IN THE SUPREME COURT OF FLORIDA
(Before a Referee)

THE FLORIDA BAR,

Complainant,

v.

JENNIFER PEREZ,

Respondent.
_____/

Supreme Court Case No.
SC22-1548

The Florida Bar File No.
2023-00,152(2B)(NES)

AMENDED REPORT OF REFEREE

(Amended to include new Paragraph VI, which replaces Paragraph IX (sic) in the original Report of Referee, in which a determination of fees and costs was reserved pending further argument).

I. SUMMARY OF PROCEEDINGS:

The Florida Bar filed its Petition for Emergency Suspension with exhibits against Respondent in these proceedings on November 17, 2022. Respondent filed a Motion to Dismiss Petition for Emergency Suspension, or, in the Alternative, In Opposition to Emergency Suspension or to Terminate or Modify Suspension on November 21, 2022. The Supreme Court of Florida on November 21, 2022, issued its order directing the appointment of referee, that the matter be heard within 7 days of the referee's appointment, and that the referee submit a recommendation to the Florida Supreme Court within 7 days of the hearing under Rule

Regulating Florida Bar 3-5.2(g) on November 21, 2022. The undersigned, as Chief Judge, took the referee assignment, replacing the previously assigned referee, due to the short time requirements (seven (7) days) in which to hear the matter.

On November 29, 2023, the court entered an order granting the Petition for Emergency Suspension, thereby suspending Respondent until further order of the Court. On November 30, 2022, The Florida Bar and Respondent entered into a Stipulation for Dissolution of Emergency Suspension and Imposition of Interim Probation with Conditions. On December 12, 2022, The Florida Supreme Court approved the recommendation for an interim probation and dissolved the emergency suspension prior to the expiration of the thirty (30) day period provided for Ms. Perez to wind down her practice of law as was allowed under the emergency suspension.

The Final Hearing commenced on the Bar's Petition for Emergency Suspension on February 13 – 14, 2023. The following counsel were present:

For The Florida Bar:

Patricia Ann Toro Savitz, Staff Counsel
J. Derek Womack, Bar Counsel

For Respondent:

Scott K. Tozian, Esquire
Henry M. Coxe, Esquire
Joseph A. Corsmeier, Esquire
Gwendolyn H. Daniel, Esquire

The Final Hearing did not conclude on February 14, 2023 and was continued and held on March 8, 2023. The Supreme Court granted the motion for extension of time to file the Report of Referee until May 8, 2023, with the undersigned referee having thereafter requested one final extension to complete and file the report.

The pleadings, responses, and exhibits were provided to the referee, considered as part of this Report, constitute the record for the hearing and are part of the referee file which will be forwarded to the Supreme Court of Florida at the conclusion of the disciplinary proceedings.

The Bar presented the following witnesses:

Karen Brown, Florida Bar Investigator

John Berrena, Florida Bar Investigator

The Florida Bar submitted Exhibits 1 - 18. The referee admitted all of the Bar's exhibits, with the exception of Exhibit 4 and a portion of Exhibit 16. Bate stamped pages 252 -259 of Exhibit 16 were not admitted.

Respondent presented the following witnesses:

Respondent: Jennifer Perez, Esquire

Timothy P. Chinaris, Esquire

Respondent submitted Exhibits 1 – 30; all were admitted.

Any pleadings, notices, motions, orders, transcripts, and exhibits are forwarded to the Supreme Court of Florida with this report and constitute the record in this case.

II. FINDINGS OF FACT

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

Narrative Summary of Case.

Overview

The Florida Bar filed its Petition for Emergency Suspension alleging that Respondent, a lawyer admitted in Louisiana and Florida, set up a "Mobile Claims Center" in the parking lot of a defunct motel, in hurricane ravaged Fort Myers, Florida, after Hurricane Ian to solicit clients by deceiving homeowners that the "Mobile Claims Center" was a part of FEMA and thereby lured potential clients to her firm. (Petition, paragraph 4). Based on these allegations, the Florida Supreme Court imposed an

emergency suspension to prevent the alleged great public harm caused by solicitation of vulnerable storm victims.

Prior to filing its Petition, The Florida Bar engaged in a limited investigation, which began after The Bar received a photograph, anonymously submitted, of an eighteen-wheeler truck and trailer on a road in an unknown location taken at an unknown time. The firm name Gauthier, Murphy & Houghtaling (hereinafter "GMH") was displayed on vehicle wrap attached to the side of the trailer. The Florida Bar reviewed the GMH law firm website showing that GMH appeared to be based in Louisiana but also noted a Fort Myers, Florida location on Cleveland Avenue. The GMH website identified Respondent, whom The Bar confirmed was a Florida Bar member, as the Florida partner.

The Florida Bar sent an investigator to the Cleveland Avenue address on two (2) separate occasions, where Respondent's law firm had set up the trailer and tent. The Florida Bar's investigator, who was not told the nature of any Florida Bar concerns, confirmed that the trailer and tent were over eleven (11) miles away from the FEMA insurance village. The investigator's pictures show that "Mobile Claim Center" was painted on the upper portion of one side of the trailer and that a plastic tarp had covered the firm's name and logo so that the firm name was not visible to the public.

The exterior photos also showed in small lettering at the bottom of the trailer, a phone number and "John W. Houghtaling II – Metairie, LA" and "Verdicts and Settlements" on the exterior side of the trailer.

No firm employees were working at the site. The Florida Bar investigator only had contact with a custodian (identified by GMH as a third-party contractor) and his assistant, who were responsible for setting up and maintaining the trailer and its multiple component parts. On the second visit, the investigator witnessed an unknown person enter the tent and trailer, and he did not hear the conversation between the custodian and the unknown person but "imagined" that the man was turned away after being told the trailer was not affiliated with FEMA. This supposition was based on the custodian telling the investigator that some people mistakenly believed the tent and trailer were affiliated with FEMA and had to be redirected.

The Florida Bar did not discover any evidence that Respondent, or any of her employees or agents had attempted to obtain clients from any walk-in traffic at the tent or trailer, or otherwise solicit any clients in the Fort Myers community. No one with The Florida Bar spoke with Respondent or anyone else at her law firm. It is unclear, given the seriousness of the allegations and possible consequences to Respondent, why basic investigative inquiries were not pursued by the Florida Bar, such as:

- whether the firm had any Florida clients;
- how the firm obtained any Florida clients;
- the purpose of the tent and trailer;
- why the tent and trailer had been set up in that location;
- why the firm name had been covered;
- whether any clients had hired the firm as walk in visitors to the tent and trailer;
- whether any employees worked out of the tent and trailer;
- whether a bona fide law firm partner, admitted in Florida, was in charge of the Florida cases.

The Florida Bar's Petition for Emergency Suspension did not charge a violation of any of The Florida Bar advertising rules other than Rule 4-7.18, pertaining to solicitation. The Florida Bar's presentation of evidence primarily addressed alleged advertising concerns related to the GMH website and the hidden wording on the GMH trailer. Yet, law firm websites are exempt from any prefiling requirements and The Florida Bar will only review portions of a website upon request. Because lawyers are not able to obtain Bar compliance letters related to their website prior to publication, The Bar provides a safe harbor for non-compliant portions of a website if

the issue is corrected within fifteen (15) days of providing notice of the problem to the attorney. R. Regulating Fla. Bar 4-7.19(f)(5). The Florida Bar did not send the required notice of non-compliance to Respondent informing her of any concerns pursuant to Rule 4-7.19(g) and providing her an opportunity to correct any issues prior to this complaint.

Respondent explained that the law firm did not staff the tent and trailer and that Respondent was only present to meet with existing clients at the trailer during prearranged times or via teleconferencing. I have considered a May 2019 Board of Governor's decision on an advertising appeal determining that an entirely virtual multi-state law firm, with no brick and mortar office, could appropriately advertise itself in Florida as a multistate law firm if it included clarifying language that the firm maintained no physical office location. Evidence submitted at the hearing established that the GBH website improperly failed to contain this clarifying language which should have been prominently displayed. Respondent should have more carefully verified that her instructions to cover all of the writing on the outside of the trailer were followed in order to avoid any advertising misunderstandings. The undersigned referee's recommendation regarding this lack of diligence is addressed at the conclusion of this Report.

FACTUAL FINDINGS

Respondent's Educational Background and Legal Employment

In 2015, Respondent began law school at Loyola University New Orleans, College of Law. In her second year, she accepted a short-term law clerking project at GMH related to the firm's representation of Super Storm Sandy victims in New York, New Jersey and Pennsylvania. (T. 237). Based on Respondent's efforts, the firm offered her a continuing clerkship through law school.

Respondent's employment with GMH

The primary office of GMH is located in Metairie, Louisiana, a suburb of New Orleans. GMH employs twelve attorneys and all attorneys practice first-party plaintiff's property damage cases. (TII p. 45). (T. 240). GMH was a well-known firm in New Orleans and its founding member donated the fourth floor of Respondent's law school. (T. 237). GMH also built a national reputation for investigating fraud in the insurance industry and was retained by the Attorney General of Louisiana to assist policy holders in Hurricane Katrina claims wherein the firm uncovered systemic practice by insurance companies of obtaining third-party administrators and third-party

consultants who were intentionally denying causation to avoid paying victims. (TII 46-47). GMH was also asked to assist the Attorney General in New York where the firm discovered a systemic scheme by the insurance companies to deny relief to Superstorm Sandy victims. (TII 47). These discoveries resulted in Senate hearings and documentaries on Frontline and 60 Minutes, highlighting GMH. (TII 47).

When Respondent graduated from law school in May 2018, she was interviewed by one of the firm's founding partners, Robert Murphy, who was returning to the firm after twenty-six years on the bench as a trial and appellate judge. (T. 239). Respondent accepted the associate position and was admitted to The Louisiana Bar. (T. 238-39).

GMH represented clients in multiple jurisdictions. (T. 248). In addition to Louisiana clients, Respondent handled cases in New York, the Virgin Islands, Texas, Illinois and Iowa. (T. 245, 256).

GMH's expansion into Florida

In 2018, when Respondent accepted the associate position with the firm, Judge Murphy and John Houghtaling, the firm's managing members, explained that the firm was considering expanding into Florida. (T. 242). Respondent offered to take the Florida Bar Examination with the

understanding that she would likely be working as a subordinate lawyer to the firm's Florida partner. (T. 242, R. Exh. 2, 3). Respondent was provided a January 8, 2018, ethics opinion from Smith, Tozian, Daniel & Davis, P.A., a Florida professional responsibility firm, to Texas attorney Dana Kirk regarding a potential interstate partnership wherein Mr. Kirk and GMH would partner with a Florida law firm. (T. 242; R. Exh. 1). The firm sought additional research from Louisiana and Florida attorney Jeremiah Johns regarding Florida interstate practice in December 2018. (R. Exh. 4).

As the firm considered a Florida expansion, Respondent was assigned to work as Mr. Houghtaling's associate and was assigned a small docket of commercial cases to handle, as well as working on Mr. Houghtaling's large loss cases. (T. 244-45). Respondent was given more responsibility as she successfully handled her cases and, in the next few years, became the highest earner in settlement amounts as compared to the eleven other firm attorneys. (T.II 45). Respondent was admitted to The Florida Bar in May 2020.

GMH discussed promoting Respondent to become the Florida partner and sought additional advice related to Respondent's potential future practice in Florida. (T. 246). Louisiana attorney Scott LaBarre provided a memo on practice in Florida, Texas and New York and concluded that

Respondent, as a member of The Florida Bar, did not need a physical Florida office to practice in Florida. (R. Exh. 5, 17). Respondent understood from these opinions, as well as her own research, that while a physical Florida office was not a pre-requisite to practicing law in Florida, if the firm chose to advertise in Florida, the firm would need to identify a bona fide office location in the advertisement. (T. 250,323; R. Exh. 6; R. Exh. 17, BS 002). GMH also contemplated purchasing Florida property where Respondent could live on one floor and have the office space on another floor. The firm researched whether it was appropriate to have a residential unit that could be used as a law office. (T. 312).

Respondent understood that a Florida partner would need to have a bona fide equity interest, having liability and receiving profits from the Florida office as well as the Louisiana office. (T. 251-52). Respondent reviewed the Legal Fuel section of The Florida Bar's website to set up a Florida practice and reached out to Jeremiah Johns who agreed to serve as Florida inventory attorney in September 2020. (T. 252, 289). Mr. Johns had closed his Florida office but still continued to handle Florida cases which confirmed with Respondent that a physical office was not necessary to practice law in Florida. (T. 252-53). Respondent reviewed advice from

Mr. LaBarre in October 2020 that there was no Florida residency requirement for practice in Florida. (T. 254-55; R. Exh. 9).

Expansion of GMH into Florida was delayed due to the Covid-19 pandemic which significantly impacted interstate travel during 2020 and 2021. (T. 256). In addition, two major hurricanes, Hurricane Laura and Hurricane Delta, made landfall in Louisiana in 2020 requiring the firm to focus its attention on the Laura and Delta clients rather than taking on more cases than it could handle. (T. 256).

Respondent's Representation of AAHOA clients

GMH represents publicly held companies, real estate investment trusts and large commercial properties. (T. 260). It has significant relationships with business associations, including the Asian American Hotel Owner's Association (AAHOA). (T. 260). During Hurricane Laura, Respondent represented an AAHOA board member and obtained significant and good results. (T. 261). As Hurricane Ian approached the west coast of Florida at the end of September 2022, Respondent personally received calls from other AAHOA members who owned property in Florida as well as former AAHOA Louisiana clients who also owned property in Florida. (T. 260-61).

Based on the client demand due to the impending storm, Respondent and the GMH partners reviewed the research gathered in the past few years related to Florida practice. Hurricane Ian made landfall on September 28, 2022. On that same day, Respondent compiled a research memorandum summarizing the opinions and provided it to Mr. Murphy and Mr. Houghtaling. (R. Exh. 10, T. 266). GMH determined Respondent should be made the Florida partner and that she could appropriately represent Florida clients related to Hurricane Ian property claims.

Respondent's Equity Partnership in GMH

GMH advised its Certified Public Accountant and business law attorney that Respondent was purchasing a 0.5 percent interest in the firm by foregoing an earned bonus of $50,000.00. (T. 348).

GMH's Restated Operating Agreement was amended to note Respondent's equity interest and her partnership was made effective October 1, 2022. (T. 273-74; R. Exh. 11, 12). Respondent testified that the partners reached an agreement on October 1, 2022, but needed time to get paperwork in order and executed the agreement on October 10, 2022. (T. 342-43). Respondent, managing partner of the Florida law office, and Mr. Murphy, managing partner of the Louisiana office, executed employment

agreements and were provided compensation related to the additional administrative duties. (T. 347; TII 43-44). Based on Respondent's ownership interest and her achievement as the highest earner in settlement results, Respondent was the second highest compensated partner in GMH in 2022 after the 97.5 percent shareholder. (TII. 45-46).

Truck, Trailer and Tent "Mobile Claim Center"

Prior to the Covid-19 pandemic, GMH obtained an eighteen-wheeler truck, trailer and tent combination that it utilized at trade shows. (T. 257). During Hurricanes Delta and Laura in 2020, GMH used the trailer and tent, which was outfitted with a generator, air conditioner, bathrooms with running water and computer equipment, as a meeting spot in the impacted areas where clients, who were commercial property owners, could have a comfortable place to meet, upload documents and communicate with attorneys and contractors. (T. 258). GMH also permitted clients to utilize the tent and trailer for meeting spaces; following Hurricane Laura, a client held church meetings in the space. (T. 281).

Respondent's AAHOA clients, who had commercial property in Florida in the path of Hurricane Ian, were aware of the firm's trailer and tent. (T. 258, 261). Some of these clients owned property in Louisiana and

had previously used the trailer and tent during Hurricanes Delta and Laura or knew about the trailer from trade shows. (T. 261). GMH decided to transport the trailer and tent to Florida so it could continue to be utilized by GMH clients in the aftermath of Hurricane Ian. (T. 261). The truck began its transport to Florida on October 1, 2022. (T. 262, 324).

GMH utilized services of a third-party contractor to transport the truck and trailer and another third-party contractor, Sergio Alvarado, to set up the trailer. The set-up required significant planning and coordination related to arranging for a generator company and delivery, set up of the butler building with bathrooms and constructing the flooring. (T. 262-63, 276, 285, 33). Melissa Pierce, paralegal to Mr. Houghtaling and Respondent, communicated with the third-party contractors regarding the trailer logistics. (T. 285, 330). Mr. Alvarado had previously set up the trailer and tent at trade shows and Hurricane Laura and had previously worked on the set up with Mr. Houghtaling, who was very particular about its presentation. (T. 263, 272, 276-77, 331).

Because the trailer was wrapped with the firm's name and could be considered an advertisement, GMH had pre-filed the pictures with the Louisiana State Bar Association, which approved its usage years prior. (T. 259-60; R. Exh. 8). Respondent was concerned that Florida would also

consider the wrapping to be advertising. Pictures of the trailer had not been pre-filed with The Florida Bar's advertising department. (T. 264, 267; R. Exh. 10 noting underlined portion of memo). Respondent instructed Ms. Pierce to advise Mr. Alvarado to cover all the writing on the trailer to avoid potential Florida advertising issues. (T. 264).

Respondent's instructions to cover the writing on the trailer are confirmed in text messages between Ms. Pierce and Mr. Alvarado, who is identified in text chain as "Sergio (at garage)." (T. 270-273; R. Exh. 13). The truck and trailer arrived in Fort Myers on October 3, 2022. (T. 263). On October 3, 2022, Ms. Pierce texted Mr. Alvarado, "I talked to Jenn and yulia and all words and logo need to be covered. Can't have any reference to our firm." (R. Exh. 13-001)(*emphasis added*). On October 4, 2022, Ms. Pierce followed up on her prior instruction texting to Mr. Alvarado, "Don't forget unfortunately, we need to cover the words bc we will get in trouble for advertising." (R. Exh. 13-003). Ms. Pierce then sent another text on October 5, 2022, "I just talked to Jen and she agreed with what we just talked about. Would you mind sending me a picture of the trailer covered so we can make sure it's in compliance with what we need." (R. Exh. 13-003). Mr. Alvarado sent a picture in which the writing on the side of the trailer appeared to be covered. (R. Exh. 13-003). While the firm name and

logo were covered with a plastic tarp and not visible to the public, the writing, "Mobile Claims Center" across the top was not covered and in smaller letters, a phone number and "John W. Houghtaling II – Metairie, LA" were visible on the back of the trailer and "Verdicts and Settlements" was visible on the side of the trailer. (T. 104, 115, TFB Exh. 12). Respondent explained that it was not visible from the street and that she did not notice it when she visited the location. (T. 279).

The trailer was set up in the parking lot of the Riverview Inn motel, which was owned by Respondent's client who had retained the firm to represent it regarding significant damage to the motel caused by Hurricane Ian rendering it non-operational. (T. 277, 334). GMH paid rent to the owner of Riverview Inn for the space. (T. 335). Although the Riverview Inn was described in the Petition for Emergency Suspension as "defunct," the property was owned by SW Sunshine LLC, Respondent's corporate client, and was operational, paying all of its taxes. (T. 316; R. Comp. Exh. 29). Respondent testified that she did not select the location due to the proximity to FEMA insurance village. (T. 278). It was uncontested that the Riverside Inn was approximately eleven (11) miles from the FEMA insurance village. (T. 268; R. Exh. 26).

Respondent handled Florida claims on behalf of 70-75 entities; however, the number of Florida clients was less because many clients owned multiple hotels with individual entities. (T. 354, 357). None of these clients were obtained through the mobile claims center. (T. 357). Respondent's clients originated from the client's association in AAHOA. (T. 357). Respondent's Florida clients had commercial property claims and Respondent's representation of individual Florida homeowners was limited to representing an AAHOA commercial client who also owned a Florida home damaged by the hurricane or had a family member with a Florida home damaged by the hurricane.

Respondent testified that she did not intend or attempt to lure unsuspecting Florida homeowners to the firm through the use of the tent and trailer and it is uncontested that Respondent's practice area pertains to representation of commercial property owners. (T. 268). Respondent's law firm had not previously represented uninsured "FEMA victims." (T. 268). It is also uncontested that no Florida client was obtained through the operation of the tent and trailer or originated from a person walking into the tent and trailer.

The tent and trailer were used, especially in the immediate aftermath of the hurricane as a place for clients, who did not have access to cell

service, internet or electricity, or other utilities, to utilize equipment to communicate with the firm via zoom or to use the airconditioned restrooms. (T. 355). Respondent scheduled times to meet with the clients on Tuesdays or Thursdays. (T. 288, 335). During these times, Respondent would cater Indian food from one of her clients' restaurants and would provide general advice to the group before meeting with each client individually. (T. 280-81). Respondent also permitted AAHOA to use the tent to hold meetings. (T. 281, 333-34). Respondent's clients used the space to meet with contractors and discuss coordinated inspections. (T. 282).

Sergio Alvarado and his assistant remained onsite to ensure the maintenance and security of the tent and the trailer. (T. 299, 331). Mr. Alvarado and his assistant were considered custodial support and did not perform any legal office work or clerical work for the firm. (T. 282). The firm did not staff the tent or trailer with paralegals, legal assistants or lawyers. (T. 282). John Houghtaling visited the site one time to review the setup of the tent and trailer. (T. 285). Respondent was the only attorney who traveled to the site to meet with clients regarding their legal claims. (T. 282, 287-88).

The Florida Bar's investigation

Initiation of the Investigation and Karen Brown's Investigation

The Florida Bar's investigation began after the Bar received a photograph from an anonymous source. (T. 47). The photograph depicted a semi-truck with the law firm name, "Gauthier, Murphy & Houghtaling" at an unknown location and time. (TFB. Exh. 8). The Florida Bar did not elicit any testimony or produce any evidence identifying the photographer, the date the photo was taken, or the location where the photo was taken. One can assume that the photograph was taken in Florida (in that the anonymous complaint was made to the Florida Bar and the Respondent conceded that the covering was put in place in Fort Myers). However, no testimony was presented showing any investigation whatsoever by the Florida Bar to attempt to determine where the photograph was taken and for how long the law firm's name (and other writing) remained visible while within the State of Florida. This would have been important information on the issue of intent. The Florida Bar's investigators were not able to shed any light on why these questions were not pursued. (T. 68-69, 74, 166).

The Florida Bar turned this photograph over to Karen Brown, a former Tallahassee Police Officer, who has been employed as a Florida Bar investigator since 2010. (T. 45, 47). Ms. Brown conducted a "Google"

search of the firm's name, reviewed the GMH website and noted that Respondent was identified as the Florida partner in charge of the Florida practice which had an address on Cleveland Avenue in Fort Myers, Florida. (T. 48, 64). Ms. Brown reviewed Respondent's Florida Bar membership record and noted that she had an address in Metairie, Louisiana. (T. 49, 52; TFB Exh. 7).

Ms. Brown's review of the GMH website indicated practice in Louisiana and Texas in one location but did not list Florida, although in another location, it referenced Hurricane Ian claims management and AAHOA members. (TFB Exh. 7 – 53, 86). The website stated that the firm administered claims for some of the Nation's largest property owners. (TFB Exh. 7, BS 69). The Florida Bar did not elicit any testimony or offer any evidence to suggest that this statement was false. The website indicated GMH administered claims across the country but did not represent that it had offices nationwide. (T. 79). Ms. Brown did not prepare a Notice of Non-compliance or have any knowledge that The Bar sent a Notice of Non-compliance related to any portion of the GMH website to GMH. (T. 86).

Ms. Brown confirmed that Respondent had advised The Florida Bar Foundation that she had opened a Florida trust account with Whitney

Hancock Bank. (T. 61-62; 82, TFB Exh. 10). GMH used the Cleveland Avenue address for its Florida banking records. (T. 62).

Ms. Brown was told to contact another investigator, John Berrena, who worked out of a South Florida Bar office with instructions to travel to the Cleveland Avenue address and "put eyes on it" and "see what's going on." (T. 49, 70). Mr. Berrena's first visit was October 11, 2022. Ms. Brown received pictures from Mr. Berrena of the truck and trailer located at the Cleveland Avenue address with a license plate tag that was registered to GMH. (T. 63). The pictures showed that the firm name was covered with a plastic tarp. (T. 71). Ms. Brown did not ask Mr. Berrena to investigate who owned the Riverside Inn motel or determine whether it was operational before the hurricane or why the tent and trailer were placed on the property. (T. 75-56). Ms. Brown, based on instructions from Bar counsel, told Mr. Berrena to make a second visit but did not communicate with him about the case. (T. 65). Ms. Brown completed an affidavit summarizing her work. (TFB Exh. 9).

John Berrena's Investigation

Mr. Berrena has been a part-time investigator with The Florida Bar since 2018, and has an impressive background as a former homicide

detective with the Broward Sheriff's Office and service in The Army's Special Forces. (T. 92-94). Unfortunately, and inexplicably, The Florida Bar, despite having available an excellent investigative resource, provided limited guidance and instructions to Mr. Berrena, thereby hampering his ability, at this critical early stage, to gather pertinent evidence that could have eliminated The Bar's concerns that Respondent was engaged in solicitation or the unauthorized practice of law.

Mr. Berrena's first visit to the site occurred on October 11, 2022, at 11:00 a.m. when he took pictures of the trailer and the tent. The only people present at the site were Sergio Alvaredo and his assistant, Mark Denison, with whom he did not recall speaking. (T. 100, 138-39, 175). Mr. Berrena was only instructed to take pictures. (T. 140). Mr. Berrena did not ask Mr. Alvaredo who employed him. (T. 139). Mr. Alvaredo explained that it was his job to set up the tent and make sure the logo and firm name remained covered with a black tarp because the firm was concerned it could be advertising. (T. 139, 167). Mr. Berrena did not see anyone who appeared to be doing legal work and did not see any member of a law firm who required supervision. (T. 141-42).

Mr. Berrena testified that the area had been impacted by the hurricane and noted that a billboard near the tent and trailer had been

severely damaged. (T. 143). The Riverside Inn also appeared damaged and in need of repair. (T. 142). Mr. Berrena did not know that the owner of the motel was one of Respondent's clients. (T. 144). Mr. Berrena spoke with someone who was paid to "keep an eye on the property" who told him the motel was closed. (T. 120).

Mr. Alvaredo cooperated completely with Mr. Berrena as he took photographs of the exterior and interior of the tent and trailer. (T. 167). The exterior photos showed that the firm name and logo were covered, but the phrase "Mobile Claims Center" was visible as was the phrase, in small lettering at the bottom of the trailer, a phone number and "John W. Houghtaling II – Metairie, LA" and "Verdicts and Settlements" on the side of the trailer. (T. 104, 115, TFB Exh. 12). The interior of the tent and trailer was branded with the firm name and logo and contained marketing posters and pamphlets. The tent was arranged with multiple round tables, chairs and sofas. (T. 113).

Mr. Berrena was asked to return to the site on October 18, 2022. Mr. Berrena did not conduct any unannounced visits between his first visit on October 11, 2022, and October 18, 2022, but pointed out that Respondent and her firm were not told he was coming to inspect the premises on the 11th or the 18th. (T. 146). The trailer and the tent did not change in

appearance between Mr. Berrena's first and second visit. (T. 145). On the 18th, Mr. Berrena did not observe any lawyers, paralegals or clients at the site; the only people on site when he arrived were Mr. Alvaredo and his assistant. (T. 169).

On the October 18, 2022 visit, an unnamed man, described as a "big white guy" with a ball cap, t-shirt and shorts walked into the tent and Mr. Berrena observed him speak to Mr. Alvaredo. (T. 113). Mr. Berrena "did not hear the conversation." (T. 113). Mr. Berrena testified that Mr. Alvaredo had previously told him that "these people come in, ask if this is FEMA, and he tells them no." (T. 113). Based on what Mr. Alvaredo had previously told him, Mr. Berrena testified "I imagine that's what the gentleman had asked him" even though he did not hear the conversation. (T. 113). Mr. Berrena had no information suggesting that the law firm signed up any clients through the operation of the tent and trailer. (T. 164). Mr. Berrena testified that this unidentified individual was turned away. Mr. Berrena did not testify that Mr. Alvaredo or his assistant made any effort to provide the individual with marketing materials or gather any information from him.

During the second visit, Mr. Berrena asked Mr. Alvaredo, "who runs this place?" (T. 152). Mr. Alvaredo gave John Houghtaling's name to Mr.

Berrena. (T. 110). Mr. Houghtaling had the most interaction with Mr. Alvaredo because Mr. Houghtaling directed the setup of the tent and trailer at trade shows and during Hurricane Laura. (T. 276-77, 285). Mr. Alvaredo gave Ms. Pierce's contact information to Mr. Berrena to speak with Mr. Houghtaling. (T. 155). Mr. Berrena called Ms. Pierce who explained that Mr. Houghtaling was testifying before the Senate but would return his call. (T. 112). Ms. Pierce also told Mr. Berrena that Respondent was the Florida partner. (T. 176).

Mr. Berrena did not ask to speak with Respondent and never reached out to her. (T. 157). Mr. Houghtaling returned Mr. Berrena's call soon after and left a voice mail. (T. 156). Mr. Berrena received Mr. Houghtaling's message but did not call him. (T. 156). Instead, he passed the message on to Bar Counsel to speak with Mr. Houghtaling. (T. 156). No one at The Bar told Mr. Berrena that they had spoken with Mr. Houghtaling. (T. 156).

Mr. Berrena was also asked to perform Google searches. (T. 121, 168). Mr. Berrena noted reviewing the "Who We Are" portion of the GMH website that stated it was a "claims management firm processing more the $3.7 billion of insurance claims for property owners, real estate investment trusts and property management companies throughout the United States."

(T. 127-28). Mr. Berrena did not have any information to suggest that the description was not accurate. (T. 158-59).

Mr. Berrena confirmed that the FEMA insurance village was approximately 11.5 miles away from the Cleveland Avenue address and he did not note any law firm presence in proximity to the FEMA insurance village. (T. 150 -51).

Respondent's Florida practice before receiving The Bar's Petition

Respondent was alarmed that The Florida Bar had sent an investigator to the tent and trailer. (T. 286). However, Mr. Berrena's communications with Ms. Pierce suggested that The Bar did not have any concerns. (T. 286). Ms. Pierce described Mr. Berrena's demeanor as friendly and relayed Mr. Berrena's comment that he did not know why he had been sent to the site. (T. 286). Mr. Berrena had confirmed that the advertisement outside of the tent and trailer had been covered up and that any brochures were inside the tent. (T. 287). Although Mr. Berrena had left a message to speak with Mr. Houghtaling, neither Mr. Berrena nor anyone else from The Bar returned Mr. Houghtaling's call. (T. 306). Ms. Pierce had informed Mr. Berrena that Respondent was the Florida partner but no one from The Bar attempted to speak with her or otherwise contact

her by correspondence requesting an explanation regarding the use of the tent and trailer. (T. 306). As mentioned above, as part of a thorough investigation, speaking with the Respondent and Mr. Hoghtaling should have been a top priority.[1]

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[1] Had Mr. Berrena spoken with Respondent, and assuming her statement would have been consistent with her in-court testimony, The Florida Bar would have learned at the very early stages of their investigation that:

- the law firm had been hired to represent Florida commercial clients through its established relationship with a national business association, Asian American Hotel Owners Association ("AAHOA");
- all of the Florida firm clients had originated through AAHOA and no clients were obtained through the use of the trailer;
- GMH's Florida client base consisted of commercial property owners and the few GMH Florida homeowner clients were either AAHOA members or relatives or referrals of AAHOA members that had existing commercial property files open with GMH;
- the tent and the trailer had been set up to provide a meeting place for and with GMH clients, with water, sewer, electricity, air conditioning and computers for existing clients to work with contractors, hold association meetings and for the firm to file and pursue insurance claims for their commercial property damages by Hurricane Ian;
- the trailer and tent were set up in the parking lot of the motel, with connections to sewer and a generator, and the firm paid rent for the space to the motel owner, a firm client, whose property was severely damaged in Hurricane Ian;
- the firm name was covered with plastic to avoid any potential advertising problems in the event it was considered a billboard that had not been pre-filed with The Florida Bar Advertising Department;
- other than custodial staff to maintain the tent, who were independent contractors, no firm legal staff worked out of the Fort Myers location for client intake, marketing or other office work.
- Respondent was admitted to practice law in Florida and was an equity partner who shared in the profits and losses of all law firm offices and who was responsible for the firm's representation of its Florida clients.

Respondent was also unaware that The Florida Bar was examining GMH's website. Law firm websites are exempt from prefiling requirements. Timothy Chinaris, Esquire, over objection by the Florida Bar, offered expert testimony on behalf of Respondent. Mr. Chinaris previously served as Ethics Director for The Florida Bar, on the Florida Bar Special Committee on Website Advertising Rules, on Florida Bar Professional Ethics Committee for multiple terms and Florida Bar Committee on Professionalism. (R. Exh. 28-004, TII 53). Based on Mr. Chinaris's background and experience, I find that his testimony regarding The Bar's investigation of lawyer website advertising provides helpful and persuasive guidance. Mr. Chinaris explained as follows:

> Q. The website, unlike direct mail advertisement or TV advertisement or billboard advertisement, does not require pre-approval by The Florida bar?
>
> A: No. And in fact, the law rules say lawyers are not to file their websites with The Florida Bar. I think there's a provision that says individual portions or a statement or two or a paragraph or something that there's question about, The Bar will give an opinion on that, but they will not give opinions on websites. They do not want them.
>
> . . .
>
> Q: If the Bar reviews a website and determines it doesn't comply, do the rules require The Bar to take any procedural steps?

A: Yes, As part of the -- I guess overall procedure dealing with websites, because they are not required to be filed for review, there was some concern people would be – lawyers would be exposed; they wouldn't be able to get an opinion on their website. But yet if there was something wrong with it, The Bar would discipline them.

And so the rule that's part of 4-7.19 provides that in the case of a perceived violation on a website, The Bar is supposed to give a notice to the law firm so that they can take corrective action, and The Bar is not to proceed with any kind of discipline unless 15 days have passed after that notice was given and the appropriate connections were not made.

Q: If I understood what you said, if The Bar reviews a website, finds it's noncompliant advises the lawyer of the Bar concerns, and the lawyer corrects the website to address The Bar's concern, it does not morph into a grievance?

A: Correct.

Q: Okay. And in your experience representing advertising clients, how frequently do advertising inquiries relating to noncompliance lead to formal disciplinary prosecution?

A: Virtually never, in my experience anyway. Maybe I've been fortunate. The Bar is concerned about getting the problem corrected. Rather than punishment, they want to correct it and make sure everything is done properly.

So oftentimes, if somebody complains to The Bar about a billboard or a TV advertisement, The Bar will contact the advertiser and get the matter resolved rather than going the formal disciplinary route.

(TII 80-82).

Respondent and GMH did not receive any notice of non-compliance pursuant to Rule Regulating The Florida Bar 4-7.19(g) and The Florida Bar

did not otherwise contact Respondent or GMH regarding any website compliance issues.

Respondent, who was focused on potential advertising issues arising from the vehicle wrapping before the truck and trailer arrived in Florida, continued to investigate how to comply with the advertising rules. Respondent's own research and the research of others indicated that advertising required identification of a bona fide office location. (T. 250, 323; R. Exh. 6; R. Exh. 17, BS 002). On October 26, 2022, Respondent contacted The Florida Bar's Ethics Hotline to discuss whether the trailer and tent set up as a mobile office in the motel parking lot would constitute a bona fide office for purposes of advertising. (T. 292-95; 338; TFB Exh. 2-000004).

The Ethics Hotline Call records classified Respondent's inquiry as "Type of Call: Advertising." (TFB Exh. 2-000004). Huy-Yen Cam Bailey, who answered the Ethics Hotline Call, informed Respondent that there was no brick-and-mortar law office requirement and noted that lawyers practice out of their homes. (T. 293). Ms. Bailey and Respondent also discussed Florida Ethics Opinion 62-64, which permitted a lawyer who practiced out of a hotel, to utilize the hotel's address but cautioned that the lawyer could not use the same phone number as the hotel. (T. 293). Ms. Bailey further

advised Respondent that any concerns whether the wrapping on the vehicle constituted advertising needed to be directed to The Florida Bar's Advertising Department. (T. 293; TFB Exh. 2-000004).

While the call summary apparently prepared by Ms. Bailey identified Respondent as a "contractor," Respondent denied identifying herself as a contractor (T. 295), and I find insufficient evidence to dispute her statement in that regard. The Florida Bar's affidavit of the Director of The Florida Bar Ethics and Advertising Department, as well as the attached The Florida Bar Procedure for Ruling on Questions of Ethics Rule 2(a)(1)(A) state that the Ethics Hotline will only provide guidance to members of The Florida Bar in good standing. (TFB Exh. 2-000002, 2-000008). Had Respondent claimed to be a contractor, Florida Bar rules would have prohibited Ms. Bailey from providing guidance to Respondent. The Florida Bar did not offer any testimony from Ms. Bailey related to this telephone conversation.

After hearing from Mr. Alvarado on October 26, 2022, that some people had mistaken the tent for FEMA, Respondent, in what appears to be continued efforts on her part to try to comply with applicable rules, instructed Mr. Alvarado to create a sign that plainly stated they were not FEMA. (T. 299) (Motion to Dissolve, Exh. 1; entered as Composite Exh. 30). When the sign did not withstand wind and rain, GMH ordered a

professional, laminated sign that was received on November 1, 2022, stating "This is NOT FEMA." (T. 299).

Respondent continued to pursue steps for setting up the Florida office. Respondent had previously opened a trust account at Hancock Whitney Bank that had offices in Florida and notified The Florida Bar Foundation on October 12, 2022, that GMH had opened a Florida trust account. (T. 291, 310; R. Exh. 15). She communicated with Lee County regarding an occupational license and spoke with the firm accountant and Mr. Alvarado about obtaining a post office box for the Fort Myers location. (T. 338-39). On November 8, 2022, Respondent also retained a professional responsibility attorney, Joseph Corsmeier, in an abundance of caution to ensure she did not miss any requirement while she set up her office and to address any advertising issues. (T. 300-01; 326; R. Exh. 16). Approximately one week later (on November 17, 2022), and without any communication or prior notice from The Florida Bar, Respondent received the Petition for Emergency Suspension in her morning email. (T. 289).

Respondent's conduct post-Petition for Emergency Suspension

Respondent instructed that the tent and trailer be disassembled the day she received the Petition. The truck and trailer left Florida the next

morning. (T. 289). The Florida Bar has not alleged that Respondent failed to comply with the suspension requirements, including providing notices to all Florida clients, Florida opposing counsel, Florida co-counsel, Courts and Bar associations nationwide, and banking institutions. The Florida Bar and Respondent subsequently stipulated to the imposition of an interim probation which permitted Respondent to continue to practice law in Florida. As a condition of her interim probation, Respondent was required, among other conditions, to obtain a brick-and-mortar office and advise The Florida Bar of her entry and exit into Florida to prove that she had a "non-transitory" presence in Florida. Respondent leased an office in Fort Myers, Florida and moved to Florida full-time in January 2023. (T. 304, 335; Exh. 18). She continues to represent Florida clients.

RECOMMENDATIONS AS TO GUILT

Standards and Burden of Proof

I have considered the following standards in evaluating the record evidence. The Bar has the burden of proving by clear and convincing evidence that Respondent is guilty of the elements of each specific rule violation alleged in the complaint. Florida Bar v. Rood, 622 So. 2d 974,

977 (Fla. 1993); Florida Bar v. Burke, 578 So. 2d 1099, 1102 (Fla. 1991). Florida courts define the term 'clear and convincing evidence' as follows:

> [T]he evidence must be found to be credible; the facts to which the witnesses testify must be distinctly remembered; the testimony must be precise and explicit and the witnesses must be lacking in confusion as to the facts in issue. The evidence must be of such weight that it produces in the mind of the trier of fact a firm belief or conviction, without hesitancy, as to the truth of the allegations sought to be established.

In re Davey, 645 So. 2d 398, 404 (Fla. 1994) (quoting Slomowitz v. Walker, 429 So. 2d 797, 800 (Fla. 4th DCA 1983)). Without proof by evidence adequate to leave "'no substantial doubt ... sufficient to convince ordinarily prudent minded people,'" the proof is inadequate. Slomowitz v. Walker, 429 So. 2d at 799-800 (*internal citations omitted*).

Where the record evidence fails to support The Bar's allegations of misconduct as to a specific rule violation, the Court directs a referee to find in favor of the respondent and dismiss the Bar's complaint alleging such violation. See Florida Bar v. Scott, 566 So. 2d 765, 766 (Fla. 1990) (disapproving referee's finding of guilt as to rule violation because the record evidence did not support the referee's finding by clear and convincing evidence); Florida Bar v. Quick, 279 So. 2d 4, 7-9 (Fla. 1973) (same).

Similarly, where the record evidence is inconclusive or contradictory as to proof of the elements of a rule violation, the referee's finding should be in favor of the respondent because the evidence "does not establish the charges with that degree of certainty as should be present in order to justify a finding of guilt" as to a disciplinary rule violation. See Florida Bar v. Rayman, 238 So. 2d 594, 598 (Fla. 1970) (disapproving referee's findings and concluding that the inconsistent and inconclusive record evidence failed to comprise that degree of proof necessary to warrant a finding of guilt for a disciplinary rule violation).

Limitations on Advisory Materials

I have noted that advisory materials, including Ethics Opinions and Rule Commentary may not be utilized to impose additional obligations or as a basis for disciplinary sanction. While lawyers may look to Florida Ethics Opinions for guidance in interpreting the rules, there can be no discipline for violating a Florida Ethics Opinion. Rule 1 of the Florida Bar Procedures for Ruling on Questions of Ethics states:

> Staff opinions, professional ethics committee opinions, and opinions of the board of governors are advisory only and are not the basis for action by grievance committee, referees, or the board of governors except on application of the respondent in disciplinary proceedings.

(*emphasis added*); See also TFB Exh. 2-000008. Rule 1 indicates that a respondent may utilize these advisory opinions to demonstrate that his/her conduct complied with the guidance provided by these opinions.

Comments to the Rules Regulating The Florida Bar are intended only as guides to interpretation. These comments "explain and illustrate the meaning and purpose of the rule," but only the text of each rule is authoritative. Thus, even when comments use the term "should," they are advisory only and "do not add obligations to the rules but merely provide guidance for practicing in compliance with the rules." See Preamble, Rules Regulating Fla. Bar, Ch. 4.

The Florida Bar did not prove that Respondent engaged in the Unauthorized Practice of Law in violation of Rule Regulating Florida Bar 4-5.5.

The Florida Bar has not shown through clear and convincing evidence that Respondent was not authorized to represent Florida clients. The Florida Bar opened its case explaining that the Petition for Emergency Suspension was filed to protect the economic interests of Florida Bar members and to protect the public. Bar counsel maintained that "The Bar and the Supreme Court have carefully crafted restrictions on out of state law firms seeking to extend its reach into Florida" to "protect competition

among the licensed dues-paying members of the Florida Bar" and that "our brothers and sisters in the Florida bar – Florida bar members likely deserve to provide those services without disruption and competition from foreign firms with no attachment to the state." (T. 14). Using these proceedings to restrict out-of-state counsel to promote a closed legal marketplace is directly contrary to Florida Supreme Court precedent. In State ex rel. Florida Bar v. Sperry, 140 So. 2d 587, 595 (Fla. 1962) vacated sub nom. Sperry v. State of Fla. ex. rel. Florida Bar, 373 U.S. 379 (1963) the Court held as follows:

> The reason for prohibiting the practice of law by those who have not been examined and found qualified to practice is frequently misunderstood. It is not done to aid or protect the members of the legal profession either in creating or maintaining a monopoly or closed shop. It is done to protect the public from being advised and represented in legal matters by unqualified persons over whom the judicial department can exercise little, if any, control in the matter of infractions of the code of conduct which, in the public interest, lawyers are bound to observe.

Protecting the interests of Florida attorneys over clients' rights to choose their own counsel harms the public by depriving clients of counsel with specialized experience in addressing complex legal claims. Legal excellence in serving clients is not achieved by limiting choice to ensure less experienced and less qualified Florida attorneys have less competition.

Hurricane ravaged property owners suffer damages uniquely related to hurricane water and wind loss and deserve attorneys who have handled hurricane claims and understand potential industry approaches and pitfalls.

It is uncontested that GMH, initially based in Louisiana, a state that has suffered from catastrophic hurricanes, developed significant expertise representing hurricane victims. The Attorney Generals of Louisiana and New York relied upon GMH's expertise. It is similarly uncontested that Respondent developed a client base in AAHOA that sought her assistance along with GMH's resources and substantial insurance industry experience to protect their commercial property interests impacted by Hurricane Ian in Florida.

It is also uncontested that Respondent herself was a dues-paying active member of The Florida Bar at the time of alleged competition against "licensed dues-paying members of The Florida Bar." I find that Respondent's representation of these Florida clients did not constitute the unauthorized practice of law.

Respondent is admitted to practice law in Florida and Louisiana. GMH sought advice from multiple attorneys over a several year period to evaluate whether Respondent could practice law in Florida even though she was a member of a law firm that had offices in Louisiana. Respondent

reviewed these memoranda and conducted her own research. I find that Respondent diligently and appropriately evaluated her responsibilities regarding what The Florida Bar has described as "esoteric points" of law before deciding to represent Hurricane Ian Florida victims. (T. 14).

As a member of The Florida Bar, Respondent is entitled to practice law in Florida even if she resides in another state. The Florida Board of Bar Examiners advises potential applicants that Florida does not have a residency requirement. (R. Exh. 9). Moreover, long standing Florida Ethics Opinion 76-7, that has not been rescinded, advises that a lawyer admitted to the Florida Bar but who practiced full time in a New York firm could appropriately represent clients in Florida matters and share fees from the Florida matter with his New York firm as long as the client was informed.

Even if Respondent was not a member of The Florida Bar, Rule Regulating the Florida Bar 4-5.5 authorizes temporary practice for a lawyer who is admitted in another jurisdiction. Rule 4-5.5 (c)(4)(B) authorizes an out-of-state lawyer to temporarily practice in Florida if the Florida matters "arise out of or are reasonably related to the lawyer's practice in a jurisdiction in which the lawyer is admitted to practice." The commentary to Rule 4-5.5 (c)(4) explains that an applicable circumstance occurs when "the services may draw on the lawyer's recognized expertise developed through

regular practice of law in a body of law that is applicable to the client's particular matter." Representation of hurricane victims is uniquely within GMH's regular practice of law.

I do not find anything nefarious about GMH's decision to begin its Florida practice in the wake of Hurricane Ian; the firm's "regular practice" pertained to hurricane storm damage. Respondent and her law firm were responding to an exigency directly related to the firm's specialized knowledge authorizing temporary practice while the firm established an interstate practice. The firm had relationships with AAHOA members and several former and current clients who were contacting the firm related to concerns about devastating damage to their Florida property.

Because GMH intended to have a Florida presence that was not temporary, it determined that it should establish an interstate practice. There is limited authority related to the establishment of an interstate practice. Rule 4-5.5 is the applicable rule on multijurisdictional practice but the body of the rule addresses practice by lawyers who are not admitted in Florida. Respondent is a Florida lawyer.

Respondent and The Florida Bar agree that Florida Bar v. Savitt, 363 So. 2d 559 (Fla. 1978), which is an unauthorized practice of law and not a regulatory case and which was decided approximately forty-five (45)

years ago, is the most recent controlling case establishing the requirements for an interstate practice. While there appear to be Florida Ethics Opinions interpreting and expanding the Savitt conditions, these opinions are only advisory and The Florida Bar may not rely on these opinions before a Referee to impose additional obligations that might be used as a basis for disciplinary sanctions. TFB Exh. 2-000008.

Savitt pertains to a New York law firm that had opened an office in Miami, Florida, and in contrast to the facts of this case, the lawyer supervising the Miami office was not admitted to practice law in Florida. Id. at 363. Savitt set out the consent judgment terms to which the Savitt law firm and The Florida Bar agreed would establish an appropriate interstate law firm. The Florida Supreme Court approved those terms.

In Savitt, the New York lawyers were not practicing in Florida on a temporary or transitory basis. The Florida Bar interprets this fact as imposing a converse requirement that any Florida lawyer in charge of an interstate Florida law office must stay in Florida on a non-transitory basis. Savitt does not impose such a restriction in the terms set out in the UPL consent agreement. It was the non-transitory nature of the New York lawyers' practice in Savitt that necessitated additional conditions of an interstate law firm, namely a Florida bona fide partner. Savitt does specify

that if a firm lawyer is only admitted out-of-state and not in Florida, and is providing legal advice in Florida, the out-of-state lawyer could only be in Florida on a transitory basis. Id. at 561.

I do not find that Savitt requires the Florida partner of an interstate firm to physically be in Florida on a non-transitory basis or that any arguable condition requiring the physical and non-transitory presence is sufficiently clear to warrant a disciplinary finding. Neither Rule 4-5.5 nor Savitt references a physical or a "brick and mortar" location. Although Rule commentary is not controlling and could not be used as a basis for finding a disciplinary violation and imposing sanctions, even the commentary to Rule 4-5.5 is silent as to any physical office space requirement.

As technology has advanced exponentially since 1978 when Savitt was decided, The Florida Bar has acknowledged and approved virtual law practices. Florida Ethics Opinion 00-4 explains "there is no express provision in the Rules of Professional Conduct that prohibit[s] . . .the practice of law through the internet." In relation to multi-state or multijurisdictional practices, in May 2019 the Florida Board of Governors approved advertising for a fully virtual multistate practice that had no office locations in Florida or any other jurisdiction. "Board Rules on 'Virtual' Firm's Direct Mail Campaign," Florida Bar News, May 31, 2019 (Florida Bar

Advertising File Nos. 19-01896, 19-01897). The Florida Bar did not seek discipline or otherwise suggest that this multistate firm violated Savitt or any other rule relating to interstate practice because it had no physical presence in Florida; it approved its advertising, with the caveat that the advertisement state that the firm did not have physical office space. Even if Respondent's representation of Florida clients was not authorized through her own Florida Bar membership and Florida Ethics Opinion 76-7 or Rule 4-5.5(c)(4), her representation consisting of virtual communications with clients and in person meetings at the Cleveland address did not invalidate GMH's interstate practice.

Savitt imposed the requirement that an interstate law firm operate according to an agreement that shares profits and losses on a basis that is shared across the business of the law firm and the various practice jurisdictions and not just on a Florida-only basis. Savitt does not quantify the extent of ownership required to establish a bona fide partner.

I find, based on the evidence presented, that GMH made a reasonable decision to promote a firm attorney to become the Florida *bona fide* equity shareholder for valid reasons, including Respondent's own track record as the highest settlement earner and GMH's familiarity with respondent and her work product. Respondent became an equity

shareholder, effective October 1, 2022, and paid for her ownership interest by forgoing payment of an earned $50,000.00 bonus. Based upon her ownership interest and settlement results, she was the second highest paid lawyer in the firm after the firm's majority shareholder.

The Bar argued that Respondent's separate employee agreement with GMH suggested she was not a *bona fide* owner. Respondent explained that both she and the Louisiana managing partner signed employee agreements reflecting additional firm compensation due to administrative obligations associated with law firm management. When Savitt was decided, lawyers practiced in law firms that were partnerships. Since Savitt, lawyers are permitted to practice in professional corporations and in limited liability professional companies. However, the principle of Savitt is that the Florida supervising lawyer is a bona fide owner of the firm.

Even though the GMH majority shareholder had a controlling interest in the firm, Savitt does not require a bona fide owner to have a majority control over the limited liability corporation. Rather, Savitt requires that Respondent have control over the Florida cases. Respondent testified that she had exclusive decision-making authority over her Florida cases and The Florida Bar did not produce any evidence contradicting this assertion. There was no testimony from any Florida clients or any GMH employees

that Respondent was not responsible for the Florida cases. The Florida Bar has not met its burden of establishing, by clear and convincing evidence, that Respondent was engaged in or assisting others in the unauthorized practice of law in Florida. I do not find that Respondent violated Rule 4-5.5.

The Florida Bar did not prove that Respondent engaged in solicitation in violation of Rule Regulating the Florida Bar 4-7.18 or attempted to do so in violation of Rule 4-8.4(a).

The Stipulation for Interim Probation between the parties, reviewed by this Referee and approved by the Florida Supreme Court, required Respondent to provide copies of all her Florida contingency fee agreements to The Florida Bar. In addition, Respondent has been required to produce all trust account and banking records that would identify any other client in the event Respondent did not produce all contingency fee contracts. Although The Florida Bar has been provided the names and contact information for all Florida clients, The Florida bar has not provided any evidence that Respondent's Florida clients retained Respondent either through the Cleveland Avenue site or "Mobile Claims Center" or through some other type of misleading advertising.

Respondent testified that her Florida clients originated from their association in AAHOA and that, with the small exception of a few homeowners who were either members or relatives of members of AAHOA, her clients owned commercial properties damaged by Hurricane Ian. The Florida Bar has offered no testimony or other evidence rebutting Respondent's testimony and acknowledged that it did not have knowledge of any client who would contradict this assertion. (TII 134).

Rule Regulating the Florida Bar 4-7.18 prohibits solicitation, which in contrast to advertising, involves direct contact with prospective clients with whom the lawyer has no family or prior professional relationship. Specifically, Rule 4-7.18 states,

> (a) Solicitation. Except as provided in subdivision (b) of this rule, a lawyer may not:
>
> (1) solicit in person, or permit employees or agents of the lawyer to solicit in person on the lawyer's behalf, professional employment from a prospective client with whom the lawyer has no family or prior professional relationship when a significant motive for the lawyer's doing so is the lawyer's pecuniary gain. The term "solicit" includes contact in person, by telephone, by electronic means that include real-time communication face-to-face such as video telephone or video conference, or by other communication directed to a specific recipient that does not meet the requirements of subdivision (b) of this rule and rules 4-7.11 through 4-7.17 of these rules;

The essence of solicitation is uninvited contact with the public, where a lawyer has greater influence to persuade a potential client to retain a law firm. The Florida Bar argues that Respondent covered up the GMH firm name and logo on the trailer to mislead hurricane victims or deceive policy holders into walking into a Mobile Claims Center where the individual would see firm marketing and be persuaded to retain GMH.

Respondent credibly testified that she did not cover the firm name to mislead the public into walking into the tent in order to impress walk-in clients with firm marketing and persuade the client to retain her firm. Respondent's testimony is corroborated by contemporaneous evidence. First, the following evidence shows that Respondent covered the firm logo and firm name because she was concerned about Florida advertising compliance:

- Respondent's internal memorandum showed Respondent had considered potential compliance issues if the advertisement did not identify a bona fide office location;
- Respondent was aware that Louisiana had found the firm name and logo to be advertising which carried pre-filing requirements;
- the text messages between Ms. Pierce and Sergio while the trailer was on route and arrival confirm that "Jen" (Respondent) was directing Sergio to cover "all writing" to avoid "advertising problems" prior to any visit or contact by The Florida Bar;
- During Mr. Berrena's unannounced visit to the Cleveland Avenue site, Mr. Alvarado told Mr. Berrena that Mr. Alvarado was on site

to ensure the tarp remained in place over the firm name and logo to avoid advertising problems;

- the Ethics Hotline call record prior to the Petition for Emergency Suspension reflects that Respondent was inquiring whether the address of her mobile office would constitute a bona fide office for advertising.

Second, The Florida Bar did not produce any evidence proving the necessary Rule 4-7.18(a) element that Respondent or any of her agents or employees sought "professional employment from a prospective client" when any uninvited person walked into the tent.

The Florida Bar relies on the hearsay testimony of Mr. Alvarado who stated that some individuals had to be redirected after entering the tent and Mr. Berrena's observation of the person who was similarly turned away. There is no evidence that there was even an attempt to "sign up" a client from the tent and trailer, nor that any person would not be turned away.

The Florida Bar refers to Florida Bar v. Wolfe, 759 So. 2d 639 (Fla. 2000) to argue Respondent or her agents engaged in solicitation. In Wolfe, the responding attorney personally visited the homes of four people whose houses were damaged by a tornado, one of whom had also lost her husband in the storm. Id. at 640. Mr. Wolfe presented the storm victims with pamphlets, promising them that he would obtain maximum benefits for them. Id. In addition, he provided them with prepared contingency fee

agreements that did not comply with contingency fee requirements. Id. at 640-41, 645. Mr. Wolfe also told the storm victims that he would pay them a referral fee for clients who signed with him. The Court found that Mr. Wolfe had "invade[d] the sanctity of an area ravaged by a catastrophe to solicit disaster victims without regard for dignity or decorum." Id. at 645.

In contrast, Respondent and GMH employees made no attempt to persuade any individual to retain the firm. The firm did not have marketing staff, intake personnel or other office staff on site to discuss contingency fee contracts or to set consultation appointments with the firm. Walk-ins were not provided marketing materials or sample contingency fee contracts. Walk-ins were not asked to provide contact information for outreach by the firm and no information was requested or collected about potential claims. A firm that invested substantial sums in setting up the truck, trailer and tent, including a generator, air-conditioning, sewer system connections, elaborate flooring and furniture would have resources to capitalize on walk-in clientele if that was intended. The only individuals on site were a custodian and his assistant, who redirected any uninvited individual away from the trailer.

Third, it is uncontested that Respondent did not obtain any clients from the tent and trailer the entire time it was operational between October

4, 2022, and November 17, 2022. The absence of client retention would not be dispositive if Respondent or her agents had made unsuccessful attempts to persuade walk-ins to retain the firm. However, there is no evidence of any attempts. In addition to the absence of any evidence of such attempts, it is also undisputed that individual walk-ins would have fallen outside of Respondent's commercial property owner client base.

Fourth, Respondent provided a reasonable explanation for transporting the trailer to an impacted area immediately following the hurricane. Pursuit of insurance claims in a storm ravaged area is complicated by the absence of electricity and internet. While the interior of the tent included firm materials, the collection of round tables and chairs as well as rows of chairs depicted in photographs, are consistent with Respondent's testimony that the tent was created and used as a place for existing clients to comfortably gather, meet with contractors and attend association meetings. The Florida Bar even referenced a photograph depicting an AAHOA meeting held at the tent and trailer.

After considering all of these facts as well as the absence of any evidence clearly and convincingly establishing that Respondent or any of her agents attempted to offer professional employment to any "walk-ins" or uninvited individuals, I do not find that Respondent violated Rule 4-7.18.

The Florida Bar did not prove that Respondent engaged in criminal conduct in violation of Rule 4-8.4 (b).

The Florida Bar argued that Respondent engaged in solicitation in violation of Florida Statutes, section 877.02. As discussed in the preceding section related to Rule 4-7.18, The Florida Bar did not meet its burden of proving that Respondent or any of her agents attempted to obtain professional employment from a prospective client through direct or targeted contact. The evidence showed that any client mistaking the GMH trailer for a general insurance claims center was redirected and turned away without any attempt to market the individual for potential legal representation by GMH. I do not find that Respondent violated Rule Regulating the Florida Bar 4-8.4 (b).

The Florida Bar did not prove a Rule 4-1.5 violation.

Rule Regulating the Florida Bar 4-1.5 prohibits an attorney from accepting an illegal, prohibited or clearly excessive fee. The Florida Bar has not suggested or implied that Respondent's contingency fee agreements did not comply with Rule 4-1.5. The Florida Bar appears to argue that Respondent would be prohibited from accepting any fees

generated from solicitation. The Florida Bar has not offered any evidence showing that Respondent received any fee that was generated from solicitation or non-compliant advertising. The Florida Bar has not disputed that Respondent's Florida clients originated from the relationship with AAHOA members. Accordingly, I do not find that Respondent violated Rule 4-1.5.

The Florida Bar did not prove that Respondent engaged in conduct contrary to honesty and justice in violation of Rule 3-4.3 or dishonesty, fraud, deceit or misrepresentation in violation of Rule 4-8.4(c) or in conduct prejudicial to the administration of justice in violation of Rule 4-8.4(d).

The Bar charges that Respondent violated the following Rules:

a. Misconduct and Minor Misconduct, 3-4.3 – The commission by a lawyer of any act that is unlawful or contrary to honesty and justice may constitute a cause for discipline whether the act is committed in the course of a lawyer's relations as a lawyer or otherwise, whether committed within Florida or outside the state of Florida, and whether the act is a felony or a misdemeanor; and

b. Misconduct, 4-8.4(c) – A lawyer shall not engage in conduct involving dishonesty, fraud, deceit, or misrepresentation.

In evaluating these allegations, I have evaluated whether The Florida Bar has met its burden of proving the necessary elements of intent required by both of these rules. The Florida Bar must show "deliberate and knowing" misconduct to satisfy the intent elements of Rules 4-8.4(c) and 3-4.3. Florida Bar v. Behm, 41 So. 3d 136, 148 (Fla. 2010); See also Florida

Bar v. Draughon, 94 So. 3d 566, 569 (Fla. 2012) (finding attorney's fraudulent transfer was done with "actual intent to hinder" a creditor and therefore, violated Rule 3-4.3); Florida Bar v. Wasserman, 675 So. 2d 103, 105 (Fla. 1996) (counsel's outburst in court proceeding in which he stated his intent was to counsel his client to defy a court order constituted a violation of Rule 3-4.3).

In contrast, the Court has found that a failure to supervise resulting in "extremely negligent" conduct is insufficient to prove the intent element of Rule 4-8.4(c). See Florida Bar v. Johnson, 132 So. 3d 32 (Fla. 2013) (finding extremely negligent supervision of paralegal who stole from trust account was not sufficient to prove a Rule 4-8.4(c) violation, but other findings of contempt warranted disbarment). Similarly, the Preamble to the Rules Regulating the Florida Bar defines "'fraud' or 'fraudulent'" as "conduct having a purpose to deceive and not merely negligent misrepresentation or failure to apprise another of relevant information."

The Preamble defines "knowingly" as "actual knowledge" and indicates that a person's "knowledge may be inferred from [the] circumstances." R. Regulating Fla. Bar, Ch. 4 (Preamble). "Circumstantial evidence is often used to prove intent and is often the only available evidence of a person's mental state" but must be inconsistent with any

"reasonable hypothesis of innocence." Florida Bar v. Marable, 645 So. 2d 438, 443 (Fla. 1994).

The Florida Bar appears to rely on two separate acts to prove Respondent knowingly and deliberately engaged in dishonest conduct. First, The Bar asserts that Respondent made misrepresentations to The Florida Bar Ethics Hotline ("Hotline") when she called the Hotline before she received the Petition for Emergency Suspension. The Florida Bar did not elicit any testimony from the Hotline attorney and the only evidence related to the substance of the communication is Respondent's testimony and the short summary of the call record apparently created by the Hotline attorney.

The Bar claims Respondent did not adequately describe the Mobile Claims Center and asserts that she should have advised the Hotline attorney that she was utilizing the Mobile Claims Center as a bona fide office to establish an interstate law firm. The Bar, apparently misunderstanding the basis for Respondent's call to the Hotline, argued that she did not provide pertinent and relevant facts related to establishing an interstate practice; however, that subject was outside the scope of Respondent's advertising inquiry to the Hotline.

The evidence showed Respondent understood that she needed to reference a *bona fide* office location in any advertisement. Before even receiving the Petition for Emergency Suspension, Respondent sought to confirm through the Hotline and retention of professional responsibility counsel, that the mobile office at the Cleveland Avenue address would constitute a *bona fide* location for purposes of removing the plastic tarp to reveal the firm name and logo on the side of the trailer.

The Hotline summary accurately indicates that the caller described a "mobile office at a hotel." The summary also correctly notes that Respondent's inquiry related to advertising concerns and not the establishment of an interstate practice. Respondent's call to the Hotline demonstrated yet another attempt to ensure that she fully understood the advertising restrictions related to identifying a bona fide office in any advertisement before she uncovered the trailer.

In addition, although it is unknown why the call summary incorrectly identified Respondent as a contractor, The Florida Bar's affidavit and Florida Bar Procedures for Ruling on Questions of Ethics note that the Hotline may only be used by Florida Bar members in good standing. In accordance with its own rules of procedure, the Hotline would not have provided any advice to a "contractor." The Bar has not established, by

clear and convincing evidence, that Respondent deliberately and knowingly made any misrepresentations in her communication with the Hotline.

Second, The Bar argues that Respondent engaged in "fraudulent" and "deceitful" misconduct, potentially causing prejudice to individuals' property damage claims, by failing to cover the words "Mobile Claims Center" thereby inviting members of the public to enter the tent and trailer only to be turned away. (TII 131).

The Florida Bar has not proven this allegation by clear and convincing evidence. In addition to Respondent's own testimony, circumstantial evidence refutes the assertion that respondent knowingly and deliberately misled the public. Respondent's instructions to cover "all writing" on the trailer were memorialized in text messaging between Ms. Pierce and Mr. Alvarado ("Sergio at garage"). Not only was there no evidence that Respondent or her agents capitalized on any walk-in traffic by attempting to persuade the walk-ins to hire the firm, Respondent took the steps necessary to correct any misunderstanding. When Respondent learned from Mr. Alvarado that people were mistaking the trailer for FEMA, she instructed him to install a sign that plainly stated that the location was "NOT FEMA." She then instructed her office to order a professionally laminated sign to ensure a weather-proof sign remained in place.

The Bar asserts that Respondent acted dishonestly in violation of Rule 4-8.4(c) because the wording on the trailer suggested it was offering legal services to the public and did not post any warning that the trailer and tent were only for the use of existing clients. (TII 131). A Rule 4-8.4(c) violation cannot be sustained on this basis. While it certainly would have been preferable to have signage displayed that clearly and unambiguously described the purpose of the trailer and tent and for whom they were intended, the deficiency in clarity does not establish dishonesty by clear and convincing evidence.

The Florida Bar asserts that Respondent engaged in "conduct prejudicial to the administration of justice" in violation of Rule 4-8.4(d). A brief interaction, in which an uninvited individual comes to the tent and trailer and is then told that he is in the wrong place does not prejudice or even potentially prejudice that individual's claim. The Bar has not proven a violation of Rule 4-8.4 (d).

Respondent should have appreciated that the "Mobile Claim Center" wording might cause confusion and she should have been more diligent in fully inspecting all visible wording. However, any negligence associated with this lack of complete diligence does not establish the requisite intent for a Rule 4-8.4(c) or 3-4.3 violation. Florida Bar v. Johnson, *supra.* The

Bar has not established that Respondent had a "purpose to deceive" to support a finding of fraudulent conduct or that she deliberately or knowingly engaged in dishonest conduct. I do not find that Respondent has violated Rules 4-8.4(c) or 3-4.3.

The Florida Bar did not prove a Rule Regulating the Florida Bar 4-5.3 violation.

Rule 4-5.3 requires a managing attorney to "make reasonable efforts to ensure that the firm has in effect measures giving reasonable assurance that the person's conduct is compatible with the professional obligations of the law." The Bar argues that Respondent violated Rule 4-5.3 because she failed to supervise Mr. Alvarado. The Bar relied on Mr. Berrena to establish Mr. Alvarado's relationship with GMH and Mr. Alvarado's duties to the firm. Mr. Berrena testified that he did not ask Mr. Alvarado who employed him. Mr. Berrena further testified that Mr. Alvarado told him that his duties were to set up and maintain the tent and trailer and to make sure the plastic tarp covered the firm name and firm logo to avoid advertising concerns. Mr. Berrena further witnessed Mr. Alvarado speak to an uninvited individual who entered the tent and have a conversation he did not hear but was consistent with the individual learning he was in the wrong place. Mr.

Berrena testified that he did not see any legal work or office work being conducted in the tent and trailer and did not see anyone he would describe as a paralegal or a legal assistant.

Respondent explained that Mr. Alvarado was a third-party contractor and not an employee of the firm. Respondent testified that Mr. Alvarado was previously retained to coordinate and set up the tent and trailer for trade shows and understood GMH's expectations regarding its appearance. Respondent testified that Mr. Alvarado had previously set up the tent and trailer for Hurricane Laura in Louisiana and was asked to complete a similar set up and maintenance in Fort Myers. Other than securing the property and ensuring that only invited guests utilized the tent and trailer, there is no evidence that Mr. Alvarado performed any other services for the firm. The Florida Bar has not asserted that Mr. Alvarado acted improperly or committed any misconduct related to any communication with the public or with clients.

Based on the evidence at the hearing, I find that Mr. Alvarado performed a custodial function to maintain and secure the premises. Mr. Alvaredo was not entrusted with performing legal work or communicating with firm clients. Mr. Alvarado's communications with individuals entering the tent were consistent with the duties of any security guard or

maintenance personnel who is tasked with ensuring that only invited individuals are allowed on law firm premises. Given these limited roles, The Florida Bar has not proved that Respondent violated Rule 4-5.2 by failing to make reasonable efforts to ensure Mr. Alvarado's conduct was in line with her professional obligations.

III. CONCLUSIONS, STANDARDS AND CASE LAW

When The Florida Bar received the anonymous complaint and photograph, they had an obligation to investigate. The urgency of this investigation was heightened by the increased vulnerability of citizens during a time of crisis. And it was incumbent on The Florida Bar to do a *thorough* investigation at the outset, using the many available resources at its disposal. As discussed above, they unfortunately failed to do so. In the undersigned Referee's opinion, the evidence developed and presented by The Florida Bar was not sufficient to support, by clear and convincing evidence, the allegations in the petition.

Despite reaching this conclusion, the undersigned Referee finds that Respondent should have been more diligent in ensuring total compliance with Bar rules, and was careless in certain areas, including: (1) failing to order and confirm the covering of all wording on the trailer that was visible

to the public throughout the trailer's presence in Florida; (2) failing to personally conduct a thorough verification of what was visible to the public following setup in Fort Myers through personal and specific communication with Mr. Alvaredo (to include immediately obtaining detailed photographs showing complete compliance with instructions; (3) failing to order the presence of specific language on the trailer clearly outlining the trailer's limited purpose; (4) failing to have a qualified individual of the firm present in Fort Myers who could competently and accurately explain the purpose of the trailer's presence to individuals who happened to appear and make inquiries; and (5) failing to ensure that GBH's website clearly stated that the Florida office location was available by appointment only.

Guilt findings as to uncharged advertising concerns are deferred in accordance with Rule Regulating the Florida Bar 3-5.3(h)(2). I find that the above-outlined lack of diligence and carelessness, while significant, are of a nature that should be eligible for diversion, rather than for more significant sanctions. I have considered prior Florida Supreme Court approval of a diversionary program for more extensive failures to comply with advertising restrictions related to direct mail solicitations and radio advertisements. See Florida Bar v. Alan Bennet Garfinkel, SCO7-818. Given all the circumstances, including The Florida Bar's failure to provide

any notice of non-compliance related to the website, I recommend that Respondent be diverted to a practice and professionalism enhancement program with a special condition of the completion of an advertising workshop.

IV. RECOMMENDATION AS TO DISCIPLINARY MEASURES TO BE APPLIED

Based upon my findings that Respondent has not been proven guilty of any violations of The Rules Regulating The Florida Bar by clear and convincing evidence, no discipline is recommended, other than the proposals outlined in Section III above.

V. PERSONAL HISTORY AND PAST DISCIPLINARY RECORD

In making my findings and recommendation, I considered the following:

Personal History of Respondent:

Age: 29

Date admitted to the Bar: May 1, 2020

Prior Discipline: None.

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

Determinations related to costs to be assessed and fee awards were deferred to allow for argument from counsel as a result of the findings herein. On June 26, 2023, the parties presented their arguments. After carefully considering the evidence at the final hearing as well as the arguments presented on June 26, 2023, I make the following findings and recommendations:

The court is persuaded by the Respondent's arguments that considering the findings in this Report that the Petitioner did not sufficiently prevail in the proceedings to justify the award of attorneys' fees and costs. It is therefore my recommendation that their motion therefor be denied.

On May 24, 2023, the undersigned issued an order in this case entitled "Order on Discovery Violations," which detailed clear discovery violations on the part of Petitioner. The undersigned denied Respondent's motion to dismiss the complaint, however deferred ruling on the award of sanctions (monetary or otherwise) for the discovery violations. Significant to the undersigned's analysis was the extent of resulting prejudice to the Respondent and the amount of extra work that was needed due to the discovery violation. After careful consideration, and (1) having determined

that the prejudice to the respondent was not significant, and (2) having (hopefully) sufficiently put the Petitioner on notice that their conduct in this regard was clearly wrong and should never be repeated (with suggestions on how to address similar alleged confidential matters in the future),the undersigned declines to recommend imposition of sanctions against the Petitioner.

Dated this 30th day of June, 2023.

/s/ Charles E. Roberts
Charles Edward Roberts, Referee

Original to:

Hon. John A. Tomasino, Clerk of the Supreme Court of Florida, Supreme Court, Building, 500 South Duval Street, Tallahassee, Florida, 32399-1927

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