

IN THE SUPREME COURT OF FLORIDA
(Before a Referee)

THE FLORIDA BAR,
Complainant,

v.

TERESA MARIE GAFFNEY,
Respondent.

Supreme Court Case
No. SC21-938

The Florida Bar File
Nos. 2018-10,184 (13C)
2018-10,542 (13C)

REPORT OF REFEREE

I. RECOMMENDATION OF REFEREE: Permanent Disbarment

Pursuant to the undersigned being duly appointed as referee to conduct disciplinary proceedings herein according to Rule 3-7.6, Rules of Discipline, **it is recommended that Ms. Gaffney's license to practice law be permanently revoked as soon as possible based on the most egregious incidents of continuing misconduct ever witnessed by this referee.** See Transcript of Ruling Conference, August 25, 2022.

The undersigned provides the following attachments, in addition to this proceeding's record and report, in support of this special request that the Supreme Court of Florida give this matter and recommendation immediate attention: Chapter 7 Memorandum Decision Following Trial on Contested Matters, dated June 3, 2019, issued by U.S. Bankruptcy Judge

Roberta A. Colton, in the bankruptcy case of Sarah K. Sussman, Debtor, Case No. 8:17-bk-08959-RCT (entered as bar's trial exhibit P49); The Florida Bar's ("bar") Complaint; the bar's Motion for Partial Summary Judgment; the bar's Sanctions Memorandum of Law; and the transcript of the bar's sanctions hearing closing argument. All attachments are considered incorporated in the report and adopted as findings of the referee.

II. SUMMARY OF PROCEEDINGS

On June 22, 2021, The Florida Bar ("bar") filed its Complaint against Ms. Gaffney ("respondent"). On June 29, 2021, the Honorable Kimberly Byrd was appointed as referee in this matter. On August 25, 2021, the referee's request for an extension of time to file the report of referee was granted by this Court, extending the due date for filing the report of referee to February 26, 2022.

Thereafter, by Court order, dated October 21, 2021, the proceedings were stayed until February 6, 2022, and the due date for the filing the report of referee was extended to August 19, 2022. On February 21, 2022, an Amended Order Appointing Referee was entered, appointing the undersigned as referee in this matter.

Ms. Gaffney was represented by pro hac vice counsel, James Macchitelli, in this matter. Ms. Gaffney was local counsel for Mr. Macchitelli and also co-counsel in this matter. The bar was represented by Lindsey Guinand and Robyn Dillon.

The bar's complaint alleged Ms. Gaffney violated Rules 3-4.3, 4-3.1, 4-3.3(a), 4-3.4(c), 4-3.5(c), 4-8.2(a), 4-8.4(a), 4-8.4(c) and 4-8.4(d) in Count I of its Complaint, and Rules 3-4.3, 4-3.1, 4-3.3(a), 4-8.4(a), 4-8.4(c) and 4-8.4(d) in Count II of its Complaint. Ms. Gaffney denied violating any of the rules charged and asserted two affirmative defenses.

The bar filed a Motion for Partial Summary Judgment and Request for Judicial Notice ("Motion") on February 18, 2022, and respondent filed a response in opposition on March 16, 2022. By agreement of the parties, the referee held a hearing on the bar's Motion and respondent's response on March 22, 2022. By order dated April 19, 2022, the referee granted the bar's Motion in part, finding respondent guilty of violating Rules 3-4.3, 4-3.1, 4-3.4(c), 4-3.5(c), 4-8.2(a), 4-8.4(a), 4-8.4(d) in connection with the allegations contained in Count I of the bar's complaint and Rules 3-4.3, 4-3.1, 4-8.4(a), 4-8.4(c), and 4-8.4(d) in Count II. The referee further granted the bar's Request for Judicial Notice and took into evidence Exhibits 1 through 52.

On June 15, 2022, the bar filed a notice of voluntary dismissal without prejudice of Rule 4-3.3(a) in connection with Count II. This concluded the issues and matters related to Count II.

Thereafter, three issues were left to be adjudicated: the bar's allegations that Ms. Gaffney violated Rules 4-3.3(a) and 4-8.4(c) related to Count I of the Complaint and whether Ms. Gaffney violated the Rules Regulating The Florida Bar regarding her failure to appear at her deposition in Case No. 14-CA-3762. A final hearing on the remaining issues took place on July 18 through 21, 2022, via Zoom.

On July 27, 2022, the undersigned filed a request for extension of time to file the report of referee in this matter. By Court order, dated August 4, 2022, an extension was granted, and the report of referee was ordered to be filed by October 21, 2022.

On August 5, 2022, the undersigned made an oral ruling finding Ms. Gaffney guilty of violating Rules 4-3.3(a) and 4-8.4(c), related to Count I of the bar's complaint. Immediately thereafter a sanctions hearing was held on August 5, 8, and 9, 2022, via Zoom. The undersigned issued an oral ruling on sanctions on August 25, 2022.

All items properly filed including pleadings, recorded testimony (if transcribed), exhibits in evidence and the report of referee constitute the

record in this case and are forwarded to the Supreme Court of Florida. The undersigned refers the Court to the index of record for a list of the plethora of other filings in this case. Each filing was reviewed by the referee.

III. FINDINGS OF FACT

Jurisdictional Statement. Ms. Gaffney 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.

1. Preliminary Statement: Citations to the Record

- a. References to the bar's final hearing exhibits will be cited as (P Exhibit **).
- b. References to the bar's sanctions hearing exhibits will be cited as (Sanctions Exhibit **)
- c. References to the respondent's exhibit will be cited as (R Exhibit **).
- d. References to the respondent's Answer will be cited as (Answer para. **).

2. Motion for Summary Judgment in Bar Proceeding

The following facts were proven by clear and convincing evidence in the bar's Motion for Partial Summary Judgment:

Count I

Ms. Gaffney's Failure to Appear at Her March 11, 2015, Deposition;
Refusal to Reschedule the Deposition Pursuant to Court Order; and
Refusal to Answer Court Ordered Deposition Questions

Ms. Gaffney was a party defendant in Hillsborough County Case No. 14-CA-3762 and her deposition was scheduled for March 11, 2015. A Notice of Taking Deposition was filed with the court, and served on respondent's counsel, on February 5, 2015. P Exhibit 1. On March 10, 2015, the day before her scheduled deposition, and over a month after being scheduled for her deposition, respondent, through counsel, filed a Motion for Protective Order Regarding Notice of Taking Deposition, claiming to have other commitments. P Exhibit 2. The motion does not seek a continuance or other relief, but rather a blanket order protecting respondent from being deposed. Florida Rule of Civil Procedure 1.280 (c) outlines the grounds for seeking a protective order, none of which are cited in the motion. Respondent's motion does not allege that respondent needed protection from annoyance, embarrassment, oppression, or undue burden or expense, as required by the rule. Rather, the one sentence provided as a basis for the protective order is that respondent "will be attending the Judicial Qualifications Committee meeting on the date scheduled for her deposition." Respondent is not a member of the Judicial

Qualifications and was not attending a Judicial Qualifications Committee meeting on the date of the scheduled deposition. No hearing on the motion for protective order was scheduled or held, and no oral or written order was issued prior to the March 11, 2015, deposition. P Exhibit 4. Despite no protective order from the court, Ms. Gaffney failed to appear for her deposition. P Exhibit 5.

After respondent failed to appear for her deposition, opposing counsel filed a Verified Response to Teresa Gaffney's Motion for Protective order and Motion for Sanctions. The following day, on March 12, 2015, respondent's counsel filed an Amended Motion for Protective Order retracting the previous reasons for seeking a protective order, claiming it was an error and citing an entirely different reason for needing the protective order (now retroactively). P Exhibit 3. In the amended motion, respondent, for the first time, claimed to need the protective order because she had "commitments" related to the Judicial Nominating Committee and "the date was not cleared." Neither of these arguments, however, is a valid, good cause basis for seeking a protective order. Ms. Gaffney's knowledge of the deposition date will be outlined more below.

The trial court issued an August 7, 2015, order denying Ms. Gaffney's Amended Motion for Protective Order and compelling Ms. Gaffney to

reschedule her deposition. P Exhibit 6. Ms. Gaffney refused to do so without opposing counsel first agreeing to schedule other depositions. Ms. Gaffney thereby willfully disobeyed the court's directive, requiring opposing counsel to file another Motion to Compel Discovery. P Exhibit 7. The Motion to Compel Discovery was granted by court order dated September 18, 2015, and stated: "Teresa Gaffney shall appear for her deposition on October 16, 2015, at 11:00 a.m." P Exhibit 8.

On October 16, 2015, Ms. Gaffney appeared for her deposition, after being court-ordered to do so. P Exhibits 8 and 9. At the deposition, Ms. Gaffney was asked questions regarding her father's deed to a property at issue in the case.

Ms. Gaffney and her counsel, who was also her husband, objected to the questions on the basis of attorney/client privilege. Ms. Gaffney claimed that she was representing her father when she prepared the deed that transferred an interest in her father's home to herself and that all communications, she had with him concerning that deed were privileged. A telephonic hearing was held with the judge during the deposition to address the objection and privilege. After hearing argument from both parties, the trial judge overruled the objection and ordered respondent to answer the deposition questions. P Exhibit 9.

Thereafter, respondent completely disobeyed the direct court order to answer the questions. Page 8 of Ms. Gaffney's deposition transcript states:

THE COURT: Thank you. All right. Objection 2 is overruled. The witness is directed to answer the question. Thank you. Anything else for you today?

MR. KANGAS: Not at this time. Your Honor. Thank you very much.

THE COURT: Okay. Thank you all.

MR. SUSSMAN: Well, I guess we're going to the Second DCA.
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THE DEPONENT [TERESA GAFFNEY]: I'm not violating the attorney/client privilege.

MR. SUSSMAN: You need to do what you need to do and we're not breaching attorney/client privilege. We're done unless you want to do something else and ask some other questions.

BY MR. KANGAS:

Q. Please explain the circumstances surrounding that execution of the deed.

TERESA GAFFNEY:

A. I can't. It's attorney/client privilege and we'll have to go to the Second DCA. Go on to your other questions. Take it up with the Second DCA.

Id.

Ms. Gaffney did not, however, take the issue up with the Second District Court of Appeals following her refusal to answer. Likely because the judge's ruling concerning the attorney-client privilege assertion was based on Fla. Stat. 90.502(4)(b). Florida Statute 90.502(4)(b) states: "There is not

an attorney-client privilege when the communications sought is relevant to an issue between two parties who claim through the same decedent.” P Exhibit 10, pg. 2.

There is no question that the issue concerning the transfer of the deed was relevant to the proceedings, as it was the main issue. However, even if Ms. Gaffney disagreed with the trial judge regarding Fla. Stat. 90.502(4)(b), she still willfully disobeyed the court’s oral order. As a result, opposing counsel filed Plaintiff’s Motion for Order Granting Discovery Sanctions and for Order Finding Teresa Gaffney in Contempt of Court on October 28, 2015. P Exhibit 10. On March 22, 2016, an Amended Notice of Evidentiary Hearing was filed, noticing the motion for sanctions and contempt. P Exhibit 11. Despite being noticed for the hearing, Ms. Gaffney failed to appear at the evidentiary hearing on March 29, 2016. See Answer, para. 26.

Following the evidentiary hearing, the court ordered sanctions against Ms. Gaffney and held her in contempt of court. In the court’s order granting sanctions and holding respondent in contempt, the court found the following, among other things:

“Further, with respect to the discovery violations described above, the Court specifically ordered Gaffney to answer questions concerning the subject matter of this lawsuit. Defendant Gaffney willfully disobeyed this Court’s direct order. Defendant Gaffney is an

attorney licensed by the Florida Bar. She cannot claim ignorance to the Florida Rules of Civil Procedure and blame her husband/counsel, as it is obvious to this Court that she has been complicit every step of the way.”

“Finally, Plaintiff scheduled the motions for sanctions against Defendants Gaffney and Sussman to be heard on March 29, 2016. Although Defendants Gaffney and Sussman received notice of the hearing, and the respective motions sought the severe sanction of the striking of pleadings, neither of the Defendants nor their counsel appeared for the hearing in an attempt to present evidence in opposition to it. Remarkably, Defendants Gaffney and Sussman and their counsel failed to communicate to Plaintiff or the Court any justifiable reason for the failure to appear. This was the second hearing in a row that Dov Sussman, Esq., and Teresa Gaffney, Esq., as counsel for Sarah Sussman intentionally did not appear for a properly noticed hearing. This Judge has never experienced such contempt for the judicial system. There remains no doubt that the disobedience of Dov Sussman, Esq. and Teresa Gaffney, Esq. was willful, deliberate and contumacious.”

“...this Court finds that those Defendants have willfully and intentionally frustrated the Plaintiffs attempts to justly, speedily, and inexpensively prosecute this case. The Defendants' have contumaciously disregarded this Court's authority, the Rules Regulating the Florida Bar and the Florida Rules of Civil Procedure. Accordingly, this Court is granting Plaintiffs' request that Defendants' affirmative defenses and counterclaims/crossclaims be stricken as a sanction, that attorneys' fees and costs be awarded and that an ultimatum is imposed so that the defendants and their counsel will comply with the law. As will be ordered in detail below, Defendants will be given one, final opportunity to comply with the law. If either fails to do so, her or its answer will be stricken and final judgment will be entered against her or it.”

P Exhibit 12.

Further, the court found the plaintiff was prejudiced due to the misconduct of Ms. Gaffney, including failing to appear at depositions, failing to follow court orders, and frustrating attempts to set and conduct same.

Despite also being counsel of record for one of the defendants in the matter, Ms. Gaffney never appeared for a hearing, including the hearing seeking contempt and sanctions. Ms. Gaffney was court ordered to answer certain deposition questions and she refused to do so. Ms. Gaffney was the defendant deponent, but importantly, also one of the counsels of record. She made objections on her own behalf and after being ordered to answer questions she repeated her objections and refused to answer. Thereafter, after being noticed of the hearing on the motion concerning her refusal to answer the deposition questions, respondent failed to appear at the hearing. All this conduct is clear by the deposition transcript as well as the motion filed by opposing counsel and the subsequent findings by the trial judge. P Exhibits 9, 10 and 12.

*Respondent's Numerous Motions to Disqualify and Other
Motions/Pleadings Lacking Merit and Impartiality Towards the Tribunal*

One business day after the court issued its sanctions ruling against Ms. Gaffney, she submitted an unsworn affidavit to the court asserting inflammatory, personal, horrendous, accusations against the presiding

judge, The Honorable Paul Huey. P Exhibit 13. Rather than addressing her misconduct in the litigation and responding appropriately to the sanctions and contempt order, Ms. Gaffney filed a public document personally attacking Judge Huey.

On April 29, 2016, the court entered an Order Treating Affidavit of Gaffney as Amended Motion to Disqualify Judge and Order Granting Motion to Disqualify Judge. On the same day, Ms. Gaffney's counsel/husband also filed a Motion for Reconsideration of all of Judge Huey's rulings. Upon Judge Huey's recusal, The Honorable Rex Barbas was assigned the case and he heard the Motion for Reconsideration.

On July 6, 2016, a hearing was held on the motion for reconsideration. On July 12, 2016, Judge Barbas entered an order denying the Motion for Reconsideration. Unhappy with the decision, on July 21, 2016, Ms. Gaffney, through counsel/husband, filed another Motion for Reconsideration. Then, in August 2016, Ms. Gaffney through counsel/husband, filed a Verified Motion to Disqualify Judge Barbas From Presiding Further In The Above Captioned Matter, which attached another affidavit penned by Ms. Gaffney. See P Exhibit 15.

Respondent's Affidavit stated in part, "[i]n reviewing the Transcript of July 6, 2016, Judge Rex Barbas expressly condoned the behavior of Judge

Paul Huey, to wit, the overt sexual harassment and the fear of repercussions of the sexual advances of Judge Paul Huey. Further, Judge Rex Barbas expressly condoned the unlawfully hearings conducted by Judge Paul Huey in violation of Florida Statutes 38.10.” Answer, para. 43 and P Exhibit 15.

The Verified Motion to Disqualify Judge Barbas was denied. The court’s August 23, 2016, Order Denying Defendant’s Verified Motion to Disqualify Judge Rex Barbas From Presiding Further In the Above-Captioned Matter denied the motion on several grounds. P Exhibit 16.

One such ground for denial was stated as follows:

“The motion is untimely based upon the affidavit attached to the motion. Motions are considered untimely when they are filed after a party has suffered an adverse ruling and no good cause is shown for the delay. See: 497 So. 2d 240 (1986), 669 So. 2d 326 (4th DCA 1996). In this case, the motion to disqualify was filed only after the Court had announced on the previous day to the filing of the motion that the Court was denying the Defendants’ Motion for Reconsideration.”

On or about September 6, 2016, the court entered a default judgment against defendants, including Ms. Gaffney. In its Order Granting Motion for Default, the court stated, “[n]o judgment shall be entered upon this default until after the conclusion of the pending appeals in Case No. 2D15-5735.” P Exhibit 17. Thereafter there was no more activity on the case until the

conclusion of the appeals in early 2017, wherein the Second District Court of Appeals ruled against Ms. Gaffney.

The very next filing was a Motion to Dismiss the entire case filed by defendants, including Ms. Gaffney, on March 21, 2017. The motion claimed the grounds for the dismissal were lack of personal jurisdiction, subject matter jurisdiction, and expiration of the statute of limitations. The motion sought the following relief, among other things: “[d]ismiss the case with prejudice”; “[c]ondemn the Sexual Predatory Practices engage in by Judge Paul Huey”; and “[a]n apology to the Designated Defendants from the Court for its refusal and reluctance to follow the law (emphasis added).” P Exhibit 18.

On September 5, 2017, the court issued an order denying the motion to dismiss. Within the order, the court stated, in part, “...these are the same motions that the Court previously ruled upon. In fact, these are the same motions that formed the basis for orders, which the Defendants filed a Petition for Writ of Certiorari to the Second District Court of Appeals. The Second District subsequently denied the Petition.” P Exhibit 19.

The next week, on September 15, 2017, defendants filed Motion to Disqualify Judge Rex Barbas. The Motion also attached an Affidavit of Teresa M. Gaffney, A Designated Defendant, in Support of the Motion to

Disqualify The Presiding Judge, The Honorable Rex Barbas. See P Exhibit 20.

Ms. Gaffney's unsworn affidavit stated that she is an attorney licensed to practice law in Florida, that the designated defendant caused to be filed a Motion to Disqualify the Trial Judge, and that her affidavit was brought in support of the statements made in the Motion to Disqualify the present presiding judge and pursuant to Fla. Stat. 38.10. Two days later, on September 17, 2017, respondent's counsel/husband filed Defendant's Motion for an Evidentiary Hearing on Subject Matter Jurisdiction, Standing, Statute of Limitations, Breach of Fiduciary, Conflict of Interest, Filing an Unlawful Lis Pendens. P Exhibit 21.

On or about September 19, 2017, the court entered an Order Striking Defendants' Motion for a Hearing on Subject Matter Jurisdiction, Standing, Statute of Limitations, Breach of Fiduciary, Conflict of Interests, Filing an Unlawful Lis Pendens. P Exhibit 22. The court found that the defendants' motion again argued the same matters contained in their original motion for reconsideration following Judge Huey's disqualification. The court found that since a default had been entered and the issues regarding personal jurisdiction and subject matter jurisdiction had already been addressed (and taken up on appeal which was per curiam affirmed), the motion was a

nullity, since judgment had been entered and the default never set aside. The court further found that the defendants filed yet another motion for reconsideration alleging the same matters that they had previously argued and were a part of the order of July 12, 2016.

Also, on September 19, 2017, the court denied the latest motion for disqualification. P Exhibit 4. On September 27, 2017, Ms. Gaffney, through counsel/husband, filed a Petition For a Writ of Prohibition and A Writ of Mandamus with the Second District Court of Appeals, Case No. 2D17-3849. P Exhibit 23. The Petition asked for a Writ of Prohibition to require Judge Barbas' Disqualification. The Petition reargued and realleged personal attacks on Judge Barbas. The Petition also sought a Writ of Mandamus to require the lower court to hold an evidentiary hearing, to "hold cognizance" of defendants' request for criminal investigation of plaintiff, and to require disclosure of all communications with plaintiff and plaintiff's counsel.

By Amended Order dated October 23, 2017, the Second District Court of Appeal denied the petitions for writ. P Exhibit 24. Thereafter, on October 16, 2017, the court issued a Final Judgment Upon Default and that same day a Writ of Possession was issued. P Exhibit 25.

On October 23, 2017, respondent filed an Emergency Verified Motion for a Temporary Injunction against the writ of possession. Paragraph 81 of the Emergency Verified Motion cited the standard and burden of the movant in seeking a temporary injunction. It stated, "[i]n order to obtain a temporary injunction, the moving party must make four showing. Atomic Tattoos, LLC v. Morgan, 45 So. 3d 63, 64-65 (Fla. 2d DCA 2010). The movant must demonstrate that he will suffer irreparable harm without an injunction, that he has no adequate remedy at law, that he enjoys a substantial likelihood of success on the merits and that an injunction would be in furtherance of the public interest."

The Emergency Verified Motion filed by the defendants reargued all of respondent's positions in the case. The issues of the case had been ruled upon, considered again after numerous motions for reconsiderations, and upheld on appeal, and thus, necessarily had no "substantial likelihood of success."

The court concluded the request within the verified motion was not an emergency and then subsequently denied the motion. Up until this point in time, and after Judge Huey's recusal, the defendants, including Ms. Gaffney, filed at least six (6) motions or other pleadings continually arguing

matters that had been repeatedly ruled upon, and affirmed on appeal. Such motions and pleadings include but are not limited to the following:

- a. April 29, 2016 Motion for Reconsideration
- b. July 21, 2016 Motion for Reconsideration
- c. March 21, 2017 Motion to Dismiss
- d. September 17, 2017 Defendant's Motion for an Evidentiary Hearing on Subject Matter Jurisdiction, Standing, Statute of Limitations, Breach of Fiduciary, Conflict of Interest, Filing an Unlawful Lis Pendens
- e. September 27, 2017 Petition For a Writ of Prohibition and A Writ of Mandamus
- f. October 23, 2017 Emergency Verified Motion for a Temporary Injunction

The court, in more than one order denying all the above requests, made the finding that defendants were alleging the same matters over and over again. That conclusion is not subjective or up to interpretation. But, rather, evidenced by the repetitive arguments made by defendants in all their filings. Their positions and arguments had been rejected or denied repeatedly by the lower and appellate courts and yet Ms. Gaffney continued to file motions or other pleadings rearguing same.

On or about June 17, 2019, the plaintiffs filed a Motion for Order to Show Cause and to Enforce Final Judgment. On or about June 20, 2019, the defendants filed a motion to disqualify opposing counsel, Mr. Kangas, and on July 11, 2019, the defendants filed another motion to disqualify Judge Barbas, making the same allegations as the motion for disqualification of Mr. Kangas. On July 12, 2019, an evidentiary hearing was held on defendant's motion for disqualification. Before the court issued a ruling, Ms. Gaffney filed another motion to disqualify Judge Barbas.

On July 22, 2019, Ms. Gaffney's counsel/husband filed another motion on behalf of Ms. Gaffney to disqualify Judge Barbas stating in part the following: "Judge Barbas has endorsed the conduct of a judicial sexual predator and allowed to stand an order made by the judicial sexual predator in retribution for his denial by Gaffney (emphasis added)." The motion further stated in part that: "In opening the hearing with a decidedly misogynistic comment, Judge Barbas effectively announced that no woman will be treated fairly in his court. The rule of law has been supplanted by misogyny (emphasis added)." The motion also stated in part that: "The final order demonstrates the court's profound animus to women, the final order stands for the proposition that the sexual extortion engaged in by Judge Huey was acceptable and had no impact on Judge Huey's retaliatory order

(emphasis added).” The motion attached an affidavit by Ms. Gaffney, which was attesting to the allegations in the motion, among other things. P Exhibit 27.

On or about July 23, 2019, the court denied both motions to disqualify. In the July 23, 2019, order, the court stated in part: “Regarding the allegations that the undersigned found nothing wrong with Judge Huey’s alleged actions, this court never made that statement. The sanction order issued by Judge Huey was not vacated because there was a factual and legal basis to conclude that the defendants were being obstructionists during the proceedings.” P Exhibit 26. The court also stated in part: “The litany of actions delineated by Judge Huey for the sanctions were never rebutted by Mr. Sussman in a hearing that lasted an entire half day. Moreover, at the conclusion of the hearing, the undersigned provided Sussman with another opportunity to comply with the rules of discovery, and the court would then consider withdrawing the sanctions order.” The court further stated in part that: “The defendants make the bold allegation that the undersigned Judge ‘had no problem with the conduct and behavior of Judge Huey...’ The court reiterated that it was not conducting a hearing regarding the alleged actions by Judge Huey. The defendants continually try to mislead the court and whoever else reads their motions filled with

misstatements and innuendo (emphasis added).” Also, “[i]t is evident that the defendants continue to make motions to obstruct the progress of this case by continually arguing matters that have been continuous [sic] ruled upon and affirmed on appeal.” Id.

Ms. Gaffney’s conduct in continuously making personal allegations against at least two judges in the proceeding and citing same as a basis for injunctions, writs, emergency relief, dismissals, and repeated motions for reconsiderations and disqualifications is tantamount to belligerence and theatrics. Respondent’s conduct directly resulted in years of delay based on bad-faith filings and completely lacked the professional integrity required by the rules of professionalism.

Respondent’s Reckless, Impugning, and Disparaging Statements

About the Judiciary

As seen above, directly following an adverse ruling against Ms. Gaffney in Case No. 14-CA-003762, she began to disparage and impugn the integrity of the presiding judge, Circuit Court Judge Paul Huey. Ms. Gaffney has continued to use the court system and her license to practice law to publicly attack Judge Huey in many different forums, including this bar proceeding.

After Judge Huey's recusal in Case No. 14-CA-003762, Judge Rex Barbas was assigned the case. Directly following an adverse ruling from Judge Barbas, respondent began to disparage and impugn the integrity of Judge Barbas. The following statements were made or verified by Ms. Gaffney in court filings about Judge Huey and Judge Barbas:

- a. "Judge Barbas has endorsed the conduct of a judicial sexual predator and allowed to stand an order made by the judicial sexual predator in retribution for his denial by Gaffney." P Exhibit 27 and Answer para. 55.
- b. "Judge Rex Barbas had no problem with the quid pro quo sexual harassment by Judge Paul Huey directed towards Teresa M. Gaffney." *Id.*
- c. "In opening the hearing with a decidedly misogynistic comment, Judge Barbas effectively announced that no woman will be treated fairly in his court. The rule of law has been supplanted by misogyny." *Id.* and Answer para. 56.
- d. "The final order demonstrates the court's profound animus to women, the final order stands for the proposition that the sexual extortion engaged in by Judge Huey was acceptable and had no impact on Judge Huey's retaliatory order." *Id.* and Answer para. 57.
- e. "Judge Huey wanted retribution for the Petitioner [Gaffney] rebuffing him and refusing his sexual demands." P Exhibit 28.
- f. "More importantly the default judgment is predicated on the quid pro quo sexual demands made by Judge Huey, which were scorned and resulted in the order of 22 April 2016." P Exhibit 29.
- g. "The order of 22 April 2016 which is the basis for this courts default is void for a number of reasons specifically an order based on quid pro quo sexual harassment is void and contrary to the laws of the State of Florida." *Id.*
- h. "The basis of this judicial action was the refusal of the offer of quid pro quo sexual blackmail by the author [Judge Huey] of the order in question. The poisonous quality of that order is such that in the civilian or military world the perpetrator of these

advances would be disciplined and relieved of further duties and responsibilities." P Exhibit 30.

Furthermore, Ms. Gaffney's September 2017 unsworn affidavit stated the following about Judge Barbas, in part:

- a. Although subject matter jurisdiction is lacking in the above captioned matter before this court and although subject matter jurisdiction has never been established on the record, the presiding judge has failed to take cognizance and following the controlling law and statute dispositive of this crucial issue of justiciability.
- b. The presiding judge has refused and/or failed to take notice of the fact that although the circuit court lacks any jurisdictional basis to proceed, the Plaintiff has been permitted broad latitude to prosecute a matter over which preferential treatment of the Plaintiff takes precedence over the requirements of the law.
- c. The repeated failings of the presiding judge to exercise his duties pursuant to the Code of Judicial Conduct and his abject failure to take notice of the repeated defalcations of the Plaintiff and his counsel convinces the Affiant that a fair and impartial treatment of this matter will [sic] be forthcoming from the presiding judge.
- d. The presiding judge has failed to note the very basic operations of the law, such as Statute of Limitations and instead has agreed with the contrived quasi-legal analysis of Plaintiff and his counsel which lack any support in case law or statute.
- e. The presiding judge has failed to comprehend that the predatory activity of the preceding presiding judge casts a dark shadow over the integrity of the judicial process. Instead the present presiding judge has expressed amusement and scoffed at the pleadings filed on behalf of the Designated Defendants and, significantly, has adopted the unlawful rulings of the preceding judge.
- f. The court has declined to take any remedial action as to the transgressions perpetuated by the Plaintiff, and his counsel, but, rather, has permitted plaintiff, and his counsel to avoid any consequences for its unlawful actions.

P Exhibit 20.

After as many as five (5) accusatory motions for disqualification were filed against Judge Barbas, he granted Ms. Gaffney's latest motion to disqualify in an order dated December 12, 2019. The order stated in part, "[h]owever, based upon the constant misrepresentations by counsel for the Defendant and Defendant Gaffney herself, the undersigned finds that he can no longer be fair and impartial towards the Defendant Gaffney nor her attorney, Sussman. For that reason, and that reason alone, this court ORDERS AND ADJUDGES that Defendant's Motion to Disqualify / Recuse is GRANTED." P Exhibit 31.

Immediately thereafter, The Honorable Caroline Tesche-Arkin was assigned the case. Ten days later, on December 22, 2019, defendants filed another Motion for Reconsideration, now seeking all orders and findings issued by Judge Barbas be rescinded. P Exhibit 32. Judge Tesche-Arkin denied the motion in an order dated February 26, 2020, and defendants filed another repetitive Motion for Reconsideration on March 1, 2020. P Exhibit 33.

Per Ms. Gaffney's modus operandi, immediately following the adverse ruling, she filed another Motion for Disqualification of the trial judge on March 15, 2020. P Exhibit 34. In total, the defendants filed at least three

(3) motions for disqualification against Judge Tesche-Arkin, none of which met the legal standard required for disqualification of a judge.

Ms. Gaffney has remained steady in her accusations against the Thirteenth Circuit Judiciary and after Judge Tesche-Arkin's assignment to the case, respondent also began to disparage and impugn the integrity of Judge Tesche-Arkin.

The Supreme Court of Florida has clearly outlined the standard applicable to statements made about the judiciary. "The applicable standard under the rule is not whether the statement is false, but whether the lawyer had an objectively reasonable factual basis for making the statement." *The Florida Bar v. Ray*, 797 So. 2d 556, 558-59 (Fla. 2001). "The burden is on the lawyer who made the statement to produce a factual basis to support the statement." *Id.* at 558 n.3; See also *The Florida Bar v. Patterson*, 257 So. 3d 56 (Fla. 2018).

It is not disputed that Ms. Gaffney made the statements above. In fact, she stands by her statements about the judiciary and continues to make the same allegations in numerous forums, including during this bar proceeding. By reading the statements themselves, it can be concluded as a matter of law, that the statements impugn the integrity of the judiciary.

Ms. Gaffney failed to establish that she had any objectively reasonable basis for making each and every statement she made about the court. Ms. Gaffney's self-serving statements and personal affidavits are subjective and therefore insufficient evidence to meet her burden. The subjective nature of Ms. Gaffney's statements are evidenced by Ms. Gaffney's April 25, 2016 unsworn affidavit, wherein she repeatedly makes allegations in the form of "her opinion." See P Exhibit 13. Ms. Gaffney made statements for which she had no objective evidence to support and with reckless disregard as to the truth or falsity of the statements.

Those statements include, but are not limited to:

- a. "Judge Huey made material misrepresentations in his order."
- b. "His order of April 22, 2016 is but the most recent example of his inability to contain his vindictive temperament which seems to motivate his extreme departure from the requirements of the law."
- c. "...It appears that Judge Paul Huey uses his position as Judge to coerce or threaten harm if one does not agree to sexual favors."
- d. "In my opinion Judge Paul Huey, in his capacity as a judge, is stalking me and filing false statements, under the guise of a judicial order, as a judge, because I refused his sexual advances."
- e. "In my opinion Judge Paul Huey is a danger to me personally and poses a grave threat to the public at large."
- f. "Because I refused Judge Huey's sexual advances, he is utilizing his position as a judge to target me with his vindictive and vituperative comments and is otherwise seeking to harm my personal reputation and my professional standing."

P Exhibit 13.

Ms. Gaffney impugned the integrity of Judge Huey by making repeated subjective statements that were made with reckless disregard for the truth or falsity. Ms. Gaffney cannot make allegations against a sitting judge then make shocking accusations about his abuse of power while under the guise of "this is my opinion". This is exactly what Rule 4-8.2(a) is in place to prevent. One may not make spurious allegations with a complete disregard for the truth or falsity.

Further record evidence that establishes the statements made by respondent were subjective and unfounded are stated in Judge Barbas' July 23, 2019, Amended Order as follows:

"This Court's Review of Predecessor Judge's Rulings

Regarding the allegations that the undersigned found nothing wrong with Judge Huey's alleged actions, this court never made that statement. What the undersigned judge recalls saying is that it did not matter what the basis for the disqualification of Judge Huey may have been, the undersigned judge only reviews the orders issued by Judge Huey for their factual and legal sufficiency. The sanction order issued by Judge Huey was not vacated because there was a factual and legal basis to conclude that the defendants were being obstructionists during the proceedings. The litany of actions delineated by Judge Huey for the sanctions were never rebutted by Mr. Sussman in a hearing that lasted an entire half day. Moreover, at the conclusion of that hearing, the undersigned provided Mr. Sussman with another opportunity to comply with the rules of discovery, and the court would then consider withdrawing the sanctions order. Again, in paragraph 18 of the July 22, 2019 motion to disqualify, the defendants make the bold allegation that the undersigned judge "had no problem with the conduct and behavior of Judge Huey...". The court reiterated

that it was not conducting a hearing regarding the alleged actions by Judge Huey. The defendants continually try to mislead the court and whoever else reads their motions filled with misstatements and innuendo.

Misogyny

The allegation of failing to follow the law is followed by the bold statement: "But it is not the only evidence of Judge Barbas's misogyny." The defendants' motions do not contain any statements made by the undersigned judge in this regard. No transcript of the July 12, 2019 hearing is attached. As is now clearly customary of the defendants, they make a bold statement and then fail to follow it with any factual basis. The court made no misogynous statement in court. Contrary to Defendant Gaffney's allegation, there were multiple female attorneys and law students in the courtroom during the hearing on July 12, 2019. The defendants also alleged that the undersigned judge "cannot resist venting his antagonism to women." Again, this conclusion is not supported by any statements or actions that the undersigned has taken.

Impugning Ms. Gaffney's Reputation

Defendants claim that the undersigned impugned the reputation of Ms. Gaffney. Again, there are no statements cited that impugn Ms. Gaffney.

Adverse Judicial Rulings

As the defendants are well aware, adverse judicial rulings are not a basis for judicial disqualification. All the rulings the undersigned judge made were prior to the final judgement and became a basis for any potential appeal, which the defendants took and lost. It is evident that the defendants continue to make motions to obstruct the progress of this case by continually arguing matters that have been continuous ruled upon and affirmed on appeal.

P Exhibit 35.

Ms. Gaffney's written accusations against Judge Huey, Judge Barbas, and Judge Tesche-Arkin were made for the purpose of impugning their integrity and calling into question the adverse rulings made against Ms. Gaffney. Further, her statements cannot be determined to be objectively reasonable because they have been continuously reviewed and denied by the successor judges and the Second District Court of Appeals. There is no objective evidence to support the egregious accusations made by Ms. Gaffney, which also include but are not limited to:

- a. The Thirteenth Judicial Circuit Judges have engaged in a conspiracy.
- b. The Thirteenth Judicial Circuit Judges engaged in the theft of respondent's assets and aided and abetted, covered up and relied on false and fraudulent orders.
- a. Judge Huey poses a grave threat to the public at large.
- d. Judge Huey filed false statements, under the guise of a judicial order.
- e. The Thirteenth Judicial Circuit Judges punished respondent for exposing the theft of property and the outing of Defendant Judge Paul Huey for his predatory sexual conduct.

Ms. Gaffney's aforementioned statements are also unequivocally disparaging. Judge Huey, Judge Barbas, and Judge Tesche-Arkin are court personnel and respondent's statements about the judges are not only

disparaging and humiliating but also prejudicial to the administration of justice.

Ms. Gaffney's Violations of Court's Final Judgment

As stated previously, the court issued its Final Judgment in Case No. 2014-CA-3762 on October 16, 2017. The order declared the following:

IT IS ORDERED AND ADJUDGED that the Deed dated January 20, 2012, purporting to transfer Teresa Gaffney's interest in the Clark Street Property to Sarah K. Sussman, Trustee, recorded at Book 20915 and Page 233-234, of the Official Records of Hillsborough County, Florida, constituted a fraudulent transfer as defined by Chapter 726, Florida Statutes, and therefore the transfer of the Subject Real Property from Teresa Gaffney to Sarah K. Sussman, Trustee of the Sussman Family Trust, is avoided as to 100% of the property and therefore the Deed recorded at Book 20915 and Page 233-234 of the Official Records of Hillsborough County, Florida is declared to be null and void. In addition, Sarah K. Sussman, Trustee, and Teresa Gaffney are hereby enjoined against any further disposition of the Subject Real Property. (emphasis added).

FURTHER IT IS ORDERED AND ADJUDGED that Defendant, Teresa Gaffney, obtained title to the Subject Real Property through the exploitation of John J. Gaffney as provided for in Chapter 415, Florida Statutes. It is therefore ordered by the Court that a Judgment be and is hereby entered against Defendant, Teresa M. Gaffney, and that the Plaintiff does have and recover from the Defendant, Teresa M. Gaffney, legal and beneficial title to and possession of the Subject Real Property situated in the County of Hillsborough, State of Florida...

P Exhibit 25.

Ms. Gaffney appealed the Final Judgment to the Second District Court of Appeal on February 6, 2018. The Second District Court of Appeals per curiam affirmed the Final Judgment on February 13, 2019. Ms. Gaffney then filed for rehearing, rehearing en banc and written opinion, which were denied by the Second District Court of Appeals in an Order dated April 24, 2019. Ms. Gaffney then sought review from the Supreme Court of Florida in a Notice to Invoke Discretionary Jurisdiction, filed May 23, 2019. The Supreme Court of Florida dismissed the notice in its Order dated May 31, 2019, stating that it lacked jurisdiction. Despite clear confirmation from the courts that the Final Judgment stands as legally valid, Ms. Gaffney thereafter directly violated the Final Judgment and filed claims of lien on the property.

Subsequent to the issuance of the final judgment, Ms. Gaffney filed two claims of lien on the said property each in the amount of \$285,000.00 and filed in Official record book 25334 pages 568-570 and book 26389 pages 822-824. In response to the claims of lien, opposing counsel filed a Motion for Order to Show Cause and to Enforce Final Judgment, and on September 13, 2019, a hearing was held on the motion. At the hearing, Ms. Gaffney's position was: "...that this Court's Final Judgment is a nullity because the aforementioned property was homestead

exempt. Additionally, Ms. Gaffney argue[d] that the claim of lien is not disposition of the property. Finally, Ms. Gaffney claim[ed] that the Court lacks subject matter jurisdiction because the initial order by J[udge] Huey was a void as against public policy.” P Exhibit 38. As of the date of the hearing, Ms. Gaffney had already exhausted her appellate options regarding the issue of homestead exemption, including all the way to the Supreme Court of Florida. Furthermore, as of the date of the hearing, Ms. Gaffney had already exhausted her appellate options regarding the issue of her claim that the court lacked subject matter jurisdiction. Despite having argued these issues and having been denied relief by the highest courts, Ms. Gaffney still argued same at the hearing in defense of her improperly filed liens.

The record documents clearly establish Ms. Gaffney asserted a position which was frivolous and made in bad faith when she filed the two claims of lien after the final judgment had been issued and affirmed on appeal. Respondent repeatedly argued the issues of homestead exemption and subject matter jurisdiction in dozens of filings in the trial court and the appellate court after all those issues had reached final disposition. Despite the finality of those issues having been determined by the highest courts, respondent filed the claims of lien in an attempt to hinder the transfer of

property at issue. Further, respondent subsequently defended those claims of lien at the September 2019 hearing by continuing to assert bad faith arguments.

On September 26, 2019, the court issued an Order on Plaintiff's Motion for Order to Show Cause and to Enforce Final Judgment and Directions to the Clerk of Court. The court found that the claims of liens filed by Ms. Gaffney were dispositions upon the property, subject to the final judgment in this case, and the claims of lien filed by Ms. Gaffney were direct violations of the court's final Judgment. The court ordered that Ms. Gaffney shall show cause why she should not be held in indirect criminal contempt for violating the injunction prohibiting her from making any disposition of the same property. The court also held that the liens were null and void and the clerk was ordered to strike them from the public records.

Subsequently, opposing counsel entered into a Stipulation for Dismissal of Indirect Criminal Contempt in the interest of avoiding delays in the case. Opposing counsel agreed to dismiss the contempt but not the findings that Ms. Gaffney violated the final judgment or the striking of the liens filed in contravention of the final judgment. On or about October 25, 2019, the court entered an Order Granting Stipulation.

On or about October 30, 2019, the plaintiff filed an Emergency Verified Motion for Order to Show Cause and to Enforce Final Judgment stating that, on October 11, 2019, the very next day following the stipulation on October 10, 2019, Ms. Gaffney filed two new notices of lis pendens against the same property. P Exhibit 39. On or about October 31, 2019, the court entered an Order to Show Cause and Arraignment on Order to Show Cause finding that on the very next day following the parties' stipulation, October 11, 2019, in disregard of the court's authority and the Final Judgment Upon Default, Ms. Gaffney effectuated two new dispositions of the Clark Street Property, through the filing of two separate notices of lis pendens. P Exhibit 40.

In response to the Order to Show Cause, on November 5, 2019, Ms. Gaffney again sought disqualification of the presiding judge, for approximately the seventh time.

As stated in the comment to Rule 4-3.5, an "advocate's function is to present evidence and argument so that the cause may be decided according to law. Refraining from abusive or obstreperous conduct is a corollary of the advocate's right to speak on behalf of litigants. A lawyer may stand firm against abuse by a judge but should avoid reciprocation; the judge's default is no justification for similar dereliction by an advocate.

An advocate can present the cause, protect the record for subsequent review, and preserve professional integrity by patient firmness no less effectively than by belligerence or theatrics." Ms. Gaffney's misconduct demonstrates respondent's blatant disrespect and disregard for the rules of the tribunal. Respondent knowingly disobeyed an obligation under the rules of a tribunal by filing dispositions against the property at issue two separate times, in direct violation of the final judgment and the court's order.

Further, respondent's filing of claims of liens on the property on two occasions resulted in unnecessary hearings and delays in the case. This, along with her filing of another motion to disqualify the judge, was done with the sole purpose of delaying the transfer of property, thus, intentionally disrupting the litigation and the tribunal. Ms. Gaffney does not deny, but rather, defends her claims of lien on the property in violation of the final judgment. Lastly, Ms. Gaffney's egregious misconduct can only be viewed as contrary to honesty and justice and prejudicial to the administration of justice.

Ms. Gaffney's Frivolous Lawsuit, Case No. 19-CA-2729

In March 2019, after the final judgment in Case No. 14-CA-3762 was per curium affirmed by the Second District Court of Appeals, a lawsuit was initiated in the East Division of Hillsborough County Civil Division, Case No.

19-CA-002729, *Sarah Sussman, et al. v. Kangas, Estate of Gaffney, Baumann, et al.* The parties were the same parties as those in 14-CA-3762, sans Ms. Gaffney. However, Ms. Gaffney filed a notice of appearance for the plaintiff the next month, on April 8, 2019, and thus, was counsel of record for the rest of the lawsuit. P Exhibit 43.

The complaint alleged defendants engaged in “fraud,” “theft,” and “slandered the homestead property” of Sarah Sussman, among many other allegations. P Exhibit 41. The complaint sought numerous forms of relief from the complaint, including but not limited to:

- a. “Void the Judgment entered unlawfully in Case Number 14-CA-003762;
- b. Void any transfer of title of the Homestead Property;
- c. Restore the Title of the Homestead Property to the Plaintiff; [and]
- d. Restore the Homestead Property and pay for all damages associated with the unlawful seizure of Homestead Property...”

Id. at pg. 15.

After Ms. Gaffney signed on as co-counsel, the following occurred in the lawsuit, as can be seen on the court’s docket:

- a. June 5, 2019: Plaintiffs filed a Motion for Continuance and attached a copy of Ms. Gaffney’s April 2016 unsworn affidavit from Case No. 14-CA-3762 as an Exhibit to the motion. P Exhibit 44.
- b. June 13, 2019: Case transferred by court order to Tampa.
- c. June 27, 2019: Plaintiff files Motion to Disqualify Judge Barbas.

d. July 25, 2019: Amended Order Denying Motion to Disqualify.

The order found in part, "Because of the attempt by the Plaintiff in this case to forum shop and circumvent the rulings of this Court and the affirmation by the Second District Court of Appeals, it is incumbent upon this court to thwart the attempted illegal usurpation of this Court's authority. It is inconceivable that the Plaintiff herein should reap the benefit of filing a "new" case, (2019-CA-2729), through forum shopping and filing a motion to disqualify that requires an automatic disqualification of the undersigned judge, when that new case alleges the same facts, issues and laws as in the old case (2014-CA-3762) and is asking for relief that is contrary to the judgment in the prior case."

P Exhibit 45.

e. On or About August 24, 2019: Plaintiff filed Writ of Prohibition to Second District Court of Appeals, regarding Amended Order Denying Motion to Disqualify.

f. 9/12/19: Second District Court of Appeals denies Writ.

g. 10/29/19: Order Granting Defendant's Motion to Dismiss Complaint. P Exhibit 46.

h. 11/6/19: Plaintiff filed Notice of Appeal of order granting motion to dismiss.

i. 10/7/20: Second District Court of Appeal per curium affirms dismissal.

j. 10/22/20: Plaintiff filed Motion for Rehearing to the Second District Court of Appeal.

k. 10/27/20: Plaintiff filed Motion for Relief from Judgment in Case No. 19-CA-002729. P Exhibit 47.

The motion sought the following relief:

“WHEREFORE, the Plaintiffs, based upon the admission of the Defendants falsely filed a meritless lawsuit in 14-CA-3762 for the sole purposes of unlawfully taking Homestead Property, therefore, the Court must vacate the final judgment in this matter and allow the Plaintiffs due process and their day in Court to seek relief for the unlawfully taking of Homestead Property pursuant to FRCP 1.540(b).

1. Award Plaintiffs their attorney fees and costs expended in this matter from Kangas, individually, and Baumann, individually, and Baumann/Kangas Estate Law; and
2. Return the Homestead Property immediately; and
3. Award damages to the Plaintiffs derivative from the admitted bad faith, meritless and fraudulent lawsuit filed by the Defendants in 14-CA-3762...”

l. 12/1/20: Second District Court of Appeal denied plaintiff's motion or rehearing.

m. 12/18/20: Second District Court of Appeal issued Mandate.

The above filings are record evidence of misconduct engaged in by Ms. Gaffney as counsel of record in Case No. 19-CA-2729. The entire lawsuit was filed with the intent of circumventing the orders and final judgment issued in Case No. 14-CA-3762. There was no merit to the complaint, as evidenced by the complaint being dismissed after the defendants filed a motion to dismiss and the dismissal was upheld by the

appellate court. By using her license to practice law in this manner, respondent advocated and pushed forward a frivolous lawsuit.

Count II

In Count II, the bar alleged respondent engaged in misconduct related to bankruptcy Case No. 8:17-bk-08959-RCT. On or about October 16, 2017, in Hillsborough County Case No. 14-CA-3762, the court entered a Final Judgment Upon Default declaring that real property located at 119 S. Clark Street, Tampa, Florida belonged to the Estate of John J. Gaffney. The Final Judgment declared the following:

- a. "Teresa Gaffney obtained title to the real property located at 119 Clark Street S., Tampa, Florida through the exploitation of her father, John J. Gaffney; and
- b. A determination that the Deed dated January 20, 2012, purporting to transfer Teresa Gaffney's interest in the Clark Street Property to Sarah K. Sussman, as Trustee of the Sussman Family Trust Living Trust constituted a fraudulent conveyance as defined by Chapter 726, Florida Statutes, and therefore the Deed recorded at Book 20915 and Page 233-234 of the Official Records of Hillsborough, County, Florida is declared to be null and void;
- c. The Final Judgment Upon Default had 'the effect of a duly executed conveyance that is recorded in Hillsborough County to [the Estate of John J. Gaffney].'; and
- d. Directing the Clerk of Court to issue a writ of possession without delay."

P Exhibit 48:

As a matter of law, per the Final Judgment, as of October 16, 2017, none of the defendants, including Sarah Sussman, Ms. Gaffney, and the Sussman Family Trust, had any legal interest in the Clark Street property.

Ms. Gaffney was living at the property at the time of the Final Judgment and on October 23, 2017, the Hillsborough County Sheriff served the Writ of Possession at the Clark Street Property. Answer para. 115 and 117. The next day, on October 24, 2017, the following documents were filed with the Clerk of the Bankruptcy Court in the Middle District of Florida, Tampa Division, Case No. 8:17-bk-08959-RCT: (1) a handwritten Petition for Voluntary Bankruptcy of Sarah K. Sussman (respondent's daughter); and (2) a certificate of credit counseling, purporting to evidence that Sarah K. Sussman had taken the credit counseling course required to be taken prior to filing for bankruptcy. Answer para. 118.

Filed Meritless Bankruptcy Petition for Purpose of Thwarting Writ of Possession

The bankruptcy case was initiated for the sole purpose of improperly blocking the Estate of John J. Gaffney from taking possession of the property. Ms. Gaffney admits that she assisted with the filing of her daughter, Sarah Sussman's, bankruptcy petition. Answer para. 133.

Over the next two years, the bankruptcy matter was litigated and ultimately the bankruptcy court dismissed the bankruptcy action finding bad faith conduct and conduct prejudicial to the administration of justice. In its June 3, 2019, 23-page Memorandum Decision Following Trial on Contested Matters, which is attached to his Report of Referee, the bankruptcy court found the following, among other things:

- a. "The service of the writ of possession prompted a flurry of activity and ultimately led to the filing of this bankruptcy case." Memorandum Decision Following Trial on Contested Matters, pg. 4. P Exhibit 49.
- b. "The petition was filed, in person, by Ms. Gaffney. The petition is handwritten and was not accompanied by bankruptcy schedules or all required initial disclosures and statements." *Id.* at 5.
- c. "Throughout the events of October 23–25, 2017, Debtor was in Washington, D.C. Further, at that time, she did not reside at the Clark Street Property, having moved to Washington sometime around February 2016. When the chapter 13 petition was filed, Debtor lived and worked in Washington, D.C." *Id.* at 7.
- d. "Unfortunately for the Debtor, her claim to title to the Clark Street Property arose from a deed that was declared void by the state court before her bankruptcy petition was filed. The Final Judgment served to strip Debtor of all legal and beneficial interest in the property and effectively conveyed it to the Administrator. Accordingly, the Clark Street Property was not property of the bankruptcy estate subject to the automatic stay." *Id.* at 10.
- e. "Debtor's right to possession was terminated by the Final Judgment and the writ of possession. Further, Debtor was not in physical possession of the Clark Street Property when her chapter 13 petition was filed, having relocated to Washington, D.C. over a year before the petition. Rather it was her parents that were in

actual possession and her parents who were dispossessed. But her parents are not the debtors in this case.” *Id.* at 11.

The bankruptcy court made clear in its memorandum of dismissal that “the Clark Street Property was not property of the bankruptcy estate...” *Id.* at 10. Still, in bad faith and with no legal basis for such a claim, Sarah Sussman, through assistance and guidance of her mother, respondent, claimed homestead protections of the Clark Street property and swore to same in the bankruptcy filing.

The bankruptcy court’s memorandum order further found:

- a. “Filing a chapter 13 petition for an improper purpose evidences bad faith. And filing a chapter 13 petition for purposes of circumventing a final state court judgment can be an improper purpose.” *Id.* at 16.
- b. “The events that transpired in the days leading up to the filing of this case are not entirely clear, but one fact is crystal clear. The sole purpose of Debtor’s chapter 13 petition was an attempt to relitigate issues that were or should have been litigated in state court. The court determined Debtor’s chapter 13 petition was improper for that very reason, when it denied confirmation and dismissed the petition. But even after Debtor converted her case to a chapter 7 liquidation, the matters dominating the court’s docket continued to revolve around the same state court disputes between the Debtor and the Administrator, between the Administrator and Ms. Gaffney, or among the three collectively. The trial on the Contested Matters did little to dissuade the court from this conclusion. It is simply not the function of this court to relitigate state court issues...” *Id.* at 17.

Sarah Sussman, Ms. Gaffney’s daughter, appealed the bankruptcy court’s findings and dismissal. On September 13, 2019, the appellate court

affirmed the court's decision, finding the final judgment predated the establishment of the property in bankruptcy. The United States District Court Middle District of Florida Tampa Division's Order also made the following findings:

- a. "The controlling fact of the case is that this transfer of property by final judgment occurred over one week prior to the filing of any bankruptcy petition. Appellant filed this bankruptcy case after sheriff's deputies came to enforce the writ of possession." P Exhibit 50.
- b. "Appellant simply did not own the house as a matter of law or fact when she filed the bankruptcy petition. That means the bankruptcy estate never possessed the house. Whether or not the house was subject to the Florida homestead exemption at one time was simply not relevant: the house was never present in the bankruptcy estate when the petition was filed." Id.

Ms. Gaffney's attempts to go around the Final Judgment and writ of possession issued in Case No. 14-CA-3762 by filing a bankruptcy petition for her daughter, claiming her daughter possessed the Clark Street property was false and dishonest. The numerous records in Case No. 14-CA-3762, and the findings of the bankruptcy court make it clear, as a matter of law, that the Clark Street property was legally and properly transferred to the Estate of John Gaffney. Ms. Gaffney, as an attorney, was well aware of the legal implications of the Final Judgment. She has never denied that the Final Judgment ordered transfer of the property to the

Estate of John Gaffney and voided hers, and her daughter's claims to the property. Necessarily, it must be concluded that respondent made false statements to the bankruptcy court when she filed the Petition for Voluntary Bankruptcy of Sarah K. Sussman claiming her daughter owned the Clark Street property and legally had a right to an automatic stay concerning same. The undersigned finds Ms. Gaffney's actions following the service of the writ of possession involved dishonesty, bad faith, obstruction of justice, and a complete abuse of the court system.

Ms. Gaffney's Instruction to Sarah Sussman to Destroy Evidence

As admitted by Ms. Gaffney in her Answer to the bar's Complaint, Ms. Gaffney filed: (1) a handwritten Petition for Voluntary Bankruptcy of Sarah K. Sussman (respondent's daughter); and (2) a certificate of credit counseling, purporting to evidence that Sarah K. Sussman had taken the credit counseling course required to be taken prior to filing for bankruptcy on October 24, 2017. Answer para. 118. At a hearing in bankruptcy court on October 31, 2017, "[t]he Court ordered the parties to mediation and, in doing so, encouraged the participation of all parties to the state court action." P Exhibit 48 at 3. Sarah Sussman's claim that she had completed the credit counseling course prior to filing the bankruptcy petition quickly

became a contested issue. Despite knowledge of the contested issue, respondent admitted in her Answer to the bar's complaint that "...in November of '17, December, somewhere around that time period, the computer actually just died. I told her to smash the hard drive and just toss the computer, because it was bad looking and pretty bad. She does it. She smashes the computer and throws it – the hard drive, like you're supposed to and get rid of it." Answer para. 129. Thereafter, motions were filed, subpoenas were issued, and a multi-day evidentiary hearing was held on the issue of whether Ms. Sussman completed the course and her destruction of evidence in support thereof. See e.g. P Exhibit 51.

Following the November 19, 2018, multi-day evidentiary hearing, the court issued an Order Granting Motion for Sanctions Against Sarah Sussman for Spoilation of Evidence on November 20, 2018. P Exhibit 52. The bankruptcy court concluded that by destroying the computer, Sarah Sussman "acted with the intent to deprive the Estate of its use in the litigation between the parties" and issued sanctions against Ms. Sussman.

Respondent has admitted that she directed her daughter, Sarah Sussman, to destroy the computer. The clear intent of respondent's conduct was to deprive the Estate of evidence on the computer that could be relevant in the litigation between the parties. Spoilation of evidence is by

definition contrary to honesty and justice and prejudicial to the administration of justice and it is profoundly incredible that Ms. Gaffney engaged in such misconduct.

Ms. Gaffney's Affirmative Defenses

Lastly, Ms. Gaffney plead two affirmative defenses in her Answer to the bar's Complaint and the bar addressed both defenses in its Motion for Partial Summary Judgment.

First Affirmative Defense: Ms. Gaffney alleged she has a constitutional right under federal and state constitutions to political speech and to express her observations regarding prejudices and attitudes of the local judiciary.

Ms. Gaffney did not provide evidence or proper legal authority to support this affirmative defense. The bar provided legal authority as a basis to deny the affirmative defense and the undersigned finds the following based on that authority.

Ms. Gaffney fails to recognize that as an attorney her speech must comply with The Rules Regulating The Florida Bar. The license to practice law is a privilege, not a right, and it can be restricted or rescinded by the Florida Supreme Court at any time. It is well established that an attorney

can be found guilty of the Rules outlined in the Rules Regulating The Florida Bar for statements made while having a license to practice law.

The First Amendment does not protect attorneys who make harassing or threatening remarks about the judiciary or opposing counsel, *Florida Bar v. Saylor*, 721 So. 2d 1152, 1155 (Fla. 1998), and the right to free speech under both the Florida and United States Constitutions does not preclude an attorney being disciplined for speech directed at the judiciary. See *Florida Bar v. Wasserman*, 675 So. 2d 103, 105 (Fla. 1996). In *Florida Bar v. Ray*, 797 So. 2d 556, 558 (Fla. 2001), the Florida Supreme Court held that statements made by an attorney which questioned the veracity and integrity of a judge, as well as the judge's fairness at a hearing, were not protected speech under the First Amendment for purposes of an attorney disciplinary proceeding, as the attorney did not have an objectively reasonable basis for making those statements. The attorney was found guilty of violating Rule 4-8.2(a). The Supreme Court of Florida has long held that attorneys, because of their standing as officers of the court, enjoy a conditional privilege that in some instances constrains their free speech rights. *The Florida Bar re Amendments to Rules Regulating The Florida Bar*, 624 So. 2d 720 (Fla. 1993). The bar has a substantial interest both in protecting litigants and court personnel from

disparaging conduct by attorneys and in preventing the erosion of confidence in the legal profession such behavior engenders. Lawyers are members of a privileged profession entailing obedience to ethical rules which may require abstention from what in other circumstances would be constitutionally protected behavior. See *American Civil Liberties Union of Florida, Inc. v. Florida Bar*, 744 Fed. Supp. 1094, 1097 (N.D. Fla. 1990).

The undersigned finds that Ms. Gaffney failed to prove that any of her statements are constitutionally protected and prevent a finding of guilt under the Rules Regulating The Florida Bar.

Second Affirmative Defense: Ms. Gaffney argues that seeking discipline against her for speaking up regarding prejudicial conduct by judges has the potential to create a "chilling effect" in reporting judicial misconduct.

Ms. Gaffney did not provide evidence or proper legal authority to support this affirmative defense. The bar provided legal authority as a basis to deny the affirmative defense and the undersigned finds the following based on that authority.

The Florida Supreme Court has given the Florida Bar express authority to prosecute attorneys for violation of The Rules Regulating The

Florida Bar. The Florida Supreme Court has also given the Judicial Qualifications Commission express authority to prosecute judges for violations of the Code of Judicial Conduct. There are available procedures in place that allow attorneys to report judicial misconduct in a way that does not violate The Rules Regulating The Florida Bar. Alleging the possibility of a "chilling effect" is not a legally valid affirmative defense as plead.

The undersigned finds that Ms. Gaffney failed to prove that there is a sufficient legal basis to find that a "chilling effect" is an affirmative defense preventing a finding of guilt under the Rules Regulating The Florida Bar.

3. Final Hearing in Bar Proceeding

Following the Order Granting in Part The Florida Bar's Motion for Partial Summary Judgment, Ms. Gaffney filed a Motion for Reconsideration, requesting reconsideration of every finding. The argument put forth by Ms. Gaffney was that her due process rights had been violated because summary judgment had been entered prior to the close of discovery. The bar filed a response to the Motion for Reconsideration and Ms. Gaffney filed a Supplement. A hearing was held on the motion, response and supplement, and all parties, including Ms. Gaffney, were afforded an opportunity to provide argument. After hearing argument and reviewing of the filings and precedent, the motion for reconsideration was

denied. Ms. Gaffney's due process rights were not violated by entry of the order granting partial summary judgment. Further, Ms. Gaffney was not prevented from completing discovery in this bar proceeding. Even after the order on summary judgment was entered, Ms. Gaffney had every discovery tool available to her, including depositions.

Several months later, in July 2022, a final hearing was held on the remaining issues/rules. The issues that remained to be adjudicated were:

1. Whether Ms. Gaffney violated Rule 4-3.3(a), related to Count I¹;
2. Whether Ms. Gaffney violated Rule 4-8.4(c), related to Count I;
3. Ms. Gaffney admitted, and the bar proved in its Motion for Partial Summary Judgment, that Ms. Gaffney did not appear for her March 11, 2015, deposition in Case No. 14-CA-3762. Ms. Gaffney may present evidence at the final hearing that she is not guilty of violating any Rules Regulating The Florida Bar related to that nonappearance.

During the final hearing, the bar called one witness to testify: Michael Kangas, Esq. In addition, the bar entered into evidence sixty-seven (67) exhibits, identified in the record as P1-67.

¹ After the Order Granting in Part The Florida Bar's Motion for Partial Summary Judgment, but before the final hearing, the bar filed a Notice of Voluntary Dismissal Without Prejudice as to Rule 4-3.3(a) in Count II.

Also, during the final hearing, Ms. Gaffney testified on her own behalf and called five witnesses: E. Michael Isaak, Esq., J. Kevin Carey, Esq., Sarah Sussman, Gilbert Singer, and Michael Sussman. Ms. Gaffney entered one exhibit into evidence, identified in the record as R29.

Based on the evidence presented at the final hearing, the undersigned finds the following additional facts were proven by clear and convincing evidence:

Ms. Gaffney's Failure to Appear at her March 11, 2015, Deposition

It is undisputed that Ms. Gaffney did not appear for her deposition, which was properly noticed, on March 11, 2015, in Case No. 14-CA-3762. Ms. Gaffney admits she did not appear, and a certificate of nonappearance was issued and filed in the case, as can be seen on P Exhibit 4. The issue was whether Ms. Gaffney knowingly failed to appear and whether she had some defense that would prevent the undersigned from finding Ms. Gaffney violated the rules related to her nonappearance.

Ms. Gaffney testified during the final hearing that she did not know about the March 11, 2015, deposition before the deposition date. She supported that position by offering the following arguments: Mr. Levine did not tell her about the deposition; and as soon as she found out, she filed a Notice of Clarification with the court.

Those arguments, however, do not prove Ms. Gaffney didn't know about the deposition until after the deposition date. But, rather, the exhibits in the underlying matter, as well as Ms. Gaffney's filings in this bar case, and her Notice of Clarification prove that Ms. Gaffney did know about the deposition by at least March 10, 2015, the day before the deposition.

On April 29, 2022, Ms. Gaffney filed a Motion for Reconsideration in this bar proceeding. On page 6, para. 30, Ms. Gaffney addresses her knowledge of the deposition. The motion states, "[a]s soon as Respondent found out about the deposition – through a third party and not her attorney – Respondent filed a Notice of Clarification in the file and fired Mr. Levine." Importantly, Ms. Gaffney, in her own filing in this bar matter, asserts she learned of the deposition from a third party. She does not say who the third party is or on what date she found out, but during cross examination on July 19, 2022, the bar asked the following question, in sum, "[i]n your motion for reconsideration, filed in this bar case, you stated you found out about the deposition through a third party. Who was the third party?"

Ms. Gaffney testified that the third party was Carter Andersen, a Judicial Nominating Commission member.

So, it is clear Ms. Gaffney found out about the deposition from Carter Anderson. The next logical question is, when did she find out from Carter

Anderson? The answer can be found in the Notice of Clarification Ms. Gaffney filed in the related probate matter in December 2015, which was entered into evidence. P Exhibit 67. In that Notice, Ms. Gaffney stated she spoke with Carter Anderson on March 10, 2015, the day before her scheduled deposition. It is Ms. Gaffney's own statements that prove she found out about the deposition on March 10, 2015.

During Ms. Gaffney's testimony in the final hearing however, she was unclear and unspecific and simply placed blame on everyone else, including Mr. Levine. I do not find Ms. Gaffney's testimony that she did not know about the deposition before the date of the deposition to be credible.

It is also telling that Ms. Gaffney never once, in the 14-CA-3762 case, where the deposition was scheduled, told the court she didn't know about the deposition at all before March 11, 2015. To this referee's knowledge, nowhere in the over 450 docket entries, does Ms. Gaffney file something with the court saying she didn't know about the deposition at all before March 11, 2015. Rather, Ms. Gaffney took the position with the 14-CA-3762 court that she was given "untimely notice" of the deposition. Furthermore, Ms. Gaffney sticks with that position in the beginning of this bar matter. In her Answer to the bar's complaint, filed, July 12, 2021, Ms. Gaffney says

Mr. Levine failed to “timely notify her”. Not that he failed to notify her entirely.

Lastly, Ms. Gaffney continues to argue that as soon as she found out about the deposition, she filed a Notice of Clarification in the case. That is not supported by the evidence. There was no Notice Of Clarification filed in Case No. 14-CA-3762, as evidenced by the court’s docket. P Exhibit 4. Furthermore, the Notice of Clarification that Ms. Gaffney provided to the bar and that was entered into evidence as P Exhibit 67, was filed in the probate case (Case No. 12-CP-221) on December 23, 2015, nine months after the March 11, 2015, deposition date. When the bar asked Ms. Gaffney during her testimony about why it had been filed in the probate court, Ms. Gaffney said she also filed it in the 14-CA-3762 case on December 23, 2015. The docket in 14-CA-3762, however, does not reflect a notice of clarification on any date, most importantly not on or around the date of the deposition, March 2015. Further, Ms. Gaffney has never shown a notice of clarification with a case heading that reflected Case No. 14-CA-3762. Ms. Gaffney admitted during her cross examination that the Notice of Clarification does not say anywhere in it that she did not know about the deposition before the March 11, 2015, deposition date.

The evidence presented establishes that Ms. Gaffney found out about the deposition from Carter Anderson on March 10, 2015, the day before the scheduled deposition. Ms. Gaffney's testimony during the final hearing, which at times contradicted the timing, is not credible.

In addition, the bar questioned Ms. Gaffney about what she was doing on March 11, 2015, that would have prevented her from attending the deposition once she found out about it. Ms. Gaffney could not recall what her commitments were that day. Thus, no credible evidence was presented by Ms. Gaffney to defend her nonappearance.

It is clear and convincing to the undersigned that Ms. Gaffney had knowledge of the deposition scheduled for March 11, 2015, at least one day before the deposition, and yet she willfully failed to appear. This is supported by the following court documents: Notice of Deposition, Certificate of Nonappearance, and the court docket in Case No. 14-CA-3762; as well as the Notice of Clarification in Case No. 12-CA-221; and the Motion for Reconsideration and Answer filed in this bar proceeding.

Ms. Gaffney's Deceptive Conduct in Case No. 19-CA-2729

In granting the bar's Motion for Partial Summary Judgment, in part, the undersigned already determined Ms. Gaffney engaged in bad faith conduct by prosecuting Case No. 19-CA-2729 with her co-

counsel/husband. I concur with the trial court that the 19-CA-2729 case was frivolous. What was still ripe for consideration at the final hearing in this matter was whether Ms. Gaffney lacked candor to the court and engaged in dishonest and deceptive conduct related to that litigation.

First, the bar alleged Ms. Gaffney engaged in deceptive conduct, prejudicial to the administration of justice, when she advocated and pursued the case in Plant City, Florida. In March 2019, after the final judgment in Case No. 14-CA-3762 was per curiam affirmed by the Second District Court of Appeals, Ms. Gaffney's husband (and her counsel in most of the related underlying matters) filed a lawsuit on behalf of Ms. Gaffney's and his daughter against the Estate of John Gaffney and other related parties on the same issues already adjudicated in Case No. 14-CA3762. Ms. Gaffney filed a notice of appearance on behalf of her daughter, the plaintiff, the following month, on April 8, 2019. P Exhibit 43. Ms. Gaffney remained co-counsel with her husband, Mr. Sussman, for the rest of the lawsuit, until his unfortunate passing in December 2021. As of the date of the final hearing in this bar matter, Ms. Gaffney remained sole counsel of record in that proceeding.

At the time the complaint was filed, Mr. Sussman also filed a Request for Division Assignment, requesting the case be put in the East Division of

Tampa. P Exhibit 72. Of importance, all the other cases, related to the parties and property at issue, both pending at the time and previously resolved, were in the Tampa Division.

The bar called Michael Kangas to testify in the bar proceeding. During the final hearing, Mr. Kangas testified that immediately upon learning of the new case being filed, he reached out to Mr. Sussman via phone and email and asked for the case to be moved to Tampa, since obviously this lawsuit involved the same parties and issues as the 14-CA-3762 case. Mr. Sussman responded in an email, opposing the transfer, and threatening to seek fees and costs if Mr. Kangas sought to transfer divisions. P Exhibit 73.

It is evident by the Request for Division Assignment and the emails between Mr. Kangas and Mr. Sussman, that the intent from the beginning was to file and prosecute the 19-CA-2729 case outside of Tampa. This required Mr. Kangas to file a Motion to Transfer Case from East Division. P Exhibit 74. Thereafter a hearing was held on the transfer motion, and Ms. Gaffney appeared to oppose the motion. Mr. Kangas testified in the bar proceeding that Ms. Gaffney argued at the hearing in Case No. 19-CA-2729 that the case should stay in the East Division because Ms. Gaffney could not get a fair trial in Tampa. Ms. Gaffney knowingly argued in support

of the complaint being filed in the east division, and during her bar testimony, she defended same.

It is clear to the undersigned that the complaint was filed in a different division for the purpose of attempting to secure a new judge who would relitigate the issues already adjudicated by the trial court, the appellate court and the Supreme Court of Florida in Case No. 14-CA-3762. The trial court agreed and stated the following in an order dated July 25, 2019,

“The instant case was filed in the East Division of the Court (Plant City) in at an obvious attempt at forum shopping. Plaintiff’s counsel knew that if he filed the case in the Tampa Division, that the case would eventually be transferred to the undersigned since it involves the same issues, law and facts as case 2014-CA-3762.”

P Exhibit 45.

Ms. Gaffney’s appearance in the case and argument in opposition of the transfer to Tampa evidences her intent to deceive the court in Case No. 19-CA-2729. The court in Plant City did not buy into Ms. Gaffney’s arguments in opposition and granted the request to transfer the case to Tampa. Then, after transfer, as seen by Ms. Gaffney multiple times over, she filed a motion to disqualify the assigned Tampa judge. The motion to disqualify was denied in a scathing July 2019 order. In that order the court stated, in part,

“Because of the attempt by the Plaintiff in this case to forum shop and

circumvent the rulings of this Court and the affirmation by the Second District Court of Appeals, it is incumbent upon this court to thwart the attempted illegal usurpation of this Court's authority. It is inconceivable that the Plaintiff herein should reap the benefit of filing a "new" case, (2019-CA-2729), through forum shopping and filing a motion to disqualify that requires an automatic disqualification of the undersigned judge, when that new case alleges the same facts, issues and laws as in the old case (2014-CA-3762) and is asking for relief that is contrary to the judgment in the prior case."

P Exhibit 45.

Ms. Gaffney's active participation regarding the division assignment of Case No. 19-CA-2729 was knowingly and intentionally deceitful.

Ms. Gaffney's Misrepresentations and Lack of Candor Towards the Tribunal in Case No. 19-CA-2729

The bar alleged Ms. Gaffney lacked candor to the court and made misrepresentations to the court in Case No. 19-CA-2729. More specifically, that Ms. Gaffney was dishonest, made misrepresentations, failed to correct misrepresentations and omitted information to the court.

First, the bar entered into evidence, and I reviewed, the Complaint for Declaratory Relief, filed March 13, 2019, initiating Case No. 19-CA-2729. P Exhibit 41. Several statements are at issue in this complaint, and I find the following related to each.

Exhibit 41, Page 9, paragraph 73 states in relevant part,

“Neither the state court proceeding, or this proceeding, involve the same parties or privies; there is a lack of identity of causes of action, i.e. they are not the same.”

This is a false statement that is directly contradicted by Case No. 14-CA-3762, the rulings in the Court of Appeals in the same case, the July 2019 Order from the 19-CA-2729 case, as well as by Mr. Kangas’ testimony in this bar proceeding.

Mr. Kangas testified that after Ms. Gaffney lost in the appellate court regarding her appeal of the final judgment in Case No. 14-CA-3762, the 19-CA-2729 case was initiated against the same parties, related to the same issues, namely, the Clark Avenue property. This is further evidenced by the July 2019 court order issued in the 19-CA-2729 case which held, in relevant part,

“It is inconceivable that the Plaintiff herein should reap the benefit of filing a “new” case, (2019-CA-2729), through forum shopping and filing a motion to disqualify that requires an automatic disqualification of the undersigned judge, when that new case alleges the same facts, issues and laws as in the old case (2014-CA-3762) and is asking for relief that is contrary to the judgment in the prior case.”

P Exhibit 45.

In addition, the statement that the cases do not “involve the same parties” is clearly contradicted by comparing the style headings of the 19-CA-2729 complaint and the 14-CA-3762 Final Judgment. P Exhibits 41 and

25. Sarah Sussman and the Sussman Family Trust are defendants in the 14-CA-3762 case and are plaintiffs in the 19-CA-2729 case. Phillip A Baumann as Administrator ad Litem of the Estate of John J. Gaffney was the plaintiff in the 14-CA-3762 case and is one of the defendants in the 19-CA-2729 case. This is clear and uncontroverted. Thus, the statement to the court in the 19-CA-2729 complaint, para 73, that the same parties are not involved is a misrepresentation that Ms. Gaffney to date has not corrected.

Also, on page 11 of the complaint in 19-CA-2729, several requests for relief are listed. The third listed request for relief is, “[v]oid the Judgment entered unlawfully in Case Number 14-CA-003762.” P Exhibit 41. There is no evidence that the final judgment entered in Case No. 14-CA-3762 was entered unlawfully. To the contrary, the Second District Court of Appeals upheld the final judgment as legally valid, thus making it a lawful judgment. Furthermore, Ms. Gaffney requested the Supreme Court of Florida intervene on the issue of the final judgment, to which the Court rejected.

It is evident by Ms. Gaffney’s conduct in the past several years, as well as throughout this bar proceeding, that she believes the final judgment is invalid or “void”. However, Ms. Gaffney’s belief does not make it true. There has never been a finding by any court that the final judgment was entered unlawfully. Stating the final judgment was entered unlawfully on

page 11 of the 19-CA-2729 complaint is a false representation to the court that Ms. Gaffney to date has not corrected.

The next document filed in Case No. 19-CA-2729 that was entered into evidence by the bar and that the undersigned reviewed for misrepresentations was the Motion for Relief from Judgment, filed October 27, 2020. P Exhibit 47. The motion contains four misrepresentations: page 3, paragraph 6; page 4, paragraph 11; page 8, paragraph 25; and page 25, the Wherefore clause.

The bar entered into evidence P Exhibit 54, which is the transcript excerpt of a July 13, 2020, hearing wherein Mr. Kangas was testifying in court. The transcript contradicts the statements and allegations made in the Motion for Relief from Judgment. Furthermore, Mr. Kangas testified in the bar proceeding that the representations by Ms. Gaffney in the Motion for Relief from Judgment were false.

Ms. Gaffney did not enter any documentary evidence related to this issue and did not provide any witness testimony to address same. Actually, Ms. Gaffney did not even address the misrepresentations in the Motion for Relief from Judgment in her own testimony in the bar proceeding. Rather, the only argument Ms. Gaffney put forth in her defense of these

misrepresentations to the court is that she wasn't the drafter of the documents.

The bar's position is that Rule 4-3.3 does not require an attorney to be drafter, or the filer of the document that contains misstatements. I concur. Ms. Gaffney is responsible for the misrepresentations to the court because she was co-counsel in the case and because she has never made any effort to correct or amend the misrepresentations. To the contrary, during her testimony in this proceeding Ms. Gaffney said she intended to move forward with the motion and complaint in Case No. 19-CA-2729, as counsel for her daughter.

Ms. Gaffney specifically advocated in support of the complaint and had a duty to correct the multiple misrepresentations that were made within it, but she failed to do so. Further, Ms. Gaffney is counsel of record and defends and supports the Motion for Relief from Judgment and thus must be held accountable for the misstatement within it.

The undersigned relies upon the Court's ruling in *Florida Bar v. Burkich-Burrell*, 659 So.2d 182, wherein The Supreme Court of Florida found the respondent attorney guilty of making misrepresentations to the court because she failed to properly review and check the information and omissions made by her client in responses to interrogatories. In that case,

the client made omissions and misrepresentations, and the client was the one who signed the document. The Court, however, found the respondent attorney guilty of violating the rules because she failed to “check or review the interrogatories for correctness and truthfulness”. Further the Court stated that by “her inaction” she assisted the client in withholding information from the Court. The positions outlined by the Supreme Court in *Burkich-Burrell* directly contradict Ms. Gaffney’s position that she is not responsible for anything if she is not the drafter.

Lastly, the bar alleged Ms. Gaffney repeatedly failed to disclose material facts and relevant authority to the court in 19-CA-2729. The evidence presented established the following:

1. Ms. Gaffney never disclosed to the 19-CA-2729 trial court that the Second District Court of Appeals had affirmed the final judgment in Case No. 14-CA-3762.
2. Ms. Gaffney never disclosed to the 19-CA-2729 trial court that Second District Court of Appeals issued its Mandate regarding the final judgment three months after the 19-CA-2729 case had been initiated.
3. Ms. Gaffney never disclosed to the 19-CA-2729 trial court that the Supreme Court of Florida issued an order dismissing Ms.

Gaffney's attempt to have the Supreme Court review the 14-CA-3762 final judgment in May 2019.

It is clear from the evidence presented that these rulings are from the controlling jurisdiction and Ms. Gaffney never notified the court in 19-CA2729. Mr. Kangas testified about these rulings, and they were entered into evidence in this proceeding. Further, Mr. Kangas testified that Ms. Gaffney failed to notify the court in 19-CA-2729 of the court of appeals and Supreme Court of Florida decisions. P Exhibits 41-47. Ms. Gaffney did not enter any documentary evidence or provide any witness testimony to address this issue.

It has been proven be clear and convincing evidence that Ms. Gaffney failed to disclose to the 19-CA-2729 tribunal legal authority in the controlling jurisdiction know to Ms. Gaffney to be directly adverse to her position. Ms. Gaffney's conduct related to Case No. 19-CA-2729 was deceitful, misrepresentative, and lacked candor.

Ms. Gaffney's Affirmative Defenses

Ms. Gaffney plead two affirmative defenses in her Answer to the bar's Complaint.

First Affirmative Defense: Ms. Gaffney alleged she has a constitutional right under federal and state constitutions to political speech and to express her observations regarding prejudices and attitudes of the local judiciary.

Ms. Gaffney did not specify in her Answer what Rules Regulating The Florida Bar this defense is applicable to, if any. Nor did she present any evidence or legal authority in support of this affirmative defense at trial. While it can be reasonably presumed that this affirmative defense would not apply to the Rules at issue in the trial, namely Rules 4-3.3 and 4-8.4(c), in an abundance of caution the referee will address the defense here. I rely upon and incorporate my findings above regarding this affirmative defense and find that Ms. Gaffney failed to prove by clear and convincing evidence that any of her statements are constitutionally protected and prevent a finding of guilt under the Rules Regulating The Florida Bar.

Second Affirmative Defense: Ms. Gaffney argues that seeking discipline against her for speaking up regarding prejudicial conduct by judges has the potential to create a "chilling effect" in reporting judicial misconduct.

Again, Ms. Gaffney did not specify in her Answer what Rules Regulating The Florida Bar this defense is applicable to, if any. Nor did she

present any evidence or legal authority in support of this affirmative defense at trial. While it can be reasonably presumed that this affirmative defense would not apply to the Rules at issue in the trial, namely Rules 4-3.3 and 4-8.4(c), in an abundance of caution the referee will address the defense here. I rely upon and incorporate my findings above regarding this affirmative defense and find that Ms. Gaffney failed to prove by clear and convincing evidence that there is a sufficient legal basis to find that a “chilling effect” is an affirmative defense preventing a finding of guilt under the Rules Regulating The Florida Bar.

IV. RECOMMENDATIONS AS TO GUILT.

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

Count I:

1. 3-4.3 (Misconduct and Minor Misconduct);
2. 4-3.1 (Meritorious Claims and Contentions);
3. 4-3.3(a) (Candor Towards the Tribunal);
4. 4-3.4(c) (Fairness to Opposing Party and Counsel) ;
5. 4-3.5(c) (Impartiality and Decorum);
6. 4-8.2(a) (Impugning Qualifications and Integrity of Judge);
7. 4-8.4(a) (Misconduct);

8. 4-8.4(c) (Conduct involving dishonesty, fraud, deceit); and
9. 4-8.4(d) (Conduct prejudicial to the administration of justice).

Count II

1. 3-4.3 (Misconduct and Minor Misconduct);
2. 4-3.1 (Meritorious Claims and Contentions);
3. 4-8.4(a) (Misconduct);
4. 4-8.4(c) (Conduct involving dishonesty, fraud, deceit); and
5. 4-8.4(d) (Conduct prejudicial to the administration of justice).

V. SANCTIONS HEARING

A sanctions hearing was held on August 5, 8, and 9, 2022, via zoom. The bar called one witness to testify: Michael Kangas, Esq. In addition, the bar entered into evidence forty-five (45) exhibits, identified in the record as bar's sanctions exhibits 1-45. Further, the bar filed Notice of Authority for Sanctions Hearing with attached case law and a Memorandum of Law for Sanctions.

Ms. Gaffney testified on her own behalf and called nine witnesses: Michael Sussman; Troy Lovell, Esq; J. Kevin Carey, Esq.; Gilbert Singer, Esq.; E. Michael Isaak, Esq.; Sheldon McMullen, Esq.; Robin Trupp, Esq.; Frank Schellace, Esq.; and Thomas Gaitens, Esq. Ms. Gaffney did not

enter any exhibits into evidence at the sanctions hearing. Ms. Gaffney filed a sanctions memorandum prior to the hearing and a written closing argument after the hearing.

My findings on the appropriate discipline after the sanctions hearing are outlined below.

VI. STANDARDS FOR IMPOSING LAWYER SANCTIONS

The bar filed its Notice of Authority for Sanctions Hearing and Memorandum of Law for Sanctions on July 25, 2022, and relied upon Standards 6.1, 6.2, 7.1, 3.2, and 3.3 in support of its requested sanction: disbarment.

Ms. Gaffney argued against the Standards provided by the bar and requested the referee find three mitigating factors apply, in support of her requested sanction: admonishment.

I considered the following Standards prior to recommending discipline and make the following findings on each:

Standard 6.1 False Statements, Fraud, and Misrepresentation

Absent aggravating or mitigating circumstances, and on application of the factors to be considered in imposing sanctions, the following sanctions are generally appropriate in cases involving conduct that is prejudicial to

the administration of justice or that involves dishonesty, fraud, deceit, or misrepresentation:

(a) Disbarment. Disbarment is appropriate when a lawyer: (1) with the intent to deceive the court, knowingly makes a false statement or submits a false document; or (2) improperly withholds material information and causes serious or potentially serious injury to a party or causes a significant or potentially significant adverse effect on the legal proceeding.

Comment, in part: Lawyers who engage in these practices violate the most fundamental duty of an officer of the court. As the court noted in a case where a lawyer was disbarred for making intentional misrepresentations to a judge, “[a]n officer of the court who knowingly seeks to corrupt the legal process can expect to be excluded from that process.” See *Florida Bar v. St. Louis*, 967 So. 2d 108, 122-23 (Fla. 2007).

Ms. Gaffney engaged in conduct that was intended to deceive the bankruptcy court when she filed a petition for bankruptcy on behalf of her daughter with the purpose of improperly staying the writ of possession in the 14-CA-3762 case. The petition Ms. Gaffney filed on behalf of her daughter claimed that the Clark Avenue property was the property of her daughter. That was false. The court in 14-CA-3762 and the court of appeals issued orders specifically conveying the property to the Estate of

John J. Gaffney. Later, the bankruptcy court learned that the property Ms. Gaffney was alleging belonged to her daughter in the bankruptcy petition, was not in fact hers at the time of the bankruptcy filing. Ms. Gaffney engaged in intentionally deceitful conduct for her personal benefit, and the bankruptcy court did not accept it.

Furthermore, Ms. Gaffney improperly refused to answer depositions questions in Case No. 14-CA-3762, thereby withholding material information in the case. Ms. Gaffney was court ordered to answer the questions, and she refused. This had the potential of causing significant adverse effect on the legal proceeding, and would have, had respondent not also engaged in other misconduct which led to her own default later in the case. Respondent engaged in the behavior discussed in both Standard 6.1(a)(1) and (2), thus warranting disbarment.

Standard 6.2 Abuse of the Legal Process

Absent aggravating or mitigating circumstances, and on application of the factors to be considered in imposing sanctions, the following sanctions are generally appropriate in cases involving failure to expedite litigation or bring a meritorious claim, or failure to obey any obligation under the rules of a tribunal except for an open refusal based on an assertion that no valid obligation exists:

(a) Disbarment is appropriate when a lawyer causes serious or potentially serious interference with a legal proceeding or knowingly violates a court order or rule with the intent to obtain a benefit for the lawyer or another and causes serious injury or potentially serious injury to a party.

Comment, in part: "Lawyers should be disbarred for intentionally misusing the judicial process to benefit the lawyer or another when the lawyer's conduct causes injury or potentially serious injury to a party, or serious or potentially serious interference with a legal proceeding."

Ms. Gaffney filed multiple lawsuits seeking the same relief and also pursued an action in a venue she knew to be improper while actively opposing its transfer to the proper venue. It is hard to understand how significantly Ms. Gaffney has abused the judicial process to benefit herself and her family. Ms. Gaffney has attempted to circumvent the court's authority in Case No. 14-CA-3762 by improperly filing other lawsuits in the same circuit, filing a frivolous bankruptcy petition to interfere with the writ of possession, and violating the court's Final Judgment. Ms. Gaffney has shown a blatant disregard for the 13th Judicial Circuit Court, Second District Court of Appeals, and the Bankruptcy Court. Apart from her behavior throughout the underlying litigation, Ms. Gaffney engaged in inappropriate behavior in the bar proceedings, which also fits in this

standard and will be outlined more below. Ms. Gaffney's conduct in both the underlying actions and the bar proceedings caused serious interference with legal proceedings and she continues to interfere with numerous other legal proceedings as recent as this month. Based on Standard 6.2, Ms. Gaffney's misconduct warrants disbarment.

Standard 7.1 Deceptive Conduct or Statement and Unreasonable or Improper Fees

Absent aggravating or mitigating circumstances and on application of the factors to be considered in imposing sanctions, the following sanctions are generally appropriate in cases involving deceptive conduct or statements...

(a) Disbarment is appropriate when a lawyer intentionally engages in conduct that is a violation of a duty owed as a professional with the intent to obtain a benefit for the lawyer or another and causes serious or potentially serious injury to a client, the public, or the legal system.

Ms. Gaffney intentionally brought actions she knew or should have known were frivolous and without merit, a clear violation of a duty owed by a legal professional. Further, Ms. Gaffney's repeated motions to disqualify judges in the 13th Judicial Circuit, totaling over a dozen, evidences her violation of a duty owed as professional. Ms. Gaffney authored and signed

under oath many affidavits, which she later filed with many courts, making impugning and disparaging remarks about the judiciary. She repeatedly made disparaging statements about the judiciary for her own personal benefit and to the detriment of the legal system. Ms. Gaffney's conduct fits squarely under Standard 7.1(a), again demonstrating that disbarment is appropriate.

Standard 3.3 Aggravating Factors

The Florida Bar relied upon the facts and evidence presented in its Motion for Partial Summary Judgment, at trial, and at the sanctions hearing and argued the following aggravating factors applied: (b)(2) selfish motive; (b)(3) pattern of misconduct; (b)(4) multiple offenses; (b)(5) bad faith obstruction of the disciplinary proceeding by intentionally failing to comply with rules or orders of the disciplinary agency; (b)(6) submission of false evidence, false statements, or other deceptive practices during the disciplinary process; (b)(7) refusal to acknowledge wrongful nature of misconduct; and (b)(9) substantial experience in the practice of law.

I find all seven aggravating factors argued by the bar apply and justify an increase in the degree of discipline to be imposed against Ms. Gaffney. More specifically, the following facts and evidence support the referee's findings regarding the aggravating factors:

3.2(b)(2) Dishonest or selfish motive

Ms. Gaffney's motive throughout the years of protracted litigation she filed, was a party to, or was otherwise involved, were clear: to get the Clark Avenue property back without regard for who she defamed in the process. Despite the fact that Ms. Gaffney has exhausted her appellate remedies and the matter has been adjudicated against her position many times over, Ms. Gaffney continues to seek return of the property to date.

This is further evidenced by Ms. Gaffney's recent personal bankruptcy case, which was presented in evidence by the bar at the sanctions hearing. See Sanctions Exhibits 1, 2, and 12. On February 22, 2022, Ms. Gaffney filed a voluntary petition for Chapter 13 bankruptcy. Amazingly, on page 9 of her petition, Ms. Gaffney claims she owns an interest in the Clark Avenue property. More specifically, she claims she owns the entire amount of the property, \$556,000.00, and that the property is her homestead. It is unfathomable how Ms. Gaffney can assert such a dishonest, misrepresentative, patently false statement to another court. The following courts have issued orders upholding the Final Judgment which conveyed the property to the Estate of John J. Gaffney: Circuit Court in 14-CA-3762; Second District Court of Appeals; Supreme Court of Florida; Bankruptcy Court in Case No. 8:17-bk-08959-RCT; Circuit Court in 19-CA-

2729. This list is not all-inclusive. Ms. Gaffney's assertions in her personal bankruptcy petition directly contradict not only the court's orders, but reality. Ms. Gaffney has completely disregarded the rules and orders of many courts and has engaged in conduct in direct contradiction of the law. Ms. Gaffney continues to act selfishly and dishonestly for her own personal benefit and to the detriment of the legal profession.

3.2(b)(3) Pattern of misconduct

Litigation surrounding a property belonging to the Estate of John J. Gaffney has been ongoing for ten years. For ten years, Ms. Gaffney has been filing lawsuit after lawsuit and appeal after appeal, trying to regain the property. Her conduct related to same has been unprofessional, deceitful, and meritless. Ms. Gaffney engages in the same pattern of unprofessional behavior in all the cases she is involved in concerning the property at issue. For that reason, this factor is considered in aggravation.

Furthermore, pursuant to this Court's history of taking into consideration a respondents' behavior during bar disciplinary proceedings, I find the following misconduct by Ms. Gaffney in this bar proceeding as evidence of a pattern of misconduct:

1. *Violation of Rule 3-7.11 General Rule of Procedure and Referee's Case Management Order dated August 24, 2021.*

In direct contradiction of the prior referee's order and Rule 3-7.11 General Rule of Procedure, Ms. Gaffney sent witnesses invalid subpoenas, signed by her pro hac vice counsel. See R. Regulating The Florida Bar Rule 3-7.11(d)(1); Sanctions Exhibits 24-31; The Florida Bar's Memorandum of Law for Sanctions attached hereto.

2. Failure to Appear at Two Depositions in the Bar Proceeding.

Ms. Gaffney, as her own co-counsel in this bar matter, failed to appear at two depositions. Ms. Gaffney failed to appear for an April 4, 2022, witness deposition, which had been scheduled by court order and a June 13, 2022, witness deposition which has been properly noticed. Ms. Gaffney was co-counsel and local counsel, had knowledge of both depositions, and willfully failed to appear. See Sanctions Exhibits 32-35; The Florida Bar's Memorandum of Law for Sanctions attached hereto.

3. First Violation of April 19, 2022, Order on Discovery: Failure to Comply with Rule of Civil Procedure 1.280(b)(5).

An April 19, 2022, Order on Discovery in this matter directed Ms. Gaffney to disclose to the bar information compliant with Rule 1.280(b)(5), Florida Rules of Civil Procedure. Ms. Gaffney failed to timely, properly, and sufficiently comply with the order and Rule 1.280. See Sanctions Exhibits

36, 37, 39, 40; The Florida Bar's Memorandum of Law for Sanctions attached hereto.

4. Failure to Disclose Expert Affidavit.

Ms. Gaffney identified an expert witness in her response to interrogatories in this matter and was in possession of the expert's affidavit, summarizing his opinions, a "few weeks" prior to the bar's deposition of the expert. Despite the expert's deposition testimony, which stated he had provided Ms. Gaffney with his affidavit a "few weeks" prior, Ms. Gaffney never disclosed the affidavit to the bar. Not only did Ms. Gaffney fail to provide the bar with a copy of the affidavit before the deposition, but she also failed to provide it prior to the court ordered disclosure deadline, as outlined in the Order on Discovery. The bar only discovered the affidavit because the witness mentioned it during his deposition testimony. The knowledge, possession, and withholding of an expert's affidavit by Ms. Gaffney is violative of the Order on Discovery, the Rules of Civil Procedure, and the rules of professional conduct and is considered in aggravation. See Sanctions Exhibits 36-40; The Florida Bar's Memorandum of Law for Sanctions attached hereto.

5. Second Violation of April 19, 2022, Order on Discovery: Untimely Discovery.

Per the April 19, 2022, Order on Discovery, discovery cutoff in this bar matter was June 13, 2022. Seven days after discovery cutoff, on June 20, 2022, Ms. Gaffney provided 9,752 pages of untimely discovery to the bar. Furthermore, the same day, Ms. Gaffney filed her final witness and exhibit lists. On the lists she disclosed, for the very first time, at least three unknown witnesses and "new exhibits". In response to Ms. Gaffney's untimely discovery, and undisclosed witnesses and exhibits, the bar was forced to file eleven, well-founded, motions in limine, which were all granted. See Sanctions Exhibits 36; The Florida Bar's Memorandum of Law for Sanctions attached hereto.

It is well established by the bar's Motion for Partial Summary Judgment and 52 exhibits that Ms. Gaffney violated numerous orders and rules in the underling litigation. This is outlined in numerous orders from the circuit court. Ms. Gaffney does not believe the rules apply to her. Ms. Gaffney's refusal to comply with the Rules of Civil Procedure, rules of the tribunal, and court orders is a pattern, and it is unacceptable. She continued the same misconduct in the bar proceeding and said misconduct should be considered in aggravation.

*6. Emergency Motion for Entry of Temporary Restraining Order #1
Filed in Federal Court.*

Four days before the final hearing in this bar matter was scheduled to begin, Ms. Gaffney filed an Emergency Motion for entry of Temporary Restraining Order in the US District Court, Middle District of Florida, Case No. 8:21-cv-00021, *Teresa Gaffney, et al., v. Judge Paul Huey, Judge Rex Barbas, Judge Caroline Tesche-Arkin, et al.* Although the bar is not a party to Ms. Gaffney's federal lawsuit against multiple sitting 13th Circuit Judges, Ms. Gaffney filed an emergency motion with the federal court asking the federal court to issue a restraining order against the bar. More specifically, Ms. Gaffney requested the bar be barred from proceeding with its disciplinary proceedings.

Ms. Gaffney having no basis in law or fact for seeking a restraining order against the bar within a federal suit in which the bar is not a party, the federal court denied Ms. Gaffney's emergency motion the next day, July 15, 2022. The federal court's five-page order clearly outlines the lack of legal support for Ms. Gaffney's filing and requests, similar to her filings in the underlying cases at issue in this bar proceeding. In addition, in the federal court's July 15, 2022, order, the court found "[Ms. Gaffney] also failed to confer with any of the defendants about her proposed amendment in accordance with Local Rule 3.01(g)." Sanctions Exhibit 5, Order Denying

Emergency Motion for Restraining Order, Case No. 8: 2021-CV-000021, pg. 5. See also Sanctions Exhibits 3-4.

7. Emergency Motion for Entry of Temporary Restraining Order #2 and Complaint against The Florida Bar and Bar Counsel, Filed in Federal Court.

On the morning of the first day of the final hearing in this bar proceeding, Ms. Gaffney filed a complaint against The Florida Bar, bar counsel, individually, and others, in federal court. In addition, Ms. Gaffney filed an emergency motion seeking a restraining order against the bar, prohibiting the final hearing from commencing that morning. The complaint makes unfounded allegations against the bar and bar counsel, very similar to the allegations she has made against every other attorney or judge who has disagreed with her position over the past eight years. Not surprisingly, the federal judge issued an order the same day, denying Ms. Gaffney's request for a restraining order. Sanctions Exhibits 6-9.

Ms. Gaffney's misconduct during these disciplinary proceedings has been abusive, obstructive, improper, and clearly evidences her continued pattern of misconduct.

3.2(b)(4) Multiple offenses

The undersigned is recommending Ms. Gaffney be found guilty of nine Rules Regulating The Florida Bar in connection with Count I, and five Rules in connection with Count II of the bar's Complaint. Ms. Gaffney committed multiple different offenses, including, but not limited to: refusing to answer deposition questions, impugning the integrity of the judiciary, violating court orders, filing a frivolous lawsuit in a different division for the purpose of deceiving the court, filing a meritless bankruptcy petition for her daughter, making misrepresentations, and instructing her daughter to destroy evidence. As such, this factor is considered in aggravation.

3.2(b)(5) Bad faith obstruction of the disciplinary proceeding by intentionally failing to comply with rules or orders of the disciplinary agency.

The undersigned references and incorporates the facts and evidenced outlined above in the Pattern of Misconduct factor, 3.2(b)(3), into this aggravating factor. Ms. Gaffney engaged in improper and unprofessional behavior throughout this disciplinary proceeding. The Court has repeatedly ruled that unprofessional behavior is unacceptable. See *Florida Bar v. Abramson*, 3 So. 3d 964 (Fla. 2009). Ms. Gaffney withheld an affidavit, provided late discovery, failed to attend two depositions, violated the referee's orders at least three times, and violated Rule 3-7.11, General

Rule of Procedure, among other things. This conduct cannot be tolerated by an attorney this factor is considered in aggravation.

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

The undersigned references and incorporates the facts and evidenced outlined above in the Pattern of Misconduct factor, 3.2(b)(3), into this aggravating factor. Ms. Gaffney's intentional violations of the bar's procedural rules, failure to comply with at least three orders of the referee and withholding of discovery constitutes deceptive practices in this disciplinary proceeding.

3.2(b)(7) Refusal to acknowledge wrongful nature of misconduct

Throughout not only this bar disciplinary process but also in the numerous pieces of litigation brought by Ms. Gaffney, Ms. Gaffney has continually asserted that her position is justified and correct. The Court stated in *Florida Bar v. Rosenberg*, 169 So.3d 1155, 1162 (2015) that an attorney's refusal to acknowledge the wrongful nature of his misconduct was "particularly significant," wherein the attorney continued to attempt to relitigate the underlying case and continued his abusive litigation practices throughout the bar disciplinary proceedings. Ms. Gaffney's arguments in her pleadings, motions, and other filings in this proceeding, as well as her

testimony during the final hearing and sanctions hearing, continue to demonstrate that she does not believe her actions were improper and that she has no remorse for her misconduct. Ms. Gaffney has attempted to relitigate the underlying cases over and over again in this bar proceeding. She listed witnesses on her witness list that were irrelevant to the bar proceeding and were only listed for the purpose of continuing to litigate the underlying cases. In response, the bar had to file eleven motions in limine to prevent fifteen of Ms. Gaffney's irrelevant witnesses from testifying. Further, Ms. Gaffney repeatedly called witnesses and asked questions of those witnesses that were irrelevant to the bar proceedings, but rather, were for the purpose of relitigating the underlying matters. The undersigned referee has never in his career had to sustain more relevancy objections.

Most applicable, however, is Ms. Gaffney's own testimony during the sanctions hearing. Ms. Gaffney testified on her own behalf, and when bar counsel asked Ms. Gaffney whether she could acknowledge any of her own wrongdoing in the past ten years, Ms. Gaffney stated the only thing she did wrong was hire the wrong attorneys to represent her. However, her husband was her counsel for a majority of the numerous proceedings. Judge Huey pointedly addresses this fact in his April 2016 sanction order, to wit:

“The Court considers the familial relationship between counsel and the Defendants as evidence of the clients’ participation. Attorneys Sussman and Gaffney are married to one another. Sarah K. Sussman is their daughter. Sarah K. Sussman is the trustee of the Sussman Family Trust. Attorney Gaffney is both a Defendant in this case, and has appeared as counsel on behalf of Defendant Sussman. Based upon those relationships, it is inconceivable to this Court that the Defendants are not participating in and completely aware of the misconduct of the Attorneys Sussman and Gaffney.”

P Exhibit 12.

Ms. Gaffney could not identify or acknowledge a single thing she has done wrong. She is unable to recognize and adjust her misconduct. This is most concerning and only further supports the referee’s recommendation that Ms. Gaffney be permanently disbarred.

3.2(b)(9) Substantial experience in the practice of law

Ms. Gaffney has been licensed to practice law since 1984. This factor is considered in aggravation because the longer an attorney has been practicing, the more experienced and knowledgeable the attorney should be regarding his or her professional duties and obligations. Ms. Gaffney has been practicing law for almost 40 years. She knows, or at the very least should know, the Rules Regulating The Florida Bar apply to her, and she must uphold the professionalism standards at all times.

Standard 3.3 Mitigating Factors

Ms. Gaffney argued the following mitigating factors applied: (b)(1) absence of a prior disciplinary record; (b)(7) character or reputation; and (b)(9) unreasonable delay in the disciplinary proceedings.

I do not find that any mitigating factors apply. Ms. Gaffney did not provide credible evidence in support of these factors.

First, factor 3.3(b)(1), absence of a prior disciplinary record. While the bar stipulated that Ms. Gaffney has not received a discipline from the Supreme Court of Florida related to a bar disciplinary case, Ms. Gaffney has been disciplined by other court(s). On April 22, 2016, the trial court in Case No. 14-CA-3762 issued an Order Granting Motions for Sanction, Striking Pleadings, And Entering Default Against Defendant's Teresa Gaffney and Sarah K. Sussman, Individually And As Trustee, which found Ms. Gaffney in willful contempt of court. P Exhibit 12. Later in the same case, on February 2, 2021, the trial court issued an order finding Ms. Gaffney in indirect civil contempt. Sanctions Exhibit 20, Order Finding Teresa Gaffney in Indirect Civil Contempt for Failure to Product Fact Information Sheet. Then, again, on February 7, 2022, during the pendency of these disciplinary proceedings, the same trial court issued another order against Ms. Gaffney, finding her in "continued, willful, and deliberate contempt of this court..." Sanctions Exhibit 21, pg. 3, Order Imposing

Sanctions for Continued Contempt of Teresa Gaffney for Failure to Produce Fact Information Sheet. Thus, having been held in contempt of court at least three times, I find Ms. Gaffney has prior discipline and this factor should not be considered in mitigation.

Second, factor 3.3(b)(7) character or reputation. Ms. Gaffney offered seven witnesses and testified on her own behalf in support of her argument that this factor should apply to mitigate the discipline in this case. I find Ms. Gaffney's testimony and the testimony of her children, Michael Sussman and Sarah Sussman, are not credible. I do not find that Ms. Gaffney's other witnesses provided testimony to sufficiently establish Ms. Gaffney has good character or a good reputation in the legal community. Thus, this factor should not be considered in mitigation.

Third, 3.3 (b)(9) unreasonable delay in the disciplinary proceedings if the respondent did not substantially contribute to the delay and the respondent demonstrates specific prejudice resulting from that delay. Ms. Gaffney presented no evidence whatsoever to support this factor. Rather, as evidenced by the record in this case, Ms. Gaffney was the one who repeatedly asked for continuances and stays in the proceedings, to which the bar objected. Further, because the delays in the bar proceeding were by request of Ms. Gaffney there cannot be a finding that Ms. Gaffney

suffered from any prejudice. This factor should not be considered in mitigation.

In sum, I do not find any mitigating factor exists to justify the reduction in the degree of discipline to be imposed against Ms. Gaffney.

VII. CASE LAW

I considered the following case law prior to recommending discipline:

Florida Bar v. Cox, 794 So. 2d 1278 (Fla. 2001)
Florida Bar v. Rosenberg, 169 So. 3d 1155 (Fla. 2015)
Florida Bar v. Abramson, 3 So. 3d 964 (Fla. 2009)
Florida Bar v. Koepke, 327 So. 3d 788 (Fla. 2021)
Florida Bar v. Lord, 433 So. 2d 983 (Fla. 1983)
Florida Bar v. Rheinstein, 2022 WL 1598898 (Fla. May 20, 2022)
Florida Bar v. Burkich, SC16-139, 2018 WL 904231 (Fla. February 15, 2018)
Florida Bar v. Wishart, 543 So. 2d 1250 (Fla. 1989)
Florida Bar v. Wishart, 543 So. 2d 1250 (Fla. 1989) (BARKETT, J. dissenting)
Florida Bar v. Baker, 810 So. 2d 876 (Fla. 2002)
Florida Bar v. Bennett, 276 So. 2d 481 (Fla. 1973)
Florida Bar v. Springer, 873 So. 2d 317 (Fla. 2004)
Florida Bar v. Weintraub, 528 So. 2d 367 (Fla. 1988)
Florida Bar v. Chestnut, SC18-1614, 2019 WL 3967128 (Fla. Aug. 22, 2019)
Florida Bar v. Roman, SC16-1330, 2018 WL 3633573 (Fla. July 12, 2018)
Florida Bar v. Keitel, SC18-532, 2019 WL 321655 (Fla. Oct. 28, 2021)
Florida Bar v. Schwartz, 334 So. 3d 298 (Fla. 2022)
Florida Bar v. Gwynn, 94 So. 3d 425 (Fla. 2012)
Florida Bar v. Berthiaume, 78 So. 3d 503 (Fla. 2011)
Florida Bar v. Patterson, 330 So. 3d 519 (Fla. 2021)
Florida Bar v. Spolter, 126 So. 3d 1059 (Table) (Fla. 2013)
Florida Bar v. Klein, 774 So. 2d 685 (Fla. 2000)
Florida Bar v. Lanford, 691 So.2d 480, 481 (Fla. 1997)

Florida Bar v. Cramer, 643 So.2d 1069, 1070 (Fla. 1994)
Florida Bar v. Neu, 597 So.2d 266 (Fla. 1992)
Florida Bar v. Fredericks, 731 So. 2d 1249, 1252 (Fla. 1999)
Florida Bar v. Wasserman, 675 So. 2d 103, 104 (Fla. 1996)
Florida Bar v. Cocalis, 959 So. 2d 163, 164 (Fla. 2007)
Shamrock-Shamrock, Inc. v. Tracey Remark, 271 So.3d 1200 (Fla. 5th DCA 2019)
In re Holloway, 832 So. 2d 716 (Fla. 2002)
Bailey v. KS Management Services, L.L.C., No. 21-20335, (5th Cir. May 26, 2022).
McCoy v. Energy XXI GOM, L.L.C., 695 F. App'x 750, 758–59 (5th Cir. 2017)
Brown v. Miss. Valley State Univ., 311 F.3d 328, 333 (5th Cir. 2002)
Curtis v. Anthony, 710 F.3d 587, 594 (5th Cir. 2013)

I found *Florida Bar v. Wishart*, 543 So. 2d 1250 (Fla. 1989), and particularly Justice Barkett's dissenting opinion to be particularly on point and persuasive. In *Wishart*, the Court issued a lengthy suspension. While Justice Barkett agreed on the finding of misconduct, she found disbarment was the most appropriate sanction over the majority's opinions for suspension where there is no more flagrant misconduct by an attorney than deliberately disobeying a series of direct orders by the court even if the attorney believes that the orders were contrary to law.

VIII. RECOMMENDATION AS TO DISCIPLINARY MEASURES TO BE APPLIED

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

- A. Permanent disbarment.
- B. Payment of The Florida Bar's costs in these proceedings.

Once disbarred, Ms. Gaffney will eliminate all indicia of her status as an attorney on email, social media, telephone listings, stationery, checks, business cards office signs or any other indicia of her status as an attorney, whatsoever. Ms. Gaffney will no longer herself out as a licensed attorney.

IX. PERSONAL HISTORY, PAST DISCIPLINARY RECORD

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

Personal History of Ms. Gaffney:

Age: 64

Date admitted to the Bar: 07/30/1984

Prior bar discipline: None.

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

I find costs outlined in the bar's Motion for Costs were reasonably incurred by The Florida Bar. It is recommended that such costs, totaling \$8,931.02, be charged to Ms. Gaffney and that interest at the statutory rate shall accrue and be deemed delinquent 30 days after the judgment in this

case becomes final unless paid in full or otherwise deferred by the Board of
Governors of The Florida Bar.

Dated this _____ day of _____, 2022.

peter ramsberger

peter ramsberger (Sep 22, 2022 14:44 EDT)

Peter Ray Ramsberger, Referee
324 S Fort Harrison Ave
Clearwater, FL 337565138

Original To:

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IN THE SUPREME COURT OF FLORIDA

(Before a Referee)

SUPREME COURT CASE NO.: SC21-938

THE FLORIDA BAR CASE FILE NOS.:

2018-10,184(13C) AND 2018-10,542(13C)

THE FLORIDA BAR,

Complainant,

v.

TERESA MARIE GAFFNEY,

Respondent.

BY VIDEOCONFERENCE

TRANSCRIPT OF PROCEEDINGS

Pages 1 through 19

Thursday, August 25th, 2022

1:02 p.m.

Heard by Honorable Peter R. Ramsberger, Referee

This cause came on to be heard at the date and place
aforesaid, when and where the following proceedings were
reported by:

Lisa Lopez

CLARK REPORTING SERVICE, INC.

813-229-3332

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1 APPEARANCES VIA VIDEO TELECONFERENCE

2

3

4 On behalf of The Florida Bar:

5 THE FLORIDA BAR

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7 Tampa, Florida 33607

8 813-875-9821

9 BY: LINDSEY M. GUINAND, ESQUIRE

10 ROBIN DILLON, ESQUIRE

11

12 On behalf of Respondent:

13 THE LAW OFFICE OF JAMES J. MACCHITELLI

14 1051 Perimeter Drive, Suite 400

15 Schaumburg, Illinois 60173

16 847-414-4532

17 BY: JAMES J. MACCHITELLI, ESQUIRE, PRO HAC VICE

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1 THE COURT: I appreciate you all being here this
2 afternoon. This is the final -- well, it's not really a
3 hearing. It's for me to give the Bar some direction.

4 As far as the respondent's renewed motion, I have
5 reviewed everything and the motion is denied.

6 Are there any other preliminary matters before I
7 make some comments and remarks to give the Bar some
8 guidance?

9 MS. GUINAND: No, Your Honor.

10 MR. MACCHITELLI: No, Your Honor.

11 THE COURT: I have considered all the evidence
12 presented. I've listened to the arguments. I've reviewed
13 all the volumes of materials that have been presented, just
14 numerous, numerous exhibits, motions, memorandum. I don't
15 think Ms. Gaffney's going to like a couple of my comments,
16 but I think I need to do what I need to do as a judge or as
17 a referee.

18 In my opinion, this case represents probably the
19 most egregious continuing pattern of attorney misconduct
20 I've ever heard of. I don't mean to sound trite, and I
21 don't want to sit here and provide snarky editorial
22 comment. But I doubt that even renowned legal fiction
23 writer John Grisham could have crafted this type of case.
24 It's just so off the chain in terms of misconduct.

25 Since I am requesting the Florida Bar draft a

1 referee's report, the purpose here today is to provide the
2 Florida Bar with some guidance in drafting the report. The
3 report, after all, is my product. It's going to have my
4 signature on it, but I think since I'm asking them to do a
5 lot of the drafting that I need to give them some
6 direction. And again, that's the purpose of why we're here
7 this afternoon.

8 To begin, the complaint, Florida Bar's Motion for
9 Summary Judgment, the Florida Bar's Memorandum of Law for
10 Sanctions, the Florida's Bar's closing argument, and the
11 evidentiary trial are all adopted and incorporated by
12 reference. Those documents should be attached to the
13 report as exhibits so anyone going through the report has
14 quick access to those documents.

15 As far as preparing a summary, I will leave it up
16 the Bar to go ahead and craft a summary since they have all
17 the information. They've also spent a phenomenal amount of
18 effort into putting all this together.

19 The Bar has satisfied its burden by proving by
20 clear and convincing evidence -- in fact, I think they've
21 gone beyond that. I don't think that there's any
22 reasonable doubt whatsoever in this case. The case law
23 presented by the Florida Bar is also adopted into the
24 referee's report. The report should provide that the
25 referee has considered the standards for sanctions referred

1 to in the Florida Bar's Memorandum of Law for Sanctions.
2 The report should also reflect that the referee has
3 considered all the aggravating and mitigating -- I think
4 there's only two mitigating factors that were offered.

5 The referee profoundly agrees with the Bar's
6 recommendation for disbarment. Given the shocking and
7 continuing pattern of misconduct, this referee highly
8 encourages the Florida Supreme Court to give this case its
9 immediate attention. Respondent's license to practice law
10 should be permanently revoked as soon as possible.

11 Again, I'm not making this statement just simply
12 to offer a rant against all the extremely outrageous
13 behavior that has gone on for almost a decade now -- and
14 I'm not even going back to 2009 when the deed exchange
15 apparently took place -- in the probate estate, back in
16 2012, with the underlying civil lawsuit in 2014 and it just
17 continues year after year after year -- 2014, '15, '16,
18 2017, '18, '19, '20, '21, and through this year, and it
19 continues.

20 I have notes to go back through a lot of the
21 case, but I'm not going to do that. The record speaks loud
22 and clear and it speaks for itself. There's a lot of
23 language in Judge Huey's order that to me is absolutely
24 spot-on, factually and supported by the record. In his
25 conclusion, Judge Huey wrote, quote, this court has never

1 experienced such contumacious disrespect for the judicial
2 system from a litigant or her counsel.

3 And that's a direct quote from Judge Huey's
4 lawyer, and that was way back in April of 2016. And then
5 three days after the order's entered by Judge Huey
6 basically telling respondent, you know, you had your
7 opportunity and it's about the last thing a trial judge
8 wants to do is default. We try very hard to let people
9 have their hearings based upon the merits, but it was so
10 egregious, he entered that motion for sanctions, that 19-
11 page order, and goes on and on and on, all based upon the
12 record.

13 Then three days later, respondent signs an
14 unsworn affidavit making horrendous allegations against
15 Judge Huey. Three days after that order.

16 So then Judge Huey came off the case and then
17 Judge Rex Barbas inherited it. I'll let this transcript
18 speak for themselves.

19 Then, I guess he got accused of being a
20 misogynist at some point by the respondent. And then the
21 utterly frivolous lawsuit got filed over in Plant City in
22 2019 in clear violation of the requirements in the 13th
23 Circuit as to where the case should have been filed, in
24 Tampa, not Plant City.

25 And then unfortunately Judge Wes Tibbals had to

1 deal with it because respondent and her attorney, her late-
2 husband, Mr. Sussman, wouldn't even agree that yes, it
3 should be filed in Tampa. So there had to be a hearing in
4 Plant City to have the case filed back to where it should
5 have been, in Tampa. Outrageous.

6 And I think Ms. Guinand outlined that complaint
7 and various misrepresentations and lack of candor that were
8 made in front of that judge over in Plant City.

9 Judge Barbas got the case back, the 2019 case,
10 where it should have been back in Tampa. And my
11 recollection's the case got dismissed with prejudice.
12 Apparently both cases went to the 2nd DCA at some point. I
13 believe both cases were PCA'd, per curiam affirmed. And
14 then finally, I guess Judge Barbas just said, I've had
15 enough, and finally he just took himself off, I think, in
16 December of maybe 2019. I've got so much information here
17 in dates.

18 And then he got off and then it started to go to
19 a series of different judges and I'm not exactly sure
20 what's going on anymore. Mr. Macchitelli kept telling me
21 time and time again, the cases are still open, they're
22 still open. Okay. Maybe they are. I don't know. I think
23 last hearing, someone said Judge Nash in Tampa may have
24 inherited various cases. I don't know. Nor does it really
25 matter because none of it really has anything to do as far

1 as the argument that I keep hearing over and over again
2 about homestead, about lack of subject matter jurisdiction,
3 about affirmative defenses. None of it has anything to do
4 with this case. I've never had a case where I had to
5 sustain more relevancy objections than this case.

6 One of the, I guess, purported defenses argued by
7 Mr. Macchitelli is that -- and quite frankly, Ms. Gaffney
8 said this -- well, it wasn't her conduct; it was her
9 lawyers, even though her now-deceased husband represented
10 her on most of these proceedings. Well, it was her
11 lawyers, Judge. It wasn't her. You shouldn't hold her
12 responsible for what her lawyers did. I think that's one
13 of the arguments that was advanced.

14 But I'm going to go back to Judge Huey's order,
15 back from April of 2016 and I want to quote from it. This
16 is what Judge Huey determined. Quote, the court considers
17 the familial relationship between counsel and the
18 defendants -- that's respondent, her husband, and her
19 daughter -- as evidence of the client's participation.

20 After describing the familial relationships,
21 Judge Huey writes, quote, based on those relationships, it
22 is inconceivable to this court that the defendants are not
23 participating in and completely aware of the misconduct of
24 Attorney Sussman and Gaffney.

25 That goes back to April of 2016.

1 I need to say this. I think one of the more
2 outlandish, not-to-believe, outrageous incidents of
3 misconduct by respondent is also noted in Judge Huey's
4 sanction order in page 15, and that is when during her
5 deposition, respondent refused to answer questions, she
6 asserted the attorney-client privilege. And I think this
7 goes as to how she obtained the deed from her father. So
8 she asserts a privilege. She goes in front of a judge to
9 make a determination. And I might be wrong about this, but
10 I believe someone told me the judge was actually Judge
11 Battles who made the determination. But the judge, whoever
12 the judge was, said, no, the privilege doesn't apply,
13 you're ordered to go back and answer the questions.

14 A licensed attorney then goes back to the
15 deposition and completely disobeys a direct court order.
16 There's no motion to continue. There's no stay. There's
17 no writ of mandamus or writ of prohibition filed. She just
18 says no; I don't care what the judge just told me to do.

19 This calls up the opinion that I have. This is
20 by Justice Barkett, 1999 case. The Florida Bar has it in
21 its case law in its Memorandum for Sanctions and I saw this
22 case and I read it. Let me give you the citation. The
23 Florida Bar v. Wishart, W-i-s-h-a-r-t, 543 So. 2nd 1250
24 (1989). Justice Barkett -- actually, it's a dissenting
25 opinion. She wrote -- I'm going to slightly paraphrase it.

1 She writes, short of defrauding a client, I can think of no
2 more flagrant misconduct by an attorney than deliberately
3 disobeying a direct order by the court. And this
4 misconduct is not justified by the attorney's belief that
5 the order's contrary to law. Our entire system of
6 jurisprudence is built on the principle that disagreements
7 with the application of law can be corrected by appeals, by
8 collateral attacks, or by petition to the legislature for a
9 change in the law. No attorney is ever privileged to
10 irrigate to himself or herself the right to say with
11 finality what the law is. That prerogative enures in the
12 courts. Without this principle, our legal system would
13 fall into shambles.

14 Quote, of necessity, an attorney must be required
15 to recognize those instances in which his or her
16 professional judgment is impaired. In the extreme forum
17 presented in this case, the lack of this capacity itself is
18 a serious indicator of unfitness to practice law.

19 I believe Ms. Guinand only asked Ms. Gaffney -- I
20 think only two questions, maybe a few more, in cross-
21 examination. Again, I'm relying upon my notes, my
22 recollection. But I think the first question I think Ms.
23 Guinand asked Ms. Gaffney is, basically, is there any
24 wrongdoing or any misconduct you want to own up to?
25 Something to that effect. It was broad. It was left open.

1 And I believe the only -- or do you have remorse. I think
2 that question was also asked of Mrs. Gaffney on cross-exam
3 and I think the only answer that Ms. Gaffney could say and
4 did say is she hired the wrong lawyers and she should have
5 monitored her lawyer's conduct more closely.

6 Again, you all have a transcript. That's my
7 recollection. And that goes right back to Justice
8 Barkett's observation in her opinion. We all make
9 mistakes. We all mess up at times. We all sometimes go,
10 what was I thinking? We're all human. But when you're
11 given an opportunity after this massive year after year
12 after year misconduct and you can't own anything, it goes
13 right back to Justice Barkett's quote, right there.

14 As to credibility, this referee finds the
15 respondent and her two adult children who testified have
16 absolutely no credibility whatsoever. Respondent's other
17 witnesses added very little, if anything, to do with the
18 merits of this case. In fact, I only think one witness
19 said, yeah, he may have read the Bar complaint. The rest
20 of the witnesses said they didn't even read the Bar
21 complaint.

22 I've already talked about the frivolous nature of
23 the lawsuit that got filed in 2019 in Plant City.

24 I think I'll also need to incorporate by
25 reference the bankruptcy order because that case also is

1 not to be believed. It finally got thrown out.

2 I mean, the destruction of the laptop computer.

3 I mean, that is so profoundly incredible.

4 I've got comments here that I don't think I need
5 to make.

6 I frankly don't understand how this misconduct
7 has gone for so long without being -- I know Ms. Gaffney's
8 been held in contempt on numerous occasions. I recollect
9 she's under contempt right now from Judge Arkin. Caroline
10 Tesche Arkin. I don't know why that got stayed through a
11 bankruptcy filing.

12 Mr. Macchitelli keeps telling me cases are still
13 open. If they are, I guess the judge still has
14 jurisdiction. But it just escaped me how this has gone on
15 for some long and the respondent has not been held
16 accountable and properly sanctioned. There is so much
17 misconduct throughout so many individuals for all these
18 years.

19 Again, I highly encourage the Florida Supreme
20 Court to give this case its immediate attention and to
21 expedite this and that the Court follow the recommendation
22 by the Florida Bar and by this referee.

23 It's also a very sad case to me. Extremely sad.
24 To be a lawyer for so long, a proud Gator. You kept saying
25 the Florida State University, which I took it to be the

1 University of Florida. To work hard, undergraduate degree,
2 law degree, LLM degree, be a tax lawyer all these years.
3 Get yourself nominated and be on the Judicial Nominating
4 Commission. And then to lose your license under such
5 disgrace. It's profoundly sad.

6 I'm sad, sad, very sad that you brought your
7 children into this whole ordeal. Sarah and Michael didn't
8 deserve it, that they were brought in.

9 I've got lots of other comments that I'm going to
10 refrain from saying. But certain things, I think, need to
11 be addressed by someone who's looked at -- a neutral
12 independent magistrate, that's me -- who's looked at all
13 this information, studied it and studied it and devoted I
14 don't know how many hours. Read through it, read through
15 it. I wanted to make sure I was really getting it and
16 understanding it. And I think I got it.

17 One of the big arguments, I suppose, is well,
18 Judge, you denied me my due process rights because you
19 granted the summary judgment motion and I didn't get to do
20 all my discovery. And I'm sure the Florida Supreme Court's
21 going to have to deal with that issue. I'll let Ms.
22 Guinand address that with the Supreme Court if they're
23 going to take other matters into consideration, but she
24 definitely had sufficient time to conduct her discovery.

25 What has perplexed me is what other discovery is

1 there? All this misconduct speaks for itself. I have
2 court orders. I have emails. I have motions. They're all
3 -- most of them came in under judicial notice. They speak
4 for themselves and there they are. What other discovery
5 could possibly be out there?

6 Whether Judge Huey did or did not make
7 inappropriate comments during a telephone call placed by
8 the respondent to him doesn't really have anything to do
9 with this case. His order from April 2016 is based
10 complete off the record.

11 I have the referee manual in front of me, revised
12 edition, from 2021. It goes through these types of
13 proceedings, various matters, and then it finally comes
14 down to the referee's report. Again, I'm going to defer to
15 the Bar to draft that report based on what I've already
16 announced.

17 I think the summary of proceedings -- I think
18 there's enough information for the bar to put that summary
19 together, including the date the complaint was filed,
20 referee was appointed -- when I got appointed -- the final
21 hearing, et cetera.

22 Findings of fact. I think we already announced
23 that. I'll let the Bar draft a narrative summary of the
24 case. That's under Roman Numeral II, paragraph D.

25 As to the recommendations as to guilt, I think

1 I'm very clear on that.

2 I've considered all the case law. I think the
3 Bar attached copies of the case law in its memorandum as
4 well. I've already indicated -- I'm under Roman Numeral V
5 of the report, standards for opposing. I think I've
6 considered all of the standards.

7 Roman Numeral VI, aggravating and mitigating
8 factors. I think I've already indicated I have considered
9 all the aggravating and the mitigating factors.

10 The recommendation as to discipline.

11 I will assess the appropriate Bar costs in the
12 case. I believe Ms. Guinand's going to draft up a summary
13 and send it to Mr. Macchitelli for his review, but yes, I
14 will assess the court costs.

15 The personal history. There is no prior history
16 with the Florida Bar and the respondent. I believe that
17 was a mitigating factor brought up.

18 It talks about past disciplinary record. Well, I
19 guess there's no record with the Florida Bar, but there is
20 various contempt orders, though, in civil cases.

21 And then last paragraph on the form that I have
22 is Roman Numeral IX. That's the cost. And I'll leave
23 that, again, for Florida Bar counsel to go ahead and put
24 that together as far as the costs.

25 I'm going to ask Ms. Guinand or Ms. Dillon, do

1 you have any questions or confusion as far as your
2 directives from the referee to drafting the report?

3 MS. GUINAND: No, Your Honor.

4 THE COURT: And Mr. Macchitelli, any questions or
5 confusion as far as what's gone down here today?

6 MR. MACCHITELLI: No, sir.

7 THE COURT: Okay. And Ms. Gaffney, I know you're
8 not happy to sit here and have to listen to this from me,
9 but it has to be said. It just does. And I don't enjoy
10 this part of my job. I never do. I enjoy trying to help
11 people solve their own problems. That's why I spent most
12 of my time in family court. I know that sounds awfully
13 self-serving, but it's true. I really, really enjoy trying
14 to help people get through it.

15 When I first saw this case and got a kind of a
16 whiff of it, I said, you know, why don't you all talk,
17 talk, talk, and maybe get something worked out and the
18 answer was no, no, no, no. I thought, well, okay. Because
19 most Bar cases I've had over the many years -- 30 years as
20 a trial court judge -- have gotten resolved. Very few
21 cases have gotten this far, and I'm sorry it had to go this
22 far, but maybe it needed to. Maybe this all needed to come
23 out and this record needed to be loud and clear.

24 So that's going to conclude it.

25 Ms. Guinand, Ms. Dillon, when you get a copy of

1 the draft, please send it to Mr. Macchitelli for his
2 review. Again, the report of referee is my work product.
3 My signature's going to go on it, so it's still subject to
4 me making my own comments, observations in the draft report
5 when I get it from the Florida Bar, which I may end up
6 doing.

7 Ms. Guinand, Ms. Dillon, as far as a time frame,
8 when would you might anticipate having a draft report
9 ready?

10 MS. GUINAND: Your Honor, I believe that in order
11 to get the transcript from today, which would be helpful,
12 it's usually ten days, and I see Ms. Lopez nodding her
13 head, so if I let her know I'm going to order it, a ten-day
14 turnaround and then if I could have a week after that, so
15 maybe two-and-a-half weeks, if that would be reasonable for
16 Your Honor.

17 I will get -- the motion for costs is done except
18 for what we're going to get from the court reporter today
19 so I'll work on getting that to Mr. Macchitelli and Your
20 Honor in the interim.

21 THE COURT: Okay.

22 Ms. Gaffney, again, I know you don't want to sit
23 here and listen to me today. Is there anything that you
24 need to present before we conclude this?

25 THE RESPONDENT: No, sir -- no, Your Honor. You

1 know we're going to appeal it, of course, so --

2 THE COURT: I understand. I will say this. I
3 need to compliment Ms. Gaffney, the attorneys throughout
4 these proceedings. Notwithstanding the underlying
5 substance, I think everyone has acted professionally,
6 competently. I can't imagine the amount of preparation
7 that's gone into this case as I sit here and look at these
8 stacks and stacks of three-ring binder notebooks. We had a
9 few moments here, but all trials have their moments. But I
10 compliment all of you. You've been professional. You've
11 been respectful. You've been diligent. You've been
12 respectful toward this Court. And I appreciate that.

13 I appreciate what attorneys do when they work
14 hard for their clients and you've worked very, very hard
15 for your clients. And I do want to compliment all three of
16 you. Well, all four of you.

17 Ms. Dillon, I'm not sure you've had a lot to say,
18 but you've been here. So I appreciate that.

19 Thank you for your professionalism throughout
20 these hearings. I'll look forward to getting a draft
21 report. If we need to chat at any time in the meantime,
22 let Stephanie Pitts know and we can get on the phone or get
23 a Zoom together. Stephanie Pitts, anything else before we
24 disconnect here? No? Okay. All right. Thank you.

25 (Proceeding ended at 1:30 p.m.)

CERTIFICATE OF TRANSCRIBER

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STATE OF FLORIDA
SUPREME COURT OF FLORIDA

I, Lisa Ann Lopez, ELECTRONIC TRANSCRIBER, certify that I was authorized to and did electronically transcribe the proceedings in THE FLORIDA BAR V. TERESA MARIE GAFFNEY, Supreme Court Case No. SC21-938, held on Tuesday, August 9th, 2022 via video teleconference; and the transcript, pages 1 through 19, is a true and correct transcription from the provided audio recording, to the best of my ability.

I FURTHER CERTIFY that I am not a relative, employee, attorney, or counsel of the parties, nor am I a relative or employee of any of the parties' attorneys or counsel connected with the action, nor am I financially interested in the action.

DATED this 9th of September, 2022.

Lisa Ann Lopez

Lisa Ann Lopez, CER/CET-1178

Notary Public



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ORDERED.

Dated: June 03, 2019



Roberta A. Colton
United States Bankruptcy Judge

UNITED STATES BANKRUPTCY COURT
MIDDLE DISTRICT OF FLORIDA
TAMPA DIVISION
www.flmb.uscourts.gov

In re

Sarah Katherine Sussman,

Debtor.

Case No. 8:17-bk-08959-RCT
Chapter 7

MEMORANDUM DECISION
FOLLOWING TRIAL ON CONTESTED MATTERS
(Docs. 7, 28, 85, and 113)

On April 15, 2019, the court conducted a day-long trial on (1) the Debtor's *Emergency Motion to Enforce the Automatic Stay and Request for Damages, Fees and Costs* (Doc. 7), (2) the *Emergency Motion for Relief from Stay* (Doc. 28) filed by Creditor, Phillip A. Baumann, as Administrator Ad Litem of the Estate of John J. Gaffney, deceased (the "Administrator"), (3) the Administrator's *Motion to Dismiss Case for Debtor's Failure to Comply with 11 U.S.C. §§109(h)(1) and 521(b) and for Debtor's Fraud on the Court* (Doc. 85), and (4) the Administrator's *Objection to Debtor's Claim of Exemptions on Amended Schedule C* (Doc. 113) (collectively, the "Contested Matters").

The journey to trial was tortured and populated by a series of disputes between the

P Exhibit 49

Debtor and her family on one side and the Administrator on the other. All these disputes, including the Contested Matters, center on the parties' competing claims to a parcel of real property located at 119 S. Clark St., Tampa, FL (the "Clark Street Property").

At trial, the court heard testimony from Debtor Sarah Katherine Sussman, Administrator Phillip A. Baumann, attorney Richard J. McIntyre, attorney Gilbert M. Singer, Debtor's mother Teresa M. Gaffney, in-house counsel to the Hillsborough County Sheriff's Office ("HCSO") Jason Gordillo, and the following members of the HCSO: Sergeant Michele Polk, Corporal Gary Harris, and Deputy Jonathan Carlton. The court admitted thirty-two exhibits offered by the Administrator, some limited in scope.¹ No exhibits were offered by the Debtor.²

Jurisdiction

This court has jurisdiction over this proceeding under 28 U.S.C. §§ 157 and 1334(b). This is a core proceeding under 28 U.S.C. §§ 157(b)(2)(A), (B), and (G).

Based on the documentary evidence and credible testimony adduced at trial, the following are the court's findings of fact and conclusions of law as required by Fed. R. Bankr. P. ("Rule(s)") 7052, made applicable by Rule 9014(c).

Facts

The Clark Street Property once belonged to Debtor's grandfather, John J. Gaffney, who passed away in December 2011. Before he passed, in or about June 2009, the property was conveyed to Teresa M. Gaffney subject to a life estate retained by Mr. Gaffney. Quite soon

¹ Doc. 647 (annotated exhibit list).

² Debtor failed to file an exhibit list in advance of trial as required by Local Rule 9070-1 and the court's scheduling orders (Docs. 341 and 507; *see also* Docs. 37, 107, 133, and 189). In any event, Debtor did not proffer any exhibit before the close of the evidence. But during closing argument, Debtor's counsel identified two documents filed of record in this case: an unauthenticated copy of the 2016 tax record for the Clark Street Property from the Hillsborough County Tax Collector (Doc. 584), and a non-certified copy of a purported "Notice of Homestead" filed by Debtor in the Hillsborough County Public Records (Doc. 583). These are discussed in Part II below.

after Mr. Gaffney passed, Ms. Gaffney, by deed dated January 20, 2012, conveyed the Clark Street Property to Debtor as trustee of The Sussman Family Trust Living Trust.³

Sometime in early 2014, the Administrator was appointed by the state probate court to commence a state court action to recover the Clark Street Property from Debtor and her family and to void the deeds that purported to convey title to Ms. Gaffney and Debtor as trustee. The Administrator filed the action⁴ shortly after his appointment and duly recorded a Notice of Lis Pendens dated April 10, 2014.⁵ Attempts by Debtor and her family to dissolve the lis pendens were unsuccessful.⁶

On April 22, 2016, the state court entered an order that struck, as a sanction, Ms. Gaffney's and Debtor's answer and affirmative defenses to the Administrator's complaint (the "Sanctions Order").⁷ Thereafter, the state court entered defaults against Ms. Gaffney and Debtor.⁸ After dispensing with additional and ultimately unsuccessful motion practice instigated by Ms. Gaffney and Debtor,⁹ the state court entered its Final Judgment Upon Default dated October 16, 2017 (the "Final Judgment").¹⁰

In the Final Judgment, the state court adjudged two distinct matters, both of which it noted were pled in the Administrator's complaint. First, the court declared "null and void" as

³ Adm'r Exs. 23 and 26. The documents creating the family trust have not been produced during this bankruptcy case, nor were they produced to the Administrator in the underlying state court litigation.

⁴ *Baumann v. Gaffney et al.*, Case No. 14-CA-3762 (Fla. Cir. Ct. Hillsborough Cty. filed Apr. 10, 2014).

⁵ Adm'r Ex. 17.

⁶ Adm'r Ex. 22; *see also* Adm'r Exs. 18-21.

⁷ The Sanctions Order, which details the conduct that led to its entry, was not offered at trial. It appears in the record as an attachment to the Administrator's Proof of Claim No. 2-2. The Sanctions Order is specifically referenced and expressly relied upon in the final judgment that was admitted at trial. Adm'r Ex. 23. The court takes judicial notice of the Sanctions Order for the purpose of noting the detailed factual account upon which the state court relied in rendering the final judgment. Fed. R. Evid. 201.

⁸ Adm'r Ex. 23.

⁹ An order dated Sept. 5, 2017, which denied several post-default motions by Ms. Gaffney and Debtor including a motion to dismiss and to vacate the defaults, was read into the record by Debtor's counsel. This order, upon which Mr. Gordillo relied, also decreed that judgment on the complaint would be entered in favor of the Administrator and a writ of possession would issue.

¹⁰ Adm'r. Ex. 23.

a fraudulent transfer the deed that transferred title for the Clark Street Property into Debtor as trustee. Avoidance of that deed effectively returned title to the property to Ms. Gaffney. Second, the state court declared that Ms. Gaffney had obtained title to the Clark Street Property through the exploitation of her father. The court therefore entered judgment against Ms. Gaffney ordering that “legal and beneficial title to and possession of” the Clark Street Property be vested in and held by the Administrator.

The Final Judgment expressly states that it is a conveyance of the Clark Street Property in accordance with Florida Rule of Civil Procedure 1.570(d). It also directs the state court clerk to immediately issue a writ of possession commanding the HSCO to place the Administrator in possession of the property. The Final Judgment was entered by the state court on October 16, 2017, and a writ of possession was issued promptly the next day.¹¹ Both the state trial court and the appellate court denied Debtor’s requests for a stay of the Final Judgment pending appeal.¹² Proceedings in the state appellate court have yet to conclude.

Deputy Carlton served the writ of possession on the Clark Street Property early on October 23, 2017. He spoke with Debtor’s father and current counsel, Dov Sussman, and advised that he would return on the morning of October 25, 2017, to execute on the writ.

The service of the writ of possession prompted a flurry of activity and ultimately led to the filing of this bankruptcy case.

Shortly after the writ was served, Ms. Gaffney contacted attorney Gil Singer, an insolvency professional she had known for several years. Ms. Gaffney was in tears, claiming she was about to lose her home. Because he was unable to represent her, Mr. Singer referred

¹¹ Adm’r Exs. 23 and 24.

¹² Adm’r Exs. 27 and 28.

Ms. Gaffney to three other insolvency attorneys including attorney Richard McIntyre.

Later that same day, Ms. Gaffney met with Mr. McIntyre and members of his law firm.¹³

Mr. Singer attended the meeting at Ms. Gaffney's request. Though he was in and out of the meeting, Mr. Singer recalled a bankruptcy being "bandied about." He specifically recalled discussion of the Debtor, who was not present, being placed in a bankruptcy. This consultation notwithstanding, Debtor's initial bankruptcy petition was not filed by Mr. McIntyre's firm.¹⁴

Also, on October 23, 2017, Ms. Gaffney contacted the HCSO regarding the writ. She was referred to Sgt. Polk, supervisor of the civil process section, with whom she spoke numerous times over the course of the next few days. After Ms. Gaffney mentioned a bankruptcy, Sgt. Polk reached out to HCSO's in-house counsel, Mr. Gordillo. Sgt. Polk indicated to Ms. Gaffney that execution of the writ would be temporarily on hold pending Mr. Gordillo's review.

This bankruptcy case was commenced at 11:24 a.m. on October 24, 2017.¹⁵ The petition was filed, in person, by Ms. Gaffney.¹⁶ The petition is handwritten and was not accompanied by bankruptcy schedules or all required initial disclosures and statements.¹⁷

After learning of the bankruptcy filing and the circumstances more generally, Mr. Gordillo conducted a review of the matter to determine whether execution of the writ would be stayed or go forward. After a targeted review of the state court docket and his own legal

¹³ See Adm'r Ex. 34. Mr. McIntyre attended the meeting but did not bill for his time as other members of the firm who primarily handle consumer bankruptcy cases were in attendance.

¹⁴ When filing in this court, Mr. McIntyre's firm uses a bankruptcy filing software that completes fields in forms with typewritten text. Debtor's petition is handwritten. Adm'r Ex. 29. Yet, in a sworn letter to the United States trustee, Debtor stated that her petition was populated in part by the McIntyre firm and that she executed and mailed the petition back to the McIntyre firm. Adm'r Ex. 33.

¹⁵ Adm'r Ex. 29.

¹⁶ Adm'r Exs. 37 ¶ 2 and 29.

¹⁷ Adm'r Ex. 29. Only Debtor's statement of her social security number, Official Form 121, and a Certificate of Credit Counseling were filed with the petition. (Docs. 2 & 3).

research, Mr. Gordillo concluded that the Clark Street Property was not property of the bankruptcy estate and therefore the automatic stay did not apply. Accordingly, he determined that execution of the writ of possession as to the Clark Street Property could proceed.

On the evening of October 24 upon learning that the eviction would go forward, Sgt. Polk promptly called Ms. Gaffney and left her a voicemail message. Sgt. Polk called again early the next morning to reiterate that execution of the writ was no longer on hold.

Deputy Carlton and Corp. Harris arrived at the Clark Street Property to execute on the writ at about 1:00 p.m. on October 25, 2017. When the officers arrived, Mr. Sussman was the only person present. Ms. Gaffney arrived about thirty minutes later. Both Mr. Sussman and Ms. Gaffney were afforded the opportunity to remove their personal belongings from the property, and both did remove several such items. Additional time was allowed, with the consent of the Administrator who was also present, for a large number of cats to be removed safely from the property. After what Deputy Carlton described as a not insignificant period of time, the locks were changed, and the former occupants were escorted from the property.

Deputy Carlton and Corp. Harris searched the property to ensure no persons or pets remained on the premises. Both reported that the house was very cluttered and smelled of cat urine. Photos admitted as Administrator's Exhibit 14 accurately depicted the condition of the Clark Street Property at the time the writ was executed.¹⁸ The photos confirm the officers' reports as to the condition of the property.

Both Deputy Carlton and Corp. Harris characterized the events of October 25, 2017, as peaceful. No damage to the property occurred. While the Administrator and his counsel were present, the officers observed no threats being made, nor were reports of threats filed afterward.

¹⁸ Adm'r Ex. 14. The photos indicate that the home was in a state of great disarray and seeming disrepair.

Typically, when executing a writ of possession, a trespass warning would be issued by the officers to the parties being removed. Neither Mr. Sussman nor Ms. Gaffney were trespassed because the Administrator had agreed that they could return at a future time to collect the rest of their personal belongings.

At the time of the execution of the writ, the Administrator was aware of Debtor's bankruptcy filing. Though he knew of the filing, the Administrator did not take any action to stay execution of the writ. Rather, being unfamiliar with the effect of the automatic stay on the writ, he deferred to and relied upon Mr. Gordillo's determination that the writ was not stayed.

Since October 25, 2017, neither Debtor nor her family have returned to the Clark Street Property. The Administrator made several attempts to arrange for Debtor and her family to return to the property to collect their belongings.¹⁹ Debtor never availed herself of the opportunity and her claims that she feared for her personal safety are not credible.

Throughout the events of October 23–25, 2017, Debtor was in Washington, D.C.²⁰ Further, at that time, she did not reside at the Clark Street Property,²¹ having moved to Washington sometime around February 2016. When the chapter 13 petition was filed, Debtor lived and worked in Washington, D.C.²²

Debtor's bankruptcy petition was filed, in person, by Ms. Gaffney.²³ A certificate of completion of prepetition credit counseling was filed with the petition.²⁴ The certificate

¹⁹ Adm'r Exs. 35 and 36.

²⁰ See also Adm'r Exs. 15 and 33.

²¹ Debtor's last visit to the Clark Street Property was about one month before the bankruptcy was filed. In the year leading up to the bankruptcy, Debtor's cell phone records indicate that she was present in Florida (and presumably at the Clark Street Property) for only about 45 days. Of those, 27 coincided with the 2016 Thanksgiving and winter holidays. Adm'r Ex. 15.

²² Adm'r Exs. 8 p.5, 10, 32, 39, and 41 (341 Meeting Tr. at 9:21–25, 10:16–20, 19:7–9, 26:19–27:10; 2004 Exam. Tr. at 17:5–7 (referencing Adm'r Ex. 31), 92:3–17).

²³ See also Adm'r Ex. 37 ¶2.

²⁴ Adm'r Ex. 7; see also Doc. 3.

indicates that the credit counseling course was taken via the internet on October 23, 2017, at 7:35 p.m.²⁵ At the time the online course was completed, Debtor was in Washington, D.C. and clocked in at work.²⁶

Records of the course provider, Debtorcc.org, indicate that the internet protocol address from which the course was taken place the computer logged into the course in Tampa, FL.²⁷ The IP address belonged to Ms. Gaffney's business.²⁸ Debtorcc.org's billing records also indicate that the course fee was paid by credit card belonging to Ms. Gaffney. Nevertheless, Ms. Gaffney adamantly denies taking the credit counseling course for Debtor, providing that she was on the phone speaking with clients at the time the course was taken.

Debtor claims that she took the credit counseling course before she filed her petition, adding that she took notes during the course believing that there would be a test at the end.²⁹ But Debtor's testimony is not credible, at least to the extent she claims to have taken the course *before* filing for bankruptcy. And though Debtor previously has maintained that she took the course on a laptop computer which connected to Ms. Gaffney's business via virtual private network, the court, as sanction for Debtor's failure to preserve electronically stored information, presumes for purposes of the Administrator's motion to dismiss that she did not take the credit counseling course on that laptop computer.³⁰

²⁵ Adm'r Ex. 7.

²⁶ Adm'r Exs. 32 and 33.

²⁷ Adm'r Ex. 7.

²⁸ Adm'r Ex. 6.

²⁹ Adm'r Ex. 41 (341 Meeting Tr. at 21:7-11).

³⁰ Doc. 365 (Order Granting Motion for Sanctions Against Sarah Sussman for Spoliation of Evidence).

Discussion

I. *Debtor's Emergency Motion to Enforce the Automatic Stay and Request for Damages, Fees and Costs, and the Administrator's Emergency Motion for Relief from Stay*

Debtor argues that the execution of the writ of possession on October 25, 2017, which she asserts dispossessed her of her homestead, violated the automatic stay. The Administrator counters that that stay could not have been violated because the Clark Street Property was never property of the bankruptcy estate subject to the automatic stay.

The threshold issue before the court is whether, as of the filing of this bankruptcy case, the Debtor had any interest in the Clark Street Property protected under 11 U.S.C. § 362.³¹ Relevant here is § 362(a)(3),³² which provides that filing of a bankruptcy petition operates as a stay of “any act to obtain possession of property of the estate or of property from the estate or to exercise control over property of the estate.”

Section 541 of the Bankruptcy Code lists the types of property interests included in “property of the estate” and thus protected by the automatic stay.³³ Property of the estate is defined broadly to include “all legal or equitable interests of the debtor in property as of the commencement of the case.”³⁴ Courts look to applicable state law to determine a debtor’s legal and equitable interests, if any, in property.³⁵

³¹ Statutory references are to 11 U.S.C. §§ 101–1532 (“Code” or “Bankruptcy Code”), unless noted otherwise.

³² Debtor argues, consistent with prior papers filed with the court, that the Administrator’s actions violated § 362(a)(4), which prohibits “any act to create, perfect, or enforce any lien against property of the estate.” But no lien is implicated here. In previous filings, Debtor also cited § 362(a)(6), which prohibits “any act to collect, assess, or recover a claim against the debtor” But that provision is also inapplicable as the Administrator’s actions were not taken to collect on a “claim” as that term is defined in the Bankruptcy Code. § 101(5).

³³ See *Baillie Lumber Co. v. Thompson (In re Icarus Holding, LLC)*, 391 F.3d 1315, 1319 (11th Cir. 2004); *Bell-Tel Fed. Credit Union v. Kalter (In re Kalter)*, 292 F.3d 1350, 1352–53, 1352 n.1 (11th Cir. 2002); *Southtrust Bank of Ala., N.A. v. Thomas (In re Thomas)*, 883 F.2d 991, 994–95 (11th Cir. 1989); see also *In re Xenerga, Inc.*, 449 B.R. 594, 598, 601 (Bankr. M.D. Fla. 2011); *In re Fox*, 274 B.R. 909, 910 (Bankr. M.D. Fla. 2002).

³⁴ § 541(a); see, e.g., *Charles R. Hall Motors, Inc. v. Lewis (In re Lewis)*, 137 F.3d 1280, 1283 (11th Cir. 2002); *Thomas*, 883 F.2d at 995.

³⁵ See *Butner v. United States*, 440 U.S. 48, 55 (1979); *Kalter*, 292 F.3d at 1353; *Lewis*, 137 F.3d at 1283.

Unfortunately for the Debtor, her claim to title to the Clark Street Property arose from a deed that was declared void by the state court before her bankruptcy petition was filed. The Final Judgment served to strip Debtor of all legal and beneficial interest in the property and effectively conveyed it to the Administrator. Accordingly, the Clark Street Property was not property of the bankruptcy estate subject to the automatic stay.

In Florida, “[i]t is well established that a judgment for conveyance of real property can itself have the effect of a duly executed conveyance and can be recorded as such.”³⁶ The conveyance operates pursuant to Florida Rule of Civil Procedure 1.570(d).³⁷ For a judgment to serve as a conveyance, it must contain or reference a legal description of the property and identify the property interests involved. Further, the court issuing the judgment must have *in-rem* jurisdiction over the property.³⁸

The court finds that all requirements necessary under Florida law to effectuate a conveyance of the Clark Street Property to the Administrator were satisfied by the Final Judgment. The Final Judgment contains the legal description of the Clark Street Property and expressly defines the property interests involved, namely that the Administrator is to have legal and beneficial title and is entitled to immediate possession. And the Final Judgment was issued by the Circuit Court for Hillsborough County, which possessed the necessary *in-rem* jurisdiction as it is the circuit court for the county in which the Clark Street Property sits.³⁹

³⁶ *Williams v. Shuler*, 551 So. 2d. 585, 587 (Fla. Dist. Ct. App. 1989); *see also Alt. Dev. Inc. v. St. Lucie Club & Apartment Homes Condo. Assoc.*, 608 So. 2d 822, 826 (Fla. Dist. Ct. App. 1992).

³⁷ *See, e.g., Alt. Dev. Inc.*, 608 So. 2d at 826; *see also In Kendall Grove Joint Venture v. Martinez-Esteve (In re Kendall Grove Joint Venture)*, 50 B.R. 64, 66 (Bankr. S.D. Fla. 1985).

³⁸ *See Alt. Dev. Inc.*, 608 So. 2d at 826; *Williams*, 551 So. 2d. at 587.

³⁹ *See Griveas v. Amoco Oil Co.*, 854 So. 2d 841, 843 (Fla. Dist. Ct. App. 2003) (“Only the circuit court in the county where the real property is located has in rem jurisdiction.”); *see also Goedmakers v. Goedmakers*, 520 So. 2d 575, 578 (Fla. 1988) (“[C]ourts have no jurisdiction in actions relating to real property located outside their territorial boundaries.”).

Accordingly, after entry of the Final Judgment, Debtor no longer had legal or beneficial title to the Clark Street Property.⁴⁰ In short, she no longer owned the property, whether as “trustee” or otherwise.

The Final Judgment also directed the issuance of the writ of possession and effectively determined that neither Debtor nor anyone other than the Administrator had a legal possessory interest in the Clark Street Property.⁴¹ Debtor has identified no equitable interest that might give rise to a legal interest, such as a commercial tenant who has the right to cure a payment default even after termination of the lease.⁴²

Debtor’s right to possession was terminated by the Final Judgment and the writ of possession. Further, Debtor was not in physical possession of the Clark Street Property when her chapter 13 petition was filed, having relocated to Washington, D.C. over a year before the petition. Rather it was her parents that were in actual possession and her parents who were dispossessed. But her parents are not the debtors in this case.

Still, Debtor argues that the Clark Street Property is her declared homestead protected

⁴⁰ Debtor did not raise the issue at trial that the Final Judgment, though rendered prepetition, was not recorded until several days after the petition was filed. But this fact is of no moment. Fla. R. Civ. P. 1.570(d) does not speak of recordation unlike the analogous Fla. Stat. § 61.075(4), which provides that a judgment of dissolution of marriage may operate as a transfer of property “when the judgment . . . is recorded” (emphasis added). Further, recordation “does not operate to convey title.” *Van Eepoel Real Estate Co. v. Sarasota Milk Co.*, 129 So. 892, 895 (Fla. 1930) (quoting *Hunter v. State Bank*, 61 So. 497, 499 (Fla. 1913)).

⁴¹ See Fla. R. Civ. P. 1.580; *Cohen v. Ginsberg*, 715 So. 2d 1113, 1113 (Fla. Dist. Ct. App. 1998) (“The gist of [Fla. R. Civ. P. 1.580(a)] is that a court cannot order a writ to issue until it has formally adjudicated the right to possession of property.”); see also *Sarasota-Fruitville Drainage Dist. v. All Lands Within Said Dist. Upon Which Drainage Taxes for Year 1928 Have Not Been Paid*, 25 So. 2d 498, 500 (Fla. 1946) (noting a writ of possession is meant to transfer possession of real property *after* title and right to possession have been adjudicated); *Dixon v. Dixon*, 191 So. 292, 293 (Fla. 1939) (noting a writ of possession issues “only when the right is clear and free from doubt, when there is no equity—or appearance of equity—in the defendant; it is not customary to issue the writ where there is a bona fide contest as to the right to the possession of the property, or where the rights of the parties have not been fully and finally adjudicated in the principal suit”).

⁴² Cf. *In re PetitUSA, LLC*, No. 16-10305-BKC-LMI, 2016 WL 8504995, at *3–*4 (Bankr. S.D. Fla. Apr. 5, 2016) (discussing, under Florida law, the equitable remedy of anti-forfeiture). Debtor cites to *In re PetitUSA, LLC*, but the case is readily distinguishable. That case involved a landlord-tenant dispute arising from a commercial lease of business property.

under Art. X § 4 of the Florida Constitution and that the Administrator's actions were in clear violation of that provision. Unfortunately for the Debtor, her argument misunderstands the relevant inquiry. Even if the Clark Street Property had homestead status prior to entry of the Final Judgment, that status would not imbue Debtor with any additional rights or interests in the Clark Street Property that might be protectable by the automatic stay.⁴³

Debtor also attacks the Final Judgment, arguing that it cannot be given preclusive effect because it is not a "final" judgment. She notes, first, it is on appeal and, second, the state court did not decide Debtor's homestead claim and therefore *res judicata* does not apply. The court addresses each argument in turn.

First, the mere filing of an appeal does not render an otherwise final judgment unenforceable or without effect. Rather, to stay the effect of a final judgment an aggrieved party must obtain a stay pending appeal. This is true in both Florida state⁴⁴ and federal courts.⁴⁵ Debtor sought a stay of the Final Judgment before both the state trial and appellate court, but her requests were denied.

Second, in this circuit, whether a federal court should give *res judicata* or preclusive effect to a state court judgment is determined according to the laws of the state that rendered the decision.⁴⁶ In Florida, "a party is precluded from raising any issue that was or could have

⁴³ See *Venn v. Reinhard (In re Reinhard)*, 377 B.R. 315, 319 (Bankr. N.D. Fla. 2007) ("The acquisition of homestead status does not confer any additional property interest or rights in property."); see also *Heartwood 4, LLC v. Tabor (In re Tabor)*, Adv. No. 15-01616-EPK, No. 14-20731-EPK, 2016 WL 1533362, at *3 (Bankr. S.D. Fla. Apr. 13, 2016) ("Stated another way, Florida homestead status is a 'claim for the underlying property interest' and is not itself a property interest.").

⁴⁴ See Fla. R. App. P. 9.310(a); *FMS Mgmt. Sys., Inc. v. IDS Mortg. Corp.*, 402 So. 2d 474, 475 (Fla. Dist. Ct. App. 1981).

⁴⁵ See Fed. R. Civ. P. 62; Fed. R. Bankr. P. 8007; *Lofstedt v. Kendall (In re Kendall)*, 510 B.R. 356, 359 (Bankr. D. Colo. 2014) ("A stay pending appeal temporarily suspends proceedings or the effect of a judgment.").

⁴⁶ See *Copeland v. Hous. Auth. of Hollywood*, 300 F. App'x 843, 844 (11th Cir. 2008) (applying Florida law); *Kizzire v. Baptist Health Sys., Inc.*, 441 F.3d 1306, 1308 (11th Cir. 2006) (applying Alabama law); see also *Lasky v. Itzler (In re Itzler)*, 247 B.R. 546, 548 (Bankr. S.D. Fla. 2000).

been raised in an earlier suit that (1) involved [the] same parties; (2) was on the same cause of action; and (3) was decided on the merits.”⁴⁷ Debtor acknowledges she raised the issue that the Clark Street Property was her homestead in the course of the state court proceedings. There can be little doubt that the state court action involved the same parties. So too, the matters concern the “same cause of action” as that term is applied by Florida courts.⁴⁸

Although Debtor is correct that the Final Judgment does not include an express adjudication of Debtor’s homestead claim, Debtor ignores what occurred in the state court.⁴⁹ The court struck Debtor’s and Ms. Gaffney’s pleadings as a sanction for their refusal to cooperate in discovery and to abide by directives of the court. Thus, it was Debtor’s own conduct and the conduct of her counsel that led the state court to decline to decide her homestead claim. And “[w]here a party has substantially participated in an action in which he had a full and fair opportunity to defend on the merits . . . and even attempts to frustrate the effort to bring the action to judgment, it is not an abuse of discretion . . . to prevent further litigation of the issues resolved by [a] default judgment in the prior action.”⁵⁰

The court concludes that principles of *res judicata* are not a bar to this court’s giving preclusive effect to the Final Judgment. Further, the court cannot simply ignore that early in

⁴⁷ *Copeland*, 300 F. App’x at 844 (citing *Fla. Dep’t of Transp. v. Juliano*, 801 So. 2d 101, 105 (Fla. 2001)).

⁴⁸ See *Youngblood v. Taylor*, 89 So. 2d 503, 505 (Fla. 1956) (“[T]he test of the identity of the causes of action, for the purpose of determining the question of res adjudicata, is the *identity of the facts essential* to the maintenance of the actions.” (quoting *Gordon v. Gordon*, 36 So. 2d 774, 776 (1948))).

⁴⁹ Debtor’s characterization of the Final Judgment as a “default judgment” is misleading. The judgment was entered after the state court sanctioned the defendants, including Debtor, by striking their answers and affirmative defenses. The Final Judgment therefore is not a default judgment in the traditional sense, as where a defendant fails to appear and defend the suit. Rather, it is a default only in the technical sense in that it was entered after a clerk’s default. Both Debtor and Ms. Gaffney appeared, filed defensive pleadings, asserted counterclaims, and were offered numerous opportunities to litigate the dispute. But in the end, they were sanctioned for their misconduct and willful failure to abide by the state court’s orders.

⁵⁰ *Bush v. Balfour Beatty Bahamas, Ltd. (In re Bush)*, 62 F.3d 1319, 1325 (11th Cir. 1995); cf. *In re Itzler*, 247 B.R. at 550–55, 555 (“[U]nder Florida law, even a pure default judgment, which arose from no participation of the defendant, is sufficient to meet the “fully litigated” element of collateral estoppel.”).

this case, the court modified the automatic stay to allow Debtor's appeal of the Final Judgment to proceed to conclusion. The court's decision was based, in part, upon an agreement of the parties that judicial resources would best be conserved if matters related to the parties' respective interests in the Clark Street Property were decided finally by the state appellate court. On several occasions since, this court has declined Debtor's invitation to revisit that decision and it will not do so now. Similarly, the court adheres to its position that it will not address Debtor's arguments on the merits of the state court's decision.

Because the Clark Street Property did not become property of the bankruptcy estate subject to the automatic stay, there could be no violation of the stay based on execution of the writ and for which Debtor might recover damages under 11 U.S.C. § 362(k).

Though the court concludes that the Clark Street Property is not property of the estate subject to the automatic stay, an issue remains as to items of Debtor's personal property that she asserts were inside the property. Debtor testified that she was prevented from retrieving items of her personal property due to threats made by the Administrator either of her immediate arrest should she return to the property or that her physical safety was in danger. If true, this might rise to a violation of the automatic stay. But the facts tell a different story.

To begin, Debtor did not identify specific items of her personal property located in the Clark Street Property at the time of the execution of the writ, save an unnamed feline. The few specific items Debtor identified belonged not to her, but to her brother or parents.⁵¹ Instead,

⁵¹ During trial, the court conditionally permitted Ms. Gaffney to testify as to her personal property lost as a result of her removal from the Clark Street Property. The court's ruling was based upon the representation of Debtor's counsel that case law existed where courts had permitted a debtor to recover for a stay violation based upon damages suffered not by the debtor but by the debtor's family. The court has reviewed counsel's Supplemental Memorandum of Law (Doc. 645) and concludes that the cited cases do not stand for that particular proposition. Rather, the cases discuss the issue of standing of non-debtors to pursue, on their own behalf, damages for a violation of the automatic stay.

she described in very broad terms items typically belonging to an entire family. And as Debtor had relocated to Washington, D.C. over a year before the filing, the court cannot conclude that, save for her cat, Debtor maintained personal property at the Clark Street Property.

As to the unnamed cat, both Deputy Carlton and Corp. Harris testified that Mr. Sussman and Ms. Gaffney were provided additional time to remove several cats from the residence, presumably including the Debtor's. The officers sweep the property specifically to ensure that no persons or animals were left behind. It is not entirely clear but the cat in question may have been feral and living outside of the residence. If so, it cannot be said that the Administrator's obtaining possession of the Clark Street Property was an act to exercise control over the cat nor prevented Debtor or her family from retrieving the cat, even if at a later time.

Debtor's claim that she was prevented from retrieving her property by the Administrator's threats is belied by the record. Deputy Carlton and Corp. Harris reported that the events of October 25 were peaceable, and that no threats were made or later reported. Mr. Sussman and Ms. Gaffney were allowed additional time to retrieve their personal effects. And contrary to standard practice, a trespass warning was not issued because the Administrator had agreed that arrangements would be made to allow Mr. Sussman and Ms. Gaffney to collect the rest of their personal belongings at some time in the future. Debtor's claim that she feared for her personal safety were she to return to the Clark Street Property was not credible.

Last, the Administrator offered on several occasions to arrange for Debtor and her family to return to the Clark Street Property to retrieve their remaining personal property. They declined the Administrator's offers.

In the end, the court finds that no willful violation of the automatic stay occurred as to either the Clark Street Property or Debtor's personal property. Without a violation of the stay,

“the damages provision of 11 U.S.C. § 362 by its terms [becomes] irrelevant.”⁵² Accordingly, the court need not discuss Debtor’s claimed damages.

The court now turns to the Administrator’s motion for relief from the stay. Assuming the Clark Street Property had been property of the estate subject to the automatic stay, the court finds that cause exists to annul the stay as of the filing of the chapter 13 petition.⁵³ Section 362(d) of the Code authorizes a court to annul the stay retroactive to the petition date where “the circumstances of the particular case warrant such relief.”⁵⁴ The decision to annul the stay is within the discretion of the court “with each decision being considered on a case-by-case basis.”⁵⁵ Of the several factors to be considered in determining whether to annul the automatic stay, the debtor’s conduct and lack of good faith are the most important.⁵⁶ Filing a chapter 13 petition for an improper purpose evidences bad faith.⁵⁷ And filing a chapter 13 petition for purposes of circumventing a final state court judgment can be an improper purpose.⁵⁸

The events that transpired in the days leading up to the filing of this case are not entirely clear, but one fact is crystal clear. The sole purpose of Debtor’s chapter 13 petition was an

⁵² *Vazquez Laboy v. Doral Mortg. Corp. (In re Vazquez Laboy)*, 647 F.3d 367, 373–74 (1st Cir. 2011); see *Valdes Morales v. EMI Equity Mortg. Inc. (In re Valdes Morales)*, Adv. No. 16-00166, No. 11-04694 BKT, 2019 WL 1220839, at *4 (Bankr. D.P.R. Mar. 13, 2019) (providing where there is no violation of the stay, damages under § 362(k) are not available).

⁵³ § 362(d)(1) (providing the court may, “for cause”, terminate, annul, modify, or condition the stay).

⁵⁴ *In re Barr*, 318 B.R. 592, 598 (Bankr. M.D. Fla. 2004) (citing *Albany Partners, Ltd. V. Westbrook (In re Albany Partners, Ltd.)*, 749 F.2d 670 (11th Cir. 1984)).

⁵⁵ *In re Stockwell*, 262 B.R. 275, 280 (Bankr. D. Vt. 2001); see *Fjeldsted v. Lien (In re Fjeldsted)*, 293 B.R. 12, 21 (B.A.P. 9th Cir. 2003); *Albany Partners, Ltd. V. Westbrook (In re Albany Partners, Ltd.)*, 749 F.2d 670, 675 (11th Cir. 1984) (noting that while the stay should be annulled only in limited circumstances, a court does not abuse its discretion in granting such relief “particularly” when it finds the petition was not filed in good faith).

⁵⁶ See *In re Barr*, 318 B.R. at 598; *In re Webb*, 294 B.R. 850, 853 (Bankr. E.D. Ark. 2003); see generally *Albany Partners*, 749 F.2d at 675–76.

⁵⁷ E.g., *Shell Oil Co. v. Waldron (In re Waldron)*, 785 F.2d 936, 939–41 (11th Cir. 1986); see generally *Kitchens v. Ga. R.R. Bank & Trust Co. (In re Kitchens)*, 702 F.2d 885, 887–89 (11th Cir. 1983) (discussing a non-exhaustive set of factors courts may use in determining a chapter 13 debtor’s good faith).

⁵⁸ See *In re McGovern*, 297 B.R. 650, 661 (S.D. Fla. 2003) (listing cases); *In re Soppick*, 516 B.R. 733, 746–47 (Bankr. E.D. Pa. 2014); *In re Peterson*, 228 B.R. 19, 24–25, 25 n.4 (Bankr. M.D. Fla. 1998); *In re Bandini*, 165 B.R. 317, 320 (Bankr. S.D. Fla. 1994).

attempt to relitigate issues that were or should have been litigated in state court. The court determined Debtor's chapter 13 petition was improper for that very reason, when it denied confirmation and dismissed the petition.⁵⁹ But even after Debtor converted her case to a chapter 7 liquidation, the matters dominating the court's docket continued to revolve around the same state court disputes between the Debtor and the Administrator, between the Administrator and Ms. Gaffney, or among the three collectively. The trial on the Contested Matters did little to dissuade the court from this conclusion. It is simply not the function of this court to relitigate state court issues, particularly when they are, according to Debtor, still on appeal.

As to the remaining factors,⁶⁰ the court finds they also weigh in favor of the Administrator and annulling the stay. Grounds certainly existed for the modification of the stay had the Administrator filed a motion before execution of the writ. Among other things, both the state trial court and appellate court had denied Debtor's request for a stay pending appeal. And the parties agreed early in the case that the state court was best suited to determine their respective rights in the Clark Street Property, which led this court to modify the stay. Although the Administrator was aware of the bankruptcy, it was Mr. Gordillo, HCSO's in-house counsel, who decided that execution of the writ could and should proceed. Relying on Mr. Gordillo's opinion was reasonable, particularly because the court agrees that Mr. Gordillo was correct.

Accordingly, for these reasons, the Debtor's *Emergency Motion to Enforce the Automatic Stay and Request for Damages, Fees and Costs* (Doc. 7) will be denied, and the Administrator's *Emergency Motion for Relief from Stay* (Doc. 28) will be granted.

⁵⁹ On September 21, 2018, the court dismissed Debtor's chapter 13 petition and provided leave to convert the case to chapter 7. (Doc. 305). Debtor opted to convert on September 29, 2018. (Doc. 309).

⁶⁰ See *In re Barr*, 318 B.R. at 598.

II. *Administrator's Objection to Debtor's Claim of Exemptions on Amended Schedule C*

The Administrator objects to Debtor's homestead exemption in the Clark Street Property on the basis that she is not entitled to claim the exemption because at the time she filed this bankruptcy case, she did not own the property and did not reside there.⁶¹ Debtor responds that her homestead claim, which is asserted under Art. X § 4 of the Florida Constitution, is "unassailable."⁶² She argues that it is of no moment that she held title to the property as trustee of The Sussman Family Trust Living Trust rather than in her individual capacity or that she allegedly resided in Washington, D.C. because it is not disputed that her family resided at the Clark Street Property.

Florida's constitution does not define the term "homestead," but it does provide for certain limitations and requirements. Debtor claims the exemption from forced sale provided in Art. X § 4 of the Florida Constitution. That provision contains an ownership requirement, a residency requirement, and an acreage limitation.⁶³ The acreage limitation is not at issue here.

The Administrator, who bears the burden of persuasion on his objection,⁶⁴ has demonstrated that as of the filing of this bankruptcy case, Debtor did not hold title to the property in any capacity and further did not reside there. Thus, neither the ownership nor residency requirement appear met. But Debtor repeats her homestead claim is "unassailable."

As to the residency requirement, Debtor argues that her homestead exemption cannot be denied because she did not reside on the property (a fact she disputes) when her family

⁶¹ The Administrator also objected to Debtor's claimed exemptions in her personal property. But as he did not pursue those objections at trial, the court deems them abandoned.

⁶² Debtor has never filed a formal, written response to the Administrator's objection. The court therefore relies on her arguments made at trial, which are echoed throughout her numerous filings in this case.

⁶³ See *Englander v. Mills (In re Englander)*, 95 F.3d 1028, 1031 (11th Cir. 1996); *In re Wierschem*, 152 B.R. 345, 347 (Bankr. M.D. Fla. 1993).

⁶⁴ Fed. R. Bankr. P. 4003(c); see § 522(l); *In re Caliri*, 347 B.R. 788, 797 (Bankr. M.D. Fla. 2006).

resided there. Debtor is correct on the law,⁶⁵ and the Administrator does not contest that Debtor's parents, who were the individuals removed by HCSO, resided at the Clark Street Property. Accordingly, the court finds that the residency requirement is met. But that is not the end of the analysis. Debtor must still satisfy the ownership requirement.⁶⁶

As to the ownership requirement, Debtor argues that she cannot be denied her homestead exemption simply because she held title to the Clark Street Property via revocable trust rather than individually. Again, Debtor is correct on the law,⁶⁷ but that is not the issue in dispute. Rather, the issue is whether Debtor held title—in any capacity—given the Final Judgment. Debtor does not directly address this issue other than to attack the propriety and finality of the Final Judgment, arguments the court declines to address or rejects above.

During closing argument, Debtor attempted to bolster her ownership claim citing to data from the Hillsborough County Tax Collector and a "Notice of Homestead" she purportedly recorded in the Hillsborough County official records. These documents were not admitted at trial and though filed of record in the case,⁶⁸ Debtor did not ask for the court to take judicial notice of these documents prior to the close of evidence. Nonetheless, because the court finds that neither document is terribly enlightening on the relevant issue and notwithstanding Debtor's failures to follow the local rule and abide by orders of this court as to exhibits, the court will consider these documents but only for the limited purpose of supporting Debtor's testimony that, prepetition, she had received a homestead exemption for real property taxes and

⁶⁵ See, e.g., *In re Oyola*, 571 B.R. 874, 877–78 (Bankr. M.D. Fla. 2017); *In re Wierschem*, 152 B.R. at 347.

⁶⁶ Debtor relies heavily on Judge Williamson's decision in *In re Oyola*, and the tests for residency articulated by the court. But Debtor's argument conflates the constitutional residency requirement with the ownership requirement, which was not in dispute in Judge Williamson's case.

⁶⁷ See, e.g., *In re Edwards*, 356 B.R. 807, 810–11 (Bankr. M.D. Fla. 2006); *In re Alexander*, 346 B.R. 546, 549–51 (Bankr. M.D. Fla. 2006).

⁶⁸ See *supra* note 2.

at some point had “declared” homestead on the Clark Street Property.

Until the Final Judgment was entered, Debtor could arguably claim the constitutional homestead exemption from taxation.⁶⁹ So it is not surprising that the county tax rolls prior to entry of the Final Judgment reflect that election. But the homestead exemption from taxation is quite different from the homestead exemption from forced sale upon which Debtor relies. These two exemptions derive from two different provisions of the Florida Constitution, serve two different policy goals, and are subject to two different interpretative standards.⁷⁰ Simply put, one is not dispositive of the other.

Debtor could not recall when she “declared” homestead on the Clark Street Property. But it appears that the Notice of Homestead was recorded two days after the Final Judgment was entered. At that point, Debtor no longer had an ownership interest in the Clark Street Property to support a homestead claim. And it cannot be the law that one can receive real property via fraudulent transfer and then insulate oneself from liability by claiming the property as homestead, particularly after suffering an adverse judgment. Fortunately, the court need not address that particularly thorny issue here as a debtor’s entitlement to a claim of exemption for purposes of a bankruptcy case is determined as of the date of the petition.⁷¹ And on that date, as a result of the Final Judgment, Debtor had no ownership interest in the Clark Street Property. Therefore, the ownership requirement is not met, and the exemption must be disallowed.

Accordingly, the Administrator’s *Objection to Debtor’s Claim of Exemptions on*

⁶⁹ Florida’s homestead exemption from taxation is set forth in Art. VII § 6 of the Florida Constitution.

⁷⁰ See *Grisolia v. Pfeffer*, 77 So. 3d 732, 735–36 (Fla. Dist. Ct. App. 2011).

⁷¹ See *In re Williams*, 427 B.R. 541, 547 (Bankr. M.D. Fla. 2010); *In re Vick*, No. 07-10844-BKC-AJC, 2008 WL 2444526, at *2 (Bankr. S.D. Fla. June 16, 2008) (listing cases).

Amended Schedule C will be sustained.⁷²

III. *Administrator's Motion to Dismiss Case for Debtor's Failure to Comply with 11 U.S.C. §§109(h)(1) and 521(b) and for Debtor's Fraud on the Court*

The Administrator seeks dismissal of this case based upon Debtor's ineligibility to be a debtor due to her failure to complete prepetition credit counseling as mandated by § 109(h)(1) of the Bankruptcy Code. Debtor responds that she completed the course as evidenced by the certificate of completion of prepetition credit counseling filed with the petition.

As detailed above, the certificate filed with the court indicates that the credit counseling course was taken via the internet on October 23, 2017, at 7:35 p.m. The course provider's records indicate that the IP address from which the course was taken place the connected computer in Tampa, FL. At that time, Debtor was in Washington, D.C. and clocked in at work. These facts are not disputed and are established by the evidence proffered by the Administrator.

Prior to trial on the Contested Matters, the court held a three-day evidentiary hearing relative to Debtor's failure to preserve electronically stored information, specifically the laptop computer on which Debtor claims to have taken the credit counseling course. The court ultimately concluded that Debtor, after being directed to preserve the laptop, destroyed it with the intent to deprive the Administrator of access to the ESI contained on the laptop. As sanction for her misconduct, the court ordered that it would presume that Debtor did not take the credit counseling course on that laptop computer.⁷³ The presumption was rebuttable.

Debtor's only evidence that she completed the credit counseling course *before* filing the

⁷² The court pauses briefly to note that the chapter 7 trustee's decision not to administer the Clark Street Property as indicated in her Report of No Distribution dated Nov. 16, 2018, nor object to the homestead exemption is not dispositive of the issue. It merely reflects her sound business judgment that given the competing claims to the property and the uncertainty of Debtor's interest, pursuing the property would not result in any benefit to the estate. In any event, the Administrator filed a timely objection to the exemption.

⁷³ Doc. 365 (Order Granting Motion for Sanctions Against Sarah Sussman for Spoliation of Evidence).

petition is her own testimony, which the court does not find credible. The court believes that Debtor eventually took the course, after the original petition was filed, but that does not save Debtor unless she had complied with the provisions of § 109(h)(3), which she did not do. And Debtor offered no additional evidence to explain how she could simultaneously be at work in Washington, D.C. while also logged into any computer in Tampa, FL., thereby failing to rebut the evidentiary presumption.

Debtor argues, however, that the motion must be denied because the Administrator failed to prove that Ms. Gaffney took the course for the Debtor, as he had theorized. But the Administrator does not have to identify and prove that someone other than the debtor took the credit counseling course. Instead, he must show only that it is likely Debtor did not, which would render her ineligible to be a debtor before this court.⁷⁴

Having carefully reviewed the evidence adduced at trial, the court must conclude that Debtor did not complete the credit counseling course before filing this bankruptcy. Though Ms. Gaffney testified that “Sarah took the course,” she did not explain her basis for that assertion. Ms. Gaffney stated that she had spoken to Debtor about the need to complete credit counseling before filing a bankruptcy, but she did not testify as to any facts to suggest that Debtor actually took the course. This is not to say that the court does not credit Ms. Gaffney’s testimony that she did not take the course for the Debtor. This may be true. But that fact alone

⁷⁴ See *In re Hess*, 347 B.R. 489, 500–01 (Bankr. D. Vt. 2006); *In re Marek*, No. 11-21158-TLM, 2012 WL 2153648, at *11 & n.52 (Bankr. D. Idaho June 13, 2012) (“Lack of statutory eligibility is ‘cause’ for dismissal of the case.”); cf. *Marshall v. McCarty (In re Marshall)*, 596 B.R. 366, 369 (B.A.P. 8th Cir. 2019) (finding the debtor ineligible because she failed to prove she had satisfied the credit counseling requirement); *In re Hargrove*, 465 B.R. 507, 509 (Bankr. E.D. Ark. 2011) (“Debtors have the burden of proof to establish their eligibility for relief under the provisions of 11 U.S.C. § 109.”); *In re Voelker*, 123 B.R. 749, 750 (Bankr. E.D. Mich. 1990) (“When a debtor’s eligibility to file under a particular chapter of the Bankruptcy Code is challenged, the burden is upon the debtor to establish such eligibility.”); *In re Morgan Strawberry Farm, L.D.*, 98 B.R. 584, 585 (Bankr. M.D. Fla. 1989) (“The burden of proof in establishing eligibility for bankruptcy relief is on the party filing the petition.”).

does not lead to the conclusion that Debtor completed the credit counseling course prepetition.⁷⁵

Section 109(h) of the Bankruptcy Code has been criticized as a failed experiment added to the Code by BAPCPA.⁷⁶ Nonetheless, Congress' mandate is clear. Absent exemption or timely obtained leave of court, the failure to obtain credit counseling prior to filing bankruptcy renders a debtor ineligible to be a debtor in bankruptcy.⁷⁷ Although the failure to comply with § 109(h)(1) not jurisdictional,⁷⁸ the court is compelled to dismiss the case.⁷⁹

Accordingly, the Administrator's *Motion to Dismiss Case for Debtor's Failure to Comply with 11 U.S.C. §§109(h)(1) and 521(b) and for Debtor's Fraud on the Court* will be granted and this case dismissed.

The court will enter a separate Order consistent with this Memorandum Decision.

Service of this Decision other than by CM/ECF is not required. Local Rule 9013-1(b).

⁷⁵ The court denied summary judgment to the Administrator on his motion to dismiss, in part, based on the Affidavit of Stanley Gloster (Doc. 511), in which Mr. Gloster averred that in a conversation that occurred shortly after the petition was filed, Debtor mentioned taking the credit counseling course. In the court's view, this statement created an issue of fact and, if true, may have corroborated Debtor's claims. But Mr. Gloster was not offered as a witness at trial.

⁷⁶ See *In re Enloe*, 373 B.R. 123, 127 & n.13 (Bankr. D. Colo. 2007); *In re Elmendorf*, 345 B.R. 486 (Bankr. S.D. N.Y. 2006), *aff'd sub nom. Adams v. Finlay*, No. 06-6040, 2006 WL 3240522 (S.D. N.Y. Nov. 3, 2006), *vacated and remanded sub nom. In re Zarnel*, 619 F.3d 156 (2d Cir. 2010).

⁷⁷ § 109(h); see, e.g., *Marshall*, 596 B.R. at 368-69; *Vexler v. Baruch (In re Baruch)*, 564 B.R. 424, 427 (M.D. Fla. 2016).

⁷⁸ See *Baruch*, 564 B.R. at 428-30; see also *Adams v. Zarnel (In re Zarnel)*, 619 F.3d 156, 169 (2d Cir. 2010); *In re Wise*, 415 B.R. 579, 583 (Bankr. N.D. Ala. 2009).

⁷⁹ See *Baruch*, 564 B.R. at 424; see also *Marshall*, 596 B.R. at 369; *In re Stinnie*, 555 B.R. 530, 534-36 (Bankr. W.D. Va. 2016); *In re Ross*, 338 B.R. 134, 136-41 (Bankr. N.D. Ga. 2006).

IN THE SUPREME COURT OF FLORIDA

THE FLORIDA BAR,

Complainant,

v.

TERESA MARIE GAFFNEY,

Respondent.

Supreme Court Case
No. SC-

The Florida Bar File Nos.
2018-10,184 (13C)
2018-10,542 (13C)

COMPLAINT

The Florida Bar, complainant, files this Complaint against Teresa Marie Gaffney, respondent, pursuant to the Rules Regulating The Florida Bar and alleges:

1. Respondent is and was at all times mentioned herein a member of The Florida Bar admitted on July 30, 1984 and is subject to the jurisdiction of the Supreme Court of Florida.
2. Respondent resided and practiced law in Hillsborough County, Florida, at all times material.
3. The Thirteenth Judicial Circuit Grievance Committee C found probable cause to file this complaint pursuant to Rule 3-7.4, of the Rules Regulating The Florida Bar, and this complaint has been approved by the presiding member of that committee.

Count I

TFB File 2018-10,184 (13C)

4. Paragraphs 1 through 3 are realleged and incorporated herein by reference.

5. Respondent was a defendant in a real property matter titled *Baumann, Administer Ad Litem of the Estate of Gaffney v. Teresa Gaffney and Sarah Sussman, Individually and as Trustee of the Sussman Family Trust*, case no. **14-CA-003762**, in and for Hillsborough County, Florida.

6. From about June 2014 to June 2015, respondent was represented by the firm of Walters Levin Klingensmith & Thomison.

7. Beginning in or around April 2015, respondent was represented by her husband, attorney Dov Sussman.

8. Respondent also filed a notice of appearance to represent the other defendant in the matter, respondent's and Mr. Sussman's daughter, Sarah Sussman.

9. The matter concerned the transfer of real property from the estate of respondent's father to respondent and her daughter before respondent's father's death.

10. The plaintiff in the matter, Phillip A. Baumann, as Administer Ad Litem of the Estate of John J. Gaffney, raised issues as to the legality of

those transfers and whether the property needed to be used to pay the estate's legal fees.

11. On February 5, 2015, plaintiff filed a Notice of Taking Deposition of respondent.

12. Respondent was noticed, through counsel, that her deposition was scheduled for March 11, 2015.

13. The day before her scheduled deposition, and over a month after being scheduled for her deposition, respondent, through counsel, filed a Motion for Protective Order Regarding Notice of Taking Deposition.

14. The motion failed to allege a sufficient legal basis for a protective order under Rule 1.280, Fla. R. Civ. P.

15. Respondent and her counsel failed to schedule the motion for a hearing.

16. Respondent was not excused by order of the court from appearing for her deposition.

17. On March 11, 2015, after respondent failed to appear at her deposition, plaintiff's counsel filed a Verified Response to Teresa Gaffney's Motion for Protective Order and Motion for Sanctions.

18. Plaintiff's counsel scheduled respondent's motion for protective order and plaintiff's response and motion for sanctions for a hearing.

19. The court denied respondent's motion by order dated August 7, 2015, and directed respondent to cooperate in scheduling her deposition.

20. Thereafter, respondent and her counsel failed to cooperate in scheduling her deposition.

21. On August 13, 2015, plaintiff's counsel filed a Motion to Compel Discovery, in which plaintiff sought assistance from the court in scheduling the depositions of respondent and Mr. Sussman.

22. The court held a case management conference on September 16, 2015, and entered its second order compelling respondent to appear for a deposition to occur on October 16, 2015.

23. At the October 16, 2015 deposition, respondent claimed that she was representing her father when she prepared the deed that transferred an interest in her father's homestead to herself and that all communications she had with him concerning that deed were privileged.

24. A hearing was held during the deposition, and the court overruled the privilege objection and directed respondent to answer the question.

25. Thereafter, respondent refused to answer the question based upon the attorney client privilege in direct violation of the order of the court.

26. On or about March 29, 2016, an evidentiary hearing was held on plaintiff's motion for sanctions and contempt of court, and respondent failed to appear for the hearing.

27. Respondent and her counsel failed to communicate to plaintiff or the court any reason for the non-appearance at the scheduled hearing.

28. The court found the plaintiff was prejudiced due to the misconduct of respondent and Mr. Sussman.

29. On or about April 22, 2016, the court issued an Order Granting Motions For Sanction, Striking Pleadings, And Entering Default Against Defendants Teresa Gaffney and Sarah K. Sussman, Individually and as Trustee, which granted motions for sanctions, struck pleadings, and entered a default against respondent.

30. The court stated in part that, "...this Court finds that those Defendants have willfully and intentionally frustrated the Plaintiffs attempts to justly, speedily, and inexpensively prosecute this case. The Defendants' have contumaciously disregarded this Court's authority, the Rules Regulating the Florida Bar and the Florida Rules of Civil Procedure. Accordingly, this Court is granting Plaintiffs' request that Defendants' affirmative defenses and counterclaims/crossclaims be stricken as a sanction, that attorneys' fees and costs be awarded and that an ultimatum

is imposed so that the defendants and their counsel will comply with the law. As will be ordered in detail below, Defendants will be given one, final opportunity to comply with the law. If either fails to do so, her or its answer will be stricken and final judgment will be entered against her or it.”

31. The court further stated that respondent and Mr. Sussman frustrated the plaintiff's attempts to prosecute the case by failing to clear deposition and hearing dates, failing to follow court orders, and failing to appear at depositions and hearings and frustrating attempts to set and conduct same.

32. The court concluded that respondent's disobedience was willful, deliberate, and contumacious, rather than an act of neglect or inexperience.

33. On or about April 25, 2016, respondent submitted an Affidavit to the court stating that in her opinion, Judge Huey's conduct was tantamount to sexual extortion under color of law.

34. Respondent also stated that in her opinion, Judge Huey was stalking her and filing false statements, under the guise of a judicial order, as a judge, because she refused his alleged sexual advances.

35. Respondent further stated that Judge Huey had made material misrepresentations in his order, just as he threatened that he would do if

she did not acquiesce to his alleged sexual advances, and that it appears that Judge Huey uses his position as Judge to coerce or threaten harm if one does not agree to sexual favors.

36. On or about April 29, 2016, the court entered an Order Treating Affidavit of Gaffney as Amended Motion to Disqualify Judge and Order Granting Motion to Disqualify Judge.

37. The subsequent judge reconsidered Judge Huey's Order of April 22, 2016, based upon Judge Huey's disqualification.

38. The court ruled that the rulings within the April 22, 2016, order were legally correct based upon the record.

39. On or about July 6, 2016, a hearing for defendants' Motion for Reconsideration was held and all matters were addressed.

40. On or about July 12, 2016, the court entered an order denying the Motion for Reconsideration.

41. The defendants filed a motion for reconsideration of the proceedings of July 6, 2016, but a hearing was never re-scheduled after it was canceled.

42. On August 23, 2016, Mr. Sussman filed a Motion (Verified) to Disqualify Judge Barbas which attached an Affidavit by Ms. Gaffney.

43. Respondent's Affidavit stated in part: "In reviewing the Transcript of July 6, 2016, Judge Rex Barbas expressly condoned the behavior of Judge Paul Huey, to wit, the overt sexual harassment and the fear of repercussions of the sexual advances of Judge Paul Huey. Further, Judge Rex Barbas expressly condoned the unlawfully hearings conducted by Judge Paul Huey in violation of Florida Statutes 38.10."

44. The Motion (Verified) to Disqualify Judge Barbas was denied.

45. On or about September 6, 2016, the court entered a default final judgment against the defendants for failure to comply with court orders after their pleadings were struck as a sanction on April 22, 2016.

46. On or about September 19, 2017, the court entered an Order Striking Defendants' Motion for a Hearing on Subject Matter Jurisdiction, Standing, Statute of Limitations, Breach of Fiduciary, Conflict of Interests, Filing an Unlawful Lis Pendens.

47. The court found that the defendants' motion again argued the same matters contained in their original motion for reconsideration following Judge Huey's disqualification.

48. The court found that since a default had been entered and the issues regarding personal jurisdiction and subject matter jurisdiction had already been addressed (and taken up on appeal which was denied), the

motion was a nullity, since judgment has been entered and the default never set aside.

49. The court further found that the defendants again filed yet another motion for reconsideration alleging the same matters that they had previously argued and were a part of the order of July 12, 2016.

50. By order dated February 12, 2019, the Second District Court of Appeal per curiam affirmed the ruling of the lower court in case no. **2D17-4238**.

51. On or about June 17, 2019, the plaintiffs filed a Motion for Order to Show Cause and to Enforce Final Judgment.

52. On or about June 20, 2019, the defendants filed a motion to disqualify opposing counsel Mr. Kangas, alleging Mr. Kangas engaged in ex parte communications with both Judge Huey and Judge Barbas during the litigation and that the final order in the case was written or ghostwritten by Mr. Kangas.

53. On July 11, 2019, the defendants filed a supplement to the motion to disqualify Judge Rex Barbas, making the same allegations as the motion for disqualification of Mr. Kangas.

54. On July 12, 2019, an evidentiary hearing was held on defendant's motion for disqualification.

55. On or about July 22, 2019, Mr. Sussman filed another motion to disqualify Judge Barbas stating in part the following: "Judge Barbas has endorsed the conduct of a judicial sexual predator and allowed to stand an order made by the judicial sexual predator in retribution for his denial by Gaffney."

56. The motion further stated in part that: "In opening the hearing with a decidedly misogynistic comment, Judge Barbas effectively announced that no woman will be treated fairly in his court. The rule of law has been supplanted by misogyny."

57. The motion also stated in part that: "The final order demonstrates the court's profound animus to women, the final order stands for the proposition that the sexual extortion engaged in by Judge Huey was acceptable and had no impact on Judge Huey's retaliatory order."

58. Mr. Sussman's motion attached an affidavit by respondent.

59. On or about July 23, 2019, the court denied both motions to disqualify.

60. In the July 23, 2019 order, the court stated in part: "Regarding the allegations that the undersigned found nothing wrong with Judge Huey's alleged actions, this court never made that statement. The sanction order issued by Judge Huey was not vacated because there was a factual

and legal basis to conclude that the defendants were being obstructionists during the proceedings.”

61. The court also stated in part: “The litany of actions delineated by Judge Huey for the sanctions were never rebutted by Mr. Sussman in a hearing that lasted an entire half day. Moreover, at the conclusion of the hearing, the undersigned provided Sussman with another opportunity to comply with the rules of discovery, and the court would then consider withdrawing the sanctions order.”

62. The court further stated in part that: “The defendants make the bold allegation that the undersigned Judge ‘had no problem with the conduct and behavior of Judge Huey...’ The court reiterated that it was not conducting a hearing regarding the alleged actions by Judge Huey. The defendants continually try to mislead the court and whoever else reads their motions filled with misstatements and innuendo.”

63. In the July 23, 2019 order, the court further stated in part that: “It is evident that the defendants continue to make motions to obstruct the progress of this case by continually arguing matters that have been continuous [sic] ruled upon and affirmed on appeal.”

64. On or about September 16, 2019, the court entered an Order on Defendants’ Motion for Relief from Judgment and Defendants’

Supplemental Motion for Relief from Judgment finding that no new issues had been raised by the defendants or that the issues raised should have been raised on appeal.

65. On or about September 26, 2019, the plaintiffs filed a Motion for Order to Show Cause and to Enforce Final Judgment, alleging that after entry of final judgment on October 16, 2017, Sarah Sussman recorded a lis pendens that purported to claim an interest in the Clark Avenue property on March 25, 2019.

66. The lis pendens was filed by respondent's husband, Mr. Sussman.

67. On or about September 26, 2019, the court entered an Order on Plaintiff's Motion for Order to Show Cause and to Enforce Final Judgment and Directions to the Clerk of the Court.

68. The court stated that the final judgment held that: (a) Deed was declared null and void; and (b) Respondent was enjoined against any further disposition of the said property.

69. Subsequent to the issuance of the final judgment, respondent filed two claims of lien on the said property each in the amount of \$285,000 and filed in Official record book 25334 pages 568-570 and book 26389 pages 822-824.

70. The court found that the claims of liens filed by respondent were dispositions upon the property, subject to the final judgment in this case, and the claims of lien filed by respondent were direct violations of the court's final Judgment.

71. The court ordered that respondent shall show cause why she should not be held in indirect criminal contempt for violating the injunction prohibiting her from making any disposition of the same property.

72. The court held that the liens filed by Mr. Sussman on behalf of respondent were null and void and the clerk was ordered to strike them from the public records.

73. On or about October 17, 2019, the court entered an Order Scheduling Continued Hearing stating that the Amended Motion for Judgment of Attorneys' Fees against Teresa Gaffney dated September 16, 2019 and Plaintiff's Motion for Judgment of Attorneys' Fees dated May 12, 2016, were scheduled to be heard on October 11, 2019.

74. The hearing did not conclude and was continued on November 22, 2019.

75. On or about October 10, 2019, opposing counsel entered into a Stipulation for Dismissal of Indirect Criminal Contempt in the interest of avoiding delays in the case.

76. Opposing counsel agreed to dismiss the contempt but not the findings that respondent violated the Final Judgment or the striking of the liens filed in contravention of the final judgment.

77. On or about October 25, 2019, the court entered an Order Granting Stipulation.

78. On or about October 30, 2019, the plaintiff filed an Emergency Verified Motion for Order to Show Cause and to Enforce Final Judgment stating that, on October 11, 2019, the very next day following the stipulation on October 10, 2019, respondent filed two new notices of lis pendens against the same property.

79. On or about October 31, 2019, the court entered an Order to Show Cause and Arraignment on Order to Show Cause finding that on the very next day following the parties stipulation, October 11, 2019, in disregard of the court's authority and the Final Judgment Upon Default, Ms. Gaffney effectuated two new dispositions of the Clark Avenue Property, through the filing of two separate notices of lis pendens recorded in the Official Records of Hillsborough County, Florida, at Book 27024, Page 769, and Book 27024 Page 770-71, respectively.

80. These two separate notices of lis pendens each purport to secure \$8,000,000.00 in damages alleged to be owed to respondent.

81. The court ordered respondent to appear on November 7, 2019.

82. The court heard arguments and on November 25, 2019, granted defendant's motion to dismiss and further considered striking the recorded lis pendens and the award of fees and costs as a sanction.

83. On November 14, 2019, respondent filed a motion to disqualify Judge Barbas, alleging the court failed to provide respondent the opportunity to respond to the emergency motion and that she was being incorrectly held in contempt.

84. By order dated December 12, 2019, the court ruled in part that: "However, based upon the constant misrepresentations by counsel for the Defendant and Defendant Gaffney herself, the undersigned finds that he can no longer be fair and impartial towards the Defendant Gaffney nor her attorney, Sussman. For that reason, and that reason alone, this court **ORDERS AND ADJUDGES** that Defendant's Motion to Disqualify / Recuse is **GRANTED.**"

85. On or about April 8, 2019, respondent filed a notice of appearance for the plaintiff in case no. **19-CA-002729**, *Sarah Sussman v. Kangas, Estate of Gaffney, Baumann*, of which Mr. Sussman was also representing the plaintiff.

86. At a hearing on defendants' Motion to Transfer Case on or about June 12, 2019, plaintiff opposed such transfer.

87. On or about June 27, 2019, Mr. Sussman filed a motion to disqualify Judge Barbas, alleging the same allegations that were alleged in case no. 14-CA-003762.

88. On or about July 23, 2019, the court entered an Amended Order Denying Motions to Disqualify finding that the instant case was filed in the East Division of the Court (Plant City) in an obvious attempt at forum shopping.

89. The court further found that because of the attempt by the plaintiff in this case to forum shop and circumvent the rulings of the court and the affirmation by the Second District Court of Appeals, it was incumbent on the court to thwart the attempted illegal usurpation of the court's authority.

90. Respondent has brought multiple appeals related to the above-referenced cases.

91. In one appeal, case no. **2D20-1713**, Teresa Gaffney v. Baumann, Kangas, Mr. Sussman filed a Reply to Respondent's Response to Writ of Prohibition on June 18, 2020, on behalf of the plaintiffs.

92. In the Reply, Mr. Sussman stated that respondent does not believe she can get a fair trial, hearing or ruling from Judge Tesche Arkin or any Judge in the Thirteenth Judicial Circuit.

93. The Reply states in part that:

“Through a series of investigations it was uncovered that Judge Huey, Kangas, Baumann, Judge Barbas and Judge Tesche Arkin and others acted in concert to deprive [respondent] of her due process rights, her civil rights and her property and the property of others to coverup the predatory sexual nature of Judge Huey and to punish [respondent] and to cover up the theft of property of John J. Gaffney by Tyler and Patchett with the help of Kangas and Baumann.”

94. The Reply further stated that Judge Barbas found nothing wrong with Judge Huey demanding sexual favors for a favorable ruling and that Judge Barbas had refused to allow witnesses to testify against Judge Huey.

95. Respondent has moved to recuse various judges, in addition to those mentioned above.

96. Respondent has also brought a federal civil rights lawsuit in case no. **8:21-cv-00021-sdm**, *Teresa Gaffney, Sarah Sussman v. Judge Ficarrotta, Judge Huey, Judge Barbas, Judge Tesche Arkin*.

97. An amended complaint was filed on January 12, 2021, and Exhibit 1 to the amended complaint contains an affidavit of respondent.

98. Respondent's complaint filed against four (4) Hillsborough County judges, alleges the following, in part:

99. "The defendants further elected to act as a rump legislature and re-write Florida Statute 415.1111 and Florida Statute 95.11 to further accommodate their goal of confiscation of the Plaintiffs property."

100. "To achieve this goal, the Defendants colluded, conspired and combined to bring about their unlawful purpose and took the necessary steps to perfect their conspiracy. Having utilized an unlawful means to effectuate an unlawful goal the Defendants confiscated the property of the Plaintiffs; the Defendants then conspired, combined and colluded to award attorney fees and costs against Teresa Gaffney and Sarah Sussman on a flawed judgment in a case which the bench described as 'dead on arrival', i.e., meritless. The collusive and conspiratorial actions taken by the Defendants, individually and as a collective body, were taken in furtherance of a conspiracy to seize valuable property from the Plaintiffs."

101. "The actions were taken under color of law so that the Defendants, individually and collectively, could successfully defraud the Plaintiffs and punish the Plaintiffs for exposing the theft of property and the outing of Defendant Judge Paul Huey for his predatory sexual conduct and

other related acts effectuated in contravention of the law and which acts were set in motion under color of law.”

102. “The Defendants are as responsible as these attorneys in the theft of the assets as the Defendants aided and abetted, covered up and relied on false and fraudulent orders.”

103. “There was an admission against interest made by Judge Huey - admitting to the sexual harassment and stating that the underlying state court case was never viable and should have been dismissed. Judge Huey further stated that he wants to get away from this case because he knows that he is ‘in trouble’.”

104. “On or about 4 April 2014, the Defendants conspired to utilize an order of the Probate Court which order was forged and was known by the Defendants to be forged.”

105. “In the course and scope of the underlying meritless litigation, (i.e., 3762), as described more fully above, the Defendants fabricated evidence and obstructed discovery which would have exposed the fabrication of evidence.”

106. “The misconduct, deceit and fabrication of evidence exercised by the Defendants was the sine qua non necessary for the Defendants to visit harm on the Plaintiffs.”

107. "Specifically, the Defendants actively participated in, or personally caused, the abuse of the Plaintiffs in a manner calculated to coerce submission to the nefarious goals of the Defendants and, for the Defendants to unlawfully secure money and property belonging to the Plaintiffs. The modus operandi described in this complaint appears to be motivated by animus and/or bias, which racial bias and/or gender bias constituted a purposeful discrimination."

108. "At all times relevant in this complaint, the named defendants did in fact combine, collude and conspire to achieve by concerted action the accomplishment of an unlawful purpose or, alternatively, the accomplishment of a lawful purpose by unlawful means. At all times relevant the defendants conspired to, and in fact accomplished acts, unlawfully, willfully, and maliciously that resulted in injury to the Plaintiffs."

109. "In short, the Defendants did conspire to do an unlawful act, or acts, or to do a lawful act or acts by unlawful means."

110. "The Defendants in this action perpetrated overt act or acts in the pursuance of their conspiracy directed at the Plaintiffs."

111. The plaintiffs are seeking damages in excess of \$1,000,000.

112. By reason of the foregoing, respondent has violated the following Rules Regulating The Florida Bar: **Rule 3-4.3** (Misconduct and

Minor Misconduct); **Rule 4-3.1** (Meritorious Claims and Contentions); **Rule 4-3.3(a)** (Candor Toward the Tribunal - False evidence; Duty to disclose); **Rule 4-3.4(c)** (Fairness to Opposing Party and Counsel - lawyer must not knowingly disobey an obligation under the rules of a tribunal); **Rule 4-3.5(c)** (Impartiality and decorum of the tribunal - Disruption of Tribunal); **Rule 4-8.2(a)** (Judicial and Legal Officials - Impugning Qualifications and Integrity of Judge or Other Officers); **Rule 4-8.4(a)** (violate or attempt to violate the Rules of Professional Conduct, knowingly assist or induce another to do so, or do so through the acts of another); **Rule 4-8.4(c)** (Engaging in conduct involving dishonesty, fraud, deceit or misrepresentation); and **Rule 4-8.4(d)** (Engaging in conduct in connection with the practice of law that is prejudicial to the administration of justice).

COUNT II

TFB File No. 2018- 10,542 (13C)

113. Paragraphs 1 through 3 are realleged and incorporated herein by reference.

114. On or about October 16, 2017, in Hillsborough County case no. **14-CA-3762**, the court entered a Final Judgment Upon Default declaring that real property located at 119 S. Clark Avenue, Tampa, Florida belonged to the Estate of John J. Gaffney.

115. Respondent and her husband, Dov Sussman, were living at the property at the time.

116. On October 17, 2017, a writ of possession was issued by the Hillsborough County Clerk to be served upon respondent and Mr. Sussman and return possession of the Clark Avenue Property to the Estate.

117. On October 23, 2017, the Hillsborough County Sheriff served the Writ of Possession at the Clark Avenue Property.

118. On October 24, 2017, the following documents were filed with the Clerk of the Bankruptcy Court in the Middle District of Florida, Tampa Division, case no. **8:17-bk-08959-RCT** on October 24, 2017: (1) a handwritten Petition for Voluntary Bankruptcy of Sarah K. Sussman (respondent's daughter); and (2) a certificate of credit counseling, purporting to evidence that Sarah K. Sussman had taken the credit counseling course required to be taken prior to filing for bankruptcy.

119. On or about February 20, 2018, at the 341 Meeting of the Creditors, Sarah Sussman admitted that she was in Washington D.C. for the entire month of October.

120. Ms. Sussman testified that she reviewed and signed the Voluntary Petition for Bankruptcy, that the forms were mailed (not e-mailed)

to her and that after reviewing and revising same she mailed (not e-mailed) the Voluntary Petition for Bankruptcy back to the original sender in Florida.

121. It is impossible (using overnight mail) to mail an item on October 23 to a recipient in Washington D.C., and for that recipient to receive same, and place the items back in the mail so that the original sender receives the return package on October 24.

122. With respect to the credit-counseling course required by 11 USC s. 109(h), the course was allegedly taken by Sarah Sussman between 6:33 p.m. and 7:35 p.m. on October 23, 2017.

123. Sarah Sussman admitted that she was in Washington D.C. on October 23, 2017.

124. The subpoenaed records of Debtorcc.org (online credit counseling company) evidence that the IP (internet protocol) address of the computer from which the course was allegedly taken by Sarah K. Sussman was physically located in Tampa, Florida.

125. The records also showed that respondent paid for the course, and that respondent's own e-mail address was used to register for the course.

126. On February 27, 2017, Ms. Sussman was asked under oath to explain how she could be in Washington D.C. and take the Credit Counseling Course on a computer physically located in Tampa, Florida.

127. Ms. Sussman could not do so.

128. Furthermore, in response to the Preservation Letter, respondent directed her daughter to destroy the computer used to take the class.

129. Respondent stated, "So in November of '17, December, somewhere around that time period, the computer actually just died. I told her to smash the hard drive and just toss the computer, because it was bad looking and pretty bad. She does it. She smashes the computer and throws it – the hard drive, like you're supposed to and get rid of it."

130. On November 20, 2018, the bankruptcy court granted a Motion for Sanctions against Sarah Sussman for Spoliation of Evidence.

131. On June 30, 2019, the bankruptcy judge dismissed the case and entered a Memorandum Decision Following Trial on Contested Matters that outlined facts leading to the conclusion the debtor did not complete the credit counseling course and granted the Administrator's Motion to Dismiss Case for Debtor's Failure to Comply with § 109(h)(1) and 521(b) and for Debtor's Fraud on the Court.

132. Ultimately, on September 19, 2019, the appellate court affirmed the trial court's decision finding the final judgment predated the establishment of the property in bankruptcy.

133. Respondent assisted with the filing of Ms. Sussman's bankruptcy petition when Ms. Sussman did not own the property in question.

134. By reason of the foregoing, respondent has violated the following Rules Regulating The Florida Bar: **Rule 3-4.3** (Misconduct and Minor Misconduct); **4-3.1** (Meritorious Claims and Contentions); **Rule 4-3.3(a)** (Candor Toward the Tribunal - False evidence; Duty to disclose); **Rule 4-8.4(a)** (Violate or attempt to violate the Rules of Professional Conduct, knowingly assist or induce another to do so, or do so through the acts of another); **Rule 4-8.4(c)** (Engaging in conduct involving dishonesty, fraud, deceit or misrepresentation); and **Rule 4-8.4(d)** (Engaging in conduct in connection with the practice of law that is prejudicial to the administration of justice).

WHEREFORE, The Florida Bar prays respondent will be appropriately disciplined in accordance with the provisions of the Rules Regulating The Florida Bar as amended.

Katrina S. Brown

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CERTIFICATE OF SERVICE

I certify that this document has been efiled with The Honorable John A. Tomasino, Clerk of the Supreme Court of Florida; with a copy provided via email to Jodi Anderson Thompson, Counsel for Respondent, at jodi@jodiathompsonlaw.com; and that a copy has been furnished by United States Mail via certified mail No. 7017 1450 0000 7821 0988, return receipt requested to Jodi Anderson Thompson, Counsel for Respondent, to her official bar address at 3637 S. Hesperides Street, Tampa, Florida 33629-8337; and to Katrina S. Brown, Bar Counsel, Lindsey M. Guinand, Bar Counsel, The Florida Bar, Tampa Branch Office, 2002 N. Lois Avenue, Tampa, Florida 33607, by email to kschaffhouser@floridabar.org, lguinand@floridabar.org, nstanley@floridabar.org, tampaoffice@floridabar.org, on this 22nd day of June, 2021.



Patricia Ann Toro Savitz, Staff Counsel

**NOTICE OF TRIAL COUNSEL AND
DESIGNATION OF PRIMARY EMAIL ADDRESS**

PLEASE TAKE NOTICE that the trial counsel in this matter are Katrina S. Brown, Bar Counsel, and Lindsey M. Guinand, Bar Counsel, whose address, telephone number, and primary and secondary email addresses are The Florida Bar, Tampa Branch Office, 2002 N. Lois Ave., Suite 300, Tampa, Florida 33607-2386, (813) 875-9821, and kschaffhouser@floridabar.org (Primary); lguinand@floridabar.org (Primary); nstanley@floridabar.org (Secondary); tampaoffice@floridabar.org (Secondary). Respondent need not address pleadings, correspondence, etc. in this matter to anyone other than trial counsel and to Patricia Ann Toro Savitz, Staff Counsel, The Florida Bar, 651 E Jefferson Street, Tallahassee, Florida 32399-2300, psavitz@floridabar.org.

MANDATORY ANSWER NOTICE

RULE 3-7.6(h)(2), RULES REGULATING THE FLORIDA BAR,
PROVIDES THAT A RESPONDENT SHALL ANSWER A COMPLAINT.

IN THE SUPREME COURT OF FLORIDA
(Before a Referee)

THE FLORIDA BAR,

Complainant,

v.

TERESA MARIE GAFFNEY,

Respondent.

Supreme Court Case
No. SC21-938

The Florida Bar File Nos.
2018-10,184 (13C)
2018-10,542 (13C)

**THE FLORIDA BAR'S MOTION FOR PARTIAL SUMMARY JUDGMENT
AND REQUEST FOR JUDICIAL NOTICE**

COMES NOW The Florida Bar, by and through its undersigned counsel, and files this Motion for Partial Summary Judgment pursuant to Rule 1.510, Florida Rules of Civil Procedure, and states as follows:

1. This motion concerns The Florida Bar's complaint against respondent, Teresa Gaffney, and is seeking partial summary judgment for eight (8) of the nine (9) Rules Regulating the Florida Bar alleged to have been violated within Count I of the bar's complaint, and all six (6) Rules Regulating The Florida Bar alleged to have been violated within Count II of the bar's complaint.

2. In *Florida Bar v. Daniel*, 626 So. 2d 178, 182 (Fla. 1993), the Supreme Court of Florida held that a referee has the authority in a bar disciplinary proceeding to enter a summary judgment order.

3. Rule 1.510 states in part that “[t]he court shall grant summary judgment if the movant shows that there is no genuine dispute as to any material fact and the movant is entitled to judgment as a matter of law.” Fla. R. Civ. P. 1.510.

4. Effective May 1, 2021, the Supreme Court of Florida amended Florida Rule of Civil Procedure 1.510, adopting the summary judgment standard articulated by the United States Supreme Court in *Celotex Corp. v. Catrett*, 477 U.S. 317, (1986); *Anderson v. Liberty Lobby, Inc.*, 477 U.S. 242, 106 (1986); and *Matsushita Electric Industrial Co. v. Zenith Radio Corp.*, 475 U.S. 574 (1986). *In Re: Amendments to Florida Rule of Civil Procedure 1.510*, 309 So. 3d 192 (Fla. 2020).

5. In *Matsushita Electric Industrial Co.*, the Court held that the nonmoving party opposing summary judgment “must do more than simply show that there is some metaphysical doubt as to the material facts.” *Matsushita*, 475 U.S. at 586.

6. Further, the Supreme Court stated that “[w]hen opposing parties tell two different stories, one of which is blatantly contradicted by the

record, so that no reasonable jury could believe it, a court should not adopt that version of the facts for purposes of ruling on a motion for summary judgment.” *Scott v. Harris*, 550 U.S. 372, 380 (2007).

7. Lastly, the U.S. Supreme Court has held that there is “no express or implied requirement in Rule 56 that the moving party support its motion with affidavits or other similar materials negating the opponents claim.” *Celotex*, 477 U.S. at 323. Rather, “the burden on the moving party may be discharged by ‘showing’ – that is, pointing out to the district court – that there is an absence of evidence to support the nonmoving party’s case.” *Id.* at 325.

8. The Florida Bar's Complaint was filed on June 22, 2021, and charged respondent with violating the following Rules Regulating the Florida Bar:

- a. **Count I: Rule 3-4.3** (Misconduct and Minor Misconduct); **Rule 4-3.1** (Meritorious Claims and Contentions); **Rule 4-3.3(a)** (Candor Toward the Tribunal- False evidence; Duty to disclose); **Rule 4-3.4(c)** (Fairness to Opposing Party and Counsel- lawyer must not knowingly disobey an obligation under the rules of a tribunal); **Rule 4-3.5(c)** (Impartiality and decorum of the tribunal- Disruption of Tribunal); **Rule 4-**

8.2(a) (Judicial and Legal Officials- Impugning Qualifications and Integrity of Judge or Other Officers); **Rule 4-8.4(a)** (violate or attempt to violate the Rules of Professional Conduct, knowingly assist or induce another to do so, or do so through the acts of another); **Rule 4-8.4(c)** (Engaging in conduct involving dishonesty, fraud, deceit or misrepresentation); and **Rule 4-8.4(d)** (Engaging in conduct in connection with the practice of law that is prejudicial to the administration of justice).

b. **Count II: Rule 3-4.3** (Misconduct and Minor Misconduct); **Rule 4-3.1** (Meritorious Claims and Contentions); **Rule 4-3.3(a)** (Candor Toward the Tribunal- False evidence; Duty to disclose); **Rule 4-8.4(a)** (violate or attempt to violate the Rules of Professional Conduct, knowingly assist or induce another to do so, or do so through the acts of another); **Rule 4-8.4(c)** (Engaging in conduct involving dishonesty, fraud, deceit or misrepresentation); and **Rule 4-8.4(d)** (Engaging in conduct in connection with the practice of law that is prejudicial to the administration of justice).

9. On July 12, 2021, respondent filed her Answer to the bar's Complaint.

10. Throughout a large portion of respondent's Answer, respondent denies allegations with the following response, "[d]enied, as the [document] speaks for itself." As a result, much of this motion relies upon the documents themselves as proof of misconduct.

11. The pleadings in this matter, including respondent's admissions to certain conduct in her Answer, as well as record evidence attached to this motion, establish there is no genuine issue as to eight (8) of the nine (9) Rules Regulating The Florida Bar alleged to have been violated in Count I of The Florida Bar's Complaint, and as to all six (6) Rules Regulating The Florida Bar alleged to have been violated in Count II.

Request for Judicial Notice

12. The bar references and encloses 52 exhibits in support of its motion for partial summary judgment.

13. Exhibits 1-47 are the dockets and filed documents from Hillsborough County Case Nos. 14-CA-3762 and 19-CA-2729.

14. Exhibits 48-52 are filed documents from Case No. 8:17-bk-08959-RCT, Bankruptcy Court in the Middle District of Florida, Tampa Division.

15. The Florida Evidence Code authorizes a court to take judicial notice of its own records, the records of other Florida courts, and records from any other state or federal court of the United States. Section 90.201, Florida Statutes. Judicial notice of discretionary matters listed in §90.202, Florida Statutes, can be noticed whether or not a party requests it, including, “(r)ecords of any court of this state or of any court of record of the United States or of any state, territory, or jurisdiction of the United States.” §90.202(6), Florida Statutes. However, if a party does request the court to take judicial notice of a record from this section and satisfies the notice requirements of §90.203, then taking judicial notice of these matters is mandatory. flcourts.org.

16. By filing of this motion, the bar provides respondent with notice of its request to take judicial notice of Exhibits 1-52.

17. At the hearing on this motion, the bar requests your honor take judicial notice of Exhibits 1-52.

COUNT I

TFB File 2018-10,184 (13C)

18. In Count I, the bar alleges respondent engaged in many different instances of misconduct resulting in the violation of the Rules Regulating The Florida Bar.

In this motion, the bar has broken down the instances of misconduct, cited to the evidence that supports the allegations, and provided the rules that were violated in each instance.

Respondent's Failure to Appear at Her Deposition

19. Respondent was a party in Case No. 14-CA-3762 and her deposition was scheduled for March 11, 2015, in Hillsborough County. A Notice of Taking Deposition was filed with the court, and served on respondent's counsel, on February 5, 2015. **See Notice of Taking Deposition attached as Exhibit 1.**

20. On March 10, 2015, the day before her scheduled deposition, and over a month after being scheduled for her deposition, respondent, through counsel, filed a Motion for Protective Order Regarding Notice of Taking Deposition. **See Motion for Protective Order Regarding Notice of Taking Deposition attached as Exhibit 2.**

21. The motion does not seek a continuance or other relief, but rather a blanket order protecting respondent from being deposed. **See Exhibit 2.**

22. Florida Rule of Civil Procedure 1.280 (c) outlines the grounds for seeking a protective order.

Rule 1.280 (c) Protective Orders. Upon motion by a party or by the person from whom discovery is

sought, and for good cause shown, the court in which the action is pending may make any order to protect a party or person from annoyance, embarrassment, oppression, or undue burden or expense that justice requires...

Fla. R. Civ. P. 1.280.

23. The motion for protective order was legally insufficient and untimely.

24. The motion does not cite the applicable Rule of Civil Procedure and does not plead any good cause, as required by the rule. **See Exhibit 2.**

25. Respondent's motion does not allege that respondent needed protection from annoyance, embarrassment, oppression, or undue burden or expense, as required by the rule. *Id.*

26. As a result, and as a matter of law, the motion failed to allege a sufficient legal basis for a protective order under Rule 1.280, Fla. R. Civ. P.

27. In addition to the legal insufficiency, the motion made a misrepresentation to the court. *Id.*

28. The one sentence provided as a basis for the protective order is that respondent "will be attending the Judicial Qualifications Committee meeting on the date scheduled for her deposition." *Id.*

29. Respondent is not a member of the Judicial Qualifications Committee and was not attending a Judicial Qualifications Committee

meeting on the date of the scheduled deposition. **See Amended Motion for Protective Order Regarding Notice of Taking Deposition attached as Exhibit 3.**

30. No hearing on the motion for protective order was scheduled or held, and no oral or written order was issued prior to the deposition. **See Docket in Case No. 14-CA-3762 attached as Exhibit 4.**

31. Despite no protective order from the court, respondent failed to appear for her deposition. **See Verified Response to Teresa Gaffney's Motion for Protective Order and Motion for Sanctions attached as Exhibit 5.**

32. After respondent failed to appear for her deposition, opposing counsel filed a Verified Response to Teresa Gaffney's Motion for Protective Order and Motion for Sanctions. *Id.*

33. The following day, on March 12, 2015, respondent's counsel filed an Amended Motion for Protective Order ("Amended Motion"). **See Exhibit 3.**

34. The Amended Motion retracts the previous reasons for seeking a protective order, claims it was an error, and cites an entirely different reason for needing the protective order (now retroactively). *Id.*

35. The Amended Motion claimed respondent needed the protective order because she had “commitments” and “the date was not cleared”. *Id.*

36. Specifically, respondent claimed she had “commitments” related to the Judicial Nominating Committee. *Id.*

37. The amended motion did not include any record evidence that supported other “commitments”. *Id.*

38. Other “commitments” is not a legally valid, good cause, reason for seeking protective order.

39. Other “commitments” is also not a basis for intentionally failing to appear for a deposition.

40. Likewise, claiming, after the no-show, that the deposition date was “not cleared” is not a valid, good cause, basis for seeking a protective order.

41. Further, it should be noted that the first motion for protective order did not allege that the deposition date “was not cleared”. **See Exhibits 2 and 3.**

42. The reasons cited in the Motion for Protective Order and Amended Motion for Protective Order are inconsistent, claim invalid basis

for a protective order, and were made without a good faith basis for seeking such relief.

43. Further the amended motion was denied by the court and the court's order instructed respondent to reschedule her deposition after a hearing that was scheduled to occur on August 12, 2015. **See Order on Motion to Dismiss Complaint, Motion to Discharge Lis Pendens, Motion for Protective Order As To The Taking Of The Deposition Of Defendant Teresa M. Gaffney attached as Exhibit 6.**

44. After the order from the court compelling respondent to reschedule her deposition, respondent refused to do so. **See Motion to Compel Discovery attached as Exhibit 7.**

45. As a result, plaintiff had to file another Motion to Compel Discovery, seeking another court order compelling respondent to appear for her deposition. *Id.*

46. The Motion to Compel Discovery was granted by court order dated September 18, 2015 and stated: "Teresa Gaffney shall appear for her deposition on October 16, 2015, at 11:00 a.m." **Case Management Order attached as Exhibit 8.**

47. After a Notice of Deposition and two court orders, respondent appeared for her deposition as the defendant in the case on October 16, 2015, seven months after the originally scheduled deposition.

48. In sum, respondent failed to appear for her deposition, as a defendant in a civil case, and improperly sought protection from the court in an untimely manner. This is evidenced and uncontroverted by Exhibits 1-8.

49. Rule 3-4.3 (Minor Misconduct and Misconduct) states, “[t]he standards of professional conduct required of members of the bar are not limited to the observance of rules and avoidance of prohibited acts, and the enumeration of certain categories of misconduct as constituting grounds for discipline are not all-inclusive nor is the failure to specify any particular act of misconduct be construed as tolerance of the act of misconduct. 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 the 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.”

50. Rule 4-8.4(d) (Misconduct) states in part: “A lawyer shall not: (d) engage in conduct in connection with the practice of law that is prejudicial to the administration of justice...”

51. Respondent's intentional and willful failure to appear at her deposition is conduct contrary to honesty and justice and prejudicial to the administration of justice, in violation of Rules 3-4.3 and 4-8.4(d).

52. Further, respondent offered misleading and/or misrepresentative information to the court in the first motion for protective order and the amended motion for protective order.

53. In the first motion, respondent represented to the court that she was unable to attend the deposition because of her attendance at a "Judicial Qualifications Committee meeting."

54. Although this information was enclosed within a motion that was filed by respondent's counsel, respondent is responsible for the false information.

55. Rule 4-8.4(a) states, "A lawyer shall not: (a) violate or attempt to violate the Rules of Professional Conduct, knowingly assist another to do so, or do so through the acts of another."

56. Here, respondent, "through the acts of another," offered completely false information to the court in a bad faith effort to avoid being deposed.

57. Respondent should be found guilty of violating Rule 4-8.4(a).

58. Rule 4-8.4(c) (Misconduct), states in part: “[a] lawyer shall not: engage in conduct involving dishonesty, fraud, deceit, or misrepresentation...”

59. When opposing counsel filed an opposition to the motion for protective order, respondent’s excuses for her unavailability changed, demonstrating dishonesty, deceit, and/or misrepresentation.

60. Respondent no longer had a meeting but had a “commitment.”

61. Respondent is a licensed attorney and thus an officer of the court.

62. It is impermissible to represent to a court that one cannot attend a deposition, as the named defendant in a lawsuit, because of a “meeting” with a committee to which one does not belong, and then later, represent to the same court that one did not appear because of a wholly different, unspecified, unsupported reason.

63. Respondent’s untimely and legally insufficient request for a protective order in an effort to avoid being deposed was made in bad faith and lacked honesty.

64. Respondent made misrepresentations to the court about her circumstances and alleged need for a protective order.

65. Based on the foregoing, respondent violated 4-8.4(c).

66. Respondent was properly noticed of her deposition pursuant to Rule of Civil Procedure 1.310 and failed to appear for her deposition.

67. Rule 1.310 states:

(a) DEPOSITIONS UPON ORAL EXAMINATION
When Depositions May Be Taken. After commencement of the action any party may take the testimony of any person, including a party, by deposition upon oral examination. Leave of court, granted with or without notice, must be obtained only if the plaintiff seeks to take a deposition within 30 days after service of the process and initial pleading upon any defendant, except that leave is not required (1) if a defendant has served a notice of taking deposition or otherwise sought discovery, or (2) if special notice is given as provided in subdivision (b)(2) of this rule. The attendance of witnesses may be compelled by subpoena as provided in rule 1.410. The deposition of a person confined in prison may be taken only by leave of court on such terms as the court prescribes.

Fla. R. Civ. P.

68. This is a known rule of court and one which respondent knowingly disobeyed by willingly failing to appear for her deposition.

69. Further, after the first order from the court, which ordered respondent to reschedule her deposition, respondent failed to comply with rescheduling.

70. Rule 4-3.4(c) (Fairness to Opposing Party and Counsel) states, "A lawyer must not: knowingly disobey an obligation under the rules of a tribunal except for an open refusal based on an assertion that no valid obligation exists."

71. By knowing her deposition had been noticed and knowingly or deliberately failing to appear, respondent violated Rule 4-3.4(c).

72. A necessary element for disciplinary cases involving dishonesty, fraud, deceit or misrepresentation is intent. This element is satisfied by showing that the conduct was deliberate or knowing. *Florida Bar v. Head*, 84 So. 3d 292, 300 (Fla. 2012); *Florida Bar v. Smith*, 866 So. 2d 41, 46 (Fla. 2004) (recognizing that the motive behind the attorney's action was not the determinative factor but instead the issue was "whether the attorney deliberately or knowingly engaged in the activity in question").

73. The Bar has proven that respondent knowingly or deliberately made misrepresentations to the court about her circumstances and alleged need for a protective order; knowingly or deliberately failed to appear at her deposition; and knowingly or deliberately failed to comply with rescheduling her deposition after the court directed her to do so.

74. The record is clear from the documents filed in Case No. 14-CA-3762 that there are no material issues of fact. The documents speak for

themselves, as pointed out by respondent in her Answer to the bar's Complaint in this matter.

75. As a result of respondent's misconduct related to the scheduling of her deposition, respondent should be found guilty, as a matter of law, of violating **rules 3-4.3, 4-3.4(c), 4-8.4(a), 4-8.4(c) and (d)**.

Respondent's Refusal to Answer Deposition Questions

76. On October 16, 2015, respondent appeared for her deposition, after being court-ordered to do so. **See Exhibit 8 and Except of The Deposition of Teresa Gaffney attached as Exhibit 9.**

77. At the deposition, respondent was asked questions regarding her father's deed to a property at issue in the case. **See Exhibit 9.**

78. Respondent's counsel/husband objected to the questions on the basis of attorney/client privilege. ***Id.***

79. Respondent claimed that she was representing her father when she prepared the deed that transferred an interest in her father's homestead to herself and that all communications she had with him concerning that deed were privileged. ***Id.***

80. A telephonic hearing was held with the judge during the deposition. The judge overruled the objection and ordered respondent to answer the deposition questions. *Id.*

81. The judge's ruling concerning the attorney-client privilege assertion was based on Fla. Stat. 90.502(4)(b).

82. Florida Statute 90.502(4)(b) states: "There is not an attorney-client privilege when the communications sought is relevant to an issue between two parties who claim through the same decedent." **Motion for Order Granting Discovery Sanctions and For Order Finding Teresa Gaffney in Contempt of Court attached as Exhibit 10, pg. 2.**

83. There is no question that the issue concerning the transfer of the deed was relevant to the proceedings, as it was the main issue.

84. Thereafter, respondent failed to answer the questions as ordered by the court. **See Exhibit 9.**

85. Page 8 of the deposition transcript states:

THE COURT: Thank you. All right. Objection 2 is overruled. The witness is directed to answer the question. Thank you. Anything else for you today?

MR. KANGAS: Not at this time. Your Honor. Thank you very much.

THE COURT: Okay. Thank you all.

MR. SUSSMAN: Well, I guess we're going to the Second DCA.

THE DEPONENT [TERESA GAFFNEY]: I'm not violating the attorney/client privilege.

MR. SUSSMAN: You need to do what you need to do and we're not breaching attorney/client privilege. We're done unless you want to do something else and ask some other questions.

BY MR. KANGAS:

Q. Please explain the circumstances surrounding that execution of the deed.

TERESA GAFFNEY:

A. I can't. It's attorney/client privilege and we'll have to go to the Second DCA. Go on to your other questions. Take it up with the Second DCA.

86. As a result of respondent's refusal to answer questions against the court's direct order, opposing counsel filed Plaintiff's Motion for Order Granting Discovery Sanctions and for Order Finding Teresa Gaffney in Contempt of Court on October 28, 2015. **See Exhibit 10.**

87. On March 22, 2016, an Amended Notice of Evidentiary Hearing was filed, noticing the motion for sanctions and contempt. **See Amended Notice of Evidentiary Hearing attached as Exhibit 11.**

88. Respondent was served with the notice of hearing. *Id.*

89. Respondent admits she failed to appear at the evidentiary hearing on March 29, 2016. **See Answer, para. 26.**

90. Following the evidentiary hearing, the court ordered sanctions against respondent and held her in contempt of court. **See Order Granting Motions for Sanction, Striking Pleadings, And Entering Default Against Defendant's Teresa Gaffney and Sarah K. Sussman, Individually And As Trustee attached as Exhibit 12.**

91. In the court's order granting sanctions and holding respondent in contempt, the court found the following, among other things:

Further, with respect to the discovery violations described above, the Court specifically ordered Gaffney to answer questions concerning the subject matter of this lawsuit. Defendant Gaffney willfully disobeyed this Court's direct order. Defendant Gaffney is an attorney licensed by the Florida Bar. She cannot claim ignorance to the Florida Rules of Civil Procedure and blame her husband/counsel, as it is obvious to this Court that she has been complicit every step of the way.

Finally, Plaintiff scheduled the motions for sanctions against Defendants Gaffney and Sussman to be heard on March 29, 2016. Although Defendants Gaffney and Sussman received notice of the hearing, and the respective motions sought the severe sanction of the striking of pleadings, neither of the Defendants nor their counsel appeared for the hearing in an attempt to present evidence in opposition to it. Remarkably, Defendants Gaffney and Sussman and their counsel failed to communicate to Plaintiff or the Court any justifiable reason for the failure to appear. This was the second hearing in a row that Dov Sussman, Esq., and Teresa Gaffney, Esq., as counsel for Sarah

Sussman intentionally did not appear for a properly noticed hearing. This Judge has never experienced such contempt for the judicial system. There remains no doubt that the disobedience of Dov Sussman, Esq. and Teresa Gaffney, Esq. was willful, deliberate and contumacious.

...this Court finds that those Defendants have willfully and intentionally frustrated the Plaintiffs attempts to justly, speedily, and inexpensively prosecute this case. The Defendants' have contumaciously disregarded this Court's authority, the Rules Regulating the Florida Bar and the Florida Rules of Civil Procedure. Accordingly, this Court is granting Plaintiffs' request that Defendants' affirmative defenses and counterclaims/crossclaims be stricken as a sanction, that attorneys' fees and costs be awarded and that an ultimatum is imposed so that the defendants and their counsel will comply with the law. As will be ordered in detail below, Defendants will be given one, final opportunity to comply with the law. If either fails to do so, her or its answer will be stricken and final judgment will be entered against her or it.

Id.

92. Respondent admitted in her Answer that the Order speaks for itself.

93. Further, the court found the plaintiff was prejudiced due to the misconduct of respondent, including failing to appear at depositions, failing to follow court orders, and frustrating attempts to set and conduct same.

See Exhibit 12.

94. Despite being counsel of record for one of the defendants in the matter, respondent never appeared for a hearing, including the hearing seeking contempt and sanctions. *Id.*

95. Respondent was court ordered to answer certain deposition questions and she refused to do so. Respondent was the defendant deponent, but importantly, also one of the counsels of record. She made objections on her own behalf and after being ordered to answer questions she repeated her objections and refused to answer. Thereafter, after being noticed of the hearing on the motion concerning her refusal to answer the deposition questions, respondent failed to appear at the hearing. All this conduct is clear by the deposition transcript as well as the motion filed by opposing counsel and the subsequent findings by the judge.

96. By knowingly or deliberately disobeying the court's order to answer the deposition questions, respondent violated Rule 4-3.4(c) and 4-8.4(a).

97. Respondent's conduct in her deposition lead to court filings and an evidentiary hearing. By failing to appear for the properly noticed evidentiary hearing and wasting the court's time on same, respondent engaged in conduct was contrary to and prejudicial to the administration of justice in violation of Rules 3-4.3 and 4-8.4(d).

98. There is no issue of material fact and as a matter of law respondent should be found guilty of violating rules 3-4.3, 4-3.4(c), 4-8.4(a) and (d).

Respondent's Nine Motions to Disqualify¹ and Other Motions/Pleadings Lacking Merit and Impartiality Towards the Tribunal

99. One business day after the court issued its sanctions ruling against respondent, respondent submitted an unsworn affidavit² to the court asserting inflammatory, personal, accusations against the presiding judge, The Honorable Paul Huey. **See Affidavit of Teresa Gaffney attached as Exhibit 13.**

100. Rather than addressing her misconduct in the litigation, respondent filed a public document personally attacking Judge Huey. *Id.*

101. *The bar will get more into the false and reckless statements made by respondent against the judiciary, and how those statements violated rules 4-8.2(a) and 4-8.4(d) later in the motion.*

¹ Defendants filed in excess of nine Motions to Disqualify in this proceeding, however, for purposes of this section of the Motion for Summary Judgment the bar relies upon the nine filed between April 2016 and July 2019.

² Respondent's "Affidavit" is signed but does not state that it was sworn and subscribed to before the official taking the oath, nor did it contain verification under oath. Respondent did not swear that the facts contained in the document were true and correct.

102. On April 29, 2016, the court entered an Order Treating Affidavit of Gaffney as Amended Motion to Disqualify Judge and Order Granting Motion to Disqualify Judge.

103. On the same day, respondent's counsel/husband also filed a Motion for Reconsideration of all of Judge Huey's rulings.

104. Upon Judge Huey's recusal, The Honorable Rex Barbas was assigned the case.

105. The following is admitted by respondent:

- a. Following Judge Huey's recusal, respondent, through counsel/husband, filed a Motion for Reconsideration, seeking reconsideration of numerous orders entered by Judge Huey against respondent. **See Answer and Motion for Reconsideration attached as Exhibit 14.**
- b. On July 6, 2016, a hearing was held on the motion for reconsideration. **See Exhibit 14.**
- c. On July 12, 2016, Judge Barbas entered an order denying the Motion for Reconsideration. **See Answer, para. 40.**
- d. On July 21, 2016, respondent, through counsel/husband, filed another Motion for Reconsideration. **See Exhibit 14.**

- e. Then, in August 2016, respondent through counsel/husband, filed a Verified Motion to Disqualify Judge Barbas From Presiding Further In The Above Captioned Matter, which attached another affidavit by respondent. **See Answer, para. 42, and Verified Motion to Disqualify Judge Barbas From Presiding Further In The Above Captioned Matter attached as Exhibit 15.**
- f. Respondent's Affidavit stated in part, "[i]n reviewing the Transcript of July 6, 2016, Judge Rex Barbas expressly condoned the behavior of Judge Paul Huey, to wit, the overt sexual harassment and the fear of repercussions of the sexual advances of Judge Paul Huey. Further, Judge Rex Barbas expressly condoned the unlawfully hearings conducted by Judge Paul Huey in violation of Florida Statutes 38.10." **Answer, para. 43 and Exhibit 15.**
- g. The Verified Motion to Disqualify Judge Barbas was denied. **See Answer para. 44.**

106. The court's August 23, 2016 Order Denying Defendant's Verified Motion to Disqualify Judge Rex Barbas From Presiding Further In the Above-Captioned Matter denied the motion on several grounds. **See**

Order Denying Defendant's Verified Motion to Disqualify Judge Rex Barbas From Presiding Further In the Above-Captioned Matter attached as Exhibit 16.

107. One such ground for denial was stated as follows:

The motion is untimely based upon the affidavit attached to the motion. Motions are considered untimely when they are filed after a party has suffered an adverse ruling and no good cause is shown for the delay. See: , 497 So. 2d 240 (1986), , 669 So. 2d 326 (4th DCA 1996). In this case, the motion to disqualify was filed only after the Court had announced on the previous day to the filing of the motion that the Court was denying the Defendants' Motion for Reconsideration.

Id.

108. On or about September 6, 2016, the court entered a default judgment against defendants, including respondent. **See Answer, para. 45.**

109. In its Order Granting Motion for Default, the court stated, "[n]o judgment shall be entered upon this default under after the conclusion of the pending appeals in Case No. 2D15-5735." **Order Granting Motion for Default attached as Exhibit 17.**

110. Thereafter there was no more activity on the case until the conclusion of the appeals in early 2017, wherein the second DCA ruled against respondent. **See Exhibit 4.**

111. The very next filing was a Motion to Dismiss the entire case filed by defendants, including respondent, on March 21, 2017. **See Motion to Dismiss attached as Exhibit 18.**

112. The motion claimed the grounds for the dismissal were lack of personal jurisdiction, subject matter jurisdiction, and expiration of the statute of limitations. *Id.*

113. The motion sought the following relief, among other things:

- a. "Dismiss the case with prejudice";
- b. "Condemn the Sexual Predatory Practices engage in by Judge Paul Huey;"
- c. "An apology to the Designated Defendants from the Court for its refusal and reluctance to follow the law."

114. On September 5, 2017, the court issued an order denying the motion to dismiss. **See Order Denying Defendants' Motions to Dismiss for Lack of Personal Jurisdiction, Subject Matter Jurisdiction, and Expiration of The Statute of Limitations attached as Exhibit 19.**

115. Within the order, the court stated, "...these are the same motions that the Court previously ruled upon. In fact, these are the same motions that formed the basis for orders, which the Defendants filed a

Petition for Writ of Certiorari to the Second District Court of Appeals. The Second District subsequently denied the Petition.”

116. The next week, on September 15, 2017, defendants filed Motion to Disqualify the judge. The Motion also attached an Affidavit of Teresa M. Gaffney, A Designated Defendant, in Support of the Motion to Disqualify The Presiding Judge, The Honorable Rex Barbas³. **See Motion to Disqualify Judge Rex Barbas attached as Exhibit 20.**

117. Respondent’s unsworn affidavit stated that she is an attorney licensed to practice law in Florida, that the designated defendant caused to be filed a Motion to Disqualify the Trial Judge, and that her affidavit was brought in support of the statements made in the Motion to Disqualify the present presiding judge and pursuant to Fla. Stat. 38.10. *Id.*

118. Two days later, on September 17, 2017, respondent’s counsel/husband filed Defendant’s Motion for an Evidentiary Hearing on Subject Matter Jurisdiction, Standing, Statute of Limitations, Breach of Fiduciary, Conflict of Interest, Filing an Unlawful Lis Pendens. **See Motion attached as Exhibit 21.**

³ Respondent’s “Affidavit” is signed but does not state that it was sworn and subscribed to before the official taking the oath, nor did it contain verification under oath. Respondent did not swear that the facts contained in the document were true and correct.

119. On or about September 19, 2017, the court entered an Order Striking Defendants' Motion for a Hearing on Subject Matter Jurisdiction, Standing, Statute of Limitations, Breach of Fiduciary, Conflict of Interests, Filing an Unlawful Lis Pendens. **See Order attached as Exhibit 22.**

120. The court found that the defendants' motion again argued the same matters contained in their original motion for reconsideration following Judge Huey's disqualification. *Id.*

121. The court found that since a default had been entered and the issues regarding personal jurisdiction and subject matter jurisdiction had already been addressed (and taken up on appeal which was per curiam affirmed?), the motion was a nullity, since judgment had been entered and the default never set aside. *Id.*

122. The court further found that the defendants filed yet another motion for reconsideration alleging the same matters that they had previously argued and were a part of the order of July 12, 2016. *Id.*

123. Also, on September 19, 2017, the court denied the latest motion for disqualification. **See Exhibit 4.**

124. On September 27, 2017, respondent, through counsel/husband, filed a Petition For a Writ of Prohibition and A Writ of Mandamus with the Second District Court of Appeals, Case No. 2D17-

3849. **See Petition For a Writ of Prohibition and A Writ of Mandamus attached as Exhibit 23.**

125. The Petition asked for a Writ of Prohibition to require Judge Barbas' Disqualification. *Id.*

126. The Petition reargued and realleged personal attacks on Judge Barbas.

127. The Petition also sought a Writ of Mandamus to require the lower court to hold an evidentiary hearing, to "hold cognizance" of defendants' request for criminal investigation of plaintiff, and to require disclosure of all communications with plaintiff and plaintiff's counsel. *Id.* at pgs. ii-iii.

128. By Amended Order dated October 23, 2017, the Second District Court of Appeal denied the petitions for writ. **See Amended Order attached as Exhibit 24.**

129. Thereafter, on October 16, 2017, the court issued a Final Judgment Upon Default and that same day a Writ of Possession was issued. **See Final Judgment Upon Default attached as Exhibit 25 and Exhibit 4.**

130. On October 23, 2017, respondent filed an Emergency Verified Motion for a Temporary Injunction against the writ of possession. **See Exhibit 4.**

131. Paragraph 81 of the Emergency Verified Motion cited the standard and burden of the movant in seeking a temporary injunction. It stated,

In order to obtain a temporary injunction, the moving party must make four showing. *Atomic Tattoos, LLC v. Morgan*, 45 So. 3d 63, 64-65 (Fla. 2d DCA 2010). The movant must demonstrate that he will suffer irreparable harm without an injunction, that he has no adequate remedy at law, that he enjoys a substantial likelihood of success on the merits and that an injunction would be in furtherance of the public interest.

(emphasis added).

132. The Emergency Verified Motion filed by the defendants reargued all of respondent's positions in the case.

133. The issues of the case had been ruled upon, considered again after numerous motions for reconsiderations, and upheld on appeal, and thus, necessarily had no "substantial likelihood of success."

134. The court concluded the request within the verified motion was not an emergency and then subsequently denied the motion. **See Exhibit 4.**

135. Up until this point in time, and after Judge Huey's recusal, the defendants, including respondent, filed at least six (6) motions or other pleadings continually arguing matters that had been repeatedly ruled upon, and affirmed on appeal. Such motions and pleadings include but are not limited to the following:

- a. April 29, 2016 Motion for Reconsideration
- b. July 21, 2016 Motion for Reconsideration
- c. March 21, 2017 Motion to Dismiss
- d. September 17, 2017 Defendant's Motion for an Evidentiary Hearing on Subject Matter Jurisdiction, Standing, Statute of Limitations, Breach of Fiduciary, Conflict of Interest, Filing an Unlawful Lis Pendens
- e. September 27, 2017 Petition For a Writ of Prohibition and A Writ of Mandamus
- f. October 23, 2017 Emergency Verified Motion for a Temporary Injunction

136. The court, in more than one order denying all the above requests, made the finding that defendants were alleging the same matters over and over again.

137. That conclusion is not subjective or up to interpretation. But, rather, evidenced by the repetitive arguments made by defendants in all their filings. Their positions and arguments had been rejected or denied repeatedly by the lower and appellate courts and yet the defendants continue to file motions or other pleadings rearguing same.

138. On or about June 17, 2019, the plaintiffs filed a Motion for Order to Show Cause and to Enforce Final Judgment.

139. On or about June 20, 2019, the defendants filed a motion to disqualify opposing counsel, Mr. Kangas, and on July 11, 2019, the defendants filed another motion to disqualify Judge Barbas, making the same allegations as the motion for disqualification of Mr. Kangas.

140. Respondent admitted to the following in her Answer:

- a. On July 12, 2019, an evidentiary hearing was held on defendant's motion for disqualification.
- b. On July 22, 2019, Mr. Sussman filed another motion on behalf of the defendants to disqualify Judge Barbas stating in part the following: "Judge Barbas has endorsed the conduct of a judicial sexual predator and allowed to stand an order made by the judicial sexual predator in retribution for his denial by Gaffney."

- c. The motion further stated in part that: "In opening the hearing with a decidedly misogynistic comment, Judge Barbas effectively announced that no woman will be treated fairly in his court. The rule of law has been supplanted by misogyny."
- d. The motion also stated in part that: "The final order demonstrates the court's profound animus to women, the final order stands for the proposition that the sexual extortion engaged in by Judge Huey was acceptable and had no impact on Judge Huey's retaliatory order."
- e. Mr. Sussman's motion attached an affidavit by respondent.
See Motion to Disqualify Judge Rex Barbas attached as Exhibit 27.
- f. On or about July 23, 2019, the court denied both motions to disqualify.

141. In the July 23, 2019, order the court stated in part: "Regarding the allegations that the undersigned found nothing wrong with Judge Huey's alleged actions, this court never made that statement. The sanction order issued by Judge Huey was not vacated because there was a factual and legal basis to conclude that the defendants were being obstructionists

during the proceedings.” **Order Denying Defendants Motions to Disqualify attached as Exhibit 26.**

142. The court also stated in part: “The litany of actions delineated by Judge Huey for the sanctions were never rebutted by Mr. Sussman in a hearing that lasted an entire half day. Moreover, at the conclusion of the hearing, the undersigned provided Sussman with another opportunity to comply with the rules of discovery, and the court would then consider withdrawing the sanctions order.” *Id.*

143. The court further stated in part that: “The defendants make the bold allegation that the undersigned Judge ‘had no problem with the conduct and behavior of Judge Huey...’ The court reiterated that it was not conducting a hearing regarding the alleged actions by Judge Huey. The defendants continually try to mislead the court and whoever else reads their motions filled with misstatements and innuendo.” *Id.*

144. In the July 23, 2019, order, the court further stated in part that: “It is evident that the defendants continue to make motions to obstruct the progress of this case by continually arguing matters that have been continuous [sic] ruled upon and affirmed on appeal.” *Id.*

145. Rule 4-3.1 (Meritorious Claims and Contentions) states in relevant part, “[a] lawyer shall not bring or defend a proceeding, or assert or

controvert an issue therein, unless there is a basis in law and fact for doing so that is not frivolous, which includes a good faith argument for an extension, modification, or reversal of existing law.”

146. Rule 4-3.5(c) (Impartiality and decorum of the tribunal-Disruption of Tribunal) states, “A lawyer shall not engage in conduct intended to disrupt a tribunal.”

The comment to Rule 4-3.5 states in part:

The advocate’s function is to present evidence and argument so that the cause may be decided according to law. Refraining from abusive or obstreperous conduct is a corollary of the advocate’s right to speak on behalf of litigants. A lawyer may stand firm against abuse by a judge but should avoid reciprocation; the judge’s default is no justification for similar dereliction by an advocate. An advocate can present the cause, protect the record for subsequent review, and preserve professional integrity by patient firmness no less effectively than by belligerence or theatrics.

147. Rule 4-8.4(d) (Misconduct) states in part: “A lawyer shall not: (d) engage in conduct in connection with the practice of law that is prejudicial to the administration of justice...”

148. Respondent’s repeated motions and pleadings arguing the same allegations and positions over and over again were intended to disrupt the tribunal and delay the transfer of property at issue. By disrupting

the tribunal's ability to efficiently advance the litigation, respondent engaged in conduct in connection with the practice of law that is prejudicial to the administration of justice.

149. Respondent's conduct in continuously making personal allegations against at least two judges in the proceeding and citing same as a basis for injunctions, writs, emergency relief, dismissals, and repeated motions for reconsiderations and disqualifications is tantamount to belligerence and theatrics.

150. Respondent's conduct directly resulted in years of delay based on bad-faith filings and completely lacked the professional integrity required by the above rules.

151. The filings in the case speak for themselves and as a result, there is no issue of material fact and as a matter of law respondent should be found guilty of violating rules **4-3.1, 4-3.5(c) and 4-8.4(d)**.

Respondent's Reckless, Impugning, and Disparaging Statements

About the Judiciary- 4-8.2(a) and 4-8.4(d)

152. Directly following an adverse ruling against respondent in Case No. 14-CA-003762, respondent began to disparage and impugn the integrity of the presiding judge, Circuit Court Judge Paul Huey.

153. Respondent has continued to use the court system and her license to practice law to publicly attack Judge Huey in many different forums.

154. After Judge Huey's recusal in Case No. 14-CA-003762, Judge Rex Barbas was assigned the case.

155. Directly following an adverse ruling from Judge Barbas, respondent began to disparage and impugn the integrity of Judge Barbas. **See para. 105 (a-g) above.**

156. The following statements were made or verified by respondent in court filings about Judge Huey and Judge Barbas⁴:

- a. "Judge Barbas has endorsed the conduct of a judicial sexual predator and allowed to stand an order made by the judicial sexual predator in retribution for his denial by Gaffney." **Motion to Disqualify Judge Barbas attached as Exhibit 27 and Answer para. 55.**
- b. "Judge Rex Barbas had no problem with the quid pro quo sexual harassment by Judge Paul Huey directed towards Teresa M. Gaffney." *Id.*
- c. "In opening the hearing with a decidedly misogynistic comment, Judge Barbas effectively announced that no woman will be treated fairly in his court. The rule of law has been supplanted by misogyny." *Id.* and **Answer para. 56.**

⁴ The list of statements made by respondent are not all inclusive. Respondent made many more statements across many forums, but for the purposes of this motion, the bar has limited the list of examples for efficiency.

- d. "The final order demonstrates the court's profound animus to women, the final order stands for the proposition that the sexual extortion engaged in by Judge Huey was acceptable and had no impact on Judge Huey's retaliatory order." *Id.* and Answer para. 57.
- e. "Judge Huey wanted retribution for the Petitioner [Gaffney] rebuffing him and refusing his sexual demands." Reply For The Writ of Prohibition, Case No. 2D20-1713, pg. 7, attached as Exhibit 28.
- f. "More importantly the default judgment is predicated on the quid pro quo sexual demands made by Judge Huey, which were scorned and resulted in the order of 22 April 2016." Designated Defendants Motion to Lift Default attached as Exhibit 29.
- g. "The order of 22 April 2016 which is the basis for this courts default is void for a number of reasons specifically an order based on quid pro quo sexual harassment is void and contrary to the laws of the State of Florida." *Id.*
- h. "The basis of this judicial action was the refusal of the offer of quid pro quo sexual blackmail by the author [Judge Huey] of the order in question. The poisonous quality of that order is such that in the civilian or military world the perpetrator of these advances would be disciplined and relieved of further duties and responsibilities." Objection to Proposed Order Entitled 'Final Judgment Upon Default' attached as Exhibit 30.
- i. Respondent's September 2017 unsworn affidavit stated the following about Judge Barbas, in part:
 - 4. Although subject matter jurisdiction is lacking in the above captioned matter before this court and although subject matter jurisdiction has never been established on the record, the

presiding judge has failed to take cognizance and following the controlling law and statute dispositive of this crucial issue of justiciability.

5. The presiding judge has refused and/or failed to take notice of the fact that although the circuit court lacks any jurisdictional basis to proceed, the Plaintiff has been permitted broad latitude to prosecute a matter over which preferential treatment of the Plaintiff takes precedence over the requirements of the law.

6. The repeated failings of the presiding judge to exercise his duties pursuant to the Code of Judicial Conduct and his abject failure to take notice of the repeated defalcations of the Plaintiff and his counsel convinces the Affiant that a fair and impartial treatment of this matter will [sic] be forthcoming from the presiding judge.

7. The presiding judge has failed to note the very basic operations of the law, such as Statute of Limitations and instead has agreed with the contrived quasi-legal analysis of Plaintiff and his counsel which lack any support in case law or statute.

8. The presiding judge has failed to comprehend that the predatory activity of the preceding presiding judge casts a dark shadow over the integrity of the judicial process. Instead the present presiding judge has expressed amusement and scoffed at the pleadings filed on behalf of the Designated Defendants and, significantly, has adopted the unlawful rulings of the preceding judge.

12. The court has declined to take any remedial action as to the transgressions perpetuated by the Plaintiff, and his counsel, but, rather, has permitted plaintiff, and his counsel to avoid any

consequences for its unlawful actions.
(emphasis added) **See Exhibit 20.**⁵

157. After as many as five (5) accusatory motions for disqualification were filed against Judge Barbas, he granted respondent's latest motion to disqualify in an order dated December 12, 2019. The order stated in part, "[h]owever, based upon the constant misrepresentations by counsel for the Defendant and Defendant Gaffney herself, the undersigned finds that he can no longer be fair and impartial towards the Defendant Gaffney nor her attorney, Sussman. For that reason, and that reason alone, this court **ORDERS AND ADJUDGES** that Defendant's Motion to Disqualify / Recuse is **GRANTED.**" **Order Granting Defendant Gaffney's Motion for Disqualification attached as Exhibit 31.**

158. Immediately thereafter, The Honorable Caroline Tesche-Arkin was assigned the case. **See Exhibit 4.**

159. Ten days later, on December 22, 2019, defendants filed another Motion for Reconsideration, now seeking all orders and findings issued by Judge Barbas be rescinded. **See Motion for Reconsideration of Factual and Legal Opinions Rendered by Judge Rex Barbas, As Well As Orders Issued by Judge Rex Barbas Form the Date On Which**

⁵ Defendant's September 15, 2017 Motion to Disqualify Judge Barbas was denied by Order dated September 19, 2017.

He Was Assigned to The Above Captioned Matter, Through and Including The Disqualification of Judge Barbas From The Above Captioned Matter attached as Exhibit 32.

160. Judge Tesche-Arkin denied the motion in an order dated February 26, 2020, and defendants filed another repetitive Motion for Reconsideration on March 1, 2020. **See Exhibit 4, Motion for Reconsideration attached as Exhibit 33.**

161. Per respondent's modus operandi, immediately following the adverse ruling, defendants filed another Motion for Disqualification on March 15, 2020. **See Motion to Disqualify Judge Caroline Tesche Arkin and Judge Scott Stephens attached as Exhibit 34.**

162. In total, the defendants filed at least three (3) motions for disqualification against Judge Tesche-Arkin, none of which met the legal standard required for disqualification of a judge.

163. Respondent has remained steady in her accusations against the Thirteenth Circuit Judiciary and after Judge Tesche-Arkin's assignment to the case, respondent also began to disparage and impugn the integrity of Judge Tesche-Arkin.

164. Rule 4-8.2(a) (Judicial and Legal Officials- Impugning Qualifications and Integrity of Judge or Other Officers) states, “[a] lawyer shall not make a statement that the lawyer knows to be false or with reckless disregard as to its truth or falsity concerning the qualifications or integrity of a judge, mediator, arbitrator, adjudicatory officer, public legal officer, juror or member of the venire, or candidate for election or appointment to judicial or legal office.”

165. The Supreme Court of Florida has clearly outlined the standard under this rule. “The applicable standard under the rule is not whether the statement is false, but whether the lawyer had an objectively reasonable factual basis for making the statement.” *The Florida Bar v. Ray*, 797 So. 2d 556, 558-59 (Fla. 2001). “The burden is on the lawyer who made the statement to produce a factual basis to support the statement.” *Id.* at 558 n.3; *See also The Florida Bar v. Patterson*, 257 So. 3d 56 (Fla. 2018).

166. It is not disputed that respondent made the statements above. In fact, respondent stands by her statements about the judiciary and continues to make the same allegations in numerous forums.

167. The bar does not have to prove the statements respondent made were false. The bar must prove the statements were made and that they impugn the integrity of the judiciary. By reading the statements

themselves, it can be concluded as a matter of law, that the statements impugn the integrity of the judiciary.

168. Thus, the burden is on the respondent to establish that she had an objectively reasonable basis for making each and every statement she made about the court.

169. The moving party in a motion for summary judgment may obtain judgment as a matter of law, even when a burden is on the opposing party, by showing that the opposing party has no evidence or that its evidence is insufficient to meet its burden at trial.

170. Respondent has no evidence that there was an objectively reasonable basis for making so many allegations against the judiciary. Respondent's self-serving statements and personal affidavits are subjective and therefore insufficient evidence to meet her burden.

171. The subjective nature of respondent's statements are evidenced by Respondent's April 25, 2016 unsworn affidavit⁶, wherein she repeatedly makes allegations in the form of "her opinion." **See Exhibit 13.**

172. Respondent, in filing the affidavit, did not just cite to her personal experiences and use those to form a basis for legal relief. Rather,

⁶ Respondent's "Affidavit" is signed but does not state that it was sworn and subscribed to before the official taking the oath, nor did it contain verification under oath. Respondent did not swear that the facts contained in the document were true and correct.

she made statements for which she had no objective evidence to support and with reckless disregard as to the truth or falsity of the statements.

173. Those statements include, but are not limited to:

- a. "Judge Huey made material misrepresentations in his order."
- b. "His order of April 22, 2016 is but the most recent example of his inability to contain his vindictive temperament which seems to motivate his extreme departure from the requirements of the law."
- c. "...It appears that Judge Paul Huey uses his position as Judge to coerce or threaten harm if one does not agree to sexual favors."
- d. "In my opinion Judge Paul Huey, in his capacity as a judge, is stalking me and filing false statements, under the guise of a judicial order, as a judge, because I refused his sexual advances."
- e. "In my opinion Judge Paul Huey is a danger to me personally and poses a grave threat to the public at large."
- f. "Because I refused Judge Huey's sexual advances, he is utilizing his position as a judge to target me with his vindictive and vituperative comments and is otherwise seeking to harm my personal reputation and my professional standing." **See Exhibit 13.**

174. Respondent impugned the integrity of Judge Huey by making repeated subjective statements that were made with reckless disregard for the truth or falsity. Respondent cannot make allegations against a sitting judge then make shocking accusations about his abuse of power while under the guise of "this is my opinion". This is exactly what Rule 4-8.2(a) is

in place to prevent. One may not make spurious allegations with a complete disregard for the truth or falsity. One such example of a statement that clearly violates Rule 4-8.2(a) is when respondent claims Judge Huey is unable to “contain his vindictive temperament which seems to motivate his extreme departure from the requirements of the law.”

175. Respondent need only make one impugning, reckless, statement about the judiciary to be found guilty of Rule 4-8.2(a) and here we have dozens. In addition, respondent has, and continues, to make allegations against several Thirteenth Judicial Circuit judges in many courts across the State of Florida.

176. In *The Florida Bar v. Patterson*, 257 So. 3d 56 (Fla. 2018), the Supreme Court made it evidently clear that making reckless statements about the judiciary based on one’s personal opinions is unprofessional, unacceptable, and violative of Rule 4-8.2(a).

177. Further in a second bar disciplinary case against Mr. Patterson, the Supreme Court found Mr. Patterson guilty of violating Rule 4-8.2(a) again, after claiming judicial bias based on race in court filings. The Supreme Court approved the referee’s findings that the record evidence did not support Mr. Patterson’s subjective opinions and it was therefore

misconduct to make such allegations in court filings. *Florida Bar v. Patterson*, No. SC19-2070, 2021 WL 5832861 (Fla. Dec. 9, 2021).

178. Further record evidence that establishes the statements made by respondent were subjective and unfounded are as follows:

a. Judge Barbas stated in a July 23, 2019 Amended Order,

This Court's Review of Predecessor Judge's Rulings

Regarding the allegations that the undersigned found nothing wrong with Judge Huey's alleged actions, this court never made that statement. What the undersigned judge recalls saying is that it did not matter what the basis for the disqualification of Judge Huey may have been, the undersigned judge only reviews the orders issued by Judge Huey for their factual and legal sufficiency. The sanction order issued by Judge Huey was not vacated because there was a factual and legal basis to conclude that the defendants were being obstructionists during the proceedings. The litany of actions delineated by Judge Huey for the sanctions were never rebutted by Mr. Sussman in a hearing that lasted an entire half day. Moreover, at the conclusion of that hearing, the undersigned provided Mr. Sussman with another opportunity to comply with the rules of discovery, and the court would then consider withdrawing the sanctions order. Again, in paragraph 18 of the July 22, 2019 motion to disqualify, the defendants make the bold allegation that the undersigned judge "had no problem with the conduct and behavior of Judge Huey...". The court reiterated that it was not conducting a hearing regarding the alleged actions by Judge Huey. The defendants continually try to mislead the court and whoever else reads their

motions filled with misstatements and innuendo.

Misogyny

The allegation of failing to follow the law is followed by the bold statement: "But it is not the only evidence of Judge Barbas's misogyny." The defendants' motions do not contain any statements made by the undersigned judge in this regard. No transcript of the July 12, 2019 hearing is attached. As is now clearly customary of the defendants, they make a bold statement and then fail to follow it with any factual basis. The court made no misogynous statement in court. Contrary to Defendant Gaffney's allegation, there were multiple female attorneys and law students in the courtroom during the hearing on July 12, 2019. The defendants also alleged that the undersigned judge "cannot resist venting his antagonism to women." Again, this conclusion is not supported by any statements or actions that the undersigned has taken.

Impugning Ms. Gaffney's Reputation

Defendants claim that the undersigned impugned the reputation of Ms. Gaffney. Again, there are no statements cited that impugn Ms. Gaffney.

Adverse Judicial Rulings

As the defendants are well aware, adverse judicial rulings are not a basis for judicial disqualification. All the rulings the undersigned judge made were prior to the final judgement and became a basis for any potential appeal, which the defendants took and lost. It is evident that the defendants continue to make motions to obstruct the progress of this case by continually arguing matters that have been continuous ruled upon and affirmed on appeal.

Amended Order Denying Defendants' Motions to Disqualify attached as Exhibit 35.

179. Respondent's written accusations against Judge Huey, Judge Barbas, and Judge Tesche-Arkin were made for the purpose of impugning their integrity and calling into question the adverse rulings made against respondent.

180. Further, respondent's statements cannot be determined to be objectively reasonable because they have been continuously reviewed and denied by the successor judges and the Second District Court of Appeals.

181. There is no objective evidence to support the egregious accusations made by respondent, which include but are not limited to:

- a. The Thirteenth Judicial Circuit Judges have engaged in a conspiracy.
- b. The Thirteenth Judicial Circuit Judges engaged in the theft of respondent's assets and aided and abetted, covered up and relied on false and fraudulent orders.
- c. Judge Huey poses a grave threat to the public at large.
- d. Judge Huey filed false statements, under the guise of a judicial order.
- e. The Thirteenth Judicial Circuit Judges punished respondent for exposing the theft of property and the outing of Defendant Judge Paul Huey for his predatory sexual conduct.

182. Respondent's statements are violative of Rule 4-8.2(a) as a matter of law. Respondent does not deny the statements and therefore, there is no genuine issue of material fact.

183. The aforementioned statements are also unequivocally disparaging and humiliating in violation of Rule 4-8.4(d).

184. Rule 4-8.4(d) states in part, "[a] lawyer shall not: engage in conduct in connection with the practice of law that is prejudicial to the administration of justice, including to knowing, or through callous indifference, disparage, humiliate, or discriminate against litigants, jurors, witnesses, court personnel, or other lawyers."

185. Judge Huey, Judge Barbas, and Judge Tesche-Arkin are court personnel and respondent's statements about the judges are not only disparaging and humiliating but also prejudicial to the administration of justice.

186. Respondent does not deny any of the statements and there is no genuine issue of material fact, but rather, as a matter of law, respondent made statements that directly violate 4-8.4(d).

187. As a result of respondent's plethora of impugning and disparaging statements made about the judiciary, respondent should be found guilty of violating **Rules 4-8.2(a) and 4-8.4(d)**.

Respondent's Violations of Court's Final Judgment

188. As stated previously, the court issued its Final Judgment in Case No. 2014-CA-3762 on October 16, 2017. **See Exhibit 25.**

189. The order declared the following:

IT IS ORDERED AND ADJUDGED that the Deed dated January 20, 2012, purporting to transfer Teresa Gaffney's interest in the Clark Street Property to Sarah K. Sussman, Trustee, recorded at Book 20915 and Page 233-234, of the Official Records of Hillsborough County, Florida, constituted a fraudulent transfer as defined by Chapter 726, Florida Statutes, and therefore the transfer of the Subject Real Property from Teresa Gaffney to Sarah K. Sussman, Trustee of the Sussman Family Trust, is avoided as to 100% of the property and therefore the Deed recorded at Book 20915 and Page 233-234 of the Official Records of Hillsborough County, Florida is declared to be null and void. In addition, Sarah K. Sussman, Trustee, and Teresa Gaffney are hereby enjoined against any further disposition of the Subject Real Property.

(emphasis added).

FURTHER IT IS ORDERED AND ADJUDGED that Defendant, Teresa Gaffney, obtained title to the Subject Real Property through the exploitation of John J. Gaffney as provided for in Chapter 415, Florida Statutes. It is therefore ordered by the Court that a Judgment be and is hereby entered against Defendant, Teresa M. Gaffney, and that the Plaintiff does have and recover from the Defendant, Teresa M. Gaffney, legal and beneficial title to and possession of the Subject Real Property situated in the County of Hillsborough, State of Florida...

Id.

190. Respondent appealed the Final Judgment to the Second District Court of Appeal on February 6, 2018. **See Exhibit 4.**

191. The Second District Court of Appeals per curium affirmed the Final Judgment on February 13, 2019. **See Order from Second District Court of Appeals attached as Composite Exhibit 36.**

192. Respondent then filed for rehearing, rehearing en banc and written opinion, which were denied by the Second District Court of Appeals in an Order dated April 24, 2019. *Id.*

193. Respondent then sought review from the Supreme Court of Florida in a Notice to Invoke Discretionary Jurisdiction, filed May 23, 2019.

Id.

194. The Supreme Court of Florida dismissed the notice in its Order dated May 31, 2019, stating that it lacked jurisdiction. **See Order attached as Exhibit 37.**

195. Despite clear confirmation from the courts that the Final Judgment stands as legally valid, respondent directly violated the Final Judgment and filed claims of lien on the property.

196. In her Answer to the bar's complaint respondent admitted the following, "Subsequent to the issuance of the final judgment, respondent

filed two claims of lien on the said property each in the amount of \$285,000 and filed in Official record book 25334 pages 568-570 and book 26389 pages 822-824." **See Answer para. 69.**

197. In response to the claims of lien, opposing counsel filed a Motion for Order to Show Cause and to Enforce Final Judgment, and on September 13, 2019, a hearing was held on the motion.

198. At the hearing, respondent's position was: "...that this Court's Final Judgment is a nullity because the aforementioned property was homestead exempt. Additionally, Ms. Gaffney argue[d] that the claim of lien is not disposition of the property. Finally, Ms. Gaffney claim[ed] that the Court lacks subject matter jurisdiction because the initial order by J[udge] Huey was a void as against public policy." **Order on Plaintiff's Motion for Order to Show Cause and to Enforce Final Judgment and Directions to the Clerk of Court attached as Exhibit 38.**

199. As of the date of the hearing, respondent had already exhausted her appellate options regarding the issue of homestead exemption, including all the way to the Supreme Court of Florida.

200. As of the date of the hearing, respondent had already exhausted her appellate options regarding the issue of her claim that the court lacked subject matter jurisdiction.

201. Despite having argued these issues and having been denied relief based on those positions by the highest courts, respondent still argued same at the hearing in defense of her improperly filed liens.

202. Rule 4-3.1 (Meritorious Claims and Contentions) states, in pertinent part:

A lawyer shall not bring or defend a proceeding, or assert or controvert an issue therein, unless there is a basis in law and fact for doing so that is not frivolous, which includes a good faith argument for an extension, modification, or reversal of existing law.

R. Reg. Fla. Bar.

203. The record documents prove that respondent asserted a position which was frivolous and made in bad faith when she filed the two claims of lien after the final judgment had been issued and affirmed on appeal.

204. Respondent repeatedly argued the issues of homestead exemption and subject matter jurisdiction, in dozens of filings in the trial court and the appellate court and all those issues had reached final disposition. Despite the finality of those issues having been determined by the highest courts, respondent filed the claims of lien in an attempt to hinder the transfer of property at issue.

205. Further, respondent subsequently defended those claims of lien at the September 2019 hearing by continuing to assert bad faith arguments.

206. Despite all reasoning and explanation provided by respondent, the fact remains that respondent filed the two claims of lien on the property after the final judgment and argued in defense of that conduct at a hearing. Thus, rendering no genuine issue of material fact concerning that misconduct.

207. Respondent should be found guilty of **Rule 4-3.1** as a matter of law.

208. On September 26, 2019, the court issued an Order on Plaintiff's Motion for Order to Show Cause and to Enforce Final Judgment and Directions to the Clerk of Court. *Id.*

209. The court found that the claims of liens filed by respondent were dispositions upon the property, subject to the final judgment in this case, and the claims of lien filed by respondent were direct violations of the court's final Judgment. *Id.*

210. The court ordered that respondent shall show cause why she should not be held in indirect criminal contempt for violating the injunction prohibiting her from making any disposition of the same property. *Id.*

211. The court held that the liens were null and void and the clerk was ordered to strike them from the public records. *Id.*

212. Subsequently, opposing counsel entered into a Stipulation for Dismissal of Indirect Criminal Contempt in the interest of avoiding delays in the case. Opposing counsel agreed to dismiss the contempt but not the findings that respondent violated the final judgment or the striking of the liens filed in contravention of the final judgment.

213. On or about October 25, 2019, the court entered an Order Granting Stipulation. **See Exhibit 4.**

214. On or about October 30, 2019, the plaintiff filed an Emergency Verified Motion for Order to Show Cause and to Enforce Final Judgment stating that, on October 11, 2019, the very next day following the stipulation on October 10, 2019, respondent filed two new notices of lis pendens against the same property. **See Emergency Verified Motion for Order to Show Cause and to Enforce Final Judgment attached as Exhibit 39.**

215. On or about October 31, 2019, the court entered an Order to Show Cause and Arraignment on Order to Show Cause finding that on the very next day following the parties' stipulation, October 11, 2019, in disregard of the court's authority and the Final Judgment Upon Default, Ms. Gaffney effectuated two new dispositions of the Clark Street Property,

through the filing of two separate notices of lis pendens. **See Order to Show Cause and Arraignment on Order to Show Cause attached as Exhibit 40.**

216. As admitted by respondent in her Answer to the bar's Complaint, the "two separate notices of lis pendens each purport to secure \$8,000,000.00 in damages alleged to be owed to respondent." **See Answer para. 80.**

217. In response to the Order to Show Cause, on November 5, 2019, respondent again sought disqualification of the presiding judge, for approximately the seventh time. **See Exhibit 4.**

218. In response to a fifth motion to disqualify filed specifically against this judge, Judge Barbas, an order dated December 12, 2019, was entered and ruled in part that, "[h]owever, based upon the constant misrepresentations by counsel for the Defendant and Defendant Gaffney herself, the undersigned finds that he can no longer be fair and impartial towards the Defendant Gaffney nor her attorney, Sussman. For that reason, and that reason alone, this court **ORDERS AND ADJUDGES** that Defendant's Motion to Disqualify / Recuse is **GRANTED.**" **Order Granting Defendant Gaffney's Motion for Disqualification attached as Exhibit 41.**

219. Rule 4-3.4(c) (Fairness to Opposing Party and Counsel- lawyer must not knowingly disobey an obligation under the rules of a tribunal) states, "A lawyer must not knowingly disobey an obligation under the rules of a tribunal except for an open refusal based on an assertion that no valid obligation exists."

220. Rule 4-3.5(c) (Impartiality and decorum of the tribunal- Disruption of Tribunal) states, "A lawyer shall not engage in conduct intended to disrupt a tribunal."

The comment to Rule 4-3.5 states in part:

The advocate's function is to present evidence and argument so that the cause may be decided according to law. Refraining from abusive or obstreperous conduct is a corollary of the advocate's right to speak on behalf of litigants. A lawyer may stand firm against abuse by a judge but should avoid reciprocation; the judge's default is no justification for similar dereliction by an advocate. An advocate can present the cause, protect the record for subsequent review, and preserve professional integrity by patient firmness no less effectively than by belligerence or theatrics.

221. After final judgement was entered, respondent filed two claims of lien and the court ordered them null and void because they were in direct violation of the final judgment. Soon thereafter, opposing counsel agreed to dismiss the contempt proceedings against respondent related to that

misconduct and the next day respondent filed another two lis pendens. The court again found the claims were filed in violation of the court's final judgment and respondent filed a motion to disqualify the judge.

222. This misconduct demonstrates respondent's blatant disrespect and disregard for the rules of the tribunal. Respondent knowingly disobeyed an obligation under the rules of a tribunal by filing dispositions against the property at issue two separate times, in direct violation of the final judgment and the court's order.

223. Further, respondent's filing of claims of liens on the property on two occasions resulted in unnecessary hearings and delays in the case. This, along with her filing of another motion to disqualify the judge, was done with the sole purpose of delaying the transfer of property, thus, intentionally disrupting the litigation and the tribunal.

224. Respondent does not deny, but rather, defends her claims of lien on the property in violation of the final judgment. Therefore, there is no genuine issue of material fact. As a matter of law, respondent should be found guilty of **Rules 4-3.4(c) and 4-3.5(c)**.

225. Lastly, respondent's egregious misconduct can only be viewed as contrary to honesty and justice and prejudicial to the administration of justice in violation of **Rule 3-4.3 and 4-8.4(d)**.

Respondent's Frivolous Lawsuit

226. In March 2019, after the final judgment in Case No. 14-CA-3762 was per curium affirmed by the Second District Court of Appeals, a lawsuit was initiated in the East Division of Hillsborough County Civil Division, Case No. 19-CA-002729, *Sarah Sussman, et al. v. Kangas, Estate of Gaffney, Baumann, et al.* **See Docket in Case No. 19-CA-2729 attached as Exhibit 42.**

227. The parties were the same parties as those in 14-CA-3762, sans respondent. However, respondent filed a notice of appearance for the plaintiff the next month, on April 8, 2019, and thus, was counsel of record for the rest of the lawsuit. **See Notice of Appearance attached as Exhibit 43.**

228. The complaint alleged defendants engaged in "fraud," "theft," and "slandered the homestead property" of Sarah Sussman, among many other allegations. **See Complaint for Declaratory and Injunctive Relief and For Damages; For Unlawful Filing of False Documents Against Real Property; For Conversion and For Slander of Title attached as Exhibit 41.**

229. Plaintiff sought numerous forms of relief from the complaint, including but not limited to:

- a. "Void the Judgment entered unlawfully in Case Number 14-CA-003762;
- b. Void any transfer of title of the Homestead Property;
- c. Restore the Title of the Homestead Property to the Plaintiff;
[and]
- d. Restore the Homestead Property and pay for all damages associated with the unlawful seizure of Homestead Property..." *Id.* at pg. 15.

230. After respondent signed on as co-counsel, the following occurred in the lawsuit, as can be seen on the court's docket:

- a. June 5, 2019: Plaintiffs filed a Motion for Continuance and attached a copy of respondent's April 2016 unsworn affidavit from Case No. 14-CA-3762 as an Exhibit to the motion. **See Motion for Continuance attached as Exhibit 44.**
- b. June 13, 2019: Case transferred by court order to Tampa.
- c. June 27, 2019: Plaintiff files Motion to Disqualify Judge Barbas.
- d. July 25, 2019: Amended Order Denying Motion to Disqualify.

The order found in part, "Because of the attempt by the Plaintiff in this case to forum shop and circumvent the rulings of this Court and the affirmation by the Second District Court of Appeals, it is incumbent upon this court

to thwart the attempted illegal usurpation of this Court's authority. It is inconceivable that the Plaintiff herein should reap the benefit of filing a "new" case, (2019-CA-2729), through forum shopping and filing a motion to disqualify that requires an automatic disqualification of the undersigned judge, when that new case alleges the same facts, issues and laws as in the old case (2014-CA-3762) and is asking for relief that is contrary to the judgment in the prior case." **Amended Order Denying Motion to Disqualify attached as Exhibit 45.**

- e. On or About August 24, 2019: Plaintiff filed Writ of Prohibition to Second District Court of Appeals, regarding Amended Order Denying Motion to Disqualify.
- f. 9/12/19: Second District Court of Appeals denies Writ.
- g. 10/29/19: Order Granting Defendant's Motion to Dismiss Complaint. **See Order Granting Defendant's Motion to Dismiss Complaint attached as Exhibit 46.**
- h. 11/6/19: Plaintiff filed Notice of Appeal of order granting motion to dismiss.

- i. 10/7/20: Second District Court of Appeal per curium affirms dismissal.
- j. 10/22/20: Plaintiff filed Motion for Rehearing to the Second District Court of Appeal.
- k. 10/27/20: Plaintiff filed Motion for Relief from Judgment in Case No. 19-CA-002729. **See Motion for Relief from Judgment attached as Exhibit 47.**

The motion sought the following relief:

“WHEREFORE, the Plaintiffs, based upon the admission of the Defendants falsely filed a meritless lawsuit in 14-CA-3762 for the sole purposes of unlawfully taking Homestead Property, therefore, the Court must vacate the final judgment in this matter and allow the Plaintiffs due process and their day in Court to seek relief for the unlawfully taking of Homestead Property pursuant to FRCP 1.540(b).

1. Award Plaintiffs their attorney fees and costs expended in this matter from Kangas,

individually, and Baumann, individually, and Baumann/Kangas Estate Law; and

2. Return the Homestead Property immediately; and

3. Award damages to the Plaintiffs derivative from the admitted bad faith, meritless and fraudulent lawsuit filed by the Defendants in 14-CA-3762..."

I. 12/1/20: Second District Court of Appeal denied plaintiff's motion or rehearing.

m. 12/18/20: Second District Court of Appeal issued Mandate.

231. Rule 4-3.1 (Meritorious Claims and Contentions) states, in pertinent part:

A lawyer shall not bring or defend a proceeding, or assert or controvert an issue therein, unless there is a basis in law and fact for doing so that is not frivolous, which includes a good faith argument for an extension, modification, or reversal of existing law.

R. Reg. Fla. Bar.

232. The above filings are record evidence of misconduct engaged in by respondent as counsel of record in Case No. 19-CA-2729.

233. The entire lawsuit was filed with the intent of circumventing the orders and final judgment issued in Case No. 14-CA-3762.

234. There was no merit to the complaint, as evidenced by the complaint being dismissed after the defendants filed a motion to dismiss and the dismissal was upheld by the appellate court.

235. By using her license to practice law in this manner, respondent advocated and pushed forward a meritless lawsuit in violation of Rule 4-3.1 and she should be found guilty of this rule as a matter of law.

Conclusion- Count I

236. The Supreme Court of Florida's case law unequivocally supports the referee taking judicial notice of the attached exhibits and to rely on the findings as support for the findings of fact in this bar disciplinary case. See *Florida Bar v. Head*, 27 So. 3d 1, 8 (Fla. 2010) (Referee was permitted to consider the bankruptcy court documents and rely on them as support for the disciplinary findings of fact); *Florida Bar v. Shankman*, 41 So. 3d 166, 170 (Fla. 2010) (Referee could properly consider the federal district court's order and magistrate's report and could have relied upon them as support for the disciplinary findings of fact); *Florida Bar v. Tobkin*, 944 So. 2d 219, 224 (Fla. 2006) (Referee properly relied upon facts

included in the District Court of Appeal's opinion in bar matter); *Florida Bar v. Calvo*, 630 So. 2d 548, 549-50 (Fla. 1993) (Information regarding Securities and Exchange Commission disciplinary proceedings may be considered in a Florida attorney disciplinary proceeding, even though they are subject to a different standard of review than in bar discipline proceedings as the difference goes only to weight to be accorded, and not to admissibility).

237. Additionally, in *Florida Bar v. Rood*, 620 So. 2d 1252, 1255 (Fla. 1993), the Court held that "[r]eferees are authorized to consider any evidence, such as a trial transcript or judgment from a civil proceeding, that they deem relevant in resolving the factual question."

238. Thus, the referee in this matter may properly consider the attached exhibits and may rely upon them as support for the disciplinary findings of fact.

239. In sum, and in conclusion of the bar's motion for partial summary judgment concerning Count I of the bar's Complaint, the record evidence supports a finding of guilt of the conduct alleged herein and of the following Rules: **Rule 3-4.3** (Misconduct and Minor Misconduct); **Rule 4-3.1** (Meritorious Claims and Contentions); **Rule 4-3.4(c)** (Fairness to Opposing Party and Counsel- lawyer must not knowingly disobey an

obligation under the rules of a tribunal); **Rule 4-3.5(c)** (Impartiality and decorum of the tribunal- Disruption of Tribunal); **Rule 4-8.2(a)** (Judicial and Legal Officials- Impugning Qualifications and Integrity of Judge or Other Officers); **Rule 4-8.4(a)** (violate or attempt to violate the Rules of Professional Conduct, knowingly assist or induce another to do so, or do so through the acts of another); **Rule 4-8.4(c)** (Engaging in conduct involving dishonesty, fraud, deceit or misrepresentation); and **Rule 4-8.4(d)** (Engaging in conduct in connection with the practice of law that is prejudicial to the administration of justice).

240. There is no genuine issue of material fact concerning any of the above outlined misconduct and guilt should be found as a matter of law.

241. The only issues left to be determined in this count is whether respondent also violated Rule 4-3.3(a) (Candor Toward the Tribunal -False evidence; Duty to disclose), and the appropriate sanction to be imposed against respondent.

COUNT II

TFB File No. 2018-10,542 (13C)

242. Paragraphs 236-238 are realleged and incorporated herein.

243. In Count II, the bar alleges respondent engaged in misconduct related to bankruptcy Case No. 8:17-bk-08959-RCT.

244. On or about October 16, 2017, in Hillsborough County Case No. 14-CA-3762, the court entered a Final Judgment Upon Default declaring that real property located at 119 S. Clark Street, Tampa, Florida belonged to the Estate of John J. Gaffney. **See Exhibit 25.**

245. The Final Judgment declared the following:

- a. "Teresa Gaffney obtained title to the real property located at 119 Clark Street S., Tampa, Florida through the exploitation of her father, John J. Gaffney; and
- b. A determination that the Deed dated January 20, 2012, purporting to transfer Teresa Gaffney's interest in the Clark Street Property to Sarah K. Sussman, as Trustee of the Sussman Family Trust Living Trust constituted a fraudulent conveyance as defined by Chapter 726, Florida Statutes, and therefore the Deed recorded at Book 20915 and Page 233-234 of the Official Records of Hillsborough, County, Florida is declared to be null and void;

- c. The Final Judgment Upon Default had “the effect of a duly executed conveyance that is recorded in Hillsborough County to [the Estate of John J. Gaffney].”; and
- d. Directing the Clerk of Court to issue a writ of possession without delay.” **Emergency Verified Motion for Relief From Stay to The Extent It Affects The Rights of The Estate Of John J. Gaffney attached as Exhibit 48.**

246. As a matter of law, per the Final Judgment, as of October 16, 2017, none of the defendants, including Sarah Sussman, respondent, and the Sussman Family Trust, had any legal interest in the Clark Street property.

247. As admitted by respondent in her Answer to the bar’s complaint, she was living at the property at the time of the Final Judgment and on October 23, 2017, the Hillsborough County Sheriff served the Writ of Possession at the Clark Street Property. **See Answer para. 115 and 117.**

248. Respondent also admits that the next day, on October 24, 2017, the following documents were filed with the Clerk of the Bankruptcy Court in the Middle District of Florida, Tampa Division, Case No. 8:17-bk-08959-RCT: (1) a handwritten Petition for Voluntary Bankruptcy of Sarah K. Sussman (respondent’s daughter); and (2) a certificate of credit counseling, purporting to evidence that Sarah K. Sussman had taken the credit

counseling course required to be taken prior to filing for bankruptcy. **See Answer para. 118.**

Respondent Filed Meritless Bankruptcy Petition for Purpose of Thwarting Writ of Possession

249. The bankruptcy case was initiated for the sole purpose of improperly blocking the Estate of John J. Gaffney from taking possession of the property.

250. Respondent admits that she assisted with the filing of her daughter, Sarah Sussman's, bankruptcy petition. **See Answer para. 133.**

251. Over the next two years, the bankruptcy matter was litigated and ultimately the bankruptcy court dismissed the bankruptcy action finding bad faith conduct and conduct prejudicial to the administration of justice.

252. In its June 3, 2019, 23-page Memorandum Decision Following Trial on Contested Matters, the bankruptcy court found the following:

- a. "The service of the writ of possession prompted a flurry of activity and ultimately led to the filing of this bankruptcy case." **Memorandum Decision Following Trial on Contested Matters, pg. 4, attached as Exhibit 49.**

- b. "The petition was filed, in person, by Ms. Gaffney. The petition is handwritten and was not accompanied by bankruptcy schedules or all required initial disclosures and statements." *Id.* at 5.
- c. "Throughout the events of October 23–25, 2017, Debtor was in Washington, D.C. Further, at that time, she did not reside at the Clark Street Property, having moved to Washington sometime around February 2016. When the chapter 13 petition was filed, Debtor lived and worked in Washington, D.C." *Id.* at 7.
- d. "Unfortunately for the Debtor, her claim to title to the Clark Street Property arose from a deed that was declared void by the state court before her bankruptcy petition was filed. The Final Judgment served to strip Debtor of all legal and beneficial interest in the property and effectively conveyed it to the Administrator. Accordingly, the Clark Street Property was not property of the bankruptcy estate subject to the automatic stay." *Id.* at 10.
- e. "Debtor's right to possession was terminated by the Final Judgment and the writ of possession. Further, Debtor was

not in physical possession of the Clark Street Property when her chapter 13 petition was filed, having relocated to Washington, D.C. over a year before the petition. Rather it was her parents that were in actual possession and her parents who were dispossessed. But her parents are not the debtors in this case.” *Id.* at 11.

253. The bankruptcy court made clear in its memorandum of dismissal that “the Clark Street Property was not property of the bankruptcy estate...” *Id.* at 10. Still, in bad faith and with no legal basis for such a claim, Sarah Sussman, through assistance and guidance of her mother, respondent, claimed homestead protections of the Clark Street property and swore to same in the bankruptcy filing.

254. The memorandum further found:

- a. “Filing a chapter 13 petition for an improper purpose evidences bad faith. And filing a chapter 13 petition for purposes of circumventing a final state court judgment can be an improper purpose.” *Id.* at 16.
- b. “The events that transpired in the days leading up to the filing of this case are not entirely clear, but one fact is crystal clear. The sole purpose of Debtor’s chapter 13 petition was an

attempt to relitigate issues that were or should have been litigated in state court. The court determined Debtor's chapter 13 petition was improper for that very reason, when it denied confirmation and dismissed the petition. But even after Debtor converted her case to a chapter 7 liquidation, the matters dominating the court's docket continued to revolve around the same state court disputes between the Debtor and the Administrator, between the Administrator and Ms. Gaffney, or among the three collectively. The trial on the Contested Matters did little to dissuade the court from this conclusion. It is simply not the function of this court to relitigate state court issues..." *Id.* at 17.

255. Sarah Sussman appealed the bankruptcy court's findings and dismissal.

256. On September 13, 2019, the appellate court affirmed the court's decision, finding the final judgment predated the establishment of the property in bankruptcy. **See Order attached as Exhibit 50.**

257. The United States District Court Middle District of Florida Tampa Division's Order also made the following findings:

a. "The controlling fact of the case is that this transfer of property by final judgment occurred over one week prior to the filing of any bankruptcy petition. Appellant filed this bankruptcy case after sheriff's deputies came to enforce the writ of possession."

Id. at 2.

b. "Appellant simply did not own the house as a matter of law or fact when she filed the bankruptcy petition. That means the bankruptcy estate never possessed the house. Whether or not the house was subject to the Florida homestead exemption at one time was simply not relevant: the house was never present in the bankruptcy estate when the petition was filed." *Id.*

258. This disciplinary proceeding is for the sole purpose of reviewing and determining respondent's misconduct as it applies to the Rules Regulating The Florida Bar. This proceeding is not to be used for the purpose of relitigating the underlying issues. The issues cited above in court filings have already been fully litigated and determinations were made by the trial and appellate courts. Here, what should be reviewed by the referee is whether the conduct of respondent, established in the record, is violative of the Rules Regulating The Florida Bar. The bar asserts it does.

259. More specifically, respondent's actions following the service of the writ of possession involved dishonesty, bad faith, obstruction of justice, and a complete abuse of the court system. As such, respondent violated **Rule 3-4.3** (Misconduct and Minor Misconduct); **Rule 4-3.1** (Meritorious Claims and Contentions); **Rule 4-3.3(a)** (Candor Toward the Tribunal - False evidence; Duty to disclose); **Rule 4-8.4(a)** (Violate or attempt to violate the Rules of Professional Conduct, knowingly assist or induce another to do so, or do so through the acts of another); **Rule 4-8.4(c)** (Engaging in conduct involving dishonesty, fraud, deceit or misrepresentation); and **Rule 4-8.4(d)** (Engaging in conduct in connection with the practice of law that is prejudicial to the administration of justice).

260. Respondent's attempts to go around the Final Judgment and writ of possession issued in Case No. 14-CA-3762 by filing a bankruptcy petition for her daughter, claiming her daughter possessed the Clark Street property was false and dishonest. The numerous records in Case No. 14-CA-3762, and the findings of the bankruptcy court make it clear, as a matter of law, that the Clark Street property was legally and properly transferred to the Estate of John Gaffney.

261. Respondent, as an attorney, was well aware of the legal implications of the Final Judgment. Respondent has never denied that the

Final Judgment ordered transfer of the property to the Estate of John Gaffney and voided hers, and her daughter's claims to the property. Necessarily, it must be concluded that respondent made false statements to the bankruptcy court when she filed the Petition for Voluntary Bankruptcy of Sarah K. Sussman claiming her daughter owned the Clark Street property and legally had a right to an automatic stay concerning same.

262. Respondent's false, deceitful, and meritless statements to the court are violative of **Rules 4-3.1, 4-3.3(a) and 4-8.4(c)**.

263. Respondent's abuse of the bankruptcy court system, in an effort to stall and disrupt Case No. 14-CA-3762, is conduct contrary to honesty and justice and prejudicial to the administration of justice in violation of **Rules 3-4.3, 4-8.4(a), and 4-8.4(d)**.

Respondent's Admitted Instruction to Sarah Sussman to Destroy Evidence

264. As admitted by respondent in her Answer to the bar's Complaint, respondent filed: (1) a handwritten Petition for Voluntary Bankruptcy of Sarah K. Sussman (respondent's daughter); and (2) a certificate of credit counseling, purporting to evidence that Sarah K.

Sussman had taken the credit counseling course required to be taken prior to filing for bankruptcy on October 24, 2017. **See Answer para. 118.**

265. At a hearing in bankruptcy court on October 31, 2017, “[t]he Court ordered the parties to mediation and, in doing so, encouraged the participation of all parties to the state court action.” **Exhibit 48 at 3.**

266. Sarah Sussman’s claim that she had completed the credit counseling course prior to filing the bankruptcy petition quickly became a contested issue.

267. Despite knowledge of the contested issue, respondent admitted in her Answer to the bar’s complaint that “...in November of ’17, December, somewhere around that time period, the computer actually just died. I told her to smash the hard drive and just toss the computer, because it was bad looking and pretty bad. She does it. She smashes the computer and throws it – the hard drive, like you’re supposed to and get rid of it.” **Answer para. 129.**

268. Thereafter, motions were filed, subpoenas were issued, and a multi-day evidentiary hearing was held on the issue of whether Ms. Sussman completed the course and her destruction of evidence in support thereof. **See e.g. Motion for Sanctions for Spoliation of Evidence attached as Exhibit 51.**

269. Following the November 19, 2018, multi-day evidentiary hearing, the court issued an Order Granting Motion for Sanctions Against Sarah Sussman for Spoilation of Evidence on November 20, 2018. **See Order Granting Motion for Sanctions Against Sarah Sussman for Spoilation of Evidence attached as Exhibit 52.**

270. The bankruptcy court concluded that by destroying the computer, Sarah Sussman “acted with the intent to deprive the Estate of its use in the litigation between the parties” and issued sanctions against Ms. Sussman.

271. Respondent has admitted that she directed her daughter, Sarah Sussman, to destroy the computer. The clear intent of respondent’s conduct was to deprive the Estate of evidence on the computer that could be relevant in the litigation between the parties.

272. The facts are not in dispute. The issue turns on whether, as a matter of law, respondent’s conduct violated the Rules Regulating The Florida Bar.

273. Spoilation of evidence is by definition contrary to honesty and justice and prejudicial to the administration of justice. Respondent should be found guilty of **Rules 3-4.3 and 4-8.4(a) and (d)** for her conduct concerning the destruction of evidence.

Conclusion- Count II

274. In sum, and in conclusion of the bar's motion for summary judgment concerning Count II of the bar's Complaint, the record evidence supports a finding of guilt of the conduct alleged herein and of the following Rules: **Rule 3-4.3** (Misconduct and Minor Misconduct); **Rule 4-3.1** (Meritorious Claims and Contentions); **Rule 4-3.3(a)** (Candor Toward the Tribunal -False Evidence; Duty to disclose); **Rule 4-8.4(a)** (violate or attempt to violate the Rules of Professional Conduct, knowingly assist or induce another to do so, or do so through the acts of another); **Rule 4-8.4(c)** (Engaging in conduct involving dishonesty, fraud, deceit or misrepresentation); and **Rule 4-8.4(d)** (Engaging in conduct in connection with the practice of law that is prejudicial to the administration of justice).

275. There is no genuine issue of material fact concerning any of the above outlined misconduct and guilt should be found as a matter of law.

276. The only issue left to be determined in this count is the appropriate sanction to be imposed against respondent.

Respondent's Affirmative Defenses

277. Respondent includes two affirmative defenses in her Answer.

278. By asserting affirmative defenses, respondent admits the misconduct charged by the bar but argues she can prove that other rules of law defeat or mitigate the legal consequences of the misconduct; i.e. a finding of guilt.

279. Respondent's two affirmative defenses rely solely on legal argument.

280. First Affirmative Defense: Respondent argues that she has a constitutional right under federal and state constitutions to political speech and to express her observations regarding prejudices and attitudes of the local judiciary.

281. Respondent fails to recognize that, as an attorney, her speech must comply with The Rules Regulating The Florida Bar. The license to practice law is a privilege, not a right, and it can be restricted or rescinded by the Florida Supreme Court at any time. It is well established that an attorney can be found guilty of the Rules outlined in the Rules Regulating The Florida Bar for statements made while having a license to practice law.

282. The First Amendment does not protect attorneys who make harassing or threatening remarks about the judiciary or opposing counsel, *Florida Bar v. Saylor*, 721 So. 2d 1152, 1155 (Fla. 1998), and the right to free speech under both the Florida and United States Constitutions does

not preclude an attorney being disciplined for speech directed at the judiciary. See *Florida Bar v. Wasserman*, 675 So. 2d 103, 105 (Fla. 1996).

283. In *Florida Bar v. Ray*, 797 So. 2d 556, 558 (Fla. 2001), the Florida Supreme Court held that statements made by an attorney which questioned the veracity and integrity of a judge, as well as the judge's fairness at a hearing, were not protected speech under the First Amendment for purposes of an attorney disciplinary proceeding, as the attorney did not have an objectively reasonable basis for making those statements. The attorney was found guilty of violating Rule 4-8.2(a).

284. The Supreme Court of Florida has long held that attorneys, because of their standing as officers of the court, enjoy a conditional privilege that in some instances constrains their free speech rights. *The Florida Bar re Amendments to Rules Regulating The Florida Bar*, 624 So. 2d 720 (Fla. 1993).

285. The bar has a substantial interest both in protecting litigants and court personnel from disparaging conduct by attorneys and in preventing the erosion of confidence in the legal profession such behavior engenders. Lawyers are members of a privileged profession entailing obedience to ethical rules which may require abstention from what in other circumstances would be constitutionally protected behavior. See *American*

Civil Liberties Union of Florida, Inc. v. Florida Bar, 744 Fed. Supp. 1094, 1097 (N.D. Fla. 1990).

286. Second Affirmative Defense: respondent argues that seeking discipline against respondent for speaking up regarding prejudicial conduct by judges has the potential to create a “chilling effect” in reporting judicial misconduct.

287. The Florida Supreme Court has given the Florida Bar express authority to prosecute attorneys for violation of The Rules Regulating The Florida Bar. The Florida Supreme Court has also given the Judicial Qualifications Commission express authority to prosecute judges for violations of the Code of Judicial Conduct. There are available procedures in place that allow attorneys to report judicial misconduct in a way that does not violate The Rules Regulating The Florida Bar. Alleging the possibility of a “chilling effect” is not a legally valid defense.

Conclusion

288. The Preamble of the Rules of Professional Conduct outlines the following for all attorneys licensed to practice law in Florida:

A lawyer, as a member of the legal profession, is a representative of clients, an officer of the legal system, and a public citizen having special responsibility for the quality of justice. As a representative of clients, a lawyer performs various functions. As an adviser, a lawyer provides a client

with an informed understanding of the client's legal rights and obligations and explains their practical implications. As an advocate, a lawyer zealously asserts the client's position under the rules of the adversary system. As a negotiator, a lawyer seeks a result advantageous to the client but consistent with requirements of honest dealing with others. As an evaluator, a lawyer acts by examining a client's legal affairs and reporting about them to the client or to others. In addition to these representational functions, a lawyer may serve as a third-party neutral, a nonrepresentational role helping the parties to resolve a dispute or other matter. Some of these rules apply directly to lawyers who are or have served as third-party neutrals. See, e.g., rules 4-1.12 and 4-2.4. In addition, there are rules that apply to lawyers who are not active in the practice of law or to practicing lawyers even when they are acting in a nonprofessional capacity. For example, a lawyer who commits fraud in the conduct of a business is subject to discipline for engaging in conduct involving dishonesty, fraud, deceit, or misrepresentation. See rule 4-8.4. In all professional functions a lawyer should be competent, prompt, and diligent. A lawyer should maintain communication with a client concerning the representation. A lawyer should keep in confidence information relating to representation of a client except so far as disclosure is required or permitted by the Rules of Professional Conduct or by law. A lawyer's conduct should conform to the requirements of the law, both in professional service to clients and in the lawyer's business and personal affairs. A lawyer should use the law's procedures only for legitimate purposes and not to harass or intimidate others. A lawyer should demonstrate respect for the legal system and for those who serve it, including judges, other lawyers, and public officials. While it is a lawyer's duty, when necessary,

to challenge the rectitude of official action, it is also a lawyer's duty to uphold legal process.

289. Respondent, in her years and years of litigation related to her father's property in many different courts, has breached the fundamental responsibilities as a lawyer, an officer of the legal system, and as a public citizen.

290. Fair access to the courts is a right the United States gives to all and one The Florida Bar supports. However, there are restrictions within the Rules Regulating The Florida Bar that limit the abuse of that access by lawyers.

291. Respondent has abused her license to practice law in such an egregious way that she has harmed the justice system, the judiciary, and the publics' perception of the legal profession.

292. The misconduct outlined by respondent in this motion for summary judgment presents no genuine disputes of material facts, respondent's affirmative defenses do not preclude a finding of guilt as a matter of law, and as a result, respondent should be found guilty of the conduct alleged herein and of violating eight (8) of the nine (9) Rules charged in Count I of the bar's complaint, and all six (6) Rules charged in Count II of the bar's complaint.

293. The only issues left to be determined is whether respondent also violated Rule 4-3.3(a) (Candor Toward the Tribunal -False evidence; Duty to disclose) in Count I of the bar's Complaint, and the appropriate sanction to be imposed against respondent.

WHEREFORE, The Florida Bar respectfully moves for entry of an order granting partial summary judgment in favor of The Florida Bar finding respondent guilty of the alleged conduct outlined herein and of violating the following Rules Regulating The Florida Bar: **Count I: Rule 3-4.3** (Misconduct and Minor Misconduct); **Rule 4-3.1** (Meritorious Claims and Contentions); **Rule 4-3.4(c)** (Fairness to Opposing Party and Counsel-lawyer must not knowingly disobey an obligation under the rules of a tribunal); **Rule 4-3.5(c)** (Impartiality and decorum of the tribunal- Disruption of Tribunal); **Rule 4-8.2(a)** (Judicial and Legal Officials- Impugning Qualifications and Integrity of Judge or Other Officers); **Rule 4-8.4(a)** (violate or attempt to violate the Rules of Professional Conduct, knowingly assist or induce another to do so, or do so through the acts of another); **Rule 4-8.4(c)** (Engaging in conduct involving dishonesty, fraud, deceit or misrepresentation); and **Rule 4-8.4(d)** (Engaging in conduct in connection with the practice of law that is prejudicial to the administration of justice). **Count II: Rule 3-4.3** (Misconduct and Minor Misconduct); **Rule 4-3.1**

(Meritorious Claims and Contentions); **Rule 4-3.3(a)** (Candor Toward the Tribunal- False evidence; Duty to disclose); **Rule 4-8.4(a)** (violate or attempt to violate the Rules of Professional Conduct, knowingly assist or induce another to do so, or do so through the acts of another); **Rule 4-8.4(c)** (Engaging in conduct involving dishonesty, fraud, deceit or misrepresentation); and **Rule 4-8.4(d)** (Engaging in conduct in connection with the practice of law that is prejudicial to the administration of justice).

Respectfully submitted,



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CERTIFICATE OF SERVICE

I certify that The Florida Bar's Motion for Summary Judgment has been furnished to the Honorable Kimberly Sharpe Byrd, Referee, West Pasco Judicial Center, 7530 Little Road, Rm. 214, New Port Richey, Florida 34654-5598, via email to Shannon McGrady, Judicial Assistant, at crcivw1@jud6.org; with copies to Teresa Marie Gaffney, Respondent, P.O. Box 18112, Tampa, Florida 33679, via email at ferri@overstreetwealth.com; and to Patricia Ann Toro Savitz, Staff Counsel, The Florida Bar, 651 E. Jefferson Street, Tallahassee, Florida 32399-2300 via email at psavitz@floridabar.org, on this 18th day of February, 2022.



Lindsey M. Guinand, Bar Counsel

IN THE SUPREME COURT OF FLORIDA
(Before a Referee)

THE FLORIDA BAR,

Complainant,

v.

TERESA MARIE GAFFNEY,

Respondent.

Supreme Court Case
No. SC21-938

The Florida Bar File Nos.
2018-10,184 (13C)
2018-10,542 (13C)

THE FLORIDA BAR'S MEMORANDUM OF LAW FOR SANCTIONS

The Florida Bar, by and through its undersigned counsel, files this Memorandum of Law for Sanctions in preparation of the Sanctions Hearing scheduled for July 27, 28 and 29, 2022. Based on the referee's findings in the Order Granting in Part and Denying in Part The Florida Bar's Motion for Partial Summary Judgment dated April 19, 2022, the evidence and testimony presented at the final hearing on July 18 through 21, 2022, and respondent's conduct in these disciplinary proceedings, The Florida Bar urges the referee to recommend that respondent be disbarred. The Florida Bar also requests the assessment of costs in this disciplinary proceeding against respondent.

SUMMARY OF PROCEEDINGS

On June 22, 2021, The Florida Bar filed its formal complaint with the Supreme Court of Florida. On June 29, 2021, the Honorable Kimberly Sharpe Byrd was appointed as referee. On October 21, 2021, the Supreme Court of Florida entered an order staying the proceedings until February 6, 2022. Subsequently, due to scheduling issues, Judge Byrd was unable to continue as referee, and Judge Peter Ramsberger was appointed to serve as referee on February 21, 2022.

The bar's complaint alleged respondent violated Rules 3-4.3, 4-3.1, 4-3.3(a), 4-3.4(c), 4-3.5(c), 4-8.2(a), 4-8.4(a), 4-8.4(c) and 4-8.4(d) in Count I in connection with her violation of court orders, filing frivolous pleadings and lawsuits, and impugning the integrity of judges. The complaint alleged respondent violated Rules 3-4.3, 4-3.1, 4-3.3(a), 4-8.4(a), 4-8.4(c) and 4-8.4(d) in Count II in connection with her misconduct and alleged destruction of evidence in a bankruptcy matter. Respondent denied violating any of the rules charged and asserted two affirmative defenses. The bar filed a Motion for Partial Summary Judgment and Request for Judicial Notice ("Motion") on February 18, 2022, and respondent filed a response in opposition on March 16, 2022.

The referee held a hearing on the bar's Motion and respondent's response on March 22, 2022. By order dated April 19, 2022, the referee granted the bar's Motion in part, finding violations of Rules 3-4.3, 4-3.1, 4-3.4(c), 4-3.5(c), 4-8.2(a), 4-8.4(a), 4-8.4(d) in connection with the allegations contained in Count I of the bar's complaint and Rules 3-4.3, 4-3.1, 4-8.4(a), 4-8.4(c), and 4-8.4(d) in Count II. On June 15, 2022, the bar filed a notice of voluntary dismissal of Rule 4-3.3(a) in connection with Count II. A final hearing on the remaining two rule violations of Rules 4-3.3(a) and 4-8.4(c) from Count I took place on July 18 through 21, 2022. A sanctions hearing is scheduled for July 27, 28, and 29, 2022.

PURPOSE OF SANCTIONS HEARING

The proceedings in this matter have been bifurcated. The first phase was the guilt phase. The second phase is the discipline phase. Both phases entail an analysis of different relevant issues. The purpose of the guilt phase is to determine whether an attorney's conduct violated the Rules Regulating The Florida Bar. The evidence put forth in the first phase is for the sole purpose of determining guilt. The evidence put forth in the second phase is for the sole purpose of determining the appropriate discipline. The matters litigated in the guilt phase are not ripe for relitigating

in the discipline phase. The evidence presented during the discipline phase must be relevant to the Florida's Standards for Imposing Lawyer Sanctions and aggravating or mitigating factors (as outlined more below). During the discipline phase, the referee is charged with determining the appropriate sanction, not reconsidering issues already litigated in underlying matters or in the bar proceeding.

SUMMARY OF LEGAL AUTHORITY AND ARGUMENT

SUPPORTING SANCTION

I. Florida's Standards for Imposing Lawyer Sanctions

Florida's Standards for Imposing Lawyer Sanctions ("Standards") provide a format for bar counsel, referees, and the Supreme Court to determine the appropriate sanction in attorney disciplinary matters. The Supreme Court relies upon the Standards in imposing discipline, and the Standards provide a framework for determining an appropriate sanction. The Court has held that "[t]he Florida Standards for Imposing Lawyer Sanctions provide a starting point for determining, in the absence of mitigating or aggravating circumstances, an appropriate discipline based on the duty violated and the potential or actual injury caused by the violation." *Florida Bar v. Cox*, 794 So. 2d 1278, 1283 (Fla. 2001).

In the instant case, it is the bar's position that the following Standards support a sanction of disbarment:

6.1 False Statements, Fraud, and Misrepresentation

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

(a) Disbarment. Disbarment is appropriate when a lawyer: (1) with the intent to deceive the court, knowingly makes a false statement or submits a false document; or (2) improperly withholds material information and causes serious or potentially serious injury to a party, or causes a significant or potentially significant adverse effect on the legal proceeding.

Comment, in part: Lawyers who engage in these practices violate the most fundamental duty of an officer of the court. As the court noted in a case where a lawyer was disbarred for making intentional misrepresentations to a judge, "[a]n officer of the court who knowingly seeks to corrupt the legal process can expect to be excluded from that process." See *Florida Bar v. St. Louis*, 967 So. 2d 108, 122-23 (Fla. 2007).

Respondent engaged in conduct that was intended to deceive the bankruptcy court when she filed a petition for bankruptcy on behalf of her daughter with the purpose of improperly staying the writ of possession in the 14-CA-3762 case. The petition respondent filed on behalf of her

daughter claimed that the Clark Avenue property was the property of respondent's daughter. That was false. The court in 14-CA-3762 and the court of appeals issued orders specifically conveying the property to the Estate of John J. Gaffney. Later, the bankruptcy court learned that the property respondent was alleging was her daughter's in the bankruptcy petition, was not in fact hers at the time of the bankruptcy filing.

Respondent engaged in intentionally deceitful conduct for her personal benefit, and the bankruptcy court did not accept it.

Furthermore, respondent improperly refused to answer depositions questions in Case No. 14-CA-3762, thereby withholding material information in the case. Respondent was court ordered to answer the questions, and respondent refused. This had the potential of causing significant adverse effect on the legal proceeding, and would have, had respondent not also engaged in other misconduct which led to her own default later in the case.

Lastly, should the referee find respondent guilty of the facts and rules at issue in the July 18 through 21, 2022 final hearing, the bar would also argue that this standard applies to that misconduct.

Respondent engaged in the behavior discussed in both Standard 6.1(a)(1) and (2), thus warranting disbarment.

6.2 Abuse of the Legal Process

Absent aggravating or mitigating circumstances, and on application of the factors to be considered in imposing sanctions, the following sanctions are generally appropriate in cases involving failure to expedite litigation or bring a meritorious claim, or failure to obey any obligation under the rules of a tribunal except for an open refusal based on an assertion that no valid obligation exists:

(a) Disbarment is appropriate when a lawyer causes serious or potentially serious interference with a legal proceeding or knowingly violates a court order or rule with the intent to obtain a benefit for the lawyer or another and causes serious injury or potentially serious injury to a party.

Comment, in part: "Lawyers should be disbarred for intentionally misusing the judicial process to benefit the lawyer or another when the lawyer's conduct causes injury or potentially serious injury to a party, or serious or potentially serious interference with a legal proceeding."

Respondent filed multiple lawsuits seeking the same relief and also filed an action in a venue she knew to be improper. It is hard to understate how significantly respondent has abused the judicial process to benefit herself and her family. Respondent has attempt to circumvent the court's authority in Case No. 14-CA-3762 by improperly filing other lawsuits in the same circuit, filing a frivolous bankruptcy petition to interfere with the writ of possession, and violated the court's Final Judgment. Respondent has

shown a blatant disregard for the 13th Judicial Circuit Court, Second District Court of Appeals, and the Bankruptcy court.

Apart from her behavior throughout the underlying litigation, respondent engaged in inappropriate behavior in the bar proceedings, which also fits in this standard and will be outlined more below.

Respondent's conduct in both the underlying actions and the bar proceedings caused serious interference with legal proceedings and she continues to interfere with numerous other legal proceedings as recent as this month. Based on Standard 6.2, respondent's misconduct warrants disbarment.

Lastly, should the referee find respondent guilty of the facts and rules at issue in the July 18 through 21, 2022 final hearing, the bar would also argue that this standard applies to that misconduct.

7.1 Deceptive Conduct or Statement and Unreasonable or Improper Fees

Absent aggravating or mitigating circumstances and on application of the factors to be considered in imposing sanctions, the following sanctions are generally appropriate in cases involving deceptive conduct or statements...

(a) Disbarment is appropriate when a lawyer intentionally engages in conduct that is a violation of a duty owed as a professional with the intent to obtain a benefit for the lawyer or another and

causes serious or potentially serious injury to a client, the public, or the legal system.

Respondent intentionally brought actions she knew or should have known were frivolous and without merit, a clear violation of a duty owed by a legal professional. Further, respondent's repeated motions to disqualify judges in the 13th Judicial Circuit, totaling over a dozen, evidences her violation of a duty owed as professional. Respondent authored and signed under oath many affidavits, which she later filed with many courts, making impugning and disparaging remarks about the judiciary. She repeatedly made disparaging statements about the judiciary for her own personal benefit and to the detriment of the legal system.

Respondent's conduct fits squarely under Standard 7.1(a), again demonstrating that disbarment is appropriate.

Lastly, should the referee find respondent guilty of the facts and rules at issue in the July 18 through 21, 2022 final hearing, the bar would also argue that this standard applies to that misconduct.

3.2 Aggravation

Standard 3.2 lists aggravating factors that may justify an increase in the degree of discipline to be imposed. The aggravating factors that exist in this case, further support disbarment. The applicable aggravating factors include:

3.2(b)(2) Dishonest or selfish motive

Respondent's motive throughout the years of protracted litigation she filed, was a party to, or was otherwise involved, were clear: to get the Clark Avenue property back without regard for who she defamed in the process. Despite that respondent has exhausted her appellate remedies and the matter has been adjudicated against her position many times over, respondent continues to seek return of the property to date.

This is further evidenced by respondent's recent personal bankruptcy case. On February 22, 2022, respondent filed a voluntary petition for Chapter 13 bankruptcy. Amazingly, on page 9 of 52 of her petition, respondent claims she owns an interest in the Clark Avenue property. More specifically, she claims she owns the entire amount of the property, \$556,000.00, and that the property is her homestead.

It is unfathomable how respondent can assert such a dishonest, misrepresentative, patently false statement to another court. The following courts have issued orders upholding the Final Judgment which conveyed the property to the Estate of John J. Gaffney: Circuit Court in 14-CA-3762; Second District Court of Appeals; Supreme Court of Florida; Bankruptcy Court in Case No. 8:17-bk-08959-RCT; Circuit Court in 19-CA-2729. This list is not all-inclusive. Respondent's assertions in her personal bankruptcy

petition directly contradict not only the court's orders, but reality.

Respondent has completely disregarded the rules and orders of many courts and has engaged in conduct in direct contradiction of the law.

Respondent continues to act selfishly and dishonestly for her own personal benefit.

3.2(b)(3) Pattern of misconduct

Litigation surrounding a property belonging to the Estate of John J. Gaffney has been ongoing for ten years. For ten years, respondent has been filing lawsuit after lawsuit and appeal after appeal, trying to regain the property. Her conduct related to same has been unprofessional, deceitful, and meritless. Respondent engages in the same pattern of unprofessional behavior in all the cases she is involved in concerning the property at issue. For that reason, this factor should be considered in aggravation.

Furthermore, in recent years, the Supreme Court of Florida has moved toward stronger sanctions for attorney misconduct. See *Florida Bar v. Rosenberg*, 169 So.3d 1155, 1162 (Fla. 2015); *Florida Bar v. Rostein*, 835 So. 2d 241, 246 (Fla. 2002). Included within their analysis and basis for imposing stronger sanctions, the Supreme Court of Florida has taken into consideration respondents' behavior during bar disciplinary proceedings. See *Florida Bar v. Norkin*, 132 So.3d 77 (Fla. 2014). The Court has

considered an attorney's misconduct within the bar disciplinary proceedings as evidence of a pattern of misconduct and therefore a relevant factor for consideration when determining the appropriate sanction.

Respondent engaged in the following misconduct during these bar disciplinary proceedings:

1. Violation of Rule 3-7.11 General Rule of Procedure and Referee's Case Management Order dated August 24, 2021.

Rule 3-7.11(d)(1) of the Rules Regulating The Florida Bar states, "Subpoenas for witnesses' attendance and the production of documentary evidence must be issued by the referee and must be served either in the manner provided by law for the service of process or by an investigator employed by The Florida Bar."

Furthermore, in the first referee's case management order, dated August 24, 2021, Rule 3-7.11(d)(1) was memorialized, instructing all subpoenas be submitted to the referee.

Respondent is aware of the rule and the order, as evidenced by her submission of deposition subpoenas to the referee in this bar case in April 2022. Despite respondent's knowledge of the rule and order, she emailed at least three documents purporting to be bar subpoenas to witnesses for trial in this matter. Respondent's counsel signed documents that purported

to be subpoenas for trial in the bar matter and emailed them to the following three witnesses: Judge Matthew Smith, Michael Kangas, and Phillip Baumann.

First, the three documents purporting to be bar subpoenas are invalid as they are not signed by the referee. Second, respondent did not properly serve the witnesses per the Florida Rules of Civil Procedure, but rather, emailed them. In addition, respondent did not copy the bar or otherwise notify bar counsel. Instead, bar counsel was notified by the three aforementioned witnesses. Upon being notified of the invalid subpoenas, bar counsel advised respondent of the applicable rules, again, and asked respondent to notify all the witnesses who had received the invalid subpoenas that said subpoenas were invalid. Respondent did not notify the three aforementioned witnesses.

It is also unknown if respondent provided invalid subpoenas to other witnesses in this bar matter. Specifically, it is unknown whether the witnesses that testified for respondent appeared voluntarily, or if they appeared under the guise that they had been subpoenaed. Respondent's actions, in violation of Rule 3-7.11 and the referee's August 2021 order, were knowing and intentional. Further, it must be concluded that respondent's conduct in direct violation of the rule and court order was for

the purpose of deceiving the witnesses. Emailing witnesses a document that is purporting to be a subpoena with the power to hold a witness in contempt of court for failing to comply, when said subpoena is knowingly invalid, is deceitful. Lastly, the witnesses and bar counsel unnecessarily had to dedicate time and resources to responding to the invalid subpoenas.

2. Failure to Appear at Two Depositions

Respondent, as her own co-counsel in this bar matter, failed to appear at two depositions. First, respondent failed to appear at the deposition of Michael Kangas, scheduled for March 29, 2022. In the prior referee's order, dated February 24, 2022, respondent was instructed to depose Mr. Kangas on March 29, 2022. Respondent never filed a notice of deposition, requested a subpoena, or otherwise organized the deposition. Despite respondent's lack of planning and obvious willingness to disregard the February 24, 2022, court order, the witness and bar counsel were unwilling to disregard the referee's order. Thus, bar counsel created a zoom link for the March 29, 2022, deposition and sent it to respondent and the witness. The witness, Mr. Kangas, and bar counsel appeared on March 29, 2022. Respondent did not appear.

The second deposition respondent failed to appear at was the deposition of Steve Bellevigna. The bar was scheduled to take Mr.

Bellevigna's deposition on June 8, 2022. The bar properly noticed and subpoenaed Mr. Bellevigna for the deposition. On June 7, 2022, the eve of Mr. Bellevigna's deposition, respondent emailed bar counsel and stated Mr. Bellevigna had a family emergency and needed to reschedule his deposition. The bar agreed to continue the deposition to June 13, 2022. The witness and respondent agreed to June 13, 2022. Then, one business day before the June 13, 2022, deposition, respondent again emailed bar counsel and said Mr. Bellevigna was not available. No explanation, rationale, or excuse was provided. The bar did not agree to continue or reschedule the deposition.

The next business day, the day of the deposition, June 13, 2022, bar counsel and the court reporter appeared for the deposition. The witness, Ms. Bellevigna, did not appear. Respondent's co-counsel did not appear. Respondent also did not appear. Directly thereafter, a certificate of non-appearance was issued by the court reporter, and bar counsel filed it in this proceeding.

Regardless of whether the witness was able to appear, after being properly noticed and subpoenaed, respondent, as co-counsel in this case, has an obligation to appear. Respondent is an attorney of record in this

case, and she may not pick and choose when she would like to show up to depositions.

3. First Violation of April 19, 2022, Order on Discovery: Failure to Comply with Rule of Civil Procedure 1.280(b)(5).

In respondent's response to the bar's interrogatories, respondent identified two witnesses as experts. Thereafter on April 19, 2022, the referee entered an Order on Discovery. The April 19, 2022, Order on Discovery in this matter directed respondent to do the following, regarding expert witnesses:

"Respondent has identified two witnesses as possible experts, Frank Schellace, Esq., and Thomas Gaitens. Respondent shall provide The Florida Bar with the following information, pursuant to Rule 1.280(b)(5), at least seven days before the deposition of each expert witness: (1) the identity of each expert; (2) the subject matter on which the expert will testify; (3) the facts and opinions to which the expert will testify and the bases for those opinions; (4) the scope of the expert's employment in the case and the expert's compensation for such services; (5) the expert's litigation experience, including the percentage of cases for which the expert testified on behalf of plaintiffs and the percentage of cases for which he or she has testified on behalf of defendants; (6) the names of reasonably recent cases (usually those falling within the last three years) in which the expert has testified either by deposition or at trial; and (7) an estimation of the extent of involvement of the expert as a witness, which may be based on number of hours, percentage of hours, or percentage of compensation."

On May 31, 2022, the evening of the seventh day before the deposition of Frank Schellace, respondent filed with the Referee a Disclosure of Expert Witness The Honorable Frank Schellace (hereinafter "Disclosure").

Respondent's disclosure outlines her own summary of what she "believe[s]" Frank Schellace will testify to. There was no expert report or other written opinions by Frank Schellace filed or provided to the bar. There were no exhibits or attachments to the Disclosure. In addition, the Disclosure failed to include all the information ordered to be disclosed in the Order on Discovery. More specifically, the Disclosure failed to include: "(3)...bases or those opinions; (4) the scope of the expert's employment in the case and the expert's compensation for such services; (5) the expert's litigation experience, including the percentage of cases for which the expert testified on behalf of plaintiffs and the percentage of cases for which he or she has testified on behalf of defendants; (6) the names of reasonably recent cases (usually those falling within the last three years) in which the expert has testified either by deposition or at trial; and (7) an estimation of the extent of involvement of the expert as a witness, which may be based on number of hours, percentage of hours, or percentage of compensation." Respondent's failure to comply with the requirements of the Order on Discovery were extremely prejudicial to the bar's preparation and questioning of Frank Schellace at his deposition on June 7, 2022. Respondent's Disclosure recites the same arguments and positions respondent has been proffering in all of her filings in this bar matter. It is impossible to discern her own

arguments and positions from those of Frank Schellace's within the Disclosure. To date, respondent has never provided the required information as outlined in the Order on Discovery and Rule of Civil Procedure 1.280.

4. Failure to Disclose Expert Affidavit

Despite respondent's failure to comply with the court's order and Rule 1.280, the bar prepared as thoroughly as possible based on the limited information and started the deposition of Frank Schellace on June 7, 2022. During the deposition, the bar learned that the expert witness had completed an affidavit and provided same to respondent. During the deposition, the following exchange occurred between bar counsel and the witness:

"Q. Can you tell me the documents you have reviewed in preparation for your expert testimony in this case.

A. I reviewed the Bar complaint a while back, motion for partial summary judgment, two federal court actions, of course prior to -- I mean, last night I reviewed my affidavit.

Q. And what affidavit is that?

A. The affidavit that I signed and submitted to -- I guess to Mr. -- I'm sorry. I don't -- I don't know

even how to pronounce his last name.

Q. Macchitelli?

A. Macchitelli, yes. I assume he has my affidavit because he's counsel for Miss Gaffney."

Excerpt of Transcript of Deposition of Frank Schellace, June 7, 2022, pg. 19, Ins. 12-24, attached as Exhibit 1 to the bar's Motion in Limine, filed on June 24, 2022.

This was the very first time the bar had ever heard of an affidavit by Frank Schellace. The bar then continued to question the witness about the undisclosed affidavit:

"Q. Is there an affidavit that you completed yourself or wrote out yourself, Mr. Schellace?

A. I prepared an affidavit, yes.

Q. And when did you prepare that?

A. I would say that was handed over months ago.

Q. And you signed it?

A. Yes, I signed it. Yes.

Q. And when did you prepare that -- I'm sorry, not prepare. When did you provide that to Mr. Macchitelli?

A. I don't recall.

Q. Did you ever provide that to Miss Gaffney?

A. Yes.

Q. When?

A. Few weeks ago, on or about.”

See pgs. 20-21, Ins. 13-25 and 1-2.

Frank Schellace completed an affidavit concerning his expert opinions and provided same to respondent a “few weeks” prior to the June 7, 2022, deposition. Not only did respondent fail to provide the bar with a copy of the affidavit by the May 31, 2022, deadline as outlined in the Order on Discovery, but respondent failed to attach it to the Disclosure she filed on May 31, 2022, and did not provide the affidavit to the bar before the June 7, 2022, deposition. In addition, respondent never disclosed the existence of an affidavit. The only reason the bar discovered there was an affidavit was because the witness mentioned it during his testimony. The knowledge, possession and withholding of Frank Schellace’s affidavit by respondent is violative of the Order on Discovery, the Rules of Civil Procedure, and the rules of professional conduct.

5. Second Violation of April 19, 2022, Order on Discovery: Untimely Discovery

Per the April 19, 2022, Order on Discovery, discovery cutoff in this bar matter was June 13, 2022. Seven days after discovery cutoff, on June 20, 2022, respondent provided 9,752 pages of untimely discovery.

Furthermore, the same day, respondent filed her final witness and exhibit lists. On the lists she disclosed, for the very first time, at least three unknown witnesses and "new exhibits". On page 4 of respondent's final exhibit list, respondent titles section III, "New Exhibits", and lists documents not previously disclosed. While the bar appreciates respondent admitted in her own filing that the documents under the "New Exhibits" section were brand new, it does not lessen the violation. In response to respondent's untimely discovery, and undisclosed witnesses and exhibits, the bar was forced to file eleven, well-founded, motions in limine.

It is well established by the bar's Motion for Partial Summary Judgment and 52 exhibits that respondent violated numerous orders and rules in the underling litigation. This is outlined in numerous orders from the circuit court. Respondent does not believe the rules apply to her. Respondent's refusal to comply with the Rules of Civil Procedure, rules of the tribunal, and court orders is a pattern, and it is unacceptable. She

continued the same misconduct in the bar proceeding and said misconduct should be considered in aggravation.

6. Emergency Motion for Entry of Temporary Restraining Order #1 Filed in Federal Court

Four days before the final hearing in this bar matter was scheduled to begin, respondent filed an Emergency Motion for entry of Temporary Restraining Order in the US District Court, Middle District of Florida, Case No. 8:21-cv-00021, *Teresa Gaffney, et al., v. Judge Paul Huey, Judge Rex Barbas, Judge Caroline Tesche-Arkin, et al.* Although the bar is not a party to respondent's federal lawsuit against multiple sitting 13th Circuit Judges, respondent filed an emergency motion with the federal court asking the federal court to issue a restraining order against the bar. More specifically, respondent requested the bar be barred from proceeding with its disciplinary proceedings.

Respondent having no basis in law or fact for seeking a restraining order against the bar within a federal suit in which the bar is not a party, the federal court denied respondent's emergency motion the next day, July 15, 2022. The federal court's five-page order clearly outlines the lack of legal support for respondent's filing and requests. Respondent completely failed, or did not even attempt, to meet her burden for many other requests within the motion. Rather, respondent made unfounded allegations against the

bar, and others, and filed the emergency motion with no legal authority for same. Lastly, in the federal court's July 15, 2022, order, the court found "[respondent] also failed to confer with any of the defendants about her proposed amendment in accordance with Local Rule 3.01(g)." pg. 5.

7. Emergency Motion for Entry of Temporary Restraining Order #2 and Complaint against The Florida Bar and Bar Counsel, Filed in Federal Court

On the morning of the final hearing in this bar proceeding, respondent filed a complaint against The Florida Bar, and bar counsel, individually, in federal court. In addition, respondent filed an emergency motion seeking a restraining order against the bar, prohibiting the final hearing from commencing that morning. The complaint makes unfounded allegations against the bar and bar counsel, very similar to the allegations she has made against every other attorney or judge who has disagreed with her position over the past eight years.

Not surprisingly, the federal judge issued an order the same day, denying respondent's request for a restraining order.

Respondent's misconduct during these disciplinary proceedings has been abusive, obstructive, improper, and clearly evidences her continued pattern of misconduct. Her continued pattern of misconduct further supports the bar's position that respondent should be disbarred.

3.2(b)(4) Multiple offenses

As of the date of this memorandum, respondent's misconduct constituted violations of seven of the Rules Regulating The Florida Bar in connection with Count I, and five violations in connection with Count II. In addition, there are two additional rules in Count I that the referee has yet to rule upon and may be included as additional offenses.

Respondent committed multiple different offenses, including, but not limited to: refusing to answer deposition questions, impugning the integrity of the judiciary, violating court orders, filing a frivolous lawsuit, filing a meritless bankruptcy petition, making misrepresentations, and instructing her daughter to destroy evidence.

3.2(b)(5) Bad faith obstruction of the disciplinary proceeding by intentionally failing to comply with rules or orders of the disciplinary agency

As mentioned above in the Pattern of Misconduct factor, 3.2(b)(3), respondent engaged in improper and unprofessional behavior throughout this disciplinary proceeding. The Court has repeatedly ruled that unprofessional behavior is unacceptable. See *Florida Bar v. Abramson*, 3 So. 3d 964 (Fla. 2009). Respondent withheld an affidavit, provided late discovery, failed to attend two depositions, violated the referee's orders at least three times, and violated Rule 3-7.11, General Rule of Procedure,

among other things. This conduct cannot be tolerated by an attorney, and this factor should enhance respondent's discipline.

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

Respondent engaged in several instances of deceptive practices throughout this disciplinary proceeding. Respondent's intentional violations of the bar's procedural rules, failure to comply with at least three orders of the referee, and withholding of discovery constitutes deceptive practices. Respondent's actions caused delay, prejudice, and wasted judicial resources.

3.2(b)(7) Refusal to acknowledge wrongful nature of misconduct

Throughout not only this bar disciplinary process but also in the numerous pieces of litigation brought by respondent, respondent has continually asserted that her position is justified and correct. The Court stated in *Florida Bar v. Rosenberg*, 169 So.3d 1155, 1162 (2015) that an attorney's refusal to acknowledge the wrongful nature of his misconduct was "particularly significant," **wherein the attorney continued to attempt to relitigate the underlying case and continued his abusive litigation practices throughout the bar disciplinary proceedings.** Respondent's arguments in her pleadings, motions, and other filings in this proceeding,

as well as her testimony during the final hearing, continue to demonstrate that she does not believe her actions were improper and that she has no remorse for her misconduct. Respondent has attempted to relitigate the underlying cases over and over again in this bar proceeding. She listed witnesses on her witness list that were irrelevant to the bar proceeding and were only listed for the purpose of continuing to litigate the underlying cases. In response, the bar had to file eleven motions in limine to prevent fifteen of respondent's irrelevant witnesses from testifying. Further, respondent repeatedly called witnesses and asked questions of those witnesses that were irrelevant to the bar proceedings, but rather, were for the purpose of relitigating the underlying matters.

Further, respondent has shifted blame to others, citing conspiracies between opposing counsel and several sitting judges. Importantly, respondent has also blamed the bar and individual bar counsel in an effort to deflect. Respondent has alleged that the bar and bar counsel are also engaged in the conspiracy and initiated the bar proceeding in retaliation. Based on those unfounded allegations, respondent then filed a federal lawsuit in the Middle District of Florida against the bar, bar counsel individually, and others, the morning of her final hearing in this matter. Respondent then emailed a copy of the federal lawsuit to bar counsel, and

others, thirty-five minutes before her final hearing was scheduled to begin. It is unclear what the purpose of emailing bar counsel a copy of the complaint and emergency motion was, but what is obvious is respondent's continued refusal to acknowledge any wrongdoing.

Respondent continued her abusive litigation practices throughout the bar disciplinary proceedings. This conduct cannot be tolerated by an attorney, and this factor should enhance respondent's discipline.

3.2(b)(9) Substantial experience in the practice of law

Respondent has been licensed to practice law since 1984. This factor is considered in aggravation because the longer an attorney has been practicing, the more experienced and knowledgeable the attorney should be regarding his or her professional duties and obligations. Respondent has been practicing law for almost 40 years. She knows, or at the very least should know, the Rules Regulating The Florida Bar apply to her, and she must uphold the professionalism standards at all times.

3.3 Mitigation

Standard 3.3 lists mitigating factors that may justify a reduction in the degree of discipline to be imposed. The bar stipulates there is one applicable mitigating factor: Standard 3.3(b)(1) Absence of a prior disciplinary record. However, it is the bar's position that given respondent's

actions have taken place over the course of more than 10 years and still continue to date that this factor should not justify a reduction in discipline. While it may be a mitigating factor, this factor does not substantially outweigh any of the aggravating factors and thus should not reduce the discipline. Furthermore, case law makes clear that the lack of a disciplinary history does not bar or otherwise prevent a recommendation of disbarment. *Florida Bar v. Koepke*, 327 So. 3d 788 (Fla. 2021).

The applicable Standards support the bar's recommended sanction of disbarment.

II. Case Law

In addition to the Standards, the relevant and applicable case law must be taken into consideration. First, it is important to note the Florida Supreme Court has defined the three objectives of attorney discipline as: (1) fairness 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; (2) fairness to the respondent, being sufficient to punish a breach of ethics and at the same time encourage reformation and rehabilitation; and (3) deterrence to others who might be prone or tempted

to become involved in like violations. *Florida Bar v. Lord*, 433 So. 2d 983, 986 (Fla. 1983).

Additionally, in recent years, the Court has moved towards stronger sanctions for attorney misconduct. *Florida Bar v. Rosenberg*, 169 So. 3d 1155, 1162 (Fla. 2015). Demonstrating this point is the recent case of *Florida Bar v. Koepke*, 327 So. 3d 788 (Fla. 2021), where the Court recently found that certain conduct is so egregious that it warrants disbarment despite an attorney's lack of prior disciplinary history. The Court in its opinion stated: "[n]otwithstanding Mr. Koepke's long membership in the Florida Bar and lack of prior disciplinary history, we conclude that his actions in this matter demonstrate so purposeful and considered a violation of his oath of attorney as to require disbarment." *Id.* at 789.

Turning to case law supporting disbarment based on misconduct similar to that of respondent, the bar suggests the following are analogous and proper precedent:

In *Florida Bar v. Rheinstein*, 2022 WL 1598898 (Fla. May 20, 2022) (Not Reported in So. Rptr.), an attorney was disbarred following a reciprocal discipline disbaring the attorney in Maryland for filing numerous frivolous pleadings and taking positions unsupported by the facts or the law in the course of representing clients involved in civil litigation over an

unpaid construction loan. Rheinstein attempted to prove an elaborate conspiracy theory to force a settlement and made unsubstantiated accusations against his legal opponent regarding a fraud scheme that led a court to believe the opponent was under federal investigation. Rheinstein engaged in a series of actions, including threatening to report his opponent's attorneys to the Attorney Grievance Commission if they refused to drop an appeal or withdraw from the case, making accusations of ex parte communication with the clerk's office in an effort to manipulate the trial record, and threatening opposing counsels with claims related to their clients' alleged fraudulent conduct. Rheinstein's overall misconduct was found to have negatively impacted the perception of the legal profession by reasonable members of the public. Respondent had significant aggravation, but he had no prior discipline.

It is difficult to find a more analogous case than this one. Similarly to the attorney in *Rheinstein*, respondent filed frivolous pleadings, took positions unsupported by law and fact, has alleged a conspiracy theory with unsubstantiated accusations, and has made accusations of ex parte communication. Respondent's overall misconduct, just as *Rheinstein's*, has negatively impacted the perception of the legal professional.

In *Florida Bar v. Burkich*, 2018 WL 904231 (Fla. February 15, 2018)

(Not Reported in So. Rptr.) Burkich was disbarred for her misconduct in connection with her representation as co-counsel of her son in a person injury matter. Burkich's co-counsel, Mr. Feiler, withdrew from the representation and filed a charging lien. When the matter was close to being settled, Burkich misrepresented the amount of the settlement to Feiler to get him to reduce the amount he would accept in satisfaction of the lien. Thereafter, Burkich failed to notify Feiler that the settlement went through, and she did not pay any monies to him despite their agreement. Feiler sued Burkich, who engaged in a series of abusive litigation tactics to delay and obstruct the proceedings. Feiler won a judgment for the amount agreed to satisfy his lien plus the costs of the suit. Eventually, after multiple frivolous motions and appeals by Burkich, the judgment was paid.

Thereafter, Feiler pursued his motions for sanctions and costs resulting from Burkich's multitude of bad faith litigation. Burkich subsequently engaged in a rampant pattern of abusive litigation tactics and made serious false accusations against Feiler and the presiding judge. Additionally, it was discovered during the investigation into this matter that Burkich similarly made false allegations against another judge when he

ruled against respondent in a case. Burkich continued her pattern of abusive litigation tactics in the bar disciplinary matter.

Burkich's conduct is analogous to respondent's conduct in this matter. Respondent has engaged in a decade long series of abusive litigation tactics to delay and obstruct proceedings related to the Clark Avenue property. Further, respondent has filed frivolous motions and pleadings, and made reckless statements about the judiciary after several judges ruled against her.

In *Florida Bar v. Wishart*, the Court suspended an attorney for three years in connection with his actions in a personal custody proceeding wherein he willfully and knowingly disobeyed orders and judgments of the court and "pursued a course of conduct designed to disrupt the orderly process of the judicial system in order to serve his own ends, as he *alone* defined them." *Florida Bar v. Wishart*, 543 So.2d 1250, 1251 (Fla. 1989) (emphasis in original).

Justice Barkett dissented from the majority and would have instead imposed disbarment. In his dissenting opinion, Justice Barkett stated:

Short of defrauding a client, I can think of no more flagrant misconduct by an attorney than deliberately disobeying a series of direct orders by the court. This misconduct is not justified, as Wishart contends, by the attorney's belief that these orders were contrary to law. Our entire system of

jurisprudence is built on the principle that disagreements with the application of law can be corrected by appeals, by collateral attacks, or by petition to the legislature for a change in the law. No attorney is ever privileged to arrogate to himself or herself the right to say with finality what the law is. That prerogative inheres in the courts. Without this principle, our legal system would fall into shambles.

Id., at 1253. (Barkett, J. dissenting)

The Court's decision in *Wishart* is from 1989, and it is important to remember that as stated above in *Rosenberg*, the Court has moved toward harsher sanctions for attorney misconduct.

Additionally, the Court stated in *Florida Bar v. Baker*, 810 So. 2d 876, 882 (Fla. 2002) "...we expect members of The Florida Bar to conduct their personal business affairs with honesty and in accordance with the law."

The Court has consistently held since 1973 that "an attorney is an attorney is an attorney." *Florida Bar v. Bennett*, 276 So. 2d 481, 482 (Fla. 1973).

Furthermore, the Court has held that, "we are of the opinion, in light of [an attorney's] history of repeated transgressions and the increasing egregiousness of each infraction, that he has been an overzealous advocate incapable of seeing the forest for the trees." This too, applies to respondent in this bar matter.

In a concurring opinion in *Florida Bar v. Springer*, 873 So.2d 317 (Fla. 2004), Chief Justice Lewis wrote “[w]e should not subscribe to the view that disbarment may not occur if this Court has not previously rendered an opinion of disbarment on identical facts. Facts supporting disbarment may be so egregious that this Court has not had the occasion to render such an opinion.” *Id.* at 324.

Simultaneously with the filing of this memorandum, the bar is filing a Notice of Authority for Sanctions Hearing which lists additional cases for consideration by the referee.

Despite respondent’s assertion that her license to practice law is a “property right”, it is not. The practice of law is a privilege, not a right, that can be revoked for cause. R. Regulating Fla. Bar 3-1.1. Further, “[a]ttorneys are officers of the court and as such are expected by the bar, bench and public to conduct themselves in accordance with the law.” *Florida Bar v. Weintraub*, 528 So. 2d 367, 369 (Fla. 1988). Respondent engaged in serious misconduct that abused the legal system and violated her duty owed as a professional. Respondent’s misconduct undermines the integrity of the legal profession. The public expects, and the Rules demand, a lawyer to uphold the rules and standards of the profession. Respondent’s inability to practice law without violating the Rules repeatedly is not

acceptable in this profession. Respondent fails to acknowledge her misconduct or display any remorse, and she has made it clear that she will not stop until this court makes her. The only sanction appropriate here is disbarment.

Based upon the egregiousness of respondent's misconduct, Florida's Standards for Imposing Lawyer Sanctions, and existing case law, the bar asks the referee to recommend respondent be disbarred and be ordered to pay the disciplinary costs of this proceeding.

Respectfully submitted,



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CERTIFICATE OF SERVICE

I certify that the foregoing has been furnished to the Honorable Peter R. Ramsberger, Referee, via email to Stephanie Pitts, Office Manager, at spitts@jud6.org; with copies via email to Teresa Marie Gaffney, Respondent, at terri@overstreetwealth.com; to James Macchitelli, Pro Hac Vice Counsel for Respondent, at jimmymacclaw@gmail.com; and to Patricia Ann Toro Savitz, Staff Counsel, The Florida Bar, at psavitz@floridabar.org, on this 25th day of July, 2022.



Lindsey Margaret Guinand, Bar Counsel

IN THE SUPREME COURT OF FLORIDA

(Before a Referee)

SUPREME COURT CASE NO.: SC21-938

THE FLORIDA BAR CASE FILE NOS.:

2018-10,184(13C) AND 2018-10,542(13C)

THE FLORIDA BAR,

Complainant,

v.

TERESA MARIE GAFFNEY,

Respondent.

BY VIDEOCONFERENCE

TRANSCRIPT OF THE FLORIDA BAR'S CLOSING ARGUMENT AND

REBUTTAL

Pages 1 through 18

Tuesday, August 9th, 2022

Heard by Honorable Peter R. Ramsberger, Referee

This cause came on to be heard at the date and place
aforesaid, when and where the following proceedings were
reported by:

Victoria Applegarth

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1 CLOSING ARGUMENT BY THE FLORIDA BAR

2 MS. GUINAND: As Your Honor's aware and outlined
3 in our memorandum for sanctions, the Bar is recommending or
4 requesting that Your Honor recommend Ms. Gaffney be
5 disbarred from the practice of law. We're also asking that
6 Your Honor order disciplinary costs pursuant to Rule 3-7.6,
7 which will be outlined in motion after this proceeding.

8 I would rely on the arguments that were in our
9 memorandum concerning standards 6.1, 6.2, and 7.1. And
10 then for standards 3.2, which is the aggravating factors,
11 the Bar believes 7 of the 11 aggravating factors apply and
12 are supported by the evidence. I would rely on and
13 incorporate in the Bar's arguments from the memorandum, but
14 would also like to make some additional argument based on
15 the evidence that was presented over the last three days.

16 First, factor 3.2(b)(2), dishonest or selfish
17 motive. The following Bar's sanctions exhibits provide
18 evidence of this factor: Exhibits 1 through 8, Exhibit 32,
19 and Exhibits 44 through 45. All of Ms. Gaffney's conduct
20 over the numerous court cases and over the numerous years
21 has been driven solely for selfish reasons. Everything
22 related to all of these cases is about her desire to get
23 that Clark Avenue property back. It's purely selfish for
24 the purpose of her and her family and that aggravating
25 factor must be taken into consideration. Since her motives

1 have been entirely selfish and driven for the purpose of
2 her and her family, her discipline should be increased
3 accordingly.

4 The same evidence supports the next three
5 factors, which is 3.2(b)(3), pattern of misconduct,
6 2.3(b)(5), bad faith obstruction of the disciplinary
7 proceeding, and 3.2(b)(6), deceptive practices during the
8 disciplinary practice. The Bar would propose to Your Honor
9 that all of the Bar's exhibits, 1 through 45, support those
10 three aggravating factors.

11 Ms. Gaffney's obvious and continued pattern of
12 misconduct is established by not only the exhibits that
13 were in trial and the testimony that was provided, but also
14 by the additional 45 sanctions exhibits. The exhibits
15 prove that Ms. Gaffney not only engaged in a pattern of
16 misconduct in the 30 cases that are on Mr. Kangas's Excel
17 sheet that we looked at during his testimony at the
18 sanctions hearing, but also that she continued that
19 misconduct in numerous forms since the Bar's complaint was
20 filed in June of 2021. In its memorandum, the Bar listed
21 seven examples of Ms. Gaffney's conduct in this Bar
22 disciplinary proceeding, and the Bar entered 45 exhibits
23 that establish those seven exhibits. That included
24 certificate of nonappearances, subpoenas, emails, motions,
25 and the like. All of those establish that all seven of

1 those examples occurred during this disciplinary proceeding
2 and they should be taken into consideration when adding on
3 the pattern of misconduct factor, the bad faith obstruction
4 factor, and the deceptive practices factor.

5 For 2.3(b)(4), multiple instances of misconduct,
6 this factor is established on its own by the order granting
7 the motion for partial summary judgment. For multiple
8 offenses, Your Honor, Ms. Gaffney need only have committed
9 more than one offense for this aggravating factor to apply.
10 So by violating multiple rules, this rule is necessarily
11 implicated. She violated multiple rules in multiple
12 circumstances over multiple years. And the court has
13 historically given harsher punishments who have engaged in
14 multiple instances of misconduct as opposed to attorneys
15 who only engage in isolated incident of misconduct.

16 For 3.2(b)(7), refusal to acknowledge wrongful
17 nature of misconduct, this factor is evidenced by every
18 single thing Ms. Gaffney has ever filed in this Bar case,
19 by her own testimony yesterday in the sanctions hearing,
20 and by the Bar's sanctions Exhibits 1 through 8, 16 and 17,
21 31 and 32, and 43 through 45. Ms. Gaffney believes very
22 strongly that she has never done anything wrong ever in the
23 past six years of all this underlying litigation. She
24 could not tell this Court one thing she did wrong at all
25 about herself. Her testimony to this Court in the

1 sanctions hearing was, I acknowledge what I could have done
2 better was hire better attorneys or watch the attorneys
3 better who I did hire.

4 Like we've seen throughout this entire
5 disciplinary proceeding, nothing is ever Ms. Gaffney's
6 fault. She places blame on everyone else -- her attorneys,
7 the judges, the court of appeals, the Bar, Mr. Kangas, Mr.
8 Baumann, and the list goes on and on. The blame is placed
9 on everyone else and she does not take responsibility for
10 anything. Anyone and everyone who comes into contact with
11 Ms. Gaffney related to this Clark Avenue property ends up
12 in the middle of her unfounded allegations that everyone is
13 involved in a cover-up and a conspiracy. This includes,
14 but is not limited to everyone I just mentioned -- the
15 judges, Mr. Kangas, Mr. Baumann, but also several assistant
16 attorney generals, her appellate counsel, me personally,
17 the executive director of the Bar, and the list goes on and
18 on. Everyone else is wrong and everyone else is to blame,
19 but never Ms. Gaffney.

20 This factor has to be taken into consideration
21 and is one that the court relies on heavily when
22 determining whether or not an attorney should receive a
23 significant rehabilitative suspension or should be
24 disbarred from the practice of law. If you are unable to
25 acknowledge that you are wrong, how can you be

1 rehabilitated? The Bar's position is you cannot.

2 This factor is further evidenced by the motion to
3 strike that Ms. Gaffney filed last week. Within that 78-
4 page motion, she does not admit that she did anything
5 wrong, but rather places blame on Bar counsel by naming Bar
6 counsel -- or writing the words "Bar counsel" 991 times.
7 She then goes on to blame the judges and says the word
8 "judge" 197 times. Importantly, not one time does she ever
9 take responsibility for her own actions. This is repeated,
10 typical conduct by Ms. Gaffney and is another example of
11 why her license to practice law should be removed.

12 Factor 3.2(b)(9), substantial experience in the
13 practice of law, Ms. Gaffney did testify that she had been
14 practicing for 38 years and that necessarily establishes,
15 in and of itself, that aggravating factor, substantial
16 experience in the practice of law. This is considered an
17 aggravating factor, Your Honor, because when an attorney
18 has been practicing for a substantial period of time, the
19 attorney's expected to know the rules and to know better.

20 We would ask that you find all seven of those
21 aggravating factors have been proven, established by the
22 evidence, and enhance the recommended discipline for Ms.
23 Gaffney.

24 Standard 3.3, which lists the mitigation factors,
25 although Ms. Gaffney did not present testimony on her own

1 behalf that establishes her lack of disciplinary
2 proceedings, the Bar is willing to stipulate to that
3 mitigating factor. That being said, the Bar provided Your
4 Honor with a case, the Florida Bar v. Koepke, K-o-e-p-k-e,
5 327 So.3rd 788 and that is a 2021 case. In that case, the
6 Supreme Court of Florida held that disbarment is still an
7 appropriate discipline in cases where an attorney lacked
8 prior disciplinary history. So it is not required that
9 they have a disciplinary history before disbarment is
10 issued as a sanction.

11 Also in mitigation, Ms. Gaffney provided
12 character witnesses over the past two days in support of
13 what the Bar presumes she'll be asking for, which is that
14 Your Honor find factor 3.3(b)(7), character or reputation.
15 However, the Bar believes that little to no weight should
16 be given to the testimony of the witnesses that testified
17 over the past two days. You will notice, Your Honor, that
18 every single witness that testified in this sanction
19 hearing was listed on her trial exhibit list, have
20 completed affidavits and been attached to every filing in
21 this Bar case, and have been actively involved in all of
22 the underlying cases. Ms. Gaffney has attached affidavits
23 from all of these people in her underlying cases and her
24 whole theme to these list of witnesses is that they support
25 her spurious allegations against the 13th Judicial Circuit

1 judiciary.

2 So we'd ask Your Honor to take that into
3 consideration. They have supported Ms. Gaffney's
4 allegations and are testifying to her character or her
5 experience, but in support of that, she did not provide a
6 single witness outside of those people to testify to her
7 character other than her son, who we do believe was not
8 actively involved in the other litigation. Ms. Gaffney's
9 not provided evidence to support a finding of any of the
10 other mitigating factors and the Bar does not believe any
11 of the other ones apply. We'd ask that Your Honor not find
12 another mitigating factor applies in this case.

13 And then for the case law, Your Honor, I'd like
14 to direct your attention to the Bar's Notice of Filing
15 Authority for Sanctions Hearing, and I'd like to go over
16 some of those cases. I will not go over all of them. Or
17 if Your Honor does have the printouts, it's tab 8, which is
18 The Florida Bar v. Rosenberg. While this case is analogous
19 to Ms. Gaffney's misconduct, it does not cover all of Ms.
20 Gaffney's misconduct, and the Bar's position is Ms. Gaffney
21 should receive a higher suspension than a one-year based on
22 the numerous instances of misconduct, the ongoing pattern
23 of misconduct, and the existence of many other aggravating
24 factors.

25 In the Rosenberg case, the court gave a one-year

1 suspension after the attorney refused to acknowledge the
2 wrongful nature of his misconduct and continued to
3 relitigate the underlying case and continued his abusive
4 litigation practices throughout the Bar disciplinary
5 proceedings. The Bar has provided this case to show that
6 Ms. Gaffney has also engaged in similar misconduct.

7 Tab 12, Your Honor, is The Florida Bar v.
8 Rheinstein. The Bar did go into quite a lot of detail in
9 its memorandum outlining how this is analogous to Ms.
10 Gaffney. And in that case, the court held that despite
11 having no prior disciplinary history, the attorney was
12 disbarred for filing numerous frivolous pleadings and
13 taking positions unsupported by the facts or the law,
14 attempting to prove an elaborate conspiracy theory in order
15 to force a settlement, then made unsubstantiated
16 accusations against opposing counsel to the court that
17 counsel was under federal investigation.

18 Similar to Ms. Gaffney, the allegations of
19 conspiracy theories, frivolous pleadings, et cetera, are
20 the basis for why Mr. Rheinstein was disbarred. That is a
21 recent case in 2022 and we think directly applicable to
22 what we're seeing here.

23 Tab 13, Your Honor, is The Florida Bar v. Burkich
24 case. I also did go into detail on that in my memorandum
25 and would rely in my argument for that case.

1 For tabs 14 and 15, the court in that case --
2 while this is an old case, did want to bring your attention
3 that because of the severity of the misconduct. Even back
4 in 1989, the court issued a three-year suspension for an
5 attorney who willfully and knowingly disobeyed orders and
6 judgments of the court and pursued a course of conduct
7 designed to disrupt the orderly process of the judicial
8 system in order to serve his own ends as he alone defines
9 them.

10 The Bar believes that this is directly applicable
11 to the conduct we've seen by Ms. Gaffney, know that she
12 very much believes in everything that -- all of her
13 positions and everything she's been doing in these
14 underlying litigations, but when the law directly
15 contradicts that and the courts make rulings over and over
16 and over again, you cannot continue to do whatever you
17 would like to do, despite the law and despite the rules
18 regulating the Florida Bar.

19 We did also point out for Your Honor that the
20 dissent in that case they said dissented that it should
21 have been a three-year and should have been a disbarment.
22 Because this was back in 1989 and Supreme Court is harsher
23 in its sanctions, the Bar does believe disbarment is
24 appropriate today.

25 For tab 20, Your Honor, The Florida Bar v.

1 Chestnut, an attorney was disbarred where he repeatedly
2 attempted to circumvent the court's discovery orders and
3 made misrepresentations.

4 Here, we have a lot more rule violations, a lot
5 more misconduct involved by Ms. -- I'm sorry -- committed
6 by Ms. Gaffney, and a lot more rule violations. So we do
7 believe that this case also supports, since it's 2019, a
8 finding of disbarment for Ms. Gaffney.

9 Tab 21 is The Florida Bar v. Roman. In that
10 case, the court concluded that disbarment was necessary
11 when an attorney filed three separate frivolous lawsuits
12 against attorneys, made false allegations, failed to comply
13 with discovery requests and orders, withheld evidence, and
14 evaded service of a deposition subpoena.

15 This is all conduct we've seen by Ms. Gaffney in
16 addition to other misconduct and again, is analogous to
17 what we're seeing and therefore supports the Bar's position
18 of disbarment.

19 Tab 22 is The Florida Bar v. Keitel. That
20 attorney impugned the judiciary and again, we're seeing
21 made allegations of a conspiracy involving attorneys and
22 judges. So this is the second case the Bar found that
23 involves an attorney alleging conspiracy theories against
24 the judiciary and other fellow judges (sic). In both of
25 these cases, the Supreme Court of Florida has found that to

1 be completely inappropriate, unprofessional, below the
2 standards, and warranting disbarment.

3 The Bar also provided Your Honor on tab 24 The
4 Florida Bar v. Gwynn. The Bar provided this case to Your
5 Honor because of the sheer number of rule violations. In
6 that case, Gwynn committed 15 separate rule violations and
7 did only receive a 91-day suspension, so we did want to
8 provide that to Your Honor as a case that is out there.

9 However, this case was from ten years ago, and
10 the Supreme Court has been much harsher with attorneys
11 since that case. Further, the court in that case found
12 many mitigating factors in favor of the respondent, which
13 Your Honor, the Bar's position is we do not have here.

14 Tab 26 is The Florida Bar v. Patterson. That is
15 a case wherein the attorney impugned the judiciary in
16 violation of 4-82 and 4-84(d) and engaged in conduct
17 prejudicial to the administration of justice. That
18 attorney received a two-year suspension.

19 However, Your Honor, that was conduct that
20 occurred in one case, not occur over multiple cases and it
21 was not ongoing misconduct. All of the violations were
22 within one court case and the referee and the Supreme Court
23 of Florida took that into consideration.

24 Here, Ms. Gaffney continues that misconduct in so
25 far as recent as her filings last week or in her suing me

1 personally and the Florida Bar on the first day of trial,
2 making more conspiracy allegations. It's ongoing and it
3 never ends and that needs to be taken into consideration.

4 Tab 27 is The Florida Bar v. Spolter. Sorry.
5 The attorney in that case received a one-year suspension
6 although the attorney had no prior discipline. She made
7 baseless claims against a judge, wasted judicial resources,
8 continuously filed motions to disqualify, and presented
9 testimony based upon false information knowing that the
10 filings had no allegations or merit.

11 The Bar found that to be analogous and wanted to
12 provide it to Your Honor. I do want to point out that the
13 reason it's distinguished from Ms. Gaffney was that Ms.
14 Gaffney has been found guilty of more than double the
15 amount of rules that Ms. Spolter was found guilty of. And
16 Ms. Spolter was not found guilty of lack of candor or
17 deceit and misrepresentation, which are arguably the two
18 most serious rules an attorney can violate. So the Bar
19 believes that receiving a discipline more than a one-year
20 suspension is warranted in this case.

21 The final case, Your Honor, is tab 28, The
22 Florida Bar v. Klein. That case, the court found that
23 disbarment was required where the attorney improperly
24 sought favorable forum in which to litigate, knowingly
25 disobeyed obligations to the tribunal, intentionally

1 disobeyed court orders, filed frivolous pleading, and
2 engaged in dishonest conduct prejudicial to the
3 administration of justice.

4 Every single one of those instances of misconduct
5 is also what we have here with Ms. Gaffney. She violated
6 all the rules related to those misconduct, and again, case
7 law does support disbarment.

8 Lastly, Your Honor, Ms. Gaffney is asking that
9 she receive an admonishment as a part of her sanction
10 rather than disbarment or a suspension. To date, she has
11 not provided Your Honor with any legal basis or precedent
12 to support that request, but rather asks for it because
13 that's what she wants. That is not how the law works and
14 there needs to be precedent in the standards that support
15 what the sanction is going to be. She has not provided
16 case law to support the admonishment, Your Honor, because
17 it doesn't exist. We did a lot of research into it. The
18 case law that we found that was analogous to the 13 rules
19 that were violated, the plethora of pattern of misconduct
20 and aggravating factors, and the case law that we found and
21 provided to Your Honor and are listed on the Notice of
22 Filing Authority, it is not case law that supports a
23 request that she receive an admonishment.

24 When her misconduct is applied to the standards
25 and the case law, disbarment is the only appropriate

1 outcome. Her conduct is nowhere near the high standards of
2 this profession and her continued behavior warrants nothing
3 other than disbarment. We ask Your Honor recommend
4 disbarment and payment of the Bar costs in your
5 recommendation to the Supreme Court of Florida.

6 THE COURT: Is that it?

7 MS. GUINAND: Yes, Your Honor.

8 (RESPONDENT'S CLOSING ARGUMENT UNDER SEPARATE COVER)

9 REBUTTAL CLOSING ARGUMENT BY THE FLORIDA BAR

10 MS. GUINAND: Your Honor, just as to the
11 mitigating factors, argument is not evidence. There was
12 not a single piece of evidence that was entered into the
13 record for the sanctions hearing for Ms. Gaffney, so they
14 have to rely on just the testimony that was presented and
15 the testimony does not support many of those factors that
16 Mr. Macchitelli just mentioned. We'd ask Mr. Macchitelli
17 to rely on just the evidence in the record in his written
18 supplement of the closing and not things outside of the
19 record.

20 And just wanted to point out for the personal or
21 emotional problems factor, that needs to be relevant to at
22 the time she engaged in the misconduct, so the unfortunate
23 passing of her husband which occurred this past December is
24 irrelevant to all of the underlying misconduct in the Bar's
25 complaint and should not be taken into consideration as

1 misconduct.

2 And the argument that there was unreasonable
3 delay, there was a lot more written there that needs to be
4 proven by the respondent. Again, there was no evidence of
5 any of that presented by Ms. Gaffney, should not be taken
6 into consideration just because Mr. Macchitelli's providing
7 argument on same.

8 That's it, Your Honor.

9 (END OF REQUESTED PORTION)

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CERTIFICATE OF TRANSCRIBER

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STATE OF FLORIDA
SUPREME COURT OF FLORIDA

I, Lisa Ann Lopez, ELECTRONIC TRANSCRIBER, certify that I was authorized to and did electronically transcribe the closing arguments of the Florida Bar in THE FLORIDA BAR V. TERESA MARIE GAFFNEY, Supreme Court Case No. SC21-938, held on Tuesday, August 9th, 2022 via video teleconference; and the transcript, pages 1 through 18, is a true and correct transcription from the provided audio recording, to the best of my ability.

I FURTHER CERTIFY that I am not a relative, employee, attorney, or counsel of the parties, nor am I a relative or employee of any of the parties' attorneys or counsel connected with the action, nor am I financially interested in the action.

DATED this 9th of September, 2022.



Lisa Ann Lopez, CER/CET-1178.

Notary Public



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