

**IN THE DISTRICT COURT OF APPEAL
THIRD DISTRICT OF FLORIDA**

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CASE NO. 3D2023-2151
L.T. CASE NO. 2019-9489 CA 01

RAZ OFER,

Appellant,

v.

OPUSTONE, LLC., *and all others.*

Appellee.

APPELLANT'S REPLY BRIEF

RAZIEL OFER

PRO SE

By: /s/ *Raziel Ofer*

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PREFACE

Appellee, RODRIGUEZ IV PA, was the post-judgment collection attorney for Opustone LLC, the Plaintiff below, and for the purposes of this Reply Brief shall hereinafter be referred to as “Appellee.” Appellant, RAZIEL OFER, was the Defendant below and for the purposes of this Reply Brief, he will hereinafter be referred to as Appellant.

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The record transmitted by the clerk of the lower court has been filed with this Court. References to the record are designated as “R” followed by the appropriate page designations.

In order to facilitate review, the Appellant has prepared a Supplemental Appendix of certain relevant documents pursuant to Rule 9.220, Fla. R. App. References to the Appendix shall be designated as “**R:000_ _**” followed by the appropriate tab designation. Appellant has also cross-referenced each of the docket entries referenced in this Reply Brief with their identifying docket number below “**DE_**”

REPLY

I.

APPELLEE’S COUNSEL RONIEL RODRIGUEZ IV AND HIS EXPERT WITNESS ON POST JUDGMENT LEGAL FEES—ATTORNEY STEPHEN T. MILLAN—CONTINUE TO VIOLATE THE FLORIDA BAR RULES REGARDING ATTORNEY CLIENT CONFIDENTIALITY IN THE PRESENCE OF THIS HONORABLE COURT

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In his Answer brief Appellee’s legal counsel Roniel Rodriguez IV maintains he has provided this Court with the “actual” letter attorney Stephen T. Millan sent Appellant OFER within a week of their meeting and which Appellee’s counsel claims demonstrates the matters discussed at the attorney client meeting between attorney Stephen T. Millan and his prospective client, Appellant OFER, were not related to the case below which Appellee’s counsel maintains “...[h]ad not even been filed at the time of the meeting.”

The fact that Appellee’s counsel claims he is now providing this Court with the “actual” letter attorney Stephen T. Millan sent Appellant OFER on March 26, 2019 is further evidence attorneys Stephen T. Millan and Appellee’s counsel Roniel Rodriguez IV continue to violate the Florida Bar rules with impunity. In fact, Appellees counsel Roniel Rodriguez IV’s allegation that he is now providing this Court with the “actual” letter sent by attorney Stephen T. Millan to Appellant OFER is further proof attorney Stephen T. Millan did in fact disclose confidential, attorney-client

communications by and between attorney Stephen T. Millan and his prospective client, Appellant OFER, to Appellee's counsel, Roniel Rodriguez IV, the latter who had no problem soliciting, obtaining, and publishing attorney-client communications to the detriment of Appellant OFER.

Appellee's counsel also maintains that when attorney Stephen T. Millan and Appellant OFER had their attorney-client meeting the week of March 18, 2019, Plaintiff OPUSTONE had not yet filed the action below. Except Appellee's counsel failed to disclose to this Honorable Court that attorney Stephen T. Millan sent his prospective client, Appellant OFER, correspondence that in part, memorialized their attorney client meeting on March 26, 2019, and *the next day*, on March 27, 2019, OPUSTONE filed the action below. **[R:0001]**

II.

“...[A] BIZARRE WORLD OF ABSURD CONSPIRACY THEORIES THAT PERCOLATE FROM THE MIND OF THE APPELLANT...”

These are the words of Appellees legal counsel Roniel Rodriguez IV when describing the irrefutable facts in this case and conduct which occurred starting in March, 2019, and which was undertaken by and between attorney Roniel Rodriguez IV, and his expert witness on fees in

this case and suite mate since 2016 at the time, attorney Stephen T. Millan. The undeniable hard facts that form the basis of the instant appeal are a far cry from conspiracy theories, are simple and straightforward, and consist of the following:

In March, 2019 Appellant OFER was referred to attorney Stephen T. Millan by one of Appellant OFER's attorneys, and in order to handle various civil matters and/or disputes he was having, including but not limited to disputes with Plaintiff OPUSTONE regarding flooring materials used to renovate his real estate located at 1560/1568 Drexel Avenue, Miami Beach, Florida. During the week of March 18, 2019, Appellant OFER met with attorney Stephen T. Millan with a view to retain him as legal counsel to handle the referenced matters. On March 26, 2019 attorney Stephen T. Millan sent email correspondence to Appellant OFER which memorialized, in part, their attorney-client meeting which had occurred the week prior.

[R:0010]; See infra.

[THIS SPACE INTENTIONALLY LEFT BLANK]

From: **Stephen T Millan** <millanstm@gmail.com>
Date: Tue, Mar 26, 2019 at 9:56 PM
Subject: Non-Representation
To: <raz_ofer2@gmail.com>, Stephen T Millan <SMillan@millanlawfirm.com>

 Millan - Meeting.pdf
60.2kB

.....
MILLAN LAW FIRM, P.A.
.....

March 26, 2019

SENT BY EMAIL
Raz Ofer
raz_ofer2@gmail.com

RE: NON-REPRESENTATION ON TWO PENDING CASES

Dear Mr. Ofer;

It was a pleasure meeting you last week regarding the case_2017-26820-CA-21 before the Honorable Judge David C. Miller and 2016-23188-CA-06 before the Honorable Judge Abby Cynamon

This letter to confirm that. **I have not been retained on either of these two cases, and that I will not take in action on either one unless formally retained. I AM NOT YOUR ATTORNEY AND WILL NOT BE DOING ANY LEGAL WORK ON YOUR BEHALF.** As to the case before Judge Miller as we discussed, a court order requires your to have replacement counsel make an appearance on or before April 2, 2019. As I informed you, should you fail to have an attorney make a formal appearance, the court could dismiss your case or take other detrimental action.

We did not discuss the specifics of the 2016-23188-CA-06 case with Judge Cynamon and accordingly, as with the case with Judge Miller, you must have counsel make an appearance consistent with whatever order has been entered by the court, failing which, your case could be dismissed or the court could take other detrimental action

We also discussed the Drexel issues and my recommendations.

Sincerely yours,

Stephen T. Millan, Esq.

150 West Flagler Street, Suite 1675, Miami, FL 33130 305-363-2745 SMILLAN@MillanLawFirm.com

[R:0010]

Appellant OFER did not retain the legal services of attorney Stephen T. Millan. Thereafter, on December 9, 2022 Appellee's legal counsel, Roniel Rodriguez IV proffered the expert testimony of attorney Stephen T. Millan in this matter, and against OFER at the lower court level for the purpose of getting the lower court to impute legal fees. **[DE 183; DE 184; DE 185; DE 186; DE 187]** At the time of the December 9, 2022 hearing where attorney Stephen T. Millan testified as an expert, attorney Stephen T. Millan never disclosed to the lower court that Appellant OFER was a prospective client with whom he met about the same OPUSTONE matter was the subject of the lawsuit filed by OPUSTONE on March 27, 2019, one (1) day after attorney Stephen T. Millan sent the aforementioned correspondence to Appellant OFER. **[R: 0001]**

On December 9, 2022 Appellee's counsel, Roniel Rodriguez IV, failed to disclose to the lower court or Appellant OFER's then legal counsel, Mr. David Winker, the financial and other benefits conferred upon expert witness Stephen T. Millan by Appellee's legal counsel, attorney Roniel Rodriguez IV. **[DE 183; DE 184; DE 185; DE 186; DE 187]** For example, attorney Roniel Rodriguez IV and his business partner, Stuart R. Kalb, covered attorney Stephen T. Millan's office rent since attorney Stephen T. Millan removed from the bench in 2016 for directing racist comments to a

defendant and his family and which were in his courtroom. As another example, Appellee's counsel Roniel Rodriguez IV frequently referred cases to attorney Stephen T. Millan for profit and the latter generated income from said referrals. In fact, on April 14, 2023, attorney Stephen T. Millan actually filed an appearance as counsel in this matter in the court below at the behest of Appellee's counsel, Roniel Rodriguez IV. **[DE 241;DE 272]**
[R:0014]

Unfortunately, on December 9, 2022 Appellant's then counsel, David Winker, Esq., who was handling the hearing on the post-judgment legal fees where attorney Stephen T. Millan testified against his prospective client—Appellant OFER—was unaware that Appellant OFER was a prospective client of expert witness Stephen T. Millan regarding this very same matter with OPUSTONE. **[R:0012]** And, Appellant OFER was not present at the December 9, 2022 hearing. **[R:0012]**

In the case currently before this Honorable Court attorney Stephen T. Millan shared confidential information, documents, and communications Appellant OFER shared with him during their attorney client meeting the week of April 18, 2019, with attorney for OPUSTONE, Roniel Rodriguez IV. Specifically, post-judgment counsel's expert witness on fees, attorney Stephen T. Millan, had confidential information related to Appellant OFER's

financial condition and assets, including but not limited to valuable real estate that Appellant OFER owns and that could be used against Appellant OFER to collect on the sham OPUSTONE judgment, which is exactly what occurred in the instant case.

Based upon the foregoing facts, the Lower Court abused its discretion by failing to grant Appellant OFER'S Rule 1.540 Motion to Vacate the December 12, 2022 Order Granting Attorney's Fees Based on the Conflict of Interest by and Between Appellee's Expert Witness on Fees—Attorney Stephen T. Millan and Appellant OFER who was a prospective client of Attorney Stephen T. Millan since March 18, 2019 and where attorney Stephen T. Millan disseminated the Attorney-Client Communications and attorney-client documents Appellant OFER shared with Appellant OFER and gave the latter information to counsel for OPUSTONE Roniel Rodriguez IV and which formed the basis of the lawsuit which resulted in the instant case.

III.

APPELLEE'S ANSWER BRIEF DOES NOT DISPUTE THAT POST JUDGMENT COUNSEL'S EXPERT WITNESS ON THE AWARD OF POST JUDGMENT LEGAL FEES—ATTORNEY STEPHEN T. MILLAN—HAD A CONFLICT OF INTEREST AND COULD NOT TESTIFY AS AN EXPERT WITNESS AGAINST APPELLANT OFER SINCE APPELLANT OFER WAS A PROSPECTIVE CLIENT OF ATTORNEY STEPHEN T. MILLAN REGARDING THE SAME EXACT CIVIL MATTER WITH PLAINTIFF OPUSTONE AND WHERE ATTORNEY STEPHEN T. MILLAN RECEIVED

CONFIDENTIAL INFORMATION FROM APPELLANT OFER THAT WAS USED TO APPELLANT OFER'S DISADVANTAGE IN THE SAME OPUSTONE MATTER

Contrary to Appellee's baseless allegations that Appellant's initial brief is the "...[l]atest exhibition of conflation, confusion, and baseless accusations ungrounded in law and unsupported by facts or evidence...", the issues raised in the instant appeal lodged by Appellant OFER are very clear, direct and concise—they concern similar conduct and facts that have been previously ruled upon by this Honorable Court and which can be reconciled with the matter of Lopez v. Flores, 223 So.3d 1036 (Fla. 3rd DCA 2017) and its progeny.

In this case Appellant OFER was a prospective client of Appellee's expert witness on post-judgment legal fees since the week of March 18, 2019 regarding the OPUSTONE matter, among others. In fact, as discussed herein, OPUSTONE filed its civil action against Appellant OFER on March 27, 2019—one (1) day after attorney Stephen T. Millan sent Appellant OFER email correspondence memorializing some of the matters discussed during their attorney client meeting the week of April 18, 2019. **[R:0010; R:0001]**

Based upon the foregoing facts, this Honorable Court must therefore conclude the trial court departed from the essential requirements of law by denying Appellant's Rule 1.540 Motion to Vacate the Final Judgment

Awarding Post Judgment Attorney's Fees totaling \$39,765.00 dollars, based on conflicts of interest by and between Appellee's expert witness on post-judgment attorney's fees—attorney Stephen T. Millan—and the latter's prospective client in the same exact matter—Appellant OFER—thereby resulting in irreparable injury to Appellant OFER. See State Farm Fla. Ins. Co. v. Seville Place Condo. Ass'n, Inc., 74 So.3d 105, 108 (Fla. 3d DCA 2011).

Specifically, Appellant OFER has demonstrated the trial court erred in its determination that there were no conflicts of interest by and between Appellee's expert witness on post judgment fees—attorney Stephen T. Millan—and Appellant OFER, to whom the post-judgment legal fees were being imputed, where during the week of March 18, 2019, Appellant OFER became a prospective client of post-judgment counsel's expert witness on fees—Stephen T. Millan—regarding the same exact litigation with Plaintiff OPUSTONE pre suit. Appellant OFER has likewise demonstrated the trial court erred in its determination that there was no proof that confidential information was actually disclosed by Appellant OFER to post-judgment counsel's expert witness—attorney Stephen T. Millan, that could be used to the disadvantage of Appellant OFER. See Gutierrez v. Rubio, 126 So.3d at 320-321 (Fla. 3rd DCA 2013).

Along that same vein, Appellant OFER has proven the trial court erred in its determination that there were no conflicts of interest by and between Appellee's expert witness on post judgment legal fees—attorney Stephen T. Millan—and Appellant OFER, to whom the post-judgment legal fees were being imputed. To add insult to injury, on April 14, 2023 attorney Stephen T. Millan filed a Notice of Appearance in the OPUSTONE post judgment proceedings at the behest of post-judgment legal counsel, Roniel Rodriguez IV, which was directly adverse to the interest of Appellant OFER, and despite the fact Appellant OFER was a prospective client of attorney Stephen T. Millan regarding the same exact litigation with Plaintiff OPUSTONE pre suit.

[R:0014]

The trial court likewise erred in denying Appellant OFER's Rule 1.540 Motion to Vacate the Attorney's Fee Award whereas here, the referenced conflicts of interest were never disclosed to the lower court by Plaintiff's post-judgment legal counsel Roniel Rodriguez IV or his expert witness—attorney Stephen T. Millan—despite the fact they were both fully aware Appellant OFER was a prospective client of post-judgment counsel's expert witness—Stephen T. Millan—regarding the same exact matter at the pre-suit stage. More importantly, Appellant OFER's counsel—Mr. David Winker—who was handling the December 9, 2022, hearing where post-judgment counsel's

expert witness on fees testified, was not aware at the time of the hearing that Appellant was a prospective client of post-judgment counsel's expert witness on fees—attorney Stephen T. Millan—regarding the same exact litigation with OPUSTONE in the pre-suit stages. **[R:0012]**

Based upon the foregoing facts, there can be no question Appellee's post-judgment counsel, Roniel Rodriguez IV, obtained an unfair informational and tactical advantage in this litigation as a result of the information disclosed by attorney Stephen T. Millan to the latter regarding Appellant's assets—as but one example—and which he obtained from his prospective client—Appellant OFER. For example, attorney Stephen T. Millan learned from Appellant OFER that the latter owned multiple hotels and/or apartment buildings in Miami Beach through a holding company and/or limited liability company—1560/1568 Drexel Ave LLC, the latter which owned real estate located at: 1560/1568 Drexel Avenue and which was valued in excess of \$40 million dollars. Although ownership of the hotel and apartment building owned by Appellant OFER located at 1560/1568 Drexel Ave was transferred to another of his corporations--DRO 15R LLC—Appellee's counsel, Roniel Rodriguez IV, moved for the turnover of the corporate stock of 1560/1568 Drexel Ave LLC, which attorney Roniel Rodriguez IV purchased at the Sheriff's sale for \$5.00 because he believed

1560/1568 Drexel Ave LLC still owned the real estate located at: 1560/1568 Drexel Avenue.

For reasons which are still under investigation and are likewise being looked at by the Florida Bar, attorney Roniel Rodrigues IV took possession and control of Appellant OFER's hotel and apartment building located at 1560/1568 Drexel Avenue, which attorney Roniel Rodriguez IV acquired by being the highest bidder at the Sheriff's sale, bidding \$5.00, through his corporate entity, AJAR HOLDINGS LLC when the Sheriff auctioned off the shares of 1560/1568 Drexel Ave LLC. Presently, AJAR HOLDINGS LLC is a foreign corporation exclusively owned by Appellee's counsel, Roniel Rodriguez IV.

Moreover, according to Appellee's counsel Roniel Rodriguez IV, the purpose of the stock turnover of 1560/1568 Drexel Ave LLC and subsequent Sheriff's sale of the latter was to satisfy the supposed \$105,000.00 dollar judgment held by Plaintiff OPUSTONE, yet the latter *did not receive a single dollar* from Appellee's counsel, Roniel Rodriguez IV's acquisition of Appellant OFER's hotel and apartment building. Based on the foregoing, Plaintiff's counsel Roniel Rodriguez IV engaged in fraud and has stolen from his own client—OPUSTONE—where he used the OPUSTONE judgment to facilitate the turnover of the 1560/1568 Drexel Ave LLC's shares that he

believed still owned Appellant OFER's hotel and apartment building located at 1560/1568 Drexel Avenue, Miami Beach, Florida in order to acquire the latter property valued in excess of \$40 million dollars for himself—not his client. And, to date, Appellee's counsel Roniel Rodriguez IV has never filed a satisfaction of judgment in this case and still maintains his post-judgment attorney's fees totaling \$39,765.00 dollars, remain outstanding. Hence it appears Appellee's counsel Roniel Rodriguez IV attorney's fees have not been satisfied despite the fact attorney Roniel Rodriguez IV took Appellant OFER's real estate in Miami Beach, Florida valued in excess of \$40 million dollars, and which generate no less than \$200,000.00 dollars per month in income.

OPUSTONE judgment as the pretext for requesting the Court to order Appellant OFER to turnover the shares of 1560/1568 Drexel Ave LLC.

IV.

APPELLANT OFER IS NOT REQUIRED TO DISCLOSE THE SPECIFICS OF THE COMMUNICATIONS BY AND BETWEEN HIMSELF AND ATTORNEY STEPHEN T. MILLAN

In his answer brief Appellee's counsel Roniel Rodriguez IV maintains Appellant OFER failed to identify or provide this Court with "a single document" that was provided by Appellant OFER to attorney Stephen T. Millan during the course of their attorney client meeting in April, 2018 and

claims no such evidence exists.

According to well established caselaw in this district, the Appellant is not required to disclose the specifics of the communications by and between himself and attorney Stephen T. Millan as this would defeat the confidential nature of the information. See Health Care & Ret. Corp. of Am. Inc. v. Bradley, 944 So. 2d 508, 512 (Fla. 4th DCA 2006) (“It would appear to defeat the confidential nature of the information if the former client were required to prove what confidential information was revealed to its former attorney.”); Lopez v. Flores, 223 So.3d 1033 (Fla. 3rd DCA 2017).

However, as but one example, post-judgment counsel’s expert witness on fees, attorney Stephen T. Millan, had confidential information related to Appellant OFER’s financial condition and assets, including but not limited to valuable real estate that Appellant owns and that could be used against Appellant in the event of a judgment, which is exactly what occurred in the instant case.

V.

THE CASELAW RELIED UPON BY APPELLEE IN THE ANSWER BRIEF CANNOT BE RECONCILED WITH THE FACTS OF THE INSTANT CASE AND ARE THEREFORE NOT CONTROLLING AND SHOULD NOT BE RELIED UPON BY THE COURT

It is well settled that in order to establish that attorney-client relationship existed, thereby giving rise to irrefutable presumption that

confidences were disclosed, the law does not require a long or complicated attorney/client relationship to fulfill the requirements for disqualification, and it is not necessary to prove that confidential communications were disclosed because once the relationship is established, an irrefutable presumption arises that confidences were revealed to the attorney. See Metcalf v. Metcalf, 785 So.2d 747 (Fla. 5th DCA 2001). The existence of the attorney/client privilege does not depend upon whether the client actually hires the attorney; it is enough if the client consults the attorney with intentions of employing him or her professionally. Id. In considering whether the attorney/client privilege applies to disqualify an attorney from opposing a former client, the focus is on the perspective of the person seeking out the lawyer, not on what the lawyer does after the consultation. See Metcalf, 785 So.2d 747 (Fla. 5th DCA 2001).

In State Farm Mutual Automobile Insurance Co. v. K.A.W., 575 So.2d 630, 633 (Fla.1991), the supreme court held that under the Rules of Professional Conduct, the party seeking disqualification must establish the following:

“(1) an attorney-client relationship existed, thereby giving rise to an irrefutable presumption that confidences were disclosed during the relationship, and (2) the matter in which the law firm subsequently represented the interest adverse to the former client was the same or substantially related to the matter in which it represented the former client.”

In order to establish the first prong of this standard, the law does not require a long or complicated attorney/client relationship to fulfill the requirements for disqualification, and it is not necessary to prove that confidential communications were disclosed because once the relationship is established, an irrefutable presumption arises that confidences were revealed to the attorney. *Id.*; Key Largo, 759 So.2d at 693 (citing McPartland v. ISI Inv. Servs., Inc., 890 F.Supp. 1029, 1031 (M.D.Fla.1995)). Moreover, the existence of the attorney/client privilege does not depend upon whether the client actually hires the attorney. Dean v. Dean, 607 So.2d 494 (Fla. 4th DCA 1992), *rev. dismissed*, 618 So.2d 208 (Fla.1993). It is enough if the client consults the attorney with intentions of employing him or her professionally. *Id.* In considering whether the attorney/client privilege applies to disqualify an attorney from opposing a former client, the focus “is on the perspective of the person seeking out the lawyer, not on what the lawyer does after the consultation.” *Id.* at 499; *see also* Gerheiser v. Stephens, 712 So.2d 1252 (Fla. 4th DCA 1998) (holding that co-defendant's mother's conversation with attorney who later represented defendant was protected by attorney/client privilege, even though mother did not retain attorney, because mother was acting as agent for her son for purpose of securing legal representation for him); Lane v. Sarfati, 676 So.2d 475, 476 (Fla. 3d DCA

1996); The Florida Bar v. King, 664 So.2d 925, 927 (Fla.1995) (holding that a fee is not necessary to form an attorney/client relationship) (citing Dean).

Whether or not a person who consults a lawyer is deemed a “client,” for purposes of evidence code depends on subjective intent of person seeking consultation rather than what lawyer does. F.S.A. § 90.502(1)(b). The [privilege] rests on the need for the advocate and counselor to know all that relates to the client's reasons for seeking representation if the professional mission is to be carried out. See Trammel v. United States, 445 U.S. 40, 51, 100 S.Ct. 906, 913, 63 L.Ed.2d 186 (1980). Hence, it logically follows that the privilege does not turn on the client actually hiring or engaging the attorney; it is enough if the client merely consulted the attorney about a legal question “with the view to employing [the attorney] professionally * * * although the attorney is not subsequently employed.” Keir v. State, 152 Fla. 389, 394, 11 So.2d 886, 888 (1943).

According to Appellant OFER’s testimony during the November 21, 2023 hearing on his Rule. 1.540 Motion to Vacate the Post Judgment attorney’s fee award, he clearly met with attorney Stephen T. Millan with the view to employing him professionally:

“Mr. OFER: It doesn't matter whether I retained him or not, but when I speak with the lawyer, consult with him in detail, the meeting lasted for three hours. Okay? And he and I gave him

all the relevant documents, including for this case. He is conflicted. And, as you know, Judge, some people do it like, if there is a specialized area, they go and talk with ten lawyers and tell them all the details. Just so the party in this in a particular area, cannot be any lawyer because we have already discussed it with that. So once you once you meet with the lawyer and The Florida Bar Rules are very clear. In fact, I called The Florida Bar today...”

[R:0023 at P. 12]

Once it is established that an attorney/client relationship exists, the party seeking disqualification must show that the matter in which the law firm subsequently represented the interest adverse to the former client is the same matter or substantially related to the matter in which it represented the former client. See K.A.W., 575 So.2d at 633; see *also* Key Largo, 759 So.2d at 693; Lee v. Florida Dep't of Ins. & Treasurer, 586 So.2d 1185 (Fla. 1st DCA 1991); Junger Util. & Paving Co. v. Myers, 578 So.2d 1117 (Fla. 1st DCA 1989).

Florida law is clear that “disqualification is appropriate where a party obtains an unfair informational or tactical advantage through the disclosure of privileged information to that party's counsel.” See Castellano v. Winthrop, 27 So. 3d 134, 137 (Fla. 5th DCA 2010). “While the right of a party to choose his or her attorney is deeply engrained in our jurisprudence, that right is not unlimited. A party does not have the right to an attorney possessing confidential information of the adversary so as to provide the

party with an unfair informational or tactical advantage.” See Alan B. Garfinkel, P.A. v. Mager, 57 So. 3d 221, 224 (Fla. 5th DCA 2010). Indeed, attorneys with “inside” knowledge are expressly restricted from using it for the gain of others. *Id.*; See R. Regulating Fla. Bar 4-1.6, 4-1.7, 4-1.8, and 4-1.9.

When dealing with this type of motion, each case must be decided on their own facts and circumstances. See Balaban v. Philip Morris United States, Inc., 240 So. 3d 896, 899 (Fla. 4th DCA 2018). Courts must balance the interest of protecting the integrity of the judicial process against the right of a party to choose its counsel. *Id.* “[T]here is a countervailing public interest in ensuring that a litigant is free from the risk of opposition by a lawyer once privy to that litigant’s confidences and who is able to use those confidences against that litigant.” See Alan B. Garfinkel, P.A., 57 So. 3d at 225.

Disqualification in the present case would have guaranteed that the case was well presented to the lower court, that a client’s confidential information is not misused, and that loyalties are protected. See Balaban, 240 So. 3d at 899 (*citing* Restatement (Third) of the Law Governing Lawyers, § 6 *cmt. i* (2000)). “Our legal system cannot function fairly or effectively if an attorney has an informational advantage in the form of confidences gained during a former representation of his client’s current opponent.” See State

Farm Mut. Auto. Ins. Co. v K.A.W., 575 So. 2d 630, 632 (Fla. 1991).

Here, the trial court applied the incorrect legal standard, failed to balance the interests of the parties and the justice system, and improvidently denied Appellant OFER's Rule 1.540 Motion to Vacate because the lower court incorrectly determined Appellant OFER met with attorney Stephen T. Millan as a prospective client *prior* to Appellee's counsel, Roniel Rodriguez IV, getting involved in the case, and prior to summary judgment being filed.

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[See R:0023 at P. 28, Line 13-22]

The relevant focus and analysis set forth in the binding and relevant case precedent cited herein would have instead focused on the fact Appellant OFER met with attorney Stephen T. Millan the week of March 19, 2019, in order to retain him as legal counsel to represent Appellant OFER in a number of civil matters, including but not limited the ongoing pre-suit dispute with Plaintiff OPUSTONE. In fact, as set forth herein and in the lower tribunal, on March 26, 2019, attorney Stephen T. Millan emailed Appellant OFER to memorialize certain matters they discussed in their attorney-client meeting. **[R:0010]** The following day, on March 27, 2019, Plaintiff OPUSTONE filed suit against Appellant OFER. **[R:0001]**

Thereafter, on December 9, 2022, Appellee's counsel, Roniel Rodriguez IV, proffered the testimony of his expert witness on the issue of

Roniel Rodriguez IV's post-judgment legal fees that would be imputed to Appellant OFER. And, that expert was attorney Stephen T. Millan—Appellant OFER's "prospective attorney" with whom Appellant OFER met regarding the same OPUSTONE matter pre-suit the week of March 18, 2019, only days before the OPUSTONE complaint was filed in the lower tribunal on March 27, 2019. **[R:0001]**

In the case at bar, post judgment counsel Roniel Rodriguez IV vis-a-vie attorney Stephen T. Millan, obtained an unfair informational advantage against Appellant OFER when he obtained information regarding Appellant OFER's assets, finances, real estate investments and holdings, etc from attorney Stephen T. Millan and was provided information that could be used in the collection of a judgment entered against Appellant OFER. Plaintiff's Post Judgment legal counsel's expert witness received the confidential information from Appellant OFER directly. See R. Regulating Fla. Bar 4-1.6; R. Regulating Fla. Bar 4-1.9; *Id.* at comment ("The essential question is whether, but for having represented the former client, the lawyer would know or discover the information.").

Attorney Stephen T. Millan's March 26, 2019 correspondence to Appellant OFER confirms he met with Appellant OFER who was a prospective client and references some of the matters discussed by

Appellant OFER with attorney Stephen T. Millan. [R:0010] More importantly, post-judgment counsel Roniel Rodriguez IV was well-aware of his expert witness—Stephen T. Millan’s—conflict of interest and he knew Appellant OFER was a prospective client of Stephen T. Millan in the same exact OPUSTONE matter.

In this case there is an “[i]rrefutable presumption that confidences were disclosed” by and between Appellant OFER and post-judgment counsel’s expert witness on legal fees—attorney Stephen T. Millan—because it has been shown in this record that there was once it is shown an attorney-client relationship existed. See State Farm Mut. Auto. Ins. Co. v. K.A.W., 575 So.2d 630, 633 (Fla. 1991); Metcalf v. Metcalf, 785 So.2d 747, 749 (Fla. 5th DCA 2001); Garner v. Somberg, 672 So.2d 852, 854 (Fla. 3d DCA 1996). This Court has likewise held that the courts have refused to recede from those cases employing that irrefutable presumption even though the attorney with whom presumed confidences were ***disclosed is not subsequently employed***. See Metcalf, 785 So.2d at 749–50; Garner, 672 So.2d at 854; Dean v. Dean, 607 So.2d 494, 497 (Fla. 4th DCA 1992).

VI.

PRAYER FOR RELIEF

Based upon the foregoing facts, Appellant OFER respectfully requests this Honorable Court to remand the instant matter to the lower court with instructions to vacate the lower court's December 12, 2022 Order Awarding Attorney's Fees Pursuant to Fla.R.Civ.Pro. 1.540 based upon the undisclosed conflicts of interest by and between post judgment creditor's counsel, Roniel Rodriguez IV and his expert witness on attorney's fees, attorney Stephen T. Millan (hereinafter MILLAN). **[DE 277; R:0009]** In this case, the record plainly and irrefutably demonstrates that confidential information obtained by MILLAN from Appellant OFER—MILLAN's prospective client since March 18, 2019—was shared by MILLAN with post judgment creditor's counsel for OPUSTONE, attorney Roniel Rodriguz IV, the latter who used said information to the disadvantage of Appellant OFER, and the lower court should have therefore granted Appellant OFER's November 21, 2023, Motion to Vacate the Lower Court's December 12, 2022 Order Awarding Attorney's Fees Pursuant to Fla.R.Civ.Pro. 1.540. See Fla. Bar R. 4-1.18(c); Lopez v. Flores, 223 So.3d 1033, 1036 (3rd DCA 2017).

Respectfully submitted,

/s/ Raziel Ofer

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CERTIFICATE OF TYPEFACE COMPLIANCE

I hereby certify that this Answer Brief was prepared in Arial Style 14-point font, in compliance with Rule 9.045(b) of the Florida Rules of Appellate Procedure, and does not exceed 3,400 words, in compliance with Rule 9.210(a)(2)(B).

/s/ Raziel Ofer

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CERTIFICATE OF SERVICE

I certify that on April 4, 2024, pursuant to and in compliance with Rule 2.516, Florida Rule of Judicial Administration, a copy of the foregoing was filed through the Florida E-Filing portal and served on all parties of record.

/s/ Raziel Ofer

Raziel Ofer

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