

IN THE DISTRICT COURT OF APPEAL
THIRD DISTRICT OF FLORIDA

CASE NO: 3D24-0334

THE LAW OFFICES OF
JONATHAN B. HARRIS, P.A., et al.,

Appellants,

v.

VIRAGE CAPITAL MANAGEMENT, L.P. et al.,

Appellees.

APPELLANT'S INITIAL BRIEF

**On Appeal from the Circuit Court of the Eleventh
Judicial Circuit in and for Miami-Dade County**

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**THE LAW OFFICES OF
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I. STATEMENT OF THE CASE AND FACTS

A. INTRODUCTION

This appeal raises issues of first impression. First, Appellants could find no reported cases in any jurisdiction where the sole asset of a law firm facing levy and execution of its stock to satisfy a final judgment, is a multi-million-dollar global settlement affecting the firm's innocent, third-party clients who were plaintiffs against either corporate or individual defendants in their cases below.¹

Second, Appellants could find no reported cases in Florida defining the constitutional limits of Fla. Stat. Ann. §§ 56.061 and 678.1121(5). Even the Supreme Court's holding in *Street v. Sugerman*, 202 So. 2d 749 (Fla. 1967), that a professional legal service corporation is not exempt from the levy and sale of its stock to a non-professional judgment creditor under Fla. Stat. Ann. §§ 621.09-621.11, sheds no light on the constitutional parameters of these statutes.

Indeed, *Sugerman* leaves unanswered many questions raised herein relating to certain externalities like a client's sacred,

¹ Exhibits to Appellants' Initial Brief are set forth in the Appendix filed herewith and will be designated throughout as (App._).

confidential relationship with their attorney and a client's confidential interest in their cases and settlements. Instead, the *Sugerman* court not only lumped together law firms with non-professional legal service corporations, like carpet cleaners and exterminators, it also granted non-professional legal creditors the right to acquire ownership of a law firm's stock by purchasing it at a sheriff's sale, like the Appellees' non-professional legal entities seek to do here.

Hence, first and foremost, Appellants challenge the constitutionality of these statutes on the grounds that, as applied, the trial court erred by denying Appellants and their 96 innocent, third-party, *Engle* and *Broin* clients affected by the court's ruling,² their constitutional rights to procedural due process in violation of Article I, Section 9 of the Florida Constitution. The trial court neither allowed Appellants nor their clients a fair "(1) hearing (2) before an impartial decision-maker, after (3) fair notice of the charges and allegations and (4) with an opportunity to present [their] own case."

² See *Engle v. Liggett*, 945 So. 2d 7246, 7276-77 (Fla. 2006) and *Philip Morris Inc. v. French*, 897 So. 2d 480 (Fla. 3rd DCA 2004).

Neff v. Adler, 416 So. 2d 1240, 1242-43 (Fla. 4th DCA 1982).

Second, the lower court denied the clients' access to courts by refusing to hold an evidentiary hearing in violation of Article I, Section 21 of the Florida Constitution. Accordingly, by denying Appellants' and their clients' rights to due process, the trial court has also violated their rights to equal protection under the law, as guaranteed by Article I, Section 2 of the Florida Constitution. By failing to protect their constitutional rights, the lower court failed to protect the clients' relationship with their counsel and their right to counsel of their choosing, in violation of Rule 4-5.8 of the Rules Regulating the Florida Bar.

B. PROCEDURAL HISTORY

This is an appeal from a non-final order pursuant to Fla.R.App.P. 9.130(c) and 9.130(a)(3)(C)(ii), granting Appellees' right to levy and execute on Appellants' law firm stock without an evidentiary hearing, under Fla. Stat. Ann. §§ 56.061 and 678.1121(5)³ and *Street v. Sugerman*, 202 So. 2d 749 (Fla. 1967).

³ Fla. Stat. Ann. § 56.061 states, in part, as follows:

Lands and tenements, goods and chattels, equities of

(App.1). Appellants, on the one hand, are Defendants/Judgment debtors below. They consist of possible owners or prior owners of said stock, which Appellants cannot locate. By refusing to hold an evidentiary hearing as to who, or which entity, is the legal owner of the stock, the court's order simply loops all possible owners of the stock together as one.⁴

redemption in real and personal property, and stock in corporations, shall be subject to levy and sale under execution.

Fla. Stat. Ann. § 678.1121(5) states as follows:

A creditor whose debtor is the owner of a certificated security, uncertificated security, or security entitlement is entitled to aid from a court of competent jurisdiction, by injunction or otherwise, in reaching the certificated security, uncertificated security, or security entitlement or in satisfying the claim by means allowed at law or in equity in regard to property that cannot readily be reached by other legal process.

⁴ Defendants/Appellants consist of Jonathan B. Harris, *individually*; The Law Offices of J.B. Harris, P.A., an *inactive* Florida professional corporation which last filed its annual report with the Florida Division of Corporations on April 4, 2003; and J.B. Harris, P.A., an *inactive* Florida corporation which last filed its annual report with the Florida Division of Corporations on April 5, 2010; and The Law Offices of Jonathan B. Harris, P.A., the only *active* Florida professional corporation owned and operated by Jonathan B. Harris, *individually*, sometimes doing business under the expired fictitious name of J.B. Harris P.A. Due to Appellees oversight The Law Offices

Appellees, on the other hand, are judgment creditors from a declaratory action which they commenced against Appellants in Texas in 2019. *Virage Capital Management LP, et al., and Phillip T. Howard, et al., v. J.B. Harris, et al.*, Dist. Ct., Harris Co., TX, 127th Jud. Dist., No: 2019-22971. The final judgment only awarded Appellees their attorneys' fees in the amount of nearly \$1 million. Appellees domesticated the final judgment and commenced the collection action below, from which this appeal arises. *Virage Capital Management LP, et al. v. J.B. Harris, P.A., et al.*, Case No: 2022-23001-CA-01 (Fla. 11th Cir.).

In the interim, Appellants appealed the Texas final judgment, the outcome of which an appellate panel will render sometime between now and the end of the year, because the tenure of one of the judges on the panel ends on December 31, 2024. *Harris, et al. v. Virage Capital Management, LP, et al.*, No. 01-22-00882-cv (Tex. App.

of Jonathan B. Harris, P.A. was never a defendant nor a judgment debtor in the collection action below. However, for purposes of this appeal and to simplify matters, The Law Offices of Jonathan B. Harris, P.A. consented to the lower court's jurisdiction during the hearing on Appellees' Amended Motion for the Turnover of Appellants' Stock.

2022).

Significantly, the only asset belonging to Appellants' law firm is a confidential, multi-million-dollar global settlement consisting of 53 *Engle*-progeny cases and 43 *Broin* cases in which Appellants maintain a fee interest, while the *Engle* and *Broin* clients maintain an interest in the settlement.⁵ Were Appellees allowed acquisition of Appellants' firm via purchase of its stock at a sheriff's sale, as ordered by the court, it would have the authority under judicial sanction to hijack the settlement, thereby allowing them to attempt to squeeze more funds from the tobacco Defendants and to disturb the attorney-client relationship by and between Appellants and their 96 clients.

Pointedly, while the lower court refused to hold an evidentiary hearing on Appellees' Motion for the Turnover of the Stock Interest

⁵ Appellants bring to the court's attention an order rendered by Judge Darren Farfante of the Hillsborough County Circuit Court on May 10, 2024, directing non-party tobacco companies to disburse the settlement proceeds to Appellants' 53 *Engle* clients, in accordance with the law governing an assignment for the benefit of creditors action (the "ABC") titled, *In re: Howard & Associates, Attorneys at Law, P.A., assignor, to Larry Hyman, assignee*. Case No: 2021-CA-9064 (Fla. 13th Cir.) (settlement proceeds are exempt from the assignor's estate). (App.2). Since Appellees may appeal the order over the next 30 days, Appellants, as instructed, hereby file their Initial Brief in compliance with the court's April 17, 2024, order.

Owned by Appellants, it also left unanswered numerous questions, not the least of which include (i) whether the court should have taken any action to protect the clients' interest in the settlement; (ii) whether Appellees, who have made it known they will be the highest bidder at the sheriff's sale, must post a bond to protect the clients' interests and in what amount; (iii) whether the Appellees, who have declared in the judicial proceeding in Hillsborough County, n. 5, *supra*, that they intend to "blow up" the settlement to extract a larger sum from the tobacco Defendants and, of course, higher fees for themselves; (iv) whether in light of this harebrained scheme, Appellees could possibly have the clients' best interest in mind, even though the clients have already signed settlement and release agreements with the tobacco Defendants; and (v) whether the order directing the sale of Appellants' stock should also have included protections for a lienor senior to Appellees, *i.e.*, Titan Asset Purchasing LLC., whose attorney, James Webb, stated during the hearing:

Second, that the order should provide that it's not judicial permission to intercede in the relationship between J.B. Harris, an attorney, and their clients. Clients get to pick their attorneys. That's a very important power. And this Court is a

gatekeeper of ethics rules, protector of clients of attorneys who are before the Court. We think that would be appropriate. We just don't want this to be a tool to essentially unwind a many, many million dollars settlement, frustrate my client's ability to recover on its lien, and that's really what this appears to be.

(App.3, 18:1-15).

Instead, the hearing was merely a perfunctory, *pro forma* exercise in determining the validity of the Appellees' lien to facilitate their levy and execution of Appellants stock, by setting a date for the sale. For the court, the solution for all of Appellants' concerns would simply be to post a supersedes bond.

THE COURT: Mr. Harris, let me ask you this. If all of those things are true, and you are deeply concerned about the stock being levied, and, thus, the potential liquidation of your clients, and your rights to represent them, and, ultimately, the gain or return you may receive on your sweat as it relates to your work in those cases, why not simply post a bond?

(App.3, 12:17-23).

But the way -- the best way, I think, for you to insulate yourself against what you believe to be damaged beyond the amount of the judgment being \$800,000, et cetera, is to simply post that bond and then you've got all corners, covered.

(App.3, 13:24-25; 14:1-3)

By determining that a supersedeas bond would cure all of Appellants' ills, the court not only violated Appellants' and their

clients' rights to due process, pursuant to Article I, Section 9 of the Florida Constitution, it also violated the clients' rights of access to the courts, in conformity with Article I, Section 21 of the Florida Constitution, and both the Appellants' and the clients' rights to equal protection under the law, as guaranteed by Article 1, Section 2 of the Florida Constitution.⁶

⁶ While Appellees have launched an attack to take over Appellants' law firm, they have simultaneously initiated in Hillsborough County the ABC, n. 5, *supra*, for the purpose of "blowing up" the settlement, so they may renegotiate it with the tobacco companies for a larger settlement sum and additional attorneys' fees.

Appellees have based this preposterous initiative on the theories that Appellants "under-settled" the clients' claims and that the Appellees are entitled to attorneys' fees from the global settlement under a 2018 tri-party agreement titled, Confidential Settlement Agreement ("CSA"), arising by and among Appellants, Appellees, and the disgraced, disbarred and incarcerated, Tim Howard who, in 2017, Appellees began lending \$30 million to under a line of credit to operate his law firm, Howard and Associates, Attorneys at Law, PA.

On March 24, 2022, the Florida Supreme Court disbarred Howard for stealing client funds. See *The Florida Bar v. Phillip Timothy Howard*, Case Nos: SC19-488 & SC19-1570; L.T. Nos: 2016-00,682(2A); 2019-00,088(2A). The U.S. Attorney for the Northern District of Florida then indicted Howard, who later pled guilty to charges of federal racketeering for operating a Ponzi scheme aimed at defrauding sick and dying NFL players, who were seeking compensation from the NFL's concussion injury fund for concussion related brain injuries.

During the hearing, Appellants' colloquy with the court went as follows:

We're talking about people's individual rights. And the Constitution of Florida and the United States come into play. I and my clients have due process rights, which the Court should be cautious, very cautious of in reaching judgment here. And what I would recommend to the Court is that if it's inclined to grant [Virage's] motion, that it hold an evidentiary hearing to assure that myself, and my clients and other innocent interested third-parties, including a senior lienor, or be given a right to a hearing and present evidence, and to cross-

Howard is now serving 14 years in federal prison in Atlanta, GA. *U.S.A. v. Phillip Timothy Howard*, Case No. 4:22cr43-AW-MAL (N.D. Fla.). See Press Release, U.S. Attorney's Office, N. D. Fla., *Former Florida Attorney Sentenced to 14 Years in Federal Prison For Racketeering Relating to Operation of his Tallahassee Law Firm and Investment Companies*, Nov. 7, 2023.

One issue on appeal in Texas is whether Appellees may step into Howard's shoes to reap the benefit of attorneys' fees from any future litigation from Appellants' *Engle* and *Broin* cases, including the global settlement, which Howard stole from Appellants to use as additional collateral to secure Appellees' \$30 million line of credit.

Of course, the law is so well settled it hardly bears citing, however, under both Florida and Texas law when an attorney is suspended or disbarred, either status is tantamount to withdrawing from a contingent fees case. See *Santini v. Cleveland Clinic*, 65 So. 3d 22 (Fla. 4th DCA 2011); *Carbonic Consultants v. Herzfeld & Rubin, Inc.*, 699 So. 2d 321 (Fla. 3d DCA 1997); *Royden v. Ardoin*, 160 Tex. 338 (Tex 1960)(attorney's disbarment is tantamount to abandonment of a client by knowingly and willfully engaging in a course of conduct which led to his termination and his right to any benefits he may have derived from his work thereafter).

examination. A five-minute motion calendar, as much as I respect Your Honor's ability to look at the essence of these things, is not sufficient. Virage is not interested in merely collecting its attorney's fees, but in taking over this settlement. Mr. Rodriguez cites not one case involving the settlement of any cases in a law firm where it's being taken over and is forced to sell its stock.

(App.3, 10:6 – 23).

Rejecting Appellants' plea, the trial court entered the non-final order from which Appellants have appealed.

II. SUMMARY OF THE ARGUMENTS

By failing to hold an evidentiary hearing before entering an order granting Appellee's motion to transfer the stock of Appellants' law firm, the lower court erred by depriving Appellants and their clients of their rights to due process in violation of Article I, Section 9 of the Florida Constitution.

Because the lower court denied Appellants and their clients rights to due process in violation of Article I Section 9 of the Florida Constitution, the court also denied the clients' rights to access to courts in violation of Article I, Section 21 of the Florida Constitution, and violated Appellants' and their clients' rights to equal protection

under the laws as guaranteed by Article I, Section 2 of the Florida Constitution.

Finally, sections 56.061 and 678.1121(5), Florida Statutes, as applied, are unconstitutional because they allow a judgment creditor the right to disrupt existing attorney client relationships between a firm, subject to levy and execution, and its clients, by usurping a client's right to choose his or her own counsel pursuant to Rule 4-5.8 of the Rules Regulating the Florida Bar.

III. ARGUMENT

A. STANDARD OF REVIEW.

Because this is an appeal from a non-final order where the trial court issued rulings of law, the standard of review is *de novo*. *Citizens Prop. Ins. Corp. v. Manor House, LLC*, 313 So. 3d 579 (Fla. 2021) (appellate court reviews questions of law *de novo*).

B. THE TRIAL COURT ERRED BY DENYING APPELLANTS' AND THEIR CLIENTS' RIGHTS TO PROCEDURAL DUE PROCESS.

Article I, Section 9 of the Florida Constitution provides, in part, "No person shall be deprived of life, liberty or property without due process of law." "Procedural due process rights derive from a property interest in which the individual has a legitimate claim." *Metropolitan*

Dade County v. Sokolowski, 439 So. 2d 932, 934 (Fla. 3d DCA 1983), *petition for review denied*, 450 So. 2d 488 (Fla. 1984). Appellants have as much of a “legitimate claim” to property rights in their law firm, their fees, and in protecting the rights of their clients, as their clients have in the settlement proceeds derived from decades of litigation and collective bargaining with the tobacco defendants under *Engle* and *Broin* to settle their claims for a sum each client found acceptable.

Even though the clients are not parties to this appeal, the trial court had an obligation to protect their interests and failed to exercise it, which is implicated in a section 56.061 and 678.1121(5) proceeding -- even if it meant appointing independent counsel to represent the clients during an evidentiary hearing -- as much as Appellants also have a fiduciary duty to protect their interests, or face sanction. See, *e.g.*, *Erlandsson v. Erlandsson*, 296 So. 3d 431, 434 (Fla. 4th DCA 2020) (“A trial judge in guardianship proceedings has a mandatory statutory obligation to appoint counsel for the alleged incapacitated person.”); *In re Amendments to Rule Regulating the Fla. Bar-Rule 3-6.1*, 295 So. 3d 1147, 1150, (“The Supreme Court of Florida has held that lawyers acting as escrow agents have a fiduciary

duty to protect the interests of all parties with an interest in the escrowed funds whether held in the lawyer's trust account or a separate escrow or fiduciary account.”) citing *Fla. Bar v. Marrero*, 157 So. 3d 1020 (Fla. 2015); *Fla. Bar v. Hines*, 39 So. 3d 1196 (Fla. 2010).

To qualify under due process standards, the opportunity to be heard must be meaningful, full, and fair, and not merely colorable or illusive. In *Fuentes v. Shevin*, 407 U.S. 67, 92 S.Ct. 1983, 32 L. Ed. 2d 556 (1972), the Supreme Court determined that a citizen must receive notice and have an opportunity to be heard before being deprived of a substantial right or property interest. “[T]he Court has traditionally insisted that, whatever its form, opportunity for that hearing must be provided before the deprivation at issue takes effect.” *Fuentes*, 407 U.S. 67 at 82; *See also, United States v. James Daniel Good Real Prop.*, 510 U.S. 43, 48, 114 S.Ct. 492, 498 (1993) (“Our precedents establish the general rule that individuals must receive notice and an opportunity to be heard before the Government deprives them of property.”).

Florida law is in accord. *See Sokolowski*, 439 So. 2d at 934 (“To qualify under due process standards, the opportunity to be heard

must be meaningful."); *Tauber v. State Bd. of Osteopathic Medical Examiners*, 362 So. 2d 90, 92 (Fla. 4th DCA 1978) ("Fundamentally, due process requirements are satisfied if an opportunity for **a meaningful hearing** is provided prior to the final deprivation of a property interest."), *cert. denied*, 368 So. 2d 1374 (Fla. 1979)(emphasis added); *Pelle v. Diners Club*, 287 So. 2d 737, 738 (Fla. 3d DCA 1974) ("It is fundamental that the constitutional guarantee of due process, which extends into every proceeding, requires that the opportunity to be heard be full and fair, not merely colorable or illusive."); *accord*, *State Plant Bd. v. Smith*, 110 So. 2d 401, 407 (Fla. 1959); *Ryan's Furniture Exchange, Inc. v. McNair*, 120 Fla. 109, 162 So. 483, 487 (Fla. 1935). *See also*, *Neff v. Adler*, 416 So. 2d 1240 ("The fundamentals of procedural due process are (1) a hearing (2) before an impartial decision-maker, after (3) fair notice of the charges and allegations, (4) with an opportunity to present one's own case.")

Nevertheless, "the manner in which due process protections apply vary with the character of the interests and the nature of the process involved." *Agency for Health Care Admin. v. Associated*

Indus., 678 So. 2d 1239 (Fla. 1996) (“Admittedly, the scope of due process jurisprudence has not been as well defined as other areas of American law. It has been written that ‘due process is flexible and calls for such procedural protections as the particular situation demands.’”) citing *Morrissey v. Brewer*, 408 U.S. 471, 481, 92 S. Ct. 2593, 2600, 33 L. Ed. 2d 484 (1972).

Although “[t]he legislature may determine by what process and procedure legal rights may be asserted and determined[,] provided that the procedure adopted affords reasonable notice and a fair opportunity to be heard before rights are decided,” *Peoples Bank of Indian River County v. State Dep’t of Bank & Fin.*, 395 So. 2d 521, 524 (Fla. 1981).

Sections 56.061 and 678.1121(5), as applied, offer no such protections to debtors seeking to enforce their constitutional rights by moving for an evidentiary hearing prior to the loss of their property. Significantly, the court cannot ignore the collateral damage these statutes exact on innocent third-parties like Appellants’ 96 *Engle* and *Broin* clients, or on a first lien holders like Titan. In this

case, the statutes, as applied, clearly violate the due process rights of Appellants, as well as innocent third-parties.

Because sections 56.061 and 678.1121(5), utilized in tandem with the blessings of *Sugerman*, 202 So. 2d 749, throw law firms into the same category as every non-professional service corporations, like dry cleaners and window washers, their reach ignores specially classified externalities like the sacredness of the attorney client relationship and a client's right to retain lawyers of their choosing. Accordingly, this court should find the lower court's order in violation of Appellants' due process rights, as well as those of the clients, in violation of Article I, Section 9 of the Florida Constitution.

C. THE TRIAL COURT ERRED BY DENYING CLIENT'S ACCESS TO COURTS IN VIOLATION OF ARTICLE I, SECTION 21 OF THE FLORIDA CONSTITUTION, AND VIOLATED APPELLANTS' AND THEIR CLIENTS' RIGHTS TO EQUAL PROTECTION UNDER THE LAWS AS GUARANTEED BY ARTICLE I, SECTION 2 OF THE FLORIDA CONSTITUTION.

Article I, Section 21 of the Florida Constitution provides: "The courts shall be open to every person for redress of any injury and justice shall be administered without sale, denial or delay." In *Kluger v. White*, 281 So. 2d 1 (Fla. 1973), the Supreme Court formulated the

test courts should apply in determining whether a statute is violative of this constitutional guarantee:

[W]here a right of access to the courts for redress for a particular injury has been provided by statutory law predating the adoption of the Declaration of Rights of the Constitution of the State of Florida, or where such right has become a part of the common law of the State pursuant to Fla.Stat. § 2.01, F.S.A., *the Legislature is without power to abolish such a right without providing a reasonable alternative to protect the rights of the people of the State to redress for injuries, unless the Legislature can show an overpowering public necessity for the abolishment of such right, and no alternative method of meeting such public necessity can be shown.* (emphasis supplied).

In general, courts recognize that legislative enactments are presumed constitutional, *Jetton v. Jacksonville Electric Authority*, 399 So. 2d 396, 398 (Fla. 1st DCA 1981), and have been equally reticent in declaring statutory provisions unconstitutional based on *Kluger, supra*. In the present case, however, the legislature has crafted two statutes that, when acting in tandem, impinge on the constitutional rights of affected, innocent third-parties by denying them their right to access the courts, treating them, instead, like miscellanea whose rights are subverted, with judicial sanction, by those of a law firm's creditors.

As the court in *Henderson v. Crosby*, 883 So. 2d 847, 852 (Fla.

1st DCA 2004), has observed:

Florida courts have addressed the scope of the access-to-courts provision found in the Florida Constitution on many occasions. See, e.g., *Nationwide Mut. Fire Ins. Co. v. Pinnacle Med., Inc.*, 753 So. 2d 55 (Fla. 2000); *Psychiatric Assocs. v. Siegel*, 610 So. 2d 419 (Fla. 1992); *Smith v. Dep't of Ins.*, 507 So. 2d 1080 (Fla. 1987); *Carter v. Sparkman*, 335 So. 2d 802 (Fla. 1976), *receded from on other grounds in Aldana v. Holub*, 381 So. 2d 231 (Fla. 1980); *Kluger v. White*, 281 So. 2d 1 (Fla. 1973); *Lloyd v. Farkash*, 476 So. 2d 305 (Fla. 1st DCA 1985). However, most such cases have construed the provision in the factual context of claims that laws enacted by the legislature have restricted the right of access to the courts, often by abolishing a particular remedy. In *Psychiatric Associates*, the court said (referring to article I, section 21), "The right to go to court to resolve our disputes is one of our fundamental rights." 610 So. 2d at 424.



Notwithstanding the relative abundance of cases addressing the access-to-courts provision, however, neither the parties nor we have discovered any Florida decision directly bearing on the issue presented by this appeal. Here, there is no issue of legislative restriction of the right of access. In fact, properly viewed, there is no issue of 'restriction' of access at all. Rather, the issue is to what extent article I, section 21, requires the Department [of Corrections] to provide more 'affirmative' assistance to inmates in the preparation and filing of litigation papers than does the federal constitution.

In the instant case, while sections 56.061 and 678.1121(5) do not prohibit debtors from accessing courts -- to the contrary debtors

are dragged into court under these provisions -- by its silence, 678.1121(5) implicitly precludes a law firm's innocent, third-party clients from participating in a *pro forma*, pre-sale hearing on a creditor's motion to transfer stock to a sheriff in satisfaction of a law firm's debt. Significantly, the statute also forecloses the possibility of the clients ever joining in an evidentiary hearing to plead their case on the impact such a sale will have on their vested interest in their cases, settlements, and the hallowed relationships they have with their attorneys.

Again, to the extent access to courts is a fundamental right, *Psychiatric Assocs. v. Siegel*, 610 So. 2d 419, the lower court denied the rights of innocent, third-party clients' access to courts by denying their right to an evidentiary hearing. *See Demps v. State*, 696 So. 2d 1296 (Fla. 3rd DCA 1997) ("the constitutional right of access to the courts is violated when a prisoner is housed in an out-of-state facility without either legal reference materials of the state of conviction or reasonable alternative means of access [to such materials].") *citing* *Bounds v. Smith*, 430 U.S. 817, 828, 97 S. Ct. 1491, 52 L. Ed. 2d 72 (1977); *Johnson v. Delaware*, 442 A.2d 1362 (Del. 1982); *Shoats v.*

Commissioner, Pennsylvania Department of Corrections, 139 Pa. Commw. 607, 591 A.2d 326 (Pa.Cmmw.Ct.1991); *State v. Wooten*, 260 So. 3d 1060, 1072 (“Article I, § 24(a) Fla. Const., and rules such as Fla. R. Jud. Admin. 2.420, do not override or supplant the common law as to access to court files, but rather assists its implementation by institutionalizing transparency in the Florida Constitution and the rules ensuring public access to judicial records.”). See also *Owens-Corning Fiberglass Corp. v. Corcoran*, 679 So. 2d 291, 293 (Fla. 3rd DCA 1996) (when an injury occurred but a cause of action could not be pursued because the results of the injury could not be discovered a statute barring the action barred access to the courts and was unconstitutional) citing *Battilla v. Allis Chalmers Mfg. Co.*, 392 So. 2d 874 (Fla. 1980) (holding that repose statute, as applied, unconstitutionally denied plaintiffs' access to court), accord, *Diamond v. E.R. Squibb & Sons, Inc.*, 397 So. 2d 671 (Fla. 1981) (holding “that the operation of section 95.031(2) operated to bar a cause of action before it accrued and thereby denied the aggrieved plaintiff access to the courts.”). Cf. *Pinillos v. Cedars of Lebanon Hospital Corporation*, 403 So. 2d 365 (Fla. 1981) (admissibility of

collateral source evidence in medical malpractice actions upheld); *Purdy v. Gulf Breeze Enterprises, Inc.*, 403 So. 2d 1325 (Fla. 1981) (statute requiring reimbursement of insurer for PIP benefits, where insured recovers from negligent third party, does not deny access to courts); *Chapman v. Dillon*, 415 So. 2d 12 (Fla. 1982) (threshold limits of no-fault statute provide a reasonable alternative to tort action and do not deny access to courts).

D. THE TRIAL COURT ERRED BY DENYING THE APPELLANTS AND THEIR CLIENTS EQUAL PROTECTION UNDER THE LAWS AS GUARANTEED BY ARTICLE I, SECTION 2 OF THE FLORIDA CONSTITUTION.

Article I, Section 2 of the Florida Constitution provides, in part: "All natural persons are equal before the law and have inalienable rights, among which are the right to enjoy and defend life and liberty, to pursue happiness, to be rewarded for industry, and to acquire, possess and protect property... No person shall be deprived of any right because of race, religion or physical handicap."

In *North Broward Hosp. Dist. v. Kalitan*, 219 So. 3d 49, 59 (Fla. 2017), the Supreme Court held that because caps on personal injury noneconomic damages in medical negligence actions provided under the statute, arbitrarily reduce damage awards for plaintiffs who suffer

the most drastic injuries, they violate the Equal Protection Clause of the Florida Constitution. Accordingly, the court found the statute capping noneconomic damages in medical negligence case was “not rationally related to a legitimate government interest.” *Id.*

In the present case, there is no rational relationship between the statutes’ operations and their disruptive and preclusive effect on the rights of innocent, third-party clients, their relationship with counsel, and their right to be included in an evidentiary hearing, when a firm is forced to turn over its stock to a sheriff for sale to satisfy a debt.

Moreover, Appellants were denied the opportunity to present evidence as to the disruptive operation of the statutes on Appellants’ relationship with their clients and the clients’ rights to access the settlement fund. Since the opportunity to be heard must be “meaningful, full and fair, and not merely colorable or illusive,” *Sokolowski*, 439 So. 2d at 934, by refusing to hold an evidentiary hearing the court violated Appellants’ and the clients’ rights to equal protection, because there was no hearing available to the Appellants

and the clients on these external issues, much less one that was “meaningful, full and fair, and not merely colorable or illusive.” *Id.*

Appropriately, sections 56.061 and 678.1121(5), as applied, violate Appellants’ and the clients’ rights to equal protection under Article I, Section 2 of the Florida Constitution. *See Loyd v. State*, 379 So. 3d 1080 (Fla. 2023) (“assess[ing] whether a facially neutral statute that allegedly has a disparate impact violates the Equal Protection Clause of the Fourteenth Amendment, courts apply ‘the rational relationship test unless some evidence of purposeful intent to discriminate has been shown.’”), *citing United States v. Greene*, 995 F.2d 793, 796 (8th Cir. 1993).

E. FLA. STAT. ANN. §§ 56.061 AND 678.1121(5), AS APPLIED, ARE UNCONSTITUTIONAL BECAUSE THEY ALLOW A JUDGMENT CREDITOR TO DISRUPT EXISTING ATTORNEY/CLIENT RELATIONSHIPS BETWEEN A FIRM, SUBJECT TO LEVY AND EXECUTION, AND ITS CLIENTS BY USURPING A CLIENT’S RIGHT TO CHOOSE HIS OR HER OWN COUNSEL PURSUANT TO RULE 4-5.8 OF THE RULES REGULATING THE FLORIDA BAR.

The lower court’s order forcing the sale of Appellants’ stock fails to consider exactly how the operation of Rule 4-5.8, RRTFB, governing the Procedures for Lawyers Leaving Law Firms and the Dissolution of Law Firms, would affect a global settlement of the

dimensions described herein. Especially, where the purchaser of the stock will most certainly be the Appellees, who not only contest the valuation of the settlement, but also seek to “blow it up” so they may try 53 *Engle* cases to verdict or settle them for a higher price.

Rule 4-5.8, RRTFB, states:

(a) Contractual Relationship Between Law Firm and Clients. The contract for legal services creates the legal relationships between the client and law firm and between the client and individual members of the law firm, including the ownership of the files maintained by the lawyer or law firm. Nothing in these rules creates or defines those relationships.

(b) Client’s Right to Counsel of Choice. Clients have the right to expect that they may choose counsel when legal services are required and, with few exceptions, nothing that lawyers and law firms do affects the exercise of that right.

(c) Contact With Clients.

- (1) *Lawyers Leaving Law Firms.* Absent a specific agreement otherwise, a lawyer who is leaving a law firm may not unilaterally contact those clients of the law firm for purposes of notifying them about the anticipated departure or to solicit representation of the clients unless the lawyer has approached an authorized representative of the law firm and attempted to negotiate a joint communication to the clients concerning the lawyer leaving the law firm and bona fide negotiations have been unsuccessful.

- (2) *Dissolution of Law Firm.* Absent a specific agreement otherwise, a lawyer involved in the dissolution of a law firm may not unilaterally contact clients of the law firm unless, after bona fide negotiations, authorized members of the law firm have been unable to agree on a method to provide notice to clients.

(d) Form for Contact With Clients.

- (1) *Lawyers Leaving Law Firms.* When a joint response has not been successfully negotiated, unilateral contact by individual members or the law firm must give notice to clients that the lawyer is leaving the law firm and provide options to the clients to choose to remain a client of the law firm, to choose representation by the departing lawyer, or to choose representation by other lawyers or law firms.
- (2) *Dissolution of Law Firms.* When a law firm is being dissolved and no procedure for contacting clients has been agreed to, unilateral contact by members of the law firm must give notice to clients that the firm is being dissolved and provide options to the clients to choose representation by any member of the dissolving law firm, or representation by other lawyers or law firms.
- (3) *Liability for Fees and Costs.* In all instances, notice to the client required under this rule must provide information concerning potential liability for fees for legal services previously rendered, costs expended, and how any deposits for fees or costs will be handled. In addition, if appropriate, notice must be given

that reasonable charges may be imposed to provide a copy of any file to a successor lawyer.

(e) Nonresponsive Clients.

- (1) *Lawyers Leaving Law Firms.* In the event a client fails to advise the lawyers and law firm of the client's intention in regard to who is to provide future legal services when a lawyer is leaving the firm, the client remains a client of the firm until the client advises otherwise.
- (2) *Dissolution of Law Firms.* In the event a client fails to advise the lawyers of the client's intention in regard to who is to provide future legal services when a law firm is dissolving, the client remains a client of the lawyer who primarily provided the prior legal services on behalf of the firm until the client advises otherwise.

See Donahue v. Vaughn, 721 So. 2d 356 (Fla. 5th DCA 1998); *Dowda & Fields, P.A. v. Cobb*, 452 So. 2d 1140 (Fla. 5th DCA 1984); and *Woodson v. Durocher*, 588 So. 2d 644 (Fla. 5th DCA 1991).

Given that clients have a fundamental right to retain a lawyer of their choosing without interference from others, there are countless issues raised by the operation of Rule 4-5.8, RRTFB, in relation to the forced sale of Appellants' stock pursuant to the lower court's unconstitutional order, which are sure to lead to additional litigation.

Among other things, what will the client letter co-signed by Appellees and Appellants say to the clients; whether Appellees be allowed to send along with the client letter a copy of its unverified, uncertified, unvetted, and non-forensic analysis of the settlement's valuation, prepared and submitted to the ABC court by one attorney, Richard Diaz, who will also represent Appellants' clients on behalf of the Appellees, should the stock sale go through (App.4), *In re: Howard & Associates*, Case No. 2021-CA-9064; whether Appellants, in turn, may send to the clients their Verified Motion to Disqualify Diaz for creating a conflict of interest in violation of Rules 4-1.6; 4-1.7; and 4-1.9, RRTFB, also filed with the ABC court. (App.5 w/o exhibits).

Moreover, since Appellees initiated the ABC as a supplemental proceeding, the trial court should have required them to produce evidence proving who holds the true ownership interests in the stock being sold, as well as why it has ignored the interests of a superior lien holder, Titan.

Because of the uniqueness of the issues in this case, the lower court also should have held an evidentiary hearing to determine the valuation of the global settlement vis-à-vis the debt owed by

Appellants to the Appellees, especially since Appellees contend the Appellants under-settled the clients' cases.

Finally, what happens if Appellants' Texas appeal court publishes an opinion favorable to Appellants after the stock is sold and after Appellees have signed up Appellants clients? How would Appellees make Appellants whole in the face of such a reversal? What happens to the clients? Would the ruling require them to undergo a reverse-Rule 4-5.8, RRTFB, proceeding?

Hence, the unprecedented conundrum created by the unconstitutional application of sections 56.061 and 678.1121(5) as a basis for the trial court's unconstitutional order.

IV. CONCLUSION

For the reasons set forth above, Appellants respectfully requests that this Court reverse the lower courts' Order Granting Judgment Creditors' Amended Motion for Turnover of Stock Interest Owned by Judgment Debtor Jonathan Beryl Harris, on the basis that the order's reliance on sections 56.061 and 678.1121(5), Florida Statutes, as applied, violates Article I Section 9 of the Florida

Constitution, Article I, Section 24 of the Florida Constitution, and Article I, Section 2 of the Florida Constitution.

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CERTIFICATE OF FONT SIZE AND PITCH

Pursuant to Florida Rule of Appellate Procedure 9.210(a)(2)(B), counsel for Appellant hereby certifies that this brief complies with the applicable font and word count requirements because it is written in 14-point Bookman Old Style font and contains less than 13,000 words, excluding those parts omitted from the word count by Florida Rule of Appellate Procedure 9.045(e).

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a true and correct copy of the foregoing was electronically served this **14th** day of **May 2024**, via the Florida e-Portal Filing System and emailed to counsel of record listed on the Service List below:

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