IN THE SUPREME COURT OF FLORIDA

THE FLORIDA BAR,

Petitioner,

v.

SCOT STREMS,

Respondent.

_____/

Supreme Court Case
No. SC20-806

The Florida Bar File
Nos. 2018-70,119 (11C-MES)
2019-70,311 (11C-MES)
2020-70,440 (11C-MES)
2020-70,444 (11C-MES)

RESPONSE IN OPPOSITION TO RESPONDENT'S MOTION TO DISSOLVE ORDER OF SUSPENSION DATED JUNE 9, 2020

Petitioner, The Florida Bar, by and through undersigned counsel, files this Response in Opposition to Respondent's Motion to Dissolve Order of Suspension Dated June 9, 2020, and in support sets forth the facts and argument below.

I. Introduction and Overview

The Petition sets forth an appalling, years-long torrent of misconduct perpetrated by respondent and the Strems Law Firm, P.A. ("SLF"). The substance of The Florida Bar's case is memorialized by a small library of court orders and findings of both fact and law from judges across the state. The affidavits of Judge Gregory P. Holder and Judge Rex M. Barbas breathe life into these papers, offering a candid and first-hand window into the conduct of respondent's firm in the courtroom. On this basis, the Florida Supreme Court granted The Florida Bar's

Petition and entered its Order of Suspension, dated June 9, 2020 ("the Suspension Order").

Respondent complains that the underlying court records do not evidence a sufficiently recent or ongoing ethical catastrophe to justify the imposition of an emergency suspension. This argument is premised on the implicit assurance that the alleged campaign of misconduct is no longer ongoing, having come to an end at some unidentified time. Against this argument, The Florida Bar is grateful for the opportunity to prove that the conduct described in the Petition continues to unfold presently. This Response is accompanied by orders and other documents from four additional, recent cases that fit hand-in-glove with the pattern alleged in the Petition, including a sanctions order against SLF entered since the Suspension Order was entered. These exhibits put to rest any doubt that the alleged conduct is ongoing.

For his second principal argument, respondent purports to occupy a unique position in the legal profession—the sole partnership at a mid-sized firm who is utterly unaccountable for the actions of any of his subordinates. Even as his employee-attorneys repeatedly drove his client's cases over the brink of court-sanctioned dismissal, respondent was ostensibly blind to their ethical breaches and powerless to stop their misconduct. This is a central conceit of respondent's case, and for the reasons explained below, it is simply not believable.

II. The Standard of Review under Rule 3-5.2(i)

For respondent to prevail on this Motion, he must show that The Florida Bar "cannot demonstrate a likelihood of prevailing on the merits on any element of the underlying rule violations." Rule 3-5.2(i), R. Reg. Fla. Bar. By its plain language, Rule 3-5.2(i) does not contain any temporal language or immediacy requirements. The Florida Supreme Court has already determined that the Petition demonstrated a sufficiently immediate threat to public harm that it granted the requested suspension. No part of Rule 3-5.2(i) purports to dissolve an emergency suspension on the basis of immediacy. The analysis described in the rule is a weighing of The Florida Bar's case on the rule violations, not an exercise in measuring the time between the alleged misconduct and the date of the suspension.

Respondent's argument on this issue is rooted in a misguided reading of *The Florida Bar v. Guerra*, 896 So. 2d 705 (Fla. 2005). *Guerra* concerns an attorney whose license was suspended under Rule 3-5.2 for his misuse of trust funds in a Ponzi-like scheme. *See id.* at 706. When he learned The Florida Bar had begun its investigation, he ceased this conduct and hired an accountant to bring his trust accounts into compliance. *See ibid.* The attorney then moved to dissolve the suspension order for essentially the same reason as the respondent—the alleged conduct was supposedly no longer continuing. *See ibid.* The Court rejected that argument, reasoning:

> In these proceedings, Guerra admits that he violated trust accounting rules, but argues that the emergency suspension should be dissolved because he is no longer engaged in this misconduct. This is simply not a valid basis for dissolution of the emergency suspension. If it were, the purpose of the emergency suspension would be entirely defeated. We expect that when one is discovered violating trust requirements, he or she most assuredly will immediately discontinue the conduct.

Id. at 706-707 (emphasis supplied). To be clear: the Court did not decline to lift the suspension because the conduct was interrupted by the suspension order, as respondent incorrectly states. The Court declined to dissolve the suspension because the issue of immediacy was "not a valid basis for dissolution" in the first place. *Ibid.*

Guerra provides for even further relevant comparison with the instant case. In *Guerra*, the attorney repaid his clients prior to moving for dissolution, but the harm in this case by its nature cannot be repaid. Respondent cannot restore lost time and resources to the courts that have sanctioned SLF, nor can respondent's clients resurrect lawsuits that have been dismissed with prejudice due to his firm's misconduct. Furthermore, it bears noting that the attorney in *Guerra* ceased his misconduct when he learned of The Florida Bar's investigation. The instant case is based upon four separate files dating back to 2018, and the respondent received notice of the most recent complaint months before the Petition was filed. As this Response will show, the misconduct of respondent and SLF has still not ceased.

Accordingly, both the facts and law of *Guerra* strongly support leaving the suspension in place.

The operative test of Rule 3-5.2(i) is whether The Florida Bar can prove a likelihood of succeeding on the merits of the alleged rule violations. For the reasons set out in the Petition and this Response below, The Florida Bar satisfies this requirement with ease.

III. The Pattern of Conduct Alleged in the Petition Continues Presently

In essence, respondent contends that the Petition does not allege sufficiently recent or ongoing conduct that would warrant an emergency suspension. *See* Motion, p. 4. Setting aside the requirements of Rule 3-5.2 discussed above, respondent's argument possesses no merit because the pattern of conduct alleged in the Petition continues to unfold presently in courtrooms across the state.

Respondent's argument rests on the observation that "The Bar has cited no orders entered in the nineteen (19) months prior to the filing of the Petition." *See id.* The pattern of misconduct alleged in the Petition, however, is not limited to some rigid formulation of sanctions orders. Rather, the Petition clearly alleges an obstructive and dilatory litigation practice designed to serve SLF's interests at the expense of its clients, its opponents, and the judiciary. That unethical conduct continues to produce a menagerie of appalling outcomes through late 2019 and well into the present, as discussed below.

A. ***Robinson v. Safepoint Ins. Co.***
11th Judicial Circuit, Case No. 2015-019932-CA-01
Hon. Maria Santovenia
SLF Counsel: Gregory Saldamando; Scot Strems[1]

This is the companion to the *Robinson* case described in the Petition. *See* Petition, ¶ 14(d). On October 3, 2019, Judge Santovenia entered her order dismissing the case with prejudice based upon plaintiff's fraudulent testimony. *See generally* Exhibit A-1. As with the companion case, this fraud was brought to light based upon phone records that proved that the plaintiff had been communicating with SLF's favored remediation company (All Insurance Restoration Services, Inc. or "AIRS") well before the alleged loss took place. The court explained that "the Plaintiff perpetuated the fraud upon the Court and misrepresented facts that are central to this claim, thereby interfering with the judicial system's ability to impartially adjudicate this claim." *Id.*, p. 14. The court's decision was being appealed, but that appeal was recently dismissed on June 23, 2020, meaning that Judge Santovenia's order is now unchallenged. *See generally* Exhibit A-2.

No doubt that respondent will attempt to foist blame for these sanctions onto his client on the basis that the order includes no explicit finding of attorney misconduct. This hardly resolves the ethical concerns surrounding the case,

[1] Both respondent and Gregory Saldamando signed the complaint in this case, both are listed as counsel of record, and both are copied on the dismissal order.

however, particularly in light of such considerations as respondent's obligations of candor under Rule 4-3.3 or its duty of fairness under Rule 4-3.4. Simply put, respondent cannot sit back and claim innocence while his client repeatedly submits false testimony to the court. The two cases illustrate precisely why such conduct is unethical and sanctionable.

B. ***Clay v. Safepoint Ins. Co.***
15th Judicial Circuit, Case No. 50-2017-CA-000076
Hon. Howard Coates, Jr.
SLF Counsel: Orlando Romero, Michael Perez, David Herrera, Scot Strems[2]

In the course of litigating the captioned action, the insurer's counsel discovered that the loss at issue had already been repaired at the expense of the City of Delray. *See generally* Exhibit B-1. This fact would naturally be fatal to the plaintiff's damages case, so the plaintiff and SLF allegedly concealed the relevant documents for over a year as discovery raged on. *See id.*, pp. 1-2. Consequently, the insurer filed a motion to strike the plaintiff's pleadings and dismiss the case with prejudice. *See generally id*.

With a methodical recitation of the facts, the insurer's motion sets forth each instance at which the plaintiff and SLF had an opportunity or obligation to produce the information in question (*e.g.* depositions and written discovery requests). *See id.*, pp. 3-10. More specifically, the insurer emphasizes that the plaintiff and

[2] Messrs. Romero and Herrera are listed on the docket as counsel for plaintiff. Mr. Perez signed the complaint. The civil cover sheet was signed by respondent.

SLF allegedly failed to disclose the plaintiff's repairs and relief from the City of Delray on several occasions, including: two rounds of written discovery responses, two days of the plaintiff's sworn deposition testimony, two expert disclosures, and one round of expert discovery responses. *See id.*, ¶ 4. Instead, the plaintiff "continued to pursue a completely speculative estimate prepared by a third party who did not do any of the work." *Id.*, p. 11. That "third party" was Contender Claims Consultants, Inc. ("Contender"), who had been previously struck as a witness in the case. *See id.*, p. 4, fn.1.

In its motion, the insurer explains at length how it was prejudiced by litigating a case to the brink of trial against a plaintiff whose loss had already been repaired. *See id.*, pp. 12-15. The insurer goes on to argue that the proportionate sanction for plaintiff's and SLF's conduct was dismissal of the case with prejudice under *Kozel* (among other authority). *See id.*, pp. 15-20. Furthermore, to dispel any doubt, the insurer explicitly alleges SLF's involvement in the concealment of the evidence during its discussion of the requisite *Kozel* factors. *See id.*, pp. 18-19.

A hearing on the motion to strike was held on October 11, 2019. *See* Exhibit B-2. The facts and circumstances of the case are thoroughly recited, and the court engages in thoughtful *Kozel* analysis with counsel. In the process, Judge Coates makes several observations directly relevant to the instant proceedings. For example:

THE COURT: But if your client had the repairs done by the City of Delray Beach and those repairs were fully done, where are your damages then? And at what point to you contend that -- I mean, it seems to me there's got to be some point where you have a professional responsibility to disclose to the other side the City of Delray Beach's involvement in the repairs. Or certainly your client has a duty to answer a question directly: "Does anybody have knowledge about the repairs?"

…

THE COURT: As a representative of the court, are you going to tell me that the City of Delray Beach didn't do the repairs at issue in this case?

MR. ROMERO: I don't know.

THE COURT: Counsel, how can you say that? After we have been on the trial docket, it's just disingenuous for me to sit up here and believe that you don't know, as the attorney for the plaintiff, whether or not the repairs have been done by the City of Delray Beach and when.

I'm going to ask you one more time. And keep in mind your professional obligation to this court. Are you taking the position as to whether these repairs had been completed by the City of Delray Beach at this point?

MR. ROMERO: I do not know the scope of what has been required as it pertains to what was lost in terms of the damages that occurred in this case. I do not know exactly what the City of Delray Beach repaired.

THE COURT: How can that be, counsel? When you are plaintiff's counsel, you're tasked with the responsibility of coming in and being prepared to try your client's case on the issue of damages? You're now at trial. And you're sitting here now, in October of 2019, telling me you don't know the scope or extent of the repairs done by the City of Delray Beach?

> In my mind, you would absolutely have to have that knowledge in order to be able to put on a good faith case of your client's damages in this case. Am I missing something here as to why you would be unaware of these damages?
>
> I mean, I agree in basic Black Letter Law that in providing your damages you would have to know to what extent and the scope of the work that was done by the City of Delray Beach so you could then tell the jury what the damage would be to your client. The actual damages.
>
> MR. ROMERO: There is no estimate from the City of Delray Beach, your honor. I can't come up with a number out of the blue.

Id., 21:12-23:25. Judge Coates goes on to offer his unvarnished impression of SLF's position:

> THE COURT: This really reeks of an attempt by the plaintiff to double dip in terms of recovery here and getting repairs done by the City of Delray Beach and not disclosing that and then seeking full damages in this case. So I want to know at this point what is going on here. Now you're saying you knew nothing about that but you didn't bring your client here to testify today.

Id., 25:24-26:6.

On October 15, 2019, Judge Coates entered an order granting the insurer's motion to strike. *See* Exhibit B-3. The order did not set out explicit findings of fact, but it instead gave the parties 45 days to "mediate the existing issues left in this matter," and expressly reserved the jurisdiction "to issue an opinion applying *Kozel v. Ostendorf*, 629 So. 2d 817 (Fla. 1993)." *Ibid*. According to the mediator's report, the mediation was successful, and SLF voluntarily dismissed the case with

prejudice on October 31, 2019, obviating further proceedings on sanctions. *See* Exhibits B-4; B-5.

The *Clay* case concluded just last fall, and it bears all the familiar hallmarks of the pattern alleged in the Petition. Respondent's firm refuses to practice the barest diligence and omits obviously critical facts in discovery. As their fee claim accumulates, SLF's attorneys stand aside and watch unapologetically as their client runs headlong into dismissal. Meanwhile, the court and the defense expend considerable effort and resources litigating this claim for over two years.

C. ***Mojica v. United Prop. & Cas. Ins. Co.***
17th Judicial Circuit, Case No. CACE 16-011382
Hon. Keathan Frink
SLF Counsel: Christopher Narchet, Michael Perez, Scot Strems[3]

On February 17, 2020, Judge Frink dismissed the captioned lawsuit due to plaintiff's fraud on the court. *See generally* Exhibit C-1. In short, the plaintiff made various claims regarding the condition of the subject property and repairs of the same, which he supported in discovery responses and deposition testimony. *See id.*, ¶¶ 1-4. The plaintiff's ex-wife provided testimony and other evidence directly contradicting the plaintiff's claims. *See id.*, ¶¶ 2, 3, 5. The court dismissed the case, finding that:

[3] Mr. Narchet is indicated as plaintiff's counsel on the docket, and he is copied on the dismissal order. Respondent signed the civil cover sheet, and his name is likewise on the dismissal order. Michael Perez signed the complaint.

> by clear and convincing evidence, [] the facts above demonstrate a pattern of conduct by the Plaintiff, repeated over and over in discovery responses and deposition testimony, showing utter disregard for the legal system, utter disregard for the sanctity of an oath, and a willful lack of compliance with discovery procedures developed to ensure a fair trial.

Id., ¶ 7.

Days ago on June 22, 2020, Judge Frink entered an order granting sanctions against SLF based upon essentially the same conduct as the dismissal order. *See* Exhibit C-2. To this end, the court noted that SLF represented the plaintiff from the discovery of his alleged loss through the entirety of litigation, and even assisted in the hiring of AIRS to address the supposed damage. *See id.*, p. 2. For the four years of this litigation, the plaintiff and SLF failed to produce any records demonstrating that plaintiff paid for materials or labor to repair his alleged loss. *See id.*, p. 4. Judge Frink noted that there was "no record evidence showing [SLF] attempted to secure records from [the plaintiff] evidencing the repairs he testified he completed… Either [SLF] failed to collect and retain those records or the records simply do not exist." *Id.*, pp. 4-5. "The lack of truthfulness regarding the damage and repairs to the kitchen establishes that the Plaintiff and his attorneys intentionally set in motion a calculated scheme to unfairly hamper the Defendant's defense." *Id.*, p. 5. Furthermore, SLF "knew or should have known at the time Plaintiff made the above-referenced claims that the claims were not supported by the material facts necessary to establish those claims." *Ibid.* Accordingly, judge

Frink awarded the insurer entitlement to fees as required by Fla. Stat. § 57.105. *Ibid.* Naturally, the hearing to determine the amount of these sanctions has not been held. All the same, this matter is yet another case that has met an ignominious end due to SLF's continuing efforts to obfuscate the discovery process, precisely as described in the Petition.

D. ***McEkron, et al. v. Security First Ins. Co.***
Case No. 2017-006245-CA-01, 11th Judicial Circuit
Hon. Jennifer D. Bailey
SLF Counsel: Orlando Romero, Michael Perez, Scot Strems[4]

On or about March 15, 2017, SLF filed suit on behalf of plaintiffs in the captioned case. From the complaint, this appears to be a typical SLF case alleging $22,129.19 in damages relating to a roof leak. From there, the course of litigation is meticulously recited in the insurer's recently-filed motion to strike SLF's fee claim. *See generally* Exhibit D.

On February 7, 2019, counsel for the insurance company sent a settlement offer to respondent and SLF attorney Orlando Romero. *See generally id.*, ¶¶ 7, 48-49. At that time, the plaintiffs relied on an estimate of $32,952.88 for their damages. Under the terms of this settlement offer, the plaintiffs would have received $40,500.00 exclusive of the attorney's fee claim under § 627.428, which would be determined at a court hearing. *See ibid.* Put simply, this settlement offer

[4] Respondent, Mr. Romero, and Mr. Perez are each identified as plaintiffs' counsel in the court's docket. Mr. Perez also filed the complaint, and respondent signed the civil cover sheet.

would ensure that SLF's clients received an approximately 123% recovery, and SLF would be entitled to whatever fees it could prove. Incredibly, respondent and Mr. Romero refused this offer.

Instead of making their clients whole, respondent and Mr. Romero elected to go to trial, at which a jury awarded the plaintiffs $10,000.00. This represents less than a quarter of the insurer's settlement offer, and well under a third of the plaintiffs' alleged damages. In spite of the disastrous outcome for their clients, SLF still had a potential claim for attorney's fees under § 627.428 since they had technically prevailed at trial.

After written discovery requests regarding SLF's fee claim, and after a court order regarding the same, and after defense counsel's motion to enforce that court order, SLF finally produced an affidavit and fee sheet roughly six months after trial. While the plaintiffs' documented losses never exceeded the low five-figures, SLF claimed over $320,000.00 in fees. *See* Exhibit [MOTION], ¶ 19. Naturally, the defense undertook further discovery of this sizable fee claim and deposed two witnesses: plaintiffs' counsel Orlando Romero (in his capacity as SLF's records custodian for purposes of the claim) and Christopher Aguirre, a former managing partner of SLF.[5] Both of these witnesses made alarming admissions as to the

[5] Mr. Aguierre's deposition transcript from the *McEkron* case was already filed as Exhibit S to the Petition.

veracity of SLF's fee claim, prompting the insurer to file its motion to strike the fee claim just days ago on June 22, 2020.

The insurer's motion distills a great deal of material, and walks the reader through several important revelations:

- Mr. Romero's admission that he discarded time records before the fee sheet he submitted was ever created. *See* Exhibit D, ¶ 25.

- Mr. Romero's timesheet was substantially based upon his guesswork, and he admits to exaggerating the time entries for several tasks that were otherwise objectively verifiable (*e.g.* billing 4 hours for a mediation that was invoiced for 2.5; billing 5 hours for two hours of testimony). *See id.*, ¶¶ 30-32.

- Mr. Romero's admission that on several occasions, the time entries that he recorded were often excessive in light of the work purportedly done. *See id.*, ¶¶ 33.

- $31,500 in trial and trial preparation billings for an attorney who Mr. Romero could not identify, and who he testified did not participate in the trial. *See id.*, ¶ 34.

- Over $70,000 billed in monthly strategy meetings by attorneys who could not recall basic facts about the case (such as the cause of loss), and who seemed unable to recall these very meetings. *See id.*, ¶¶ 37-43.

- Mr. Aguirre's unequivocal testimony that these monthly strategy meetings did not take place, and that the time sheet included entries for other work that was not performed. See id., ¶¶ 44-45.

Absent only the final sanctions (for which the insurer now makes a powerful case), the *McEkron* matter follows form perfectly with the other cases discussed in the petition. It is a three-year-old case over a five-figure water loss, the record of which is replete with discovery motions and other evidence of delay (*e.g.*, a July

25, 2018 order to show cause against plaintiffs and a December 7, 2017 order to compel against plaintiffs). The client harm may not have come in the form of a *Kozel* dismissal, but it is present nonetheless as respondent chose to trade his clients' $40,500.00 settlement offer for a $10,000.00 verdict.

In no uncertain terms, the Petition alleges a pattern of conduct in which respondent and his firm frequently and willfully place their own financial interests above their professional obligations, and above the interest of their client. It is difficult to imagine a more powerful example of such conduct than respondent's rejection of the insurer's final settlement offer. The offer significantly exceeded the plaintiffs' damages, and excluded SLF's fees, which would be decided by the court like any other fee award. Respondent's only conceivable motive for such a decision was a desire for a hefty fee claim fortified by hours of supposed trial work.

In the end, the *McEkron* case possesses all of the hallmarks of SLF's obstructive and dishonest practice, as described in the Petition. The matter is presently being litigated, and with the insurer's motion pending, SLF's conduct is once again the subject of judicial scrutiny. Accordingly, it is unreasonable and disingenuous for respondent to argue that the pattern of conduct alleged in the Petition is no longer ongoing. If anything, the *McEkron* case is an object lesson in why the Suspension Order should remain in place.

IV. Respondent Cannot Hide Behind His Subordinates

Respondent spends much of the Motion arguing why he should not be responsible for the misdeeds of his subordinate attorneys under Rule 4-5.1. At length, he absolves himself of any wrongdoing and shifts blame onto his subordinate attorneys. *See* Motion, pp. 14-19. According to respondent, the fault falls squarely on the likes of Gregory Saldamando, Jonathan Drake, Christopher Aguirre, Luz Borges, Jerome La Torre, Hunter Patterson, Jennifer Jimenez, and others. *See id.*, p. 17. Unfortunately for respondent, accountability is not so easily shed.

Before delving into the minutiae of the ethical rules, respondent's theory of the case warrants further exploration. The Petition is comprised of court orders and findings that describe a years-long torrent of rule-breaking conduct frequently punctuated by some of the most powerful sanctions available in Florida courts. Respondent, who is the president and sole partner of his firm, claims that he had no knowledge of this conduct and practice, and had no opportunity or obligation to put an end to it. For the reasons stated below, respondent's contentions are neither believable nor meritorious.

A. Respondent utterly failed in his obligations under Rule 4-5.1(a) and (b)

Rule 4-5.1(a) obligates a partner in a firm to "make reasonable efforts to ensure that the firm has in effect measures giving reasonable assurance that all

lawyers therein conform to the Rules of Professional Conduct." Rule 4-5.1(b) similarly provides that a supervisory lawyer "shall make reasonable efforts to ensure that the other lawyer conforms to the Rules of Professional Conduct." As the sole partner and president of the firm, respondent is bound by both of these rules. He even acknowledges his own "managerial and/or supervisory authority over all thirty lawyers employed by his firm… ." Motion, p. 5.

Simply put, it strains credulity for respondent to argue that he somehow satisfied his obligations under Rules 4-5.1(a) and (b) while a considerable section of his subordinate attorneys engaged in the long-running and egregious misconduct described in the Petition. Apparently, respondent would have the Court believe that he had no knowledge of the repeated and devastating sanctions that his firm incurred, or he was powerless to stop them. Neither explanation is characteristic of a partner who has effected "reasonable assurances" or taken "reasonable efforts" to ensure the ethical practice of his subordinates.

Respondent takes the position that intervention in his subordinates' repeated violations of discovery procedures and court orders would require him "to micromanage each of the firm's cases… ." Motion, p. 15. With this hyperbole, respondent conjures the prospect of having to keep his associates' calendars and proofread their e-mails, but the sanctions discussed in the Petition were not issued on the basis of scrivener's errors and scheduling mishaps. They are the product of

sustained infractions bound together with intent that courts have repeatedly described with such phrases as "deliberate and contumacious disregard for this Court's authority," and "pattern of willful, contemptuous, and contumacious disregard of lawful Court Orders." Petition, Exhibit N, p. 14; Exhibit K, ¶ 8. If respondent truly needs to "micromanage" his subordinates to convince them to comply with procedural rules and court orders, that only speaks of deeper ethical flaws in his practice.

Respondent would have the Court accept that there is a rogue contingent of subordinate attorneys within his firm, including several of his most senior attorneys, who are behind all of the firm's most grievous ethical violations, and who operate beyond his knowledge and control. At the same time, respondent purports to have satisfied his obligations under Rule 4-5.1. These propositions mutually exclude one another based on the record of this case. Accordingly, The Florida Bar can easily show a likelihood of success on the issue of Rules 4-5.1(a) and (b)

B. As an active participant and the firm's leader, respondent is accountable for the misconduct of his subordinates' misconduct

Of course, respondent also denies responsibility for his subordinates' misdeeds under Rule 4-5.1(c). Principally, respondent argues that he is not accountable under Rule 4-5.1(c)(1), which makes an attorney responsible for the ethical violation of another attorney if "the lawyer orders the specific conduct or,

with knowledge thereof, ratifies the conduct involved." According to respondent, he had no knowledge of the misconduct of his associates and did nothing to ratify their actions. Neither of these positions comport with the facts.

Respondent's argument relies heavily upon a hair-splitting exercise regarding whether and under what circumstances he received notice of the sanctions orders listed in the Petition. Unfortunately for respondent, the application of Rule 4-5.1(c) does not turn on technical issues of the service of documents. Such language appears nowhere in the rule. Rather, a cursory inspection of the facts reveals that respondent did, in fact, know of his subordinates' conduct, and did in fact ratify that conduct on a repeated, ongoing basis.

Respondent contends that the contents of the Petition "do not support any allegation that Mr. Strems engaged in, ordered, or knew about the specific conduct leading to the [sanctions] orders, or that a he knew about the conduct at a time when consequences could be avoided or mitigated." Motion, pp. 16-17. This contention is unbelievable on its face. Again, the orders in the Petition concern *Kozel* sanctions and other dramatic, case-ending decisions expressly based upon SLF's willful and sustained refusal to abide by procedural rules and court orders. In a reasonable and ethical practice, any one of the orders discussed in the Petition would raise bright red flags regarding potential malpractice liability and professional discipline. It is incredible to propose that these orders were not

brought to respondent's attention as the president and sole partner of the firm, particularly given the vast effort and firm resources expended in attempting to escape liability for these sanctions. For example, Melissa Giasi's ubiquitous appearance as SLF's favored appellate counsel in these matters must have been done with respondent's approval. There is certainly no basis to believe that a subordinate such as Gregory Saldamando or Jonathan Drake surreptitiously retained Ms. Giasi and paid her fee.

Fortunately, the Court need not guess at respondent's knowledge or his involvement in his firm's conduct. The facts show that he was an active participant. The Florida Bar has recently received a "Cases by Name Listing Report" from the 13th Judicial Circuit, which lists respondent as counsel of record in 220 individual cases, most of which fall in the relevant time frame described in the Petition. *See* Exhibit E. In fact, respondent's name appears in connection with several of the cases discussed in the Petition, including:

- *Rodriguez v. Avatar Prop. & Cas. Ins. Co.*, Case No. 16-CA-000575. Judge Rice found "an incredible pattern of delay by Plaintiff and his attorneys from the very inception of the lawsuit." Petition, Exhibit G, ¶ 21.

- *Rivera v. Security First Ins. Co.*, Case No. 16-CA-004946. Judge Barbas ordered respondent to personally appear in any hearings in any future SLF suits in the court. Petition, Exhibit I-1, ¶ 60.

- *Collazo v. Avatar Prop. & Cas. Ins. Co.*, Case No. 16-CA-001883. Judge Huey found that it was "standard operating procedure" for respondent's firm "to ignore the well-established law, disregard the

Florida Rules of Civil Procedure, violate Court orders, and thwart insurers' attempts to conduct discovery and defend themselves." Petition, Exhibit L-1, ¶ 16.

- *Ramirez v. Heritage Prop. & Cas. Ins. Co.*, Case No. 16-CA-3258. Noting the violation of four court orders and the spoliation of evidence, Judge Barbas characterized SLF's conduct as a "deliberate and contumacious disregard of this Court's authority." Petition, Exhibit N, p. 14.

See Petition, ¶¶ 14(g), (i), (l), (n).

Taking an even broader view of SLF's litigation practice reveals that respondent is an essential party to the firm's ongoing litigation efforts. The office of Florida's Chief Financial Officer maintains a searchable database of lawsuits and other documents that are served on insurers. *See* Service of Process Reports, https://apps.fldfs.com/LSOPReports/Reports/Report.aspx. Searches of this database reveal respondent's overwhelming presence in SLF's litigation pipeline. Searching for attorney "Strems" in the period of January 1, 2019 through July 2, 2020 reveals that respondent has served 2,470 on insurers during that timeframe. *See* Exhibit F-1. The same search for other litigators within SLF reveals virtually no results. For example, searches during the same period for "Drake," "Patterson," and "Camejo" produce no results for those three SLF attorneys. *See* Exhibits F-2, F-4, F-5. A search during the same period for "Saldamando" returns exactly one (1) result for Gregory Saldamando. *See* Exhibit F-3. Respondent's role in the firm's litigation practice is undeniable.

Furthermore, the instant Response includes a prominent example of respondent's personal awareness and participation in the weighty *McEkron* case, discussed above. To reiterate, in that case the defense sent respondent a settlement offer in excess of the existing demand, and respondent sent the matter to trial anyway, where his client was awarded a fraction of the offer. *See* Exhibit D, ¶ 7-9, 48-49. This was no incidental contact with the file. For an attorney, there are few weightier decisions in litigation than the decision to resolve (or refuse to resolve) a case. Furthermore, respondent's personal time entries appear throughout the fee sheet in the McEkron file, including entries for drafting the complaint and monthly entries for status meetings and internal memoranda. *See generally* Exhibit H to Exhibit D of this Response. There can be no doubt that respondent was an active participant in the *McEkron* litigation; he presently claims tens of thousands of dollars in fees for his work in that case.

Furthermore, respondent's own testimony in *McEkron* reveals with crystal clarity the deep involvement that respondent had with his firm's cases across the board.

> Q. … So as you know, better than anyone, these first-party property cases have a general trajectory.
>
> [Respondent]. Sure
>
> Q. We serve discovery, take depos, and set it for trial, go to experts, go to trial, and lots of hearings and motions in between. You have a lot of cases, and you're managing a

whole firm, so is your involvement, on a day-to-day case, limited to jumping in for strategy on a monthly basis?

[Respondent]. I would agree with that.

Q. Okay. And I don't want to put words in your mouth, do you also become involved during trial?

[Respondent]. Physically during the actual trial?

Q. Well, preparing for trial. Is that when you kind of jump back in?

[Respondent]. --yes.

Q. Okay. Are there any other trigger points in a case when you're – you, Scot Strems, is going to get involved in a daily claim?

[Respondent]. Negotiation.

Q. Settlement?

[Respondent.] Yes.

Exhibit T to Exhibit D of this Response, 37:21-38:18. Respondent's own testimony leaves no daylight for the argument he puts forward now. There can be no question that he participated actively in SLF's systemically unethical conduct. He claims he has no involvement in his subordinates cases, but: he was counsel of record in 220 cases in the 13th Judicial Circuit alone, four of which are identified in the Petition; he has served 2,470 insurance lawsuits since January 1, 2019; and he further admits that he becomes regularly involved in trial preparation and settlement.

Respondent's contention that he was somehow uninvolved in his subordinates' cases simply does not align with the overwhelming weight of the evidence.

As alleged in the Petition, and as found by several judges therein, the sanctions incurred by SLF are part of a standard operating procedure that is hostile to procedural rules, court orders, and the ethical obligations of SLF's attorneys. This practice must originate somewhere. Surely an entire cadre of respondent's employees—including several senior attorneys—did not spontaneously and independently decide to start ignoring court orders. Junior attorneys tend to learn from their superiors and tend to follow the accepted practice established by their management. Nonetheless, respondent unconvincingly asserts that he had no knowledge of the pervasive rule-breaking practice his firm developed, and no role in its origination. That defies belief, and to that end, respondent's argument warrants an examination of the two pending cases related to the instant Petition.

In *The Florida Bar v. Strems* and *The Florida Bar v. Saldamando*, both respondent and Mr. Saldamando are accused of remarkably similar misconduct in their settlement practices. *See generally* Complaint in SC20-842 (the "Nowak Complaint"); Complaint in SC20-844 (the "Alvarez Complaint"). In both cases, SLF used an insurer's settlement offers to secure bottom-liminal settlement authority from their clients. *See* Nowak Complaint ¶¶ 18-20; Alvarez Complaint, ¶¶ 20-21. Then, respondent and Mr. Saldamando returned to the insurer to

negotiate a much larger global settlement (50% larger or more). *See* Nowak Complaint, ¶ 23; Alvarez Complaint, ¶¶ 22-23. Respondent and Mr. Saldamando then unilaterally instructed the insurer to pay the insured their previously-authorized sums, purporting to keep the entire balance as the firm's fee. *See* Nowak Complaint, ¶ 24; Alvarez Complaint, ¶ 32. The clients were not advised of these increased settlement offers prior to the finalization of the settlements, which they of course never approved. *See* Nowak Complaint, ¶¶ 25-28; Alvarez Complaint, ¶¶ 25-39. While the instant Petition does not overtly concern SLF's settlements, it clearly concerns what respondent knew of the firm's broader unethical practices. On that point, the nearly mirror-image complaints against respondent and Mr. Saldamando are incredibly salient. Both of them have described their settlement practices as standard and ordinary for SLF. *See* Nowak Complaint, ¶¶ 71-73; Alvarez Complaint, ¶¶ 55-57. In his role as SLF's architect and sole partner, respondent shaped the firm's settlement practices and Mr. Saldamando followed those practices closely. In the end, respondent is certainly no stranger to the broader unethical conduct within his firm; he is a willing and active participant, and a leader to his subordinates.

Respondent further argues that he never ratified the conduct of his subordinates as required by Rule 4-5.1(c)(1), but that assertion is likewise unbelievable. The same attorneys appear time and again in the cases that underpin

the Petition, incurring dramatic sanctions that frequently result in the termination of their clients' actions. Every time, respondent sent them back out to practice. There is no allegation—let alone proof—that any SLF attorney was suspended, terminated, or otherwise internally disciplined for this conduct. Accordingly, the Court is left with the inescapable conclusion that respondent did ratify his subordinates' conduct by continuing to send them back to court.

The analysis under Rule 4-5.1(c)(2) follows a similar pattern, with the same outcome. This rule holds an attorney responsible for another attorney's conduct if "the lawyer is a partner or has comparable managerial authority in the law firm in which the other lawyer practices...and knows of the conduct at a time when its consequences can be avoided or mitigated but fails to take remedial action." *See id.* As discussed above, respondent surely became aware of his firm's egregious and long-running record of sanctions at some point. As the record shows, each sanctions order served as a preview for the next, and respondent had an opportunity (and an obligation) to intervene and reform the practices of his subordinates with each successive sanction and *Kozel* dismissal. The record of this case illustrates that he never once did so; SLF's pattern of gross misconduct has never meaningfully slowed.

The Florida Bar has clearly shown a likelihood of success in the area of respondent's accountability under Rule 4-5.1. The rule gives four separate avenues

for discipline in sections (a), (b), (c)(1), and (c)(2). Respondent has run afoul of them all. He has entirely abdicated his obligations to keep his subordinates ethically compliant, and he actively participates in their misconduct. While he does not stand shoulder-to-shoulder with SLF's attorneys in the courtroom, he plays an indispensable role in the firm's ongoing unethical practice, and as its sole capital partner, he enjoys the lion's share of its profits. According to Rule 4-5.1, that privilege comes with accountability.

V. *Courtin* and *Watson* Evidence Respondent's Personal Intent to Mislead

In the Motion, respondent attempts to relitigate his position regarding the misleading affidavits he submitted in the *Courtin* and *Watson* cases. *See* Petition, ¶ 14(q), (r). Respondent appears to argue that these affidavits cannot be the basis of discipline because the matter has not been the subject of an evidentiary hearing or sanctions order. *See* Motion, p. 19. That argument is incorrect; respondent's affidavits are on the record, and the Court is perfectly competent to review them on its own account. In this pursuit, the Court also has the benefit of the insurer's exhaustive motion on the issue, as well as a transcript of argument of counsel for both sides together with the observations of Judge Echarte. *See* Petition, Exhibits Q-1, Q-3. Consequently, the Court has more than enough context in which to review respondent's affidavits without the need to rehash respondent's arguments.

Respondent states that "'fraudulent' denotes conduct having a purpose to deceive." Motion, p. 20. That is a quite apt description of respondent's affidavits in *Courtin* and *Watson*. In that vein, it is perhaps not surprising that respondent characterizes the sworn representations in his October 21, 2019 affidavit as "[a] disagreement between counsel regarding the events that occurred approximately six (6) years ago." Motion, p. 20. To be clear: there is no dispute that the affidavits in *Courtin* and *Watson* omit key e-mails in respondent's exchange with defense counsel. *See* Petition, Exhibit Q-1, ¶¶ 25-32. It is likewise undisputed that respondent submitted his affidavits to convince the courts that the purported factual dispute he describes precluded summary judgment against his client. Furthermore, respondent's affidavits concern settlement communications, which are presumptively inadmissible at trial and therefore not competent to support a decision on summary judgment *See* Fla. R. Civ. P. 1.520(c). For these reasons and others described in the underlying materials, there is more than adequate evidence to infer respondent's intent.

As a final note on this issue, respondent argues that the Petition's allegations regarding *Courtin* and *Watson* must fail because they are not specifically addressed in the supporting affidavits. To be clear, Rule 3-5.2(a)(1) does not require every single point in the Petition to be supported by affidavit testimony. Rather, the affidavits supporting the Petition only need to demonstrate "facts personally

known to the affiants that, if unrebutted, would establish clearly and convincingly that a layer appears to be causing great public harm." *Id.* The affidavits do precisely that, as the Florida Supreme Court implicitly ruled when it entered the Suspension Order.

VI. The Size of Respondent's Practice is Irrelevant

In a dubious defense that does not remotely engage the merits of the Petition, respondent argues that his law practice is too voluminous to be restrained by the Suspension Order. More precisely, he takes the position that an emergency suspension is unwarranted because the eighteen cases in the Petition represent only a small fraction of SLF's total practice. *See* Motion, pp. 6-7 ("[T]hese orders [described in the petition] comprise 0.1 percent (0.1%) of all cases and 0.28 percent (0.28%) of resolved cases."). Unsurprisingly, this premise is put forward without the support of any authority.

To be clear, the Rules of Professional Conduct do not exempt attorneys of firms of any size, client base, or revenue. Furthermore, the Florida Supreme Court already found that the Petition alleged sufficient threat of great public harm when it entered the Suspension Order pursuant to Rule 3-5.2(a)(1). In fact, the Petition made a point of emphasis regarding SLF's size and case load. *See* Petition, ¶ 6. Accordingly, the Court was fully apprised of those issues when it entered the Suspension Order.

VII. SLF's Evasion of Consolidation Evidences an Unethical Intent

At length, Judges Holder and Barbas discuss the scheme between SLF and AIRS to evade the consolidation of obviously related cases in order to secure greater aggregate fee claims. Respondent's technical counterargument centers around the requirements of administrative orders requiring the filing of related case notices in the 13th Judicial Circuit. Not surprisingly, respondent asserts more or less blanket immunity to these requirements. While perhaps respondent missed the greater import of the allegations in the Petition and affidavits, The Florida Bar will engage this argument briefly.

The text of Administrative Order S-2019-047 provides the relevant provisions:[6]

> **6. Related Cases**
> Plaintiffs have an affirmative obligation to notify the court of any related cases at the beginning of the first hearing on any matter set in the case. A case is "related" if it is a pending civil case filed in the Thirteenth Judicial Circuit Court or the Hillsborough County Court involving the same parties and same legal issues.
>
> **7. Consolidation of Cases**
> When two or more civil cases, regardless of the nature, involving common questions of law or fact, are pending in the Circuit Civil Division, which might be appropriately considered or tried together, but which are assigned to different divisions of the Circuit Civil Division, the judge assigned to the division

[6] Copies of Administrative Order S-2019-047 and the related Administrative Order S-2019-044 are included as respective Exhibits A and B to respondent's Motion to Dismiss the Petition, filed June 29, 2020.

> which has the lowest case number may, upon appropriate motion or on the judge's own motion, transfer the case(s) with the higher number(s) to the division with the lowest case number. Upon any transfer, the clerk will make appropriate notation upon the progress docket. Thereafter, the issues in all the cases will be heard, tried and determined by the judge assigned to the division consolidating the cases. Any transfer will remain permanent regardless of whether the cases are ultimately tried together. After consolidation, each pleading, paper or order filed in a consolidated action must show in the caption, the style and case number of all of the transferred cases that have been consolidated.

Paragraph 6 of the administrative order lays out the relevant standard for the filing of related case notices. Respondent pits this administrative measure against case law from the 5th District Court of Appeals, of which the 13th Judicial Circuit is not even a part, in order to vindicate his own opinion that his cases are exempt from the administrative order's requirements. *See* Motion, pp. 26-27. However, Paragraph 6 is more properly read in conjunction with the court's efforts to consolidate cases in Paragraph 7, which related case notices are clearly meant to serve. In its plain wording, Paragraph 7 provides a far more expansive scope for the consolidation of cases than respondent reads into Paragraph 6. Specifically, Paragraph 7 gives a court the discretion to consolidate "two or more civil cases, regardless of the nature, involving common questions of law or fact...which might be appropriately considered or tried together… ." *Id*. On its face, this standard for consolidating cases is far broader than that espoused by respondent, whose analysis requires the strict identity of parties and legal issues.

Paragraph 7 gives the judges of the 13th Judicial Circuit relatively broad discretion to consider what cases should be consolidated. Clearly it is the presiding judge—not the plaintiff—who has the authority to make that determination. Nonetheless, respondent interprets Paragraph 6 in a deliberately narrow fashion that is not at all helpful to the court's determination under Paragraph 7. The implication of respondent's position is that in spite of Paragraph 6, he has no obligation to disclose cases that might properly be consolidated at the court's election under Paragraph 7. Even if this does not contradict the letter of the administrative order, it certainly contradicts the spirit. Respondent's interpretation of SLF's obligations under this rule leaves the court in the dark when it comes to managing its own caseload. Indeed, that is SLF's exact practice, with the firm rarely if ever volunteering a notice of related case.

While the respondent expends considerable ink discussing the limits of the administrative orders, he provides scant discussion of why SLF practices law in a manner that so rigidly eschews cooperation with the bench. This is a notable omission, considering that much of this case concerns knowledge and intent, as discussed above. Respondent leaves the Court wondering just why it chooses to separate every individual claim into its own lawsuit, even where common issues are bound together and eligible for consolidation. The Motion offers no meaningful

explanation as to why this is done, or how this practice serves its client in any strategic way.

Judge Holder provides one explanation: that these separate, bifurcated actions "are only brought to allow Mr. Strems and his firm to claim attorney fees associated with the alleged breach of the insurance contract." Petition, Exhibit U, p. 2. This observation resolves the mystery neatly. With the one-way fee shifting of Fla. Stat. § 627.428, SLF's insistence on evading consolidation makes perfect sense from a financial perspective. Surely an attorney will generate more fees if he drafts two pleadings instead of one, attends two depositions instead of one, or argues at two summary judgment hearings instead of one. In this context of maximizing fees, consolidation is SLF's natural enemy.

For these reasons, The Florida Bar clearly demonstrates a likelihood of prevailing on the merits as to SLF's filing scheme and the intent behind that practice.

VIII. The Supporting Affidavits Competently Support the Petition

Respondent raises various piecemeal challenges to the affidavits of Hon. Rex Barbas and Hon. Gregory Holder. The Florida Bar intends to call both of these judges at the upcoming hearing on respondent's Motion so that the Court will have an opportunity to gauge their knowledge and competence firsthand. Accordingly, The Florida Bar will not brief these issues extensively beyond a few key points.

Among other things, respondent criticizes Judge Holder for his lack of knowledge regarding the relationship between SLF, Contender, and AIRS. *See* Response, pp. 29-30. To be clear, Judge Holder has presided over dozens of SLF cases during his time on the bench and has had ample opportunity to observe the firm's relationship with loss consultants and remediation companies (such as Contender and AIRS) in the courtroom. His affidavit (as well as Judge Barbas's) condenses years of such experiences into a few pages. Just because Judge Holder's affidavit is not as specific or exhaustive as respondent would like is no basis for discrediting it. In any case, respondent will have the opportunity to cross-examine him and realize the full extent of his knowledge.

Respondent criticizes Judge Barbas's affidavit for its "references [to] hearsay communications characterizing the purported experience of other judges." Motion, p. 32. To this end, it is worth noting that hearsay evidence is admissible in this proceeding. As explained in the Referee Manual: "The referee is not bound by technical rules of evidence. Hearsay evidence is admissible and there is no right to confront witnesses." The Florida Bar, *Referee Manual* (revised December 2019), floridasupremecourt.org/content/download/412702/4104172/ 2019-tfb-referee-manual.pdf (citing *The Florida Bar v. Maynard*, 672 So. 2d 530 (1996); *The Florida Bar v. Vannierr*, 498 So. 2d 896 (1986); *The Florida Bar v. Dawson*, 111 So. 2d 427 (1959)). Furthermore, one of these "other judges" is Judge Holder, who

will be available to corroborate much of what Judge Barbas has to say. Accordingly, respondent's hearsay objection is an inadequate reason to discredit Judge Barbas's affidavit.

In the end, Rule 3-5.2(a)(1) requires that a supporting affidavit "demonstrat[e] facts personally known to the affiants that, if unrebutted, would establish clearly and convincingly that a lawyer appears to be causing great public harm." Judges Holder and Barbas have spent countless hours observing and adjudicating SLF's conduct across several dozens of the firm's cases over a span of years. Three of their own orders are discussed at length in the Petition itself, and their affidavits describe the exact same pattern of conduct found in the other fifteen. They allege public harm specifically, and they provide crystal-clear explanations of how SLF's conduct has manifested that harm. The affidavits of Judge Barbas and Judge Holder satisfy Rule 3-5.2(a)(1) in every respect.

IX. Conclusion

The Petition, as supported by its affidavits and the further evidence in this Response, clearly demonstrates a likelihood of success on the elements of each of the rule violations alleged by The Florida Bar. Respondent's Motion does nothing to diminish the overwhelming evidence that he and his firm have engaged in an unbroken and ongoing pattern of grossly unethical conduct. Rather, he attempts to evade the Suspension Order by misapplying the relevant standard and shifting

blame onto his subordinates. For these reasons and those discussed above, the Suspension Order should not be disturbed, and respondent's Motion should be denied.

Respectfully Submitted,

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CERTIFICATE OF SERVICE

I certify that this Response in Opposition to Respondent's Motion to Dissolve Order of Suspension dated June 9, 2020 has been provided to the Honorable Dawn V. Denaro, Referee, via email at ddenaro@jud11.flcourts.org; to Natasha Zellner, Judicial Assistant, via email at nzellner@jud11.flcourts.org; to Scott K. Tozian, Attorney for Respondent, at stozian@smithtozian.com; to Benedict P. Kuehne, Attorney for Respondent, at ben.kuehne@kuehnelaw.com; to Mark A. Kamilar, Attorney for Respondent, at kamilar@bellsouth.net; and to Patricia Ann Toro Savitz, Staff Counsel, at psavitz@floridabar.org this 2nd day of July, 2020.

J. DEREK WOMACK
Bar Counsel