IN THE SUPREME COURT OF FLORIDA
(Before a Referee)

THE FLORIDA BAR,

Complainant,

v.

SCOT STREMS,

Respondent.
_____/

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)

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

COMES NOW, Respondent, SCOT STREMS, by and through his undersigned counsel, pursuant to Rules Regulating The Florida Bar 3-5.2(g) and (i), and files this his Motion to Dissolve Order of Suspension Dated June 9, 2020, requiring Bar Counsel to demonstrate a likelihood of prevailing on the merits of all of the elements of the charged rule violations. In support, Respondent sets forth the following facts and argument.

I. Introduction.

To counter the threat caused by a lawyer creating great public harm, the Florida Supreme Court promulgated Rule Regulating The Florida Bar 3-5.2, which allows for the extraordinary *ex parte* imposition of an emergency suspension. Rule 3-5.2 does not permit the respondent to file a response to The Florida Bar's Petition for Emergency Suspension prior to the imposition of a Court order. The

Florida Bar's Petition for Emergency Suspension must be "supported by 1 or more affidavits demonstrating facts personally known to the affiants that, if unrebutted, would establish clearly and convincingly that a lawyer appears to be causing great public harm." R. Regulating Fla. Bar 3-5.2(a)(1).

In this case, The Florida Bar filed its Petition for Emergency Suspension (hereinafter "Petition") with approximately six hundred (600) pages of exhibits thereto on Friday, June 5, 2020. The Bar filed only two (2) affidavits in support of its Petition. The Court issued its Order granting The Florida Bar's Petition for Emergency Suspension on Tuesday, June 9, 2020. Respondent's law firm employs thirty (30) lawyers and one hundred and twenty (120) support staff. At the time of the Court's Order, Respondent's law firm represented nine thousand (9,000) clients. The Bar has failed to demonstrate jeopardy of great public harm warranting 9,000 clients suffering tremendous disruption. Ironically, the only true emergency presented by the suspension is the one created for the nine thousand (9,000) clients and one hundred and fifty (150) employees whose well-being has been profoundly imperiled by the Bar's Petition.

Given the severity of the sanction, including the impact to clients and the *ex parte* nature of the proceeding leading to the emergency suspension, Rule 3-5.2(g) permits a respondent to file a Motion for Dissolution. Rule 3-5.2(i) instructs, "The referee will recommend dissolution or amendment, whichever is appropriate, to the

extent bar counsel cannot demonstrate a likelihood of prevailing on the merits on any element of the underlying rule violation."

The Florida Standards for Imposing Lawyer Sanctions set forth the types of circumstances warranting an emergency suspension. Fla. Stds. Imposing Law. Sancs. 2.4. In pertinent part, the commentary to Standard 2.4 explains that a lawyer could be suspended on an emergency basis following the conviction of a "serious crime" or when the "lawyer's **continuing conduct** is causing or is likely to cause **immediate and serious injury** to a client or the public." (*emphasis added*). As an example of a "continuing conduct" that would warrant emergency suspension, the commentary references "ongoing conversion of trust funds" or when a "lawyer abandons the practice of law." Fla. Stds. Imposing Law. Sancs. 2.4 (*cmt*).

None of the misconduct alleged, in isolation or in totality, remotely approaches the type of conduct described in the commentary justifying emergency suspension. The Bar's Petition is deficient, does not demonstrate that Mr. Strems is causing "immediate and serious injury to a client or the public," and is not supported by affidavits alleging facts "personally known" to the affiants. The vast majority of allegations contained in the Petition pertain to lawyers other than Mr. Strems without any showing that Mr. Strems ordered, ratified, or knew about the conduct. The emergency suspension must be dissolved because the Bar cannot

demonstrate a likelihood of prevailing on each element of the charged rule violations. Such relief does not deprive The Florida Bar of an opportunity to later attempt to prove its case; it simply gives the Respondent the opportunity to defend before his license is summarily suspended without consideration of the complete facts.

II. Overview.

The emergency suspension should be dissolved for multiple reasons. First, the conduct alleged in the Petition for Emergency Suspension does not reference "continuing conduct." Fla. Stds. Imposing Law. Sancs. 2.4. Rather, the alleged conduct references seventeen (17) orders entered in a discrete time frame between March 2016 and November 2018, a period during which the Strems Law Firm, P.A., handled in excess of ten thousand (10,000) cases. The Bar has cited no orders entered in the nineteen (19) months prior to the filing of the Petition that would substantiate The Florida Bar's claim that there is a likelihood of causing "immediate and serious injury to a client or the public." Fla. Stds. Imposing Law. Sancs. 2.4.

Second, the matters referenced in the Petition pertain to cases in which lawyers other than Respondent were lead counsel responsible for the litigation. While the firm has six (6) offices located throughout the State of Florida, Mr. Strems predominantly practices in the firm's Miami office. In paragraph 14 of its

Petition, the Bar seeks to hold Respondent Scot Strems responsible for the alleged rule violations committed by subordinate attorneys handling the cases and named in the orders entered in subparagraphs (a) through (p). Petition, pp. 7-26. The fact that Mr. Strems has managerial and/or supervisory authority over all thirty lawyers employed by his firm is not sufficient to hold him responsible for their actions. In order to hold Mr. Strems responsible for any misconduct related to the actions of another attorney, the Bar must prove that Mr. Strems either ordered or "with knowledge thereof," ratified the conduct, or knew of the conduct "at a time when consequences [could] be avoided" but failed to take "reasonable remedial action." R. Regulating Fla. Bar 4-5.1(c). The Bar has not alleged any facts supporting these elements; therefore, the Bar cannot show a likelihood of prevailing on the merits of the allegations. Accordingly, dissolution of the emergency suspension is required by Rule 3-5.2(i) based on The Florida Bar's inability to prove this element of the alleged rule violations. R. Regulating Fla. Bar 3-5.2(i).

Third, the matters that directly reference Mr. Strems's actions appear to concern a 2018 affidavit (Watson) and a 2020 affidavit (Courtin) executed by Mr. Strems. (Petition, para. 14 (q) and (r)). Respondent has not been afforded any evidentiary hearings regarding these allegations and neither trial court entered an order setting forth any factual finding that Respondent committed misconduct related to these affidavits. As a result, the Bar cannot show a likelihood of

prevailing on these allegations. The allegation regarding Watson pertains to an order that stated in conclusory fashion there was "some support" for defendant's allegation that the Strems affidavit to summary judgment attached an incomplete email chain and reserved for a later date further consideration on whether sanctions should be imposed. In Courtin, the confusion regarding Mr. Strems's affidavit to summary judgment arose from an incorrect timeline, so the facts do not support any finding of misconduct.

Fourth, the allegations regarding Courtin and Watson are not supported by any order or "affidavits demonstrating facts personally known to the affiant[]" as required by Rule Regulating The Florida Bar 3-5.2(a)(1), which governs emergency suspensions. Given the absence of any order or affidavit, the allegations regarding Mr. Strems's alleged conduct in Courtin and Watson cannot support an emergency suspension.

Fifth, the conduct alleged by the Bar does not rise to the seriousness of conversion or the complete abandonment of practice justifying an immediate emergency suspension. In the eighteen (18) matters referenced in the Petition, most of these cases pertain to failures in the course of vigorous litigation to adhere to discovery deadlines or scheduled depositions. During the timeframe of the matters alleged in the Petition, the Strems Law Firm handled 17,958 matters and successfully prosecuted and/or settled 6,257 cases. Consequently, these orders

comprise 0.1 percent (0.1%) of all cases and 0.28 percent (0.28%) of resolved cases.

While lawyers must ensure they comply with discovery deadlines, adhering to discovery deadlines in contested litigation matters often depends on cooperation by clients and opposing counsel. A failure to adhere in individual cases can be the simple consequence of human mistake. Moreover, the Bar's Petition attaches the deposition of Christopher Aguirre, Esquire, who acted as the "litigation manager" in 2017 when the majority of the orders occurred. (Petition Exh. S). Mr. Aguirre explained that the firm created his position to improve the discovery process given the voluminous caseload handled by twenty to thirty (20-30) litigation attorneys and the need to be more responsive to opposing counsel and ensure the firm was not missing deadlines. (Petition Exh. S). While failures to meet discovery deadlines are not excused under the Rules Regulating The Florida Bar, they are not comparable in scale or gravity to ongoing patterns of conversion of client funds or the abandonment of a law practice warranting emergency suspension, especially when the cases in question occurred in 2016 and 2018 and remedial efforts have proven effective in minimizing similar problems.

Sixth, The Florida Bar's broad allegation that Mr. Strems engaged in a "Duplicitous Filing Scheme" is not supported by specific facts and instead relies upon broad summary allegations from two Hillsborough County Circuit Court

judges and do not contain "facts personally known to the affiant[] that, if unrebutted, would establish clearly and convincingly that a lawyer appears to be causing great public harm" as required by Rule Regulating The Florida Bar 3-5.2(a)(1). Florida courts define the term 'clear and convincing evidence' as follows:

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

In re Davey, 645 So. 2d 398, 404 (Fla. 1994) (quoting Slomowitz v. Walker, 429 So. 2d 797, 800 (Fla. 4th DCA 1983)).

The conjecture of two Thirteenth Judicial Circuit Court judges, Judge Holder and Judge Barbas, who do not have personal knowledge supporting the accusations of a "filing scheme," does not meet the clear and convincing burden to support an emergency suspension. The affidavits filed by Judges Holder and Barbas reference documents not attached to the affidavits or Petition. In addition, one affidavit contains conclusory and unproven allegations summarized from an Orange County class action complaint filed April 16, 2020, without specific reference to supporting facts. Both affidavits summarize hearsay conversations with third parties.

It is well established that conclusory allegations, defined as allegations "without supporting [facts or documents]" and allegations based "largely on supposition" do not create issues of fact. See Landers v. Milton, 370 So. 2d 368, 370 (Fla. 1979); K.E.L. Title Ins. Agency, Inc., v. CIT Technology Financing Services, Inc., 58 So. 3d 369, 370 (Fla. 5th DCA 2011). As discussed more thoroughly below, many of the broad suppositions contained in the affidavits cannot form the basis for an emergency suspension.

In addition to the clear and convincing burden, the facts alleged in the affidavit must be "personally known to the affiant[]." R. Regulating Fla. Bar 3-5.2(a)(1). Courts have noted that merely asserting that an affidavit is made with "the conclusory assertion that [the affiant] is basing the affidavit on 'personal knowledge' does not satisfy [a] rule's requirement that [the witness] 'show affirmatively that [he] is competent to testify' and that he 'set forth such facts as would be admissible in evidence.'" John v. Dannels, 186 So. 3d 620, 622 (Fla. 5th DCA 2016). Similarly, conclusory allegations by Judges Holder and Barbas that fail to describe the underlying "facts personally known to the affiant[]," do not satisfy the Rule 3-5.2(a) requirement for imposition of an emergency suspension.

The gravamen of this "duplicitous scheme" as characterized by the Bar appears to be the two Judges' concerns that "related" cases are not consolidated in accordance with Hillsborough County Administrative Order S-2019-047 (circuit

court), effective January 1, 2020, and AO-2019-044 (county court) which requires plaintiffs to notify the court of related cases. AO S-2019-047 defines "related" as a case involving the "same parties and same legal issues." As explained in more detail below, Judge Barbas's affidavit incorrectly applies an expansive definition of what constitutes a "related case," which directly contradicts the definition explicitly set forth in the relevant Administrative Order.

While the Judges' affidavits broadly allege pattern and practice, they only specifically reference three purported failures to consolidate. (Judge Holder Affidavit, Petition Exh. U, para. 6; Judge Barbas Affidavit, Petition Exh. V, para. 7 and 12 e.). These sets of cases did not involve the "same parties and same legal issues" because each set involved separate dates of loss with separate incidents causing property damage or separate types of damages pursued by different parties represented by different law firms. These cases would not meet the criteria for consolidation set forth in State Farm Florida Ins. Co. v. Bonham, 886 So. 2d 1072, 1074 (Fla. 5th DCA 2004), because they do not involve the "same core of operative facts." The Bar cannot prove the likelihood of prevailing on the merits of its claim that Mr. Strems engaged in a "duplicitous scheme."

III. The Florida Bar Cannot Establish Continuing Conduct showing Immediate and Serious Injury to a Client or to the Public.

Assuming *arguendo* that The Florida Bar can prove that Mr. Strems ordered or ratified the specific conduct, or knew of the conduct at a time when the consequences could be mitigated, the Bar cannot establish that there is "continuing conduct" causing or likely to cause great public harm. The matters summarized in paragraph 14 pertain to cases conducted by subordinate lawyers. The most recent order imposing sanctions included in the Petition was signed in November 2018. The absence of any order in the past nineteen (19) months is consistent with the firm affirmatively addressing concerns and undermines the assertion that Mr. Strems is either currently causing or about to cause great public harm.

In contrast to Florida Bar v. Guerra, 896 So. 2d 705 (Fla. 2005), there is no ongoing pattern of serious misconduct that is only interrupted by the Emergency Suspension Order. As the Court noted in Guerra, "We expect that when one is discovered violating trust requirements, he or she most assuredly will immediately discontinue the conduct" and thus, interruption by an emergency order of suspension is not justification to dissolve that suspension. Id. at 706-707. In this case, however, the Bar's own timeline shows the potential issues related to the orders by various subordinate attorneys were addressed nearly a year and a half before the Petition, eliminating the Bar's argument for an emergency suspension.

Timeline of the Orders

2016

Matter	Hearing	Order	Reversed/Vacated	Petition Exhibit
Laurent	02-08-2016	03-02-2016		14(a)
Scott	09-28-2016	10-18-2016		14(b)
Scott	09-28-2016	11-02-2016		14(c)

2017

Matter	Hearing	Order	Reversed/Vacated	Petition Exhibit
Robinson	n/a	04-11-2017	Reversed 10-19-2018 for failure to conduct evidentiary hearing; alleged misconduct by Plaintiff, not counsel	14(d)
Reese	n/a	07-28-2017		14(h)
Rodriguez	05-03-2017	07-14-2017		14(g)
Casiano	05-15-2017	05-17-2017		14(f)
Santos	08-03-2017	08-16-2017		14(e)
Rivera	08-03-2017	08-16-2017	Vacated: m/rehearing granted to set evidentiary hearing on whether evidence of bad faith, which was not held	14(i)
Morales/ Velazquez	09-27-2017	10-25-2017		14(k)
Perez	09-28-2017	10-14-2017		14(j)
Collazo	11-28-2017	11-30-2017		14(l)

2018

Matter	Hearing	Order	Reversed/Vacated	Petition Exhibit
Frazer	02-13-2018	03-14-2018	2020 – 4th DCA: Reversed order for $22,877.02 in monetary sanctions against plaintiff attorneys because trial court did not comply with due process.	14(m)
Watson	03-26-2018	04-02-2018 granting summary judgment and reserving to consider m/ sanctions		14(r)
Ramirez	03-27-2018 07-24-2018	08-23-2018		14(n)
Rodriguez	11-06-2018 After withdrawal of Strems Law Firm; no plaintiff's attorney attended	11-14-2018		14(o)

2019

Matter	Hearing	Order	Reversed/Vacated	Petition Exhibit
Vera and Perez	05-01-2019	05-02-2019 requiring Strems to appear in place of Attorney Drake ("managing supervisory attorney") and clarify if Perez was deceased (firm responded with affidavit: Plaintiff Perez was the son and his father of the same name passed away in 2002); **no sanctions**		14(p)

2020

Matter	Hearing	Order	Reversed/Vacated	Petition Exhibit
Courtin	No evidentiary hearing on m/sanctions	None; **no finding of misconduct**		14(q)

IV. Respondent is not Responsible for Another Attorney's Violations, Rule Regulating The Florida Bar 4-5.1(c).

The Rules Regulating The Florida Bar prohibit disciplining one lawyer for the conduct of another unless the partner actually knew of the improper conduct and failed to take any action to prevent or remediate the misconduct. Rule 4-5.1 sets forth the only manner in which a lawyer can be held responsible for the misconduct of another. Rule 4-5.1(c) states in pertinent part, as follows:

> **(c) Responsibility for Rules Violations.** A lawyer shall be responsible for another lawyer's violation of the Rules of Professional Conduct if:
>
> (1) the lawyer orders the specific conduct or, with knowledge thereof, ratifies the conduct involved; or
>
> (2) the lawyer is a partner or has comparable managerial authority in the law firm in which the other lawyer practices or has direct supervisory authority over the other lawyer, and knows of the conduct at a time when its consequences can be avoided or mitigated but fails to take reasonable remedial action.

(*emphasis added*).

While a supervising attorney or partner must "make reasonable efforts" to ensure that its subordinate lawyers are complying with the Rules Regulating The Florida Bar, the Bar fails to allege how Respondent failed to ensure that

subordinate lawyers comported with the Rules Regulating The Florida Bar. R. Regulating Fla. Bar 4-5.1(a) and (b). Instead, the Petition implies that Respondent should have been required to micromanage each of the firm's cases, which is not only impractical, but impossible. The Florida Bar's assertion that a partner or supervising attorney is responsible for all misconduct of any subordinate attorney regardless of knowledge would render Rule 4-5.1(c) entirely meaningless. Such a reading would violate a fundamental principle of statutory construction that a "'statute should be interpreted to give effect to every clause in it, and to accord meaning and harmony to all of its parts.'" Florida Dept. of Environmental Protection v. ContractPoint Florida Parks, LLC, 986 So. 2d 1260, 1265 (Fla. 2008) (quoting Jones v. ETS of New Orleans, Inc., 793 So. 2d 912, 914–15 (Fla. 2001)).

The phrase "should have known" does not appear in Rule 4-5.1 and is not the standard. Rather, the supervising attorney must have actual knowledge at a time he or she could have prevented the misconduct or taken action to remediate it before the supervising attorney could be disciplined for the subordinate lawyer's conduct.

The Bar's Petition cites eighteen (18) matters over an approximate four-year period in which the firm represented around 7,856 clients in litigation and an additional 10,102 clients in pre-litigation claims. One matter involved an order that was reversed and pertained solely to the misconduct of the plaintiff without

citing to misconduct by plaintiff's counsel. (Robinson, Petition Exh. 14(d)). Another order was vacated without a subsequent evidentiary hearing. (Rivera, Petition Exh. 14(i)). One order did not find misconduct; instead, it ordered Mr. Strems to appear at all future hearings. (Perez, Petition Exh. 14(p)). One order reserved on sanctions but did not make a final determination of sanctions. (Watson, Petition Exh. 14(r)). One matter has not proceeded to any evidentiary hearing and no sanctions order has been entered. (Courtin, Petition Exh. 14(q)).

One order (Rodriguez, Petition Exh. 14(o)) was entered after permitting plaintiff's counsel to withdraw and advising counsel he did not have to appear at a subsequent hearing on a Motion for Sanctions. At the hearing that resulted in the cited order, conducted in the absence of plaintiff's counsel, the *pro se* party plaintiff, in defending against sanctions, claimed she never retained the firm and the signature on her fee agreement was forged. The Bar fails to state in the Petition that this resulted in Bar complaints against subordinate Strems Law Firm attorneys, in which these attorneys rebutted these allegations by providing the Bar with another letter agreement signed by the plaintiff, evidence of communications between the plaintiff and the law firm discussing her case, and a copy of the plaintiff's driver's license she provided to the firm.

Even without these deficiencies, the orders and the Bar's allegations in Paragraph 14 do not support any allegation that Mr. Strems engaged in, ordered, or

knew about the specific conduct leading to the orders, or that he knew about the conduct at a time when consequences could be avoided or mitigated. Consequently, the Bar cannot show a likelihood of prevailing on the merits of these allegations.

A. Analysis of the Orders.

1. The following eleven (11) orders provided in the Petition referenced an attorney other than Mr. Strems, and Mr. Strems was not referenced in nor even copied on the order:

Matter	**Date of Order**	**Attorney Named or Copied**	**Petition Exhibit**
Laurent	03-02-2016	Gregory Saldamando	14(a)
Robinson	04-11-2017	Gregory Saldamando	14(d)
Santos	08-16-2017	Christopher Aguirre	14(e)
Casiano	05-17-2017	Luz Borges	14(f)
Rodriguez v. Avatar	07-14-2017	Gregory Saldamando	14(g)
Perez	10-14-2017	Jonathan Drake	14(j)
Morales	10-25-2017	Jerome La Torre	14(k)
Ramirez	08-23-2018	Jonathan Drake	14(n)
Rodriguez v. Am. Security Ins.	11-14-2018	Hunter Patterson	14(o)
Perez	05-02-2019	Jonathan Drake and Manuel Iravedra Order required Scot Strems to appear at future hearings, but no copy of order to Strems	14(p)
Watson	04-02-2018	Jennifer Jimenez	14(r)

2. The following four (4) orders referenced an attorney other than Mr. Strems; however, Mr. Strems was copied on the order:

Matter	Date of Order	Attorney Named or Copied	Petition Exhibit
Reese	07-28-2017	Referenced experience of Scot Strems, Michael Perez, and Christopher Aguirre; order copied to all three attorneys	14(h)
Rivera	08-16-2017	Referenced Jonathan Drake as lead attorney; required sanctions to be paid by Scot Strems personally; copied to Strems; vacated for evidentiary hearing, which was not held	14(i)
Collazo	11-30-2017	Christopher Aguirre and Gregory Saldamando; copied to Saldamando and Strems	14(l)
Frazer	03-14-2018	Gregory Saldamando; copied to Saldamando and Strems	14(m)

3. The following two (2) orders provided in the Petition did not reference any attorney; however, although Mr. Strems was not referenced, he was copied on the order:

Matter	Date of Order	Attorney Named or Copied	Petition Exhibit
Scott, No. COCE-15-002048	10-18-2016	No attorney referenced; copied to Strems	14(b)
Scott, No. COCE-14-0233	11-02-2016	No attorney referenced; copied to Strems	14(c)

4. The following order referenced an affidavit executed by Mr. Strems but did not hold an evidentiary hearing or issue an order making factual findings. Mr. Strems was not copied on this order.

Matter	Date of Order	Attorney Named or Copied	Petition Exhibit
Courtin	02-27-2020	Order reserving jurisdiction to hold evidentiary hearing on m/sanctions re: Strems's affidavit and referring matter to The Florida Bar for investigation; copied to Chastity Delgaldo and Melissa Giasi	14(q)

V. Courtin, Watson, and Scot Strems's Affidavit to Summary Judgment.

The Bar's Petition references the Courtin matter even though there has been no evidentiary hearing or sanctions order. Instead, the Bar includes the Courtin Motion for Sanctions and the trial court's stated concerns, which appear to arise from a misunderstanding of the timeline of the underlying litigation that began in 2014. Prior to Ms. Courtin sustaining any loss or retaining Strems Law Firm, P.A., Strems Law Firm had other cases pending with Homeowner's Choice Property & Casualty Insurance Company.

It was Mr. Strems's contention that his firm and the insurance company had agreed to abate the Examinations Under Oath ("EUO") during the pendency of global settlement discussions regarding 156 cases, including Courtin, which began on July 14, 2014, and which would reduce the amount of the attorney's fee figure in the global settlement. The insurance company also argued that the attachments

to Mr. Strems's affidavit were insufficient because the affidavit did not attach May 2014 insurance company emails that were sent prior to Ms. Courtin's date of loss on June 26, 2014. Moreover, the insurance company complained that Mr. Strems should have attached December 2014 insurance company emails after global resolution discussions had terminated.

The arguments presented at the summary judgment hearing reflected disagreement between the parties as to whether or not there was an abatement on EUOs. A disagreement between counsel regarding the events that occurred approximately six (6) years ago does not indicate a lack of candor. Rather, it potentially raises a factual issue to be evaluated at an evidentiary hearing for a determination regarding the terms of the agreement during the global settlement negotiations. A factual dispute does not equate with a lack of candor or a misrepresentation. In order to prove a Rule 4-8.4(c) violation charging the attorney engaged in conduct involving dishonesty, deceit, or misrepresentation, the Bar has a high burden because intent is a necessary element.

As defined in the Preamble to the Rules of Professional Conduct: "'Fraud' or 'fraudulent' denotes conduct having a purpose to deceive and not merely negligent misrepresentation or failure to apprise another of relevant information." Further, the Preamble defines "knowingly" as "actual knowledge" and indicates that a person's "knowledge may be inferred from circumstances." R. Regulating

Fla. Bar, Preamble. "Circumstantial evidence is often used to prove intent and is often the only available evidence of a person's mental state." Florida Bar v. Marable, 645 So. 2d 438, 443 (Fla. 1994).

The law in Florida is well established, however, that "in order to be legally sufficient evidence of guilt, circumstantial evidence must be inconsistent with any reasonable hypothesis of innocence." Id.; see also Florida Bar v. Fredericks, 731 So. 2d 1249, 1251-52 (Fla. 1999) ("circumstantial evidence alone may be insufficient to prove guilt unless it is inconsistent with any reasonable hypothesis of innocence"). There is a reasonable hypothesis of innocence that Mr. Strems was providing his recollection of events and emails that confirmed his understanding of the abatement. In short, the Bar cannot meet its burden of proving this disagreement amounted to dishonest conduct.

In any event, the allegations regarding Courtin or Watson are not supported by any affidavit "demonstrating facts personally known to the affiant[]" as required by Rule Regulating The Florida Bar 3-5.2(a) and, even if taken as true, do not warrant suspension on an emergency basis.

VI. "Duplicitous Filing Scheme." (Petition, para. 24-34).

The Florida Bar alleges that Strems Law Firm, P.A., engaged in duplicitous conduct without specific reference to any facts supporting this unfounded allegation. It appears the gravamen of this allegation is the purported failure to file

Notices of Related Cases in conformance with Hillsborough County Administrative Orders. The Bar relies on Judge Barbas's contention that Mr. Strems's subordinate lawyers are not adhering to local Administrative Orders pertaining to consolidation.

As an initial matter, Judge Barbas's recitation of the relevant Administrative Orders is not accurate. In paragraph 10 of his affidavit, Judge Barbas avers as follows:

> Pursuant to local Administrative Order S 2019-047 paragraph 7 and Administrative Order 2019-44 paragraph 12, attorneys for plaintiffs are required to notify the court when there are other related cases. A "related" case is defined as any case with one or more of the following: the same plaintiff(s) or defendant(s) names(s), the same property address, the same policy of insurance and/or the same or similar dates of alleged loss.

(Petition, Exh. V, para. 10). This summary misstates Administrative Order S-2019-047, paragraph 7, pertaining to circuit court cases, which actually states, in pertinent part:

> 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** 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.

(*emphasis added*). Paragraph 12 of Administrative Order 2019-44 contains identical language but pertains to county, rather than circuit court cases. Paragraphs 7 and 12 of the Administrative Orders cited by Judge Barbas do not place the affirmative duty on the plaintiff and make consolidation permissive and not mandatory.

Judge Barbas may be referring to Paragraph 6 of the S-2019-047 Administrative Order which states:

> 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**.

(*emphasis added*). Paragraph 6 narrowly defines related cases as cases involving the "same parties and same legal issues" rather than the much more expansive definition of a related case given by Judge Barbas as pertaining to "one or more of the following: the same plaintiff(s) or defendant(s) names(s), the same property address, the same policy of insurance and/or the same or similar dates of alleged loss." (Petition Exh. V, para. 10) (*emphasis added*). Administrative Order S-2019-047 was effective January 1, 2020, but it appears that the language contained in subsection (6) was first adopted into an Administrative Order earlier in 2019 by AO 2019-007, which was effective April 1, 2019.

The Bar has characterized Mr. Strems's actions as "duplicitous" and petitioned to suspend Mr. Strems on an emergency basis for a subordinate lawyer's purported failure to consolidate cases in compliance with a local Administrative Order that is not even correctly attributed or interpreted in its supporting affidavit.

The affidavits filed by Judge Holder and Judge Barbas cite three specific sets of cases they claim should have been subject to this Administrative Order. Judge Holder, in paragraph 6 of his affidavit, cites Thirteenth Circuit Cases 17-CA-008935 and 17-CA-008936; however, he also notes that each case pertained to different dates of loss of June 17, 2016 and July 3, 2016.

Similarly, Judge Barbas cites to Thirteenth Circuit Cases 2019-CA-9085 [sic] (see Case No. 2019-CA-8085) and 2019-CC-44524 in paragraph 7 of his affidavit, which have different parties – one brought by Strems Law Firm and a separate plaintiff's law firm representing a water loss mitigation company. Under most insurance policies, a homeowner has a duty to mitigate damages. If a homeowner hires a company to dry out the property following an incident involving water damage, the homeowner satisfies that condition. A failure to satisfy the duty to mitigate can expose a homeowner to a motion for summary judgment for failure to comply, which would eliminate the homeowner's entire claim for damages. In the industry, the mitigation company generally submits its invoice for its services drying out the property directly to the insurance carrier

though an assignment of benefits. The mitigation company retains its own legal counsel, including the Fernandez Law Firm or Morgan & Morgan, P.A., to assist them in collecting its invoices.

Strems Law Firm represents the homeowner on claims for different damages that have not otherwise been assigned to a mitigation company. Specifically, Strems Law Firm will handle the claim for damages outside the scope of services rendered by the mitigation company and assist the homeowner on recouping funds needed to bring the property to pre-loss condition. Strems Law Firm does not seek damages related to claims associated with the services rendered by the water loss mitigation company because those claims no longer belong to the homeowner. As such, any cause of action filed by a water loss mitigation company involves separate issues from the cause of action filed by the homeowner. This assignment of benefits usually occurs before the Strems Law Firm is retained. Regardless, the Strems Law Firm has no agreement with or control of how these entities handle their claims or file their lawsuits.

Judge Barbas also cites to Thirteenth Circuit Cases 2020-CA-338 (date of loss September 10, 2017) and 2020-CC-2256 (date of loss October 3, 2019) in paragraph 12(e), that involve separate incidents with separate dates of loss. Obviously, the plaintiffs who experience separate incidents resulting in property damages will have to bring a cause of action against the same insurance company

from whom they purchased a policy. Even though the parties are the same, the underlying incident giving rise to the claim for property damage is different. Accordingly, the issues, including causation, coverage, and damages will be different for each case. Insurance companies almost always assign these incidents separate claims numbers and investigate them independently for statute of limitations and other defensive issues.

The determination that these matters did not fall within the definition of a "related matter" under the terms of the Administrative Order is consistent with the Court's analysis of whether these matters should be consolidated. In evaluating whether consolidation is appropriate, State Farm Florida Ins. Co., v. Bonham, 886 So. 2d 1072, 1074 (Fla. 5th DCA 2004), held that a court must evaluate the following factors:

> (1) whether the trial process will be accelerated due to the consolidation; (2) whether unnecessary costs and delays can be avoided by consolidation; (3) whether there is the possibility for inconsistent verdicts; (4) whether consolidation would eliminate duplicative trials that involve substantially the same core of operative facts and questions of law; and (5) whether consolidation would deprive a party of a substantive right.

Id. Bonham held that denying a Motion to Consolidate was appropriate finding as follows:

> Although there is a possibility of inconsistent verdicts, the lawsuits are different causes of action based on unrelated theories and feature different measures of damages. It is true that a common issue in both actions is whether and when there was sinkhole activity on the

> property. However, the core facts underlying both lawsuits are different. The broker lawsuit focuses on the concealment of information concerning sinkhole activity, which allegedly occurred prior to the purchase of the property, while the insurance litigation is concerned with whether any sinkhole loss occurred during the policy period. Thus, this case is not analogous to those in which separate lawsuits and causes of action arise out of a single motor vehicle accident.

Id.

As in Bonham, the cases referenced by Judges Holder and Barbas arise out of different causes of action unrelated to each other in time and scope or by parties and damages. The core facts in each action are different and require a separate coverage analysis. When the underlying causes of action, dates of loss, and damages are distinct, there is not a possibility of "duplicative" suits.

The mere possibility of different juries arriving at a different conclusion on a fact common to two lawsuits does not alone mandate consolidation. See Friedman v. DeSota Park N. Condo. Ass'n, 678 So. 2d 391 (Fla. 4th DCA 1996). Just as appellate courts have determined that actions with separate dates of loss do not require consolidation, there is no showing that these cases with different dates of loss are "related cases" with the "same legal issues" and the "same parties" that should be brought to the notice of the court under the terms of the Hillsborough County Administrative Orders.

Even assuming *arguendo* Notices of Related Cases should have been filed with regard to these three sets of cases, a mistaken or inaccurate interpretation of

what constitutes a "related case" under the terms of a local Administrative Order does not rise to the level of a disciplinary violation and certainly not the type of conduct that would warrant an immediate emergency suspension. In order to justify this harsh sanction, The Florida Bar utilizes inflammatory descriptions claiming Mr. Strems "ha[s] endeavored to pull the wool over the eyes of the 13th Judicial Circuit in order to keep it unaware of the firm's duplicative filings and attorney's fee claims" which "evinces a lawless and fraudulent intent to abuse the judiciary." (Petition, para. 32, p. 35). Despite the hyperbole, filing two causes of action for two separate dates of loss or two different parties, represented by different law firms, filing suits regarding separate losses, or not filing a notice regarding another firm's law suit, is not "duplicative" or "fraudulent" as alleged by the Bar. Even Judges Holder and Barbas assert the remedy for the separate filings is "consolidation" and not "dismissal," which would be appropriate if the firm were filing frivolous and duplicative lawsuits.

Moreover, neither the Bar, nor Judge Holder, nor Judge Barbas allege that Mr. Strems filed the lawsuits or ordered his subordinate attorneys who were responsible for the litigation to refrain from filing Notices of Related Cases in Hillsborough County. The Bar cannot meet its burden of showing that Mr. Strems is responsible for the alleged violations of his subordinates regarding the purported

violations of the Administrative Orders and these allegations cannot support the imposition of an emergency suspension.

VII. Affidavit of Judge Holder. (Petition Exh. U).

Judge Holder's affidavit contains conclusory allegations not based on personal knowledge and with no reference to supporting facts. For example, he broadly alleges, "From my experience with the Strems Law Firm, they represent exclusively Hispanic property owners (many of whom claim to be non-english [sic] speakers) who are generally referred to the firm through the use of third party known as Contender Claims Consultants, Inc." (Petition Exh. U, para. 4). This statement is entirely without personal knowledge. Judge Holder has no basis to aver that each of the 17,958 claims brought by Strems Law Firm over the relevant time frame pertain to "exclusively Hispanic property owners." Moreover, there is no basis for Judge Holder to claim that many of these "Hispanic" plaintiffs "claim" to not speak English. The reference to "Hispanic property owners" is profoundly disturbing; the race, ethnicity, or national origin of any litigant is entirely irrelevant. See also R. Regulating Fla. Bar 4-8.4(d).

Second, Judge Holder does not provide any underlying basis to support his bald claim that Contender Claims Consultants "generally refer[s]" cases to Strems Law Firm. (Petition Exh. U). Merely stating it is "[his] experience" as a sitting judge and reviewing case files provide no vantage point for observations between

Strems Law Firm employees and its clients that are required to be "personally known" to him.

Judge Holder states, without any specificity, "on information and belief, Contender presents these Hispanic homeowners with a Contingent Fee Agreement." (Petition Exh. U, para. 4). Rather than provide any explanation as to how he has personal knowledge of this assertion, Judge Holder cites the unproven allegations contained in an Amended Class Action Complaint and Demand for Jury Trial that was filed April 16, 2020, in Orange County. (Petition Exh. U, para. 4).

Judge Holder also claims that the fee "agreement is unknowingly signed by the homeowner with no discussion by and between the homeowners and Mr. Strems or any of his employed attorneys or staff members." (Petition Exh. U, para. 4). Again, Judge Holder has no personal knowledge that would support this statement. Judge Holder appears to rely on the bare allegations of the Orange County civil complaint filed against Strems Law Firm which, as Judge Holder must know, does not constitute "facts," let alone facts that are personally known to the affiant.

Judge Holder avers "[a]t that point, it **appears** that Mr. Strems or his agents contact All Insurance Restoration Services Inc. ("AIRS") to provide water remediation services" and "AIRS then convinces the homeowners to execute assignments of benefits contracts." (Petition Exh. U, para. 4) (*emphasis added*).

This allegation is pure speculation based on a conclusory summary of broad allegations contained within a civil lawsuit, unsupported by any specific facts and not personally known to Judge Holder. Clearly, if it were sufficient to suspend an attorney on an emergency basis upon bare allegations in a civil lawsuit, the Bar would have simply attached the civil complaint. Instead, the Bar provides a summary of these allegations in a sworn affidavit, prepared by a sitting judge who has no personal knowledge of the facts supporting the accusations, in an attempt to meet the Rule 3-5.2(a) requirements. This is insufficient and cannot form the basis for an emergency suspension.

In paragraph 8 of Judge Holder's affidavit, he references orders that do not show misconduct by Mr. Strems or conduct warranting emergency suspension. Judge Holder cites eight (8) orders purportedly granting sanctions, all from the 2016 to 2017 time frame and without any showing that Mr. Strems was involved in the cases or knew about any conduct leading to the sanctions.

The rest of the orders recited in paragraph 8 do not raise misconduct issues but are orders that could be issued in any busy litigation practice. For example, he cites three Final Judgment Orders, four Summary Judgment Orders, two Motions for Sanctions (with no corresponding Order), one Notice of Lack of Prosecution, one Dismissal, one Order finding admissions deemed admitted, one Consolidation Order, two voluntary dismissals, three orders granting dismissals for failure to

prosecute, one motion to enforce settlement, one pending notice of lack of prosecution, one case showing lack of activity, two orders granting motions to compel discovery, two cases consolidating actions with an All Insurance Restoration Services, Inc., case, and two cases set for trial in June and July 2020 in which the litigation counsel have not yet complied with the Uniform Trial Court Order. These orders, culled from about four (4) years of heavy litigation practice, also fail to consider the 2,846 Strems Law Firm litigation cases brought to successful conclusion during this timeframe. But even considering these orders on their own, there is no showing of ongoing conduct that warrants an emergency suspension.

VIII. Affidavit of Judge Barbas. (Petition Exh. V).

Judge Barbas's affidavit references hearsay communications characterizing the purported experience of other judges which does not constitute information personally known to him and is therefore, inappropriate for inclusion in a Rule 3-5.2(a) affidavit supporting emergency suspension. In addition, the communications do not even appear to be related to Mr. Strems, who is the subject of the suspension, but rather to subordinate attorneys who are handling the litigation.

As discussed in section VI above, Judge Barbas's affidavit primarily pertains to allegations that attorneys other than Mr. Strems failed to appropriately

consolidate related cases. In support, Judge Barbas attaches what appears to be a print-out of cases that Judge Barbas contends should have been consolidated in compliance with Administrative Orders. However, it is unclear whether these matters fall within the effective date of the Administrative Order cited by The Florida Bar or whether they fall within the correct definition of "related cases" requiring the "same parties" and the "same legal issues." Moreover, there are no facts to evaluate whether these cases involved the same issues or whether they pertain to separate incidents giving rise to different causes of action or separate claims for damages brought by different parties.

Judge Barbas also references orders in which sanctions were entered. Two of these orders have been addressed above and do not demonstrate that Mr. Strems violated any Rule Regulating The Florida Bar: Ramos (Petition Exh. 14(i)) and Ramirez (Petition Exh. 14(n)). (Petition Exh. V, para. 12 a. and 12 c., respectively). Judge Barbas also references sanctions orders entered in March and August 2018 pertaining to 2017 Motions for Sanctions for discovery violations. (Petition Exh. V, para. 12 b.). The March 2018 Order was copied to Attorneys Drake, Strems, and Iravedra. The August 2018 Order was only copied to Attorney Drake. In addition, Judge Barbas cites one matter in which he contends that the firm failed to timely prosecute a claim. Even if these allegations are taken as true and constitute a rule violation, they do not even allege that Mr. Strems committed,

ordered, ratified, or knew about conduct at a time when the consequences could be avoided or mitigated and thus, do not show that Mr. Strems should be responsible for a subordinate lawyer's alleged violation. More importantly, these matters do not show clearly and convincingly that a lawyer appears to be causing great public harm.

IX. Conclusion.

The Florida Bar's Petition for Emergency Suspension does not meet the requirements of Rule 3-5.2 of "clearly and convincingly" proving Respondent appears to be "causing great public harm." The Petition references numerous discovery violations which are dated, and affidavits rife with conclusory allegations by two Thirteenth Circuit Court judges who possess little, if any, personal knowledge of matters upon which they opine. The vast majority of the allegations cannot be attributed to the Respondent, but to subordinate lawyers scattered across the state. While the totality of the allegations may justify Bar scrutiny, they fall woefully short of justifying emergency suspension.

WHEREFORE and by reason of the foregoing, Respondent respectfully requests this Referee to dissolve the emergency suspension imposed by this Court's Order dated June 9, 2020.

Respectfully submitted,

/s/ Scott K. Tozian

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CERTIFICATE OF SERVICE

I HEREBY CERTIFY that the original of the foregoing Motion to Dissolve Order of Suspension Dated June 9, 2020, has been furnished this 26th day of June, 2020, to the Honorable John A. Tomasino, Clerk, Supreme Court of Florida, via e-portal filing; and a true and correct copy has been provided by email to the Honorable Berlita Ana Soto, Chief Judge, Eleventh Judicial Circuit, bsoto@jud11.flcourts.org; John Derek Womack, Esquire, Bar Counsel, The Florida Bar, jwomack@floridabar.org; Patricia Ann Savitz, Esquire, Staff Counsel, The Florida Bar, psavitz@floridabar.org; and Mark A. Kamilar, Esquire, Counsel for Respondent, kamilar@bellsouth.net.

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