IN THE SUPREME COURT OF FLORIDA
(Before a Referee)

THE FLORIDA BAR,

Complainant,

v.

RAYMOND B. MITCHELL

Respondent.
_____/

SUPREME COURT CASE
NO. SC20-1777

The Florida Bar File
No. 2019-10,038(20A)

RESPONDENT'S INITIAL BRIEF

APPEAL FROM THE "REPORT OF REFEREE" HEATHER DOYLE

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PRELIMINARY STATEMENT AND ABBREVIATIONS

References to the Index of Record filed by the Referee will be listed as "R" with a dash then a number referring to the Record Number listed under “Tab” of the record/index, then a space followed "at" then a space then the page numbers where the statements are listed in the Index of Record on Appeal. The Index of Record listing the Exhibits of the parties will have a “Exh. #” between the R and the page number.

For example, [R-3 at 18]. (*That means Index Record “Tab” 3 at page 18 of the document in the Record).*

For example, [R-38 Exh.2 at 7] for the Index of Record listing the Exhibits. (*That means Index Record “Tab” 38 Exhibit #2 at page 7 of the Exhibit.*)

References to the Transcripts will be as above except listed with a "-T1:" or "-T2:" (T1 or T2 for 1st or 2nd Transcript- see below.) Then follows a space and a “p” for the page number of the Transcript, then a colon ":" then the line numbers of the Transcript where the reference is found.

Example [T1: p17:8-25]

The first number after the space after the T1: is the page number in the Transcript, and the second number after the colon “:” is the line number on the Transcript.

The example above [T1: p17:8-25] then means *Transcript 1 on page 17 of the Transcript, Line 8 through Line 25 of the first Transcript*.

The contents of Transcripts 1, 2, 3, 4 are stated below:

T1 = **April 22, 2021**- The transcript of day one of the trial held on April 22, 2021 before Referee Doyle.

T2 = **April 23, 2021**- The transcript of day two of the trial held on April 23, 2021 before Referee Doyle.

T3 = **May 18, 2021**- The transcript of day three of the trial held on May 18, 2021 before Referee Doyle.

T4 = **May 28, 2021**- The transcript of day one of the trial held on May 28, 2021 before Referee Doyle.

STATEMENT OF THE CASE AND OF THE FACTS

The nature of this case is the allegation of the Florida Bar that Respondent violated Rules 4-8.2(a) and 4-8.4(d) in his Motion to Disqualify Judge Amy Hawthorne by alleging Respondent stated something in his Motion that was not true that he knew was not true [4-8.2(a)] and that Respondent disparaged Judge Amy Hawthorne and was prejudicial to justice [4-8.4(d)] in his Motion to Disqualify filed in the Travis Varney dissolution of marriage case.

Respondent was retained by Travis Varney ("Husband") in his divorce case around August 30, 2017 which was a case already filed and pending. Respondent was Husband Varney's second attorney retained in his divorce case. When Respondent filed his Notice of Appearance the assigned judge in that case was Nicholas Thompson. Several months later in May of 2018 Respondent discovered that a different judge had been assigned in the Travis Varney case, judge Amy Hawthorne. Respondent had previously had a few cases and hearings before the honorable Amy Hawthorne and from those cases it seemed to Respondent that judge Amy Hawthorne had flagrantly ignored laws, made rulings in violations of several laws, and had caused two of Respondent's prior client's to be deprived unjustly and unlawfully of large amounts of assets and child support which by law and by justice they should have been granted to have them. Respondent also had judge Amy Hawthorne

in some cases where she had a very bad and grouchy attitude and was disrespectful to attorneys and parties during the hearings, rebuking and speaking very loud when there was no need for any strong rebuke or loud speaking. (Other attorneys Respondent had asked about their view of Judge Hawthorne said the same thing and they thought Judge Hawthorne was out for revenge against attorneys she had dealt with when she ran her own family law firm.)

Respondent was retained by Celeste Rabideau around April 30, 2014 to obtain an order for child support she needed very much as she had little income and was the primary supporter of her young children (she had two minor children- at that time ages 7 and 5). Her pro se divorce ended with an agreement that had no child support agreed to or ordered and the child support provision in the agreement was left blank. Florida law does not allow parties to agree away child support and since Ms. Rabideau had less income than father the former husband should have been paying child support. Celeste Rabideau decided to choose a motion for relief from judgment to try to overturn the judgment/agreement and obtain child support as the law required, instead of undergoing a lengthy and expensive modification of child support case. Since almost every judge before had struck down “zero child support” agreements or orders as a violation of Florida laws, Celeste Rabideau and

Respondent believed she had a great chance of voiding the agreement of zero child support. At the hearing with the Magistrate however, the Magistrate ruled that it could not be changed or vacated with a Report that clearly ignored the laws and provided contradictory logic that ignored what the appellate courts have ruled. Celeste Rabideau decided to file “Exceptions” to the Magistrate Report (like an appeal) even though this was becoming very costly. Exceptions were drafted and filed and a transcript was prepared, all costing Ms. Rabideau must money which she actually needed to help raise her minor children better and sufficiently. The hearing on the Exceptions was heard by judge Amy Hawthorne. Judge Amy Hawthorne refused to follow the law which plainly and clearly states that parties cannot agree away child support and a child support order must be entered within the statutory guidelines of plus or minus five percent (5%), and she refused to overrule the Magistrate Report, even though it was plainly in contradiction to the laws of Florida. Judge Hawthorne was also rude in her verbal ruling telling Celeste Rabideau ‘she made her agreement and she can live with it’ (which Celeste Rabideau testified to during the trial in this Bar case). Judge Amy Hawthorne refused to follow the laws and the appellate court rulings even though it was plainly unlawful and even though Celeste Rabideau needed the money very much to

raise her children as the children were suffering from the lack of money to support them.

Respondent was also retained around March 22, 2016 by Caridad Moulton-Miran for an appeal of her dissolution of marriage case that was finalized by a trial of over three days. Caridad Moulton-Miran had retained another attorney during her divorce case, Douglass Spiegel. To summarize, Caridad Moulton-Miran had owned her own house prior to the marriage for many years before and after her marriage sold it and bought another house in her sole name only with money solely from her before the marriage house (non-marital funds) which by law makes her new house deeded only on the name of wife, Caridad Moulton-Miran, and never in husband's name, a non-marital asset owned solely by wife, Caridad Moulton-Miran. This was actually the third divorce case filed by the Miran parties within on year as the husband, Mr. Miran, had a history of extreme violence against the wife with three domestic violence cases and injunctions obtained by wife Caridad Moulton-Miran against Mr. Miran. The trial was focused solely on if Mr. Miran (husband) would be able to obtain up to half the house of wife based on a violently coerced quitclaim deed that was illegally invalid and void. Without any party asking for this to be enforced, Judge Amy Hawthorne during the trial, on her own, sua sponte,

looked at an alleged agreement from the second trial, that was voided, dismissed in its entirety by husband Mr. Miran, and decided to enforce that alleged agreement that gave the entire house (100%) to Mr. Miran (who was in prison on a 30-year sentence for attempted murder of his wife, Caridad Moulton-Miran during the trial) and wife Caridad Moulton-Miran in actual practice received nothing whatsoever, except some promise that husband Mr. Miran would somehow pay Caridad Moulton-Miran a measly $14,000 while he was in prison for 30 years. There were numerous laws violated by Judge Amy Hawthorne in adopting that agreement no one was seeking to have enforced, and enforcing it was extremely unjust to wife, Caridad Moulton-Miran since she actually received nothing at all from the divorce and Mr. Miran received the entire house, except for $14,000. Mr. Miran received about $100,000 of value counting the increase in the house value and wife Caridad Moulton-Miran received $0 Zero in practical assets and some lame promise of getting $14,000. Judge Amy Hawthorne has a duty to void out extremely unfair and unjust agreements even if this would have been an actual agreement that was actually agreed to, but Caridad Moulton-Miran never agreed to it in actuality. Caridad Moulton-Miran had filed a motion to void and set aside the alleged agreement signed under extreme violence and threat of violence by husband Mr. Miran, which that

motion was never heard by judge Amy Hawthorne to determine if the alleged agreement was actually an agreement or a coerced one under extreme violence. Right after wife Caridad Moulton-Miran had filed her motion to set aside the agreement husband Mr. Miran filed his notice of voluntary dismissal. Wife's attorney Douglass Spiegel filed a Motion for New Trial and a Motion for Rehearing naming many of the unjust and illegal laws violated by Judge Amy Hawthorne in her Judgment, but simply denied both motions without any hearings, and with no explanation at all and no concern at all that Caridad Moulton-Miran gets absolutely nothing from her divorce (when the house was her pre-marital non-marital house) and the violent attempted murderer Mr. Miran received the entire house 100% (since he would never be able to pay the $14,000).

Respondent filed an appeal of the Judgment for Caridad Moulton-Miran as several laws were violated by Judge Hawthorne's Judgment which resulted in extreme injustice for Caridad Moulton-Miran and an unjust enrichment for Mr. Tolga Miran. An Initial Brief of 50 pages was filed with the 2nd DCA and the large amount of work needed to complete the Brief (with several issues of law violations to document in the Brief) cost the client Caridad Moulton-Miran several thousands of dollars in attorney fees in the hope of obtaining at least half of her home she had indirectly owned

before the marriage and was legally a non-marital asset that should have been totally her own asset with husband Tolga Miran receiving nothing or very little. The appellate court (2nd DCA) surprisingly denied the appeal with no explanation or ruling whatsoever, which emotionally and financially devasted my client Caridad Moulton-Miran. She lost her non-marital house and lost more than $20,000 in attorney fees and receive nothing whatsoever in total violations of Florida laws (and a denial of her appeal with no explanation or ruling at all is a violation of due process of law that should not be allowed to occur).

Caridad Moulton-Miran then wanted to pursue some hearings in a motion for relief from judgment based on some legal issues in an attempt to obtain her proper share of her home she unlawfully lost to erroneous court decisions. These actions were also denied and she again lost additional funds in an attempt to have the courts follow the laws and pursue justice, but justice was denied to Caridad Moulton-Miran and she received nothing whatsoever from her home and an attempted murderer of the wife, Husband, Tolga Miran was granted the entire house.

Because of these two prior cases that Judge Hawthorne had ruled in an extremely unjust manner and violated several laws that were clear and compelling and based on her attitude not being the best in the past

Respondent had to inform his client Travis Varney of her past history of unjust rulings and attitude to inform him of the possibility of filing a motion to disqualify Judge Hawthorne, as is his duty as an attorney to inform his client of all relevant issues. Travis Varney was then fearful of Judge Hawthorne being very biased and prejudiced against him based on her history of unlawful rulings and he also claimed he had a fear of women judges based on his own research where he found that many had ruled against men according to what he said he found in his research. Respondent told his client Travis Varney that he had never seen Judge Amy Hawthorne ever be biased against men before and that in the two cases that he told Mr. Varney were unlawful and unjust were both women who Judge Amy Hawthorne had ruled against, so Respondent did not agree with his client's fear that Judge Hawthorne would be biased against men. (Travis Varney had a pending temporary alimony order of $2,000 per month ordered by the prior Judge Thompson, and he was fearful that at the final trial a woman judge would order it even higher beyond his ability to pay it.) Respondent did not agree with his gender of the Judge fears but since Rule 2.330 says any actual fear of bias or prejudice by a client/party shall be stated and the judge should disqualify whether the bias or prejudice is actually true or not, thus Respondent said since Travis Varney

actually feared the woman judge he would write in the motion to disqualify that “Husband fears bias from a women judge” since Respondent suspected the Bar could become bias or prejudice themselves and view that us something not allowed even though Rule 2.330 does not limit any type of bias or prejudice to be stated and that bias or prejudice is authorized by the Rule. (Respondent’s fears of the Florida Bar’s illegitimate views that that kind of bias or prejudice is not allowed was correct, even though it is allowed in the Rule, showing the Florida Bar’s own extreme bias or prejudice against Respondent.)

Respondent filed the Motion to Disqualify Judge Amy Hawthorne for his client Travis Varney around May 25, 2018. Judge Hawthorne refused to abide by Rule 2.330 and disqualify herself as the Rule requires since the Rule is designed to promote a view of justice and fairness of the court system by the parties in their own minds and is not designed to keep a judge on some case because the judge’s feelings may be hurt by a motion to disqualify. However, it appears Judge Amy Hawthorne had her feelings hurt and refused to follow Rule 2.330 even though she may have viewed the allegations in the Motion as untrue, so she refused to disqualify herself as the Rule requires, thus putting Travis Varney in great fear for about two years he had some biased and prejudiced judge in his divorce case that

would rule against him unjustly. Judge Hawthorne also seemed to view that her being the judge in that divorce case was some right or interest of hers to stay on, and instead of disqualifying herself Judge Hawthorne sent the Motion to Disqualify to the Florida Bar for review.

Sometime in July 2018 the Florida Bar sent a letter to Respondent asking if he could explain how his Motion to Disqualify was not a violation of some ethics rules, though not clearly stated which parts of Rules or what alleged violations were broken. Respondent wrote back two or three times that his goal was only to obtain a judge who follows the laws and promotes justice and would care to promote justice and provide his client, Travis Varney, a judge he would not fear would be biased or prejudiced against him, and that he only followed the Rules as written and that neither of the two ethics Rules referenced by the Florida Bar were violated as could plainly be seen from the facts and rules as written. The Florida Bar ignored the ethics Rules as written and wanted to punish Respondent for trying to obtain a judge who follows the laws carefully and justly.

The Florida Bar did not pursue their complaint for a long time until December 2020 when they filed their complaint officially with the Supreme Court. A Referee was appointed and ruled and now we are in the Florida Supreme Court.

SUMMARY OF ARGUMENT

1. THE REFEREE ERRED IN HER INTERPRETATION AND VIEW OF RULE 2.330 FLORIDA RULE OF JUDICIAL ADMINISTRATION

Stating the specific bias of a judge is not "disparaging" a judge since Rule 2.330 requires that the specific bias be written and stated. Rule 2.330(d)(1) states that the Motion to Disqualify shall show "*that the party fears that he or she will not receive a fair trial or hearing* *because of specifically described prejudice or bias of the judge*." It also states in Rule 2.330(c)(2) that "A motion to disqualify shall:*** allege specifically the facts and reasons upon which the movant relies as the grounds for disqualification;". Respondent put in detailed "facts and reasons" in his Motion to Disqualify, such as the reasons the party feared the bias and prejudice from her past history and apparent attitudes, because the Rule requires it to be written in the Motion. The purpose was to follow the Rule as written and to obtain a judge whom the party (and Respondent) did not fear to be biased against the laws and facts, and obtain a judge who would faithfully follow the laws.

Seeking to disqualify a judge due to the fear of the party (and lawyer on his behalf) is a duty under the Rules if a party believes the judge will be biased and Rule 2.330 says the judge must disqualify

immediately whether the alleged bias/prejudice is true or not and not take issue with the Motion to Disqualify.

2. THE REFEREE ERRED IN HER REPORT RULING ON RULE 4-8.2(a) FLORIDA RULE OF PROFESSIONAL CONDUCT

The Referee stated in her Report that Respondent had "no objectively reasonable factual basis for the statements that respondent made in the Motion to Disqualify" based on the claims of Respondent that "Judge Amy Hawthorne totally ignores the laws of Florida and rules against them and ignores the evidence and facts in her cases" and "Judge Hawthorne was biased against the parties and refused to follow the laws of Florida apparently just to get the cases done and completed to lessen the case load." However, the Referee did not refute a single example of the numerous laws Judge Hawthorne had violated in Respondent's Motion to Disqualify as there were about 9-10 examples of law violations of Judge Hawthorne.

The Referee also misstates the Rule 4-8.2(a). Referee wrote that Respondent had "no objectively reasonable factual basis for the statements" in his Motion to Disqualify on page 14 of her Report. However, Rule 4-8.2(a) states a lawyer shall not make a statement that "the lawyer knows to be false or with reckless disregard to its truth or falsity … concerning the integrity of a judge". Respondent's Motion to

Disqualify Judge Hawthorne is true and Respondent certainly does not know that it is false, or recklessly disregarded whether it is true or false. The Referee or the Florida Bar has never stated or proven any of the law violations stated in the Motion were incorrect, nor did they prove or give any evidence that husband Varney did not really fear his alleged bias of Judge Hawthorne being biased against the law and men. Husband truly believed his fears of a woman judge being biased against men, and Respondent truly believes (and gave several specific instances of) that Judge Hawthorne violated many laws in the examples in the Motion. The Referee never stated which statements of Respondent that were false or he knew was false.

3. THE REFEREE ERRED IN HER REPORT RULING ON RULE 4-8.4(d) FLORIDA RULE OF PROFESSIONAL CONDUCT

Respondent did not violate Rule 4-8.4(d) since it plainly and clearly does NOT apply to a Judge and stating her bias examples is not disparaging since Rule 2.330 requires it be stated. The Rule states a lawyer cannot disparage or engage in conduct prejudicial to the administration of justice "litigants, jurors, witnesses, court personal, or other lawyers". It never states "judges". Therefore, it does not apply to judges. The other stated Rule 4-8.2(a) plainly states it applies to "judges". It states that a lawyer shall not . . . "of a **judge**, mediator,

arbitrator… etc." But Rule 4-8.4(d) does not list judges at all, therefore, the Rules makers intentionally left out the word "judge" in Rule 4-8.4(d). Therefore, my Motion to Disqualify Judge Hawthorne cannot violate this Rule. Also, the official **"**Comment" to Rule 4-8.4(d) plainly shows that the Motion to Disqualify Judge Hawthorne does NOT violate this Rule. Comment for subdivision (d) states on the last sentence of the Comment: "This subdivision (d) does NOT prohibit a lawyer from representing a client as may be permitted by applicable law". So, this Rule does NOT apply to judges, and even if it did, a lawyer is authorized by the applicable law in Rule 2.330 to file a Motion to Disqualify a judge.

4. THE REFEREE ALLOWED HER REPORT TO CONTAIN FALSE AND INCORRECT TESTIMONY OF RESPONDENT THAT REFEREE ADMITTED ORIGINALLY WAS INCORRECT AND REFEREE SAID SHE WOULD AMEND HER REPORT TO STATE THE TRUTH OF WHAT RESPONDENT TESTIFIED, BUT LATER CHANGED HER MIND AND REFEREE SAID SHE WOULD ALLOW HER REPORT TO STATE WHAT SHE KNEW ORIGINALLY WAS INCORRECT, INACCURATE AND FALSE STATEMENT OF WHAT RESPONDENT TESTIFIED AT TRIAL, (THOUGH SHE CLAIMED OTHER MEMORIES BUT NOT SPECIFIC) (WHICH SHE ADOPTED HER REPORT EXACTLY AS PROPOSED BY THE FLORIDA BAR WHO PROPOSED FALSE TESTIMONY OF RESPONDENT RESULTING IN THE APPEARANCE RESPONDENT WAS GUILTY OF WHAT HE KNEW WAS NOT TRUE) WHEN THE ACTUAL TESTIMONY OF RESPONDENT SHOWED HE KNEW ALL HE WROTE IN HIS MOTION TO DISQUALIFY JUDGE HAWTHORNE WAS TRUE, NOT FALSE.

The Referee stated on page 11 of her Report (drafted by the Florida Bar 100%) that "respondent acknowledged that he had never heard Judge

Hawthorne state that she wanted to get cases done and lessen her case load by not following the laws of the State of Florida." This was totally false and incorrect as that was never stated anywhere by Respondent ever. In fact, the Referee seems to contradict herself because in the next sentence the Report states "The Respondent did testify that he had heard Judge Hawthorne comment during court appearances that she 'wanted to get cases done and lessen her caseload.'" So, Respondent did testify that he had heard Judge Hawthorne say she wanted to get cases done, but the sentence before that claims he never heard her say that, which is totally false. Respondent testified that he heard Judge Hawthorne say that many times at docket soundings in several cases, hearings, and with many judges and court persons.

5. THE REFEREE ERRED IN HER REPORT ON HER RECOMMENDATIONS AS TO GUILT, SANCTIONS, AND DISCIPLINE THAT GOES FAR BEYOND THE RECOMMENDED GUIDELINES OF PROPER PUNISHMENT

Referee was in error in her Report as already argued herein and Respondent was not guilty of any ethics Rule violations. The Referee also recommended the incorrect sanctions and discipline for Respondent. If Respondent is guilty of improperly seeking to obtain a judge who faithfully follows the laws of Florida and cares that they are promoting justice, then the Referee recommended a sanction far

beyond what is called for and fits the facts and situation of Respondent. Chapter 600 & 700 says suspension is appropriate when an attorney violates his duty and it causes injury or potential injury to a client, the public, or the legal system. In this case there was no injury or harm to anyone, no client, not the public, or the legal system as few people knew about the Motion to Disqualify (other than perhaps the feelings of Judge Hawthorne, who by Rule 2.330 is supposed to put her feelings away and not be offended and enter an order to disqualify). The only possible sanction that is appropriate if Respondent did any violations of the Rules is Admonishment since there was little or no harm to anyone. Suspension of 91 days is far beyond the actions of Respondent and very far beyond and injury or hard incurred by anyone and is a violation of the 8th Amendment as Excessive.

6. THE REFEREE MADE NUMEROUS ERRORS IN HER REPORT (TAKING THE PROPOSED REPORT OF THE FLORIDA BAR WITHOUT ANY REVISIONS AT ALL, NOT A SINGLE WORD IS REVISED)

This section cannot be summarized easily.

7. THE FLORIDA BAR VIOLATED DUE PROCESS OF LAW IN HOW THEY HANDLED THIS CASE BY OFFERING UNJUST OFFERS TO SETTLE THAT VIOLATED THE 8TH AMENDMENT BY OFFERING CRUEL AND UNUSUAL PUNISHMENT, AND BY CLAIMING IN THE COMPLAINT THAT RESPONDENT HAD VIOLATED CONFIDENTIALITY OF HIS CLIENTS, CITING RULE 4-1.6, BUT THE FLORIDA BAR DID NOT INVESTIGATE ITS ALLEGATIONS OR HAVE

ANY EVIDENCE AT ALL THIS WAS TRUE, IT JUST SIMPLY MADE UP THE ALLEGATION WITH NO EVIDENCE WHATSOEVER.

The Grievance Committee offered Respondent to settle:

1. 'I would admit to a minor violation of the Rules;
2. 'I would go and obtain a mental health evaluation (through some organization *[on this call she said it was if they recommended it*]);
3. 'and that would not guarantee that I would not lose my bar license even if I did those two items listed above *(since the Grievance Committee members wanted to "get" his bar license).'*

The Florida Bar alleged Respondent did not obtain the consent of his prior clients without even investigating if that was true. All his clients signed Affidavits that stated he did obtain their consent before filing his Motion and that nothing was confidential regardless. Celeste Rabideau/Jones testified that no one from the Florida Bar ever called her about her case or obtaining consent. [T1: 245:5-7].

The Final Report of the Referee should be reversed with Respondent found not guilty and any sanction incurred be Admonishment at most if Respondent is guilty of any violation.

ARGUMENT

Referee Heather Doyle erred as a matter of law and erred on the facts on several issues in her Report of Referee dated June 3, 2021.

1. THE REFEREE ERRED IN HER INTERPRETATION AND VIEW OF RULE 2.330 OF THE FLORIDA RULES OF JUDICIAL ADMINISTRATION.

The Referee seemed to view having a judge be disqualified was some goal and a “desired result” of Respondent as if it was similar to some regular motion that could be granted but not required (page 11 of Report of Referee- last sentence). Referee does not seem to realize that a judge is required to disqualify herself on a motion to disqualify if a party fears bias and prejudice of that judge. Rule 2.330 was written for the benefit of the parties who have real fears of bias and prejudice from a judge whether those fears are actually true or not. The Referee seems to believe Judge Hawthorne had some vested interest in being the judge of the divorce case of Travis Varney when any other judge could have handled just as good as Judge Hawthorne. The Referee seems to think Judge Hawthorne was unjustly deprived (an attempt) of her right to be the judge of Travis Varney’s divorce case by Respondent filing his Motion to Disqualify. It is not a “desired result” but it is a requirement for judges to disqualify when actual bias and prejudice has been alleged against them. Would obtaining another judge have harmed anyone? Or harmed Wife in the divorce case? Of course not. How would that have harmed anyone since there was no trial and Judge Hawthorne knew almost nothing about the Travis Varney case.

The Referee also does not understand that any kind of bias and prejudice against a judge is authorized by Rule 2.330. That Rule does not state that bias and prejudice against the laws of Florida of a judge is not allowed to be alleged. The Referee reported on page 12 of her Report that Respondent argued that "Rule 2.330 did not impose limits on the claims he could make about Judge Hawthorne in the Motion to Disqualify". Respondent never ever argued that at all. Respondent did argue that Rule 2.330 does not limit any type of bias and prejudice that a party may fear from a judge and can be stated in a motion to disqualify. Respondent's arguments are limited by "bias and prejudice" and by "a party fears" and it must be the true beliefs of the party. That is totally different from the Referee's allegation (as proposed by the Florida Bar) that I argued I can make 'any claim about a judge whatsoever'.

The Referee also incorrectly confused stating the bias and prejudice of a judge with "disparaging" a judge (Report of Referee, page 12). Stating what bias and prejudice a party fears in a motion to disqualify cannot be disparaging if it is true since all forms of bias and prejudice can be stated. The ethics Rule referred to by the Referee does not apply to judges regardless since Rule 4-8.4(d) states it does not apply to judges, as judges are not listed in the Rule (as they are in Rule

4-8.2(a) which specifically uses the word “judge”), and the official Comments to Rule 4-8.4(d) states “This subdivision (d) does NOT prohibit a lawyer from representing a client as may be permitted by applicable law”. So, this Rule does NOT apply to judges, and even if it did, a lawyer is authorized by the applicable law in Rule 2.330 to file a Motion to Disqualify a judge for any bias or prejudice that a client reasonably believes a judge has or may have, even if it is something listed in Rule 4-8.4(d). Stating that a judge did not follow the laws (if true) cannot be “disparaging” a judge or else all appeals and motions to reconsider and relief from judgments would all be “disparaging” judges. Stating the judge had no concern about following the laws cannot be “disparaging” if it was true, and the evidence from the documents, witnesses and the motions for new trial/rehearing by attorney Douglass Spiegel and responding orders shows that Judge Hawthorne had no concern at all that Moulton received nothing from her divorce and that Rabideau unlawfully receive no child support she needed.

Stating the specific bias of a judge is not “disparaging” since Rule 2.330 requires that the specific bias be written and stated. Rule 2.330(d)(1) states that the Motion to Disqualify shall show “*that the party fears that he or she will not receive a fair trial or hearing because of*

specifically described prejudice or bias of the judge." It also states in Rule 2.330(c)(2) that "A motion to disqualify shall:*** allege specifically the facts and reasons upon which the movant relies as the grounds for disqualification;". Respondent put in detailed "facts and reasons" in his Motion to Disqualify, such as the reasons the party feared the bias and prejudice from her past history and apparent attitudes, because the Rule requires it to be written in the Motion. The purpose was to follow the Rule as written and to obtain a judge whom the party (and Respondent) did not fear to be biased against the laws and facts, and obtain a judge who would faithfully follow the laws.

Seeking to disqualify a judge due to the fear of the party (and lawyer on his behalf) is a duty under the Rules if a party believes the judge will be biased and Rule 2.330 says the judge must disqualify immediately whether the alleged bias/prejudice is true or not.

> **(f) Determination — Initial Motion.** The judge against whom an initial motion to disqualify under subdivision (d)(1) is directed shall determine only the legal sufficiency of the motion and shall not pass on the truth of the facts alleged. If the motion is legally sufficient, the judge shall immediately enter an order granting disqualification and proceed no further in the action. If any motion is legally insufficient, an order denying the motion shall immediately be entered. No other reason for denial shall be stated, and an order of denial shall not take issue with the motion. **(Rule 2.330)**

The purpose of the Rule is to allow parties to have a judge who they perceive will be fair and impartial, and filing the Motion to Disqualify is a duty for lawyers under the ethics rules to diligently represent their clients. This duty was explained in the Answer of Respondent on page 7-8:

> **Rule 4-1.4** says *"A lawyer shall: (1) promptly inform the client of any decision or circumstance with respect to which the client's informed consent, as defined in terminology, is required by these rules; (2) reasonably consult with the client about the means by which the client's objectives are to be accomplished"*
> **Rule 4-1.3** says "*A lawyer shall act with reasonable diligence and promptness in representing a client."* and the Comments under it says "*A lawyer should pursue a matter on behalf of a client despite opposition, obstruction, or personal inconvenience to the lawyer and take whatever lawful and ethical measures are required to vindicate a client's cause or endeavor. A lawyer must also act with commitment and dedication to the interests of the client and with zeal in advocacy upon the client's behalf."*
> **Rule 4-1.2** says *"**Lawyer to Abide by Client's Decisions.** Subject to subdivisions (c) and (d), a lawyer must abide by a client's decisions concerning the objectives of representation, and, as required by rule 4-1.4, must reasonably consult with the client as to the means by which they are to be pursued. A lawyer may take action on behalf of the client that is impliedly authorized to carry out the representation. A lawyer must abide by a client's decision whether to settle a matter. * * * * (b) **No Endorsement of Client's Views or Activities.** A lawyer's representation of a client, including representation by appointment, does not constitute an endorsement of the client's political, economic, social, or moral views or activities."* The client, Varney, demanded his lawyer, Respondent, place his fear of gender bias in the Motion to Disqualify, even though Respondent did not agree with his views, thus writing client's fears and views is required by this Rule since the Rule says "*a lawyer must abide by a client's decisions"* and it

cannot be argued client's view is a view of Respondent says the Rule.

Rule 4-2.1 says *"In representing a client, a lawyer shall exercise independent professional judgment and render candid advice. In rendering advice, a lawyer may refer not only to law but to other considerations such as moral, economic, social, and political factors that may be relevant to the client's situation.* The Comment under that Rule says "*A client is entitled to straightforward advice expressing the lawyer's honest assessment. Legal advice often involves unpleasant facts and alternatives that a client may be disinclined to confront. In presenting advice, a lawyer endeavors to sustain the client's morale and may put advice in as acceptable a form as honesty permits. However, a lawyer should not be deterred from giving candid advice by the prospect that the advice will be unpalatable to the client."*

[R-5 at 7-8].

2. THE REFEREE ERRED IN HER REPORT RULING ON RULE 4-8.2(a) FLORIDA RULE OF PROFESSIONAL CONDUCT

The Referee stated in her Report that Respondent had "no objectively reasonable factual basis for the statements that respondent made in the Motion to Disqualify" based on the claims of Respondent that "Judge Amy Hawthorne totally ignores the laws of Florida and rules against them and ignores the evidence and facts in her cases" and "Judge Hawthorne was biased against the parties and refused to follow the laws of Florida apparently just to get the cases done and completed to lessen the case load." However, the Referee did not refute a single example of the numerous laws Judge Hawthorne had violated in Respondent's Motion to Disqualify as there were about 9-10 examples

of law violations of Judge Hawthorne. The Bar in two and a half years has never made any allegation that any of the examples of the laws being violated by the Judge stated in my Motion were incorrect, nor did the Referee in her Report (that was written verbatim by the Florida Bar). The statement is true and is a bias that judges are not permitted to have as they are obligated by law and Rules to follow the laws faithfully.

The Referee also misstates the Rule 4-8.2(a). Referee wrote that Respondent had "no objectively reasonable factual basis for the statements" in his Motion to Disqualify on page 14 of her Report. However, Rule 4-8.2(a) states a lawyer shall not make a statement that "the lawyer knows to be false or with reckless disregard to its truth or falsity … concerning the integrity of a judge". Respondent's Motion to Disqualify Judge Hawthorne is true and Respondent certainly does not know that it is false, or recklessly disregarded whether it is true or false. The Referee or the Florida Bar has never stated or proven any of the law violations stated in the Motion were incorrect, nor did they prove or give any evidence that husband Varney did not really fear his alleged bias of Judge Hawthorne being biased against men. Husband truly believed his fears of a woman judge being biased against men, and Respondent truly believes (and gave several specific instances of) that

Judge Hawthorne violated many laws in the examples in the Motion. Witness attorney Douglass Spiegel agreed with Respondent in his testimony and his two Motions he filed right after Judge Hawthorne entered her Final Judgment, Motion for New Trial and Motion for Rehearing [R-38 Exh. 1 & 2 at All]. He attempted to have Judge Hawthorne correct her unlawful Judgment adopting an extremely unfair and unjust “agreement” but Judge Hawthorne denied both his Motions with no hearing at all with no explanation whatsoever. That supports Respondents statements that Judge Hawthorne violated the laws and had no concern about how unlawful, unjust, unfair her rulings were. Judge Hawthorne could have corrected her unlawful Judgment that adopted an unlawful agreement but she refused to do so and did not care at all that Caridad Moulton-Miran received nothing at all from her divorce while husband got the house.

Rule 4-8.2(a) also seems to be focused on when a judge is a candidate for an election or appointment to a judicial office and thus when lawyers speak about a judge as a candidate it must be true, thus Rule 4-8.2(a) seems to be irrelevant to the issue of a motion to disqualify in Rule 2.330 *(and even if it does apply to Rule 2.330, it seems it may contradict it to some degree, except that all the*

statements were true, and Rule 2.330 is a rule of Procedure which is the much higher authority than an ethics Rule if there is any conflict).

3. THE REFEREE ERRED IN HER REPORT RULING ON RULE 4-8.4(d) FLORIDA RULES OF PROFESSIONAL CONDUCT

Respondent did not violate Rule 4-8.4(d) since it plainly and clearly does NOT apply to a Judge and stating her bias examples is not disparaging since Rule 2.330 requires it be stated. The Rule states a lawyer cannot disparage or engage in conduct prejudicial to the administration of justice "litigants, jurors, witnesses, court personal, or other lawyers". It never states "judges". Therefore, it does not apply to judges. The other stated Rule 4-8.2(a) plainly states it applies to "judges". It states that a lawyer shall not . . . "of a **judge**, mediator, arbitrator… etc." But Rule 4-8.4(d) does not list judges at therefore, the Rules makers intentionally left out the word "judge" in Rule 4-8.4(d). Therefore, my Motion to Disqualify Judge Hawthorne cannot violate this Rule. Also, the official **"**Comment" to Rule 4-8.4(d) plainly shows that the Motion to Disqualify Judge Hawthorne does NOT violate this Rule. Comment for subdivision (d) states on the last sentence of the Comment: "This subdivision (d) does NOT prohibit a lawyer from representing a client as may be permitted by applicable law". So, this

Rule does NOT apply to judges, and even if it did, a lawyer is authorized by the applicable law in Rule 2.330 to file a Motion to Disqualify a judge.

The Referee in her Report (written verbatim by the Florida Bar) attempts to make Rule 4-8.4(d) apply to judges by quoting the Patterson case (page 15 of Report of Referee). However, the Patterson case {The Florida Bar v. Patterson, 257 So. 3d 56, at 64 (Fla. 2018)} simply stated that Patterson had made "inappropriate and disparaging statements in court filings and in a letter distributed to other members of the judiciary about opposing counsel and judges . . ." a lawyer had violated Rule 4-8.4(d)." Patterson was stating many unkind statements about many different court personal such as lawyers. "Lawyers" are on the included list of personal stated in Rule 4-8.4(d), however, "judges" are not. The Court was making a statement of the general history of Patterson, not stating that judges are on the list in Rule 4-8.4(d). There were many more reasons the Court found Patterson guilty, not just for statements in a motion, as they wrote (*Id* at 64):

> Our review of the record reveals that Patterson engaged in such conduct by pursuing his own interests in Faddis's appeal, hindering her ability to obtain a more favorable outcome, and nearly resulting in the imposition of additional sanctions against her. He also engaged in such conduct by making inappropriate and disparaging statements in court filings and in a letter distributed to other members of the judiciary about opposing counsel and judges that presided in Faddis's case, contributing to

> the general lack of civility and professionalism this Court is striving to curb in the legal profession.

Patterson also was guilty of some very extreme conduct as the case stated (*Id* at 59):

> On September 20, 2013, Patterson sent Judge Jose E. Martinez, the presiding judge in the case, a letter detailing the history of Faddis's circuit court case and expressing his dissatisfaction with its outcome, comparing the alleged injustice suffered by Faddis to the biblical story of Susanna. He expressed his belief that influential members of the community had manipulated the outcome of the case and implied that a district court judge was biased in favor of opposing counsel. The letter was also sent to judges in the Eleventh Judicial Circuit and Third District.

Patterson was writing to several judges and complaining that many members of the community and some judges were biased against him. That is far different than Respondent citing the several examples of laws that Judge Hawthorne violated and never alleging anyone else was biased and all the law violations have never been stated to be incorrect by anyone. They also wrote about Patterson (*Id* at 59):

> he insinuates that he is "being bullied" by the parties, their counsel, or the court in this case, and that a "miscarriage of justice ... is *knowingly* being perpetrated upon him," (emphasis added). He likens "the story" of the case he filed on behalf of Faddis to "the story of Fidel Castro's suffocating grip of Cuba, the Holocaust, Jim Crow laws, and Hillary Clinton." According to him, the trial court sanction—and probably, now this one as well—are part of some political scheme to silence him and his client.

Patterson plainly does not stand for the idea that Rule 4-8.4(d) applies to judges as the Referee Report implies. The Ray cases quoted in the Report (page 15) also does not support her finding that Respondent is guilty and should be sanctioned for 91 days. The Florida Bar v. Ray, 797 So.2d 556, (Fla. 2001) was about an attorney who had stated "utterly false" statements and were "outrageously false accusations" against a judge. Attorney Ray did not argue that his statements were true but he argued they were protected speech under the First Amendment, which the Court disagreed with. Respondent in his Motion to Disqualify stated the laws Judge Hawthorne had violated which the Referee nor the Bar has ever proven was false, nor have they even tried; and they did not prove that the parties were unjustly deprived of assets and money they should have been awarded with. Those are not false at all, nor outrageous, and Respondent argues his statements are true and he is not seeking protection under the First Amendment freedom of speech clause for any of his statements. The Referee (and Florida Bar in its proposed Report) quoted Ray but they left out an important phrase by using the ". . ." periods. The complete sentence states "ethical rules that prohibit attorneys from making statements impugning the integrity of judges are not to protect judges from unpleasant or unsavory criticism.

Rather, such rules are designed to preserve public confidence in the fairness and impartiality of our system of justice." [underlined is the part Report left out with "…"] They wrote the ethics Rules quoted by the Referee and the Florida Bar are not designed to protect judges from unpleasant criticism. However, the Referee and the Bar write that Judge Hawthorne was disparaged, implying she received unpleasant criticism that she did not like. Stating what Judge Hawthorne did if true cannot be "disparaging", since Rule 2.330 states the same idea that judges are to ignore any false allegations of bias and prejudice against them and immediately disqualify themselves and not take issue with the issues in the motion to disqualify. The Referee and the Bar seem to believe the ethics Rules they quote changes Rule 2.330 and are designed to protect judges "from unpleasant or unsavory criticism". They are incorrect, however.

4. THE REFEREE ALLOWED HER REPORT TO CONTAIN FALSE AND INCORRECT TESTIMONY OF RESPONDENT THAT REFEREE ADMITTED ORIGINALLY WAS INCORRECT AND REFEREE SAID SHE WOULD AMEND HER REPORT TO STATE THE TRUTH OF WHAT RESPONDENT TESTIFIED, BUT LATER CHANGED HER MIND AND REFEREE SAID SHE WOULD ALLOW HER REPORT TO STATE WHAT SHE KNEW ORIGINALLY WAS INCORRECT, INACCURATE AND FALSE STATEMENT OF WHAT RESPONDENT TESTIFIED AT TRIAL, (THOUGH SHE CLAIMED OTHER MEMORIES BUT NOT SPECIFIC) (WHICH SHE ADOPTED HER REPORT EXACTLY AS PROPOSED BY THE FLORIDA BAR WHO PROPOSED FALSE TESTIMONY OF RESPONDENT RESULTING IN THE

APPEARANCE RESPONDENT WAS GUILTY OF WHAT HE KNEW WAS NOT TRUE) WHEN THE ACTUAL TESTIMONY OF RESPONDENT SHOWED HE KNEW ALL HE WROTE IN HIS MOTION TO DISQUALIFY JUDGE HAWTHORNE WAS TRUE, NOT FALSE.

A. The Referee stated on page 11 of her Report (drafted by the Florida Bar 100%) that "respondent acknowledged that he had never heard Judge Hawthorne state that she wanted to get cases done and lessen her case load by not following the laws of the State of Florida." This was totally false and incorrect as that was never stated anywhere by Respondent ever. In fact, the Referee seems to contradict herself because in the next sentence the Report states "The Respondent did testify that he had heard Judge Hawthorne comment during court appearances that she 'wanted to get cases done and lessen her caseload.'" So, Respondent did testify that he had heard Judge Hawthorne say she wanted to get cases done, but the sentence before that claims he never heard her say that, which is totally false. Respondent testified that he heard Judge Hawthorne say that many times at docket soundings in several cases, hearings, and with many judges and court persons. Here is the testimony of Respondent [T1: p126:11-24]:

"A. Well, that was mostly based on the experience with Judge Hawthorne and just judges in general and the whole court system. Specifically, I've seen like docket soundings or, I guess, docket

soundings, I guess even hearings, that many times Judge Hawthorne and many other judges talk about how they want to get the cases over and, you know, this case is taking too long. She specifically said that many times at docket soundings I've been in.

Respondent brought this issue up at the hearing on May 18, 2021 to the Referee [T3: p3:24 through p15:15] as he had also filed a *Second Motion for Reconsideration or Rehearing* the night before the hearing of May 18, 2021 [R-51]. The Referee said she agreed with Respondent and she remembered that Respondent had testified that he heard Judge Hawthorne say many times at docket soundings that she wanted to get case over with and cases are taking too long [T3: p4:23; p6:1-21]. The Referee also ordered the Bar to obtain the transcript of his testimony to correct the Record if it was incorrect [T3: p9:22 through p14:2]. Although the Referee said she remembered Respondent testified he had heard Judge Hawthorne state that, at the end of the sanction hearing on May 18, 2021 the Referee changed her mind about having the Bar obtain the transcript and seemed to not care if false testimony of the Respondent was in her Reports (Interim and Final) (as the Final Report remained exactly the same word for word as her Interim Report) {although the Referee claimed she had rethought the testimony but she seemed not sure what it really was} and the Referee did not seem to care that Respondent was reported to be lying in his Motion to Disqualify simply

because Respondent could appeal to the Supreme Court of Florida and have it corrected [T3: p75:12 through p78:4]. Thus, the Referee sent a Report to the Florida Supreme Court that reported the Respondent knew he had lied about what he heard Judge Hawthorne say in his Motion to Disqualify but the Referee originally knew that Report was false, allowing likely false testimony of Respondent in her Report which resulted in Respondent appearing to be guilty of filing false statements that he knew were false in his Motions which would violate Rule 4-8.2(a). She could have ordered the Bar to still get the Transcript to make sure of the testimony but Referee did not seem to care about the truth of what Respondent testified. However, Respondent did not ever testify that he never heard Judge Hawthorne say what was alleged and that he did hear her say that many times, thus Respondent's Motion to Disqualify was true and not false as the Referee's Report falsely claims. It appears the Referee is not concerned with allowing likely fraudulent statements of Respondent which results in harm to Respondent if not true. In fact, Respondent had written in his Answer to Complaint on page 5 [R-5 at 5-6]:

"… is based on the 17 years of experience with judges and courts in family law cases. Those statements appear to be very true based on the many court hearings Respondent has been with in Judge Hawthorne's court room from docket soundings to set trial dates and viewing dozens

of other cases at the docket sounding and in my cases at docket sounding and hearings where Judge Hawthorne has often pressured all cases to settle, set the trial dates, limit the time for discovery, denying motions to continue trials often (but not always as she granted one of mine in the Varney case when she first came on that case as judge). It is also true that the Case Managers in Lee County for family cases constantly attempt and pressure to get the cases settled and completed and try to force mediations and trial dates even when the cases are not ready for mediations or trials. They have literally stated they need to get these cases completed because that is what the judges want and the court system wants, and they are working on behalf of the judges, report to the judges, and are controlled to a large degree by the judges.

* * * *

But I have seen many instances of Judge Hawthorne pressuring cases to be completed or to set a trial date and she has literally stated in some cases that 'this case needs to be completed and over with' (paraphrase)."

5. THE REFEREE ERRED IN HER REPORT ON HER RECOMMENDATIONS AS TO GUILT, SANCTIONS, AND DISCIPLINE THAT GOES FAR BEYOND THE RECOMMENDED GUIDELINES OF PROPER PUNISHMENT

Referee was in error in her Report as already argued herein and Respondent was not guilty of any ethics Rule violations. The Referee also recommended the incorrect sanctions and discipline for Respondent. If Respondent is guilty of improperly seeking to obtain a judge who faithfully follows the laws of Florida and cares that they are promoting justice, then the Referee recommended a sanction far beyond what is called for and fits the facts and situation of Respondent. Respondent was simply seeking to obtain a judge who his client, Travis Varney, believed would be fair and impartial and was fighting for his

client within the Rules as written. The Referee stated in her Report that she considered the standards as written in chapter 600 and chapter 700 for recommended discipline (page 19 & 20 of the Report). Under chapter 700 the Referee did not explain what Respondent did that was "Deceptive" at all as there is nothing in the Report that claims Respondent was deceptive. Chapter 700 (700 Violations Of Other Duties Owed As A Professional - 7.1 Deceptive Conduct Or Statements And Unreasonable Or Improper Fees) states the following guidelines for discipline:

> **(b) Suspension.** Suspension is appropriate when a lawyer knowingly engages in conduct that is a violation of a duty owed as a professional and causes injury or potential injury to a client, the public, or the legal system.
>
> **(c) Public Reprimand.** Public reprimand is appropriate when a lawyer negligently engages in conduct that is a violation of a duty owed as a professional and causes injury or potential injury to a client, the public, or the legal system.
>
> **(d) Admonishment.** Admonishment is appropriate when a lawyer is negligent in determining whether the lawyer's conduct violates a duty owed as a professional and causes little or no actual or potential injury to a client, the public, or the legal system.

The Referee recommended suspension of 91 days (as the Bar recommended) even though they did not present any evidence at all that Respondent knew he was engaged in conduct that was a violation

(since he followed the Rules as written) and Respondent did not cause any injury to a client, the public, or legal system since very few people knew about the Motion to Disqualify, it did not injure either Varney party (there was no evidence at all that showed that) and filing a Motion to Disqualify a judge certainly cannot be something that caused injury to the legal system. If so then every single Motion to Disqualify a judge for any bias or prejudice could be viewed as an injury to the legal system when that Rule 2.330 is designed to prevent perceived injury of the legal system in the minds and beliefs of the parties whether the bias or prejudice is true or not. The same argument is for Reprimand. The only sanction that fits Respondent is Admonishment if Respondent was guilty. How can Respondent seeking a lawful judge who loves justice and faithfully follows the laws be something that causes suspension for 91 days? The degree of sanction recommended by the Referee is shocking as it seems the Referee is far more concerned about the feelings of Judge Hawthorne than the feelings of Travis Varney who felt betrayed by the legal system and he was harmed for two years by Hawthorne denying to disqualify as Rule 2.330 requires and her refusal injures the view of the legal system to all those who hear what happened here. The only person who was possibly hurt by the Motion to

Disqualify was Judge Hawthorne who likely had her feelings hurt (but no evidence of that presented), but no one else was harmed by it, and Rule 2.330 says Judge Hawthorne is supposed to put her feeling aside and disqualify herself, but that did not happen. The examples quoted in the Rule 700 Comments for “suspension” are all examples of attorneys who were ones where large amounts of assets and money was being transferred to the lawyer using fraud or excessively overcharging clients huge attorney fees for little work or one was an attorney rebuking the judge in front of the jury and in letters to many court personal. It certainly was not stating the bias and prejudice of Judge Hawthorne by quoting the laws she violated that were never refuted or proven wrong and the Rule 2.330 requires that it be listed with specific allegations and examples.

Chapter 600 does not apply since Respondent did not state any statement that was false or that he knew was false. All the witnesses who testified totally agreed with everything Respondent wrote in his Motion to Disqualify. There was no witness who disagreed with a single sentence of Respondent whatsoever. The Report of the Referee simply makes that allegation but does not state anywhere which statements were false in the Motion to Disqualify. All the witnesses agreed with

Respondent, including attorney Douglass Spiegel who agreed that Judge Hawthorne had violated numerous laws as he wrote in his Motions for New Trial and Motion for Rehearing, and he agreed with Respondent that the alleged agreement in his case was unenforceable and not a valid binding agreement and that judges have a duty to overturn one-sided unjust and unfair agreements [T1: p215:10-15] as Judge Hawthorne adopted in the Moulton-Miran case where husband received 100% of the home and wife 0% (except for a weak and nearly unenforceable promise husband would pay wife $14,000 while he was in prison on a 30 year sentence). Suspension of 91 days is far beyond the actions of Respondent and very far beyond the injury or hurt incurred by anyone and it violates the **8th Amendment** as Excessive (especially for seeking a lawful judge for client.)

6. THE REFEREE MADE NUMEROUS ERRORS IN HER REPORT (TAKING THE PROPOSED REPORT OF THE FLORIDA BAR WITHOUT ANY REVISIONS AT ALL, NOT A SINGLE WORD IS REVISED)

A. The Referee stated on page 7 of her Report that “Mr. Varney agreed it would have been beneficial if he had known that the appellate court had upheld Judge Hawthorne’s ruling in one of the cases listed in the Motion to Disqualify.” She did not report that Respondent did explain the appeal results to Mr. Varney (without any ruling or explanation of the

denial) but it had been about three years since that occurred and Mr. Varney had forgotten much of what occurred at that time. The footnote 5 on page 7 does not explain that although Mr. Varney thought Judge Hawthorne's ruling in his divorce case after a trial was fair, this was only after his case went on for two more years after Judge Hawthorne refused to disqualify herself as Rule 2.330 requires and Travis Varney suffered for two years fearing his judge would be biased and prejudiced against him violating the purpose of Rule 2.330. Travis Varney also testified that he "was glad that [Respondent] told me" about the unlawful rulings in the other cases [T1: p75:2-7]. Travis Varney also testified that Respondent had shown him the laws and documents of the other cases (which included the Brief and ruling from the 2nd DCA) [T1: p76:17-23; and T1: p81:25 to p82:4].

B. The Referee stated and implies on page 8 of her Report that the "separation/settlement agreement that was notarized and signed by both the husband and wife on February 22, 2011" was a valid one that no one objected to at that trial. The Referee does not state, as was testified to plainly and clearly, that the alleged agreement was from a prior divorce case that was dismissed in its entirety, and no one and neither party was seeking to have that alleged agreement enforced in

the third divorce case/trial, and no one asked for it to be enforced in any of their petitions, pleadings, motions, or other documents in that case. Referee also does not state, as she should, that 'taking judicial notice' of a case does not mean that the alleged agreement from that case is valid, binding, or enforceable. Referee wrote that there was no objection from wife's counsel, implying the agreement was adopted. Referee does not state that wife's counsel did not object to judicial notice of the prior divorce case having been filed, but wife's counsel did object to the alleged agreement from the case being a valid and binding agreement [R-38-Exh.13: p82:4-23] since that case was dismissed and no one asked for that agreement to be enforced in their pleadings. The Referee did not mention that (as the Florida Bar wrote her Report) which is very selective and deceptive. The Referee wrote that both attorneys agreed the agreement had not been set aside, but that was not true. That line is not referenced in the transcript. Also, Referee did not state, as Respondent had testified to, that wife in that prior dismissed divorce case had filed a motion to set aside the alleged agreement as being coerced under extreme amount of violence and threats from husband but that motion to set aside the agreement was never heard since the husband the next day filed a voluntary dismissal in its entirety (including

the agreement) [T1: p168:15 through p176] and Judge Hawthorne never held a hearing on that motion before pulling out the dismissed agreement and enforcing it without a hearing to see is it was a fraudulent agreement coerced by violence by the husband, as wife was testifying to at the trial [R-38-Exh.13: p83:13-23]. Referee also did not state that divorce judges have a duty to overturn any alleged agreement if it is very one-sided and unfair as this alleged agreement was, as Respondent testified to [T1: p140:10-14].

C. The Referee stated on page 9 of her Report that Respondent did not mention that the 2nd DCA had per curium upheld the Judgment of Judge Hawthorne in his Motion (implying that Respondent had some duty to do so). Respondent did not do so because: Judge Hawthorne already knew her Judgment was not overturned by the 2nd DCA; of course Respondent knew the 2nd DCA denied the appeal; there is no reason to state that in a motion to disqualify a judge since Rule 2.330 says it should state the bias and prejudice the party fears and not whether an appeal was won or not [T1: p141:17-21]; and Respondent testified that he thought the 2nd DCA was incorrect and in error and that the 2nd DCA did not prove Respondent's arguments were incorrect at all since they did not bother to write an opinion to explain why they denied

it, they simply denied an appeal with no explanation at all [T1: p134:1-4,14-17]. Respondent testified that appellate courts can be wrong very often since Supreme Courts often overturn them [T1: p142:2-20].

D. The Referee stated on page 10 of her Report that Rabedeau/Jones did not seek review (appeal) Judge Hawthorne's ruling upholding the Magistrate's ruling, implying that Rabedeau/Respondent knew Judge Hawthorne was correct. Rabedeau/Jones testified she had very little money and was seeking child support to assist her and Rabedeau could not afford approximately $15,000-$20,000 to pay attorney fees for an appeal [T1: p239:2-3].

E. The Referee stated on page 11 of her Report (drafted by the Florida Bar 100%) that "respondent acknowledged that he had never heard Judge Hawthorne state that she wanted to get cases done and lessen her case load by not following the laws of the State of Florida." This was totally false and incorrect as that was never stated anywhere by Respondent ever. In fact, the Referee seems to contradict herself (or is deceptive) because in the next sentence the Report states "The Respondent did testify that he had heard Judge Hawthorne comment during court appearances that she 'wanted to get cases done and lessen her caseload.'" So, Respondent did testify that he had heard

Judge Hawthorne say she wanted to get cases done, but the sentence before that claims he never heard her say that, which is totally false. Respondent testified that he heard Judge Hawthorne say that many times at docket soundings in several cases, hearings, and with many judges and court persons. Here is the testimony of Respondent [T1: p126:11-24]:

"A. Well, that was mostly based on the experience with Judge Hawthorne and just judges in general and the whole court system. Specifically, I've seen like docket soundings or, I guess, docket soundings, I guess even hearings, that many times Judge Hawthorne and many other judges talk about how they want to get the cases over and, you know, this case is taking too long. She specifically said that many times at docket soundings I've been in.

F. The Referee stated on page 15 of her Report "Respondent knew or should have known that the separation/settlement agreement was presented as an exhibit by the husband in the Miran trial and any suggestion in the Motion to Disqualify that the trial judge brought up that agreement sua sponte is not in line with the transcript of those trial proceedings."

The Referee is in error here since Respondent argued that Judge Hawthorne brought up that agreement sua sponte to be enforced as an agreement of the parties, not simply brought it up in the case. (The Florida Bar who drafted this Report as their proposed Report, which the

Referee signed without any revisions at all is very deceptive and dishonest in their arguments trying to make Respondent argue something he did not argue at all.) Paragraph H of Respondent's Motion to Disqualify discusses this and plainly discusses the "enforcement" of the sua sponte agreement brought up by Judge Hawthorne. Respondent wrote [R-38-Exh.20: page 3]:

> H. Judge Amy Hawthorne saw an alleged agreement from the prior divorce case that was dismissed with prejudice that **no one was seeking to <u>enforce</u>** in the final third divorce case. Wife had filed a Motion to Set Aside and Vacate that alleged agreement in the second divorce case due to husband coercing her to sign the alleged agreement with severe threats of violence and death to her and wife's mother. However, wife's motion was never heard because husband filed a voluntary dismissal the next day that dismissed the entire divorce case. Judge Hawthorne saw the agreement at the trial, <u>brought up the agreement sua sponte of her own decision without being asked to do so by either party, and **enforced it**</u> without ever discovering whether it was obtained by coercion, fraud and duress as wife had testified to and claimed in her Motion to set aside the agreement.

The Referee also claims in her Report (page 15) that stating that Judge Hawthorne violated many laws is "conduct prejudicial to the administration of justice." The Referee never explains how stating the violations of laws in a motion to disqualify is prejudicial to justice. There is no explanation of who was harmed, how many of the public knew about Respondent's Motion to Disqualify, or how any of the parties were harmed in the case. The Referee simply makes a statement with no

evidence to support her statements. Referee also ignores and does not mention how when Judge Hawthorne refused to disqualify herself as Rule 2.330 requires how that was very prejudicial to the administration of justice to Travis Varney who testified he was under much fear of a biased judge for two years and he was forced to seek another attorney. He and others may have told other people about that judge and how she seems to refuse to follow the Rules and laws and caused other people to view some judges as unlawful judges doing what they like in spite of the laws and rules.

7. THE FLORIDA BAR VIOLATED DUE PROCESS OF LAW IN HOW THEY HANDLED THIS CASE BY OFFERING UNJUST OFFERS TO SETTLE THAT VIOLATED THE 8TH AMENDMENT BY OFFERING CRUEL AND UNUSUAL PUNISHMENT, AND BY CLAIMING IN THE COMPLAINT THAT RESPONDENT HAD VIOLATED CONFIDENTIALITY OF HIS CLIENTS, CITING RULE 4-1.6, BUT THE FLORIDA BAR DID NOT INVESTIGATE ITS ALLEGATIONS OR HAVE ANY EVIDENCE AT ALL THIS WAS TRUE, IT JUST SIMPLY MADE UP THE ALLEGATION WITH NO EVIDENCE WHATSOEVER.

As stated in his Affidavit and in the Affidavit of Teresa Campoli, Respondent asked Elizabeth Claire Bentley, Esquire, for the Grievance Committee of the Florida Bar if she had told him on Feb. 15, 2019 that many of the members on the Grievance Committee were very angry with Raymond B. Mitchell and his Motion to Disqualify he had filed on Judge Hawthorne and ‘<u>they wanted to get his bar license suspended</u>’.

Ms. Bentley said yes that was true. I, Raymond B. Mitchell, Respondent, then asked Ms. Bentley if this is what the Grievance Committee offered:

1. 'I would admit to a minor violation of the Rules;

2. 'I would go and obtain a mental health evaluation (through some organization *[on this call she said it was if they recommended it*]);

3. 'and that would not guarantee that I would not lose my bar license even if I did those two items listed above *(since the members wanted to "get" his bar license).'*

Elizabeth Claire Bentley stated to Raymond B. Mitchell that what he said as written above was exactly correct and that was exactly what the Grievance Committee offered to him earlier about two weeks prior on the telephone. I heard her state that clearly and plainly and she had no objection or disagreement at all with the three statements stated above by myself, Raymond B. Mitchell. Elizabeth Claire Bentley refused to put their offer in writing. Raymond B. Mitchell asked her why they wanted a mental health evaluation, but Ms. Bentley refused to explain saying it was confidential. Elizabeth Claire Bentley did not seem to care at all whether the judge had followed the laws or not and had destroyed a client's financial assets and home and gave her home away in violation of Florida laws. It seemed all Ms. Bentley cared about was that I, Raymond Mitchell, can never state that a judge ever violated the laws no matter how much the judge did violate the laws, and I cannot state what his client, Mr. Varney, believed and feared as

bias from Judge Hawthorne that a woman judge would be biased against him being a man, and it seemed she wanted to punish me, Raymond Mitchell, no matter what the law and facts were. Ms. Bentley had no concern at all about whether the judge's ruling was unjust or just and promoted injustice and had no desire at all to report the judge to the Judicial Qualifications Commission, and said she was not allowed to do so."

The Florida Bar alleged Respondent did not obtain the consent of his prior clients without even investigating if that was true. All his clients signed Affidavits that stated he did obtain their consent before filing his Motion and that nothing was confidential regardless. Celeste Rabideau/Jones testified that no one from the Florida Bar ever called her about her case or obtaining consent. [T1: 245:5-7].

3. **CONCLUSION.**

For all of the foregoing reasons, this Court should reverse the Final Report of the Referee, declare Respondent is not guilty of violating any ethics Rules at all; and in the alternative, if Respondent is guilty of some violation of the Rules that his discipline fit the harm caused (which was little or no harm) and order that any sanction be an Admonishment since that fits any possible violation of the Rules.

CERTIFICATE OF SERVICE

I certify that a copy of this document (Initial Brief-amended) was emailed to Joi L. Pearsall and to all the persons/emails listed below on October 16, 2021:

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CERTIFICATE OF COMPLIANCE WITH FONT/WORD REQUIREMENTS

I certify that Appellant's Initial Brief complies with the font requirements of Florida Rule of Appellate Procedure 9.045(e) and that Arial 14 font was used, and complies with the word count requirements of Fla. Rule App. P. 9.210(a)(2)(B) that requires less than 13,000 words, and this Initial Brief has 11,609 words and is less than 50 pages.

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