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 REPLY 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.

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 COURT SHOULD NOT ACCEPT THE REFEREE'S RECOMMENDATIONS OF GUILT.

A. Error in Bar's "Statement of Facts" & Standard of Review

The Florida Bar in its Answer Brief in the "Statement of Case and Facts" section erred in its allegation on page 16 when they claimed *"Likewise, with respect to the Miran case, Mr. Mitchell's testimony made clear that he simply disagreed with Judge Hawthorne's ruling…"* and refers to Transcript pages 130-134. Plainly, that is not true at all as Respondent Mitchell wrote in his Motion to Disqualify Judge Hawthorne nine (9) examples of plain and clear laws and statutes that were clearly violated and resulted in financial deprivation or ruin for some parties in those cases. [R-37 Exh. 3 at pg. 2-5] Respondent Mitchell also wrote about 15 or so violations of plain and clear laws that Judge Hawthorne violated and refused to correct in his Initial Brief in the 2nd DCA Appeals Court [R-38 Exh. 17 at pg. 2-6 {*pg.ii-vi*}]. The Bar also erred in summarizing attorney Spiegel's testimony by cherry picking his statements to make it appear to this Court that he agreed that the "Agreement" was valid and binding

in that case and not providing this Court the complete context (Page 17 of Answer Brief). The Florida Bar did not inform this Court that attorney Spiegel stated in his testimony:

> A. *this is what I was referencing that why the settlement agreement didn't have any bearing in this case though that's what the judge decided because of this document and for the reasons she stated.*
> *Q. And as it's stated as you just read, he dismissed this in its entirety. Were you arguing that dismissed the Agreement, also?*
> *A.* ***Yes****.*
> *Q. Okay. Now, in the agreement that you already testified that in your argument was invalid…*
> * * * *
> *A. And, yes, my [view of the] Agreement was that it wasn't valid and it wasn't part of this [case] and[but] the Judge upheld that.*
>
> *(The brackets are mine and implied by his testimony and likely transcribed incorrectly by transcriptionist.)*

[T1: p187:17 to p188:9; 189:9-11]. Attorney Spiegel's testified that he thought and argued the Agreement in the Miran divorce case was invalid and had no bearing or validity in the divorce case he was the attorney for in the trial and that the Agreement from the prior divorce case was dismissed and cancelled (as he argued in his Motion for New Trial and Motion for Rehearing). [R-37 Exh. 1 & 2, all pages].

Standard of Review: The evidence is fully contrary to the Report of the Referee as there is no evidence at all that Respondent stated anything he knew was not true about Judge Hawthorne or was reckless

in his statements. The Referee and the Florida Bar simply make allegations that Respondent made false statements but does not back up their allegations with any testimony or evidence from the trial to show he knew it was false as all witnesses and documents fully backed up what Respondent wrote in his Motion to Disqualify. On page 24 of Answer Brief the Florida Bar cites *Frederick* but there is no "evidence in the record that supports the Referee's findings" at all in this case since the Referee did not provide any true evidence of any statement at all the Respondent made that he knew was not true or was reckless. The Referee never stated in her Report that any of the witnesses credibility were not true or false. Since all the witnesses agreed totally with Respondent, then the Referee's Report is wrong.

B. The Referee's Recommendations of Guilt Are Not Supported by Any Competent, Substantial Evidence Whatsoever

(1). The Record Has No Evidence to Support the Finding that Mr. Mitchell Violated Rule 4-8.2(a), Nor Did The Referees Report Indicate Anything Respondent Said That He Knew Was Not True Or Was Reckless In Regard To The Truth

The Florida Bar states in error that Respondent did not have an objectively reasonable factual basis to state that Judge Hawthorne, as a woman, "would be very biased and prejudicial in favor of the female Wife who is a woman/female." That is an error since

Respondent did not make that statement, his client Husband Varney made that statement. The Motion to Disqualify states:

> D. Husband discovered on May 16, 2018 that Judge Amy Hawthorne is a woman/female and since his Wife (opposing party) is also a woman/female and is aggressively asking and seeking all forms of alimony, including durational alimony, Husband greatly fears that since Judge Amy Hawthorne is a woman she would be very biased and prejudicial in favor of the female Wife who is a woman/female and grant large amounts of alimony to Wife based on bias and prejudice for women.

Husband believed that but Respondent did not believe that, as they testified. The Referee's Report did not report any issue with Husband Varney's fears of bias from women judges. The Report only mentions that Respondent's statement about Judge Hawthorne not following or ignoring the laws or refusing to follow them is a violation. The Referee Report does not report any problem with the Husband fearing a woman judge. In fact, the Report states on page 7:

Mr. Varney testified that he did tell respondent that he was fearful that a woman judge would be more favorable towards his wife and that he had consulted the internet to look for statistics about the different case outcomes for the parties in a divorce case if the judge on the case was a woman.

Also, Rule 2.330 says

(d) Grounds. (1) A 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;

(f) 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.

The party, Husband Varney, truly feared a woman judge based on his own research and Rule 2.330 says to write the parties' fear in the Motion based on their fears, and the Judge should not determine the truth of the fears or alleged bias. Respondent testified he told Varney he disagreed that Judge Hawthorne was biased against men but Varney truly believed it and he demanded it be in the Motion to Disqualify based on his own sole research on the internet and Respondent never gave him any information on gender bias, and that he feared for two years after Hawthorne denied his Motion she would be biased against him. [T1: p77:10 to p81:24]. His fear of bias was the objectionably reasonable part. The Bar wants me to evaluate if his fears are true in total violation of Rule 2.330, which is written to alleviate parties fear of a bias from a judge whether the fears are true or not. Why cannot another judge besides Hawthorne be the judge of Varney's divorce case? There is no reason at all not to grant Varney's Motion to Disqualify. Rule 2.330 never states the fears of a party "must be objectively reasonable", although this Court has ruled such. Varney doing his own research and

finding statistics that many women judges rule against men per his testimony that seemed true, that would be reasonable to have a man fear a woman judge could award huge award of alimony to wife beyond his ability to pay. If Rule 2.330 says the judge cannot determine the truth of the allegations of fear of bias then why should an attorney judge his client and tell his client his fears are false? How is an attorney to know if Varney's research and statistics he found were not true when Varney insisted he did find them? And if the Bar's view of Rule 2.330 is true how is a lawyer supposed to know he must research his client's fears of bias and prejudice to prove he is right before lawyer may file a motion to disqualify a judge for his client when Rule 2.330 does not state that at all? How would lawyers know it is their duty to conduct a large investigation into the client's fears when the Rule does not require that? And would not that defeat the purpose of Rule 2.330 to make sure parties are not in fear of judges who they perceive is biased?

The Florida Bar alleges the Agreement from the Miran case was legal and valid for various reasons which Respondent argued in his Motion to Disqualify was invalid and illegal to adopt as the Judgment and they also argue that Respondent arguing why his statements in his Motion to Disqualify are true and not false is "relitigating the findings of

Miran" (Answer Brief page 27) but they are confusing the issues. The Referee claimed in her Report that Respondent wrote things about Judge Hawthorne that were not true at all and had no basis for it. Respondent was writing to show that his arguments were true that many laws were violated by Judge Hawthorne, and therefore he did not write something he knew was not true. The Florida Bar is arguing in circles jumping from one argument against Respondent, then when Respondent argues against the Bar's arguments they jump to a different argument stating that Respondent is relitigating the prior case, which is not true at all. Here is a summary of all the laws Judge Hawthorne violated by adopting the alleged Agreement argued in the Motion to Disqualify and in his Initial Brief in the appeal of the divorce case.

1. Wife Miran had done and testified to owning a house before the marriage and doing all the items necessary to keep her house as a non-marital house per F.S. 61.075 (other than debates over the coerced and invalid quit claim deed and alleged Agreement).

2. Wife Miran/Moulton testified and presented large amounts of evidence that Husband Miran was extremely violent and had forced her with coercion and violence to sign an invalid quitclaim deed and a one-sided agreement greatly favoring Husband, and Wife filed a Motion to set aside the Agreement that was never heard by any judge.

3. Husband and no one ever asked for the Agreement from the prior divorce case to be enforced in any of their petitions, pleadings, motions, or discovery documents, and relief not requested in the pleadings cannot be granted.

"See *Ruble v. Ruble*, 884 So.2d 150, 152 (Fla. 2d DCA 2004) (holding that trial court erred in refusing to set aside final judgment awarding permanent custody where husband did not request permanent custody in his petition), *review denied,* 895 So.2d 406 (Fla.2005); Perez v. Perez, 519 So.2d 1104 (Fla. 3d DCA 1988) (concluding that the award of husband's interest in the marital residence to the wife was not supported by any such request in the petition). Here, the trial court improperly awarded the equity in the marital residence to the wife, where she did not request such in her petition.

Accordingly, we reverse this case and remand it for the trial court… " *Rogers v. Rogers,* 905 So.2d 1050, 1051 (Fla. 2d DCA 2005).

The trial court also erred in refusing to set aside the final judgment because the husband had never requested permanent custody in his petition. *See McDonald v. McDonald,* 732 So.2d 505 (Fla. 4th DCA 1999) (holding that it is reversible error to grant relief not sought by the pleadings).
Ruble v. Ruble, 884 So.2d. 150, 152 (Fla. 2d DCA 2004).
[Underline is mine].

4. Husband Miran did not believe the alleged Agreement was valid since he was asking for 50% of the house in the trial but the alleged Agreement said Husband gets 100% of the house and Wife gets nothing 0% of the house, and all the debts. 50% is not what the alleged Agreement says he gets so he did not believe it was valid or enforceable; and the Agreement was dismissed and cancelled in its entirety by his Dismissal and thus was void.

5. The Agreement was extremely unjust and unfair to Wife since Husband gets 100% of the house, Wife gets 0% and only a promise he would pay her $14,000 somehow when he was in prison for a 30-year sentence for a scheme of attempted murder of Wife, and Wife gets all the marital debts and Husband no debts. Under F.S. 61.075 the distribution of marital assets and debts are almost always required to be equal (50-50%).

"the court shall set apart to each spouse that spouse's nonmarital assets and liabilities, and in distributing the marital assets and

liabilities between the parties, the court must begin with the premise that the distribution should be equal…" F.S. 61.075(1).

6. Judge Hawthorne had a duty to void extremely unfair and one-sided agreements that favor one party over another as this alleged Agreement was. Even if Wife had signed the agreement willingly it was so unfair and one-sided that Judge Hawthorne had a duty to void the Agreement, not enforce it.

> *[W]e feel compelled to discuss the duties of a trial judge regarding a settlement agreement in a dissolution of marriage proceeding. Even if overreaching had not been proved in this case, we would be inclined to view that Judge Sanderlin's decision not to enforce the settlement agreement finds support in section 61.08, Florida Statutes (1981),and in case authorities too well known and numerous to require citation,* ***that a trial judge in a dissolution proceeding is called upon to do equity and justice between the parties.*** *Maas v. Maas, 440 So.2d 494, 495* (Fla. 2nd DCA 1983).
>
> The Supreme Court wrote: *Courts, however, must recognize that parties to a marriage are not dealing at arm's length, and, consequently, trial judges must carefully examine the circumstances to determine the validity of these agreements. Casto v. Casto, 508 So.2d 330, 334 (Fla. 1987).*
>
> Underline & Bold are mine.

7. Final Judgments in divorce cases are required to have findings of fact detailing all the reasons the Court distributed the assets and debts as it did but Judge Hawthorne's Judgment did not have any findings of fact regarding the assets and liabilities.

> *(3) In any contested dissolution action wherein a stipulation and agreement has not been entered and filed, any distribution of marital assets or marital liabilities shall be supported by factual findings in the judgment or order based on competent substantial evidence with reference to the factors enumerated in subsection (1). The distribution of all marital assets and marital liabilities,*

whether equal or unequal, shall include specific written findings of fact as to the following:
(a) Clear identification of nonmarital assets and ownership interests;
(b) Identification of marital assets, including the individual valuation of significant assets, and designation of which spouse shall be entitled to each asset;
(c) Identification of the marital liabilities and designation of which spouse shall be responsible for each liability;
(d) Any other findings necessary to advise the parties or the reviewing court of the trial court's rationale for the distribution of marital assets and allocation of liabilities.

Florida Statute 61.075(3). [Underline mine]. The agreement in the Miran case was NOT entered and filed with the Clerk ever. It was only provided to the Judge at trial, thus Hawthorne's Judgment required all these specific findings but her's contains none.

8. In the Rabideau case child support cannot be agreed away or left blank as they did in their agreement.

The 2nd DCA said in Wilkes v. Wilkes, 768 So.2d 1150 "A child's right to support may not be waived by a parent, see Strickland v. Strickland, 344 So.2d 931 (Fla. 2d DCA 1977), nor may that right be contracted away, see Finch v. Finch, 640 So.2d 1243 (Fla. 5th DCA 1994)."

The Florida Bar argues (page 27) that on appeal the MiranJudgment was upheld. However, the appellate court did not write an opinion explaining why it denied the appeal, it was just "per curiam". Thus, there was no statements that stated any of Respondent's legal arguments were incorrect. And appellate courts can be often incorrect in their rulings which is why many appeals court rulings are appealed to the Supreme Court and are overturned. Also, an appeal without any opinion

or explanation has no legal effect on filing a motion to disqualify a judge. Since the appeals court did not explain which legal arguments of Respondent were not correct (if any) then Respondent has no idea if it was only one or many. Since it seems the legal violations are clear with no argument against them there is no reason not to include those arguments in a Motion to Disqualify since none were proven false.

The Florida Bar argues on page 28 of its Answer Brief that Respondent's Motion for Relief from Judgment for Rabideau was solely based on mistake. That is not true at all. There were several reasons stated and the reasons stated in the said Motion for Relief are below:

> *Former Wife seeks relief from the Judgment due to* ***mistake or inadvertence, and surprise; and she has discovered new evidence,*** *which is material and relevant to one substantial issue in the Agreement;* ***fraud/misrepresentation/misconduct*** *of the Former Husband; and that part of the Final Judgment is* ***void****, and that the Judgment should no longer have* ***prospective application****.*

[R-38 Exh. 28, at 1]. The Bar also argues that a relief from judgment cannot void a judgment/agreement. However, the 2nd DCA in Wilkes v. Wilkes, 768 So.2d 1150, overturned an agreement/judgment for child support for contracting away child support based on a motion for relief under Rule 1.540.

The Florida Bar claims on page 31 that Respondent had "no objectively reasonable factual basis" for his statements. But the summary of some of the laws violated by Judge Hawthorne in the two cases plainly show an objective reasonable factual basis that his client Varney would fear having Judge Hawthorne as a judge and she should have disqualified herself and allowed another judge to come into the case as the official judge. As Varney testified, when he heard Wife Miran received 0% of the assets (and a slight chance to get $14,000) and 100% of all the liabilities and the attempted murderer Husband Miran in prison received 100% of the house and Zero marital liabilities; and that Ms. Rabideau/Jones was denied any child support to support her children that she needed greatly when the law is clear child support should have been ordered, Varney was in great fear of a biased judge ruling awful for him in his case. The Florida Bar just makes blanket statements without providing any evidence or reasons for their statements, and the do not prove any of the laws cited by Respondent are incorrect (other than surface court rulings that are not on point). They do not prove the laws and court rulings cited by Respondent are incorrect at all in his Motion to Disqualify.

(2) The Referee's Report nor the Record Has No Evidence to Support the Finding that Mr. Mitchell Violated Rule 4-8.4(d)

The Florida Bar then complains that when Respondent quotes Rule 4-8.4(d) as written, showing it does not have the word "judge" in its Rule wording (as Rule 4-8.2(a) did) and then argues Respondent attempted "a statutory construction" as if Rules are not to be read as written. It expressly and plainly leaves out the word "judge" because as the Bar is doing here, whenever a lawyer would file an appeal or some motion to correct an incorrect ruling of a judge the Bar could argue that is "disparaging" a judge. Thus, no lawyer could ever appeal or file motions to change an order or judgment without fear of being attacked falsely by the Bar that they are disparaging a judge by saying they were incorrect in their rulings. "Court personal" is NOT judges. The Rule states a lawyer cannot disparage "litigants, jurors, witnesses, court personal, or other lawyers". **It never states "judges".** Therefore, it does not apply to judges. The Comment to the Rule allows a lawyer to do anything else permitted by law or rule. (Another reason the word Judge is not in this Rule.) (See Initial Brief for more on this argument).

The Bar quotes *Pilkington* (page 35) but that case is discussing unfavorable rulings within the same case that a motion to disqualify is filed. It does not necessarily apply to extremely unlawful rulings in other

cases where parties were deprived of large amounts of assets or money as here. (The same applies to *Wilson* referred to on page 36).

The Bar refers to *Norkin* (page 35) but that case is discussing when an attorney said disparaging things about a judge at some corporate board election outside of the court setting.

The Bar also argues that Respondent did not inform Mr. Varney of the appeals case which is not true at all. Varney testified he cannot remember things very well from 3 years prior. Respondent clearly and plainly informed Varney of the appeal as is shown in his Motion to Disqualify. On paragraph F of page 2 of the said Motion it states:

> "when Husband's attorney Mitchell had appealed the ruling for the final judgment in a dissolution of marriage case in Miran v. Miran/Moulton in case no. 11-DR-3833 in Lee County."

Varney signed this Motion and the appeal case was clearly explained to him before this Motion was drafted.

The Bar never explains or gives any evidence at all about who was harmed by the Motion to Disqualify. There is no one who was injured and there is no evidence the judge's feelings were hurt. The Bar simply ignores how much the public view of the legal system was harmed by Judge Hawthorne denying Disqualification and putting Mr. Varney in great fear for two years and her rulings causing Ms. Miran and

Ms. Rabideau/Jones telling the public how unjust she was and how much they were denied their rightful award of assets and child support.

2. THE COURT SHOULD REJECT THE REFEREE'S RECOMMENDATION OF A 91-DAY REHABILITATIVE SUSPENSION.

A. A 91-Day Rehabilitative Suspension is Unreasonable and Excessive, and is Cruel & Unusual for the actions of Respondent.

Respondent followed the Rules as written as closely as possible to obtain a law-abiding judge for his client and it is unreasonable to suspend him for 91 days for attempting to obtain a judge who follows the law. The Bar is concerned over the slightest violation of Rules by an attorney by is totally unconcerned about clients receiving absolutely nothing from a divorce (or no child support) by a judge in violation of the laws and an extreme injustice to those parties. (See Initial Brief).

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 was emailed to Joi L. Pearsall and to all the persons/emails listed below on November 29, 2021:

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CERTIFICATE OF COMPLIANCE WITH FONT/WORD REQUIREMENTS

I certify that Appellant's Reply 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).

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