

IN THE SUPREME COURT OF FLORIDA

THE FLORIDA BAR,

Complainant,

Case No. SC20-1777

v.

RAYMOND B. MITCHELL,

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

Respondent.

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**THE FLORIDA BAR'S RESPONSE TO RESPONDENT'S MOTION
TO SUPPLEMENT THE RECORD - MAGISTRATE'S REPORT**

Pursuant to Rule 9.300(a), Florida Rules of Appellate Procedure, Complainant The Florida Bar ("TFB") responds in opposition to Respondent Raymond B. Mitchell's ("Respondent") Motion to Supplement the Record - Magistrate's Report (the "Motion"), and states as follows:

1. This disciplinary proceeding concerns whether Respondent violated the Rules Regulating The Florida Bar ("RRTFB") in making certain statements in seeking to disqualify a trial judge. Respondent's statements in part related to his disagreements with the same judge's ruling in another case called *Rabedeau*.

2. Through the Motion, Respondent seeks to supplement the existing record on review with the report of the magistrate in the

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“Rab[e]deau/Jones case” which Respondent says “is extremely relevant for future review of the accuracy of the allegations in Respondent’s Motion to Disqualify a Judge,” particularly Respondent’s contentions that the magistrate “clearly ignored clear statutes and appellate/supreme court cases.” (Motion at 1.) Respondent’s exceptions to the same magistrate’s report are admitted into evidence. (Respondent’s Ex. 29 (within Tab 38 to the Second Amended Index of Record (“Index”)); *see also* Apr. 23, 2021 Hearing Tr. at 30:19-29:1.)

3. The Court should deny the Motion as Respondent failed to timely introduce the magistrate’s report into evidence or to timely supplement the record. After the Referee had closed the record at the April 23, 2021 hearing on guilt, Respondent sought to admit the magistrate’s report at the May 18, 2021 hearing on sanctions but his request was denied. (May 18, 2021 Hearing Tr. at 16:2-18.) As Respondent concedes, he also sought to have the Referee take judicial notice of the report after the sanctions hearing had concluded, but the Referee denied that motion too. (Motion at 2; *see*

also Tab 54 to Index (May 19, 2021 Order Denying Respondent's Motion to Take Judicial Notice of Magistrate Judge's Report).¹

4. Rule 3-7.6(n)(4) of the RRTFB states that motions to supplement the record should be filed within 15 days of service of the index of record. The Index was filed in this matter in June 2021, and consequently, Respondent's request to supplement comes too late.

5. "[T]his Court can only review the record which was properly before th[e] referee." *Fla. Bar v. Horowitz*, 697 So. 2d 78, 83 (Fla. 1997). As the magistrate's report was not properly before the Referee, it cannot be considered now.

For all those reasons, TFB asks the Court to deny Respondent's Motion.

Respectfully submitted on October 19, 2021.

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¹ Although the Referee declined to take judicial notice, the magistrate's report remains in the pleading file before this Court, as it was attached to Respondent's May 18, 2021 motion for judicial notice (Tab 52 in the Index).

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CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on October 19, 2021, a true and correct copy of the forgoing was filed through the Florida Courts E-Filing Portal and served by email to the following:

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