

**IN THE SUPREME COURT OF FLORIDA**

THE FLORIDA BAR,

**Case Number SC 21-959**

Complainant,

**TFB File # 2021-30,711 (18C)**

v.

GEORGE EDWARD OLLINGER, III,

Respondent.

\_\_\_\_\_ /

**Response to Petition for Contempt and Order to Show Cause and Request for Evidentiary Hearing Under Rules 3-7.7(g) and 3-7.11(f)(1)F**

As counsel for Respondent, I respond to the Bar's June 25, 2021 Petition for Contempt and This Honorable Court's June 25, 2021 Order to Show Cause, asking This Honorable Court to dismiss and deny that Petition. In the alternative that This Court does not dismiss and deny, then I respectfully request that This Honorable Court appoint a Referee so that my client will receive an Evidentiary Hearing under Rule Regulating The Florida Bar 3-7.7(g) and Rule Regulating The Florida Bar 3-7.11(f)(1)F.

Respondent states:

1. Please accept this pleading as a general denial of the Petition for Contempt because my client never had any intent to act with contempt toward This Honorable Court.

2. This is true in all instances, including his obedience to This Court's January 19, 2021 Order of Emergency Suspension.

3. As the attached Affidavit of my client shows, my client worked diligently toward the goal of full compliance with This Honorable Court's January 19 suspension order.

4. That January 19 Order commanded my client to "cease representing any clients **after** thirty days of this Court's order." See page 1 at paragraph a (with emphasis added).

5. The Bar's Petition provides 3 pages and 5 exhibits alleging the practice of law by my client **within** thirty days of this Court's order. See Petition paragraphs 2 through 11 and its Exhibits A through E. This does not prove a contempt or disobedience of this Court's order because my client was ordered to stop **after** thirty days of this Court's order. His actions **before** thirty days do not prove wrongdoing **after** thirty days.

6. There is only one thing mentioned in the Bar's petition that happened **after** thirty days: my client sent an email.

7. Just one email.

8. It is a factual issue as to whether the sending of a single email constitutes the practice of law. "[I]t is somewhat difficult to define exactly what

constitutes the practice of law in all instances,” holds *The Florida Bar v. Brumbaugh*, 355 So. 2d 1186 (Fla. 1978). When it comes to who can send an email, the average person might guess that anyone can do that, not just a lawyer. Indeed, *Brumbaugh* cites *State v. Sperry*, 140 So. 2d 587 (Fla.1962) and tells us that one way to determine whether the task is the practice of law is to ask whether those who perform the task should “possess legal skill and a knowledge of the law greater than that possessed by the average citizen....” *Id.* at 591. Sending one email does not require legal skill or knowledge of the law. Therefore, it is a factual question as to whether my client’s sending of an email constitutes the practice of law.

9. The Bar bears the burden of proof, yet the Bar has not produced the email.

10. Instead, the Bar provides an affidavit from the recipient of the email. See Exhibit F to the Bar’s Petition.

11. The affidavit’s description of the email, if the description is accurate, means that the email was in furtherance of the Court’s January 2021 Suspension Order. The email, if it says what the affiant thinks it says, does nothing more than “request that I agree to extend the stay of the case. . . .” See Affidavit at paragraph 4. It is not asking to settle the case, advance the

case, or participate in the case. It is merely asking to do what the January 2021 Order says to do: it is asking to keep my client out of the case.

12. These actions, and all of my client's actions that are described in the Bar's petition, were actions taken in furtherance of obeying This Honorable Court's order. All the actions described in the Petition were part of my client's withdrawal from the Boyles v. Boyles case. The reason he was withdrawing from that case was in order to obey This Honorable Court's order to "cease representing any clients after thirty days . . . ." See page 1 paragraph a.

13. When it comes to withdrawing from a case, the Rules Regulating The Florida Bar recognize that a lawyer has the duty and obligation to protect his client's interests:

***Protection of Client's Interest.*** Upon termination of representation, a lawyer shall take steps to the extent reasonably practicable to protect a client's interest, such as giving reasonable notice to the client, allowing time for employment of other counsel, surrendering papers and property to which the client is entitled, and refunding any advance payment of fee or expense that has not been earned or incurred. The lawyer may retain papers and other property relating to or belonging to the client to the extent permitted by law.

*Quoted from:* Rule Regulating The Florida Bar 4-1.16(d).

14. In light of my client's duties and obligations to protect his client's interests, the Bar's Petition raises factual issues.

15. We do not know, from the Bar's Petition and its attachments, why the Honorable Circuit Judge stayed the proceedings instead of discharging my client from the proceedings and continuing without him. What we know from the Bar's Petition and its attachments is that my client did not hide his suspension from the Honorable Circuit Judge or his opposing counsel. For example:

A. The opposing counsel swears under oath that "Mr. Ollinger advised me of his emergency suspension from the practice of law in and around February 2021." See Exhibit F to Bar's Petition at paragraph 3.

B. Likewise, the party, Mr. Boyles, who is my client's client, swears under oath that he knows about my client's suspension. See Exhibit B to Bar's Petition at page 2.

C. The Honorable Circuit Court Judge knew, also, because the motions he granted tell him so. See Exhibits B, C, D and E to Bar's Petition.

16. Therefore, even if we view the Bar's Petition in the light most favorable to the Bar, this is a case where a factual issue arises under Rule Regulating The Florida Bar 4-1.16 which places the following obligations upon my client:

***Compliance With Order of Tribunal.*** *A lawyer must comply with applicable law requiring notice or permission of a tribunal when terminating a representation. When ordered to do so by a tribunal, a lawyer shall continue representation notwithstanding good cause for terminating the representation.*

*Quoted from:* Rule Regulating The Florida Bar 4-1.16(c). The Official

Comment to this rule reminds us that the rule means:

*[C]ourt approval or notice to the court is often required by applicable law before a lawyer withdraws from pending litigation. Difficulty may be encountered....*

*Quoted from:* Official Comment to Rule Regulating The Florida Bar 4-1.16 at paragraph 3.

17. Therefore, even in the light most favorable to the Bar, the Bar's Petition raises a factual issue as to whether or not my client was doing his best to comply both with This Honorable Court's January 19 Suspension Order and the Circuit Court's stay order. Clearly my client was not trying to

appear before the Circuit Court while suspended. If anything, he was trying to avoid going to Circuit Court. That's in furtherance of This Honorable Court's order. The Bar's Petition does not answer the factual question of why Mr. Boyles, who swears under oath to knowing my client is suspended, did not already have a new lawyer when my client sent the email to opposing counsel suggesting she extend the Circuit Court's stay. The Bar's Petition does not answer the factual question of whether Rule 4-1.16(d), which requires my client to protect his client's interest, meant that my client should send this one email. The Bar's Petition does not answer the factual question of whether sending one email was excusable, not contemptible, in light of my client's obligations to the lower tribunal created by Rule 4-1.16(c).

18. In the light most favorable to my client, the Bar's Petition shows my client was doing everything he could do to obey This Court's January 19 suspension order; alerted all relevant judges and lawyers and parties to that suspension; was not practicing law; and merely sent one email in an effort to protect his client's interest upon withdrawal as required by Rule Regulating The Florida Bar 4-1.16(d) and permitted by Rule 4-1.16(c). That is not contemptible behavior.

19. We hope This Honorable Court can agree that this is not

contempt. We ask that the Order to Show Cause be discharged, and the Petition for Contempt be denied, forthwith. If This Honorable Court cannot do so, then in the alternative, we respectfully suggest that the applicable Rules of Discipline, and the requirements of due process of law, require the factual issues to be resolved by an evidentiary hearing. See, e.g., Rule Regulating The Florida Bar 3-7.11(f)(1)F (stating, in relevant part: *"If the Supreme Court of Florida requires factual findings, it may direct appointment of a referee as provided in these rules. Proceedings for contempt referred to a referee must be processed in the same manner as disciplinary proceedings under these rules..."*).

**Wherefore, Respondent respectfully requests This Honorable Court** to deny the Petition and discharge the Order; or in the alternative, to please grant my client the Evidentiary Hearing before a Referee per Rules 3-7.7(g) and 3-7.11(f)(1)F of the Rules Regulating The Florida Bar.

### **Certificate of Service**

**I Hereby Certify** that this Response was filed and served on this 13th day of July, 2021 to: (1) psavitz@floridabar.org which is the email address of Patricia Ann Toro Savitz, Staff Counsel, The Florida Bar, 651 East Jefferson Street, Tallahassee, FL 32399; and (2) kbryk@floridabar.org and

orlandooffice@floridabar.org which are the primary and secondary email addresses of Kenneth Bryk, Bar Counsel, The Florida Bar, Orlando Branch Office, 1000 Legion Place, Suite 1625, Orlando, Florida 33801; and (3) to my client, Mr. George Edward Ollinger, III (via his private email address).

Respectfully Submitted,

*Law Office of Patrick John McGinley, P.A.*

/s/ Patrick John McGinley

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BY: Patrick John McGinley, B.C.S.  
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STATE OF Florida  
COUNTY OF: Brevard

**AMENDED AFFIDAVIT**

I, George Edward Ollinger, III, after being duly sworn, say:

This affidavit is submitted pursuant to Rule 3-5.1(h) of the Rules of Discipline in conjunction with the decision in The Florida Bar v. George Edward Ollinger, III, SC21-28; The Florida Bar File No. 2020-30,134(18C)CES.

1.  I had no client(s) or matter(s) pending when the court order was served on me.

OR

2a.  I have furnished a copy of the court order to all my clients with matters pending when the court order was served on me; and

2b.  To all opposing counsel and co-counsel in the matters listed in 2a. above; and

2c.  To all courts, tribunals, or adjudicative agencies before which I am counsel of record.

AND

3.  I have notified all state (other than The Florida Bar), federal and administrative bars of which I am a member.

4.  The names and addresses of all persons and entities that have been furnished with such notification are indicated on the attached list (Exhibit A), and such is a complete listing of all persons and entities notified pursuant to this rule.

FURTHER AFFIANT SAYETH NOT.

George E. Ollinger  
George Edward Ollinger, III

STATE OF FLORIDA  
COUNTY OF BREVARD

Sworn to and subscribed before me, by means of  physical presence or  online notarization, this 2ND day of FEBRUARY, 2021 George Edward Ollinger, III, who  is personally known to me or  produced \_\_\_\_\_.

Melissa Mara  
Notary Public



Melissa M. Mara, CP, FRP  
Certified Paralegal  
The Florida Bar  
651 East Jefferson Street  
Tallahassee, Florida 32399-2300

## AMENDED EXHIBIT A

The names and addresses of all persons and entities that have been furnished with such notification are indicated herein in this Exhibit A, pursuant to Rule 3-5.1(h) of the Rules of Discipline in conjunction with the decision of the Florida Supreme Court in *The Florida Bar v. George Edward Ollinger, III, SC 21-28, The Florida Bar No. 2020-30,134(18C)CES*.

1. The Honorable David Dugan, Circuit Judge, Moore Justice Center, Brevard County Courthouse, Viera, Florida 32940.
2. The Honorable Barbara Bronis, Circuit Judge, St. Lucie County, Florida, 100 E. Ocean Blvd., Suite A363, Stuart, Florida 34994.
3. The Honorable N. Hunter Davis, Circuit Judge, Broward County, Florida Courthouse, 201 S.E. 6<sup>th</sup> Street, Fort Lauderdale, Florida 33301.
4. Katherine Birnbaum, Esq., 1301 E. Broward Blvd., #230, Fort Lauderdale, Florida 33394.
5. Patrician Rego Chapman, Esq., Dean, ringers, Morgan & Lawton, PA, 201 E. Pine Street, #1200, Orlando, Fl. 32801-2725.
6. Christopher Broome, Esq., 915 Washington Av., Titusville, FL. 32780.
7. Tino Gonzalez, Esq., 1600 Sarno Rd., Melbourne, FL. 32935.
8. Clerk US District Court, Middle District of Florida, Orlando Division, 401 West Central Blvd., Orlando, Fl. 32801.
9. Clerk US District Court, Southern District of Florida, US Federal Bldg. and Courthouse, 299 East. Broward Blvd., Fort Lauderdale, Fl. 33301
10. Clerk US Supreme Court, 1 First St. NE, Washington, DC 20543
11. Clerk US Tax Court, 400 2<sup>nd</sup> St. NW, Washington, DC 20217.
12. The Honorable Laurie E. Buchanan, 312 Courthouse Addition, 218 South Second St., Fort Pierce, Florida 34950.
13. James Boyles, Client, 4953 Whispering Wind Avenue, Kissimmee, FL 34958
14. Faith Fitzpatrick, client, c/o Terry Brewer, 280 Goldcoast Ave., Port St. Lucie, FL 34983; or 2694 Mohawk Avenue, Fort Pierce, FL.34946.