

IN THE SUPREME COURT OF FLORIDA

THE FLORIDA BAR,

Petitioner,

v.

JENNIFER PEREZ,  
Respondent.

Supreme Court Case  
No. SC22-1548

The Florida Bar File  
No. 2023-00,152 (2B) NES

**MOTION TO DISMISS PETITION FOR EMERGENCY SUSPENSION OR, IN THE  
ALTERNATIVE, IN OPPOSITION TO EMERGENCY SUSPENSION OR TO  
TERMINATE OR MODIFY SUSPENSION**

COMES NOW, Jennifer Perez, through undersigned counsel, and files this **MOTION TO DISMISS PETITION FOR EMERGENCY SUSPENSION OR, IN THE ALTERNATIVE, IN OPPOSITION TO EMERGENCY SUSPENSION OR TO TERMINATE OR MODIFY SUSPENSION** in this matter.

The Florida Bar’s Petition for Emergency Suspension fails to provide clear and convincing evidence that Respondent is causing great public harm, which is required under Rule 3-5.2, Rules Regulating The Florida Bar, and results from a clear misunderstanding of the underlying facts and circumstances in this matter.

Respondent did not act improperly, nor did she improperly solicit or deceive members of the Florida community in an attempt to obtain clients or for any other improper purpose. Respondent also never ordered any employee or third party to engage in the unlicensed practice of law or act improperly and there was no actual unlicensed practice of law. Respondent has not caused and is not causing great public harm.

RECEIVED, 11/21/2022 08:17:22 AM, Clerk, Supreme Court

The structure used by Respondent and her law firm for existing clients which The Florida Bar asserts was part of the “insurance village” or the FEMA operations center was actually 11.9 miles and at least a 30 minute drive from the Lakes Regional Library parking lot which is the location of the FEMA “insurance village.” The structure had a prominently displayed sign stating “THIS IS NOT FEMA” affixed to the claims center and any person who came to the structure and who was not part of an existing corporate client group was turned away. **A photograph of the display sign is attached and incorporated with this motion as Exhibit 1.**

Respondent provided no assistance in the unlicensed practice of law, nor did she improperly supervise the janitor who the Florida Bar investigators state was not involved in the legal office. Respondent further followed the guidance of expert ethics opinions from respected Florida lawyers, including undersigned, The Florida Bar Ethics and Advertising Hotline, and The Florida Bar’s Legal Fuel to ensure compliance.

The clear and convincing evidentiary standard required to impose an emergency suspension has clearly not been met and Respondent respectfully requests that the Petition for Emergency Suspension be dismissed, or, in the alternative, the emergency suspension not be imposed or, if imposed, that the suspension be terminated in its entirety.

#### **I. Statement of Facts and Circumstances**

The law firm of Gauthier Murphy & Houghtaling (“law firm”) is a plaintiff’s law firm founded in 1974 with a national practice. The law firm is counsel for clients with properties and businesses in multiple states, such as hoteliers and chain-restaurateurs. For years, the law firm has consulted with and represented publicly traded companies and large

associations, including more than 250 hotels that are members of a national trade association.

Respondent, Jennifer Perez, has been with the law firm for over five years with a practice focused solely on the first party property claims and litigation, and with a concentration on corporate clients with large commercial assets in several states. Respondent has practiced nationally with local counsel including in the U.S. Virgin Islands, California, New York, Texas, Iowa, and Arkansas.

Respondent is a member of The Florida Bar in good standing, has no prior discipline in any jurisdiction, and has had no disciplinary actions taken against her in any jurisdiction, including Florida, until this Petition was filed. Respondent has Florida clients, however, there is no active litigation nor is Respondent counsel of record in any Florida court.

By 2015, the Gauthier Murphy & Houghtaling law firm's practice was focused on first party property claims and litigation exclusively nationwide. In 2018, the law firm began discussions to expand and open a Florida office in association with another outside firm. The law firm sought reputable ethics counsel to advise on the process of establishing an interstate multi-jurisdictional law firm and provide an opinion to not run afoul of Florida laws. The law firm engaged undersigned counsel at Smith Tozian Daniel & Davis, P.A. who provided a detailed opinion with the requirements to properly establish an interstate multi-jurisdictional law firm. **The 2018 Ethics Opinion of Smith Tozian Daniel & Davis, P.A. is attached and incorporated with this motion as Exhibit 2.**

The law firm fully understood that Florida had strict requirements regarding multi-jurisdictional law firms and seriously considered all options and requirements to commence an interstate law firm in Florida.

Upon advice of counsel with the review of the opinions and requirements, and after further discussions, the law firm decided to bypass association with another firm and elected to promote from within the law firm. Respondent was approached by Gauthier Murphy & Houghtaling with the opportunity to take the Florida Bar Examination and join in opening a Florida office. Respondent followed the advice of Florida ethics counsel and commenced studying for the Florida Bar Examination.

Respondent was admitted to practice in Florida in May 2020. At that time, it was not feasible for the law firm to open a Florida office due to the COVID-19 pandemic as all employees, including the Respondent, were working remotely.

During the COVID-19 pandemic, Respondent was part of the team that commenced the COVID-19 insurance coverage litigation nationwide.. As a result, Florida businesses contacted the law firm and Respondent for representation on their COVID-19 losses and have been clients since Respondent's admission in 2020.

While the COVID-19 pandemic prevented interstate travel, Respondent and the law firm continued their practice in Louisiana and nationwide with local counsel. During Hurricanes Laura, Delta, Zeta, and Ida, the law firm served approximately 250 hotel property owners in their first party insurance claims.

These legal services continued to strengthen the law firm's relationship with return multi-state corporate clients.. Respondent has represented dozens of multi-state corporate law firm clients among over 100 first-party commercial property cases.

Before Hurricane Ian struck Florida, the Respondent and the law firm were receiving calls from existing corporate clients with property in Florida, including corporate trade association members of which the firm is a member, who were concerned about potential losses and were seeking representation in the claims handling and reconstruction process. Gauthier Murphy & Houghtaling took the steps to strictly comply with the expert ethics advice received to proceed in commencing an interstate Florida law firm.

Following the ethics opinions received from Florida ethics counsel, a *bona fide* interstate partnership in Florida was established by the law firm and Respondent is the Florida equity partner. On October 1, 2022, the Respondent, an active Florida Bar member in good standing, became an equity partner and member of the law firm's limited liability corporation.

Respondent's partnership and membership was memorialized in writing in an operating agreement that governs the profits and losses of the several offices. The addition of the Respondent to the operating agreement was reviewed and confirmed by the law firm's outside corporate counsel and all members of the law firm.

The profits and losses of all offices of the interstate law firm are properly included in the determining the allocation among all members of the law firm, including Respondent. Respondent and law firm members sharing of the profits and losses are not based on the business generated or handled only by the Florida office or any other office, but rather percentage of ownership.

Respondent properly operates both out of Louisiana and Florida, actively supervising, overseeing, and participating in the Florida law firm and maintaining her existing Louisiana and other out of state clients.

In addition to the previous Florida ethics opinions received, Respondent then proceeded to ensure that any and all remaining requirements were met with guidance from the undersigned counsel at the Law Office of Joseph A. Corsmeier, P.A., The Florida Bar's "Legal Fuel" resources, and other resources.

A Florida IOTA Trust Account was opened by the law firm on or about October 12, 2022 with Notice to the Florida Bar Foundation. Gauthier Murphy & Houghtaling also registered with the Florida Department of Revenue on October 25, 2022 and is pending approval for a Lee County occupational license.

**It is important to note that Respondent was never contacted by the Florida Bar investigators;** however, she was advised that The Florida Bar investigators arrived unannounced at the law firm's location at 13020 North Cleveland Ave., North Fort Myers, FL, which had arrived on or about October 4, 2022. This location is 11.9 miles and a 32-minute drive from the Lakes Regional Library parking lot that is the location of the FEMA insurance village. **A detailed map is attached and incorporated with this motion as Exhibit 3.**

The location of the firm structure was the parking lot of the Riverview Inn, an existing but closed hotel of a law firm client. It was a tedious process to set up the location. While named "mobile claims center," the equipped 18-wheeler and trailer has not been moved and remained parked and unmoved and a 1,000 sq. ft. tent is attached to setup meeting space, generators, Wi-Fi, and air conditioning is connected, and a small mobile

home with bathrooms set up next to the tent. **Photographs confirming the above are attached and incorporated with this motion as Exhibit 4.**

Additionally, because the multi-jurisdictional law firm was being finalized, all of the exterior of the trailer/mobile claims center was to be covered. Sergio Alvarado, a third-party independent contractor, was retained to do this. Any photographs with the mobile claims center exterior uncovered were taken prior to its extensive set-up.

Upon learning that members of the community were confusing the private trailer as potentially a FEMA site, a sign that specifically read "THIS IS NOT A FEMA CENTER" was made and predominately placed in the front entrance to the tent/trailer. **See Exhibit 1.**

The trailer was used only for the law firm's existing corporate clients to have available space to meet with the law firm, the client's contractors and consultants, and assist with any other necessity in the devastated area. Existing corporate clients of the law firm were able to use the claims center's Wi-Fi to communicate with Respondent or members of their business outside of Fort Myers. The space also provided clean bathrooms, printers, client lunches, or air-conditioned meeting space. Existing client members of the trade association were permitted to use the claims centers as meeting space upon request. **Photographs showing the meeting space attached and incorporated with this motion as Exhibit 5.**

As reported to the law firm, The Florida Bar investigators advised the third-party independent contractor that they did not see any violation as long as the law firm's materials remained inside the tent and trailer; however, Respondent called the Florida Ethics Bar Hotline on October 26, 2022, to confirm this information.

Respondent called the hotline and spoke with Ms. Ian Baylee regarding the use of the trailer as an office space. Respondent advised Ms. Baylee that she was a Florida licensed attorney in a law firm that did not have a traditional brick and mortar location.

Respondent explained to Ms. Baylee that the office space was a fully functioning 18-wheeler/trailer with printers, Wi-Fi, air-conditioning, bathrooms, meeting spaces, and televisions that was parked at a hotel parking lot in Fort Myers.

Ms. Baylee advised Respondent that there was no requirement for a brick-and-mortar location and that Respondent could actually operate out of a house. Respondent then confirmed that Florida Bar Ethics Opinion 62-64 provides that a law office can use the street address of a hotel.

Respondent further advised Ms. Baylee that while she was actively looking for an apartment in Fort Myers, which she has today, she was traveling to the trailer location to meet with clients on a regular basis. Ms. Baylee advised Respondent that this was proper because she was available by appointment.

Finally, Respondent advised Ms. Baylee that the 18-wheeler's exterior, which had the law firm's signage, was covered, and asked if the tarping could be removed since the Respondent had taken the steps to open a trust account and with the tax revenue office. Ms. Baylee advised Respondent that the name of the law firm could be appropriate signage, but other elements should be checked out with the advertisement department. Ms. Baylee advised Respondent that this complied with the Rules Regulating The Florida Bar

Respondent then sought additional ethics counsel for guidance and Respondent and the law firm retained the undersigned on November 8, 2022 to provide ethics advice



and guidance. Thereafter, Respondent was advised that a foreign entity form needed to be submitted to the Florida Secretary of State, Division of Corporations. Respondent then acquired a registered agent and submitted the law firm's registration forms, Louisiana certificate, and payment.

At all times, Respondent and the law firm took appropriate good faith actions to ensure full compliance and followed all ethics opinions that she proactively sought and received.

Respondent was available by appointment and had traveled to the location several times. Additionally, regarding any Florida clients, Respondent held weekly meetings with any staff that was involved with any communications with Florida clients and overseeing the tasks and communications for Florida clients.

At all times, any non-client individual who walked up to the trailer was turned away and no clients were ever signed up after walking up to the trailer, calling the number on the trailer, or the Gauthier Murphy & Houghtaling website. The only Florida clients who went into the trailer were existing law firm corporate group clients.

After being served with the above referenced Petition for Emergency Suspension on November 17, 2022, which was Respondent's first contact or notice from The Florida Bar, the trailer was removed from the location on November 18, 2022 and a traditional brick and mortar location was secured. This is the only time that the trailer had moved since it was placed there on October 4, 2022.

## **II. LAW AND ARGUMENT**

### **a. Standard for Emergency Suspension**

An Emergency suspension is the temporary suspension of a lawyer from the practice of law pending imposition of final discipline and includes suspension upon conviction of a serious crime or when the lawyer's continuing conduct is or is likely to cause immediate and serious injury to a client or the public.<sup>1</sup>

A serious crime is any felony or any lesser crime a necessary element of which, as determined by the statutory or common law definition of such crime, involves interference with the administration of justice, false swearing, misrepresentation, fraud, extortion, misappropriation, theft; or an attempt or a conspiracy or solicitation of another to commit a serious crime.<sup>2</sup>

On petition of The Florida Bar, authorized by its president, president-elect, or executive director, supported by one or more affidavits demonstrating facts personally known to the affiants that, if unrebutted, would establish **clearly and convincingly** that a lawyer appears to be causing great public harm, the Supreme Court of Florida may issue an order suspending the lawyer on an emergency basis.<sup>3</sup>

"Clear and convincing evidence" differs from the "greater weight of the evidence" in that it must be more compelling and persuasive. "Clear and convincing evidence" is evidence that is precise, explicit, lacking in confusion, and of such weight that it produces a firm belief or conviction without hesitation about the matter in issue.

This Court has defined this standard as of proof as a higher standard than a preponderance and minimally below beyond and to the exclusion of a reasonable doubt. This involves both a qualitative and quantitative analysis and the evidence must be

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<sup>1</sup> Fla. St. Lwyr. Sanctions Standard 2.4.

<sup>2</sup> Commentary to Fla. St. Lwyr. Sanctions Standard 2.4.

<sup>3</sup> R. Regulating Fla. Bar 3-5.2(a)(1).

credible; the memories of the witnesses must be clear and without confusion; and the sum total of the evidence must be of sufficient weight to convince the trier of fact without hesitancy.<sup>4</sup>

- b. There is no clear and convincing evidence that the Respondent's conduct is or is likely to cause immediate and serious injury to a client or the public.**

The Florida Bar's Petition for emergency suspension should be dismissed or the suspension denied and/or terminated because the Respondent clearly has not caused "great public harm", nor is she likely to cause any *immediate and serious harm* to clients or the public; therefore, no immediate and draconian suspension (or any sanction at all) must or should be taken to protect Respondent's clients and the public. The allegations in the Petition are clearly not supported by clear and convincing evidence.

- i. There was and is no deceptive conduct or solicitation.**

There was absolutely no deception or solicitation as the trailer was never used to solicit business from FEMA Hurricane Ian victims but only as a meeting space with existing corporate clients. Respondent never acted improperly, requested others to act improperly, or improperly solicited clients.

First, The Florida Bar submits that the covering of the trailer's exterior was done to intentionally deceive Hurricane Ian victims into the belief that Gauthier Murphy & Houghtaling was FEMA to generate business rather than cover a potential advertisement to abide by the Florida Rules.

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<sup>4</sup> Owens-Corning Fiberglas Corp. v. Ballard, 749 So. 2d 483 (Fla. 1999), citing In re Adoption of Baby E.A.W., 658 So. 2d 961, 967 (Fla. 1995).

This assumption is clearly incorrect and is wholly unsupported by The Florida Bar's affidavits and photographs. The Florida Bar's affidavits confirm that trailer was not in the Insurance Village, even though this fact is unclear in the Petition.

Indeed, as previously stated, the trailer is over 11 miles and 30 minutes away from the insurance village. The Affidavit of Florida Investigator John Berrena also confirms that the village has two separate check points staffed by civil security and law enforcement and that after walking through the insurance village and its surrounding areas, he saw no law firm in the village.

In addition, Respondent took active steps in preventing the trailer from being confused with anything else. As shown by the photographs submitted by The Florida Bar investigator, the exterior of the trailer was covered in black tarps to cover any law firm advertisement. (See Affidavits of Karen Brown and John Berrena, Bar Petition Exhibit E).

Unfortunately, even though a third-party independent contractor was brought in to ensure the covering of the exterior, the words "Mobile Claim Center" and "John Houghtaling" that were in a light grey color remained exposed.

These words were not visible from the street as they are obstructed by trees, the generator, wires, and portable bathrooms that were placed behind the trailer in addition to its light coloring and small text size.

The law firm's business telephone number was partially exposed but ultimately unreadable as only the area code was fully exposed. (See Respondent's Florida Bar Profile listing office number 504-456-8600 and photograph labeled Petition Composite Exhibit 1).

In addition, a sign that specifically clarified that the trailer was not FEMA was affixed to the tent. **See Exhibit 1.** This provides further clear and unequivocal clarification that the mobile center was not associated with the insurance village 30-minutes away.

Ultimately, and most importantly, there was absolutely no deception or direct solicitation of any community member for legal or any other services. The trailer location was utilized for existing corporate clients. Existing corporate clients, including existing clients and the client trade association, were able to utilize the trailer's WI-FI to communicate with counsel or members of their business outside of Fort Myers. The trailer and tent further provided existing clients with clean bathrooms, printers, or air conditioned meeting space. **See Exhibit 4.**

Other than the existing corporate client group, no members of the community were given information about the law firm nor any advice or guidance. Any person who was not part of the corporate group client was advised that Gauthier Murphy & Houghtaling was not FEMA and could not be provided any assistance.

There is no evidence that the trailer was purposefully utilized to solicit, advertise, or engage new unknown clients and, in fact, the trailer was not improperly used by Respondent or the law firm.

To the contrary, The Florida Bar's Petition and exhibits confirm that community members who mistook the claims center as FEMA were actively turned away. (See Affidavits of Karen Brown and John Berrena, Complaint Exhibit E). Nevertheless, the 18-wheeler has been removed from the parking lot; therefore, there was and is no threat of harm or injury or deception to the general public, imminent or otherwise.

The Florida Bar's Petition claims that parking the trailer at an existing client's property, a closed hotel, was deceptive. While it may not be traditional, there is no brick-and-mortar requirement under the Rules Regulating The Florida Bar. Further, under Florida Bar Ethics Opinion 62-64, it is permissible to operate out of the address of a hotel as was done by the law firm and Respondent in the instant matter.

The Florida Bar's Petition also confirms that there was no public harm as there was no confusion that the hotel was not the law firm office. The investigators affirmatively provide that the Riverview Inn was closed, and the mobile claims center was not affiliated with the Inn, which could potentially cause the public to be confused as to whether the trailer was part of the hotel. (See Affidavit of John Berrena, Complaint Exhibit E).

There was and is no possible harm or injury of solicitation or deception, as addressed in Florida Bar Ethics Opinion 62-64, of the possibility of hotel business channeled to the law firm because the hotel is closed. Nevertheless, the law firm has removed the trailer and secured a brick and mortar location.

**ii. There was and is no improper supervision of non-lawyer employees as cited by The Florida Bar.**

The Florida Bar provides no facts to support the claim that Respondent improperly supervised non-lawyer employees to support the Petition for Emergency Suspension. The Florida Bar's allegations stem solely from the investigator's conversation with a third-party independent contractor who incorrectly stated that Mr. Houghtaling was the attorney on site.

The Florida Bar investigator also spoke with Mr. Houghtaling's paralegal, an actual employee and representative of the law firm, who clearly clarified that it was Respondent who was the Florida attorney at the location. (See Affidavit of John Berrena, Complaint

Exhibit 5). In addition to meeting with current clients in person at claims center, Respondent had the capability to schedule video conferences for only existing clients at the mobile claims center with Wi-Fi.

This is further supported by the affidavit of Florida Bar investigator Karen Brown who submits that “The Florida Attorney is Jennifer Perez, with an address of 13020 N Cleveland Avenue, North Fort Myers, FL 33903. The website also says ‘CONTACT GMH Partner Jennifer Perez jennifer@gmhatlaw.com’...the mobile unit in the parking lot of 13020 North Cleveland Ave., North Fort Myers, FL” (See Affidavit of Karen Brown, Complaint Exhibit E).

There was no improper supervision as Respondent was the managing attorney as was known by The Florida Bar investigators.

The third-party independent contractor was and is not an employee of Respondent or the law firm and the affidavit of the Florida Bar investigator provides that the third-party independent contractor is merely a custodian with custodian tasks such as setting up the tent and covering the exterior of the trailer and had nothing to do with the legal practice. (See Affidavit of John Berrena, Complaint Exhibit 5).

The third-party independent contractor’s custodian duties are not related to the law firm operations under Rules Regulating the Florida Bar 4-5.3 in any way and are only keeping the trailer running. The third-party independent contractor simply correctly advised that the trailer is not FEMA without any additional interaction and if he did have contact it was when someone approached the trailer. (See Affidavit of Florida Bar Investigator John Berrena).

Finally, Respondent was and is appropriately meeting with and properly supervising all law firm employees in handling Florida client matters and overseeing all employees' interactions with Florida clients and with Florida related matters.

Respondent was meeting with clients at the trailer in person and virtually, flying in by appointment and in general to observe the situation in Florida. There was and is no imminent harm or injury to the public or clients as the oversight and direction is from a Florida attorney.

**iii. Respondent has not assisted with the unlicensed practice of law.**

The Florida Bar fails to submit evidence of any conduct by Respondent that she somehow assisted with the unlicensed practice of law. In order to determine whether an activity constitutes the unlicensed practice of law, a two-part analysis must be made. First, it must be determined whether the activity is the practice of law. Secondly it must be determined whether the conduct is authorized. If an activity is the practice of law but the activity is authorized, the activity is not the unlicensed practice of law and may be engaged in by a nonlawyer.<sup>5</sup>

The first question is whether a service or activity constitutes the unlicensed practice of law is whether the activity constitutes the practice of law. In The Florida Bar v. Sperry, 140 So. 2d 587, 591 (Fla. 1962), judg. vacated on other grounds, 373 U.S. 379 (1963), the Court found that setting forth a broad definition of the practice of law was "nigh onto impossible" and instead developed the following test to determine whether an activity is the practice of law:" . . .if the giving of [the] advice and performance of [the] services

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<sup>5</sup> The Florida Bar v. Moses, 380 So. 2d 412 (Fla. 1980).



affect important rights of a person under the law, and if the reasonable protection of the rights and property of those advised and served requires that the persons giving such advice possess legal skill and a knowledge of the law greater than that possessed by the average citizen, then the giving of such advice and the performance of such services by one for another as a course of conduct constitute the practice of law.”

The Florida Bar fails to identify any conduct by Respondent that could even arguably be construed as the unauthorized practice of law. The Florida Bar knows from its investigators that Respondent is the Florida attorney overseeing the trailer/claims center as clarified by the paralegal who the investigator spoke with and as indicated on the law firm’s website. (See Affidavit of John Berrena, Complaint Exhibit E, and Composite Exhibits).

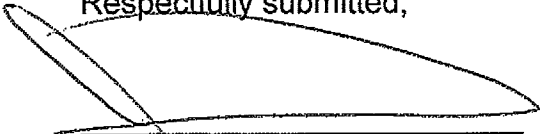
Further, the appearance of Mr. Houghtaling’s name in small print, obscured by the trees, generator, temporary bathroom, and other wiring was not visible to the public from the street and in no way was a representation held out to the public that he was an attorney nor responsible for the office at that location. **Photographs confirming the above are attached and incorporated as Exhibit 6.**

### **III. Conclusion**

The Florida Bar has failed to show by clear and convincing evidence (or any evidence) that Respondent acted improperly or caused or is causing great public harm to justify an emergency suspension. The Florida Bar’s Petition for Emergency Suspension should be dismissed or, in the alternative, the emergency suspension should not be imposed or, if it is imposed, the suspension should be terminated in its entirety. Alternatively, the Respondent requests the appointment of a referee to decide on an

expedited basis the proper decision regarding The Florida Bar's requested Emergency Suspension.

Respectfully submitted,

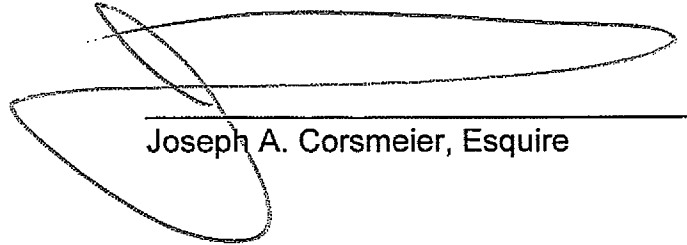


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I hereby certify that this document has been e-filed with The Honorable John A. Tomasino, Clerk of the Supreme Court of Florida, and true and correct copies of same has been furnished to Elizabeth Clark Tarbert, Bar Counsel, The Florida Bar, at her designated e-mail address of etarbert@@floridabar.org, and Patricia Savitz, Bar Counsel at her designated email address of psavitz@floridabar.org this 21st day of November, 2022.



Joseph A. Corsmeier, Esquire