

IN THE SUPREME COURT OF FLORIDA

THE FLORIDA BAR,

Complainant,

Case No.: SC19-2070

v.

Fl. Bar No.: 2018-10, 412 (13F)

KELSAY DAYON PATTERSON,

Respondent.

/

**AMENDED APPENDIX TO
THE FLORIDA BAR'S
INITIAL BRIEF**

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IN THE SUPREME COURT OF FLORIDA

THE FLORIDA BAR,

Complainant,

v.

KELSAY DAYON PATTERSON,

Respondent.

Supreme Court Case
No. SC-

The Florida Bar File
No. 2015-10,669 (13F)

COMPLAINT

The Florida Bar, Complainant, files this Complaint against Kelsay Dayon Patterson, Respondent, pursuant to the Rules Regulating The Florida Bar and alleges:

1. Respondent is, and at all times mentioned in the Complaint was, a member of The Florida Bar, admitted on October 1, 1997, and is subject to the jurisdiction of the Supreme Court of Florida.

2. Respondent practiced law in Hillsborough County, Florida, at all times material.

3. The Thirteenth Judicial Circuit Grievance Committee "F" found probable cause to file this Complaint pursuant to Rule 3-7.4, of the Rules Regulating The Florida Bar, and this Complaint has been approved by the presiding member of that committee.

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4. In October 2010, Johanna Faddis retained Respondent to represent her in pursuing a claim against The City of Homestead and its individual city council members for invasion of privacy for obtaining and disclosing her personal text messages during an official investigation of the City Manager.

5. On September 1, 2011, Respondent, on behalf of Faddis, filed a civil complaint against The City of Homestead, its individual city council members, and a private investigation firm (“defendants”), in the matter *Faddis v. The City of Homestead, et al.*, Case No. 2011-27981-CA-30, in the Eleventh Judicial Circuit Court, in and for Miami-Dade County, Florida.

6. The complaint alleged that The City of Homestead disclosed certain personal text messages between Faddis and the City Manager resulting in a breach of Faddis’ right to privacy.

7. On June 4, 2012, defendants filed a motion for summary judgment against Faddis alleging that the text messages between Faddis and the City Manager were considered public records and of public concern.

8. On or about July 26, 2012, the defendants filed a motion for sanctions alleging Faddis and Respondent had perpetrated fraud upon the court based on Faddis’ inconsistent deposition testimony in separate legal proceedings.

9. On November 14, 2012, the Honorable Jorge E. Cueto entered a final judgment for the defendants and struck Faddis' pleadings based on her perjurious statements and fraud upon the court.

10. On December 10, 2012, attorney Arnold R. Ginsberg, on behalf of Faddis, filed a Notice of Appeal in the Third District Court of Appeal, Case No. 3D12-3248, appealing the circuit court's November 14, 2012, Final Judgment for Defendants Striking the Pleadings of Plaintiff.

11. On December 14, 2012, the defendants filed separate motions for attorneys' fees against Respondent and Faddis in the circuit court case.

12. On May 31, 2013, Judge Cueto entered an Order Granting Attorneys' Fees and Sanctions against Faddis and Respondent, finding evidence that both Faddis and Respondent acted in bad faith and engaged in vexatious conduct.

13. On June 17, 2013, Respondent filed Faddis' second Notice of Appeal in the Third District Court of Appeal, Case No. 3D13-1642, appealing the May 31, 2013, Order Granting Attorneys' Fees and Sanctions against Faddis and Respondent.

14. On August 14, 2013, the district court dismissed Faddis' appeal because the May 31, 2013, Order Granting Attorneys' Fees and Sanctions against Faddis and Respondent was a non-final and non-appealable order.

15. On September 4, 2013, the district court issued a written opinion in Case No. 3D12-3248, affirming the circuit court's November 14, 2012, Final Judgment for Defendants Striking the Pleadings of Faddis, as a sanction for committing fraud upon the court and perjury. The district court stated that Faddis' perjury "was undertaken with the intent to deceive the court, constituted a deliberate scheme to subvert the judicial process, and amounted to fraud upon the court."

16. On September 20, 2013, Respondent sent a letter to The Honorable Jose E. Martinez, Judge of the United States District Court for the Southern District of Florida, in which Respondent complained about the outcome of Faddis' case, alleged that influential members of the community manipulated the outcome of the case, and implied that another district court judge was biased in favor of opposing counsel. Respondent sent copies of the letter to judges in the Eleventh Judicial Circuit and Third District Court of Appeal.

17. On October 21, 2013, the district court issued its mandate in Case No. 3D12-3248, and reiterated the appellate court's September 4, 2013, written opinion.

18. On December 18, 2013, Judge Cueto entered a Final Judgment on the defendants' motion for attorneys' fees. The Final Judgment imposed a total of \$166,162.06 in favor of the defendants and against Faddis and Respondent.

19. On January 15, 2014, Respondent filed a Notice of Appeal of the December 18, 2013, Final Judgment on behalf of Faddis, in the Third District Court of Appeal, Case No. 3D14-121, in which Respondent argued against the imposition of attorneys' fees against himself, but not against Faddis.

20. On July 7, 2014, Respondent filed his Reply Brief in Case No. 3D14-121.

21. In the brief, Respondent stated "Law is whatever the judge or judges that day say it is."

22. Respondent further insinuated that he was standing up to "those who are in power" and compared his posture in the case to "Fidel Castro's suffocating grip of Cuba, the Holocaust, Jim Crow Laws, and Hillary Clinton."

23. On September 17, 2014, the district court entered its Per Curiam Affirmed Opinion in Case No. 3D14-121.

24. On September 18, 2014, the district court dismissed Respondent's appeal in Case No. 3D14-121, for lack of jurisdiction based on Respondent's failure to properly state the name of the appealing party in his appeal.

25. On September 18, 2014, the district court also ordered Faddis and Respondent to show cause as to why they should not be sanctioned pursuant to Fla. Stat. § 57.105 in Case No. 3D14-121.

26. On October 13, 2014, Respondent filed Appellant's Response to Court's Show Cause Order in Case No. 3D14-121.

27. In the response, Respondent argued against the imposition of attorneys' fees on his own behalf, but failed to make any argument on behalf of Faddis.

28. In the response, Respondent stated "We cannot all be judges, politicians, wealthy business men, or local big named law firms with tremendous influence who can often supersede all laws on the books."

29. On February 11, 2015, the Third District Court of Appeal issued its opinion on the Order to Show Cause in Case No. 3D14-121, finding Respondent's allegation that the trial court awarded sanctions against Faddis without express findings of bad faith lacked any basis in reality.

30. The district court further found that Respondent failed to name himself as an appellant in the appeal and this alone was fatal to his challenge of the sanctions. Further, Respondent's appeal of the sanction order on behalf of Faddis was insufficient to constitute an appeal for himself.

31. The district court ordered Respondent alone to pay appellate attorneys' fees to the defendants, and remanded the matter back to the trial court to determine the appropriate amount.

32. Wherefore, by reason of the foregoing, Respondent has violated the following Rules Regulating The Florida Bar: **3-4.3** (Misconduct and Minor Misconduct); **4-1.7** (Conflict of Interest); **4-8.2(a)** (Impugning Qualifications and Integrity of Judges or Other Officers); and **4-8.4(d)** (Engage in conduct in connections with the practice of law that is prejudicial to the administration of justice).

WHEREFORE, The Florida Bar prays Respondent will be appropriately disciplined in accordance with the provisions of the Rules Regulating The Florida Bar as amended.



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CERTIFICATE OF SERVICE

I hereby certify that the original of the foregoing Complaint has been electronically filed with The Honorable John A. Tomasino, Clerk of the Supreme Court of Florida, using the E-Filing Portal; and that true and correct copies have been furnished via certified U.S. mail, return receipt no. 7016 0750 0000 3623 6525, to Kelsay Dayon Patterson, Respondent, to his record Bar address of Law Office of Kelsay Patterson, P.O. Box 273826, Tampa, Florida 33688-3826, and via electronic mail to his record Bar email address of kplaw@bellsouth.net; via electronic mail to Jodi Anderson Thompson, Bar Counsel, The Florida Bar, to her record Bar email address of jthompso@floridabar.org, and secondary email addresses of ahendricks@floridabar.org and tampaoffice@floridabar.org; and by electronic mail to Michael S. Hooker, Designated Reviewer, to his record Bar email address of michael.hooker@phelps.com, all on this 4th day of August, 2016.

Adria E. Quintela

Adria E. Quintela
Staff Counsel

**NOTICE OF TRIAL COUNSEL AND
DESIGNATION OF PRIMARY EMAIL ADDRESS**

PLEASE TAKE NOTICE that the trial counsel in this matter is Jodi Anderson Thompson, Bar Counsel, whose address, telephone number, and primary and secondary email address are The Florida Bar, Tampa Branch Office, 4200 George J. Bean Parkway, Suite 2580, Tampa, Florida 33607-1496, (813) 875-9821, jthompso@floridabar.org (primary), ahendricks@floridabar.org (secondary), and tampaoffice@floridabar.org (secondary). Respondent need not address pleadings, correspondence, etc. in this matter to anyone other than trial counsel and to Adria E. Quintela, Staff Counsel, The Florida Bar, Lakeshore Plaza II, 1300 Concord Terrace, Suite 130, Sunrise, Florida 33323, aquintel@floridabar.org.

MANDATORY ANSWER NOTICE

RULE 3-7.6(h)(2), RULES OF DISCIPLINE, EFFECTIVE MAY 20, 2004,
PROVIDES THAT A RESPONDENT SHALL ANSWER A COMPLAINT.

IN THE SUPREME COURT OF FLORIDA
(Before a Referee)

THE FLORIDA BAR,

Complainant,

v.

KELSAY DAYON PATTERSON,

Respondent.

Supreme Court Case
No. SC16-1438

The Florida Bar File
No. 2015-10,669 (13F)

REPORT OF REFEREE

I. SUMMARY OF PROCEEDINGS

Pursuant to the undersigned being duly appointed as referee to conduct disciplinary proceedings herein according to Rule 3-7.6, Rules of Discipline, the following proceedings occurred:

The Florida Bar filed a Complaint against Respondent on August 4, 2016, and alleged that Respondent violated the following Rules Regulating The Florida Bar:

- 3-4.3 Misconduct and Minor Misconduct
- 4-1.7 Conflict of Interest
- 4-8.2(a) Impugning Qualifications and Integrity of Judges or Other Officers
- 4-8.4(d) Engage in conduct in connection with the practice of law that is prejudicial to the administration of justice

The trial was bifurcated for the Referee to first determine whether or not there were any violations of the Rules Regulating The Florida Bar, and if so, then the case would proceed to the penalty phase. After two separate Motions for Extension of Time, the final hearing regarding alleged violations was conducted on March 23, 2017. Of the four violations charged by The Florida Bar, the Referee found Respondent guilty of one, 3-4.3 (Misconduct and Minor Misconduct) which was improperly sending correspondence to the Court, Judge Jose E. Martinez, U.S.

District Court Judge, Southern District of Florida, letter dated September 20, 2013. The penalty phase was held on April 21, 2017, and this Report of Referee outlines the penalty.

All items properly filed, including pleadings, recorded testimony (as transcribed), exhibits introduced into evidence and this Report of Referee constitute the record in this case and are forwarded to the Supreme Court of Florida.

II. FINDINGS OF FACT

A. Jurisdictional Statement.

Respondent is, and at all times mentioned during this investigation, was, a member of The Florida Bar, subject to the jurisdiction and Disciplinary Rules of the Supreme Court of Florida.

B. Narrative Summary of Case.

The evidence presented showed that Respondent represented Johanna Faddis (“*Faddis*”) in a high profile and emotionally charged civil action against The City of Homestead, its individual city council members, and a private investigation firm for allegations of invasion of privacy resulting from the retrieval and disclosure of Faddis’ personal text messages during an internal workplace investigation.

In that case, on November 14, 2012, Judge Jorge E. Cueto entered a Final Judgment in favor of the defendants (City of Homestead) and struck Faddis’ pleadings finding that Faddis had committed perjury as to whether or not she had been sexually harassed based on her inconsistent deposition testimony from an internal investigation. The Court found that Respondent represented Faddis at the deposition, and should have known of the inconsistent testimony prior to filing the litigation. On May 31, 2013, Judge Cueto entered an Order granting attorney’s fees and sanctions against Faddis and Respondent, finding evidence that they acted in bad faith and engaged in vexatious conduct.

On June 17, 2013, Respondent appealed the May 31, 2013, Order on Faddis’ behalf. On September 4, 2013, the District Court issued a written opinion, affirming the trial court’s November 12, 2012, Final Judgment and stating, in part, that Faddis’ perjury constituted a deliberate scheme to subvert the judicial process and amounted to fraud upon the Court.

Respondent also represented Faddis in a federal § 1983 civil rights case against the same defendants as the State case. On September 20, 2013, while both the federal and State cases were pending, Respondent sent a reactionary letter to Judge Jose E. Martinez, U.S. District Court Judge, Southern District of Florida, (the judge in the federal case) in which Respondent expressed his discontent over the outcome of the State Faddis' case, likened the alleged injustice to Faddis to the "Bible story involving Susanna as found in the Book of Daniel," alleged that influential members of the community had manipulated the outcome of the case, and implied that another district court judge was biased in favor of opposing counsel. Respondent sent copies of the letter to other members of the judiciary in the Eleventh Judicial Circuit and Third District Court of Appeal. Respondent resorted to sending the letter because he believed he was deprived the opportunity to present evidence that he had not engaged in fraudulent conduct toward the tribunal at an evidentiary hearing before he was sanctioned. Respondent also made similar statements in pleadings.

On December 18, 2013, in the State case Judge Cueto entered a Final Judgment in favor of the Defendants and imposed attorneys' fees against both Faddis and Respondent. Respondent did not believe that he had been afforded due process before being sanctioned with fees. On January 15, 2014, Respondent appealed the December 18, 2013, Final Judgment on Faddis' behalf. On September 18, 2014, the district court dismissed Respondent's appeal for lack of jurisdiction, and ordered Faddis and Respondent to show cause why they should not be sanctioned pursuant to Fla. Stat. § 57.105. On October 13, 2014, Respondent filed a response to the Order to Show Cause, arguing against the imposition of attorneys' fees. In his response the Respondent also implied that certain influential individuals can supersede the law, and continued to make incendiary and disparaging comments by stating, "We cannot all be judges, politicians, wealthy business men, or local big named law firms with tremendous influence who can supersede all laws on the books." On February 11, 2015, the district court issued an opinion on the Order to Show Cause, and found that Respondent failed to sufficiently appeal the Order, ordered Respondent alone to pay the appellate attorneys' fees, and remanded the matter back to the trial court to determine the appropriate amount.

The final hearing, in this Bar case, was held before the Referee on March 23, 2017. The Florida Bar called an attorney with the Defendant's firm who presented an overall summary of the *Faddis* case, both State and Federal actions, and generally described Respondent's litigation against the City of Homestead, whom he represents. The Respondent also testified. After the presentation of evidence by the parties and after hearing testimony, this Referee found Respondent violated Rule 3-4.3 (Misconduct and Minor Misconduct) by sending the letter dated September 20, 2013, to Judge Jose E. Martinez. The Referee found Respondent not guilty of violating Rule 4-1.7 (Conflict of Interest) , Rule 4-8.2(a) (Impugning Qualifications and Integrity of Judges or Other Officers) and finds the Respondent not guilty of 4-8.4(d) (Engaging in conduct in connection with the practice of law that is prejudicial to the administration of justice.)

On April 21, 2017, the Referee heard the penalty phase of the trial. The Florida Bar called the Respondent to testify as to a more recent Order awarding Fla. Stat. §57.105 sanctions, dated June 26, 2015, against Respondent and his client in the matter of *Jeudine v. City of Homestead*, et al., filed in the 11th Circuit, Case No. 14-13594CA 4, as well as the Respondent's bankruptcy filing which included the discharging of the two sanctions orders. In the *Jeudine* case, the Judge and the opposing attorneys were the same people as in the *Faddis* case, and all around the same time period. It appears in the *Jeudine* case, Respondent was sanctioned for not moving the case forward. The Florida Bar also called to testify Frank A. Shepherd, former Chief Judge of the Third District Court of Appeal, who was familiar with the *Faddis* case and the Respondent. Judge Shepherd, one of the Judges copied on the September 20, 2013, letter, expressed clearly his negative views and opinions of the Respondent. The Respondent had no witnesses, other than his own counsel who testified as to their positive relationship and the help that Respondent had been to him, due to some medical issues the attorney had.

During the trial and the penalty phase, Respondent argued that he had sent the letter to Judge Martinez on the advice of Judge James Lawrence King, Sr., whom had counseled Respondent in 2002 on what sounded like a similar situation. See Exhibit 41 for the letter sent to Judge Martinez, as it references this advice. The Referee finds Respondent's testimony of his frustration over the procedure of the state action and his explanation as to why he sent the letter, although flawed, to be credible under the circumstances.

Respondent is a passionate African American civil rights lawyer who strongly believes in our system of justice. He moved from south Florida to Tampa in 2006 in an attempt to distance himself from some difficult challenges he witnessed and experienced in the legal community. Sadly, and to his own detriment, he has continued to represent some clients in this arena, which now have brought about these sanctions orders and this Florida Bar action.

III. RECOMMENDATIONS AS TO GUILT

The Referee recommends that Respondent be found **guilty of violating Rule 3-4.3 (Misconduct and Minor Misconduct)** of the Rules of Professional Conduct.

The clear and convincing evidence is that Respondent improperly sent a letter dated September 20, 2013, to Judge Jose E. Martinez, which letter summarizes, although in a long and arduous manner, the *Faddis* case history including his perception of the politics and undue influence that occurred in the state circuit court case. His letter attempts to reveal how the system is being undermined and to expose the truth of his client's situation. Judge Martinez, according to Exhibit 6, was the assigned Judge on the Federal § 1983 action involving the same *Faddis* case parties, and was overseeing this case when the letter was sent.

Respondent's reasoning behind sending the letter to Judge Martinez, while flawed, is credible considering his frustration and his strong belief and passion in his client's cause.

The Referee recommends that Respondent be found **not guilty** of violating the following Rules:

4-1.7 (Conflict of Interest); 4-8.2(a) (Impugning Qualifications and Integrity of Judges or Other Officers); and 4-8.4(d) (Engage in conduct in connection with the practice of law that is prejudicial to the administration of justice.)

There is no evidence that the Respondent intended to have improper communications with the court, or knew that what he was doing was improper. While the letter of September 20, 2013, and some of the pleadings in the *Faddis* case have definite overtones of conspiracy and are emotionally charged, Respondent's ethical duty to his client combined with his strong belief that his

action was the appropriate way to expose the perceived wrong-doings, mitigate a finding of not guilty of these charges.

Specifically to the charge of conflict of interest, the Florida Bar's position was Respondent represented himself versus his client in the pleadings on the proportion of the Fla. Stat. § 57.105 sanction to be paid by the client versus the lawyer. Respondent took the position that his advocacy was to the whole sanction, which would include his client, and the Referee finds this credible.

IV. CASE LAW

The Florida Bar presented the following cases for the Referee to consider: *Florida Bar v. Wasserman*, 675 So.2d 103 (Fla. 1996); *Florida Bar v. Ratiner*, 46 So.3d 35 (Fla. 2010); *Florida Bar v. Lord*, 433 So.2d 983 (Fla. 1983); *Florida Bar v. Cox*, 794 So.2d 1278 (Fla. 2001); *Florida Bar v. Abramson*, 3 So.3d 964 (Fla. 2009); *Florida Bar v. Morgan*, 938 So.2d 496 (Fla. 2006); *In Re Shimek*, 284 So.2d 686 (Fla. 1973); *Florida Bar v. Tobkin*, 944 So.2d 219 (Fla. 2006); *Florida Bar v. Vaughn*, 608 So.2d 18 (Fla. 1992). The Referee finds that although these cases are directly on point with the factual allegations of the instant action, most of the Respondents had prior disciplinary records or their conduct was more extreme and harmful than the Respondent in this case.

The Respondent has presented the following cases for the Referee to consider: *Florida Bar v. Brown*, 978 So.2d 107 (Fla. 2008); *Florida Bar v. Doane*, 43 So.3d 640 (Fla. 2010); and *Florida Bar v. Bartholf*, 775 So.2d 957 (Fla. 2000). None of these cases are factually similar and not directly on point.

V. STANDARDS FOR IMPOSING LAWYER SANCTIONS

The Referee considered the following Standards prior to recommending discipline:

A. Theoretical Framework.

1. The duty violated
2. The lawyers' mental state
3. The potential or actual injury caused by the lawyer's misconduct, and
4. The existence of aggravating or mitigating factors

B. Standards.

1. Sanctions Standard 2.7 Probation, and Standard 2.8 which provide additional conditions imposed while Respondent is practicing law;
2. The duties violated by Respondent to clients. Standard 4.34, admonishment is appropriate when a lawyer is negligent in determining whether the representation of a client may be materially affected by the lawyer's own interests, or will adversely affect another client, and causes little or no injury to a client;
3. The duties violated by Respondent to the legal system. Standard 6.3 Improper communications with Individuals in the Legal System;
4. The duties violated by the Respondent as a professional. Standard 7.4 violations of other duties owed as a professional.

VI. AGGRAVATING AND MITIGATING FACTORS

The Referee considered the following factors prior to recommending discipline:

A. Aggravating Factors

1. Respondent's refusal to acknowledge the wrongful nature of sending the letter to Judge Martinez, as improper communication with a judge;
2. Respondent's filing bankruptcy to avoid the consequences of the sanctions orders (although this represents other financial challenges of the Respondent.)

B. Mitigating Factors

1. Respondent has no prior disciplinary record.
2. Respondent cooperated fully and freely with the disciplinary board.

3. Respondent's attitude toward the proceedings were respectful, humble, and professional.
4. Respondent believed he was following the correct procedure in sending the letter to the Judge, therefore negligently and not knowingly violated the Rules of the Florida Bar.
5. Respondent has volunteered his time with Big Brothers and Big Sisters.
6. While the courts in the underlying case imposed attorney's fees against the Respondent and sanctioned him, the written Court Orders are more harsh in the outcome, than the transcript of the proceedings,
7. The underlying trial courts in granting sanctions against Respondent, have addressed the penalty as the Court found appropriate and not all Fla. Stat. §57.105 sanctions represent a violation of professional conduct,
8. Respondent has demonstrated a passionate heart for his clients, even to his own detriment, and demonstrated an unselfish motive,
9. Respondent has devoted significant professional time and resources to ensure equal access to our system of justice, despite the lack of economic or social barriers for legal counsel, as demonstrated by the clients in the two cases described in this action. In the *Faddis* case, his client had been through mental health counseling for an abusive husband, and was facing similar issues in the workplace, prior to being terminated and then having her personal text messages publicized by her employer. In the *Jeudine* case, his client is a migrant farm worker with very limited resources,
10. Respondent already has financial problems and a suspension would just add to the problems, instead of truly helping Respondent understand why what he did was wrong and bring Respondent back into the professional world of a legal practice with a better understanding of his professional responsibilities.

C. Commentary.

The Florida Bar seeks a 91 day rehabilitative suspension; however, a suspension will not be in the best interest of our legal community or Respondent. A suspension, adding to the economic reality and hardship already apparent, would be tantamount to the end of the Respondent's legal career. Respondent, as an African American civil rights lawyer, is passionate about his clients and their causes to a fault. Respondent can be an effective advocate, although not in the two examples indicated in this grievance process. His boundaries were weakened by his passion. He failed to appreciate the demands made upon the Courts due to lack of staffing and overbooked dockets which require brevity and concise arguments. His passion and method of advocacy frustrated the Judges and instead of adjusting his method, and recognizing the problem, it escalated.

At one time Respondent was an active member of voluntary bar organizations and trial advocacy groups. Through these negative experiences, which caused him to move to Tampa from south Florida, he lost faith in our justice system and basically dropped out of organized bar. A structured probationary period, such as the conditions recommended in this report, if approached with a positive and respectful attitude, which the Referee believes Respondent has demonstrated, will hopefully channel this passion and the Respondent's advocacy talents, back into a productive and successful member of the Bar and rebuild Respondent's faith in our system of justice for the betterment of all.

VII. RECOMMENDATION AS TO DISCIPLINARY MEASURES TO BE APPLIED

The Referee recommends Respondent be found guilty of misconduct justifying disciplinary measures, and that he be disciplined by:

- A. Admonishment, in accordance with Standard 6.34;
- B. Rehabilitative Probation for 1 year;
- C. Become an active member of the George Edgecomb Bar Association;

- D. Appointment of Erik R. Matheney, an attorney in good standing with the Florida Bar, as a consultant, and one the Referee knows will assist Respondent in reconnecting with the active professional life within the framework of the Bar Rules for professionalism and effective advocacy for a client. Respondent shall meet with the consultant, Mr. Matheney, every two weeks, subject to modification, unless good cause is shown as to any delay in the meeting;
- E. Respondent shall prepare quarterly reports of Respondent's case load and he will review with the consultant;
- F. Within the one year probationary time, Respondent shall personally attend the Ethics School, as coordinated with the The Florida Bar; shall register and attend Practicing with Professionalism continuing education, and the next Annual Ethics Update continuing education;
- G. The Referee would agree to continue jurisdiction to monitor this probation period to assure compliance and address any modifications in the appointment of the consultant;
- H. Payment of The Florida Bar's costs in these proceedings.

VIII. PERSONAL HISTORY, PAST DISCIPLINARY RECORD

In recommending discipline after finding misconduct, the Referee considered the Respondent was born in 1971, was admitted to the Florida Bar October 1, 1997, at 26 years of age.

IX. STATEMENT OF COSTS AND MANNER IN WHICH COSTS SHOULD BE TAXED

The Referee finds the following costs were submitted to the Court in the form of an Affidavit by The Florida Bar and found to be reasonably incurred by The Florida Bar and supported by substantial competent evidence:

Administrative Fee	\$1,250.00
Court Reporters' Fees	\$1,520.55
Bar Counsel Costs	\$ 44.94
Investigative Costs	<u>\$ 11.60</u>

Total	<u>\$2,827.09</u>
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It is recommended that such costs be charged to Respondent and that interest at the statutory rate shall accrue and be deemed payable beginning 60 days after the judgment in this case becomes final unless paid in full or otherwise deferred or waived by the Board of Governors of The Florida Bar.

Dated this 2nd day of June, 2017.



PAMELA ANN MEACOMES CAMPBELL
Referee

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on June 2, 2017,

An original of the foregoing Report of Referee has been FedEx'd and e-mailed to:

The Honorable John A. Tomasino
Clerk, Supreme Court of Florida
e-file@flcourts.org,
500 South Duval Street
Tallahassee, Florida 32301

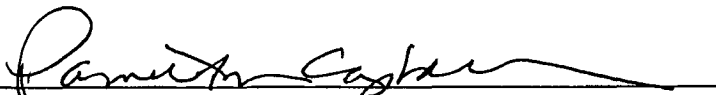
And that a copy has been e-mailed to:

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on June 2, 2017.


PAMELA ANN MEACOMES CAMPBELL
Referee
Sixth Judicial Circuit
545 First Avenue No., Room 300
St. Petersburg, Florida 33701

Supreme Court of Florida

No. SC16-1438

THE FLORIDA BAR,
Complainant,

vs.

KELSAY DAYON PATTERSON,
Respondent.

October 19, 2018

PER CURIAM.

We have for review a referee's report recommending that respondent, Kelsay Dayon Patterson, be found guilty of professional misconduct in violation of the Rules Regulating the Florida Bar (Bar Rules) and that he receive an admonishment for his misconduct. The Florida Bar has petitioned for review, challenging the referee's recommendations as to guilt and the recommended discipline. We have jurisdiction. *See* art. V, § 15, Fla. Const. For the reasons discussed below, we approve the referee's findings of fact and recommendation of guilt as to Bar Rule 3-4.3 (Misconduct and Minor Misconduct). However, we disapprove the referee's recommendations of no guilt as to Bar Rules 4-1.7

(Conflict of Interest; Current Clients), 4-8.2(a) (Judicial and Legal Officials; Impugning Qualifications and Integrity of Judges or Other Officers), and 4-8.4(d) (a lawyer shall not engage in conduct in connection with the practice of law that is prejudicial to the administration of justice), and find Patterson guilty of violating each of these rules. We also disapprove the referee's recommended discipline as far too lenient, and instead impose a one-year suspension from the practice of law.

I. BACKGROUND

In August 2016, The Florida Bar filed a complaint against Patterson alleging that he violated several Bar Rules in his representation of Johanna Faddis in her civil action against the City of Homestead and other defendants. The Bar's complaint was referred to a referee. The referee held a hearing on both guilt and discipline, and submitted a report containing her findings and recommendations for the Court's review. The referee made the following findings and recommendations.

Patterson represented Faddis in a civil action alleging invasion of privacy against the City of Homestead, its individual council members, and an investigative firm employed by the city. On November 14, 2012, the Circuit Court of the Eleventh Judicial Circuit entered an order striking Faddis's pleadings on the grounds that she had committed perjury and awarding final judgment in favor of the city and the other defendants. The circuit court found that Faddis's testimony

during a deposition in the case on the issue of whether she had been sexually harassed, a material issue in the case, was inconsistent with deposition testimony she gave on the same issue in a separate case involving the city. The circuit court also found that Patterson represented Faddis at the deposition in the separate case and that he should have been aware of the inconsistent testimony prior to filing the complaint. The circuit court ultimately awarded attorney's fees to the city and imposed sanctions against Faddis and Patterson for acting in bad faith. The Third District Court of Appeal affirmed the circuit court's order, finding Faddis's conduct was "undertaken with intent to deceive, constituted a deliberate scheme to subvert the judicial process, and amounted to a fraud upon the court." *Faddis v. City of Homestead*, 121 So. 3d 1134, 1135 (Fla. 3d DCA 2013).

While proceedings were ongoing in the circuit court, Patterson also pursued a civil rights claim against the city and other defendants under 42 U.S.C. § 1983 (2012) in the U.S. District Court for the Southern District of Florida. 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 sent the September 20, 2013, letter based on advice he purportedly received from Judge James Lawrence King, Sr. in 2002, and out of a belief that he was denied the opportunity to present evidence prior to being sanctioned by the circuit court that demonstrated his conduct was not fraudulent.

On December 18, 2013, the circuit court entered a final judgment awarding in excess of \$160,000 in attorney's fees against Patterson and Faddis equally. Patterson appealed the circuit court's order on behalf of Faddis to the Third District. The district court affirmed the circuit court's order to the extent it applied to Faddis, *see Faddis v. City of Homestead*, 160 So. 3d 438 (Fla. 3d DCA 2014) (table), but dismissed the appeal for lack of jurisdiction to the extent Patterson attempted to obtain review of the order as it applied to him, finding that Patterson had failed to identify himself as an appealing party in the notice of appeal. The Third District also directed Faddis and Patterson to show cause why attorney's fees should not be awarded to the city and other defendants for their prosecution of a frivolous appeal. Patterson filed a response containing "incendiary and disparaging comments," such as "We cannot all be judges, politicians, wealthy business men, or local big named law firms with tremendous influence who can supersede all laws on the books." In an opinion dated February 11, 2015, the Third

District found that each of the three claims advanced by Patterson on appeal were frivolous and ordered him alone to pay appellate attorney's fees. *Faddis v. City of Homestead*, 157 So. 3d 447 (Fla. 3d DCA 2015), *review dismissed*, 163 So. 3d 508 (Fla. 2015). Before ordering appellate attorney's fees against Patterson, the district court made the following observation:

Curiously, Patterson's response to our order to show cause makes no argument on behalf of his client. Rather, it is a screed following hard upon his reply brief filed in this appeal, where 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 is grossly mistaken. This case is not about political connection, human atrocities, bullies, or, as he would have it, the ability of "strong minded individuals" to stand up for the powerless. This case is about an officer of the court who proffered false evidence in violation of the Rules Regulating the Florida Bar. *See* R. Regulating Fla. Bar 4–3.3(a)(4). It is now probably also about an attorney who has impugned the qualifications and integrity of the judges of this court, the trial court, or other officers. *See* R. Regulating Fla. Bar 4–8.2(a).

Id. at 453 (footnote omitted).

On these facts, the referee recommended that Patterson be found guilty of violating Bar Rule 3-4.3 (Misconduct and Minor Misconduct) only. The referee determined that the September 20, 2013, letter to Judge Martinez and the filings in the Faddis case contained emotionally charged statements with conspiratorial

overtone, but that there was no evidence Patterson knew sending the letter was inappropriate or that he intended to have improper communications with a court. She concluded that Patterson strongly believed that his actions were the appropriate way to expose what he perceived as wrongdoing in Faddis's case—i.e., that politics and undue influence controlled the outcome of the case—and that Patterson's belief, along with the ethical duty he owed Faddis, warranted a recommendation of no guilt as to Bar Rules 4-8.2(a) (Judicial and Legal Officials; Impugning Qualifications and Integrity of Judges or Other Officers) and 4-8.4(d) (a lawyer shall not engage in conduct in connection with the practice of law that is prejudicial to the administration of justice). The referee also rejected the Bar's contention that Patterson advanced his own interests instead of his client's interests in the appeal of the circuit court's December 18, 2013, order, creating a conflict of interest in violation of Bar Rule 4-1.7 (Conflict of Interest; Current Clients). The referee found Patterson's explanation credible that his advocacy in the case was aimed at the sanction as a whole, including Faddis.

In recommending discipline, the referee found two aggravating factors and ten mitigating factors. Instead of exclusively relying on the factors listed in the Florida Standards for Imposing Lawyer Sanctions to make her findings in aggravation and mitigation, *see* Fla. Stds. Imposing Law. Sanctions 9.22, 9.32, the referee listed several factors she considered in recommending discipline. In

aggravation, the referee found that Patterson refused to acknowledge the wrongful nature of his conduct and that he filed for bankruptcy to avoid the consequences of the sanctions imposed against him. As to mitigation, the referee found the following: (1) the absence of a prior disciplinary record; (2) full cooperation with the disciplinary board; (3) respectful and professional attitude; (4) Patterson's belief that sending a letter to a judge was the correct procedure; (5) Patterson's volunteer work with Big Brothers and Big Sisters; (6) the harshness of the order and opinions issued in Faddis's case; (7) the imposition of sanctions by the circuit court; (8) Patterson's passion for his clients and unselfish motive; (9) Patterson's devotion of significant time and resources to ensuring equal access to the judicial system; and (10) Patterson's existing financial problems that a suspension, as opposed to a reformation program, would only exacerbate.

As a sanction, the referee recommended that Patterson receive an admonishment and that he be placed on probation with various conditions for one year. She also recommended that costs be awarded to the Bar in the amount of \$2,827.09.

The Bar filed a notice of intent to seek review of the report of referee, challenging the referee's recommendations of no guilt as to Bar Rules 4-1.7, 4-8.2(a), and 4-8.4(d), as well as the recommended discipline. Patterson did not file an answer brief in this case. After reviewing the report of referee and the Bar's

brief, the Court directed Patterson to show cause why the referee's recommended discipline should not be disapproved and a more severe sanction be imposed.

II. ANALYSIS

A. Findings of Fact and Recommendations of Guilt

The Bar challenges the referee's recommendations of guilt as to Bar Rules 4-1.7, 4-8.2(a), and 4-8.4(d).¹ To the extent the Bar challenges the referee's findings of fact for the rule violations, this Court's review of such matters is limited, and if a referee's findings of fact are supported by competent, substantial evidence in the record, this Court will not reweigh the evidence and substitute its judgment for that of the referee. *Fla. Bar v. Frederick*, 756 So. 2d 79, 86 (Fla. 2000); *see also Fla. Bar v. Jordan*, 705 So. 2d 1387, 1390 (Fla. 1998). To the extent the Bar challenges the recommendations as to guilt, this Court has repeatedly stated that the referee's factual findings must be sufficient under the applicable rules to support the recommendations as to guilt. *See Fla. Bar v. Shoureas*, 913 So. 2d 554, 557-58 (Fla. 2005). Ultimately, the party challenging the referee's finding of fact and conclusion as to guilt has the burden to

1. We note that the referee's findings of fact and recommendation of guilt as to Bar Rule 3-4.3 are not challenged by either party. Accordingly, and having reviewed the record, we approve the referee's findings of fact and recommendation of guilt as to Bar Rule 3-4.3 without further comment.

demonstrate that there is no evidence in the record to support those findings or that the record evidence clearly contradicts the conclusions. *Fla. Bar v. Germain*, 957 So. 2d 613, 620 (Fla. 2007).

Bar Rule 4-1.7

Broadly speaking, Bar Rule 4-1.7 prohibits a lawyer from representing a client if the representation creates a conflict of interest. The rule specifically prohibits a lawyer from representing a client if there is a substantial risk that the representation will be materially limited by the lawyer's own personal interests. *See* R. Regulating Fla. Bar 4-1.7(a)(2). The comment to the rule explains that “[l]oyalty and independent judgment are essential elements in the lawyer’s relationship to a client.” *Id.* cmt. Such loyalty may be “impaired when a lawyer cannot consider, recommend, or carry out an appropriate course of action on behalf of his or her client because of the lawyer’s other interests.” *Fla. Bar v. Roberto*, 59 So. 3d 1101, 1104 (Fla. 2011).

Here, the Bar claims that Patterson used the appellate rights of his client, Faddis, to assert his own interests and seek relief from the circuit court’s December 18, 2013, order for himself. The circuit court’s order imposed in excess of \$160,000 in attorney’s fees against Patterson and Faddis equally, giving Patterson a significant financial interest in the outcome of any subsequent appeals of the order. Patterson acknowledged such in his formal hearing testimony, stating with

respect to Faddis's appeal of the order: "I've always argued that [Faddis] was entitled to an evidentiary hearing and a due process hearing. And then I would be entitled to the same too." That interest created a clear and substantial risk of materially limiting Patterson's independent judgment and loyalty to Faddis, who had an interest in reducing or eliminating her liability under the December 18, 2013, order, even if it was not to the benefit of Patterson. Given the existence of such risk, Patterson was required under Bar Rule 4-1.7(b)(4) to obtain Faddis's informed consent, confirmed in writing, to his continued representation of her. There is no documentation in the record indicating he obtained such consent.

Despite the foregoing, Patterson represented Faddis in her appeal of the December 18, 2013, order. The filings submitted to the district court in the case make clear that Patterson's financial interest in the matter, as well as his personal views on the legal system and the actions of the circuit court, ultimately supplanted his independent judgment and the loyalty he owed to Faddis. Patterson used the initial brief and other filings in the case to present argument on matters that were either already considered by the district court—the dismissal of Faddis's lawsuit—or on his own behalf. His arguments largely focused on the alleged violation of his due process rights, the perceived injustice in the circuit court's actions, and his views on the inequities of the legal system. Patterson devoted only part of the initial brief to presenting argument on Faddis's behalf—alleging that the circuit

court awarded sanctions against her without express factual findings of bad faith, a claim the district court found lacked any basis in reality. *Faddis*, 157 So. 3d at 45. None of the filings expressly sought a reduction in the fees owed by Faddis, and Patterson failed to advocate on Faddis's behalf altogether in the response to the district court's show cause order, requesting instead that the court relieve just him from the financial burdens of the circuit court's order.

Accordingly, the record in this case clearly reflects that Patterson had a significant personal and financial interest in the outcome of Faddis's appeal; that he failed to inform Faddis of such interests and obtain her informed consent for his continued representation of her; and that Patterson's personal and financial interests ultimately became the focus of Faddis's appeal, despite the loyalty he owed her. Patterson's actions not only hindered Faddis's ability to obtain a more favorable outcome in her appeal, but nearly resulted in the district court imposing additional sanctions against her for pursuing a frivolous appeal. We therefore disapprove the referee's recommendation and find Patterson guilty of violating Bar Rule 4-1.7.

Bar Rule 4-8.2(a)

Bar Rule 4-8.2(a), in relevant part, states that a "lawyer shall not make a statement that the lawyer knows to be false or with reckless disregard as to its truth or falsity concerning the qualifications or integrity of a judge." The applicable

standard under the rule is not whether the statement is false, but whether the lawyer had an objectively reasonable factual basis for making the statement. *Fla. Bar v. Ray*, 797 So. 2d 556, 558-59 (Fla. 2001). The burden is on the lawyer who made the statement to produce a factual basis to support the statement. *Id.* at 558 n.3.

The Bar claims that several statements contained in Patterson's September 20, 2013, letter to Judge Martinez and in the filings for Faddis's appeal of the December 18, 2013, order violated Bar Rule 4-8.2(a). The record reflects that there is no dispute as to whether Patterson sent the September 20, 2013, letter, or as to whether he prepared and submitted the filings in Faddis's appeal. In both the letter and court filings, Patterson either disparaged opposing counsel or expounded upon the alleged bias of judges and the shortcomings of the legal system. For example, during the appeal of the December 18, 2013, order, Patterson stated the following in the reply brief:

Here is the funny thing: Law is not science or math. It does not depend on true holdings and reasons that will allow you to successfully chart a path to Mars or create a molecule of water. Law is whatever the judge or judges that day say it is.

Additionally, in the letter to Judge Martinez, Patterson repeatedly suggested that judges favor one class of influential citizens over all others, referred to opposing counsel as the "elders," and cautioned Judge Martinez that "[j]udges must recognize that in deciding to elevate people like these elders to a status of

being above the laws they are complicit in further corroding any remaining sense of justice and fair play left within these elders.” He also stated the following:

The undersigned cannot accept that judges who have presided over complex cases, raised children, who have read holy scripts/manuals, and receive the highest levels of diversified education are unable to see any of this from the perspective of [Faddis].

Significantly, Patterson stated the following in his letter with respect to Judge Emas:

Curiously, the author of the 3rd DCA’s opinion, Judge Kevin Emas, commented in the oral argument that he was uncertain as to whether [Faddis] had been sexually harassed or not. After being uncertain about whether she was sexually harassed, the opinion issued 2 weeks later gives a rather flinty opinion that she repeatedly lied throughout her litigation, created a fraudulent plan, and set about to achieve an illegal and fraudulent end. . . . To then see these same elders from Weiss Serota . . . pictured with Judge Emas at his investiture ceremony, one can only wonder if Mr. Gredes’ burden at oral argument . . . was lighter than it should have been.

The referee did not make any specific findings as to whether Patterson had an objectively reasonable factual basis for his statement questioning Judge Emas’s integrity, or for any of his other statements. She found only that Patterson’s reasoning for sending the letter was “flawed.” During the formal hearing, Patterson explained that he sent the September 20, 2013, letter after viewing a photograph on the district court’s website of Judge Emas with opposing counsel. According to his testimony, Patterson believed that an injustice had occurred in Faddis’s case, and that the influence allegedly wielded by opposing counsel and his

firm in the community was the cause of that injustice. Patterson's testimony falls well short of establishing an objectively reasonable factual basis for any of his statements, especially those questioning Judge Emas's integrity, and there is no other evidence in the record that would otherwise establish such a basis. We therefore conclude that Patterson's statements were made with a reckless disregard to their truth or falsity in violation of Bar Rule 4-8.2(a).

The referee based her recommendation of no guilt as to Bar Rule 4-8.2(a) in part on Patterson's ethical duty to his client and his strong belief that sending the September 20, 2013, letter was the appropriate way to expose the perceived wrongdoing in his client's case. Such factors, however, do not relieve Patterson of his guilt and are relevant only in mitigating the discipline imposed. The referee also based her recommendation on the fact that Patterson did not know sending the September 20, 2013, letter was wrong and that there was no evidence he intended to have improper communications with a court. The issue, however, is not whether Patterson sought to have improper communications with a judge about an ongoing case—a violation of Bar Rule 4-3.5 (Impartiality and decorum of the tribunal)—but whether an objectively reasonable factual basis existed for his statements assailing the qualifications and integrity of judges. *See Ray*, 797 So. 2d at 560 (stating that an attorney is not prohibited from communicating with or criticizing a judge as long as the attorney complies with the Rules of Professional Conduct).

Accordingly, the record in this matter clearly contradicts the referee's recommendation as to Bar Rule 4-8.2(a). We therefore disapprove the referee's recommendation and find Patterson guilty of violating Bar Rule 4-8.2(a).

Bar Rule 4-8.4(d)

Bar Rule 4-8.4(d) prohibits a lawyer from engaging in conduct in connection with the practice of law that is prejudicial to the administration of justice. 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. *See Fla. Bar v. Norkin*, 132 So. 3d 77, 89 (Fla. 2013) ("The Court and the Bar share the 'overarching objective of increasing the professionalism aspirations of all lawyers in Florida and ensuring that the practice of law remains a high calling with lawyers invested in not only the service of individual clients but also service to the public good as well.' ").

The record clearly contradicts the referee's recommendation as to Bar Rule 4-8.4(d). We therefore disapprove the referee's recommendation and find Patterson guilty of violating Bar Rule 4-8.4(d).

B. Discipline

Lastly, we address the referee's recommended discipline of an admonishment with one year of probation. In reviewing a referee's recommended discipline, this Court's scope of review is broader than that afforded to the referee's findings of fact because, ultimately, it is the Court's responsibility to order the appropriate sanction. *See Fla. Bar v. Anderson*, 538 So. 2d 852, 854 (Fla. 1989); *see also* art. V, § 15, Fla. Const. This Court will generally not second-guess the referee's recommended discipline as long as it has a reasonable basis in existing case law and the Florida Standards for Imposing Lawyer Sanctions. *See Fla. Bar v. Temmer*, 753 So. 2d 555, 558 (Fla. 1999).

Here, our review of the record reveals that Patterson's conduct constitutes far more than mere careless neglect deserving of an admonishment. He deliberately disregarded the loyalty he owed his client and placed his personal and financial interests at the forefront of her appeal; he submitted filings to the district court containing unprofessional statements disparaging those involved in his client's case; and he knowingly sent a letter to Judge Martinez and others in the judiciary that disparaged opposing counsel and accused Judge Emas of conduct

unbecoming a judge. His conduct violated multiple Bar Rules and he has yet to fully acknowledge the wrongfulness of his actions and accept responsibility for them, even after this Court ordered him to show cause why a more severe sanction should not be imposed.

Furthermore, this Court is greatly troubled by the general lack of respect and professionalism Patterson displayed toward judges and other professionals in court filings and in his letter to Judge Martinez. Such conduct, while an inconvenience or a mere slight to those initially confronted by it, ultimately emboldens others to engage in similar unprofessional or disrespectful acts, the net effect of which is the gradual erosion of public confidence in the courts and the decisions rendered by them. Like all lawyers in Florida, Patterson took the Oath of Admission to The Florida Bar prior to his admission, wherein he affirmatively committed to “maintain the respect due to courts of justice and judicial officers.” This commitment is not extraneous to, but coextensive with the obligations set out in the Bar Rules. The Court expects all lawyers to conduct themselves in a respectful and professional manner when accessing the courts or appearing before a judicial officer, regardless of the form or capacity in which the appearance occurs. *See* Code for Resolving Professionalism Complaints, Standards of Professionalism (prohibiting members of the Bar from engaging in unprofessional conduct and defining such conduct as “substantial or repeated violations of the Oath of

Admission to The Florida Bar, The Florida Bar Creed of Professionalism, The Florida Bar Professionalism Expectations, The Rules Regulating The Florida Bar, or the decisions of The Florida Supreme Court”).

Given the severity of Patterson’s misconduct, we conclude that the referee’s recommended discipline is not supported and that a suspension is the appropriate sanction in this case. *See Fla. Stds. for Imposing Law. Sanctions* 4.32 (“Suspension is appropriate when a lawyer knows of a conflict of interest and does not fully disclose to a client the possible effect of that conflict, and causes injury or potential injury to a client.”); 6.32 (“Suspension is appropriate when a lawyer engages in communication with an individual in the legal system when the lawyer knows that such communication is improper, and causes injury or potential injury to a party or causes interference or potential interference with the outcome of the legal proceeding.”); 7.2 (“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.”).

In *The Florida Bar v. Abramson*, 3 So. 3d 964 (Fla. 2009), this Court imposed a ninety-one-day suspension on a respondent who engaged in discourteous and disrespectful behavior towards a judge during jury selection in a criminal proceeding. He interrupted the judge, demanded to be heard on a pretrial motion, and asked jurors to weigh in on who they thought was at fault in a

disagreement he had with the judge. *Id.* at 965. The respondent in *Abramson*, like Patterson, was found to have violated Bar Rules 4-8.2(a) and 4-8.4(d), as well as two other Bar Rules. *Id.* at 966. Patterson's misconduct, in contrast to that of the respondent in *Abramson*, is far more egregious in that he deliberately placed his personal and financial interests ahead of his client's interests and did not limit his misconduct to a single proceeding or filing. Furthermore, this Court has become increasingly concerned by the lack of respect and professionalism exhibited by many Florida lawyers during judicial proceedings and would in all likelihood impose a much lengthier suspension on the respondent in *Abramson* were he to appear before us today. *Norkin*, 132 So. 3d at 89-92 (imposing a two-year suspension on a lawyer who engaged in pattern of disrespectful and unprofessional conduct toward judges and opposing counsel).

In addition, this Court generally imposes a lengthy suspension in cases where a lawyer's personal interests create a conflict of interest. *See e.g., Roberto*, 59 So. 3d at 1106 (suspending the respondent for one year where the lawyer's personal interests created a conflict of interest); *Fla. Bar v. Herman*, 8 So. 3d 1100, 1106-09 (Fla. 2009) (suspending respondent for eighteen months where he represented a client at the same time he represented his own company, which was the client's competitor, without obtaining the client's consent); *Fla. Bar v. Vining*, 721 So. 2d 1164, 1169-70 (Fla. 1998) (suspending the respondent for six months

where the lawyer represented a client individually while his professional association was engaged in litigation with the client).

We conclude, based on a review of relevant case law, and the aggravating and mitigating factors found by the referee, that a one-year suspension is the appropriate sanction in this case.

III. CONCLUSION

Accordingly, we approve the referee's findings of fact and recommendation of guilt as to Bar Rule 3-4.3. The referee's recommendations of no guilt as to Bar Rules 4-1.7, 4-8.2(a), and 4-8.4(d) are hereby disapproved, and we find Patterson guilty of violating each of those rules. The referee's recommended discipline is also disapproved and Patterson is hereby suspended from the practice of law for one year. Patterson's suspension will be effective thirty days from the filing of this opinion so that he can close out his practice and protect the interests of existing clients. If Patterson notifies this Court in writing that he is no longer practicing and does not need the thirty days to protect existing clients, this Court will enter an order making the suspension effective immediately. Patterson shall fully comply with Bar Rule 3-5.1(h). Further, Patterson shall accept no new business from the date this opinion is filed until he is reinstated.

Judgment is entered for The Florida Bar, 651 East Jefferson Street,
Tallahassee, Florida 32399-2300, for recovery of costs from Kelsay Dayon
Patterson in the amount of \$2,827.09, for which sum let execution issue.

It is so ordered.

CANADY, C.J., and PARIENTE, QUINCE, POLSTON, LABARGA, and
LAWSON, JJ., concur.
LEWIS, J. concurs in result.

THE FILING OF A MOTION FOR REHEARING SHALL NOT ALTER THE
EFFECTIVE DATE OF THIS SUSPENSION.

Original Proceeding – The Florida Bar

Joshua E. Doyle, Executive Director, Tallahassee, Florida, Matthew Ian Flicker,
Bar Counsel, Tampa, Florida, and Adria E. Quintela, Staff Counsel, The Florida
Bar, Sunrise, Florida,

for Complainant

Russell S. Prince of Palma & Prince, P.A., Valrico, Florida,

for Respondent

IN THE SUPREME COURT OF FLORIDA

THE FLORIDA BAR,

Complainant,

v.

KELSAY DAYON PATTERSON,

Respondent.

Supreme Court Case
No. SC-

The Florida Bar File
No. 2018-10,412(13F)

COMPLAINT

The Florida Bar, Complainant, files this Complaint against Kelsay Dayon Patterson, Respondent, pursuant to the Rules Regulating The Florida Bar and alleges:

1. Respondent was admitted to The Florida Bar on October 1, 1997 and is subject to the jurisdiction of the Supreme Court of Florida.

2. The Thirteenth Judicial Circuit Grievance Committee “F” found probable cause to file this complaint pursuant to Rule 3-7.4, of the Rules Regulating The Florida Bar, and this Complaint has been approved by the presiding member of that committee.

3. On December 19, 2009, Preston Bussey III (“Bussey”) passed away in Brevard County, Florida.

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4. On or about May 2011, Bussey's mother, J. Pearl Bussey-Morice, was appointed as Personal Representative of the Estate of Preston Devansa Bussey III.

5. On June 10, 2011, J. Pearl Bussey-Morice, as Personal Representative, filed suit on behalf of Bussey's estate in the matter of *J. Pearl Bussey-Morice v. Patrick Kennedy, et. al.*, case no. 6:11-cv-970-Orl-41GJK, in the United States District Court Middle District of Florida Orlando Division.

6. In this suit, J. Pearl Bussey-Morice ("plaintiff") alleged seven Fourth Amendment excessive-force claims against the City of Rockledge officers ("officers") involved in the incident which resulted in the untimely death of Bussey.

7. The plaintiff also made claims of battery and negligent training against the employer of the officers, the City of Rockledge ("city").

8. The plaintiff retained respondent to represent her in *J. Pearl Bussey-Morice v. Patrick Kennedy, et. al.*

9. On January 8, 2015, the district court issued a final judgment in favor of the city and the officers (collectively the "defendants") and against respondent's client, the plaintiff.

10. In February 2015, respondent's co-counsel filed a Notice of Appeal in the United States Court of Appeals for the Eleventh Circuit, case no. 18-13627, appealing the final judgment.

11. All issues before the district court were stayed pending resolution of the appeal of the final judgment.

12. On August 8, 2016, the Eleventh Circuit Court of Appeals affirmed the district court's entry of summary and final judgment in favor of all defendants. On September 6, 2016, the Eleventh Circuit Court of Appeals issued the mandate.

13. On May 1, 2017, the district court lifted the stay on its proceeding in case no. 6:11-cv-970-Orl-41GJK and reopened the case to address outstanding motions.

14. On September 27, 2017, the district court held a hearing to allow the parties to supplement the written motions still pending before the court with oral argument.

15. On January 12, 2018, the Honorable Carlos E. Mendoza, United States District Judge, issued a forty-two-page order sanctioning respondent and finding that, among other things, respondent engaged in vexatious conduct throughout the litigation.

16. Respondent's vexatious conduct included, but was not limited to, his repeated disparaging comments about the court, opposing counsel, and opposing parties.

17. During his representation of plaintiff, respondent accused the district court of acting based on an unfounded alleged racial bias.

18. Respondent alleged that United States District Court Judges and the Magistrate Judge displayed bias against plaintiff, respondent and respondent's co-counsel because of their race.

19. Respondent consistently asked rhetorical and condescending questions of the court in his filings.

20. Also during his representation of plaintiff, respondent repeatedly made allegations against opposing counsel and the opposing parties, regarding an alleged racial-motivated conspiracy.

21. Respondent's allegations against the United States District Court Judges, the Magistrate Judge, opposing counsel, and the opposing parties caused delays in the litigation, multiplied the proceedings, and disrupted the tribunal.

22. In Plaintiff's Notice of Compliance Re: DE# 284 & Notice of Objection to Magistrate's Order, DE #284, filed June 20, 2012, respondent's entire argument was that he, personally, was being mistreated by opposing counsel and the court.

23. In the filing, respondent wrote, "[w]e have clearly now entered a realm of rulings where the credibility of the lawyers and their personalities as exhibited through their pleadings from constant pleas, claims, and a characterization campaign is being decided by the Court."

24. In addition, respondent stated “[h]ow could that sort of credibility determination be made, i.e. the Plaintiff and the undersigned did not have a valid concern for their own safety? These sort of actions that are void of truth and/or morality will not be lightly overlooked by any sensible black American.”

25. Respondent continued to argue that “[i]f the Court cannot understand that black people fear unsubstantiated, distorted, wild, and malicious characterizations against them by non-whites, i.e. Trayvon Martin (but we raised this issue with the Court saying just this same thing before Trayvon Martin had even died) (Preston Bussey was also falsely accused of attacking the security guards by Defendant Gomez), then it is beyond the undersigned’s ability to convey a cultural anxiety of black people in this specific regard to the Court.”

26. In the same filing, respondent wrote “...this Court again decided that a substantive conversation must have occurred. Why? Well, because they said so, though the undersigned said otherwise.”

27. He later stated “[a]t the end of the day, the undersigned respectfully asks this Court to not only consider its own role in our society, but mine too. Breaking my back with punitive sanctions for doing what?”

28. In Plaintiff’s Reply Re: Motion to Disqualify Defendant’s Attorneys, filed on October 31, 2011, respondent wrote, “[a]ny thinking person who knows our American history would quickly be able to appreciate the parallel to what occurred

to Preston Bussey, III. The worst part of it all is that the Defendant's lawyers, educated men who must know better, are trying to continue down this path that reflects a sad and ugly American past. That is, they have chosen to serve lies about a matter involving the untimely, tragic, and unnecessary death of an unarmed Black man there in the hospital, on his own accord, seeking medical help, AND NOW being caught red-handed in deceit and dishonesty for which no conservative would ever ratify out loud, they expect the entitlement of treatment they feel is their birth right."

29. On January 6, 2012, during the deposition of one of the defendants, respondent stated, "I'll be the first to say and I want the record to reflect that just because we're in situations like this where I'm an African American and my clients are African Americans it is always consistent that white American attorneys and white police officers always love to accuse Africans and blacks of always being hostile of always being argumentative and always being nasty."

30. Respondent was hostile, loud and disrespectful to opposing counsel and the defendants at the deposition on January 6, 2012.

31. Plaintiff's deposition was scheduled for February 3, 2012 and was to be conducted at opposing counsel's office.

32. On January 26, 2012, respondent emailed opposing counsel notifying them he would not appear at opposing counsel's office for the deposition due to an

alleged racially-motivated conspiracy by the opposing parties and counsel to harm respondent and his client.

33. Specifically, respondent email stated, "...[t]he defendants may be there, and they will have their fire arms [sic] on them. These are the circumstances when Blacks are often portrayed in a negative regard to justify some accidental or strange death. That is not the way I am leaving this planet over the false representations of these officers and others while at [opposing counsel's office]. No chance that is going to happen to me."

34. Furthermore, respondent wrote, in an Emergency Motion for Protective Order, filed February 2, 2012, that, "...two (2) African Americans (the Plaintiff and the undersigned) do not feel safe, nor do our families feel safe with us disappearing behind the closed doors of people who have already said and done things that show no respect for the truth..."

35. At an initial attorney's meeting between all counsel, respondent refused to consent to magistrate jurisdiction, noting that he, his clients, and the assigned district judge were black, whereas the assigned magistrate judge was white.

36. Respondent repeatedly inserted his personal opinions about the opposing parties and opposing counsel into his court filings and arguments before the court.

37. As a result of respondent's conduct, on October 16, 2012, opposing counsel filed a Motion in Limine of Defendant, City of Rockledge, Regarding Race-Baiting Tactics by Counsel.

38. Respondent improperly deviated from the legal matter by inserting his personal objectives and views in the client's case.

39. Respondent's baseless suggestions that defendants, defense counsel, and the judges presiding over this case have been motivated by some racial or other bias, are impugning the qualifications and integrity of judicial and legal officials.

40. The proceedings were multiplied by respondent's conduct.

41. Respondent further failed to facilitate the timely submission of the parties' Joint Pretrial Statement in violation of the district court's Case Management Scheduling Order ("CMSO").

42. The CMSO required the parties to meet in person on or before September 28, 2012 to exchange witness lists, exhibit lists, and to prepare the Joint Final Pretrial Statement, which was due by October 12, 2012.

43. Respondent met with opposing counsel on September 28, 2012, however, he failed to provide a witness list, a complete exhibit list, and other documentation as necessary for the Joint Pretrial Statement.

44. Due to respondent's failure to provide the information for the Joint Pretrial Statement prior to the due date, the defendants unilaterally filed a Pretrial Statement on the due date.

45. On the same day, respondent's co-counsel unilaterally filed an Emergency Motion for an Extension of Time ("Emergency Motion"), requesting additional time to prepare the Joint Pretrial Statement.

46. The district court held a hearing on the Emergency Motion and respondent failed to appear for that hearing.

47. The district court granted the Emergency Motion in part, ordering the parties to meet for a second pretrial meeting on or before October 22, 2012, and to file an Amended Joint Pretrial Statement by October 24, 2012.

48. On October 22, 2012, the parties' counsel met for the second ordered meeting, however, respondent again failed to provide defense counsel with all the information necessary for the Joint Pretrial Statement.

49. Due to respondent's failure to provide the required information in a timely manner, the parties were unable to reach an agreement on the Amended Joint Pretrial Statement by the due date, October 24, 2012.

50. On the due date, respondent filed a Second Emergency Motion for Extension of Time to File Joint Pretrial Statement ("Second Emergency Motion").

51. The court granted the second extension of time and on November 5, 2012, the Joint Pretrial Statement was finally filed with the court.

52. Respondent's, and his co-counsel's, conduct unnecessarily prolonged the submission of the Joint Pretrial Statement.

53. Respondent, and his co-counsel, failed to comply with United States District Court Middle District of Florida, Local Rule 301(g) when filing the first Emergency Motion and the Second Emergency Motion.

54. Based on respondent's failure to facilitate the timely filing of a Joint Pretrial Statement, the district court sanctioned plaintiff's counsel by awarding attorney's fees and costs incurred in attending the second attorney meeting and preparing the Amended Joint Pretrial Statement to defense counsel.

55. Respondent later argued, in a hearing on September 27, 2017, that the sanctions ordered against plaintiff's counsel for failing to comply with the court's order should be imposed against the plaintiff, his client, not respondent and his co-counsel.

56. In asking the court to impose sanctions against plaintiff, respondent argued in favor of his own interests and to the detriment of his client.

57. During the discovery process, respondent inadvertently received a fax from one of the defendants containing the defendant's responses to interrogatories.

58. The fax was inadvertently sent to respondent instead of defendant's counsel.

59. Upon receipt, respondent read the responses, kept the fax, and failed to notify defense counsel of the inadvertent disclosure.

60. Within a few days of receipt of the inadvertent disclosure, respondent received the intended response to interrogatories from opposing counsel.

61. Respondent compared the response inadvertently sent to him by the defendant to the response respondent received from defense counsel and brought both in front of the court.

62. The presiding district judge ordered respondent to destroy the inadvertently disclosed document.

63. On January 25, 2015, plaintiff, by and through counsel, filed an Amended Motion to Vacate Judgment ("Amended Motion"), requesting the January 8, 2015 Final Judgment be vacated pursuant to Federal Rule of Civil Procedure 60(b)(2).

64. Respondent, in his Amended Motion, argued that plaintiff had discovered new evidence, all five elements of Rule 60(b)(2) of the Federal Rules of Civil Procedure had been met, and thus, the Final Judgment entered against plaintiff should be vacated.

65. Respondent failed to meet all five elements of Rule 60(b)(2) and in its Order denying the Amended Motion, the district court judge found the Amended Motion to be legally frivolous.

66. In its January 12, 2018 Order, the district court ordered sanctions against respondent for filing the frivolous Amended Motion.

67. On August 26, 2019, the United States Court of Appeals for the Eleventh Circuit issued a per curiam opinion affirming “the district court’s various sanctions against [plaintiff’s] counsel, Kelsay Patterson and Wendell Locke.”

68. By reason of the foregoing, respondent has violated the following Rules Regulating The Florida Bar: **Rule 3-4.3** (Misconduct and minor misconduct); **Rule 4-1.7** (Conflict of Interest; Current Clients); **Rule 4-3.1** (Meritorious Claims and Contentions); **Rule 4-3.2** (Expediting Litigation); **Rule 4-3.4** (Fairness to opposing party and counsel); **Rule 4-3.5** (Impartiality & Decorum of the Tribunal); **Rule 4-4.4(b)** (Respect for Rights of Third Persons – A lawyer who receives a document relating to the representation of the lawyer’s client and knows or reasonably should know that the document was inadvertently sent must promptly notify the sender); **Rule 4-8.2(a)** (Impugning the qualifications and integrity of judicial and legal officials); and **Rule 4-8.4** (Misconduct).

WHEREFORE, The Florida Bar prays respondent will be appropriately disciplined in accordance with the provisions of the Rules Regulating The Florida Bar as amended.



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CERTIFICATE OF SERVICE

I certify that this document has been efiled with The Honorable John A. Tomasino, Clerk of the Supreme Court of Florida, with a copy provided via email to Russell Scott Prince, Counsel for Respondent, 8270 Woodland Center Blvd., Tampa, FL 33614, at rprince@palmaprince.com; a copy has been furnished by United States Mail via certified mail No. 7017 1070 0000 4774 4252, return receipt requested to Russell Scott Prince, whose record bar address is 8270 Woodland Center Blvd., Tampa, FL 33614-2401; and via email to Lindsey Margaret Guinand, Bar Counsel, 2002 North Lois Avenue, Suite 300, Tampa, FL 33607, at lguinand@floridabar.org, on this 12th day of December, 2019.



Patricia Ann Toro Savitz
Staff Counsel

**NOTICE OF TRIAL COUNSEL AND DESIGNATION OF PRIMARY
EMAIL ADDRESS**

PLEASE TAKE NOTICE that the trial counsel in this matter is Lindsey Margaret Guinand, Bar Counsel, whose address, telephone number and primary email address are The Florida Bar, Tampa Branch Office, 2002 N. Lois Ave., Suite 300, Tampa, Florida 33607-2386, (813) 875-9821 and lguinand@floridabar.org. Respondent need not address pleadings, correspondence, etc. in this matter to anyone other than trial counsel and to Patricia Ann Toro Savitz, Staff Counsel, The Florida Bar, 651 E Jefferson Street, Tallahassee, Florida 32399-2300, psavitz@floridabar.org.

MANDATORY ANSWER NOTICE

RULE 3-7.6(h)(2), RULES REGULATING THE FLORIDA BAR,
PROVIDES THAT A RESPONDENT SHALL ANSWER A COMPLAINT.

NOV 10 2020

THE FLORIDA BAR,

Complainant,

v.

KELSAY DAYON PATTERSON,

Respondent.

Supreme Court Case
No. SC19-2070The Florida Bar File
No. 2018-10,412 (13F)**REPORT OF REFEREE****I. SUMMARY OF PROCEEDINGS**

Pursuant to the undersigned being duly appointed as referee to conduct disciplinary proceedings herein according to Rule 3-7.6, Rules of Discipline, the following proceedings occurred:

On December 12, 2019, The Florida Bar filed its Complaint against respondent. On December 13, 2019, The Supreme Court of Florida issued a Notice to Appoint Referee in the Fifth Judicial Circuit. On December 17, 2019, The Supreme Court of Florida issued an Order of Termination, terminating the December 13, 2019 Notice to Appoint Referee. On December 17, 2019, the Supreme Court of Florida issued a new Notice to Appoint Referee in the Seventeenth Judicial Circuit. On the same day, the Chief Judge of the Seventeenth Judicial Circuit appointed the Honorable Jose Izquierdo. On December 18, 2019, the Chief Judge of the Seventeenth Judicial Circuit issued an Order of Termination and Appointing Successor Bar Referee, terminating the appointment of the

Honorable Jose Izquierdo and appointing the Honorable Ernest A. Kollra, Jr. as referee. Also, on December 18, 2019, respondent filed his Answer and Notice Regarding Venue.

The final hearing in this matter was scheduled for April 28-29, 2020 and the referee's report was due on June 15, 2020. Due to the impacts of COVID-19, the final hearing was rescheduled to June 22-23, 2020, and The Supreme Court of Florida granted the referee's request for extension of time to file his report. The report deadline was extended to August 14, 2020. The final hearing was rescheduled a second time, due to court closures related to COVID-19. The new final hearing dates were September 14-15, 2020 and The Supreme Court of Florida granted the referee's request for extension of time to file his report. The report deadline was extended to October 13, 2020.

On August 20, 2020, respondent filed a Motion for Final Summary Judgment. On September 4, 2020, The Florida Bar filed its Response to Respondent's Motion for Summary Judgment. On September 9, 2020, a hearing was held on respondent's motion. After argument of the parties, the Motion for Final Summary Judgment was denied.

The final hearing was held on September 14-15, 2020, in Hillsborough County, Florida. Lindsey Guinand, counsel for The Florida Bar, Russell Prince, counsel for respondent, and Kelsay Patterson, respondent and pro se co-counsel,

appeared at the final hearing. On September 25, 2020, respondent filed a Motion to Supplement the Record. On September 29, 2020, The Florida Bar filed a Response to respondent's motion. With no objection from the bar, the referee entered an order granting respondent's motion.

After the conclusion of the final hearing, the referee requested an extension of time to file his report with The Supreme Court of Florida. The Court, in an order dated September 17, 2020, granted the request for extension of time, and ordered the referee's report be filed by November 12, 2020.

On October 21, 2020, a telephonic hearing was held in this matter, wherein the referee made an oral ruling regarding guilt. On October 28, 2020, the referee executed a Report of Referee on Findings of Fact and Guilt. The referee's findings, as memorialized in the October 28, 2020 preliminary report, are outlined below.

On November 2, 2020, a sanctions hearing was held in person in Hillsborough County. Lindsey Guinand, counsel for The Florida Bar, and Kelsay Patterson, respondent and pro se co-counsel, appeared at the final hearing. Respondent's counsel, Russell Prince, appeared by phone. No witnesses were called to testify, and no exhibits were entered.

All items properly filed including pleadings, recorded testimony (if transcribed), exhibits in evidence and the report of referee constitute the record in this case and are forwarded to The Supreme Court of Florida.

II. FINDINGS OF FACT

Jurisdictional Statement. Respondent is, and at all times mentioned during this investigation was, a member of The Florida Bar, subject to the jurisdiction and Disciplinary Rules of the Supreme Court of Florida.

Narrative Summary Of Case.

During the final hearing, on September 14-15, 2020, The Florida Bar called four witnesses to testify: Robert Bonner, Esq., Joshua Walker, Esq., Joseph Flood, Esq., and United States District Court Judge Carlos Mendoza. In addition, The Florida Bar entered into evidence eighty-two (82) exhibits, identified in the record as The Florida Bar's Exhibits 1-82.

Also, during the final hearing, respondent testified on his own behalf and entered four exhibits into evidence; identified in the record as Respondent's Exhibits 1-4. In the days following the final hearing, respondent filed a Motion to Supplement the Record, seeking admission of an additional exhibit. The motion was granted, and Respondent's Exhibit 5 was entered into evidence, by order of the referee.

The evidence presented showed that respondent represented the plaintiff in a heavily litigated civil lawsuit in the United District Court Middle District of

Florida, Orlando Division, from 2011 through 2019. The civil lawsuit centered around the death of Preston Bussey III (“Bussey”), who died in Brevard County, Florida on December 19, 2009. On or about May 2011, Bussey’s mother, J. Pearl Bussey-Morice, was appointed as Personal Representative of the Estate of Preston Bussey III. As Personal Representative, J. Pearl Bussey-Morice hired respondent to represent her in a lawsuit concerning the death of her son. On June 10, 2011, respondent, as counsel for J. Pearl Bussey-Morice, filed suit on behalf of Bussey’s estate in the matter of *J. Pearl Bussey-Morice v. Patrick Kennedy, et. al.*, case no. 6:11-cv-970-Orl-41GJK, in the United States District Court Middle District of Florida Orlando Division. In this suit, *J. Pearl Bussey-Morice v. Patrick Kennedy, et. al.*, J. Pearl Bussey-Morice (“plaintiff”) alleged seven Fourth Amendment excessive-force claims against the City of Rockledge police officers (“officers”) involved in the incident which resulted in the untimely death of Bussey. Joshua Walker, Esq. and Joseph Flood, Esq. represented the officers in the lawsuit.

On or about October 26, 2011, respondent filed a Second Amended Complaint, adding the City of Rockledge (“city”) as defendants. In the complaint, the plaintiff made claims of battery and negligent training against the city. Robert Bonner, Esq. represented the city and made an appearance in the case on November 10, 2011. The complaint was amended four times and there were no allegations of race, as a legal issue, made within in any of the complaints.

During the discovery phase of the litigation, one of the defendant officers inadvertently sent his draft response answers to interrogatories, via fax, to respondent, rather than to his own lawyer. The fax cover sheet indicated the fax was intended for Joshua Walker, counsel for the officer. Upon receipt, respondent read the responses, kept the fax, and failed to notify defense counsel of the inadvertent disclosure. Mr. Walker learned the fax had been inadvertently sent to respondent when the officer notified Mr. Walker a few days later. Mr. Walker then contacted respondent, notified him the fax had been inadvertently sent, and requested the fax be returned. Mr. Walker further attached a copy of Rule 4-4.4, Rules Regulating The Florida Bar, to his written request to respondent. Respondent refused to return the fax to defense counsel.

Within a few days of receipt of the inadvertent fax from the officer, respondent received the official response to interrogatories from defense counsel. Respondent compared the response inadvertently sent to him by the defendant officer to the response respondent received from defense counsel and noticed discrepancies. Further, respondent noticed the jurat page which was attached to the inadvertently sent responses was the same as the jurat page attached to the official responses from counsel a few days later. Respondent then filed a motion with the court, attaching the inadvertently sent fax as an exhibit. Further, respondent used the information within the fax to file another amended complaint.

In response, defense counsel filed a Motion to Compel the return of the inadvertent disclosure, as well as a Motion to Strike the filing of the fax. A hearing was held, the district court granted the motions and ordered respondent to destroy the fax. It was only after being ordered by the district court to destroy the document he did so, despite being notified of the applicable Rule Regulating The Florida Bar beforehand.

I do not find that the fact that the jurat page from the initial fax was the same jurat page used in the subsequent responses several days later, even though there were clearly different answers, gives respondent some ability to violate Rule 4-4.4.

In January 2012, respondent took the depositions of several of the defendant officers in the case. At the deposition of Officer Donald Williams, on January 6, 2012, defense counsel, Joseph Flood, Esq., interrupted the deposition and asked respondent to ask his client, the plaintiff, and the plaintiff's relative, who was also present for the deposition, to stop make faces and grunting noises. Respondent denied his client was engaging in that behavior and claimed that Mr. Flood was making these assertions because, among other things, "...white American attorneys and white police officers always love to accuse Africans and blacks of always being hostile of always being argumentative and always being nasty." (The Florida Bar Exhibit 19, pg. 13). Respondent and defense counsel argued back and forth,

and respondent continued to argue about his race and the race of his client. The deposition was terminated as a result of this incident between counsel.

Following the deposition of another officer, respondent and defense counsel, Joshua Walker, Esq., engaged in a loud argument in the parking lot. Two defendant officers were present and subsequently filed affidavits with the court, attesting to their observations and concerns for respondent's behavior. Respondent has denied the argument ever took place and, in response, filed his own affidavit as well as an affidavit from his client. These two depositions, and resulting conflicting affidavits, started the slew of issues, disagreements, and filings between all counsel, about one another in the litigation.

The next deposition scheduled to take place was the deposition of respondent's client, the plaintiff. Plaintiff's deposition had been scheduled for February 3, 2012 and was noticed to be conducted at defense counsel's office. Following the incidents and allegations surrounding the officers' depositions, respondent informed defense counsel neither he nor his client would appear for the plaintiff's deposition as it was currently scheduled. In a fax, dated January 20, 2012, and emails dated January 19, 20, and 26, 2012, respondent communicated his displeasure with the defendants and their counsel and expressed his opinion that he and his client were being treated unfairly, in part, because of their race. Within these writings to defense counsel, respondent wrote, among other things:

“These are the circumstances when Blacks are often portrayed in a negative regard to justify some accidental or strange death. That is not the way I am leaving this planet over the false representations of these officers and others while at Dean Ringers. No chance that is going to happen to me.” (The Florida Bar Exhibit 26b, p. 2).

“Instead of you speaking directly to my point of view, trying to place yourself in the shoes of a man whose race and ancestry shows unfairness, bias, and wrongdoing against Blacks as part of our American history,.....you claim that I instead am behaving unprofessional.” (The Florida Bar Exhibit 26a, p. 3)

“I would rather avoid a scenario that somehow leads to some accusation that I attempted to strike, hit, or confront anyone, that strangely results in my untimely death, against and over the objections of my client. Sure, my wife and my son would have a cause of action, but I would prefer to be around for them, and myself,... rather than have them face and deal with a host of accusations that I had the strength and violence/anger of 20 wild gorillas when I attacked someone. No thanks, I will leave that sort of creative fantastical writing to the fate of some other unlucky and unfortunate fellow and his family.” (The Florida Bar Exhibit 27, p. 3).

On February 1, 2012, less than 48 hours before the plaintiff was scheduled to be deposed, respondent filed an Emergency Motion for Protective Order Re: Deposition of Plaintiff Pearl Bussey-Morice. Within the motion, respondent references African American history and the fact that he and the plaintiff are African American. Further, respondent explained he did not feel safe around the defendants and their counsel, and he feared that he and his client’s appearance at the deposition could lead to their “criminal arrest or bodily injury.”

As stated in defense counsel's memorandum opposing the motion, the party moving for a protective order must demonstrate "good cause" for limiting the discovery sought and must do so by articulating specific facts to support its request, without relying on speculative or conclusory statements. Respondent's motion was full of speculative or conclusory statements and failed to meet the burden. The district court denied the motion on February 3, 2012, the day of the deposition. The order was served upon the parties around the time of the deposition. All parties agree there was no protective order in place at the time the deposition was scheduled to begin. Defense counsel and the court reporter were present at defense counsel's office for the deposition. Respondent and his client failed to appear. Defense counsel subsequently sought sanctions for the plaintiff's and respondent's failure to appear at the deposition and the court ordered respondent and his client to pay for the attorney's and court reporter's fees.

Disagreement and hostility between counsel spanned into issues with written discovery as well, and often lead to motions before the court.

On September 14, 2011, the defendants served initial Interrogatories and their initial Request for Production of Documents on the plaintiff. Pursuant to Fed. R. Civ. P. 33 and 34, Plaintiff's responses to this discovery were due on October 14, 2011. Respondent failed to serve responses to either request by the statutorily required deadline. In emails dated October 18, 2011, and November 9, 2011,

respondent makes untimely requests to defense counsel for more time to serve discovery responses; thereby admitting the discovery had not yet been served. (The Florida Bar Exhibit 11, pgs. 70-73). Defense counsel filed a Motion to Compel Responses to Discovery and respondent subsequently served responses.

Also, on December 22, 2011, defense counsel filed a Motion to Compel Better Rule 26 Disclosures and Better Responses. Respondent did not respond to this Motion, and the district court granted the motion, in part, ordering respondent:

“On or before Friday, February 3, 2012, Plaintiff shall provide a computation of all damages claimed by Plaintiff in this case by identifying the type, amount, and computation method;

On or before Friday, February 3, 2012, Plaintiff shall provide complete answers to Interrogatory Nos. 6, 8, 12, 15, 16, 17;

On or before Friday, February 3, 2012, Plaintiff shall provide better responses and produce documents responsive to Request Nos. 9, 15, 16, 25; . . . and

Failure to comply with this order will result in sanctions.” (The Florida Bar Exhibit 35, pg. 2).

Respondent subsequently filed a notice of compliance and provided a tracking number, indicating he had sent the discovery responses via certified mail on January 30, 2012. However, by respondent’s own admission in his Notice of Compliance (The Florida Bar Exhibit 36), the responses did not get delivered to defense counsel’s office until February 6, 2012. This was three days past the due date. Defense counsel states they did not receive the responses, so respondent

drove another copy of his responses to defense counsel's office and hand-delivered them on February 8, 2012. Respondent received a receipt from the law firm's secretary, dated February 8, 2012. Later, defense counsel argued the interrogatories delivered on February 8, 2012 were missing required information. Respondent asserted everything had been delivered and was included in the February 8, 2012 delivery.

Regardless of the disagreement between counsel, regarding what was included in the February 8, 2012 hand-delivery, it is unrefuted that the February 3, 2012 deadline, as ordered by the district court, had not been met.

Due to the growing tension between counsel for the parties, respondent obtained co-counsel to assist him in the litigation. On or about May 17, 2012, Wendell Locke, Esq., filed a Notice of Appearance in the case, as co-counsel for plaintiff. Prior to Mr. Locke's appearance, the district court entered a Case Management Scheduling Order ("CMSO"), requiring the parties to meet in person on or before September 28, 2012 to exchange witness lists, exhibit lists, and to prepare the Joint Final Pretrial Statement, which was due by October 12, 2012. The meeting was scheduled between all attorneys on September 28, 2012 and took place at the office of defense counsel. Respondent arrived approximately an hour late and upon his arrival, failed to bring with him all his exhibits, proposed voir dire questions, proposed jury instructions, and an exhibit list and witness list that

met the formatting requirements of federal court. Although the attorneys attempted to discuss the issues for the joint pretrial statement, it was unable to be completed due to respondent's failure to appear with the required information. On the date the joint pretrial statement was due to be filed, defense still did not have all the information it needed from plaintiff's counsel. As a result, defense counsel unilaterally filed their own pretrial statement on the due date. On the same day, respondent's co-counsel filed an Emergency Motion for an Extension of Time ("Emergency Motion"), requesting additional time to prepare the Joint Pretrial Statement. The district court held a hearing on the Emergency Motion and respondent did not appear for that telephonic hearing. The district court granted the Emergency Motion, in part, ordering the parties to meet for a second pretrial meeting on or before October 22, 2012, and to file a joint pretrial statement by October 24, 2012. Further, the district court found plaintiff's counsel had not attended the meeting with all the required documents, as outlined in the CMSO, and ordered sanctions against them.

Come October 24, 2012, again, the parties were unable to complete a joint pretrial statement for filing with the court. On the due date, respondent filed a Second Emergency Motion for Extension of Time to File Joint Pretrial Statement. The court granted the second extension of time and on November 5, 2012, the Joint Pretrial Statement was finally filed with the court. The second emergency motion

failed to comply with United States District Court Middle District of Florida, Local Rule 301(g). Respondent and his co-counsel failed to properly and timely confer with all defense counsel regarding their position.

Whether it was a failure to appear to specific meetings with counsel, failure of a client to appear for deposition, failure to comply with court deadlines and rules which required motions and emergency motions for extension of time, or failure to be prepared as required by the court, I find that respondent did not make reasonable efforts to expedite the litigation, in violation of Rule 4-3.2. Further, there were several cited times when respondent was deemed to not have fulfilled his obligations under the rules of the court, which required motions to compel, notices of noncompliance and failure to be prepared under deadlines imposed by the court. Many of these failures on the part of respondent resulted in sanctions, and I find his conduct violated Rule 4-3.4(c) and (d), regarding fairness to opposing party and counsel.

On January 7, 2013, the district court entered summary judgment in favor of the city. On February 8, 2013, the district court entered summary judgment in favor of five of the officers and denied summary judgment as to two of the officers. The two officers who were not granted summary judgment took an interlocutory appeal and on October 1, 2014, the 11th Circuit Court of Appeals reversed the district court as to the two officers. The Court of Appeals returned

jurisdiction to the district court and on January 8, 2015, the district court issued a final judgment in favor of all the defendants and against respondent's client, the plaintiff.

On January 21, 2015, plaintiff, by and through counsel, filed a Motion to Vacate Judgment, followed by an Amended Motion to Vacate Judgment ("Amended Motion") on January 25, 2015. The Amended Motion argued that plaintiff had discovered new evidence, pursuant to Rule 60(b)(2) of the Federal Rules of Civil Procedure, and thus, the Final Judgment entered against plaintiff should be vacated. Defense counsel filed responses in opposition of the Amended Motion, arguing the amended motion did not meet the criteria of Rule 60(b)(2). The five criteria for filing a motion to vacate judgment under Rule 60(b)(2) are as follows: (1) the evidence must be newly discovered since the final judgment or order; (2) due diligence on the part of the movant to discover the new evidence must be shown; (3) the evidence must not be merely cumulative or impeaching; (4) the evidence must be material; and (5) the evidence must be such that a new trial (or reconsideration of the final judgment or order) would probably produce a new result.

The evidence presented by respondent as a basis for his motion was a new affidavit from a witness, Frank Valpetti. Respondent argued he searched for and tried to depose Mr. Valpetti throughout the litigation, without success. Respondent

attached an affidavit to his motion, attesting to his efforts to locate Mr. Valpetti in 2012 and then again in 2014. Respondent located him in January 2015. There was approximately a year and a half of time wherein respondent did not expend efforts to locate Mr. Valpetti.

Once respondent located Mr. Valpetti in 2015, he drafted a hand-written affidavit, had Mr. Valpetti sign it, and then respondent notarized it. Respondent, argued in his motion, and testified in the bar case, that Mr. Valpetti's sworn testimony had not been filed, or considered by the court, prior to the entry of the final judgement. Further, he argued that the affidavit provided new information, that was not solely for impeachment, and that would have materially altered the outcome of the final judgment.

Defense counsel argued that Mr. Valpetti's sworn testimony already existed within the court file, and none of the five elements of the statute had been met. The district court agreed, and on May 13, 2015, it issued an order denying the amended motion to vacate judgment, finding respondent failed to meet all five elements of Rule 60(b)(2) and finding the Amended Motion to be legally frivolous.

Specifically, the Order denying the amended motion to vacate, found that Mr. Valpetti had previously provided a sworn statement as a part of the FDLE report, and that statement had been filed within the court case and relied upon in the summary judgment motions and the Eleventh Circuit Court of Appeals

decision. The Order states, "...Plaintiff was previously aware of the Valpetti Sworn Statement, which has been filed numerous times, (*see* Doc. Nos. 155-1; 185-1; 203-5; 228-14; 235-23) and has been continually relied upon throughout this litigation. In fact, Plaintiff was the first to file that statement. (*See* Doc. 155-1)." (The Florida Bar Exhibit 69, pg. 12).

I have concluded that the Amended Motion clearly did not qualify under the statute. The evidence respondent claimed was 'new evidence' was cumulative or impeaching. It was immaterial, and it would not have resulted in a different outcome. Four of the five necessary elements were not satisfied, and for this reason, the Amended Motion was not a meritorious claim, in violation of Rule 4-3.1.

Plaintiff, by and through counsel, filed a Notice of Appeal in the United States Court of Appeals for the Eleventh Circuit, case no. 18-13627, appealing the final judgment. In June 2015, all issues before the district court were stayed pending resolution of the appeal of the final judgment. On August 8, 2016, the Eleventh Circuit Court of Appeals affirmed the district court's entry of summary and final judgment in favor of all defendants. On September 6, 2016, the Eleventh Circuit Court of Appeals issued the mandate. On May 1, 2017, the district court lifted the stay on its proceeding in case no. 6:11-cv-970-Orl-41GJK and reopened the case to address outstanding motions.

On September 6, 2017, United States District Court Judge Carlos Mendoza issued an Order setting a hearing on seven motions and ordered respondent and his co-counsel to appear for the hearing. On September 27, 2017, the district court held a hearing on the motions and all counsel were afforded the opportunity to make argument.

On January 12, 2018, Judge Carlos Mendoza issued a forty-two (42) page order from the September 27, 2017 hearing, finding, among other things, that respondent had engaged in unprofessional conduct throughout the litigation. Judge Mendoza testified as a witness for the bar, in this bar proceeding. During his testimony he stated he was alarmed by respondent's behavior and in his opinion respondent's comments about the judiciary were "distasteful".

Judge Mendoza referenced numerous filings by respondent and his co-counsel in his January 12, 2018 Order. Many of the filings were entered into evidence by The Florida Bar. Some of the statements made by respondent, and relied on by The Florida Bar, are as follows:

- a. "We have clearly now entered a realm of rulings where the credibility of the lawyers and their personalities as exhibited through their pleadings from constant pleas, claims, and a characterization campaign is being decided by the Court." (The Florida Bar Exhibit 36, pg. 2)
- b. "How could that sort of credibility determination be made, i.e. the Plaintiff and the undersigned did not have a valid concern for their own safety? These sort of actions that are void of truth and/or morality will not be lightly overlooked by any sensible black American." (TFB Exh. 36, pg. 5)

c. “If the Court cannot understand that black people fear unsubstantiated, distorted, wild, and malicious characterizations against them by non-whites, i.e. Trayvon Martin (but we raised this issue with the Court saying just this same thing before Trayvon Martin had even died) (Preston Bussey was also falsely accused of attacking the security guards by Defendant Gomez), then it is beyond the undersigned’s ability to convey a cultural anxiety of black people in this specific regard to the Court.” (TFB Exh. 36, pg. 5)

d. “Any thinking person who knows our American history would quickly be able to appreciate the parallel to what occurred to Preston Bussey, III. The worst part of it all is that the Defendant’s lawyers, educated men who must know better, are trying to continue down this path that reflects a sad and ugly American past. That is, they have chosen to serve lies about a matter involving the untimely, tragic, and unnecessary death of an unarmed Black man there in the hospital, on his own accord, seeking medical help, AND NOW being caught red-handed in deceit and dishonesty for which no conservative would ever ratify out loud, they expect the entitlement of treatment they feel is their birth right.” (TFB Exh.10, pg. 3).

District Court Judge Charlene Honeywell, who presided over the *Bussey-Morice* case from 2011 through 2014, also concluded respondent was making incendiary comments about the judiciary and stated his filings were “appalling”. On November 14, 2012, during a hearing, Judge Honeywell stated:

“Mr. Patterson, why is it necessary to include all of that in your pleadings anyway? I had reached the same conclusion when I read an objection you filed with regard to an order of the magistrate judge where if you didn't directly call him a racist, the inference was clear from what you had in your pleading and throughout your pleadings. One of the reasons that we have had as much difficulty getting rulings out is because two or three pages are spent on stuff that's superfluous to the legal issues before the Court. I have never seen anything like it before. I can't understand. You know, this case is not about the history of African Americans in this country. We know what that history is. That's not what I'm trying. I'm trying a case that was filed by your law firm on behalf of the personal representative of Pearl Bussey-

Morris or Bussey-Morris. And the case will be tried on its facts.” (The Florida Bar Exhibit 55 pgs. 26-27).

It is not disputed that respondent made the statements he made in his filings with the district court. Respondent did admit he filed pleadings insinuating that judges in this case have decided pleadings and issues based on partiality and racial bias. He notes that he was emotionally charged during the pendency of the proceedings and let his emotions and anger get the best of him. However, that still does not constitute a defense to a violation of Rule 4-8.2(a). No evidence was presented, and no argument was made, that respondent had an objectively reasonable factual basis for making the statements he made about the judiciary. I find he did not.

I consider the pleadings filed by respondent to be disparaging in nature, in violation of Rule 3-4.3 and 4-8.4(d). I find the plain language used in the pleadings was alleging racial and other biased partiality on the part of opposing counsel and the courts. Further, I find respondent engaged in acrimony so severe with the other parties that proceedings needed to be stopped and later postponed on several occasions. Respondent also exhibited unprofessionalism concerning his actions with the fax received by the opposing party by mistake. In addition, I find there were numerous times when respondent failed to comply with court orders and rules which resulted in sanctions being imposed various times through the case.

Also, at numerous times throughout the case respondent alleged racial bias by opposing counsel and parties without proper basis. This caused acrimony between himself and opposing counsel through the case and stifled the timely administration of justice, in violation of Rule 4-8.4(d).

Following the entry of District Court Judge Mendoza's January 12, 2018 Order, respondent's co-counsel filed a Motion for Reconsideration on behalf of respondent's client, the plaintiff. The motion argues that their client, the plaintiff, should be ordered to pay sanctions, not plaintiff's counsel. In 2012, respondent and his co-counsel were ordered to pay sanctions after their failure to comply with the court order concerning the joint pretrial statement. In January 2018, the district court ordered the attorney's fees be quantified, related to those sanctions. It should be noted that by 2018, respondent had discharged the monies he owed from court-ordered sanctions in the *Bussey-Morice* case in his personal bankruptcy case. Thus, at the time the attorney's fees were quantified, only respondent's co-counsel was still responsible for payment of the sanctions. It was co-counsel, Mr. Locke, who filed the subject motion asserting the sanction should be imposed on his client instead of himself, resulting in the conflict of interest. There is no evidence that respondent wrote, filed, endorsed or had any involvement in the motion filed by his co-counsel. For this reason, I do not find that respondent engaged in a conflict of interest.

Lastly, with respect to impartiality and decorum of the tribunal, under this rule lawyers shall not engage in conduct intended to disrupt the tribunal. And although there was what I consider to be abusive verbiage in the pleadings which were unrelated to the law and without relevance to the issue being presented, I do not find that this conduct intended to disrupt the tribunal.

III. RECOMMENDATIONS AS TO GUILT.

By reason of the foregoing, I recommend that Respondent be found **guilty** of violating the following Rules Regulating The Florida Bar:

1. Rule 3-4.3 (Misconduct and minor misconduct);
2. Rule 4-3.1 (Meritorious Claims and Contentions);
3. Rule 4-3.2 (Expediting Litigation);
4. Rule 4-3.4(c) and (d) (Fairness to opposing Party and Counsel);
5. Rule 4-4.4(b) (Respect for Rights of Third Persons);
6. Rule 4-8.2(a) (Impugning the integrity of judicial official); and
7. Rule 4-8.4(d) (Misconduct).

By reason of the foregoing, I recommend that Respondent be found **not guilty** of violating the following Rules Regulating The Florida Bar:

1. Rule 4-1.7 (Conflict of Interest; Current Clients); and
2. Rule 4-3.5(c) (Impartiality & Decorum of the Tribunal);

IV. STANDARDS FOR IMPOSING LAWYER SANCTIONS

The Florida Bar filed a Notice of Authority for Sanctions Hearing on October 29, 2020, and relied upon Standards 3.2(b), 3.3(b), 6.2(b), and 8.1(b) in support of their requested sanction.

I considered the following Standards, prior to recommending discipline:

3.2 Aggravating Factors

The Florida Bar argued the following aggravating factors applied: (1) prior disciplinary offenses; (3) a pattern of misconduct; (4) multiple offenses; and (9) substantial experience in the practice of law.

I find that there are no aggravating factors. Specifically, I do not find factors one, prior disciplinary offenses, and four, multiple offenses, to be applicable.

Respondent's misconduct in this case was the same time as his misconduct addressed in the SC16-1438 case, and thus, I do not consider the prior misconduct to be an aggravating factor. Further, I do not find factor nine, substantial experience in the practice of law, to be an aggravating factor because respondent's misconduct in this case was approximately ten years ago.

3.3 Mitigating Factors

I find the following mitigating factors apply:

- (2) absence of dishonest or selfish motive;
- (5) full and free disclosure to the bar or cooperative attitude towards proceedings;

This factor was conceded by the bar and the referee notes respondent has been cooperative and professional during these proceedings.

- (11) imposition of other penalties or sanctions.;

Respondent was sanctioned by the district court in the underlying litigation.

(12) remorse; and

(13) remoteness of prior offenses.

6.2 Abuse of Legal Process

Absent aggravating or mitigating circumstances, and on application of the factors to be considered in imposing sanctions, the following sanctions are generally appropriate in cases involving failure to expedite litigation or bring a meritorious claim, or failure to obey any obligation under the rules of a tribunal except for an open refusal based on an assertion that no valid obligation exists:

(b) Suspension. Suspension is appropriate when a lawyer knowingly violates a court order or rule and causes injury or potential injury to a client or a party or causes interference or potential interference with a legal proceeding.

V. CASE LAW

Respondent did not provide any case law for consideration. The Florida Bar provided, and I considered, the following case law prior to recommending discipline:

1. *Florida Bar v. Patterson*, 257 So.3d 56 (Fla. 2018)
2. *Florida Bar v. Marcellus*, 249 So.3d 538 (Fla. 2018)
3. *Florida Bar v. Rosenberg*, 169 So.3d 1155 (Fla. 2015)
4. *Florida Bar v. Spolter*, 126 So.3d 1059 (Table)

5. *Florida Bar v. Reno*, 115 So.3d 1003 (Table)
6. *Florida Bar v. Norkin*, 132 So.3d 77 (Fla. 2013)
7. *Florida Bar v. Rostein*, 835 So. 2d 241, 246 (Fla. 2002)
8. *Florida Bar v. Williams*, 753 So.2d 1258, 1263 (Fla. 2000)
9. *Florida Bar v. Germain*, 957 So.2d 613 (Fla. 2007).

VI. RECOMMENDATION AS TO DISCIPLINARY MEASURES TO BE APPLIED

The Florida Bar requested the referee recommend a two-year suspension, attendance at Ethics School and Professionalism Workshop, and payment of the bar's disciplinary costs.

I recommend that Respondent be found guilty of misconduct justifying disciplinary measures, and that be disciplined by:

- A. 90-day suspension;
- B. Attendance at Ethics School;
- C. Attendance at Professionalism Workshop; and
- D. Payment of The Florida Bar's costs in these proceedings.

During suspension, respondent will eliminate all indicia of respondent's status as an attorney on social media, telephone listings, stationery, checks, business cards office signs or any other indicia of respondent's status as an

attorney, whatsoever. Respondent will no longer hold himself out as a licensed attorney.

I find a non-rehabilitative suspension is most appropriate here and I took the following into consideration in making my recommendation. The timeline of the misconduct in this case, as it relates to respondent's misconduct in the prior disciplinary case, SC16-1438, is of great concern. Respondent has already been punished by much of the same conduct as he is being accused of here, albeit some adding conduct, as pointed out by The Florida Bar. But, a lot of what respondent was sanctioned for in SC16-1438 is of the same nature as what occurred here. I do find that to some degree The Florida Bar is double downing by seeking an increased suspension when the misconduct here occurred at the same time as the prior misconduct.

Further, I find it important, and I give great weight to the fact that Judge Honeywell, the presiding district court judge in the underlying litigation, did not make a complaint to The Florida Bar about respondent's conduct. In November 2012, Judge Honeywell admonished respondent and his co-counsel about their conduct. I reviewed the record and timeline in this case and specifically, what respondent did or did not do after Judge Honeywell's admonishment. I found that most of respondent's misconduct after that was related to the Volpetti affidavit, and the Amended Motion to Vacate Judgement, which failed to meet four of the

five statutory requirements. The testimony in this case seems to support that respondent essentially dropped out as lead attorney in the litigation, as far as preparing pleadings, although he remained as co-counsel and he must remain responsible for that.

What most concerned me was respondent's conduct about the interrogatories and the inadvertently disclosed fax. Respondent's conduct was totally inappropriate. He filed the fax with the court and filed an amended complaint based on the fax, both of which he should not have done. And, it took a court order to get respondent to destroy the fax. I find this misconduct to be the most egregious thing for which respondent has not yet been punished for.

VII. PERSONAL HISTORY, PAST DISCIPLINARY RECORD

Prior to recommending discipline pursuant to Rule 3-7.6(m)(1)(D), I considered the following:

Personal History of Respondent:

Age: 49

Date admitted to the Bar: 10/01/1997

Past Disciplinary Record: On October 19, 2018, respondent received a one-year suspension in *Florida Bar v. Patterson*, 257 So.3d 56 (Fla. 2018), SC16-1438.

VIII. STATEMENT OF COSTS AND MANNER IN WHICH COSTS SHOULD BE TAXED

I find the following costs were reasonably incurred by The Florida Bar:

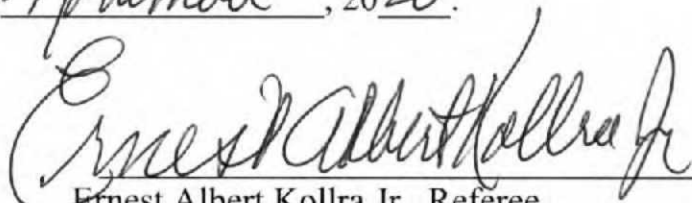
Court Reporters' Fees \$5,239.25
Investigative Costs \$203.00
Referee Costs \$1,439.77
Bar Counsel Costs \$32.86
Witness Costs \$383.85
Administrative Fee \$1,250.00

TOTAL \$8,548.73

It is recommended that such costs be charged to respondent and that interest at the statutory rate shall accrue and be deemed delinquent 30 days after the judgment in this case becomes final unless paid in full or otherwise deferred by the

Board of Governors of The Florida Bar

Dated this 4 day of November, 2020.



Ernest Albert Kollra Jr., Referee
201 SE 6th St
Fort Lauderdale, FL 33301-3303

Original To:

Clerk of the Supreme Court of Florida; Supreme Court Building; 500 South Duval Street, Tallahassee, Florida, 32399-1927

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IN THE SUPREME COURT OF FLORIDA
(Before a Referee)

THE FLORIDA BAR,

Complainant,

v.

KELSAY DAYON PATTERSON,

Respondent.

Supreme Court Case
No. SC19-2070

The Florida Bar File
No. 2018-10,412 (13F)

THE FLORIDA BAR’S FINAL EXHIBIT LIST

Exhibit No.	Brief Description	Date Filed
1.	Order, US District Court Middle District, Case No. 6:11-cv-970-Orl-41GJK (Doc. 612)	1/12/18
2.	Respondent’s Response to Initial Bar Complaint	2/23/18
3.	Docket No. in Case No. 6:11-cv-970-Orl-41GJK, US District Court Middle District	06/10/11 – 09/24/19
(The following exhibits with a “(Doc. #)” are documents filed in Case No. 6:11-cv-970-Orl-41GJK, US District Court Middle District)		
4.	Case Management Order (Doc. 20)	08/31/11
5.	Def’s Mot to Compel Inadvertently Disclosed Docs (Doc. 44)	10/10/11
6.	Plt’s Response to Motion to Compel and Sanctions (Doc. 45)	10/10/11
	a. Exhibit to Response, email from Respondent to Mr. Flood and Mr. Walker (Doc. 45-2)	10/10/2011
	b. Exhibit to Response, Rule 4-4.4 Respect for Rights of Third Persons (Doc. 45-3)	10/10/11
	c. Exhibit to Response, Mr. Walker email to	10/10/11

Exhibit No.	Brief Description	Date Filed
	Respondent (Doc. 45-4)	
7.	Def's Mot to Disqualify PL's Counsel and Mot to Strike Exhibit (Doc. 48)	10/17/11
8.	Plt's Mot to Disqualify Def's Counsel & Response in Opposition of Def's (Doc. 53)	10/20/11
9.	Def's Motion to Strike Privileged Information, Motion for leave to File Second Amended Complaint (Doc. 58)	10/27/11
10.	Plaintiff's Reply Re: Motion to Disqualify Defendant's Attorneys (Doc. 61)	10/31/11
11.	Def's Mot to Compel Responses to Disc (Doc. 73)	11/09/11
12.	Not of Appearance on Behalf of Def, The City of Rockledge (Doc. 74)	11/10/11
13.	Def's Mot to Seal Certain Docs Regarding Motion to Disqualify Counsel (Doc. 80)	11/15/11
14.	Clerk's Minutes Motion Hearing (Doc. 82)	11/16/11
15.	Motion Hearing Transcript (Doc. 84)	11/25/11
16.	Def's Motion to Compel Better Rule 26 Disclosures and Better Responses (Doc. 97)	12/22/11
17.	Def's Motion to Compel Responses to Request to Produce (Doc. 100)	01/05/12
18.	Order on Def's Mot to Compel (Doc. 104)	01/09/12
19.	Defendant's Motion to Terminate or Limit Depositions, to Appoint a Special Master and to Impose Sanctions (Doc. 112)	01/13/12
20.	Plaintiff's Response to Motion for Sanctions By Individual Defendants (Doc. 113)	01/13/12
21.	Def's Mot to Compel Return of Executed Release Forms (Doc.115)	01/19/12
22.	Order on Def's Motion to Compel Return of Executed Forms (Doc. 121)	01/23/12
23.	Order on Def's Motion to Compel Better Rule 26... (Doc. 122)	1/24/12

Exhibit No.	Brief Description	Date Filed
24.	Plt's Mot for Protective Order (Doc. 123)	02/01/12
25.	Def's Motion to Quantify attorney's fees and Cost (Doc. 124)	02/02/12
26.	Memo of Law in Opposition to Plt's Mot for Protective Order w/ attachments (Doc. 125)	02/02/12
	a. Exhibit to Memo, email from Respondent to Mr. Bonner (Doc. 125-2)	1/20/12
	b. Exhibit to Memo, email from Respondent to Mr. Flood and Mr. Bonner (Doc. 125-3)	1/26/12
27.	Email from Mr. Patterson to four opposing counsel (re: refusing to appear at plaintiff's deposition)	1/19/12
28.	Letter faxed to Mr. Flood and Mr. Bonner from Mr. Patterson (re: refusing to appear at plaintiff's deposition)	1/20/12
29.	Motion for Sanctions for Failure of Party to attend a schedule Depo and Memo of Law (Doc. 141)	02/10/12
30.	Def's Motion to Enforce Disc Orders and to Impose Sanctions (Doc. 142)	02/10/12
31.	Order on Def's Mot to Quantify Attorney Fees (Doc. 242)	05/10/12
32.	Appearance of Counsel (Doc.252)	05/17/12
33.	Plt's Objection to Magistrate's order awarding attorney fees (Doc. 257)	05/22/12
34.	Order for Sanctions for failure of Party to Attend a Scheduled Deposition (Doc. 283)	06/15/12
35.	Order on Def's Motion to enforce Discovery Orders (Doc. 284)	06/18/12
36.	Plt's Notice of Compliance Re; De#284 & Not of Object to Magistrate Ord (Doc. 287)	06/20/12
37.	Pretrial Statement (Doc. 330)	10/10/12
38.	Def's Proposed Jury Instructions (Doc. 331)	10/10/12
39.	Def's Proposed Vior Dire questions (Doc. 333)	10/10/12

Exhibit No.	Brief Description	Date Filed
40.	Plt's Emergency Motion for Ext of Time to File Joint Pretrial Statement (Doc. 334)	10/10/12
41.	Indv Def's Response in Opposition to Plt's Emerg Motion for Ext of Time (Doc. 335)	10/11/12
42.	Indv Def's Mot in Limine, Mot to Strike... (Doc. 339)	10/15/12
43.	Mot in Limine of Def's, Rockledge, Re: Race-baiting Tactics by Counsel (Doc. 341)	10/16/12
44.	Mot in Limine of Def's Rockledge, Re: Disparaging Remarks (Doc. 343)	10/16/12
45.	Mot in Limine of Def's Rockledge Re Personal opinions of Counsel (Doc. 346)	10/16/12
46.	Clerk's Minutes Telephonic Mot Hearing (Doc. 357)	10/17/12
47.	Plt's Second Emerg Mot for Ext of Time to File Joint Pretrial Statement, Jury Instructions and Verdict Forms (Doc. 381)	10/24/12
48.	Def's Response in Opposition to Plt's Second Emerg Mot (Doc. 384)	10/26/12
49.	Memo of Law of Def's Rockledge, In opposition to Plt's Second Emerg Mot (Doc 385)	10/26/12
50.	Plt's Response opposing Indv Defendants' Mot in Limine, Mot to Strike...(Doc. 398)	11/05/12
51.	Plt's Response opposing Mot in Limine of Def's Rockledge Re Race- Baiting Tactics (Doc. 406)	11/08/12
52.	Transcript of Telephonic Mot Hearing (Doc. 408)	11/02/12
53.	Plt's Response to Mot Limine of Def's Rockledge Re: Disparaging Personal Opinions of Counsel (Doc. 410)	11/13/12
54.	Plt's Response Opposing Mot in Limine of Def's Rockledge, Re: Golden Rule (Doc. 413)	11/13/12
55.	Transcript of Pretrial Conference (Doc. 423)	11/27/12
56.	Order on two of Plt's Motions (Doc. 434)	12/12/12
57.	Def's Second Mot to Enforce Court Order (Doc. 468)	01/28/13

Exhibit No.	Brief Description	Date Filed
58.	Def's Mot to Quantify Attorney's Fees Re to Second Pretrial Statement (Doc. 484)	02/27/13
59.	Plaintiff's Response Opposing Defendants' Mot to Strike (Doc. 486)	03/04/13
60.	Renewed Motion of Def's City Rockledge to Quantify Attorney's Fees (Doc. 501)	01/07/15
61.	Order for Entry of Final Judgment and Incorp Memo of Law (Doc. 503)	01/08/15
62.	Judgment in Civil Case (Doc. 504)	01/08/15
63.	Defendant Patrick Kennedy's Motion for Sanction Pursuant to Fed. R. Civ. P. 11 (Doc. 511)	01/20/15
64.	Def's Leverich, Owens, Williams, Herberner's Mot for Sanctions Pursuant to Fed. R. Civ. 11 (Doc. 512)	01/20/15
65.	Plt's Amended Mot to Vacate Judgment (Doc. 524)	1/25/15
66.	Mot of Def, City Rockledge For Attorney's Fees as Sanctions (Doc. 553)	02/18/15
67.	Defendant's Notice of Supplemental Authority (Doc. 556)	02/26/15
68.	Indv Def's Mot for Rule 11 Sanctions related to Plt's Frivolous Mot to Vacate (Doc. 563)	03/30/15
69.	Order on Plt's Mot to Vacate Judgment (Doc. 567)	05/13/15
70.	Plt's Brief Re whether case should be Stayed (Doc. 570)	05/28/15
71.	Order on Stay (Doc. 571)	06/10/15
72.	Indv Def's Mot to Lift the Stay Reopen the Case, Renew pending Mots (Doc. 589)	11/02/16
73.	Order on Mot to Lift Stay (Doc. 590)	05/01/17
74.	Indv Def's Consolidated Mots for Civil Contempt and Sanctions (Doc. 592)	05/15/17
75.	Plt's Response Opposing Indv Def's Consolidated Mot for Civil Contempt (Doc. 594)	05/22/17
76.	Amended Mot of Def, City Rockledge, for Attorney Fees (Doc. 596)	06/02/17

Exhibit No.	Brief Description	Date Filed
77.	Transcript of Motions for Sanction Hearing (Doc. 610)	10/03/17
78.	Order on Multi Plt's and Def's Motion (Doc. 644)	8/27/18
79.	Amended Plt's Notice of Appeal (Doc. 647)	09/20/18
80.	PCA Opinion in United States Court of Appeals for the Eleventh Circuit Case No. 18-13627 (Doc. 651)	8/26/19

The Florida Bar reserves the right to enter into evidence exhibits not listed, in rebuttal.

Respectfully submitted,



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CERTIFICATE OF SERVICE

I certify that The Florida Bar's Final Exhibit List has been furnished to The Honorable Ernest Albert Kollra Jr., Referee, 201 SE 6th St., Fort Lauderdale, FL 33301-3303, via email to Judicial Assistant Teresa Sugar at tsugar@17th.flcourts.org; a copy has been furnished to Russell Scott Prince, Counsel for Respondent, 8270 Woodland Center Blvd., Tampa, FL 33614-2401, via email at rprince@palmaprince.com; and a copy has been furnished to Kelsay D. Patterson, Pro Se Co-Counsel, PO Box 273826, Tampa, FL 33688, via email at kplaw@bellsouth.net; and a copy to The Florida Bar's Staff Counsel, Patricia Savitz at psavtiz@floridabar.org; on this 31st day of August, 2020.

A handwritten signature in black ink, appearing to read "Lindy Guinand", with a stylized, cursive script.

Lindsey Margaret Guinand, Bar Counsel

UNITED STATES DISTRICT COURT
MIDDLE DISTRICT OF FLORIDA
ORLANDO DIVISION

J. PEARL BUSSEY-MORICE,

Plaintiff,

v.

Case No: 6:11-cv-970-Orl-41GJK

**PATRICK KENNEDY, TIMOTHY
HERBERNER, IVETTE GOMEZ, DON
WILLIAMS, ROBERT OWENS,
MATTHEW LEVERICH, CITY OF
ROCKLEDGE, FLORIDA and
GORDON HEWATT,**

Defendants.

ORDER

THIS CAUSE is before the Court on the following motions: the Individual Defendants'¹ Consolidated Motion for Civil Contempt and Sanctions (Doc. 592) and Plaintiff's Response (Doc. 594); Defendant City of Rockledge's Renewed Motion to Quantify Attorney's Fees (Doc. 501) and Plaintiff's Response (Doc. 529); and Defendant Kennedy's Motion for Sanctions (Doc. 511) and Plaintiff's Response (Doc. 542). This Cause is also before the Court on Defendants Leverich, Owens, Williams, and Herbener's Motion for Sanctions (Doc. 512) and Plaintiff's Response (Doc. 547); Defendants Kennedy, Herbener, Williams, Owens, and Leverich's Reply to Plaintiff's Responses (Doc. 554); Defendants Kennedy, Herbener, Williams, Owens, and Leverich's Notice of Supplemental Authority (Doc. 556); and Plaintiff's Notice (Doc. 561). Also before the Court is Defendant City of Rockledge's Amended Motion for Attorney's Fees (Doc. 596) and Plaintiff's

¹ "Individual Defendants" will be used throughout this Order to refer collectively to Defendants Patrick Kennedy, Timothy Herbener, Gordon Hewatt, Ivette Gomez, Don Williams, Robert Owens, and Matthew Leverich.

Response (Doc. 600); Defendant City of Rockledge’s Motion for Sanctions (Doc. 553) and Plaintiff’s Response (Doc. 558); and the Individual Defendants’ Motion for Rule 11 Sanctions Related to Plaintiff’s Frivolous Motion to Vacate (Doc. 563) and Plaintiff’s Response (Doc. 566). Additionally, a hearing was held on September 27, 2016, where the parties supplemented their written motions with oral argument. (*See generally* Mins., Doc. 608).

I. BACKGROUND

This suit arises out of the death of Preston Bussey III (“Bussey”). The factual background has previously been set forth by the Eleventh Circuit, *see Bussey-Morice v. Gomez*, 587 F. App’x 621, 621–25 (11th Cir. 2014) (per curiam); *Bussey-Morice v. Kennedy*, 657 F. App’x 909, 910–911 (11th Cir. 2016); *see also* (Oct. 1, 2014 11th Cir. Op., Doc. 499, at 2–9); (Aug. 8, 2016 11th Cir. Op., Doc. 586, at 3–4), and reiterated by this Court, (*see* May 13, 2015 Order, Doc. 567, at 2–7).

Procedurally, the relevant facts are as follows: On February 6, 2015, Plaintiff filed her Notice of Appeal (Doc. 548) in this matter, seeking an appeal of the January 8, 2015 Judgment (Doc. 504) entered against her and in favor of Defendants. Accordingly, this Court stayed the case pending the appeal and advised the parties that upon resolution of the appeal, the stay would be lifted, and this case would be reopened. (June 10, 2015 Order, Doc. 571, at 1). On August 8, 2016, the Eleventh Circuit Court of Appeals affirmed this Court’s entry of summary and final judgment in favor of all Defendants, *Kennedy*, 657 F. App’x at 916; (*see also* Doc. 586 at 16), and subsequently issued the mandate, (Sept. 6, 2016 Mandate, Doc. 588, at 16). The Individual Defendants filed a Motion to Lift the Stay, Reopen the Case, and Renew Pending Motions (Doc. 589), advising the Court of the previously filed motions they planned to renew and the motions that they planned to refile as consolidated motions, (*id.* at 2). Consequently, the Court lifted the

stay and reopened this case. (May 1, 2017 Order, Doc. 590, at 2). Per the Court's Order, the City of Rockledge ("the City") filed a Notice of Intent Regarding Pending Motions (Doc. 593), informing the Court of the motions it sought to renew. On September 27, 2017, the Court held a hearing to allow the parties to supplement the written motions still pending before the Court with oral argument. (Doc. 608).

II. THE SANCTIONS MOTIONS

All of the motions currently pending ask this Court to sanction Plaintiff and/or Plaintiff's attorneys—Kelsay Patterson and Wendell Locke. The motions can be organized into three different categories: (A) motions that seek sanctions based on prior discovery violations and violations of the Court's Case Management Scheduling Order ("CMSO," Doc. 20), (B) motions that generally seek sanctions pursuant to Rule 11 and 28 U.S.C. § 1927, and (C) motions that seek sanctions based on Plaintiff's Amended Motion to Vacate Judgment. Each category will be addressed in turn. Finally, the Court will discuss its decision to refer Plaintiff's counsel to the Florida Bar based on their conduct throughout this litigation.

A. Sanctions Based on Discovery Violations and Violations of the CMSO

The Individual Defendants' Motion for Civil Contempt and Sanctions ("Motion for Civil Contempt") requests sanctions to be awarded against Plaintiff and Plaintiff's counsel based on Plaintiff's prior discovery violations and violations of the Court's CMSO. Defendant City of Rockledge's Renewed Motion to Quantify Attorney's Fees ("Renewed Motion to Quantify") seeks to collect sanctions previously awarded based on Plaintiff's violation of the CMSO. The Court will first address the Individual Defendants' request for sanctions based on prior discovery violations. Then the Court will address the Individual Defendants' and the City's request for sanctions based on the violations of the CMSO.

1. *Sanctions Based on Discovery Violations*

The Individual Defendants' Motion for Civil Contempt asks the Court to initiate civil contempt proceedings, enforce the previously awarded discovery sanctions, and impose additional sanctions against Plaintiff and Plaintiff's counsel based on their repeated failure to comply with the Court's discovery orders and orders requiring the payment of sanctions by Plaintiff and her counsel. The Court will briefly summarize the relevant factual background before turning to the parties' arguments.

a. *Background*

The Individual Defendants filed their first Motion to Compel (Doc. 97) on December 22, 2011, based on Plaintiff's failure to (1) identify in her Rule 26 initial disclosures as well as in her response to Defendants' interrogatories the type, amount, or computation method for damages; (2) return Defendants' documents that were inadvertently provided to Plaintiff, in contravention of court order; and (3) provide proper answers to court interrogatories. The Individual Defendants subsequently filed a second Motion to Compel (Doc. 100), seeking better responses to their requests for production. Plaintiff failed to respond to either of the Motions to Compel, and United States Magistrate Judge Gregory J. Kelly granted the motions as unopposed. (Jan. 24, 2012 Order, Doc. 122, at 3). In doing so, Judge Kelly also granted the Individual Defendants' request for an award of attorney's fees and costs for bringing the Motions to Compel and advised that if the parties were not able to agree on an amount, the Individual Defendants should file a motion to quantify. (*Id.*). The Individual Defendants subsequently filed a Motion to Quantify (Doc. 124), seeking an award of \$2,597.50, which Judge Kelly granted, (May 10, 2012 Order, Doc. 242, at 8).

On the same day the Individual Defendants filed their Motion to Quantify, they also filed their Motion to Enforce Discovery Orders and to Impose Sanctions for Plaintiff's Non-Compliance

(“Motion to Enforce,” Doc. 142). The Individual Defendants argued that Plaintiff had still not provided information relating to her Rule 26 initial disclosures as required by the Court’s previous January 24, 2012 Order. The Individual Defendants also sought sanctions based on Plaintiff’s failure to appear for her court-ordered deposition. The Motion to Enforce was granted, and the Individual Defendants were awarded \$250.00 in expenses from Plaintiff’s counsel for bringing the Motion to Enforce. (June 18, 2012 Order, Doc. 284, at 7). Additionally, Plaintiff and Plaintiff’s counsel were sanctioned jointly and severally in the amount of \$917.50, representing the expenses incurred by the Individual Defendants in preparing for and attending Plaintiff’s deposition. (*Id.*). Although Plaintiff sought review of the Magistrate Judge’s Order granting the Individual Defendants’ attorney’s fees and costs in the amount of \$2,597.50, (*see* Pl.’s Obj. to Magistrate’s Order, Doc. 257), as well as the Order granting the Motion to Enforce, (*see* Pl.’s Notice of Obj. to Magistrate’s Order, Doc. 287), both orders were affirmed by the District Judge, (Dec. 12, 2012 Order, Doc. 434, at 7). To date, neither Plaintiff nor Plaintiff’s counsel have paid any of the sanctions ordered.

b. The Parties’ Arguments

The Individual Defendants ask the Court to initiate civil contempt proceedings against Plaintiff and Plaintiff’s counsel based on their repeated failure to comply with the Court’s discovery orders. Specifically, the Individual Defendants cite Plaintiff’s counsel’s failure to comply with this Court’s December 12, 2012 Order requiring the payment of \$2,847.50² in costs and attorney’s fees from Plaintiff’s counsel and an additional payment of \$917.50 jointly and severally from Plaintiff and Plaintiff’s counsel. The Individual Defendants also cite Plaintiff’s

² This amount is the sum of the sanctions previously awarded solely against Plaintiff’s counsel: \$250.00 + \$2,597.50 = \$2,847.50. (*See* Doc. 434 at 7).

failure to provide discovery in accordance with this Court's orders but admit that this is a moot point because judgment has already been entered in the Individual Defendants' favor. (*See* Doc. 592 at 10).

"District courts have inherent power to enforce compliance with their lawful orders through civil contempt." *Nat'l Union Fire Ins. Co. of Pittsburgh v. Olympia Holding Corp.*, 140 F. App'x 860, 862–63 (11th Cir. 2005) (quotation omitted). "A finding of civil contempt must be based upon clear and convincing evidence that: 1) the allegedly violated order was valid and lawful; 2) the order was clear, definite, and unambiguous; and 3) the alleged violator had the ability to comply with the order." *Zow v. Regions Fin. Corp.*, 595 F. App'x 887, 889 (11th Cir. 2014) (quotation omitted). Where there is a finding of civil contempt, "[d]istrict courts have broad discretion in fashioning civil contempt sanctions." *Howard Johnson Co. v. Khimani*, 892 F.2d 1512, 1519 (11th Cir. 1990) (citing *United States v. United Mine Workers of Am.*, 330 U.S. 258, 303–04 (1947)). "[S]anctions in civil contempt proceedings may be employed for either or both of two purposes: to coerce the [offender] into compliance with the court's order, and to compensate the complainant for losses sustained." *Tom James Co. v. Morgan*, 141 F. App'x 894, 899 (11th Cir. 2005) (emphasis omitted); *see also United States v. McCorkle*, 321 F.3d 1292, 1298–99 (11th Cir. 2003); *Smith v. Sullivan*, 611 F.2d 1050, 1053 (5th Cir. 1980).³

The Court declines to initiate civil contempt proceedings. Although the Court is dismayed by Plaintiff's counsel's failure to comply with the Court's discovery orders, the Court finds that neither of the purposes underlying civil contempt—compliance or compensation—will be served by initiating contempt proceedings against Plaintiff's counsel or Plaintiff.

³ Cases decided by the Fifth Circuit prior to October 1, 1981 are binding on this Court. *See Bonner v. City of Prichard*, 661 F.2d 1206, 1207 (11th Cir. 1981).

With regard to Patterson, coercing him to comply with the Court's previous discovery orders would be meaningless because judgment has already been entered in this case. Additionally, coercing Patterson to pay the previously awarded discovery sanctions would be inappropriate because the Individual Defendants concede that those sanctions were discharged in Patterson's bankruptcy proceeding.⁴ In the same vein, it would be inappropriate to initiate contempt proceedings to compensate the Individual Defendants for Patterson's past discovery violations. Such compensation has been calculated and awarded. To re-award those sanctions now would be an improper end run around Patterson's bankruptcy discharge.

In sum, even if civil contempt proceedings were initiated against Patterson, under these particular circumstances, the Court would not be able to impose a coercive or compensatory sanction against him. Although the Court agrees that Patterson should be reprimanded for his failure to comply with the Court's discovery orders, contempt proceedings are not the proper mechanism to achieve that goal. *See McCorkle*, 321 F.3d at 1299 (expressing disapproval of the district court's contempt proceedings where the district court adjudicated the individual to be "in contempt" but declined to impose a coercive sanction because it would serve no purpose and stating that the circuit court was "at a loss as to how a party can be adjudged in civil contempt

⁴ Patterson recently filed for Chapter 7 bankruptcy. *See generally In re Kelsay Patterson*, No. 8:16-bk-10552-KRM (Bankr. M.D. Fla. 2016). An Order of Discharge was entered on March 15, 2017. *See id.* at Doc. 27. The legal effect of Patterson's bankruptcy proceedings on his previous sanctions awards is not entirely clear and has not been briefed by the parties. However, the Individual Defendants have stated that they "are not . . . attempting to collect a debt from Mr. Patterson that has been discharged through bankruptcy." (Doc. 592 at 2; *see also* Sept. 27, 2017 Tr., Doc. 610, at 45:1–4). When the issue was addressed at the hearing, counsel for the Individual Defendants—Mr. Walker—conceded that he believed "as of the recent discharge order, the previously adjudicated sanctions in the amount of \$2,847.50 and the other portion that was joint and several with his client of \$917.50, . . . were discharged through bankruptcy." (Doc. 610 at 44:15–18).

when the underlying basis for the contempt citation is moot. Clearly the court meant only to reprimand Bailey for his past conduct”); *see also Mar-Jac Poultry, Inc. v. United States*, 153 F. App’x 562, 565 (11th Cir. 2005) (affirming the district court’s denial of civil contempt where, under the circumstances, the motion for civil contempt had become moot because the court could “no longer . . . grant the meaningful relief that [the movant] requested”); *In re Simmons*, 200 F.3d 738, 742–43 (11th Cir. 2000) (“As there was no longer a need to hold the Debtor in contempt, we agree that civil contempt penalties should not have then been imposed upon the Debtor.”). And although the Individual Defendants argue that in the context of civil contempt, the Court has broad discretion to “fashion an appropriate remedy, including referral to a grievance committee,” (Doc. 592 at 3), “[a] mere reprimand and referral to a state bar disciplinary committee is not a contempt adjudication,” *McCorkle*, 321 F.3d at 1298. Therefore, civil contempt proceedings will not be initiated against Patterson.

The Court also finds that initiating civil contempt proceedings against Locke based on his failure to pay the discovery sanctions and to comply with the Court’s discovery directives is inappropriate. Plaintiff argues that it would be inequitable to hold Locke liable for the payment of the discovery sanctions because they were awarded before he filed a notice of appearance in the case and thus were the result of conduct that is not attributable to him. The Court agrees with Plaintiff. Locke filed his Notice of Appearance (Doc. 252) on May 17, 2012, after Plaintiff’s counsel was sanctioned based on the Individual Defendants’ Motions to Compel, (*see* Doc. 122 at 3 (awarding the Individual Defendants attorney’s fees and costs for bringing the Motions to Compel); *see also* Doc. 242 at 8 (quantifying the attorney’s fees and costs on May 10, 2012)), and after the Individual Defendants moved for sanctions based on Plaintiff’s failure to appear for her deposition, (*see* Doc. 142 at 3–6). Further, the Court awarded and affirmed the sanctions awards

pursuant to Federal Rule of Civil Procedure 37(a)(5)(A), 37(b)(2)(C), and 37(d)(3). (Doc. 242 at 8; Doc. 284 at 7; Doc. 434 at 7). All of those subsections of Rule 37 require that the *advising attorney* be ordered to pay sanctions under certain circumstances. *See* Fed. R. Civ. P. 37(a)(5)(A); Fed. R. Civ. P. 37(b)(2)(C); Fed. R. Civ. P. 37(d)(3). Locke was not the advising attorney when the Individual Defendants filed the Motions to Compel and was not the advising attorney when Plaintiff failed to appear at her deposition. While Locke certainly could have communicated more effectively with opposing counsel regarding the payment of the discovery sanctions, the Court concludes that Locke was not required to pay the discovery sanctions imposed by the Court.

In addition to the payment of the sanctions, the Individual Defendants argue that Locke was equally responsible for ensuring that the Court's discovery directives were adhered to. However, in its discretion, the Court declines to initiate contempt proceedings on this basis. As with Patterson, even if Locke was held in contempt, the Court would not be able to meaningfully sanction him. The Court's discovery directives are moot, rendering a coercive sanction futile. And a sanction directing Locke to pay the attorney's fees and costs awarded as discovery sanctions would be illogical given the Court's previous determination that it is inappropriate to require Locke to pay those discovery sanctions. Accordingly, the Court declines to initiate contempt proceedings against Locke.

The Court also declines to initiate civil contempt proceedings against Plaintiff. "[U]nder the Eleventh Circuit's case law, the alleged contemnor may avoid a contempt finding by showing an inability to comply or a good faith effort to comply. *S.E.C. v. Solow*, 682 F. Supp. 2d 1312, 1325 (S.D. Fla.) (citing *Khimani*, 892 F.2d at 1516), *aff'd*, 396 F. App'x 635 (11th Cir. 2010). Plaintiff's counsel repeatedly argued, including at the September 27 hearing, that Plaintiff has no assets and has been unable to pay any type of monetary sanction. Because it seems likely that

Plaintiff would be able to avoid a finding of contempt based on her inability to pay, the Court declines to expend additional judicial resources and initiate civil contempt proceedings against her.

Apart from the initiation of civil contempt proceedings, the Individual Defendants also request the imposition of additional sanctions. As discussed in more detail below, *see supra* Section II.D., the Court will be referring attorneys Patterson and Locke to the Florida Bar.

2. *Sanctions for Violating the CMSO*

In addition to the discovery sanctions, Defendants were previously awarded attorney's fees and costs as sanctions for Plaintiff's counsel's violation of the CMSO, specifically Plaintiff's counsel's failure to facilitate the timely submission of the parties' Joint Pretrial Statement. Defendants now ask the Court to quantify those fees and costs. Again, the Court will summarize the facts giving rise to the sanctions and then address the parties' arguments.

a. *Background*⁵

The CMSO required the parties to meet in person on or before September 28, 2012, to exchange witness lists, exhibit lists, and to prepare the Joint Final Pretrial Statement, which was due by October 10, 2012. (Doc. 20 at 2). The attorneys met on September 28, 2012. (Defs.' Mot. to Quantify Atty's Fees, Doc. 484, at 2). However, Defendants contend that Plaintiff's counsel failed to bring the required exhibits, exhibit lists, and witness lists and was not prepared to discuss the Pretrial Statement. (*Id.*). Defendants provided Plaintiff's counsel with a draft of their proposed Pretrial Statement and jury instructions. (*Id.*). Several days later, Defendants again provided their proposed submissions to Plaintiff's counsel, but Plaintiff's counsel did not respond. (*Id.*).

⁵ In the Motion for Civil Contempt, the Individual Defendants cite to their previously filed Motion to Quantify Attorney Fees Related to Second Pretrial Statement (Doc. 484) and their Renewed Motion to Quantify Attorney's Fees (Doc. 509) for the relevant background surrounding the Joint Final Pretrial Statement. (*See* Doc. 592 at 5). Accordingly, the Court has also relied upon these filings for the relevant factual background.

According to Defendants, Plaintiff's counsel failed to provide any information for the Joint Pretrial Statement and also failed to respond to Defendants' correspondence asking for Plaintiff's input. (*Id.*). As a result, Defendants unilaterally filed a Pretrial Statement, jury instructions, verdict form, and proposed voir dire questions on the due date. (*See* Doc. Nos. 330–33). That evening, Plaintiff's counsel unilaterally filed an Emergency Motion for an Extension of Time (“Emergency Motion,” Doc. 334), requesting additional time to prepare the Joint Pretrial Statement. On October 17, 2012, the Court held a telephonic hearing on Plaintiff's Emergency Motion. (Mins., Doc. 357). The Court granted in part Plaintiff's motion and ordered the attorneys to meet for a second pretrial meeting on October 22, 2012. (*Id.*). The Court further ordered the attorneys to file an Amended Joint Pretrial Statement on or before October 24, 2012. (*Id.*). Based on Plaintiff's failure to comply with the CMSO, the Court awarded defense counsel attorney's fees and costs incurred in attending the second attorney meeting and preparing the Amended Joint Pretrial Statement. (Doc. Nos. 357, 359). However, to date, the Court has not quantified the fees owed to Defendants.

Defendants allege that the dilatory conduct continued after the sanctions were imposed. For example, when the attorneys met for the second meeting on October 22, 2012, Defendants allege that Plaintiff's counsel were still unprepared to make any contributions to the Pretrial Statement. (Doc. 484 at 3). Defendants again provided Plaintiff's counsel with a proposed Pretrial Statement that was nearly complete as well as Defendants' proposed witness lists, exhibit lists, jury instructions, verdict form, and voir dire questions, and the attorneys discussed what they could at the meeting. (*Id.*). Afterwards, defense counsel revised the jury instructions based on the discussions at the meeting. (*Id.* at 4). Plaintiff's finally submitted their documents for the Pretrial Statement to Defendants the evening of October 23, 2012, which—according to Defendants—

contained substantial edits to the draft of the Pretrial Statement that Defendants previously provided Plaintiff. (*Id.*).

Defense counsel reviewed Plaintiff's proposed documents, and the following evening—October 24, 2012—defense counsel proposed edits to Plaintiff's counsel. (*Id.*). Plaintiff's counsel did not accept the edits and filed a Second Emergency Motion for Extension of Time to File Joint Pretrial Statement, Jury Instructions, and Verdict Form ("Second Emergency Motion," Doc. 381), explaining that they did not receive Defendants' suggested changes until late in the day on October 24, 2012, and that they needed more time to review Defendants' revisions, (*id.* at 3–4). In the Second Emergency Motion, Plaintiff not only requested a second, unspecified extension of time to prepare the Joint Pretrial Statement but also sought an order from the Court striking Defendants' proposed submissions relating to the Joint Pretrial Statement and awarding attorney's fees and costs incurred by Plaintiff's counsel in bringing the motion. (*Id.* at 2–3). Additionally, Plaintiff filed the Second Emergency Motion without sufficiently complying with Local Rule 3.01(g). (*See id.*). Unaware that Plaintiff was going to file the Second Emergency Motion, defense counsel subsequently attempted to reach a compromise with Plaintiff's counsel, proposing that if Plaintiff's counsel would withdraw the motion, Defendants would agree to an extension of time. (Doc. 484 at 4). Plaintiff's counsel refused to withdraw the Second Emergency Motion, and as a result, Defendants filed a Response (Doc. 384). (*Id.* at 4–5).

The Court granted Plaintiff's Second Emergency Motion to the extent it requested an extension of time—giving the parties until November 5, 2012, to file an Amended Joint Pretrial Statement—but denied the motion in all other respects. (Oct. 31, 2012 Endorsed Order, Doc. 392). The Joint Pretrial Statement (Doc. 400) was finally submitted on November 5, 2012, nearly a month after the original due date.

b. The Parties' Arguments

i. The Individual Defendants

In the Motion for Civil Contempt, the Individual Defendants seek an award of \$6,269 against Plaintiff and/or Locke⁶ based on 46.2 hours incurred in attending the second attorney meeting, responding to Plaintiff's Second Emergency Motion, and preparing the necessary materials to file the Amended Joint Pretrial Statement. Plaintiff presents several arguments in opposition.

First, Plaintiff's counsel argues that the sanctions ordered by the Court at the October 17, 2012 telephonic hearing were solely awarded against Plaintiff, not Plaintiff's counsel. For support, Plaintiff's counsel cites the Minutes from the hearing, which state that the "Court orders sanctions against Plaintiff" (Doc. 357). The Court does not find this argument persuasive. When Judge Honeywell ordered sanctions at the hearing, she stated, "I'm also going to award, as a sanction for [P]laintiff's failure to comply with the requirements in the Case Management and Scheduling Order . . . , an award of attorneys' fees and costs to defense counsel." (Oct. 17, 2012 Tr., Doc. 408, at 27:7–11). This statement is ambiguous and fails to establish that the sanctions were imposed solely against Plaintiff.

The sanctions were ordered based on the failure to provide necessary information to defense counsel to facilitate the timely submission of the Joint Pretrial Statement. This failure is undoubtedly attributable to Plaintiff's counsel. Indeed, per the Court's CMSO and Local Rule 3.06(b), *counsel* is required to attend the in-person meeting so that the attorneys can exchange information and prepare the Joint Final Pretrial Statement. (See M.D. Fla. R. 3.06(b); Doc. 20 at

⁶ The Individual Defendants do not seek to collect the sanctions award from Patterson directly "due to the ambiguities in Mr. Patterson's now-stricken bankruptcy schedules." (Doc. 592 at 6).

8). Further, it was Plaintiff's counsel's decision to unilaterally file a Second Emergency Motion on the day the Pretrial Statement was due, after one extension had already been granted, and their refusal to withdraw the Second Emergency Motion that caused Defendants to have to file a response. All of this could have been avoided had a Joint Pretrial Statement been timely submitted. Accordingly, the Court rejects Plaintiff's counsel's argument that sanctions related to the Pretrial Statement should solely be imposed against Plaintiff.

Second, Plaintiff argues that Defendants have waived any argument they may have had for sanctions in relation to the Joint Pretrial Statement because Defendants failed to initiate an adversary proceeding in Patterson's bankruptcy case. Plaintiff has not cited any analogous caselaw to support this theory; she only cites general legal standards relating to waiver. "Waiver requires the existence at the time of the alleged waiver . . . a right which may be waived, actual or constructive knowledge of that right, and the intention to relinquish that right." *Air Prod. & Chemicals, Inc. v. La. Land & Expl. Co.*, 867 F.2d 1376, 1379 (11th Cir. 1989). Waiver may be express or implied from conduct. *Id.* "For waiver to be implied for conduct, the acts, conduct or circumstances relied upon to show waiver must make out a clear case." *Id.* "Moreover, waiver is an affirmative defense; the party asserting that another party has waived a right has the burden of proof." *Id.* Assuming waiver could apply here, Plaintiff has failed to satisfy her burden. That Defendants failed to pursue a claim for sanctions in an adversary proceeding in Patterson's bankruptcy does make out a clear case of waiver. Moreover, even if there were a waiver, it would only apply as to Patterson, and Defendants have already made clear they are not attempting to collect these sanctions from Patterson. Thus, the Court rejects Plaintiff's argument that Defendants waived their right to the payment of sanctions related to the violation of the CMSO and the untimely submission of the Joint Pretrial Statement.

Third, Plaintiff argues that if Locke is sanctioned, the Court will be punishing him for conduct that is attributable to Patterson. Locke argues that it was Patterson who was supposed to bring the necessary materials to the first pretrial meeting; therefore, any sanctionable conduct is attributable to Patterson. Unfortunately for Locke, he was co-counsel with Patterson at the time that Patterson failed to bring the requisite documents to the first attorney meeting. He cannot disclaim liability by merely shifting the fault to Patterson. Moreover, the sanctions previously ordered were not solely based upon counsel's failure to bring the necessary documents to the first attorney meeting. Rather, the facts alleged by the Individual Defendants—which Plaintiff has failed to rebut—demonstrate that the sanctions ordered were also based upon Plaintiff's counsel's inability to productively discuss the Pretrial Statement at the first attorney meeting due to a lack of preparation and their subsequent failure to provide any input regarding the Pretrial Statement prior to the original deadline—despite having been provided Defendants' proposed submissions—which ultimately caused Defendants to unilaterally file a Pretrial Statement in an attempt to comply with the Court's deadlines.

Moreover, even after the Court awarded sanctions, Plaintiff's counsel's dilatory tactics persisted. Plaintiff's counsel continued to exhibit a lack of preparation, professionalism, and sense of urgency to comply with the court-ordered deadlines. According to the Individual Defendants, Plaintiff's counsel were, yet again, unprepared to have any meaningful discussions regarding the Joint Pretrial Statement when they attended the second attorney meeting and, ultimately, sought a second extension of time without input from the Individual Defendants. All of this conduct cannot solely be pinned to Patterson without further explanation. As co-counsel, Locke was equally obligated to assist opposing counsel in preparing the Joint Pretrial Statement. Locke's argument

that he is free from liability solely because it was Patterson who failed to bring the requisite documents to the first attorney meeting is not well-taken.⁷

Finally, Plaintiff contends that the amount of attorney's fees sought by the Individual Defendants—\$6,269—is excessive. Both parties appear to rely on the lodestar method to determine the amount of attorney's fees owed. Under that method, the lodestar fee is calculated by multiplying the reasonable hourly rates of counsel by the number of hours expended on the litigation. *Gray v. Bostic*, 625 F.3d 692, 714 (11th Cir. 2010) (Carnes, J., concurring). The Individual Defendants assert that the \$6,269 requested represents 46.2 hours of work incurred in attending the second attorney meeting, responding to Plaintiff's Second Emergency Motion, and preparing the materials necessary to finally submit the Amended Joint Pretrial Statement. The Individual Defendants have submitted their counsel's time entries, (Indiv. Defs.' Time Entries, Doc. 509-1, at 8–12), which document 6.8 hours of paralegal time at the rate of \$75 per hour, 17.4 hours of associate time at the rate of \$135 per hour, and 22 hours of partner time at \$155 per hour. The Individual Defendants and Plaintiff state that the hourly rates are reasonable, and this Court agrees.

Plaintiff, however, argues that the number of hours claimed is unreasonable. Specifically, Plaintiff argues that the Individual Defendants billed excess time for the review and preparation of

⁷ Plaintiff alternatively argues that if Locke is ordered to pay sanctions, his sanctions should not exceed \$500 because 1) Plaintiff is unable to pay the sanctions, 2) any sanctions imposed against Patterson were discharged in his bankruptcy, and 3) the Court would essentially be punishing Locke for Patterson's conduct. However, this Court finds that 1) Plaintiff's inability to pay is irrelevant since, as the Court discussed above, the sanctions are solely imposed against Plaintiff's counsel, 2) it is appropriate to impose the entire sanctions award against Plaintiff's counsel jointly and severally, notwithstanding the fact that the Individual Defendants have conceded that any sanctions imposed against Patterson were discharged in his bankruptcy proceedings, and 3) for the reasons discussed above, the conduct warranting sanctions is not solely attributable to Patterson.

e-mails, engaged in “unit billing,”⁸ billed for work that was duplicative, billed for work based on time entries that were insufficient or vague, and improperly billed for travel time. (Aff. of Scott Ward Dutton, Doc. 594-2, at 3–6; *see also* Spreadsheet, Doc. 594-3).

The Court has conducted a line-by-line review of counsel for the Individual Defendants’ time entries and Plaintiff’s objections thereto (Doc. Nos. 594-2, 594-3) and determined that the 46.2 hours of worked performed by two attorneys and a paralegal is reasonable. The Court will not regurgitate the tedious analysis here. Instead, the Court will briefly discuss Plaintiff’s main objections.

The majority of Plaintiff’s objections assert that defense counsel billed excessive time for the receipt and review of e-mails. Accordingly, Plaintiff asks the Court to reduce nearly all of the time entries related to receiving and reviewing an e-mail from .10 hours to .05 hours. The Court concedes that it is unable to determine precisely how much time defense counsel spent reviewing e-mails. This determination is affected by a number of unknown variables, including the subject matter of each e-mail and the number of individuals contributing to the conversation. Nevertheless, in its discretion, the Court rejects Plaintiff’s request to reduce defense counsel’s time entries relating to the receipt and review of e-mails as the Court finds that the .10 hour time entries are reasonable. For many other entries Plaintiff’s expert similarly argues that the amount of time spent was excessive or unreasonable for the task completed. But a thorough review of the time entries suggests otherwise.

In conclusion, the fees requested by the Individual Defendants are reasonable. This is true under the lodestar approach and is certainly true under a general reasonable standard based on the

⁸ According to Plaintiff’s fee expert, “unit billing is a practice where the attorney bills a predetermined number of minutes for a given task.” (Doc. 594-2 at 4 (quoting *Browne v. Costales*, 579 So. 2d 161, 162 (Fla. 3d DCA 1991))).

Court's own discretion and expertise. *See McDonald v. Cooper Tire & Rubber Co.*, No. 801CV1306T27TGW, 2005 WL 3372855, at *2 n.3 (M.D. Fla. Dec. 12, 2005) ("As the Eleventh Circuit has not required a Lodestar analysis when an award of attorney's fees is ordered as a sanction, this Court has based its award of attorney's fees on a reasonableness standard and its own discretion and expertise."), *aff'd*, 186 F. App'x 930 (11th Cir. 2006). Therefore, Locke will be ordered to pay sanctions in the form of attorney's fees to the Individual Defendants in the amount of \$6,269.

ii. *The City*

In the City's Renewed Motion to Quantify Attorney's Fees, it asks the Court to award \$3,004.50 in attorney's fees and costs to the City based on Plaintiff's failure to comply with the CMSO. In support of its request, the City has submitted its attorneys' time entries. (*See generally* Invoice, Doc. 463-2). The City asks to be compensated for a total of 19.5 hours of work—18.6 hours of work performed by attorney Bonner at \$155 per hour and .9 hours of work performed by attorney Lane at \$135 per hour. Plaintiff submitted an Amended Response to the City's Request for Sanctions ("Amended Response," Doc. 529), objecting to the City's request.

Again, both parties appear to calculate the amount of fees owed based on the lodestar approach. Additionally, both parties state that the hourly rates sought are reasonable, and this Court agrees. However, Plaintiff argues that the 19.5 hours claimed is unreasonable. Plaintiff argues that the hours the City claims should be reduced because defense counsel thwarted the timely filing of the Pretrial Statement on October 24, 2017, by e-mailing to Plaintiff's counsel—at the last minute and without any warning—various edits, including the addition of new information that had not previously been discussed between the parties. After reviewing the record and the relevant motions pertaining to this matter, the Court finds that Plaintiff's argument is without merit. The record is

devoid of any indication that counsel for Defendants interfered with or delayed the submission of the Joint Pretrial Statement. Instead, the record indicates that Plaintiff's counsel engaged in conduct that unnecessarily prolonged the submission of the Joint Pretrial Statement.

While Defendants proposed edits to Plaintiff's counsel the evening that the Pretrial Statement was due, Defendants did not receive any proposed submissions from Plaintiff until the evening prior—October 23, 2012. And the second attorney meeting was the day before that. After missing the original deadline for the submission of the Joint Pretrial Statement, the parties were granted only a brief extension of time and required to work within the narrow time frame prescribed by the Court. Thus, the last-minute nature of the drafting and correspondence between the parties was somewhat inevitable and cannot be attributed to the City and their purported undue delay. And even if the City sent various changes to Plaintiff's counsel on the evening of October 24, 2012, it does not follow that Plaintiff's counsel was justified in filing the Second Emergency Motion without conferring with defense counsel, in violation of Local Rule 3.01(g). Accordingly, the City will not be faulted for sending revisions to Plaintiff's counsel the evening prior to the deadline, especially when this entire scenario could have been avoided had Plaintiff's counsel facilitated the timely submission of the Joint Pretrial Statement. The Court therefore rejects Plaintiff's counsel's argument that the number of hours claimed by the City should be reduced because the City prevented the Joint Pretrial Statement from being submitted by the first amended deadline.

Additionally, Plaintiff contends that the 19.5 hours should be reduced because Plaintiff's counsel provided certain documents and information to defense counsel, such as an amended exhibit list, jury instructions, a portion of Plaintiff's statement of the case, information about their expert witnesses, and a verdict form. (*See* Doc. 529 at 3–4). This argument is equally unavailing.

Plaintiff's counsel is not entitled to a reduction in the number of hours claimed by the City's attorneys simply because they participated in the litigation. The abovementioned items that Plaintiff's counsel provided to Defendants are standard materials that counsel are required to share with opposing counsel in preparation for trial. While Plaintiff's counsel may wish to be commended for contributing to the trial preparations, Plaintiff's counsel was not only expected, but required, to make these efforts. The CMSO provides that it is the "primary responsibility" of Plaintiff's counsel "to coordinate compliance with the sections of [the CMSO] that require a meeting of lead trial counsel . . . and the filing of a Joint Final Pretrial Statement and related material." (Doc. 20 at 10). Accordingly, that Plaintiff's counsel attended the second attorney meeting and provided defense counsel with various documents does not persuade this Court to reduce the 19.5 hours billed by the City's attorneys.

Finally, with her Amended Response, Plaintiff submitted an Affidavit from her fee expert (Doc. 529-1). Plaintiff's fee expert raises similar objections as those previously discussed with regard to the Individual Defendants' request for attorney's fees relating to the preparation of the Joint Pretrial Statement. That is, Plaintiff's expert avers that the 19.5 hours claimed by the City is excessive and that the City improperly engaged in "unit billing" and charged an excessive or unreasonable amount of time for the review and preparation of e-mails. (*Id.* at 3–4). Again, the Court has conducted a line-by-line review of the City's time entries and Plaintiff's objections thereto (Doc. 529-2). For the reasons discussed above, the Court overrules Plaintiff's objections to the time entries submitted by the City and concludes that the hours expended by the City were reasonable. Locke will be ordered to pay attorney's fees to the City in the amount of \$3,004.50.⁹

⁹ It appears that the City seeks payment from Plaintiff's counsel. (See Doc. 501 at 6 ("The additional efforts related to the preparation of the Joint Pretrial Statement were solely due to the actions of *counsel for the Plaintiff*.")) (emphasis added)). However, the City does not specify

B. Sanctions Pursuant to Rule 11 and 28 U.S.C. § 1927

The following motions seek sanctions pursuant to Rule 11 and 28 U.S.C. § 1927: Defendant Kennedy's Motion for Sanctions; Defendants Leverich, Owens, Williams, and Herbener's Motion for Sanctions; and Defendant City of Rockledge's Amended Motion for Attorney's Fees. The Court will first address Defendants' request for sanctions pursuant to Rule 11 and then will address their request for sanctions pursuant to § 1927.

*1. Rule 11**a. Legal Standard*

As relevant, Federal Rule of Civil Procedure 11(b) provides that, by filing a motion or pleading, an attorney certifies that to the best of his or her "knowledge, information, and belief, formed after an inquiry reasonable under the circumstances":

- (1) it is not being presented for any improper purpose, such as to harass, cause unnecessary delay, or needlessly increase the cost of litigation;
- (2) the claims, defenses, and other legal contentions are warranted by existing law or by a nonfrivolous argument for extending, modifying, or reversing existing law or for establishing new law;
- (3) the factual contentions have evidentiary support or, if specifically so identified, will likely have evidentiary support after a reasonable opportunity for further investigation or discovery; and
- (4) the denials of factual contentions are warranted on the evidence or, if specifically so identified, are reasonably based on belief or a lack of information.

Rule 11(b)(2) and (b)(3) go to whether a claim is legally or factually frivolous. *See Thompson v. RelationServe Media, Inc.*, 610 F.3d 628, 664 (11th Cir. 2010). "[A] litigant's obligations with

whether it wishes to collect its attorney's fees from Patterson or Locke. Because the City appears to agree that the sanctions previously awarded against Patterson were discharged in his bankruptcy proceedings, the Court will not impose these sanctions against Patterson.

respect to the contents” of pleadings or motions “are not measured solely as of the time they are filed with or submitted to the court, but include reaffirming to the court and advocating positions contained in those pleadings and motions after learning that they cease to have any merit.” *Turner v. Sungard Bus. Sys., Inc.*, 91 F.3d 1418, 1422 (11th Cir. 1996) (quoting Fed. R. Civ. P. 11(b), (c) advisory committee’s note to 1993 amend.).

In the Eleventh Circuit, a Rule 11 challenge as to frivolity requires a two-prong inquiry—“whether the legal claims or factual contentions are objectively frivolous, and, if so, whether a reasonably competent attorney should have known they were frivolous.” *Thompson*, 610 F.3d at 665. Under the first step, “[a] factual claim is frivolous if no reasonably competent attorney could conclude that it has a reasonable evidentiary basis.” *Id.* Under the second step, the question is “whether the attorney should have known they were frivolous” or, stated differently, whether “a reasonable investigation would have revealed the error to a reasonably competent attorney.” *Id.* “Both inquiries measure attorney conduct under an objective reasonably competent attorney standard.” *Id.*

Rule 11(c) permits sanctions for any violation of Rule 11(b). “The purpose of Rule 11 sanctions is to reduce frivolous claims, defenses, or motions, and to deter costly meritless maneuvers.” *Kaplan v. DaimlerChrysler, A.G.*, 331 F.3d 1251, 1255 (11th Cir. 2003) (quotation omitted). Appropriate sanctions “must be limited to what suffices to deter repetition of the conduct or comparable conduct by others similarly situated.” Fed. R. Civ. P. 11(c)(4). The sanctions may include “nonmonetary directives” or “an order to pay a penalty into court.” *Id.* In determining the amount of a monetary sanction, “the district court must consider the ability to pay of the party subject to sanctions.” *Bullard v. Downs*, 161 F. App’x 886, 887 (11th Cir. 2006) (per curiam)

(citing *Byrne v. Nezhat*, 261 F.3d 1075, 1098 n.53 (11th Cir. 2001), *abrogated on other grounds* by *Bridge v. Phx. Bond & Indem. Co.*, 553 U.S. 639, 661 (2008)).

b. The Parties' Arguments

Defendant Kennedy and Defendants Leverich, Owens, Williams, and Herbener argue that Rule 11 sanctions should be imposed because Plaintiff's allegations were frivolous. These Defendants aver that based on the numerous eyewitnesses' testimony, the state attorney's review of the Florida Department of Law Enforcement ("FDLE") investigation, the FDLE investigator's opinion, and Plaintiff's own expert, there was no factual or legal support for Plaintiff's claims and that a reasonable attorney would have known that the Individual Defendants were entitled to qualified immunity. Similarly, the City argues that Plaintiff should be sanctioned for maintaining claims that lacked factual and legal support. The City argues that the claims brought against the City were clearly barred by sovereign immunity, and therefore Plaintiff had a duty to discontinue the prosecution of her case against the City.

Defendants have not persuaded the Court that Plaintiff's claims were legally or factually frivolous or that a reasonable attorney would have known they were frivolous. Plaintiff's claims were not completely devoid of factual support. Additionally, Plaintiff's claims were not wholly unsupported under existing law so as to rise to the level of being frivolous. Plaintiff's claims included a constitutional claim for excessive force, which gave rise to the Individual Defendants' qualified immunity defense, as well as claims for wrongful death against the City, one of which alleged municipal liability under a negligent training theory. These types of claims and defenses often present "close calls" to the Court and require the application of multi-pronged tests, engagement in factually-intensive inquiries, and examination of Eleventh Circuit constitutional case law. For example, Plaintiff's excessive force claim hinged on what was reasonable under the

circumstances—an admittedly grey area of the law. *Cf. Morton v. Kirkwood*, 707 F.3d 1276, 1281 (11th Cir. 2013) (noting that a claim for excessive force requires the court to “slosh [its] way through the factbound morass of reasonableness” (quotation omitted)). Notably, the Individual Defendants filed a motion for sanctions with the Eleventh Circuit, arguing that Plaintiff’s second appeal—which challenged the district court’s finding on summary judgment that Officers Kennedy, Herbener, Williams, Owens, Gomez, Hewatt, and Leverich were entitled to qualified immunity and that the City was entitled to sovereign immunity—was patently frivolous because “[i]t lack[ed] any basis in law and [was] based upon a grossly misrepresented statement of facts.” *Bussey-Morice v. Kennedy*, Appeal No. 15-10537, Oct. 23, 2015 Individual Officers’ Mot. for Sanctions for Frivolous Appeal at 4. In ruling on Plaintiff’s second appeal, the Eleventh Circuit Court of Appeals concluded that Plaintiff’s second appeal was not frivolous. (Doc. 586 at 16 n.16 (“[W]e do not find Bussey-Morice’s appeal to be frivolous or sanctions to otherwise be appropriate.”)). If it was not frivolous for Plaintiff to appeal her claims, then it certainly was not frivolous for her to bring them in the first place. Accordingly, this Court does not find that Plaintiff’s claims were frivolous. To the extent Defendants’ motions seek Rule 11 sanctions based on Plaintiff’s purportedly frivolous claims, they will be denied.

2. *28 U.S.C. § 1927*

a. *Legal Standard*

Title 28 of the United States Code § 1927 provides that “[a]ny attorney or other person admitted to conduct cases in any court of the United States or any Territory thereof who so multiplies the proceedings in any case unreasonably and vexatiously may be required by the court to satisfy personally the excess costs, expenses, and attorneys’ fees reasonably incurred because of such conduct.” “To justify an award of sanctions a court must find that three predicates apply:

(1) an attorney must engage in unreasonable and vexatious conduct; (2) this conduct must multiply the proceedings; and (3) the amount of the sanction cannot exceed the costs occasioned by the objectionable conduct.” *Traffic Sports USA, Inc. v. Federacion Nacional Autonoma De Futbol De Honduras*, No. 08-20228-CIV, 2008 WL 4792196, at *4 (S.D. Fla. Oct. 31, 2008) (citing *Peterson v. BMI Refractories*, 124 F.3d 1386, 1396 (11th Cir. 1997)).

“[A]n attorney multiplies proceedings unreasonably and vexatiously within the meaning of the statute only when the attorney’s conduct is so egregious that it is tantamount to bad faith.” *Amlong & Amlong, P.A. v. Denny’s, Inc.*, 500 F.3d 1230, 1239 (11th Cir. 2007) (quotation omitted). “For an attorney’s conduct to be classified as egregious, the attorney must knowingly or recklessly pursue a frivolous claim. Negligent conduct alone will not support a finding of bad faith under § 1927, and for sanctions to be appropriate something more than a lack of merit is required.” *Traffic Sports USA, Inc.*, 2008 WL 4792196, at *4 (citing *Hudson v. Int’l Comput. Negotiations, Inc.*, 499 F.3d 1252, 1262 (11th Cir. 2007)). “[F]or purposes of § 1927, bad faith turns not on the attorney’s subjective intent, but on the attorney’s objective conduct.” *Amlong & Amlong, P.A.*, 500 F.3d at 1239. “What is crucial is whether, regardless of the attorney’s subjective intentions, the conduct was unreasonable and vexatious when measured against an objective standard.” *Hudson*, 499 F.3d at 1262.

b. The Parties’ Arguments

All Defendants present similar arguments for the imposition of sanctions pursuant to 28 U.S.C. § 1927. To advance their argument, the Individual Defendants provide a lengthy list of examples of Plaintiff’s allegedly vexatious conduct and argue that Plaintiff’s unreasonable behavior throughout this case unnecessarily multiplied the proceedings. In particular, the Individual Defendants allege the following: (1) Plaintiff’s counsel routinely included superfluous

and offensive arguments in their motions, which significantly delayed the proceedings, (*see, e.g.*, Nov. 14, 2012 Tr., Doc. 423, at 26:22–27:8, 27:24–28:1); (2) Plaintiff’s counsel made it unnecessarily difficult for defense counsel to retrieve privileged information that defense counsel inadvertently disclosed to Plaintiff’s counsel, (*see generally* Doc. Nos. 44, 45, 48, 53, 58, 80, 82, 84); (3) defense counsel had to file numerous motions to compel to ensure Plaintiff’s compliance with discovery and pretrial obligations,¹⁰ (*see generally* Doc. Nos. 73, 97, 100, 115), which resulted in numerous hearings and court orders, (*see* Doc. Nos. 82, 121, 122, 153, 180, 357, 359, 368, 434), and—as previously discussed—despite clear dictates from the Court, Plaintiff’s counsel never complied with the resulting court orders; (4) Plaintiff’s continued failure to comply with the Court’s orders caused Defendants to make additional efforts to obtain compliance, (*see* Doc. Nos. 142, 468); (5) Defendants had to make significant efforts to compel Plaintiff to attend her deposition, (*see* Doc. Nos. 123, 125); and (6) Plaintiff’s failure to appear at her deposition caused defense counsel to file additional motions and requests for sanctions, necessitating additional rulings from the Court, (*see* Doc. Nos. 141, 283, 284). The City similarly argues, though in more general terms, that Plaintiff’s counsel’s vexatious conduct inordinately multiplied the proceedings. The Court agrees with Defendants that Plaintiff’s counsel acted vexatiously, which caused the proceedings to be multiplied.

The record also indicates that Plaintiff and Plaintiff’s counsel continuously made unfounded, inflammatory, and disrespectful accusations against nearly everyone involved in this litigation. For example, Plaintiff and Plaintiff’s counsel refused to attend Plaintiff’s videotaped

¹⁰ As discussed above, Plaintiff’s counsel also failed to comply with the Court’s CMSO and demonstrated a repeated failure to meet court-imposed deadlines, resulting in Plaintiff’s counsel unilaterally filing two separate “emergency” requests for an extension of time to file the Joint Pretrial Statement.

deposition at one of the defense attorney's offices due to an alleged racially-motivated conspiracy by Defendants and defense counsel to arrest or harm Plaintiff and her attorneys. (See Doc. Nos. 123, 125-2, 125-3). **Yet another example is Plaintiff's implicit, yet clear, insinuation that the United States Magistrate Judge presiding over this case is a racist simply because he ruled in Defendants' favor on certain motions.** (Doc. 287 at 5–6; Doc. 423 at 26:22–27:3; *see also* Pl.'s Resp. to Defs.' Second Mot. to Enforce Court Orders, Doc. 479, at 2 n.1). Shockingly, Plaintiff's counsel's unfounded accusations and blatant disrespect for the Court seem to be a theme. (See, e.g., Appellant's Resp. Vehemently Opposing Appellee's Mot. for Sanctions, Doc. 592-1, at 6 n.4 (“Bussey-Morice’s counsel’s ability to pursue her claims has been in some way undermined, primarily because of the recent intimidation from the District Court, knowing the inherent power of the Court to stifle, cripple and/or destroy an attorney or his/her practice with the stroke of a pen.”); *id.* (stating that Plaintiff’s counsel experienced “[u]nfair treatment, intimidation and possible reprisal in the forum”); Pl.’s Brief Regarding Whether Case Should Be Stayed Pending Appeal, Doc. 570, at 1 n.1 (insinuating that the Eleventh Circuit is biased and stating that it was not a surprise that it ruled in the officers’ favor)).

Plaintiff's counsel also included other inappropriate comments and arguments within their motions, such as continuous references to the Individual Defendants as the “Brutality Officers,” (see, e.g., Doc. Nos. 479, 486, 487), even after the Individual Defendants filed a Motion in Limine (Doc. 339), requesting that Plaintiff's counsel cease referring to the Defendant Officers with such demeaning terms. This unprofessional—and frankly abhorrent—behavior was recognized and admonished by the district judge on more than one occasion. (See Doc. 408 at 23:1–2, 23:12–15 (warning the parties that they would be required to act professionally and refer to people by their names), 23:16–20; Doc. 423 at 26:25–27:14, 27:22–28:1, 28:7–12, 30:14–31:8). This type of

behavior multiplied the issues that the Court was required to resolve before reaching the merits of the case, utilizing limited judicial resources.

Notably, Plaintiff has not addressed § 1927 sanctions in its relevant Responses (Doc. Nos. 542, 547). While there very well may be other instances in the record that demonstrate Plaintiff's counsel's vexatious conduct, this Court concludes that the numerous instances discussed above are sufficient to demonstrate that Plaintiff's behavior is not the result of negligence. Rather, the frequency with which Plaintiff's counsel acted unreasonably and the nature of their actions gravely concern the Court and convince the Court that Plaintiff's conduct is akin to bad faith. An objectively reasonable attorney—and, thankfully, the vast majority of attorneys that appear before this Court—would not have acted as Plaintiff's counsel have in litigating this case. Defendants Kennedy, Leverich, Owens, Williams, and Herbener have sufficiently demonstrated that Plaintiff's counsel has litigated this case in an unreasonable and vexatious manner. And the record undoubtedly reflects that Plaintiff's conduct multiplied the proceedings. Thus, the first two prongs of the § 1927 inquiry have been satisfied.

However, for sanctions under § 1927 to be proper, “the amount of the sanction cannot exceed the costs occasioned by the objectionable conduct.” *Traffic Sports USA, Inc.*, 2008 WL 4792196, at *4. Accordingly, “the dollar amount of the sanction must bear a financial nexus to the excess proceedings, i.e., the sanction may not exceed the ‘costs, expenses, and attorneys’ fees reasonably incurred because of such conduct.’” *White v. Verizon Fla. LLC*, No. 8:09-cv-1533-T-23TBM, 2011 WL 806713, at *4 (M.D. Fla. Feb. 10, 2011) (quoting *Amlong & Amlong*, 500 F.3d at 1239), *report and recommendation adopted sub nom.*, *Lochin v. Verizon Fla. LLC*, No. 8:09-cv-1535-T-23TBM, 2011 WL 806607 (M.D. Fla. Mar. 2, 2011). Defendants Kennedy, Leverich, Owens, Williams, and Herbener have not requested a particular amount for § 1927 sanctions.

Rather, they have indicated in their motions that “[s]hould the Court award sanctions as requested in this Motion, the Defendants will submit appropriate affidavits and records demonstrating the amount of such expenses to be assessed in accordance with the Court’s ruling.” (Doc. 511 at 19 n.5; Doc. 512 at 19 n.7). Defendants Kennedy, Leverich, Owens, Williams, and Herbener will therefore be directed to file motions to quantify so that the Court can determine the amount of sanctions to award pursuant to § 1927.

The Court is also unable to assess the amount of sanctions that the City is entitled to pursuant to § 1927. Although the City, filed affidavits, exhibits, and time entries in support of its request for sanctions, (*see* Doc. Nos. 597-1, 597-2, 597-3, 598-1, 598-2, 598-3), those documents indicate that the City seeks to recover all of the attorney’s fees incurred in working on this case. Because the Court has concluded that Plaintiff’s claim was not entirely baseless, it rejects the City’s request to recover all of its attorney’s fees. Like Defendants Kennedy, Leverich, Owens, Williams, and Herbener, the Court will allow the City to file a motion to quantify so that the Court may assess an appropriate sanctions award pursuant to § 1927. The City’s motion to quantify should relate to particular conduct by Plaintiff’s counsel that created an inordinate multiplication of proceedings.¹¹

C. Sanctions Based on Plaintiff’s Amended Motion to Vacate Judgment

¹¹ In submitting their motions to quantify, Defendants are reminded that in order for fees to be awarded under § 1927, Defendants must establish a causal link between the misconduct and the fees sought as sanctions. *See Goodyear Tire & Rubber Co. v. Haeger*, 137 S. Ct. 1178, 1186 & n.5 (2017). Additionally, this Court has already ordered Plaintiff’s counsel to pay sanctions in the form of attorney’s fees for various reasons, including Plaintiff’s counsel’s failure to comply with certain discovery orders and pretrial obligations and for Plaintiff’s failure to attend her own deposition. Accordingly, any motions to quantify filed by Defendants shall be limited to conduct that has not already resulted in sanctions against Plaintiff’s counsel.

The final set of motions seek sanctions based on the filing of Plaintiff's allegedly frivolous Motion to Vacate Judgment (Doc. 524). These motions include the City's Motion for Sanctions and the Individual Defendants' Motion for Rule 11 Sanctions.

1. *Background*

The procedural facts surrounding Plaintiff's Amended Motion to Vacate were summarized in this Court's May 13, 2015 Order (Doc. 567) denying Plaintiff's Amended Motion to Vacate and are as follows:¹² On July 2, 2012, the City Defendant moved for summary judgment on the battery and negligent training claims, (Doc. 292), and the Individual Defendants moved for summary judgment on the excessive-force claims, (Doc. Nos. 293, 295–300). United States District Judge Charlene E. Honeywell granted the City Defendant's motion. (Jan. 7, 2013 Order, Doc. 455, at 9). Regarding the Individual Defendants, Judge Honeywell granted summary judgment as to Defendants Leverich, Herberner, Owens, Williams, and Kennedy, and denied summary judgment as to Defendants Gomez and Hewatt. (Feb. 8, 2013 Order, Doc. 476, at 21–22). Defendants Gomez and Hewatt filed an interlocutory appeal. (*See* Feb. 26, 2013 Notice of Appeal, Doc. 483). On October 1, 2014, the Eleventh Circuit issued its Opinion, reversing Judge Honeywell's denial of summary judgment as to Defendants Gomez and Hewatt. *Bussey-Morice v. Gomez*, 587 F. App'x 621, 631 (11th Cir. 2014) (*per curiam*); (*see also* 11th Cir. Op., Doc. 499, at 24). The mandate issued on December 30, 2014. (Doc. 502). As a result, Judge Honeywell ordered that judgment be entered in favor of all Defendants and against Plaintiff, (Jan. 8, 2015 Order, Doc. 503, at 1–2), and the corresponding Judgment was entered on January 8, 2015, (Jan. 8, 2015 J., Doc. 504). Notably, the January 8, 2015 Judgment reflects Judge Honeywell's grant of summary judgment in favor of

¹² This factual background is taken verbatim from this Court's May 13, 2015 Order (Doc. 567 at 7–8) and formatted to be a part of this Order for readability.

Defendants Leverich, Herberner, Owens, Williams, Kennedy, and the City Defendant, as well as the Eleventh Circuit-mandated summary judgment in favor of Defendants Gomez and Hewatt. Plaintiff filed a Motion to Vacate the January 8, 2015 Judgment (Doc. 517) and subsequently filed the Amended Motion to Vacate.

In Plaintiff's Amended Motion to Vacate, she argued that the January 8, 2015 Judgment should be vacated pursuant to Federal Rule of Civil Procedure 60(b)(2), which permits a court to vacate a judgment pursuant to newly discovered evidence.¹³ In arguing that the judgment should be vacated based on newly discovered evidence, Plaintiff relied upon the affidavit of Frank Valpetti ("Volpetti Affidavit," Doc. 524-4), a security guard at Wuesthoff Hospital who was present the night of Bussey's death.¹⁴ The City argued that the Amended Motion to Vacate should be denied because it failed every prong of the 60(b)(2) test. Similarly, the Individual Defendants argued that the Volpetti Affidavit failed to satisfy the majority of the requirements of Rule 60(b)(2). The Court found that Plaintiff failed to satisfy four of the five Rule 60(b)(2) prerequisites

¹³ Under Federal Rule of Civil Procedure 60(b)(2), a party may move to vacate "a final judgment, order, or proceeding" based on "newly discovered evidence." In the Eleventh Circuit, to obtain such relief based on newly discovered evidence, the movant must establish: "(1) the new evidence was discovered after the judgment was entered, (2) [the movant] had exercised due diligence in discovering that evidence, (3) the evidence was not merely cumulative or impeaching, (4) the evidence was material, and (5) the evidence was likely to produce a different result." *Wortley v. Chrispus Venture Capital, LLC (In re Global Energies, LLC)*, 763 F.3d 1341, 1347 (11th Cir. 2014) (per curiam) (citing *Waddell v. Hendry Cty. Sheriff's Office*, 329 F.3d 1300, 1309 (11th Cir. 2003)).

¹⁴ This particular individual was referred to throughout the case as Frank Valpetti until Plaintiff's counsel referred to him as Frank Volpetti in filing the Amended Motion to Vacate. (See Doc. 567 at 9). That Frank Valpetti and Frank Volpetti are the same person has never been disputed. In its previous Order, the Court elected to refer to that individual as "Valpetti," which was consistent with the prior evidence and proceedings, (*id.*), and the Court continues to do so here. As in its previous Order, the Court refers to the actual affidavit as the "Volpetti Affidavit." (See *id.*).

and denied Plaintiff's Amended Motion to Vacate.¹⁵ (*See* Doc. 567 at 11). Prior to this Court's ruling on the Amended Motion to Vacate, the City and the Individual Defendants filed their respective motions for sanctions, which are now before the Court.

2. *The Parties' Arguments*

The City asks that Plaintiff and Plaintiff's counsel be required to pay attorney's fees, costs, and expenses incurred by the City in responding to the Amended Motion to Vacate Judgment. More specifically, the City seeks sanctions pursuant to Federal Rule of Civil Procedure 11 and 28 U.S.C. § 1927. Similarly, the Individual Defendants request that sanctions be imposed under Rule 11. Having addressed the relevant legal standards above,¹⁶ the Court will first address the parties' Rule 11 arguments.

Defendants present similar arguments for the imposition of sanctions pursuant to Rule 11. They argue that sanctions are warranted because Plaintiff's Amended Motion to Vacate had no legal or factual basis. Defendants contend that the Volpetti Affidavit (1) is not newly discovered evidence, (2) is merely cumulative or impeaching, (3) is not material, and (4) would not have resulted in a different outcome. Plaintiff opposes each of these contentions. The majority of Plaintiff's Response to the City's Motion for Sanctions and Response to the Individual Defendants' Motion for Sanctions merely reiterates the same arguments that Plaintiff presented in arguing the Amended Motion to Vacate Judgment. (*Compare* Doc. 524 at 8–13, *with* Doc. 558 at 7–12, *and* Doc. 566 at 7–11). The Court previously addressed Plaintiff's Rule 60(b)(2) challenge and decided that Plaintiff's arguments were meritless in denying Plaintiff's Amended Motion to Vacate. The

¹⁵ The Court questioned whether the Volpetti Affidavit satisfied the first element—that is, whether the Volpetti Affidavit qualified as newly discovered evidence—but ultimately did not make that determination. (*See* Doc. 567 at 11).

¹⁶ *See supra* section II.B.1.a., II.B.2.a.

relevant question now, for purposes of determining whether Rule 11 sanctions should be imposed, is (1) whether the legal claims or factual contentions asserted in Plaintiff's Amended Motion to Vacate were legally frivolous and (2) whether a reasonably competent attorney should have known they were frivolous.

Plaintiff's Amended Motion to Vacate was premised on the Volpetti Affidavit. This Court expressed serious doubt as to the affidavit's merit and reliability as well as whether it even qualified as newly discovered evidence. (*See* Doc. 567 at 11, 13). In denying Plaintiff's Amended Motion to Vacate, the Court held that Plaintiff failed to satisfy elements two through five of the Rule 60(b)(2) inquiry. This is significant because Rule 60(b)(2) requires the satisfaction of all five elements. Yet "every assertion in the affidavit fail[ed] some element of the Rule 60(b)(2) inquiry," (*id.* at 16), and many of the assertions failed to satisfy multiple elements. This demonstrates the legal frivolity of Plaintiff's Amended Motion to Vacate, especially since relief under Rule 60(b)(2) is extraordinary and the requirements thereunder "must be strictly met" for the Rule to provide relief. *Waddell v. Hendry Cty. Sheriff's Office*, 329 F.3d 1300, 1309 (11th Cir. 2003) (quotation omitted).

Briefly reviewing some of Plaintiff's arguments in the Amended Motion to Vacate further reveals that Plaintiff's Motion was indeed frivolous. For example, Plaintiff's "newly discovered evidence" consisted of the Volpetti Affidavit—an affidavit from a witness whose testimony had already been filed by Plaintiff, was subsequently filed several more times throughout the case, and was continuously relied upon by the Court throughout the proceedings. Nevertheless, Plaintiff's Amended Motion to Vacate withheld the fact that Valpetti's testimony was already record evidence before the Court. Additionally, Plaintiff argued in her Amended Motion to Vacate that she was unable to depose Valpetti even though she diligently tried to locate him. But, in reality,

Plaintiff did not attempt to depose Valpetti until the month before the discovery deadline, and after that attempt failed, Plaintiff did not even try to search for Valpetti for over two years. (Doc. 567 at 12). As this Court previously articulated, “[s]uch conduct bespeaks a lack of diligence.” (*Id.* at 13). And to argue that this affidavit was new evidence that was discovered as a result of Plaintiff’s due diligence bespeaks frivolity.

Moreover, as previously explained by this Court, the assertions in the Volpetti Affidavit were clearly cumulative—indeed, Plaintiff relied on several statements in arguing for vacature that were already before the Court, including facts that were clearly established at summary judgment. (*See id.* at 15–16). Additionally, numerous statements in the affidavit were impeaching or of no import. (*See id.* at 13–16). Any reasonable attorney reviewing the Volpetti affidavit would have realized that it did not come close to satisfying all five requirements of Rule 60(b)(2). The Court therefore concludes that Plaintiff’s Amended Motion to Vacate asserted frivolous arguments and that a reasonably competent attorney should have known they were frivolous. Consequently, the Court will grant the City’s and the Individual Defendants’ motions for sanctions under Rule 11 based on Plaintiff’s Amended Motion to Vacate. Sanctions will be imposed against Plaintiff’s counsel.¹⁷

As for the nature of the sanction, Rule 11 provides that a sanction imposed under the rule “must be limited to what suffices to deter repetition of the conduct or comparable conduct by others similarly situated.” Fed. R. Civ. P. 11(c)(4). “The sanction may include nonmonetary directives; an order to pay a penalty into court; or, if imposed on motion and warranted for effective

¹⁷ The Court will not sanction Plaintiff. The Court finds that the decision to file the frivolous Amended Motion to Vacate, the related research and investigation, the formulation of the arguments, and the drafting of said motion is conduct attributable solely to Plaintiff’s counsel. *See* Fed. R. Civ. P. 11(c)(1) (authorizing the Court to impose Rule 11 sanctions “on any attorney, law firm, or party that violated the rule or is responsible for the violation”).

deterrence, an order directing payment to the movant of part or all of the reasonable attorney's fees and other expenses directly resulting from the violation." *Id.* The City requests attorney's fees, costs, and expenses incurred in responding to the Amended Motion to Vacate Judgment. The Court finds that such an award is likely to be sufficient, but not greater than necessary, to appropriately deter such meritless conduct in the future. Further, this type of award is explicitly authorized under Rule 11. Thus, the City will be directed to file a motion to quantify, outlining the attorney's fees, costs, and expenses incurred in responding to the Amended Motion to Vacate. The Individual Defendants do not specify the nature of the sanctions award that they seek. But they do state that "[s]hould the Court include an award of attorney's fees as part of those sanctions, the Defendants will submit appropriate affidavits and records demonstrating the amount of such expenses to be assessed in accordance with the Court's ruling." (Doc. 563 at 10). Like the City, the Individual Defendants will be awarded their reasonable attorney's fees, costs, and expenses incurred in responding to the Amended Motion to Vacate. The Individual Defendants will therefore also be directed to file a motion to quantify, outlining the attorney's fees, costs, and expenses incurred in responding to Plaintiff's Amended Motion to Vacate.

Because the Court has determined that sanctions will be awarded against Plaintiff's counsel for the Amended Motion to Vacate Judgment pursuant to Rule 11, the Court declines to address the City's argument for sanctions pursuant to § 1927.

D. Referral to the Florida Bar

The Individual Defendants argue in their Motion for Civil Contempt that the Court has broad discretion to "fashion an appropriate remedy, including referral to a grievance committee." (Doc. 592 at 3). Additionally, in the Individual Defendants' Motion for Rule 11 Sanctions, they argue that Plaintiff's counsel violated the Florida Bar Rules by impugning the qualification and

integrity of the judges and other attorneys. (Doc. 563 at 8). “[T]he Court has the discretion under Rule 11 and its inherent authority to impose a variety of non-monetary sanctions,” including referring the matter to disciplinary authorities. *In re Engle Cases*, No. 3:09-cv-10000-J-WGY-JBT, 2017 WL 4675652, at *67 (M.D. Fla. Oct. 18, 2017). Under its inherent authority, a federal court may impose “sanction[s] for conduct which abuses the judicial process.” *Goodyear Tire & Rubber Co. v. Haeger*, 137 S. Ct. 1178, 1186 (2017) (quotations omitted). Similar to § 1927, the Court’s inherent sanctioning authority permits it to impose sanctions “when a party has acted in bad faith, vexatiously, wantonly, or for oppressive reasons.” *Chambers v. NASCO, Inc.*, 501 U.S. 32, 45–46 (1991) (quotation omitted); *see also Meidinger v. Healthcare Indus. Oligopoly*, 391 F. App’x 777, 780 (11th Cir. 2010) (“In order to exercise its inherent power to award sanctions, the court must find that a party acted in bad faith.”). Finally, “[i]nherent powers must be exercised with restraint and discretion.” *Footman v. Cheung*, 341 F. Supp. 2d 1218, 1224 (M.D. Fla. 2004) (citing *Barnes v. Dalton*, 158 F.3d 1212, 1214 (11th Cir. 1998)). After careful review of the record, the Court has decided to refer Plaintiff’s counsel to the Florida Bar.

The Court finds that Plaintiff’s counsel have acted in bad faith in litigating this case. The most outrageous conduct exhibited by Plaintiff’s counsel is likely their frequent, baseless suggestions of racial bigotry directed towards Defendants, defense counsel, and even the Court. Indeed, Plaintiff’s counsel has repeatedly disparaged the Court’s decisions, while accusing the Court of acting based on an unfounded alleged racial bias or other notions of partiality. (*See, e.g.*, Doc. 257 at 6–7; Doc. 287 at 2–7; Doc. 592-1 at 6 n.4; *see also* Doc. 570 at 1 n.1 (alleging that those involved in this case were engaged in some sort of concerted effort to discourage the filing of civil rights suits and stating that it was “not necessarily a surprise” that the Eleventh Circuit ruled in favor of the officers)). And as discussed above, the record demonstrates that Plaintiff’s

counsel acted vexatiously throughout the litigation, multiplying the proceedings. *See supra* Section II.B.2.b.

Furthermore, Patterson is not a first-time offender. It appears that Patterson has engaged in a pattern of reckless behavior in litigating numerous cases throughout Florida.¹⁸ *Cf. Parish-Carter v. Avossa*, No. 9:16-cv-81623, 2017 WL 4355835, at *4 (S.D. Fla. Oct. 2, 2017) (referring attorneys to the Florida Bar where their actions in a single case demonstrated a pattern of reckless behavior). In *Gunning v. Miami-Dade County*, an order to show cause was entered after Patterson threatened to physically attack opposing counsel during a deposition. No. 1:01-cv-859-FAM (S.D. Fla. May 6, 2013), Doc. 101; *see id.* at Doc. 74 at 60:7–13. Patterson was warned that any similar conduct would likely result in the suspension of his Florida Bar license as well as a referral to the Florida Bar, but no sanctions were imposed. *Id.* at Doc. 104 at 2. In *Barcomb v. Fiserv Health, Inc.*, Judge Merryday issued an order striking numerous filings submitted by Patterson based on Patterson’s “repeated inattention to proper procedure” and failure to comply with the local rules. No. 8:08-cv-1790-T-23TGW (M.D. Fla. Dec. 23, 2008), Doc. 21 at 2. In that same case, Judge Merryday subsequently overruled an objection that Patterson filed to the magistrate judge’s report and recommendation, noting that Patterson’s objection failed to cite any “legal authority and compris[ed] eight pages dedicated principally to impugning the fairness of the Magistrate Judge.” *Barcomb*, 2009 WL 2765468, at *1 (M.D. Fla. Aug. 27, 2009). Notably, Patterson’s allegations regarding the magistrate judge’s lack of impartiality in *Barcomb* bear a striking resemblance to the

¹⁸ The examples of misconduct are set forth in Defendant Kennedy’s Motion for Sanctions and Defendants Leverich, Owens, Williams, and Herbener’s Motion for Sanctions. (*See* Doc. 511 at 15–18; Doc. 512 at 16–18). Plaintiff argues that these examples of prior misconduct are attacks on Patterson’s character that serve to distract the Court from the real issues. The Court disagrees. The previous behaviors cited by Defendants are included to demonstrate Patterson’s pattern of abusive and inappropriate behavior and to support Defendants’ argument for the imposition of serious disciplinary measures to deter similar future conduct.

allegations Patterson has launched at this Court and the various judges that have presided over this case. In denying Patterson's objection in *Barcomb*, Judge Merryday informally reprimanded Patterson. *See id.* Accordingly, it seems that if this conduct is to cease, Patterson needs more than an informal reprimand.

Additionally, Defendants Kennedy, Herbener, Williams, Owens, and Leverich filed a Notice of Supplemental Authority, informing the Court of the Third District Court of Appeals' decision to affirm sanctions previously entered against Patterson in the amount of \$166,000 for changing sworn testimony, filing frivolous appeals, engaging in vexatious litigation and bad faith conduct, proffering false evidence to the court, and violating ethical rules by impugning the qualifications and integrity of the judges and attorneys. *Faddis v. City of Homestead*, No. 3D14-121, 2014 WL 4628900 (Fla. 3d DCA Sept. 17, 2014). After the appellate court affirmed the sanctions, the court also issued an order to show cause as to why the plaintiff and her counsel, Patterson, should not be ordered to compensate the appellees for the plaintiff's frivolous appeal of the trial court's order awarding sanctions. *Faddis*, 157 So. 3d 447, 449 (Fla. 3d DCA 2015). Finding Patterson's response to the order to show cause unpersuasive,¹⁹ the court ordered appellate attorney fees as a sanction against Patterson. *Id.* at 453–54.²⁰ At the hearing, Patterson represented

¹⁹ Like many of the motions filed by Patterson throughout this case, Patterson's response to the *Faddis* court's order to show cause impugned the qualifications and integrity of the appellate and trial court judges as well as other officers of the court. *Faddis*, 157 So. 3d at 453. In particular, Patterson argued in that response that he was "being bullied by the parties, their counsel, or the court"; "that a miscarriage of justice [was] knowingly being perpetrated upon him"; and that the trial court's decision to impose sanctions was "part of some political scheme to silence him and his client." *Id.* (internal quotations omitted). The foregoing arguments bear an uncanny resemblance to the arguments Patterson raised in this case; both arguments are completely unsupported and beneath the dignity of the judicial process.

²⁰ Although Patterson appealed the *Faddis* court's decision affirming the trial court's sanctions award to the Florida Supreme Court, (*see* Doc. 561 at 1), the Florida Supreme Court dismissed the appeal for lack of jurisdiction, *Faddis v. City of Homestead*, 163 So. 3d 508 (Fla. 2015).

that the *Faddis* sanctions were investigated by the Florida Bar and that the Bar concluded that the “orders against [him] were not founded” and that he “never did anything fraudulent.” (Doc. 610 at 54:22–24). While the Florida Bar’s website indicates that there is a disciplinary proceeding currently pending against Patterson and does not provide any further information, the Court nevertheless takes Patterson’s representation into account in rendering its decision here. Even so, the *Faddis* decision demonstrates that large monetary sanctions are likely insufficient to deter Patterson from engaging in similar misconduct in the future.

Finally, Patterson has shown no signs of remorse for the actions he has taken in this case. *See Avossa*, 2017 WL 4355835, at *4 (referring attorneys to the Florida Bar and noting that one attorney in particular had not shown any sign of remorse for his actions or taken responsibility for the harassment he inflicted upon defense counsel). At the September 27, 2017 hearing, Patterson insisted that he and Locke had not done anything wrong and that they were merely arguing what they believed were reasonable constitutional claims on behalf of their client. Certainly, it is an attorney’s duty to zealously advocate on a client’s behalf, but must zealous advocacy mean that a lawyer is permitted to litigate a client’s claims without any boundaries, ethical rules, or professional obligations to restrain and guide his or her conduct? Clearly, the answer is no. While an attorney is an advocate, he is also an officer of the court and is required to “demonstrate respect for the legal system and for those who serve it, including judges, other lawyers, and public officials.” R. Reg. Fla. Bar ch. 4, pmbl.

This Court has repeatedly admonished Plaintiff’s counsel from failing to comply with court orders; improperly deviating from the legal issues in this case; and baselessly suggesting that Defendants, defense counsel, and the judges presiding over this case have been motivated by some racial or other bias. Nevertheless, Plaintiff’s counsel’s conduct throughout this litigation evidences

that the Court's warnings have fallen on deaf ears. Accordingly, the Court refers Plaintiff's attorneys—Kelsay Patterson and Wendell Locke—to the Florida Bar for further investigation.²¹

III. CONCLUSION

For the foregoing reasons, it is **ORDERED** and **ADJUDGED** as follows:

1. The Individual Defendants' Motion for Civil Contempt and Sanctions (Doc. 592) is **GRANTED in part** and **DENIED in part**. **On or before February 12, 2018**, Attorney for Plaintiff, Wendell Locke, will be ordered to pay sanctions to the Individual Defendants in the amount of \$6,269.00. The Motion is **DENIED** in all other respects.
2. The City of Rockledge's Renewed Motion to Quantify Attorney's Fees (Doc. 501) is **GRANTED**. **On or before February 12, 2018**, Attorney for Plaintiff, Wendell Locke is ordered to pay sanctions to the City in the amount of \$3,004.50.
3. Defendant Kennedy's Motion for Sanctions (Doc. 511) is **GRANTED in part** and **DENIED in part**. Defendant Kennedy is entitled to sanctions pursuant to 28 U.S.C. § 1927. The Motion is **DENIED** in all other respects.
4. Defendants Leverich, Owens, Williams, and Herbener's Motion for Sanctions (Doc. 512) is **GRANTED in part** and **DENIED in part**. Defendants Leverich, Owens, Williams, and Herbener are entitled to sanctions pursuant to 28 U.S.C. § 1927. The Motion is **DENIED** in all other respects.

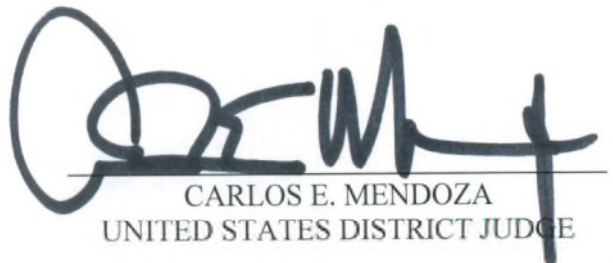
²¹ Although part of the Court's analysis focused on previous instances of misconduct committed by Patterson, the misconduct that has occurred in this case is equally attributable to Locke, as he has served as co-counsel with Patterson since 2012 and authored many of the filings submitted in this case. Accordingly, the Court will also refer Wendell Locke to the Florida Bar.

5. Defendant City of Rockledge's Amended Motion for Attorney's Fees (Doc. 596) is **GRANTED in part** and **DENIED in part**. The City is entitled to sanctions pursuant to 28 U.S.C. § 1927. The Motion is **DENIED** in all other respects.
6. **On or before January 26, 2018**, Defendants shall file a motion to quantify fees and costs so that the Court can determine the amount of the sanctions awards owed to Defendants Kennedy, Leverich, Owens, Williams, Herbener, and the City pursuant to 28 U.S.C. § 1927. Failure to file an appropriate motion with supporting affidavits and timesheets in the time provided will result in the denial of Defendants' requests for § 1927 sanctions. If Plaintiff decides to file a response in opposition to a motion to quantify, the response shall be filed **within seven days of the date of service of the corresponding motion to quantify**.
7. The City of Rockledge's Motion for Sanctions (Doc. 553) is **GRANTED**.
8. The Individual Defendants' Motion for Rule 11 Sanctions (Doc. 563) is **GRANTED**.
9. **On or before January 26, 2018**, Defendants shall file a motion to quantify fees and costs so that the Court can determine the amount of the sanctions awards owed to Defendants pursuant to Federal Rule of Civil Procedure 11 based on Plaintiff's Amended Motion to Vacate. Failure to file an appropriate motion with supporting affidavits and timesheets in the time provided will result in the denial of Defendants' requests for Rule 11 Sanctions. If Plaintiff decides to file a response in opposition to a motion to quantify, the response shall be filed **within seven days of the date of service of the corresponding motion to quantify**.

10. The Court refers the matters discussed herein to the Florida Bar for an investigation into:

- a. Whether Patterson and Locke violated Rule 4-8.2(a) of the Rules Regulating the Florida Bar, which prohibits attorneys from impugning the qualifications and integrity of judges and other attorneys, by including in their filings unwarranted allegations against defense counsel and claims of racial bigotry against Defendants, counsel for Defendants, and the Court.
- b. Any other violations of the Florida Rules of Professional Conduct.
- c. The Clerk is directed to transmit this Order as well as the entire record of the sanctions proceedings to the Florida Bar.

DONE and **ORDERED** in Orlando, Florida on January 12, 2017.



CARLOS E. MENDOZA
UNITED STATES DISTRICT JUDGE

Copies furnished to:

Counsel of Record

**UNITED STATES DISTRICT COURT
MIDDLE DISTRICT OF FLORIDA
ORLANDO DIVISION**

**J. PEARL BUSSEY-MORICE, as
Personal Representative of the
Estate of Preston Bussey, III,**

CASE NO: 6:11-cv-970-Orl-36-GJK

Plaintiff,

vs.

**PATRICK KENNEDY, TIMOTHY
HERBERNER, TIMOTHY HEWITT,
YVETTE GOMEZ, DON WILLIAMS,
ROBERT OWENS, MATTHEW LEVERICH,
AND THE CITY OF ROCKLEDGE, FLORIDA,**

Defendants.

**DEFENDANTS' MOTION TO TERMINATE OR LIMIT DEPOSITIONS,
TO APPOINT A SPECIAL MASTER AND TO IMPOSE SANCTIONS**

COME NOW Defendants PATRICK KENNEDY, TIMOTHY HERBENER, TODD HEWATT, IVETTE GOMEZ, DON WILLIAMS, ROBERT OWENS and MATTHEW LEVERICH, by and through undersigned counsel and pursuant to Fed. R. Civ. P. 30(d), Fed. R. Civ. P. 53, and this Court's inherent authority, and hereby file their Motion to terminate or limit depositions, to appoint a Special Master to preside over future depositions taken by Plaintiff, and to impose sanctions against Plaintiff's counsel, and would state as follows:

I. Preliminary Statement.

Plaintiff brought this action against the individual Defendant police officers pursuant to 42 U.S.C. § 1983 for allegedly using excessive force in their attempt to restrain a violent, psychotic, Baker-Acted individual who had escaped from the Wuesthoff Hospital. This case has nothing to do with race. Nonetheless, throughout this litigation, Plaintiff's counsel has leveled

baseless accusations against defense counsel for alleged racism, fraud and assorted other unethical behavior. This conduct spilled over into the Defendants' depositions, during which Plaintiff's counsel repeatedly harassed and abused the witnesses. Ultimately, the deposition of Officer Williams was terminated after Plaintiff's counsel's unprovoked outburst that "white American attorneys and white police officers always love to accuse Africans and blacks of always being hostile of always being argumentative and always being nasty." (See Excerpts of Deposition of Ofc. Don Williams, Jan. 6, 2012, p. 6:21-25, attached hereto as Exhibit A.)

Plaintiff's counsel's slanderous accusations and harassment has escalated throughout this case to the point that Plaintiff's depositions cannot proceed without judicial oversight. Pursuant to Fed. R. Civ. P. 30(d), the Defendants respectfully move to terminate the depositions, to appoint a special master to preside over future depositions taken by Plaintiff's counsel in this case and to impose sanctions, including the payment of fees for the special master, against Plaintiff's counsel.

II. Officer Williams' deposition was terminated after Plaintiff's counsel's unprovoked accusations of racism against the defendants and defense counsel.

Officer Don Williams was deposed on January 6, 2012. Officer Williams was the fifth defendant to be deposed during that week. The Defendants initially consented to Plaintiff's request to allow Plaintiff's sister, Ms. Anna Cotton, to remain in the room during the depositions. However, as the depositions progressed throughout the week, Plaintiff and Ms. Cotton began to disrupt the proceedings by shaking their heads at the witnesses, commenting upon the testimony given by the defendants, glaring and pointing at defense counsel, etc. (See Affidavit of Sgt. Hewatt, ¶ 5, attached hereto as Exhibit B and Affidavit of Officer Owens, ¶ 5, attached hereto as Exhibit C). Finally, during Officer Williams' deposition, defense counsel objected to this

conduct and indicated that if such behavior was going to continue, Ms. Cotton may have to leave the deposition. (See Ex. A, Excerpts of Deposition of Ofc. Don Williams, Jan. 6, 2012, pp. 5-6).

In response to that request, Plaintiff's counsel hurled racial insults against defense counsel and the witnesses, claiming that the "white American attorneys and white police officers" were just doing what they always do – accuse African Americans of misbehavior. Plaintiff's counsel stated as follows:

Mr. Patterson: I'll be the first to say and I want the record to reflect that just because we're in situations like this where I'm an African American and my clients are African Americans it is always consistent that white American attorneys and white police officers always love to accuse Africans and blacks of always being hostile of always being argumentative and always being nasty.

...

And now because you're here today and you don't like looking over at my client and now you want to get on the record and say all of these atrocious things we're supposed to sit here and as good African Americans understand that we have been told what to do because you're suggesting that we're being hostile or we're making faces or we're being violent or we're being rude or nasty and if we object, then say, well, that's not the case and then we'll suspend the deposition, we'll leave, we'll terminate this because you don't agree with our characterization of you. You know, it is just, you know, you're damned if you do, damned if you don't.

(Ex. A, Excerpts of Deposition of Ofc. Don Williams, Jan. 6, 2012, pp. 5-17.) This unprovoked stream of racial accusations continued for several minutes until the deposition was terminated.¹

III. Plaintiff's counsel's racial antagonisms have persisted throughout this litigation.

The outburst described above is not an isolated event. Plaintiff's counsel has attempted to inject racial animus into this case at every turn.² For example, during the first day of depositions, Plaintiff's counsel inquired as to whether Officer Leverich was Jewish.

¹ As stated by defense counsel during the deposition, the objection to the disruptive conduct had absolutely nothing to do with race. (Ex. A, Excerpts of Deposition of Ofc. Don Williams, Jan. 6, 2012, p. 8.) ("your clients could have been red, purple or blue and if they are going to act the way they were acting . . . I would complain.")

Mr. Patterson: Now, I did a public records request of your personnel file. So I've read through it. It says that you read Hebrew. Are you Jewish?

Officer Leverich: I am Jewish, yes. (Excerpts of Deposition of Ofc. Matthew Leverich, Jan. 4, 2012, p. 6, attached hereto as Exhibit D).

There was no contemporaneous objection to this question, as it was not clear to what end Plaintiff's counsel was seeking this information.

However, Plaintiff's counsel's intent became clear as the depositions continued. By the following day, Plaintiff's counsel was strongly insinuating that the police officers used a taser on Mr. Bussey, not because he was violent, psychotic, threatening, resisting arrest and committing battery on law enforcement, but simply because he was African American. Upon questioning why Sergeant Hewatt wasn't himself tasered following a traffic stop and arrest in 1990, Mr. Patterson started the following line of questioning:

Mr. Patterson: And certainly Preston Bussey didn't tell you I'm going to fuck with you because you're fucking with me. He didn't say that to you, did he?

Sgt. Hewatt: No, sir.

Mr. Patterson: In fact, his words were incoherent and unintelligible, weren't they?

Sgt. Hewatt: I believe so.

Mr. Patterson: Okay. And you would acknowledge that one difference between Preston Bussey and yourself is that you're a white American and Preston Bussey was a black American, true?

[objections]

² In fact, this conduct began at the Rule 26 initial attorney's meeting, where Plaintiff's counsel refused to consent to magistrate jurisdiction, noting that he, his clients and the assigned district judge was black, whereas the assigned magistrate judge was white. Upon defense counsel expressing shock at such a statement, Plaintiff's counsel proceeded to lecture about the modern day realities of being an African American attorney.

Mr. Patterson: These are just facts. Either - - you are a white American, aren't you? (Excerpts of Deposition of Sgt. Gordon Hewatt, Jan. 5, 2012, pp. 13-17, attached hereto as Exhibit E).

Mr. Patterson then went on for several minutes sarcastically declaring that Sgt. Hewatt was “a pretty fortunate fellow” for not being tasered, pepper sprayed or beaten with a billy club during his youth. (*Id.*)

This harassment persisted throughout the depositions. Plaintiff's counsel's demeanor, tone, attitude, sarcasm, eye-rolling, pointing and yelling resulted in countless requests from defense counsel to stop harassing the witnesses.³ (*See* Affidavit of Sgt. Hewatt, ¶ 4, Ex. B; Affidavit of Officer Owens, ¶ 4, Ex. C.) At one point, undersigned counsel suggested that an attempt be made to reach the Magistrate judge so that the deposition could proceed without further harassment. (*See* Ex. E, Excerpts of Deposition of Sgt. Gordon Hewatt, Jan. 5, 2012, pp. 4-7). Plaintiff's counsel rejected that suggestion. (*Id.*)

Plaintiff's counsel's hostility was not directed solely at the police officers. Immediately following Sgt. Hewatt's deposition on January 5, Plaintiff's counsel exited the building and began raising his voice in an extremely hostile manner towards defense counsel. (*See* Ex. B, Affidavit of Sgt. Hewatt, ¶¶ 6-9; Ex. C Affidavit of Officer Owens, ¶¶ 7-9.) Plaintiff's counsel's conduct was so aggressive that the police officers remained on the scene out of concern that Plaintiff's counsel posed a safety threat to defense counsel and others. (*See* Ex. B, Affidavit of Sgt. Hewatt, ¶¶ 6-9; Ex. C, Affidavit of Officer Owens, ¶¶ 7-9.)

³ As just one example, at one point during Sgt. Hewatt's deposition, Plaintiff's counsel turned around completely in his chair and began asking questions in sarcastic tones with his back to the witness. (*See* Ex. E, Excerpts of Deposition of Sgt. Gordon Hewatt, Jan. 5, 2012, p. 12; Ex. C, Affidavit of Officer Owens, ¶ 4.)

IV. Plaintiff's counsel has repeatedly leveled bald accusations of fraud and racism against defense counsel.

Plaintiff's counsel has alleged and suggested throughout this proceeding that defense counsel is unethical, fraudulent and racist. For example, after refusing to return privileged documents that were inadvertently sent to Plaintiff's counsel by one of the Defendants, Plaintiff's counsel accused defense counsel of committing fraud. In one of the many motions directed to this issue, Plaintiff's counsel took it a step further by suggesting that defense counsel's alleged fraud was racially motivated. Plaintiff's counsel stated as follows:

Messers Walker & Flood are part of a well known and established Orlando law firm whose members have various political & professional ties. Despite their lucky association, should we bother to take the time to consider these lies and distortions served in the context of this 1950s style senseless Southern death of an unarmed Black man in a hospital as a patient by seven (7) fully armed police officers resulting in him being suffocated by a pillow case? In Washington D.C.'s Museum of American History, a significant portion of the second floor is dedicated to the civil rights struggle of African Americans from the 1860s to 1970s. Any thinking person who knows our American history would quickly be able to appreciate the parallel to what occurred to Preston Bussey, III. **The worst part of it all is that the Defendant's lawyers, educated men who must know better, are trying to continue down this path that reflects a sad and ugly American past.** That is, they have chosen to serve lies about a matter involving the untimely, tragic, and unnecessary death of an unarmed Black man there in the hospital, on his own accord, seeking medical help, **AND NOW** being caught red-handed in deceit and dishonesty for which no conservative would ever ratify out loud, **they expect the entitlement of treatment they feel is their birth right.**

(Plaintiff's Reply Re: Motion to Disqualify Defendant's Attorneys [Doc. No. 61, p. 3.])
(emphasis supplied).

Plaintiff's counsel followed up on his allegations of fraud by filing a grievance with The Florida Bar against defense counsel. Plaintiff's counsel's unsupported claims were ultimately rejected by this Court, resulting in a strong admonition that Plaintiff's counsel should withdraw his unfounded Bar complaint. (See Hr'g Tr., Nov. 16, 2011, p. 9:12-20 [Doc. No. 84.]) Despite

that admonition, just five days later Plaintiff's counsel renewed his grievance to The Florida Bar, calling Judge Scriven's ruling a "litigation gift" that relieved defense counsel from a malpractice action. Plaintiff's counsel's claims were entirely baseless; a fact quickly recognized by The Florida Bar when it summarily dismissed the grievance.

This conduct alone warrants sanctions against Plaintiff's counsel. As this Court noted in *Williams v. Florida Health Sciences Ctr., Inc.*, 2007 WL 641328 (M.D. Fla. 2007) *aff'd*, 293 Fed. Appx. 757 (11th Cir. 2008), Rule 11 is violated when an attorney makes bald accusations of fraud against opposing counsel. "An accusation of fraudulent conduct against another member of the bar is a serious charge; in this instance, it is wholly unsubstantiated." *Id*; see also *Thomas v. Tenneco Packaging Co., Inc.*, 293 F.3d 1306, 1320-22 (11th Cir. 2002) (finding of bad faith warranted where attorney included patently offensive remarks directed to opposing counsel in court filings); *Coats v. Pierre*, 890 F.2d 728, 734 (5th Cir. 1989), cert. *denied*, 498 U.S. 821 (1990) (abusive language toward opposing counsel in court documents constitutes a form of harassment prohibited by Rule 11).

V. Sanctions should be imposed against Plaintiff's counsel to deter such conduct in the future.

Federal Rule of Civil Procedure 30(d)(3) provides that, "[a]t any time during a deposition, the deponent or a party may move to terminate or limit it on the ground that it is being conducted in bad faith or in a manner that unreasonably annoys, embarrasses, or oppresses the deponent or party." The Court may impose an appropriate sanction – including the reasonable expenses and attorney's fees, on any person who impedes, delays, or frustrates the fair examination of the deponent. Fed. R. Civ. P. 30(d)(2). In this case, Officer Williams' deposition was terminated upon Plaintiff's counsel's repeated harassment and brazen, unsupported allegations of racism. These false allegations have permeated this case, are patently

offensive, and are by definition the type of bad faith and harassing conduct prohibited by the Rules.

This Court has the inherent authority to impose sanctions against attorneys engaged in such conduct. *Thomas v. Tenneco Packaging Co., Inc.*, 293 F. 3d 1306, 1320 (11th Cir. 2002) (“It has long been understood that certain implied powers must necessarily result to our Courts of justice from the nature of their institution, powers which cannot be dispensed with in a Court, because they are necessary to the exercise of all others.”) (citations omitted). This means, among other things, “that a federal court has the power to control admission to its bar and to discipline attorneys.” *Id.* (citations omitted). “This ‘inherent power’ to sanction errant lawyers, in fact, ‘can be invoked even if procedural rules exist which sanction the same conduct.’” *Id.* (citations omitted).

The reasoning of *Thomas v. Tenneco Packaging Co., Inc.* is particularly applicable to this case. In *Thomas*, the Eleventh Circuit upheld the district court’s impositions of sanctions against an attorney for making repeated vitriolic accusations against opposing counsel, including the unsupported claims that opposing counsel was racist. *Id.* at 1330. The court aptly noted as follows:

[I]n the twenty-first century, individuals take allegations of racism very seriously . . . because allegations of racism are taken so seriously in our society, allegations that are baseless – thereby serving only a frivolous or harassing purpose – are particularly offensive and provoke a strong response from the person accused, given the huge reputational costs involved.

Id. The court further noted that “such race-baiting serves no purpose other than to disrupt proceedings and to harass opposing counsel.” *Id.* at 1324, fn. 28.

Pursuant to Fed. R. Civ. P. 53, the Court may appoint a special master to preside over pretrial matters that cannot be effectively and timely addressed by an available district or

magistrate judge. When allocating payment for the special master, the Court may consider the extent to which a party is responsible for the need to appoint the master. Fed. R. Civ. P. 53(g)(3). In this case, the need for a master to preside over the remainder of Plaintiff's depositions is caused solely by Plaintiff's counsel's undeterred abuse and harassment. Plaintiff's counsel should bear the costs for this appointment.

VI. Conclusion.

Plaintiff's counsel's repeated harassment and slanderous accusations have derailed this litigation. This conduct necessitates the appointment of a master to preside over the remaining depositions taken by Plaintiff's counsel. These depositions should be set in the courthouse or at such other location so as to facilitate the necessary supervision. While additional monetary penalties may be appropriate, at a minimum Plaintiff's counsel should bear the costs associated with the master oversight. Plaintiff's counsel should further be admonished in the strongest terms to deter such conduct in the future.

As this Court noted in *Williams*, 2007 WL 641328, "launching allegations of fraud against opposing counsel without reasonable inquiry as to their truth is unprofessional and unethical behavior, not to mention offensive and damaging to reputable attorneys. As one court stated, '[l]awyers cannot . . . be allowed to make such abusive remarks against opposing counsel and expect to be able to say 'so sorry, I didn't really mean it' and not face sanctions.'" (citations omitted). Plaintiff's counsel has thus far demonstrated that a slap on the wrist will not deter such conduct; a more substantial penalty is required.

CERTIFICATE OF GOOD FAITH

I HEREBY CERTIFY that pursuant to Local Rule 3.01(g), counsel for the Defendants conferred with Plaintiff's counsel prior to bringing this Motion. Plaintiff's counsel does not

object to the appointment of a special master. However, Plaintiff's counsel objects to the remainder of the relief requested herein.

WHEREFORE, Defendants PATRICK KENNEDY, TIMOTHY HERBENER, TODD HEWATT, IVETTE GOMEZ, DON WILLIAMS, ROBERT OWENS and MATTHEW LEVERICH respectfully request that this Court enter an Order terminating the depositions until such time as a special master is appointed and impose sanctions upon Plaintiff's counsel, including the costs associated with appointing a special master. The Defendants also respectfully request the Court award the Defendants the expenses and attorney's fees incurred in seeking this relief.⁴

I HEREBY CERTIFY that on January 13, 2012, I electronically filed the foregoing with the Clerk of the Courts by using the ECF system which will send a notice of electronic filing to Kelsay D. Patterson, Esq., 8875 Hidden River Parkway, Suite 300, Tampa, FL 33637-2087; and Robert E. Bonner, Esq., 260 Wekiva Springs Road, Suite 2000, Longwood, FL 32779-5947.

/s/ Joshua B. Walker
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Attorneys for Defendants

⁴ Should the Court grant the request for attorney's fees, undersigned counsel will submit the necessary information to support the amount to be awarded.

1 UNITED STATES DISTRICT COURT
2 FOR THE MIDDLE DISTRICT OF FLORIDA
3 ORLANDO DIVISION

4 CASE NO: 6:11-CV-970-ORL-35-GJK

5 J. PEARL BUSSEY-MORICE, as
6 Personal Representative of the Estate
7 Of PRESTON BUSSEY, III,

8 Plaintiff,

9 vs.

10 PATRICK KENNEDY, TIMOTHY HERBERNER,
11 GORDON HEWATT, YVETTE GOMEZ,
12 DON WILLIAMS, ROBERT OWENS,
13 MATTHEW LEVERICH, AND THE CITY
14 OF ROCKLEDGE, FLORIDA,

15 Defendants.

16 * * * * * E X C E R P T * * * * *

17 DEPOSITION OF: DON WILLIAMS

18 DATE TAKEN: Friday, January 6, 2012

19 TIME: 10:42 a.m. - 12:34 p.m.

20 PLACE: Orange Legal

21 1416 East Robinson Street
22 Orlando, Florida 32801

23 TAKEN BY: The Plaintiff

24 REPORTED BY: KARA SIPLE
25 Court Reporter and Notary Public

1 was deployed was irrelevant.

2 BY MR. PATTERSON:

3 Q Let me make sure I get your --

4 MR. FLOOD: Excuse me. I understand your
5 clients have responses and we have allowed
6 Ms. Bussey's sister to be here but I'm not going
7 to allow them to -- you know, chuckling, making
8 faces --

9 MR. PATTERSON: She's a plaintiff. Her son
10 has died and she's not saying anything. She's
11 not making any comments on the record and --

12 MR. FLOOD: That's not true.

13 MR. PATTERSON: If you don't like looking at
14 her because she's shaking her head because she's
15 listened to the testimony --

16 MR. FLOOD: Well, I'll interrupt you since
17 you've interrupted me. That's not what I'm
18 objecting to. I understand it is an emotional
19 event and I completely agree that Ms. Bussey has
20 every right to reasonably investigate this
21 incident. I have no problem with that. What I
22 do have a problem with is she and her sister
23 making faces at the officer, grunting, making
24 responses, belittling his responses verbally --
25 not verbally but facially and with gestures.

1 That's not appropriate and you know it is not
2 appropriate. I understand it is an emotional
3 event and that's not what I'm complaining about,
4 but I'm not going to have them mocking this
5 officer and his responses because they think that
6 his responses are inappropriate. If that's the
7 way it is going to go, then we are going to stop
8 and we'll have to either exclude the sister or,
9 you know, get an order on that. I don't want to
10 do that. I have agreed to have her here but not
11 with that kind of behavior.

12 MR. PATTERSON: Well, I hear what you're
13 saying. I haven't heard any comments. I haven't
14 heard any words that my client or her sister have
15 uttered and simply indicating that somebody is
16 making facial gestures and expressions doesn't
17 necessarily make it so and I'll be the first to
18 say and I want the record to reflect that just
19 because we're in situations like this where I'm
20 an African American and my clients are African
21 Americans it is always consistent that white
22 American attorneys and white police officers
23 always love to accuse Africans and blacks of
24 always being hostile of always being
25 argumentative and always being nasty.

1 MR. FLOOD: Wow.

2 MR. PATTERSON: Just because it's an
3 accusation, it doesn't make it true though and
4 she's not doing anything but --

5 MR. BONNER: If you want to accuse everybody
6 of racially motivated behavior --

7 MR. PATTERSON: I didn't say that I accused
8 you of anything.

9 MR. BONNER: That's the most ridiculous
10 thing that I have ever heard and we will --

11 MR. PATTERSON: I can finish my statement.

12 MR. FLOOD: I think we should stop.

13 MR. PATTERSON: I can finish my statement.

14 MR. FLOOD: We're done. We're done.

15 MR. PATTERSON: Well, then you guys are --

16 MR. FLOOD: That's the most preposterous --

17 MR. PATTERSON: It happens all the time.

18 Simply because you want to get on the record and
19 accuse my client of shaking her head and making
20 faces and just because those are your comments
21 doesn't make them true and you can say these
22 things but just like I can say there are five
23 people walking into the door even though they're
24 getting on the record to suggest such things,
25 that still doesn't make it happen and if you guys

1 want to terminate the deposition --

2 MR. FLOOD: We are. We're going to
3 terminate the deposition. Kelsay --

4 MR. PATTERSON: -- then we can go --

5 MR. FLOOD: -- your clients could have been
6 red, purple or blue and if they are going to act
7 the way that they were acting --

8 MR. PATTERSON: They weren't doing anything.
9 My clients haven't said anything and simply
10 because you --

11 MR. FLOOD: -- I would complain.

12 MR. PATTERSON: -- guys want to terminate
13 the deposition because my client is allowed to be
14 a party and allowed to sit here not to mention
15 Mr. Bonner and all of the police officers sat
16 down there the entire time making faces,
17 exchanging notes the entire time, laughing,
18 ridiculing and you know what we suffered it, we
19 dealt with it and now because you're here today
20 and you don't like looking over at my client and
21 now you want to get on the record and say all of
22 these atrocious things we're supposed to sit here
23 and as good African Americans understand that we
24 have been told what to do because you're
25 suggesting that we're being hostile or we're

1 making faces or we're being violent or we're
2 being rude or nasty and if we object, then say,
3 well, that's not the case and then we'll suspend
4 the deposition, we'll leave, we'll terminate this
5 because you don't agree with our characterization
6 of you. You know, it is just, you know, you're
7 damned if you do, damned if you don't. So am I
8 -- are we supposed to sit back and say everything
9 that you guys -- any way that you characterize
10 us, that we're yelling, that we're hostile --

11 MR. FLOOD: Tell me when you're done.

12 MR. PATTERSON: -- that we're slamming
13 tables, even if it is not true, we either have to
14 withstand it and say we're sorry, we don't mean
15 to do those things or we have the right to sit
16 here and she has the right to listen. She's not
17 saying anything and that's objectionable because
18 her son was killed and she's listening to
19 information where a police officer is saying he
20 sees no connection between sudden cardiac arrest
21 and the taser hitting a person in the chest even
22 though the memo speaks it to and she's listening
23 to it and she has the right to roll her eyes and
24 look up and turn to the left or right. She's not
25 calling him names. She's not pointing her finger

1 at him. She's not standing up and she doesn't
2 have the right to have grief and to have grief
3 you're going to suspend the deposition. My
4 goodness this is America that we live in. You
5 have to be kidding me.

6 MR. BONNER: Mr. Patterson --

7 MR. PATTERSON: You have got to be kidding
8 me.

9 MR. BONNER: -- if you're so paranoid --

10 MR. PATTERSON: You have got to be kidding
11 me.

12 MR. BONNER: -- that you think that
13 everybody.

14 MR. PATTERSON: I didn't say everybody.

15 MR. BONNER: -- objects in a deposition and
16 who exercises their rights is a racist, then you
17 have a long way to go.

18 MR. PATTERSON: No, I didn't say everybody
19 is a racist. I know that everybody isn't. I
20 know that everybody isn't and that's why the
21 country is a good country.

22 MR. BONNER: If you want to lie on the
23 record that the officers were down here laughing
24 yesterday, you can go ahead and do that.

25 MR. PATTERSON: I don't need to. I know

1 what I saw.

2 MR. BONNER: I'm not going to put up with
3 it.

4 MR. PATTERSON: Put up with what? You
5 haven't even made the comment. It was Joe's
6 comment that he said that he didn't like looking
7 at her face. What are you talking about? I saw
8 you guys down there exchanging notes. Don't try
9 to go high handed on me, Bob. I saw what I saw
10 but just because I don't speak to it, it doesn't
11 mean that I didn't see it and if I now speak to
12 it, now you're angry.

13 MR. BONNER: I'm not going to sit by and be
14 called a racist by you or --

15 MR. PATTERSON: I didn't call you a racist.

16 MR. FLOOD: You called me a racist and I'm
17 not going to sit --

18 MR. PATTERSON: If the record reflects that
19 I called you a racist, Bob, have the court
20 reporter read it back.

21 MR. FLOOD: No, you called me a racist,
22 Kelsay.

23 MR. PATTERSON: I called you racist today?
24 I called you a racist today?

25 MR. FLOOD: You couldn't wait to play the

1 race card in this case. You've been waiting --

2 MR. PATTERSON: Joe, have I called -- is
3 that record going to say that I called you a
4 racist?

5 MR. FLOOD: -- beginning with telling me at
6 our first meeting that you would not agree to
7 magistrate jurisdiction because Magistrate Kelly
8 is white and the district --

9 MR. PATTERSON: No, no, no.

10 MR. FLOOD: Are you denying that you said
11 that at our meeting?

12 MR. PATTERSON: I did not say that.

13 MR. FLOOD: Oh, no.

14 MR. PATTERSON: And if you find any place in
15 that record where I called you, Officer Williams
16 or Mr. Bonner a racist then you point that out.
17 I didn't call anyone a racist.

18 MR. BONNER: There's no point in arguing
19 with somebody who isn't going to be civil and
20 rational. We're out of here.

21 MR. FLOOD: It's terminated.

22 MR. PATTERSON: That's what Mr. Bonner says
23 but that's not what Joe says.

24 MR. FLOOD: It's terminated.

25 MR. PATTERSON: Okay.

1 MR. FLOOD: You have accused me of being a
2 racist.

3 MR. PATTERSON: You're saying that that
4 record accuses you of being a racist?

5 MR. FLOOD: Absolutely.

6 MR. PATTERSON: Well, if that's what your
7 position is, I know that it doesn't say that but
8 that's your position.

9 MR. FLOOD: I'm not going to be accused
10 ridiculously of being a racist and playing the
11 race card in this case when all I asked was for
12 your clients not to mock this officer.

13 MR. PATTERSON: I already told you that my
14 clients were not mocking --

15 MR. FLOOD: Yes, they were.

16 MR. PATTERSON: Simply because people get on
17 the record and make accusations of what is
18 occurring when it is really not occurring, I as
19 the plaintiff's attorney, have all the right to
20 speak up and say that your characterizations and
21 your representations are incorrect. They're
22 misrepresentations and we don't simply have to be
23 people that listen and say, okay, if you tell us
24 to stop screaming and shouting, we'll stop doing
25 that even though we're not doing that to begin

1 with.

2 MR. FLOOD: Okay. The deposition is --
3 we're done.

4 MR. PATTERSON: We are people from this
5 country too. We're African Americans. We know
6 how it works.

7 MR. FLOOD: Okay.

8 MS. COTTON: He knows that I wasn't mocking
9 him. He was sitting there looking at us and he
10 knew in the first place. We never made any
11 suggestion toward this officer. He knows that.

12 MR. FLOOD: We're finished.

13 MS. COTTON: You can see it all over his
14 face right now saying it is not even true.

15 MR. PATTERSON: Right. You can ask Officer
16 Williams. He's there. I mean, has anybody
17 mocked you today, Officer Williams?

18 MR. FLOOD: There's no more questions.
19 We're finished.

20 MR. PATTERSON: And let the record reflect
21 that when the question went to Officer Williams,
22 Mr. Flood would not let him answer the question.
23 You guys just simply wanted to terminate this
24 deposition.

25 MS. BUSSEY-MORICE: They did.

1 MR. PATTERSON: Yeah, that's all you wanted
2 to do.

3 MS. BUSSEY-MORICE: They killed my son.

4 MS. COTTON: They killed her son and they
5 know what they did.

6 MR. PATTERSON: Because, Officer Williams, I
7 have been nothing but congenial to you and I
8 asked him if --

9 MR. FLOOD: You're not going to sign any
10 releases?

11 MS. COTTON: No, she's not.

12 MS. BUSSEY-MORICE: You already got the
13 medical --

14 MR. PATTERSON: You're not supposed to
15 communicate with my client but I will tell you
16 what I already told you that I would look at the
17 releases just like I told Mr. Walker that
18 yesterday. I mean --

19 MR. FLOOD: You know, you have been telling
20 us that you're going to provide these releases
21 for months and we still don't have them and it's
22 a simple thing to sign them.

23 MR. PATTERSON: I haven't been telling you
24 that. I haven't been telling you that. I told
25 you to --

1 MR. FLOOD: I sent you three e-mails on the
2 social security records and --

3 MR. PATTERSON: I told you to bring the
4 social security authorization on Wednesday and --

5 MR. FLOOD: It is right in front of you.

6 MR. PATTERSON: -- and Mr. Walker brought it
7 and she signed it. If you're not aware of that,
8 then the court reporter can speak to that.

9 MR. FLOOD: I think it had the wrong name on
10 the top.

11 MR. PATTERSON: Well, then I wasn't aware of
12 that and I will take a look at the four documents
13 that you've placed in front of me now. What was
14 brought on Wednesday was signed consistent with
15 what I said we would do --

16 MR. FLOOD: Okay.

17 MR. PATTERSON: -- and just because now you
18 want to claim just like Mr. Walker claimed
19 yesterday that he sent me e-mails and letters
20 about autopsy photos, there are no e-mails and
21 letters about autopsy photos and, therefore, am I
22 supposed to just simply state that those e-mails
23 and letters exist when they don't exist. These
24 are mischaracterizations.

25 MS. COTTON: Right. I wouldn't worry about

1 it.

2 THE REPORTER: We're off.

3 (Deposition was adjourned at 12:34 p.m.)

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AFFIDAVIT OF G. TODD HEWATT

STATE OF FLORIDA

COUNTY OF BREVARD

I, G. TODD HEWATT, Affiant, first being duly sworn on oath, depose and say as follows:

1. I am over the age of 21 years, am competent to testify and have personal knowledge of the facts set forth herein.

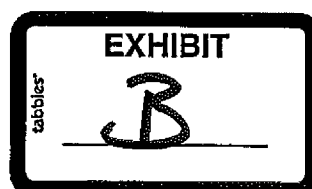
2. I am a party to the case styled *Bussey-Morice v. Kennedy, et al.*, Case No. 6:11-cv-970-Orl-36-GJK, which is currently pending in the United States District Court for the Middle District of Florida, Orlando Division. In that matter, the Plaintiff is represented by attorney Kelsay Patterson.

3. On January 5, 2012, I attended my deposition which was taken by attorney Kelsay Patterson in regard to the above-referenced matter.

4. During the deposition, Mr. Patterson's conduct towards me was incredibly hostile, rude, demeaning, sarcastic and harassing. During my 11 years in law enforcement, I have never experienced such treatment at the hands of an attorney.

5. Also during the deposition, I observed Plaintiff and Plaintiff's sister making repeated remarks/comments about my testimony, shaking their heads, and making other gestures that disrupted the proceeding.

6. Upon the conclusion of the deposition, I exited the court reporter's office and walked into the parking lot where I proceeded to talk with my attorney, Mr. Joshua Walker.

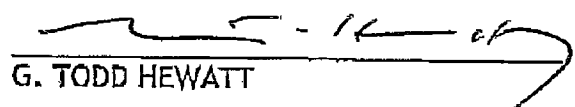


7. While standing in the parking lot, I observed Mr. Patterson exit the building and begin speaking and raising his voice at Mr. Walker. Mr. Patterson was extremely angry and antagonistic, although Mr. Walker had done nothing to provoke such a reaction.

8. Mr. Patterson acted in such a hostile manner that I felt concern for Mr. Walker's safety. From my training and experience as a law enforcement officer for the past 11 years, including my experience as the SWAT commander, it appeared to me that Mr. Patterson's unprovoked anger and hostile conduct posed a safety threat to Mr. Walker and possibly others.

9. Throughout this interaction, Mr. Walker remained calm and did nothing that would further provoke Mr. Patterson's hostility. Mr. Walker handled himself with restraint and professionalism.

FURTHER AFFIANT SAYETH NAUGHT.


G. TODD HEWATT

The foregoing instrument was acknowledged before me this 13 day of January, 2012, by G. TODD HEWATT who is personally known to me or who produced _____ as identification.




NOTARY PUBLIC

Corey Harris
PRINT NAME

10-20-12
COMMISSION EXPIRES

AFFIDAVIT OF ROBERT OWENS

STATE OF FLORIDA

COUNTY OF BREVARD

I, ROBERT OWENS, Affiant, first being duly sworn on oath, depose and say as follows:

1. I am over the age of 21 years, am competent to testify and have personal knowledge of the facts set forth herein.

2. I am a party to the case styled *Bussey-Marice v. Kennedy, et al.*, Case No. 6:11-cv-970-Orl-36-GJK, which is currently pending in the United States District Court for the Middle District of Florida, Orlando Division. In that matter, the Plaintiff is represented by attorney Kelsay Patterson.

3. On January 5, 2012, I attended the deposition of Sgt. Hewatt, which was taken by attorney Kelsay Patterson in regard to the above-referenced matter.

4. During that deposition, I observed Mr. Patterson act in a very hostile manner. He frequently raised his voice at Sgt. Hewatt, rolled his eyes, pointed his fingers and asked questions in a very rude, sarcastic and demeaning tone. At one point, Mr. Patterson turned his back completely on Sgt. Hewatt and began asking questions in a very demeaning tone, with his back turned on the witness.

5. I also observed disruptive conduct from Plaintiff and Plaintiff's sister. That conduct included making comments about and expressing disagreement with the testimony, rolling their eyes, shaking their heads and glaring and making gestures at the witness, the defendants and defense counsel.

6. Upon the conclusion of the deposition, I exited the court reporter's



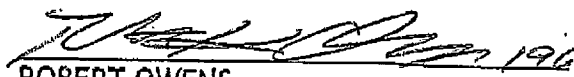
Mr. Joshua Walker.

7. While standing in the parking lot, I observed Kelsay Patterson exit the building and begin raising his voice towards Mr. Walker in a hostile manner. Mr. Patterson was extremely angry, although Mr. Walker had done nothing to provoke such a reaction.

8. Mr. Patterson acted with such anger and hostility that I felt alarmed for Mr. Walker's safety. From my training and experience as a law enforcement officer, it appeared to me that Mr. Patterson's unprovoked anger and hostile conduct posed a safety threat to Mr. Walker and possibly others.

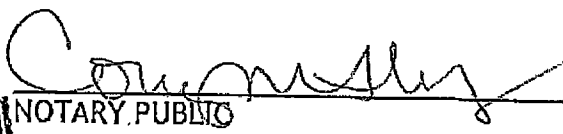
9. Throughout this interaction, Mr. Walker remained calm and did nothing that would further provoke Mr. Patterson's hostility. Mr. Walker handled himself with remarkable restraint and professionalism, despite the hostile conduct from Mr. Patterson.

FURTHER AFFIANT SAYETH NAUGHT.


ROBERT OWENS

The foregoing instrument was acknowledged before me this 13 day of January, 2012, by ROBERT OWENS who is personally known to me or who produced _____ as identification.




NOTARY PUBLIC
Corey Harris
PRINT NAME
10-20-12
COMMISSION EXPIRES

1 UNITED STATES DISTRICT COURT
2 FOR THE MIDDLE DISTRICT OF FLORIDA
3 ORLANDO DIVISION

4 CASE NO: 6:11-CV-970-ORL-35-GJK

5 J. PEARL BUSSEY-MORICE, as
6 Personal Representative of the Estate
7 of PRESTON BUSSEY, III,

8 Plaintiff,

9 vs.

10 PATRICK KENNEDY, TIMOTHY HERBERNER,
11 GORDON HEWATT, YVETTE GOMEZ,
12 DON WILLIAMS, ROBERT OWENS,
13 MATTHEW LEVERICH, AND THE CITY
14 OF ROCKLEDGE, FLORIDA,

15 Defendants.

16 * * * * * E X C E R P T * * * * *

17 DEPOSITION OF: MATTHEW LEVERICH

18 DATE TAKEN: Wednesday, January 4, 2012

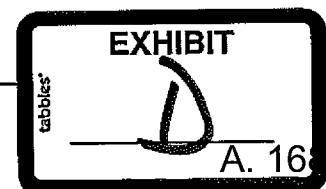
19 TIME: 1:24 p.m. - 3:29 p.m.

20 PLACE: Orange Legal

21 1416 East Robinson Street
22 Orlando, Florida 32801

23 TAKEN BY: The Plaintiff

24 REPORTED BY: KARA SIPLE
25 Court Reporter and Notary Public



1 A Sounds good.

2 Q Now, I did public records request of your
3 personnel file. So I've read through it. It says
4 that you read Hebrew. Are you Jewish?

5 A I am Jewish, yes.

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1 UNITED STATES DISTRICT COURT
2 FOR THE MIDDLE DISTRICT OF FLORIDA
3 ORLANDO DIVISION

4 CASE NO: 6:11-CV-970-ORL-35-GJK

5 J. PEARL BUSSEY-MORICE, as
6 Personal Representative of the Estate
7 Of PRESTON BUSSEY, III,

8 Plaintiff,

9 vs.

10 PATRICK KENNEDY, TIMOTHY HERBENER,
11 GORDON HEWATT, IVETTE GOMEZ,
12 DON WILLIAMS, ROBERT OWENS,
13 MATTHEW LEVERICH, AND THE CITY
14 OF ROCKLEDGE, FLORIDA,

15 Defendants.

16 * * * * * E X C E R P T * * * * *

17 DEPOSITION OF: GORDON HEWATT

18 DATE TAKEN: Thursday, January 5, 2012

19 TIME: 10:12 a.m. - 4:50 p.m.

20 PLACE: Orange Legal

21 1416 East Robinson Street
22 Orlando, Florida 32801

23 TAKEN BY: The Plaintiff

24 REPORTED BY: KARA SIPLE
25 Court Reporter and Notary Public

EXHIBIT

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* * * * *

BY MR. PATTERSON:

Q But you did taser him in the chest?

A Unintentionally.

Q But that's not my question. You keep jumping in.

MR. BONNER: Your question misrepresents what's in the documents, Counselor.

MR. PATTERSON: What I'm saying is he tasered him in the chest. I never said that you intentionally tasered him in the chest. It doesn't matter that it was intentional or unintentional.

THE WITNESS: Oh, absolutely it does.

BY MR. PATTERSON:

Q Well, hold on.

A If I intentionally did it, I'd be violating that policy.

Q You are not to talk when I'm not asking you a question and there's not a question pending.

MR. WALKER: If we're not --

THE WITNESS: Please don't raise your voice at me again.

BY MR. PATTERSON:

Q I'm not raising my voice at you.

1 A Yes, you did.

2 Q You are moving outside the bounds of a
3 witness in a deposition and it is not for you to keep
4 jumping in when there's not a question pending. That
5 is improper and that's inappropriate. Here's my
6 question.

7 MR. WALKER: Mr. Patterson, stop abusing and
8 harassing the witness.

9 MR. PATTERSON: I'm not abusing him, but you
10 know that I'm allowed to get my question out.
11 You've explained that to your client before.

12 MR. BONNER: You're not allowed to harass
13 the witness, abuse the witness, raise your voice
14 and shout at the witness.

15 MR. PATTERSON: I'm not abusing the witness
16 and I'm not shouting at the witness but the
17 witness -- if you can't tell him and if you
18 refuse to tell him, then I will tell him that I'm
19 allowed to get my question out and for him not to
20 continue jumping in and interceding and breaking
21 up my questions. Is there a rule that allows him
22 to break up my question while I'm in the midst of
23 it, Mr. Bonner?

24 MR. BONNER: There is no rule that allows
25 you to interrupt his answers while he's --

1 MR. PATTERSON: Right. And I haven't
2 interrupted his answers.

3 THE WITNESS: Yes, you have.

4 MR. BONNER: You --

5 MR. PATTERSON: That's your perspective of
6 it and I respect your opinion.

7 MR. BONNER: It will be reflected on the
8 deposition transcript.

9 MR. PATTERSON: Absolutely. Absolutely. I
10 agree that the record will speak for itself.

11 MR. WALKER: Can I offer a suggestion
12 perhaps and I have seen this happen before.
13 Sometimes when these type of issues arise, it is
14 beneficial to all parties to make an attempt to
15 see if the magistrate is available who can
16 sometimes sit in telephonically for a deposition
17 and they can rule on these issues so the
18 deposition can go forward. I know the court is
19 busy, but would you be willing to make an attempt
20 to address these issues that way?

21 MR. PATTERSON: No. I don't have any issues
22 that I believe need to be addressed in that
23 context, but if you'd like to do that, you're
24 welcome to do that. I also know that there's a
25 payment for that. If you believe that you can

1 get a magistrate on the phone because you believe
2 it is necessary, then you do so. I don't believe
3 it is necessary. I believe I can ask my
4 questions and I will ask them until I get the
5 response that is adequate. If I'm entitled to a
6 yes or no, then I'm entitled to --

7 THE WITNESS: I have given it to you twice.

8 MR. PATTERSON: You and I are talking,
9 right? So that's the kind of thing that you have
10 to say, I'm talking to Mr. Patterson, Mr. Hewatt,
11 so please let me talk to him. I mean, that's
12 your client. That's not for me to say.

13 MR. WALKER: I'm just trying to do what I
14 can to let you take your deposition.

15 MR. PATTERSON: I appreciate that too.

16 MR. WALKER: But I can't let you keep
17 harassing the witness.

18 MR. PATTERSON: I hear what you're saying.
19 That's been your ongoing objection.

20 * * * * *

21 BY MR. PATTERSON:

22 Q Would you agree that is retreating?

23 A Yes.

24 Q To this point when your officers Leverich
25 and Gomez have their tasers out, have you seen from

1 exposure that they can have breathing and upper
2 respiratory issues trying to breath and respirate,
3 did you tell 350 pound Patrick Kennedy to get off of
4 Mr. Bussey's upper body?

5 A He shook him off twice before he was able
6 to --

7 Q Did you hear my question? Did you ask him
8 to get -- did you ask Officer Kennedy to get off of
9 Patrick -- did you ask Patrick Kennedy --

10 MR. WALKER: Hold on. I'm --

11 BY MR. PATTERSON:

12 Q Did you ask Officer Patrick Kennedy to get
13 off of Preston Bussey's upper body? Did you ask him
14 that?

15 MR. WALKER: Hold on. I'm confused,
16 Mr. Patterson. Are you talking to the witness
17 because you turned around in your chair?

18 BY MR. PATTERSON:

19 Q Does the witness understand my question?

20 A I couldn't hear. You were turned around in
21 your chair.

22 * * * * *

23 BY MR. PATTERSON:

24 Q Not sitting down, not keeping your mouth
25 closed when he's asking you not to talk, it would

1 be -- you say that it would be obstruction. Would
2 there be any other possible criminal charges that
3 this Sergeant Elliott could have brought against you
4 based on what we've talked about and read here?

5 A I don't believe so, no.

6 MR. WALKER: Object to the form.

7 BY MR. PATTERSON:

8 Q You can be arrested and give a person -- a
9 police officer a hard time and you would agree that
10 could be a booking of resisting arrest without
11 violence, would you agree?

12 MR. WALKER: Object to the form.

13 MR. BONNER: Object to the form.

14 THE WITNESS: Obstruction which I believe
15 falls under the same statute.

16 BY MR. PATTERSON:

17 Q They could be -- you could be -- both
18 charges or one or both?

19 A It's one.

20 Q Okay. But he didn't give you that, did he?

21 A No, sir.

22 Q Even though you said and did these things,
23 correct?

24 A Correct.

25 Q And certainly Preston Bussey didn't tell you

1 I'm going to fuck with you because you're fucking
2 with me. He didn't say that to you, did he?

3 A No, sir.

4 Q In fact, his words were incoherent and
5 unintelligible, weren't they?

6 A I believe so.

7 Q Okay. And you would acknowledge that one
8 difference between Preston Bussey and yourself is
9 that you're a white American and Preston Bussey was a
10 black American, true?

11 MR. WALKER: Hold on. Objection.

12 MR. BONNER: Objection.

13 BY MR. PATTERSON:

14 Q These are just facts. Either -- you are a
15 white American, aren't you?

16 MS. BUSSEY-MORICE: (Unintelligible.)

17 MR. WALKER: Mr. Patterson, put it back --

18 BY MR. PATTERSON:

19 Q Well, you knew that you went to the hospital
20 looking for a slim African American, didn't you?

21 A Yes, sir.

22 MR. WALKER: Object to the form.

23 * * * * *

24 BY MR. PATTERSON:

25 Q Okay. So you have been warned not to enter

1 school property. You entered school property -- the
2 parking lot of the school on April 19th, 1985 after
3 you had already been warned. Did you get tasered or
4 pepper sprayed?

5 A No, sir.

6 Q Okay. And then on July 18th, 1990 you were
7 arrested for breach of peace and disorderly conduct
8 by the Melbourne police. They heard what you had to
9 say, still arrested you, still charged you. It
10 happened that day and you didn't get pepper sprayed
11 or tasered, did you?

12 A No, sir.

13 Q And then, of course, we have the instance
14 with Sergeant Elliott of the Indialantic Police
15 Department where you told him you're fucking with him
16 and you're intentionally being an asshole and that
17 didn't lead to him pepper spraying you or taser
18 you either, did it?

19 A No.

20 Q You have been a pretty fortunate fellow,
21 haven't you?

22 MR. WALKER: Object to the form.

23 MR. BONNER: Join.

24 THE WITNESS: I have been arrested three
25 times. That's not fortunate.

1 BY MR. PATTERSON:

2 Q Well, you have never been tasered or pepper
3 sprayed, have you?

4 MR. WALKER: Object to the form. Tasers did
5 not exist back then.

6 BY MR. PATTERSON:

7 Q Well, that's what you say, but the question
8 is you weren't pepper sprayed, were you?

9 A No.

10 Q Well, you weren't hit over the head with a
11 billy club. Did billy clubs exist in 1985 and 1990?

12 A I don't have any idea.

13 Q You know, the baton.

14 A I have no idea.

15 Q Okay. Because I think they did. Well, you
16 certainly did get hit with any club that an officer
17 would have on him, did you?

18 A No, sir.

19 Q In either of these instances, did you?

20 A No, sir.

21 Q The cop didn't say, well, we told you not to
22 be on school property, here you are, you're hard
23 headed, pull out a club or baton and beat the crap
24 out of you, did he?

25 A No.

1 Q Okay. So to that end, you have been pretty
2 fortunate that you haven't encountered any abuse or
3 discipline with regard to force by police officers,
4 would you agree?

5 MR. WALKER: Object to the form.

6 THE WITNESS: I wouldn't call it fortunate.
7 I haven't given them a reason to strike me.

8 * * * * *

9 MR. PATTERSON: I don't have anything else
10 with regard to the deposition. As I told the
11 court reporter, since the deposition is over the
12 appearance fee in this deposition is now
13 concluded. So to the extent that you want to
14 remain on the record and talk about other items,
15 if you want to request that -- if you want to
16 order that, that's between you and the court
17 reporter, but I have concluded in -- 100 percent
18 completed the deposition of, you know, Gordon
19 Hewatt. I'm just letting you know that so she
20 knows that if she's typing, it not because I'm
21 going to be paying for it. I'm letting you know
22 that's an expense that I'm passing onto you and
23 Bob down there.

24 MR. WALKER: All right. Well, I don't think
25 that's the case, but as I indicated to you

Josh Walker

From: kelsaypatterson@verizon.net
Sent: Thursday, January 19, 2012 11:51 AM
To: Josh Walker; Joseph R. Flood; REB@fltrialteam.com; DRL@fltrialteam.com
Subject: Re: Bussey-Morice, J. Pearl v. Kennedy, Patrick, et al GC2009064652:

Dear Mr. Walker, Mr. Flood, Mr. Bonner, & Mr. Lane:

Just finished speaking to Ron Lynch, my expert in this matter. He has another matter/event scheduled the morning of March 2nd. He has offered his availability on the afternoon of March 2nd from 2pm to 5pm, at Mr. Flood's office. Is that a sufficient amount of time or would you like him to consider alternative dates?

Next, I believe the mediation is set for February 24th, shall we agree to postpone it until after the completion of Mr. Lynch's deposition? We can begin looking for dates in March, April, May, or June. The sooner we start trying to secure a new date, the better our chances for getting a workable date for all.

Next, given some of the wild affidavit claims put forth by Mr. Walker against me at the conclusion of Mr. Hewatt's deposition, and the ongoing claims regarding the conduct of myself and my client as per Joe Flood at the deposition of Mr. Williams, neither my client nor I feel comfortable being alone in the presence of armed police officer/defendants who have shown their willingness to describe my conduct in a completely false way. If they would say such things about me, and swear to them, just like suggesting the Plaintiff continued to get up off the floor, had been violent, was attacking the hospital's staff, and was "bleeding out", all lies of course as per their depositions as per their own observations in looking at the dvd, I fear for my health and life. I would rather avoid a scenario that somehow leads to some accusation that I attempted to strike, hit, or confront anyone, that strangely results in my untimely death, against and over the objections of my client. Sure, my wife and my son would have a cause of action, but I would prefer to be around for them, and myself,... rather than have them face and deal with a host of accusations that I had the strength and violence/anger of 20 wild gorillas when I attacked someone. No thanks, I will leave that sort of creative fantastical writing to the fate of some other unlucky and unfortunate fellow and his family.

Therefore, given the allegations against me as contained in those police affidavits filed by Joshua Walker (wherein they claim for no apparent reason whatsoever, I confronted Joshua Walker, about nothing in particular to threaten, intimidate, and create the presence of an assault), and those "interesting" characterizations of the Plaintiff and her sister used as a basis to terminate the deposition of Donald Williams, advise if her deposition will be conducted and/or carried out before the presence of a Special Master. If not, or if we do not have adequate assurances of our safety and objectivity to the proceeding, I will not produce my client for deposition on February 4th. I will not under, under any circumstance, produce her or be there with her at your office (Mr. Walker & Flood's office) on February 4th as this matter presently stands/exists. Advise what you propose to offer us, other than hollow assurances of safety, in the face of accusations of Joe continuing to affirm and state that I have at some point in time actually called him a racist....an item that I have asked your office to prove/show that you have not shown or proved; your client have admitted to being "an asshole" in facing other law enforcement authority.....the same client who presented a false affidavit against me; and these false accusations. There is no way we will or are going to enter into your office knowing that we will be amongst people who have already accused us of really bad, horrible, negative things. In that context, we fear for our safety as too many unverified things may happen to us.

If you have no ideas or assurances against our concerns, you will need to move to Compel the Plaintiff's deposition. Feel free to attach the full content/context of this email correspondence to show the Court our position. I will not leave it to my family and a lawyer who then may have to hire to try impeaching and attacking the credibility of lawyers and their police officer clients if something really bad should happen to me up against more accusations that I did something causing/requiring me to be killed. No thanks. Your foundation for making such statements in the event of my untimely demise are there, on the record, and now only need to be furthered supported without the aggravation of my objections/voice if I should suddenly lose my life in some strange inexplicable sequence of events.

Kelsay Patterson

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on this 4th day of March, 2021, the foregoing was filed and served via the State of Florida's E-Filing Portal to:

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