

IN THE SUPREME COURT OF FLORIDA

THE FLORIDA BAR,

Complainant,

Case No. SC20-806

v.

The Florida Bar File Nos.:

2018-70,119(11C-MES)

SCOT STREMS,

2019-70,311(11C-MES)

2020-70,440(11C-MES)

Respondent.

2020-70,444(11C-MES)

_____/

RESPONDENT'S RESPONSE TO ORDER TO SHOW CAUSE

COMES NOW, Respondent, SCOT STREMS, by and through undersigned counsel, and hereby files this his Response to the Florida Supreme Court's Order dated July 15, 2020, directing Respondent to "show cause . . . why the referee's recommendations should not be approved." In support thereof, Respondent provides the following:

I. Introduction.

The Florida Bar's submissions contain broad and inflammatory rhetoric arguing for the imposition of an emergency suspension. The Bar's presentation and evaluation of evidence in seeking this drastic and severe remedy should be sober, analytical, and entirely based in fact. See Florida Bar v. Rubin, 362 So. 2d 12, 16 (Fla.1978) ("The Bar has consistently demanded that attorneys turn 'square corners' in the conduct of their affairs. An accused attorney has a right to demand no less of the Bar when it musters its resources to prosecute for attorney

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misconduct.”). The underlying documents and testimony do not substantiate the pattern The Florida Bar attempts to create with its general accusations.

At best, the Bar’s evidence shows twelve (12) sanctions orders entered between 2016 and 2018, in cases that were not handled by Respondent Scot Strems, during a time when Strems Law Firm employed about thirty (30) attorneys and handled approximately 9,000 claims. Several of the “orders” referenced in The Florida Bar’s Petition for Emergency Suspension (“Petition”) were vacated, reversed, entered following the firm’s withdrawal, or did not contain final determinations of fact. In one matter, the Bar did not disclose that after the appellate court reversed the order making adverse findings, on remand the trial court found that the allegations were not supported by evidence.

The uncontested evidence further shows about two years ago, in 2018, Mr. Strems took steps to address firm procedural problems impacting discovery compliance by undergoing a Florida Bar Diversion/Discipline Consultation Service (DDCS) Administrative Review. Since that time, The Florida Bar produced one (1) order, entered in June 2020, in a matter not handled by Scot Strems, in which the firm was required to pay half of an attorney’s fee sanction order pursuant to Florida Statutes, section 57.105.

The issues raised by The Florida Bar warrant review and investigation. However, the evidence presented during the hearing on Respondent’s Motion to

Dissolve Order of Suspension Dated June 9, 2020 did not show that Respondent “appears to be causing great public harm” necessitating an emergency suspension. The Florida Standards for Imposing Lawyer Sanctions set forth the types of circumstances in which an emergency suspension should be imposed. Fla. Stds. Imposing Law. Sancs. 2.4. In pertinent part, the commentary to Standard 2.4 explains that a lawyer could be suspended on an emergency basis following the conviction of a “serious crime” or when the “lawyer’s **continuing conduct** is causing or is likely to cause **immediate and serious injury** to a client or the public.” (*emphasis added*). As an example of a “continuing conduct” that would warrant emergency suspension, the commentary references “ongoing conversion of trust funds” or when a “lawyer abandons the practice of law.” Fla. Stds. Imposing Law. Sancs. 2.4 (*cmt*).

In contrast to Florida Bar v. Guerra, 896 So. 2d 705 (Fla. 2005), there is no ongoing pattern of serious misconduct that is only interrupted by the emergency suspension order. As the Court noted in Guerra, “We expect that when one is discovered violating trust requirements, he or she most assuredly will immediately discontinue the conduct” and thus, interruption by a petition for emergency suspension is not justification to dissolve that suspension. Id. at 707. In this case, however, the Bar’s own timeline shows the potential issues related to the orders by

various subordinate attorneys were addressed in 2018 refuting the contention that Respondent is “causing great public harm” necessitating an emergency suspension.

The emergency suspension should be dissolved because the Bar did not meet its burden of demonstrating “a likelihood of prevailing on the merits on any element of the underlying rule violations.” R. Regulating Fla. Bar 3-5.2(i). The Referee’s report did not reference any specific rule violation and accordingly, did not find that Respondent had violated the elements of the rule violations alleged by the Bar.

The Report of Referee relies entirely on the testimony of two Thirteenth Circuit Court Judges, the Honorable Gregory Holder and the Honorable Rex Barbas, to support the broad finding that Respondent’s firm persisted in bad faith litigation tactics to the detriment of their clients and despite warnings and monetary sanctions. However, not only did Judge Holder and Judge Barbas have no interaction with Scot Strems, the most recent adverse order entered by either Judge Barbas or Judge Holder in a matter handled by a Strems Law Firm attorney occurred almost two (2) years ago, showing an absence of exigent circumstances warranting the drastic remedy of an emergency suspension.

II. Emergency suspension is not warranted because Scot Strems and his firm did not engage in a pattern of bad faith conduct as alleged by Judge Holder and Judge Barbas.

Respondent's law firm employs thirty (30) lawyers and one hundred and twenty (120) support staff. At the time the Petition for Emergency Suspension was filed, Respondent's law firm represented nine thousand (9,000) clients.

Respondent Scot Strems never appeared before Judge Holder or Judge Barbas.

Although for a period of time Mr. Strems signed the initial coversheets and complaints filed by Strems Law Firm, subordinate attorneys in the firm's Tampa office handled the litigation in Hillsborough County. Strems Law Firm had six (6) offices throughout the State of Florida. The firm's offices in Orlando, Tampa, and Miami were overseen by a managing partner within each local office. There were approximately four (4) to six (6) lawyers in the Tampa office. Scot Strems primarily practiced out of the Coral Gables office.

The Florida Bar's Petition for Emergency Suspension ("Petition") references three (3) orders entered by Judge Holder and Judge Barbas that were critical of Strems Law Firm subordinate attorneys. One (1) order was entered by Judge Holder in October 2017 and two (2) orders were entered by Judge Barbas – one (1) order in August 2017, which was subsequently vacated, and the other order in August 2018.

A. *The October 14, 2017 order entered by Judge Holder did not find egregious facts or the threat of immediate and serious injury warranting emergency suspension.*

Although Judge Holder testified that Mr. Strems engaged in a pattern of bad faith litigation conduct, the only order submitted by the Bar and Judge Holder was entered almost three years ago on October 14, 2017, in the matter of Perez v. Homeowners Choice Property. (Petition Exh. 14(j-1, j-2)). In this case, Judge Holder dismissed a case *sua sponte* when he learned that the Strems Law Firm lawyer had asked to reschedule an Examination Under Oath (EUO) five days before it was scheduled to occur.

On September 28, 2017, the Court had held a hearing to consider whether an abatement should be lifted. During the exchange, the Strems Law Firm lawyer indicated that he had requested the insurance company to reschedule an EUO and the insurance lawyer declined to accommodate the rescheduling. In pertinent part, Judge Holder inquired of the Strems Law Firm lawyer as follows:

COURT: Mr. Drake, when – and I'd like something in writing, what evidence do you have that indeed in writing you notified Mr. Mitchell's law firm that there was a conflict that you were having problems attending the July 25, 2017, EUO that had been scheduled and confirmed as of June 16, 2017?

MR. DRAKE: We have in writing from the email chain, which was sent into the Court that on Thursday, July 20th – let me see if there was anything before that. Definitely by Thursday, July 20th, which would have been five days in advance, we let them know of the issues. We tried to begin rescheduling the EUO and after multiple

attempts to reschedule the EUO they denied every attempt to reschedule.

. . .

MR. DRAKE: . . . Thursday July 20th, where we talked about where there is information between scheduling assistants discussing the fact that there was a conflict and we were attempting to reschedule. And at the time I reviewed the order, the order did not contain a deadline for time for the EUO to occur. That does not mean that plaintiffs' counsel does not take seriously the need to expedite any request for EUOs or depositions, especially ones connected to a court order.

Petition Exh. 14(j-1), pp. 9-10.

Mr. Drake further explained that the plaintiff was not attempting to lift the abatement. In response, the insurance company stated:

MR. MITCHELL: Your Honor, if I may. If it was just a matter of rescheduling something, we wouldn't have brought the motion ---

COURT: Thank you. Thank you. That means stop.

Petition Exh. 14(j-1), p. 12.

Although the insurance company had not filed a motion for sanctions under Florida Statutes, section 57.105 and was not asking for dismissal as a penalty for rescheduling the EUO, Judge Holder *sua sponte* dismissed the case on his own motion. In support, Judge Holder stated that he had been previously warned, "This court will not countenance any dilatory tactics, whether they be for lucre or malice in violation of the oath to God that every attorney takes." (Petition Exh. 14(j-1), p. 13).

Judge Holder issued a written order on October 14, 2017. (Petition Exh. 14(j-2)). The order did not reference any conduct by Scot Strems and did not copy Scot Strems on the order. Id. The order dismissed the action without prejudice and permitted plaintiffs to refile the lawsuit following the occurrence of all conditions precedent under the policy of insurance. Id.

Despite Judge Holder's references to prior warnings during the October 14, 2017 evidentiary hearing, the Bar, the Referee, and Judge Holder do not provide any citations to orders prior to October 14, 2017 in which Judge Holder warned or admonished any attorney in the Strems Law Firm. In addition, the Bar, the Referee, and Judge Holder do not provide any citations to orders after October 14, 2017 in which Judge Holder warned or admonished any attorney in the Strems Law Firm.

B. The orders entered by Judge Rex Barbas on August 16, 2017 and August 23, 2018 did not find egregious facts or the immediate threat of serious injury justifying emergency suspension.

1. Rivera, Rosas, and Ramos v. Security First Insurance Company, Petition Exh. 14(i).

Judge Barbas entered an order granting the insurance company's motion for sanctions based on the repeated requests to reschedule depositions. The trial court's order cited an email written by the lawyer handling the matter for Strems Law Firm as follows:

We would still like to reschedule the depositions scheduled for tomorrow. Part of the issue is physically getting our elderly clients (85 and 92 I believe) and their daughter from New York to the deposition location tomorrow. The other problems is that I am supposed to be at an EUO with Amanda Griffin from your firm. . . My calendar is still a work in progress and some of my conflicts are being identified late, my apologies.

(Petition Exh. 14(i-1), p. 5).

The insurance company declined to reschedule. Although the lawyer for Strems Law Firm filed a motion for protective order, he did not set it for a hearing. When the plaintiffs failed to appear the next day, the insurance company filed a motion for sanctions. The court initially granted sanctions in the amount of \$37,000.00, and ordered the sanctions to be paid by Scot Strems from his personal account, although Mr. Strems is not otherwise referenced in the order because he did not handle the litigation.

However, on rehearing, the court vacated the order to hold an evidentiary hearing to evaluate whether there was evidence of bad faith. (Petition Exh. 14(i-2)). The evidentiary hearing did not occur because the trial court subsequently granted the insurance company's motion for final summary judgment and entered final judgment against the plaintiffs. (Petition Exh. 14(i-3)).

2. Ramirez and Ramirez v. Heritage Property & Casualty Insurance Company, Petition Exh. N.

Judge Barbas entered an Order Granting Amended Motion to Dismiss Plaintiffs' Complaint And/Or Verified Motion on August 23, 2018. A Strems Law

Firm lawyer out of the Tampa office handled the litigation in this case. The order pertains to litigation occurring in 2017 and the plaintiffs' failure to respond to discovery requests and failure to timely comply with a court order compelling discovery. The insurance company primarily asserted that the plaintiffs had failed to produce cell phone records and cited the plaintiffs' deposition testimony in which a plaintiff contended he had not been asked to look for the cell phone records. The insurance company argued that by the time they had subpoenaed the records directly from the cell phone company, the records no longer existed and thus, they were prejudiced by spoliation of evidence. Judge Barbas dismissed the action with prejudice on August 23, 2018, but did not otherwise reference any conduct by Scot Strems.

Any failure to adhere to discovery obligations justifies review by The Florida Bar. However, these facts do not warrant the emergency suspension of Scot Strems. The order references discovery violations that occurred in 2017 in a matter that Scot Strems was not handling. In 2018, Mr. Strems took significant actions to evaluate and overhaul firm procedures to maximize the firm's effectiveness in handling discovery. (Resp. Hearing Exh. 1). Further, Mr. Strems assigned one of his former litigation lawyers to a full-time position managing and supervising the litigation lawyers' compliance with discovery obligations and communications with opposing counsel. (Petition Exh. S, pp. 18-23, excerpt

attached hereto for convenience as the original exhibit omits pagination).

Although Strems Law Firm continues to litigate in Hillsborough County, The Florida Bar has not submitted any Hillsborough County orders in the last twenty (20) months, suggesting Strems Law Firm's discovery compliance is "causing great public harm."

III. There is no credible evidence that Scot Strems directed any subordinate lawyer to violate the Rules Regulating The Florida Bar.

The Rules Regulating The Florida Bar prohibit disciplining one lawyer for the conduct of another unless the partner actually knew of the improper conduct and failed to take any action to prevent or remediate the misconduct. R.

Regulating Fla. Bar 4-5.1(c). The terms of Rule 4-5.1(c) are precise and state as follows:

(c) Responsibility for Rules Violations. A lawyer shall be responsible for another lawyer's violation of the Rules of Professional Conduct if:

(1) the lawyer orders the specific conduct or, with knowledge thereof, ratifies the conduct involved; or

(2) the lawyer is a partner or has comparable managerial authority in the law firm in which the other lawyer practices or has direct supervisory authority over the other lawyer, and knows of the conduct at a time when its consequences can be avoided or mitigated but fails to take reasonable remedial action.

R. Regulating Fla. Bar 4-5.1(c).

The sole evidence indicating that Scot Strems directed subordinate attorneys to violate Rules Regulating The Florida Bar was the testimony of Judge Holder.

Judge Holder testified that he recalled a 2017 confession by the Tampa supervising attorney, Jonathan Drake, that Mr. Strems essentially told him to file and prosecute cases without proper supporting evidence, to initiate cases not supported by proper contracts of insurance, to refuse their clients participation in EUOs and depositions, and to allege and seek unsupported damages. The Referee relied on Judge Holder's testimony recalling this confession to find that The Florida Bar had proven a likelihood of prevailing on the elements of the rule violations. (Report of Referee, p. 6).

Although Judge Holder was quite descriptive in his stated recollection of this "private" mentoring conversation with Mr. Drake with no one else present, he did not make contemporaneous notes regarding this conversation or meeting with Mr. Drake, did not refer Mr. Strems to The Florida Bar for directing his subordinates to violate the Rules Regulating The Florida Bar, or contemporaneously bring this information to the attention of The Florida Bar. Instead, he did nothing with this information until he revealed it in his hearing testimony on July 8, 2020.

While the commentary to the Code of Judicial Conduct, Canon 3(D)(2) permits a judge to counsel an attorney regarding perceived rule violations rather than referring an attorney to The Florida Bar, the gravity of this allegation would warrant immediate referral to The Florida Bar, action that Judge Holder has done by his estimation on at least ten (10) other occasions.

Incredibly, Judge Holder testified that he only told Bar Counsel about Mr. Drake's 2017 "confession" that Mr. Strems personally directed his subordinate attorneys to intentionally delay cases and file law suits without evidence three (3) years later, around the time he worked on his May 4, 2020 affidavit, prepared for the Petition for Emergency Suspension. This "confession" is not contained within Judge Holder's detailed affidavit in which he sets out the reasons supporting emergency suspension in this case. (Petition Exh. U). Judge Holder gave no explanation for this absence when he otherwise devoted more than fifteen (15) hours and four (4) days over the course of two (2) weeks preparing, rewriting, and finalizing his affidavit, during which time he reviewed numerous cases throughout the Circuit and State that he contended supported his commentary in the affidavit.

Reference to this confession is not contained within The Florida Bar's Petition for Emergency Suspension or contained within The Florida Bar's thirty-seven (37) page Response in Opposition to Respondent's Motion to Dissolve Order of Suspension Dated June 9, 2020, nor in its Supplemental Memorandum Supporting The Florida Bar's Response in Opposition.

Mr. Drake was called as a rebuttal evidence witness with no advance notice or preparation. Mr. Drake presented clear, cogent, and direct responses to questions concerning his supposed "confession" to Judge Holder. Mr. Drake was confident, concise, and definitive when absolutely denying and directly contradicting Judge

Holder's assertions. Mr. Drake gave a compelling explanation as to the circumstances that corroborated why he would never have that type of personal conversation with Judge Holder, how Judge Holder was never engaged in mentoring Mr. Drake in any fashion, and that the only relationship Mr. Drake had with Judge Holder was when he appeared before the Judge for on-the-record proceedings. Mr. Drake also offered significant testimony concerning Judge Holder's routinely expressed displeasure and irritation with plaintiffs' lawyers who pursued insurance claims cases against insurance companies and the insurance defense bar.

Had Mr. Drake confessed to Judge Holder, in 2017, that Scot Strems had instructed him to willfully file and pursue fraudulent cases and intentionally delay discovery, this outrageous admission would not only have been brought to The Bar's attention well before April or May 2020 when Judge Holder claims he informed Bar Counsel, this confession would have been the focus of Judge Holder's affidavit and the Bar's Petition for Emergency Suspension. At the very least, it would have been the featured rebuttal evidence to Respondent's Motion to Dissolve, which prominently argued that there was no evidence showing that Respondent directed or ratified conduct leading to the sanctions orders in matters involving subordinate attorneys. Despite Judge Holder allegedly informing the Bar of this troubling confession, none of the Bar's submissions reference this

incriminating information that the Referee relied upon in her Report of Referee. Based on all of these circumstances, this allegation should not support the imposition of an emergency suspension.

IV. There is no support for the finding that Scot Strems or Strems Law Firm engaged in “duplicitous” filings.

The Report of Referee generally found that the Strems Law Firm engaged in “duplicitous” filings without providing a factual basis for the finding. The duplicitous filing allegation appears to arise from The Florida Bar’s reliance on Judge Barbas’s interpretation of a local administrative order.

The Bar presented the testimony of Judge Rex Barbas and Judge Gregory Holder regarding their suspicions that Respondent, who represents solely insureds as claimants in first party insurance disputes, colluded with another attorney in a separate law firm, Fernandez Trial Law Firm, who exclusively represents mitigation companies who have obtained assignment of benefits from insurers, to file separate lawsuits. This claimed collusion supposedly resulted in the waste of judicial resources of the Thirteenth Judicial Circuit. The suspicion was never substantiated factually and appears to have been based on their belief that the two law firms had the same physical address in Tampa, Florida, and that the pleadings filed by both firms had utilized the same font and format. The undisputed testimony revealed that both firms rented space from Regus Office Space, a worldwide landlord firm that rents shared space to multiple businesses in the form

of a full services shared suite arrangement. Mr. Fernandez, who previously worked for Strems Law Firm, may have continued to utilize the same document processing templates. Mr. Drake's testimony also indicated that the Tampa office of the Strems Law Firm no longer utilizes this space at Regus Office Space. Nor does the Strems Law Firm represent the clients represented by the Fernandez Trial Firm, all of whom are mitigation companies through assignments of benefits (AOBs).

The judges' testimonies also appear to be based in part on their interpretation of a local Administrative Order that requires a plaintiff to notify the court of related cases which is defined within Administrative Order S-2019-047 as a case involving the "same parties and same legal issues." Judge Holder and Judge Barbas broadly interpreted related cases in a manner not supported by the plain and clear language of the Administrative Order. Both judges asserted that their understanding of the Administrative Order required consolidation of related cases defined as having "one or more of the following: the same plaintiff(s) or defendant(s) names(s), the same property address, the same policy of insurance and/or the same or similar dates of alleged loss." (Petition Exh. V, para. 10) (*emphasis added*). But the Administrative Order entered into the record is not as broad as the judges' interpretation, and both judges conceded that no published precedential ruling of the Second District Court of Appeal or any other

Administrative Order supported their interpretation. In addition, many of the “related” cases referenced by Judge Holder and Judge Barbas reflected that the Fernandez Trial Firm filed the subsequent case that might be “related” and had the responsibility for filing any Notices of Related Cases. The Bar did not substantiate its broad claim that Scot Strems or Strems Law Firm engaged in duplicitous filings in the Thirteenth Circuit warranting the imposition of an emergency suspension.

V. The Strems Law Firm had measures in place to ensure subordinate lawyers acted in conformity with the Rules Regulating The Florida Bar in accordance with Rule 4-5.1.

Mr. Strems did not turn a blind eye toward sanctions orders entered against his subordinate lawyers. Rule Regulating The Florida Bar 4-5.1(a) and (b) require

Respondent to:

(a) Duties Concerning Adherence to Rules of Professional Conduct. A partner in a law firm, and a lawyer who individually or together with other lawyers possesses comparable managerial authority in a law firm, shall make reasonable efforts to ensure that the firm has in effect measures giving reasonable assurance that all lawyers therein conform to the Rules of Professional Conduct.

(b) Supervisory Lawyer’s Duties. Any lawyer having direct supervisory authority over another lawyer shall make reasonable efforts to ensure that the other lawyer conforms to the Rules of Professional Conduct.

In 2018, Respondent addressed discovery compliance issues with lawyers within his firm to improve and implement additional procedures to support the lawyers engaged in litigation. (Petition Exh. S, pp. 18-23, excerpt attached hereto

for convenience as the original exhibit omits pagination; hearing testimony of Jonathan Drake; hearing testimony of Respondent). In addition, Strems Law Firm participated in a Florida Bar Diversion/Discipline Consultation Service (DDCS) Administrative Review conducted by a Florida Bar law firm management consultant on March 16, 2018. The Administrative Review included review of internal controls existing within the law firm, including processes that have been established to provide reasonable, but not absolute, assurance that data is protected, and that client matter files, important case-related deliverables, and business records of the firm are not overlooked, forgotten, or ignored. The consultant also noted where important internal controls, business, and workflow processes should be in place. The consultant acknowledged that “because of the inherent limitations in any internal controls, errors or irregularities may occur and not be detected.” (Resp. Hearing Exh. 1).

While failures to meet discovery deadlines are not excused under the Rules Regulating The Florida Bar, they are not comparable in scale or gravity to ongoing conversion of client funds or abandonment of a law practice warranting emergency suspension, especially when the cases in question occurred in 2016 through 2018 and remedial efforts have proven effective in minimizing similar problems.

VI. Seven orders cited by The Florida Bar in its Petition for Emergency Suspension were reversed, vacated, entered without an opportunity for a response, or did not contain any final findings of misconduct by Strems Law Firm attorneys.

Although not relied upon or referenced in the Report of Referee outside of the testimonies of Judge Holder and Judge Barbas, The Florida Bar submitted orders relating to litigation, handled by subordinate attorneys, occurring between 2016 and 2018 it contended warrants Mr. Strems's emergency suspension. These allegations were not supported by "1 or more affidavits demonstrating facts personally known to the affiants that, if unrebutted, would establish clearly and convincingly that a lawyer appears to be causing great public harm." R. Regulating Fla. Bar 3-5.2(a)(1). Seven (7) of these orders do not contain final determinations of discovery violations or adverse conduct by Strems Law Firm attorneys.

In Robinson and Robinson v. SafePoint Insurance Company, (Petition, para. 14(d)), a trial court order dated April 13, 2017, is offered as support to suspend Mr. Strems on an emergency basis. (Petition, pp. 9-10). The Florida Bar noted, "As Mr. Strems will no doubt point out, Judge Cueto's decision was reversed and remanded by the Third DCA with instructions to conduct an evidentiary hearing." (Petition, p. 10). The Florida Bar further argued, "After the lengthy wait for the resolution of the appeal, the case is back on track, with the insurer-defendant continuing to pursue its efforts to dismiss the case." Id. The Bar did not disclose

that, about three (3) months prior to the filing of the Bar's Petition, the trial court heard the matter on remand from the District Court and denied the motion to dismiss determining the allegations of fraud were based on suspicion rather than evidence. (See Respondent's Notice of Supplemental Memorandum Supporting Respondent's Motion to Dissolve, dated July 2, 2020).

In addition to Judge Barbas's order referenced above (Petition Exh. 14(i)) that was vacated on rehearing, the Bar also cites another monetary sanctions order that was reversed on appeal. In Frazer and Byfield v. Avatar Property and Casualty Insurance Company, (Petition, para. 14(m)), the Fourth District Court of Appeal upheld the dismissal but reversed the trial court's assessment of \$22,877.02 in monetary sanctions finding the trial court did not comply with due process.

Further, the Bar relies on another order in Rodriguez v. American Security Insurance Company, (Petition, para. 14(o)), that was entered after the trial court had granted the Strems Law Firm's motion to withdraw and subsequently held a hearing on the insurance company's motion for sanctions against the plaintiff for failing to appear at depositions. At this hearing, the *pro se* plaintiff contended she had never hired Strems Law Firm. In response to a Bar complaint on this issue, the Strems Law Firm attorneys who had handled the litigation submitted a detailed response to The Florida Bar showing two fee agreements bearing her signature, a color copy of her driver's license she provided to the firm, and a history of

communication with the firm. (Resp. Hearing Exh. 4). This order that was entered without the benefit of this information does not support suspending Scot Strems, who was not even involved in the underlying litigation, on an emergency basis.

Several orders cited by the Bar as a basis to suspend Scot Strems on an emergency basis did not contain any final findings of misconduct. For example, in Watson v. Homeowners Choice Property and Casualty Insurance Company, (Petition, para. 14(r)), Vera and Perez v. American Security Insurance Company, (Petition, para. 14(p)), and Courtin v. Homeowners Choice Property and Casualty Insurance Company, (Petition, para. 14(q)), the Bar relies on orders raising questions regarding potential misconduct prior to any evidentiary hearing to evaluate the conduct and did not otherwise attempt to prove these allegations during the hearing on the Motion to Dissolve. Unproven concerns and allegations do not support the imposition of an emergency suspension.

VII. The Florida Bar’s supplemental responses do not show that Scot Strems or Strems Law Firm attorneys are causing great public harm warranting the emergency suspension of Scot Strems.

Respondent noted in his Motion to Dissolve that the Bar’s Petition for Emergency Suspension did not allege any recent matters showing an “immediate and serious” threat to public safety to warrant an emergency suspension. In an attempt to correct this deficiency, The Florida Bar filed its Response in Opposition to Respondent’s Motion to Dissolve on July 2, 2020, with 1,822 pages of

attachments (“Bar Response in Opposition”), and its Supplemental Memorandum in Supporting The Florida Bar’s Response in Opposition on July 6, 2020, with 197 pages of attachments (“Bar Memorandum”), on the Friday afternoon before the Tuesday hearing. The Bar’s supplement was not supported by “1 or more affidavits demonstrating facts personally known to the affiants that if unrebutted, would establish clearly and convincingly that a lawyer appears to be causing great public harm” as required by Rule Regulating The Florida Bar 3-5.2(a)(1).

The attachments to the Bar’s Response in Opposition pertained to four (4) separate matters. The first two matters resulted in orders that did not find any misconduct by a Strems Law Firm attorney but rather, imposed sanctions for misconduct committed solely by the party plaintiffs. The third matter, which Scot Strems did not handle, addressed misconduct by a plaintiff but required the Strems Law Firm to pay half of the sanctions finding the lawyer should have known about the plaintiff’s misconduct. The fourth matter, comprising 1,336 pages of The Florida Bar’s attachments, pertained to allegations made by an insurance company in a motion filed on June 22, 2020, in which there has not been an evidentiary hearing or a final order. (Bar Response in Opposition, Exhibit D).

The first matter, Robinson v. SafePoint Insurance Company, resulted in an order dated October 3, 2019, dismissing the action for fraud by the party plaintiffs regarding fraudulent testimony. The Strems Law Firm lawyers who handled the

litigation on behalf of the plaintiffs were not sanctioned, implicated, or referenced in the court's nineteen (19) page order. (Bar Response in Opposition, Exh. A). Strems Law Firm did not appeal the order.

The second matter, Clay v. SafePoint Insurance Company, involved a motion by the insurance company to strike or dismiss the pleadings because plaintiffs had allegedly received compensation from a city assistance program that was not disclosed in the litigation. During the October 11, 2019 hearing on this motion, the judge evaluated the appropriate sanction, including the impact on attorney's fees and indicated to plaintiff's counsel, "Let me hear you address that issue, because **I am not asserting fault with the attorneys.**" (Bar Response in Opposition, Exh. B-2, p. 29) (*emphasis added*). In addition, the insurance company's lawyer agreed that the Strems Law Firm attorney had not acted improperly. The insurance company's attorney stated, "Your honor, the issues is the attorneys—**although I do not think that Mr. Romero [Strems Law Firm attorney] knew. And that's his representation today.**" (Bar Response in Opposition, Exh. B-2, pp. 31-32) (*emphasis added*). The court ultimately dismissed the action without prejudice subject to a mediation occurring. (Bar Response in Opposition, Exh. B-3). The parties settled at the mediation and the action was dismissed. (Bar Response in Opposition, Exh. B-4 and B-5).

The third matter, Mojica v. United Property & Casualty Insurance Company, resulted in a February 17, 2020 order dismissing the action due to the plaintiff's fraud on the court. The insurance company contended that the plaintiff misrepresented making repairs to his sink when he did not have the receipts for repair materials and his ex-wife claimed she had made the repairs after he moved out. (Bar Response in Opposition, pp. 11-13). The February 17, 2020 order dismissed the action with prejudice finding the plaintiff had committed a fraud on the court. (Bar Response in Opposition, p. 11). On June 22, 2020, the trial court granted the insurance company's motion for sanctions pursuant to Florida Statutes, section 57.105, and found that the Strems Law Firm attorney handling the litigation knew or should have known the husband had not made the repairs and required Strems Law Firm split the payment of sanctions with the party plaintiff. (Bar Response in Opposition, pp. 11-13). Scot Strems did not handle the underlying litigation and the order provides no rationale to suggest that Scot Strems should have been aware that the plaintiff had not made the sink repairs he claimed to have made. This order does not support suspending Scot Strems on an emergency basis.

The fourth matter pertains to a dispute over attorney's fees and references a motion filed by the insurance company on June 22, 2020 in McEkron, et al., v. Security First Insurance Company. The insurance company's motion attaches to

its motion as Exhibit I the Petition for Emergency Suspension in support of its pleading. (Bar Response in Opposition, Exh. D). There has been no hearing on the allegations contained in the motion and consequently, no trial court determination regarding the accusations. The insurance company's unadjudicated motion does not provide a basis for emergency suspension.

Similarly, the day before the hearing on the Motion to Dissolve, The Florida Bar filed Notice of Supplemental Filing, attaching a May 22, 2020 Motion to Strike filed by an insurance company in Cameron v. Citizens Property Insurance Corporation. This Notice was not accompanied by "1 or more affidavits demonstrating facts personally known to the affiants that, if unrebutted, would establish clearly and convincingly that a lawyer appears to be causing great public harm" as required by Rule Regulating the Florida Bar 3-5.2(a)(1). The insurance company's motion alleged that the plaintiffs had called the insurance company and represented that they had not hired the Strems Law Firm. Scott Strems did not handle the underlying litigation.

The Bar argued, in pertinent part:

Considering the weighty evidence provided by Citizens, which was not contradicted by SLF, it appears that this lawsuit was in fact filed without client authorization. When caught in that act, SLF continued to litigate the case for months, only to abandon its client unceremoniously days ahead of the hearing on the sanctions motion.

(Bar Memorandum, p. 3). The Bar submitted this filing and 197 pages of attachments to support an emergency suspension apparently without contacting the plaintiffs directly to verify whether the lawsuit was filed without their authorization. Moreover, the Bar did not contact Respondent to ask about the insurance company's allegation prior to submitting these accusations to the Referee to support the imposition of an emergency suspension. Had the Bar contacted the plaintiffs, the plaintiffs would have explained to The Florida Bar that they had been confused by the partial payment sent by the insurance company and had executed affidavits on October 18, 2019 explaining the misunderstanding. (Resp. Hearing Exhs. 2 and 3). Unadjudicated and uninvestigated allegations by an insurance company should not be cited to support an emergency suspension.

The Florida Bar is asking the Court to grant an extraordinary remedy by simply mirroring unproven allegations by an insurance company without independently investigating the accusations. In Tyson v. Florida Bar, 826 So. 2d 265 (Fla. 2002), this Court clarified the purpose of disciplinary proceedings by holding:

As we explained over forty years ago in In re Harper, 84 So. 2d 700, 702 (Fla. 1956), the purpose of an attorney disciplinary proceeding is the protection of the public, not the vindication of private rights; 'Disciplinary proceedings against attorneys are instituted in the public interest and to preserve the purity of the courts. No private rights except those of the accused are involved.'

Id. at 268. (*emphasis added*). Similarly, emergency suspensions should not be based upon a private entity's unproven allegations and personal financial interests.

VIII. Allegations in Class Action Suit.

The Bar attached an unverified Amended Class Action Complaint and Demand for Jury Trial to its Petition. This amended complaint was filed by a competitor to Strems Law Firm, was not verified, and is currently subject to a motion to dismiss. (Hearing testimony of William Schifino, Esquire). The Florida Bar solely relied on the affidavit of Judge Holder to support the allegations in the Petition. However, Judge Holder acknowledged he did not have personal knowledge of the allegations in the class action complaint other than from reading the allegations in the pleading. Judge Holder conceded the allegations in the complaint were just that – allegations. He also revealed he was aware of no factual development of evidence in that case. He claimed to not know the complaint was subject to a pending motion to dismiss.

IX. Interim Probation Appropriately Addresses the Concerns Raised in the Petition for Emergency Suspension.

Rule Regulating The Florida Bar 3-5.2 provides for probation as an interim remedy to protect the public from the concerns expressed in Judge Holder's and Judge Barbas's testimonies. Pursuant to Rule Regulating The Florida Bar 3-5.1(c), the conditions of probation are not limited and can be created to address concerns raised in a specific circumstance.

In this case, Strems Law Firm participated in a Diversion/Discipline Consultation Service (DDCS) Administrative Review conducted by a Florida Bar law firm management consultant on March 16, 2018. Following the administrative review, The Florida Bar law firm management consultant made written recommendations that are summarized as follows:

1. Where applicable, the firm's website and on-site signage should include: "By Appointment Only";
2. The firm should join ILTA (International Legal Technology Association) and ARMA (f/k/a American Records Managers Association);
3. Respondent should designate an Inventory Attorney;
4. The firm should consider new practice software and a client portal;
5. Entire files should be examined at regular intervals to determine the date of last contact and any outstanding items due from or to the client;
6. If no activity during an agreed interval, an alert should be sent to the practice manager or client relations manager to determine the reason; at a minimum, a status letter should be mailed to the client;
7. The firm should be aggressive in ensuring the accuracy of client contact information;
8. Specific DDCS recommended language should be added to fee agreements and welcome letters;
9. The firm should designate a Clients Relations Specialist;

10. The firm should enhance its data security and records retention policies, undergo a HIPAA self-audit, and use a 3-2-1 best practice protocol for data back-up;
11. The firm should update its policy manual; and
12. The firm should utilize recommended personality sorter tests, questionnaires, and scoring to help strengthen its management team. During an interim probationary period, Respondent's management of Strem's

Law Firm, now known as The Property Advocates, could be monitored by a Referee approved member of The Florida Bar with the following special conditions:

- 1) The monitor will be responsible for meeting with Respondent on a regular basis and overseeing the status of Respondent's legal practice, including compliance with all DDCS recommendations.
- 2) In addition, the practice manager and lead litigation attorney at the law firm will conduct weekly meetings at which each attorney will update the status of his or her assigned cases, including any deadlines, hearing dates, outstanding discovery requests, and any other information due from or to the client, opposing counsel, and the court. The practice manager and lead litigation attorney will communicate with the monitor as frequently as needed and at least bi-weekly regarding the status of all pending cases.
- 3) Along with the monitoring activities, the monitor and Respondent would be jointly responsible for providing monthly reports to The Florida Bar, Miami

Branch, for the first three (3) months, and quarterly reports thereafter until the period of probation has ended. The first report should be due thirty (30) days after the order becomes final. While Respondent must assume primary responsibility for filing the reports with the Bar, the reports must be signed by Respondent and the supervising attorney, and must describe the status of Respondent's practice and his efforts to monitor case management.

- 4) Respondent would be required to supply the name of an alternate supervising attorney within thirty (30) days of receiving notice if the monitor should become unavailable to continue serving in the capacity of supervising attorney during the term of probation. Any replacement supervising attorney will perform the same duties as described above for the monitor.
- 5) Additional proposed terms of probation include continuing education. Respondent and all firm attorneys should complete, if suggested by the monitor additional continuing legal education (CLE) and The Florida Bar ethics programs, at Respondent's expense. Further, Respondent should complete at least ten (10) hours in additional ethics CLE, over the required minimum, including The Florida Bar's 2019 and 2020 Masters in Ethics courses.
- 6) In addition to paying the Bar's reasonable costs of this proceeding within thirty (30) days of the date of the order approving interim probation,

Respondent will reimburse the Bar for the costs of supervision and will pay all fees and costs of the required probationary conditions.

WHEREFORE and by reason of the foregoing, Respondent respectfully requests the Court to reject the Report of Referee recommending the denial of the Motion to Dissolve Order of Suspension, and immediately reinstate Respondent to the practice of law pending the trial in this cause. In the alternative, Respondent requests the Court to dissolve the suspension and impose an interim period of probation including the special conditions set forth above.

Respectfully submitted,

/s/ Scott K. Tozian

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CERTIFICATE OF SERVICE

I HEREBY CERTIFY that the original of the foregoing Respondent's Response to Order to Show Cause has been filed via Florida Supreme Court eportal this 30th day of July, 2020; and copies have been furnished via email to John Derek Womack, Esquire, Bar Counsel, The Florida Bar, jwomack@floridabar.org; and Patricia Ann Savitz, Esquire, Staff Counsel, The Florida Bar, psavitz@floridabar.org.

/s/ Scott K. Tozian

SCOTT K. TOZIAN, ESQUIRE