

IN THE SUPREME COURT OF FLORIDA

THE FLORIDA BAR,

Complainant,

Supreme Court Case
No. SC 2020-1685

vs.

BRIAN P. RUSH,

The Florida Bar File
No. 2018-10, 741 (13B)

Respondent.

ON APPEAL FROM THE CIRCUIT COURT OF THE SIXTH JUDICIAL
CIRCUIT IN AND FOR PINELLAS COUNTY, FLORIDA
THE HONORABLE W. DOUGLAS BAIRD, PRESIDING REFEREE

INITIAL BRIEF OF THE RESPONDENT/APPELLANT, BRIAN P. RUSH

WOODLIEF & RUSH, P.A.

/s/ Brian P. Rush

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Rule 4-8.4, Rules Regulating the Florida Bar (Misconduct)

STANDARDS OF REVIEW

The de novo standard of review applies to the Court's review of the Referee's Report in regard to construction of North Park's 2014 and 2018 Fee Agreements with Respondent Rush.

The de novo standard of review applies to the Court's review of the Referee's Report in regard to interpretation of the Florida Bar Rules and Florida Statutes and Constitutional Provisions, especially in regard to North Park's 2014 and 2018 Fee Agreements with Respondent Rush.

The clear and convincing evidence standard applied to and is required to prove each of the Florida Bar's charges. The Florida Bar has the burden of proof and must plead and prove each ultimate fact and each violation alleged, in the Florida Bar's 52-paragraph Complaint, by clear and convincing evidence. The Florida Bar is required to present competent substantial evidence that is **"precise, explicit, and lacking in confusion"** to prove each specific violation alleged against Respondent Rush. In the case of Owens-Corning Fiberglass Corporation v. Ballard, 749 So.2d 483, (Fla. 1999), the Florida Supreme Court defined "clear and convincing evidence" as follows:

"[T]his Court defines the standard "clear and convincing evidence" as "an intermediate level of proof [that] entails both a qualitative and quantitative standard. The evidence must be credible; the memories of the witnesses must be

clear and without confusion; and the sum total of the evidence must be of sufficient weight to convince the trier of fact without hesitancy.”” FN. 4 (underline added)

The Supreme Court’s “Trial by Ambush” Rule applies to the Referee’s decision to allow the Bar to put on expert testimony where the Bar did not disclose the expert’s identity, opinions or grounds, in violation of the Referee’s pretrial disclosure order. See, Florida Bar v. Lobasz 64 So.3d 1167 (Fla. 2011). The abuse of discretion standard and the “trial by ambush” rule applies to the Referee’s decision to allow the Florida Bar to introduce evidence of a non-reported, non-final, vacated/dismissed with prejudice arbitrator’s decision.

NOTES ON REFERENCES

Citation to the Florida Bar’s documents in the Record will be designated “FB. ____.” Citations to the Respondent’s documents in the Record will be designated as “R.____.” Citations to the trial transcript will be designated as “T.____.” Citations to the Appendix will be designated as “App. ____.”

STATEMENT OF FACTS AND CASES

Respondent, Brian P. Rush (“**Rush**”) appeals the February 7, 2022 Report of the Referee in favor of The Florida Bar (“**Florida Bar**” or “**TFB**”).

A. Relevant Procedural History

In May and June of 2018, Jack Suarez and North Park repudiated North Park’s 2014 and 2018 Fee Agreements with Rush and demanded that Rush

sign a new illegal fee agreement, drafted by North Park's attorney, Richard Petitt. North Park and Petitt made these unlawful written demands, by unlawfully threatening to file a Florida Bar Grievance against Rush, unless Rush surrendered to North Park's/Petitt's extortionate demands **(FB.-Ex. #16 and #18)**. When Rush refused to sign North Park's new illegal fee agreement, Suarez and North Park filed a materially false Florida Bar Complaint. **(FB.-Ex. #1)** agreement, Suarez and North Park filed a materially false Florida Bar Complaint. **(FB.-Ex. #1)**

B. Relevant Procedural History

In May and June of 2018, Jack Suarez and North Park repudiated North Park's 2014 and 2018 Fee Agreements with Rush and demanded that Rush sign a new illegal fee agreement, drafted by North Park's attorney, Richard Petitt. North Park and Petitt made these unlawful written demands, by unlawfully threatening to file a Florida Bar Grievance against Rush, unless Rush surrendered to North Park's/Petitt's extortionate demands **(FB.-Ex. #16 and #18)**. When Rush refused to sign North Park's new illegal fee agreement, Suarez and North Park filed a materially false Florida Bar Complaint. **(FB.-Ex. #1)**

In early 2021, after refusing to allow Rush's and Suarez's testimony before the Grievance Committee, the Florida Bar charged Rush with violating

seven (7) Florida Bar Rules, erroneously charging that North Park's 2014 and 2018 Fee Agreements were illegal contingency fee agreements, which contained an unlawful penalty for termination provision. The Florida Bar also alleged that Rush acted unethically when Rush reasonably sought payment first from FDOT and only second from North Park, even though Rush sent four (4) written requests to North Park asking that the fee dispute be resolved by Florida Bar Fee Arbitration, as provided by North Park's Fee Agreements and as provided in all ten (10) Fee Agreements signed by North Park's managing agent, Todd Taylor (2010-2018). **R-Ex. "293, 295, 296, 311" App. "1."**

C. Factual Summary

North Park owned 400-acres of prime development property approximately ½ mile west of Park Road in Plant City, Florida on which North Park planned to construct approximately 1,200 residential units of both single family and multi-family homes, plus additional commercial sites along Sam Allen Road. North Park's property is heavily impacted by existing wetlands. Affidavit of Mesimer, P.E., **R-Ex #59**; Mesimer T. 839-909; FDOT's Settlement Justification Statement, **R-Ex #168**.

Order of Taking and North Park's Loss of Access

FDOT's taking resulted in the taking of approximately 7.0 acres of North Park's land, and also encumbered an additional 2.3 acres, such that the total amount of land taken or encumbered by the Order of Taking equaled 9.3 acres, which were the most valuable uplands on North Park's property. As a direct result of the Order of Taking, North Park's unfettered ingress/egress (access) to Sam Allen Road was precluded. **R-Ex #59;** Mesimer T. 839-909.

SUMMARY OF ARGUMENT

From 2010 to 2014, Respondent Rush represented Todd Taylor in several cases, and Taylor signed eight separate fee agreements with Rush. From 2014 to 2018, Taylor signed two (2) additional fee agreements with Rush for a total of ten (10) lengthy signed fee agreements.

The Florida Bar repeatedly introduced conflicting or vague testimony, which did not meet the required clear and convincing evidence standard and directly conflicted with the Florida Bar Rules, Florida's Eminent Domain Statutes and controlling Supreme Court precedent. Aloyma Sanchez' false testimony and 2018 fraudulent alteration/fabrication of evidence, combined with Philip Hobby's 2021 truthful production of the unaltered, original Hobby Memo shows that the Florida Bar has not met the heightened proof

requirements of clear and convincing evidence. Further, North Park's own attorney/agent witnesses, Michael Rocha and Richard Petitt, directly contradicted Suarez' 2018 false Florida Bar Grievance and directly contradicted the Florida Bar's Complaint filed against Rush. Similarly, North Park's managing agent witnesses, Todd Taylor and Jack Suarez, directly contradicted Suarez' false Florida Bar Grievance. As a result of this contradictory testimony by FDOT/Sanchez/Hobby and by North Park's authorized attorneys and agents (Rocha, Petitt, Taylor and Suarez), the Florida Bar failed to prove its Complaint allegations and failed to meet the required Clear and Convincing Evidence Standard.

FDOT's Taking Economically Disabled North Park Project

The Order of Taking and FDOT's construction plans economically "disabled" North Park's development, and North Park suffered two different types of losses: (1) loss of value of the 9.3 acres taken/encumbered; and (2) severance damages for loss of ingress and egress for North Park's 600 single family homes. This loss of access economically disabled North Park's ten to fifteen-million-dollar residential project. North Park responded by repeatedly demanding that FDOT restore unfettered ingress/egress by relocating FDOT's drainage ponds and modifying FDOT's construction plans, structures and easements. Taylor/Rushnell "Major Problem" email,

dated March 6, 2018 **R-Ex #232**; Rushnell T., 806-810; North Park's April 2018 Memorandum of Understanding, **R-Ex #198**; North Park's 2018 Hourly Fee Agreement, **R-Ex #198**; Taylor T. 373-75; Petitt T. 394, 5-25; **R-Ex #19**. Affidavit of Richard Harris, **R-Ex #61**; Affidavit of John Greer. **R-Ex #62**

North Park's 2.8 Million Dollar Valuation of Land Taken/Encumbered

On October 23, 2017, North Park's managing agent and authorized officer, Todd Taylor, sent an email to Brian Rush, wherein Taylor concluded that North Park's 9.3 acres of land taken/encumbered had a value of \$305,504.00 per acre. At \$305,540.00 per acre, North Park's loss of 9.3 acres would equal just compensation of more than \$2.84 million dollars. On October 23, 2017, Taylor and North Park directed Attorney Rush to transmit Taylor's estimate of value of \$305,540.00 per acre to North Park's appraisal experts, Greer and Harris, and Rush promptly followed Taylor's/North Park's direction. Taylor October 23, 2017 email to Rush, R- Ex #230; Rush T. 63:1-25. Taylor Trial Tr. 281:10-23.

North Park Expert's Valuation of Damages

On or about April 16, 2018, North Park's development damages expert, John Greer, concluded that North Park's 9.3 acres of land taken/encumbered by FDOT resulted in compensation/losses to North Park of \$2.092 million dollars which was \$750,000.00 less than the above North Park/Taylor

valuation of \$2.84 million dollars. Taylor T. page 281, lines 1-23; Affidavit of John Greer, R-Ex #62. Further, John Greer concluded that FDOT's taking had diminished North Park's ingress/egress to Sam Allen Road, causing severance damages of more than eight million dollars (\$8,000,000.00). Affidavit of John Greer. **R- Ex #62.**

In early July of 2018, North Park's expert real estate appraiser, concluded that FDOT's taking had caused loss of access/severance damages of more than \$5.6 million dollars. **R-Ex #61. R-Ex #10.** Similarly, FDOT's official settlement justification statement cited \$5.6 million dollars of severance damages and was signed by Aloyma Sanchez. **R- Ex. #168**

North Park's 2014 Fee Agreement Confirms North Park's Objectives and Limited Scope of Rush's Representation

In September 2014, North Park and Taylor signed a comprehensive Eminent Domain Fee Agreement whereby North Park hired Rush to represent North Park in regard to the FDOT taking. The 2014 Fee Agreement incorporated Florida's eminent domain Attorney fee statute and confirmed the limited scope of Rush's representation in regard to seeking just compensation, severance damages, road access to Sam Allen Road, and FDOT's payment of North Park's attorney's fees, expert fees and costs. **R- Ex. #7** Taylor and North Park had ample time to review North Park's 2014

Fee Agreement before they signed the notarized Agreement. Affidavit of Tifani Rivas. **R-Ex. #13**

North Park's 2018 Hourly Fee Agreement and Memorandum of Understanding Confirms Client's Demand for Nonmonetary Benefits

On April 6, 2018, Taylor and North Park signed North Park's 2018 Hourly Fee Agreement, whereby North Park confirmed its objectives and again directed that Rush demand that FDOT relocate the FDOT drainage pond and provide valuable non-monetary benefits to North Park. Additionally, North Park directed Rush to draft and send to FDOT a detailed Memorandum of Understanding, whereby FDOT would provide valuable non-monetary benefits and concessions to North Park. 2018 Hourly Fee Agreement, **R-Ex #11**; Memorandum of Understanding, R-Ex #198; Taylor T. 369-73. North Park and Taylor specifically agreed the case would require “**substantial additional legal work**” at “**an hourly rate of \$395.00 per hour.**” 2018 Hourly Fee Agreement **FB-Ex #11; R-Ex #11 and #13**; Rush T. 77:1-25.

North Park's/Pettit's Extortionate Threats to Repudiate/Constructively Terminate North Park's Fee Agreements with Rush

In late April of 2018, Jack Suarez forced Taylor to resign as North Park's managing agent, and Suarez took over North Park. On May 18, 2018, Attorney Richard Pettit, emailed a letter to Rush repudiating North Park's

2014 and 2018 Fee Agreements with Rush, and Attorney Pettit demanded that Rush involuntarily rescind the above Fee Agreements. **R-Ex. 288 (also, FB-Ex #16). App. “2.”** Attorney Pettit also unethically demanded that Rush sign a new illegal one-page fee agreement drafted by Pettit, or else North Park would file a Florida Bar Grievance against Rush, drafted by Pettit.

On May 21, 2018, Attorney Pettit emailed a second letter to Rush again repudiating North Park’s 2014 and 2018 Fee Agreements and again threatening to file a Florida Bar Grievance against Rush, unless Rush complied with Attorney Pettit’s extortionate demands. Attorney Pettit’s threats to file a Florida Bar Grievance/Complaint against Rush was made for the sole purpose of obtaining an advantage in the pending eminent domain case, and Pettit’s threats directed violated Rule 4-3.4 and 4-8.4.

In May, June, and July, 2018, Rush responded by sending to North Park four (4) separate written requests for Florida Bar Fee Arbitration, which North Park refused. **R-Ex #294. App. “3”; R-Ex. #293, #295, #296, #311 and #313. App. “1”.**

On June 6, 2018, Jack Suarez signed under “**penalties of perjury**” a materially false Florida Bar Complaint, drafted by Pettit, falsely asserting that **(1)** Taylor was “mentally incompetent” when Taylor signed the 2014 Fee Agreement, **(2)** the 2014 Fee Agreement was unenforceable because it was

vague and had an illegal penalty for termination clause, **(3)** that Rush had used undue influence to take advantage of the “mentally incompetent” Taylor, and **(4)** Taylor had acted without Suarez’s authorization, when Taylor hired Rush and signed the 2014 Fee Agreement. **FB-Ex. #1. App. “4”**.

Aloyma Sanchez’s Fraudulent Fabrication, Alteration and Concealment of Original Hobby Memo

On July 19, 2018, Aloyma Sanchez secretly directed an FDOT appraiser, Philip Hobby (“Hobby”), to draft a memo confirming Hobby’s recollection of Rush’s alleged oral warnings to Sanchez that Sanchez/FDOT should avoid tortious interference with Rush’s contracts and Rush’s attorneys lien. (the original “**Hobby Memo**”). Importantly, the original July 19, 2018 Hobby Memo did not contain any reference to any threat of any Bar Complaint by Rush or anyone else. After receiving North Park’s/Pettitt’s July 30, 2018 second Bar Grievance, Rush sent two (2) detailed letters to Sanchez, dated August 1, 2018 and August 6, 2018, specifically refuting Sanchez and Pettitt’s false accusations, of which Rush only received notice on or about July 30, 2018. **R-Ex. #314 and #316. App. “5”**. On August 16, 2018, Sanchez secretly sent an email to Hobby fraudulently requesting that Hobby email to Aloyma Sanchez a new August 16, 2018 version of the original July 19, 2018 Hobby Memo which would fraudulently “corroborate” Sanchez’s false accusations against Rush. However, Hobby refused to

make any material changes to the original Hobby Memo. **R-Ex #437. App.**
“6”.

On or about August 16, 2018, Aloyma Sanchez secretly altered the original Hobby Memo to fabricate a new materially false Hobby Memo to include a new accusation, falsely alleging that Rush had threatened to file a **“Florida Bar Complaint”**, solely to obtain an advantage for Sanchez in Rush’s pending civil claim for fees and costs from FDOT, and Sanchez thereby violated Rules 4-3.4 and 4-8.4.

ARGUMENT

- I. THE REFEREE ERRED IN DETERMINING THAT RESPONDENT RUSH’S FEE AGREEMENTS VIOLATED RULE 4-1.5, R.R.F.B (Reasonable Fees), BECAUSE:
 - a) NORTH PARK’S SIGNED 2014 AND 2018 FEE AGREEMENTS ARE OBJECTIVELY LAWFUL, ESPECIALLY WHERE NORTH PARK’S EXPERT ATTORNEY MICHAEL ROCHA, TESTIFIED THAT NORTH PARK DIRECTED ROCHA TO REVIEW THE 2014 FEE AGREEMENT AND ROCHA DETERMINED THAT THE FEE AGREEMENT WAS CLEAR, UNAMBIGUOUS, REASONABLE AND ENFORCEABLE.
 - b) NORTH PARK’S 2018 HOURLY FEE AGREEMENT IS AN OBJECTIVELY LAWFUL HOURLY FEE AGREEMENT, WHICH CANNOT EVER BE A CONTINGENCY FEE AGREEMENT AND CANNOT POSSIBLY CONTAIN A PROHIBITED PENALTY FOR TERMINATION CLAUSE BECAUSE IT IS NOT A CONTINGENCY AND PROVIDES A \$395.00 PER HOUR FEE.
 - c) RUSH’S ATTORNEY’S LIEN IS SPECIFICALLY AUTHORIZED BY RULE 4-1.8(a) and (i), AND FLORIDA CASE LAW SPECIFICALLY AUTHORIZED RUSH TO SECURE PAYMENT OF FEES AND COSTS BY FILING MOTIONS AND PURSUE THE ATTORNEY’S

LIEN IN THE UNDERLYING EMINENT DOMAIN CASE.

- d) THE REFEREE'S CONCLUSION THAT NORTH PARK'S UNAMBIGUOUS 2014 AND 2018 FEE AGREEMENTS ARE NOT ENFORCEABLE BECAUSE TAYLOR LACKED AUTHORITY OR BECAUSE TAYLOR AND NORTH PARK VOLUNTARILY CHOSE NOT TO READ THE FEE AGREEMENTS BEFORE SIGNING, CONTRADICTS NORTH PARK'S TESTIMONY AND FLORIDA LAW.
- e) THE REFEREE'S CONCLUSION THAT RUSH'S FEE AGREEMENTS ARE UNLAWFUL IS ERRONEOUS WHERE THE REFEREE BASED HIS CONCLUSION ON THE UNDISCLOSED AND BIASED EXPERT TESTIMONY OF NORTH PARK'S ATTORNEYS BURNS AND PETTIT, WHERE THE FLORIDA BAR DID NOT DISCLOSE BURNS AND PETTIT AS EXPERT WITNESSES AND DID NOT DISCLOSE THEIR EXPERT OPINIONS, AS REQUIRED BY THE REFEREE'S PRE-TRIAL ORDER, WHICH AMOUNTED TO PROHIBITED TRIAL BY AMBUSH, OVER RUSH'S OBJECTION.
- f) THE REFEREE'S CONCLUSIONS ARE ERRONEOUS WHERE THE REFEREE BASED HIS CONCLUSIONS ON A VACATED/DISMISSED WITH PREJUDICE, NON-FINAL ARBITRATION AWARD, WHERE THERE WAS NO TRANSCRIPT OF THE ARBITRATION PROCEEDINGS, ESPECIALLY WHERE THE CIRCUIT COURT ENTERED AN ORDER VACATING AND DISMISSING THE ENTIRE ARBITRATION CASE WITH PREJUDICE.

Rule 4-1.5(a), Rules Regulating the Florida Bar

Rule 4-1.5(a) and (d), R.R.F.B. governs the legality and the enforcement of attorney's fee agreements with their clients, as follows in part:

(a) Illegal, Prohibited, or Clearly Excessive Fees and Costs.

A lawyer must not enter into an agreement for, charge, or collect an illegal, prohibited, or clearly excessive fee... A fee or cost is clearly excessive when: (1) after a review of the facts, a lawyer

of ordinary prudence would be left with a definite and firm conviction that the fee or the cost exceeds a reasonable fee... or (2) the fee or cost is sought or secured by the lawyer by means of intentional misrepresentation or fraud upon the client...

(d) Enforceability of Fee Contracts. Contracts or agreements for attorney's fees between attorney and client will ordinarily be enforceable according to the terms of such contracts or agreements, unless found to be illegal... or clearly excessive...

Rule 4-1.5(f), R.R.F.B., provides that a client may waive the client's constitutional, statutory and other rights in regard to payment of attorney's fees, even when the client's attorney's fees are specifically provided for or limited by Statute or Constitutional Provision, even though the client's waiver benefits the attorney and is a detriment to the client.

North Park's 2014 Eminent Domain Fee Agreement and North Park's 2018 Hourly Fee/Reasonable Fee Agreement

On or about September 25, 2014, North Park and Taylor signed a detailed and comprehensive 2014 Fee Agreement which is titled "Eminent Domain Fee Agreement," whereby North Park hired Respondent Rush to represent North Park in an eminent domain matter.

2014 Fee Agreement

The 2014 Fee Agreement incorporated by reference Florida's eminent domain attorney fee statute and confirmed the limited scope of Rush's representation in regard to seeking just compensation, severance damages, road access to Sam Allen Road, and FDOT's payment of North Park's attorney's fees, expert fees and costs. **R-Ex. #10**; Affidavit of Tifani Rivas **R-Ex #13**.

North Park's 2014 Eminent Domain Fee Agreement (the "**2014 Fee Agreement**"), is objectively lawful and is a fully enforceable fee agreement under Florida Law, for which the Rush Attorneys have been paid nothing. The 2014 Fee Agreement sets forth the parties' contractually agreed upon limited scope of representation and the client's objectives goals, strategy and plan of action for Rush's representation of North Park, and North Park's agreement to "**fully cooperate**" with this agreed upon strategy. **R-Ex #10 (also, FB-Ex. #7)**; App. "7" and provides in part:

AGREEMENT FOR REPRESENTATION **EMINENT DOMAIN**

TODD R. TAYLOR, MANAGING MEMBER, as authorized agent of NORTH PARK ISLES PTC, LLC and JT NORTH PARK, LLC (known together as "Client"), hereby retains and employs Brian P. Rush, Esq., Brian P. Rush, P.A., and Woodlief and Rush, P.A. ("Attorney") to represent Client in a condemnation proceeding **for damages, loss of land value, impairment of access, loss of furniture, fixtures and**

equipment and/or business loss claims or other losses/claims involving the State of Florida, and/or the Florida Department of Transportation. (bold emphasis added) Page 1 of North Park's 2014 fee agreement.

ATTORNEYS FEES

As set forth in this Agreement, Attorney's fees and costs for this representation will be limited to the amount paid to Attorney by the condemning authority or the State of Florida or the Department of Transportation or their agents through a settlement or the amount awarded by the Court if Attorneys cannot reach a settlement of their claim for fees. (underline added).

Attorney has enclosed copies of Florida Statutes, Section 73.091 and 73.092 regarding the obligation of the government to pay Client's attorney's fees, costs, and expert fees in defending this case. See, Pg. 2 of North Park's 2014 fee agreement.

OFFERS OF JUDGEMENT **[CLIENT'S OBLIGATION TO PAY ATTORNEY'S FEES]**

Chapter 73, Florida Statutes, and Rule 1.442 provide an explanation of the procedures when an "offer of judgment" or "proposal for settlement" is made. **Generally, if the final judgment or trial verdict award is equal to or less than the Offer of Judgment, Client would be responsible for any attorney's fees and costs billed by Attorneys, after the date the Offer of Judgment is rejected or expires.** (bold emphasis added)(underline added) (bracketed title added).

TERMINATION OF REPRESENTATION **[CLIENT'S OBLIGATION TO PAY ATTORNEY'S FEES]**

Client shall at all times have the right to terminate Attorney's services upon written notice to that effect, but Client would then be obligated to pay to Attorney the reasonable value of his services. (bold emphasis added) (underline added) (bracketed title added).

[Client's Full Cooperation to Recover Attorney's Fees]

If required by Attorney or the Court, **Client agrees to fully cooperate and to join in a petition to the Court for Attorney's fees and costs and expert fees** based on a consideration of the above factors, and Florida Statutes and case law. (bold emphasis added) (underline added) (bracketed title added).

North Park and Taylor specifically agreed that the Client had "**received a copy** of this agreement and had **read it carefully** before signing the agreement". The last half-page of the agreement is set forth verbatim below.

If you agree with the foregoing terms and conditions of our attorney-client relationship, please indicate your approval and acceptance by dating, signing, and returning this Agreement. Page 5 of North Park's 2014 fee agreement, R-Ex #7.

Each party hereto has received a copy of this agreement and has read it carefully before signing the agreement. Attorney has made no guarantees of success to Client, and Client has not relied upon Attorney in deciding to execute this fee agreement. Notwithstanding any Rule of Construction, this agreement shall be construed equally in regard to each party. Page 6 of North Park's 2014 fee agreement, R-Ex #7.

READ CAREFULLY BEFORE SIGNING


TODD R. TAYLOR, managing member as an
agent for NORTH PARK ISLES PTC, LLC and
JT NORTH PARK, LLC and related business
entities, Client

9/25/14
Date

**Plaintiffs' Protected Property and Contractual Rights
in 2014 Agreement**

The 2014 Fee Agreement and Rush's lawful attorney's lien established valuable property rights and contractual rights to the Rush attorneys, which

Rush sought to protect through his out of Court communications and statements to FDOT and Aloyma Sanchez, all of which are protected by the First Amendment to the U.S. Constitution.

2018 Hourly Fee Agreement

On or about April 6, 2018, the North Park Companies and their authorized manager/agent, Todd Taylor, entered into an additional 2018 Hourly Fee Agreement, which is titled “**Hourly Fee/Reasonable Fee Agreement.**” Under the 2018 Fee Agreement the same North Park Companies promised to pay hourly fees to the same attorneys, Rush and his law firm (the “**Rush Attorneys**”) to represent the same North Park Companies in the same subject eminent domain matter, involving the same Florida Department of Transportation (“FDOT”), in regard to the same taking of property. Additionally, Rush agreed to draft a detailed settlement proposal in a Memorandum of Understanding to be signed by the same opposing eminent domain parties: FDOT and North Park.

North Park’s 2018 Hourly Fee Agreement, whereby North Park confirmed its specific objectives, goals and directions that Rush force the FDOT to relocate the FDOT drainage pond and provide access to Sam Allen Road and valuable, non-monetary benefits to North Park. Additionally, North Park directed Rush to draft and send to FDOT a detailed Memorandum of

Understanding, whereby FDOT would provide valuable non-monetary benefits and concessions to North Park. Memorandum of Understanding, R.-Ex #198; Taylor T. 369-73. R.-Ex #11; Rush T. 77:1-25. North Park's 2018 Hourly Fee Agreement provides in pertinent part:

HOURLY FEE/REASONABLE FEE AGREEMENT (2018)

TODD TAYLOR individually and as authorized agent of North Park Isles PTC, LLC and JT North Park, ("Client"), hereby retains and employs Brian P. Rush, Esquire, and Brian P. Rush, P.A. ("Attorney") to represent Client **in regard to prepare an initial draft Memorandum of Understanding Agreement between the Florida Department of Transportation ("FDOT") and the Client which tracks Client's previous emails to Attorney Brian P. Rush, Esquire in regard to the issues that are important to Client.** Pg. 1, North Park's 2018 fee agreement, R-Ex #11.

"For any additional legal work, Client agrees to pay Attorney an hourly rate of \$395.00 per hour for each hour of Attorney's time, which shall increase annually by five percent (5%) on January 1st of each year. Interest shall accrue on unpaid balances at one percent (1%) per month. It is anticipated that this litigation will require substantial additional legal work" (Underline added). Pg. __ North Park's 2018 fee agreement, R-Ex #11.

North Park's 2018 Fee Agreement Authorized and Directed Rush to Draft North Park's Memorandum of Understanding in Conjunction with Attorney Michael Rocha

Taylor and North Park directed Respondent Rush to prepare a detailed Memorandum of Understanding ("M.O.U."), to be signed by FDOT and North Park, whereby North Park would obtain valuable nonmonetary benefits from

FDOT. **R-Ex #245-#255** North Park's direction to Rush in regard to drafting the M.O.U. was confirmed in North Park's April 6, 2018 Fee Agreement, signed by Taylor and North Park. **FB-Ex #11**, which is set forth in part below:

MEMORANDUM OF UNDERSTANDING

This is an Agreement and Memorandum of Understanding between and among North Park Isles PTC, LLC, JT North Park, LLC, and Todd Taylor, (together known herein as "**Landowner**" or "**Defendant**") and the State of Florida, Department of Transportation (known herein as "**FDOT**"), who agree as follows: Page 1 of North Park's Memorandum of Understanding, R-Ex #198. NOW THEREFORE, the above Landowner and Defendants and FDOT hereby agree to the following understandings and agreements:

- 4) **Relocation of Water Retention Pond.** FDOT agrees to fully cooperate with the above Landowner and Defendants and not object to the relocation of the water retention pond described in this paragraph and more particularly described in FDOT's construction plans attached to the Order of Taking in the subject eminent domain proceeding...The FDOT agrees to take all reasonably necessary steps to move the water retention pond from the above designed location, so that the water retention pond will be relocated approximately two hundred (200) to three hundred (300) feet to the east of the subject property of the North Park Isles development, as shown on the diagram attached as **Exhibit "A"**. Pages 4-5 of North Park's Memorandum of Understanding, R-Ex #198.
- 5) **Modification of FDOT Drainage Pipes.** FDOT agrees to fully cooperate with the above Landowner and Defendants and not object to the modification of the drainage pipes to be connected to the above described water retention pond as this modification is described below in this paragraph.
- 6) **Access Road Surface Improvements, Including Monuments and Landscaping.** FDOT agrees to fully cooperate with the

above Landowner and Defendants and not object to the modification of the current FDOT construction plans and FDOT easements, described in and attached to the subject eminent domain Order of Taking as described below in this paragraph.

Taylor's Competency and Contract Authority

North Park's managing member and authorized agent, Todd Taylor, executed **eight (8) previous written fee agreements** with Rush's law firm from 2010 to 2014, before Taylor and North Park signed the 2014 Eminent Domain Agreement and the 2018 Hourly Fee Agreement. All of these previous written fee agreements recommended that the Client should seek "**independent legal counsel**", before signing the previous eight fee agreements. Contrary to the Referee's erroneous finding, these eight (8) previous fee agreements with the Rush attorneys bear the signature of Todd Taylor and contain the client's specific waiver of a jury trial and a waiver of attorney's fees against Rush. **R-Ex #1-9. App. "8"** Taylor is a licensed real estate broker-real estate agent in the State of Florida, and Taylor was a 40 year plus real estate developer and investor, who was involved in signing numerous commercial contracts and attorney's fee agreements.

Aloyma Sanchez Confirmed that North Park Repeatedly Requested that FDOT Relocate FDOT's Drainage Ponds and Structures

Sanchez admitted that North Park was continuously asking FDOT to move drainage ponds on the property. Sanchez Trial T. 449:25; 450:14.

Aloyma Sanchez admitted that she attended a settlement conference at FDOT on April 4, 2018. Respondent was present with his clients, including Jack Suarez, Todd Taylor and Devon Rushnell. At that meeting and continuing until the case settled at mediation in November 2018, the landowner never wavered in its demand that FDOT agree to relocate the drainage ponds. Sanchez Trial T. 484: 8 through 485:6.

Aloyma Sanchez admitted she received an October 15, 2018 email from Richard Petitt which reaffirmed the landowner's request for relocation of the pond. Sanchez Trial Tr. 519:17 through 520:3, 526:18 through 527:2 and R-Ex #330 and #333. Aloyma Sanchez admitted that she sent a signed settlement justification report to FDOT for settlement authority identifying a potential award of nonmonetary benefits, based upon North Park's \$5.6 million dollar appraisal of severance damages, as justification for FDOT's settlement at mediation in November 2018. T. 521:18 through 523:1 and R-Ex #168.

Testimony of North Park's Real Estate Attorney, Michael Rocha, Confirmed
2014 Eminent Domain Fee Agreement is Lawful, Unambiguous and
Enforceable

Michael Rocha is a real estate contract lawyer, with substantial expertise in drafting and interpreting contracts under Florida Law. At the Florida Bar trial, Michael Rocha testified that he was hired by Jack Suarez

and North Park in approximately April of 2018. As part of that retention he was asked by Jack Suarez and North Park to review Rush's eminent domain fee agreement and to work with Rush to develop and submit to FDOT a Memorandum of Understanding. Rocha Trial Tr. 944:24 through 947:1, and R-Ex #34.

Michael Rocha testified that the 2014 Fee Agreement was clear, unambiguous and by its own language (**"As set forth in this agreement"**) must be read and construed as a whole. Rocha concluded that the Fee Agreement contained common contractual provisions including, a third-party beneficiary provision regarding the protection of the fees for the expert witnesses, a cooperation clause requiring the client to **"fully cooperate"** and to **"join in"** Rush's petition for fees and costs and expert fees, and a provision regarding the construction of the document equally between the parties. R. Ex #10; Rocha Trial Tr. 982:5 through 983:16, 995:20 through 999:23, and R-Ex #190 and FB-Ex #7.

Rocha Confirmed North Park Objective was to
Obtain Non-Monetary Benefits

Michael Rocha further identified Rocha's telephone conference with North Park's agent Devon Rushnell **"regarding proposed memorandum of understanding with FDOT regarding certain nonmonetary concessions... and regarding eminent domain case and proposed**

memorandum of understanding.” Mr. Rocha testified that Rocha understood that the memorandum of understanding identified “certain engineering and drainage concessions that the client needed from FDOT in order to move forward with the sale of the land.” The terms contained in the memorandum of understanding were substantively identical and consistent with the issues identified by Devon Rushnell in North Park’s March 22, 2018 email to Respondent and others. Rocha Trial Tr. 947:24 through 949:9, and R-Ex #34, #232, #250 and #251.

Rocha’s Confirmed that Rush Pursued North Park’s
Required Objectives

Michael Rocha attended a meeting at Jack Suarez’s office on April 12, 2018 where Mr. Suarez discussed: the scheduled closing date with the purchaser of North Park’s land; resolution of the engineering issues with FDOT that were blocking closing; and just compensation for the taking. Mr. Rocha spoke to Aloyma Sanchez on April 12, 2018, after the meeting at Jack Suarez’s office. During this conversation Aloyma Sanchez flatly rejected North Park’s Memorandum of Understanding. T. 1017:9 through 1021:16, and R-Ex #257.

Rocha Confirmed North Park's Approval of
Memorandum of Understanding

Michal Rocha acknowledged that he had “lots of emails” from Rush and Devon Rushnell regarding the Memorandum of Understanding, and Rush kept Rocha and North Park well informed about the Memorandum of Understanding. Michael Rocha identified the Memorandum of Understanding drafted by Rush and sent to FDOT, which basically outlined the settlement deal that North Park wanted. T. 955:5 through 956:13, and R-Ex #245 to #255.

Michael Rocha testified that Rush had prepared North Park's detailed settlement proposal dealing with drainage, access, relocating of various water and sewer lines, and a large number of items which are contained in North Park's Memorandum of Understanding. The clients never communicated any dissatisfaction with the substance of the memorandum of understanding. T. 956:14 through 957:8, and R-Ex #245-#255.

Eminent Domain Expert Attorney, Henry Campbell,
Confirmed that 2014 Eminent Domain Fee Agreement is
Lawful, Unambiguous and Enforceable

Henry “Hank” Campbell is an experienced eminent domain lawyer with the firm of Campbell, Trohn, et al in Lakeland, Florida for almost forty (40) years. T. 1031:11 through 1032:25. Henry Campbell testified that although reasonable fees in an eminent domain action are the result of a percentage

calculation, they are absolutely owed by Statute and are not contingent. Campbell also cited the Rowe, Quanstrom and Schick cases wherein the courts have determined that eminent domain attorney's fees are not a contingency fee, and the Courts cannot use a contingency risk multiplier to increase the percentage fee under the statute. T. 1037:10 through 1037:24. T. 1038:16 through 1043:4, R-Ex #10 and FB-Ex #7.

Henry Campbell testified that he reviewed all of the correspondence between Rush and FDOT, and that based upon his review of the file, North Park never wavered in its demand that Rush accomplish the drainage and engineering modifications identified in the Memorandum of Understanding. Campbell Trial Tr. 1056:19 through 1058:17 and R-Ex #232, #235 and #245-#255.

Petitt's Unreasonable Demand that Rush Sign New Fee Agreement

Henry Campbell also reviewed Richard Petitt's May 18, 2018 correspondence with its new unlawful fee agreement attached as Exhibit "A" (FB-Ex #16) and concluded, **"I know of no eminent domain lawyer who would sign an agreement that's even close to Exhibit "A" including the fact that (Rush) cannot have contact with the client or the opposing party. How a trial lawyer, the only counsel of record in the case, could sign something like this is unimaginable to me."** Campbell concluded

that the termination clause in the 2014 Fee Agreement **tracked the language in controlling Florida Supreme Court case law, and the termination clause contained no penalty and simply stated that Respondent was entitled to a reasonable fee, based on quantum merit.**

T. 1060:21 through 1063:9.

North Park's Attorney, Richard Pettit, Confirmed that North Park Communicated that it was Not Interested in Monetary Compensation from FDOT as Part of a Prompt Settlement

Pettit testified that in early May 2018, North Park/Suarez was telling Pettit, FDOT and Aloyma Sanchez that **North Park was “not concerned with money”, and North Park “wants to settle and get some non-monetary accommodations from the FDOT, i.e., the relocation of the pond...”** Pettit Trial Tr. 384:16-25 and 385:1-2.

Rush's May 7, 2018 Letter to Pettit/North Park Confirms Rush's Ongoing Settlement Negotiations with FDOT

Pettit received a May 7, 2018 letter from Respondent Rush outlining North Park's requested nonmonetary benefits and accommodations from FDOT and outlining North Park's estimated damages as leverage to force FDOT to settle with North Park. Pettit also testified that Rush's May 7, 2018 letter stated that North Park was willing to negotiate a settlement of monetary claims, because **“Mr. Suarez advised Mr. Rush that the clients were willing to waive a substantial portion of the claims for the value of the**

land taken in an effort to settle with the FDOT.” According to Petitt: “Mr. Suarez did not really care about the amount of compensation from the FDOT.” R-Ex #286 (also, FB-Ex #15); Petitt Trial Tr. 385:3-25 and 386:1-25 and 387:1-3. **App. “9.”**

Petitt Admitted Sending Threatening Letter to Rush

Petitt sent a letter dated May 18, 2018 to Rush demanding that Rush involuntarily rescind North Park’s Fee Agreements. Petitt falsely asserted that because “[the fee agreement] violates the Rules Regulating the Florida Bar, in that it contains an illegal termination provision,” and “Todd Taylor did not have the mental capacity to understand the engagement agreement”, and “Todd Taylor did not have the actual or apparent authority of the clients to execute the engagement agreement.” Petitt testified that Petitt’s letter then threatened Rush that “if you do not agree to rescind the engagement agreement, then the client will pursue their legal remedies.” FB-Ex #16; R.-Ex #288; T. 387:4-15 and 388:11-16 and 393:2-13.

North Park’s Repudiation Letters to Rush Threatened False Florida Bar Complaint Against Rush to Coerce Rush to Terminate Lawful Fee Agreements

On May 18, 2018, the North Park Companies sent an unlawful demand letter to Rush, demanding that Rush terminate his lawful Fee Agreements with

North Park, and enter into a new unlawful one-page fee agreement, which itself violated the Florida Bar's Rules. **App. "2"**; R-Ex #288 which falsely stated in pertinent part:

"The Engagement Agreement is unenforceable for a number of reasons, which include, without limitation, the following:

- 1. It violates the Rules Regulating the Florida Bar, in that it contains an illegal termination provision that purports to require the Clients to pay you a fee if they terminate the attorney-client relationship, even if the contingency is not fulfilled. The Florida Bar and the courts have been consistent in holding that such a termination provision is void and unenforceable in the context of contingent fee agreements. See, e.g. *Guy Bennett Rubin, P.A. v. Guettler*, 73 So. 3d 809 (Fla. 2011).**
- 2. The Engagement Agreement is inconsistent, overreaching, and confusing.**
- 3. Todd Taylor did not have the mental capacity to understand the Engagement Agreement.**
- 4. Todd Taylor did not have the actual or apparent authority of the Clients to execute the Engagement Agreement."**

On May 21, 2018, the North Park Companies sent a second demand letter to Rush again demanding that Rush rescind and terminate Rush's Fee Agreements or face a Bar Complaint. **App. "3"**; R.-Ex 294 which stated in pertinent part:

"As for the Clients' intentions regarding the illegal engagement agreement, that is dependent on the choice you make. The Clients have given you path to enter into a new, legal engagement agreement. The Clients await your response. If you persist in insisting that the current engagement agreement is valid and enforceable, then the

Clients will pursue their legal remedies. Although the precise course of action is still under consideration, I disagree that the Clients are bound by the purported arbitration provision in the illegal engagement agreement.”

North Park’s/Suarez’/Pettit’s June 2018 Bar Grievance

On or about June 6, 2018, Jack Suarez, the newly appointed managing agent of North Park filed a false Bar Grievance against Rush. Mr. Suarez’ June 2018 Bar Grievance alleged numerous violations of the Bar Rules, all of which repudiated Rush’s Fee Agreements (FB-Ex #1):

- a. Jack Suarez falsely alleged that Rush’s Fee Agreement was illegal, unethical and unenforceable because North Park could terminate the Rush attorneys at any time, but then North Park would be responsible for paying the **“reasonable value of the attorney’s services”**, where the **“reasonable value of attorney’s services” would be determined through binding arbitration before the Florida Bar Arbitration Program and could be zero.**
- b. Jack Suarez falsely alleged that Rush’s Fee Agreement was illegal, unethical and unenforceable because Rush’s fee agreements had been obtained by taking advantage of Todd Taylor, the managing agent appointed by North Park, allegedly **because Mr. Taylor was “mentally incompetent” when Taylor signed North Park’s 2014 and 2018 fee agreements, even though Suarez had simultaneously appointed and authorized Taylor to be the managing agent for the North Park Companies and Taylor had simultaneously executed various contracts and agreements with Suarez and others, both before and after Rush’s fee agreements, including a 2016 Agreement for the sale of the subject North Park property for **ten million dollars (\$10,000,000.00).****
- c. Jack Suarez falsely alleged that the 2014 and 2018 fee agreements were unfair, over-reaching and contained a “penalty” for “termination” and that North Park’s fee agreements were “contingency fee” agreements, even though North Park’s 2018 Hourly Fee Agreement cannot possibly be a contingency fee agreement.

- d. Jack Suarez filed this false Florida Bar Grievance alleging personal knowledge of the alleged facts, even though Petitt and Suarez had no direct involvement in the North Park eminent domain case for the four (4) years prior to mid-April 2018.
- e. At the end of Jack Suarez' June 2018 Bar Grievance, Suarez tellingly requested that the Florida Bar give North Park an advisory opinion that Rush's fee agreement was illegal and unenforceable, so that North Park could avoid paying any attorney's fees and thereby win North Park's fee dispute with Rush.
- f. Jack Suarez' false Florida Bar Grievance was drafted by Attorney Petitt and signed by Jack Suarez "**under penalties of perjury**", and Suarez' subsequent admissions at trial show that the North Park Grievance was materially false when filed.

Taylor's Experience and Competency to Sign Fee Agreements

Todd Taylor ("Taylor") admitted that he is an experienced and sophisticated licensed real estate broker and land developer, with over forty (40) years of experience in reviewing and signing "all manner" of contracts. Taylor Trial Tr. 270:12-25 and 271:1-6, 20-25 and 272:1-18. From 2010 to 2014, Todd Taylor signed eight (8) detailed attorneys fee agreements with Rush and his law firms, which were substantially similar to the North Park Fee Agreements with Rush, signed by Taylor in 2014 and 2018. **R-Ex #1-#9**. Before retaining Respondent Rush as North Park's attorney, **Taylor asked his "other two partners Jack Suarez and Robert Suarez about retaining Mr. Rush for the (FDOT) matter"**. At trial, Taylor testified that Taylor did not read the 2014 eminent domain fee agreement before Taylor signed it, even though Taylor had the opportunity to review the Agreement

before signing. FB-Ex #7; Taylor Trial Tr. 277:1-16 and 278:1-7. Tifani Rivas notarized Taylor's signature on the 2014 Fee Agreement and Rivas testified by Affidavit that Rivas gave the Fee Agreement to Taylor, and Taylor had ample time to review the 2014 Fee Agreement. Rivas also testified that Taylor reviewed the 2014 Fee Agreement and demanded changes to the Agreement before signing it. Affidavit of Tifani Rivas, R-Ex #13; Blue Line Version of Revisions to Agreement, R-Ex #12. **App. "10."**

Taylor admitted that Taylor and North Park agreed to the hiring of North Park's experts, Mesimer, Harris and Greer. Taylor Tr. 279:23-25 and 280:6-25. When North Park and Taylor signed North Park's 2014 Fee Agreement, Taylor admitted that **Taylor and North Park "were still trying to work with the FDOT to have the pond moved a second time after it had previously been moved."** Taylor Trial Tr. 281:1-5.

FDOT'S Absolute Statutory Obligation to Pay
Reasonable Fees/Costs

Under the Florida Constitution and Florida Statutes, FDOT is absolutely required to pay "reasonable" attorney's fees and costs in an eminent domain case, which can include substantial hourly fees under the supplemental attorney's fee provisions of Chapter 73, Florida Statutes. See, Jacksonville Expressway Authority v. Henry G. Du Pree Co., 108 So.2d 289

(Fla. 1959); Dade County v. Brigham, 47 So.2d 602 (Fla. 1950); Lee County v. Sager, 595 So.2d 177 (Fla. 2d DCA 1992).

Eminent Domain Fees Are Not Contingent

Eminent domain attorney's fees are not contingency fees because payment of a "reasonable" attorney's fee in eminent domain is "assured," and the fees are paid, as part of "just compensation." Standard Guarantee Insurance Company v. Quanstrom 555 So.2d 828, 835 (Fla. 1990) (**eminent domain attorney's fees have "special, distinct factors", and "the attorney is assured of a (reasonable) fee when the action commences"**); See, Schick v. Department of Agriculture and Consumer Services 599 So.2d 641, 644 (Fla. 1992) (**eminent domain attorney is not entitled to a contingency risk multiplier**); See, City of North Miami Beach v. Reed 863 So.2d 351, 353 (Fla. 3rd DCA 2003) (**Contingency risk multiplier is unavailable in eminent domain cases under new Statute**). While both eminent domain and probate cases are subject to statutory percentage fee schedules, neither of these types of cases are contingency fee cases. See, Quanstrom (supra) at 834-36. See, FDOT v. Skinners Wholesale Nursery, 736 So.2d 3, 8 (Fla. 1 st DCA 1998) (**"enhancement (of) fees based on contingency risk factor is inappropriate in this eminent domain case."**) (applying new 1994 Statute.).

Rush's Attorney's Lien Authorized Rush to File Motions Against FDOT and North Park

An attorney's lien has long been recognized and approved by the Florida Supreme Court as a lawful and equitable lien to secure the payment of the attorney's fees and costs. See, Miller v. Scobie, 11 So.2d. 892 (Fla., 1943); See, Mabry v. Knabb, 10 So.2d 330 (Fla. 1942). See, Rule 4-1.8(a)(i)(1), R.R.F.B. An attorney's lien has long been recognized as an enforceable lien which secures, protects and ensures the payment of a reasonable attorney's fees in an eminent domain proceeding. See, Winn v. City of Cocoa, 75 So.2d 909, 912 (Fla. 1954). **(In an eminent domain proceeding, the Client Landowner is "obligated" to pay the terminated attorney "a reasonable fee for the services rendered up to the time of such discharge," and the Attorney is entitled to receive the "reasonable value of his services.")** (If the landowner waives the eminent domain attorney's fees, then the landowner becomes liable to pay these fees to his attorney.)

Under Florida Law, an attorney's lien must be filed in the Court file of the pending lawsuit, before any settlement is paid or dismissal occurs. Once filed in the Court file, the notice of the attorney's lien becomes an equitable lien. The attorney's lien also authorizes the attorney to file motions and pursue a recovery under the attorney's lien by filing motions in the pending

case. See, Brown v. Vermont Mutual Insurance Company, 614 So.2d 574, 580 (Fla. 1st DCA 1993). (“**Although the parties to a lawsuit that are represented by attorneys may settle the dispute between themselves, without the participation of their attorney, any such settlement made without knowledge of or notice to a party’s attorney, and without payment of the attorney’s fee due such attorney, operates as a fraud upon the attorney, whether intended or not, and the attorney may continue the litigation in the name of the parties to enforce the right to be paid a fee.”).**

The Florida Bar Rules specifically authorize attorneys to acquire and enforce an attorney’s lien, to secure payment of the attorney’s fees and costs. See, Rule 4-1.8(a) and (i)(1), R.R.F.B. (“**the lawyer may acquire a lien granted by law to secure the lawyer’s fee or expenses.**”).

At the time Respondent Rush and North Park signed North Park’s 2014 and 2018 Fee Agreements, and when the Florida Bar found probable cause and filed the Florida Bar’s Complaint against Rush, the controlling Florida Bar Ethics Opinion 88-11 provided in pertinent part as follows:

Florida Bar Ethics Opinion, Opinion 88-11

Florida common law recognizes two types of attorney’s liens: the charging lien and the retaining lien. *Daniel Mones, P.A. v Smith*, 486 So.2d 559 (Fla. 1986).

The attorney should give timely notice of the asserted charging lien by either filing a notice of lien or otherwise pursuing the lien in the underlying suit. The latter approach is preferred. In summary, it would not be ethically improper for the inquiring attorney's firm to assert a retaining lien on the case file until the outstanding costs are paid or guaranteed. **Alternatively, a charging lien can be filed.** (Bold emphasis and underline added).

Court's Approval of Respondent Fee Motions and Attorneys Lien

On July 11, 2018, the Circuit Court recognized Rush's pending motions for attorney's fees, and that the Court would approve Rush's attorney's lien, and the Court would retain jurisdiction to hear Rush's pending motions for attorney's fees and costs. R-Ex #101 and #133.

2014 and 2018 Fee Agreements are Unambiguous and Enforceable

The interpretation of allegedly ambiguous terms in a written contract are ascertained from the language of the contract. **The agreement of the parties "is ascertained from the language used in the instrument and the objects to be accomplished...."** *Rylander v. Sears Roebuck & Co.*, 302 So.2d 478, 479 (Fla. 3d DCA 1974). *Robbie v. City of Miami*, 469 So.2d 1384, 1385 (Fla.1985)." FSJI 416.14, Note 2 Interpretation Dispute Term(s). In deciding what the terms of a contract actually mean, the Court must consider the whole contract, not just isolated parts. (**"In reviewing the**

contract in an attempt to determine its true meaning, the court must review the entire contract without fragmenting any segment or portion.”) J.C. Penney Co., Inc. v. Koff, 345 So.2d 732, 735 (Fla. 4th DCA 1977). (“We rely upon the rule of construction requiring courts to read provisions of a contract harmoniously in order to give effect to all portions thereof.”) City of Homestead v. Johnson, 760 So.2d 80, 84 (Fla.2000).” Mayflower Corp. v. Davis, 655 So.2d 1134, 1137 (Fla. 1st DCA 1994) (“Courts have also looked to the conduct of the parties throughout their course of dealings to determine their intentions and the meaning of the agreement.”). FSJI 416.18.

North Park’s May 2018 Written Repudiation of Fee Agreements
Released Rush’s Remaining Duties to Perform

Repudiation of a contract or contractual duty discharges the other party’s duties to render performance. “**Where performances are to be exchanged under an exchange of promises, one party’s repudiation of a duty to render performance discharges the other party’s remaining duties to render performance.**” Hosp. Mortg. Grp. v. First Prudential Dev. Corp., 411 So.2d 181, 182 (Fla.1982) (quoting Restatement (Second) of Contracts SS § 253 (1979)). FSJI 416.23, Note 1, 2 Anticipatory Breach and Repudiation of Performance.

North Park's 2014 Fee Agreement and North Park's 2018 Fee Agreement and the M.O.U. specifically identify FDOT as the same opposing condemnor and both fee agreements address North Park's ongoing litigation with FDOT. Respondent has shown by testimony and numerous documents admitted into evidence that both the 2014 and 2018 fee agreements were in regard to the same eminent domain litigation, with the same North Park/FDOT parties, with the same North Park clients and the same Rush Attorneys, such that these successive fee agreements involve the same attorney-client relationship for the same case.

Florida Supreme Court Prohibits Surprise Evidence or New Accusations Against Respondent Attorney as Unfair Trial by Ambush

The Florida Supreme Court has repeatedly warned the Florida Bar and litigants in disciplinary proceedings against unreasonable failure to provide discovery, failure to follow pretrial orders, and failure to make pretrial disclosures of evidence, especially expert witness disclosure, and the Supreme Court has prohibited litigants from **preventing discovery and pursuing tactics involving "trial by ambush."** In the case of *The Florida Bar v. Lobasz*, 64 So.3d 1167 (Fla. 2011) the Supreme Court warned that the Court would not allow the Florida Bar or Attorney Respondents to engage in **"hide the ball" discovery tactics** in order to carry out a prohibited trial by ambush. The Supreme Court stated:

“Discovery shall be available to the parties in accordance with the Florida Rules of Civil Procedure.” Id. at 1171

“Although a referee has wide latitude to admit evidence and may consider any relevant evidence, we must emphasize that “trial by ambush” tactics will not be condoned.” Id. at 1171 (Underline added)

“we feel compelled to reiterate that parties who evade their discovery responsibilities will not be permitted to benefit from such improper tactics.” Id. at 1171-1172 (Underline added)

In this Bar proceeding, the Florida Bar violated the Referee’s pretrial order and failed to provide required discovery and failed to disclose experts and their opinions, which the Bar prosecutors presented to the Referee over the repeated objections of Respondent Rush. The Bar’s failure to disclose three (3) expert witnesses (Burns, Petitt and Sanchez), is in direct violation of the Referee’s pretrial order. That order required the Bar to disclose all of the Florida Bar’s expert witnesses and all of their expert’s opinions, including the expert witness’ factual basis, grounds for opinions and expert’s conclusions. **The Bar’s violation of the Pre-Trial Order amounts to trial by ambush, especially where Respondent Rush complied with the Referee’s pretrial order regarding expert disclosure.** Because the Florida Bar violated the Court’s pretrial order and violated Rule 1.280(b)(5), Florida Rules of Civil Procedure, these expert opinions were improper surprise expert opinions.

- II. THE REFEREE ERRED IN DETERMINING THAT RESPONDENT RUSH VIOLATED RULE 4-1.7, R.R.F.B (Conflict of Interest), BECAUSE A FEE DISPUTE, FOMENTED BY THE CLIENT'S BREACH OF TWO OBJECTIVELY LAWFUL FEE AGREEMENTS, PLUS THE CLIENT'S BREACH OF A CONTRACTUAL DUTY TO COOPERATE WITH ATTORNEY RUSH, IS NOT A CONFLICT OF INTEREST, ESPECIALLY WHERE THE CLIENT REFUSED RUSH'S FOUR WRITTEN REQUESTS FOR FLORIDA BAR FEE ARBITRATION.

Rule 4-1.7, Rules Regulating the Florida Bar: **Conflict of Interest;**

Current Clients, only applies to actual conflict of interest situations when an attorney is simultaneously representing adverse interest or multiple clients “**in a single matter,**” or where the representation “**will be materially limited by the lawyer’s responsibility to another client... or by a personal interest of the lawyer.**” However, this Rule does not apply to lawful fee agreements or a lawful attorneys lien, where an attorney uses protected speech to protect or secure payment of reasonable fees and costs. A fee dispute, especially a fee dispute initiated by the client’s unlawful/unconscionable repudiation of a lawful fee agreement, cannot be a prohibited “conflict of interest”. Quite simply, a fee dispute is not a conflict of interest, as defined by Rule 4-1.7.

North Park’s Fee Dispute With Rush is Not a Conflict of Interest Under Bar Rules

A fee dispute between an attorney and a client is not a conflict of interest, is not unethical, and does not violate the Florida Bar Rules, especially when the fee dispute is fomented by the client and his new lawyer in order to extort

and forces Rush's to rescind two (2) objectively lawful Fee Agreements and thereby terminate a lawful attorney's lien filed pursuant to Rule 4-1.8(a) and (i), R.R.F.B.

Rush's Refusal to Comply with North Park's Unlawful and Unconscionable Demands Does Not Create a Conflict of Interest

In the Spring of 2018, Rush reasonably refused North Park's unlawful demands that Rush rescind, waive, impair or silence Rush's motions for attorney's fees against FDOT. In the Spring, Summer and Fall of 2018, North Park repeatedly repudiated North Park's contractual promises to "fully cooperate" and "join in" Rush's applications and motions for fees against FDOT. When FDOT's statutory obligation to pay attorney's fees became an impediment to North Park obtaining nonmonetary concessions **valued at between approximately five million dollars and eight million dollars**, North Park embarked on a calculated scheme to force Rush to surrender his claims for attorney's fees.

Rush's Refusal to Waive Rush's Claims for Attorney's Fees and Expert Fees Against FDOT Does Not Create a Conflict of Interest

In March, April, May, June and July of 2018, Respondent Rush repeatedly transmitted North Park's settlement demands to FDOT, even after North Park repudiated its 2014 and 2018 written fee agreements. In June and July of 2018, despite North Park's prior written repudiation of its

fee agreements and North Park's June 6, 2018 false Bar Grievance, Rush still transmitted North Park's June 28, 2018 settlement demands to FDOT. Rush did so, **even though North Park had constructively terminated Rush's employment repeatedly in late May and early June of 2018.** North Park Has falsely accused Rush of pursuing non-monetary compensation, which North Park supposedly did not authorize. The 2014 and 2018 Fee Agreements and the M.O.U. show that North Park's accusations are obvious lies. In any event, enforcing a lawful contract and a lawful attorneys lien does not create a conflict of interest under Rule 4-1.7, R.R.F.B.

No Court Order Found That Rush's Lis Pendens or Any of Rush's
Motions were Frivolous/Non-Meritorious

In the eminent domain case and in the related Circuit Court actions to compel Florida Bar Arbitration, no Circuit Court Judge has ever entered an order or made any finding that Respondent Rush filed any non-meritorious or frivolous pleading, motion, notice, lien or paper, and neither FDOT nor North Park sought such a ruling in the eminent domain case and in the related Circuit Court actions. The Florida Bar presented no evidence that North Park or FDOT ever filed a motion under Section 57.105, Florida Statutes or ever filed a motion under any other rule or statute, contending that Respondent Rush filed any non-meritorious or frivolous pleading, motion, notice, lien or paper. Therefore, there is no predicate Court ruling

that any party or any Court has contended or found that Respondent Rush filed any non-meritorious or frivolous pleading, motion, notice, lien or paper and there is no evidentiary basis to make such a finding in this disciplinary proceeding. As a result, the Florida Bar has not met the clear and convincing evidence standard for the Florida Bar's burden of proof in these Bar proceedings, and Respondent Rush has not violated Rule 4-1.7 (Conflict of Interest) and has not violated 4-3.1 (Meritorious Claims), and has not violated Rule 4-8.4 (Misconduct), Rules Regulating the Florida Bar. R-Ex #101, #102 and #133.

Claims for Equitable Lien Support Filing of Lis Pendens

In the Fall of 2018, Rush filed a lis pendens against North Park in regard to Rush's equitable claims for fees and costs, based upon Rush's equitable attorneys lien. North Park filed a motion to dissolve the lis pendens, and the Trial Court entered an order simply dissolving the lis pendens. FB-Ex. #28. However, the Trial Court did not award any sanctions, damages, attorney's fees or costs against Rush. Further, the Trial Court did not make any findings that the filing of the lis pendens was frivolous, non-meritorious or prohibited by Florida Law.

The filing of a lis pendens is proper when a Plaintiff is pursuing a claim for equitable lien or constructive trust which Rush actually filed in the Circuit

Court action to compel arbitration. In the case of S and T Builders v. Globe Properties, Inc., 944 So.2d 302 (Fla. 2006), the Florida Supreme Court confirmed that the Plaintiff, S and T Builders could lawfully file and record a notice of lis pendens, where S and T Builders was pursuing an action for equitable lien, which **was not based upon any mortgage or duly recorded instrument.**

In concluding that a party may properly file a lis pendens in a claim for equitable lien/constructive trust, the Supreme Court explained that the lis pendens served the purpose of notifying third-party creditors, purchasers and others of the Plaintiff's equitable claims. The Supreme Court's opinion provides, in pertinent part as follows:

“S and T Builders (S & T) filed an amended complaint against Globe Properties (Globe) for foreclosure of an equitable lien. S & T also filed and recorded a Notice of Lis Pendens.” Id. at 303 (Bold emphasis and Underline added)

“[Note] 1. The purpose of a notice of lis pendens is 'to alert creditors, prospective purchasers and others to the fact that the title to a particular piece of real property is involved in litigation.' Am. Legion Cmty. Club v. Diamond, 561 So.2d 268, 269 n. 2 (Fla.1990).” Id. at 306

“When the initial pleading does not show that the action is founded on a duly recorded instrument or on a lien claimed under part I of chapter 713, the court may control and discharge the notice of lis pendens as the court may grant and dissolve

injunctions. § 48.23(3), Fla. Stat. (2005) (emphasis supplied).³ Id. at 304 (Underline added)

"[Notes] 3. None of the parties disputes that S & T's lis pendens is not founded on a duly recorded instrument or on a lien claimed under part I of chapter 713, Florida Statutes." Id. at 306 (Underline added)

Paragraphs 38, 39 and 40 of the Florida Bar's Complaint erroneously claim that Respondent Rush's filing of a lis pendens in support of Rush's lawful actions for equitable lien and constructive trust, by itself, amounts to a violation of Rule 4-3.1 (Meritorious Claims and Contentions). **Just because an attorney makes a claim or pursues certain equitable relief that is ultimately unsuccessful, does not mean that the unsuccessful claim is frivolous or non- meritorious, especially where the Trial Court has made no such finding and North Park pursued no such sanctions.**

III. THE REFEREE ERRED IN DETERMINING THAT RESPONDENT VIOLATED RULE 4-3.1, R.R.F.B (Meritorious Claims) BY FILING MOTIONS FOR PAYMENT OF RUSH'S FEES, BECAUSE RUSH'S LAWFUL 2014 AND 2018 FEE AGREEMENTS, AND RUSH'S ATTORNEYS LIEN, ESTABLISHED RUSH'S RIGHT TO FILE MOTIONS FOR FEES.

After receiving North Park's May 18, 2018 and May 21, 2018, repudiation letters and constructive termination notice, Rush filed a notice of attorney's lien, as specifically authorized by and provided by Rule 4-1.8(a) and (i)(1).

Rush's May 18, 2018 Notice of Lien to Recover Attorney's Fees. **FB-Ex #26H**

App. "11" and states in part:

**NOTICE OF LIEN AND MOTION TO ADJUDICATE LIEN AND
RECOVER ATTORNEY'S FEES, EXPERT FEES AND COSTS**

Brian P. Rush, Esquire, Brian P. Rush, P.A. and Woodlief & Rush, P.A., hereby file this **Notice of Lien and Motion to Adjudicate Lien and Recover Attorney's Fees, Expert Fees and Costs...**

**Defendants' Required Cooperation in
Motion for Fees and Costs**

Defendants have agreed to fully cooperate with the above Attorneys and to join in the filing of motions to recover all amounts owed to the undersigned Attorneys, including but not limited to the above Attorney's attorneys' fees and costs, plus all expert witness fees and costs. (bold added)

FDOT and their attorneys are obligated under Florida law to avoid interfering with the above described attorney's fee agreement and the expert fee agreements and contracts described below. (bold added)

Attorney's Lien Authorized Filing of Rush's Motions

As North Park and FDOT made ongoing unconscionable attacks on Rush's attorneys lien and motions for attorney's fees. See, Rule 4-1.8(i) ("the lawyer may (1): acquire a lien granted by law to secure the lawyer's fee or expenses;").

IV. THE REFEREE ERRED IN DETERMINING THAT RESPONDENT RUSH VIOLATED RULE 4-3.4, R.R.F.B (Fairness to Opposing Party and Counsel), BECAUSE THERE IS NO CLEAR AND CONVINCING

EVIDENCE THAT RUSH ALLEGEDLY MADE A THREAT IN THE IN THE PRESENCE OF LAW ENFORCEMENT TO FILE A BAR COMPLAINT AGAINST ATTORNEY SANCHEZ, WHERE SANCHEZ IS THE ONLY WITNESS VAGUELY ASSERTING SANCHEZ' FALSE ACCUSATION, ESPECIALLY WHERE PHILIP HOBBY AND RUSH AND METADATA EVIDENCE DIRECTLY CONTRADICTED SANCHEZ' FALSE AND UNBELIEVABLE ACCUSATION.

Rule 4-3.4, Rules Regulating the Florida Bar: Fairness to Opposing Party and Counsel, specifically provides that a lawyer, including government lawyers, “**must not obstruct, alter, destroy or conceal a document (or other evidence) and must not fabricate evidence.**” The comment to the Rule specifically confirms that an attorney may **attack the credibility of a witness, by asserting that the witness’ lies, lied or is a “liar.”** Rule 4-3.4, states in part as follows:

RULE 4-3.4 FAIRNESS TO OPPOSING PARTY AND COUNSEL

A lawyer must not:

(a) **unlawfully obstruct another party’s access to evidence or otherwise unlawfully alter, destroy, or conceal a document or other material that the lawyer knows or reasonably should know is relevant to a pending or a reasonably foreseeable proceeding; nor counsel or assist another person to do any such act;**

(b) **fabricate evidence, counsel or assist a witness to testify falsely, or offer an inducement to a witness, except a lawyer may pay a witness reasonable expenses incurred by the witness ...;**

(h) present, participate in presenting, or threaten to present disciplinary charges under these rules solely to obtain an advantage in a civil matter.

Aloyma Sanchez violated Rule 4-3.4(a)(b)(c)(d) and (h) when Sanchez disparaged North Park's appraiser criticizing his bills for professional services in an unsolicited and ex-parte attack on the unrepresented appraiser witness. When confronted with her unethical ex-parte behavior, Sanchez responded by falsely accusing Rush of making a threat to report Sanchez' misconduct to the Florida Bar.

On July 18, 2018, Aloyma Sanchez sent a secret email to Attorney Petitt falsely recounting Sanchez' July 18, 2018 alleged conversations with Respondent Rush, where Rush actually notified FDOT that FDOT (a) should not tortiously interfere with Respondent Rush's fee agreements; (b) should not impair Rush's attorney's lien against FDOT; and (c) should not violate the Trial Court's July 12, 2018 Order. FB-Ex #24; T. 401:16-25 and 402:1-25 and 403:1-4. In late September of 2020, Aloyma Sanchez sent an email to Rush and North Park's attorneys attaching Sanchez' fraudulently fabricated/alterd version of the July 19, 2018 Hobby Memo. At that time, Sanchez deliberately lied and misrepresented that the fraudulently altered Hobby Memo attached to Sanchez' September 2020 email was supposedly an unaltered original Hobby Memo, which it was not. **App. "12."**

On July 31, 2018, Rush first received notice that FDOT and Aloyma Sanchez were falsely asserting that Rush had supposedly communicated a non-existent threat to Aloyma Sanchez that Rush intended to file a Bar Complaint against Sanchez. Rush's detailed four-page August 1, 2018 letter specifically addressed Rush's notice to Aloyma Sanchez that she had improperly disparaged North Park's expert appraiser, Richard Harris, on the record, at the July 11, 2018 Court hearing:

7. During our July 18th discussion, you advised me that you and FDOT would strenuously oppose Mr. Harris' claims for expert appraisal fees, because you feel that his appraisal work was unnecessary and excessive. I responded to you that this position was very unfair when you and the FDOT had previously demanded that Mr. Harris "**finish your appraisal.**" FDOT's position is especially unfair when FDOT and you knew that an appraisal of this \$15 million dollar property would be extremely complicated and expensive.

8. When you stated that the FDOT would strenuously oppose Mr. Harris' claim for expert appraisal fees, I told you that FDOT's position was especially unfair to Mr. Harris and his family, because Mr. Harris is the sole support for his family. As you may know, Mr. Harris' appraisal work is the sole support for his wife, who is quite ill and his appraisal work provides support for their institutionalized, intellectually disabled, adult son (Downs Syndrome). **Because you and the FDOT had specifically demanded that Mr. Harris "finish" this expensive appraisal for this 15 million dollar property, I told you that Mr. Harris would likely be somewhat upset by FDOT's unfair and unreasonable position.**

17. I am not now aware that you have violated any of the Florida Bar Rules and I have never threatened that I would file a Florida

Bar Complaint against you. You have repeatedly advised me that you will follow Florida Law.

On August 1, 2018, for the first time, Aloyma Sanchez sent a short email to Rush asserting that Sanchez disagreed with “everything” in Rush’s August 1, 2018 letter.

On August 6, 2018, Rush emailed a second letter to Aloyma Sanchez, specifically refuting Sanchez’ false claim that Rush had threatened to file a Bar Grievance against Sanchez, for any reason and especially solely to obtain an advantage in a pending civil claim. Rush’s August 6, 2018 letter to Sanchez stated, in pertinent part:

1. **Based upon your promises to obey Florida law, obey the Court’s orders and not induce a breach in my Fee Agreement, I see no reason why you should be personally sued for anything. However, if you or FDOT break these promises and induce a breach in the Fee Agreement, then you and FDOT will likely be sued for tortious interference, as provided by Florida law.**
2. Inducing a breach in someone else’s contract or otherwise interfering with that written contract or other business relationship is fully actionable under Florida law. See, Bankers Risk Management Services, Inc. v. Av-Med Managed Care, Inc., 697 So.2d 158 (Fla. 2nd DCA 1997) (tortious interference with contractual relationship is actionable in Florida). See, Johnson Enterprises of Jacksonville, Inc. v. FPL Group, Inc., 162 F.3d 1290 (11th Circuit 1998) (under Florida law, elements of tortious interference with contract are: (1) existence of contract, (2) defendants knowledge of contract, (3) defendant’s intentional procurement of contract’s breach, (4) absence of privilege, and (5) damages resulting from breach.) You are now on Notice.

3. I, **Brian P. Rush**, did not threaten that I, **Brian Rush** would file a **Bar** complaint against you or anyone else.

(Bold print added) (Underline added)

On July 19, 2018, FDOT and Aloyma Sanchez directed Philip Hobby, an FDOT appraiser to draft a memorandum (the “**Hobby Memo**”) confirming Hobby’s alleged recollection of Rush’s July 18, 2018 discussions with Aloyma Sanchez, in the Courthouse lobby, in the presence of law enforcement/officers. The original (unaltered) **Hobby Memo, dated July 19, 2018, specifically does not reference any threat by Plaintiff to file a Bar Complaint against Aloyma Sanchez or anyone else.** In fact, the phrase “Bar Complaint” is not contained in the original Hobby Memo. R-Ex #437. **App. “6.”** On or about August 13, 2018, FDOT’s Tallahassee, General Counsel, Clinton Doud sent a detailed email memo and case law to Aloyma Sanchez, detailing the level of corroboration necessary to support Sanchez’ unsubstantiated accusations against Rush. In response, Sanchez forwarded the FDOT General Counsel’s case law to Phillip Hobby, with a fraudulent request that Hobby “**corroborate**” Sanchez’ unsubstantiated accusations against Rush. R-Ex # 422. **App. “13.”**

On August 16, 2018, Aloyma Sanchez sent an eight (8) page email to Philip Hobby falsely claiming that Sanchez had allegedly misplaced Hobby’s

original memo, dated July 19, 2018. In her 8-page email, Sanchez attached Clinton Doud's memo and Florida case law, which concluded that the testimony of a single attorney witness, accusing another attorney of making threats, was insufficient evidence to support the complaining attorney's unsubstantiated assertion of attorney misconduct. In her 8-page email to Hobby, Sanchez encouraged Hobby to review the attached case law and then send a new revised Hobby Memo, so that Philip Hobby would now be Sanchez' "corroborating witness." The introductory paragraph of Sanchez' cover email to Hobby states as follows:

Phil

Please send your memo that **I know you did the day after the incident** with Mr. Rush

As you can see from the 3 DCA case below-**the result was he said/she said.**

Of course, I do not have that problem because I have a corroborating witness-YOU!

Thank you.

On or about August 16, 2018, Aloyma Sanchez or some other FDOT agent materially altered Hobby's original July 19, 2018 Memo to fabricate a false accusation that Rush had threatened to file a "**Florida Bar Complaint**" against Aloyma Sanchez. This altered/fabricated August 2018 Hobby Memo now included for the first time the phrase: "**Florida Bar Complaint**", which was not included in the original Hobby memo. Because Hobby's initial July

19, 2018 Hobby Memo did not contain the phrase: “**Florida Bar Complaint**” **R.-Ex #437. App. “6.”** and because Hobby testified that he had not made any “material” changes to Hobby’s original July 19, 2018 Hobby Memo, and because Hobby testified that Aloyma Sanchez had requested that he make “changes” to the initial Hobby Memo, and because FDOT’s Tallahassee counsel has specifically advised Sanchez in writing that her unsubstantiated accusations were insufficient, without specific corroboration from Hobby, it is **almost certain** that Aloyma Sanchez **deliberately altered** the original Hobby Memo to include the fabricated and false accusation that Rush had threaten to file a “Florida Bar Complaint.”

Unconscionably, the Florida Bar prosecutor elected to put into evidence Sanchez’ fraudulently fabricated (altered) Hobby Memo, through the false testimony of Aloyma Sanchez. FB #25. **App. “14.”** When Philip Hobby subsequently produced the original unaltered Hobby Memo on the second to last day of the Bar Trial, the Florida Bar prosecutor attempted to exclude the original unaltered Hobby Memo and subsequently argued against Respondent’s Motion to Show Cause to hold FDOT in contempt for filing a false affidavit which concealed the original and unaltered Hobby Memo from Rush in discovery.

Hobby's Trial Testimony Contradicts Sanchez' False Accusations

Mr. Hobby testified that he was asked to attend the hearing because Ms. Sanchez claimed she was supposedly scared by Respondent's alleged aggressive discussions. Even so, Mr. Hobby testified that Respondent did not act in an aggressive fashion prior to the hearing, and in fact it was a pleasant conversation. Hobby Trial Tr.573:10-24, 578:5-10 and 598:15 through 599:5. Mr. Hobby denied that Respondent was violent or aggressive, and when Rush spoke to Aloyma Sanchez, Rush was 18-24 inches away from her during this conversation. Mr. Hobby testified respondent did not raise his voice or make any physical contact with Ms. Sanchez during this 10-minute conversation. Hobby did not recall and did not document that Respondent made any threat of a Bar Grievance against Aloyma Sanchez, stating: **"I don't know anything about a Florida Bar Complaint."** Hobby Trial Tr. 605:22 through 608:16.

Philip Hobby admitted that Rush and Aloyma Sanchez stood close together, but Rush did not have any physical contact and did not raise his voice during Rush's July 18, 2018 discussion with Aloyma Sanchez. R-Ex #422; 603:1-25 and 604:1-25 and 605:1-25 and 606:1-25 and 607:1-25 and 608:1-25. Philip Hobby admitted that he spoke to Aloyma Sanchez two or

three times about the Hobby memo in regard to the events of July 18, 2018, but Hobby did not make any “material” changes.

Aloyma Sanchez Admitted Her Accusations Against Rush Lack
Believability, Especially When Sanchez Cannot Remember Key Facts
About Her Accusations

Aloyma Sanchez admitted that her interactions with Respondent on July 11 and July 18, 2018 all occurred inside the Courthouse lobby with Sheriff’s deputies and other security personnel present. Ms. Sanchez admitted she never sought assistance from any of the deputies and security personnel and never complained to or approached law enforcement. During this interaction, Respondent advised Ms. Sanchez that if she interfered with his fee contract that he would sue her for tortious interference. Surprisingly and unbelievably, Aloyma Sanchez claimed a loss of memory, when Sanchez admitted that she had no recollection of the basis for Rush’s alleged Complaint against her to The Florida Bar. Sanchez Trial Tr. 507:13 through 510:8, 511:24 through 512:14.

Rush’s Motion for FDOT to Show Cause Arising from FDOT’s Violation of
Subpoena

On August 20, 2021, the Bar Referee, the Honorable W. Douglas Baird signed an amended subpoena duces tecum for deposition, which was served on the Florida Department of Transportation. The subpoena sought all written communications including “all drafts” of the Hobby Memo and other

documents between FDOT's appraiser, Philip R. Hobby and Florida Bar Counsel in regard to Rush, **"including all metadata and including all drafts of any such documents."** However, FDOT and Attorneys Henderson and Sanchez fraudulently concealed and failed to produce the requested documents, including Philip Hobby's original unaltered first draft of the July 19, 2018 "Hobby memo" which **did not include the phrase, "Florida Bar Complaint."** FDOT violated the subpoena so that the original Hobby Memo could not be compared with the sixth draft of the Hobby Memo, which FDOT and Sanchez fraudulently produced as the original unaltered Hobby Memo.

FDOT's and Samuel Henderson's False Affidavit

On or about Thursday, September 30, 2021 (the seventh day of the eight-day Florida Bar Prosecution), Rush discovered that FDOT and its general counsel, Samuel Henderson, had filed a false affidavit and thereby violated the Referee's subpoena, by failing to disclose the original July 19, 2018 Hobby Memo plus any other undisclosed drafts, created prior to the final Hobby memo, which was revised sometime on or about August 16, 2018. On or about Saturday, October 2, 2021, Rush filed Rush's Motion for Order to Show Cause, seeking contempt sanctions against FDOT and Henderson for direct violation of the subpoena. **App. "15."** Rush's Motion

for Order to Show Cause, filed in the Supreme Court docket, stated in pertinent part:

5. Examination of the metadata contained in the Revised Hobby Memo revealed that the Revised Hobby Memo was (originally) authored by Phillip Hobby (“Mr. Hobby), last modified on August 16, 2018, and that there had been five (5) previous versions of the document. However, prior to Mr. Hobby’s testimony FDOT did not produce any other version of the Revised Hobby Memo to Plaintiff, notwithstanding that the FDOT Subpoena clearly and unequivocally demanded “all drafts” of any documents responsive thereto. See Ex. A, at p. 6.

10. Examination of the metadata contained in the Original Hobby Memo revealed that the Original Hobby Memo was authored by Mr. Hobby, and originally created on July 19, 2018 – nearly a month prior to the Revised Hobby Memo.

15. Perhaps most critically for purposes of the case at bar, on the second page of the Original Hobby Memo, Mr. Hobby included a bullet point that initially read as follows: My observation is that no reasonable person would view Aloyma Sanchez as raising her voice at BPR, only being stern as to making sure she understood that he was planning on attacking her personally through a lawsuit alleging fraud and tortuous interference. See Ex. D, at p. 2.

16. However, on the same page of the Revised Hobby Memo, Mr. Hobby revised the foregoing bullet point to read as follows: My observation is that no reasonable person would view Aloyma Sanchez as raising her voice at Rush, only being stern as to making sure she understood that he was planning on attacking her personally through a Florida Bar complaint lawsuit alleging fraud and tortious interference. See Ex. B, at p. 2 (emphasis supplied); see also Ex. E, at p. 2 (showing blackline addition of the phrase “Florida Bar complaint” made by Mr. Hobby).

Sanchez Violated Rule 4-3.4, When Sanchez Disparaged North Park's Unrepresented Expert Appraiser in an Ex-Parte Attack/Without Notice

The Preamble to Chapter 4 of the Florida Rules of Professional Conduct specifically provides that Florida lawyers are required to communicate to other attorney's the obligation **“for observance of the Rules,” in order to “aid in securing their observance by other lawyers.”** The Preamble also provides that **“no disciplinary action should be taken when the lawyer acts within the bounds of that discretion.”**

At the time of Sanchez' surprise ex-parte disparagement of Harris, Aloyma Sanchez knew that the presiding Judge had previously held the same position as an eminent domain attorney representing FDOT, and that the appraiser, Richard Harris was neither present, nor represented at the July 11, 2018 hearing. As a result, Sanchez knew that Harris was unable to respond to Sanchez' ex-parte disparagement or to defend himself from Sanchez' surprise attack on Harris' livelihood. Under these circumstances, there is no clear and convincing evidence to support the Referee's conclusion that Rush violated Rule 4-3.4 or Rule 4-8.4, R.R.F.B.

V. THE REFEREE ERRED IN DETERMINING THAT RESPONDENT RUSH VIOLATED RULE 4-3.4, R.R.F.B (Fairness) and RULE 4-8.4, R.R.F.B (Misconduct), WHERE RUSH'S OUT OF COURT ORAL CONVERSATION WITH SANCHEZ IS PROTECTED COMMERCIAL SPEECH AND PROTECTED FREE SPEECH, WHERE RUSH COMPLAINED OF GOVERNMENT MISCONDUCT BY FDOT AND SANCHEZ, CONSISTING OF TORTIOUS INTERFERENCE WITH

RUSH'S FEE AGREEMENTS WHERE RUSH RAISED THE FIRST AMENDMENT DEFENSE DIRECTLY WITH THE FLORIDA BAR AND THE REFEREE BY MOTION AND ORAL ARGUMENT, PRIOR TO THE ISSUANCE OF THE REFEREE'S REPORT.

Where an attorney has asserted a claim for unpaid fees and costs pursuant to the Client's contractual promises, and has filed an attorney's lien, the attorney pursuing the attorney's lien has a protected First Amendment right to communicate out of Court notice to opposing counsel, so that all parties and their attorneys will be on notice to take reasonable steps to avoid violating the attorney's lien or interfering with the attorney's written fee agreements or violating court orders retaining jurisdiction to award fees and costs. **R-Ex #388; App. "16"**. Additionally, the Court's July 12, 2018 and July 18, 2018 orders protecting Rush's pending motions for fees and costs secured by Rush's previous May 18, 2018 Notice of Attorneys Lien are attached. **FB-Ex #26-M and #26-N; App. "17"**.

Florida Attorneys Retain First Amendment Rights

Florida Supreme Court Justices have stated that the Rules and the Florida Bar's enforcement of the Rules cannot lawfully infringe on the First Amendment where the lawyers' conduct involves the presentation of truthful statements. See, In Re: Petition to Amend the Rules Regulating the Florida Bar, 571 So.2d 451 (Fla. 1990). Justice Barkett stated "**a lawyer cannot be**

forced to surrender all first amendment freedom as the price for practicing law.”

On July 18, 2018, in a large public lobby far removed from the Courtroom, Rush engaged in a direct and ethical conversation with FDOT’s attorney, Aloyma Sanchez, wherein Rush expressed his concern that FDOT’s ex parte attack on Mr. Harris was very unfair, **and that Mr. Harris was facing difficult personal circumstances in regard to his support of a severely disabled adult child**, such that Sanchez’ ex parte attack on Harris and his livelihood was improper and unreasonable. Rush’s private conversation with Sanchez is protected by the First Amendment and is specifically authorized by the Florida Bar Rules. See, Preamble to Bar Rules, R.R.F.B. (**Attorneys are required to counsel other attorneys to follow the Bar Rules, including avoidance of witness disparagement**). Thereafter, Rush confirmed the substance of the above oral conversation with FDOT’s attorney in two (2) detailed letters dated August 1, 2018 and August 6, 2018, emailed to FDOT’s legal counsel, Aloyma Sanchez, copies of which are attached. **R-Ex #314 and #316; App. “5”.**

VI. THE REFEREE ERRED IN DETERMINING THAT RUSH VIOLATED RULE 4-1.2, R.R.F.B. (Objectives), BECAUSE NORTH PARK REPEATEDLY AGREED TO PURSUE ITS WRITTEN OBJECTIVES, AND NORTH PARK DIRECTED RUSH TO PURSUE SPECIFIC WRITTEN DEMANDS ON FDOT TO RELOCATE FDOT’S DRAINAGE POND AND OBTAIN NON-MONETARY BENEFITS.

Rule 4-1.2, Rules Regulating the Florida Bar: Objectives and Scope of Representation, specifically provides that **“Lawyers may take action on behalf of a client that is impliedly authorized to carry out the representation.”** Rule 4-1.2 also provides that Florida lawyers **“may agree to limit the objectives or scope of the representation.”** Further, Rule 4-1.2 provides that the Attorney **is responsible for “tactical issues”**, and the Client’s fee agreement **“may authorize the lawyer to take specific action on behalf of client without further consultation.”**

The undisputed evidence shows that North Park repeatedly confirmed its litigation goals and objectives by directing Rush to seek just compensation, severance damages, restored road access and attorney’s fees and costs from FDOT. The undisputed evidence shows that North Park’s demanded that FDOT relocate its drainage pond, structures and easements in order to restore North Park’s unfettered access.

Beginning in April of 2018, North Park made a change in the focus of its litigation goals and objectives, when North Park put primary focus on FDOT’s pond relocation and obtaining non-monetary engineering changes from FDOT, and secondary focus on North Park’s monetary compensation from FDOT. However, North Park’s change in focus did not alter FDOT’s obligation to pay statutory attorney’s fees and did not alter North Park’s contractual promises to

“fully cooperate” and “join in” to support Rush’s applications and motions for attorney’s fees, expert fees and costs. Similarly, North Park’s change in focus did not alter North Park’s obligation to pay Rush’s hourly attorney’s fees in the event that FDOT did not pay these attorney’s fees and costs.

North Park’s 2014 and 2018 Fee Agreement

In September 2014, North Park and Taylor signed a detailed and comprehensive Eminent Domain Fee Agreement, which incorporated Florida’s eminent domain attorneys fee statute and confirmed the limited scope of Rush’s representation in regard to pursuing just compensation, severance damages, road access to Sam Allen Road, and FDOT’s payment of North Park’s attorney’s fees, expert fees and costs. R-Ex #10; **App. “7.”** Affidavit of Tifani Rivas R-Ex #13; **App. “10.”** On April 6, 2018, Todd Taylor and North Park signed North Park’s 2018 Hourly Fee Agreement, whereby North Park again confirmed its objectives, directions and demands that Rush force FDOT to relocate the FDOT drainage pond and provide valuable, non-monetary benefits to North Park. Specifically, North Park directed Rush to draft and send to FDOT a detailed Memorandum of Understanding, whereby FDOT would provide valuable non-monetary benefits and concessions to North Park. 2018 Hourly Fee Agreement, R-Ex #11; Memorandum of Understanding, R-Ex #198; Taylor T. 369-73. **App. “18.”**

North Park's Repeated Demands to Rush to Obtain
Non-Monetary Benefits From FDOT

On March 6, 2018 Devon Rushnell and North Park sent an email to Rush, Taylor and the Suarez Brothers confirming North Park's **"major problem" with FDOT taking, which "disables the entire project", and North Park demanded that Rush "put FDOT on notice of North Park's demands for nonmonetary/changes to FDOT's plans in order to restore road access. R-Ex #232. T. 374-75. **App. "19."** On March 22, 2018 Rushnell and North Park sent an email to Rush wherein North Park sent detailed written requirements, and whereby North Park demanded nonmonetary changes to FDOT plans and specifications to restore road access and obtain other nonmonetary benefits. R-Ex #235; T. 374-75. **App. "20."** On March 27, 2018 Jack Suarez sent an email to Rush and Taylor directing Rush to increase pressure on FDOT by setting for trial North Park's eminent domain case, so that **North Park can hold this over (FDOT's) head**, while North Park negotiates to obtain valuable nonmonetary benefits from FDOT. R-Ex #237. **App. "21."** On March 27, 2018 Taylor and North Park sent an email to Rush, directing Rush to send written notification to FDOT regarding North Park's demands for monetary compensation and nonmonetary modifications to FDOT plans and specifications. R-Ex #237. **App. "21."****

On April 2, 2018 Rush sent a letter to Aloyma Sanchez/FDOT, complying with Taylor's March 27, 2018 email direction to send written notification to FDOT regarding North Park's demands for monetary compensation and non-monetary benefits and modifications to FDOT plans, easements, drainage structures and specifications in order to restore road access. FB-Ex #9. **App. "22."** On April 3, 2018 Rush sent an email to North Park, attaching Rush's April 3, 2018 letter to Aloyma Sanchez, again complying with Taylor's March 27, 2018 email direction for Rush to send written notice to FDOT regarding North Park's demands for monetary compensation and non-monetary benefits and modifications to FDOT plans, specifications, easements and structures. R-Ex #241 (FB-Ex #10) **App. "23."**

On April 5, 2018 Rush sent a letter to North Park/Taylor, enclosing the Memorandum of Understanding ("M.O.U.") and confirming North Park's direction to send the M.O.U. to FDOT as set forth in the 2018 Fee Agreement. R-Ex #198. R-Ex #247. **App. "24."** On April 6, 2018 Taylor and North Park signed the 2018 Hourly Fee Agreement between North Park/Taylor and Rush, again confirming Rush's authority to draft and send North Park's Memorandum of Understanding to FDOT. R-Ex #11. **App. "18."**

On April 12, 2018, Jack Suarez and Taylor summoned Rush to North Park's offices, where Suarez and Taylor went over a detailed meeting agenda stating R-Ex #257. **App. "25."**

NPI Agenda 4-12-2018

I. Where are we? We will miss the 4/17/2018 closing with Jeff Hills.

**Do not have all engineering issues resolved with the FDOT
that are blocking us from closing on the Hills Contract.**

II. Where we need to get to:

Close the Sale with Jeff Hills by April 25th.

Get our "Just Compensation" for the taking of our Real Estate.

While these are equals in importance, **the closing is first
among equals and the just compensation is subordinate to
achieving the targeted 4/25 closing date.**

At the end of the April 12th meeting, North Park Suarez and Taylor ordered Rush to obtain a settlement from FDOT within two weeks (April 25th closing date), which would require FDOT's pond relocation and require resolving **"all engineering issues with the FDOT."** However, North Park and Suarez clearly stated that North Park's interest in "just compensation" was secondary and subordinate to resolving all engineering issues with FDOT. North Park and Suarez communicated that North Park was prepared

to waive all of North Park's claims for monetary compensation, in return for obtaining prompt resolution of all engineering issues with FDOT that were “blocking us (North Park) from closing on the Hills Contract.”

North Park's 2017-2018 Demands to Relocate Drainage Pond

From 2014 to the end of 2018, North Park consistently demanded that FDOT relocate the seven-acre drainage pond, drainage easements and structures, in order to restore North Park's unfettered road access. North Park's expert engineer and expert appraiser issued reports confirming North Park's damages caused by FDOT's taking and resulting loss of access. However, on April 20, 2018, FDOT sent a letter to North Park and its managing agent, Todd Taylor, wherein FDOT refused to relocate FDOT's pond, easements and drainage structures. R-Ex #276-#279. **App. “26.”** In that letter, FDOT blamed North Park and Taylor for repeatedly failing to obtain required environmental permits from the Southwest Florida Water Management District (“SWFWMD”). FDOT again sent copies of the same refusal letter to North Park in July, September and October, 2018. R-Ex # 317. **App. “27.”**

Rush's Friday, May 4, 2018 Letter to Sanchez/FDOT

On Friday, May 4, 2018, Rush sent a detailed letter to Aloyma Sanchez, again confirming North Park's demands and notifying FDOT of the

estimated severance damages to North Park caused by FDOT's taking of North Park's property and North Park's resulting loss of access. R-Ex #282 and #284. Rush's May 4, 2018 letter to Sanchez/FDOT also confirms North Park's willingness to potentially waive North Park's monetary claims against FDOT (as authorized by Jack Suarez), in return for FDOT providing valuable non-monetary benefits described in North Park's Memorandum of Understanding, which North Park's experts had valued at approximately Five to Eight Million Dollars. Rush's May 4, 2018 letter to Sanchez/FDOT also contains Rush's request to negotiate FDOT's payment of attorneys fees and expert fees arising from the non-monetary benefits described in the Memorandum of Understanding. Affidavit of John Greer; R-Ex #62; Greer Report; R-Ex #240. **App. "28."** R-Ex #282 and #284. FB-Ex #7. R-Ex #10. **App. "7" and "8."**

Rush's May 7, 2018 Letter to North Park and
its Attorney, Richard Petitt

On Monday, May 7, 2018, Rush sent a detailed letter to North Park and its attorney, Richard Petitt, again confirming North Park's demands to FDOT for non-monetary benefits to eliminate the significant damage caused by FDOT's taking and North Park's loss of ingress and egress. Rush's May 7, 2018 letter to North Park also confirmed North Park's demand that FDOT pay all attorney's fees and costs. R-Ex #286. **App. "9."** Rush's previous May

4, 2018 letter to Sanchez/FDOT is substantially identical to Rush's May 7, 2018 letter to North Park's attorney, Richard Petitt.

Importantly, at trial, Petitt testified that Jack Suarez had clearly stated that Suarez and North Park were not interested in obtaining monetary compensation from FDOT, and instead, Suarez and North Park demanded that FDOT relocate its drainage pond and drainage easements and structures. Affidavit of John Greer; R-Ex #62. **App. "28."** R-Ex #16 and R-Ex #282. **App. "29."** R-Ex #7. **App. "8."**

VII. THE REFEREE ERRED IN DETERMINING THAT RESPONDENT RUSH VIOLATED RULE 4-1.2, R.R.F.B (Objectives of Representation), WHEN RUSH REFUSED NORTH PARK'S UNLAWFUL AND UNCONSCIONABLE DEMAND THAT RUSH INCLUDE IN THE JULY 2, 2018 SETTLEMENT PROPOSAL RUSH'S WAIVER OF HIS OWN CLAIMS FOR ATTORNEYS FEES AND EXPERT FEES.

Rule 4-1.2, Rules Regulating the Florida Bar: Objectives and Scope of Representation, specifically provides that **"Lawyers may take action on behalf of a client that is impliedly authorized to carry out the representation."**

On June 25, 2018, Petitt secretly sent a settlement offer to Aloyma Sanchez and FDOT. The first paragraph of this June 25, 2018 Petitt letter contained underlined language, which specifically protected Respondent Rush's claims for fees and costs, as follows: **"This offer does not include,**

effect or waive in any respect Brian Rush's claim for attorney's fees and costs which must be heard by the Court at an appropriate hearing if we are able to settle the case." R-Ex #297 (FB-Ex #19) and FB-Ex #20.

App. "30." However, Petitt/North Park secretly deleted the above underlined language in subsequent settlement proposals to FDOT and in Petitt's June 28, 2018 letter to Rush. R-Ex #299 (FB-Ex #21); FB-Ex #22 (R-Ex #301) and #23; Petitt Trial Tr. 394:5-20 and 395:1-12, 22-25 and 396:2-7. **App. "31."**

On June 28, 2018, Petitt and North Park responded to Sanchez' June 26th rejection letter by sending a letter to Rush directing Rush to send a new settlement proposal to FDOT. Unconscionably, Petitt's June 28th letter to Rush secretly deleted the above underlined language, so that Rush's claim for fees and costs was no longer specifically protected. FB-Ex #21 and R-Ex #299.

The June 28, 2018, Petitt/North Park letter to Respondent Rush demanded that Rush submit a new settlement offer, drafted by Attorney Petitt, which included an undisclosed waiver of Rush's claims for attorney's fees, so that Rush's claim for fees and costs was no longer preserved. Cleverly, neither Petitt nor North Park copied Rush on the previous Petitt/North Park settlement letter dated June 25, 2018 or FDOT's June 26, 2018 rejection letter. Of great importance, the Petitt/North Park June 28,

2018 settlement proposal **did not require that the Court retain jurisdiction as part of the settlement proposal, thus waiving Rush's claims for attorney's fees.** R-Ex #299. **App. "31."**

In a letter dated July 2, 2018, Rush faithfully sent the entire substance of the June 28, 2018 Petitt/North Park settlement proposal, including North Park's detailed diagram showing that the FDOT's pond and drainage structures would be relocated approximately 200-feet to the east, in order to create a new model center with 14 new waterfront lots. However, Rush properly declined to carry out Attorney Petitt's unreasonable demand that Rush send a settlement proposal to FDOT which did not require that the Court retain jurisdiction to consider Rush's pending motions for fees and costs. R-Ex #302 and #303 **App. "32."**; FB-Ex #21, #22. **App. "31."** Petitt Trial Tr. 398:4-21 and 399:7-25 and 400:1-12.

On July 6, 2018, Aloyma Sanchez/FDOT sent a letter to North Park rejecting North Park's/Rush's July 2, 2018 settlement proposal. Importantly, Sanchez/FDOT did not raise Rush's claims for attorney's fees in Aloyma Sanchez'/FDOT's July 6, 2018 rejection letter. FB-Ex 23 (R-Ex #304) and FB-Ex #22, #23. **App. "31."** Petitt Trial Tr. 399:14-25 and 400:1-25 and 401:1-9.

Petitt's/North Park's Continuing Demands for Non-Monetary Benefits From
FDOT

Three and one-half months after North Park terminated Rush's representation and three months after the Court entered its July 2018 Order approving Rush's withdrawal from representation of North Park, North Park, Petitt and Suarez **continued to demand** that FDOT relocate FDOT's drainage pond and provide North Park with valuable non-monetary benefits. These Fall 2018 North Park demands are substantively identical to North Park's demands sent by Rush to FDOT in April, May, June and July of 2018. R-Ex #165 **App. "33"**; "R-Ex #317 **App. "27"**; R-Ex. #318 and #319. **App. "34."** On October 15, 2018, North Park and Petitt sent "**an alternate proposal for moving the drainage ponds**" to **Aloyma Sanchez**, which FDOT and Sanchez again rejected on October 17, 2018, for the same reasons previously given by FDOT in the Spring and Summer of 2018. R-Ex #165, (pgs. 4768-4771). **App. "33."** Petitt Trial Tr. 646:20-25 and 647:1-9 and 648:1-18. This alternate proposal is substantively identical to North Park's demands sent by Rush in April, May, June and July of 2018. R-Ex #323. **App. "35."**

VIII. THE REFEREE ERRED IN DETERMINING THAT RESPONDENT RUSH VIOLATED RULE 4-1.4, R.R.F.B (Communication), BECAUSE NORTH PARK AND RUSH REPEATEDLY COMMUNICATED BY MEMO, LETTER AND FEE AGREEMENTS, CONFIRMING NORTH PARK'S AGREED OBJECTIVE AND STRATEGY.

Rule 4-1.4, Rules Regulating the Florida Bar: **Communication**, provides that “a lawyer shall reasonably consult with a client about the means by which the client’s objectives are to be accomplished” and “keep the client reasonably informed about the status of the matter.” In other words, the “**means**” (**tactics**) are controlled by the attorney, but the “**objectives**” (**goals**) are set by the client.

At trial, North Park and Todd Taylor testified that **Rush met with Taylor “twice weekly”** from at least 2017 to 2018 to discuss the eminent domain case, which would total over 100 meetings. Additionally, the record reflects over 250 exhibits, almost all of which were sent by Rush to North Park during the eminent domain representation and included between 100 and 200 emails, letters, memos, settlement proposals, invitations to negotiate, motions, notices, liens, memoranda of understanding, plus the detailed 2014 and 2018 Fee Agreements. The record reflects over one hundred (100) emails/letters between Rush and Taylor/North Park agents in regard to various case matters. R-Ex # 201 through #316.

It is highly unlikely that the Florida Bar or the Supreme Court will ever

see a similar volume and quality of communication between an attorney and their client, as is shown by the detailed and ongoing communications between Rush and the North Park client, from 2014 to 2018. Unless the Florida Supreme Court now requires that very busy trial lawyers write their clients detailed letters and emails either every week (52 weeks per year), plus meet with the client more than 100 times for in office meetings, plus transmit to the client copies of almost every email, memo, motion, or other communication that the lawyer sends or receives from various third-parties, it seems unlikely that any other trial attorney in Florida has communicated more times with their client, than Respondent Rush did in this case. In any event, neither North Park or any other witness testified that Rush had actually violated Rule 4-1.4 by failing to communicate with North Park. Therefore, the Florida Bar has failed to prove this alleged violation of Rule 4-1.4 by clear and convincing evidence.

IX. THE REFEREE ERRED IN AWARDING COSTS AGAINST RESPONDENT RUSH BECAUSE RUSH SUBSTANTIALLY OR COMPLETELY PREVAILED AGAINST THE FLORIDA BAR'S COMPLAINT, AS SET FORTH ABOVE, SUCH THAT RUSH IS THE PREVAILING PARTY IN THIS FLORIDA BAR PROCEEDING.

In this Florida Bar proceeding, arising from the Florida Bar's 54-paragraph Complaint against Respondent Rush, the Florida Bar has failed to prove all or substantially all of its charges that Rush violated seven (7) separate Florida Bar Rules. For the reasons set forth herein and above, and

for the reasons set forth in Respondent Rush's Conclusion at the end of this Brief, the Referee's Report should be reversed either totally or substantially. Also, no sanction or punishment should be entered against Respondent Rush. Similarly, the Referee's award of over \$19,000.00 in costs should be reversed because Rush has prevailed on all or almost all of the Florida Bar's charges, such that Rush is the prevailing party.

X. THE FLORIDA BAR'S FOUR-YEAR PROSECUTION OF NORTH PARK'S/FDOT'S BAD FAITH ACCUSATIONS AGAINST RESPONDENT RUSH HAS NOW ARMED WELL FINANCED BUSINESS CLIENTS AND POWERFUL CONDEMNORS WITH A STRATEGY TO PURSUE UNCONSCIONABLE BAR COMPLAINTS AGAINST LAWYERS WHO MERELY SEEK TO HAVE THE FLORIDA BAR FEE ARBITRATION PROGRAM DETERMINE AN AWARD OF REASONABLE ATTORNEY'S FEES AND COSTS, WHICH WERE CONTRACTUALLY PROMISED AND PROTECTED BY STATUTE AND LIEN.

The Florida Bar's 4-year prosecution of Respondent Rush has severely damaged Rush's law practice and Rush's ability to provide legal services to average Floridians in of North Tampa. Over the past 4-years, Respondent Rush has expended over 1000 hours and has paid numerous attorneys to defend Respondent Rush against false charges brought by North Park/Petitt and FDOT/Sanchez so that the North Park/FDOT clients could avoid paying attorney's fees owed by them. Over that time, Attorneys Petitt and Sanchez have engaged in the very behavior and rule violations that the Florida Bar have accused Respondent Rush of committing.

Ultimately, it is up to the Florida Supreme Court to decide whether the Florida Bar has proven the allegations of its complaint against Rush by clear and convincing evidence. Even so, the Court's decision will be important for Florida Lawyers, because many business clients and many large condemnor clients are very interested in using Florida Bar prosecutions to avoid paying attorney's fees to private lawyers. However, without prompt payment of reasonable fees, promised by Rule, contract and statute, Florida's small private law firms will not be able to pay their staff or advance costs for Florida's middle-class and working families.

CONCLUSION

The Florida Bar Referee's Report and conclusions are not supported by clear and convincing evidence, as required by the Florida BAR Rules. Therefore, Respondent Rush request that the Court reject and reverse the Referee's Report and conclusions in toto, and enter judgment in favor of Respondent Rush, for the reasons set forth herein and above.

1. The North Park clients are highly sophisticated, with substantial experience in negotiating contracts and hiring attorneys.
2. Taylor signed eight (8) attorneys fee agreements, before he signed North Park's 2014 and 2018 Fee Agreements.

3. North Park's 2014 and 2018 Fee Agreements are objectively reasonable, lawful and enforceable, and do not violate Rule 4-1.5.

4. Rush's lawful Attorney's Lien is authorized by contract and Rule 4-1.8, R.R.F.B., and authorized Rush to file motions for fees.

5. Suarez committed perjury when Suarez filed his Bar Grievance, claiming Taylor was "mentally incompetent" and claiming that Taylor had "no authority" to hire Rush.

6. Pettit/Suarez unlawfully threatened Rush with a Bar Grievance to extort an unlawful rescission of Rush's Fee Agreements, with the unlawful demand that Rush sign a new illegal fee agreement.

7. North Park's Spring 2018 repudiation of its Fee Agreements constructively terminated and relieved Rush of his contractual duty to perform future assignments, including sending settlement proposals.

8. North Park repeatedly confirmed its goals, objectives and strategy, especially through the 2018 Memorandum of Understanding.

9. Rush faithfully pursued North Park's settlement and case objectives, for four years (2014-2018). See, 2018 Fee Agreement.

10. Taylor's, Suarez' and Rushnell's March/April 2018 emails and memos confirmed North Park's objectives and goals, especially the direction to obtain nonmonetary benefits and waive monetary comp.

11. Rush properly refused Petitt's June 28th demand that Rush waive his attorney's fee claim in North Park's settlement proposals.

12. Aloyma Sanchez disparaged North Park's unrepresented, appraiser expert in an ex-parte attack, which violated Rule 4-3.4.

13. Sanchez testified that Sanchez "could not remember" Rush's actual words when Rush allegedly threatened to file a Bar Complaint, and Sanchez' testimony is imprecise and unbelievable.

14. Sanchez admitted that she secretly reported her false accusation to her co-conspirator Petitt, without disclosure to Rush.

15. Philip Hobby testified that Sanchez repeatedly demanded changes in the original, unaltered Hobby Memo, but Hobby denied making any "material changes" in his original Hobby Memo.

16. Metadata in evidence proved that Hobby's Memo was altered approximately 1-month after Hobby created his original Memo.

17. Two years later, in September 2020, Sanchez emailed to Rush the altered Hobby Memo, falsely claiming that it was the original unaltered Memo. See, September 24, 2020 Sanchez email. **App. "36."**

CERTIFICATE OF SERVICE

I certify that the foregoing has been filed electronically in the Supreme Court of the State of Florida, with a copy promptly furnished by email on this 5th day of June, 2022, to:

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CERTIFICATE OF COMPLIANCE

Pursuant to Florida Rule of Appellate Procedure 9.045(b) and (e) and Rule 9.210(a) and (b), I certify that this Brief is submitted in Arial Style 14-point font.

Pursuant to the Supreme Court's Order dated May 25, 2022, I hereby certify that this brief does not exceed the 80-page limit, authorized by the above Order.

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