

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

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

WOODLIEF & RUSH, P.A.

/s/ Brian P. Rush

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B. The Florida Bar Failed to Meet the Required Clear and Convincing Evidence Standard to Prove Respondent Rush’ Alleged Violation of Florida Bar Rules in regard to reasonably pursuing the Client’s Written Objectives and Goals, which the North Park Client Repeatedly Confirmed Through Written Agreements and Directions to Rush, which Rush also Confirmed in Writing.	
C. The Florida Bar Failed to Meet the Required Clear and Convincing Evidence Standard to Prove Aloyma Sanchez’ Unsubstantiated Accusation that Rush Orally Threatened to File a Florida Bar Complaint Against Sanchez for the <u>Sole</u> Purpose of Obtaining an Advantage in	

Pending Litigation, Especially Where FDOT's Own Records and Philip Hobby's Testimony Contradicted Sanchez' False Accusations and the Original Hobby Memo Confirmed Sanchez' Fabrication of the Fraudulently Altered Hobby Memo.

- D. The Supreme Court's Review of North Park's 2014 and 2018 Fee Agreements is de novo and both of these Fee Agreements are Objectively Lawful and Do Not Include a Prohibited Penalty for Termination Clause because upon termination, Rush's Fee Claim was limited to reasonable fees to be determined by Florida Bar Fee Arbitration.
- E. North Park's 2014 and 2018 Fee Agreements are Not Ambiguous when Read as a Whole, and the Florida Supreme Court has Never Declared any Eminent Domain Fee Agreement or Hourly Fee Agreement to be Illegal in the absence of a liquidated penalty clause. In any event, an alleged Contractual Ambiguity must be construed de novo, and an ambiguity Does Not Cause a Contract to be Illegal.
- F. Rush's Attorney's Lien is Specifically Authorized by Florida Bar Rule, 4-1.8 and Rule 4-1.5, and the Bar Rules, North Park's Fee Agreements and Florida Case Law Specifically Authorized Rush to File and Pursue Motions to Enforce and Collect upon the Attorney's Equitable Lien, and Rush's motions to Recover Attorney's Fees, Expert Fees and Costs do not violate Bar Rules.
- G. In North Park's 2014 Fee Agreement, North Park Contractually promised to fully Cooperate with Rush to Pursue and Collect Statutory Attorney's Fees and Costs from FDOT and Petitt/North Park's May 2018 repudiation letters to Rush repudiated North Park's Contractual Promises.
- H. North Park's 2014 and 2018 Fee Agreements and Numerous North Park Written Directives, especially North Park's M.O.U., specifically Set Forth the Client's Agreed Objectives, which Rush Faithfully Followed and Repeatedly Confirmed in Writing to North Park and Petitt.
- I. The Florida Bar Failed to Prove By Clear and Convincing Evidence that Respondent Rush Made Unauthorized or Inappropriate Settlement Communications to FDOT when all of Rush's Proposals to Negotiate in March/April 2018 and on May 4, 2018 and Rush's Settlement Proposal dated July 2, 2018, were Specifically and/or Impliedly Authorized by North Park's Fee Agreements and North Park's Written Directions that Rush

must Promptly Pursue Settlement with FDOT which included North Park’s Unequivocal Written Demand that FDOT Relocate FDOT’s 7-Acre Drainage Pond, Modify FDOT’s Plans and Pay Attorney’s Fees, Expert Fees and Costs.

- J. The Florida Bar Failed to Prove by Clear and Convincing Evidence that Rush Failed to Regularly Communicate with North Park Orally, in Writing and by In-Person Meetings with North Park’s Agents, Including Taylor, Rushnell, Suarez, Suarez, Pettitt and Rocha, especially where the record reflected over 100 Written Communications from Rush to North Park and approximately 100 in person meetings between Rush and North Park’s agents, Todd Taylor, Jack Suarez and/or Devon Rushnell.
- K. Because Respondent Rush’s Attorney’s Liens, Motions for Fees, and Lis Pendens are Authorized by Florida Law, and Because No Trial Judge ever Found That Rush’s Attorney’s Lien, Motions or Lis Pendens Were Non-meritorious or Frivolous when Filed The Florida Bar Failed to Prove by Clear and Convincing Evidence That Rush Violated Rule 4-3.1 (Meritorious Claims), especially where Florida case law allows the filing and payment of a Bond for a Lis Pendens Based Upon Rush’s Equitable Attorney’s Lien, Filed Pursuant to Rule 4-1.8 and Rule 4-1.5.
- L. Because the Florida Bar has Failed to Prove Through Clear and Convincing Evidence that Rush Violated Rule 4-1.2 (Objectives/Scope), Rule 4-1.4 (Communication), Rule 4-1.5 (Reasonable Fees and Costs), Rule 4-1.7 (Conflict of Interest), Rule 4-1.8 (Attorney’s Liens), Rule 4-3.1 (Meritorious Claims), Rule 4-3.4 (Fairness to Counsel and Witnesses), Rule 4-8.4 (Misconduct), Rules Regulating the Florida Bar, the Referee’s Report Should be Reversed with Judgment Entered in Favor of Rush.
- M. In any event, Rush substantially prevailed against the Florida Bar’s “shotgun” complaint alleging seven (7) separate Rule Violations, and Rush should not be suspended or be required to pay costs, where Rush has substantially prevailed, as set forth above.

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Section 73.091, Florida Statutes (FDOT Required to Pay Attorney's Fees, Expert Fees and Costs)

Section 73.092, Florida Statutes (Computation of Reasonable Fees Required to be Paid by FDOT)

Section 682.12, Florida Statutes (Court shall issue an Order correcting or vacating arbitration award)

Section 682.13, Florida Statutes (Court shall enter order vacating award/dismissed with prejudice)

Section 682.15, Florida Statutes (Court shall enter judgment confirming vacating arbitration award)

Rule 2.505, Rules of Judicial Administration (Withdrawal from Representation/Attorney's Liens)

Rule 3-7.6, Rules Regulating the Florida Bar (Appointment of Retired Judges as Referees Requires Specific Written Approval by Chief Justice)

Rule 3-7.7, Rules Regulating the Florida Bar

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Rule 4-3.4, Rules Regulating the Florida Bar (Fairness to Opposing Counsel); (Alteration/Concealment of Evidence Prohibited)

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

STANDARDS OF REVIEW

The Clear and Convincing Evidence standard of proof is required in all Florida Bar proceedings and this standard 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 clear and convincing evidence, which must also be substantial and competent and further is "**precise, explicit, and lacking in confusion**" to prove each specific fact and 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 Florida Bar incorrectly asserts that the Florida Bar is not required to prove each material fact and each alleged violation of the Bar Rules by Clear and convincing evidence. The Florida Bar's assertion is legally erroneous.

The de novo standard of review applies to the Court's review of the Referee's Report, in regard to the Referee's contract interpretation and any alleged illegality of North Park's Fee Agreements. 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, Florida Statutes and Florida/Federal Constitutional Provisions. Certainly, the de novo standard of review applies to the Referee's conclusion in regard to any alleged contractual ambiguity or illegality, **especially in regard to North Park's Fee Agreements.**

The Supreme Court's "Trial by Ambush" Rule applies to the Referee's decision to allow the Bar to put on surprise expert testimony by North Park's and FDOT's biased and adversarial trial attorneys Petitt, Sanchez and Burns, where the Florida Bar failed to disclose the expert's identity, opinions or grounds, in violation of the pretrial disclosure order. See, Florida Bar v. Lobasz 64 So.3d 1167 (Fla. 2011).

STATEMENT OF CASE AND FACTS

Respondent, Brian P. Rush (“**Rush**”) replies to the Florida Bar’s Answer brief in the Appeal of the February 7, 2022 Report.

A. Procedural History and Nature of Case

For the first time in its history, the Florida Bar has filed a Bar Complaint seeking to declare an eminent domain fee agreement to be illegal. For the first time in its history, the Florida Bar has filed a Bar Complaint seeking to declare an hourly fee agreement to be illegal. For the first time in its history, the Florida Bar has filed a Bar Complaint seeking to declare a fee agreement to be illegal, because the Fee Agreement allegedly contains an ambiguity or ambiguous language, where contractual ambiguities are required to be construed by the Court and do not affect the legality of a contract. For the first time in its history, the Florida Bar has filed a Bar Complaint seeking to declare an hourly fee agreement to be unenforceable, where no one testified or alleged exactly how the hourly fee agreement was specifically ambiguous, illegal or otherwise not enforceable. For the first time in its history, the Florida Bar has introduced altered documentary evidence and unlawful repudiation letters created by adversary attorneys (Petitt and Sanchez) to support the Bar’s “shotgun” accusations against a Florida Attorney. When this fabrication and alteration was discovered on the seventh day of trial, after four years of

concealment by FDOT, Sanchez and Samuel Henderson, the Florida Bar prosecutor successfully convinced the Referee to deny a requested show cause order to ascertain the facts of this obvious and so far undisputed FDOT/Sanchez fraud.

Similarly, for the first time in its history, the Florida Bar has filed a Bar Complaint seeking to declare that an attorney's equitable lien filed pursuant to the specific provisions of Rule 4-1.8 and Rule 4-1.5, Rules Regulating the Florida Bar, is unenforceable or illegal. Specifically, for the first time in its history, the Florida Bar has prosecuted a Florida Attorney for pursuing a lawful attorney's lien in the face of the Client's unconscionable and unlawful opposition. Additionally, for the first time in its history, the Florida Bar has filed a Bar Complaint to declare that the Respondent attorney's lien and the Respondent four (4) written requests to the client for contractually promised Florida Bar Fee Arbitration was somehow unethical and somehow violated the Florida Bar Rules. For the first time in history, the Florida Bar has filed a Bar Complaint, asserting that a Florida Attorney's demands for payment of statutory eminent domain fees or earned hourly attorney's fees and costs based on four (4) years of legal representation arising from over 700 hours of attorney time, plus expert witness fees in excess of \$175,000.00 somehow

amounted to unethical payment demands, in violation of Rule 4-1.5 and Rule 4-3.1, Rules Regulating the Florida Bar.

For the first time in its history, the Florida Bar has actively supported a sophisticated business Client's unconscionable and unlawful act to avoid paying lawful hourly fees and costs and statutory eminent domain fees which the Client and FDOT were obligated to pay for 4 years of legal services rendered by the Attorney. Apparently, the Florida Bar's real goal is to destroy the practical enforceability of both small firm's lawful fee agreements and lawful attorney's liens.

The appointment of the 79-year-old retired Judge as a Referee was not specifically approved by the Florida Supreme Court. See, Rule 3-7.6; See, Rule 3-7.7, Rules Regulating the Florida Bar. For important and obvious reasons, the Florida Bar Rules do not favor the appointment of a retired judge to act as a Bar Referee, especially one who has never practiced eminent domain law, which is difficult in a complex civil case, involving numerous issues of first impression in an eight day contested Bar trial, which involves the prosecution of an attorney who has never before been charged or disciplined by the Florida Bar in 40 years of law practice.

B. Timeline of Events (2013-2021)

Attorney Rush represented North Park from 2014 to 2018. North Park first sought to restore unfettered ingress and egress to its development in 2013, and North Park and its successor-purchaser, North Park Development Company, actively pursued the relocation of the FDOT pond and modifications to FDOT's plans and drainage easement from 2013 into 2021, once again shows that North Park never changed its main objective in the eminent domain case.

After North Park and its successor, North Park Development jointly obtained modified Southwest Florida Water Management District (SWFWMD) permits in 2021, FDOT agreed to substantial changes to FDOT's construction plans, drainage structures, easements and pond location in 2021, which fully restored access to the North Park Development project. See, Mesimer's Aerial photos, dated September 2021. **(App # 38)**

By early 2021, North Park/Petitt and FDOT/Sanchez had successfully destroyed Rush' Fee claim through Petitt's and Sanchez fabricated/altered documents, false accusations and testimony, especially Petitt's assertion that the 2014 and 2018 Fee Agreements were illegal when they are not, and also Sanchez' introduction of a fabricated/altered Hobby Memo which falsely claimed that Rush had threatened to file a Bar Grievance against Aloyma

Sanchez, which Phillip Hobby contradicted. See, “Timeline of Events (2013-2018), attached as **App Ex. #39**.

C. North Park’s 2014 and 2018 Fee Agreements

In 2014 and again in 2018, North Park signed two separate lawful and fully enforceable fee agreements with the Rush Attorneys in regard to the eminent domain litigation. Neither of these fee agreements are ambiguous, especially when read as a whole. Additionally, both of these fee agreements deal with the same case, same parties, same legal issues and are properly read together as controlling North Park’s attorney-client relationship and fee agreements with the Rush Attorneys.

The Referee’s conclusion that the 2014 eminent domain fee agreement was ambiguous and therefore illegal is legally erroneous, because the 2014 Fee Agreement is not ambiguous. In any event, an alleged ambiguity is necessarily construed by the Court in order to enforce the parties’ agreement, and is not properly used to erroneously declare an otherwise lawful fee agreement to be completely illegal. Tellingly, the Florida Bar’s Answer Brief does not designate or explain the exact words or alleged ambiguity in the 2014 Fee Agreement and does not quote any portion of the 2018 Hourly Fee Agreement which properly must be read together with the 2014 Fee Agreement.

Similarly, North Park's 2018 Hourly Fee Agreement is not ambiguous, is not unlawful and was fully enforceable at \$395.00 per hour. The Referee's conclusion that the 2018 Hourly Fee Agreement was unenforceable is unsubstantiated, unexplained and erroneous, especially where the parties agreed that North Park would pay the Rush Attorneys an hourly fee:

“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... It is anticipated that this litigation will require substantial additional legal work... In the alternative to the above hourly fee payment to be paid to Attorney, Client agrees that Attorney shall be entitled to receive a reasonable fee awarded by the court... In any circumstance, Client agrees that Attorney shall be entitled to receive the largest or greatest award of Attorney’s fees, whichever is greater or larger.” (Underline and bold emphasis added)

From 2013 to early 2021, FDOT's planned 7-acre drainage pond and FDOT's plans and easements substantially impaired and blocked North Park's unfettered access to the northern residential development where North Park planned to build 600 single family homes. FDOT's impairment and blockage of North Park's unfettered access economically "disabled" the project and caused severance damages of approximately five to eight million dollars. See, Affidavit of Appraiser, Richard Harris. See, FDOT's statutory Justification Report confirming severance damages of 5.6 million dollars, signed by both FDOT's attorney, Aloyma Sanchez and FDOT's right of way manager, Ronald Crew. Under eminent domain law and under Section 73.092, Florida Statutes,

the reestablishment of ingress and egress as set forth in FDOT's 2019 stipulated judgment created a valuable non-monetary benefit to the North Park client. North Park ultimately obtained this completed non-monetary benefit, but only after North Park fraudulently procured the 2021 dismissal with prejudice of the parties' Arbitration Proceedings and their three pending lawsuits. See, Mesimer's 2021 aerial photographs of North Park's fully constructed multi-lane access road, which conferred valuable nonmonetary benefits on North Park and North Park's successor-purchaser, as identified by Reginald Mesimer at the Final Hearing. Curiously, Florida Bar Counsel objected and prevented Mesimer from discussing this indisputable evidence of North Park's eight year objective (2013-2021). **(App. Ex # 38)**

D. The Florida Bar's Complaint Cannot Lawfully be Based on Rush's Lawful Pursuit of Contractual and Statutory Attorney's Fees Arising From North Park's Unconscionable Repudiation/Breach of North Park's Fee Agreements and Agreements for Florida Bar Fee Arbitration.

The Florida Bar's Answer Brief incorrectly and gratuitously asserts that the Florida Bar's Complaint against Respondent Rush arises out of Rush's Contention that Rush was "entitled" to certain statutory eminent domain fees. In fact, the Florida Bar's Complaint does not lawfully involve or even address Rush's "entitlement" to attorney's fees or Rush's claims for attorney's fees and

costs, where Florida Statutes provide for these fees and where the parties contractually agreed to have any such fee disputes including “entitlement” resolved by the Florida Bar Fee Arbitration Program, which North Park breached.

Similarly, the Florida Bar’s Complaint does not arise from North Park’s unconscionable repudiation and breach of its objectively lawful 2014 and 2018 Fee Agreements with Rush. Any fee dispute raised by North Park’s desire to repudiate/breach its objectively lawful 2014 Eminent Domain Fee Agreement and 2018 Hourly Fee Agreement, cannot be the basis for the Florida Bar’s Complaint, where the Florida Bar Rules specifically authorize the filing of an Attorney’s lien and related motions to secure payment of the attorney’s claims and filing of motions for fees and costs pursuant to lawful fee agreements. See, Rule 4-1.8 and Rule 4-1.5, R.R.F.B.

North Park’s 2014 and 2018 Fee Agreements required North Park to resolve all attorney fee disputes through Florida Bar Fee Arbitration (at no cost to the parties), and North Park indisputably repudiated/breached North Park’s contractual agreement for Florida Bar Fee Arbitration. As a result, the Florida Bar Complaint cannot lawfully sanction Respondent Rush for pursuing through motion practice attorneys fees and costs under objectively lawful fee agreements, lawful attorney’s liens and lawful Florida Bar arbitration

agreements, all of which North Park unconscionably repudiated/breached. North Park's use of Attorney Petitt's May 2018 repudiation letters demanding that Rush terminate Rush's two lawful fee agreements and sign a new, illegal one page fee agreement, and North Park's active use of Sanchez' false accusations and fabricated evidence against Rush are only part of North Park's unconscionable behavior. In any event, the Florida Bar's complete reliance on the above unconscionable and fraudulent acts by North Park, FDOT and their attorneys eliminates any reasonable possibility that the Florida Bar actually proved its Bar Complaint by clear and convincing evidence.

E. The Underlying Eminent Domain Action (2017-2018)

FDOT filed its petition in eminent domain in approximately May of 2017, and the FDOT/North Park parties settled the eminent domain case at a confidential mediation on or about November 30, 2018, which FDOT subsequently adopted into a Stipulated Final Judgement in January of 2019. The Order of Taking was entered on or about October 24, 2017, and FDOT attached FDOT's construction plans and easements to the Order of Taking. Further, the Order of Taking specifically required FDOT to build the project, especially its drainage ponds and structures in strict conformance to the plans and easements attached to the Order of Taking. See, paragraph "12" of Order of Taking, which framed the issue of eminent domain damages. (**App # 43**).

Numerous issues remained unresolved after the Order of Taking, including paper discovery, depositions of parties and experts, engineering analysis, preparation of expert testimony, research in regard to real estate appraisals, disclosure of expert reports and invoices, motion practice related to severance damages, settlement proposals, negotiations for FDOT engineering concessions, proposals to relocate a 7-acre FDOT drainage pond and related structures, modifications to FDOT's construction plans, restoration of unfettered access to North Park's isolated residential development consisting of 600 single family residential lots, and determination of reasonable attorney's fees, expert fees and costs, plus an anticipated mediation of all issues, including restoration of unfettered ingress and egress. Most of these items could not be completed until after completion of North Park's expert reports and disclosure to FDOT of the expert's preliminary fee invoices, which the FDOT required, prior to mediation.

The Florida Bar's gratuitous and incorrect assertion that "the only issue that remained [after the Order of Taking] was compensating North Park for the property taken" is fallacious and ignores the practical procedural and substantive requirements of eminent domain trial practice, all of which involve complex engineering and valuation issues, which are hotly disputed in our adversarial and very complicated legal system. The Florida Bar's gratuitous

assertion is especially erroneous in a complex eminent domain case involving a loss of unfettered ingress and egress to a 400-acre development, which even the FDOT admitted caused substantial damages. According to the FDOT's own statutorily required "Justification Report", signed by Aloyma Sanchez and the FDOT Right of Way Manager, Ronald Crew, this loss of access caused damages to North Park of approximately \$5.6 million dollars, which were cured by the FDOT/North Park Mediated Settlement, all of which resulted from Attorney Rush' 4 years of unpaid legal work. According to the FDOT's Justification Report subsequently disclosed in a subsequent public records disclosure these damages would be substantially eliminated by the parties' mediated settlement agreement, which was not disclosed to Respondent Rush at the time of the mediated settlement agreement.

F. North Park's Non-Existent Change in Objectives

North Park never changed any of its objectives, except when Jack Suarez unequivocally told Attorneys Petitt and Rush that North Park was not interested in any monetary compensation from FDOT, and instead North Park desired a prompt settlement which would necessarily relocate FDOT's drainage pond and modify FDOT's construction plans, so that North Park would obtain its never changing objective to restore access and obtain a significantly widened 2 or 3 lane entry road, with sidewalks and landscaping,

and FDOT would remove all obstructions preventing the above expanded entry road. See, Mesimer Aerial Photos, September 2021 (**App #38**) See, 2018 Hourly Fee Agreement (**App. #18**); See, April 2018 Memorandum of Understanding (**App. #18**); See, Petitt's secret settlement proposal dated June 25, 2018; and See, Rush's detailed settlement proposal to FDOT, with attached diagram of roadway, dated July 2, 2022. (**App. #32**)

SUMMARY OF ARGUMENT

The North Park Companies acted through Todd Taylor and Devon Rushnell from early 2014 to April 18, 2018, and after April 18, 2018 the North Park Companies acted through Jack Suarez and North Park's new attorney, Richard Petitt, until North Park constructively terminated Rush's Fee Agreements and employment on May 18, 2018. In other words, Todd Taylor directed North Park's eminent domain case for 43 months, and Jack Suarez directed Rush for only one month before North Park terminated Rush's employment on May 18, 2018. In other words, Taylor directed the Rush Attorneys for almost 98% of the Rush Attorneys' active representation of North Park prior to North Park's termination of Rush's employment which was again confirmed by North Park's June 4, 2018 Bar Complaint declaring North Park's 2014 and 2018 Fee Agreements to be allegedly illegal and unenforceable under Rule 4-1.5, R.R.F.B.

Taylor, Rushnell and Suarez are all highly sophisticated land developers and investors with over 100 years of experience between them. Devon Rushnell is a licensed civil engineer and developer, with more than 20-years of experience in land development. Prior to the Spring of 2018, neither Suarez, nor Petitt had any involvement with North Park's eminent domain case or Rush's representation of North Park. Suarez has no personal knowledge of any kind in regard to North Park's 2014 and 2018 Fee Agreement, and Suarez has not read the entirety of these agreements. From 2010 to 2014, Respondent Rush represented Todd Taylor in several cases, and Taylor "carefully read", understood and signed eight prior fee agreements with Rush. From 2014 to 2018, Taylor and North Park carefully read, understood and signed two (2) additional fee agreements with Rush for a total of ten (10) comprehensive fee agreements, signed by Todd Taylor.

Importantly, the Florida Bar concedes that the 2018 Hourly Fee Agreement is lawful, and the Florida Bar raised no challenges to its enforceability against North Park, even though the Referee decided not to enforce the 2018 Hourly Fee Agreement, even though expressly required to do so by Rule 4-1.5, Rules Regulating the Florida Bar.

Aloyma Sanchez' False Testimony and Concealment/Alteration of
Evidence Precludes Clear and Convincing Evidence Standard

The Florida Bar's prosecution is fatally flawed because 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. Certainly, Aloyma Sanchez' vague and contradictory deposition and trial testimony is not clear and convincing evidence to support her accusations against Rush, especially in light of Sanchez' four-year concealment of the unaltered/original Hobby Memo, which did not reference any threatened "Florida Bar Complaint". Aloyma Sanchez' false testimony and 2018 fraudulent alteration/fabrication of the altered Hobby Memo, combined with Philip Hobby's 2021 in Court production of the unaltered, original Hobby Memo on the seventh day of the Bar Trial shows that the Florida Bar has not met the heightened proof requirements of clear and convincing evidence. Because Hobby's unaltered/original July 2018 Hobby Memo directly contradicted Aloyma Sanchez' August 2018 altered/fabricated Hobby Memo and directly contradicted Sanchez vague testimony, the Florida Bar cannot reasonably rely upon Sanchez's Testimony and has failed to produce "clear and convincing evidence" to support Aloyma Sanchez' false and self-serving accusations against Rush.

North Park's Agents Testimony Precludes Florida Bar from Meeting
Clear and Convincing Evidence Standard

North Park's own attorney/agent witness, Michael Rocha, directly contradicted North Park's/Jack Suarez' 2018 false Florida Bar Grievance and directly contradicted the Florida Bar's Complaint filed against Rush where North Park's Attorney, Mr. Rocha testified that the 2014 Eminent Domain Fee Agreement was not ambiguous and instead was clear, lawful and enforceable. Similarly, North Park's managing agent witnesses, Todd Taylor and Jack Suarez, directly contradicted Suarez' false Florida Bar Grievance, where both Taylor and Suarez admitted that North Park and Suarez had specifically authorized Taylor to hire Rush to represent North Park in the eminent domain case. At trial, Jack Suarez also abandoned his obviously false statement that Taylor was "mentally incompetent" when Taylor retained Rush, pursuant to Suarez' express permission.

As a result of the contradictory testimony by FDOT/Sanchez/Hobby and by North Park's authorized attorneys and agents (Rocha, Taylor and Suarez), the Florida Bar failed to prove its Complaint allegations and failed to meet the required Clear and Convincing Evidence Standard.

North Park's Admissions that FDOT's Plans and Pond Economically Disabled North Park Project Prevents the Florida Bar from Meeting Clear and Convincing Evidence Standard

North Park repeatedly admitted that the Order of Taking and FDOT's construction plans economically "disabled" North Park's development. Because of FDOT's Taking, 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 unfettered ingress and egress to North Park's 600 single family homes. According to North Park, this loss of access economically "disabled" North Park's residential **project**. North Park responded by repeatedly demanding that FDOT restore unfettered ingress/egress by relocating FDOT's drainage ponds and modifying FDOT's plans, structures and easements. See, Taylor/Rushnell "Major Problem" email, dated March 6, 2018 **R-Ex #232**; See, Rushnell email to Rush, detailing North Park's required changes to FDOT's ponds, plans and easements, dated March 22, 2018. **R-Ex #235** Rushnell T., 806-810; North Park's April 2018 Memorandum of Understanding, **R-Ex #198**; North Park's April 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 Valuation Prevents the Florida Bar from Meeting Clear and Convincing Evidence Standard Regarding North Park's Original Goals to Recover Compensation From FDOT

North Park has always contended that FDOT's Taking has caused millions of dollars in damages to North Park. On October 23, 2017, North Park's managing agent and authorized officer, Todd Taylor, sent an email to Brian Rush, wherein Taylor/North Park 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. Taylor's October 23, 2017 email to Rush, **R- Ex #230**; Rush T. 63:1-25. Taylor Trial Tr. 281:10-23.

On or about April 16, 2018, North Park's development damages expert, **John Greer**, issued a report, concluding 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 \$305,504.00/acre. Taylor T. page 281, lines 1-23; Affidavit of John Greer, R-Ex #62.

In July of 2018, North Park's licensed expert real estate appraiser, **Richard Harris**, concluded that FDOT's taking caused loss of access/severance damages of more than \$5.6 million dollars. **R-Ex #61. R-Ex #10**. Similarly, FDOT's statutorily required Settlement Justification Report

confirmed Harris' estimate of \$5.6 million dollars of severance damages and was signed by Aloyma Sanchez and FDOT's right of way manager. **R- Ex.**

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

In September 2014, North Park and Taylor "**carefully read**" and 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, and road access to and from Sam Allen Road. **R-Ex. #7.**

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

On April 6, 2018, Taylor and North Park "**Carefully Read**" and signed North Park's 2018 Hourly Fee Agreement, whereby North Park confirmed its never changing objectives and again directed that Rush demand that FDOT relocate the FDOT drainage pond and provide valuable non-monetary benefits and engineering concessions to North Park. Additionally, North Park directed Rush to draft and send to FDOT a detailed Memorandum of Understanding, whereby North Park demanded that FDOT 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. In the 2018 Hourly Fee Agreement, North Park and Taylor specifically agreed the eminent domain 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 Repudiation/Constructive Termination of North Park’s
Fee Agreements with Rush Prevents the Florida Bar from Meeting Clear
and Convincing Evidence Standard

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 Rush’s 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 threatened to file a Florida Bar Grievance against Rush, unless Rush complied with Attorney Pettit’s unlawful and extortionate demands. Attorney

Petitt'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 Petitt's threats directly violated Rule 4-3.4 and 4-8.4. On June 4, 2018, North Park confirmed North Park's repudiation of North Park's fee agreements and North Park's constructive termination of the Rush Attorneys' employment, **when North Park filed its Florida Bar Grievance demanding that the Florida Bar declare North Park's Fee Agreements to be illegal/unethical/unenforceable.**

In May, June, and July, 2018, Rush sent to North Park four (4) separate written requests for Florida Bar Fee Arbitration, which North Park refused, even though North Park had contractually promised to arbitrate all fee disputes through the Florida Bar Fee Arbitration. **R-Ex #294. App. "3"; R-Ex. #293, #295, #296, #311 and #313. App. "1".**

North Park's Materially False Florida Bar Complaint Destroys Bar's Reliance on Petitt/Suarez/North Park's Testimony and Thereby Prevents the Florida Bar from Meeting Clear and Convincing Evidence Standard

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 illegal because it was vague and had an unlawful 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”**. All four of these accusations are false, perjurious and were contradicted at trial by North Park, Suarez and Taylor. The North Park/Suarez Bar Complaint concluded with the following specific demand repudiation of North Park’s lawful Fee Agreements:

The Clients are unable to close on the sale of the Property because of the pendency of the Lawsuit. Accordingly, the Clients are requesting the Florida Bar to review and opine that the Engagement Agreement is illegal, unethical, and unenforceable.

Sanchez’s Fabrication, Alteration and Four-Year Concealment of Original Hobby Memo Destroys Reliability of Sanchez’ Testimony and Prevents the Florida Bar from Meeting Clear and Convincing Evidence Standard

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 attorney’s lien. **Importantly, the original July 19, 2018 Hobby Memo (the original “Hobby Memo”) did not contain any reference to any threat of any Bar Complaint by Rush or anyone else.** After receiving North Park’s/Petitt’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 Pettit'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 demanding that Hobby email to Aloyma Sanchez a new August 16, 2018 version of the original July 19, 2018 Hobby Memo which would falsely "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"**. At the 2021 Bar Trial, Hobby produced, for the first time, the original/unaltered Hobby Memo, and Hobby specifically testified that **Hobby did not know "anything" about a Florida Bar Complaint, and** Hobby specifically denied, making **any material changes** to his original July 19, 2018 Hobby Memo.

In late August of 2018, Aloyma Sanchez secretly altered the original July 2018 Hobby Memo to fabricate a new materially false Hobby Memo which now included a new accusation, falsely alleging that Rush had threatened to file a "**Florida Bar Complaint**" against Sanchez. Prior to this late August 2018 fabrication, the original Hobby Memo never used the words: "**Florida Bar Complaint**". Apparently, Sanchez altered the original Hobby Memo solely to obtain an advantage for Sanchez and FDOT against Rush's

pending statutory/constitutional claim for eminent domain fees and costs from FDOT, and Sanchez thereby committed fraud and 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).

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:

(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., also provides that a client may waive the client's constitutional, statutory and other rights in regard to agreements for attorney's fees, even when the client's attorney's fees are specifically provided for or limited by Statute or Constitutional Provision, even when the client's waiver benefits the attorney and is a detriment to the client. **See, Rule 4.1.5 (f).**

North Park's Objectively Lawful 2014 Fee Agreement and
Objectively Lawful 2018 Hourly Fee/Reasonable 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 North Park's duty to fully cooperate with Rush to insure FDOT's payment to Rush of 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 clear, unambiguous, objectively lawful and is a fully enforceable fee agreement under Florida Law, for which the Rush Attorneys **have been paid nothing**. **R-Ex #10 (also, FB-Ex. #7); App. "7"** and provides in part:

**AGREEMENT FOR REPRESENTATION
EMINENT DOMAIN (2014)**

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). See, pg. 1 of 2014 Fee Agreement.

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.

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).

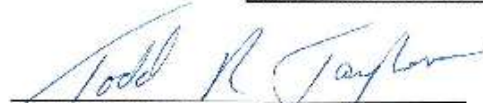
[Client's Full Cooperation to Recover Attorney's Fees]

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.

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. (Underline added.) 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

2018 Hourly Fee Agreement

On or about April 6, 2018, North Park and its 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 at \$395.00 per hour to the same attorneys, Rush and his law firm (the “**Rush Attorneys**”) to represent the same North Park Companies in the same 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 in regard to the same taking to be signed by the same opposing eminent domain parties: FDOT and North Park.

North Park’s 2018 Hourly Fee Agreement, confirmed its specific objectives, goals and directions that Rush force the FDOT to relocate the FDOT drainage pond and restores access to Sam Allen Road plus valuable, non-monetary benefits to North Park. Additionally, North Park directed Rush to draft and send to FDOT the Memorandum of Understanding, whereby FDOT would provide valuable non-monetary benefits and engineering/roadway concessions to North Park. See, **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)

“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. 2 North Park’s 2018 fee agreement, R-Ex #11.

Plaintiffs’ Protected Property and Contractual and First Amendment Rights in 2014 and 2018 Agreements

The 2014 and 2018 Fee Agreements and Rush’s lawful attorney’s lien established valuable property rights and contractual rights owned by the Rush attorneys, which Rush sought to protect through his July 18, 2018 out of Court communications to FDOT and Aloyma Sanchez, **all of which are protected as both commercial speech and free speech, by the First Amendment to the U.S. Constitution and the Contract Clause.**

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 written 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**. North Park's M.O.U. states in pertinent part as set forth below:

MEMORANDUM OF UNDERSTANDING

- 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...

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

From 2013 to 2021, North Park continuously asked FDOT to move FDOT's drainage ponds on the property. Sanchez Trial T. 449:25; 450:14. At the April 4, 2018 Settlement Conference, and continuing until the case settled at mediation in November 2018, the landowner never wavered in its demand that FDOT relocate its 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 FDOT ponds. 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 real estate appraisal of severance damages, as justification for FDOT's settlement with North Park, where FDOT agreed to relocate its ponds. T. 521:18 through 523:1 and R-Ex #168. FDOT and Sanchez signed FDOT's statutory Justification Report which **directly substantiates Rush's claim for statutory attorney's fees based on "non-monetary benefits."**

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.

At the Florida Bar Trial, Michael Rocha testified that the 2014 Fee Agreement was clear and 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. There is no clear and convincing evidence that the 2014 Fee Agreement is either ambiguous or illegal, and the Referee’s erroneous conclusion should be rejected by this Honorable Court.

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

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.”** Rocha Trial Tr. 947:24 through 949:9, and R-Ex

#34, #232, #250 and #251. Michal Rocha acknowledged that he had “lots of emails” from Rush and Devon Rushnell regarding the Memorandum of Understanding, and that 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 M.O.U. and its 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. Rocha also confirmed that North Park never communicated any dissatisfaction with the substance of the Memorandum of Understanding. T. 956:14 through 957:8, and R-Ex #245-#255. **There is no clear and convincing evidence that Rush failed to reasonably communicate with North Park. There is no evidence that North Park did not demand valuable non-monetary benefits from FDOT.**

North Park’s Attorney, Richard Pettit, Confirmed that North Park/Suarez Were Not Interested in Monetary Compensation from FDOT, as Part of a Prompt Settlement

Pettitt testified that in early May 2018, North Park/Jack Suarez was telling Pettitt, 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...” Petitt Trial Tr. 384:16-25 and 385:1-2.

On April 2, 2018, April 3, 2018, April 5, 2018, and April 12, 2018, Rush previously sent various settlement/mediation invitations and proposals to negotiate to FDOT, which were specifically authorized by North Park and which were substantively consistent or similar to Rush’s and North Park’s subsequent proposals to negotiate, dated May 4, 2018, June 25, 2018 and July 2, 2018.

On May 4, 2018, Rush sent a letter to FDOT inviting FDOT to negotiate, in regard to various potential settlement issues, and the May 4, 2018 letter **did not contain any actual monetary demand for settlement, but rather** set forth various principles and potential negotiating points for further discussion between the parties. Rush’s May 4, 2018 letter requesting negotiations for settlement, was authorized by North Park and was entirely consistent with the above Rush’s previous and subsequent settlement communications authorized by North Park.

Immediately after Rush’s May 4, 2018 letter to FDOT, Petitt admitted that Petitt/North Park 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 promptly settle with North Park. Petitt also testified that Rush's May 7, 2018 letter correctly confirmed that North Park was willing to waive North Park's monetary claims. At the Bar Trial, Petitt testified that **"Mr. Suarez advised Mr. Rush that the clients were willing to wave 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."** There is no clear and convincing evidence that Rush's May 4, 2018 letter to FDOT requesting a prompt negotiated settlement was not authorized by North Park, which consistently demanded that Rush negotiate a prompt settlement, especially where Suarez had confirmed that North Park did not care about monetary compensation, all of which is consistent with the May 4th and May 7th Rush letters in 2018.

North Park's May 2018 Repudiation and Extortion Letters Threatened Attorney Rush with A False Florida Bar Complaint to Coerce Rush to Rescind Rush's Lawful 2014 and 2018 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. Petitt testified that Petitt's letter threatened Rush that **"if you (Rush) do not agree to rescind the (illegal) 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.

Rush's Attorney's Lien Authorized Rush's Filing of Motions to Pursue Lien and Payment of Fees and Costs

Under Florida Law, an attorney's lien 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."**). 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."**). On July 11, 2018, the Circuit Court protected Rush's pending motions for attorney's fees, and the Court stated on the record that the Court

would approve Rush's attorney's lien. Additionally, the Court specifically protected Rush's right to pursue motions for attorney's fees and costs which were secured by an equitable attorneys lien. R-Ex #101 and #133.

The interpretation of allegedly ambiguous terms in a written contract are ascertained from the language of the contract. 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."**) City of Homestead v. Johnson, 760 So.2d 80, 84 (Fla.2000)."

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

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, Repudiation of Performance.

Supreme Court Prohibits Surprise Evidence/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:

“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 deliberately failed to disclose experts and their opinions. **The Bar’s violation of the Pre-Trial Order amounts to “trial by ambush”, especially where Rush complied with the Referee’s pretrial order regarding required expert disclosure by all parties.**

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 CONTRACTUALLY PROMISED 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 the enforcement of lawful fee agreements or a lawful attorneys lien, where an attorney uses protected speech to 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 statutory fee claim against the government (FDOT) and a resulting fee dispute is not a conflict of interest, as defined by Rule 4-1.7, **especially where the attorneys fee claim against FDOT would reduce or relieve the client’s liability for fees and costs.** Otherwise, any client wishing to avoid a lawful duty to fully cooperate to pay his attorney would simply initiate a fee dispute and then promptly file a Bar Complaint, which is exactly what occurred in this case.

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 unconscionable demands that Rush rescind, waive, impair or silence

Rush's motions for attorney's fees. 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 motions for fees against FDOT. When FDOT's statutory obligation to pay attorney's fees became an impediment to North Park obtaining valuable nonmonetary concessions from FDOT, **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 and costs.

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. **Despite North Park's prior written repudiation of its fee agreements and North Park's June 4, 2018 false Bar Grievance, Rush still transmitted the entire substance of North Park's June 28, 2018 settlement demands to FDOT, but without waiving Rush's Attorney's lien or pending motions for fees and costs. **Rush faithfully transmitted the entire substance of North Park settlement demands, even though North Park had constructively terminated Rush's employment repeatedly in late May and June of 2018.****

No Trial Court Found That Rush's Lis Pendens or Any of Rush's
Motions or Liens were Frivolous or 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, lis pendens, or paper, and neither FDOT nor North Park ever sought such a ruling in the eminent domain case or 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 filed a motion for sanctions under any other rule or statute. **Therefore, there is no predicate Trial Court ruling that any Trial Court has contended or found that Respondent Rush filed any non-meritorious or frivolous pleading, motion, notice, lien, lis pendens, 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. R-Ex #101, #102 and #133. See, The Florida Bar v. Committee, 916 So.2d 741, (Fla. 2005) **Trial Court's order that Attorney Committee's claims were non-meritorious and frivolous, and in violation of Federal Rule 11, warranting Federal Court sanctions, created the required predicate for Florida Bar's Bar Complaint against Attorney Committee**

in regard to attorney's violation of filing non-meritorious claims in violation of Florida Bar Rule 4-3.1; Generally, Florida attorneys have the leeway to pursue new or novel claims or defenses.

Claims for Equitable Lien Support Filing of Lis Pendens

In the Fall of 2018, **after North Park refused Rush's four requests for Florida Bar Fee Arbitration, and after the Trial Court Judge overruled North Park's objections to contractually promised Fee Arbitration**, Rush filed a lis pendens against North Park. The lis pendens was filed in regard to Rush's equitable lien claims for fees and costs, based upon Rush's properly filed 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 Rush's 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, especially when based on an equitable attorney's lien, *S and T Builders v. Globe Properties. Inc.*, 944 So.2d 302 (Fla. 2006). In S and T Builders, 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 the Court noted was not based upon any mortgage or duly recorded instrument, but the Supreme Court held that the Trial Court could require S and T Builders to post a substantial bond to protect the landowners.** Based on the above case, there is no clear and convincing evidence that the lis pendens was improper under existing Florida Law, and no Trial Court ever so determined. The Florida Bar is without authority to charge Attorney Rush with a violation of Rule 4-3.1. for filing a non-meritorious lis pendens, where the Trial Court Judge never made any such finding, and North Park never sought sanctions, and never filed a motion under 57.105, Florida Statutes, Further, where North Park aggressively and fraudulently sought to violate its contractual promises, by advancing numerous false accusations against Attorney Rush, Rush' efforts to pursue payment of statutory and contractual fees and costs were not unreasonable or non-meritorious.

III. 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 TRUE THREAT IN THE IN THE PRESENCE OF LAW ENFORCEMENT OFFICES 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' UNSUBSTANTIATED AND

UNBELIEVABLE ACCUSATION AGAINST RUSH.

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.”**

Aloyma Sanchez violated Rule 4-3.4(a)(b)(c)(d) and (h) when Sanchez disparaged North Park’s appraiser, criticizing the appraiser’s 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 an email to Sanchez’ co-conspirator, Attorney Petitt, falsely recounting Sanchez’ July 18, 2018 alleged conversations with Respondent Rush. Attorney Petitt immediately filed a false and unsubstantiated second Bar Grievance against Rush, even though Petitt and North Park had no personal knowledge in regard to Attorney Sanchez’s false accusations. In fact, Rush actually and properly 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 and July 18, 2018 Orders. FB-Ex #24; T. 401:16-25 and 402:1-25 and 403:1-4.

Aloyma Sanchez' False 2020 Email Concealed the Original Hobby Memo

In late September of 2020, Aloyma Sanchez fraudulently sent a materially false email to Rush and North Park's attorneys attaching Sanchez' fabricated/altered August 2018 version of the original July 19, 2018 Hobby Memo. At that time, Sanchez deliberately misrepresented that the fraudulently altered Hobby Memo attached to Sanchez' September 2020 email was supposedly an unaltered original Hobby Memo, which it was not. Aloyma Sanchez' materially false 2020 email states in part as follows:

“In preparing for arbitration, I came across a memo prepared by Phil Hobby dated July 2018. This is in addition and in connection to my email of July 18, 2018, to Richard Pettit, regarding threats by Brian Rush. The memo was prepared at my request at that time as I had serious concerns for my safety.” App. “12.” (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 Rush to file a Bar**

Complaint against Aloyma Sanchez or anyone else. In fact, the phrase “**Florida 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 independent corroboration necessary to support Sanchez’ unsubstantiated accusations against Rush. In response, on or about August 16, 2018, 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.”**

The introductory paragraph of Sanchez’ August 16, 2018 cover email to Hobby states with underline added 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 late August 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. **R.-Ex #437. App. “6.”**

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 opposed Rush’s motion to show cause why FDOT should not be sanctioned for previously filing a false affidavit by which FDOT concealed the existence of the original, unaltered Hobby Memo for three years (2018-2021).

Hobby’s Trial Testimony Contradicts Sanchez’ False Accusations

At the Florida Bar hearing, Mr. Hobby testified that he was asked to attend the July 2018 hearing because Ms. Sanchez told him that 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. Trial Tr.573:10-24, 578:5-10 and 598:15 through 599:5. Mr. Hobby denied that Respondent Rush was violent or aggressive. and when Rush spoke to

Aloyma Sanchez. Mr. Hobby also 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 true threat against Aloyma Sanchez and Hobby denied hearing any threat to file a Florida Bar Complaint stating: **“I don’t know anything about a Florida Bar Complaint.”** Hobby Trial Tr. 605:22 through 608:16. 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.

Aloyma Sanchez Admitted Her Accusations Against Rush Lacked Specificity/Believability, Especially When Sanchez Cannot Remember Key Facts About Her Own Unsubstantiated Accusations

Aloyma Sanchez admitted that her interactions with Respondent on July 11 and July 18, 2018 all occurred in the Courthouse lobby with Sheriff’s deputies and other security personnel in the lobby. Ms. Sanchez admitted she never sought assistance from any of the deputies and security personnel and never complained to or approached law enforcement. Surprisingly and unbelievably, Aloyma Sanchez claimed a loss of memory, when Sanchez admitted that she had no recollection of the basis for Rush’s non-existent Complaint against Sanchez to The Florida Bar. Sanchez Trial Tr. 507:13 through 510:8, 511:24 through 512:14.

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.**" (Underline added.)

At the time of Sanchez' July 2018 surprise ex-parte disparagement of Appraiser Harris, Aloyma Sanchez knew that the presiding Trial Court Judge had previously held Aloyma Sanchez' 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. Aloyma Sanchez' undisputed ex-parte disparagement of North Park's appraisal's invoices directly violates Rule 4-3.4 of the Florida Bar Rules, and destroys the credibility and believability of Sanchez' false testimony, which precludes the Florida Bar from meeting the clear and convincing evidence standard in regard to the Florida Bar's charges against Respondent Rush. **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.

Florida Attorneys Retain First and Fifth 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 out of Court statements. See, *In Re: Petition to Amend the Rules Regulating the Florida Bar*, 571 So.2d 451 (Fla. 1990), ("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 was improper and unreasonable. Rush's 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). The Florida Bar cannot lawfully sanction an attorney's out

of Court speech protected by the First Amendment, where the attorney's commercial speech seeks to secure the attorney's lawful claims for statutory eminent domain attorney's fees, which are part of constitutional "just compensation" which is protected by the Fifth Amendment to the United States Constitution.

IV. 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 in writing 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**

always demanded that FDOT relocate its drainage pond, structures and easements in order to restore North Park’s unfettered road access.

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 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."**

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

On Friday, May 4, 2018, Rush sent Rush's fifth or sixth substantively similar written settlement communication letter to Aloyma Sanchez, again confirming North Park's demands to FDOT for the estimated severance damages 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 confirmed North Park's **willingness to potentially waive** North Park's monetary claims against FDOT (**as repeatedly authorized by Jack Suarez**), in return for FDOT promptly 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. In addition to North Park's demands for non-monetary engineering benefits from FDOT, Rush's May 4, 2018 letter to Sanchez/FDOT also contains Rush's specific request to negotiate a smaller 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 the next business day, **Monday, May 7, 2018**, Rush sent a detailed letter to North Park and its attorney, Richard Petitt, 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 substantively consistent to Rush's numerous letters to FDOT in April of 2018 and Rush's May 4, 2018 letter is substantively identical to Rush's May 7, 2018 letter to North Park's attorney, Richard Petitt.**

Importantly, 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 primarily wanted FDOT to relocate its drainage pond and modify FDOT's construction plans. Affidavit of John Greer; R-Ex #62. **App. "28."** R-Ex #16 and R-Ex #282. **App. "29."** R- Ex #7. **App. "8."**

North Park Continued to Advise FDOT that Pond Relocation and FDOT
Planned Modifications were Necessary Predicate to Settlement Through
October and November of 2018

The Bar incorrectly asserts that Respondent Rush's fee claim unreasonably delayed North Park's settlement of its eminent domain case with FDOT. The undisputed documentary evidence and North Park's own written settlement communications contradict the Florida Bar's incorrect conclusory argument. On October 15, 2018, Attorney Petitt sent an email to Attorney Sanchez outlining the remaining issues preventing a settlement to the eminent domain lawsuit. (**App. Ex #44**). The issues Attorney Petitt outlined in the email to Attorney Sanchez involved the same issues which had divided the parties since 2013, which according to North Park's e-mail were: obtaining required permits from SWFWMD, relocating the pond and modifying FDOT's plans. The above permitting and pond issues admitted by Petitt and North Park have nothing to do with Attorney Rush's motions to enforce his lawful fee agreements and lawful pursuit of payment of fees and costs for Rush's services.

V. 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 confidential settlement offer to Aloyma Sanchez and FDOT, **without any disclosure to Attorney Rush**. The first paragraph of Petitt’s June 25, 2018 Petitt secret settlement 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, after FDOT rejected the above protective language, Petitt/North Park secretly deleted the above underlined protective language in subsequent settlement proposals and in Petitt’s subsequent 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 FDOT/ 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 protective language, so that Rush's claim for fees and costs was no longer protected.

The June 28, 2018, Petitt/North Park letter to Respondent Rush demanded that Rush submit a new settlement offer to FDOT, which included an undisclosed waiver of Rush's claims for attorney's fees. Cleverly and unconscionably, North Park did not copy 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 **cleverly did not require that the Court retain jurisdiction as part of the proposed Stipulated Final Judgement, thus effectively waiving jurisdiction to consider Rush's attorney's lien and 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 and lawfully declined to carry out Attorney Petitt's unreasonable and unlawful demand that Rush send a settlement proposal to FDOT which did not require that the Court retain jurisdiction in the Final Judgement to

consider Rush's pending motions and equitable lien 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.

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

Three months after the Court entered its July 12, 2018 Order approving Rush's withdrawal from representation, North Park **continued to demand** that FDOT relocate FDOT's drainage pond, modify FDOT's plans/specs 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. R-Ex #165, (pgs. 4768-4771). **App. "33."** Petitt Trial Tr. 646:20-25 and 647:1-9 and 648:1-18. Petitt's 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."**

VI. THE REFEREE ERRED IN DETERMINING THAT RUSH VIOLATED RULE 4-1.4, R.R.F.B (Communication), BECAUSE NORTH PARK AND RUSH REPEATEDLY COMMUNICATED BY MEETINGS, E-MAILS, LETTERS AND SIGNED FEE AGREEMENTS, CONFIRMING NORTH PARK'S AGREED OBJECTIVES/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 in-person 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, affidavits, settlement proposals, invitations to negotiate, motions, notices, liens, memoranda of understanding, plus the detailed 2014 and 2018 Fee Agreements. 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 shown by the detailed and ongoing communications between Rush and the North Park client, from 2014 to 2018. As a result, the Florida Bar has failed to prove this alleged violation of Rule 4-1.4 by clear and convincing evidence.

VII. 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.

The Florida Bar has failed to prove by clear and convincing evidence all or substantially all of its charges that Rush violated seven (7) separate Florida Bar Rules. For the reasons set forth herein, and set forth in Respondent Rush's Briefs, the Referee's Report should be reversed either totally or substantially. Similarly, the Referee's award of over \$19,000.00 in costs should be reversed because Rush has prevailed on substantially all or almost all of the Florida Bar's charges, such that Rush is the prevailing party.

Supreme Court's Evidentiary Standards and Policy Considerations

The obvious and undisputed fraud and false accusations by Attorney Petitt, Attorney Sanchez and FDOT eliminate any reasonable argument that the Florida Bar has met the heightened, clear and convincing proof standard. The Florida Bar's reliance on the above-described false testimony and fabricated evidence should cast great doubt on the Bar's entire case. The Supreme Court's decision in this case will be very important for many Florida lawyers. Similarly, many business clients and many large condemnor clients are very interested in using Florida Bar prosecutions to avoid paying lawful 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 small business and working families. The outcome of this Florida Bar prosecution will greatly affect the majority of Florida lawyers who work in small law firms who are not numerically represented in Florida Bar Grievance Committees. The Court's ruling could severely impact honest, less economically powerful individuals and small businesses, who depend on the legal services of these small firm lawyers.

CONCLUSION.

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 North Tampa. Over the past 4-years, Rush has expended substantially more than 1000 hours in attorney time and has paid numerous attorneys and experts to defend Respondent Rush against false charges brought by North Park/Petitt and FDOT/Sanchez. The Florida Bar prosecutors have unreasonably brought non-meritorious charges against Rush, so that North Park and FDOT could avoid paying attorney's fees and costs required by Contract and Rule. Over that time, Attorneys Petitt and Sanchez have engaged in the very behavior and rule violations that the Florida Bar has accused Respondent Rush of committing.

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 Reply Brief is submitted in Arial Style 14-point font.

Pursuant to the Supreme Court's Order dated August 18, 2022, I hereby certify that this reply brief does not exceed the 50 to 60-page limit, authorized by the above Order.

WOODLIEF & RUSH, P.A.

/s/ Brian P. Rush

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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 15th day of September, 2022, to:

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