IN THE CIRCUIT COURT OF THE SECOND JUDICIAL CIRCUIT
IN AND FOR LEON COUNTY, FLORIDA

BRIAN KRAMER,

Plaintiff,

v.

CASE NO: 37-2020-CA-000801
DIVISION:

BEVERLY R. McCALLUM, *et al.*,

Defendants.
_____/

MOTION TO STRIKE PLEADINGS

COMES NOW BEVERLY R. McCALLUM, *pro se* defendant ("McCallum"), and pursuant to Fla. R. Civ. P. 1.140(f), hereby moves to strike certain portions of Plaintiff's Complaint, and in support thereof states as follows:

Per Rule Fla. R. Civ. P. 1.110(b), a complaint must consist of a short and plain statement of the alleged, ultimate facts. It must be in the form of consecutively numbered paragraphs. Fla. R. Civ. P. 1.110(f). "A party may move to strike...redundant, immaterial, impertinent, or scandalous matter from any pleading at any time," Fla. R. Civ. P. 1.140(f), *Rapp v. Jews for Jesus, Inc.*, 944 So. 2d 460 (Fla. 4th DCA 2006) ("*Rapp*"), but "redundant, immaterial or scandalous" matter should only be stricken if it is "wholly irrelevant, can have no bearing on the equities and no influence on the decision." *Pentacostal Holiness Church, Inc. v. Mauney*, 270 So. 2d 762, 769 (Fla. 4th DCA 1972) (internal citations omitted).

Plaintiff's lengthy Exhibit B and "Introduction" to the Complaint violate Fla. R. Civ. P. 1.110(b), and striking them is the appropriate remedy under Fla. R. Civ. P. 1.140(f). In *Rice-Lamar v. City of Fort Lauderdale*, 853 So. 2d 1125 (Fla. 4th DCA 2003) ("*Rice-Lamar*"), the court upheld the repeated striking of references to a shooting and suicide incident as immaterial

and irrelevant within the pleadings in a Florida Whistleblower Act case. *Id.* at 1133. The trial court first gave Appellant Rice-Lamar leave to amend the complaint, then ordered her for a second time to remove new references made to the incident in the amended complaint. However, Rice-Lamar was allowed to refer to the incident by date. *Id.* at 1130.

In upholding the striking of details that were "redundant, bellicose and unnessary to state the alleged causes of action, the *Rapp* court noted that "[a] complaint in a lawsuit is not a press release. The hallmarks of good pleading are brevity and clarity in the statement of the essential facts upon which the claim for relief rests 'rather than intricate and complex allegations.' " *Rapp* at 463 (citing *Ranger Construction Industries, Inc., v. Martin Companies of Daytona, Inc.*, 881 So. 2d 677, 680 (Fla. 5th DCA 2004)).

I. Exhibit B to Complaint

A. Exhibit B contradicts the facts of and is immaterial to the issue in and resolution of the instant case, and is appropriate for striking.

According to the four corners of the Plaintiff's Complaint in the instant case, Plaintiff is arguing that a 15-day suspension itself has made McCallum unqualified to appear on the State Attorney ballot. Plaintiff has cited in that regard the 15-day suspension handed down in Florida Supreme Court Case Number SC18-604. *See* Plaintiff's Complaint at paragraphs 16, 26 and 31.

Specifically, the above-referenced suspension in Case Number SC18-604 was handed down by the Court via a two-page order of December 16, 2019, and imposed via a one-page order of December 20, 2019; these orders are the definitive evidence of such suspension. *See* Movant's Composite Exhibit A. Given the expedited nature of this case as requested by Plaintiff and that he has attached a lengthy, underlying portion of the docket in Case Number SC18-604 as Exhibit B to the instant Complaint, McCallum requests that this court take judicial notice of the above-referenced orders pursuant to 90.202(6), Fla. Stat.

The Amended Report of Referee ("Amended Report") found in Exhibit B to Plaintiff's

Complaint, is dated over nine months prior to December 16, 2019, and recommended a primary sanction that is contrary to the one adopted by the high court. In fact, the Supreme Court "disapprove[d] the referee's recommendation as to discipline." Order of December 16, 2019, Case No. SC18-604. Plaintiff purports to reference "the findings of fact and recommendations of guilt approved by the Florida Supreme Court." Plaintiff's Complaint at par. 16, 26 and 31. However, it is the sanction of suspension itself – and not the "findings of fact" or "recommendations of guilt" in an attorney-discipline case, that is at issue in the instant case.

Furthermore, the instant case turns on whether a suspension – not some alternative, primary sanction, precludes McCallum from appearing on the November 2020 ballot. The Amended Report's lengthy recitation of years-worth of the underpinnings of contested litigation between a professional and her professional-oversight authority that did not result in a recommendation of suspension at all, is wholly irrelevant to resolution of the case at bar, does not bear on the equities between McCallum and Plaintiff (who was not involved in Case Number SC18-604) and can have no legitimate influence on this court's decision.

Notably, by Exhibit B, Plaintiff has included wholesale a lengthy part of the court record in Case Number SC18-604, without requesting that judicial notice be properly taken thereof. Yet even had he done so, the Florida Supreme Court has made clear that "the fact that a record may be judicially noticed does not render all that is in the record admissible," *Dufour v. State*, 69 So. 3d 235, 253 (Fla. 2011) (internal citation omitted), *see Stoll v. State*, 762 So. 2d 870, 876 (Fla. 2000) (otherwise inadmissible documents not automatically admissible just because they were included in a judicially noticed court file).

More to the point, the Florida Supreme Court could have reprinted the Amended Report by making it an exhibit to the Court's December 16, 2019 order but did not. Instead, the Court referred to it (in part to reject its recommendation as to discipline) in only one of the two orders

in Movant's Composite Exhibit A. Retention of the Amended Report in the instant case would also undermine the purposes of Bar rules, which "are designed to provide guidance to lawyers and to provide a structure for regulating conduct...They are not designed to be a basis for civil liability. Rules Regulating the Florida Bar, Chapter 4 – Preamble – Scope ("Bar rules").

The Bar rules state as follows:

> Violation of a rule should not itself give rise to a cause of action against a lawyer nor should it create any presumption that a legal duty has been breached. In addition, violation of a rule does not necessarily warrant any other nondisciplinary remedy, such as disqualification of a lawyer in pending litigation...Furthermore, *the purpose of the rules can be subverted when they are invoked by opposing parties as procedural weapons. The fact that a rule is a just basis for a lawyer's self-assessment, or for sanctioning a lawyer under the administration of a disciplinary authority, does not imply that an antagonist in a collateral proceeding or transaction has standing to seek enforcement of the rule.* Accordingly, nothing in the rules should be deemed to augment any substantive legal duty of lawyers or the *extra-disciplinary consequences of violating a substantive legal duty.*"

Id. (emphasis added).

B. Exhibit B and the "Introduction" of the instant Complaint are crafted as a press release in violation of Fla. R. Civ. P. 1.110(f) and appropriate for striking.

Plaintiff's Exhibit B, specifically, and the Complaint, generally, appear to have been crafted in the nature of a press release: a means to showcase the Amended Report for political effect. Yet, as noted above, even lawyer discipline puts limits on a member's being put in the figurative stocks at noon. No matter how the court decides the instant case, Plaintiff, who is just one of many, rank-and-file, Florida candidates, should not be allowed effectively to use the contents of the Complaint to convert this proceeding into part of his partisan, political, public-relations campaign.

More specifically, Plaintiff filed the instant lawsuit in the 4 o'clock hour of Friday, April 24, 2020, *see* Receipt No. 1508515, yet by the next court business day, Monday, April 27, 2020, a campaign photograph of Plaintiff topped an online Florida Politics article predicated

solely on the filing of the instant case. *See* News Service of Florida, *North Florida state attorney candidate takes aim at foe Brian Kramer claims his opponent, Beverly McCallum, doesn't meet the requirements for office*, Florida Politics (April 27, 2020), https://floridapolitics.com/archives/330120-north-florida-state-attorney-candidate-takes-aim-at-foe (last visited May 20, 2020). Pursuant to 90.202(12), Fla. Stat., McCallum requests that this court take judicial notice of all but the last sentence (which references content from the aforementioned, Plaintiff's Exhibit B) of the above-referenced news article, which is attached and incorporated by reference hereto as Movant's Exhibit B.

The inclusion of Plaintiff's Exhibit B, like the instant case itself, reeks of politics. Also, allowing candidates to pack the Complaint in election cases with voluminous, irrelevant, politically charged documents is bad public policy, as well. That is, other candidates from anywhere in Florida may, like Plaintiff, want to avoid having to earn a majority of votes. Like Plaintiff, they could create their own complaint-press release, file suit in Leon County and request expedited scheduling. To be sure, the prospect of having an out-of-area Circuit Judge install these candidates into office by judicial fiat, without the latters' having to endure the general election, could be so appealing that an expedited, candidates-only docket would be needed.

The resulting mass of election-year candidates demanding such expedited court time and extra-electoral victory could delay justice for litigants with worthier causes and truly emergent causes. Of even greater concern, allowing complaint-press releases like Plaintiff's could contort the constitutional framework of our state and erode the people's political power to choose constitutional officers without interference.

The political campaign between Plaintiff and McCallum is ongoing, and it would be unusual and unnecessary for a court effectively to place its imprimatur on one partisan candidate, and, therefore, one party over another in such a race. In the instant case, were this court to allow the bandying of irrelevant or other impermissible material concerning only McCallum, it would

deny her due-process and mightily obscure the public's ability to weigh the comparative merit of criticisms and any scandals relating to *Plaintiff* in the electoral process between now and November.

Also worthy of consideration by this court, as to the instant, requested relief is the anatomy of Plaintiff's Complaint itself. Not counting its exhibits, the Complaint consists of (1) eight substantive pages, (2) a page containing only a signature block and (3) a tenth page and two, additional lines entitled "Introduction" that consists only of un-numbered language. In stark contrast, the Amended Report weighs in at over double the size of the actual substance of the instant Complaint.

In the *Rice-Lamar* case, the plaintiff experienced troubles in litigation and otherwise based, in part, on her unwillingness to stop bandying about an unauthorized version of an official report and documents, and her inclusion of related content thereto in court pleadings, *see id.* at 1128-30. Like the plaintiff in *Rice-Lamar*, Plaintiff in the instant case appears to have bandied about the above-referenced, 25-page colossus of an Amended Report, at least in part, for effect.

Even if the Amended Report in Exhibit B is not impertinent or scandalous matter, it is at the very least immaterial, redundant or contradictory to the facts advanced by Plaintiff. The exhibit to the Complaint, which is twice the size of the substance of the Complaint – filed without an attendant request for judicial notice or notice to McCallum and an opportunity for her to meet such request, appears in part included for the purpose of causing embarrassment or other unwarranted, extra-judicial, extra-disciplinary results.

For the aforementioned reasons and pursuant to Fla. R. Civ. P. 1.140(f), McCallum requests that this court strike the Amended Report of Referee that is currently bloating the Complaint as its Exhibit B. McCallum stipulates that she was under a brief suspension of 15-days from December 20, 2019, through January 3, 2020 pursuant to Florida Supreme Court Case

Number 18-604, with Court orders of December 16, 2019 and December 20, 2019, being the only evidence of such suspension relevant to the instant case.

In the alternative, should this court nonetheless find that the Amended Report is in some way permissibly included in the instant case, McCallum moves this court to strike Exhibit B and limit reference to the underlying report, to its name and date of its issuance (i.e., "Amended Report of Referee dated March 4, 2019"), similar to the citation allowed by the court in *Rice-Lamar*.

II. "Introduction" to Plaintiff's Complaint

In addition to the above-cited allegations of the Complaint, the one-page plus two lines of un-numbered language entitled "Introduction" violate the short and plain statement requirement of Fla. R. Civ. P 1.110(b), as well as the consecutive-numbering requirement of Fla. R. Civ. P. 1.110(f). The "Introduction" also further invokes the immaterial matters referenced in Plaintiff's Exhibit B. Accordingly, pursuant to same authority cited above, McCallum moves to strike the entire, lengthy, un-numbered "Introduction" found in pages 2-3 of the instant Complaint.

WHEREFORE, Defendant Beverly R. McCallum moves to strike the above-referenced material from Plaintiff's Complaint, retaining jurisdiction of the instant matter in order to award attorneys fees to McCallum pursuant to Florida Statute §57.105, together with any other legal or equitable relief that this Court deems just and proper.

DATED this 20th day of May, 2020.

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a true and correct copy of the foregoing Motion to Strike Pleadings and Motion for Protective Order has been furnished to Benjamin Gibson, Esq., Counsel for Plaintiff (to bgibson@shutts.com and mabramitis@shutts.com); Ronald A. Labasky, Esq., Counsel for Defendants Crawford, Vaughan, Sanchez, Jones and Osborne (to rlabasky@bplawfirm.net and fsase@bplawfirm.net); Corbin F. Hanson, Esq. (to cfhanson@alachuacounty.us) and Robert C. Swain, Esq. (bswain@alachuacounty.us and

CAO@alachuacounty.us), Counsel for Defendant Barton; and Ashley E. Davis, Esq., Counsel for Defendant Florida Department of State (to ashley.davis@dos.myflorida.com and candice.edwards@dos.myflorida.com), by e-mail service this 20th day of May, 2020.

s/ *Beverly R. McCallum* (as to Motion and Certificate)
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Pro Se

MOVANT'S

COMPOSITE EXHIBIT A

(Order of December 16, 2019

and

Order of December 20, 2019

in Florida Supreme Court Case Number SC18-604)

Supreme Court of Florida

MONDAY, DECEMBER 16, 2019

CASE NO.: SC18-604
Lower Tribunal No(s).:
2017-00,507(09C); 2017-00,555(09C)

THE FLORIDA BAR vs. BEVERLY R. MCCALLUM

Complainant(s) Respondent(s)

Upon consideration of the Amended Report of Referee and the briefs filed in this case, the Court hereby approves the referee's findings of fact and recommendations as to guilt. However, the Court disapproves the referee's recommendation as to discipline and respondent is suspended from the practice of law for fifteen days, effective thirty days from the date of this order so that respondent can close out her practice and protect the interests of existing clients. If respondent notifies this Court in writing that she is no longer practicing and does not need the thirty days to protect existing clients, this Court will enter an order making the suspension effective immediately. Respondent shall fully comply with Rule Regulating the Florida Bar 3-5.1(h). In addition, respondent shall accept no new business from the date this order is filed until she is reinstated.

Respondent is further directed to attend The Florida Bar's Ethics School under the terms and conditions set forth in the amended report.

Judgment is entered for The Florida Bar, 651 East Jefferson Street, Tallahassee, Florida 32399-2300, for recovery of costs from Beverly R. McCallum in the amount of $4,901.50, for which sum let execution issue.

Not final until time expires to file motion for rehearing, and if filed, determined. The filing of a motion for rehearing shall not alter the effective date of this suspension.

CANADY, C.J., and POLSTON, LABARGA, LAWSON, and MUÑIZ, JJ., concur.

A True Copy
Test:

John A. Tomasino
Clerk, Supreme Court

as
Served:

KAREN CLARK BANKOWITZ
GWENDOLYN H. DANIEL
SCOTT KEVORK TOZIAN
HON. RAUL ANTONIO ZAMBRANO, CHIEF JUDGE
PATRICIA ANN TORO SAVITZ

Supreme Court of Florida

FRIDAY, DECEMBER 20, 2019

CASE NO.: SC18-604
Lower Tribunal No(s).:
2017-00,507(09C); 2017-00,555(09C)

THE FLORIDA BAR vs. BEVERLY R. MCCALLUM

Complainant(s) Respondent(s)

Respondent having notified this Court on December 20, 2019, that she is no longer practicing law, the suspension ordered by this Court dated December 16, 2019, shall be effective December 20, 2019.

A True Copy
Test:

John A. Tomasino
Clerk, Supreme Court

as
Served:

KAREN CLARK BANKOWITZ
GWENDOLYN H. DANIEL
SCOTT KEVORK TOZIAN
PATRICIA ANN TORO SAVITZ

MOVANT'S

EXHIBIT B

Florida Politics Article of April 27, 2020

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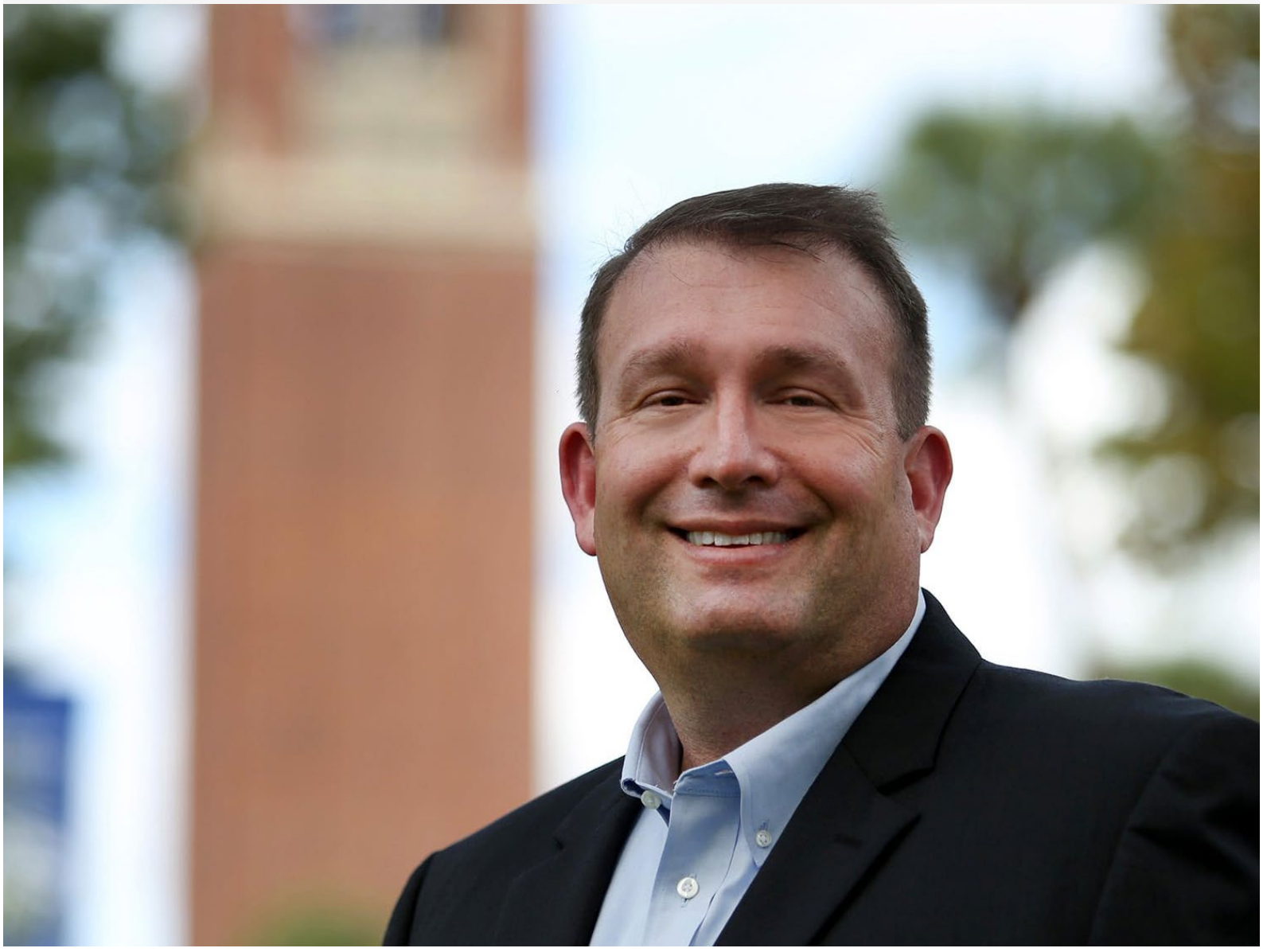

State Attorney candidate Brian Kramer.

2020

North Florida state attorney candidate takes aim at foe

Brian Kramer claims his opponent, Beverly McCallum, doesn't meet the requirements for office.

By **News Service Of Florida** on April 27, 2020

Just hours after a qualifying deadline Friday, a candidate to become state attorney in part of North Florida filed a lawsuit seeking to knock his only opponent off the ballot.

Republican **Brian Kramer** filed the lawsuit in Leon County circuit court contending that his Democratic opponent, **Beverly McCallum**, did not meet an eligibility requirement to serve as state attorney.

Kramer and McCallum are running to replace outgoing State Attorney **Bill Cervone** in the 8th Judicial Circuit, which is made up of Alachua, Baker, Bradford, Gilchrist, Levy and Union counties.

The lawsuit names as defendants the Florida Department of State and elections supervisors in the counties. Kramer and McCallum met a noon Friday deadline to qualify for the race, but Kramer filed the lawsuit later that afternoon contending that McCallum does not satisfy a constitutional requirement

that state attorneys be members of The Florida Bar for the previous five years.

While McCallum is a longtime attorney, Kramer's argument is based on a **15-day suspension** she received in December from the Florida Supreme Court. The lawsuit contends an attorney "has not had the 'privilege' of practicing law during the period she was suspended, and therefore is not 'a member of the bar of Florida' during that same time."

The suspension was related to statements made about two judges.

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