

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

**BRIAN KRAMER**, candidate for State  
Attorney for the Eighth Judicial Circuit,

Plaintiff,

v.

**Case No: 2020 CA 801**

**BEVERLY R. MCCALLUM**, candidate  
for State Attorney for the Eighth Judicial  
Circuit,

and

**FLORIDA DEPARTMENT OF STATE,  
DIVISION OF ELECTIONS,  
KIM A. BARTON**, in her official capacity  
as Alachua County Supervisor of Elections,  
**NITA D. CRAWFORD**, in her official  
capacity as Baker County Supervisor of  
Elections, **TERRY VAUGHAN**, in his  
official capacity as Bradford County  
Supervisor of Elections, **CONNIE D.  
SANCHEZ**, in her official capacity as  
Gilchrist County Supervisor of Elections,  
**TAMMY JONES**, in her official capacity  
as Levy County Supervisor of Elections,  
**DEBORAH K. OSBORNE**, in her official  
capacity as Union County Supervisor of  
Elections,

Defendants.

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**PLAINTIFF'S RESPONSE IN OPPOSITION TO  
DEFENDANT MCCALLUM'S MOTION TO STRIKE PLEADINGS**

Plaintiff Brian Kramer, candidate for State Attorney for the Eighth Judicial Circuit, hereby responds in opposition to Defendant McCallum's Motion to Strike Pleadings. The Motion should be denied, as it fails to identify any basis for the relief it seeks.

## **BACKGROUND**

1. On April 24, 2020, Plaintiff filed a two-count Complaint seeking declaratory and injunctive relief regarding the candidacy of Defendant Beverly R. McCallum for the office of State Attorney for the Eighth Judicial Circuit. The crux of Plaintiff's claim is that McCallum is not constitutionally eligible to hold the office of State Attorney, she should not be certified as a candidate for that office, and her name should not appear on the General Election ballot.

2. The Complaint itself is just 10 pages long and consists of a brief Introduction and 36 consecutively numbered paragraphs. Three Exhibits are attached to the Complaint: Exhibit A (2 pages) is a copy of McCallum's Florida Bar member profile; Exhibit B (25 pages) is a copy of the Amended Report of Referee in McCallum's disciplinary proceedings; Exhibit C (1 page) is a copy of McCallum's Oath of Candidate. Together, the Complaint and the three accompanying Exhibits total a mere 38 pages.

3. On May 20, 2020, Defendant McCallum filed a "Motion to Strike Pleadings" in which she argues that the Introduction and Exhibit B should be stricken pursuant to Florida Rule of Civil Procedure 1.140(f) because they are "lengthy," "contradictory," "immaterial," and "crafted as a press release." (Mot. at 1-2, 4, 6).

## **ARGUMENT**

The motion to strike fails to establish any basis for the relief it seeks: an order striking the "Introduction" section of the Complaint as well as the Amended Report of Referee in Exhibit B. As such, the motion should be denied.

*First*, the motion to strike should be denied because the Complaint satisfies the pleading standards in Rule 1.110. Pursuant to Florida Rule of Civil Procedure 1.110(b)(2), a pleading must contain "a short and plain statement of the ultimate facts showing that the pleader is entitled to relief." More specifically, a complaint must set forth, simply and succinctly, the elements of a

cause of action and the facts supporting those elements “so that the court and the defendant can clearly determine what is being alleged.” *Barrett v. City of Margate*, 743 So. 2d 1160, 1162 (Fla. 4th DCA 1999) (citing Rule 1.110(b)). All allegations relating to a claim for relief must “be made in consecutively numbered paragraphs.” Fla. R. Civ. P. 1.110(f).

The Introduction to the Complaint succinctly lays out Plaintiff’s case by briefly stating the law applicable to his claims, applying the law to the pertinent facts at issue, and summarizing the relief he seeks. At 322 words and spanning just over one page, it is the opposite of “lengthy,” (Mot. at 7), and comes nowhere close to violating the brevity requirement in Rule 1.110(b). Furthermore, nothing in Rule 1.110(f) requires an introduction to be done in numbered paragraphs. That provision of the general pleading requirements is specifically directed to the factual and legal allegations related to a cause of action. (“All averments of claim or defense shall be made in consecutively numbered paragraphs, the contents of each of which shall be limited as far as practicable to a statement of a single set of circumstances.”).

To the extent Defendant McCallum argues that Exhibit B also violates the “short and plain statement” requirement of Rule 1.110(b), that argument should also be rejected. Exhibit B is properly attached to the Complaint as support for the ultimate fact in Paragraph 16— Defendant McCallum’s suspension from the practice law for a period of 15 days beginning December 2020. In that context, the length of the report is irrelevant. In short, Rule 1.110(b) provides no basis to strike the Introduction and Exhibit B.

*Second*, the motion to strike should be denied because the allegations and information in the Introduction and Exhibit B are not of the type precluded by Florida Rule of Civil Procedure 1.140(f), which permits a party to move to strike allegations in a pleading the party contends are “redundant, immaterial, impertinent, or scandalous.”

As to the Introduction, its purpose is to provide the reader a roadmap to the matters addressed in more detail in the body of the Complaint. Attorneys frequently include introductions, such as the one in Plaintiff's Complaint, in court filings of all types. The Introduction is a straightforward summary of the law, the facts (which appear to be undisputed), and the relief Plaintiff seeks.

The Amended Report of Referee attached as Exhibit B also falls far short of the type of "redundant, immaterial, impertinent, or scandalous" material that is properly stricken under Rule 1.140(f). The Report was authored by Circuit Judge Raul Zambrano, in his capacity as a Referee, and consists of: 1) a summary of the Florida Bar's disciplinary proceedings against Defendant McCallum; 2) the Referee's Findings of Fact regarding accusations made by Defendant McCallum against two Fifth Circuit judges; 3) the Referee's Recommendations as to Guilt; 4) the relevant standards for imposing lawyer sanctions; 5) a summary of applicable case law; 6) the Referee's Recommendations as to Disciplinary Measures; 7) the Referee's consideration of Defendant McCallum's personal history; and 8) a statement of costs incurred by the Florida Bar. As noted above, the Report is pertinent supporting information for the ultimate facts alleged in Paragraph 16 of the Complaint.

Defendant's Motion is less than candid in stating that the Florida Supreme Court "disapprove[d] the referee's recommendation as to discipline." Mot. at 3. While true in the most technical sense, that disapproval came in the form of an *increased disciplinary penalty* imposed by the Court: a 15-day suspension from the practice of law rather than the referee's recommendation of a public reprimand by appearance before the Florida Bar's Board of Governors. While it is understandable that Defendant McCallum would prefer not to address her suspension from the practice of law, the Amended Report of Referee is the public work product

of the Florida Bar’s disciplinary process and is directly relevant to the allegations in the Complaint. The Motion provides no appropriate legal basis to strike Exhibit B as “redundant, immaterial, impertinent, or scandalous.”

**CONCLUSION**

The Motion to Strike Pleadings should be denied.

Respectfully Submitted,

/s/ Benjamin Gibson  
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**CERTIFICATE OF SERVICE**

I HEREBY CERTIFY that on this 22nd day of May, 2020, a copy of the foregoing was filed via electronic means through the Florida Courts E-Filing portal and was served via electronic mail on all counsel of record.

/s/ Benjamin Gibson  
BENJAMIN GIBSON