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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:
Division:

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.
_____/

COMPLAINT

This is a complaint for declaratory judgment and injunctive relief regarding the candidacy of Beverly R. McCallum for the office of State Attorney for the Eighth Judicial Circuit.

Introduction

Under the Florida Constitution, all State Attorneys "shall be and have been a member of the bar of Florida for the preceding five years." Art. V, § 17, Fla. Const. The Florida Supreme Court has construed the constitutional phrase "a member of the bar of Florida" to refer to "a member with the privilege to practice law." *In re Adv. Op. to Gov. re Comm'n of Elected Judge*, 17 So. 3d 265, 267 (Fla. 2009) (construing article V, section 8, of the Florida Constitution regarding the eligibility requirements for a circuit court judge). A candidate for office who has been suspended from the practice of law is therefore not a "member of the bar of Florida" during the period of suspension for purposes of eligibility to hold an office requiring Florida Bar membership.

Defendant Beverly R. McCallum fails to satisfy the constitutional eligibility requirements for the office of State Attorney. In December 2019, the Florida Supreme Court adjudicated McCallum guilty and suspended her from the practice of law for a period of fifteen days as a sanction for multiple violations of the Rules Regulating the Florida Bar. Notwithstanding her recent suspension from the practice of law, McCallum has filed a sworn candidate oath with the Department of State, Division of Elections, claiming that she is qualified to hold the office of State Attorney under the Constitution and Laws of Florida.

Brian Kramer seeks a declaratory judgment that McCallum is ineligible to hold the office of State Attorney for the Eighth Judicial Circuit, and injunctive relief directing the Florida Department of State, Division of Elections, and the applicable Defendant Supervisors of Elections in the Eighth Judicial Circuit to: 1) withhold certification of McCallum as a duly qualified candidate for State Attorney for the Eighth Judicial Circuit; 2) refrain from including

McCallum as a candidate on any ballots that are printed for the General Election; 3) refrain from certifying any votes cast for McCallum.

Parties

1. BRIAN KRAMER is a resident of Alachua County and a duly qualified candidate for the office of State Attorney for the Eighth Judicial Circuit.

2. Defendant BEVERLY R. MCCALLUM has filed qualifying documents with the Florida Department of State as a candidate for the office of State Attorney for the Eighth Judicial Circuit.

3. Defendant DEPARTMENT OF STATE, DIVISION OF ELECTIONS, is the state agency responsible for accepting qualifying documents from candidates for the office of State Attorney and for certifying to the County Supervisors of Elections the names of candidates for the office of State Attorney who have qualified for placement on the ballot. The Division of Elections "performs a ministerial function in reviewing qualifying papers" and "may not determine whether the contents of the qualifying papers are accurate." § 99.061(7)(c), Fla. Stat. The Division of Elections is included as a defendant solely for the purpose of facilitating the injunctive relief sought in this action.

4. Defendant KIM A. BARTON is the Supervisor of Elections for Alachua County, a county within the Eighth Judicial Circuit, and is sued in her official capacity.

5. Defendant NITA D. CRAWFORD is the Supervisor of Elections for Baker County, a county within the Eighth Judicial Circuit, and is sued in her official capacity.

6. Defendant TERRY VAUGHAN is the Supervisor of Elections for Bradford County, a county within the Eighth Judicial Circuit, and is sued in his official capacity.

7. Defendant CONNIE D. SANCHEZ is the Supervisor of Elections for Gilchrist County, a county within the Eighth Judicial Circuit, and is sued in her official capacity.

8. Defendant TAMMY JONES is the Supervisor of Elections for Levy County, a county within the Eighth Judicial Circuit, and is sued in her official capacity.

9. Defendant DEBORAH K. OSBORNE is the Supervisor of Elections for Union County, a county within the Eighth Judicial Circuit, and is sued in her official capacity.

Jurisdiction and Venue

10. This Court has jurisdiction over this action under article V, section 5(b), of the Florida Constitution, and it has authority to grant declaratory and injunctive relief under, respectively, sections 86.011 and 26.012(3), Florida Statutes.

11. Venue is proper in Leon County under section 47.011, Florida Statutes. The causes of action accrued in Leon County, where candidates for State Attorney are required to file qualifying documents with the Florida Division of Elections.

General Allegations

12. The Florida Constitution outlines the qualifications necessary to serve as a State Attorney: "A state attorney shall be an elector of the state and reside in the territorial jurisdiction of the circuit; ***shall be and have been a member of the bar of Florida for the preceding five years***; shall devote full time to the duties of the office; and shall not engage in the private practice of law." Art. V, § 17, Fla. Const. (emphasis added).

13. In 2009, the Florida Supreme Court construed the phrase "a member of the bar of Florida" to mean "a member with the privilege to practice law." *In re Adv. Op. to Gov. re Comm'n of Elected Judge*, 17 So. 3d 265, 267 (Fla. 2009) (construing article V, section 8 of the Florida Constitution regarding the eligibility requirements for a circuit court judge). A lawyer

who has been suspended from the practice of law 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. *See id.* (concluding that a suspended lawyer elected to be a circuit court judge could not satisfy the constitutional requirement of having been a member of The Florida Bar for the preceding five years).

14. Only an individual who is an elector of Florida, resides in the Eighth Judicial Circuit, has been a member of the Florida Bar for the preceding five years, and meets all other constitutional requirements is eligible to serve as the State Attorney for the Eighth Judicial Circuit. Art. V, § 17, Fla. Const.

15. McCallum was admitted to the Florida Bar on April 14, 2003. A copy of McCallum's Florida Bar member profile reflecting her date of admission is attached as Exhibit A.

16. On December 16, 2019, the Florida Supreme Court issued an opinion adjudicating McCallum guilty and suspending her from the practice of law for a period of fifteen days as a sanction for multiple violations of the Rules Regulating the Florida Bar. *The Florida Bar v. McCallum*, Case No. SC18-604, 2019 WL 6873032 (Fla. Dec. 16, 2019). A copy of the Amended Report of Referee containing the findings of fact and recommendations of guilt approved by the Florida Supreme Court is attached as Exhibit B.

17. During the period of her suspension from the practice of law, McCallum was not a member of The Florida Bar with the privilege to practice law in the state. *See In re Adv. Op. to Gov. re Comm'n of Elected Judge*, 17 So. 3d at 267.

18. McCallum is not constitutionally eligible to hold office as State Attorney because—as a result of her disciplinary suspension from the practice of law—she was not a

member of The Florida Bar "for the preceding five years" as required by the Florida Constitution.

19. Persons seeking to qualify for election to the office of State Attorney are required to file qualifying papers with the Florida Department of State and pay a qualifying fee. § 99.061(1), Fla. Stat. The qualifying period for the office of State Attorney for the 2020 election was from 12:00pm, Monday, April 20, 2020, through 12:00pm, Friday, April 24, 2020. Candidates may submit qualifying papers up to 14 days before the beginning of the qualifying period, to be processed and filed during the qualifying period. § 99.061(8), Fla. Stat.

20. On April 15, 2020, McCallum paid the qualifying fee and filed qualifying papers with the Division of Elections, including a sworn candidate oath stating that she was qualified under the Constitution and laws of Florida to hold the office of State Attorney. A copy of the Candidate Oath is attached as Exhibit C.

21. On April 20, 2020, the Department of State performed its ministerial function in reviewing the qualifying papers and qualified McCallum as a candidate for the office of State Attorney for the Eighth Judicial Circuit, without determining whether the contents of the qualifying papers were accurate.

22. Beverly McCallum, a Democrat, and Brian Kramer, a Republican, are the only candidates who the Department of State qualified by the end of the qualifying period for the office of State Attorney for the Eighth Judicial Circuit.

23. Section 99.061(6), Florida Statutes, requires the Department of State to certify to the supervisors of elections, within 7 days after the closing date for qualifying, the names of all duly qualified candidates for nomination or election who have qualified with the Department of State.

24. Because neither of the candidates is affiliated with the same political party, a primary election will not be held and the next State Attorney for the Eighth Judicial Circuit will be decided by voters at the General Election on November 3, 2020.

25. All conditions precedent to the filing of this action have been performed or waived.

Count 1: Declaratory Judgment

26. The allegations in paragraphs 1 through 25 are incorporated herein by reference.

27. The allegations in this Complaint demonstrate a bona fide actual, present, and practical need for a declaration by this Court that McCallum is constitutionally ineligible to hold the office of State Attorney for the Eighth Judicial Circuit.

28. In the absence of the declaratory relief sought in this action, the Plaintiff would be placed in doubt or uncertainty as to his rights with respect to the candidacy of Defendant McCallum. The Plaintiff is a duly qualified candidate for the office of State Attorney for the Eighth Judicial Circuit who is aware of the facts supporting McCallum's ineligibility to hold office. Because Florida law recognizes circumstances under which a post-election challenge to a candidate's eligibility or qualifications may be barred or estopped, it is important for this dispute to be resolved "before the ballots [are] cast and results announced." *Republican Party of Miami-Dade Cnty. v. Davis*, 18 So. 3d 1112, 1118 (Fla. 3d DCA 2009).

29. It is adverse and antagonistic to the public interest and to the interests of the Plaintiff, as a qualified elector in the Eighth Judicial Circuit and as a candidate for the office of State Attorney in the Eighth Circuit, to allow McCallum to be placed on the ballot despite her constitutional ineligibility.

30. The adverse and antagonistic interests are all before this Court by proper process and the relief sought is not merely a request for legal advice or an advisory opinion.

Count 2: Permanent Injunctive Relief

31. The allegations in paragraphs 1 through 25, 28, and 29 are incorporated herein by reference.

32. This is a claim for permanent injunctive relief to require the Department of State, Division of Elections, the Defendant Supervisors of Elections, and all those acting in concert with them to: 1) withhold certification of Beverly McCallum as a duly qualified candidate for State Attorney for the Eighth Judicial Circuit; 2) refrain from including Beverly McCallum as a candidate on any ballots that are printed for the General Election; and 3) refrain from tabulating, reporting, or certifying any votes cast for Beverly McCallum.

33. Plaintiff has a clear legal right to the relief requested. The Florida Supreme Court clearly and unambiguously determined that any lawyer who has been suspended from the practice of law is not "a member of the bar of Florida," as that phrase is used in the Florida Constitution, during the period of time he or she is suspended. *See In re Adv. Op. to Gov. re Comm'n of Elected Judge*, 17 So. 3d at 267. The relevant facts regarding McCallum's suspension from the practice of law are not in dispute.

34. Plaintiff faces a likelihood of irreparable harm if this Court does not grant the relief sought and allows McCallum to appear on the ballot and garner votes for an office she is constitutionally ineligible to hold and for which Plaintiff is also a candidate.

35. Plaintiff has no adequate remedy at law to address the harm described in this Complaint. Permitting McCallum, who is not constitutionally eligible to hold office, to appear on

the ballot and attempt to siphon away votes from Plaintiff, cannot be adequately remedied through money damages.

36. The public interest strongly favors the entry of a permanent injunction and the resolution of this dispute to prevent McCallum, who is constitutionally ineligible to hold the office of State Attorney, from being placed on the ballot and thereby misleading voters as to her eligibility.

RELIEF SOUGHT

Wherefore, Plaintiff, Brian Kramer, candidate for the office of State Attorney for the Eighth Judicial Circuit requests that this Court:

a. Declare, pursuant to section 86.011, Florida Statutes, that Beverly McCallum is constitutionally ineligible to hold the office of State Attorney for the Eighth Judicial Circuit, because she has not been "a member of the bar of Florida for the preceding five years";

b. Issue a permanent injunction, pursuant to section 26.012(3), Florida Statutes, requiring the Department of State, Division of Elections, the Defendant Supervisors of Elections, and all those acting in concert with them to: 1) withhold certification of Beverly McCallum as a duly qualified candidate for State Attorney for the Eighth Judicial Circuit; 2) refrain from including Beverly McCallum as a candidate on any ballots that are printed for the General Election; and 3) refrain from tabulating, reporting, or certifying any votes cast for Beverly McCallum; and

c. Grant such other or further relief the Court deems appropriate, including but not limited to an award of attorney's fees and costs.

Dated: April 24, 2020

Respectfully submitted,

/s/ Benjamin Gibson
DANIEL NORDBY (FBN 14588)
BENJAMIN GIBSON (FBN 58661)
AMBER STONER NUNNALLY (FBN 109281)

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Counsel for Brian Kramer, Candidate for State Attorney for the Eighth Judicial Circuit

EXHIBIT A

MEMBER PROFILE

Beverly R McCallum

Member in Good Standing

Eligible to Practice Law in Florida

Bar Number:

639788

Mail Address:

5745 SW 75th St # 194
Gainesville, FL 32608-5504

Office: **352-260-5907**

Cell: **352-260-5907**

Email:

brmlawfirm@yahoo.com

Personal Bar URL:

https://www.floridabar.org/mybarprofile/639788

vCard:

County:

Alachua

Circuit:

08

Admitted:

04/14/2003

10-Year Discipline History:

Discipline cases that are public record are posted below. Select the reference number to view the Supreme Court Order and other related documents. Members of the public may obtain information about any disciplinary history older than 10 years by emailing **LRInfo@floridabar.org** or by calling **(850) 561-5839**. The Media should call the Public Information Department at **(850) 561-5666**.

	Action Date	Reference
Suspension	12/16/2019	**201700507**

Law School:

University of Florida, Fredric G. Levin College of Law, 2002

State Courts:

Florida

EXHIBIT B

IN THE SUPREME COURT OF FLORIDA
(Before the Honorable Raul A. Zambrano, Referee)

THE FLORIDA BAR,
Complainant,

Supreme Court Case No. SC 18-604

v.

The Florida Bar File No. 2017-00,507(09C)
2017-00,555(09C)

BEVERLY McCALLUM,
Respondent.
_____/

AMENDED REPORT OF REFEREE

I. SUMMARY OF PROCEEDINGS

Pursuant to the undersigned being duly appointed as referee to conduct disciplinary proceedings herein according to Rule 3-7.6, Rules of Discipline, the following proceedings have taken place:

- On April 27, 2018, The Florida Bar filed its Complaint against Respondent as well as its Request for Admissions in these proceedings.
- On September 11, 2018, a final hearing was held in this matter. The referee allowed the parties to supplement and make their final arguments in writing.
- A deadline of October 28, 2018 was set for all submissions and arguments.

- On January 30, 2019, a Preliminary Report of Referee and Order Setting Status Conference for Sanctions Hearing was entered.
- On February 22, 2019, a Sanction Hearing was held to determine the appropriate discipline in this matter.
- All items properly filed including pleadings, recorded testimony (if transcribed), exhibits in evidence and the report of referee constitute the record in this case and are forwarded to the Supreme Court of Florida.

II. FINDINGS OF FACT

A. Jurisdictional Statement. Beverly McCallum, ("Respondent") is, and at all times mentioned during this investigation was, a member of The Florida Bar, subject to the jurisdiction and disciplinary Rules of the Supreme Court of Florida.

B. Narrative Summary of Case.

The facts of this case are not subject to much scrutiny and are mostly a matter of unrefuted record. Respondent is accused of violating the following rules:

- 3-4.3 Misconduct and Minor Misconduct
- 4-8.2(a) Impugning Qualifications and Integrity of Judges....
- 4-8.4(d) ...engag[ing] in conduct in connection with the practice of law that is prejudicial to the administration of justice....

The charges stem from several written statements attributed to Respondent. The statements were made in correspondence which was delivered to the Chief Judge of the Fifth Circuit; and then subsequently provided to the individual judges named in the correspondence. Respondent does not deny authoring the statements.

In the correspondence, Respondent levies accusations against two Fifth Circuit judges; the Honorable Robert W. Hodges ("Judge Hodges"), and the Honorable Willard Pope ("Judge Pope"). Respondent's claim against Judge Hodges involves his courtroom demeanor and interactions with her. The accusations against Judge Pope were far more serious. She in essence alludes and implies that Judge Pope is, or might be engaged in illegal, corrupt or nefarious activity and that he should or could be investigated for such conduct.

Respondent initially penned her accusations in a letter dated August 3, 2015. However, Respondent never mailed or delivered the letter until such a time that she felt it would be safe for her clients not to be "mistreated;" presumably by the judges who were the targets of her accusations. She indicated that she had deliberately not engaged in representation of any clients who might appear before the judges in question.

It was not until she had finished several cases that had been pending with the named judges (February 2017) that she decided to deliver her August 3, 2015, letter to the Chief Judge of the Fifth Circuit. She delivered the letter as an

attachment to an accompanying letter dated February 25, 2017, nearly 18 months after what gave rise to her accusations.

After delivering her initial letter and attachment, Respondent engaged in communications with the Fifth Judicial Circuit's General Counsel. She then wrote two additional letters to the General Counsel. The letters were dated March 14, 2017, and March 28, 2017. In the latter two letters Respondent reiterates her accusations and ensconces herself in them.

Judge Hodges Accusations

Respondent cited several encounters with Judge Hodges that gave her reason to believe that he was belittling, mistreating or otherwise undermining her position as an attorney. Most of these incidents revolved around a specific case, *State v. Pollard*, which was pending before Judge Hodges. Among her allegations, Respondent asserted that she was being skipped over even after signing up for her cases to be called, being unprofessionally dismissed, embarrassed by being invited to play games on her phone, being interrupted and being the victim of ex-parte communications.

Skipped over:

While attending a pretrial conference in the *Pollard* case, Respondent accused Judge Hodges of purposefully skipping her name on the cue of cases and causing her clients to have to wait an inordinate amount of time compared to

others. According to Respondent, she had signed-in but when her turn came up, Judge Hodges skipped her name and passed her over.

Respondent also takes issue with the fact that Judge Hodges engaged in conversation with others while she was standing at the podium with her client waiting for the case to be addressed.

Without more, Respondent has assumed that (a) the skipping of her name was willfully done, (b) it was done with the express purpose of making her and her clients wait longer, and (c) it was done because this will demonstrate to Respondent the disdain Judge Hodges has for her. Respondent did not assert that this happened all the time; or that Judge Hodges chronically skipped over her. She simply made one allegation of this offense.

Calling cases in court, not unlike the boarding sequence on an airliner, is always problematic. There is no perfect way of doing it and many judges/clerks do it differently. Attorneys who have conflicts, ill individuals, jail and bailiff's concerns, clerk's workload, public defender cases vs. private attorney cases, alphabetical calling[1], and for many other reasons too numerous to state, the sequence of cases called gets altered as necessary. Sometimes something as simple as accidentally failing to see an attorney's name on the list (something this referee has been guilty of) can cause an upset of the sequence.

[1] As someone whose last name begins with a "Z" I've always rejected this method.

However, Respondent has asserted that Judge Hodges did this in a malicious manner. That it was done so as to purposefully make her wait. There's no evidence anywhere that supports Respondent's notion. While she may have assumed many things, those assumptions are not fact based.

Improper Dismissal:

After a pre-trial hearing on the *Pollard* case, Respondent asked to be excused from the courtroom. Respondent took issue with Judge Hodges's manner of dismissal. According to her letter, Judge Hodges informally said "yeah" as opposed to being grammatically correct and using the more formal word of "yes".

Before discussing this issue any further, it would be helpful to point out that Respondent was an Assistant United States Attorney and is accustomed to the formality, rigidity and structure of Federal Court. Judge Hodges's dismissal of her did not meet her expectations. That being said, there is nothing improper or unprofessional in the use of the word "yeah" vs. "yes." Respondent, with this accusation seemingly creates a mountain out of an ant hill. The informality alleged is trivial and inconsequential. To take the time to even raise it as some sort of serious accusation is somewhat farcical. This accusation demonstrates Respondent's hypersensitivity in her dealings with Judge Hodges. This is apparent in her other accusations.

Candy Crush Saga[2]:

After her perceived improper dismissal from the above reference pre-trial in the *Pollard* case, Respondent claims that Judge Hodges then made a reference as she was exiting the courtroom about playing with her computer or phone. According to Respondent's correspondence, she claims that Judge Hodges said words to the effect that she was excused – "unless [she] wanted to sit and play with [her] iPad or tablet or something."

Respondent took the above statement as an affront to her professionalism. She found it insulting and undignified to have to suffer the embarrassment of an invitation to do something so childish and out of character in the formality of a courtroom. Although she readily acknowledges that others in the courtroom have engaged in playing with their phones or computers, she finds that activity to be so beneath her that the notion that Judge Hodges invited her to do so was repulsive in itself.

The problem with Respondent's feelings happens to be a glaring illustration of her misplaced accusations. The record solidly refutes her accusation. In the video recording from the courtroom that day, it clearly and unequivocally shows that Judge Hodges's statements were <u>not</u> directed at Respondent; but instead they were directed at someone else in the courtroom. However, and without more,

[2] Candy Crush Saga is a personal game played on smart phones, iPads, or computers.

Respondent assumed that the statement was made (a) to her, (b) for the purpose of demeaning and embarrassing her, and (c) to undermine her status as a serious professional attorney. Nothing could be further from the truth.

Interrupting:

Respondent, in her correspondence of March 28, 2017, also alleged that Judge Hodges had, at a time when she was discussing a case with a prosecutor in the courtroom, interrupted her to "tell a joke." According to Respondent, while she was engaged in a "professional discussion" with the prosecutor, Judge Hodges interrupted – then apologized for interrupting and said "it can wait." Thereafter, Judge Hodges attempted humor by stating that a criminal defendant charged with homicide happened to have the identical name of a former prosecutor.

This interruption apparently proved to Respondent once again that the interruption was done to trivialize and minimize Respondent's work. This interaction proved to her that Judge Hodges was mocking her work and disrespecting her. She even states in her letter that Judge Hodges must have an irresistible impulse to deliver a parting shot at her. She alleges that she is civil, and Judge Hodges is not.

Respondent seems to extrapolate the significance of these events into a negative experience at the expense of Judge Hodges. Her allegations are not supported by the facts of the case.

Ex parte communications:

Respondent also claims that in the *Pollard* case, there was an instant in which she learned that the court may have engaged in ex-parte communications with the State regarding the scheduling of the trial. She claims that she received a telephone call from Judge Hodges judicial assistant who informed her of a change of scheduling for the trial of her client. This phone call from the assistant prompted her claim that the court had improperly engaged opposing counsel in her absence. Although she does not expressly accuse Judge Hodges of violating the canons of ethics, she does imply it by stating that Judge Hodges's conducts "give pause".

Respondent should have been aware that the canons of ethics expressly allow ex-parte communications when the communications relate to scheduling and other administrative matters. See *Nudel v. Flagstar Bank, FSB*, 52 So. 3d 692 (Fla. 4th DCA 2010) (canon[s] expressly exempted communications relating to scheduling and other administrative matters, and the communication was immediately brought to the attention of opposing party.) West's F.S.A. Code of Jud. Conduct, Canon 3(B)(7).

With this accusation, Respondent once again accuses Judge Hodges, without any shred of credible evidence, of improper conduct which is not framed on facts or law. Respondent's letter is replete and teeming with derisive accusations.

Words such as defamatory, disrespectful, unprofessional, disparaging, openly hostile, disdainful, chronically disfavored, dismissive, undignified, sarcastic, condescending are all used to describe Judge Hodges interactions with Respondent. Yet each and every time the facts used in support of Respondent's claims fail to measure up to her allegations.

Respondent surmises that the reason for Judge Hodges poor treatment of her must stem from the fact that she is a defense attorney. In fact, she lays claim that when she was an Assistant United States Attorney Judge Hodges treated her with dignity and respect. But when she crossed to the criminal defense side and was paired up against Judge Hodges's "personal friends" and became a "dismantler of questionable prosecutions" that is when Judge Hodges spurned her.

At best, Respondent has proven herself to be intolerant of anything less than pure formality. She stacks assumptions and inferences to reach flawed conclusions which ultimately resulted in the assault on Judge Hodges's character – but more importantly, in the indictment of the judicial system itself. In sum, on scant evidence, she felt that Judge Hodges was biased and prejudiced against her and treated her accordingly. The evidence does not corroborate her assertions. But her accusations against Judge Hodges paled in comparison with those of Judge Pope whom she loosely accused of bribery and corruption.

Judge Pope's Accusations

The accusations against Judge Pope center on one of Respondent's client, Joseph Kenny Vickers. Mr. Vickers had apparently hired Respondent to represent him on three pending criminal drug charges. Mr. Vickers dismissed Respondent as counsel for his cases and instead hired attorney J. Michael Blackstone.

Mr. Blackstone's career history is noteworthy. Mr. Blackstone is a former Circuit Judge from the Fifth Circuit. He, and Judge Pope (then an Assistant State Attorney), both ran an election during the same year cycle but not against each other. So they both new each other from the campaign trail. Judge Pope lost his election bid, but Blackstone won his and became a Circuit Judge. Judge Pope returned to the Office of the State Attorney as an Assistant State Attorney after losing his bid for a judgeship. As a former prosecutor, Judge Pope actually appeared before Judge Blackstone as part of his prosecutorial duties.

Sometime later, Judge Blackstone was removed from the bench. Judge Pope became a Circuit Judge through a Governor's appointment.

Judge Pope described his interactions with Blackstone as limited. Their wives organized a dinner together once and that was the extent of Judge Pope's limited interaction with Blackstone. On occasion (by Judge Pope's estimation once or twice per year) Blackstone would now appear before Judge Pope to handle a case.

Sometime in December of 2014, Respondent had a scheduled hearing on the *Vickers* case. Ahead of her, Blackstone's case was called to be addressed. After Blackstone had finished his dealings with the court, he asked to approach the bench. Blackstone then extended his hand and shook Judge Pope's hand and a discussion took place. The whole event took 21 seconds.

During those 21 seconds the silence or white noise system that drowns out bench conversations was not turned on by Judge Pope. Blackstone, whom Respondent describes as having learned to whisper in a saw mill, discussed with Judge Pope their career paths and the times where they had "each other's back." Blackstone also makes a statement that he and/or Judge Pope would follow each other into a "foxhole." Most of the conversation was dominated by Blackstone and Judge Pope politely agrees or acquiesces to the statements.

At the conclusion of the conversation, Blackstone greets the prosecutor and "looks" at Respondent's client, Mr. Vickers. Sometime thereafter Mr. Vickers hires Blackstone to represent him in his case.

To the casual observer, this bench conference meeting between Blackstone and Judge Pope is nothing more than cordiality and jocularity. Blackstone does attempt to endear himself with Judge Pope and the prosecutor by praising their past history.

Respondent had worked on the *Vickers* case and had obtained a plea offer from the State. By the time that Respondent's representation was concluded, Mr. Vickers had received a 40 months in prison plea offer from the State. Blackstone was able to get Vickers sentenced reduced to 26 months in prison. This did not sit well with Respondent.

Respondent was incensed by a number of things relating to this occurrence. First, she had to wait while Blackstone approached the bench and "bantered" in the courtroom. Second, she lost a client to Blackstone which she can only speculate it happened because of the bench conference and Blackstone's "lengthy show of dominance atop the court's bench." She also loosely accuses Judge Pope of being complicit in what she termed as "client poaching." Third, there was the appearance of a "pledge of instant or prospective (or both) favor giving – *quid pro quo*" between Judge Pope and Blackstone. Fourth, Vickers received a better plea offer and was sentenced to less time than what Respondent had been able to obtain from the State. Finally, Respondent believed that she had witnessed the premise of a crime. She believed that all of this occurred because there was a bench conference.

Respondent's accusations against Judge Pope extend to others in the system as well. By implication, she also impugns wrongdoing to the Office of the State Attorney (for giving Vickers a better deal when Blackstone represented him,) and

the Clerk of the Court (whom she alleges that somehow they had buried the result of the Vickers case in such a way that she couldn't easily find them.) This in her mind was proof that the "fix is in".

Sadly, Respondent is seeing something no one else is seeing. Again, she hypothesizes on reckless extrapolation of facts to reach a verdict which damned Judge Pope and the system. Her summation of these facts is revealing:

> Unfortunately, at least part of the conduct that I describe appears to be the sort that has led historically to the public's crass invocation of terms such as "kangaroo court," "smells like home cookin'," and "the fix is in." As a former prosecutor of police and other public corruption, I recognize the smell of home cookin'(sic); the smell is rare yet not hard to detect. As a participant in the criminal justice system, I frankly get sick from the odor."

Respondent goes further and alleges in her March 14 letter that the only thing that would have made the bench conference worse in appearance was if there had been an actual exchange of money between Judge Pope and Blackstone. In fact, she suggests that there may have been money dropped by Blackstone on Judge Pope's lap as the conversation and handshake took place but that she simply couldn't see that.

Respondent further suggests that this is a matter which could have been taken up by a federal grand jury; and that, as a former Asst. U.S. Attorney, she would have subpoenaed records to check for extravagant expenditures, etc. She

cast the cliché of all aspersions: "Often when there is this kind of smoke, there's fire."

Reality is that approaching the bench is not an uncommon occurrence. Attorneys asking to approach the bench are common practice. Naturally, the content of a bench conference depends on the person calling for the conference. When an attorney asks to approach the bench, the court can only speculate as to why the request is being made.

Everything, from private personal issues an attorney may be having to discussions regarding confidential informants and other matters; or simply wanting to say "hello" are all subjects of bench conferences. But one thing is certain regarding bench conferences. Most times, the topic of the bench conference is not known by the judge until the lawyers begin to speak. Judges are trained to recognize that when the subject matter of the conference is something that ought to be on the record, then it is incumbent that the attorneys be informed of such. But simply saying "hello" to the judge is not one of those comments that need to be on the record. There is nothing in the canons of ethics that prohibits a judge from greeting an attorney in open court – on or off the record.

Handshaking too is also a common practice of both, the legal field and society in general. It is a cultural greeting ingrained in our lives and our culture. It is the way people in this country approach and acknowledge one another. Are

there instances when money exchanges happen during a hand shake? Sure. But, objectively speaking, there is absolutely no evidence whatsoever that this bench conference with its pleasantries amounted to corruption or anything else conjured up by Respondent.

This was nothing more than a light-hearted exchange between, and may I say without offending, two old lawyers. One of them reminiscing of past times and still admiring them. The other (Judge Pope) simply going along[3]. And, as it turned out, it was on the record and in open court. What this was not is what Respondent wrote in her letters.

The standard in analyzing the facts of this case is an objective standard. The Florida Bar must prove, by clear and convincing evidence, that Respondent did not have an objectively reasonable basis for making the statements.

Respondent's counsel raises several issues and defenses in his closing argument[4]. The crux of Respondent's argument lies in the claim that Respondent's words are nothing more than "rhetorical hyperbole" and as such, (1) it is protected speech guaranteed by the First Amendment to the Constitution of the United

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[3] Respondent's counsel in his closing memorandum argues that his client's view was objectively true, i.e. that Judge Pope invited the actions taking place. See memorandum at p.10 (...the fawning display that Judge Pope invited from Michael Blackstone...) [emphasis]. There is nothing on the record that would demonstrate, expressly or implied, that Judge Pope wanted this to happen. It is clear from the record that Judge Pope was simply being polite.

[4] Counsel argued, among other things that this prosecution by the Florida Bar violates the provisions against SLAPP suits. See § 768.295 Florida Statutes (2018). I find no merit on this claim and summarily reject it without discussion.

States, and (2) it does not rises to the level of defamation as the words are nothing more than pure opinion. I disagree.

This case falls squarely within the parameters of *The Florida Bar v. Ray*, 797 So. 2d 556 (Fla. 2001). The holding in *Ray* succinctly states that "...[attorney's] letter were not protected speech under the First Amendment...because [attorney] did not have an objectively reasonable basis in fact for making the statement. *Ray* at 558.

The Florida Supreme Court in *Ray* set an unambiguous standard when analyzing and reviewing allegations such as the one made by Respondent here. The basis for the standard is simple – "to preserve public fairness and impartiality of our system of justice." *Ray* supra at 559. See also *Kentucky Bar Ass'n v. Waller*, 929 S. W. 2d 181 (Ky. 1996). This standard requires the utterer who considers making a "reckless and irresponsible" statement to also consider the truthfulness of the allegations made. The undersigned need not go beyond *Ray* in analysis. Any suggestion to depart from the existing standard to anything less, such as the defamation standard, is not welcomed.

Respondent's arguments that Respondent's conduct fails to reach the level of defamation is rejected. Defamation is not the standard to be applied in reviewing this case; therefore it is inapplicable for analysis. See *Ray* supra. (...a

purely subjective *New York Times* standard is inappropriate in attorney disciplinary actions.).

Counsel for Respondent in his closing argument eloquently dissects each statement made. However, the parsing of the statements for purposes of analysis distorts the image Respondent wished to convey. Under a global view and considering the totality of the circumstances, the statements when taken together (as they were meant to be) to constitute a charge akin to an indictment. Respondent's statements were not meant to point out a deficiency or irregularity in the system. Her letters were meant to recklessly accuse judicial officers of wrongdoing.

The standard to be applied in this case is whether Respondent had an objectively reasonable basis to make her statements. Respondent's counsel invites this referee to accept a more moderate subjective standard. He argues that no one can emulate the feelings and experiences his client had with the subject judges. In other words, no one can stand in her shoes. I decline to follow. The law is clear that the standard which requires an objective reasonable basis in fact must be applied because without it reckless speculation (such as in this instant) would be protected. The applicable objective standard isn't in place to shield judges from criticism. It exists because the public's trust in the judiciary is a compelling and paramount interest.

First and foremost it is important to know that this attorney is not a rookie lawyer. She is well seasoned, intelligent and experienced. She has the requisite knowledge at her disposal to deal with difficult judges. She was aware that she could have reported the matter to the Judicial Qualifications Commission for investigation. She was also aware of her own ability to refer this matter to the U.S. Attorney's Office for investigation of corruption. She knew how to file motion to recuse the judge off of her client(s) case(s). She knew that she could approach the judge and discuss the matter privately with the judge. If in fact she thought her allegations were true, there's no doubt that she would have done those some or all of those things.

Perhaps, Respondent failed to appreciate the role of the Chief Judge and the consequences of creating a public record with her letters. But that is not an excuse for the acrid and scorched earth tone of her words or the baseless and reckless accusations she made.

III. RECOMMENDATIONS AS TO GUILT.

I recommend that Respondent be found guilty of violating the following Rules regulating The Florida Bar:

I find that the Florida Bar has proven, by clear and convincing evidence that Respondent has violated her oath as an attorney, and the rules of the Florida Bar.

Her accusations are not protected by free speech. Her words are sanctionable. For the foregoing reasons, this referee recommends that Respondent be found guilty of:

1. 3-4.3 Misconduct and Minor Misconduct.
2. 4-8.2(a) Impugning Qualifications and Integrity of Judges....
3. 4-8.4(d) ...engag[ing] in conduct in connection with the practice of law that is prejudicial to the administration of justice...

IV. STANDARDS FOR IMPOSING LAWYER SANCTIONS

I considered the following Standards prior to recommending discipline:

7.0 Violations of Other Duties Owed as a Professional

7.3 Public reprimand is appropriate when a lawyer negligently engages in conduct that is a violation of a duty owed as a professional and causes injury or potential injury to a client, the public, or the legal system.

9.22 Aggravating Factors:

The Florida Bar argued there is sufficient evidence of the following aggravating factors: a pattern of misconduct [9.22(c)]; multiple offenses [9.22(d)], refusal to acknowledge wrongful nature of conduct [9.22(g)]; and, substantial experience in the practice of law [9.22(i)].

I find the following aggravating factors in this case:

(a) a pattern of misconduct [9.22(c)];

(b) multiple offenses [9.22(d)],

(c) refusal to acknowledge wrongful nature of conduct [9.22(g)]; and,

(d) substantial experience in the practice of law [9.22(i)].

9.32 Mitigating Factors:

The Florida Bar stipulated that there is sufficient evidence of the following mitigating factors: absence of a prior disciplinary record [9.32(a)]; absence of dishonest or selfish motive [9.32(b)]; and character or reputation [9.32(g)]. Respondent also argued that there is sufficient evidence that Respondent provided full and free disclosure to disciplinary board [9.32(e)] and exhibited remorse [9.32(l)].

I find that there is sufficient evidence of the following mitigating factors:

(a) absence of a prior disciplinary record;

(b) absence of a dishonest or selfish motive; and

(g) character or reputation.

I found little evidence of Respondent's remorse for her conduct and specifically do not find 9.32(l) remorse as a mitigating factor in these proceedings.

V. CASE LAW

In *The Florida Bar v. Patterson*, 257 So. 3d 56 (Fla. 2018), the Supreme Court of Florida, found Patterson guilty of violating R. Regulating Fla. Bar 3-4.3, 4-1.7, 4-8.2(a), and 4-8.4(d) and suspended him for one year for making

disparaging remarks about a judge and violating his duty of loyalty to a client. During the representation of the client in a civil matter, Patterson wrote a letter to the presiding judge and submitted filings in the client's appeal that "either disparaged opposing counsel or expounded upon the alleged bias of judges and the shortcomings of the legal system." *Id.* at 62. Patterson also used his client's appellate rights to assert his own interests and seek relief from an order against him. Similarly to Patterson, Respondent used stinging words accusing a Circuit Court Judge of public corruption; however, I do not find her letters were made to impact or influence the outcome of any judicial proceeding or that her conduct was as egregious as Patterson.

In *The Florida Bar v. Ray*, 797 So. 2d 556 (Fla. 2001), Ray received a public reprimand for three letters written to the Chief Immigration Judge in Virginia questioning a judge's veracity, integrity, and his fairness at a hearing involving Ray's client, with reckless disregard as to truth or falsity of such statements. I find that Respondent's misconduct is similar to that of Ray, but do not find Respondent's misconduct as egregious.

In *The Florida Bar v. Abramson*, 3 So. 3d 964 (Fla. 2009), Abramson received a ninety-one-day suspension for engaging in discourteous and disrespectful behavior towards a judge during jury selection in a criminal proceeding. Abramson interrupted the judge, demanded to be heard on a pretrial

motion, and asked jurors to weigh in on who they thought was at fault in a disagreement he had with the judge. Although, I found this case to be helpful the misconduct in Abramson involved unprofessional courtroom behavior and was more significant and prejudicial.

VI. RECOMMENDATIONS AS TO DISCIPLINARY MEASURES TO BE APPLIED

I recommend that Respondent be found guilty of misconduct justifying disciplinary measures, and that Respondent be disciplined by:

A. Public Reprimand to be administered by appearance before The Florida Bar Board of Governors.

B. Attendance at The Florida Bar's Ethics School within six months of the issuance of the Court's order. Respondent shall be responsible for the $750.00 fee associated with Ethics School. Respondent's failure to pay such fee and/or attend Ethics School may be cause for further proceedings; and

C. Payment of The Florida Bar's costs in these proceedings.

VII. PERSONAL HISTORY, PAST DISCIPLINARY RECORD

Prior to recommending discipline pursuant to Rule 3-7.6(m)(1)(D), I considered the following:

Personal History of Respondent:

Age: 49

VIII. STATEMENT OF COSTS AND MANNER IN WHICH COSTS SHOULD BE TAXED

I find the following costs were reasonably incurred by The Florida Bar:

Investigative Costs	$1,525.40
Court Reporters' Fees	$1,655.90
Bar Counsel Costs	$456.80
Cost for Postage	$13.40
Administrative Fee	$1,250.00
TOTAL	$4,901.50

It is recommended that such costs be charged to Respondent and that interest at the statutory rate shall accrue and be deemed delinquent 30 days after the judgment in this case becomes final unless paid in full or otherwise deferred by the Board of Governors of The Florida Bar.

Dated this 4th day of March, 2019.

RAUL A. ZAMBRANO
CIRCUIT JUDGE
REFEREE

Original To:

Clerk of the Supreme Court of Florida, Supreme Court Building, 500 South Duval Street, Tallahassee, Florida, 32399-1927

Conformed Copies by email to:

Scott Kevork Tozian, Counsel for Respondent, 109 N. Brush Street, Suite 200, Tampa, FL 33602-4116, at stozian@smithtozian.com

Karen Clark Bankowitz, The Florida Bar, Orlando Branch Office, 1000 Legion Place, Suite 1625, Orlando, Florida 32801-1050, kbankowitz@floridabar.org

Staff Counsel, The Florida Bar, Lake Shore Plaza II, 1300 Concord Terrace, Suite 130, Sunrise, FL 33323, at aquintel@floridabar.org

EXHIBIT C

CANDIDATE OATH – STATE AND LOCAL PARTISAN OFFICE

Check applicable one:

- ☑ Candidate with party affiliation
- ☐ Candidate with no party affiliation
- ☐ Write-in candidate

RECEIVED

2020 APR 15 PM 5:02

DIVISION OF ELECTIONS
TALLAHASSEE, FL

OFFICE USE ONLY

Candidate Oath

(Section 99.021(1)(a), Florida Statutes)

I, Beverly R. McCallum

(Print name above as you wish it to appear on the ballot. If your last name consists of two or more names but has no hyphen, check box ☐. (See page 2 - Compound Last Names). No change can be made after the end of qualifying. Although a write-in candidate's name is not printed on the ballot, the name must be printed above for oath purposes.)

am a candidate for the office of State Attorney (Office), N/A (District #), 8 (Circuit #),

N/A (Group or Seat #); my legal residence is Alachua County, Florida; I am a qualified elector under the Constitution and the Laws of Florida to hold the office to which I desire to be nominated or elected; I have qualified for no other public office in the state, the term of which office or any part thereof runs concurrent with the office I seek; and I have resigned from any office from which I am required to resign pursuant to Section 99.012, Florida Statutes; and I will support the Constitution of the United States and the Constitution of the State of Florida.

Statement of Party

(Section 99.021(1)(b), Florida Statutes)

(Complete Statement of Party only if you are seeking to qualify for nomination as a party candidate.)

I am a member of the Democratic Party; I have not been a registered member of any other political party for 365 days before the beginning of qualifying preceding the general election for which I seek to qualify; and I have paid the assessment levied against me, if any, as a candidate for said office by the executive committee of the political party, of which I am a member.

Candidate's Florida Voter Registration Number (located on your voter information card): 119619457

Phonetic spelling for audio ballot: Print name phonetically on the line below as you wish it to be pronounced on the audio ballot as may be used by persons with disabilities (see instructions on page 2 of this form): *[Not applicable to write-in candidates.]*

BE-vuhr-lee AHR muh-KA-luhm

X Beverly R. McCallum	(352) 260-5907	McCallumCampaign@gmail.com
Signature of Candidate	Telephone Number	Email Address

5745 SW 75th ST #194	Gainesville	FL	32608
Address	City	State	ZIP Code

STATE OF FLORIDA
COUNTY OF ALACHUA

Sworn to (or affirmed) and subscribed before me by ☑ physical or ☐ online presence this 15th day of April, 2020.

Personally Known: _____ or Produced Identification: FL Driver License

Type of Identification Produced: Florida Driver License

Signature of Notary Public
Print, Type, or Stamp Commissioned Name of Notary Public below:

Ellen Walker
NOTARY PUBLIC
STATE OF FLORIDA
Comm# GG317411
Expires 4/16/2023