No.___

In the

Supreme Court of the United States

TERESA M. GAFFNEY,
Petitioner,

v.

THE FLORIDA BAR,
Respondent.

On Petition for a Writ of Certiorari to the
Supreme Court of the State of Florida

PETITION FOR A WRIT OF CERTIORARI

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QUESTIONS PRESENTED

1. Whether it is a denial of due process, (1) notice; (2) an opportunity to be heard; and (3) an impartial tribunal, to not allow the Petitioner to conduct discovery, call witnesses to testify nor take depositions in a trial regarding her Bar License, the taking of property, violating the 5th Amendment and 14th Amendment.

2. Whether it is a violation of due process and the 1st and 14th Amendments for the Florida Bar to file a Bar Complaint because the Petitioner filed a sexual harassment complaint against Judge Paul Huey.

3. Whether it is a violation of due process for the Florida Bar to falsely claim that the Homestead Property of Petitioner was not her and her family's Homestead Property in violation of the 5th and 14th Amendment of the US Constitution and Article X Section 4 of the Florida Constitution.

4. Whether it is a violation of due process for the Florida Supreme Court to not accept a brief for being filed a few days late in violation of Fla. R. Civ. P. 1.540(b) and the 5th and 14th Amendments of the US Constitution.

RELATED PROCEEDINGS

The Florida Bar v. Teresa M. Gaffney
SC21-0938

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TABLE OF AUTHORITIES

CASES – FLORIDA

Petitioner Teresa M. Gaffney respectfully petitions for a writ of certiorari to review the judgment of the Supreme Court of Florida in this case.

OPINIONS BELOW

The opinion of the Supreme Court of Florida (App., *infra*, A) is not yet reported in the Southern Reporter. The referee's report (App., *infra*, C) is not reported.

JURISDICTION

The final judgment of the Supreme Court of Florida was entered on August 3, 2023. This Court's jurisdiction rests on 28 U.S.C. § 1257.

CONSTITUTIONAL AMENDMENTS

The First Amendment, as incorporated against the States by Section 5 of the Fourteenth Amendment (*Gitlow* v. *New York*, 268 U.S. 652, 666 (1925)), provides, in relevant part, that the States "shall make no law * * * abridging the freedom of speech."

The Fifth Amendment states that no one shall be "deprived of life, liberty or property without due process of law."

The Fourteenth Amendment states that no State shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States; nor shall any State deprive any person of life, liberty, or property, without due process of law; nor deny to any person within its jurisdiction the equal protection of the laws.

STATEMENT

FACTUAL AND PROCEDURAL BACKGROUND

On May 29, 2009, John J. Gaffney, conveyed the real property commonly known as 119 South Clark Avenue, Tampa, Florida 33609 (hereafter referred to as the "Clark Property" or "Homestead Property") to himself as a life estate deed with a remainder to Petitioner Teresa M. Gaffney, his daughter. Petitioner purchased the Homestead Property because Mr. Gaffney's other daughter, MaryAlice Tyler, allegedly with the help of Attorney Phillip A. Baumann took an estimated $1Million from Mr. Gaffney.

On December 26, 2011, Mr. Gaffney died. By operation of law, Mr. Gaffney's life estate interest in Clark Property was extinguished upon his death, and Petitioner's remainder interest ripened into fee simple ownership of the Clark Property which was now the Homestead Property of Petitioner and her family.

On January 30, 2012, the Estate of John J. Gaffney was opened in the Hillsborough County Circuit Court and was known as Case # 2012 CP 000221.

On February 11, 2013, Petitioner filed a claim against the Estate of John J. Gaffney in the amount of $285,140.00, for services that she provided to Mr. Gaffney.

On February 12, 2012, Phillip A. Baumann, P.A. filed a claim against the Estate of John J. Gaffney in the

amount of $74,776.24 for attorney's fees allegedly earned by representing Ms. Tyler in a guardianship case known as Case # 2009 CP 1453 and 2009 MH 1747. Baumann never represented Mr. Gaffney.

On June 14, 2013, an objection to the claim of Phillip A. Baumann, P.A. was filed, Phillip A. Baumann, P.A. and Phillip A. Baumann were hired by Ms. Tyler allegedly and unlawfully took a substantial amount of assets from Mr. Gaffney and any attorneys' fees owed to Phillip A. Baumann, P.A., and Phillip A. Baumann, should have been paid by Ms. Tyler.

On July 15, 2013, Phillip A. Baumann, P.A., by and through its attorney, Michael R. Kangas, filed in the Circuit Court of Hillsborough County Case # 2013 CA 9542 against the Estate of John J. Gaffney for attorneys' fees in representing Tyler.

Phillip A. Baumann, P.A., Mr. Baumann and Mr. Kangas, sought and attempted to obtain legal ownership of the Homestead Property belonging to Petitioner or to force its sale to pay the outstanding bill for legal services that Phillip Baumann, P.A., and Mr. Baumann, provided to Ms.Tyler.

The Clark Property never belonged to the Estate of John J. Gaffney as on May 29, 2009, Mr. Gaffney had conveyed the Clark Property to himself as a life estate with a remainder to Petitioner and it became the Homestead Property of Petitioner's family upon his death.

On April 7, 2014, Judge Herbert Baumann appointed Mr. Baumann, as Administrator Ad Litem of the

Estate of John J. Gaffney over the objections of the interested parties. This appointment of Mr. Baumann, as Administrator Ad Litem of the Estate of John J. Gaffney was a clear error as Mr. Baumann had represented Ms. Tyler against Mr. Gaffney and was a claimant of the Estate of John J. Gaffney and was suing the Estate of John J. Gaffney.

On April 10, 2014, Mr. Baumann, as Administrator Ad Litem of the Estate of John J. Gaffney, and through his law firm, Phillip A. Baumann, P.A., and represented by his partner, Mr. Kangas, filed in Hillsborough County Circuit Court a cause of action known as Case # 2014 CA 3762 against Petitioner, and Sarah K. Sussman, individually and as Trustee of the Sussman Family Trust Living Trust.

Through this Case # 2014 CA 3762, Phillip A. Baumann, P.A., Mr. Baumann and Mr. Kangas, sought to reverse the transfer of the Homestead Property that occurred on May 29, 2009. An action to set aside or invalidate a duly-recorded conveyance of real property, whether based upon rescission, undue influence, duress, or some other form of fraud, is limited by a Statute of Limitation of four years under Florida law. *See* § 95.11(3)(j) and (l), Fla. Stat. In order to be valid and filed within the 4-year Statute of Limitation, Case # 2014 CA 3762 had to be filed by May 29, 2013, and since it wasn't filed until April 10, 2014, Case # 2014 CA 3762 was "dead on arrival" as it was filed 10½ months past the Statute of Limitations. There was no legal principle available to extend the four-year Statute of Limitations because Mr. Baumann had notice of the transfer shortly after

the transfer and further billed to review the deed in September of 2009.

Case # 2014 CA 3762 had eleven different judges that were assigned. Judge Paul L. Huey was the ninth judge assigned to Case # 2014 CA 3762 as he took over on or about December 2, 2015.

In the middle of December 2015, Petitioner called and spoke to Judge Huey, as she was on the Judicial Nominating Commission to appoint judges and she was asking Judge Huey about a potential judicial appointee that had listed Judge Huey as a reference. At the time of the telephone discussion near the middle of December 2015, Petitioner had no knowledge that Judge Huey, was the judge in Case # 2014 CA 3762.During that telephone Judge Huey asked Petitioner, if she were married and had children and asked her if she was a "happy wife." Judge Huey, asked Petitioner, if they could go to lunch and further asked Petitioner, for sexual favors. Petitioner was shocked and advised Judge Huey that what he was stating to her was not proper. Judge Huey, told Petitioner, "If you don't do what I say, I'm going to get you." And, just at this time, people had walked into the room where she was having this telephone communication with Judge Huey and heard the conversation.

Shortly after the telephone call mentioned above, Petitioner learned that Judge Huey, was the judge in Case # 2014 CA 3762 and understood that Judge Huey, had sexually harassed her. Petitioner requested that Judge Huey, recuse himself and on February 5, 2016, Petitioner filed a Motion to

Disqualify Judge Huey. On February 24, 2016, Judge Huey denied Petitioner's Motion to Disqualify himself. Petitioner reported Judge Huey and his sexual harassment to then Chief Judge Ronald Ficarrotta, who violated local rules and did not investigate the matter. Petitioner had provided Chief Judge Ficarrotta with the names of witnesses and contact information and other individuals who wanted to testify about other inappropriate conduct on the part of Judge Huey. On April 29, 2016, Judge Huey recused himself. Case # 2014 CA 3762 was transferred to Judge Rex M. Barbas.

On September 6, 2016, Judge Barbas, issued a default judgment in favor of Mr. Baumann, as Administrator Ad Litem for the Estate of John J. Gaffney. On October 17, 2017, Judge Barbas, issued a "Writ of Possession" of the Homestead Property in favor of Mr. Baumann, and this "Writ of Possession" allowed Mr. Baumann and Mr. Kangas, to take possession of the Homestead Property and as an unlawful sanction allowed the Petitioner and Sarah Sussman, to be removed from their Homestead Property in violation of Article X Section 4 of the Florida Constitution. Petitioner filed an appeal with the Florida Second District Court of Appeals.

On November 5, 2019, at an Inns of Court Board meeting conducted in Hillsborough County, Florida, Judge Barbas engaged in ex parte communications with Samuel Salario, a then sitting Second District Court of Appeal Judge. Judge Barbas's ex parte communication with then Judge Salario was conducted in the presence of witnesses, and through this unlawful ex parte communication, Judge Barbas,

advised Judge Salario about the Petitioner's appeal and seem to recommend that Petitioner's appeal be ignored and denied. Subsequently Judge Barbas granted a Motion to Disqualify himself. Judge Barbas appoint Judge Caroline Tesche Arkin to take over as the judge in case number 2014-CA-003762.

Judge Tesche Arkin, refused to allow the Petitioner any opportunity to be heard or due process and upheld the taking of Homestead Property as a sanction in violation of Article X Section 4 of the Florida Constitution, and the 5th and 14th Amendments of the United States Constitution, right to due process and to have the facts in her Case # 2014 CA 3762 decided by a fair, impartial and unbiased trier of fact, and therefore, without any legal, constitutional authority or statutory authority.

On January 5, 2021, Petitioner filed a civil rights case against Judge Huey, Judge Barbas, Judge Tesche Arkin and Chief Judge Ficorratta US District Court, Middle District Florida, Tampa Division. On January 12, 2021, Defendant, Marie T. Rives, as Assistant Attorney General, filed an appearance on behalf of the Judges. Ms. Rives, had conversations with staff attorneys from The Florida Bar. The Bar Complaint was filed against Petitioner for retaliation for filing the civil rights complaint and for complaining about Judge Huey's sexual harassment and complaining about Judge Barabas's ex parte conversations.

On June 22, 2021, Defendant, Lindsey M. Guinand, as Chief Branch Discipline Counsel - Lawyer Regulation of The Florida Bar, along with Patricia Ann Toro Savitz, as Staff Counsel of The Florida Bar, filed a Bar

Complaint against Petitioner. The Bar Complaint was filed as unlawful retaliation against Petitioner for filing a sexual harassment complaint against Judge Huey. The Bar Complaint was replete with fraudulent allegations of misconduct against Petitioner including filing frivolous pleadings on the issue of the unlawful taking of Homestead Property. The Petitioner was trying to get her Homestead Property back which was taken in violation of Article X Section 4 of the Florida Constitution.

Respondent filed a Motion for Partial Summary Judgment on February 18, 2022. There were no affidavits attached to that Motion and no evidence presented in the Motion. The Hearing was held on March 22, 2022. It was not an evidentiary hearing, and it was in violation of Fla. Rules of Civil Procedure 1.510(b). The rule mandates that [t]he movant must serve the motion for summary judgment at least 40 days before the time fixed for the hearing. The Hearing was held 32 days after the Motion for Partial Summary Judgment was served.

The Referee, Judge Peter R. Ramsberger, barred a substantial number of Petitioner's witnesses; denied Petitioner's Notices of Deposition for the judges; and before discovery was started, Judge Ramsberger granted Respondent's Motion for Partial Summary Judgment denying the Petitioner the right to discovery violating her due process rights. The Trial in the Bar Proceeding started on July 18, 2022. Petitioner was not allowed to call most of her witnesses nor introduce evidence.

Petitioner was found guilty of knowingly missing a deposition that evidence would have shown that her then attorney did not tell her about. Petitioner was found guilty of not answering a question at her deposition which Judge Barbas had reserved ruling on the issue. Petitioner was found guilty of not attending a hearing that the Court file established that the Petitioner was never noticed. Petitioner was found guilty of filing her daughter's bankruptcy petition and stating that the Clark Property was their Homestead Property. According to the Bar Complaint Petitioner's daughter did not own the Homestead Property in question. The Hillsborough County Property Appraiser shows that Homestead Property is still owned by Petitioner's family. Further, a review of the Bankruptcy Docket established that the Petitioner did not file any petition on behalf of her daughter, was not attorney of record, and did not participate in her daughter's Bankruptcy. Her daughter hired Bankruptcy Attorneys. Petitioner was found guilty of making a sexual harassment complaint against Judge Huey. Petitioner was not permitted to call witnesses who were present or others who would have testified of other inappropriate conduct on the part of Judge Huey. Respondent did not introduce any evidence contradicting the Petitioner's allegation. (App., *infra* C)

The Petitioner was denied due process in the taking of her Bar License in violation of the 1st, 5th and 14th Amendments of the US Constitution. The Bar Complaint was in retaliation for Petitioner filing a complaint of sexual harassment against Judge Huey. Homestead Property was taken without due process and in violation of Article X Section 4 of the Florida Constitution.

During the pendency of the Bar Complaint, Petitioner's husband of 35 years died unexpectedly. Due to the trauma Petitioner filed her Petition for extension to file her initial brief in the Florida Supreme Court several days late. The initial brief was then filed but the Florida Supreme Court declined to accept the initial brief and dismissed her appeal. The due date of the Initial Brief was miscalculated. The Brief was due on December 21, 2022. The request for extension was filed December 29, 2022, requesting an extension until February 1, 2023. The initial brief was filed February 1, 2023. The Order of the Supreme Court refusing to accept the initial brief was issued on April 18, 2023. See Appendix B. The Final Order was issued on August 3, 2023. (App., *infra* A)

REASONS FOR GRANTING THE PETITION

ARGUMENT

Whether it is a denial of due process, (1) notice; (2) an opportunity to be heard; and (3) an impartial tribunal, to not allow the Petitioner to conduct discovery, call witnesses to testify nor take depositions in a trial regarding her Bar License, the taking of property, violating the 5th Amendment and 14th Amendment.

The touchstone of due process, of course, is "the requirement that 'a person in jeopardy of serious loss (be given) notice of the case against him and opportunity to meet it.'" *Mathews v. Eldridge*, 424 U.S. 319, 348–349, 96 S.Ct. 893 (quoting *Joint Anti–Fascist Comm. v. McGrath,* 341 U.S. 123, 171–72, 71

S.Ct. 624, 95 L.Ed. 817 (1951) (Frankfurter, J., concurring)); *see also Goldberg v. Kelly,* 397 U.S. 254, 267, 90 S.Ct. 1011, 25 L.Ed.2d 287 (1970) (requiring an "opportunity to be heard ... at a meaningful time and in a meaningful manner") (internal quotation marks and citations omitted). However, "due process is flexible and calls for such procedural protections as the particular situation demands." *Morrissey v. Brewer,* 408 U.S. 471, 481, 92 S.Ct. 2593, 33 L.Ed.2d 484 (1972).

The Motion for Partial Summary Judgment (PSJ) was premature and denied the Petitioner discovery and discovery would have shown that Respondent could not prove its case beyond clear and convincing evidence. Therefore, it was a violation of due process. Discovery was necessary. The Court denied Petitioner discovery after granting the premature Motion for Partial Summary Judgment. Petitioner was not allowed to take depositions, call witnesses nor introduce evidence. *See Bailey v. KS Management Services, L.L.C.,* No. 21-20335, (5th Cir. May 26, 2022). Fed. R. Civ. P. 56(d). Summary judgment is appropriate only where "the plaintiff has had a full opportunity to conduct discovery." *McCoy v. Energy XXI GOM, L.L.C.,* 695 F. App'x 750, 758–59 (5th Cir. 2017) (per curiam)(emphasis omitted) *(quoting Brown v. Miss. Valley State Univ.,* 311 F.3d 328, 333 (5th Cir. 2002).

The reason discovery is necessary is "to safeguard non-moving parties from summary judgment motions that they cannot adequately oppose." *Curtis v. Anthony,* 710 F.3d 587, 594 (5th Cir. 2013) *(quotation omitted). Bailey at pgs. 4-5.*

Previous holdings of the Florida Supreme Court emphatically state that an attorney is entitled to due process and to present her case with witnesses and conduct discovery. *Florida Bar v. Fussell*, 179 So.2d 852 (Fla. 1965)(Attorney has a due process right to explain the circumstances of the alleged offense and to offer testimony in mitigation of any penalty to be imposed as discipline). *Florida Bar v. Fussell*, 179 So.2d 852 (Fla. 1965). *Florida Bar v. Cruz,* 490 So.2d 48, 49 (Fla. 1986).

In the instant case, as stated above, Petitioner was not permitted to take depositions of numerous witnesses. The Referee had limited Petitioner's discovery and limited Petitioner's ability to defend herself. The evidence by way of witnesses and documentation overwhelmingly supports/supported Petitioner's innocence.

The Petitioner had *"*a due process right to explain the circumstances of the alleged offense*",* to present and offer testimony to exonerate herself. Nothing less denies Petitioner of her due process rights.

Whether it is a violation of due process and the 1st and 14th Amendments for the Florida Bar to file a Bar Complaint because the Petitioner filed a sexual harassment complaint against Judge Paul Huey.

To file a Bar Complaint against an attorney and disbar her because she filed a complaint of sexual harassment violated Fla. Admin. Order No. AOSC 18-6 (February 16, 2018), Fla. Admin. Order No.

AOSC0407 (March 25, 2004) and Fla. Admin. Order No. AOSC04-08 (March 25, 2004),Title VII of the Civil Rights Act of 1964 and the 1st and 14th Amendments of the US Constitution. There would be a chilling effect on the reporting of unlawful conduct of judges and it is a violation of public policy against sexual harassment.

In *Meritor Savings Bank, FSB v. Vinson* 477 U.S. 57 (1986), the Supreme Court declared sexual harassment to be a form of sex discrimination under Title VII of the Civil Rights Act of 1964.

The Supreme Court has repeatedly held that the 1st Amendment protects a right to criticize government officials, even harshly. In *New York Times Co. v. Sullivan* 376 U.S. 254 (1964), the court unanimously declared that the amendment reflects a "profound national commitment to the principle that debate on public issues should be uninhibited, robust, and wide-open, and that it may well include vehement, caustic, and sometimes unpleasantly sharp attacks on government and public officials."

Petitioner filed a complaint of sexual harassment against Judge Paul Huey. Petitioner met with then Chief Judge Ronald Ficarrotta. Petitioner asked for an investigation and provided Judge Ficarrotta with the names of witnesses, their contact information and the names and contact information of other individuals who wanted to testify as to other inappropriate conduct of Judge Huey. There was no investigation. The witnesses were not contacted. Instead, the Court took the Homestead Property of the Petitioner as a sanction in violation of Article X

Section 4 of the Florida Constitution and Respondent filed the Bar Complaint against the Petitioner.

Retaliation occurs when an individual is punished for filing complaints regarding sexual harassment or discrimination. As the Equal Employment Opportunity Commission (EEOC) explains, "The same laws that prohibit discrimination based on race, color, sex, religion, national origin, age, disability, and genetic information also prohibit retaliation against individuals who oppose unlawful discrimination." https://www.eeoc.gov/statutes/laws-enforced. Even though retaliation is illegal, it remains a common problem. According to the EEOC, "retaliation has been the most frequently alleged basis of discrimination in the federal sector since fiscal year 2008." https://www.eeoc.gov/retaliation-making-it-personal.

The Florida Civil Rights Act (FCRA), Fla. Stat. 760, et seq., prohibits retaliation against an employee or job applicant who attempts to assert their rights to protection against discrimination and harassment.

Respondent alleged that the Petitioner impugned Judge Huey. There was no evidence to support the Respondent's position. The Referee would not allow the Petitioner to take the deposition of Judge Huey or call the witnesses who overheard the comments and those who wanted to testify to other inappropriate conduct of Judge Huey.

In re: Sexual Harassment Policy and Procedures for Complaints Against Justices and Judges, Fla. Admin. Order No. AOSC 18-6 (February 16, 2018), Fla.

Admin. Order No. AOSC0407 (March 25, 2004) and Fla. Admin. Order No. AOSC04-08 (March 25, 2004) provide guidance on how to investigate sexual harassment by a Judge. The Administrative Orders were not complied with or followed.

Statements made in the presence of the court or outside of the presence of the court are protected by the guarantee of freedom of speech of the First and Fourteenth Amendments of the United States Constitution. Contemptuous statements are not so protected. The test applied to determine whether a statement is contemptuous is whether there is a clear and present danger to orderly administration of justice. See, *Wood v. Georgia*, 370 U.S. 375 (82 S.C. 1364, 8 L.Ed.2d 569) (1962). "[N]either `inherent tendency' nor `reasonable tendency' is enough to justify a restriction of free expression." *Bridges v. California*, 314 U.S. 252, 273 (62 S.C. 190, 86 LE 192) (1941). The test is whether the attorney's conduct posed a clear and present danger to the administration of justice. See *Garland* v. *State* , 253 Ga. 789, 789, 791, 325 S.E.2d 131 (1985) (reversing contempt conviction of attorney whose remarks criticizing judge for violating judicial ethics and conducting "sham proceeding" were published in newspaper). The Georgia Supreme Court in *Garland* held that the attorney's statements did not "present a clear and present danger to the administration of justice" and therefore were protected by the First Amendment.

In the instant case the reporting of a Judge for sexual harassment does not "present a clear and present danger to the administration of justice". In fact, it is

quite the opposite. Sexual harassment is a "pervasive cancer largely untreated despite an available cure. Remission won't come from mea culpas or renewed calls for zero tolerance. Those are merely words… The best cure for a sickness… is action". *Workplace Sexual Harassment is a Cancer with an available Cure*. By Elaine Ayala. San Antonio Express-News. https://www.expressnews.com December 4, 2017.

Petitioner followed the procedures under Fla. Admin. Order No. AOSC 18-6 (February 16, 2018), Fla. Admin. Order No. AOSC0407 (March 25, 2004) and Fla. Admin. Order No. AOSC04-08 (March 25, 2004). The Petitioner is protected under the 1st Amendment and the 14th Amendment. The Petitioner was denied due process and was retaliated against in violation of State and Federal Law.

Petitioner could not have violated the Ethical Rules when the allegations against Judge Huey were true, and Petitioner repeatedly requested an investigation of the conduct of Judge Huey. Rule 4- 8.2(a) (Judicial and Legal Officials - Impugning Qualifications and Integrity of Judge or Other Officers). The statements were not false or misleading. Nor could Petitioner have engaged in conduct that is prejudicial to the administration of justice when she was the victim of sexual harassment and was subjected to retaliation for reporting the sexual harassment which retaliation included but was not limited to the taking of her Homestead Property as a sanction in violation of Article X Section 4 of the Florida Constitution and the taking of her Bar License without permitting discovery and the opportunity to be heard. Rule 4-8.4(d) (Engaging in conduct in connection with the

practice of law that is prejudicial to the administration of justice) does not apply.

Whether it is a violation of due process for the Florida Bar to falsely claim that the Homestead Property of Petitioner was not her and her family's Homestead Property in violation of the 5th and 14th Amendment of the US Constitution and Article X Section 4 of the Florida Constitution.

In retaliation for filing a complaint of sexual harassment against Judge Huey, the Court took the Homestead Property of Petitioner and her family as a sanction in violation of Article X Section 4 of the Florida Constitution. Respondent alleged that the Petitioner filed frivolous pleadings in an effort to get her family's Homestead Property back that Petitioner had paid for. Rule 4-3.1 (Meritorious Claims and Contentions); Rule 4-3.3(a) (Candor Toward the Tribunal - False evidence; Duty to disclose).

The Courts have refused to have an evidentiary hearing on the issue of Homestead. The Hillsborough County Property Appraiser considers it the Homestead Property of Petitioner's family and it is still registered that way. Petitioner and her family were evicted from their Homestead Property in 2017.

Judge Roberta Colton in her Order of June 3, 2019, in the Bankruptcy Case stated that Petitioner and her family met the residency requirements of Homestead but the Court in 14-CA-003762 declined to deal with the issue of Homestead because the Homestead Property was taken as a sanction. Judge Colton

established, affirmed, and confirmed in that Order that the Homestead Property was taken in violation of Article X Section 4 of the Florida Constitution.

Courts, the Legislature and the Executive Branch do not have the authority to carve out exceptions regarding the Homestead protection under Article X Section 4 of the Florida Constitution. See *Chames v. Demayo*, 972 So. 2d 850 (Fla. 2007); *Havoco of America v. Hill*, 790 So. 2d 1018 (Fla. 2001); *Stewart v. Tramel*, 697 So. 2d 821 (Fla. 1997); *Butterworth v. Caggiano*, 605 So. 2d 56 (Fla. 1992); *Southern Walls, Inc. v. Stilwell*, 810 So. 2d 566 (Fla. 5th D.C.A. 2002); *Robbins v. Robbins*, 360 So. 2d 10 (Fla. 2d D.C.A. 1978); *In re Estate of Nicole Santos*, 648 So. 2d 277 (Fla. 4th D.C.A. 1995). Even before *Havoco of America*, at least one appellate court ruled that the equitable defense of unclean hands did not form a basis for denying homestead protection against a devisee. *See Monks v. Smith,* 609 So. 2d 740 (Fla. 1st D.C.A. 1992).

No branch of government has the authority to alter the Florida Constitution. A person's right to exempt homestead realty from levy flows exclusively from Fla. Const. art. X, §4. This constitutional provision supersedes any attempt by the judiciary or legislature to eliminate a person's right to exempt homestead realty from creditors' claims. Homestead protection is a strict limitation on the power of the judiciary and legislature to modify homestead exemption.

The time to challenge Homestead has passed. Any order attempting to take or to devise the Homestead Property would be void ab initio. Not even a retroactive action can validly cure a devise violating the homestead

laws. See *Gotshall v. Taylor,* 196 So.2d 479, 481 (Fla. 4th DCA 1967) ("If the requirements of the Constitution and the statutes are not complied with in alienating homestead real estate, the attempt is a nullity ... and is void ab initio, and subsequent events will not breathe life into it[.]"). *Stirberg v Fein* 357 So 3d 1233 (Fla. 4th DCA 2023).

A proper and timely Notice of Homestead was filed in Petitioner's case. Although filed, the Notice was not necessary. Under Florida Law Homestead protection attaches immediately. In the instant case that would have been in 2012. "[U]nder Florida law a debtor need not claim the Article X exemption to obtain its protections—the provision is self-executing." *Osborne v. Dumoulin*, 55 So.3d 577, 587 (Fla. 2011). The Florida Supreme Court stated, "When a person acquires property and makes it his or her home, the property is 'impressed with the character of a homestead, and no action of the Legislature or declaration or other act on [the owner's] part [is] required to make it [the owner's] homestead, for it [is] already such in fact.'" *Id. at 582-83 (brackets in original) (quoting Hutchinson Shoe Co. v. Turner,* 100 Fla. 1120, 130 So. 623, 624 (1930) *(citing Baker v. State,* 17 Fla. 406, 408-09 (Fla. 1879). The Florida Constitution's homestead exemption "protects the homestead against every type of claim and judgment except those specifically mentioned in the constitutional provision itself." *Osborne at* 582.

When analyzing a claim of homestead, Florida courts are required to grant a liberal construction to the constitutional and statutory provisions in favor of the homeowner and cast a restrictive eye towards

exceptions to the homestead exemption. *Havoco of America, Ltd. v. Hill*, 790 So.2d 1018, 1021 (Fla. 2001). What makes Florida exceptional is that its homestead exemption protects a homestead acquired by a debtor using nonexempt assets – even when the acquisition was done with the actual intent to hinder, delay, or defraud creditors. The Florida Supreme Court reasons that such a transfer of nonexempt assets into an exempt homestead is not one of the three exceptions to the homestead exemption in art. X, § 4 of the Florida Constitution. *Id.*, at 1028. Therefore, while fraudulent transfers can ordinarily be set aside or unwound, such transfers cannot be set aside if, after the transfer, the property is protected by the Florida constitutional homestead exemption. *Id.*, at 1029.

Florida Case Law specifically establishes the rule that provides "once a homestead always a homestead…" *Reed v. Fain*, 145 So. 2d 858,867 (Fla. 1962). "[T]here is little a homeowner can do under Florida law to lose the protection of homestead." *In RE Bennett,* 395 B.R. 781,789 (Bankr. M.D. Fla 2008).Homestead status is established by the actual intention to live permanently in a place coupled with actual use and occupancy. *Beltran v. Kalb,* 63 So. 3d 783 (Fla. 3rd DCA 2011).

The plain and unqualified language of Fla. Const. art. X, §4 supports the principle that homestead exemption provides absolute protection from forced sale regardless of the method the homestead was obtained, except in three enumerated exceptions. Strict construction principles direct that all branches of government — executive, judicial, and legislative — follow the exact wording of Fla. Const. art. X, §4.

No branch of government can deviate from the constitution's clear and plain language. *Chames v. Demayo*, 972 So. 2d 850 (Fla. 2007); *Havoco of America v. Hill*, 790 So. 2d 1018 (Fla. 2001); *Stewart v. Tramel*, 697 So. 2d 821 (Fla. 1997); *Butterworth v. Caggiano,* 605 So. 2d 56 (Fla. 1992); *Cross v. Strader Consti. Corp.,* 768 So. 2d 465 (Fla. 2d D.C.A. 2000); *Robbins v. Robbins*, 360 So. 2d 10 (Fla. 2d D.C.A. 1978).

The Homestead Property of Petitioner's was unlawfully taken, in contravention of Article X Section 4 of the Florida Constitution effectively overturning Article X Section 4 of the Florida Constitution. It is not frivolous filings when Petitioner is attempting to get back her Homestead Property which was taken unlawfully as a sanction without an evidentiary hearing and without a ruling on the Homestead issue. Respondent provided no evidence. Petitioner was not permitted to provide evidence establishing that it was her family's Homestead Property. That was and is a due process violation and a violation of public policy. It is not a violation of the ethical rules for Petitioner to request that her family's Homestead Property be returned to her and her family.

Whether it is a violation of due process for the Florida Supreme Court to not accept a brief for being filed a few days late in violation of *Fla. R. Civ. P. 1.540(b)* and the 5th and 14th Amendments of the US Constitution.

The Federal Rules and Florida Rules of Civil Procedure contain a unique concept known as

"excusable neglect" to mitigate the harshness of being completely barred from filing a paper or document by a missed filing deadline. Excusable neglect acts to extend time to respond to court-mandated deadlines during the proceeding, and second, excusable neglect can act as a reason for relief from judgment after proceedings have, at least initially, concluded.

Florida law states that a trial court has broad authority under Rule 1.540(b)(1) to vacate or set aside a default judgment based on mistake, inadvertence, surprise or excusable neglect; indeed, setting aside defaults and allowing trial on the merits is one of liberality. *Espinosa v. Racki,* 324 So.2d 105 (Fla. 3d DCA 1975). It is the facts of a case that are of singular importance in determining whether a default judgment should be set aside. *Id*. at 107. It is fundamental that a court should set aside a default judgment where the movant shows excusable neglect, a meritorious defense, and reasonable diligence. *Sanchez v. Horrell*, 660 So.2d 366 (Fla. 4th DCA 1995).

In the Federal Rules*, Rule 60(b)(1)(B)* provides that for any act that must be done by a party to a federal court proceeding within a specified time frame, the court may "for good cause, extend the time…after the time has expired if the party failed to act because of excusable neglect." Rule 60(b)(1) provides for a party or their legal representative to obtain relief from an adverse judgment of a federal court for "mistake, inadvertence, surprise or excusable neglect." Fed. R. Civ. P. 60(b)(1). Both types of excusable neglect can only be obtained by motion to the court. *https://www.americanbar.org/groups/litigation/committees/business-torts-unfair-competition/practice*

/2018/best-practices-for-missing-a-filing-deadline-in-federal-court.

In *English v. Hecht,* 189 So.2d 366 (Fla. 3d DCA 1966), the Court ruled that an attorney's failure to file an amended complaint within a specified time was due to excusable neglect because the attorney miscalculated the time-period and thus mistakenly docketed the matter on his calendar.

In the instant matter, the due date of the Initial Brief was miscalculated. The Brief was due on December 21, 2022. The request for extension was filed December 29, 2022, requesting an extension until February 1, 2023 to file the initial brief. The initial brief was filed February 1, 2023. The Order of the Supreme Court refusing to accept the initial brief was issued on April 18, 2023. On April 19, 2023, Petitioner filed a Motion to Reconsider the Order of April 18, 2023. It was filed as a verified pleading with an affidavit by Petitioner's counsel stating that it was a mere miscalculation of dates and Petitioner should not be harmed. Respondent was not prejudiced but Petitioner suffered irreparable harm. The Final Order was not issued until August 3, 2023. (App., *infra* A)

December 2022 was a difficult time for Petitioner as 12/1/2022 was the first-year anniversary of the death of her husband on the Gregorian Calendar and 12/21/2022 was the Yahrzeit of her husband on the Jewish Calendar. That was a very stressful time for Petitioner. The years of the frivolous litigation, the Bar Complaints and the taking of the Homestead Property in violation of Article X Section 4 of the Florida Constitution was the catalyst that caused the

sudden and unexpected death of Petitioner's Husband.

The facts in this case meet the definition of excusable neglect. It was a mere miscalculation of time during an incredibly stressful month. The Court in *English further* stated, "It is the well-established rule that the opening of judgments is a matter of judicial discretion and in case of reasonable doubt, where there has been no trial on the merits, this discretion is exercised in favor of granting the application so as to permit a determination of the controversy upon the merits." *Id. at 367.*

Florida's well-settled rule is that to reverse a default judgment, "a defendant must show excusable neglect, a meritorious defense, and due diligence in seeking relief after learning of the default." *Khubani v. Mikulic,* 620 So.2d 800, 801 (Fla. 2d DCA 1993). Further, "[a]ny reasonable doubt regarding the vacation of a default should be resolved in favor of granting the application and allowing a trial on the merits*". Id. [citing North Shore Hosp. v. Barber,* 143 So.2d 849 (Fla. 1962)]. *Decubellis v. Ritchotte,* 730 So. 2d 723, 728 (Fla. 5th DCA 1999).

Petitioner has never had her day in Court in any of her matters. Petitioner was not permitted to conduct discovery, take depositions, nor have numerous witnesses testify at the Bar Hearing. The due process rights of Petitioner have been violated. Petitioner's Bar License has been taken without an opportunity to be heard and defend herself. *See, e.g., Sealed Appellant 1 v. Sealed Appellee 1*, 211 F.3d 252, 254 (5th Cir. 2000) ("It is well settled in this Circuit that while in

disbarment proceedings, due process requires notice and an opportunity to be heard."); *Pacific Harbor Capital, Inc. v. Carnival Air Lines, Inc.*, 210 F.3d 1112, 1118 (9th Cir. 2000) ("`[A]n attorney subject to discipline is entitled to procedural due process, including notice and an opportunity to be heard.' ") (internal citations omitted).

CONCLUSION

The petition should be granted.

Respectfully submitted.

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