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PER CURIAM OPINION,
SUPREME COURT OF FLORIDA
(JUNE 26, 2025)

SUPREME COURT OF FLORIDA

No. SC2022-0859

THE FLORIDA BAR,

Complainant,

v.

BROOKE LYNNETTE GIRLEY,

Respondent.

No. SC2022-0860

THE FLORIDA BAR,

Complainant,

v.

JERRY GIRLEY,

Respondent.

Before: MUÑIZ, C.J., and CANADY, LABARGA, COURIEL, GROSSHANS, FRANCIS, and SASSO, JJ.

PER CURIAM.

We have for review two referee reports recommending that Respondents, Brooke Lynnette Girley and Jerry Girley, be found guilty of professional misconduct in violation of the Rules Regulating The Florida Bar as well as their Oath of Admission to The Florida Bar and that they both be suspended from the practice of law in Florida for 30 days. Both Respondents have petitioned for review, challenging the referee's recommendations concerning guilt and the recommended sanction.[1]

For the reasons discussed below, regarding Brooke, we approve the referee's findings of fact and recommendations of guilt for violating rules 3-4.3 (Misconduct and Minor Misconduct) and 4-8.2(a) (Impugning Qualifications and Integrity of Judges or Other Officers) and the Oath of Admission. Regarding Jerry, we approve the referee's findings of fact and recommendations of guilt for violating rules 3-4.3, 4-8.2(a), and 4-8.4(d) ("A lawyer shall not engage in conduct in connection with the practice of law that is prejudicial to the administration of justice. . . . ") and the Oath of Admission. However, we disapprove the referee's recommendation that Jerry be found guilty of violating rule 4-4.1(a) (Truthfulness in Statements to Others). We approve the referee's recommended discipline of a 30-day suspension for both Respondents.

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[1] We have jurisdiction. *See* art. V, § 15, Fla. Const.

I.

Jerry is the managing partner of the Girley Law Firm, and Brooke, who is Jerry's daughter, holds an "of counsel" position at the firm. In 2021, Jerry represented Baiywo Rop in a civil lawsuit against Adventist Health System before the Ninth Judicial Circuit. Rop, a native of Kenya, alleged that Adventist Health wrongfully terminated him from its residency program due to discrimination based on race, national origin, and disability. The complaint also alleged retaliation. After Jerry presented Rop's case in chief, Adventist Health moved for directed verdict on all claims. The presiding judge, Judge Kevin Weiss, granted Adventist Health's motion on Rop's claims of discrimination based on national origin and disability. However, he reserved ruling on Rop's claims of discrimination based on race and retaliation. At the conclusion of the trial, the jury returned a verdict in favor of Rop, finding that he proved that his race was a motivating factor in the decision to terminate him, and awarded him compensatory damages in the amount of $2.75 million. After the jury's verdict, Judge Weiss ruled on Adventist Health's earlier motion for directed verdict based on the racial discrimination claim and entered a directed verdict in favor of Adventist Health, finding that Rop failed to prove a prima facie case of unlawful discrimination based on race under the Florida Civil Rights Act.[2]

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[2] Judge Weiss's order cited a decision in which this Court recognized the practice of reserving ruling on motions for directed verdict until after the jury returns a verdict for the purpose of conserving resources. *See Ricks v. Loyola*, 822 So.2d 502, 506 (Fla. 2002) (noting it is an approved practice for trial judges inclined to grant a motion for directed verdict to reserve ruling,

After the trial court entered its Order on Directed Verdicts, Brooke reposted on her social media the following posts by her brother Brian Girley, who handles social media for the firm: "Today in Orlando Florida a white Judge stole justice from a black doctor. After being awarded by a jury $2.75 million for discrimination a judge reversed their verdict. We need help getting this out," and "The Girley Law Firm won a case against @AdventHealth where a jury found that they had discriminated against a black doctor and awarded him $2.75 million. Today a white judge stole justice from him. This needs attention!" Brooke posted a picture of Judge Weiss with the message that "a white judge stole justice from a black doctor."

In the days following the trial, Brooke made several comments on social media regarding Judge Weiss and the Rop case, such as "[t]his is an injustice. One judge shouldn't be able to overturn a jury verdict," and "the judge did this own [sic] his on [sic] too. No one filed any post-trial motions." Brooke further stated: "I don't believe he had the authority to make this ruling and we need to hold him accountable." In other posts, Brooke commented, "[s]ounds like he needs to be investigated. #RemoveJudgeWeiss," and "[t]he court system is a sham!" She also stated in one post that "[t]he Dres [sic] Scott rule still applies in 2021: 'A black man has no rights which a white man is bound to respect.' Y'all, we can't let this stand. #RemoveJudgeWeiss." In another post, Brooke posted a message claiming that "[e]ven when we win, it only

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allow the jury to return a verdict, and thereafter rule on the motion for directed verdict in order to avoid the need for a costly new trial in case of a reversal on appeal (citing *Gutierrez v. L. Plumbing, Inc.*, 516 So.2d 87, 88 n.2 (Fla. 3d DCA 1987))).

takes one white judge to reverse our victory. . . . This is an injustice and cannot stand." Brooke also posted about organizing a protest rally to "bring attention to fact [sic] that judges are allowed to overturned [sic] jury verdicts and erode our civil rights."

Also, days after the trial court entered its Order on Directed Verdicts, Jerry participated in a couple of online interviews where he made several statements regarding the Rop case, Judge Weiss, and the judiciary. Jerry suggested that judges actively make decisions to reduce or preclude monetary awards for black litigants in discrimination cases and that Judge Weiss was racially biased and exceeded his authority by unlawfully reversing the $2.75 million verdict awarded to Rop, a black litigant. Among other things, Jerry stated that "we have had judges cut the money, find ways to ensure that our clients at the end of the day did not get paid. Now that's what happened last Friday," and "[t]he $2.75 million that was taken by the stroke of a judge's pen, that was a theft," "a theft to the community." Regarding the timing of Judge Weiss's ruling, Jerry stated that Judge Weiss "made a determination six days or five days after the trial that there was not enough evidence presented to cause Dr. Rop to prevail," and while there is a technical mechanism that permits a judge to do so, "this was not one of those circumstances."

Jerry also suggested that the Fifth District Court of Appeal is biased against black litigants, saying:

> There are people who have a certain point of view at the appellate court, the Fifth DCA, which sits in Daytona. There's not a single black person there. . . . Okay? So in effect, what we're saying is, to one group of white

> people, hold this particular person accountable for what he did to these black people. . . . But at the end of the day, this is something that God will have to address, because it's not in the hearts of those in . . . power, and that includes the appellate court, I would say, to right the wrongs that have been committed against us, because it—it makes financial sense to them to keep us in a place where we are beholden to them.

Jerry explained that the courts treat civil rights cases as though they are a waste of time, as "stepchildren," and stated, "[A] $2.75 million verdict, they don't want that out there cause—now everybody that is being discriminated against is gonna step forward and file a claim, and the courts don't want to hear it."

After Brooke's social media posts and Jerry's public statements, Judge Weiss was harassed and received death threats. Judge Weiss had to secure additional security for his protection at the courthouse and at home.

Based on these facts, the referee recommends that Brooke and Jerry both be found guilty of violating rules 3-4.3 (prohibiting acting contrary to honesty and justice) and 4-8.2(a) (forbidding improper impugning of the qualifications or integrity of a judge) as well as the Oath of Admission (requiring maintenance of respect due to courts and judges). The referee also recommends that Jerry be found guilty of violating rules 4-4.1(a) (prohibiting false statements) and 4-8.4(d) (prohibiting conduct prejudicial to the administration of justice). Concerning discipline, the referee recommends that both Respondents be suspended for 30

days. The referee also recommends that Jerry be required to complete the Bar's Professionalism Workshop.

Both Respondents filed notices of their intent to seek review of the referee's reports, challenging the referee's recommendations of guilt as well as the recommended discipline.

II.

First, we address Respondents' due process arguments regarding these Bar discipline proceedings. Respondents argue the Bar failed to provide them fair notice of the charges against them. We reject these arguments.

In Bar discipline proceedings, due process requires only that a lawyer receive notice of the Bar's charges and be given an opportunity to be heard. *Fla. Bar v. Committee*, 916 So.2d 741, 745 (Fla. 2005). These requirements were satisfied here. The Bar's complaints specifically alleged that Respondents violated the Oath of Admission to The Florida Bar, specified which rules had been violated, and listed the specific statements alleged to be improper.

Respondents also claim that the referee erred in limiting their expert witness's testimony, preventing Respondents from calling Judge Weiss as a witness, and excluding certain evidence that would prove there is racial bias in the legal system. We disagree.

Regarding the admission or exclusion of evidence in Bar disciplinary proceedings, the referee is not bound by technical rules of evidence because "bar disciplinary proceedings are quasi-judicial rather than civil or criminal." *Fla. Bar v. Rotstein*, 835 So.2d 241, 244 (Fla. 2002); *see Fla. Bar v. Tobkin*, 944 So.2d 219,

224 (Fla. 2006); *Fla. Bar v. Rendina*, 583 So.2d 314, 315 (Fla. 1991). Further, we review referees' rulings regarding the admissibility of evidence in Bar discipline cases using an abuse of discretion standard. *See Fla. Bar v. Hollander*, 607 So.2d 412, 414 (Fla. 1992).

Here, Respondents sought to admit evidence that, generally, there is inequality in the court system. However, Respondents' comments were not just about inequality in the court system. Many of their statements targeted specific members of the judiciary, and thus the proffered evidence would have been irrelevant to the propriety of those statements.

Respondents also failed to show that the referee abused her discretion in preventing Judge Weiss from testifying. Testimony from Judge Weiss would have been irrelevant to the charges brought against Respondents. The charges related in large part to comments made by the Respondents concerning an order entered by Judge Weiss. That order speaks for itself. The referee correctly rejected the highly improper attempt to require a judge to provide testimony regarding the basis for a judicial decision or other judicial acts. Judges "cannot be subjected to such . . . scrutiny" "regarding the process by which [they] reached the conclusions of [their] order[s]" because "[s]uch an examination of a judge would be destructive of judicial responsibility." *United States v. Morgan*, 313 U.S. 409, 422 (1941). Accordingly, we have recognized the general rule that "judges cannot be compelled to testify as to matters concerning their judicial duties," and we have held that inquiring into a "judge's thought process" is impermissible. *State v. Lewis*, 656 So.2d 1248, 1250 (Fla. 1994) (quoting Charles W. Ehrhardt, *Florida Evidence*, § 607.1 at 366 & n.1

(1994)). The referee did not abuse her discretion in excluding the proffered evidence.

III.

Next, we address the referee's findings of fact and recommendations of guilt. While only Brooke challenges some of the referee's findings of fact, both Jerry and Brooke challenge the referee's recommendations of guilt.

Our review of a referee's findings of fact is limited, and if the findings of fact are supported by competent, substantial evidence in the record, we will not reweigh the evidence and substitute our judgment for that of the referee. *Fla. Bar v. Alters*, 260 So.3d 72, 79 (Fla. 2018) (citing *Fla. Bar v. Frederick*, 756 So.2d 79, 86 (Fla. 2000)). Concerning a referee's recommendations as to guilt, "the referee's factual findings must be sufficient under the applicable rules to support the recommendations." *Fla. Bar v. Patterson*, 257 So.3d 56, 61 (Fla. 2018) (citing *Fla. Bar v. Shoureas*, 913 So.2d 554, 557-58 (Fla. 2005)). Ultimately, the burden is on the party challenging the referee's findings of fact and recommendations of guilt to demonstrate "that there is no evidence in the record to support those findings or that the record evidence clearly contradicts the conclusions." *Fla. Bar v. Germain*, 957 So.2d 613, 620 (Fla. 2007).

Rule 4-8.2(a).

First, we address the referee's recommendation that Respondents be found guilty of violating rule 4-8.2(a). Under rule 4-8.2, a lawyer must not make a statement that the lawyer knows to be false or with

reckless disregard of its truth or falsity concerning the qualifications or integrity of a judge.

Brooke challenges the referee's recommendation of guilt and asserts that some of the referee's findings are not supported by the record evidence. Specifically, she objects to the referee's findings that she had very little knowledge about the Rop case but answered questions asked online by non-lawyers who would rely on her interpretation of the law, and that one of Jerry's interviews was posted on the Girley Law Firm's website. Most important to our analysis of the referee's recommendation of guilt, Brooke challenges the referee's findings that she made disparaging and threatening comments about Judge Weiss, injected race into her posts, and implied that Judge Weiss is biased and racist. She submits that the referee wrongfully penalized her for comments made by another.

We reject these arguments. The record evidence demonstrates that Brooke stated in her own posts that Judge Weiss should be "investigated," "held responsible," and "removed" because he acted "on his own," as "no one filed any post-trial motions," and he, thus, lacked the authority to make his ruling. She also knowingly shared social media posts, originally posted by her brother, alleging that Judge Weiss, "a white judge," "stole justice from a black doctor," and suggested in her own posts that Judge Weiss violated Rop's rights because he is black, stating " '[a] black man has no rights which a white man is bound to respect.' Y'all, we can't let this stand. #RemoveJudge Weiss." Brooke's own statements, along with the ones she chose to repost, clearly had a specific message and were disparaging to Judge Weiss specifically.

Jerry also challenges the referee's recommendation that he be found guilty of violating this rule. He argues that the Bar mischaracterized his words, that he never mentioned Judge Weiss's name, and that his statements were about the court system as a whole. We reject Jerry's arguments as well. The record evidence establishes that Jerry accused the judge presiding over the Rop case, Judge Weiss, of exceeding his authority and finding a way to "cut the money" and ensure that Rop did not get paid because he is black. He alleged that the judge stole Rop's money by a stroke of a pen, and this was a theft to the black community. Jerry further suggested that the Fifth District Court of Appeal judges are racially biased as well. Jerry asserted that while there is a technical mechanism that allows a judge to enter a directed verdict after a jury enters a verdict, this mechanism was not available in Rop's case.

Respondents made these statements despite Judge Weiss making it clear in his order that he was acting in accordance with legal precedent when he deferred ruling on portions of the motion for directed verdict until after the jury rendered its verdict. Respondents' statements were made with reckless disregard of their truth or falsity, with no objectively reasonable factual basis, and impugned the qualifications and integrity of Judge Weiss and the judges of the Fifth District Court of Appeal.

Respondents further argue that these disciplinary proceedings violate their right to free speech. The First Amendment to the U.S. Constitution provides that Congress "shall make no law . . . abridging the freedom of speech." Respondents are charged with violating rule 4-8.2(a), which clearly prohibits a lawyer

from engaging in certain types of speech. Indeed, under the rule, a lawyer is prohibited from "mak[ing] a statement that the lawyer knows to be false or with reckless disregard as to its truth or falsity concerning the qualifications or integrity of a judge." R. Regulating Fla. Bar 4-8.2(a).

The type of restriction imposed on lawyer speech by rule 4-8.2(a) is not new. *See Bradley v. Fisher*, 80 U.S. 335, 355 (1871) ("[T]he obligation which attorneys impliedly assume, if they do not by express declaration take upon themselves, when they are admitted to the bar, is not merely to be obedient to the Constitution and laws, but to maintain at all times the respect due to courts of justice and judicial officers. This obligation is not discharged by merely observing the rules of courteous demeanor in open court, but it includes abstaining out of court from all insulting language and offensive conduct toward the judges personally for their judicial acts."); *In re Shimek*, 284 So.2d 686, 690 (Fla. 1973) ("It would be contrary to every democratic theorem to hold that a judge or a court is beyond bona fide comments and criticisms which do not exceed the bounds of decency and truth or which are not aimed at the destruction of public confidence in the judicial system as such. However, when the likely impairment of the administration of justice is the direct product of false and scandalous accusations then the rule is otherwise."). Moreover, we have previously explained that rule 4-8.2(a) is "designed to preserve public confidence in the fairness and impartiality of our system of justice," since "members of the Bar are viewed by the public as having unique insights into the judicial system." *Fla. Bar v. Ray*, 797 So.2d 556, 558-59 (Fla. 2001). The U.S. Supreme Court has

recognized that restrictions on speech aimed at "protecting the integrity of the judiciary" and "maintaining the public's confidence in an impartial judiciary" serve a compelling state interest and do not violate the First Amendment. *See Williams-Yulee v. Fla. Bar*, 575 U.S. 433, 445 (2015) (quoting *Fla. Bar v. Williams-Yulee*, 138 So.3d 379, 386 (Fla. 2014)). Thus, we reject Respondents' arguments that these proceedings violate their rights to free speech under the First Amendment.[3]

Accordingly, we approve the referee's recommendation that Respondents be found guilty of violating rule 4-8.2(a).

Rule 3-4.3.

Respondents also challenge the referee's recommendation that they be found guilty of violating rule 3-4.3. Rule 3-4.3 states, in part: "The commission by a lawyer of any act that is unlawful or contrary to honesty and justice may constitute a cause for discipline whether the act is committed in the course of the lawyer's relations as a lawyer or otherwise. . . . " Based on the misconduct above, we approve the referee's recom-

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[3] Respondents also argue that these proceedings violate their rights to religious freedom and their rights under the equal protection clause. However, we decline to consider these arguments because they were not made before the referee. *See Wright v. State*, 920 So.2d 21, 23 (Fla. 4th DCA 2005) (stating that constitutional issues not raised at trial cannot be raised for the first time on appeal unless the error meets the criteria of fundamental error); *Sanford v. Rubin*, 237 So.2d 134, 137 (Fla. 1970) (stating that fundamental error, which can be raised on appeal without objection in the lower court, is error that goes to the foundation of the case or goes to the merits of the cause of action).

mendation of guilt under rule 3-4.3. *See Fla. Bar v. Cocalis*, 959 So.2d 163, 166-67 (Fla. 2007) (finding a lawyer violated rule 3-4.3 by engaging in unprofessional and unethical conduct).

Oath of Admission.

Respondents also challenge the referee's recommendation that they be found to have violated the Oath of Admission to The Florida Bar, which requires Florida lawyers to maintain the respect due to courts of justice and judicial officers. Respondents repeatedly made statements suggesting that Judge Weiss was racist and exceeded his authority in reversing a $2.75 million verdict awarded to a black litigant. Respondents essentially led a campaign against Judge Weiss in retaliation for his judicial decision in a case handled by their firm. We, thus, approve the referee's findings of fact and recommendation that Respondents be found guilty of violating their Oath of Admission.

Rule 4-8.4(d).

We also find that in doing so, Jerry, who represented Rop before the circuit court, violated rule 4-8.4(d), which prohibits conduct that is prejudicial to the administration of justice. Jerry's statements were widely disseminated and caused prejudice to the administration of justice. Judge Weiss even received death threats and had to secure additional security detail for his protection. We approve the referee's findings of fact and recommendation that Jerry be found guilty of violating rule 4-8.4(d).

Rule 4-4.1(a).

The referee also recommends that Jerry be found guilty of violating rule 4-4.1(a), which prohibits a lawyer from knowingly making a false statement of material fact or law to a third person in the course of representing a client. Again, Jerry submits the referee's recommendation of guilt is not supported by the record evidence. While the record evidence shows some of Jerry's disparaging statements were made during an interview alongside Rop after Rop appealed Judge Weiss's decision, it is not entirely clear from the record, and the referee made no specific findings regarding whether Jerry's statements were made in the course of representing Rop. We, thus, decline to approve the referee's recommendation of guilt under rule 4-4.1(a). *See Shoureas*, 913 So.2d at 558 (declining to approve the referee's recommendation of guilt concerning a rule violation for lack of findings or competent, substantial evidence).

IV.

We now turn to the referee's recommendation that Respondents be suspended for 30 days. "Prior to making a recommendation as to discipline, referees must consider the Standards for Imposing Lawyer Sanctions, which are subject to aggravating and mitigating circumstances, and this Court's existing case law." *Fla. Bar v. Strems*, 357 So.3d 77, 90 (Fla. 2022). Our review of a referee's recommended discipline is broader than that afforded to the referee's findings of fact because, ultimately, it is our responsibility to order the appropriate sanction. *See Fla. Bar v. Patterson*, 257 So.3d 56, 64 (Fla. 2018); *Fla. Bar v. Anderson*,

538 So.2d 852, 854 (Fla. 1989); *see also* art. V, § 15, Fla. Const.

First, we find support in the Standards for suspension as the presumptive sanction for both Respondents. Under Standard 7.1(b) (Deceptive Conduct or Statements and Unreasonable or Improper Fees), "[s]uspension is appropriate when a lawyer knowingly 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." Here, with reckless disregard of their truth or falsity, Respondents made public statements accusing Judge Weiss of being racist and reversing the $2.75 million jury verdict because Rop is black. Respondents' statements eroded the public's confidence in the legal system and even led to death threats directed at Judge Weiss. Suspension is appropriate based on these facts.

Next, we consider the referee's findings regarding the applicable aggravating and mitigating circumstances. "[A] referee's findings of mitigation and aggravation carry a presumption of correctness and will be upheld unless clearly erroneous or without support in the record." *Germain*, 957 So.2d at 621. Regarding both Respondents, the referee found the following factors in aggravation under Standard 3.2(b) (Aggravation): (1) a pattern of misconduct; (2) substantial experience in the practice of law; and (3) refusal to acknowledge the wrongful nature of the conduct. Under Standard 3.3(b) (Mitigation), the referee found the following factors in mitigation in both cases: (1) the absence of a prior disciplinary record; and (2) character or reputation. Regarding Brooke, the referee found three additional mitigating factors: (1) full and free disclosure to the Bar or cooperative attitude

toward the proceedings; (2) the absence of dishonest or selfish motive; and (3) the imposition of other penalties or sanctions.[4] Both Respondents challenge the referee's finding of a pattern of misconduct. However, although Respondents' misconduct occurred during a few weeks, not a longer span of time, Respondents repeatedly made statements impugning Judge Weiss's integrity on various platforms. The referee's finding is supported by the record. *See Fla. Bar v. Parrish*, 241 So.3d 66, 80 (Fla. 2018).

Concerning the appropriate term of suspension, we also look to prior cases for guidance. In prior cases involving similar misconduct, we have imposed suspensions in a range of lengths. For instance, in *Florida Bar v. McCallum*, No. SC2018-0604, 2019 WL 6873032 (Fla. Dec. 19, 2019), we suspended for 15 days an attorney who made unfounded accusations against two judges in letters to the chief judge and general counsel of the circuit court in violation of rules 3-4.3, 4-8.2(a), and 4-8.4(d). In *Florida Bar v. Tropp*, 112 So.3d 101 (Fla. 2013), we publicly reprimanded Tropp and placed him on a three-year probation for violating rules 4-8.2(a) and 4-8.4(d), among others, when he filed a motion to disqualify alleging the judge presiding over post-dissolution proceedings in Tropp's divorce case had an improper, essentially ex parte discussion with Tropp's ex-wife's attorney concerning support payments but failed to state that Tropp's co-counsel was present during the discussion. We've also imposed harsher sanctions for similar misconduct. In

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[4] Although Brooke passed the New Jersey bar examination, consideration of her admission in New Jersey was abated during the pendency of these proceedings.

Florida Bar v. Jacobs, 370 So.3d 876, 884 (Fla. 2023), we suspended for 91 days an attorney found guilty of three counts of violating rule 4-8.2(a) after he accused named and unnamed judges of "acting outside the law, allowing banks to perpetrate fraud with impunity, and betraying the Constitution to protect the interests of financial monopolies." Also, in *Florida Bar v. Norkin*, 132 So.3d 77 (Fla. 2013), we publicly reprimanded and suspended an attorney for two years, followed by probation, for making disparaging comments regarding several judges, behaving in an unprofessional manner, and disrupting court proceedings, in violation of rules 4-8.2(a) and 4-8.4(d), among others.

In considering these cases, along with the aggravating and mitigating factors found in the instant cases, we have determined that a 30-day suspension for both Respondents is appropriate.

V.

Accordingly, regarding Brooke Lynnette Girley, we approve the referee's findings of fact and recommendations of guilt under rules 3-4.3, 4-8.2(a), and the Oath of Admission to The Florida Bar. Further, we approve the referee's recommended sanction and Brooke is hereby suspended from the practice of law for 30 days, effective 30 days from the date of this opinion so that she can close out her practice and protect the interests of existing clients. If Brooke notifies this Court in writing that she is no longer practicing and does not need the 30 days to protect existing clients, we will enter an order making the suspension effective immediately. Brooke shall fully comply with rule 3-5.1(h), and if applicable, rule 3-6.1. In addition, Brooke

shall accept no new business from the date this opinion is issued until she is reinstated.

Judgment is entered for The Florida Bar, 651 East Jefferson Street, Tallahassee, Florida 32399-2300, for recovery of costs from Brooke Lynnette Girley in the amount of $3,643.03, for which sum let execution issue.

Regarding Jerry Girley, we approve the referee's findings of fact and recommendations of guilt in part and find him guilty of violating rules 3-4.3, 4-8.2(a), and 4-8.4(d), as well as the Oath of Admission to The Florida Bar. We disapprove the referee's findings under rule 4-4.1(a) and find Jerry not guilty of violating that rule. Moreover, we approve the referee's recommended sanction. Jerry is hereby suspended from the practice of law for 30 days, effective 30 days from the date of this opinion so that he can close out his practice and protect the interests of existing clients. If Jerry notifies this Court in writing that he is no longer practicing and does not need the 30 days to protect existing clients, we will enter an order making the suspension effective immediately. Jerry shall fully comply with rule 3-5.1(h), and if applicable, rule 3-6.1. In addition, Jerry shall accept no new business from the date this opinion is issued until he is reinstated. Jerry is directed to attend The Florida Bar's Professionalism Workshop under the terms and conditions of the report and to comply with all other terms and conditions of the report.

Judgment is entered for The Florida Bar, 651 East Jefferson Street, Tallahassee, Florida 32399-2300, for recovery of costs from Jerry Girley in the amount of $5,357.40, for which sum let execution issue.

It is so ordered.

MUÑIZ, C.J., and CANADY, LABARGA, COURIEL, GROSSHANS, FRANCIS, and SASSO, JJ., concur.

THE FILING OF A MOTION FOR REHEARING SHALL NOT ALTER THE EFFECTIVE DATE OF THESE SUSPENSIONS.

Original Proceeding – The Florida Bar

Joshua E. Doyle, Executive Director, The Florida Bar, Tallahassee, Florida, Patricia Ann Toro Savitz, Staff Counsel, The Florida Bar, Tallahassee, Florida, Mark Lugo Mason, Bar Counsel, The Florida Bar, Tallahassee, Florida, and Ashley Taylor Morrison, Bar Counsel, The Florida Bar, Orlando, Florida,

for Complainant

Jerry Girley and Brooke Girley of The Girley Law Firm, P.A., Orlando, Florida,

for Respondent

Jerry C. Edwards and Daniel B. Tilley of American Civil Liberties Union Foundation of Florida, Inc., Miami, Florida, and Brian L. Frye, Spears-Gilbert Professor of Law, University of Kentucky, Lexington, Kentucky,

for Amicus Curiae American Civil Liberties Union Foundation of Florida, Inc.

ORDER DENYING RESPONDENTS' MOTIONS FOR REHEARING, SUPREME COURT OF FLORIDA (SEPTEMBER 10, 2025)

SUPREME COURT OF FLORIDA

No. SC2022-0859
Lower Tribunal No(s).: 2021-30,854(09B)

THE FLORIDA BAR,

Complainant(s),

v.

BROOKE LYNNETTE GIRLEY,

Respondent(s).

No. SC2022-0860
Lower Tribunal No(s).: 2021-30,853(09B)

THE FLORIDA BAR,

Complainant(s),

v.

JERRY GIRLEY,

Respondent(s).

Before: MUÑIZ, C.J., and CANADY, LABARGA, COURIEL, GROSSHANS, FRANCIS, and SASSO, JJ.

Respondents' Motions for Rehearing are hereby denied.

MUÑIZ, C.J., and CANADY, LABARGA, COURIEL, GROSSHANS, FRANCIS, and SASSO, JJ., concur.

A True Copy
Test:

/s/ John A. Tomasino
Clerk, Supreme Court
SC2022-0859 9/10/2025
[SEAL]

BROOKE GIRLEY REFEREE REPORT, SUPREME COURT OF FLORIDA (JANUARY 23, 2024)

IN THE SUPREME COURT OF FLORIDA
(Before a Referee)

THE FLORIDA BAR,

Complainant,

v.

BROOKE LYNNETTE GIRLEY,

Respondent.

Supreme Court Case No. SC22-859

The Florida Bar File No. 2021-30,854 (09B)

Before: Hon. LISA HERNDON, Referee.

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 occurred:

On June 30, 2022, The Florida Bar filed its Complaint against Respondent as well as its Request for Admissions in these proceedings. On January 10th, 2024, a final hearing was held in this matter, and Res-

pondent was found guilty. On January 11, 2024, 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

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. Respondent voluntarily sought admission The Florida Bar and was admitted to the practice of law in the State of Florida on or about September 27, 2010. Respondent practiced law in Orange County, Florida, at all times material to this action.

At the time of these events, Respondent held an "Of counsel" position with the Girley Law Firm, PA. Jerry Girley is the founding and managing partner of the Girley Law Firm and the father of Respondent. Jerry Girley represented the plaintiff in *Baiywo Rop v. Adventist Health System*, case no. 2017-CA-009484-O, in the Circuit Court of the Ninth Judicial Circuit, in and for Orange County, Florida. Dr. Rop is a black man from Kenya, and his complaint alleged (1) disparate treatment because of race, (2) disparate treatment because of national origin, (3) disparate treatment because of disability, and (4) retaliation. Judge Kevin Weiss presided over the jury trial from May 14, 2021, through May 21, 2021. At the close of plaintiff's case, the trial court granted directed verdicts as to plaintiff's claims of discrimination based on

national origin and disability, and reserved ruling on the claims of discrimination based on race and retaliation. On May 21, 2021, the jury found that plaintiff proved that his race was a motivating factor in Defendant's decision to take any adverse employment action against him and awarded compensatory damages in the amount of $2,750,000. The jury did not find that plaintiff was dismissed from the Residency Program because he engaged in protected activity. On May 28, 2021, the trial court entered an Order on Directed Verdicts and Final Judgment for Defendant, finding that the plaintiff failed to prove a prima facie case of unlawful discrimination based on race under the Florida Civil Rights Act, and entered a directed verdict in favor of defendant on plaintiff's only remaining claim, discrimination on the basis of race. The relevant portions of the trial court's order read as follows:

> On May 21, 2021, the jury returned a verdict responding "Yes", that "Dr. Rop has proved that race was a motivating factor in Florida Hospital's decision to take any adverse employment action against him".
>
> As to whether "Florida Hospital dismissed Baiywo Rop from its Radiology Residency Program action because he engaged in protected activity" the jury responded "No."
>
> The jury awarded compensatory damages to Dr. Rop in the amount of $2,750,000.00 . . .
>
> The Court has carefully considered all of the evidence presented at trial and reviewed the applicable law. The Court finds that the Plaintiff did not prove a prima facie case of

> unlawful discrimination based on race under the Florida Civil rights Act. Specifically, the Plaintiff failed to proffer reasonable evidence that race was a factor in his termination from the Radiology Residency Program. In addition, the Court expressly finds that the Defendant articulated legitimate, non-discriminatory and non-retaliatory reasons for Plaintiff's remediation, probation and dismissal from the Radiology Residency Program. Even if the Court found that the Plaintiff met its initial burden under *McDonnell Douglas Corp. v. Green,* 411 U.S. 792 (1973), Plaintiff similarly failed to show the Defendant's non-discriminatory reason for dismissal was pre-textual.

On May 28, 2021, the same day the trial court entered its Order on Directed Verdicts, Respondent retweeted posts from her brother, Brian Girley, under the username "The Casual Brian".

> "Today in Orlando Florida a white Judge stole justice from a black doctor. After being awarded by a jury $2.75 million for discrimination a judge reversed their verdict. We need help getting this out."

TFB Exhibit 3, bates stamp 150.

> "The Girley Law Firm won a case against-
>
> @AdventHealth where a jury found that they had discriminated against a black doctor and awarded him-$2.75 million. Today a white judge stole justice from him. This needs attention!"

TFB Exhibit 3, bates stamp 142.

Respondent continued to post information related to the trial, the judiciary and the court system as follows:

> "so he reserved ruling on the directed verdict for two counts. He let those two counts go to the jury and they deliberates [*sic*] until like 9pm on Friday to reach their verdict. Then a week later decided he made a ruling on the directed verdict (at 4:30pm on Friday before a holiday weekend no less) saying there wasn't sufficient evidence of discrimination and that Advent gave a legitimate reason for terminating our client. If this were truly how he felt, then he shouldn't have let it go to the jury. To be sure, the jury's large verdict amount belies the judge's reasoning. The [sic] obviously didn't believe Advent's states [*sic*].
>
> And the judge did this on his own [*sic*] his on [*sic*] too. No one filed any post-trial motions."

TFB Exhibit 3, bates stamp 148.

> "This is an injustice. One judge shouldn't be able to overturn a jury verdict." Posted May 29, 2021

TFB Exhibit 3, bates stamp 98.

> "Sounds like he needs to be investigated. #RemoveJudgeWeiss."

TFB Exhibit 3, bates stamp 100.

> "The Dres [*sic*] Scott rule still applies in 2021: 'A black man has no rights which a white man is bound to respect.' Y'all, we can't

let this stand. #RemoveJudgeWeiss." Posted May 29, 2021.

TFB Exhibit 3, bates stamp 103.

"I don't believe he had the authority to make this ruling and we need to hold him accountable."

TFB Exhibit 3, bates stamp 105.

"I agree! This Judge needs to be investigated. #RemoveJudgeWeiss."

TFB Exhibit 3, bates stamp 106.

"Hey, Brandon. Here is an event page created for the rally. This may be the first of other such rallies to bring attention to the fact that judges are allowed to overturn jury verdicts and erode our civil rights."

TFB Exhibit 3, bates stamp 121.

"The court system is a sham!"

TFB Exhibit 3, bates stamp 124 and 164.

"Even when we win, it only takes one white judge to reverse our victory. This is an injustice and cannot stand." Posted May 29, 2021.

TFB Exhibit 3, bates stamp 149.

"Join us this Saturday in front of city hall for a peaceful rally as we demand justice. We are speaking out against the court system and how one judge can overturn a $2.75M jury verdict.

#evenwhenwewinwelose."

TFB Exhibit 3, bates stamp 162.

> "TONIGHT at 7pm join my dad Attorney Jerry Girley on Black Love United as he discusses how one judge single handed oh [*sic*] reversed the jury verdict awarding his client $2.75M in discrimination case against AdventHealth. And what we can do about it.
>
> Please SHARE"

TFB Exhibit 3, bates stamp 143 and 147.

Respondent did not represent the plaintiff, had no involvement in the trial, and did not watch the trial or read the transcripts. However, Respondent did take an active role in disseminating false or misleading information about the trial, the trial judge, the judiciary, and the court system. Respondent's father Jerry Girley provided an online interview to "Black Love United". Jerry Girley's statements are the subject of a separate Bar prosecution in Supreme Court Case No. SC22-860, The Florida Bar File No. 2021-30,853 (09B). This online interview was live-streamed and posted to the Girley Law Firm's website. Respondent posted comments during the live-stream of Mr. Girley's interview, continued posting comments after the interview, and encouraged others to view and share the interview. Respondent is very familiar with social media and very active on several social media platforms. She has her own podcast and works in the media industry. At trial, Respondent indicated that "media is a more powerful tool to fight civil injustice" and acknowledged that she intended to get national attention about the injustice she perceived to have happened in the Rop case.

In Respondent's posts, she referred to the judge's ruling as an "injustice", and stated, "I don't believe he had the authority to make this ruling and we need to hold him accountable." She stated that the judge made the "decision on his own", "no one filed any post-trial motions", and "this judge needs to be investigated." Respondent created the hashtag, "#RemoveJudgeWeiss", and testified that she planned to run for judge against Judge Weiss. She retweeted the post stating, "a white judge stole justice from a black doctor" and "we need help getting this out" with a picture of Judge Weiss. These comments impugned the integrity of Judge Weiss by implying he did something improper and unlawful, and exceeded his authority. Respondent also injected race into the posts, implying that Judge Weiss was biased and racist.

Respondent made comments about the result of the case being "an injustice", and that "one judge shouldn't be able to overturn a jury verdict". At trial, Respondent explained that she was expressing her opinion as to "the law as it should be", and stated, "the procedural rules should not trump our rights under the Constitution."

Respondent widely disseminated a message through social media that the court system is not fair and doesn't provide equal justice to everyone. She was deliberate and calculated in her attempt to gain national attention and in her approach to providing this inaccurate information to the general public. Respondent answered questions posed by non-lawyers, who would reasonably be expected to rely upon her interpretation of the law. Respondent referred to Dr. Rop as "our" client, giving the impression that she had

intimate and accurate information about the case and applicable law, when in fact, she had very little knowledge about the case or what transpired at trial. Her statements were grossly inaccurate as to the substance and content of the law. Respondent posted information about a rally to "bring attention to the fact that judges are allowed to overturn jury verdicts and erode our civil rights." She said, "the court system is a sham" and "the Dres [*sic*] Scott rule still applies in 2021. 'A black man has no rights which a white man is bound to respect." Such statements give the public an improper perception of the law and causes the public to lose faith in the court system and the administration of justice.

Respondent's disparaging statements tell the public that the Judge presiding over the Rop case was unfair, racist, and exceeded his authority. The overall message of Respondent's statements convey that the court system is unfair, biased and does not provide equal justice to everyone. Respondent's declarations impugned the integrity of Judge Weiss and the judiciary and were false or made with reckless disregard to their truth or falsity with no objectively reasonable factual basis. Respondent's statements also violate the Oath of Admission to The Florida Bar and are contrary to truth and justice.

III. Recommendations as to Guilt:

Based upon the foregoing, the Referee recommends that Respondent be found guilty of violating the following Rules Regulating the Florida Bar: Oath of Admission to the Florida Bar:

I do solemnly swear:

I will support the Constitution of the United States and the Constitution of the State of Florida;

I will maintain the respect due to courts of justice and judicial officers;

I will not counsel or maintain any suit or proceedings which shall appear to me to be unjust, nor any defense except such as I believe to be honestly debatable under the law of the land;

I will employ for the purpose of maintaining the causes confided to me such means only as are consistent with truth and honor, and will never seek to mislead the judge or jury by any artifice or false statement of fact or law;

I will maintain the confidence and preserve inviolate the secrets of my clients, and will accept no compensation in connection with their business except from them or with their knowledge and approval;

To opposing parties and their counsel, I pledge fairness, integrity, and civility, not only in court, but also in all written and oral communications;

I will abstain from all offensive personality and advance no fact prejudicial to the honor or reputation of a party or witness, unless required by the justice of the cause with which I am charged;

I will never reject, from any consideration personal to myself, the cause of the defense-

less or oppressed, or delay anyone's cause for lucre or malice. So help me God.

Rule 3-4.3 Misconduct and Minor Misconduct

The standards of professional conduct required of members of the bar are not limited to the observance of rules and avoidance of prohibited acts, and the enumeration of certain categories of misconduct as constituting grounds for discipline are not all inclusive nor is the failure to specify any particular act of misconduct be construed as tolerance of the act of misconduct. The commission by a lawyer of any act that is unlawful or contrary to honesty and justice may constitute a cause for discipline whether the act is committed in the course of the lawyer's relations as a lawyer or otherwise, whether committed within Florida or outside the state of Florida, and whether the act is a felony or a MISDEMEANOR.

Rule 4-8.2 Judicial and Legal Officials

(a) Impugning Qualifications and Integrity of Judges or Other Officers.

A lawyer shall not make a statement that the lawyer knows to be false or with reckless disregard as to its truth or falsity concerning the qualifications or integrity of a judge, mediator, arbitrator, adjudicatory officer, public legal officer, juror or member of the venire, or candidate for election or appointment to judicial or legal office.

IV. Case Law:

Ethical rules that prohibit attorneys from making statements impugning the integrity of judges are not to protect judges from

> unpleasant or unsavory criticism. Rather, such rules are designed to preserve public confidence in the fairness and impartiality of our system of justice. *See Kentucky Bar Ass'n v. Waller,* 929 S.W.2d 181, 183 (Ky.1996) (disrespectful language directed at judge is not sanctioned because "the judge is of such delicate sensibilities as to be unable to withstand the comment, but rather that such language promotes disrespect for the law and for the judicial system"), *cert. denied,* 519 U.S. 1111, 117 S.Ct. 949, 136 L.Ed.2d 837 (1997). Because members of the Bar are viewed by the public as having unique insights into the judicial system, the state's compelling interest in preserving public confidence in the judiciary supports applying a different standard than that applicable in defamation cases. For this reason, we, like many other courts, conclude that in attorney disciplinary proceedings under rule 4–8.2(a), the standard to be applied is whether the attorney had an objectively reasonable factual basis for making the statements (citations omitted).

The Fla. Bar v. Ray, 797 So.2d 556, 558–59 (Fla. 2001).

> we use an objective test, asking if the lawyer had "an objectively reasonable factual basis for making the statements." *Id.* Thus, once the Bar presents evidence establishing that a lawyer made statements concerning the qualifications or integrity of a judge, the burden shifts to the respondent to provide an objectively reasonable factual basis for making the statements.

Fla. Bar v. Jacobs, 370 So.3d 876, 883 (Fla. 2023).

> Bar Rule 4-8.2(a), in relevant part, states that a "lawyer shall not make a statement that the lawyer knows to be false or with reckless disregard as to its truth or falsity concerning the qualifications or integrity of a judge." The applicable standard under the rule is not whether the statement is false, but whether the lawyer had an objectively reasonable factual basis for making the statement. *Fla. Bar v. Ray*, 797 So.2d 556, 558-59 (Fla. 2001). The burden is on the lawyer who made the statement to produce a factual basis to support the statement. *Id.* at 558 n.3.

Fla. Bar v. Patterson, 257 So.3d 56, 62 (Fla. 2018).

In *The Florida Bar v. McCallum*, 2019 WL 6873032 (2019), *Amended Report of the Referee* SC 18-604, the respondent wrote letters to the Chief Judge of the Fifth Judicial Circuit and General Counsel alleging misconduct by two Circuit Judges. The Bar Referee disagreed with respondent's defenses that (1) the statements qualified as protected speech guaranteed by the First Amendment, and (2) the statements were pure opinion, and found respondent guilty of violating rules 3-4.3, 4-8.2(a), and 4.8.4(d). *Amended Report of the Referee,* at 16-17. The Florida Supreme Court approved the Referees findings of fact and recommendations of guilt but disapproved the recommendation as to discipline of a public reprimand and ordered respondent be suspended from the practice of law for fifteen days. 2019 WL 6873032 (Fla. 2019).

In *The Florida Bar v. Conway*, 996 So.2d 213 (Fla. 2008), *Report of Referee* SC08-326, the respondent posted derogatory remarks about a judge on an internet website. The referee found the statements were false or posted with reckless disregard as to their truth or falsity, and that the statements unfairly undermined public confidence in the administration of justice and were prejudicial to the proper administration of justice. *Report of Referee*, at 3-4. *Conway* is distinguishable, in that Respondent's statements in the instant case show a deliberate and calculated plan to disseminate the message that the court system is biased and unfair to a national audience.

Respondent argued that the statements are based upon her personal opinion that the court system does not provide equal justice to all and are protected speech pursuant to the First Amendment. The Referee finds that Respondent's statements are not protected as free speech. Respondent has failed to show that she had a reasonably objective factual basis for making the statements. Additionally, Respondent argues that, although the Fifth District Court of Appeal *per curiam* affirmed the judgment in the Rop case, Respondent has filed a Motion for Reconsideration with the newly formed Sixth DCA, which is still under consideration, and therefore, Respondent's comments could be validated if the case were to be overruled. There is no merit to this argument. Therefore, the Bar has proven by clear and convincing evidence that Respondent has violated her Oath of Admission to the Florida Bar and Rules 3-4.3 and 4-8.2(a).

V. Aggravating And Mitigating Factors:

The Referee considered the following Standards for Imposing Lawyer Sanctions prior to recommending discipline:

7.1 Deceptive Conduct or Statements:

Suspension is appropriate when a lawyer 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 legal system.

Respondent's actions and words caused substantial injury to Judge Weiss by implying he acted unlawfully and outside the scope of his authority, and that his rulings were racially motivated. These comments were rapidly disseminated on social media to a nationwide audience. Thereafter, Judge Weiss was subjected to harassment and threats via social media and phone calls. Likewise, Respondent's claims that judges steal justice from black litigants and the justice system as a whole is unfair and biased causes severe injury to the court system and the public by undermining public trust. These assertions were circulated to a wide audience on social media and cannot be removed or retracted.

3.2(b) Aggravating factors.

(3) a pattern of misconduct:

Respondent made numerous false or misleading statements on multiple forums on social media over a period of time. Respondent set forth false and misleading information about the Rop case, the trial judge and the court system with the goal of spreading her message nationwide.

(7) refusal to acknowledge the wrongful nature of the conduct:

Respondent has not taken responsibility or shown remorse for posting widespread criticism of the trial judge, the judiciary and the court system. Instead, she has steadfastly taken the position that she has the right to state her opinions about perceived injustices in the court system.

Additionally, the Court finds Respondent's conduct during the Sanction Hearing to be exceedingly troubling. Judge Weiss provided testimony that he was harassed and received death threats following the social media posts about the Rop case. During his testimony, Respondent and co-counsel, Jerry Girley, were laughing and appeared to be mocking Judge Weiss.

(9) substantial experience in the practice of law:

Respondent was admitted to the Florida Bar in 2010.

3.3(b) Mitigating Factors:

(1) absence of a prior disciplinary record:

Respondent has not previously been disciplined by the Florida Bar.

The Bar is in agreement with this mitigating factor.

(2) absence of dishonest or selfish motive:

The content of the statements and manner in which they were conveyed suggest a dishonest motive

to relay false or misleading information to the general public for a selfish cause.

(5) full and free disclosure to the bar or cooperative attitude toward the proceedings:

Respondent argued that she was cooperative during the proceedings.

(7) character or reputation:

The testimony provided at the trial indicated that Respondent is of good character and has a good reputation. The Bar is in agreement with this mitigating factor.

(11) imposition of other penalties or sanctions:

Respondent argued that she has passed the Bar in New Jersey but is being penalized because she cannot be admitted while this Bar Proceeding is pending.

VI. Recommendation as to Disciplinary Measures to be Applied:

The Referee recommends that respondent be found guilty of misconduct justifying disciplinary measures, and that Respondent be disciplined as follows:

A. 30-day suspension from the practice of law;

B. Complete the Professionalism Workshop;

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)9D), this Court considered the following:

A. Personal History of Respondent:

Age: 39 years of age

Date admitted to the Bar: September 27, 2010.

B. Aggravating Factors:

Prior discipline: no prior discipline.

VIII. Statement of Costs and Manner in Which Costs Should Be Taxed:

The Referee finds that reasonable costs should be awarded to The Florida Bar and a Supplemental Report of costs will be filed once they are determined.

Dated this 23rd day of January, 2024.

/s/ Lisa Herndon
Referee

JERRY GIRLEY REFEREE REPORT, SUPREME COURT OF FLORIDA (JANUARY 23, 2024)

IN THE SUPREME COURT OF FLORIDA
(Before a Referee)

THE FLORIDA BAR,

Complainant,

v.

JERRY GIRLEY,

Respondent.

Supreme Court Case No. SC22-860

The Florida Bar File No. 2021-30,853 (09B)

Before: Hon. LISA HERNDON, Referee.

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 occurred:

On June 30, 2022, The Florida Bar filed its Complaint against Respondent as well as its Request for Admissions in these proceedings. On January 8th and 9th, 2024, a final hearing was held in this matter and

Respondent was found guilty. On January 11, 2024, 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

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. Respondent voluntarily sought admission The Florida Bar and was admitted to the practice of law in the State of Florida on or about April 19, 2007.

Respondent was Plaintiff's counsel in Baiywo Rop v. Adventist Health System, case no. 2017-CA-009484-O, in the Circuit Court of the Ninth Judicial Circuit, in and for Orange County, Florida. Dr. Rop is a black man from Kenya, and his complaint alleged (1) disparate treatment because of race, (2) disparate treatment because of national origin, (3) disparate treatment because of disability, and (4) retaliation. Judge Kevin Weiss presided over the jury trial from May 14, 2021, through May 21, 2021. At the close of plaintiff's case, the trial court granted directed verdicts as to plaintiff's claims of discrimination based on national origin and disability, and reserved ruling on the claims of discrimination based on race and retaliation. On May 21, 2021, the jury found in favor of the plaintiff and awarded compensatory damages in the amount of $2,750,000. The jury did not find that plaintiff was dismissed from the Residency Program

because he engaged in protected activity. On May 28, 2021, the trial court entered an Order on Directed Verdicts and Final Judgment for Defendant, finding that the plaintiff failed to prove a prima facie case of unlawful discrimination based on race under the Florida Civil Rights Act, and entered a directed verdict in favor of defendant on plaintiff's only remaining claim, discrimination on the basis of race. The relevant portions of the trial court's order read as follows:

> On May 21, 2021, the jury returned a verdict responding "Yes", that "Dr. Rop has proved that race was a motivating factor in Florida Hospital's decision to take any adverse employment action against him".
>
> As to whether "Florida Hospital dismissed Baiywo Rop from its Radiology Residency Program action because he engaged in protected activity" the jury responded "No."
>
> The jury awarded compensatory damages to Dr. Rop in the amount of $2,750,000.00 . . .
>
> The Court has carefully considered all of the evidence presented at trial and reviewed the applicable law. The Court finds that the Plaintiff did not prove a prima facie case of unlawful discrimination based on race under the Florida Civil rights Act. Specifically, the Plaintiff failed to proffer reasonable evidence that race was a factor in his termination from the Radiology Residency Program. In addition, the Court expressly finds that the Defendant articulated legitimate, non-discriminatory and non-retaliatory reasons for

> Plaintiff's remediation, probation and dismissal from the Radiology Residency Program. Even if the Court found that the Plaintiff met its initial burden under *McDonnell Douglas Corp. v. Green,* 411 U.S. 792 (1973), Plaintiff similarly failed to show the Defendant's non-discriminatory reason for dismissal was pre-textual.

On May 31, 2021, three days after the trial court's order on directed verdicts, Respondent provided an online interview to "Black Love United", which was accessible to the public. Respondent impugned the integrity of Judge Weiss by making statements indicating that he had abused his power, did not have the authority to grant the directed verdicts and implying that he was biased. Respondent stated when litigating civil rights cases for black people "consistently we have had judges cut the money, find ways to ensure that our clients at the end of the day do not get paid. Now, that's what happened last Friday." He further commented that "the court completely got it wrong" and that "the 2.75 million that was taken by the stroke of a judge's pen, that was a theft", "theft to the community."

Respondent painted a picture that the court system is unfair and discriminatory to black litigants, referring to the court system as a "sham" and a "shell game". He also mischaracterized the civil process, stating there is a "back door" that is "used to undermine black people and their cases", there are "false systems" put in place to "window-dress". Respondent further stated, "the problem is systematic, so this is not just that judge", "the system is structured for you to be subservient. You and people who look like you."

Respondent made statements suggesting that Judges actively make decisions to reduce or prohibit monetary awards for black litigants in discrimination cases. He made references to judges consistently cutting the money and finding ways "to ensure that black litigants do not get paid." He claimed that courts view civil rights cases as a "bother", a "nuisance" and "don't see it as real law." Respondent also suggested that judicial officers are biased to the "detriment of black people" and opined that there will never be "equal standing before the law" for black people.

Respondent said that lawyers representing employers attempt to remove black members of the venire from the jury, indicating that judges consistently "permit them to whiten the jury." Referring to the Rop case, Respondent said, "even in this case, they tried to whiten the jury."

Respondent made disparaging comments about the qualifications of the Judiciary, stating "you don't have to know the law to be the judge" and "there's no minimum requirement that you pass a certain competency test to be a judge."

Respondent disparaged a juror who was selected to serve on the Rop case when he stated, "The way that the black female got on the jury is that the white woman that was selected called in sick on Monday morning. She wasn't sick. She just didn't want to be there."

Respondent made statements suggesting the Fifth District Court of Appeal is biased against black litigants, stating that "there are people who have a certain point of view at the appellate court, the Fifth DCA. There's not a single black person there." He

suggested the Appellate Court has a financial interest, stating "it makes financial sense to them to keep us in a place where we are beholden to them." Respondent stated that the Appellate Court treats civil rights cases as "a waste of their time", "a waste of the court's resources and energy", and as "stepchildren."

Respondent impugned the integrity of a Supreme Court Justice by stating, "there are black people who have credentials . . . who don't even know they're black, who don't even want to identify with being black. There's one on the Supreme Court."

Respondent made these disparaging statements impugning the integrity of Judge Weiss, the Judiciary, and the court system as a whole. without an objectively reasonable factual basis. Respondent made statements he knew were false or with reckless disregard to their truth and veracity. The overall message of Respondent's statements convey that the court system is unfair, biased and does not provide equal justice to everyone. His comments are contrary to honesty and justice and violate his Oath of Admission to the Florida Bar. Furthermore, Respondent mischaracterized the civil process and the rules of procedure. The content of the statements undermines public confidence in the court system and is prejudicial to the administration of justice.

The full content of Respondent's statements during his interview with "Black Love United" are as follows:

> So to get a further understanding–and I like to use metaphors to try to paint the picture. Litigating civil rights for black people and for brown people in a majority white culture is

> like climbing up a hundred-foot cliff with a hundred-pound boulder on your back.
>
> People at the top of the cliff rolling hundred-pound boulders down at you, that you've got to try to avoid as you try to climb.
>
> But in that environment, we have gotten juries to agree with us that discrimination has occurred. But consistently we have had judges cut the money, find ways to ensure that our clients at the end of the day did not get paid. Now, that's what happened last Friday.

Transcript page 12, lines 5-17; TFB Exhibit 5, bates stamp 171.

> First of all, it's hard for us to even get into the courtroom. And once we get there, the first thing that employers will do is that they will attack all of the black people who are there to serve on the jury. And most consistently the judges will permit them to whiten the jury.
>
> So, consistent strategy, from Disney to Florida Hospital, the City of Orlando and Orange County. It happens every single time.
>
> So I have to say that the last act of discrimination that a–a black man will suffer, the last indignity as it relates to discrimination, is that which happens to him or to her at the courthouse.

Transcript page 13, lines 7-20; TFB Exhibit 5, bates stamp 172.

> The jury heard all of that. So the jury absolutely believed–and I only say this, that even in this case, they tried to whiten the jury. There were four white people who served on the jury, one Latino woman, and one black female. The way that the black female got on the jury is that the white woman that was selected called in sick on Monday morning. She wasn't sick. She just didn't want to be there. Called in, and that caused the black person, who was the alternate–to be able to serve on the jury.

Transcript page 15, line 25, page 16, lines1-9; TFB Exhibit 5, bates stamp 174-175.

> We tout ourselves in this country on being a nation that permits people to have a jury of their peers.
>
> And that is what we stress right in our government classes, in our civics classes. But in the end, there's a back door that is–that exists in the system, and that back door is often used to undermine black people and their cases. That's the–that's the much larger message.
>
> Because it's not the first time it's happened. This is about the fourth time where we actually, by climbing that hill that I painted a picture, with the boulder on our backs, got to the top and the jury said yes and the judge said, "No. You get nothing."

Transcript page 21, lines 19-25; page 22, lines 1-7; TFB Exhibit 5, bates stamp 180-181.

> We do not have–I wish I could report to you, those of you that are listening, that I see the day coming when we will have equal standing before the law. But my best guess and my best assessment is that that day is the 12th of never. It's just not in the cards.
>
> Now–now, I'm not saying "So despair." I'm saying that we need to point it out. We need to-we need to–to elevate it. We need to–we need to let the world know that there's a sham going on or there's a shell game going on here.

Transcript page 24, lines 11-20; TFB Exhibit 5, bates stamp 183.

> We cannot put our trust in these false systems that have been put in place to window-dress but deliver us at the end of the day nothing but grief and frustration.

Transcript page 25, lines 23-25; TFB Exhibit 5, bates stamp 184.

> There are people who have a certain point of view at the appellate court, the Fifth DCA, which sits in Daytona. There's not a single black person there.
>
> Okay? So in effect, what we're saying is, to one group of white people, hold this particular person accountable for what he did to these black people. Statistically, it doesn't work out. But we are going to appeal, because that's what we should do. Because the court completely got it wrong.

Transcript page 27, lines 5-14; TFB Exhibit 5, bates stamp 186.

> But at the end of the day, this is something that God will have to address, because it's not in the hearts of those in–in the–in power, and that includes the appellate court, I would say, to right the wrongs that have been committed against us, because it-it makes financial sense to them to keep us in a place where we are beholden to them.
>
> A $2.75 million verdict, they don't want that out there 'cause–now everybody that is being discriminated against is gonna step forward and file a claim, and the courts don't want to hear it.
>
> You know, one of the things that I run into in filing these civil rights cases–which a lot of times the courts treat these as though it's a waste of their time, it's a waste of–of the court's resources and energy. These cases are treated like stepchildren. And in the federal system, 75 percent of the time, you never get to a trial. The judge dismissed the case before it even gets to the trial.

Transcript page 28, lines 10-25, page 29, lines 1-6; TFB Exhibit 5, bates stamp 187-188.

> A long shot in that, because it–certainly we need to be able to–normally the people who–who run against judges are lawyers who are angry with judges for bad decisions that they've made.

> So you can be a judge and you don't know– you don't have to know the law, actually. You just have to have been a lawyer for five years in good standing and maybe you know the governor and he appoints you, or you put your signs out in the front yard and convince enough people to vote for you.
>
> But you don't have to know the law to be the judge. That's crazy. There's no minimum requirement that you pass a certain competency test to be a judge, just be a lawyer for five years.

Transcript page 38, lines 14-25, page 39, lines 1-2; TFB Exhibit 5, bates stamp 197-198.

> But we should find qualified black and brown people who understand the struggle. 'Cause there are black people who have the credentials, who don't understand the struggle, that–who don't even know that they're black, who don't even want to identify with being black. There's one on the supreme court.

Transcript page 41, lines 12-17; TFB Exhibit 5, bates stamp 200.

> The $2.75 million that was taken by the stroke of a judge's pen, that was a theft to – to-

Transcript page 48, lines 7-8; TFB Exhibit 5, bates stamp 207.

> Yes. And that's–it's a theft. When you say it's a theft to the community, that's–in that way,

> Cedric, it is a theft. Honestly, I agree with you on–

Transcript page 51, lines 23-25; TFB Exhibit 5, bates stamp 210.

> Well, the system is structured for you to be subservient. You and people who look like you.

Transcript page 53, lines 12-13; TFB Exhibit 5, bates stamp 212.

> Because we have the same level of animus and hostility. And like I say, I always get the sense, when I bring these civil rights cases, that it's a bother, it's–it's–it's like a nuisance. Some of the-some of them–don't really see that-see it as real law, and that's problematic.
>
> 'Cause whatever they have in their hearts and their minds, they bring it to the bench. We all–we all own (phonetic) some sort of all of our life's experiences, but that all has worked toward the detriment of black people. But giving up is not an option.

Transcript page 55, lines 22-25, page 56, lines 1-10; TFB Exhibit 5, bates stamp 214-215.

Respondent was also interviewed on an online podcast titled "Objections: With Adam Klasfeld", presented by Law & Crime, wherein he stated his opinion that the trial court's ruling in the Rop case was improper and unlawful. Additionally, he further mischaracterized the civil rules of procedure and asserted that the court system is biased and does not

provide equal justice to everyone. In the interview, Respondent made the following statements:

> So Advent Health also asked the court, in advance of the trial, to preclude Dr. Rop from talking about his symptoms that he was experiencing, which he's discussed here today. And we said, "Well, Judge, if we've got to prove that he was a person suffering from a disability, that this was something that the decision-makers weren't aware of, then we need to tell the jury what was experi–"– "what he was experiencing at the time." But the judge precluded him from discussing the things that he discussed, during trial.
>
> So we went into trial with our hand tied behind our back and one leg tied to the other. So we're hobbling into the court on the first day with both legs tied to each other. But obviously, when you get a $2.75 million verdict, the evidence was so compelling, was so convincing, was so one-sided that the jury saw through all of the shenanigans.

Transcript page 13, lines 24-25, page 14, lines 1-16; TFB Exhibit 4, bates stamp 150-151.

> That's just factually incorrect, and it's legally incorrect. But is there a technical mechanism, Adam, that permits the judge to do that? In rare circumstances, there is. But this was not one of those circumstances. And the judge had the opportunity to make that decision before the jury got the trial–before the jury went out to deliberate.

Transcript page 17, lines 24-25, page 18, lines 1-16; TFB Exhibit 4, bates stamp 154-155.

> There are all these land mines along the way that allow the defendant to persuade the Court to dismiss. A motion for summary judgment. A motion to exclude all of your main evidence through motions in limine, right?
>
> And–and they use all these different mechanisms, so by the time you get to trial, you're just a skeleton with one arm tied behind your back, hoping that a-a breeze doesn't come along, because if a breeze blows in the courtroom, it's gonna knock you over. If a fly lands on your head, it's gonna crush you, because your case has been so diminished. Unfairly so. Unjustly so.

Transcript page 18, lines 20-25, page 19, lines 1-5; TFB Exhibit 4, bates stamp 155-156.

> Now, Adam, you also know that everything that is lawful technically is not just. And I don't think that in this case what the judge did-and this is Jerry Girley's opinion–was lawful in terms of what he said was the absence of facts. There's–there's thousands of pages to the contrary to say that there were more than enough facts to get it to the jury.
>
> I don't think that it was lawful, and I don't think that it was just.

Transcript page 19, lines 23-25, page 20, lines 1-6; TFB Exhibit 4, bates stamp 156-157.

III. Recommendations as to Guilt:

The Referee recommends that Respondent be found guilty of violating the following Rules Regulating the Florida Bar:

Oath of Admission to the Florida Bar:

> I do solemnly swear:
>
> I will support the Constitution of the United States and the Constitution of the State of Florida;
>
> I will maintain the respect due to courts of justice and judicial officers;
>
> I will not counsel or maintain any suit or proceedings which shall appear to me to be unjust, nor any defense except such as I believe to be honestly debatable under the law of the land;
>
> I will employ for the purpose of maintaining the causes confided to me such means only as are consistent with truth and honor, and will never seek to mislead the judge or jury by any artifice or false statement of fact or law;
>
> I will maintain the confidence and preserve inviolate the secrets of my clients, and will accept no compensation in connection with their business except from them or with their knowledge and approval;
>
> To opposing parties and their counsel, I pledge fairness, integrity, and civility, not only in court, but also in all written and oral communications;

I will abstain from all offensive personality and advance no fact prejudicial to the honor or reputation of a party or witness, unless required by the justice of the cause with which I am charged;

I will never reject, from any consideration personal to myself, the cause of the defenseless or oppressed, or delay anyone's cause for lucre or malice. So help me God.

Rule 3-4.3 Misconduct and Minor Misconduct

The standards of professional conduct required of members of the bar are not limited to the observance of rules and avoidance of prohibited acts, and the enumeration of certain categories of misconduct as constituting grounds for discipline are not all inclusive nor is the failure to specify any particular act of misconduct be construed as tolerance of the act of misconduct. The commission by a lawyer of any act that is unlawful or contrary to honesty and justice may constitute a cause for discipline whether the act is committed in the course of the lawyer's relations as a lawyer or otherwise, whether committed within Florida or outside the state of Florida, and whether the act is a felony or a misdemeanor.

4-4. Transactions With Persons Other Than Clients Rule 4-4.1 Truthfulness In Statements to Others

In the course of representing a client **a** lawyer shall not knowingly:

(a) make a false statement of material fact or law to a third person;

Rule 4-8.2 Judicial and Legal Officials

(a) Impugning Qualifications and Integrity of Judges or Other Officers.

A lawyer shall not make a statement that the lawyer knows to be false or with reckless disregard as to its truth or falsity concerning the qualifications or integrity of a judge, mediator, arbitrator, adjudicatory officer, public legal officer, juror or member of the venire, or candidate for election or appointment to judicial or legal office.

Rule 4-8.4 Misconduct

A lawyer shall not:

(d) engage in conduct in connection with the practice of law that is prejudicial to the administration of justice, including to knowingly, or through callous indifference, disparage, humiliate, or discriminate against litigants, jurors, witnesses, court personnel, or other lawyers on any basis, including, but not limited to, on account of race, ethnicity, gender, religion, national origin, disability, marital status, sexual orientation, age, socioeconomic status, employment, or physical characteristic.

The online interviews were live-streamed and disseminated via social media to a large audience, and eventually reached a nationwide platform. The overall message to the viewing public is that the Judge presiding over the Rop case was unfair, racist, and exceeded his authority. Furthermore, the message conveyed to the public is that judges and the court system as a whole treat civil rights cases unfairly and are biased against black litigants.

IV. Case Law:

> Ethical rules that prohibit attorneys from making statements impugning the integrity of judges are not to protect judges from unpleasant or unsavory criticism. Rather, such rules are designed to preserve public confidence in the fairness and impartiality of our system of justice. *See Kentucky Bar Ass'n v. Waller,* 929 S.W.2d 181, 183 (Ky.1996) (disrespectful language directed at judge is not sanctioned because "the judge is of such delicate sensibilities as to be unable to withstand the comment, but rather that such language promotes disrespect for the law and for the judicial system"), *cert. denied,* 519 U.S. 1111, 117 S.Ct. 949, 136 L.Ed.2d 837 (1997). Because members of the Bar are viewed by the public as having unique insights into the judicial system, the state's compelling interest in preserving public confidence in the judiciary supports applying a different standard than that applicable in defamation cases. For this reason, we, like many other courts, conclude that in attorney disciplinary proceedings under rule 4–8.2(a), the standard to be applied is whether the attorney had an objectively reasonable factual basis for making the statements (citations omitted).

The Fla. Bar v. Ray, 797 So.2d 556, 558–59 (Fla. 2001).

> we use an objective test, asking if the lawyer had "an objectively reasonable factual basis for making the statements." *Id.* Thus, once the Bar presents evidence establishing that

> a lawyer made statements concerning the qualifications or integrity of a judge, the burden shifts to the respondent to provide an objectively reasonable factual basis for making the statements.

Fla. Bar v. Jacobs, 370 So.3d 876, 883 (Fla. 2023).

> Bar Rule 4-8.2(a), in relevant part, states that a "lawyer shall not make a statement that the lawyer knows to be false or with reckless disregard as to its truth or falsity concerning the qualifications or integrity of a judge." The applicable standard under the rule is not whether the statement is false, but whether the lawyer had an objectively reasonable factual basis for making the statement. *Fla. Bar v. Ray*, 797 So.2d 556, 558-59 (Fla. 2001). The burden is on the lawyer who made the statement to produce a factual basis to support the statement. *Id.* at 558 n.3.

Fla. Bar v. Patterson, 257 So.3d 56, 62 (Fla. 2018).

In *The Florida Bar v. McCallum*, 2019 WL 6873032 (2019), the respondent wrote letters to the Chief Judge of the Fifth Judicial Circuit and General Counsel alleging misconduct by two Circuit Judges. The Bar Referee disagreed with respondent's defenses that (1) the statements qualified as protected speech guaranteed by the First Amendment, and (2) the statements were pure opinion, and found respondent guilty of violating rules 3-4.3, 4-8.2(a), and 4.8.4(d). *Amended Report of the Referee,* at 1617. The Florida Supreme Court approved the Referees findings of fact and recommendations of guilt but disapproved the re-

commendation as to discipline of a public reprimand and ordered respondent be suspended from the practice of law for fifteen days. 2019 WL 6873032 (Fla. 2019).

In *The Florida Bar v. Conway*, 996 So.2d 213 (Fla. 2008), the respondent posted derogatory remarks about a judge on an internet website. The referee found the statements were false or posted with reckless disregard as to their truth or falsity, and that the statements unfairly undermined public confidence in the administration of justice and were prejudicial to the proper administration of justice. *Report of Referee*, at 3-4. *Conway* is distinguishable, in that Respondent's statements were voluminous and impugned the integrity of the trial judge, the judiciary, including the Appellate Court and a Supreme Court Justice, and the judicial system as a whole.

Respondent argued that his statements are protected speech pursuant to the First Amendment, that the statements were his opinion based upon his personal experiences, and that the Bar failed to show that the statements were false or made with reckless disregard to their truth and falsity. However, this Court finds that Respondent's statements are not protected by free speech and Respondent has failed to show that he had a reasonably objective factual basis for making the statements. The Rop case was *per curiam* affirmed by the Fifth District Court of Appeal. Defense counsel argues that the trial court's ruling is still under consideration since Respondent has filed a Motion for Reconsideration with the newly formed Sixth DCA, and therefore, Respondent's comments could be validated if the case were to be overruled. The Court finds no merit to this argument. Therefore, the

Bar has proven by clear and convincing evidence that Respondent has violated his Oath of Admission to the Florida Bar and Rules 3-4.3, 4-4.1(a), 4-8.2(a) and 4-8.4(d).

V. Aggravating and Mitigating Factors:

This Court considered the following Standards for Imposing Lawyer

Sanctions prior to recommending discipline:

7.1 Deceptive Conduct or Statements:

Suspension is appropriate when a lawyer 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 legal system.

Respondent's statements suggesting the trial judge's decisions were racially motivated and that he acted outside the scope of his authority in granting the directed verdicts caused substantial injury to Judge Weiss. Judge Weiss was harassed and received threats, both on social media and by phone. Additionally, Respondent's statements indicating judges and the legal system as a whole treat civil rights cases unfairly, discriminate against black litigants and don't provide equal justice to everyone undermines public trust in the court system and are contrary to the administration of justice.

3.2(b) Aggravating factors:

(3) a pattern of misconduct:

Respondent made numerous false or misleading statements on social media on different forums, and the statements were posted on his firm's website.

(7) refusal to acknowledge the wrongful nature of the conduct:

Respondent has maintained throughout the proceedings that he had the right to make the disrespectful and disparaging statements about the trial judge, the Judiciary and the court system because he is entitled to state his opinion based upon his perceptions. He has not taken responsibility or shown remorse for being openly critical of the judiciary and court system in an unacceptable manner and in violation of the Florida Bar Rules.

(9) substantial experience in the practice of law:

Respondent was admitted to the Florida Bar in 2007 and has been practicing law for sixteen years.

3.3(b) Mitigating Factors:

(1) absence of a prior disciplinary record:

Respondent does not have any prior disciplinary history. The Bar agreed that this is a mitigating factor.

(7) character or reputation:

The testimony presented at trial indicated Respondent is of good character and has a good reputation. The Bar agreed this is a mitigating factor.

VI. Recommendation as to Disciplinary Measures to Be Applied:

The Referee recommends that respondent be found guilty of misconduct justifying disciplinary measures, and that Respondent be disciplined as follows:

A. 30-day suspension from the practice of law;

B. Complete the Professionalism Workshop;

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)9D), this Court considered the following:

A. Personal History of Respondent:

Age: 62 years of age

Date admitted to the Bar: April 19, 2007.

B. Aggravating Factors:

Prior discipline: no prior discipline.

VIII. Statement of Costs and Manner in Which Costs Should Be Taxed:

The Referee finds that reasonable costs should be awarded to The Florida Bar and a Supplemental Report of costs will be filed once they are determined.

Dated this 23rd day of January, 2024.

/s/ Lisa Herndon
Referee

ORDER ON MOTION FOR PROTECTIVE ORDER IN JERRY GIRLEY CASE, SUPREME COURT OF FLORIDA (JANUARY 5, 2024)

IN THE SUPREME COURT OF FLORIDA
(BEFORE A REFEREE)

THE FLORIDA BAR,

Complainant,

v.

JERRY GIRLEY,

Respondent.

Supreme Court Case No. SC22-860

The Florida Bar File No. 2021-30,853 (09B)

Before: Hon. LISA HERNDON, Referee.

ORDER ON MOTION FOR PROTECTIVE ORDER

THIS CAUSE having come before this Referee on The Florida Bar's Motion for Protective Order, and this Referee having been fully advised in the premises finds as follows:

1. The issue in this disciplinary proceeding is whether respondent's conduct as alleged in the bar's Complaint violated the Rules Regulating The Florida Bar.

2. Respondent seeks to call the Honorable Kevin B. Weiss, Circuit Judge in the Ninth Judicial Circuit as a witness at the final hearing. Although judges can be called as fact witnesses, they cannot be compelled to testify to matters concerning their judicial duties nor be questioned about their mental impressions. In short, their orders and rulings speak for themselves. *United States v. Morgan*, 313 U.S. 409, 422 (1941); *State v. Lewis*, 656 So.2d 1248 (Fla. 1994) and *Statewide Grievance Comm v. Burton, 299 Conn*. 405, 416 (2011) (where the court quashed subpoenas because the judges' testimony was either irrelevant or easily proven by testimony transcripts).

3. Likewise, in the instant bar proceedings, the judge's orders also speak for themselves, as do the trial transcripts leading to the entry of those orders. Accordingly, respondent's intention to call Judge Weiss as a witness at the final hearing can only be viewed as an effort to improperly inquire into his thought processes and orders.

Based on the foregoing, it is ORDERED and ADJUDGED that:

The Florida Bar's Motion for Protective Order is GRANTED. DONE and ORDERED in Chambers at the Marion County Judicial Center, 110 N.W. 1st Ave., Ocala, FL 34475-6601, this 5th day of January, 2024.

/s/ Lisa Herndon
Referee

Copies provided via email to:

David John Winker, Counsel for Respondent, 2222 SW 17th Street, Miami, Florida 33145, dwinker@dwrlc.com;

Brooke Lynnette Girley, Co-Counsel for Respondent, 117 East Marks Street, Suite A, Orlando, Florida 32803-3816, brooke@thegirleylawfirm.com;

Ashley Taylor Morrison, Bar Counsel, The Florida Bar, 1000 Legion Place, Suite 1625, Orlando, Florida; amorrison@floridabar.org and ndejesus@floridabar.org;

Carrie Constance Lee, Co-Bar Counsel, The Florida Bar, 1000 Legion Place, Suite 1625, Orlando, Florida, clee@floridabar.org;

Jeffrey Scott Weiss, Counsel for the Honorable Kevin B. Weiss, Circuit Judge, 111 N. Orange Avenue, Ste 2000, Orlando, FL 32801-2327, jweiss@orlandolaw.net; and

Patricia Ann Toro Savitz, Staff Counsel, 651 East Jefferson Street, Tallahassee, Florida 32317, psavitz@floridabar.org.

**ORDER ON STATUS HEARING
IN JERRY GIRLEY CASE
SUPREME COURT OF FLORIDA
(DECEMBER 20, 2022)**

IN THE SUPREME COURT OF FLORIDA
(Before a Referee)

THE FLORIDA BAR,

Complainant,

v.

JERRY GIRLEY,

Respondent.

Supreme Court Case No. SC22-860

The Florida Bar File No. 2021-30,853 (09B)

Before: Hon. LISA HERNDON, Referee.

ORDER ON STATUS HEARING

A status hearing was held on December 6, 2022, with the following parties appearing by Zoom Videoconference: Ashley Taylor Morrison, Bar Counsel, and Carrie Constance Lee, Co-Bar counsel on behalf of The Florida Bar, David J. Winker, Counsel for Respondent, Jerry Girley, Respondent, and Jeffrey S. Weiss, Counsel for Judge Kevin B. Weiss.

The parties reported the status of the case, to date. This Referee then heard Non-Party Circuit Court

Judge Kevin B. Weiss's October 28, 2022 Amended Objections and Motion for Protective Order Regarding Deposition Subpoena as well as the bar's Motion for Protective Order. Having reviewed the Motions, heard the arguments of the parties, and being otherwise fully advised in the premises finds as follows:

1. Respondents may, pursuant to Florida Rule of Civil Procedure 1.310, video the deposition of Judge Kevin B. Weiss. However, the deposition will be subject to the following restrictions:

i. Both the deposition video and transcript (if transcribed) shall remain at all times in the physical possession of the attorneys, the parties and their respective legal staff and shall not be edited or modified except by counsel for any lawful use at trial.

ii. The video, and transcript (if transcribed), or any portions of the video or transcript, shall not be distributed, posted, or discussed on any internet website, blog post, podcast or on any other social media platform or media source. The video and transcript (if transcribed) shall not be disseminated to the general public for any purpose whatsoever.

iii. Upon the termination of these proceedings, including all appeals, upon written notice by counsel, Respondents and their attorney agree to provide counsel for Judge Weiss the original and copies of the video, and transcript (if transcribed), within 20 days of receiving such notice.

iv. These restrictions may be modified by Court Order after a properly noticed hearing, for good cause shown.

2. The deposition of Judge Weiss shall be limited in scope to matters that could be properly addressed at the Sanction Hearing.

3. Judge Weiss' prior representation is not relevant to the above proceedings.

Based upon the foregoing, it is ORDERED AND ADJUDGED: Non-Party Circuit Court Judge Kevin B. Weiss's October 28, 2022 Amended Objections and Motion for Protective Order Regarding Deposition Subpoena is GRANTED IN PART, subject to the limitations set forth in paragraph 1(i-iv) above. The bar's Motion for Protective Order is GRANTED. It is further ORDERED that:

1. All pretrial motions shall be filed on or before January 20, 2023.

2. A hearing on all outstanding pretrial motions shall be held February 3, 2023, at 9:00 a.m. via the Referee's courtroom Zoom link below.

3. The Final Hearing is set for March 14, 2023 and March 15, 2023, commencing at 9:00 a.m., at the Thomas S. Kirk Juvenile Justice Center, 2000 East Michigan Street, Orlando, Florida 32806.

4. A Sanction Hearing, if necessary, is set for March 17, 2023 commencing at 1:00 p.m. at the Thomas S. Kirk Juvenile Justice Center, 2000 East Michigan Street, Orlando, Florida 32806.

DONE and ORDERED in Chambers at the Marion County Judicial Center, 110 NW 1st Ave., Ocala, FL 34475-6601, this 20th day of December, 2022.

/s/ Lisa Herndon
Referee

Copies provided via email to:

David J. Winker, Counsel for Respondent, at dwinker@dwrlc.com;

Ashley Taylor Morrison, Bar Counsel, amorrison@floridabar.org, orlandooffice@floridabar.org, ndejesus@floridabar.org;

Carrie Constance Lee, Co-Bar Counsel, at clee@floridabar.org;

Jeffrey S. Weiss, Counsel for Judge Kevin B. Weiss, at jweiss@orlandolaw.net, dsambol@orlandolaw.net, dguzman@orlandolaw.net, and

Patricia Ann Toro Savitz, Staff Counsel, at psavitz@floridabar.org.

ZOOM LINK for Feb 3, 2023 hearing:

Meeting URL: https://zoom.us/j/97584045560?pwd=VlNwSmR2NlJRS013WlVROS9vVnVydz09

Meeting ID: 975 8404 5560
Passcode: 429068

BROOKE GIRLEY MOTION FOR REHEARING, SUPREME COURT OF FLORIDA (JULY 10, 2024)

IN THE SUPREME COURT OF FLORIDA

THE FLORIDA BAR,

Complainant,

v.

BROOKE GIRLEY,

Respondent.

Supreme Court Case No. SC22-859

The Florida Bar File No. 2021-30,854 (09B)

MOTION FOR REHEARING

COMES NOW, the Respondent, pursuant to Rule 9.330(a)(2)(A) of the Florida Rules of Appellate Procedure, and hereby respectfully moves this Honorable Court for rehearing of the Court's June 26, 2025, opinion and in support states as follows:

APPLICABLE LEGAL STANDARD FOR REHEARING

Florida Rule of Appellate Procedure 9.330(a)(2)(A) establishes that a motion for rehearing "shall state with particularity the points of law or fact that, in the opinion of the movant, the court has overlooked or

misapprehended in its decision" and "shall not present issues not previously raised in the proceeding." Fla. R. App. P. 9.330(a)(2)(A). The purpose of a motion for rehearing is not to reargue points previously presented or to express mere disagreement with the Court's resolution of the issues on appeal, but rather to direct the Court's attention to specific matters it has overlooked or misapprehended. *See Aquasol Condo. Ass'n v. HSBC Bank USA*, 376 So.3d 58, 63 (Fla. 3d DCA 2018). The privilege to seek rehearing is not "an open invitation for an unhappy litigant or attorney to reargue the same points previously presented, or to discuss the bottomless depth of the displeasure that one might feel toward this judicial body as a result of having unsuccessfully sought appellate relief." *Ayala v. Gonzalez*, 984 So.2d 523, 526 (Fla. 5th DCA 2008). As explained in *Charles*, a motion for rehearing "must address some error or omission in the resolution of an issue previously presented in the main argument." *Charles v. State*, 204 So.3d 63, 68 (Fla. 4th 2016) (quoting Phillip [sic] J. Padovano, Florida Appellate Practice § 21:2 (2015)).

However, rehearing is also appropriate under Rule 9.330(a) if the original decision "misapprehended" some point of law or fact. *See Charles v. State*, 204 So.3d 63, 68 (Fla. 4th 2016); *see also Gretna Racing, LLC v. Dep't of Bus. & Prof'l Regulation, Div. of Pari-Mutuel Wagering*, 178 So.3d 15, 31 n. 11 (Fla. 1st DCA 2015) (noting that ""Misapprehend" or "misapprehended" is not defined in the Florida Rules of Appellate Procedure or in *Black's Law Dictionary*. "Misapprehend" is defined by the *Oxford English Dictionary* (2nd ed. 1989) as "to apprehend wrongly; not to understand

rightly; to attach a wrong meaning to." The Merriam-Webster

Online Dictionary defines misapprehend as "to apprehend wrongly: misunderstand." Merriam-Webster, http://www.merriam-webster.com (last visited August 13, 2015)) (Bilbrey, J., concurring). This provision affords "greater leeway" in granting rehearing. *Id.*

Accordingly, this motion identifies specific points of law and fact that this Court has overlooked or misapprehended in its June 26, 2025, opinion as detailed below.

ARGUMENT AND CITATIONS TO AUTHORITIES

I. In concluding that the sanction of suspension is warranted in this instance, the Court misapprehended the applicable competent substantial evidence standard and the facts when it accepted the Referee's findings of guilt and found a causal relationship between Respondent's sanctionable statements, the erosion of the public's confidence in the court, and Judge Weiss' testimony regarding the death threats he received and the security that he needed as a result thereof.

This Court found that suspension was the presumptive sanction for Respondents based upon Standard 7.1(b): acknowledging that "[s]uspension is appropriate when a lawyer knowingly 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." *See* Opinion at p. 20. In applying that standard, this Court accepted as fact

that "Respondents' statements eroded the public's confidence in the legal system and even led to death threats directed at Judge Weiss." *See* Opinion at p. 21. This Court ultimately concluded that: "Suspension is appropriate based on these facts." *See* Opinion at p. 21.

However, as this Court has acknowledged in the past, "the competent substantial evidence rule is not satisfied by evidence which merely creates a suspicion, or which gives equal support to inconsistent inferences." *See Florida Rate Conference v. Florida R. & P. U. Com.*, 108 So.2d 601, 607 (Fla. 1959). "Surmise, conjecture or speculation have been held not to be substantial evidence." *Id.* Moreover, the pyramiding of inferences is not permitted in quasi-judicial administrative proceedings such as this. *See Tropical Park, Inc. v. Ratliff*, 97 So.2d 169, 177 (Fla. 1957). This Court has made it abundantly clear that "[w]e know of no rule where circumstantial evidence is relied upon which permits guess predicated upon guess or conjecture upon conjecture." *Id.*

In the case *sub judice*, per Standard 7.1(b) the presumptive sanction of suspension is not implicated unless the attorney misconduct "causes" injury or potential injury to a client, the public, or the legal system. To conclude as fact that the death threats about which Judge Weiss testified were "caused" by the Respondents' statements is purely conjecture or speculation. There is no evidence tending to establish who made the death threats or that the person who did so heard the statements made by the Respondents and acted in that manner because of them. This Court and the Referee have impermissibly surmised that there was a "causal" connection between the Respond-

ents' statements and the death threats; and it further did so by impermissibly pyramiding inferences.

The Referee found that "Judge Weiss provided testimony that he was harassed and received death threats *following* the social media posts about the Rop case." *See* Referee's Report on Brooke Girley at p. 16. Judge Weiss presided over hundreds, if not thousands, of cases at the time. To conclude that the harassment and death threats were "caused" by the Respondent's statements based upon the limited information provided by Judge Weiss is the classic definition of conjecture which does not meet the burden of substantial evidence.

Judge Weiss specifically testified as follows: "[a]nd then subsequent to that, when somebody called me an antisemitic slur and said that I should be killed, I found that to be a threat towards me, and the Chief, as well, as security here at the courthouse, were concerned that my safety was an issue." *See* Transcript of Hearing Before Judge Herndon on January 11, 2024, at p. 25, lns. 13-18. Judge Weiss clearly testified that "somebody" called him an antisemitic slur and said that he should be killed. Judge Weiss did not identify who made the statement nor did he testify that the individual said anything from which one could conclude that the call was related to the Rop case. Judge Weiss surmised that the call was related to the Rop case, an inference that doesn't meet the burden of substantial evidence. But Judge Weiss' testimony gives equal support to an inconsistent inference, because the caller expressed antisemitic sentiment which was never expressed in the statements made by Respondent, so it is equally as plausible that Judge Weiss was targeted by a member of one of the many

antisemitic groups proliferating in the United States. Accordingly, the competent substantial evidence burden has not been met on this point.

In short, the Referee and this Court first inferred that the unidentified caller was calling Judge Weiss about the Rop case, then inferred that the unidentified caller was a member of the audience to Respondent's statements and finally inferred that the unidentified caller acted based upon those statements. This pyramiding of inferences is impermissible, and it amounts to conjecture and speculation which does not meet the competent substantial evidence standard. Accordingly, the record evidence does not support the presumption of a suspension.

II. This Court's acceptance of the Referee's finding that Respondent's statements "were false or made with reckless disregard to their truth or falsity with no objectively reasonable factual basis" misapprehends and or overlooks what must be established to find a violation of Rule 4-8.2(a) so as not to run afoul of the Respondent's First Amendment rights.

The express language of Rule 4-8.2 provides in pertinent part that: "A lawyer shall not make a statement that the lawyer knows to be false or with reckless disregard as to its truth or falsity concerning the qualifications or integrity of a judge. . . . " *See* R. Reg. Fla. Bar 4-8.2(a). And while the Referee expressly found that Respondent's statements were "false" and or "grossly inaccurate as to the substance and content of the law", the Referee did not conclude that the Respondent "knew" the statements to be false. *See* Referee's Report on Brooke Girley at p. 9. Thus, a vio-

lation of the first prong of the rule was not established. Further, in concluding that Respondent's statements were "made with reckless disregard to their truth or falsity with no objectively reasonable factual basis", the Referee did not find that Respondent in fact entertained serious doubts as to the truth of her statements. Therefore, evidence or findings of the Respondent's "reckless disregard as to its truth or falsity" component was never met.

As the U.S. Supreme Court has indicated, albeit in the context of defamation cases involving public officials, to satisfy the "reckless disregard" standard "[t]here must be sufficient evidence to permit the conclusion that the defendant in fact entertained serious doubts as to the truth of his publication." *Harte-Hanks Communications v. Connaughton*, 491 U.S. 657, 688 (1989) (citing *St. Amant v. Thompson*, 390 U.S. 727, 731 (1968)). The standard is a subjective one-there must be sufficient evidence to permit the conclusion that the defendant actually had a "high degree of awareness of . . . probable falsity." *Harte-Hanks Communications v. Connaughton*, 491 U.S. 657, 688 (1989) (citing *Garrison v. Louisiana*, 379 U.S. 64, 74 (1964)). As a result, failure to investigate before publishing, even when a reasonably prudent person would have done so, is not sufficient to establish reckless disregard. *See Harte-Hanks Communications v. Connaughton*, 491 U.S. 657, 688 (1989) (citing *St. Amant v. Thompson*, 390 U.S. 727, 733 (1968)). In a case such as this involving the reporting of a third party's allegations, "recklessness may be found where there are obvious reasons to doubt the veracity of the informant or the accuracy of his reports." *See Harte-Hanks Communications v. Connaughton*, 491 U.S.

657, 688 (1989) (citing *St. Amant v. Thompson*, 390 U.S. 727, 732 (1968)). In this instance Respondent was not involved in the case before Judge Weiss; and she had no "obvious" reasons to doubt her father Jerry Girley, Esq.' s remarks nor those of the third party that she retweeted. There were no findings by the Referee in this regard, nor was she even questioned in a manner that would elicit testimony to support such findings. The Respondent had no duty to investigate even if a reasonably prudent person would have done so; and there is no evidence from which to conclude that Respondent had a "high degree of awareness of the probable falsity" of the statements at issue.

As the U.S. Supreme Court notes: "[i]t may be said that such a test puts a premium on ignorance, encourages the irresponsible publisher not to inquire, and permits the issue to be determined by the defendant's testimony that he published the statement in good faith and unaware of its probable falsity." *St. Amant v. Thompson*, 390 U.S. 727, 731 (1968). "But to insure the ascertainment and publication of the truth about public affairs, it is essential that the First Amendment protect some erroneous publications as well as true ones. We adhere to this view and to the line which our cases have drawn between false communications which are protected and those which are not." *St. Amant v. Thompson*, 390 U.S. 727, 732 (1968). This Court has misapprehended the reckless disregard standard in Rule 4-8.2(a) and overlooked that the Referee made no specific findings that Respondent "knew" her statements were false, entertained serious doubts as to the truth of her statements nor had a high degree of awareness of the probable falsity of her statements.

WHEREFORE, Respondent prays for a rehearing of this matter.

JERRY GIRLEY MOTION FOR REHEARING, SUPREME COURT OF FLORIDA (JULY 10, 2024)

IN THE SUPREME COURT OF FLORIDA

THE FLORIDA BAR,

Complainant,

v.

JERRY GIRLEY,

Respondent.

Supreme Court Case No. SC22-860

The Florida Bar File No. 2021-30,853 (09B)

MOTION FOR REHEARING

COMES NOW, the Respondent, pursuant to Rule 9.330(a)(2)(A) of the Florida Rules of Appellate Procedure, and hereby respectfully moves this Honorable Court for rehearing of the Court's June 26, 2025, opinion and in support states as follows:

APPLICABLE LEGAL STANDARD FOR REHEARING

Florida Rule of Appellate Procedure 9.330(a)(2)(A) establishes that a motion for rehearing "shall state with particularity the points of law or fact that, in the opinion of the movant, the court has overlooked or

misapprehended in its decision" and "shall not present issues not previously raised in the proceeding." Fla. R. App. P. 9.330(a)(2)(A). The purpose of a motion for rehearing is not to reargue points previously presented or to express mere disagreement with the Court's resolution of the issues on appeal, but rather to direct the Court's attention to specific matters it has overlooked or misapprehended. *See Aquasol Condo. Ass'n v. HSBC Bank USA*, 376 So.3d 58, 63 (Fla. 3d DCA 2018). The privilege to seek rehearing is not "an open invitation for an unhappy litigant or attorney to reargue the same points previously presented, or to discuss the bottomless depth of the displeasure that one might feel toward this judicial body as a result of having unsuccessfully sought appellate relief." *Ayala v. Gonzalez*, 984 So.2d 523, 526 (Fla. 5th DCA 2008). As explained in *Charles*, a motion for rehearing "must address some error or omission in the resolution of an issue previously presented in the main argument." *Charles v. State*, 204 So.3d 63, 68 (Fla. 4th 2016) (quoting Phillip [sic] J. Padovano, Florida Appellate Practice § 21:2 (2015)).

However, rehearing is also appropriate under Rule 9.330(a) if the original decision "misapprehended" some point of law or fact. *See Charles v. State*, 204 So.3d 63, 68 (Fla. 4th 2016); *see also Gretna Racing, LLC v. Dep't of Bus. & Prof'l Regulation, Div. of Pari-Mutuel Wagering*, 178 So.3d 15, 31 n. 11 (Fla. 1st DCA 2015) (noting that ""Misapprehend" or "misapprehended" is not defined in the Florida Rules of Appellate Procedure or in *Black's Law Dictionary*. "Misapprehend" is defined by the *Oxford English Dictionary* (2nd ed. 1989) as "to apprehend wrongly; not to understand rightly; to attach a wrong meaning to." The Merriam-

Webster Online Dictionary defines misapprehend as "to apprehend wrongly: misunderstand." Merriam-Webster, http://www.merriam-webster.com (last visited August 13, 2015)) (Bilbrey, J., concurring). This provision affords "greater leeway" in granting rehearing. *Id.*

Accordingly, this motion identifies specific points of law and fact that this Court has overlooked or misapprehended in its June 26, 2025, opinion as detailed below.

ARGUMENT AND CITATIONS TO AUTHORITIES

I. In concluding that the sanction of suspension is warranted in this instance, the Court misapprehended the applicable competent substantial evidence standard and the facts when it accepted the Referee's findings of guilt and found a causal relationship between Respondent's sanctionable statements, the erosion of the public's confidence in the court, and Judge Weiss' testimony regarding the death threats he received and the security that he needed as a result thereof.

This Court found that suspension was the presumptive sanction for Respondent based upon Standard 7.1(b): acknowledging that "[s]uspension is appropriate when a lawyer knowingly 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." *See* Opinion at p. 20. In applying that standard, this Court accepted as fact that "Respondents' statements eroded the public's confidence in the legal system and even led to death

threats directed at Judge Weiss." *See* Opinion at p. 21. This Court ultimately concluded that: "Suspension is appropriate based on these facts." *See* Opinion at p. 21.

However, as this Court has acknowledged in the past, "the competent substantial evidence rule is not satisfied by evidence which merely creates a suspicion, or which gives equal support to inconsistent inferences." *See Florida Rate Conference v. Florida R. & P. U. Com.*, 108 So.2d 601, 607 (Fla. 1959). "Surmise, conjecture or speculation have been held not to be substantial evidence." *Id*. Moreover, the pyramiding of inferences is not permitted in quasi-judicial administrative proceedings such as this. *See Tropical Park, Inc. v. Ratliff*, 97 So.2d 169, 177 (Fla. 1957). This Court has made it abundantly clear that "[w]e know of no rule where circumstantial evidence is relied upon which permits guess predicated upon guess or conjecture upon conjecture." *Id*.

In the case *sub judice*, per Standard 7.1(b) the presumptive sanction of suspension is not implicated unless the attorney misconduct "causes" injury or potential injury to a client, the public, or the legal system. To conclude as fact that the death threats about which Judge Weiss testified were "caused" by the Respondents' statements is purely conjecture or speculation. There is no evidence tending to establish who made the death threats or that the person who did so heard the statements made by the Respondents and acted in that manner because of them. This Court and the Referee have impermissibly surmised that there was a "causal" connection between the Respondents' statements and the death threats; and it further did so by impermissibly pyramiding inferences.

The Referee found that "Judge Weiss provided testimony that he was harassed and received death threats *following* the social media posts about the Rop case." *See* Referee's Report on Jerry Girley at p. 20. Judge Weiss presided over hundreds, if not thousands, of cases at the time. To conclude that the harassment and death threats were "caused" by the Respondent's statements based upon the limited information provided by Judge Weiss is the classic definition of conjecture which does not meet the burden of substantial evidence.

Judge Weiss specifically testified as follows: "[a]nd then subsequent to that, when somebody called me an antisemitic slur and said that I should be killed, I found that to be a threat towards me, and the Chief, as well, as security here at the courthouse, were concerned that my safety was an issue." *See* Transcript of Hearing Before Judge Herndon on January 11, 2024, at p. 25, lns. 13-18. Judge Weiss clearly testified that "somebody" called him an antisemitic slur and said that he should be killed. Judge Weiss did not identify who made the statement nor did he testify that the individual said anything from which one could conclude that the call was related to the Rop case. Judge Weiss surmised that the call was related to the Rop case, an inference that doesn't meet the burden of substantial evidence. But Judge Weiss' testimony gives equal support to an inconsistent inference, because the caller expressed antisemitic sentiment which was never expressed in the statements made by Respondent, so it is equally as plausible that Judge Weiss was targeted by a member of one of the many antisemitic groups proliferating in the United States.

Accordingly, the competent substantial evidence burden has not been met on this point.

In short, the Referee and this Court first inferred that the unidentified caller was calling Judge Weiss about the Rop case, then inferred that the unidentified caller was a member of the audience to Respondent's statements and finally inferred that the unidentified caller acted based upon those statements. This pyramiding of inferences is impermissible, and it amounts to conjecture and speculation which does not meet the competent substantial evidence standard. Accordingly, the record evidence does not support the presumption of a suspension.

II. This Court's acceptance of the Referee's finding that Respondent's statements "were false or made with reckless disregard to their truth or falsity with no objectively reasonable factual basis" misapprehends and or overlooks what must be established to find a violation of Rule 4-8.2(a) so as not to run afoul of the Respondent's First Amendment rights.

The express language of Rule 4-8.2 provides in pertinent part that: "A lawyer shall not make a statement that the lawyer knows to be false or with reckless disregard as to its truth or falsity concerning the qualifications or integrity of a judge. . . . " *See* R. Reg. Fla. Bar 4-8.2(a). And while the Referee expressly found that Respondent's statements were "false" and or "grossly inaccurate as to the substance and content of the law", the Referee did not conclude that the Respondent "knew" the statements to be false. *See e.g.* Referee's Report on Jerry Girley at p. 6. Thus, a violation of the first prong of the rule was not established.

Further, in concluding that Respondent's statements were "made with reckless disregard to their truth or falsity with no objectively reasonable factual basis", the Referee did not find that Respondent in fact entertained serious doubts as to the truth of his statements. Therefore, evidence or findings of the Respondent's "reckless disregard as to its truth or falsity" component was never met.

As the U.S. Supreme Court has indicated, albeit in the context of defamation cases involving public officials, to satisfy the "reckless disregard" standard "[t]here must be sufficient evidence to permit the conclusion that the defendant in fact entertained serious doubts as to the truth of his publication." *Harte-Hanks Communications v. Connaughton*, 491 U.S. 657, 688 (1989) (citing *St. Amant v. Thompson*, 390 U.S. 727, 731 (1968)). The standard is a subjective one-there must be sufficient evidence to permit the conclusion that the defendant actually had a "high degree of awareness of . . . probable falsity." *Harte-Hanks Communications v. Connaughton*, 491 U.S. 657, 688 (1989) (citing *Garrison v. Louisiana*, 379 U.S. 64, 74 (1964)). As a result, failure to investigate before publishing, even when a reasonably prudent person would have done so, is not sufficient to establish reckless disregard. *See Harte-Hanks Communications v. Connaughton*, 491 U.S. 657, 688 (1989) (citing *St. Amant v. Thompson*, 390 U.S. 727, 733 (1968)). In a case such as this involving the reporting of a third party's allegations, "recklessness may be found where there are obvious reasons to doubt the veracity of the informant or the accuracy of his reports." *See Harte-Hanks Communications v. Connaughton*, 491 U.S. 657, 688 (1989) (citing *St. Amant v. Thompson*, 390

U.S. 727, 732 (1968)). In this instance Respondent made comments stating his opinion based on his experience as a practicing civil rights attorney. There were no findings by the Referee in that any of Respondent's statements were false or had a high probability falsity, nor was he even questioned in a manner that would elicit testimony to support such findings. There is no evidence from which to conclude that Respondent had a "high degree of awareness of the probable falsity" of the statements at issue.

As the U.S. Supreme Court notes: "[i]t may be said that such a test puts a premium on ignorance, encourages the irresponsible publisher not to inquire, and permits the issue to be determined by the defendant's testimony that he published the statement in good faith and unaware of its probable falsity." *St. Amant v. Thompson*, 390 U.S. 727, 731 (1968). "But to insure the ascertainment and publication of the truth about public affairs, it is essential that the First Amendment protect some erroneous publications as well as true ones. We adhere to this view and to the line which our cases have drawn between false communications which are protected and those which are not." *St. Amant v. Thompson*, 390 U.S. 727, 732 (1968). This Court has misapprehended the reckless disregard standard in Rule 4-8.2(a) and overlooked that the Referee made no specific findings that Respondent "knew" his statements were false, entertained serious doubts as to the truth of his statements nor had a high degree of awareness of the probable falsity of her statements.

WHEREFORE, Respondent prays for a rehearing of this matter.

COMPLAINT [AGAINST BROOKE GIRLEY], SUPREME COURT OF FLORIDA (JUNE 30, 2022)

IN THE SUPREME COURT OF FLORIDA

THE FLORIDA BAR,

Complainant,

v.

BROOKE LYNNETTE GIRLEY,

Respondent.

Supreme Court Case No. SC-

The Florida Bar File No. 2021-30,854 (09B)

COMPLAINT

The Florida Bar, complainant, files this Complaint against Brooke Lynnette Girley, respondent, pursuant to the Rules Regulating The Florida Bar and alleges:

1. Respondent is and was at all times mentioned herein a member of The Florida Bar admitted on September 27, 2010 and is subject to the jurisdiction of the Supreme Court of Florida.

2. Respondent practiced law in Orange County, Florida, at all times material.

3. The Ninth Judicial Circuit Grievance Committee "B" found probable cause to file this complaint

pursuant to Rule 3-7.4, of the Rules Regulating The Florida Bar, and this complaint has been approved by the presiding member of that committee.

4. Jerry Girley is the founding and managing partner of The Girley Law Firm, PA. Respondent is the daughter of Mr. Girley and holds an "Of Counsel" position with The Girley Law Firm, PA.

5. Mr. Girley represented the plaintiff in *Baiywo Rop vs. Adventist Health System*, Case No. 2017-CA-009484-O, in the Circuit Court of the Ninth Judicial Circuit in and for Orange County, Florida.

6. From May 14, 2021 through May 21, 2021, a jury trial was conducted in the matter.

7. The trial court granted a directed verdict against the plaintiff regarding two of the plaintiff's claims, 1) the claim alleging discrimination on the basis of national origin and 2) the claim of discrimination on the basis of disability.

8. The trial court reserved ruling as to the defendant's motions for directed verdicts related to the remaining two claims (retaliation and race).

9. On May 21, 2021, a verdict was reached, and the jury awarded compensatory damages to plaintiff in the amount of $2,750,000.00.

10. The trial court entered an Order on Directed Verdicts and Final Judgment for Defendant on May 28, 2021, finding that the plaintiff did not prove a prima facie case of unlawful discrimination based on race under the Florida Civil Rights Act and entering a directed verdict in favor of the defendant on the only remaining claim, the plaintiff's claim for discrimination on the basis of race. Thus, the trial court entered

a Final Judgment in favor of the Defendant as to all claims.

11. The same day that the order was entered, respondent retweeted posts from The Casual Brian stating:

> Today in Orlando Florida a white judge stole justice from a black doctor. After being awarded by a jury $2.75 million for discrimination a judge reversed their verdict. We need help getting this out!
>
> The Girley Law Firm won a case against @AdventHealth where a jury found that they had discriminated against a black doctor and awarded him $2.75 Million. Today a white judge stole justice from him. This needs attention!

12. Respondent made statements on social media suggesting that the court system does not provide equal justice to all.

13. Respondent also suggested, through her social media posts, that the trial court's ruling concerning a directed verdict and final judgment in *Baiywo Rop vs. Adventist Health System* was improper.

14. For example, in online posts on May 29, 2021, respondent wrote:

> The Dres [*sic*] Scott rule still applies in 2021: "A black man has no rights which a white man is bound to respect." Y'all, we can't let this stand!

> Even when we win, it only takes one white judge to reverse our victory . . . This is an injustice and cannot stand.
>
> This is an injustice. One judge shouldn't be able to overturn a jury verdict!

15. In various online comments, respondent stated:

> "I don't believe he had the authority to make this ruling and we need to hold him accountable."
>
> "The court system is a sham!"
>
> "Hey Brandon! Here is an event page created for the rally. This may be the first of other such rallies to bring attention to fact that judges are allowed to overturned jury verdicts and erode our civil rights."

16. By reason of the foregoing, respondent has violated the following Rules Regulating The Florida Bar:

(a) Oath of Admission to The Florida Bar: "I do solemnly swear: I will support the Constitution of the United States and the Constitution of the State of Florida; I will maintain the respect due to courts of justice and judicial officers; I will not counsel or maintain any suit or proceedings which shall appear to me to be unjust, nor any defense except such as I believe to be honestly debatable under the law of the land; I will employ for the purpose of maintaining the causes confided to me such means only as are consistent with truth and honor, and will never

seek to mislead the judge or jury by any artifice or false statement of fact or law; I will maintain the confidence and preserve inviolate the secrets of my clients, and will accept no compensation in connection with their business except from them or with their knowledge and approval; To opposing parties and their counsel, I pledge fairness, integrity, and civility, not only in court, but also in all written and oral communications; I will abstain from all offensive personality and advance no fact prejudicial to the honor or reputation of a party or witness, unless required by the justice of the cause with which I am charged; I will never reject, from any consideration personal to myself, the cause of the defenseless or oppressed, or delay anyone's cause for lucre or malice. So help me God."

(b) 3-4.3 The standards of professional conduct required of members of the bar are not limited to the observance of rules and avoidance of prohibited acts, and the enumeration of certain categories of misconduct as constituting grounds for discipline are not all-inclusive nor is the failure to specify any particular act of misconduct be construed as tolerance of the act of misconduct. The commission by a lawyer of any act that is unlawful or contrary to honesty and justice may constitute a cause for discipline whether the act is committed in the course of the lawyer's relations as a lawyer or otherwise, whether committed within Florida or outside the state of Florida, and

whether the act is a felony or a misdemeanor.

(c) 4-8.2(a) A lawyer shall not make a statement that the lawyer knows to be false or with reckless disregard as to its truth or falsity concerning the qualifications or integrity of a judge, mediator, arbitrator, adjudicatory officer, public legal officer, juror or member of the venire, or candidate for election or appointment to judicial or legal office.

WHEREFORE, The Florida Bar prays respondent will be appropriately disciplined in accordance with the provisions of the Rules Regulating The Florida Bar as amended.

/s/ Ashley Taylor Morrison
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COMPLAINT [AGAINST JERRY GIRLEY], SUPREME COURT OF FLORIDA (JUNE 30, 2022)

IN THE SUPREME COURT OF FLORIDA

THE FLORIDA BAR,

Complainant,

v.

JERRY GIRLEY,

Respondent.

Supreme Court Case No. SC-

The Florida Bar File No. 2021-30,853 (09B)

COMPLAINT

The Florida Bar, complainant, files this Complaint against Jerry Girley, respondent, pursuant to the Rules Regulating The Florida Bar and alleges:

1. Respondent is and was at all times mentioned herein a member of The Florida Bar admitted on April 19, 2007 and is subject to the jurisdiction of the Supreme Court of Florida.

2. Respondent practiced law in Orange County, Florida, at all times material.

3. The Ninth Judicial Circuit Grievance Committee "B" found probable cause to file this complaint

pursuant to Rule 3-7.4, of the Rules Regulating The Florida Bar, and this complaint has been approved by the presiding member of that committee.

4. Respondent represented the plaintiff in *Baiywo Rop vs. Adventist Health System,* Case No. 2017-CA-009484-O, in the Circuit Court of the Ninth Judicial Circuit in and for Orange County, Florida.

5. From May 14, 2021 through May 21, 2021, a jury trial was conducted in the matter.

6. The trial court granted a directed verdict against the plaintiff regarding two of the plaintiff's claims, 1) the claim alleging discrimination on the basis of national origin and 2) the claim of discrimination on the basis of disability.

7. The trial court reserved ruling as to the defendant's motions for directed verdicts related to the remaining two claims (retaliation and race).

8. On May 21, 2021, a verdict was reached, and the jury awarded compensatory damages to plaintiff in the amount of $2,750,000.00.

9. The trial court entered an Order on Directed Verdicts and Final Judgment for Defendant on May 28, 2021, finding that the plaintiff did not prove a prima facie case of unlawful discrimination based on race under the Florida Civil Rights Act and entering a directed verdict in favor of the defendant on the only remaining claim, the plaintiff's claim for discrimination on the basis of race. Thus, the trial court entered a Final Judgment in favor of the Defendant as to all claims.

10. Three days later, respondent participated in an online interview with the hosts from an organization called Black Love United.

11. Respondent's interview with Black Love United was viewable and freely accessible to the public.

12. In the interview with Black Love United, respondent discussed the case of *Baiywo Rop vs. Adventist Health System* and suggested that the trial court's ruling on the directed verdicts was improper and that the court system does not provide equal justice to all.

13. For example, during the interview, respondent made the following statements:

> Litigating civil rights for black people and for brown people in a majority white culture is like climbing up a hundred-foot cliff with a hundred-pound boulder on your back.
>
> People at the top of the cliff rolling hundred-pound boulders down at you, that you've got to try to avoid as you try to climb. But in that environment, we have gotten juries to agree with us that discrimination has occurred. But consistently we have had judges cut the money, find ways to ensure that our clients at the end of the day did not get paid. Now that's what happened last Friday.

14. Respondent also, in the interview, inferred that the Fifth District Court of Appeal does not provide equal justice to all.

15. For example, respondent stated:

> There are people who have a certain point of view at the appellate court, the Fifth DCA, which sits in Daytona. There's not a single black person there.
>
> Okay? So in effect, what we're saying is, to one group of white people, hold this particular person accountable for what he did to those black people.

Respondent later asserted in the interview:

> But at the end of the day, this is something that God will have to address, because it's not in the hearts of those in—in the—in power, and that includes the appellate court, I would say, to right the wrongs that have been committed against us, because it—it makes financial sense to them to keep us in a place where we are beholden to them.

16. Respondent also mischaracterized the civil court process, procedural mechanisms, and rules of evidence.

17. In the interview, respondent discussed a "consistent strategy" whereby opposing counsel for the employers engage in race-based discrimination during jury selection which is permitted by the trial court. In discussing how this strategy is implemented, respondent stated that " . . . most consistently the judges will permit them to whiten the jury."

18. Respondent also made a misrepresentation regarding one of the jurors in the case and the reasons that the juror did not appear for jury duty.

19. Respondent stated, "The way that the black female got on the jury is that the white woman that

was selected called in sick on Monday morning. She wasn't sick. She just didn't want to be there."

20. Respondent later attempted to clarify or correct his misstatement regarding the reason for the juror's absence.

21. Respondent participated in another interview entitled Objections: With Adam Klasfeld, presented by Law & Crime which was freely accessible to the public.

22. In this interview with Mr. Klasfeld, respondent also discussed his belief that the trial court made an improper ruling in *Baiywo Rop vs. Adventist Health System*.

23. Respondent went on further in the interview to mischaracterize the civil rules of procedure and the fairness of the judicial process.

24. In the interview, respondent asserted:

> There are all these land mines along the way that allow the defendant to persuade the Court to dismiss. A motion for summary judgment. A motion to exclude all of your main evidence through motions in limine, right? And—and they use all these different mechanisms, so by the time you get to trial, you're just a skeleton with one arm tied behind your back, hoping that a—a breeze doesn't come along, because if a breeze blows in the courtroom, it's gonna knock you over. If a fly lands on your head, it's gonna crush you, because your case has been so diminished. Unfairly so. Unjustly so.

25. By reason of the foregoing, respondent has violated the following Rules Regulating The Florida Bar:

(a) Oath of Admission to The Florida Bar: "I do solemnly swear: I will support the Constitution of the United States and the Constitution of the State of Florida; I will maintain the respect due to courts of justice and judicial officers; I will not counsel or maintain any suit or proceedings which shall appear to me to be unjust, nor any defense except such as I believe to be honestly debatable under the law of the land; I will employ for the purpose of maintaining the causes confided to me such means only as are consistent with truth and honor, and will never seek to mislead the judge or jury by any artifice or false statement of fact or law; I will maintain the confidence and preserve inviolate the secrets of my clients, and will accept no compensation in connection with their business except from them or with their knowledge and approval; To opposing parties and their counsel, I pledge fairness, integrity, and civility, not only in court, but also in all written and oral communications; I will abstain from all offensive personality and advance no fact prejudicial to the honor or reputation of a party or witness, unless required by the justice of the cause with which I am charged; I will never reject, from any consideration personal to myself, the cause of the defenseless or oppressed, or delay

anyone's cause for lucre or malice. So help me God."

(b) 3-4.3 The standards of professional conduct required of members of the bar are not limited to the observance of rules and avoidance of prohibited acts, and the enumeration of certain categories of misconduct as constituting grounds for discipline are not all-inclusive nor is the failure to specify any particular act of misconduct be construed as tolerance of the act of misconduct. The commission by a lawyer of any act that is unlawful or contrary to honesty and justice may constitute a cause for discipline whether the act is committed in the course of the lawyer's relations as a lawyer or otherwise, whether committed within Florida or outside the state of Florida, and whether the act is a felony or a misdemeanor.

(c) 4-4.1(a) In the course of representing a client a lawyer shall not knowingly make a false statement of material fact or law to a third person.

(d) 4-8.2(a) A lawyer shall not make a statement that the lawyer knows to be false or with reckless disregard as to its truth or falsity concerning the qualifications or integrity of a judge, mediator, arbitrator, adjudicatory officer, public legal officer, juror or member of the venire, or candidate for election or appointment to judicial or legal office.

(e) 4-8.4(d) A lawyer shall not engage in conduct in connection with the practice of law that is

prejudicial to the administration of justice, including to knowingly, or through callous indifference, disparage, humiliate, or discriminate against litigants, jurors, witnesses, court personnel, or other lawyers on any basis, including, but not limited to, on account of race, ethnicity, gender, religion, national origin, disability, marital status, sexual orientation, age, socioeconomic status, employment, or physical characteristic.

WHEREFORE, The Florida Bar prays respondent will be appropriately disciplined in accordance with the provisions of the Rules Regulating The Florida Bar as amended.

/s/ Ashley Taylor Morrison
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