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Opinions and Orders

Rehearing Order

OPINION, U.S. UNITED STATES COURT OF APPEALS FOR THE ELEVENTH CIRCUIT (MAY 7, 2026)

NOT FOR PUBLICATION

IN THE UNITED STATES COURT OF APPEALS FOR THE ELEVENTH CIRCUIT

W.A. GRIFFIN,

Plaintiff-Appellant,

v.

EMORY HEALTHCARE, INC., WENDY WRIGHT, M.D., WILLIE SMITH, JR., M.D., DAN OWENS, CEO,

Defendants-Appellees.

No. 25-12457

Appeal from the United States District Court for the Northern District of Georgia D.C. Docket No. 1:23-cv-05060-MHC

Before: LUCK, LAGOA, and BRASHER, Circuit Judges.

PER CURIAM:

W.A. Griffin, proceeding pro se, appeals the district court's grant of summary judgment in favor of Emory Health Inc., Wendy Wright, M.D., Willie Smith, Jr., M.D., and Dan Owens. She argues that the district court erred in denying her motion for leave to amend her complaint, which she filed after the deadline to amend. She further argues that the district court erred in granting summary judgment, even though she never objected to the magistrate judge's recommendation thereof. And she asserts that the judge below improperly failed to recuse. These arguments fail and, as a result, we affirm the district court.

I.

We review a district court's denial of a motion to amend a complaint for abuse of discretion. *Smith v. Casey*, 741 F.3d 1236, 1241 (11th Cir. 2014). And, generally, we hold pro se pleadings to a less stringent standard and liberally construe them. *Campbell v. Air Jam., Ltd.*, 760 F.3d 1165, 1168 (11th Cir. 2014). But that "leniency does not give a court license to serve as de facto counsel for a party, or to rewrite an otherwise deficient pleading in order to sustain an action." *Id.* at 1168–69 (citation modified).

When the court imposes a scheduling order deadline, as it did here, a plaintiff seeking leave to amend his complaint after the deadline passes must demonstrate "good cause" under Federal Rule of Civil Procedure 16(b). *S. Grouts & Mortars, Inc. v. 3M Co.*, 575 F.3d 1235, 1241 (11th Cir. 2009). The "good cause standard precludes modification unless the schedule cannot be met despite the diligence of the party seeking the extension." *Sosa v. Airprint Sys.*, 133 F.3d 1417, 1418 (11th Cir. 1998) (citation modified). "The lack of diligence that precludes a finding of good cause" includes "a plaintiff who has full knowledge of the information with which it seeks to amend its complaint before the deadline passes." *S. Grouts & Mortars, Inc.*, 575 F.3d at 1241 n.3. And "it is not an abuse of discretion for a district court to deny a motion for leave to amend following the close of discovery, past the deadline for amendments[,] and past the deadline for filing dispositive motions." *Lowe's Home Centers, Inc. v. Olin Corp.*, 313 F.3d 1307, 1315 (11th Cir. 2002).

Here, under Rule 16(b), the district court properly determined that Griffin failed to demonstrate good cause. She was not diligent, as she had the documents that formed the basis of her amendments since—at the latest—September 27, 2024, and did not file until four months later, on January 27, 2025. This filing came after the scheduling deadline (September 2, 2024) *and* after discovery had closed (January 9, 2025). Accordingly, the district court did not abuse its discretion here.

The fact that Griffin is a pro se litigant does nothing to change this analysis. For one, appearing before the court pro se does not excuse her from compliance with "the relevant law and rules of court, including the Federal Rules of Civil Procedure." *Moon v. Newsom*, 863 F.2d 835, 837 (11th Cir. 1989). And, what's more, Griffin cannot claim ignorance of our rules and procedures, as she is a repeat litigant in federal court. In recent years "Griffin has filed more than two dozen cases either directly in the Northern District of Georgia or in state court that were later removed to that district court." *Griffin v. Coca-Cola Refreshments USA, Inc.*, 989 F.3d 923, 929 (11th Cir. 2021).

Consequently, we affirm as to this issue.

II.

We review de novo a district court's grant of summary judgment. *Burton v. Tampa Hous. Auth.*, 271 F.3d 1274, 1276 (11th Cir. 2001). In doing so, "[w]e view all evidence and factual inferences reasonably drawn from the evidence in the light most favorable to the non-moving party." *Id.* at 1277. We may affirm for any reason supported by the record. *United States v. Al-Arian*, 514 F.3d 1184, 1189 (11th Cir. 2008).

Under Eleventh Circuit Rule 3-1, a party that fails to object to a magistrate judge's conclusions in a report and recommendation waives the right to challenge them on appeal. 11th Cir. R. 3-1; *Smith v. Marcus & Millichap, Inc.*, 106 F.4th 1091, 1097 (11th Cir. 2024). And to preserve his appellate rights, a party must clearly advise the district court of his objections by making specific objections to the magistrate judge's reasoning and specifically identifying factual issues. *See Smith*, 106 F.4th at 1099.

If a party fails to object and thus waives his appeal, we may review for plain error if necessary. *Id.* But, for us to do so, the party seeking plain error review must explain why such review is required in the interest of justice. *Id.* Further, plain error review "rarely applies" in civil cases. *Id.*

Here, Griffin waived any objection to the magistrate judge's findings and conclusions because she failed to object to the final R&R's recommendation of summary judgment. *Id.* And she does not argue in her initial brief that the interest of justice warrants plain error review of her arguments. As a result, we need not reach plain error review here. *Id.* Accordingly, we affirm as to this issue.

III.

A judge's failure to recuse himself is reviewed for abuse of discretion. *Murray v. Scott*, 253 F.3d 1308, 1310 (11th Cir. 2001).

Generally, a judge must recuse himself in any proceeding in which "his impartiality might reasonably be questioned." 28 U.S.C. § 455(a). And it is well established that merely ruling against a litigant in a case is not sufficient to warrant dismissal. *See In re Evergreen Sec., Ltd.*, 570 F.3d 1257, 1274 (11th Cir. 2009) ("Challenges to adverse rulings are generally grounds for appeal, not recusal."); *Jaffe v. Grant*, 793 F.2d 1182, 1189 (11th Cir. 1986) ("[A] motion for recusal may not ordinarily be predicated upon the judge's rulings in the same or a related case."); *United States v. Meester*, 762 F.2d 867, 884 (11th Cir. 1985) (stating that the allegation of bias must be "personal as opposed to judicial in nature").

An exception is where "such pervasive bias and prejudice is shown by otherwise judicial conduct as would constitute bias against a party." *Jaffe*, 793 F.2d at 1189 (citation modified). This exception only applies in "rare cases." *Loranger v. Stierheim*, 10 F.3d 776, 780 (11th Cir. 1994). "[J]udicial remarks . . . that are critical or disapproving of, or even hostile to . . . the parties, or their cases, ordinarily do not support a bias or partiality challenge" unless "they reveal an opinion that derives from an extrajudicial source[.]" *Liteky v. United States*, 510 U.S. 540, 555 (1994).

Here, Griffin's motion to recuse was meritless. She based her motion on the judge's statements and adverse rulings, none of which indicate either bias or partiality. Further, she failed to point to any of the judge's opinions that impermissibly derived from an extrajudicial source. Accordingly, we affirm.

AFFIRMED.

ORDER, U.S. DISTRICT COURT FOR THE NORTHERN DISTRICT OF GEORGIA (JULY 16, 2025)

IN THE UNITED STATES DISTRICT COURT FOR THE NORTHERN DISTRICT OF GEORGIA ATLANTA DIVISION

W.A. GRIFFIN, MD,

Plaintiff,

v.

EMORY HEALTHCARE, INC., et al.,

Defendants.

Civil Action File No. 1:23-CV-5060-MHC-CCB

Before: Mark H. COHEN, United States District Judge.

ORDER

This matter is before the Court on the June 12, 2025, Final Report and Recommendation ("R&R") of United States Magistrate Judge Christopher C. Bly [Doc. 72] recommending that Plaintiff W. A. Griffin, M.D.'s Motion to Leave and File Plaintiff's Third Amended Complaint ("Pl.'s Mot. to Am.") [Doc. 64] be denied, and that Defendants Emory Healthcare, Inc., Wendy Wright, M.D., Willie Smith, Jr., M.D., and Daniel Owens's Motion for Summary Judgment [Doc.

62] be granted.[1] The Order for Service of the R&R [Doc. 73] provided notice that, in accordance with 28 U.S.C. § 636(b)(1), Plaintiff was authorized to file objections within fourteen (14) days of the service of that Order. On June 17, 2025, Plaintiff filed objections to the R&R ("Pl.'s Objs.") [Doc. 74], to which Defendants have filed a reply ("Defs.' Reply") [Doc. 75]. Also before the Court is Plaintiff's Emergency Motion for Recusal of District Court Judge(s) and Disqualification of Defense Counsel ("Mot. for Recusal & to Disqualify") [Doc. 76].

I. Plaintiff's Objections to the R&R

A. Legal Standard

In reviewing a Magistrate Judge's R&R, the district court "shall make a *de novo* determination of those portions of the report or specified proposed findings or recommendations to which objection is made." 28 U.S.C. § 636(b)(1). "Parties filing objections to a magistrate's report and recommendation must specifically identify those findings objected to. Frivolous, conclusive, or general objections need not be considered by the district court." *United States v. Schultz*, 565 F.3d 1353, 1361 (11th Cir. 2009) (internal quotation marks omitted) (quoting *Marsden v. Moore*, 847 F.2d 1536, 1548 (11th Cir. 1988)). If there are no specific objections to factual findings made by the magistrate judge, there is no requirement that those findings be reviewed *de novo*. *Garvey v. Vaughn*, 993 F.2d 776,

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[1] The Magistrate Judge also denied as moot Plaintiff's Motion for Ethical and Unbiased Judment [sic] on Pending Motions Immediately [Doc. 71]. Plaintiff raises no objection to this non-dispositive ruling.

779 n.9 (11th Cir. 1993). Further, "the district court has broad discretion in reviewing a magistrate judge's report and recommendation"—it "does not abuse its discretion by considering an argument that was not presented to the magistrate judge" and "has discretion to decline to consider a party's argument when that argument was not first presented to the magistrate judge." *Williams v. McNeil*, 557 F.3d 1287, 1290-92 (11th Cir. 2009). In addition, "a party does not state a valid objection to an R&R by merely incorporating by reference previous filings." *Hammonds v. Jackson*, No. 13-CV-711-MHS, 2015 WL 12866453, at *6 n.2 (N.D. Ga. May 18, 2015); *see also Morrison v. Parker*, 90 F. Supp. 2d 876, 878 (W.D. Mich. 2000) ("Plaintiffs' general, nonspecific objections, purporting to incorporate by reference their earlier brief, are tantamount to no objection at all and do not warrant further review.") (citations omitted).

Absent objection, the district court judge "may accept, reject, or modify, in whole or in part, the findings and recommendations made by the magistrate judge," 28 U.S.C. § 636(b)(1), and need only satisfy itself that there is no plain error on the face of the record to accept the recommendation. *See United States v. Slay*, 714 F.2d 1093, 1095 (11th Cir. 1983). In accordance with 28 U.S.C. § 636(b)(1) and Rule 72 of the Federal Rules of Civil Procedure, the Court has conducted a de novo review of those portions of the R&R to which objections have been made and has reviewed the remainder of the R&R for plain error. *See id.*

B. Discussion

The Magistrate Judge recommends denying Plaintiff's Motion to Amend based on her failure to show good cause to amend the scheduling order under Rule 16(b) of the Federal Rules of Civil Procedure.[2] R&R at 7-12. The Magistrate Judge noted that, pursuant to the Scheduling Order [Doc. 39], which adopted the deadlines for amending the pleadings as set forth in the Joint Preliminary Report and Discovery Plan ("JPRDP") [Doc. 37], any motions to amend the complaint must have been filed by September 3, 2024. R&R at 7 (citing JPRDP at 4).[3] Thus, because Plaintiff did not file her Motion to Amend until January 27, 2025, Plaintiff was required to show good cause under Rule 16(b) to justify amending the Scheduling Order to allow her motion. *Id.* at 8. The Magistrate Judge found that Plaintiff failed to show good cause for the delay because Plaintiff discovered the information to support her defamation claim around September 5, 2024, and presumably had enough information regarding the other claims she sought to add (breach of bylaws, fraud, and retaliation and harassment under Title VII) anywhere between September 5 and December 10, 2024.[4] R&R at 9 (outlining statements

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[2] The Magistrate Judge also made detailed and thorough findings regarding Defendants' Motion for Summary Judgment in recommending that it be granted. Plaintiff raises no objection to these findings, other than a single sentence: "If the court accepts this valid objection, which is supported by the US Supreme Court and 11th Circuit case law, the Motion for Summary Judgment is Moot." Pl.'s Objs. at 10. Because Plaintiff raises no objection to the findings of the R&R with respect to Defendants' Motion for Summary Judgment, the Court has reviewed that portion of the R&R for plain error and finds none.

[3] The Scheduling Order also provided that discovery in this case would close on December 10, 2024. Scheduling Order at 2.

[4] The Magistrate Judge noted the absence of any explanation as to when Plaintiff discovered the information underlying her

made by Plaintiff to Defendants on September 24 and 27, November 19, and December 3, 2024, that Plaintiff intended to amend her complaint at various times). Because Plaintiff provided no explanation as to why she waited until January 27, 2025-over four months after receiving the relevant information through discovery, over a month after the close of discovery, and over two weeks after Defendants prepared and filed a motion for summary judgment-to bring her motion to amend, the Magistrate Judge found that Plaintiff was not diligent in pursuing her claims, and that good cause does not exist. R&R at 10-12. Finally, the Magistrate Judge found that Defendants would be prejudiced, and the proceedings in this case would be unduly delayed, if Plaintiff were given the opportunity to amend her complaint at this juncture. *Id.* at 11.

Plaintiff objects to the Magistrate Judge's finding of an absence of good cause. Plaintiff argues that, because she "forewarned the court in the JPRDP that she intended to file a motion to amend her complaint closer to the end of discovery," the Magistrate Judge's finding that September 3, 2024, was the deadline to file any motion to amend pursuant to the Scheduling Order "is illogical." Pl.'s Objs. at 2 (citing JRPDP at 4). Plaintiff contends that the Scheduling Order adopted the "time limits for adding parties, amending the pleadings, filing motions, completing discovery, and discussing settlement" contained in the JPRDP; thus, according to Plaintiff, the Scheduling Order also adopted Plaintiff's answers to the prompts in the JPRDP of her "plan to file her third amended compliant [sic] closer to the END of discovery." *Id.* (arguing that

proposed amended claims, aside from her defamation claim. R&R at 9 n. 1.

"closer to the end of discovery" can reasonably be interpreted to mean either before or after the close of discovery"); JPRDP at 4.[5] Plaintiff further argues as follows:

> Rule 16(b) requires the court to issue a scheduling order that limits the time to amend pleadings. If no such deadline is set (*like in this case*), the "good cause" standard of Rule 16(b) is not triggered for amendments. In the absence of a clear scheduling order deadline, Rule 15(a) governs. Here, the JPRDP expressly indicated that Plaintiff planned to file her amendments closer to the end of discovery. The District Court had the opportunity to nullify her timeline but it failed to do so.

Pl.'s Objs. at 2-3. In the remainder of her Objections, Plaintiff simply copies and pastes the entirety of her Motion to Amend. Compare Pl.'s Objs. at 3-10; with Pl.'s Mot. to Am.

The Court rejects Plaintiff's arguments. Plaintiff cites no legal authority for her novel contention that the Court or adverse parties in litigation implicitly consent to anything written by the parties in their answers to the prompts contained in the JPRDP.

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[5] Plaintiff's argument that the Scheduling Order adopted Plaintiff's reservation of right to amend her claim is meritless and belied by her own concession that the Scheduling Order "omitted Plaintiff's express written intention to amend her complaint closer to the end of discovery." Mot. for Recusal & to Disqualify at 2; *see also* Scheduling Order at 2 n.1 (recognizing that Plaintiff indicated her intention to file a third amended complaint "closer to the end of discovery" but stating that "[t]he Court offers no opinion on the merits of such intended actions").

Indeed, the JPRDP explicitly states, "Amended and supplemental pleadings must be filed in accordance with the time limitations and other provision of [Rule] 15 . . . . Amendments to the pleadings submitted LATER THAN THIRTY DAYS after the [JPRDP] is filed, or should have been filed, will not be accepted for filing, unless otherwise permitted by law." JPRDP at 4. It further provides that, other than those motions specified, which are not relevant here, "[a]ll other motions must be filed WITHIN THIRTY DAYS after the beginning of discovery, unless the filing party has obtained prior permission of the court to file later." *Id.* at 4-5 (citing LR 7.1A(2), NDGa.). Plaintiff argues that, because she essentially reserved her right to amend her complaint, the Orders of this Court, the Local Rules, and the Federal Rules of Civil Procedure should be ignored. The Court declines to adopt Plaintiff's position.

Plaintiff was put on ample notice of deadlines applicable to amending her complaint—both in this Court specifically and in federal court generally. Although courts afford liberal construction to pro se litigants' pleadings, Plaintiffs status as a pro se litigant does not excuse her from compliance with "the relevant law and rules of the court, including the Federal Rules of Civil Procedure." *Moon v. Newson*, 863 F.2d 835, 836 (11th Cir. 1989). Rule 15 of the Federal Rules of Civil Procedure provides that any amendments to the pleading after a certain period may be made "only with the opposing party's written consent or the court's leave." FED. R. Civ. P. 15(a)(2). The Local Rules of this Court and the JPRDP form both provide notice that any motions, other than those specified, must be filed within thirty days after the beginning of discovery. JPRDP at 4-5; LR 7.1A(2), NDGa. Plaintiffs attempt to unilaterally alter the provisions of the Local Rules of this Court and the Federal Rules of Civil Procedure by inserting terms into the JPRDP fails. Nothing in the JPRDP indicates that Defendants consented to Plaintiff amending her complaint "closer to the end of discovery"; instead, the existence of separate contentions by the parties indicates that Defendants did not agree to Plaintiffs answers on several items in the JPRDP. *See* LR 16.2, NDGa. (providing that the parties are required to complete the JPRDP and, "[i]f [the parties] cannot agree on the answers to specific items, the contentions of each party must be shown on the form"). The lack of consent is also made evident by Defendants' opposition to Plaintiff's Motion to Amend [Doc. 67]. Thus, the deadline to move to amend the pleadings in the absence of Defendant's consent, as set forth in the JPRDP and adopted by the Scheduling Order, was thirty days after the beginning of discovery. Adopting Plaintiff's argument would allow any litigant to amend her pleadings at any point, so long as she asserted a reservation of the right to do so in the JPRDP, rendering Rules 15 and 16 of the Federal Rules of Civil Procedure mere suggestions.

Because Plaintiff does not offer any additional argument that the Magistrate Judge erred in finding that Plaintiff failed to show good cause under Rule 16(b), Plaintiff's Objections are OVERRULED.

II. Plaintiff's Motion for Recusal & to Disqualify

A. Motion for Recusal

Plaintiff appears to seek recusal of both the Undersigned and Judge Bly pursuant to 28 U.S.C.

§ 455 "and applicable due process principles," based on Judge Bly's refusal to allow Plaintiff to amend her complaint during an October 4, 2024, discovery dispute conference. Mot. for Recusal & to Disqualify at 2. Plaintiff further argues that the omission of Plaintiff's "express written intention to amend her complaint closer to the end of discovery" from the Scheduling Order, "coupled with the Court's preemptive statement regarding amendment, raises a reasonable question as to the Court's impartiality." *Id.*

28 U.S.C. § 455 requires recusal of a judge "'in any proceeding in which his impartiality might reasonably be questioned' or '[w]here he has a personal bias or prejudice concerning a party.'" *Christo v. Padgett*, 223 F.3d 1324, 1333 (11th Cir. 2000) (quoting 28 U.S.C. §§ 455(a) & (b)(1)). Under § 455, "the standard is whether an objective, fully informed lay observer would entertain significant doubt about the judge's impartiality." *Id.*; *see also Jones v. Commonwealth Land Title Ins. Co.*, 459 F. App'x 808, 811 (11th Cir. 2012) ("The test under § 455(a) is "whether an objective, disinterested, lay observer fully informed of the facts underlying the grounds on which recusal was sought would entertain a significant doubt about the judge's impartiality.").

Nothing in Plaintiffs Motion for Recusal demonstrates any personal bias on the part of either the Undersigned or Judge Bly. Instead, Plaintiff appears to base her Motion for Recusal solely on her disagreement with Judge Bly's rulings on discovery matters in this case. "[A]dverse rulings alone do not provide a party with a basis for holding that the court's impartiality is in doubt." *Byrne v. Nezhat*, 261 F.3d 1075, 1103 (11th Cir. 2001); *see also Liteky v.*

United States, 510 U.S. 540, 555 (1994) ("[J]udicial rulings alone almost never constitute a valid basis for a bias or partiality motion."). Instead, "No disqualify a judge under § 455(a), the bias 'must stem from extrajudicial sources, unless the judge's acts demonstrate such pervasive bias and prejudice that it unfairly prejudices one of the parties.'" *United States v. Berger*, 375 F.3d 1223, 1227 (11th Cir. 2004) (quoting *United States v. Bailey*, 175 F.3d 966, 968 (11th Cir. 1999)); *see also Mitchell v. Dixie Transp., Inc.*, No. 1:16-CV-336-MLB, 2023 WL 7276512, at *1 (N.D. Ga. Apr. 24, 2023), *recons. denied*, No. 1:16-CV-336-MLB, 2023 WL 7276514 (N.D. Ga. Sept. 14, 2023) (quoting *Guo v. Rosen*, No. 21-13823, 2023 WL 2125959, at *3 (11th Cir. Feb. 21, 2023)) ("While an exception exists where a judge's remarks in a judicial context demonstrate pervasive bias and prejudice against a party, 'a judge's rulings in the same or a related case may not serve as the basis for a recusal motion' absent evidence of pervasive bias and prejudice.").

Plaintiff merely points to Judge Bly's denial of Plaintiffs request to amend her complaint during a discovery conference and the Scheduling Order's omission of Plaintiff's apparent attempted reservation of rights. From these instances, Plaintiff speculates that Judge Bly has not been impartial in his rulings. Such assertions and speculation are insufficient to grant a motion for recusal, particularly in the absence of any evidence of extrajudicial bias, pervasive bias, or prejudice to Plaintiff. Indeed, Plaintiff already has filed an amended complaint as of course, Am. Compl. [Doc. 3], and Judge Bly granted Plaintiff the opportunity to amend her complaint a second time. Feb. 12, 2024, Order [Doc. 18]. Nothing on the record suggests any bias on the part of Judge Bly.[6] Thus, to the extent that Plaintiff is dissatisfied with Judge Bly's rulings on pre-trial matters, that is "[a]lmost invariably . . . grounds for appeal, not for recusal." *Liteky*, 510 U.S. at 555. "[A] judge, having been assigned to a case, should not recuse himself on unsupported, irrational, or highly tenuous speculation." *United States v. Greenough*, 782 F.2d 1556, 1558 (11th Cir. 1986); *see also Braxton v. Georgia Dep't of Cmty. Affs.*, No. 1:10-CV-2446-WSD, 2011 WL 13182987, at *2 (N.D. Ga. Apr. 7, 2011) (denying a motion for recusal where the recusal was sought "because [the plaintiff] is dissatisfied with the decisions in her case," and noting that "[t]his is not a proper ground to seek recusal"). Accordingly, Plaintiff's Motion for Recusal is DENIED.

B. Motion to Disqualify

Plaintiff seeks an order from this Court disqualifying Defendants' Counsel and requiring Defendants to obtain new counsel. Mot. for Recusal & to Disqualify at 3-4. Plaintiff contends that, despite her expressed intention during the JPRDP conference to amend her complaint near the end of discovery, "defense counsel allegedly colluded with the Court to secure a Rule 16 dismissal." *Id.* at 3. Plaintiff contends that Defendants' Counsel (1) failed to sign the JPRDP, "thereby undermining the procedural integrity of the scheduling process"; (2) "[p]articipat[ed] in or acquiesc[ed] to the omission of Plaintiffs amendment reservation from

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6 Furthermore, Plaintiff provides no argument as to any action taken by the Undersigned from which the Undersigned's "impartiality might reasonably be questioned." 28 U.S.C. § 455(a).

the scheduling order; and (3) [l]abel[ed] critical discovery materials as proprietary to prevent Plaintiffs access to evidence necessary for her claims." *Id.*

"As a general matter, motions to disqualify opposing counsel are disfavored." *Keohane v. Keene*, No. CIV.A. 1:06-CV-0034-RWS, 2006 WL 1275056, at *1 (N.D. Ga. May 8, 2006) (collecting cases). The Court should only grant a motion to disqualify an attorney where "compelling reasons" exist, because disqualification both overrides the client's presumptive right to choose his own lawyer and may also impose hardships on the litigant. *In re BellSouth Corp.*, 334 F.3d 941, 961 (11th Cir. 2003). Even when made in good faith, motions to disqualify opposing counsel "inevitably cause delay." *Adkins v. Hosp. Auth. of Hous. Cty., Ga.*, No. 5:04-CV-80 (CAR), 2009 WL 3428788, at *6 (M.D. Ga. Oct. 20, 2009) (citation omitted), *aff'd sub nom., McGriff v. Christie*, 477 F. App'x 673 (11th Cir. 2012). In addition to the delay, motions to disqualify often inconvenience otherwise innocent clients and cause significant expense associated with finding new counsel and getting counsel up to speed. *Prudential Ins. Co. of Am. v. Anodyne, Inc.*, 365 F. Supp. 2d 1232, 1237 (S.D. Fla. 2005). For these reasons, "motions to disqualify are viewed with disfavor as an extraordinary remedy that should not be granted unless absolutely necessary." *Fenik v. One Water Place*, No. 3:06-CV-514/RV/EMT, 2007 WL 527997, at *4 (N.D. Fla. Feb. 14, 2007); *see also Norton v. Tallahassee Mem'l Hosp.*, 689 F.2d 938, 941 n.4 (11th Cir. 1982) ("Disqualification is a harsh sanction, often working substantial hardship on the client, ... "); *Reece v. United Home Care of N. Atlanta, Inc.*, No. 1:12-CV-2070-RWS, 2014 WL 1775499, at *2

(N.D. Ga. May 2, 2014) ("As a general rule, motions to disqualify counsel are viewed disfavorably.").

Two sources of authority govern motions to disqualify counsel, depending on the alleged misconduct. First, lawyers in this Court must follow the Court's Local Rules, which incorporate the Georgia Rules of Professional Conduct (the "Georgia Rules") and judicial decisions interpreting those rules. *See* LR 83.1(C), NDGa; *Hermann*, 199 F. App'x at 752; *Bayshore Ford Truck Sales, Inc. v. Ford Motor Co.*, 380 F.3d 1331, 1338-39 (11th Cir. 2004). Violation of these rules of professional conduct may warrant disqualification. *Hermann*, 199 F. App'x at 752. To determine whether disqualification is appropriate based on a rule violation, the Court applies an exacting standard. *Thomas v. Tenneco Packaging Co., Inc.*, 293 F.3d 1306, 1322 n.24 (11th Cir. 2002). The Court "must clearly identify a specific Rule of Professional Conduct which is applicable to the relevant jurisdiction and must conclude that the attorney violated that rule." *Id.* (quoting *Schlumberger Techs.*, 113 F.3d at 1561). Although Plaintiff identifies Rule 1.7 of the American Bar Association Model Rules of Professional Conduct which, for the instant purposes, is substantially similar to Rule 1.7 of the Georgia Rules,[7] Plaintiff provides no explanation as to how Defendants' Counsel

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[7] Rule 1.7 governs conflicts of interests generally and provides, "A lawyer shall not represent or continue to represent a client if there is a significant risk that the lawyer's own interests or the lawyer's duties to another client, a former client, or a third person will materially and adversely affect the representation of the client." Georgia Rule 1.7(a); *see also* MODEL RULES OF PRO. CONDUCT r. 1.7 (A.B.A. 1983) (governing concurrent conflicts of interest).

has violated that Rule. Instead, Plaintiff simply states that Counsel's "actions, if substantiated, . . . may violate ethical obligations under Rule 1.7." Mot. for Recusal & to Disqualify at 3. Accordingly, Plaintiff fails to show that violation of any specific Georgia Rule warrants disqualification of Defendants' Counsel.

Second, where a lawyer's conduct "threatens disruption of court proceedings . . . or is a deliberate challenge to the authority of the district court," *In re BellSouth*, 334 F.3d at 959, the Court may invoke its inherent "control over his or her court room and process" to disqualify an attorney. *Schlumberger Techs., Inc. v. Wiley*, 113 F.3d 1553, 1558 (11th Cir. 1997) (citation omitted); *see also Hermann v. GutterGuard, Inc.*, 199 F. App'x 745, 752 (11th Cir. 2006) ("[F]ederal common law also governs attorneys' professional conduct because motions to disqualify are substantive motions affecting the rights of the parties."). Plaintiff has not demonstrated any conduct on the part of Defendants' Counsel warranting disqualification. Plaintiff asserts that Defendant's Counsel failed to sign the JPRDP and that this failure "undermin[ed] the procedural integrity of the scheduling process," but nothing on the record suggests that the Defendants' Counsel's failure to sign the JPRDP played any role, whatsoever, in any of the rulings issued in this case. Plaintiff further argues that Defendants' Counsel colluded with, participated in, and/or acquiesced to "the omission of Plaintiffs amendment reservation from the scheduling order," but the Court already has explained above why Plaintiff's "amendment reservation" was ineffective and irrelevant. And to the extent Plaintiff now complains about the adequacy of Defendants' discovery responses, Plaintiff had ample opportunity to raise these issues before Judge Bly while discovery still was ongoing.

Accordingly, the Court finds no grounds for disqualifying Defendants' Counsel. Plaintiffs Motion to Disqualify is DENIED.

III. Conclusion

For the foregoing reasons, and after a consideration of Plaintiff's objections and a de novo review of the record, it is hereby **ORDERED** that Plaintiff W. A. Griffin, M.D.'s Objections to the Magistrate Judge's R&R [Doc. 74] are **OVERRULED.** As to the remainder of the R&R to which no objections have been filed, this Court has reviewed it and the record for plain error and finds none.

The Court **APPROVES AND ADOPTS** the Final Report and Recommendation [Doc. 72] as the Opinion and Order of this Court. It is hereby **ORDERED** that Plaintiff W.A. Griffin, M.D.'s Motion to Leave and File Plaintiff's Third Amended Complaint [Doc. 64] is **DENIED.** It is further **ORDERED** that Defendants Emory Healthcare, Inc., Wendy Wright, M.D., Willie Smith, Jr., M.D., and Daniel Owens's Motion for Summary Judgment [Doc. 62] is **GRANTED**.

Finally, it is hereby **ORDERED** that Plaintiff's Emergency Motion for Recusal of District Court Judge(s) and Disqualification of Defense Counsel [Doc. 76] is **DENIED**.

The Clerk is **DIRECTED** to close this file.

IT IS SO ORDERED this 16th day of July, 2025.

/s/ Mark H. Cohen
United States District Judge

ORDER AND FINAL REPORT AND RECOMMENDATION, MAGISTRATE JUDGE, U.S. DISTRICT COURT FOR THE NORTHERN DISTRICT OF GEORGIA (JUNE 12, 2025)

IN THE UNITED STATES DISTRICT COURT FOR THE NORTHERN DISTRICT OF GEORGIA ATLANTA DIVISION

W.A. GRIFFIN, MD,

Plaintiff,

v.

EMORY HEALTHCARE, INC., et al.,

Defendants.

Civil Action No. 1:23-CV-5060-MHC-CCB

Before: Christopher C. BLY, United States Magistrate Judge.

ORDER AND FINAL REPORT AND RECOMMENDATION

Plaintiff W.A. Griffin, M.D., proceeding pro se, brings this action, asserting a tort claim for failure to follow bylaws under O.C.G.A. § 51-1-6 against Defendants Emory Healthcare, Inc. (Emory); Wendy Wright, M.D.; Willie Smith, Jr., M.D.; and Dan Owens, CEO; and a claim of race discrimination in violation of Title VII of the Civil Rights Act of 1964, 42 U.S.C. § 2000e, *et seq*. (Title VII) against Emory. (Doc. 19). This matter is before the Court on Plaintiff's motion for leave to file a third amended complaint, (Doc. 64), Defendants' motion for summary judgment, (Doc. 62), and Plaintiff's motion for ethical and unbiased judgment on pending motions immediately, (Doc. 71). For the reasons set forth below, I **RECOMMEND** that Plaintiff's motion for leave to amend, (Doc. 64), be **DENIED**, and that Defendants' motion for summary judgment, (Doc. 62), be **GRANTED.** Plaintiff's motion for ethical and unbiased judgment on pending motions immediately, (Doc. 71), is **DENIED AS MOOT**.

I. MOTION FOR LEAVE TO AMEND

The Court will first address Plaintiff's motion for leave to amend. (Doc. 64). In her motion, Plaintiff argues that she should be granted leave to amend because her proposed third amended complaint is based on new information obtained during discovery that supports additional claims of breach of bylaws, fraud, defamation, and Title VII retaliation and hostile work environment. *Id.* at 2–5. She also argues that, if allowed to amend, she would not request additional discovery. *Id.* at 5. Plaintiff attaches a proposed third amended complaint to her motion. (Doc. 64-1).

In response, Defendants argue that Plaintiff's request for leave to amend is untimely under the Court's scheduling order, and Plaintiff cannot show good cause because she improperly delayed seeking leave to amend. (Doc. 67 at 1, 9). Defendants note that Plaintiff acknowledged as early as August 8, 2024, that she intended to amend her complaint, but she waited until January 27, 2025, to file her motion for leave to amend (nearly two months after discovery closed and over two weeks after Defendants filed their motion for summary judgment). *Id.* at 12–16. Defendants also argue that Plaintiff's proposed amendments are futile. *Id.* at 16–25.

In her reply brief, Plaintiff argues that she did not unduly delay filing the motion for leave to amend, that Defendants can "only blame themselves if they did not predict" that she would amend her pleading after they admit that she told them several times that she intended to do so, and that the claims in her proposed amended complaint are not futile. (Doc. 70 at 1–9).

Pursuant to Federal Rule of Civil Procedure 15(a)(2), in all cases other than when a party seeks to amend its pleading as a matter of course under Rule 15(a)(1), a party may amend "only with the opposing party's written consent or the court's leave," and "[t]he court should freely give leave when justice so requires." Fed. R. Civ. P. 15(a)(2). A court need not give a party leave to amend where there has been undue delay, undue prejudice, or where amendment would be futile. *See Maynard v. Bd. of Regents of Div. of Univs. of Fla. Dep't of Educ.*, 342 F.3d 1281, 1287 (11th Cir. 2003). However, Federal Rule of Civil Procedure 16(b) requires a district court to enter a scheduling order that limits the time to amend pleadings. When a motion to amend is filed after the time set forth in the court's scheduling order, as in this case, the party moving to amend must first demonstrate good cause under Rule 16(b). *See* Fed. R. Civ. P. 16(b)(4); *Sosa v. Airprint Sys., Inc.*, 133 F.3d 1417, 1419 (11th Cir. 1998) ("[B]ecause Sosa's motion to amend was filed after the scheduling order's deadline, she must first demonstrate good cause under Rule 16(b) before we will consider whether amendment is proper under Rule 15(a)."); *see also S. Grouts & Mortars, Inc. v. 3M Co.*, 575 F.3d 1235, 1241 (11th Cir. 2009) ("A plaintiff seeking leave to amend its complaint after the deadline designated in a scheduling order must demonstrate 'good cause' under Fed. R. Civ. P. 16(b).").

The "good cause" standard of Rule 16(b)(4) is more demanding than that of Rule 15(a)(2), which allows for liberal amendment of pleadings. *See Sosa*, 133 F.3d at 1419; *Goble v. Ward*, 628 F. App'x 692, 702 & n.5 (11th Cir. 2015). The "inquiry focuses primarily upon the diligence *vel non* of the party seeking the modification. Thus, a court should typically find good cause to modify the scheduling order 'if it cannot reasonably be met despite the diligence of the party seeking the extension.'" *Batton v. Oak Inv. Grp. Corp.*, No. 2:18-CV-1361-JEO, 2019 WL 13131388, at *2 (N.D. Ala. May 1, 2019) (quoting Fed. R. Civ. P. 16, Advisory Committee Notes to 1983 Amendment). "Courts have recognized, however, that other factors may also be properly considered, including whether the movant acted in good faith and whether allowing an amended pleading will prejudice the non-movant or cause undue delay." *Batton*, 2019 WL 13131388, at *2 (collecting cases and citing 6A C. Wright, A. Miller et al., Fed. Prac. & Proc. § 1522.2 (3d ed.) ("Relief may be granted if the court finds that the movant has not unduly delayed the action and that the opponent will not be prejudiced by the modification.")). "Such a flexible approach is also supported by the principle that whether good cause exists to modify the scheduling order is ultimately a matter committed to the district court's discretion." *Id.*

The Eleventh Circuit has routinely found a lack of good cause for proposed amendments outside the deadline of the scheduling order where the plaintiff's "failure to comply with the court's scheduling order resulted from a lack of diligence in pursuing her claim." *Sosa*, 133 F.3d at 1419 (determining that "the information supporting the proposed amendment to the complaint was available to Sosa even before she filed suit"). For example, a plaintiff lacks the diligence required under Rule 16 when (1) the information giving rise to the need to amend was available to the plaintiff before the deadline expired; or (2) where a plaintiff fails to seek the information needed to determine "whether an amendment is in order." *S. Grouts & Mortars, Inc.*, 575 F.3d at 1241 n.3 (holding that plaintiff lacked diligence to establish good cause to amend complaint where plaintiff filed a motion to amend its complaint with information that it had known for over a month, after discovery had been closed for three weeks, and both parties had filed their initial briefs in support of their motions for summary judgment over a month earlier); *see also Donley v. City of Morrow*, 601 F. App'x 805, 811–12 (11th Cir. 2015) (concluding that the plaintiff "was not diligent in pursuing his . . . claim" where he "knew of the state-law claim and the facts supporting it well before the . . . deadline, but waited until six months after the deadline to try to add that . . . claim") (footnote omitted). "If a party was not diligent, the good cause inquiry should end." *Sosa*, 133 F.3d at 1418 (internal quotation marks and alterations omitted). Only after the plaintiff demonstrates good cause under Rule 16 should the court consider whether the plaintiff satisfies the requirements of Rule 15(a). *Id.* at 1419. Moreover, it is Plaintiff's burden to "indicate with . . . specificity" the good cause that exists for filing an untimely motion to amend. *Smith v. Sch. Bd. of Orange Cnty.*, 487 F.3d 1361, 1367 (11th Cir. 2007) (finding that good cause was not shown where a plaintiff "alleged that discovery had produced new violations of the law that must be addressed within the counts of the complaint, but he failed to further indicate what those violations were, what facts supported them, and why those facts previously were undiscoverable") (internal quotation marks and alteration omitted).

Here, the Court agrees with Defendants that Plaintiff must first demonstrate good cause under Rule 16(b)(4) and that she has not done so. The scheduling order in this case states that "[t]he time limits for . . . amending the pleadings . . . are as stated in the joint preliminary report and discovery plan (JPRDP) and the Local Rules of this Court." (Doc. 39 at 1). The JPRDP states that "[a]mendments to the pleadings submitted LATER THAN THIRTY DAYS after the Joint Preliminary Report and Discovery Plan is filed, or should have been filed, will not be accepted for filing, unless otherwise permitted by law." (Doc 37 at 4). The JPRDP was filed on August 2, 2024. *Id.* Thus, any motion to amend must have been filed by September 3, 2024. *See id.*

Plaintiff filed the instant motion to amend on January 27, 2025, nearly five months after the deadline to do so, over six weeks after discovery closed on December 10, 2024, and over two weeks after Defendants filed their motion for summary judgment on January 9, 2025. (Doc. 64; *see also* Doc. 39 at 2; Doc.

62). Accordingly, Plaintiff's motion for leave to file a third amended complaint was filed too late under the scheduling order and Local Rules of this Court. "[B]ecause [Plaintiff]'s motion to amend was filed after the scheduling order's deadline, she must first demonstrate good cause under Rule 16(b) before [the Court] will consider whether amendment is proper under Rule 15(a)." *Sosa*, 133 F.3d at 1418. Rule 16's good cause standard "precludes modification [of the scheduling order] unless the schedule cannot be met despite the diligence of the party seeking the extension." *Id.* (internal quotation marks omitted).

Plaintiff does not assert in her motion to amend or in her reply brief that good cause exists under Rule 16, although she does contend that there was no undue delay because she was provided with the information to support her proposed amendments during discovery. (Doc. 64 at 2–5; Doc. 70 at 1–3). Plaintiff states that she was provided with the emails underlying her defamation claims "on or about September 5, 2024 during discovery." (Doc. 70 at 3).[1] And she emailed Defendants' counsel about her intent to amend on:

- September 24, 2024, stating that she would be "amending the complaint next week" based on "defamatory emails . . . [and] additional fraud in the bylaws," (Doc. 67 at 30);
- September 27, 2024, stating that she would be amending the complaint to include allegations related to discrimination, fraud,

[1] Plaintiff does not specify exactly when during discovery she was provided with any other evidence that allows her to bring any of her other proposed amended claims.

harassment, retaliation, and "assassination plans," (*id.* at 34);

- November 19, 2024, recognizing that "[d]iscovery is almost over" and stating that she still intended to amend her complaint, (id. at 38); and
- December 3, 2024, stating that she was "getting ready to file a motion to amend[] the complaint," that she would "file it before [December] 10th [when discovery closed]," and that the proposed amended complaint would include claims for "[T]itle 7-racial discrimination," breach of contract, retaliation, hostile work environment, defamation, and fraud, (*id.* at 40).

Thus, at least a week before the close of discovery on December 10, 2024 (and likely much earlier than that), it appears that Plaintiff had everything she needed to file the motion for leave to file a third amended complaint—which she did not actually file until January 27, 2025. (Doc. 64).

Plaintiff does not explain why she could not have filed her motion for leave to file at least by the close of discovery in December of 2024 (if not in September of 2024 when she alleges she received evidence in discovery that made her aware of the existence of new claims). Nor does she explain why, even after discovery closed, she waited for several weeks after Defendants filed a comprehensive motion for summary judgment before filing her motion for leave to file a third amended complaint.

Even if the information Plaintiff received in September of 2024 is what led to her proposed amendment, the delay of over four months between receiving this information and filing a motion to amend demonstrates a lack of reasonable diligence by Plaintiff and a lack of good cause to amend. *See EEOC v. Exel Inc.*, 259 F.R.D. 652, 655 (N.D. Ga. 2008) (holding that a two-month delay between the relevant deposition testimony and the filing of the motion to amend demonstrated a lack of good cause and that a "reasonably diligent plaintiff would have acted with more speed" to determine whether the complaint should be amended). This is particularly true because Plaintiff waited until after the close of discovery and after Defendants had filed their motion for summary judgment, despite noting the need to amend months prior to those deadlines. *See Dorismond v. Clayton Cnty.*, No. 1:22-CV-02880-AT-RDC, 2024 WL 4101483, at *3 (N.D. Ga. July 22, 2024) (finding that good cause did not exist where the plaintiff acknowledged the need to amend the complaint in October of 2023 but waited until late January of 2024, after the close of discovery, to move to amend); *see also Diaz v. Burchette*, 585 F. App'x 968, 969–70 (11th Cir. 2014) (holding that the district court did not abuse its discretion by denying a motion for leave to amend filed after the close of discovery and after the defendant had filed its motion for summary judgment). Allowing Plaintiff to amend now—after summary judgment has been filed—would significantly prejudice Defendants and unduly delay the proceedings.[2] And there was no

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[2] Plaintiff's suggestion that she would not request additional discovery is all well and good. But Defendants would certainly be entitled to discovery on Plaintiff's new claims if they wanted it.

need to wait this long. Plaintiff could have filed the motion before discovery even closed.

In sum, Plaintiff has not demonstrated that she was diligent in pursuing her claims. The Court therefore finds that Plaintiff fails to show good cause under Rule 16(b) to allow the filing of her proposed third amended complaint outside the deadline that the Court approved for amendments. *See Sosa*, 133 F.3d at 1418–19. As such, there is no need to consider whether amendment would be proper under Rule 15. Accordingly, **I RECOMMEND** that Plaintiff's motion for leave to amend, (Doc. 64), be **DENIED**.

II. MOTION FOR SUMMARY JUDGMENT

A. Standards for Presenting Facts at Summary Judgment

Unless otherwise indicated, the Court draws the following facts from Defendants' statement of material facts, (Doc. 62-14); Plaintiff's response to Defendants' statement of material facts, (Doc. 66 at 10–19); and Plaintiff's statement of additional facts, (Doc. 66 at 20). Additionally, where indicated and as needed, the Court also draws some facts directly from the record. *See* Fed. R. Civ. P. 56(c)(3) ("The court need consider only the cited materials, but it may consider other materials in the record.").

For those facts submitted by Defendants that are supported by citations to record evidence, and that Plaintiff has not specifically disputed and refuted with citations to admissible record evidence showing a genuine dispute of fact, the Court deems those facts admitted, under Local Rule 56.1(B). *See* LR 56.1(B)(2)(a)(2), NDGa. ("This Court will deem each of the movant's facts as admitted unless the respondent: (i) directly refutes the movant's fact with concise responses supported by specific citations to evidence (including page or paragraph number); (ii) states a valid objection to the admissibility of the movant's fact; or (iii) points out that the movant's citation does not support the movant's fact or that the movant's fact is not material or otherwise has failed to comply with the provisions set out in LR 56.1(B)(1).").

The Court has excluded assertions of fact by either party that are immaterial, presented as arguments or legal conclusions, unsupported by a citation to admissible evidence in the record, or asserted only in the party's brief and not the statement of facts. *See* LR 56.1(B)(1), NDGa. ("The Court will not consider any fact: (a) not supported by a citation to evidence (including page or paragraph number); (b) supported by a citation to a pleading rather than to evidence; (c) stated as an issue or legal conclusion; or (d) set out only in the brief and not in the movant's [or respondent's] statement of undisputed facts."). The Court has also viewed all evidence and factual inferences in the light most favorable to Plaintiff, as required on a defendant's motion for summary judgment. *See Matsushita Elec. Indus. Co. v. Zenith Radio Corp.*, 475 U.S. 574, 587 (1986); *McCabe v. Sharrett*, 12 F.3d 1558, 1560 (11th Cir. 1994); *Reynolds v. Bridgestone/Firestone, Inc.*, 989 F.2d 465, 469 (11th Cir. 1993). The parties dispute some of the proffered facts, but many of those objections are over matters that are not necessarily material to the disposition of this case. The Court will discuss any objections and disputes presented as to the parties' proffered facts only when necessary to do so regarding a genuine dispute of a material issue of fact.

B. Material Facts

Medical Staff Credentials at Emory University Hospital Midtown

The Emory University Hospital Midtown (EUHM) Medical Staff has bylaws that provide for several categories of Medical Staff members: Active, Referral, Honorary, Courtesy, Consulting, and Coverage. (Doc. 62-14 at ¶ 1; Doc. 66 at 11, ¶ 1). The different categories of EUHM Medical Staff membership govern matters such as on-call requirements, whether a physician can directly admit patients to the hospital, and ability (or requirement, where applicable) to serve on EUHM Medical Staff committees. (Doc. 62-14 at ¶ 1; Doc. 66 at 11, ¶ 1). When applying for medical staff credentials, a physician indicates which staff category she intends to apply for by filling in a checkbox on the application. (Doc. 62-14 at ¶ 2; Doc. 66 at 11, ¶ 2). If a physician does not meet the qualifications for the category she selected, the physician is generally reassigned to a category that meets their qualifications. (Doc. 62-14 at ¶ 3; Doc. 66 at 11, ¶ 3).

Under the bylaws, "Active Staff" members must serve on committees (as requested), provide specialty coverage for the Emergency Department for those services and sections with assigned call (when assigned and as appropriate), accept referrals from the Emergency Department for follow-up care, and accept inpatient consultations when requested. (Doc. 62-14 at ¶ 4; Doc. 66 at 11, ¶ 4). Active Staff may also admit patients. (Doc. 62-14 at ¶ 4; Doc. 66 at 11, ¶ 4). Under EUHM's bylaws, Active Staff members must be involved "in at least twenty-four (24) Patient Contacts per two (2) year appointment term." (Doc. 62-14 at ¶ 5; Doc. 66 at 11, ¶ 5). As defined by EUHM's bylaws, "Patient Contacts" include "any admission, consultation, procedure, response to emergency call, evaluation, treatment, or service performed in any facility operated by the Hospital or affiliate, including outpatient facilities. It shall not include referrals for diagnostic or laboratory tests or x-rays." (Doc. 62-14 at ¶ 6; Doc. 66 at 12, ¶ 6).

As noted above, there is an "in-the-hospital" component to patient contacts. Donna Cannon, who formerly served as Manager for Medical Staff Services for Emory and worked in physician credentialing for 30 years before retiring, testified that "we want to see patient contacts in the hospital." (Doc. 62-14 at ¶¶ 7, 11; Doc. 66 at 12, ¶¶ 7, 11; *see also* Doc. 54 at 9:7–21, 24:4–20[3]). Dr. McGahan, Chief Medical Officer (CMO) of Emory St. Joseph's Hospital, testified that "[w]e generally refer to [a patient contact] as an interaction within the hospital . . . . " (Doc. 62-14 at ¶ 8; Doc. 66 at 12, ¶ 8; *see also* Doc. 53 at 10:7–19, 11:21–24, 12:2–20). Dr. Wright, EUHM's CMO and a voting member of the EUHM Medical Executive Committee (MEC), testified that Patient Contacts "include[] outpatient facilities that are operated by the hospital or a hospital affiliate, but excludes outpatient procedures and visits by a facility not operated by the hospital or affiliate." (Doc. 62-14 at ¶ 9; Doc. 66 at 12, ¶ 9; *see also* Doc. 52 at 13: 1–12, 24:23–26:18). And Dr. Willie

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[3] For clarity, here and throughout this Report and Recommendation, the Court cites to the blue CM/ECF page numbers at the top of each document, rather than the deposition transcript page numbers.

Smith, Jr., the Chief of Staff at EUHM, testified that "patient contacts refers to patients that are within the hospital proper." (Doc. 62-14 at ¶ 10; Doc. 66 at 12, ¶ 10; *see also* Doc. 55 at 9:19–25, 10: 10–18, 12:6–8).

To verify whether a provider fits into the definition for the "Active Staff" category, the EUHM credentialing committee may request a patient volume log from the provider. (Doc. 62-14 at ¶ 12; Doc. 66 at 13, ¶ 12). Patient volume logs cannot include patient interactions in "a private office setting unless it is operated by [EUHM] or one of Emory Hospital's affiliates." (Doc. 62-14 at ¶ 12; Doc. 66 at 13, ¶ 12). If a provider does not meet the Patient Contacts requirement but is requesting to remain in the Active Staff category, the bylaws provide that "[t]he chief of service or section chief may recommend to the MEC a waiver of the twenty four (24) Patient Contacts criteria." (Doc. 62-14 at ¶ 14; Doc. 66 at 13, ¶ 14). The chiefs of service or section chiefs are not required, however, to recommend a waiver. (Doc. 62-14 at ¶ 15; Doc. 66 at 13, ¶ 15). The EUHM MEC retains the ultimate authority on whether to either accept or decline a recommendation for a waiver of the Patient Contacts criteria. (Doc. 62-14 at ¶ 16; Doc. 66 at 13, ¶ 16). These types of waivers are infrequent. (Doc. 62-14 at ¶ 17; Doc. 66 at 13, ¶ 17).

EUHM's bylaws define "Referral Staff" as those Medical Staff Members who "desire to be associated with, but who do not intend to establish a practice at, this Hospital." (Doc. 62-14 at ¶ 18; Doc. 66 at 14, ¶ 18). Under the bylaws, Referral Staff members may not directly admit patients to the hospital or assist in surgery or treatment of hospital patients, but they also are not required to be on call or to serve on committees. (Doc. 62-14 at ¶ 18; Doc. 66 at 14, ¶ 18).

Plaintiff's 2023 Application for Re-Credentialing

In May of 2023, Plaintiff submitted an application for re-credentialing to the EUHM Medical Staff. (Doc. 62-14 at ¶ 19; Doc. 66 at 14, ¶ 19). As part of the application process, the EUHM credentialing office reviewed two volume reports that Plaintiff submitted for 2021-2023. (Doc. 62-14 at ¶ 20; Doc. 66 at 14, ¶ 20). Both volume reports show only office visits, labs, surgeries, biopsies, and other procedures done in Plaintiff's private office. (Doc. 62-14 at ¶ 21; Doc. 66 at 14, ¶ 21). Plaintiff testified as follows:

Q: And so this was the report that you provided to Emory Midtown with respect to your practice and your – what you would do in your office and the like as part of your recredentialing; is that right?

A: That is correct.

Q: You did not, I don't believe, separately provide a log of any sort of patients that you treated at Emory Midtown; is that right?

A: Yeah, that is correct . . . .

(Doc. 62-14 at ¶ 22; Doc. 66 at 14, ¶ 22). In Defendants' interrogatories to Plaintiff, she was asked to identify all "Patient Contacts" from May 2021 to May 2023 that she performed in any facility operated by EUHM or an EUHM affiliate, including outpatient facilities, and her response was "NONE." (Doc. 62-14 at ¶ 23).[4]

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[4] Plaintiff disputes this fact, (Doc. 66 at 14, ¶ 23), but her argument that she was an "affiliate," as explained below, fails to

EUHM's Credentials Committee determined that Plaintiff did not meet the requirements for Active Staff membership and changed her staff categorization to Referral Staff. (Doc. 52 at 173 ("[Plaintiff] is currently going through her reappointment and does not have any patient contacts at EUHM within the last 24 months. She does not meet the required criteria for Active category and will be changed to Referral.")). EUHM informed Plaintiff of the change to Referral Staff via letter. (Doc. 62-14 at ¶ 25; Doc. 66 at 15, ¶ 25). From May until July 2023, Plaintiff engaged in various written and telephonic correspondence with individuals in the EUHM Medical Staff office regarding her "patient contacts" and stating her belief that she should be classified as Active Staff. (Doc. 62-14 at ¶ 27; Doc. 66 at 15, ¶ 27).

On April 4, 2023, Plaintiff reached out to EUHM's public safety department and inquired as to whether she was permitted to bring a gun onto the Emory campus. (Doc. 62-14 at ¶ 28; Doc. 66 at 15, ¶ 28). Dr. Justin Cheeley, EUHM's Chief of Service for dermatology who is also on the MEC, testified that "some of the language used in the email exchanges [between Plaintiff and Emory's Public Safety department] was somewhat persecutorial and seemed a little bit of displaying odd behavior and odd thinking." (Doc. 62-14 at ¶ 30; *see also* Doc. 58 at 9:17–21, 10:13–22, 36:2–23).[5] Dr. Wright testified as follows:

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carry the day.

[5] Plaintiff disputes this fact because she argues that Dr. Cheeley's testimony is "not based on personal knowledge, lacks foundation, and is speculative . . . [and] without a factual basis." (Doc. 66 at 16, ¶ 30). The Court disagrees. Dr. Cheeley's

> The issue here was that the inquiry about the firearm was in [the] context of other thoughts that were paranoid and concerning for a mental health crisis . . . . That in addition to [. . .], exhibiting behavior that was paranoid, delusional, grandiose, and frankly to use the functional term, psychotic, made us very concerned about the safety of the patients first and foremost, but also the safety of the staff within the hospital.

(Doc. 62-14 at ¶ 31; *see also* Doc. 52 at 36:17–38:21).[6]

Plaintiff requested a waiver to remain on Active Staff, which was voted on and denied by the MEC on July 10, 2023. (Doc. 62-14 at ¶ 32; Doc. 66 at 16, ¶ 32). On July 13, 2023, Plaintiff asserted that "[s]omeone" from EUHM "took a bribe from Anthem to get [her] kicked off the medical staff." (Doc. 62-14 at ¶ 33; Doc. 66 at 16, ¶ 33). According to Plaintiff: "The individual that does not want me on staff is the person that is taking a bribe from Anthem. I have been in litigation with Anthem Blue Cross for nearly six years. As a result of that litigation, I have accidentally exposed organized criminal activity, white collar crime, and

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testimony about the language Plaintiff used in emails was based on his review of the emails as part of the MEC. (Doc. 58 at 18:9–19:9). Plaintiff's objection does not show a genuine dispute of fact.

[6] Plaintiff disputes this fact because she argues that Dr. Wright's testimony is "not based on personal knowledge, lacks foundation, and is speculative . . . [and] without a factual basis." (Doc. 66 at 16, ¶ 31). The Court disagrees. Dr. Wright is simply explaining the circumstances surrounding Plaintiff's recredentialing. Plaintiff's objection does not show a genuine dispute of fact.

corruption so extreme that it is unbelievable." (Doc. 62-14 at ¶ 33; Doc. 66 at 16, ¶ 33).

Plaintiff's Suspension and Relinquishment of Privileges

Dr. Wright, EUHM's CMO, placed Plaintiff on a precautionary suspension on July 14, 2023. (Doc. 62-14 at ¶ 34; *see also* Doc. 52 at 170 (noting that there were two issues associated with the precautionary suspension: "(1) The rendering of 'curbside' medical care to patients; and (2) [Plaintiff's] request to bring a firearm on campus. Coupled with the phone calls and emails with threats for legal action . . . and getting people in trouble led to suspension for being a danger and threat to the safety of patients and others on the EUHM campus.")).[7] Plaintiff described her method of "curbside medicine" as "visiting a patient in the hospital to say hello" without documenting clinical activity in the medical record. (Doc. 62-14 at ¶ 35; Doc. 66 at 16, ¶ 35). Dr. Wright testified that she felt that Plaintiff's actions were "threatening to the safety of the campus." (Doc. 62-14 at ¶ 36).[8] Under the EUHM bylaws, the CMO is authorized to impose a precautionary suspension, which may be given "at any

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[7] Plaintiff disputes this fact, (Doc. 66 at 16, ¶ 34), but Plaintiff does not cite to evidence to refute the fact as stated by Defendants.

[8] Plaintiff disputes this fact because she argues that Dr. Wright's testimony is "not based on personal knowledge, lacks foundation, and is speculative . . . [and] without a factual basis." (Doc. 66 at 17, ¶ 36). The Court disagrees. Dr. Wright is a fact witness who was involved in the underlying proceedings, and she has a basis for offering the opinion that Plaintiff's actions were threatening. Plaintiff's objection does not show a genuine dispute of fact.

time, including after a specific event, a pattern of events, or a recommendation by the [MEC]" "[w]henever failure to take action may result in imminent danger to the health and/or safety of any individual." (Doc. 62-14 at ¶ 37; *see also* Doc. 52 at 115–16).[9]

As required by the bylaws, the EUHM MEC held a meeting on July 19, 2023, to review the suspension. (Doc. 62-14 at ¶ 38; Doc. 66 at 17, ¶ 38). Prior to the meeting, Plaintiff sent a letter to the MEC asking them to "issue a formal retraction" of the precautionary suspension and stating that she provided "curbside" consulting, which she defined as "relaying prior treatments via phone to primary care providers from [her] office phone." (Doc. 62-2 at 23–25). Plaintiff has acknowledged that these curbside consults do not fit within the definition of "Patient Contacts." (Doc. 62-14 at ¶ 40; Doc. 66 at 17, ¶ 40). In the letter, Plaintiff also claimed that two white male dermatologists at Emory St. Joseph's Hospital had been reappointed to Active Staff "despite not having 24 patient admissions." (Doc. 62-14 at ¶ 41; Doc. 66 at 17, ¶ 41). Plaintiff has since acknowledged that neither of these providers that she identified in this letter were reappointed to Active Staff. (Doc. 62-14 at ¶ 42; Doc. 66 at 18, ¶ 42). Both the CMO of Emory St. Joseph's Hospital and the CMO of EUHM have confirmed that these two providers were not reappointed to Active Staff; one was appointed to Referral Staff and the other to Consulting Staff. (Doc. 62-14 at ¶ 43; Doc. 66 at 18, ¶ 43).

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[9] Plaintiff disputes this fact, (Doc. 66 at 17, ¶ 37), but Plaintiff does not cite to evidence to refute the fact as stated by Defendants.

The MEC upheld Plaintiff's precautionary suspension and asked Plaintiff to submit to a fitness for duty evaluation. (Doc. 62-14 at ¶ 44; Doc. 66 at 18, ¶ 44). Plaintiff, however, did not take the scheduled fitness for duty evaluation because she revoked part of her HIPAA consent prior to the examination. (Doc. 62-14 at ¶ 45; Doc. 66 at 18, ¶ 45). On August 11, 2023, EUHM sent notice to Plaintiff that by failing to submit the results of a fitness for duty evaluation, her privileges were automatically relinquished. (Doc. 62-14 at ¶ 46; Doc. 66 at 18, ¶ 46).

Plaintiff's Relationship with Staff Care

Staff Care has confirmed that it did not have an employment relationship with Plaintiff. (Doc. 62-14 at ¶ 49; Doc. 66 at 19, ¶ 49). At her deposition, Plaintiff also admitted that she did not have an employment or independent contractor relationship with Staff Care. (Doc. 62-14 at ¶ 50; Doc. 66 at 19, ¶ 50).[10]

C. Discussion

1. Summary Judgment Standard

Summary judgment is authorized when the pleadings, the discovery and disclosure materials on

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[10] Plaintiff contends that two other material facts are in dispute: "[Plaintiff] qualified for Active Staff under the new bylaws formed in 2021. She met the criteria for patient contacts as an affiliate of EUMH," (Doc. 66 at 20, ¶ 1), and "Emory Healthcare, Inc. and Plaintiff have employer-employee relationship for Title VII claims based upon third party relationships severed by illegal trespassing notice," (*id.* at 20, ¶ 2). Both alleged facts are legal conclusions, and neither is supported by the evidence Plaintiff cites. The Court has therefore excluded both assertions of fact. *See* LR 56.1(B)(1), NDGa.

file, and any affidavits show "that there is no genuine dispute as to any material fact and the movant is entitled to a judgment as a matter of law." Fed. R. Civ. P. 56(a). The party seeking summary judgment bears the burden of demonstrating the absence of a genuine dispute as to any material fact. *See Celotex Corp. v. Catrett*, 477 U.S. 317, 323 (1986); *Baas v. Fewless*, 886 F.3d 1088, 1091 (11th Cir. 2018). The movant carries this burden by showing the court "that there is an absence of evidence to support the nonmoving party's case." *Celotex*, 477 U.S. at 325. In making its determination, the court must view the evidence and all factual inferences in the light most favorable to the non-moving party. *See Crane v. Lifemark Hosps., Inc.*, 898 F.3d 1130, 1134 (11th Cir. 2018).

Once the moving party has adequately supported its motion, the nonmoving party must come forward with specific facts that demonstrate the existence of a genuine issue for trial. *Matsushita*, 475 U.S. at 587. The non-moving party is required "to go beyond the pleadings" and to present competent evidence designating "specific facts showing that there is a genuine issue for trial." *Celotex*, 477 U.S. at 324 (internal quotation marks omitted). Generally, "[t]he mere existence of a scintilla of evidence" supporting the non-moving party's case is insufficient to defeat a motion for summary judgment; rather, there must be evidence on which a jury could reasonably find for the non-moving party. *Anderson v. Liberty Lobby, Inc.*, 477 U.S. 242, 252 (1986). The non-moving party cannot defeat summary judgment by relying upon conclusory assertions. *See Holifield v. Reno*, 115 F.3d 1555, 1564 n. 6 (11th Cir. 1997), *abrogated on other grounds by Lewis v. City of Union City*, 918 F.3d 1213

(11th Cir. 2019) (en banc). Rather, "[a] party asserting that a fact . . . is genuinely disputed must support the assertion by . . . citing to particular parts of materials in the record." Fed. R. Civ. P. 56(c)(1)(A); *see also Resol. Tr. Corp. v. Dunmar Corp.*, 43 F.3d 587, 599 (11th Cir. 1995) (*en banc*) ("There is no burden upon the district court to distill every potential argument that could be made based upon the materials before it on summary judgment.").

If a fact is found to be material, the court must also consider the genuineness of the alleged factual dispute. *See Anderson*, 477 U.S. at 249-50. A factual dispute is not genuine if it is unsupported by evidence, or if it is created by evidence that is "merely colorable" or is "not significantly probative." *Id.* A dispute is genuine "if the evidence is such that a reasonable jury could return a verdict for the nonmoving party." *Id.* at 248. Moreover, for factual issues to be genuine, they must have a real basis in the record. *Matsushita*, 475 U.S. at 587. The non-moving party "must do more than simply show that there is some metaphysical doubt as to the material facts." *Id.* at 586. "Where the record taken as a whole could not lead a rational trier of fact to find for the non-moving party, there is no genuine issue for trial." *Id.* at 587 (internal quotation marks omitted). Thus, the standard for summary judgment mirrors that for a directed verdict: "whether the evidence presents a sufficient disagreement to require submission to a jury or whether it is so one-sided that one party must prevail as a matter of law." *Anderson*, 477 U.S. at 259 (internal quotation marks omitted).

When considering motions for summary judgment, the court does not make decisions as to the merits of disputed factual issues. *See id.* at 249; *Ryder Int'l*

Corp. v. First Am. Nat'l Bank, 943 F.2d 1521, 1523 (11th Cir. 1991). Rather, the court only determines whether there are genuine issues of material fact to be tried. *Anderson*, 477 U.S. at 249. Disputed facts that do not resolve or affect the outcome of a suit will not preclude the entry of summary judgment. *Id.*

2. Motion for Summary Judgment

In the second amended complaint, Plaintiff asserts a tort claim for failure to follow bylaws under O.C.G.A. § 51-1-6 against all Defendants, and a claim of race discrimination in violation of Title VII against Emory. (Doc. 19; *see also* Doc. 31). Defendants move for summary judgment as to both remaining claims. (Doc. 62).

a. Defendants' Arguments and Plaintiff's Responses

Defendants first argue that they are entitled to summary judgment on Plaintiff's bylaws claim because the undisputed evidence shows that Defendants did not violate the bylaws when they determined that Plaintiff did not have sufficient patient contacts to be eligible to be Active Staff. (Doc. 62 at 19–22). They also contend that they did not violate the bylaws when Dr. Wright imposed a precautionary suspension because Dr. Wright had legitimate safety concerns about Plaintiff's behavior. *Id.* at 22–24. Defendants further argue that Plaintiff's Title VII claim fails because she cannot show that Emory was her employer or that Emory interfered with Plaintiff's employment relationship with another entity. *Id.* at 24–27.

In response, Plaintiff argues that, as a medical staff professional, she constitutes an "affiliate" of EUMH and thus all of her patient contacts qualify under the bylaws to make her eligible for Active Staff. (Doc. 66 at 2). She asserts that Defendants issued a precautionary suspension "without an ounce of imminent danger," added emails to her credentialing file without giving her the opportunity to first review them, and bypassed her right to a hearing, all of which violated the bylaws. *Id.* at 2–3. Plaintiff acknowledges that she did not have an employment relationship with Staff Care, but states that this "does not change the employer-employee dynamic in this case" because Emory interfered with her relationships with her patients. *Id.* at 3.

In reply, Defendants argue that a plain reading of the bylaws and deposition testimony establishes that Plaintiff is not a EUHM "affiliate" within the meaning of the bylaws and that her patient encounters in her private office do not qualify as "patient contacts" under the bylaws. (Doc. 68 at 1–6). They also argue that the standard under the bylaws for issuing a precautionary suspension is subjective, and Plaintiff has not presented evidence that Dr. Wright did not believe that imminent danger could result if she did not issue the precautionary suspension. *Id.* at 6–8. Defendants contend that Plaintiff now raises a new allegation—that her Title VII claim is based on EUHM issuing a trespassing notice that interfered with her patient relationships—which Plaintiff may not do in her response to summary judgment. *Id.* at 9. Defendants argue that, even if she could raise her new Title VII arguments, such claim still fails because Title VII does not extend to interference with a physician's relationship with their patients. *Id.* at 9–11.

b. Tort Claim for Failure to Follow Bylaws

O.C.G.A § 51–1–6 states that "[w]hen the law requires a person to perform an act for the benefit of another or to refrain from doing an act which may injure another, although no cause of action is given in express terms, the injured party may recover for the breach of such legal duty if he suffers damage thereby." Both this court and Georgia state courts have found that a "hospital has a legal duty to follow its existing bylaws and any alleged breach of that duty can be asserted as a cause of action under O.C.G.A. § 51-1-6," without requiring a plaintiff to allege a legal duty under a statute other than O.C.G.A. § 51-1-6 to bring such a claim. *Rowell v. Phoebe Putney Mem'l Hosp., Inc.*, 791 S.E.2d 183, 186 (Ga. Ct. App. 2016); *see also Lee v. Hosp. Auth.*, 397 F.3d 1327,1329 (11th Cir. 2005) ("When hospitals fail to comply with their bylaws and arbitrarily revoke staff privileges the injured physician can maintain an action under O.C.G.A. § 51-1-6."); *Sonyika v. Emory Crawford Long Hosp.*, No. 1:09-CV-1823-CAP-WEJ, 2009 WL 10669411, at *5 (N.D. Ga. Oct. 30, 2009) ("Plaintiff correctly notes that Georgia law provides a cause of action where a hospital arbitrarily revokes staff privileges in violation of its bylaws. That cause of action, however, is a tort claim codified by O.C.G.A. § 51-1-6." (citation omitted)), *adopted by* 2009 WL 10669741 (N.D. Ga. Nov. 19, 2009).

Here, Plaintiff alleges that Defendants did not follow Emory's bylaws when they found that she did not qualify for Active Staff because she did not have enough patient contacts and when they issued her a precautionary suspension. (Doc. 66 at 2).[11] Plaintiff has failed, however, to produce sufficient evidence to raise a jury question regarding whether Defendants failed to comply with Emory's bylaws as to either action.

i. Patient Contacts

First, as to Plaintiff's qualification for Active Staff, the Emory bylaws provide for several categories of Medical Staff members: Active, Referral, Honorary, Courtesy, Consulting, and Coverage. (Doc. 62-14 at ¶ 1). Under the bylaws, Active Staff members must be involved "in at least twenty-four (24) Patient Contacts per two (2) year appointment term." *Id.* at ¶ 5. "Patient Contacts" are defined to include "any admission, consultation, procedure, response to emergency call, evaluation, treatment, or service <u>performed in any facility operated by the Hospital or affiliate, including outpatient facilities</u>. It shall not include referrals for diagnostic or laboratory tests or x-rays." *Id.* at ¶ 6 (emphasis added). To verify whether a provider fits into the definition of the "Active Staff" category, the EUHM credentialing committee may request a patient volume log from the provider. *Id.* at ¶ 12. Patient volume logs cannot include patient interactions in "a

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[11] To the extent that Plaintiff also argues that Defendants breached their duty to comply with their bylaws by "insert[ing] emails into [her] credentialing files that she was not aware of and never given the opportunity [to] review," (Doc. 66 at 2), the Court declines to consider any such argument, as it is not properly supported by facts. There are no facts properly before the Court regarding Defendants' alleged insertion of emails into Plaintiff's credentialing file, and Plaintiff has cited to no provision of the bylaws requiring that she be allowed to review emails before they are added to her credentialing file.

private office setting unless it is operated by [EUHM] or one of Emory Hospital's affiliates." *Id.*

The undisputed evidence shows that Patient Contacts "include[] outpatient facilities that are operated by the hospital or a hospital affiliate, but excludes outpatient procedures and visits by a facility not operated by the hospital or affiliate." (Doc. 62-14 at ¶ 9; Doc. 66 at 12, ¶ 9; *see also* Doc. 52 at 13: 1–12, 24:23– 26:18). And Plaintiff's volume reports submitted as part of her 2023 application for re-credentialing showed only office visits, labs, surgeries, biopsies, and other procedures done in Plaintiff's private office. (Doc. 62-14 at ¶¶ 19–21; Doc. 66 at 14, ¶¶ 19–21). Accordingly, EUHM's Credentials Committee determined that Plaintiff did not meet the metrics for Active Staff membership and changed her categorization to Referral Staff. (Doc. 52 at 173 ("[Plaintiff] is currently going through her reappointment and does not have any patient contacts at EUHM within the last 24 months. She does not meet the required criteria for Active category and will be changed to Referral.")). EUHM informed Plaintiff of the change to Referral Staff via letter. (Doc. 62-14 at ¶ 25; Doc. 66 at 15, ¶ 25).

Plaintiff has failed to meet her burden of setting forth sufficient evidence to create a genuine issue of material fact regarding her claim that Defendants breached their duties to her under the bylaws related to her re-credentialing application. The undisputed evidence establishes as a matter of law that Defendants appropriately considered and applied the "patient contacts" portion of the bylaws in the course of considering Plaintiff's re-credentialing application and that her patient interactions in her private office simply do not qualify as patient contacts.

Plaintiff argues for the first time in her response brief that "[i]n her role as a medical staff professional, Plaintiff is an affiliate of Emory University Midtown Hospital," which, she seems to argue, would make all of her patient contacts performed in her private office constitute Patient Contacts within the meaning of the bylaws. (Doc. 66 at 2). However, Plaintiff provides no evidence for this reading of the term "affiliate" in the bylaws and no legal citations to support this argument. *See id.* A plain reading of the bylaws and the undisputed evidence about how Emory officials interpret the term "patient contacts" belies Plaintiff's claim that she would be considered an "affiliate" under the bylaws.

The term "affiliate" is not defined in Emory's bylaws. (*See* Doc. 51 at 68–73). The bylaws do define "Medical Staff" and "Member," and neither term is defined to be an "affiliate" of EUHM. *See id.* at 70–71. Black's Law Dictionary defines affiliate as "[a] corporation that is related to another corporation by shareholdings or other means of control; a subsidiary, parent, or sibling corporation." AFFILIATE, Black's Law Dictionary (12th ed. 2024). There are no facts in the record to indicate that Plaintiff was employed by or under any common control with EUHM or that medical staff members are considered to be "affiliates" of EUHM. And Dr. Wright's testimony indicates that she interpreted "affiliate" to mean corporate affiliates of Emory. (*See* Doc. 52 at 12:7–13:12 (Patient Contacts "include[] outpatient facilities that are operated by the hospital or a hospital affiliate, but excludes outpatient procedures and visits by a facility not operated by the hospital or affiliate" and do not include procedures performed "[i]n an office setting unless that office is operated by our hospital or an affiliate."), *id.* at 14:10–15 (patient volume logs cannot include patient interactions in "a private office setting unless it is operated by [EUHM] or one of Emory Hospital's affiliates."). Simply put, Plaintiff has put forth no evidence or legal arguments to support her claim that she was an "affiliate" within the meaning of the bylaws. With no other evidence of patient contacts, Defendants are entitled to summary judgment on this claim.

ii. Precautionary Suspension

Next, as to Plaintiff's precautionary suspension, the bylaws state that:

> (a) Whenever failure to take action may result in imminent danger to the health and/or safety of any individual, [certain officials including the CMO are] authorized to suspend or restrict all or any portion of an individual's Clinical Privileges as a precaution.
>
> (b) precautionary suspension . . . can be imposed at any time, including after a specific event, a pattern of events, or a recommendation by the Medical Executive Committee . . . When possible, prior to the imposition of a precautionary suspension, the person(s) considering the suspension will meet with the individual and review the concerns that support the suspension and afford the individual an opportunity to respond.

(Doc. 51 at 115 (Sections 6.H.I.(a), (b) of the bylaws)).

The undisputed evidence shows that from May until July 2023, Plaintiff engaged in various written and telephonic correspondence with individuals in the EUHM Medical Staff office regarding her "patient contacts" and stating her belief that she should be classified as Active Staff. (Doc. 62-14 at ¶ 27). On April 4, 2023, Plaintiff reached out to EUHM's public safety department and inquired as to whether she was permitted to bring a gun onto the Emory campus. *Id.* at ¶ 28. Dr. Wright placed Plaintiff on a precautionary suspension on July 14, 2023. (Doc. 62-14 at ¶ 34; *see also* Doc. 52 at 170 (noting that there were two issues associated with the precautionary suspension: "(1) The rendering of 'curbside' medical care to patients; and (2) [Plaintiff's] request to bring a firearm on campus. Coupled with the phone calls and emails with threats for legal action . . . and getting people in trouble led to suspension for being a danger and threat to the safety of patients and others on the EUHM campus.")). During Dr. Wright's deposition, she testified that she felt that Plaintiff's actions were "threatening to the safety of the campus." (Doc. 62-14 at ¶ 36). Dr. Wright testified:

> The issue here was that the inquiry about the firearm was in [the] context of other thoughts that were paranoid and concerning for a mental health crisis . . . . That in addition to [. . .], exhibiting behavior that was paranoid, delusional, grandiose, and frankly to use the functional term, psychotic, made us very concerned about the safety of the patients first and foremost, but also the safety of the staff within the hospital.

(Doc. 62-14 at ¶ 31; *see also* Doc. 52 at 36:17–38:21).

Plaintiff has failed to meet her burden of setting forth sufficient evidence to create a genuine issue of material fact regarding her claim that Defendants breached their duties to her when they placed her on a precautionary suspension as provided in the bylaws. The undisputed evidence establishes as a matter of law that Defendants' actions were consistent with the bylaws. *See Lee*, 397 F.3d at 1329–30 (holding that the district court did not err in granting summary judgment for a tort claim under O.C.G.A. § 51-1-6 where "[t]he undisputed evidence showed that the investigation of [the plaintiff's] application for reappointment and of his surgical complications was conducted in a manner consistent with the hospital's bylaws, and there was no evidence to show that the hospital knowingly made a false report . . . ").[12]

Thus, because Plaintiff has not set forth sufficient evidence to create a genuine issue of material fact as

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[12] To the extent that Plaintiff argues that Defendants violated the bylaws by not meeting with her prior to imposing the precautionary suspension, (Doc. 66 at 3), the Court notes that Plaintiff misquotes the relevant bylaw provision. Section 6.H.I.(b) does not <u>require</u> Defendants to meet with Plaintiff prior to issuing a precautionary suspension. Instead, the bylaws state that such a meeting should be held prior to the suspension "[w]hen possible." (Doc. 51 at 115 ("A precautionary suspension . . . can be imposed at any time, including after a specific event, a pattern of events, or a recommendation by the Medical Executive Committee . . . When possible, prior to the imposition of a precautionary suspension, the person(s) considering the suspension will meet with the individual and review the concerns that support the suspension and afford the individual an opportunity to respond.")). Plaintiff has not shown a genuine issue of material fact regarding whether Defendants violated the bylaws by not meeting with her before imposing her precautionary suspension.

to either of her claims that Defendants breached their duties under Emory's bylaws related to re-credentialing or precautionary suspension, I RECOMMEND that Defendants' motion for summary judgment, (Doc. 62), be GRANTED as to Plaintiff's tort claim for failure to follow bylaws under O.C.G.A. § 51-1-6.

c. Title VII Claim

The Court next considers Plaintiff's claim of race discrimination in violation of Title VII. "Generally, Title VII protects employees and not independent contractors. There are certain limited situations, however, in which Title VII extends beyond a direct employment relationship between the plaintiff and the defendant." *Clark v. Marietta Surgical Ctr., Inc.*, No. 1:97-CV-0790-JOF, 1999 WL 1043772, at *6 (N.D. Ga. Mar. 18, 1999) (citation omitted). The Eleventh Circuit has held that Title VII's protection "does extend to a claim that a defendant has interfered with an individual's employment relationship with a third party." *Pardazi v. Cullman Med. Ctr.*, 838 F.2d 1155, 1156 (11th Cir. 1988) ("[The plaintiff] argues that the hospital's denial of staff privileges interfered with his employment opportunities—i.e., his employment contract with [a professional corporation]. . . . If [the plaintiff] can prove his claim that the hospital's discrimination against him interfered with his employment opportunities with the professional corporation, we hold that Title VII would encompass such a claim."); *see also Zaklama v. Mt. Sinai Med. Ctr.*, 842 F.2d 291, 294 (11th Cir. 1988) ("[P]arties other than a plaintiff's actual or potential employer could be liable under Title VII if they control the plaintiff's access to employment and deny that access based on unlawful criteria.").

Plaintiff does not argue or allege that Emory was her employer. (See Docs. 19, 66). Rather, Plaintiff contends in the second amended complaint that Emory's alleged discrimination against her interfered with her contract with Staff Care. (Doc. 19 at ¶¶ 17, 118, 153–55). However, the undisputed evidence shows that Plaintiff did not have an employment relationship with Staff Care. (Doc. 62-14 at ¶¶ 49, 50). And Plaintiff acknowledges this in her response brief. (Doc. 66 at 3 ("[D]iscovery revealed that the Staff Care relationship did not exist between 2021– 2023")). Accordingly, Plaintiff cannot assert a Title VII claim against Emory on the basis that Emory's alleged discrimination interfered with her employment with a third party.

Further, to the extent that Plaintiff argues that Emory's alleged "interference with her third party relationships with her patients" allows her to bring a Title VII claim against Emory under *Pardazi*, (Doc. 66 at 3), the Court disagrees. The Eleventh Circuit has held that "in the traditional doctor-patient relationship, patients are not doctors' employers under federal discrimination statutes[.]" *Ashkenazi v. S. Broward Hosp. Dist.*, 607 F. App'x 958, 967 (11th Cir. 2015) (affirming the district court's grant of summary judgment on a claim under the ADEA for interference with employment opportunities with third parties). Moreover, there are no facts in the record related to any "illegal trespassing notice that prevented [Plaintiff] from accessing her patients," (Doc. 66 at 3), which appears to be the basis for Plaintiff's claim that Emory interfered with her relationships with her patients.

Thus, because Plaintiff has not set forth sufficient evidence to create a genuine issue of material fact as to whether Emory interfered with her employment relationship with a third party, I RECOMMEND that Defendants' motion for summary judgment, (Doc. 62), be GRANTED as to Plaintiff's Title VII claim.

III. MISCELLANEOUS MOTION

Also before the Court is Plaintiff's motion for ethical and unbiased judgment on pending motions immediately, (Doc. 71), in which she asks that "this Court render its decisions on the pending Motion for Summary Judgment and Motion to Leave to Amend . . . based sole[l]y on the rule of law and ethical considerations, free from any [influence] by special interests or external pressu[r]es," (*id.* at 1). The Court has now taken up all of the pending motions, and Plaintiff's motion is therefore DENIED AS MOOT.

IV. CONCLUSION

For the reasons stated above, I **RECOMMEND** that Plaintiff's motion for leave to amend, (Doc. 64), be DENIED, and Defendants' motion for summary judgment, (Doc. 62), be GRANTED. Plaintiff's motion for ethical and unbiased judgment on pending motions immediately, (Doc. 71), is **DENIED AS MOOT.**

There are no other pending motions in this matter, and the Clerk is **DIRECTED** to terminate the reference to the undersigned.

IT IS SO ORDERED AND RECOMMENDED, this 12th day of June, 2025.

/s/ Christopher C. Bly
United States Magistrate Judge

ORDER DENYING PETITION FOR REHEARING, U.S. COURT OF APPEALS FOR THE ELEVENTH CIRCUIT (JUNE 29, 2026)

IN THE UNITED STATES COURT OF APPEALS
FOR THE ELEVENTH CIRCUIT

W.A. GRIFFIN,

Plaintiff-Appellant,

v.

EMORY HEALTHCARE, INC.,
WENDY WRIGHT, M.D.,
WILLIE SMITH, JR., M.D., DAN OWENS, CEO,

Defendants-Appellees.

No. 25-12457

Appeal from the United States District Court
for the Northern District of Georgia
D.C. Docket No. 1:23-cv-05060-MHC

Before: LUCK, LAGOA, and BRASHER,
Circuit Judges.

ON PETITION FOR REHEARING AND PETITION FOR REHEARING EN BANC

PER CURIAM:

The Petition for Rehearing En Banc is **DENIED**, no judge in regular active service on the Court having requested that the Court be polled on rehearing en banc. FRAP 40. The Petition for Panel Rehearing also is **DENIED.** FRAP 40.

SUPREME COURT
PRESS