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IN THE SUPREME COURT OF FLORIDA

THE FLORIDA BAR,

Complainant,

v.

CHRISTOPHER W. CROWLEY,

Respondent.
______________________________/

Supreme Court Case No.
SC20-529

The Florida Bar File Nos.
2019-10,070 (12B)
2019-10,109 (12B)
2019-10,148 (12B)

INITIAL BRIEF

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PRELIMINARY STATEMENT

Complainant is referred to as The Florida Bar or the Bar. Christopher W. Crowley is referred to as Respondent or Crowley.

Bar exhibits are referred to as "TFB-Exh." and Respondent's exhibits are referred to as "R-Exh." followed by the exhibit number and any applicable page number(s) (e.g., TFB-Exh. 1 at 5).

Documents comprising the Index of Record are referred to by tab number and any applicable page number(s) (e.g., Tab#1 at 5). The Report of Referee on Findings of Fact and Guilt (Tab#52) is referred to as "ROR1:" and the Sanctions Report of Referee (Tab#133) is referred to as "ROR2:" followed by the applicable page number(s).

Transcripts of hearings are referred to as follows: T1 for the trial held February 8, 2021 through February 9, 2021; T2 and T3 for the sanction hearing held February 28, 2024 through February 29, 2024, respectively; T4 for the hearing on Respondent's Motion for Reconsideration and / or New Trial held August 25, 2021; and T5 for the hearing on Respondent's Motion to Reconsider and Vacate Findings of Referee Due to Subsequent Authority from U.S.

Supreme Court held January 18, 2024. These transcripts are followed by applicable page and any line number(s) (e.g., T1:1:1-2).

The Rules Regulating The Florida Bar may be referred to as "Rule(s)" followed by the rule number(s). Florida's Standards for Imposing Lawyer Sanctions may be referred to as "Standard" followed by the standard number.

STATEMENT OF THE CASE

The Florida Bar filed its Complaint on April 14, 2020. (Tab#1). Prior to trial, Crowley filed a Motion to Dismiss (Tab#10) and argued that the subjective *mens rea* standard of at least recklessness (i.e., "actual malice") from New York Times v. Sullivan, 376 U.S. 254 (1964), must apply for violations of Rule 4-8.2(a), and that speech uttered during a campaign for political office has the fullest protection of the First Amendment to the U.S. Constitution. (Tab#15 at 1-8). But the Referee held that "[t]he burden is on [Crowley] to prove he had an objectively factual basis to make the statements," and thus "[t]he Florida Bar's complaint does not need to allege actual malice." (Tab#23 at 4-6).

Following trial, the Referee recommended Crowley be found in violation of Rule 4-8.2(a) by applying an objective *mens rea* standard. (ROR1:22, 27). The Referee also found Crowley in violation of Rule 3-4.3 under the same Count based upon the same grounds and reasoning for the violation of Rule 4-8.2(a): "[Crowley's] conduct towards Ms. Fox during his campaign, which were alleged in the Bar's complaint." (ROR1:24-27).

Two years after the Report of Referee on Findings of Fact and Guilt was issued, the U.S. Supreme Court issued its decision in Counterman v. Colorado, 600 U.S. 66 (2023), and the Fourth Circuit issued its decision in Grimmett v. Freeman, 59 F.4th 689 (4th Cir. 2023). Soon after a stay in the proceedings ended, Crowley filed a Motion to Reconsider and Vacate Findings of the Referee Due to Subsequent Authority from U.S. Supreme Court. (Tab#111). Crowley argued Counterman made clear that it is a violation of the First Amendment to penalize speech based solely on an objective or negligence standard without proof of a more culpable, subjective *mens rea* of the speaker, which directly contradicts the standard applied by the Referee. (Tab#111 at 1-2, 49-51; Tab#118 at 11-12). Crowley also argued that Grimmett shows Rule 4-8.2(a) is facially unconstitutional. (Tab#111 at 8-10, 51; Tab#118 at 12).

Additionally, Crowley had earlier filed a Motion for Summary Judgment based on Florida Statutes Section 768.295 (Florida's "anti-SLAPP" statute) after the Report of Referee on Findings of Fact and Guilt was issued, but before the sanctions hearing, again arguing that the actual malice standard from Sullivan must apply

to violations based on candidate speech during political campaigns. (Tab#105 at 9-10). Near the end of a stay, the Bar filed a Response (Tab#108), and on the first day the case resumed from the stay, without Crowley having an opportunity to reply to the Bar's arguments or be heard, the Referee issued an Order Denying Respondent's Motion for Summary Judgment based on the Bar's argument that "Florida Statute § 768.295 does not apply to The Florida Bar disciplinary proceedings." (Tab#110). Thus, in Crowley's Motion for Reconsideration based on Counterman and Grimmett, Crowley also requested his Motion for Summary Judgment likewise be reconsidered and he be given an opportunity to reply to the Bar's contention and the Referee's ruling that Florida Statutes Section 768.295 does not apply to Bar disciplinary proceedings. (Tab#111 at 51-52).

However, in an Order Denying Respondent's Motion to Reconsider, the Referee ruled that Counterman does not apply to this disciplinary case (Tab#120 at 8-11, 14) and that Grimmett is distinguishable (Tab#120 at 11-12, 14), and maintained that Florida Statutes Section 768.295 does not apply to Bar disciplinary proceedings (Tab#120 at 12-14).

A sanctions hearing was held February 28-29, 2024. As to Count I, Crowley was found to have violated Rules 4-8.2(a) and 3-4.3. As to Count II, the Referee found the Bar failed to prove any Rule violations.

STATEMENT OF THE FACTS

In the 2018 primary for the Twentieth Judicial Circuit State Attorney, Crowley and then-Chief Assistant State Attorney Amira Fox were candidates after then-State Attorney Stephen Russell announced his retirement. (ROR1:3-4). Fox won the primary and was elected as State Attorney (T1:151), but due to statements about four general topics Crowley made during his campaign, the Bar claimed and the Referee found that Crowley violated Rules 4-8.2(a) and 3-4.3.

A. STATEMENTS ABOUT FOX'S NAME, HER FATHER'S BOOK, AND HER UNCLE'S TIES TO THE PALESTINE LIBERATION ORGANIZATION ("PLO")

The Referee inaccurately stated that Crowley "[c]laim[ed] his political opponent was Muslim[,]…directly putting her religious beliefs at issue," (ROR1:7-8) and "made statements about Ms. Fox holding herself out as Amy Fox" (ROR1:22). On August 27, 2018, Crowley "copied and pasted portions of [an AmericanThinker.com] article, [partially] about Ms. Fox, onto his Facebook page, in addition to linking the article…with no corrections or other disclaimers." (ROR1:5-6 (citing TFB-Exh. 5b)). Crowley did not write the article. (ROR1:6). The article, "More Muslim Candidates

for Political Office,” contains a paragraph referring to Fox, which Crowley copied and pasted onto Facebook:

> Amira Dajani, a GOP candidate running for Florida attorney general under the name ‘Amy Fox,’ was recently discovered to be part of a family with deep ties to the PLO, a terrorist group pledged to destroy Israel and led from 1969 to 2004 by Yasser Arafat, the father of modem terrorism. Dajani's father wrote an anti-Israel, anti-Jewish book and dedicated it to his daughter. He advocates Israel's destruction and, contrary to reality, accuses the Jewish State of using Arabs as human shields. The uncle of Dajani, AKA Fox, has served in high-level PLO leadership positions. Thus far, the candidate has been mum about the activities of her father and uncle.

(ROR1:6 (quoting TFB-Exh. 5b(i) at 2, ¶ 4); TFB-Exh. 5b).

The quoted excerpt needed to highlight the difference between Fox’s current *last* name and her family name of “Dajani” to show her connection with the book’s author, Taher Dajani, as Fox’s father. (TFB-Exhs. 4a, 4b, 5b). It is unknown why the article also stated a different first name for Fox, but this is the only instance where the name “Amy” is indirectly mentioned by Crowley. In fact, in another Facebook post from the very same day, Crowley linked to a post referring to Fox as “Amira” and made no claim that Fox went by the name “Amy.” (TFB-Exh. 5c). Regardless, nothing in the evidence or the Referee’s Report indicates that going by the name of

"Amy" is somehow a matter "concerning the qualifications or integrity of a…public legal officer…or candidate for election…to…legal office." See R. Regulating Fla. Bar 4-8.2(a).

Instead, the Referee claimed that by referencing this portion of the article, Crowley somehow indirectly "spread the allegation that Ms. Fox was a Muslim." (ROR1:7). But nothing in that paragraph or anything Crowley ever stated claimed that Fox is a Muslim. "[D]uring his testimony Respondent stated more than once that he did not know Ms. Fox's religious background *and he did not care.*" (ROR1:7 (emphasis added)). He did not care because Fox's religion was never an issue he raised in the campaign. As a reporter for Naples Daily News noted during the campaign on August 18, 2018, Crowley said "'I don't know what religion Ms. Fox is and I don't care,'…. [Crowley] said he's never made race or ethnicity an issue in the campaign." (R-Exh. 3).

The Referee also noted that Crowley "then started publishing campaign materials that unequivocally stated Ms. Fox had 'close family ties to the PLO terrorist organization.'" (ROR1:8 (quoting TFB-Exh. 4b; see also TFB-Exh. 4a)). But again, nothing in those

campaign materials claimed that Fox is a Muslim or went by the name "Amy." (TFB-Exhs. 4a, 4b).

The sole point of those campaign materials and Facebook post was that Fox's father "wrote an anti-Israel, anti-Jewish book and dedicated it to [Fox]," and her uncle "served in high-level PLO leadership positions" which Fox "has been mum about." (ROR1:6 (quoting TFB-Exh. 5b(i), at 2, ¶ 4); TFB-Exh. 5b). As quoted in one of the campaign materials, the book dedication states:

> Without the *support* of my…daughters, Amira and Zena, it would have been difficult to…finish writing my memoir…I thank them for *their support, suggestions and valuable editorial comments.*

(TFB-Exhs. 4a, 4b) (emphasis added; ellipses in original). This does not merely dedicate the book to Fox, but indicates that Fox "support[ed]" the book and provided "suggestions and valuable editorial comments."

For this reason, Crowley raised a valid concern that Fox would not denounce or disavow the PLO and her father's book. (ROR1:8; TFB-Exhs. 4a, 4b). If Fox supported the PLO or her father's views, some voters could have worried that Fox might not treat Jewish victims or Jewish defendants fairly, such as a Jewish victim who is

assaulted or threatened in a hate-crime by a supporter of Palestine.[1] According to the Anti-Defamation League (ADL), the initial "guiding ideology of the PLO was outlined in the Palestine National Charter or Covenant, which…contained 33 articles calling for the destruction of the State of Israel," and the "PLO was responsible for scores of acts of terrorism" against Israelis. (R-Exh. 19).

An article about Fox and her father's book, "Memoir by father of state attorney candidate raised as campaign issue" by Michael Braun with Fort Myers News-Press dated June 20, 2018, noted the following from a "member of the Southwest Florida Chapter of the Zionists of America,…Jerry Sobel": "'The bottom line is, does [Fox] support the book?' [Sobel] asked, adding that *unless [Fox] personally renounces the book he could not cast a vote for her*." (R-Exh. 9 (emphasis added)). Another article by Brent Batton with

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[1] See, e.g., Dakin Andone et al., "Jewish man dies from head injury following 'interaction' with pro-Palestinian demonstrator in California, authorities say," CNN, Nov. 7, 2023; https://www.cnn.com/2023/11/07/us/thousand-oaks-protest-man-dies/index.html (accessed Nov. 8, 2023) ("A 69-year-old Jewish man died after suffering a head injury," "authorities had not ruled out the possibility of a hate crime.").

Naples Daily News acknowledged that “some of [Fox’s father’s] views and conclusions would no doubt cause supporters of Israel to take issue and even offense. [Fox’s father] describes how his brother, Sidqi [Fox’s uncle], was on the PLO executive committee….” (R-Exh. 3). Thus, this was an important and decisive issue for some voters, as even Fox admitted (T1:181-82), and it is not unreasonable or unusual to criticize political officials and candidates for apparent connections with or support of groups like the PLO, and to call on them to disavow such groups.[2]

Fox responded and publicly addressed concerns about her father’s book. Braun’s article quoted Fox as stating that the book “is written from [my father’s] perspective on his life, not mine,” and she called on voters to focus on “the issues that matter most.” (R-

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[2] See, e.g., Sara Powers, “Rep. Rashida Tlaib facing censure over response to Hamas attack on Israel,” CBS Detroit, Oct. 18, 2023; https://www.cbsnews.com/detroit/news/rep-rashida-tlaib-facing-censure-over-response-to-hamas-attack-on-israel/ (accessed Oct. 18, 2023); Sarah McCammon, “From Debate Stage, Trump Declines to Denounce White Supremacy,” NPR, Sept. 30, 2020; https://www.npr.org/2020/09/30/918483794/from-debate-stage-trump-declines-to-denounce-white-supremacy (accessed Nov. 2, 2023).

Exh. 9). Despite any concern about this book, Fox won the primary and was elected. (T1:151).

In addition to the campaign materials and Facebook post, the Referee criticized Crowley because he "laughed throughout" a radio host's narration during an interview when the host opened by stating "this race has been nasty…. from her, just basically short of strapping up for ISIS, to you being a felon, I mean the stuff going on has been nothing short of ridiculous but hey, look, its politics." (ROR1:9 (quoting TFB-Exh. 16 at 0:10-0:35)[3] (ellipsis in original)). But the Referee mischaracterized Crowley's laugh. Crowley did not laugh "throughout" the narration, but only laughed at two distinct moments in response to specific comments: (1) right after the host says "this race has been nasty," and (2) right after the host says "to you being a felon" (referencing Crowley's arrest for receiving a campaign contribution from a raffle, discussed below)—but what Crowley does *not* laugh at or after is the host's comment "from her, just basically short of strapping up for ISIS," which was clearly hyperbole. (TFB-Exh. 16 at 0:10-0:35).

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[3] Audio of interview also available at https://www.youtube.com/watch?v=4F49lYwjsWU.

The Referee ended the discussion of this topic by stating "[i]t is apparent that at least some of the public realized [Crowley's] statements were offensive and unrelated to the issues of the election," and claiming that "one of the reporters for the Charlotte Sun newspaper called out [Crowley] for this inappropriate accusation" about Fox's father's book being dedicated to her, which the reporter said "'was offensive.'" (ROR1:8-9 (quoting R-Exh. 25 (which is actually an article "calling out *Fox and Russell*" (emphasis added) for having Crowley investigated for receiving a campaign contribution from a raffle—a decision the article calls "Chickenpoop."))). But the Referee failed to explain how "some of the public['s]" opinion that Crowley's statements were "offensive and unrelated to the issues of the election" had any bearing on whether Crowley violated the Rules and ignores the fact that other members of the public thought this matter was decisively important and related to the issues of the election.

Despite what the Referee claimed, there is no evidence that Crowley ever "directly put[]…religious beliefs at issue" or "call[ed] into question the qualifications of candidates being Muslim" (contra ROR1:8), as none of Crowley's statements had anything to do with

Fox's religion, and Crowley never made any claim that Fox was Muslim. Crowley's only criticism was Fox's possible support of the PLO, which has nothing to do with race, ethnicity, national origin, or religion since anyone can support the PLO or other similar organizations without being from Palestine or being Muslim.

Except for quoting an excerpt from an article containing a statement about Fox going by the first name of "Amy," which Crowley himself never claimed or referred to Fox by, the evidence did not show, and the Referee did not find, that any of Crowley's statements related to these topics were false. Nor did the evidence show or the Referee find that Crowley had a high degree of awareness of any probable falsity, which he consciously disregarded at the time, related to any statements "concerning the qualifications or integrity" of Fox, including the article's brief comment that she went by the name "Amy."

B. STATEMENTS ABOUT FOX HAVING CROWLEY ARRESTED

The Referee next faulted Crowley for making statements which claimed Fox was involved with Crowley being arrested for a raffle at one of his campaign events. (ROR1:9). The Referee found that these statements were false and not supported by evidence because

Fox's boss, then-State Attorney Russell, is the one who reported the matter to the Florida Department of Law Enforcement ("FDLE"), had the matter assigned to another State Attorney's Office, told the Bar in an August 27, 2018 letter that Fox had no involvement in the matter (which was after Crowley's statements alleging Fox's involvement had been made), and testified to the same (as did Fox) at the February 2021 trial. (ROR1:9-13).

There is no evidence that Crowley knew at the time of his statements what was later introduced in evidence and testified to years later at the trial, nor is there any evidence that Crowley was somehow privy to all the inner workings and communications of the State Attorney's Office. Thus, there was no evidence that Crowley had a high degree of awareness that Fox probably had no involvement in the raffle matter being reported to FDLE, and thus "had [him] arrested" on account of her actions.

To the contrary, the Referee noted that Crowley told the radio host on August 20, 2018, "I challenged [Fox] to denounce [her father's book] in June and what did she do, she had me arrested." (ROR1:12 (quoting TFB-Exh. 16)). The Referee also stated that Crowley "alleged that Ms. Fox had him arrested *in retaliation*" for

bringing up the issue of her father's book. (ROR1:9 (emphasis added)). The Referee noted that Crowley testified that:

> [H]e had "circumstantial evidence" that Ms. Fox was involved. The circumstantial evidence he relies upon is the fact that Ms. Fox and Stephen Russell work closely together and that Mr. Russell supported Ms. Fox's campaign for the State Attorney position. Respondent argues that Mr. Russell's receiving and referring Respondent's criminal case to the FDLE means Ms. Fox also had to be involved. During his testimony, Respondent stated, "I have a good faith basis for believing Amira Fox had me thrown in jail," and "I believe that Amira Fox was directly involved," and "I thought she had something to do with it."

(ROR1:13). Consistent with Crowley's sincere and undisputed personal beliefs about Fox's involvement, Crowley had told the radio host on August 20, 2018 that "Russell, who was campaigning for Amira Fox, sent a complaint to [FDLE]" and that Fox and Russell "are a pair, they work together on everything." (TFB-Exh. 16 at 12:26-31, 13:02-06). This is a reasonable belief Crowley held at the time.

Crowley's understanding about Fox's involvement in every aspect of the State Attorney's Office's operations are supported and confirmed by Fox's biography on the State Attorney's Office website under "About Us" and "Meet Amira Fox": "in 2015 [Fox] became

Chief Assistant State Attorney *overseeing the day to day legal and administrative functions of the office*, including the operation of grand juries throughout the circuit."[4] Additionally, Fox campaigned on her involvement in decisions made by the State Attorney's Office and was involved in high-level decision-making. (T1:413-14). Thus, as the Chief Assistant State Attorney, Fox was closely involved with and responsible for all functions of the Office, just as Crowley believed, and there is no evidence to indicate that Crowley had a high degree of awareness of any probable falsity in the statements he made.

C. STATEMENTS THAT FOX HAD A 39% CONVICTION RATE

In the campaign, Crowley claimed that Fox had a 39% conviction rate for 2016. (ROR1:13-15). Crowley had asked William Smith, a former IT coordinator for the Twentieth Circuit State Attorney's Office from 2003 through 2012, "to calculate Lee County's conviction rate for 2016." (ROR1:14). Smith replied to Crowley in February 2018 with the following data:

> Lee County 2016 arrest during 2016 = 27494
> Lee County 2016 arrest with adjudication of guilty= 10586

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[4] https://sao20.org/amira-d-fox/ (accessed Nov. 3, 2023 and July 16, 2024) (emphasis added).

2016 Conviction Rate: 38.5%

(ROR1:14 (quoting R-Exh. 22)). Thus, Crowley did not make up the 39%, nor did he calculate it himself.

Despite this, the Referee still faulted Crowley because, three years later in February 2021 during the cross-examination of Smith at trial, "it was discovered that the calculations by Mr. Smith left out information. The numbers do not include or consider withholds of adjudication and cases wherein a defendant was arrested in 2016 and adjudicated guilty in 2017 or 2018." (ROR1:14).

Even if the calculations by Smith were not precise, there is no evidence that Crowley is a statistician or understood the imprecision at the time he made the statements, as he was relying on the accuracy of the calculation made by Smith.

The Referee then further faulted Crowley for attributing this 39% conviction rate to Fox personally, rather than to the Office as a whole. But this reasoning ignored the fact that Fox, as Chief Assistant State Attorney, was closely responsible for overseeing all functions of the Office, as noted in her biography stated above. Therefore, as the Referee observed, "[Crowley] often used the terms 'State Attorney's Office' and 'Amira Fox' interchangeably" (ROR1:17)

and, even when testifying at the trial, Crowley continued to maintain that the Office's conviction rate was still attributable to Fox specifically (ROR1:15)—and with good reason based on Fox's oversight of the day-to-day legal functions of the Office.

Again, there was no evidence that Crowley had a high degree of awareness of any probable falsity, which he consciously disregarded, at the time of making these statements about the statistics which were compiled and calculated by an IT professional familiar with the Office.

D. STATEMENTS ABOUT FOX AND RUSSELL BEING "CORRUPT" AND "SWAMPY"

Lastly, the Referee faulted Crowley for calling Fox and Russell "corrupt" for actions leading to Crowley's arrest, and for calling Fox "corrupt" and "swampy" (which Crowley "testified were synonymous terms") "because of her failures to do her job"—"the fact that 'they weren't enforcing the law.'" (ROR1:15-16). "When testifying about the 39% conviction rate, [Crowley] stated 'I think that is corrupt'" and pointed to some specific cases claiming Fox was "corrupt because she failed to prosecute Desmaret, the Lake Boys, the

slaughter houses, and improperly convincing a grand jury not to indict prison guards in the Matthew Walker case." (ROR1:22).

The Referee noted that Crowley "argues he had circumstantial evidence that Ms. Fox used her office to have him arrested for the benefit of her own campaign; thus, she is corrupt." (ROR1:16).

The Referee then faulted Crowley for assigning responsibility to Fox of the four cases mentioned because Crowley "attributed his perceived failures to convict Desmaret to Ms. Fox, personally," even though the Referee states that Crowley knew Fox was "only in a 'management' role in the office." (ROR1:17-18). Likewise, Crowley "admitted Ms. Fox was not *directly* involved in the Lake Boys trials." (ROR1:18 (emphasis added)). Regarding the Matthew Walker case, "[Crowley's] knowledge was that Ms. Fox was 'in the room' during the grand jury proceedings. Nonetheless, [Crowley] alleged Ms. Fox was corrupt for improperly interfering with a grand jury" (ROR1:18)—but Crowley's belief of Fox's involvement was later confirmed by a report of a grand juror stating, "[w]e knew they were guilty…but we were talked out of indicting them," and by Fox's own statement to a reporter that "I spent a very long time going over that evidence and presenting it to the grand jury." (R-Exh. 26 at 2-3).

And "concerning the slaughter house investigations, [Crowley] stated during his testimony that Ms. Fox 'was a part of the process of the decision not to prosecute.' And, in his opinion, failing to prosecute those involved in the slaughter houses was corrupt." (ROR1:18). Further, Crowley's witness, Richard Cuoto, who had investigated and reported on the slaughterhouses, had copied Fox on emails to the prosecutor assigned to the case, showing that Fox was aware and kept informed. (ROR1:18-19).

Crowley's beliefs about Fox's role and responsibility in his arrest, the Office's conviction rate, and the failure to adequately prosecute these four cases are again based on Fox's position as the Chief Assistant State Attorney. While Fox was not the head State Attorney, she still had the responsibilities and authority of "*overseeing the day to day legal and administrative functions of the office*, *including the operation of grand juries* throughout the circuit."[5] Thus, "[Crowley] often used the terms 'State Attorney's Office' and 'Amira Fox' interchangeably." (ROR1:17).

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[5] https://sao20.org/amira-d-fox/ (accessed Nov. 3, 2023 and July 16, 2024) (emphasis added).

The terms "corrupt" and "swampy" were Crowley's opinions about his political opponents based on their actions. The Referee noted that "corruption" can mean "an impairment of integrity, virtue, or moral principle" (ROR1:16 (quoting BLACK'S LAW DICTIONARY (11th ed. 2019)))—that is a vague term which is clearly understood as a matter of opinion. Crowley's criticism of Fox was not materially different from former-President Trump using terms like "Crooked Hillary" and "Crooked Joe Biden,"[6] or from Governor Ron DeSantis and Attorney General Ashley Moody harshly criticizing former State Attorney Monique Worrell for "neglect of duty and incompetence" despite Worrell not being personally involved in every prosecution handled by her office.[7]

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[6] "Trump retires 'Crooked Hillary,' introduces 'Crooked Joe Biden,'" Politico, April 27, 2023; https://www.politico.com/video/2023/04/27/trump-retires-crooked-hillary-introduces-crooked-joe-biden-899960 (accessed Nov. 6, 2023).

[7] "Governor Ron DeSantis Suspends State Attorney Monique Worrell for Neglect of Duty and Incompetence," August 9, 2023; https://www.flgov.com/2023/08/09/governor-ron-desantis-suspends-state-attorney-monique-worrell-for-neglect-of-duty-and-incompetence/ (accessed Nov. 1, 2023) (Governor DeSantis stated, "The people of Central Florida deserve to have a State Attorney who will seek justice in accordance with the law instead of allowing violent criminals to roam the streets and find new victims;" and

And even if these terms would somehow be considered false statements of fact rather than opinions, there was no evidence that Crowley had a high degree of awareness of any probable falsity in the statements which he consciously disregarded when making them in his claim that Fox had "an impairment of integrity, virtue, or moral principle" based on how she ran the day-to-day legal functions of the Office, including the operation of grand juries.

E. SANCTIONS HEARING

A sanctions hearing was held February 28-29, 2024. Eight witnesses testified in support of Crowley's character and service to the United States Army. (ROR2:6-7).

Attorney General Moody stated, "Ms. Worrell abdicated her responsibility as the circuit's top prosecutor and her actions undermine the safety and security of our state and Floridians.").

Further, Executive Order 23-160 at 3 states, "Worrell has authorized or allowed practices or policies that have systematically permitted violent offenders…to evade incarceration…. These practices or policies include non-filing or dropping meritorious charges…."

SUMMARY OF ARGUMENT

Rule 4-8.2(a) is facially unconstitutional under the First Amendment in all its applications because of its content discrimination proscribing only defamation impugning certain types of government officials and persons. This requires dismissal of any violations based on Rule 4-8.2(a).

Rule 4-8.2(a) is also unconstitutional, both facially and as applied, under the First Amendment because it imposes an objective negligence standard rather than the constitutionally required subjective *mens rea* of recklessness. There is no evidence that Crowley had a high degree of awareness of any probable falsity of his statements, which he consciously disregarded when he made the statements. Therefore, the Referee's application of an objective standard was unconstitutional and harmful error.

Because the claims based on Rule 4-8.2(a) violated Crowley's freedom of speech, they should have been dismissed on summary judgment under Florida Statutes Section 768.295, which applies to Bar proceedings under the plain and unambiguous language of the statute.

If Rule 4-8.2 is found to be constitutional, then, in the alternative, Count I should be remanded for a rehearing and reconsideration of the findings entered by Referee Ruhl, who subsequently recused herself. Referee Ruhl employed the same campaign treasurer in her judicial campaign as Fox, Crowley's opponent, during the same election cycle. The relationship was discovered after Referee Ruhl made credibility findings in favor of Fox and discredited testimony and evidence contrary to Fox. Rehearing is necessary to cure the taint of prejudice caused by the apparent bias.

If the case is not remanded, then the recommended sanction should be rejected because a sixty-day suspension does not have a basis in existing case law. While discipline has not previously been imposed for partisan political speech, public reprimands have been imposed for violations of Rule 4-8.2(a) in non-partisan judicial elections. Based on substantial mitigating evidence, including Crowley's military service and excellent reputation, an admonishment or diversion serves the purposes of discipline.

ARGUMENT

I. RULE 4-8.2(A) IS FACIALLY UNCONSTITUTIONAL UNDER THE FIRST AMENDMENT BECAUSE IT DISCRIMINATES BASED ON CONTENT INVOLVING DISFAVORED SUBJECTS ABOUT SPECIFIC CATEGORIES OF PEOPLE.

As with a statute, determining the constitutionality of a Rule is a pure question of law, subject to *de novo* review. See Caribbean Conservation Corp. v. Fla. Fish & Wildlife Conservation Comm'n, 838 So. 2d 492, 500 (Fla. 2003). While statutes and ordinances are often presumed to be constitutional, "[c]ontent-based regulations are presumptively invalid" because the "First Amendment generally prevents government from proscribing speech." R.A.V. v. City of St. Paul, 505 U.S. 377, 382 (1992).

In R.A.V., the U.S. Supreme Court found a bias-motivated crime ordinance to be facially unconstitutional under the First Amendment. Id. at 391. The ordinance stated:

> Whoever places on public or private property a symbol, object, appellation, characterization or graffiti, including, but not limited to, a burning cross or Nazi swastika, which one knows or has reasonable grounds to know arouses anger, alarm or resentment in others *on the basis of race, color, creed, religion or gender* commits disorderly conduct and shall be guilty of a misdemeanor.

Id. at 380 (emphasis added).

Even though the scope of the ordinance was interpreted as only punishing "fighting words," id. at 381, which is a category of unprotected speech like defamation, id. at 383, the Court found that "the ordinance is facially unconstitutional" because, under the ordinance, displays of speech "containing abusive invective…are permissible *unless* they are addressed to one of the specified disfavored topics" listed: "race, color, creed, religion or gender," id. at 391 (emphasis added). Thus, the ordinance "prohibits otherwise permitted speech solely on the basis of the subjects the speech addresses." Id. at 381.

The Court ruled that the "First Amendment does not permit…special prohibitions on those speakers who express views on disfavored subjects." Id. at 391. This is because even though fighting words and defamation are unprotected categories of speech, they are "not…categories of speech entirely invisible to the Constitution, so that they may be made the vehicles for content discrimination unrelated to their distinctively proscribable content. Thus, the government may proscribe libel; *but it may not make the further content discrimination of proscribing only libel critical of the government.*" Id. at 383-84 (emphasis added).

But that is exactly what Rule 4-8.2(a) does. The Rule states:

> **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.*

R. Regulating Fla. Bar 4-8.2(a) (italicized emphasis added). Similar to the ordinance in R.A.V., a lawyer is "otherwise permitted" under the Rule to make defamatory statements about someone and avoid discipline as long as the person is not in one of the specified protected categories (judge, legal officer, candidate, etc.). But a rule proscribing only defamation impugning certain types of government officials and persons—i.e., "on the basis of the subjects the speech addresses," 505 U.S. at 381—is facially unconstitutional, just like the ordinance in R.A.V.

This is because "the power to proscribe [speech] on the basis of *one* content element (e.g., obscenity) does not entail the power to proscribe it on the basis of *other* content elements." Id. at 386. Thus, the "government may not regulate use [of proscribable speech] based on hostility—or favoritism—towards the underlying

message expressed," id., because "the First Amendment imposes not an 'underinclusiveness' limitation but a 'content discrimination' limitation upon a State's prohibition of proscribable speech," id. at 387.

The applicability of the holding and prohibitions set forth in R.A.V. to Rule 4-8.2(a) is made clear by the Fourth Circuit Court of Appeals in Grimmett v. Freeman, which held that a similar defamation statute constituted "textbook content discrimination" and was thus facially unconstitutional. 59 F.4th 689, 694 (4th Cir. 2023).

Grimmett involved a North Carolina law which provided:

> For any person to publish or cause to be circulated derogatory reports with reference to any candidate in any primary or election, knowing such report to be false or in reckless disregard of its truth or falsity, when such report is calculated or intended to affect the chances of such candidate for nomination or election.

Id. at 691 (quoting N.C. Gen. Stat. § 163-274(a)(9)). Similar to the context in this case, during a campaign for North Carolina's attorney general, one candidate broadcast an ad criticizing the other candidate's handling of 1,500 untested rape kits. Id.

The Fourth Circuit found the law unconstitutional because it "criminalizes truthful derogatory statements so long as the speaker acts in reckless disregard of a statement's truth or falsity," id. at 692, contrary to the U.S. Supreme Court's "constitutional rule that absolutely prohibits punishment of truthful criticism even when such criticism is made with ill will or actual malice," id. at 694 (cleaned up). Likewise, Rule 4-8.2(a) states that a "lawyer shall not make a statement"—but there is no requirement for the statement to be false in order to penalize the lawyer.

The Fourth Circuit additionally found the law to be facially unconstitutional because, even if it reached only false statements, it only regulated statements critical of political candidates and thus "prohibit[ed] otherwise permitted speech solely on the basis of the subjects the speech addresses," which "is textbook content discrimination." Id. at 694. The Fourth Circuit explained that "the Act's careful limitation to only a subset of derogatory statements to which elected officials may be particularly hostile—those harmful to their own political prospects—raises the 'possibility that official suppression of ideas is afoot.'" Id. at 695-96 (quoting R.A.V., 505 U.S. at 390). Similarly, Rule 4-8.2(a) is limited to only a subset of

impugning statements to which certain types of people, mainly candidates and elected officials of a judicial or legal office, may be hostile—those harmful to their qualifications and integrity, and thus to their own political prospects.

Therefore, like the statutes in R.A.V. and Grimmett, Rule 4-8.2(a) is facially unconstitutional in all its applications because of its content discrimination. Thus, the violations based on it, including the violation of Rule 3-4.3, must be dismissed.

II. RULE 4-8.2(A) IS UNCONSTITUTIONAL UNDER THE FIRST AMENDMENT, BOTH FACIALLY AND AS APPLIED, BECAUSE A VIOLATION ONLY REQUIRES AN OBJECTIVE STANDARD RATHER THAN A SUBJECTIVE *MENS REA* OF RECKLESSNESS.

As above, determining the constitutionality of a Rule is a pure question of law, subject to *de novo* review, see Caribbean Conservation Corp., 838 So. 2d at 500, and "[c]ontent-based regulations are presumptively invalid," R.A.V., 505 U.S. at 382.

In Counterman v. Colorado, the U.S. Supreme Court made clear that it is a violation of the First Amendment to penalize speech based solely on an objective or negligence standard without proof from the government of a more culpable, subjective *mens rea* of the speaker: "the State must show that the [speaker] consciously

disregarded a substantial risk." 600 U.S. 66, 69, 79 n.5, 82 (2023) (holding that the subjective recklessness standard required for penalizing defamatory statements is the same standard required for penalizing true threats in a stalking case).

Counterman directly contradicts the Referee's finding that "[e]very statement Respondent made about Ms. Fox must have been objectively reasonable" (ROR1:21) along with the Referee's reasoning and analysis that

> [Crowley's] view, opinion and personal thoughts are *irrelevant* when considering Rule 4-8.2(a). The fact that Respondent genuinely believed in his statements about Ms. Fox does not preclude the finding that he acted with reckless disregard of the falsity of the statements, *when considered under an objective standard.*

(ROR1:22 (emphasis added)). This unconstitutional objective standard analysis, which disregards Crowley's personal thoughts and genuine beliefs, was the Referee's basis for recommending Crowley be found in violation of Rules 4-8.2(a) and 3-4.3.[8]

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[8] As the Report vaguely and conclusively found the violation of Rule 3-4.3 to be based on "[Crowley's] conduct towards Ms. Fox during his campaign, which were alleged in the Bar's complaint and proven during the final hearing," without any separate reasoning or basis being given (ROR1:24-26), the arguments requiring reversal of a violation of Rule 4-8.2(a) fully apply to and require reversal of a violation of Rule 3-4.3 as well.

But protecting and allowing "truthful reputation-damaging statements about public officials and figures" is a "central concern" of the First Amendment. Counterman, 600 U.S. at 81. That protection partially extends beyond truthful statements to provide "breathing room" and flexibility to prevent a chilling effect where people overcautiously avoid engaging in protected speech out of fear of liability. See id. at 75, 82. Thus, "an important tool…to stop people from steering wide of the unlawful zone" into self-censoring protected speech "is *to condition liability on the State's showing of a culpable mental state*." Id. at 75 (emphasis added) (cleaned up).

In requiring a subjective recklessness standard to maintain such breathing room, the U.S. Supreme Court previously held that if a person has spoken

> the truth, and no more, there is no sound principle which can make him liable, even if he was actuated by express malice.
>
> …
>
> Moreover, *even where the utterance is false*, the great principles of the Constitution which secure freedom of expression in this area preclude attaching adverse consequences to any *except the knowing or reckless falsehood.*

Garrison v. Louisiana, 379 U.S. 64, 73 (1964) (finding that the First Amendment protected a district attorney's criticism of eight judges from a criminal defamation statute which did not apply a subjective recklessness standard) (emphasis added) (internal quotation marks omitted).

The Court further explained in Garrison:

> *[S]ince erroneous statement is inevitable in free debate*, and it must be protected if the freedoms of expression are to have the breathing space that they need to survive, *only those false statements made with the high degree of awareness of their probable falsity* demanded by New York Times may be the subject of *either civil or criminal sanctions*. For speech concerning public affairs is more than self-expression; it is the essence of self-government. The First and Fourteenth Amendments embody our profound national commitment to the principle that debate on public issues should be uninhibited, robust, and wide-open, and that it may well include vehement, caustic, and sometimes unpleasantly sharp attacks on government and public officials.

Id. at 74-75 (emphasis added) (cleaned up).

Completely contrary to the above, the Referee relied on the holding in Florida Bar v. Ray, 797 So. 2d 556, 558-59 & n.3 (Fla. 2001) and Florida Bar v. Patterson, 257 So. 3d 56, 62 (Fla. 2018) that "the applicable standard under the rule [4-8.2(a)] is not whether the statement is false, but whether the lawyer had an

objectively reasonable factual basis for making the statement. The burden is on the lawyer who made the statement to produce a factual basis to support the statement." (ROR1:20 (quoting Patterson, 257 So. 3d at 62 (internal citation omitted))).

Ray acknowledged that "the language of rule 4-8.2(a) closely tracks the subjective 'actual malice' standard of New York Times," but "conclude[d] that a purely subjective New York Times standard is inappropriate in attorney disciplinary actions" because the Rule is "designed to preserve public confidence in the fairness and impartiality of our system of justice." Ray, 797 So. 2d at 558-59. But that reasoning for a different *mens rea* standard based on Rule 4-8.2(a) having a different purpose than a defamation action's to remedy a private wrong makes no difference in terms of the First Amendment's protections for the same speech.

Even though a State might have "an interest in protecting the good repute of its judges, like that of all other public officials," the U.S. Supreme Court has "firmly established…that injury to official reputation is an insufficient reason for suppressing speech that would otherwise be free," and even "the institutional reputation of the courts…is entitled to no greater weight in the constitutional

scales." Landmark Communications, Inc. v. Virginia, 435 U.S. 829, 842 (1978).

Nor is professional speech entitled to any lesser weight on the constitutional scales. The Court "has not recognized 'professional speech' as a separate category of speech. Speech is not unprotected merely because it is uttered by 'professionals.'" Nat'l Inst. of Fam. & Life Advoc. v. Becerra, 585 U.S. 755, 767 (2018). Thus, a "State may not, under the guise of prohibiting professional misconduct, ignore constitutional rights." Id. at 769 (citation omitted). "For example, th[e] Court has applied strict scrutiny to content-based laws that regulate the noncommercial speech of lawyers." Id. at 771. Thus, the First Amendment will not tolerate tipping the constitutional scales in favor of the State by excusing the requirement that an attorney-speaker be shown to have a subjective recklessness before penalizing defamatory speech of a public official or figure—even a public legal officer or candidate.

Accordingly, in Garrison, the Supreme Court held that an attorney's criticism of judges required the same protection of speech as provided by New York Times and stated, "[w]here criticism of public officials is concerned, we see no merit in the argument that

criminal libel statutes serve interests distinct from those secured by civil libel laws, and therefore should not be subject to the same limitations" on state power. 379 U.S. at 64-67, 78-79. Similarly, in Grimmett, the Fourth Circuit noted that "the justification the [State] offers to support the Act's content discrimination (preventing campaign fraud and protecting election integrity) *is of a different kind, not degree*, than the reputation-based justifications underlying libel laws," and thus the court held that the different purpose of North Carolina's law was not justifiable grounds for a lesser First Amendment standard. 59 F.4th at 695 (citing Rosenblatt v. Baer, 383 U.S. 75, 86 (1966); Gertz v. Robert Welch, Inc., 418 U.S. 323, 343 (1974)) (emphasis added). Likewise, the reasoning in Ray for an objective standard under Rule 4-8.2(a) based on the Rule's different purpose or type of proceeding is merely "of a different kind, not degree," and does not justify a standard lower than recklessness.

And on the other side of the scale from the reasoning for greater restrictions on speech set forth in Ray, is the particularly strong breathing space and heightened protection of speech in the election context. The U.S. Supreme Court has observed that

“debate” and “speech about the qualifications of candidates for public office" is "at the core of our electoral process and of the First Amendment freedoms, not at the edges." Republican Party of Minn. v. White, 536 U.S. 765, 774, 781 (2002) (cleaned up). Thus, the Court has “never allowed the government to prohibit candidates from communicating relevant information to voters during an election.” Id. at 782.

Following that principle, the Court of Appeals of Maryland noted that “any interpretation of [Rule 4-8.2(a)] in an election context must take into account the First Amendment protections for speech in election campaigns,” and “there inevitably is some imprecision in language used during the heat of a political campaign,” which “is not necessarily a violation of [Rule 4-8.2(a)]” as the Rule “does not require absolute precision in the expression of political speech as part of an election campaign.” Att’y Grievance Comm'n of Md. v. Stanalonis, 126 A.3d 6, 13, 15 (Md. App. 2015) (finding that, in a “hotly-contested primary [judicial] campaign,” an attorney’s false statement in a campaign flyer that his opponent (who was a current judge) “opposes registration of convicted sexual predators” did not satisfy the subjective test for recklessness, but

did not rule on whether the Rule required a subjective or objective test). The Maryland court further observed that "[t]he drafters of the model rule from which [Rule 4-8.2(a)] is derived apparently intended to import [the New York Times subjective] test into the rule." Id. at 14 (citing American Bar Association, Model Rules of Professional Conduct, Proposed Final Draft (May 30, 1981) at 206 ("explaining that Model Rule 8.2 is consistent with the New York Times standard")).

Indeed, the phrase in Rule 4-8.2(a)—"knows to be false or with reckless disregard as to its truth or falsity"—follows the wording which the U.S. Supreme Court set forth as required to penalize defamatory statements about a public official or figure: "knowledge that it was false or with reckless disregard of whether it was false or not." Counterman, 600 U.S. at 76 (quoting New York Times, 376 at 280). Despite this similarity, Ray gave the words a significantly different meaning and objective standard, 797 So. 2d at 558-59, which is in violation of the First Amendment.

There is no indication or evidence that Crowley knew his statements to be false and intentionally lied. Therefore, the Referee based the finding of guilt on the theory that Crowley made

statements about his political opponent with reckless disregard as to their truth or falsity, but "under an objective standard." (ROR1:22).

In Counterman, the U.S. Supreme Court held that in order to penalize a person for stalking on account of making true threats, even though such speech is "outside the bounds of First Amendment protection," the First Amendment "still requires proof" of the speaker's subjective mental state as reckless. 600 U.S. at 69. Thus, "*the State must show* that the [speaker] consciously disregarded a substantial risk that his communications would be viewed as threatening violence." Id. (emphasis added).

The Court noted that this recklessness standard is the same *mens rea* required for penalizing a speaker for defamation. Id. at 75-76, 80. And if proving recklessness is required to penalize threatening speech in the context of stalking, then at least that same level of speaker-protection must apply to alleged defamatory political campaign speech, as Crowley is accused of here. Indeed, the Court explained that "we see no reason to offer greater insulation to threats than to defamation" because "the protected speech near the borderline of true threats…is, if anything, further

from the First Amendment's central concerns than the chilled speech in Sullivan-type cases (*i.e.*, truthful reputation-damaging statements about public officials and figures)." Id. at 80-81.

Regarding defamation, the Court explained that "false and defamatory statements of fact…have no constitutional value. Yet a public figure cannot recover for the injury such a statement causes unless the speaker acted with 'knowledge that it was false or with reckless disregard of whether it was false or not.'" Id. at 76 (other internal quotation marks and citation omitted) (quoting New York Times Co. v. Sullivan, 376 U.S. at 280). This recklessness requirement is "applicable in both civil and criminal contexts" of defamation. Id. at 80.

The Court explained that a "person acts recklessly…when he consciously disregards a substantial and unjustifiable risk." Id. at 79 (cleaned up). Thus, "recklessness is morally culpable conduct, involving a deliberate decision." Id. (internal quotation marks omitted). As further clarified in the concurrence, speech punishable under this "precise and demanding form of recklessness" standard established by Sullivan is "'only those false statements made with *a high degree of awareness of their probable*

falsity.'" Id. at 102-03 (Sotomayor, J., concurring) (emphasis added) (quoting Garrison, 379 U.S. at 75). "This makes sense" because merely "[a]llowing liability for awareness of a small chance that a [statement] may be false would undermine the very shield Sullivan erects." Id. at 102 (Sotomayor, J., concurring).

Therefore, this precise and demanding recklessness culpability standard is significantly different from negligence, which is "an objective standard, of the kind [the U.S. Supreme Court] rejected" because an objective standard "makes liability depend not on what the speaker thinks." Id. at 79 n.5. Thus, "reckless defendants have done more than make a bad mistake." Id. at 80. However, a low objective or negligence standard, characterizing what Crowley thought as "irrelevant," is what the Referee applied to Crowley's statements in this case (ROR1:22) in violation of the First Amendment.

Because "[t]ruth may not be the subject of either civil or criminal sanctions where discussion of public affairs is concerned," Garrison, 379 U.S. at 74, it is the Bar's burden to first prove that a statement is false, and then further prove that the speaker had the requisite subjective *mens rea* in making the false statement and

was thus outside the protections of the First Amendment's breathing space. See Counterman, 600 U.S. at 69, 80, 82. The Bar failed to meet that burden.

Even if any of Crowley's statements were false, there is not the slightest evidence that he had "a high degree of awareness of their probable falsity," Garrison, 379 U.S. at 74, which he "consciously disregard[ed]," Counterman, 600 U.S. at 79, at the time he made the statements. And posting on Facebook the article excerpt written by another person which claimed in a brief tangent that Fox went by the first name of "Amy," is not even a statement "concerning the qualifications or integrity" of Fox in violation of Rule 4-8.2(a). Moreover, Crowley never claimed that or referred to Fox by the name of "Amy."

There was no evidence that Crowley had a high degree of awareness that Fox probably had no involvement in the raffle matter being reported to FDLE, which led to his arrest. Even if Crowley was mistaken and his comments were inaccurate, he cannot be held to an objective standard which "makes liability depend not on what the speaker thinks," because "reckless defendants have done more than make a bad mistake."

Counterman, 600 U.S. at 79-80 & n.5. Since "[o]pposing candidates…do not have the opportunity to depose each other," Stanalonis, 126 A.3d at 13, "erroneous statement is inevitable in free debate, and it must be protected," Garrison, 379 U.S. at 74-75. Crowley's sincere belief was reasonable and based on Fox's position, authority, and responsibilities as Chief Assistant State Attorney.

Also based on Fox's position, it was reasonable and not reckless for Crowley to consider and refer to Fox as personally responsible for her Office's conviction rate. And the terms "corrupt" and "swampy" are clearly Crowley's opinions about his political opponents and are not actionable as false statements of fact. Regardless, there is no evidence that Crowley was subjectively reckless in making these statements based on his knowledge and sincere beliefs.

In Stanalonis, the Maryland appellate court dismissed the petition based on a rule similar to 4-8.2(a) because, "according to [the attorney's] testimony" at the disciplinary hearing, he "appear[ed] to have actually believed" his statement and "[t]here was no evidence that [the attorney] entertained serious doubts as to the truth of his statement." 126 A.3d at 9, 15-16. Such is the evidence

in this case as well, and thus, especially under the subjective recklessness standard required by Sullivan, Garrison, and Counterman, Crowley cannot be found in violation of Rule 4-8.2(a) nor Rule 3-4.3, which must also carry the same speech protections under the First Amendment. The application of an objective standard was unconstitutional and harmful error that clearly resulted in a different outcome on each claim than would a subjective recklessness *mens rea* standard.

III. THE BAR'S PROSECUTION FOR PARTISAN POLITICAL SPEECH SHOULD HAVE BEEN DISMISSED ON CROWLEY'S MOTION FOR SUMMARY JUDGMENT PURSUANT TO FLORIDA STATUTES SECTION 768.295 (FLORIDA'S ANTI-SLAPP STATUTE).

Whether Florida Statutes Section 768.295 applies to Bar disciplinary proceedings presents an issue of statutory construction, which is to be reviewed *de novo*. State v. Peraza, 259 So. 3d 728, 730 (Fla. 2018). "The starting point for any statutory construction issue is the language of the statute itself—and a determination of whether that language plainly and unambiguously answer the questions presented." Id. Thus, the "first (and often only) step is to ask what the Legislature actually said in the statute, based upon the common meaning of the words used." Id. at 733.

This prosecution appears to be a case of first impression in which the Bar has sought discipline for partisan political speech related to the election of a State Attorney. (T1:469). The intent of the anti-SLAPP legislation is to "protect the right in Florida to exercise the rights of free speech in connection with public issues." § 768.295(1), Fla. Stat.

Prior prosecutions under Rule 4-8.2(a) involved attorney statements impugning the integrity of judicial officers. See Florida Bar v. Ray, 797 So. 2d 556 (Fla. 2001); Florida Bar v. Jacobs, 370 So. 3d 876 (Fla. 2023). In contrast, partisan campaign speech brings this disciplinary action directly within the scope of Florida's anti-SLAPP statute. In WPB Residents for Integrity in Gov't, Inc. v. Materio, 284 So. 3d 555 (Fla. 4th DCA 2019), the appellant sought review of the trial court's denial of a dismissal pursuant to the anti-SLAPP statute based on a lawsuit asserting defamation for statements made in a campaign mailer. The Fourth District Court of Appeal dismissed the appeal based on lack of irreparable harm to invoke certiorari jurisdiction. However, Judge Gross wrote a concurring opinion to correct the trial court's determination that "electioneering communications" did not fall within the scope of the

anti-SLAPP statute. Specifically, Judge Gross found that the campaign "mailer was protected 'free speech in connection with public issues' and therefore a protected activity under section 768.295." Materio, 284 So. 3d at 563 (Gross, J., concurring).

In this case, the Bar's prosecution related to campaign mailers and speech made in connection with "television program[s], radio broadcast[s], audiovisual work[s],...magazine article[s]...[and] news report[s], or other similar work" to reach the electorate on the debate with a candidate's political opposition. See § 768.295(2)(a), Fla. Stat. The Bar's prosecution relied on recitation of newspaper articles (TFB-Exh. 5b), radio broadcasts (TFB-Exh. 16), and audiovisual statements on social media and campaign mailers (TFB-Exhs. 4a, 4b). Accordingly, the Bar relied on protected works to prosecute Crowley.

The legislative intent of the anti-SLAPP law is to protect against a "chilling effect on constitutional rights." Davis v. Mishiyev, 339 So. 3d 449, 452 (Fla. 2d DCA 2022) (citing Gundel v. AV Homes, Inc., 264 So. 3d 304, 310 (Fla. 2d DCA 2019)). The threat of disciplinary action for campaign speech chills a

candidate's "exercise" of "the rights of free speech in connection with public issues." § 768.295(1), Fla. Stat.

Crowley appropriately filed a Motion for Summary Judgment asserting that the Referee should grant final judgment based on the anti-SLAPP statute. (Tab#105). See § 768.295(4), Fla. Stat. (permitting a person to "file a motion for summary judgment…seeking a determination that the claimant's or governmental entity's lawsuit has been brought in violation of this section."); R. Regulating Fla. Bar 3-7.6(f)(1) (stating that the Florida Rules of Civil Procedure apply to proceedings before a Referee). The Referee summarily denied the Motion for Summary Judgment without a hearing, finding that Referee Ruhl had already adjudicated "the issues in dispute" and that "Florida Statute § 768.295 does not apply to The Florida Bar disciplinary proceedings." (Tab#110).

The Legislature defined "governmental entity" or "government entity" to mean "the judicial branches of government." § 768.295(2)(b), Fla. Stat. Pursuant to Rule 3-7.6(f)(1), Bar disciplinary proceedings before a Referee are "quasi-judicial." In addition, disciplinary proceedings fall under the exclusive

jurisdiction of this Court pursuant to Article V, Section 15 of the Florida Constitution.

In Comm'n for Lawyer Discipline v. Rosales, 577 S.W.3d 305 (Tex. App. 2019), Texas determined that its Texas Citizens Participation Act ("TCPA"), in its version at that time, applied to attorney disciplinary proceedings.[9] As in Florida, the Texas legislation was passed to "encourage and safeguard the constitutional rights of persons to petition, speak freely, associate freely, and otherwise participate in government." Id. at 310 (citing Tex. Civ. Prac. & Rem. Code § 27.002). TCPA permits a person to move for dismissal if there is evidence that an action "'is based on, relates to, or is in response to the party's exercise of' one of the enumerated rights." Id. The lawyer regulatory body, the Commission for Lawyer Discipline, asserted that "lawyer-discipline

[9] After this decision, "the [Texas] legislature amended the TCPA to provide that the [TCPA] does not apply to 'a disciplinary action or disciplinary proceeding brought under [the State Bar Act] or the Texas Rules of Disciplinary Procedure.'" Rosales v. Comm'n for Lawyer Discipline, No. 03-18-00725-CV, 2020 WL 1934815, at *1 n.1 (Tex. App. April 22, 2020); Tex. Civ. Prac. & Rem. Code § 27.010(a)(10).

actions" were exempt from TCPA. Id. at 311. This argument was rejected.

First, the Rosales court noted that while TCPA included exemptions for governmental entities such as "the attorney general, a district attorney, a criminal district attorney or a county attorney," TCPA did not include Chief Disciplinary Counsel. Id. Second, the Rosales court determined that any "immunity invoked by the Commission does not bar application of the TCPA" to disciplinary prosecution. Id. at 314. Third, the Rosales court held that the "Commission's petition sought affirmative legal relief against [the attorney]" and therefore, the "disciplinary suit" fell under "TCPA's broad definition of "'legal action.'" Id. at 315. Accordingly, Texas determined that disciplinary proceedings were not exempt from TCPA. Id.

Florida's anti-SLAPP legislation provides an even stronger basis for determining that attorney disciplinary proceedings are not exempt. First, unlike Texas, Florida Statutes Section 768.295 does not set forth any exemptions from its definition of governmental entities. As the Rosales court noted, "if the Legislature had intended to exempt lawyer-discipline enforcement actions…, it

could have included text to that effect." Id. at 312. Second, Section 768.295 does not set out any grounds for immunity. Third, Section 768.295 broadly defines the types of actions subject to anti-SLAPP legislation as "any lawsuit, cause of action, claim, cross-claim, or counterclaim against another person or entity." This list of broad terms does not exclude quasi-judicial proceedings and instead encompasses almost every type of legal action seeking some kind of remedy, injunction, or penalty, including the disciplinary action filed against Crowley. "Where possible, courts must give effect to *all* statutory provisions," and if there is any ambiguity in a statute, then courts should inquire into the Legislature's intent, which is the "ultimate goal of *all* statutory analysis." State v. Peraza, 259 So. 3d 728, 732 (Fla. 2018). The Legislature made that inquiry simple here by expressly stating its intent in Section 768.295(1). Thus, disciplinary actions brought by the Bar constitute a "lawsuit, cause of action, [or] claim" brought by a governmental entity.

The plain and unambiguous language of Section 768.295, combined with its enacted intent to protect free speech, applies directly to these disciplinary proceedings related to partisan political speech. The purpose of Section 768.295 awarding

attorneys' fees and costs is to remedy injustice suffered by a respondent and to deter governmental entities, like the Bar, from engaging in any type of SLAPP suits, like the one brought against Crowley. Accordingly, Referee Smith erred in concluding the anti-SLAPP statute does not apply to these proceedings.

Referee Smith also erred in denying Crowley's motion "based on the record that all issues in dispute were adjudicated." (Tab#110). The sanctions hearing had not yet been held and referees only make "recommendations" as to findings of guilt, Rule 3-7.6(m)(2)(B), whereas this Court has exclusive jurisdiction and makes the final determination on the discipline of attorneys, Art. V, § 15, Fla. Const.; Rule 3-7.7(a)(2). Further, Crowley had requested to reconsider and vacate the prior Referee's findings (Tab#111) and to reopen the evidence (Tab# 88, 107).

Once Section 768.295 is found to be applicable, the burden shifts to the Bar to "demonstrate that the claims are not 'primarily' based on First Amendment rights in connection with a public issue and not 'without merit.'" Gundel, 264 So. 3d at 314. The Bar has not established that its Complaint was not filed because Crowley exercised his right of free speech, and Count I is without merit.

IV. REFEREE RUHL AND FOX, THE RESPONDENT'S POLITICAL OPPONENT SHARED THE SAME CAMPAIGN TREASURER DURING THE AUGUST 2018 ELECTION AT ISSUE IN COUNT I, CREATING BIAS AND PREJUDICE THAT TAINTED REFEREE RUHL'S FINDINGS AND CREDIBILITY ASSESSMENTS IN FAVOR OF FOX AND REQUIRING A NEW HEARING BEFORE A FAIR AND NEUTRAL REFEREE.

The decision to deny a new hearing is subject to *de novo* review. Ognenovic v. Giannone, Inc., 184 So. 3d 1135, 1136 (Fla. 4th DCA 2015). A new hearing should not be granted merely to give a "second bite at the apple," but "to remove the taint of prejudice" caused by potential bias. Id. at 1137 (citing Rath v. Network Marketing, L.C., 944 So. 2d 485, 487 (Fla. 4th DCA 2006)).

Count I relates to Crowley's partisan political speech during the August 2018 Republican primary election for the Twentieth Judicial Circuit State Attorney. Supporters of Crowley's opponent, Amira Fox, filed Bar complaints against Crowley related to Crowley's campaign. (T1:52-53, 234-35). Fox employed Eric Robinson as her campaign treasurer. (Tab#54, Exh. A).

The Honorable Maria Ruhl was elected to the circuit court bench in the same August 2018 election. Judge Ruhl also employed Eric Robinson as her campaign treasurer. (Tab#54, Exh. B). On April 17, 2020, Judge Ruhl was appointed to serve as

Referee. (Tab#4). Even though the 2018 contested election between Crowley and Fox was a central issue pled in the formal complaint and litigated in the final hearing, Referee Ruhl did not disclose that her judicial campaign employed the same campaign treasurer as employed by Fox's campaign during the same election period.

On March 25, 2021, Crowley discovered through Florida Department of Election records that Eric Robinson was the designated campaign treasurer for Fox and Referee Ruhl during the 2018 election. Neiman-Marcus Group, Inc. v. Robinson, 829 So. 2d 967, 968 (Fla. 4th DCA 2002) notes that the person selected to be a judge's campaign treasurer serves a "special role." See also Judicial Ethics Advisory Opinion 2007-17 (Nov. 15, 2007). Participation by the campaign treasurer as a litigant or a witness in a proceeding clearly requires disclosure and disqualification if the election is not remote in time.

Even though Robinson did not testify and was not directly involved in the final hearing, Robinson played a "special role" in the campaigns of Judge Ruhl and Fox during the August 2018 election. The Judicial Ethics Advisory Committee has interpreted Canon 3E as requiring disqualification when a judge's friend or the friend's

staff is involved in the conduct under consideration by the judge. In Judicial Ethics Advisory Opinion 2012-37, December 10, 2012, the Committee considered an instance in which the judge was friends with a loan collection official for a bank and determined that disqualification would appear appropriate if the friend or the conduct of the friend's staff was material to the case.

Given the heightened expectations of loyalty and affiliation associated with political campaigns, Judge Ruhl's deference afforded to her campaign treasurer would reasonably and likely transfer to candidate Fox, who employed the same person in this "special role" of campaign treasurer in the same election cycle. Referee Ruhl granted the Motion for Disqualification on April 5, 2021. (Tab#59).

By the time Judge Ruhl recused herself, she had already made findings of fact related to campaign conduct based on credibility determinations rejecting Crowley's explanations and accepting testimony of Fox and her campaign supporters. Crowley timely requested reconsideration pursuant to Florida Rules of General Practice and Judicial Administration 2.330(j) related to portions of the record relevant to Count I (addressing campaign conduct)

because Count I was most closely related to the basis for disqualification. On August 26, 2021, the Honorable Gilbert Smith, the successor Referee, denied Respondent's Motion for Reconsideration and / or New Trial after a hearing on August 25, 2021. (Tab#85; T4). Referee Smith failed to consider the essential credibility assessments made by Judge Ruhl in favor of Fox and her supporters when denying Respondent's Motion for New Trial.

In Referee Ruhl's findings related to Count I, she found that Crowley "publicly disparaged his opponent, Ms. Fox, through various political campaign materials, advertisements, interviews, and social media postings." (ROR1:4-5). In reaching these conclusions, Referee Ruhl disregarded evidence and Crowley's testimony in favor of accepting Fox's testimony. The evidence does not support a basis for Referee Ruhl's finding a violation of Rules 4-8.2(a) and 3-4.3. These critical findings related to the campaign were particularly susceptible to any bias caused by Referee Ruhl and Ms. Fox's affiliation through the use of the same campaign treasurer for the same election cycle. As such, the rulings "work an injustice" on Crowley and warrant remand for a new hearing. Rath, 944 So. 2d at 487.

For instance, Referee Ruhl relied upon an August 27, 2018, Facebook post by Crowley. (ROR1:5; TFB-Exh. 5(b)). Referee Ruhl noted that Crowley "posted, quoted and shared an article from AmericanThinker.com" but her Report of Referee references portions of the AmericanThinker article that Crowley did not quote or highlight but were instead general opinions by the article's author. Id. Crowley's Facebook post only quoted portions of the article referencing Fox's family ties to the PLO and cited the source. (TFB-Exh. 5(b)(i); T1:382-84). Referee Ruhl's Report quotes excerpts of the article that were not re-posted or otherwise endorsed by Crowley. (ROR1:5-6; TFB-Exh. 5(b)(i)). The Referee rejected Crowley's explanation that he "was not sharing the article for the rest of its content" and disregarded Crowley's testimony and statements made during his campaign that he did not know Fox's religion and did not care. (R.-Exh. 3; T1:267, 378, 384; ROR1:7).

Referee Ruhl cites an editorial from the Charlotte Sun criticizing Crowley for raising issues related to Fox's uncle's membership in the PLO (ROR1:8-9) despite Fox's acknowledgment that the PLO is a terrorist organization and that voters would be rightfully concerned about affiliation with anti-Semitic ideology

(T1:181-82), other articles confirming concerns about any connections with the PLO (R-Exhs. 3, 9), and the Charlotte Sun editorial actually "calling out Fox and Russell" for having Crowley investigated for receiving a campaign contribution from a raffle (R-Exh. 25).

On the other hand, Referee Ruhl dismissed editorials criticizing Fox, whose supporters created and mailed campaign literature featuring Crowley's arrest on charges referred by Fox's office. (R-Exh. 35). Referee Ruhl's Report notes "Ms. Fox testified during the Bar proceeding and during her testimony she explicitly stated she was not involved in the investigation or prosecution of Respondent and she specifically was not involved in his arrest." (ROR1:11). In finding there was "no evidence" to support the assertion that Fox was involved in his arrest, the Referee accepted Fox's blanket denials and disregarded evidence. (ROR1:11). Not only is circumstantial evidence sufficient to meet the high burden of proof in other cases, like Bar prosecutions, Florida Bar v. Gross, 610 So. 2d 442, 444 (Fla. 1992), Referee Ruhl does not even mention the circumstantial evidence showing Fox's involvement.

Referee Ruhl's Report does not address Crowley's position that it was exceedingly rare to pursue criminal prosecution for any "game of chance," especially a lottery raising $670.00, which was never deposited into any campaign account and was immediately donated to charity approximately one week later following Crowley's inquiries to election officials. (T1:138-39, 239, 365-66). The unusual pursuit of criminal charges under these circumstances, considering the favorable use to the opposing campaign, raises reasonable suspicion regarding the criminal prosecution in general.

Further, Fox campaigned on her involvement in decisions made by the State Attorney's Office and was involved in high-level decision-making. (T1:413-14). It is inequitable to assert that Fox is responsible for any positive decision but not responsible for any decision garnering criticism. Id. Fox knew that the State Attorney wrote a letter referring her opponent to FDLE for criminal prosecution. (T1:168, R.-Exh. 6). The letter not only requested "independent" investigation but "expedited investigation." Since the campaign funds raised by the lottery were never deposited but donated to charity, there was no public harm warranting expedited action. Rather, the only need for "expedited" action was

consideration of the upcoming election. Referee Ruhl's Report is silent as to this troubling request for "expedited" action amid a highly contested campaign.

Referee Ruhl's Report also fails to address Fox's testimony approving of the campaign literature capitalizing on her opponent's arrest. (R-Exh. 35). Fox asserted that voters should have been made aware of her opponent's arrest relating to the $670.00 that had not been deposited into a campaign account. (T1:170-71). Referee Ruhl also does not reconcile Fox's deposition testimony that she was in favor of using his arrest with her new assertions in her trial testimony contending that she asked the PAC to refrain from mailing the campaign literature but it was too late. (T1:201-02). Referee Ruhl's Report also does not note that this campaign mailer was immediately ready for distribution. (T1:394-95).

Referee Ruhl also fails to address the offer made by the appointed prosecutor in the Tenth Judicial Circuit to Crowley for Crowley to drop out of the race or be indicted with the grand jury. (T1:364, 367). This offer would only benefit Fox. (T1:368). There is no reference in Referee Ruhl's Report of the public record request revealing eight outgoing telephone calls from late July to early

August 2018 (during the supposedly independent criminal investigation) from the Twentieth Judicial Circuit State Attorney's Office to the State Attorney's Office in Bartow. (T1:374). In addition, Referee Ruhl does not note that the subject matter of these telephone calls was the availability of a grand jury, which was consistent with the threat to indict Crowley through a grand jury if Crowley did not drop out of the race. (T1:231-32; 371).

Referee Ruhl's Report cites the Black's Law Definition of "corruption" but then only utilizes a narrow definition to find that Crowley had no basis to describe Fox as corrupt. Specifically, the Referee concludes, "there is neither evidence of bribery or that Ms. Fox used the office to procure some benefit either personally or for someone else, contrary to the rights of others." (ROR1:16). However, the definition cited by the Referee also notes that "**corruption**…**1.** Depravity, perversion, or taint; an impairment of integrity, virtue or moral principle." (ROR1:16) (emphasis in original). The Referee does not reference Linda Malie's testimony of her investigations finding Fox campaigned during working hours or include Fox's admission that she was required to repay $1,458.00 to the State after receiving pay for time exceeding her allowed leave

after human resources raised the issue of her overpayment. (T1:175, 283).

In addition, Fox campaigned on her experience with the State Attorney's Office and its prosecutions, taking credit for her leadership. (T1:413-14). Yet, Referee Ruhl's Report distances Fox from any fallout from perceived failures by the State Attorney's Office or negative outcomes because she only held a supervisory position. For instance, Referee Ruhl's Report notes that Fox was not the line prosecutor in a shooting case (the "Desmaret case") but only held a "management" role. (ROR1:17).

While the Referee briefly mentions several high-profile cases that became frequent campaign talking points, the Referee reduced Fox's involvement, even in contradiction of the Bar's witnesses. For instance, Fox campaigned at events about her oversight of a gang-related prosecution of the Lake Boyz cases which Crowley believed was rushed to trial resulting in not guilty verdicts. (T1:358). Former State Attorney Russell testified that Fox <u>was involved</u> in the investigation of the Lake Boyz prosecution. (T1:442). Nonetheless, Referee Ruhl's Report defended Fox by noting that Crowley conceded Fox did not try the Lake Boyz case. Whether or not Fox

was the litigator, it was uncontested that Fox had been directing the prosecution and campaigning on her efforts to prosecute the Lake Boyz, before they were acquitted. (T1:442).

Similarly, the Matthew Walker case garnered substantial attention when a grand juror subsequently contended that the prosecution pressured them into not charging prison officials following an inmate's brutal death. (R-Exh. 17, 26). Russell confirmed that Fox was the senior assistant handling the grand jury deliberations. (T1:450). Although Russell disputed any impropriety as alleged by one of the grand jurors, he conceded that as a supervisor, Fox would be responsible for any improper conduct of the prosecution. (T1:457). However, Referee Ruhl's Report again minimized Fox's role in contradiction of the evidence finding that she was only "in the room" and therefore, there was no basis to criticize her conduct.

Fox repeatedly spoke on the campaign trail regarding illegal slaughterhouses in Lee County, and even incorrectly contended that the farms were shut down when they were still operating. (T1:283-84, 333). Despite this evidence, Referee Ruhl's Report found that Fox had no involvement in the decision not to prosecute

the slaughterhouse operators. (ROR1:18-19). Referee Ruhl's Report failed to address the testimony of Richard Cuoto, who has been involved in numerous animal abuse investigations, in conjunction with the USDA, State Attorney Offices across Florida as well as out of state and global prosecutions. (T1:312-13). Cuoto testified that he emailed Fox, presenting video evidence and received responses, confirming that emails were received. (T1:319, 333). Although he met with and spoke to Fox's subordinates, he also directly communicated via email with Fox. Id.

After the complaints documenting unstunned butchering, stabbing and skinning live animals, and other atrocities, the State Attorney's office did not act, and Lee County law enforcement coined its investigation "Rancho Delicious." (T1:316, 326). The failure to aggressively pursue criminal investigation like other Florida State Attorney Offices for similar illegal operations raised public outcry of corruption. (T1:264-66, 278, 283-86, 319, 333). Referee Ruhl's Report does not address the contradiction between Fox campaigning on her leadership, the complaining witness's email communication with Fox, and her finding that Fox was not involved in the illegal slaughterhouse investigations. (ROR1:19).

Referee Ruhl's findings, in isolation or cumulatively, related to the 2018 campaign deferring to Fox and her supporters while dismissing Crowley's testimony, witnesses and evidence raise a "taint of prejudice" in light of the Referee's and Fox's shared campaign personnel during the same election cycle. Consequently, the evidence should be presented to a fair and neutral referee during a new hearing on Count I.

V. THE SANCTION WAS NOT SUPPORTED BY CLEARLY ESTABLISHED CASE LAW

As when evaluating a Referee's recommendations as to guilt and findings of fact, a "referee's decision not to find that a mitigating or aggravating factor applies also carries a presumption of correctness and will not be disturbed unless clearly erroneous or without support in the record." Florida Bar v. Varner, 992 So. 2d 224, 230 (Fla. 2008).

Review of a Referee's recommended sanction is "broader than that afforded to the referee's findings of fact because, ultimately, it is the Court's responsibility to order the appropriate sanction." Florida Bar v. Ratiner, 46 So. 3d 35, 39 (Fla. 2010). The "Court will not second-guess the referee's recommended discipline as long as it

has a reasonable basis in existing caselaw and the [Florida] Standards for Imposing Lawyer Sanctions." Id.

If the Rule 4-8.2(a) violation is upheld, the Referee erroneously determined that the aggravating factor of refusing to acknowledge the wrongful nature of the conduct was appropriate. Fla. Stds. Imposing Law. Sancs. 3.2(7). The aggravator was incorrectly imposed because Crowley refused to change his opinion that his opponent in the partisan campaign was corrupt. In evaluating a similar rule, Nevada held that application of the Rule "was limited to statements of fact as opposed to opinion." Matter of Discipline of Colin, 448 P. 3d 556 (Nev. 2019). Similarly, sanctions should not be aggravated because the Bar disagrees with Crowley's opinion.

In addition, the recommended sanction does not have a reasonable basis in existing case law. Not only was this his first campaign, no precedent addressed partisan speech. Florida Bar v. Aven, 317 So. 3d 1096 (Fla. 2021) pertained to non-partisan judicial campaign speech and was decided after Crowley's 2018 campaign. To the extent Aven is analogous precedent, the sixty-day recommended discipline is clearly erroneous because it greatly exceeds the public reprimand imposed in Aven. Public reprimands

have been consistently imposed for disparaging the judiciary. See, e.g., Florida Bar v. Ray, 797 So. 2d 556 (Fla. 2001); Florida Bar v. Sztyndor, No. SC21-979, 2021 WL 5504988 (Fla. Nov. 24, 2021); Florida Bar v. Libow, No. SC21-805, 2021 WL 2376382 (Fla. June 10, 2021); Florida Bar v. Perry, 108 So. 3d 656 (Fla. 2013) (table);Florida Bar v. Udowychenko, 148 So. 3d 774 (Fla. 2014) (table). Contra Florida Bar v. Jacobs, 370 So. 3d 376 (Fla. 2023) (disparaging judiciary in litigation outside of campaign speech).

Crowley's character and reputation were established by eight witnesses, the absence of disciplinary history, fifteen years of service as a state prosecutor, and twenty-five years of military service with deployment to Kuwait and Iraq, ultimately obtaining the rank of Lieutenant Colonel in the United States Army. The extensive mitigating circumstances warrant a reduction from a public reprimand to an admonishment. An admonishment would also be consistent with Standard 7.1(d) which pertains to conduct in which a lawyer is negligent in determining whether his/her conduct violates a duty and there is no actual or potential injury to the legal system.

CONCLUSION

For the reasons stated above, Respondent requests this Court to find Rule 4-8.2(a) unconstitutional under the First Amendment, both facially and as applied, and therefore dismiss the Bar's claims and grant or remand Respondent's anti-SLAPP motion as to the award of attorneys' fees and costs. However, if the Court finds that Rule 4-8.2(a) is not facially unconstitutional, then, in the alternative, Respondent requests the case be remanded for a new trial under the subjective recklessness standard, along with proceedings on the anti-SLAPP motion for summary judgment, before an unbiased Referee. Finally, if neither are granted, then Respondent requests the sanction be reduced to an admonishment.

Respectfully submitted,

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CERTIFICATE OF SERVICE

I certify that on the 22nd day of July, 2024, the foregoing was filed and served via the State of Florida's E-Filing Portal to the Honorable John A. Tomasino and to: Mark Lugo Mason, Esquire, Bar Counsel, The Florida Bar at mmason@floridabar.org and mhowland@floridabar.org, and Patricia Ann Toro Savitz, Esquire, Staff Counsel, The Florida Bar at psavitz@floridabar.org.

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CERTIFICATE OF FONT STYLE, SIZE AND WORD COUNT

Undersigned Respondent does hereby certify that this Brief complies with the applicable font style and size and word count limit requirements of Florida Rule of Appellate Procedure 9.045 and 9.210(a)(2)(B). The font is 14-point Bookman Old Style. The word count is 12,816 words. It has been calculated by the word processing system, and it excludes the content authorized to be excluded under the rule but includes any footnote.

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