

IN THE SUPREME COURT OF FLORIDA
SUPREME COURT CASE NO.: SC2024-0117
THE FLORIDA BAR FILE NOS.: 2021-00,299(8B)
THE HONORABLE JUDGE GREG PARKER

THE FLORIDA BAR,
Complainant,

vs.

DANIEL WILL UHLFELDER,
Respondent.

_____ /

BEFORE YOUR HONORABLE JUDGE GREG PARKER

HEARING VIA ZOOM

APRIL 2ND, 2024

2:00 p.m. - 2:34 p.m.

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NOTARY PUBLIC, STATE OF FLORIDA

Page 2

1

2 INDEX TO APPEARANCES

3

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20 ALSO PRESENT:

21 Daniel Uhlfelder

22

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Page 3

1

2

3 INDEX

4 PAGE

5 APPEARANCES

6 Mr. Tozian 4

7 Ms. Klien 4

8

9 ISSUE(S) 4

10 RULING 25

11 Certificate of Transcriptionist 29

12

13

14

15

16

17

18

19

20

21

22

23

24

25

Page 4

1

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3 (Thereupon, the following proceedings were

4 had:)

5 THE COURT: Mr. Holas, can you hear me? This

6 is Judge Parker.

7 THE COURT REPORTER: Yes. Good afternoon,

8 Your Honor. How are you?

9 THE COURT: I'm guessing you don't have the

10 citation for this matter at this point or do you?

11 THE COURT REPORTER: I got the notice. Yes.

12 THE COURT: Okay. All right. And so you

13 want to remove?

14 MR. TOZIAN: Yes, Judge, and please,

15 everybody, let me know if I freeze. Yeah, I'm hearing

16 my voice come to my vocal folds. I'm not freezing on

17 me.

18 All right, so you've seen our motion to

19 dismiss. It's a pretty simple due process argument.

20 Our position is we were not advised of the conduct that

21 was being investigated.

22 Nor were we provided with materials that were

23 being considered by the grievance committee that were

24 used to come to, you know, the, the probable cause

25 finding.

Page 5

1 As I said earlier, the case started out in

2 the 14th Circuit. It was twice noticed for grievance

3 committee review. The first two notices, when

4 describing the subject of vote.

5 The allegation simply said the conduct under

6 investigation concerns the order of the First District

7 Court of Appeal to (indiscernible) dated February 5,

8 2021.

9 Both of those notices said the exact same

10 thing. They were referencing an order that came out of

11 the First District, which did not talk about who was

12 Counsel or co-Counsel.

13 The order simply was a denunciation of the

14 three lawyers who handled the matter at the trial

15 level, indicating in so many words that the lawsuit was

16 frivolous, the appeal was frivolous. And refer it to

17 the Florida Bar. under 37.18, which is a judicial

18 referral.

19 It never got considered. The case did not get

20 considered by the 14th Circuit grievance committee

21 because it was transferred down to the 8th in

22 Gainesville. It was noticed on three other occasions

23 Judge.

24 On April 5, 2022, it was noticed twice,

25 excuse me, once. And then it was noticed again, on

Page 6

1 August 4, 2023. And all five notices of grievance
2 committee review said the exact same thing. It said
3 that it concerned the order of the First District Court
4 of Appeal of February 5, 2021.

5 The Bar s position is they couldn't give us
6 those materials because they were confidential, being
7 provided by Ms. Mattox (phonetic) and Mr. Kitchen
8 (phonetic), in their grievance committee matters.

9 And I would suggest you Judge, is that's
10 incorrect. By revealing the emails, it would not be
11 revealing the existence or the nature of the charge
12 against Ms. Mattox or Mr. Kitchen.

13 It would simply be telling us, we're
14 considering these emails as a part of our investigation
15 of what you did wrong. And then explain what we did
16 wrong. And so we had no idea that they were considering
17 the fact that (indiscernible) had no authority to list
18 these two folks as co-Counsel.

19 Even though they were co-Counsel at the trial
20 level. And two, that he had made some sort of promise
21 to them, that he would advise the First District that
22 they were not co-Counsel, and that he misrepresented
23 that when he advised them of that fact.

24 I will tell you, Judge, that this idea that
25 it was confidential. This very same argument was made

Page 8

1 MS. KLEIN: Well, I can hear you. I didn't
2 have any freeze on my end.

3 UNKNONW FEMALE: I didn't have any freezing
4 on my end, either.

5 MS. KLEIN: What about the court reporter?
6 Mr. Holas?

7 THE COURT REPORTER: It was good on my end.

8 MS. KLEIN: The Judge is the only one that
9 couldn't hear.

10 MR. TOZIAN: Now the Judge is frozen as well.

11 THE COURT: I think we can --

12 MS. KLEIN: He s all right now.

13 MR. TOZIAN: Okay. So, Judge, we didn't --
14 we didn't know that there were some allegations that
15 Mr. Uhlfelder didn't have the authority to include
16 these people on the signature line.

17 And we didn't know that he allegedly promised
18 to straighten that out with the First District Court of
19 Appeals. And so we never addressed that issue. The Bar
20 -- the Bar raises the issue that they asked me for
21 emails between Mr. Uhlfelder and his two co-Counsel.

22 And they correctly pointed out that I gave
23 him a few initially, but when the further request was
24 made, I declined to do that based on attorney-client
25 work product privilege.

Page 7

1 in a case recently in which Hancock's and I were co-
2 Counsel out of Sarasota County. We made discovery
3 requests in that case, for any complaints that were
4 related to what we were dealing with in that case.

5 There were other documents in the Bar s
6 possession. They didn't give them to us until right
7 before the last day of trial. And the reason that was
8 given was very similar.

9 We couldn't give them to even though it was a
10 letter to the Bar, saying that our client had done
11 something wrong. They claimed it was confidential.
12 Judge, Chief Judge of the 12th was our Referee.

13 Judge Charles Roberts has since retired and
14 he found that the Bar violated discovery Rules by
15 treating these was confidential. That we were entitled
16 to it and reserved on the issue of sanctions.

17 And ultimately found that there was -- there
18 wasn't a sufficient prejudice to actually enter
19 sanction. But he found they just violated his account.

20 THE COURT: Mr. Scott, there s about 10 days
21 -- 10 seconds of freeze.

22 MR. TOZIAN: Okay.

23 Melissa, can you do anything to improve it?
24 I know I have my office manager working on it
25 as well.

Page 9

1 And I will tell you, quite candidly, Judge, I
2 couldn't see how in the world emails between these
3 lawyers could possibly in any way shed light on the
4 order of the First District Court of Appeals and
5 February 5, 2021.

6 I quite frankly, and I mean, no disrespect,
7 thought it was some sort of fishing expedition. And so
8 I opted not to give them up. Have they told me, hey,
9 we're looking at this issue. Of course, I'm going to
10 turn it over.

11 Because there's a very simple explanation for
12 everything that happened. These, as we point out, in
13 the answer, over the course of about a six-month period
14 of time, every filing in the in the appeal showed both
15 Ms. Maddoz and Mr. Kitchen, on the signature block has
16 been copied with every single filing in the case.

17 I mean, they were well aware they were on
18 there. And ultimately, and I think this is probably the
19 most important fact. Ultimately, when the show cause
20 order came out what they all did, eventually -- am I
21 freezing, Judge?

22 THE COURT: It skipped. But I m still here,
23 yeah.

24 MR. TOZIAN: Okay. So ultimately, what the
25 three lawyers agreed upon was a joint response to the

Page 10

1 order show cause both Mattox and Kitchen reviewed that
 2 response before it was filed. They approved the
 3 response. And the response did not assert that Mattox
 4 and Kitchen. Were not Appellate Counsel.
 5 THE COURT: Okay. Are you getting away from
 6 the --
 7 MS. KLEIN: Yeah, the motion to dismiss is at
 8 issue here.
 9 MR. TOZIAN: It is. Judge, I ll keep it at
 10 it s simplest then. We didn t get notice, period. We
 11 did not get noticed, because and what I'm telling you
 12 now is the very easy and simple explanation we would
 13 have given had they noticed it.
 14 The proper thing to do is for this case, to
 15 be dismissed, sent back to the grievance committee and
 16 let them consider whether or not there's probable cause
 17 based on all of the information that we have, in the
 18 case.
 19 The Bar -- I ve been on this road with the
 20 Bar before, Judge. I ve been doing this work for 40
 21 years. I've heard them say they can do this, do it this
 22 way. They cannot.
 23 If 37.374(h) means anything. We have to know
 24 what they're considering. And we have to be provided
 25 the materials they're basing their decision on. And

Page 12

1 Because he wasn't allowed to attend the
 2 meeting. There was no public notice given and there was
 3 no transcript of the meeting recorded so he couldn't
 4 get one. And I went back and forth.
 5 And the Court found, and this is at page 745.
 6 In the analysis and preliminary motions that they
 7 considered. They said, the grievance committee meetings
 8 of the Bar are private. And therefore, the Bar is
 9 justified in prohibiting Committe from attendance.
 10 At the grievance committee level, the Rule
 11 says we cannot tell anyone about what's being discussed
 12 in anybody's case. We couldn't talk about Mattox s case
 13 we couldn't talk about Kitchen's case, because that was
 14 not Mr. Uhlfelder s case.
 15 If you look at the First DCA order,
 16 throughout the entire order, they're talking about Mr.
 17 Uhlfelder and his alleged co-Counsel, Mattox and
 18 Kitchen. And the First DCA order talks about all three
 19 attorneys.
 20 Therefore, it wasn't just Mr.Uhlfelder. And
 21 when we cited to all the Rules and those notices of
 22 review, we included a lot of notices. You know, we
 23 included a lot of Rules.
 24 And I, myself, thought that the major issue
 25 was 4-3.1, meritless litigation, after I read the

Page 11

1 it's really -- it's really that -- it's a simple notice
 2 situation.
 3 I mean, the Bar can call my argument specious
 4 if they want to. But had we known that we could have
 5 put up a meaningful defense to this and now we're
 6 wasting judicial resources to plow ground that should
 7 have been plowed in the previous case.
 8 And I'll allow my colleague to make the Bar s
 9 argument.
 10 THE COURT: Thank you, Mr. Tozian.
 11 MS. KLEIN: Well, your honor. First of all, I
 12 think we're mixing apples and oranges here. The
 13 grievance committee level, at the grievance committee
 14 level, the sole determination is whether there's any
 15 probable cause in order to support the Rule violations.
 16 Due process does not start until we get to
 17 the Referee level. I didn't put it in there because I
 18 didn't know we'd be arguing due process. I thought it
 19 was a notice issue having to do with the grievance
 20 committee Rules.
 21 There's a case called the Florida Bar v
 22 Committe, with one E at the end, C-O-M-M-I-T-T-E. And
 23 it's cited at 916 So.2d 741. And that was a 2005 case.
 24 And Mr. Committe was arguing that he didn't get a fair
 25 hearing at the grievance committee level.

Page 13

1 order. But the grievance committee didn't see it that
 2 way. So they came out with other Rules and discussions
 3 about what was going on in the cases.
 4 And they came to the conclusion that the
 5 Rules are on candor to the Court. And the other Rules
 6 cited in our complaint, were more at issue. Due -- in
 7 in that same Committe case, the Court says the Bar
 8 Rules regarding confidentiality are protected by the
 9 Constitution.
 10 And they start -- cite to Article 1, section
 11 24(d) of the Florida Constitution. He was saying that
 12 some of this section 286 of Florida Statutes, you know
 13 applied.
 14 And we had to have some kind of public
 15 hearing. Article 1 grants access to public records and
 16 meetings specifically provides that the Rules of Court
 17 that are in effect on the date of adoption of the
 18 section that limit access to records shall remain in
 19 effect until they re repealed.
 20 In this case, Rule 3-7.1 which we mentioned
 21 in our response, was in effect years prior to the
 22 constitutional right to access public records and
 23 meetings.
 24 Hence, we reject committee's argument that
 25 the Bar Rules regarding confidentiality violated

Page 14

1 section 286.11(1). Now, the Court goes down here to
 2 say, due process was met because Committee was served
 3 with notice of the Bar s charges.
 4 And was afforded an opportunity in the
 5 disciplinary hearing to be heard and defend themselves.
 6 Due process does not start at the grievance committee
 7 level. It starts at the Referee level.
 8 And when he's given notice of the charges and
 9 an opportunity to be heard before Your Honor, that says
 10 due process rights being complied with. And also it
 11 talks about what has to be put into 376(h)1.
 12 We find that the Bar complied with Rule
 13 376(h)(1)(B), which requires only that the Bar set
 14 forth a particular act or acts of conduct for which the
 15 attorney is sought to be disciplined.
 16 There is no requirement for the Bar to
 17 connect every alleged item of misconduct to a specific
 18 Rule violation. It s the combination of these acts
 19 that led to the conclusion that Committee violated the
 20 Rules.
 21 So this whole argument about this as a due
 22 process thing, no, it isn't. And the case that Mr.
 23 Tozian is referring to I'm somewhat familiar with. I
 24 wasn't involved in the case. But those determinations
 25 were made before a Referee at trial.

Page 16

1 them, I said, please provide a fee agreement and
 2 engagement letter or any other written document showing
 3 that Mr. Uhlfelder hired Marie Mattox and William
 4 Gautier Kitchen to represent them in the trial matter.
 5 And on the appeal of the case, what fees the
 6 did he pay them. I was trying to determine, because I
 7 already knew at the trial level, they had signed on
 8 notices of appearance, Mattox and Kitchen.
 9 And they said they were appearing as co-
 10 Counsel. In fact, Mr. Uhlfelder even introduced Mr.
 11 Kitchen as co-counsel to Judge Carroll at the trial
 12 level.
 13 And Marie Mattox, had made a notice of
 14 appearance as co-counsel in the trial level case. So I
 15 was trying to find out if they were continuing on as
 16 Counsel on the Appellate level. And I wanted to know
 17 what their agreements were.
 18 And he gave me what's attached to Exhibit C,
 19 which are a couple of email strings that came from the
 20 beginning. I think it was around April, around the time
 21 I sent them these letters.
 22 They were emails between Mattox, Kitchen, and
 23 Mr. Uhlfelder around April 9, of 2021. Wait a minute.
 24 No, that would have been the year before. Okay, April
 25 19, of 2021, is when I got the response from Mr.

Page 15

1 It had nothing to do with the grievance
 2 committee. So he's combining apples and oranges here.
 3 He's saying that, you know, someone else has found that
 4 these confidential documents should have been provided.
 5 That's what was found at the Referee level,
 6 not at the grievance committee level. At the grievance
 7 committee level, we are bound by the Rules of
 8 confidentiality, and all of our Rules under the
 9 grievance committee Rules of 374,375, and the rest were
 10 followed.
 11 I haven't been doing this for 40 years, but
 12 I've been doing it for 25. And I have sort of a routine
 13 down about how we handle it. Now, I tried to figure out
 14 a way that I could maybe get their attention to give me
 15 the some of these emails.
 16 At the very beginning, you'll notice in our
 17 exhibits, Pros Exhibit A is the order from the Court
 18 and you'll see Appellant and his Counsel cited
 19 throughout that.
 20 But in the letter that I wrote to Mr.
 21 Greenberg (phonetic), which is Exhibit B, and his
 22 response, which is Exhibit C, I said, at the very
 23 outset, I thought, well, you know, I have the response
 24 from Mr. Bush from Mattox and Kitchen.
 25 And I knew what they were saying. So I asked

Page 17

1 Greenberg, who was representing this Uhlfelder at the
 2 plant.
 3 So when they provided these emails, I
 4 thought, well, maybe this is all there is, you know,
 5 Mr. Bush, you'll notice from Exhibit E didn't provide
 6 us with that whole group of emails until August 10, of
 7 2021.
 8 And that was the month we had set, Mr.
 9 Uhlfelder, Mattox and Kitchen cases before the
 10 grievance committee. So I didn't even have these until
 11 we were almost ready to vote. And Mr. Greenberg had
 12 provided those exact same emails as Mr. Bush did for
 13 the April 2021 period of time.
 14 So I was thinking, well, what about the other
 15 ones. So I called up Mr. Tozian. And and I said, you
 16 know, could you give me all of these emails between
 17 Mattox, Kitchen, and Mr. Uhlfelder, and then they came
 18 up with those arguments.
 19 I mean, work product, really. And then
 20 attorney-client privilege. There was nothing in the
 21 emails that indicated they had taken him on as a
 22 client. Because there was no fee agreement. There was
 23 no engagement letter, and the only mention of client
 24 was by Mr. Uhlfelder in the November emails that Mr.
 25 Bush sent me.

Page 18

1 If you -- there's two sets of emails around
2 April of 2021. And then there's absolutely no
3 communication until November when the First DCA issued
4 the order to show cause.
5 And when they issued the order to show cause
6 that's when Ms. Mattox and Mr. Kitchen finally woke up
7 and said, this is an order to show cause it's not just
8 another pleading.
9 MR. TOZIAN: Judge, respectfully, what does
10 this have to do with --
11 THE COURT: You just froze for about six
12 seconds.
13 MR. TOZIAN: Respectfully. We're talking
14 about whether or not we were told that there was an
15 allegation that Mr. Uhlfelder filed these other two
16 lawyers names on there without the authority or without
17 believing that they were his co-Counsel.
18 So all this all the dress was being said
19 doesn't address that issue.
20 MS. KLEIN: Well, it does address the issue
21 of Mr. Tozian because those emails that came in, in
22 November of 2021, Mr. Uhlfelder most to have them
23 because they were back and forth with him. He knew that
24 Marie Mattox and he knew that Mr. Kitchen, disagreed
25 with him, when they said they were going to be co-

Page 20

1 Bar Counsel as well. I could not give that information
2 to them about Ms. Mattox and Mr. Kitchen.
3 Now that we are at the due process level in
4 front of the referee, we can provide whatever in the
5 Mattox and Kitchen complaints. We can provide all those
6 documents to Mr. Tozian.
7 And he will have a full record of everything
8 we do. And Mr. Uhlfelder can defend themselves from
9 that point forward, he'll be giving an opportunity to
10 appear before the Referee.
11 Now he's talking about the sufficiency of the
12 complaint and one part of this motion. The complaint is
13 obviously sufficient, because they answered it. And it
14 doesn't meet the criteria of the Florida Bar Rule for
15 dismissing a complaint.
16 It was sufficient, and there was no lack of
17 jurisdiction. The Referee s Authority came from the
18 Supreme Court delegated to the Referee for him to
19 decide any disputed facts.
20 Now there are some disputed facts in his
21 answer. And we're going to deal with those in
22 discovery. We're going to deal with those before the
23 Referee. And it's the Referee s role to determine
24 whether the factual dispute is going to be decided in
25 favor of Mr. Uhlfelder or the Bar.

Page 19

1 Counsel on that case.
2 So even though you didn't provide them to us,
3 the other emails from Mr. Bush, show that there were
4 communications, and they denied being hired for that
5 appeal. So Mr. Uhlfelder had that information within
6 his control from November of 2021, and then refused to
7 provide it to the Bar.
8 MR. TOZIAN: I'm talking about what we -- the
9 issue here is very simple. Were we given notice of what
10 the Bar was considering and you've you've admitted as
11 much that we were not given notice of it.
12 That we were you asked us for documents, you
13 didn't tell us why you wanted those documents, and we
14 opted not to give them to you.
15 MS. KLEIN: Well, I didn't have to tell you
16 why. I asked you for them. And if Mr. Uhlfelder had him
17 in his possession. He never said he didn't have them.
18 He never said couldn't provide them. All he said was
19 I'm not going to give them to you.
20 Well, if you take that attitude at the
21 grievance committee level, the grievance committee had
22 to make a decision on what they had in front of them
23 for Mr. Uhlfelder.
24 Also, I think you have to keep in mind that
25 the Rules of the Florida Bar have to be followed by the

Page 21

1 But I'd respectfully submit, there is no lack
2 of jurisdiction. There is no lack of sufficiency of the
3 complaint. And the lack of notice, is the only issue
4 that they keep harping on because they know that we
5 can't do anything about it at the grievance committee
6 level.
7 At the trial level, that's something else
8 again, the case he's talking about went to trial and
9 was before Referee. And if you don't provide discovery,
10 well, that's something else again.
11 My policy has always going to be very
12 transparent, and to give the other side everything I
13 have. I don't make any determination about whether they
14 should get it or not. If it's in my file, they will get
15 it.
16 And at that point in time, we can also
17 discuss what the allegations are with the Bar is going
18 to go forward on. And then we're going to have a trial,
19 and these people will come in and testify.
20 And from there, the Referee will get to
21 decide the factual dispute of those allegations that
22 were denied by Mr. Tozian.
23 MR. TOZIAN: May I respond, Judge?
24 THE COURT: Please.
25 MR. TOZIAN: Judge, I hope I haven t overly

Page 22

1 complicated my argument. 374(h) provides that we get
 2 advice of the conduct that's being considered by the
 3 committee.
 4 Very simply, we were not advised that they
 5 were considering whether or not Mr. Uhlfelder was given
 6 the authority or believed he had authority to include
 7 these other two folks. Also 374(h)says, we get all the
 8 materials that the committee is going to consider.
 9 We clearly did not receive from the Florida
 10 Bar, the emails that were the basis for finding that he
 11 acted improperly including them on the signature line
 12 as co-Counsel.
 13 And the purpose for that is, in order to
 14 allow us to give us an opportunity to respond,
 15 explaining, refuting, or admitting the conduct that's
 16 alleged.
 17 We didn't know that conduct was alleged. We
 18 couldn't -- we didn't we did not have a meaningful
 19 opportunity to respond. The Committe case that Counsel
 20 cites to admit admits the Committe got notice of the
 21 Bar s charges, we had the opportunity to respond and
 22 chose not to.
 23 We didn't -- it said this is really that
 24 simple. We didn't get noticed this was an issue. And
 25 our Counsel said, was trying to get our attention. When

Page 24

1 means anything, it means we get notice of the conduct.
 2 We get all the materials being considered and
 3 we get the opportunity to respond. We were given none
 4 of those three in this instance, Judge, none. In fact,
 5 that's that is the argument.
 6 It is that simple on the issue of the
 7 jurisdiction to consider concerning paragraphs 27, 29,
 8 and 30, our position was, those are conclusory
 9 statements. There are no facts to establish those
 10 conclusory statements and 27, 29, and 30.
 11 And therefore, because there's no facts,
 12 those should be stricken. And that's, that's again, I'm
 13 trying to simplify things. I know you have a hearing
 14 just a few minutes. And I don't really think it's that
 15 complicated addition, Your Honor.
 16 And I don't mean to disrespect anybody on the
 17 call. But I think it's very simple. They did not tell
 18 us what they were considering. They did not tell us the
 19 materials they had, and we didn't have the opportunity
 20 to respond to it.
 21 MS. KLEIN: And Your Honor, we still maintain
 22 we cannot give them that confidential information at
 23 the grievance committee level. But now that we are at
 24 the Referee level, he will have a notice and
 25 opportunity to be heard.

Page 23

1 they -- when she asked for the emails. You get my
 2 attention by telling me the conduct that is under
 3 consideration, what are we accused of?
 4 And we didn't get that. She makes reference
 5 to no retainer, no fee agreement. As the court
 6 probably knows that doesn't matter. That's not how you
 7 establish an attorney-client relationship by virtue of
 8 a retainer fee agreement.
 9 She wrote a letter to Mr. Greenberg, or
 10 Exhibit B, saying, hey, please tell me the following.
 11 It s five different questions, Mr. Greenberg, in
 12 Exhibit C to her response, gives her five answers.
 13 A letter to me saying, hey, we think he
 14 didn't have authority. What do you have to show he had
 15 authority, which should have been in the notice, it
 16 could have been an earlier letter to me. And then I
 17 could have made a decision.
 18 Okay, I know what they want. I'll give them
 19 the emails that show that, at worst, this was a
 20 misunderstanding at the very worst. And that's what
 21 you're going to see if we get to that part of the
 22 trial.
 23 But they didn't make it clear what they were
 24 considering. We had no earthly idea what they're
 25 considering. And in most respectfully 374(h), if it

Page 25

1 And he will be able to discover all the
 2 materials we have. It's at the Referee level that these
 3 issues are flushed out, not at the grievance committee
 4 level.
 5 There is no accounting for what the grievance
 6 committee is going to do. I don't vote. I don't know
 7 which way they're going to go. The committee discusses
 8 what they have in front of it and they make a decision
 9 and under the Rules we go forward with any complaint.
 10 THE COURT: Thank you, Counsels. The Referee
 11 is persuaded that there should be a denial of the
 12 motion to dismiss, but certainly without prejudice at
 13 anytime to where there is -- I didn t really good look
 14 at those because that to come.
 15 MR. TOZIAN: Your Honor, I think you froze
 16 for about 10 seconds.
 17 THE COURT: Yes, sir.
 18 MS. KLEIN: Excuse me.
 19 THE COURT: I will deny it. I will deny it.
 20 Place it on record.
 21 MR. TOZIAN: It s frozen.
 22 THE COURT REPORTER: Yeah, Your Honor, you
 23 froze after you said to dimiss certainly without
 24 prejudice. That was the last thing I was able to hear.
 25 THE COURT: Okay. Let s rewind.

<hr/> 1 <hr/>	<hr/> 4 <hr/>	admits 22:20	approved 10:2
1 13:10,15	4 6:1	admitted 19:10	April 5:24 16:20,23,24 17:13 18:2
10 7:20,21 17:6 25:16	4-3.1 12:25	admitting 22:15	arguing 11:18,24
12th 7:12	40 10:20 15:11	adoption 13:17	argument 4:19 6:25 11:3,9 13:24 14:21 22:1 24:5
14th 5:2,20	<hr/> 5 <hr/>	advise 22:2	arguments 17:18
19 16:25	5 5:7,24 6:4 9:5	advise 6:21 27:17	Article 13:10,15
<hr/> 2 <hr/>	<hr/> 7 <hr/>	advised 4:20 6:23 22:4	assert 10:3
2005 11:23	741 11:23	affirmative 26:9,14	attached 16:18
2021 5:8 6:4 9:5 16:23, 25 17:7,13 18:2,22 19:6	745 12:5	afforded 14:4	attend 12:1
2022 5:24	<hr/> 8 <hr/>	afternoon 4:7	attendance 12:9
2023 6:1	8th 5:21	agree 26:16,19	attention 15:14 22:25 23:2
21 27:5	<hr/> 9 <hr/>	agreed 9:25 26:18	attitude 19:20
24(d) 13:11	9 16:23	agreement 16:1 17:22 23:5,8	attorney 14:15
25 15:12	916 11:23	agreements 16:17	attorney-client 8:24 17:20 23:7
27 24:7,10	<hr/> A <hr/>	allegation 5:5 18:15	attorneys 12:19
286 13:12	absolutely 18:2	allegations 8:14 21:17,21	August 6:1 17:6
286.11(1) 14:1	access 13:15,18,22	alleged 12:17 14:17 22:16,17	authority 6:17 8:15 18:16 20:17 22:6 23:14,15
29 24:7,10	account 7:19	allegedly 8:17	automatically 26:15
2:34 28:11	accounting 25:5	allowed 12:1	aware 9:17
<hr/> 3 <hr/>	accused 23:3	analysis 12:6	<hr/> B <hr/>
3-7.1 13:20	act 14:14	answers 23:12	back 10:15 12:4 18:23
30 24:8,10	acted 22:11	anybody's 12:12	Bar 5:17 6:5 7:5,10,14 8:19,20 10:19,20 11:3, 8,21 12:8 13:7,25 14:3, 12,13,16 19:7,10,25 20:1,14,25 21:17 22:10,21
37.18 5:17	acts 14:14,18	anytime 25:13	Bars 27:3
37.374(h) 10:23	addition 24:15	apologies 26:22	based 8:24 10:17 26:2
374(h) 22:1 23:25	address 18:19,20 27:1	apologize 26:24	basing 10:25
374(h)says 22:7	addressed 8:19 26:8, 11	appeal 5:7,16 6:4 9:14 16:5 19:5	basis 22:10
374,375 15:9	adjoined 28:11	Appeals 8:19 9:4	beginning 15:16 16:20
376(h)(1)(b) 14:13	admit 22:20	appearance 16:8,14	
376(h)1 14:11		appearing 16:9	
		Appellant 15:18	
		Appellate 10:4 16:16	
		apples 11:12 15:2	
		applied 13:13	

believed 22:6
believing 18:17
block 9:15
bound 15:7
Bush 15:24 17:5,12,25
 19:3 27:8,12
bye 28:10

C

C-O-M-M-I-T-T-E
 11:22

call 11:3 24:17
called 11:21 17:15
candidly 9:1
candor 13:5
Carroll 16:11

case 5:1,19 7:1,3,4
 9:16 10:14,18 11:7,21,
 23 12:12,13,14 13:7,20
 14:22,24 16:5,14 19:1
 21:8 22:19

cases 13:3 17:9

charge 6:11

charges 14:3,8 22:21

Charles 7:13

Chief 7:12

chose 22:22

Circuit 5:2,20

citation 4:10

cite 13:10

cited 11:23 12:21 13:6
 15:18

cites 22:20

claimed 7:11

clear 23:23

client 7:10 17:22,23

co- 7:1 16:9 18:25

co-counsel 5:12 6:18,
 19,22 8:21 12:17

16:11,14 18:17 22:12

colleague 11:8

combination 14:18

combining 15:2

Committe 11:22,24
 12:9 13:7 14:2,19
 22:19,20

committee 4:23 5:3,20
 6:2,8 10:15 11:13,20,
 25 12:7,10 13:1 14:6
 15:2,6,7,9 17:10 19:21
 21:5 22:3,8 24:23 25:3,
 6,7 27:10,14,20

committee's 13:24

communication 18:3

communications
 19:4

competing 26:4

complaint 13:6 20:12,
 15 21:3 25:9

complaints 7:3 20:5

complicated 22:1
 24:15

complied 14:10,12

concerned 6:3

concerns 5:6

conclusion 13:4 14:19

conclusory 24:8,10

conduct 4:20 5:5
 14:14 22:2,15,17 23:2
 24:1

confidential 6:6,25
 7:11,15 15:4 24:22

confidentiality 13:8,
 25 15:8

connect 14:17

consideration 23:3

considered 4:23 5:19,
 20 12:7 22:2 24:2

Constitution 13:9,11

constitutional 13:22

continue 27:10,15

continuing 16:15

control 19:6

copied 9:16

correct 26:20,21

correctly 8:22

couldn 8:9

Counsel 5:12 7:2 10:4
 15:18 16:10,16 19:1
 20:1 22:19,25 27:15

Counsels 25:10

County 7:2

couple 16:19

court 4:5,7,9,11,12 5:7
 6:3 7:20 8:5,7,11,18
 9:4,22 10:5 11:10 12:5
 13:5,7,16 14:1 15:17
 18:11 20:18 21:24 23:5
 25:10,17,19,22,25
 26:16,23 27:11,25
 28:4,6,10

Court's 26:5

criteria 20:14

D

date 13:17

dated 5:7

day 7:7

days 7:20

DCA 12:15,18 18:3

deal 20:21,22

dealing 7:4

decide 20:19 21:21

decided 20:24

decision 10:25 19:22
 23:17 25:8

declined 8:24

defend 14:5 20:8

defense 11:5 26:10

defenses 26:14

delegated 20:18

denial 25:11

denied 19:4 21:22
 26:2,14

denunciation 5:13

deny 25:19

depose 27:3

depositions 27:16,24

describing 5:4

determination 11:14
 21:13

determinations 14:24

determine 16:6 20:23

didn 8:1,3 10:10 25:13
 28:3

dimiss 25:23

disagreed 18:24

disciplinary 14:5

disciplined 14:15

discover 25:1

discovery 7:2,14
 20:22 21:9

discuss 21:17

discussed 12:11

discusses 25:7

discussions 13:2

dismiss 4:19 10:7
 25:12 26:2

dismissed 10:15

dismissing 20:15

dispute 20:24 21:21

disputed 20:19,20

disrespect 9:6 24:16

District 5:6,11 6:3,21
 8:18 9:4

document 16:2

documents 7:5 15:4

19:12,13 20:6		front 19:22 20:4 25:8	hate 26:24
dress 18:18		froze 18:11 25:15,23	haven 21:25 26:18
due 4:19 11:16,18 13:6 14:2,6,10,21 20:3 26:6		frozen 8:10 25:21 27:11	he'll 20:9 27:16
	<hr/> F <hr/>	full 20:7	hear 4:5 8:1,9 25:24 28:3
			heard 10:21 14:5,9 24:25
<hr/> E <hr/>		<hr/> G <hr/>	hearing 4:15 11:25 13:15 14:5 24:13 26:12 27:7,17 28:11
earlier 5:1 23:16	fact 6:17,23 9:19 16:10 24:4	Gainesville 5:22	hey 9:8 23:10,13
earthly 23:24	facts 20:19,20 24:9,11	Gautier 16:4	hired 16:3 19:4
easy 10:12	factual 20:24 21:21	gave 8:22 16:18	Holas 4:5 8:6
effect 13:17,19,21	fair 11:24	get all 22:7 24:2	honor 4:8 11:11 14:9 24:15,21 25:15,22 26:13 27:5 28:5,7
email 16:19	fairly 26:2	give 6:5 7:6,9 9:8 15:14 17:16 19:14,19 20:1 21:12 22:14 23:18 24:22 28:1	hope 21:25
emails 6:10,14 8:21 9:2 15:15 16:22 17:3,6, 12,16,21,24 18:1,21 19:3 22:10 23:1,19	familiar 14:23	giving 20:9	<hr/> I <hr/>
end 8:2,4,7 11:22	favor 20:25	good 4:7 8:7 25:13	idea 6:16,24 23:24
engagement 16:2 17:23	February 5:7 6:4 9:5	grants 13:15	important 9:19
enter 7:18	fee 16:1 17:22 23:5,8	Greenberg 15:21 17:1,11 23:9,11	improperly 22:11
entire 12:16	fees 16:5	greviance 6:1	improve 7:23
entitled 7:15	FEMALE 8:3	grievance 4:23 5:2,20 6:8 10:15 11:13,19,25 12:7,10 13:1 14:6 15:1, 6,9 17:10 19:21 21:5 24:23 25:3,5 27:9,14, 19	include 8:15 22:6
Essentially 26:1	figure 15:13	ground 11:6	included 12:22,23
establish 23:7 24:9	file 21:14	group 17:6	including 22:11
eventually 9:20	filed 10:2 18:15 26:10	guessing 4:9	incorrect 6:10
evidences 26:4	filing 9:14,16	<hr/> H <hr/>	indicating 5:15
exact 5:9 6:2 17:12	final 26:12 27:7,17	Hancock's 7:1	indiscernible 5:7 6:17
excuse 5:25 25:18	finally 18:6	handle 15:13	information 10:17 19:5 20:1 24:22
Exhibit 15:17,21,22 16:18 17:5 23:10,12	find 14:12 16:15	handled 5:14	initially 8:23
exhibits 15:17	finding 4:25 22:10	happened 9:12	instance 24:4
existence 6:11	fishing 9:7	harping 21:4	intention 27:3
expedition 9:7	Florida 5:17 11:21 13:11,12 19:25 20:14 22:9	haste 26:12	introduced 16:10
explain 6:15	flushed 25:3	hasty 26:24	investigated 4:21
explaining 22:15	folds 4:16		investigation 5:6 6:14
explanation 9:11 10:12	folks 6:18 22:7		involved 14:24
	forward 20:9 21:18 25:9		
	found 7:14,17,19 12:5 15:3,5		
	frankly 9:6		
	freeze 4:15 7:21 8:2		
	freezing 4:16 8:3 9:21		
	frivolous 5:16		

issue 7:16 8:19,20 9:9
10:8 11:19 12:24 13:6
18:19,20 19:9 21:3
22:24 24:6

issued 18:3,5

issues 25:3 26:7

item 14:17

J

joint 9:25

Judge 4:6,14 5:23 6:9,
24 7:12,13 8:8,10,13
9:1,21 10:9,20 16:11
18:9 21:23,25 24:4
26:19 27:2 28:3,9

judicial 5:17 11:6

June 27:5

jurisdiction 20:17
21:2 24:7

justified 12:9

K

kind 13:14

Kitchen 6:7,12 9:15
10:1,4 12:18 15:24
16:4,8,11,22 17:9,17
18:6,24 20:2,5 27:9,13

Kitchen's 12:13

KLEIN 8:1,5,8,12 10:7
11:11 18:20 19:15
24:21 25:18 26:13
27:7,12,23 28:2,5,8

Klien 27:25

knew 15:25 16:7 18:23,
24

L

lack 20:16 21:1,2,3

late 26:24

lawsuit 5:15

lawyers 5:14 9:3,25

18:16

led 14:19

letter 7:10 15:20 16:2
17:23 23:9,13,16

letters 16:21

level 5:15 6:20 11:13,
14,17,25 12:10 14:7
15:5,6,7 16:7,12,14,16
19:21 20:3 21:6,7
24:23,24 25:2,4 27:20

light 9:3

limit 13:18

list 6:17

litigation 12:25

ll 10:9

lot 12:22,23

M

Maddoz 9:15

made 6:20,25 7:2 8:24
14:25 16:13 23:17

maintain 24:21

major 12:24

make 11:8 19:22 21:13
23:23 25:8

makes 23:4

manager 7:24

Marie 16:3,13 18:24

materials 4:22 6:6
10:25 22:8 24:2,19
25:2

matter 4:10 5:14 16:4
23:6

matters 6:8

Mattox 6:7,12 10:1,3
12:12,17 15:24 16:3,8,
13,22 17:9,17 18:6,24
20:2,5 27:9,13

meaningful 11:5
22:18

means 10:23 24:1

meet 20:14

meeting 12:2,3

meetings 12:7 13:16,
23

Melissa 7:23

mention 17:23

mentioned 13:20

meritless 12:25

met 14:2

mind 19:24

minute 16:23

minutes 24:14 26:25

misconduct 14:17

misrepresented 6:22

misunderstanding
23:20

mixing 11:12

month 17:8 27:4

motion 4:18 10:7
20:12 25:12 26:2

motions 12:6

Mr.uhlfelder. 12:20

N

names 18:16

nature 6:11

notice 4:11 10:10 11:1,
19 12:2 14:3,8 15:16
16:13 17:5 19:9,11
21:3 22:20 23:15 24:1,
24

noticed 5:2,22,24,25
10:11,13 22:24

notices 5:3,9 6:1
12:21,22 16:8

November 17:24 18:3,
22 19:6

O

occasions 5:22

office 7:24

opportunity 14:4,9
20:9 22:14,19,21 24:3,
19,25

opted 9:8 19:14

oranges 11:12 15:2

order 5:6,10,13 6:3
9:4,20 10:1 11:15
12:15,16,18 13:1 15:17
18:4,5,7 22:13 28:1,4

outset 15:23

overly 21:25

P

p.m. 28:11

paragraphs 24:7

Parker 4:6

part 6:14 20:12 23:21

pay 16:6

people 8:16 21:19
27:19

period 9:13 10:10
17:13

persuaded 25:11

phonetic 6:7,8 15:21

Place 25:20

plant 17:2

pleading 18:8

pleadings 26:11

pleasure 28:10

plow 11:6

plowed 11:7

point 4:10 9:12 20:9
21:16

pointed 8:22

<p>policy 21:11</p> <p>position 4:20 6:5 24:8</p> <p>possession 7:6 19:17</p> <p>possibly 9:3</p> <p>post 26:12</p> <p>prejudice 7:18 25:12, 24</p> <p>preliminary 12:6</p> <p>prepare 28:4</p> <p>prepared 26:22 27:5, 25 28:2</p> <p>president 27:16</p> <p>pretty 4:19</p> <p>previous 11:7</p> <p>prior 13:21</p> <p>private 12:8</p> <p>privilege 8:25 17:20</p> <p>probable 4:24 10:16 11:15</p> <p>proceedings 4:3</p> <p>process 4:19 11:16,18 14:2,6,10,22 20:3 26:7 27:10,14</p> <p>product 8:25 17:19</p> <p>prohibiting 12:9</p> <p>promise 6:20</p> <p>promised 8:17</p> <p>proper 10:14</p> <p>properly 27:4</p> <p>Pros 15:17</p> <p>protected 13:8</p> <p>provide 16:1 17:5 19:2,7,18 20:4,5 21:9</p> <p>provided 4:22 6:7 10:24 15:4 17:3,12</p> <p>public 12:2 13:14,15, 22</p> <p>purpose 22:13</p> <p>put 11:5,17 14:11</p>	<hr/> <p style="text-align: center;">Q</p> <hr/> <p>question 26:22</p> <p>questions 23:11</p> <hr/> <p style="text-align: center;">R</p> <hr/> <p>raises 8:20</p> <p>read 12:25</p> <p>ready 17:11</p> <p>reason 7:7</p> <p>receive 22:9</p> <p>recently 7:1</p> <p>record 20:7 25:20</p> <p>recorded 12:3</p> <p>records 13:15,18,22</p> <p>refer 5:16</p> <p>referee 7:12 11:17 14:7,25 15:5 20:4,10, 17,18,23 21:9,20 24:24 25:2,10</p> <p>reference 23:4</p> <p>referencing 5:10</p> <p>referral 5:18</p> <p>referring 14:23</p> <p>refused 19:6</p> <p>refuting 22:15</p> <p>reject 13:24</p> <p>related 7:4</p> <p>relationship 23:7</p> <p>remain 13:18</p> <p>remove 4:13</p> <p>repealed 13:19</p> <p>reporter 4:7,11 8:5,7 25:22</p> <p>represent 16:4 27:19</p> <p>representing 17:1 27:8,13</p>	<p>request 8:23</p> <p>requests 7:3</p> <p>requirement 14:16 26:3</p> <p>requires 14:13</p> <p>reserved 7:16</p> <p>resources 11:6</p> <p>respectfully 18:9,13 21:1 23:25</p> <p>respond 21:23 22:14, 19,21 24:3,20 26:15</p> <p>response 9:25 10:2,3 13:21 15:22,23 16:25 23:12</p> <p>rest 15:9</p> <p>retainer 23:5,8</p> <p>retired 7:13</p> <p>revealing 6:10,11</p> <p>review 5:3 6:2 12:22</p> <p>reviewed 10:1</p> <p>rewind 25:25</p> <p>rights 14:10</p> <p>road 10:19</p> <p>Roberts 7:13</p> <p>role 20:23</p> <p>routine 15:12</p> <p>Rule 11:15 12:10 13:20 14:12,18 20:14</p> <p>Rules 7:14 11:20 12:21,23 13:2,5,8,16, 25 14:20 15:7,8,9 19:25 25:9 26:13</p> <p>ruling 26:5</p> <hr/> <p style="text-align: center;">S</p> <hr/> <p>sanction 7:19</p> <p>sanctions 7:16</p> <p>Sarasota 7:2</p> <p>Scott 7:20</p>	<p>seconds 7:21 18:12 25:16</p> <p>section 13:10,12,18 14:1</p> <p>served 14:2</p> <p>set 14:13 17:8 26:12</p> <p>sets 18:1</p> <p>shed 9:3</p> <p>show 9:19 10:1 18:4,5, 7 19:3 23:14,19</p> <p>showed 9:14</p> <p>showing 16:2</p> <p>side 21:12</p> <p>signature 8:16 9:15 22:11</p> <p>signed 16:7</p> <p>similar 7:8</p> <p>simple 4:19 9:11 10:12 11:1 19:9 22:24 24:6, 17 26:6</p> <p>simplest 10:10</p> <p>simplify 24:13</p> <p>simply 5:5,13 6:13 22:4</p> <p>single 9:16</p> <p>sir 25:17</p> <p>situation 11:2</p> <p>six-month 9:13</p> <p>skipped 9:22</p> <p>So.2d 11:23</p> <p>sole 11:14</p> <p>sort 6:20 9:7 15:12</p> <p>sought 14:15</p> <p>speak 26:4</p> <p>specific 14:17</p> <p>specifically 13:16</p> <p>specious 11:3</p> <p>spoke 27:8</p>
--	---	---	--

start 11:16 13:10 14:6**started** 5:1**starts** 14:7**statements** 24:9,10**Statutes** 13:12**straighten** 8:18**stricken** 24:12**strings** 16:19**subject** 5:4**submit** 21:1**sufficiency** 20:11 21:2**sufficient** 7:18 20:13,
16**suggest** 6:9**support** 11:15**Supreme** 20:18

T

talk 5:11 12:12,13**talking** 12:16 18:13
19:8 20:11 21:8**talks** 12:18 14:11**telling** 6:13 10:11 23:2**testify** 21:19**thing** 5:10 6:2 10:14
14:22 25:24**things** 24:13**thinking** 17:14**thought** 9:7 11:18
12:24 15:23 17:4**time** 9:14 16:20 17:13
21:16 26:3 28:9**time-honored** 26:3**timing** 27:24**today** 26:8,19 27:8**told** 9:8 18:14**Tozian** 4:14 7:22 8:10,
13 9:24 10:9 11:1014:23 17:15 18:9,13,21
19:8 20:6 21:22,23,25
25:15,21 26:17,18
27:2,18,21 28:7**transcript** 12:3**transferred** 5:21**transparent** 21:12**treating** 7:15**trial** 5:14 6:19 7:7
14:25 16:4,7,11,14
21:7,8,18 23:22**turn** 9:10

U

Uhlfelder 8:15,21
12:14,17 16:3,10,23
17:1,9,17,24 18:22
19:5,16,23 20:8,25
22:5**Uhlofelder** 18:15**ultimately** 7:17 9:18,
19,24**Understood** 27:21**UNKNONW** 8:3

V

ve 10:19,20**violated** 7:14,19 13:25
14:19**violation** 14:18**violations** 11:15**virtue** 23:7**vocal** 4:16**voice** 4:16**vote** 5:4 17:11 25:6

W

Wait 16:23**wanted** 16:16 19:13
27:17**wasting** 11:6**whatevers** 20:4**William** 16:3**withdraw** 27:20**witnesses** 27:3**woke** 18:6**words** 5:15**work** 8:25 10:20 17:19**working** 7:24**world** 9:2**worst** 23:19,20**written** 16:2**wrong** 6:15,16 7:11**wrote** 15:20 23:9

Y

year 16:24**years** 10:21 13:21
15:11