IN THE SUPREME COURT OF FLORIDA

THE FLORIDA BAR,

Complainant,

v.

SCOT STREMS,

Respondent.

Case No.: SC20-1277

The Florida Bar File
No. 2021-70, 075 (11C-OSC)

THE FLORIDA BAR'S INITIAL BRIEF

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PRELIMINARY STATEMENT

A. Abbreviated Names

Scot Strems, the Respondent, will be referred to as Mr. Strems or the Respondent. The Florida Bar will be referred to as the Bar.

B. Citations to the Record

References to the Report of Referee will be cited as (ROR p.**).

References to specific pleadings will be made by Tab number in the Amended Index of Record, and with further information when the document is large. (Tab-**).

The transcript of the final hearing will be cited as (T**).

The Bar's exhibits will be cited as (TFB-Ex-*) with specific reference to the page number when needed. The Bar's exhibits attached to the petition for contempt will be cited as (TFB-Ex-* Contempt) with specific reference to the page number when needed.

Mr. Strems' exhibits will be cited as (R-Ex-**).

The Bar provides an appendix of critical portions of the record to facilitate review. This brief cites to the appendix as (A**).

NATURE OF THE CASE

The Bar seeks review of the Referee's report that recommends this Court deny a petition for contempt filed against Mr. Strems. This Court entered an emergency suspension order on June 9, 2020, in Case No. SC20-808. (ROR p.3). That case is currently pending on review with the Referee recommending a two-year suspension. The Bar is seeking disbarment. Two other subsequent disciplinary cases are also pending in SC20-842 and SC20-1739.

At the time of this suspension, Mr. Strems was the sole stockholder in The Strems Law Firm. He had 5000 to 7000 clients and more than 100 employees, including about 30 lawyers. (ROR p.3, T145, 319). During the thirty-day window provided in the suspension order before he had to cease representing clients, with the help of outside counsel, Mr. Strems changed the name of his law firm to The Property Advocates, P.A. (ROR p.69). He had his professional association issue new, additional stock, which was sold on July 9, 2020, to three of his employee-attorneys. (ROR p. 69). They became the new officers of the professional association. Simultaneously, he entered into a stock redemption agreement with the professional association

[redacted] (ROR p. 70, TFB-Ex. B, p. 84).

Mr. Strems sent a letter to his clients, dated July 1, 2020, describing these events and attaching the suspension order. (A3). The letter did not advise them of their right to seek other counsel, and it provided notice of his suspension in a manner that the Bar maintains was misleading.

The Referee is recommending that the petition for contempt be denied because she concluded that Mr. Strems did not sell his law practice for purposes of Rule 4-1.17 of the Florida Rules of Professional Conduct. The Bar maintains this is a sale for purposes of the Rules of Professional Conduct, and that the July 1 letter also violated the suspension order and Rules 4-1.4 and 4-8.4(c).

STATEMENT OF THE CASE AND FACTS

The Bar filed a petition for emergency suspension in Case No. SC20-808 on June 5, 2020. It alleged that Mr. Strems had violated numerous rules of the Florida Rules of Professional Conduct. The focus of this first petition was misconduct during litigation by Mr. Strems and his associates. It alleged several violations of Rule 4-5.1 relating to his duties to supervise the lawyers in his law firm and to take reasonable steps to assure those lawyers conformed to the Rules of Professional Conduct. The Referee has recommended that Mr. Strems be found guilty of those violations and has recommended a two-year suspension. That proceeding is still pending on review with Mr. Strems challenging the findings of guilt and with the Bar seeking disbarment.

This Court entered the emergency suspension order on June 9, 2020. (ROR p.3). The standard language of this order states that "Respondent is suspended from the practice of law until further order of this Court." But the standard language also states that he must "cease representing any clients after thirty days of this Court's order." (A8). It requires that he "immediately furnish a copy of Respondent's suspension order to all clients." (A9).

It is undisputed that Mr. Strems was the sole owner of Strems Law Firm, a professional association. This firm had expanded rapidly from 2016

to the time of the emergency suspension. The estimates of the number of clients that needed to be furnished a copy of the suspension order varied between 5000 and 7000. (T145, 319). The professional association employed about 30 lawyers and had a much larger number of unlicensed employees at the time of the suspension. (ROR p. 3). These employees worked under Mr. Strems' supervision in a highly computer-dependent structure of separate teams to on-board clients, handle claims before suit, and handle claims after suit.

Mr. Strems' standard "contingency fee retainer agreement" defined "attorney" as "The Strems Law Firm, P.A." (A4).[1] Mr. Strems' signature was normally the signature on the agreement that was sent to the client by the on-board team because he was the only lawyer who was actually a member of the law firm. (A7). The contract does not specify any lawyer who will handle a matter, and no lawyer was in direct privity with the client under the terms of the contract. But Mr. Strems recognized that he needed to notify all of these clients of his suspension.

[1] During the final hearing, the fee agreement that was primarily discussed was the Evans contract, which is actually Respondent's Exhibit 1 in SC20-1739.

When a member of a professional association becomes "legally disqualified to render such professional services," that member must "sever all employment with, and financial interests in, such corporation." *See* § 621.10, Fla. Stat. Thus, it is undisputed in this case that Mr. Strems had to sever his ties with the Strems Law Firm to comply fully with this Court's order.

Mr. Strems and Strems Law Firm hired two professionals to assist in this process. Mr. Scott K. Tozian, who is an attorney who specializes in representation of attorneys in disciplinary proceedings, was actually hired a month before this Court issued its suspension order. (T290). He recommended that Mr. Strems divest his interest in Strems Law Firm. (T298). He also recommended that Mr. Strems and the Strems Law Firm hire Mr. William Kalish to help with this process because Mr. Kalish is a tax lawyer who also has experience with compliance with the Florida Rules of Professional Conduct. (T296-98, 406).

Mr. Kalish was retained to be the receiver to handle funds in the trust accounts and other accounts that Mr. Strems could no longer handle as a suspended lawyer. (T415-17). He was also retained to address the need to sever Mr. Strems ties to the Strems Law Firm. (T407-410).

Mr. Kalish recommended that Mr. Strems divest himself of ownership in the professional association, and that the ownership should be placed

"simultaneously" with three lawyers who had worked for the firm for at least a few years. (T428-29, 500). He did not recommend selling Mr. Strems' stock directly to the three lawyers. Instead, the full transfer of ownership was structured by having the professional association "redeem" Mr. Strems stock [redacted] (T426, TFB-Ex. B p. 84). [redacted] (TFB-Ex. B p. 84).

The professional association also issued new shares of stock that were simultaneously delivered to the three new owners of the association so that there would be no gap in ownership, membership, or in the officers required for the corporate entity. (T428-29). [redacted] (TFB-Ex. B p. 6-3, 33-35, 70-77, 129-34) [redacted]

A few days before this transaction, the professional association changed its name to eliminate the reference to Mr. Strems and to substitute the more generic, The Property Advocates, P.A. (T431).

To be clear, the Bar is not challenging this structure as a method for Mr. Strems to transfer ownership from himself to the three new owners. Although in the petition and at the hearing, the Bar questioned the authority of Mr. Strems, as a suspended lawyer, to take actions for Strems Law Firm during the 30-day window in which he could have performed limited representation of his clients, the Referee ruled against the Bar on that issue. Likewise, the Bar challenged whether "immediate" required faster action on some steps, but the Referee ruled against the Bar on that issue as well. The Bar is not challenging those rulings in this review.

The Bar is challenging whether this transaction is a "sale of a law practice" for purposes of the requirement to notify clients under Rule 4-1.17(b). Mr. Strems did not comply with those requirements. The Referee considered the conflicting legal opinions of two experts, (ROR pp. 79-106), as well as the conflicting legal arguments of the lawyers, and concluded that this transaction did not qualify as a sale for purposes of Rule 4-1.17. The Referee found that it was a "mere changing of the guard" that "did not implicate Rule 4-1.17 or constitute a 'sale of a law firm' (sic) for purposes of Rule 4-1.17." (ROR p. 118) This issue will be further addressed in the argument section because the facts are not really in dispute and the question is one of law for this Court to decide.

When Mr. Strems received the suspension order, his employees began working to obtain an accurate mailing list for the many clients. (T69). By July 1, 2020, Mr. Strems had drafted a letter to send to the list of clients along with this Court's order. (TFB-Ex. C Contempt). The one-page letter is an exhibit in evidence and in this brief's appendix, but it is copied here as well:

STREMS | LAW FIRM

EXHIBIT

Strems Trial Exhibit 2

July 1, 2020

Re: Your Insurance Claim

Dear Client:

Our work continues on your file, but we write this letter to advise of changes at the law firm and matters regarding me.

The ownership of The Strems Law Firm is changing by advancing three of our present lawyers as shareholders. As well, I will no longer be the owner of the law firm or involved at the firm because of this change of ownership. The remainder of the attorneys and support staff, however, remain the same.

Your case has been handled by a specifically assigned attorney at the law firm and support staff which will not be affected by these changes. I had not been the lawyer directly responsible for your matter. Of course, the lawyers directly responsible for your matter will continue without any change to seek the best settlement or judgment for your case.

I will no longer be involved in the firm and I have been suspended from the practice of law, as per the attached Order.

The new name of the firm will be **The Property Advocates P.A.** and if you see that name on further papers we send to you there is no reason for your concern.

Again, we greatly value your confidence in us as your attorneys to complete your claim and get the best result for you possible for the damages to your home.

We will stay in touch over the next few weeks and bring you up to date on our continuing efforts on your behalf.

Please feel free to contact our office with any questions you may have.

Thank you for your continued support.

Respectfully,

Scot Strems

STREMS LAW FIRM
2525 Ponce De Leon Blvd., Suite 600 Coral Gables, FL 33134 · TEL: (786) 430-0882 · FAX: (305) 459-1589

Mr. Kalish testified that he had no role in creating this letter. (T463). He explained that, while he did not think it was compelled by the rules, he probably would have added language about the possibility of a client changing firms. (T464). He believed the clients "should know what's going on." (T483). As he explained:

> But the proper way would be that the clients would also assent to any arrangements of the various lawyer too, I believe.

(T483).

Mr. Tozian testified that he did not believe his office drafted this letter, but he was relatively certain that he saw it before it went out. (T359). He did not think the letter was an issue.

But, suffice it to say, the letter was not a plain, simple statement:

> *I regret to inform you that I was suspended from the practice of law on June 9, 2020. To comply with the Florida Supreme Court's order, attached to this letter is a copy of that suspension order.*
>
> *Although I can no longer represent you and will no longer be a member of this law firm after July 9, efforts are being taken so that the lawyers who work for this law firm can continue to represent you. They will contact you in the very near future. You, of course, also have the right to retain other counsel if you choose to do so.*

The Bar maintains that Mr. Strems' letter was not full compliance with this Court's order and that it provided misleading and incomplete information to the clients in an effort to keep them with the reconstituted law firm that was obligated to make payments to Mr. Strems for a decade. The Referee rejected the Bar's position and ultimately is recommending that this Court find Mr. Strems not guilty of contempt and not guilty of the several violations of the Rules of Professional Conduct that are inherent in the conduct alleged in the petition for contempt. The Referee recommends that each party bear their own costs.

Similar to the Reports of Referee in SC20-842 and SC20-1739, the Referee's lengthy report in this case ends with a hypothetical recommendation for a penalty if this Court rejects the Referee's recommendation of not guilty. That recommendation is either an admonishment or a public reprimand, "concurrent with the previously recommended sanctions," and the payment of costs. (ROR-164-165).

The Bar maintained in the petition and at the hearing that Mr. Strems violated this order because he did not file a motion to withdraw in any of the cases filed by his law firm. (T10). Instead, the reconstituted law firm filed a "notice of change of firm name and email addresses" that included the sentence: "Any other Attorneys of Record should be removed as counsel of

record on behalf of Plaintiff." (TFB-Ex. H Contempt). Although this notice and the response of defense counsel resulted in stays and delays of litigation, these events occurred after Mr. Strems had withdrawn from the firm. There is evidence of at least two cases that remained pending with Mr. Strems listed as counsel of record, (T176, TFB-Ex-K & L Contempt).[2] The Referee rejected the Bar's position on this issue, and the Bar has chosen not to seek review of that decision. It wishes to focus this review on the two issue that can arise in other emergency suspensions: whether such a transfer of a one-lawyer professional association is a sale for purposes of Rule 4.1-17, and whether the letter providing the suspension order complied with the suspension order and the Rules of Professional Conduct.

[2] One case is Eduardo Mora v. United Property & Casualty Ins. Co., Case No. 17-010198 CA 13 in the 11th Circuit. Judge Bokor held a hearing in that case on August 12, 2020. The transcript on page 29 reflects that the judge was concerned that Mr. Strems was still counsel of record. The transcript was used here in cross-examination, but is filed in SC20-806 as a portion of Composite Ex F.

SUMMARY OF THE ARGUMENT

Mr. Strems did not choose to build a law firm with a hierarchy of partners with years of experience working with younger associates on matters that had come into those partners due to their own professional experience. He did not build a firm where clients often came to the firm because of the firm's reputation but were then introduced to a partner who they agreed would represent them with the help of his or her associates and paralegals.

Instead, he built a one-man professional association with a maze of employees who handled matters for thousands of clients who had received an engagement letter signed by the only actual member of the law firm – Mr. Strems. His was the only name in Strems Law Firm and his extensive marketing was based on that name. His clients were simply distributed among his pre-litigation teams and his litigation teams.

Thus, when he received his emergency suspension on June 9, 2020, he was faced with a serious problem. He had to leave the law firm immediately, no later than July 9. But the professional association was simply the corporate manifestation of Mr. Strems. If he removed himself from the professional association, it ceased to exist.

He knew that if he sold his practice to another lawyer or law firm that Rule 4-1.17 would require that he notify his clients and give them the option to find another lawyer who was not burdened with the problems he had created for himself and his employees; a lawyer who actually had her practice organized so that she could talk to clients in person when needed. That could dramatically reduce the value of the law practice he wanted to sell.

So instead of a direct sale, he accomplished precisely the same thing by issuing new stock for the three purchasers of his law practice, and then entering into a redemption agreement with the professional association so that the payments to him would be channeled through the law firm and not paid directly by the three lawyers. By technically selling the stock in the professional association, the legal vessel that held the contracts with his clients, he claimed that the client's professional relationship was unchanged with the professional association.

While the <u>business</u> relationship created by the thousands of contingency retainer agreements may have remained with the professional association, the clients ceased to have a <u>professional</u> relationship with Mr. Strems and that professional relationship was transferred to the three new members of the professional association. The Florida Rules of Professional

Conduct regulate the conduct of lawyers, not professional associations. The redemption agreement may have been important to the IRS for tax purposes, but to fulfill his duties to his clients, he still needed to comply with Rule 4-1.17.

But he did not comply with that rule. Instead, in order to notify his clients of his suspension order, he sent them a letter, primarily in the third-person, telling them about the change in ownership and explaining that this change was why he would no longer be involved at the firm. The Bar submits this letter is deceptive, a failure to communicate the information needed for informed consent, and a violation on the emergency suspension order.

Mr. Strems has argued that his actions are protected by advice of counsel. But this Court has clearly explained that this defense does not apply to compliance with the Florida Rules of Professional Conduct, as contrasted with some underlying legal issue with which a respondent is unversed. In any event, the evidence in this record does not support this defense.

Because the Referee misunderstood the applicable law, this Court should reject the Referee's recommendations and find Mr. Strems guilty of violating Rule 4-1.17, Rule 4-1-4, and Rule 4-8.4(c), and find him in contempt

of the suspension order. The sanction for these violations should be imposed with the other pending cases. Mr. Strems should be disbarred.

THE DECISION-MAKING PROCESS IN A DISCIPLINARY PROCEEDING AND THE STANDARD OF REVIEW

"This Court's standard of review in a contempt case is the same as that applicable to attorney discipline cases in general." *The Florida Bar v. Bitterman*, 33 So. 3d 686, 687 (Fla. 2010).

1. Issues of Law.

This Court reviews issue of law de novo when the only disagreement is whether the material facts constitute unethical conduct. *The Florida Bar v. Brownstein,* 953 So. 2d 502, 510 (Fla. 2007); *The Florida Bar v. Pape*, 918 So. 2d 240, 243 (Fla. 2005).

2. Findings of Fact

As this Court explained in *The Florida Bar v. Picon*, 205 So. 3d 759, 764 (Fla. 2016): "This Court's review of a referee's findings of fact is limited. If a referee's findings of fact are supported by competent, substantial evidence in the record, this Court will not reweigh the evidence and substitute its judgment for that of the referee. *The Florida Bar v. Frederick*, 756 So. 2d 79, 86 (Fla. 2000)." *See also The Florida Bar v. Schwartz*, 284 So. 3d 393, 396 (Fla. 2019); *The Florida Bar v. Parrish*, 241 So. 3d 66, 72 (Fla. 2018); *The Florida Bar v. Vining*, 721 So. 2d 1164, 1167 (Fla. 1998); *The Florida Bar v. Jordan*, 705 So. 2d 1387, 1390 (Fla. 1998); *The Florida Bar v. Spann*, 682 So. 2d 1070, 1073 (Fla. 1996).

3. Recommendation of Discipline

The Referee's recommendation of discipline is subjected to greater review by this Court because of this Court's ultimate responsibility to make that decision:

> In reviewing a referee's recommended discipline, this Court's scope of review 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. *See The Florida Bar v. Picon*, 205 So. 3d 759, 765 (Fla. 2016) (citing *The Florida Bar v. Anderson*, 538 So. 2d 852, 854 (Fla. 1989)). At the same time, this Court will generally not second-guess the referee's recommended discipline, as long as it has a reasonable basis in existing case law and the standards. *See The Florida Bar v. Alters*, 260 So. 3d 72, 83 (Fla. 2018); *The Florida Bar v. De La Torre*, 994 So. 2d 1032 (Fla. 2008).

The Florida Bar v. Altman, 294 So. 3d 844, 847 (Fla. 2020).

It is also important to consider that this Court has given notice to the members of the Bar that it is moving toward harsher sanctions than in the past. *See The Florida Bar v. Rosenberg*, 169 So. 3d 1155, 1162 (Fla. 2015). In *Rosenberg*, this Court explained that since the decision in *The Florida Bar v. Bloom*, 632 So. 2d 1016 (Fla. 1994), the Court has moved toward imposing stricter sanctions for unethical and unprofessional conduct. *See also Altman* at 847. As a result, case law prior to 2015 needs to be examined carefully

to make certain that the application of sanctions in these earlier cases comports with current standards.

ARGUMENT

I. The complete transfer of ownership of Strems Law Firm from Mr. Strems to three other attorneys is a "sale of law practice" under Rule 4-1.17 of the Florida Rules of Professional Conduct for which the clients were entitled to notice.

A. The central legal question within this issue, and the holding the Bar requests from this Court.

Until about forty years ago, a lawyer could sell the building from which she practiced, and the furniture and the law books connected to the practice, but the practice itself was regarded as a professional relationship that could not be sold. In 1992, Florida adopted Rule 4-1.17, which was based on the recently developed ABA Model Rule 1.17. *See In re Amendment to Rules Regulating The Florida Bar*, 605 So. 2d 252, 253 (Fla. 1992). It allowed a lawyer to sell an entire practice to one lawyer. The rule conditioned this new ability to sell a practice on requirements that the clients be notified and be given an opportunity to consent to the substitution of counsel or to terminate the representation. Then, as now, the comments began with the explanation that "[t]he practice of law is a profession, not merely a business," and "[c]lients are not commodities that can be purchased and sold at will."

In 2006, the rule was amended to permit a sale of the entire practice or an entire area of a practice to one or more lawyers. *See In re Amendments to the Rules Regulating The Florida Bar,* 933 So. 2d 417, 457 (Fla. 2006).

Although in the first sentence of the rule, this Court made clear that the item sold is a "law practice," and a not "law firm," because either a "lawyer" or a "law firm" could sell a "law practice," the rule has never defined exactly what a "sale" entails when one is selling a law practice. There is no case law defining "sale" in this context.

It is not a rare occurrence that a one-lawyer law practice is organized and doing business as a professional association or other form of legal association authorized to practice law. If Lawyer A is practicing without the use of such a separate legal entity, and she wishes to sell either the entire practice or an area of practice to another lawyer or to some other professional association, there is no question that Rule 4-1.17 applies. Lawyer A's "practice" is to the largest extent a collection of existing relationships with clients and the goodwill created by past and present clients. Before Lawyer A sells her practice to Lawyer B or to "Lawyer B, P.A," she must give notice to her clients because the clients are not "commodities."

But Mr. Strems successfully argued to the Referee that he did not sell a practice; the corporation merely redeemed his stock in the corporation [redacted] Because the corporation did not cease to exist and it continued to own the legal contracts with the clients that created the business relationship, he claimed he had no duty to

communicate with his clients to give them notice of the total 100% transfer in ownership of the professional association and their right to retain new counsel. But it is the complete transfer of his professional relationships with his clients to the new owners of the professional association that invokes Rule 4-1.17 of the Florida Rules of Professional Conduct.

The Bar submits that Rule 4-1.17(b) exists to protect the client's rights. It was not created by this Court to protect the commercial rights of a professional corporation. The argument presented to, and accepted by, the Referee in this case would dramatically reduce the client's right to be represented by a licensed lawyer of his or her choice, and to understand that he or she had that right. No matter what legal entities are involved, when 100% of the control of a "legal practice" is transferred from one lawyer to another lawyer or group of lawyers, this is a sale of a "law practice" that invokes the right of the clients to be informed under Rule 4-1.17.

In this case, the Bar is asking this Court to hold that when a lawyer facing an emergency suspension transfers his entire practice for consideration to other lawyers, either directly from lawyer to lawyer, or indirectly through a transaction involving a transfer of a professional association that is used as the legal vessel containing the lawyer's

professional relationships with his clients, that transaction for consideration is a "sale of law practice," requiring compliance with Rule 4-1.17(b).

B. Rule 4-1.17 governs the sale of a law practice, not the sale of a law firm.

Rule 4-1.17 plainly states that it applies to the sale of a law practice and not the sale of a law firm. Its first three subsections state:

> A lawyer or a law firm may sell or purchase a law practice, or an area of practice, including good will, provided that:
>
> a) **Sale of Practice or Area of Practice as an Entirety**. The entire practice, or the entire area of practice, is sold to 1 or more lawyers or law firms authorized to practice law in Florida.
>
> b) **Notice to Clients**. Written notice is served by certified mail, return receipt requested, on each of the seller's clients of:
>
> 1) The proposed sale
>
> 2) The client's right to retain counsel; and
>
> 3) The fact that the client's consent to the substitution of counsel will be presumed if the client does not object within 30 days after being served with notice.

The "practice" in this context includes the professional relationship with the clients and the good will that has been created over the life of the practice. The purchaser may keep some or all of the employees of the predecessor lawyer and may be purchasing physical or computer files and

programs that help service the clients. But the “practice” has little value without the ongoing professional relationship with the clients.

The adoption of this rule ended the complete prohibition on selling a practice, but the compromise requires the lawyer benefiting from the sale to take very specific steps to protect the clients. Admittedly, a practice is normally sold in a more direct sale of the business relationship than occurred in this case. But this is not a rule about the taxation of the sale or the basis for a new asset. The clients had an established attorney-client relationship with Mr. Strems. He was the only lawyer who was an actual member of the law firm, and he was also the lawyer signing the contracts and making first communication with the clients. It was his credentials in all the advertising that gave them assurance (albeit inaccurately) that their claims would be carefully supervised by a very experienced lawyer.

It is lawyers who must obey the Rules of Professional Responsibility, not professional associations. It is the lawyer who has skill as an advocate, not the professional association. The lawyer may delegate some of the work on a matter to an employed associate or even a paralegal, especially with the client’s knowledge and consent, but the lawyer is still the responsible supervisor. The corporation cannot assume that professional function.

By the entire transfer of his practice to the three new owners, Mr. Strems was attempting to transfer that attorney-client relationship without providing the notice required by Rule 4-1.17(b). He was not telling his clients that they had the right to find another lawyer under these circumstances.

C. The Referee misunderstood the concept of a sale of the legal practice, in part, because of the language of Mr. Strems' standard "Contingency Fee Retainer Agreement."

As Rule 4-5.8(a) explains, "the contract for legal services creates a legal relationship between the client and law firm and between the client and individual members of the law firm. . . ." It further explains that "[n]othing in these rules creates or defines those relationships." In other words, the Florida Rules of Professional Conduct address the professional relationship between a lawyer and a client – not the business relationship between the client and the law firm. Admittedly, there is some overlap between those relationships, especially in the area of reasonable fees. But the Florida Rules of Professional Conduct exist to protect clients and to protect the reputation of the profession of law and the courts that profession serves. They are not trumped by the business interests of the lawyer or the law firm.

The standard "Contingency Fee Retainer Agreement" utilized by Mr. Strems was odd in a number of respects.[3] But for purposes of this review, the major oddity is its use of the word "Attorney" as the shorthand reference for "The Strems Law Firm P.A." (A. 4-7). The contract's heading does not reference the law firm, but the first line of the contract explains that the client is retaining and employing THE STREMS LAW FIRM, P.A. (hereinafter "Attorney"). Mr. Strems signs the contract on the line for "Attorney" to sign. The word "Attorney" occurs throughout the document.

This retainer agreement does not retain "Lawyer X and Lawyer X, P.A.' In fact the body of the contract contains no reference to "lawyer" or to the word "Attorney" meaning anything except the professional association. The contract authorizes "Attorney" to file a lawsuit for the client, but there is no discussion of what lawyer, other than Mr. Strems, will represent the client. In this bulk practice, the client is represented by a pre-litigation team, and if necessary, by a subsequent litigation team. But the contract does not specify the team, much less the lawyers in the team. The client is given no right to select a particular lawyer.

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[3] Different portions of the contact create issues addressed in SC20-842 and SC20-1739.

The required “Statement of Client’s Rights” is, of course, appended to the firm’s contract. It discusses “lawyers.” It explains in paragraph 3 that the client has the right to know about a “lawyer’s education, training and experience” before hiring a lawyer. The contract has an auto-fill checkmark explaining that the client understands, but the only lawyer the client typically knows about when entering into the contract is Mr. Strems.

This contract is undoubtedly owned by the professional association. As a business relationship, it presumably continues to be owned by the professional association when 100% of that entity is transferred from one lawyer to another lawyer or group of lawyers. But calling the professional association “Attorney” in the contract does not make that association a “lawyer” for purposes of the Florida Rules of Professional Conduct.

The question here is about the professional relationship between the client and the lawyer—and the duty to communicate with a client when the lawyer who signs the retainer agreement can no longer be in the professional relationship with his client because he has sold the law firm that owns the business relationship. Mr Strems argued, and the Referee concluded, that the unchanged business relationship through the ownership of the contract by the professional association (when the entire practice is transferred from one lawyer to another group of lawyers) prevents the operation of Rule 4-

1.17. Respectfully, that is simply an error of law. It conflates the business relationship with the professional relationship to the detriment of the client and to the detriment of the judicial system.

D. The fact that the lawyers purchasing the practice were three of the many lawyers employed by the professional association did not alter the requirements of Rule 4-1.17.

The three attorneys who owned all the stock, and thus the "practice" after the simultaneous closing were Orlando Romero, Hunter Patterson, and Christopher Narchet. (T122). Mr. Romero has since died. (T160). Mr. Narchet only became employed by the Strems Law Firm in its Coral Gables office in July 2017. (T116). He never worked on one of the pre-litigation teams. (T117). His first litigation job was as a member of one of the Strems litigation teams. (T123). He was promoted to a team leader on one of the litigation teams prior to purchasing his interest in the law firm. (T118). He explained that the three purchasers "decided that the best course of action for our clients was to obviously maintain the same representation for them." (T120). He further said: "Obviously, the choice was left in their (the clients') hands as well, you know, whether they wished to continue with our services as their counsel or not." (T121). But he does not claim they reached out to the thousands of clients to discuss this with them.

Thus, Mr. Strems did not provide notice to his clients under Rule 4-1.17(b) of their rights, and the new owners unilaterally decided the best interest of the clients as well. But the clients may not have wished to be represented by a lawyer with so little experience as Mr. Narchet. They also may have discovered that the insurance company was not denying their claim and they could resolve it themselves without paying 25% of the undisputed amounts to the law firm. Respectfully, keeping the clients with the new owners of the law firm was in the best interests of Mr. Strems and the new owners, but in light of the conditions that brought on the emergency suspension and the methods used to sign up some of the clients, the clients may very well have been better off to select different representation if that option had been presented to them with fair disclosure.

The Bar submits that there is no exception to Rule 4-1.17(b) when the sale is to three lawyers currently employed by the professional association. Admittedly, at least a few of these clients were involved in litigation in which one of the new owners may have been their lead attorney of record. But even then, the clients had entered into engagements to be represented by the Strems Law Firm when the only managing and supervising lawyer was Mr. Strems. The many clients whose files were in pre-litigation would have had no prior contact with the new owners. Whether the new attorneys in

charge of managing and supervising the employees of the law firm had been employees of the firm or had come from outside the law firm, the clients still had a right to be told that they were no longer in privity with Mr. Strems' law firm, but with a reconstituted law firm with entirely new owners.

Mr. Strems argued to the Referee that the position of the Bar would mean the Rule 4-1.17(b) would need to be invoked every time a partner left a law firm with multiple members. That really is not a fair reading of the rule. The rule covers the sale of an "entire practice" or an "entire area of practice." When new partners buy their shares in an existing law firm with multiple shareholders or old partners sell their shares, the event is normally not a purchase or sale of even an "area" of the practice. The Bar is only arguing here that a sale occurs when there is a 100% change in the ownership of the professional association.

The disclosure requirements of Rule 4.1-17 are actually just an extension of the duty to communicate with your client under Rule 4.1-4. In the remaining thirty days before Mr. Strems could no longer represent a client, he still had a duty to "explain a matter to the extent reasonably necessary to permit the client to make informed decisions regarding the representation." See Rule 4-1.4(b). As we will see in the next issue, he did not accomplish that requirement.

II. Mr. Strems' July 1, 2020, letter was not the notice required by Rule 4-1.17, but rather was a document providing misleading information for Mr. Strems' benefit.

Mr. Strems did not begin sending out notices of his suspension in June to clients who had an immediate need for this information. For example, the clients who had just sent in their signed retainers and had not been processed by the on-boarding team were not sent notice of his suspension prior to the completion of that process. Instead, that team simply continued to send out Mr. Strems' standard notice of representation to the insurance carriers. (T803)(TFB-EX- Composite A Contempt) .

When he did provide notice to the clients, Mr. Strems did not send out a personal letter simply informing each client that he had been suspended by the Florida Supreme Court and providing a copy of the suspension order. Instead, he mailed out a letter about "Your Insurance Claim" to "Dear Client." (TFB-Ex. C Contempt).

The letter begins with a one-sentence paragraph: "Our work continues on your file, but we write this letter to advise of changes at the law firm and matters regarding me." Thus, although the letter is going to tell the client about his "matters," it is carefully crafted as a letter from the whole law firm – from us, not from me.

The next paragraph explains that the "ownership" of the law firm is changing (even though this is not a sale). It is changing by "advancing three of our present lawyers as shareholders." Mr. Strems explains that he will "no longer be the owner of the law firm or involved at the firm because of this change of ownership." But the truth is that he will no longer be involved because he has been suspended and he must divest himself of ownership in the firm because he has been suspended.

The next paragraph explains that the clients claim has been handled by a "specifically assigned attorney at the law firm and support staff," which will not be affected by these changes. That lawyer is not identified in the letter. Mr. Strems claims that he had not been "directly responsible for your matter," even though he had signed the contingency agreement with them and was the only shareholder in the firm. He was not "directly" involved in the sense that he had delegated the matter to his employees, but he had been suspended because of the evidence that he had mismanaged those employees.

Despite the reasons for his suspension, he assures his clients that "the lawyers responsible for your matter will continue <u>without any change</u> to seek the best settlement or judgment for your case." (emphasis supplied).

Then, in the middle of the document in a paragraph containing one compound sentence, he states: “I will no longer be involved in the firm and I have been suspended from the practice of law, as per the attached Order.”

The next paragraph explains that the “new name of the firm will be **The Property Advocates, P.A.** and if you see that name on further papers we send to you there is no reason for your concern.” (A3). Mr. Strems, of course is not part of that “we.” Instead of telling the client that they may seek to retain other counsel in light of his suspension and the sale of the firm, he tells them “there is no reason for your concern.”

The next paragraph says: “Again, we greatly value your confidence in us as your attorneys to complete your claim and get the best result for you possible for the damage to your house.” This letter is signed only by Scot Strems, and it is not signed by him for Strems Law Firm, like the first letter he sent to the clients. (A3). But he will not be completing their claims and negotiating the final settlement amounts.

Then the next two paragraphs state: “We will stay in touch over the next few weeks and bring you up to date on our continuing efforts on your behalf.” “Please feel free to contact our office with any questions you may have.” Of course, Mr. Strems will not and cannot stay in touch with them. And one of the reasons that Mr. Strems was suspended was because it was

so difficult to get through to a lawyer if you contacted the office. Ms. Mendizabal, who had worked with the firm since 2017 and was the managing attorney in the Miami office, explained that the firm had the same protocol for communicating with clients after this letter was sent out as before. (T61, 64, 84). They had a separate "team" that answered the telephones and a call center to handle overflows. (T84). Mr. Strems knew when he signed this letter that the firm was not structured to allow these clients to call the unidentified lawyer "specifically assigned" to their case to obtain the information needed to make an informed decision about staying with the law firm.

The Bar maintains that, once Mr. Strems decided not to send a simple letter notifying his clients of his suspension, but rather decided to send a firm letter announcing the complete change in ownership of the law practice, he needed to comply with Rule 4-1.17(b). He needed to tell his clients that they had a right to retain other counsel. Instead, he used the letter as a marketing tool for the new owners to assure that they would be able to keep those clients and receive the contingency fees needed to fund his buy-out.

Once Mr. Strems decided to inform his clients of the status of representation, under Rule 4-1.4(a), entitled "Informing Client of Status of Representation," he needed to provide the clients with accurate information

needed for the client to make an informed decision. Under Rule 4-1.4(b), he needed to "explain [the] matter to the extent reasonably necessary to permit the client to make informed decisions regarding the representation." He knowingly sent out a letter that did not fulfill these requirements. He intentionally avoided providing a full disclosure for his own self-interest.

Instead of recognizing the problems within the firm and sharing with the clients that he had allowed the firm to grow too quickly, that the firm had problems communicating with its clients, and that it had difficulty timely complying with discovery rules and court orders—and perhaps explaining how the new owners planned to address these problems – he told them that things would go on "without any change" and that there was "no reason for your concern."

Under Rule 4-8.4(c), a lawyer has an obligation not to engage in conduct involving dishonesty, deceit, or misrepresentation. This letter is not honest with his clients. It misrepresented why he would no longer be the owner of the law firm or involved at the firm. It misrepresented many things by omission that he needed to explain once he decided to send the content of this letter to his clients. He did this in an effort to assure that the clients stayed with the new lawyers who now owned the law practice.

There is no factual dispute about the content of this letter or the facts surrounding the sending of this letter. And Mr. Kalish and Mr. Tozian did not write this letter or provide any advance opinion that this was an appropriate letter – even assuming that "advice of counsel" has become a defense for this type of violation. But the Referee nevertheless concluded that these facts did not violate these rules. (ROR 149-150). The Bar submits that the Referee made an error in law when she concluded that these facts violate none of the applicable rules.

III. "Advice of Counsel" should not be a defense when the advice concerns the Rules themselves and not some underlying area of law with which the lawyer is unfamiliar.

Mr. Strems repeatedly emphasized to the Referee that he had relied upon the advice of the two lawyers he hired to assist with the suspension order. Just like he wished to blame his mismanagement on his associates in Case No. SC20-808, he seeks to shift responsibility for complying with the Florida Rules of Professional Conduct to his lawyers. He is seeking to expand the scope of this Court's recent decision in *The Florida Bar v. Herman*, 297 So. 3d 516 (Fla. 2020), which recognized a very limited version of the advice of counsel defense.

In *Herman,* the issue concerned the truthfulness of Mr. Herman's financial disclosures in his bankruptcy filings. Mr. Herman was not a

bankruptcy lawyer, and he had experienced bankruptcy counsel representing him in that proceeding. His disclosures had been thoroughly discussed with his lawyer and the information Mr. Herman provided to his lawyer was accurate and sufficient for his lawyer to make a legal decision for his client. The bankruptcy court found that the filings were so inaccurate as to warrant a denial of discharge, but this Court explained: "To establish that Herman is guilty of misconduct, the Bar would have to prove by clear and convincing evidence not only that Herman's bankruptcy disclosures were false or misleading, but also that Herman knew that they were false or misleading." *Id*. at 520. This Court decided that it was the advice of his counsel about bankruptcy law that kept Mr. Herman from knowing his answers were misleading.

But in *Herman* this Court explained:

> The reason an advice of counsel defense is usually unavailable in Bar discipline proceedings is that the Bar rules themselves charge Florida lawyers with knowledge of the rules and of "the standards of ethical and professional conduct prescribed by this court." R. Regulating Fla. Bar 3-4.1. But here, Herman does not claim that he relied on the advice of counsel as to the meaning and requirements of any Bar rule. Nor does this case have anything to do with Herman's work as an attorney serving clients

Id. at 520. Thus, *Herman* is not precedent for the proposition that Mr. Strems can hire lawyers to handle his suspension order and wash his hands of his own need to comply with the order and the rules. Expanding *Herman* to this context would create the most slippery of slopes.

The responsibility for each lawyer in Florida to comply with the Florida Rules of Professional Conduct must not be a delegable duty. The Bar recognizes that reliance upon the formal opinion of a lawyer who specializes in Bar matters, after complete and accurate disclosure, might very well be a mitigating factor for conduct committed in reliance upon that opinion. *See The Florida Bar v. St. Louis*, 967 So. 2d 108, 118 (Fla. 2007) ("Thus, a defense based on advice of counsel is not available to respondents in Florida Bar discipline cases unless specifically provided for in a rule or considered as a matter in mitigation."). But the notion that a lawyer can be exempt from the rules because he may have discussed aspects of the rules with the counsel selling his practice to other lawyers by means of a sophisticated corporate transaction is a dangerous and unwarranted expansion of *Herman*.

Even if advice of counsel were expanded to these circumstances, Mr. Strems did not establish this defense. The evidence related to this issue is summarized in the following paragraphs.

The Evidence.

Mr. Strems retained Mr. Tozian, an experienced lawyer who regularly defends lawyers in disciplinary proceedings, to assist him about a month before this Court entered the emergency suspension order. (T296). Because Mr. Tozian was concerned about performing the transfer of the law firm correctly, Mr. Tozian advised Mr. Strems to retain a second lawyer, Mr. Kalish, who is a tax and transaction lawyer. (T298-299). Mr. Tozian explained that he recommended this, in part, because had had a prior case where the Bar had questioned the method by which the transfer occurred. (T299).

Mr. Tozian contended in his testimony that Rule 4-1.17(b) did not apply in this case. (T374). He did not recall if he specifically discussed Rule 4-1.17(b) with Mr. Strems. (T379). But he thought it was discussed that this was equivalent to the death of a lawyer.[4] He explained: "We looked at it as one person in the firm is gone, and the rest of the firm was going to soldier on." (T378). He did not see the transaction they created to be a "traditional sale." (T378). Instead, he explained: "I mean, if you've got a firm with 30

[4] The comments to Rule 4-1.17 explain that "[t]his rules applies, among other situations, to the sale of a law practice by representatives of a lawyer who is deceased. . . ."

people and one person is out of the mix, whether they die or they're suspended or they decide that selling shoes at Nordstrom's would be a better vocation, it doesn't really matter how the person left the firm." (T378). He did not seem to take into consideration that only one lawyer in this case owned the firm. He saw the transaction as "a much more efficient way to divest Mr. Strems of his interest – and , you know, a client can fire you at any time." (T379-380). He personally thought the only time a lawyer has a duty to disclose to a client that they have the right to retain another lawyer was when the client was "unhappy with the decision-making" or "unhappy with the results." (T382)

On redirect, in a series of leading questions, Mr. Tozian testified that he approved of the transaction as fashioned by Mr. Kalish "[t]o the extent that I understood it and to the extent to which the Rules Regulating the Florida Bar applied." (T383). He confirmed that he had advised Mr. Strems that "the notification was done in compliance with the Supreme Court's order." (T384).

Mr. William Kalish testified that he was retained by Mr. Strems and the Strems Law Firm in June 2020. (T403). One of his roles was to serve as the receiver for the trust account issues. (T413). That role is not significant to this review.

He also provided advice to Mr. Strems and Strems Law Firm concerning compliance with the suspension order. (T408). The three employed attorneys who purchased the stock for the reconstituted law firm were not represented by him. (T408-409). He has experience providing tax and transactional advice to clients, especially lawyers and law firms. (T411). He was the main person involved in deciding to use the device of the redemption agreement and the newly issued stock for this transfer because, in his opinion, it avoided issues of quantum meruit if a new law firm took over from Strems Law Firm. (T415-416). Even though Mr. Strems claimed not to have been directly involved in these cases, Mr. Kalish was concerned that other approaches would involve 7500 quantum meruit decisions, which the redemption agreement avoided by buying Mr. Strems' stock for a fair market value of [redacted] (T419, 426-427). He testified that Mr. Strems was following his advice. (T416-417). In his opinion, every part of his advice to Mr. Strems was in the best interests of the clients. (T419).

He understood that Rule 4-1.17 would require giving notice to the clients that they were free to get another lawyer, but he believed "that could cause a disruption." (T420). He believed his solution to the transfer of ownership was not a "sale" and that it did not require compliance with Rule 4-1.17. (T421). He reasoned that, as a matter of corporate law, the law firm

was not sold; it was renamed and the stockholders were traded out. (T422-424). He opined that a redemption was not a sale. (T424). His opinion appears to be influenced by his training as a tax lawyer, and he was not asked whether the transaction was a sale of a "law practice" for purposes of considering the interests of the clients. (T424-425). In answer to a question by the Referee, he admitted that "it is conceivable if read as a sale, that it would be governed by Rule 1.17." (T425). But he seemed to believe, if that were true, it would apply every time that Mr. Strems hired a new lawyer as an employee. (T425).

Mr. Kalish reasoned that, if the sale of stock and the redemption were simultaneous, there was no disruption in the professional association, and since the clients probably regarded the employed lawyer who was currently the team leader assigned to their case as their lawyer, it was not a sale that required notice to the clients of their right to retain alternate counsel. (428-429). He seemed to equate this with a situation where existing shareholders invite a practicing lawyer to join the firm. (T437). He read from his affidavit explaining that Rule 4-1.17 did not apply because this did not involve "two separate entities engaged in a transfer of clients." (T452, R-Ex. 12).

As explained earlier in the Statement of Facts, Mr. Kalish testified that he had no role in creating the July 1 letter. (T463). He explained that, while

he did not think it was compelled by the rules, he probably would have added language about the possibility of changing firms. (T464). He believed the clients "should know what's going on." (T483). As he explained:

> But the proper way would be that the clients would also assent to any arrangements of the various lawyer too, I believe.

The Law

It is clear that Mr. Strems never asked either lawyer for a formal opinion on this. Mr. Tozian did not fully appreciate the fact that Mr. Strems was the only member of the professional association, and he equated this situation with a more typical law firm with multiple partners or shareholders. Mr. Kalish would have advised Mr. Strems to explain the arrangement to the clients in the July 1 letter, if asked. Thus, the evidence on advice of counsel is not a basis to find that Mr. Strems did not violate the specific rules of conduct and the suspension order in this proceeding. The evidence may not even support a mitigating factor when determining the sanction.

A Comment on the two experts

It is not uncommon in Bar proceedings for lawyers to provide expert testimony that includes explanations of some area of specialized law. For example, in the *Herman* case both sides presented experts on bankruptcy law. This type of testimony would usually be inadmissible under the formal

rules of evidence in a typical trial. *See Lee Cnty. v. Barnett Banks, Inc*., 711 So. 2d 34, 34 (Fla. 2d DCA 1997)("Expert testimony is not admissible concerning a question of law. Statutory construction is a legal determination to be made by the trial judge, with the assistance of counsels' legal arguments, not by way of 'expert opinion.'").

But in this case, Mr. Strems retained Professor Timothy P. Chinaris as an expert on the Florida Rules of Professional Conduct, and the Bar responded by hiring Professor Anthony Alfieri. (T575-76, 722). Predictably, Professor Chinaris provided expert opinions on these rules that helped Mr. Strems, and Professor Alfieri provided opinions that helped the Bar.

Professor Chinaris believed that Rule 4-1.17 applied only to transfers for consideration to lawyers "outside" the firm, and he concluded that the three employed associates were inside the firm such that a 100% transfer to them did not invoke the rule. (R-Ex-9, p. 4). He supported his interpretation not with the text of the rule, but with a comment discussing the fact that attorney-client privilege did not bar preliminary discussions involved in such a transaction with an outside lawyer. The Referee adopted this legal reasoning. (ROR p.112-114). But the comment does not suggest that the rule applies only when there might be an attorney-client privilege issue. Instead, the rule is drafted to protect the client and to make sure the client is

not treated like a "commodity." Professor Chinaris's opinion as a forensic expert does not seem to give the clients their due.

Professor Alfieri had a longer report and a longer explanation as to why he believed that Rule 4-1.17 did apply in this context. (TFB-Ex. 1 p. 27). But the Florida Rules of Professional Conduct are simply a subset of rules of law. Lawyers are called upon to read them carefully and obey them. This Court reviews the rules de novo to determine whether they apply to a set of facts or not. *See The Florida Bar v. Brownstein,* 953 So. 2d 502, 510 (Fla. 2007). The undersigned frankly questions whether this "testimony" by experts, not addressing issues of fact, but rather addressing legal conclusions that are reviewed de novo by this Court, is a proper subject for testimony. It reads more like closing arguments from the witness stand than evidence. It might be better for this Court simply to indicate that such testimony is not a necessary or proper part of a disciplinary proceeding.

IV. Mr. Strems should be found guilty of contempt and of violations of the Florida Rules of Professional Conduct.

This Court has inherent contempt powers that, in this context, are expressly incorporated into the general rules of procedure for disciplinary proceedings. *See The Florida Bar v. Ross*, 732 So. 2d 1037, 1041 (Fla. 1998); Rule 3-7.11(f). The Bar recognizes that a finding of guilt in this

contempt proceeding requires proof that Mr. Strems "intentionally and willfully" violated the terms of the order. *See The Florida Bar v. Forrester*, 916 So.2d 647, 650 (Fla. 2005). A violation does not require Mr. Strems to admit his guilt, and it can be established by circumstantial evidence. *Id.* at 652.

The standard emergency suspension order entered by this Court on June 9, 2020, required Mr. Strems "to immediately furnish a copy of Respondent's suspension order to all clients." The Referee found that the delay until July 1, 2020, to send out a copy of the order was not such a long delay as to violate the requirement of immediacy, and the Bar is not challenging that ruling in this review.

The Referee seemed to believe that the actual content of Mr. Strems' letter sending a copy of suspension order to his clients would be of no concern to this Court so long as it attached a copy of his suspension order. But the Bar submits that any licensed lawyer would know that an emergency suspension order is an exceptional and very serious matter. The order to furnish a copy of the suspension order to clients does not mandate the precise method by which the order is delivered, but any lawyer would know that it must be provided in a manner that is not deceptive.

Given the requirements of Rule 4-1.4 that a lawyer "shall explain a matter to the extent reasonably necessary to permit the client to make informed decisions regarding the representation," the requirement to furnish a copy of the suspension order to a client normally includes a concomitant duty to accurately explain to the client the legal effect of this order.

But Mr. Strems sandwiched his statement revealing his suspension to his clients in the middle of a marketing letter for the reconstituted law firm, written mostly in the third person, assuring them that another lawyer would continue for them "without any change." He told his clients they had no reason for concern, despite the concerns that caused this Court to enter the emergency suspension. He intermingled the notice of his suspension with the law firm's explanation, in the third person, of the total transfer of ownership to three unnamed attorneys. The Bar submits that the undisputed facts in this case demonstrate an intentional and willful disregard for this Court's order to provide the order to the client. That intentional disregard was designed to protect Mr. Strems' buy-out.

Even if this Court concludes that the conduct is not violative of its order, as explained earlier, the evidence clearly demonstrates a violation of Rule 4-1.4 (communication), Rule 4-1.17(b) (failure to provide the proper notice of

the sale), and Rule 4-8.4(c) (misrepresentation to client). The Petition expressly discussed the violation of Rule 4-1.17.

Rule 4-1.4 and Rule 4-8.4 were not expressly discussed in the petition. But the failures to communicate with the clients and the misrepresentations to the client were directly related to what was and was not communicated to clients as a result of the suspension order. They were discussed in Professor Alfieri's report, which was disclosed prior to the final hearing. (TFB-Ex. A). Professor Chinaris discussed both of these violations in his direct examination prior to Professor Alfieri's testimony. (T629-631, 642-643). Thus, the two additional violations were "within the scope of the conduct and rule violations specifically charged." *The Florida Bar v. Fredericks*, 731 So. 2d 1249, 1254 (Fla. 1999). For purposes of due process, Mr. Strems had notice and had an opportunity to be heard. Paraphrasing *Fredericks*, "because [Mr. Strems] was made aware of the conduct alleged by the Bar to be unethical and had the opportunity to be heard as to this conduct, there was no violation of due process." *Id.* at 1254.

The Referee's recommendations on these violations were based primarily on her legal determination that the transaction was not a sale. The facts of what was and was not communicated to the clients in the letter are undisputed. The Bar submits that the letter delivering the suspension order

contained misrepresentations designed to secure a client base for the reconstituted law firm, and it failed to communicate both the right to retain other counsel and the circumstances that might warrant the client to consider that option. Mr. Strems should be found guilty of these three violations.

V. The Court should either impose the sanction in this case in conjunction with Case No. SC20-806, Case No. SC20-842, and Case No. SC20-1739, or the issue of the proper sanction should be remanded to the Referee for consideration following this Court's determination of guilt.

The Referee is recommending that the sanction in this case be "concurrent" with the sanction in the other pending cases. The Bar agrees with this recommendation to the extent that it suggests that this Court should simply impose a single sanction for the conduct in all three cases. *See The Florida Bar v. Inglis*, 660 So. 2d 697 (Fla. 1995); *The Florida Bar v. Greenspahn*, 396 So. 2d 182, 183 (Fla. 1981) ("Under the peculiar facts of this matter, however, we determine the appropriate discipline from the totality of the conduct as though all of the charges had been presented to us in one proceeding."). The Bar is already recommending disbarment in those three cases. These violations would add incrementally to the sanction for those cases.

The four proceedings collectively demonstrate a lawyer who devised improper methods to obtain homeowners' signatures on 25% contingency

fee contracts without any direct discussions with the client about a need for representation and often before the homeowners had an objective reason to believe they needed an attorney to handle their insurance claims. Then he created a law firm structure that did not adequately communicate with the clients and could not handle the onslaught of lawsuits that he filed, leading to sanctions and *Kozel* orders against the lawyers he employed. When it came time for settlement, relying on the improper language of his contract, he negotiated global settlements that maximized his payment, and minimized the clients' returns. And when this Court entered its emergency suspension, rather than sending his clients a straight-forward letter explaining his suspension, he sent a letter from the law firm explaining that there should be no reason for them to be concerned, and that he would no longer be involved at the firm because other lawyers had become its shareholders. He did not tell the clients the whole story or tell them they had a right to retain new counsel. He did not tell them this information because then there could be insufficient money to pay his buy-out from the firm. Mr. Strems' numerous, strategic violations of the Florida Rules of Professional Conduct warrant permanent disbarment.

However, if the Court decides that a separate sanction is appropriate in this case, this Court should not rely upon the Referee's hypothetical

evaluation and should remand for a proper sanction hearing. The Bar submits that there is a dishonest or selfish motive associated with the misconduct in this proceeding that would warrant more than a public reprimand – especially if the three pending cases were treated as prior disciplinary offenses. See §3.2(b) (1) & (2), *Florida's Standards for Imposing Lawyer Sanctions*; *The Florida Bar v. Patterson*, SC19-2070, 2021 WL 5832861, at *6 (Fla. 2021)(overlapping prior discipline); *The Florida Bar v. Koepke,* 327 So.3d 788, 789 (Fla. 2021)(disbarment for first disciplinary violation).

CONCLUSION

This Court should reject the Referee's recommendation for findings of not guilty on the charge of contempt for the reasons explained in this brief. It should find Mr. Strems guilty of contempt, as well as guilty of violations of Rules 4-1.4, 4-1.17, and 4-8.4(c). It should impose a combined sanction in this proceeding and the three pending proceedings of permanent disbarment. It should award the Bar its costs.

Respectfully submitted,

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CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on this 1st day of February, 2022, the foregoing was filed and served via the State of Florida's E-Filing Portal to:

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CERTIFICATE OF TYPE SIZE & STYLE

I certify that this document complies with the applicable font and word count limit requirements of Florida Rule of Appellate Procedure 9.045 and 9.210(a)(2)(B). The font is 14-point Arial. The word count is 11,173. It has been calculated by the word-processing system, and it excludes the content authorized to be excluded under the rule, but it includes any footnote and it includes 273 words in the letter on page 10 .

/s/ *Chris W. Altenbernd*
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