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IN THE SUPREME COURT OF FLORIDA
BEFORE THE FLORIDA JUDICIAL QUALIFICATIONS COMMISSION

SC13-1333

INQUIRY CONCERNING A JUDGE No. 12-613

LAURA M. WATSON

Judge Watson's Notice of Direct Criminal Contempt by The Florida Bar and Judicial Qualifications Commission (Coxe, McGrane, and Muir)
-and-
Motion to Reject the Report and Recommendations of the JQC Based Upon Perjury, Fraud, Spoliation of Evidence, and Numerous Violations of the Rules Regulating The Florida Bar, and Other Related Relief[1]

The Honorable Laura M. Watson, ("Judge Watson") by and through undersigned counsel, places the Court on notice of acts of direct criminal contempt by The Florida Bar's ("TFB" or "Bar") counsel[2] and the Florida Judicial Qualifications Commission's ("JQC") Special Prosecutor[3]. Judge Watson moves for

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[1] The compilation of the Appendix referred to herein is not complete as of the time of filing this Notice/Motion. Due to the exigency of the circumstances, this Notice/Motion is being filed now, and the Appendix will be filed separately and as soon as possible. The Appendix is expected to be filed in the next twenty-four (24) hours.
[2] Hereinafter, the Bar's counsel, Henry M. Coxe, III will be referred to as "Coxe" and Ghenete Wright Muir as "Muir".
[3] Hereinafter, Miles A. McGrane, III will be referred to as "McGrane".

the issuance of show cause orders to punish contempt by the aforementioned counsel, pursuant to the Court's inherent power, Florida Statute § 38.22, Rule 3-7.7(g) of TFB Rules, and Fla. R. App. P. 9.410(a), for perjury and other acts, and to reject the JQC's Report and Recommendation based upon perjury, fraud, spoliation of evidence, and numerous Bar violations, which relate to improper influence over and improper conduct of the Bar and JQC. These acts are so offensive to the maintenance of a sound judicial process that the JQC's Report and Recommendations should not be allowed to stand, and should be rejected by this Honorable Court.

I. **Preliminary Statement**

Judge Watson recently discovered that counsel for the Bar and the JQC intentionally failed to produce in excess of two hundred (200) emails responsive to her discovery requests, which are material to this case ("Improperly Withheld Emails"). Though TFB's February 17, 2015 *Notice of Discovery of Additional Materials Subject to Subpoena* acknowledges the existence of improperly withheld

materials[4], TFB still has not identified or provided these materials to Judge Watson.[5] (App. Ex. A.). Based upon Muir's deposition testimony that thousands of emails related to the PIP Lawyers cases were most likely misfiled or destroyed, Judge Watson believes that a legion of emails have either been destroyed, giving rise to a spoliation claim, or have yet to surface. (App. Ex. B, Muir deposition, p. 55). Further, as detailed *infra* in Section VIII, it can be inferred from Muir's testimony that TFB has not implemented the electronic recordkeeping standards to safeguard these records as ordered by the Florida Supreme Court on May 4, 2010 (AOSC10-17).[6] (App. Ex. C).

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[4] Thirteen (13) months subsequent to his January 17, 2014 representations to the JQC Chair JQC that all documents (other than encompassed in a privilege log) responsive to Judge Watson's November 12, 2013 subpoena duces tecum had been produced, Coxe, in such February 17, 2015 Notice, admitted that "Counsel for The Florida Bar has subsequently determined that additional materials had been in the possession of the Florida Bar which had not been provided pursuant to Respondent's Subpoena." (App. Ex. A.).

[5] The emails were provided in the case of Harley Kane [TFB No. 2008-51,562(17B)] and Charles Jay Kane [TFB No. 2008-51,559 (17B)]. Learning of the existence of these emails prompted Judge Watson to issue a public records request to the Bar (App. Ex. D) and the JQC (App. Ex. E) for these and other records that had not been produced. Only after the public records request and notice that a lawsuit was imminent, did the Bar finally acknowledge the existence of the concealed records. (App. Ex. F).

[6] In this administrative order, the Florida Supreme Court sets forth the Standards for Electronically Stored Information, ESI, which applies to all court and administrative records, including the records of the Bar and JQC. *See* Fla. R. Jud. Admin., Rule 2.420 (b)(2).

The emails unearthed by the Kanes,[7] (in separate but parallel Bar cases, Harley Kane [TFB No. 2008-51,562(17B)] and Charles Jay Kane [TFB No. 2008-51,559 (17B)], arising out the *same* allegations and claims relating to Watson and five (5) other attorneys, collectively "the PIP Lawyers"), and depositions taken in that case, expose the failure of the TFB and JQC to maintain their independence and an impartial process due to the manipulation by attorneys Larry Stewart ("Stewart"), Todd Stewart ("T. Stewart"), and William C. Hearon ("Hearon") (collectively "the Stewart Lawyers") who, with vengeful or other improper motivation, *literally* directed the results of the Bar's grievance committee and the JQC's investigative and hearing panels in this case.

Throughout the initial Bar Complaint and subsequent JQC proceeding, Judge Watson has advocated that both TFB and JQC prosecutions failed to fairly and impartially investigate the Stewart Lawyers complaint against her by allowing the improper influence by the Stewart Lawyers and direction of the prosecution by

[7] Although these emails were requested by the subpoena duces tecum served on Muir, and were required to be produced by Rule 4-3.5 (b)(1) of TFB Rules, to date, no copies of these communications have been provided to Judge Watson by TFB. Such Rule mandates that a lawyer should not attempt to influence a judge or other decision maker and if such an ex-parte communication occurs, a copy is to be promptly delivered to the opposing counsel or to the adverse party if not represented by a lawyer.

Stewart.

Long ago, this Honorable Court condemned the practice of allowing those with interests adverse to an attorney to play a prominent part in directing the course of disciplinary proceedings. *See* Florida Bar v. Murrell, 74 So.2d 221 (Fla. 1954); *See also* The Florida Bar v. Swickle, 589 So.2d 901 (Fla. 1991) (TFB is responsible to conduct investigations, and should not allow those with interests adverse to an attorney to take a prominent role in directing disciplinary proceedings) and Tyson v. Florida Bar, 826 So.2d 265 (Fla. 2002) (disciplinary proceedings should not be used to vindicate private rights).[8]

After the appellate briefing schedule closed in Judge Watson's JQC case,

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[8] Bar counsel Alan Pascal ("Pascal") has worked for TFB for nine (9) years. He acknowledged an ongoing obligation for TFB to provide discovery. (App. Ex. G, deposition of Pascal, p 57). When asked if in his experience he "ever had a complainant who communicated with The Florida Bar as frequently and as many times, the gross number of times, as Larry Stewart," he refused to answer "yes" or "no," but responded that he did not believe he ever had a case where the complainant was an attorney, and that "the emails speak for themselves of how he [Stewart] wanted to look at *our work product*." (Emphasis added). Id. pp. 25-26). Pascal's acknowledgement that TFB shared their work product with Stewart, who is neither a party, Bar attorney, consultant, surety, or agent of TFB, effectively waives the work product privilege, and TFB cannot object to the disclosure of other unrevealed communications relevant to the communications already disclosed. When a party who holds a privilege voluntarily discloses it, the matter is no longer confidential or privileged. Florida Statute § 90.507.

the Kanes' disciplinary cases exposed the subterfuge between Muir, other Bar counsel, and Stewart as it related to the extensive drafting of documents, direction, and/or control by Stewart of the Bar and JQC litigation. As set forth in the Kanes' Motion to Dismiss, Stewart engaged in the inappropriate direction of the Kanes' prosecution, which included the misuse by TFB of its expert's affidavit and the concealment that it was Stewart, and not Bar counsel, who drafted the affidavit of expert Sammy Cacciatore ("Cacciatore"). Cacciatore then signed the affidavit claiming he had reviewed all of the records in question, when, *in fact*, he had not. To avoid detection, Stewart sent Cacciatore's affidavit to Muir to forward to the expert, with a suggested message, thereby cloaking such transaction with work product privilege. Muir complied. In their respective depositions, both Stewart and Cacciatore testified falsely regarding the drafting of Cacciatore's affidavit-- the falsity of which went uncorrected by David Rothman, Esq. ("Rothman"), Bar counsel at that deposition. (App. Ex. H, Kane's Motion to Dismiss). In response to the exposure and attack of this misconduct in the Kane's motion to dismiss, TFB voluntarily withdrew Stewart and Cacciatore as witnesses in the Kanes' case. [9] As

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[9] Contrary to his affidavit and deposition testimony, Cacciatore could not have reviewed the materials and drafted his affidavit in one day. Stewart asked Muir and others at TFB to send a suggested message to Cacciatore to conceal that Stewart, and not Bar counsel, drafted the affidavit for Cacciatore. Bar counsel and

stated by the Bar: “The Florida Bar cannot, and will not try to dispute the facts related to this motion.” (App. Ex. I, Response by TFB to the Kanes’ Motion to Dismiss, pp. 3, 4 and 10 and Ex. J, Kanes Response to TFB’s Response).

These newly discovered Improperly Withheld Emails show the constant and improper lobbying by Stewart and Hearon for more aggressive prosecution of Judge Watson and the PIP Lawyers, and improper directions thereto by Stewart, and the TFB and JQC’s willingness to be directed in such prosecution by same. The communications were sent to: John J. White, Esq. (President of TFB in 2008 who then became a member of the JQC and served on Judge Watson’s JQC Investigative Panel in 2013); Eugene Pettis, Esq. (“Pettis” President of TFB in 2013); Greg Coleman, Esq. (“Coleman” President-elect of TFB in 2013); John F. Harkness, Esq. (Executive Director of the Florida Bar); John T. Berry, Esq. (Legal Division Director of The Florida Bar); Ken Marvin, Esq. (“Marvin” Chief Discipline Counsel of The Florida Bar); Jay Cohen, Esq.; Adele Stone, Esq.; David Rothman, Esq. (“Rothman”) and Jeanne Melendez, Esq. (“Melendez”) (Rothman and Melendez are Special Counsel hired by TFB to prosecute the other PIP

Cacciatore were on notice that Stewart, and not Bar counsel, drafted the affidavit, but played along with the charade, and Cacciatore even complimented Bar counsel on a “job well done.”

lawyers). Despite the prohibition that "a lawyer shall not seek to influence a judge…or other decision maker, except as permitted by law or the rules of court," these emails chronical Stewart's improper influence over essentially *every possible decision maker* of TFB, [10] (including, White, TFB President who became a member of Judge Watson's JQC Investigative Panel) in the matter against Judge Watson and the other PIP lawyers, and the failure of such decision makers to be impartial and objective in such matter. *See* Rule 4-3.5(a), Rules Regulating the Florida Bar.[11]

The Improperly Withheld Emails also reflect Stewart's plan to have the Bar and the JQC bring formal charges against Judge Watson and the PIP Lawyers, which the Bar and JQC implemented. Further, these emails show Stewart drafting and directing, in detail, the prosecution of TFB's and the JQC cases. ***Most***

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[10] "There are several levels of review, by different members of Bar staff, Grievance Committees, Board of Governors members, Referees, Board of Governors in committee and as a whole, and at the end, the Florida Supreme Court." (App. Ex. I. Response by TFB to the Kanes' Motion to Dismiss, p. 2).

[11] Section (b) of that Rule, states that "[i]n an adversary proceeding a lawyer shall not communicate or cause another to communicate as to the merits of the cause with a judge or an official before whom the preceding is pending except: (1) in the course of the official proceeding in the cause; (2) in writing if the lawyer promptly delivers a copy of the writing to the opposing counsel or to the adverse party if not represented by a lawyer; (3) orally upon notice to opposing counsel or to the adverse party if not represented by a lawyer; or (4) as otherwise provided by law." Rule 4-3.5 (b), Rules Regulating The Florida Bar.

egregiously, the emails uncover a stratagem between Stewart and Rothman, contrived ***weeks before*** Judge Watson's final JQC hearing, to have the Bar move to intervene in Judge Watson's case, and Judge Watson *summarily disbarred,* without further evidentiary hearing, and *ordered to pay restitution to the Stewart Lawyers.* (App. Ex. K, R. 04/23/2014).[12] These emails show a deliberately planned and carefully executed scheme, by officers of the court, to advance the Stewart Lawyers' private agendas against Judge Watson to deprive her of her constitutional rights.

As set out *infra*, this serious and egregious conduct occurred with the assistance of Coxe, Muir, and McGrane. In affidavits and arguments made before the JQC Chair, the Honorable Kerry Evander ("Chair"), these attorneys claimed that they made a diligent search of all records, and all documents and emails related to this matter had been disclosed to Judge Watson. The Improperly Withheld Emails reveal their representations to the Chair were untrue. (App. Ex. L). This fraud was perpetrated on the court and opposing counsel in violation of numerous Bar rules,

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[12] It appears that Rothman heeded Stewart's advice to move forward to get the approval for the Bar to Intervene *even before the JQC's findings and recommendations were issued on April 15, 2014*. On April 17, 2014 the Florida Supreme Court issued its Show Cause Order, and on April 23, 2014 the Bar filed its motion to intervene in the JQC case, seeking disbarment of Judge Watson, disgorgement and/or restitution. (App. Ex. K [FN 6] and p. 4).

including but not limited to: Rules Regulating the Florida Bar 3-7.6(f)(Bar counsel or special counsel, is charged with making "such investigation as is necessary" and preparing and prosecuting the case with "utmost diligence")[13]; Rule 4-3.3 (1) (Candor Toward the Tribunal, making a false statement of material fact or law or failing to correct such misstatement); Rule 4-3.4(a)(Fairness to Opposing Party and Counsel, misconduct by obstructing another party's access to evidence; Rule 4-3.3(a)(4)(Failure to take remedial measures upon learning of the misrepresentations); Rule 4-3.5 (a)(Influencing the Decision Maker); Rule 4-3.5(b)(1)(Improperly communicating with a Judge or Official); Rule 4-8.4(c) (Misconduct "involving dishonesty, fraud, deceit, or misrepresentation); and/or Rule 4-8.4(d)(Misconduct that is prejudicial to the administration of justice).

At the final JQC hearing, Stewart was called as the JQC's *sole* witness against Judge Watson. Prior to the final JQC hearing, Judge Watson filed motions addressing the conflicts and lack of impartiality of the JQC panel and McGrane, and the unusual manner in which she was formally charged despite many procedural due process violations, which motions were denied without an opportunity to appeal. Due to the misconduct of TFB and JQC, Judge Watson did not have the benefit of

[13] The comments to this Rule obligate a prosecuting attorney to seek the truth and justice and not act simply as an advocate.

the recently discovered Improperly Withheld Emails to use against the JQC's sole witness' testimony. Without a semblance of due process, justice or fair play, the Hearing Panel simply accepted Stewart's word and ignored the substantial and competent evidence presented by Judge Watson which contradicted Stewart's testimony including, but not limited to: (1) the expert testimony of Larry Kopelman, Esq. [R. 07/22/2014, Vol. IV. and V.]; (2) the affidavits of Judge Watson's clients supporting her position that they were satisfied with the Bad Faith settlement and received all monies due them [R. 07/22/2014, 20G. and 20H.]; and (3) that the Stewart Lawyers received approximately $1,130,884.80 prior to trial by settlement and voluntary payments from Judge Watson and the other PIP Lawyers. [R. 07/22/2014, 20P. and 20R.]. The record reflects that Judge Watson requested The Improperly Withheld Emails both before and at trial, but Coxe, Muir, and/or McGrane persisted in their false allegations, and the Chair did not require disclosure; thereby Judge Watson was prevented from effectively challenging Stewart's credibility.[14]

[14] Stewart was subpoenaed to bring these Improperly Withheld Emails to trial. He acknowledged that additional emails existed and that he had possession of them, albeit his Miami office. Stewart refused to bring them to trial without a court order. The Chair did not require Stewart to produce the records. (App. Ex. M, transcript pp. 250-252).

Judge Watson was not afforded a modicum of protection and/or due process to which she was entitled so that she could defend her property rights. The Bar and JQC, who are entrusted with enforcing the rules governing our profession, failed to abide by their own rules, all at Stewart's insistence, to have Judge Watson removed from the bench and/or bar, and then ordered to pay restitution to the Stewart Lawyers. "Justice Cardozo once observed:

> '[m]embership in the bar is a privilege burdened with conditions.' An attorney is received into that ancient fellowship for something more than private gain. He [becomes] an officer of the court, and like the court itself, an instrument or agency to advance the ends of justice.'

In re Snyder, 472 U.S. 634 (1985), *citing* People ex rel. Karlin v. Culkin, 248 N.Y. 465, 470-471, 162 N.E. 487, 489 (1928) (Citation omitted.) The Bar and JQC's conduct in this case, as detailed herein, shocks the conscience, brings the entire profession into disrepute, and "will in time breed disrespect for the law" and impair the citizens' confidence in the integrity of the judicial system. Faragher v. City of Boca Raton, 111 F.3d 1530, 1547 (11th Cir. 1997) (Judge Tjoflat's Dissent).

The Bar's and JQC's methods as reflected herein, by the prosecution against Judge Watson and the Kanes, should not be tolerated in a law abiding society and are not permitted by the rules, but the rules are meaningless unless this Honorable

Court enforces them to prevent injustice.

II. Background of the Parties

The genesis of this case began on or about June 18, 2004, when the Father/Son legal team of Larry Stewart, Esq. ("Stewart") and Todd Stewart, Esq. ("T. Stewart"), along with William C. Hearon, Esq. ("Hearon") (who has either worked in the same firm as Stewart or down the hall from him for the last forty (40) years) brought suit against Judge Watson (then attorney), and five (5) other lawyers: Amir Fleischer, Gary Marks, Charles Kane, Harley Kane, and Darin Lentner (collectively "the PIP Lawyers").[15]

In that lawsuit, the Stewart Lawyers claimed that the PIP Lawyers engaged in a myriad of misconduct related to an attorneys' fee dispute between attorneys ("*Attorney's Fees Litigation*").[16] After a ten (10) week trial, all of these claims against Judge Watson personally were rejected by the trial court. Notwithstanding

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[15] The lawsuit was brought in the Fifteenth Judicial Circuit in Palm Beach County, Florida under the case of *Stewart Tilghman Fox & Bianchi, P.A., William C. Hearon, P.A., and Todd S. Stewart, P.A. v. Kane & Kane, Laura M. Watson, P.A. et. al*, Case No.502004CA006138XXXXMBAO ("*Attorney's Fees Litigation*).

[16] The Stewart Lawyers alleged claims for a Breach of Fiduciary Duty, Constructive Fraud, Constructive Trust, Fraud in the Inducement, and Quantum Meruit / Unjust Enrichment. The Stewart Lawyers also sought to impose a Constructive Trust claim against Judge Watson and Watson, P.A. for the attorney's fees and costs received by the firm. Judge Crow specifically found that neither Judge Watson nor Watson, P.A. was required to keep any settlement funds in a constructive trust.

Judge Crow's specific finding that Judge Watson was not liable, and despite the fact that the Stewart Lawyers received approximately $1,130,884.80 prior to trial by settlement and voluntary payments from Judge Watson and the other PIP Lawyers, the Stewart Lawyers engaged in relentless efforts to collect money damages from Judge Watson to which they were not entitled.

Though the *Attorney's Fees Litigation* suit was filed in June 2004, Stewart and Hearon waited until their 2008 loss at trial to file a complaint with TFB alleging improper conduct by Judge Watson and the PIP Lawyers, resulting from the actions taken between 2002 – 2004. It was not until the early voting phase of Judge Watson's 2012 election for circuit court judge that TFB found probable cause on this complaint, which the Improperly Withheld Emails reveal he drafted. The Bar did not file any formal charges against Judge Watson, but did file formal complaints against the other PIP Lawyers. After Judge Watson was elected, TFB transferred their file to the JQC at Stewart's insistence.

III. **<u>The Improperly Withheld Emails By TFB</u>**

Stewart's influence over the decision making process of the Bar (and then subsequently the JQC), which is well documented through his email communications, began in 2008, almost immediately after the Stewart Lawyers failed to obtain a judgment against Judge Watson personally. His pressing emails

continued until at least through Judge Watson's February 2014 JQC trial. Like bookends, these first and last sets of emails (of which we know) frame the steady and perpetual influence Stewart exerted on the Bar and subsequent JQC proceedings, and the abandonment of some members of the TFB and JQC of their obligations of impartiality and independence by adhering to Stewart's instructions. A sampling of these emails are identified *infra* and throughout this *Notice*:

***The Plan to Bring Disciplinary Charges against Judge Watson and Others*:**

11/25/2008 4:18 PM: Email from Hearon to White (then President of the Bar and later a member of the Investigative Panel in Judge Watson's JQC case) (cc: Stewart), expressing his displeasure that the Bar proceedings were not yet filed. White then involves Marvin to ensure the satisfaction of the Stewart Lawyers:

> "After our call [Hearon and White], I was able to finally speak with Alan Pascal, Esq., Bar counsel in Ft. Lauderdale." Hearon expressed his unhappiness with the lack of progress on the Bar complaints.
>
> By the end of the conversation Pascal stated he would not allow the grievance claims to be deferred and he would assign an investigating member of the grievance committee at the meeting that night. Pascal said he would meet with Hearon and Stewart with the investigating member of the Bar over the next two weeks.[17]

[17] This email also claims that the original "grievance" came from Judge Crow's Final Judgment. This is a fallacy perpetuated throughout this litigation. While it is true that Judge Crow's order did advise the litigants that his opinion was being forwarded to TFB for further action if needed, no evidence has ever been produced by the Bar showing Judge Crow sent the judgment to them.

"So, for the time being, I'd like you to just sit tight and let's see if the case gets assigned and things progress. If the case doesn't get assigned, I'll send you a detailed outline of the case and the issues." (Emphasis Hearon's). (App. Ex. N).

4:48 PM: Email from White to Hearon (cc: Stewart) "Great Bill. Glad to see things appear to be moving." (App. Ex. N).

02/24/2009 12:46 PM: Email from White to Hearon (cc: Marvin):

"Bill, I have forwarded your email to Ken Marvin at the Florida Bar. Mr. Marvin will be getting in touch with you about this matter. Thanks." (App. Ex. N).

In addition, this email chain references four (4) other emails that had been sent to Alan Pascal of the Bar and the two (2) investigating members. Three (3) of these emails were referenced as being sent on January 13, 2009, and the other in the evening of February 24, 2009. None of these emails were produced by the Bar to the Kanes, to Judge Watson in response to Muir's subpoena duces tecum, nor were they listed on the Bar's privilege log. (App. Ex. O).

***TFB's Plan to Intervene in Judge Watson's Case to Have Her Disbarred was Contrived Weeks before the February 10, 2014 Final JQC Trial, and Months before the JQC's April 15, 2014 Ruling*:**

01/09/2014 12:07 AM: Stewart emails Rothman, a month before Judge Watson's final JQC hearing, offering to write TFB's brief to intervene in Judge Watson's case to have her disbarred and ordered to pay restitution and/or disgorgement.

Stewart notes:

> *"I expect that* there might be some *pretty devastating findings in the JQC final order.* If that is the case, *I would hope that the Bar would be willing to intervene pursuant to Rule 3-4.5 to seek disbarment, restitution, and forfeiture.* I think this rule has never been used before but this should be a paradigm case for it. If you liked the M&F [Marks & Fleischer] brief, *we would prepare a draft similar brief on the Watson matter for your consideration.* Let me know when you receive the M&F brief…" (Emphasis added)(App. Ex. P).

01/19/2014 9:44 AM: Stewart writes Rothman to encourage him to finish his brief in the Marks & Fleischer case so that the brief can be sent to the JQC:[18]

> "As you know the JQC/Watson case is coming up in 3 weeks….While her case is different…it might be meaningful to the JQC panel to see the appellate brief in your appeal. Therefore, if at all possible, please move that appeal forward. Also, there is no question that Watson will appeal the JQC ruling and it would be good to have both appeals on the same track in front of the Sup. Ct."
>
> 3:02 PM: Rothman responds to Stewart: "*I heard from a very reliable source you did a great job in your presentation before the JQC.* [showing Rothman is most likely communicating with someone from the JQC]. Finally, as to the update on the appeal, we have not yet filed the Petition. We are waiting to hear back from TFB as to whether they will allow us to do the brief and make the argument. We should know this week. *We have read your brief. Really good job. As soon as we get the anticipated ok to move*

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[18] The 01/19/2014 and 01/26/2014 emails did not exist at the time TFB responded to Judge Watson's subpoena, in that, they were written after the date of production, but they would be responsive to the public records request, and were required to be produced by Rule 4-3.5(b)(1). They are included here to show the outrageous conduct of Stewart and Rothman, and they acutely demonstrate Stewart's continued and material influence over the Bar and JQC proceedings.

> *forward, we will begin on our revisions and soon thereafter we will file the Petition.* No way her SOL argument will prevail." (Emphasis added)(App. Ex. P).
>
> 3:02 PM: Stewart responds to Rothman: "*It would be a huge mistake if the Broward office tried to do the appeal. Is this something I should weigh in on or are you confident that it will be assigned to you? As you know I would have no hesitation letting Ken Marvin know how I feel*." (Emphasis added) (App. Ex. P).[19]

01/26/2014 10:16 AM: Stewart again writes Rothman (two (2) weeks before the final JQC hearing) regarding the Bar's Motion to Intervene in Judge Watson's case. To avoid delay, Stewart recommends that Rothman begin the approval process for intervention right away:

> "Also, since it has taken so long to get approval for the M & F [Marks & Fleischer] appeal, *should you start the process to get approval to intervene* pursuant to Rule 3-4.5 in the Watson JQC case before the Sup. Ct ? *The trial starts 2/10 and I expect a ruling before the end of*

[19] In response to this email, Rothman advised Stewart that Marvin retired, and Adria Quintela ("Quintela," the former head of the Bar's Broward office) took his place. Stewart replied, this "does not bode well for lawyer discipline and *keeping it in the hands of the Bar*." (Emphasis supplied)(App. Ex. P) Quintela appears to have been the only attorney to stand her ground with Stewart and adhere to her ethics. In her 10/05/2013 email to Stewart, Quintela counseled: "I cannot have you write our motions, our memorandum, nor do I feel comfortable submitting a document to the referee that is signed by us yet drafted by you." (App. Ex. P). This email prompted Stewart to write Marvin "about the disaster" in these cases. The following day (10/07/2014), Marvin replaced Ft. Lauderdale Bar counsel, Pascal and Muir, with Rothman and advised Stewart: "We have made arrangements for David Rothman to act as special counsel on these cases and he will be meeting with our Ft. Laud lawyers tomorrow to review the file…and David will call you tomorrow." (App. Ex. P).

> the month. Once that happens, the case will be before the Sup. Ct." (emphasis added) (App. Ex. P).[20]

It bears repeating, that based upon Muir's deposition testimony that thousands of emails related to the PIP Lawyers cases were most likely misfiled or destroyed, Judge Watson believes an enormous number of emails have either been destroyed or have yet to surface. (App. Ex. B, Muir deposition, p. 55). Two (2) of the withheld emails note such destruction. *See* 07/30/2013 email between Stewart and Marvin regarding the JQC's *Notice of Formal Charges* filed against Judge Watson [attachment "Notice of Formal Charges.pdf" deleted by Kenneth L. Marvin/The Florida Bar]. (App. Ex. Q); 07/30/2013 email between Stewart and Quintela regarding the JQC's *Notice of Formal Charges* deleted by Adria Quintela/The Florida Bar]. (App. Ex. Q). The inference that hundreds of undisclosed emails exist which "pertain to" or "mention" Judge Watson, but were not responsive to the Kanes' request for production, is drawn from a review of the Kanes' emails. These emails reveal Stewart's extensive direction of the Bar's prosecution of the Kanes case. For example, in September and October 2013 alone, the Bar and Stewart

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[20] Rothman was subsequently appointed as Special Bar Counsel for the Marks & Fleischer case and signed the brief submitted to the Florida Supreme Court. See Amir Fleischer, TFB case 2008-51,559(17B); Gary Marks, TFB case 2008-51,558(17B).

exchanged approximately one hundred and sixteen (116) emails regarding the prosecution of the Kanes. (App. Ex. J, p. 3). The failure to properly disclose the Improperly Withheld Emails during the JQC proceeding, particularly those involving Stewart, prevented Judge Watson from attacking the credibility of Stewart, the JQC's only testifying witness, supports Judge Watson's many procedural motions wherein she questioned the impartiality of the JQC proceedings, and seriously calls into question the validity of the JQC Report and Recommendation.

IV. The Improperly Withheld Emails By the JQC

Stewart's improper and uninterrupted influence over the Bar, as demonstrated by the newly discovered Improperly Withheld Emails and Stewart's close relationship with McGrane, make the existence of other emails showing his corruption of, and constant communication with the JQC likely, probable, and/or intentionally concealed by McGrane. At Stewart's November 2013 deposition, Stewart did voluntarily provide *a few emails* sent to McGrane, but these covered just a brief period of time and appear incomplete. Notably missing are McGrane's responses to Stewart's emails, and the emails between the period of November 2012 –to July 24, 2013 and September 17, 2013 until February 10, 2014, the date of Judge Watson's final JQC hearing. These emails demonstrate a level of familiarity and comfort between McGrane and Stewart that few people share -- and

certainly not one that is ethical between a JQC Special Counsel and the witness/ complainant. These communications depict Stewart's vengeful character and his motive for restitution.

The Rules Regulating the Florida Bar disallow an attorney's use of the rules to gain a tactical advantage in a civil matter; but that is precisely what Stewart sought to procure. The Preamble to the Rules Regulating the Florida Bar, in the following pertinent part, addresses the impropriety of attorneys exploiting the Rules for mere tactical advantage in a proceeding:

> ...*They are not designed to be a basis for civil liability. Furthermore, the purpose of the rules can be subverted when they are invoked by opposing parties as procedural weapons*. The fact that a rule is a just basis for a lawyer's self-assessment, or for sanctioning a lawyer under the administration of a disciplinary authority, does not imply that an antagonist in a collateral proceeding or transaction has standing to seek enforcement of the rule…

(Emphasis added.) Preamble: Rules Regulating the Florida Bar

As early as August 16, 2013, Stewart took control of the JQC trial directing the order of proof requested from McGrane, strategizing with McGrane as to the best presentation of legal arguments, and offering himself as an expert witness. Similar to his actions in the Bar cases, Stewart takes every opportunity to try to materially influence the decision maker and undermine the credibility of Judge Watson. Stewart compares Judge Watson to a child who murdered her parents,

makes his claim that if restitution is not made it should influence the outcome of Judge Watson’s case, and discusses a mythical ex-wife that Darin Lentner (Judge Watson's ex-husband) never had.[21] However, it is undisputed that Stewart is fixated on Judge Watson's finances:

07/24/2013 4:18 PM: McGrane to Stewart: Regarding the *Notice of Formal Charges* in the JQC case: "Please do not forward to anyone until this afternoon. I want to insure it’s on the S Ct docket before you do."

07/30/2013 4:18 PM: Email from Stewart to McGrane: “It's out. The Daily Bus Review and the Sun Sentinel both had stories today. *Thinking of our conversation yesterday, Watson's plea for mercy because she is 'broke' reminds me of the story of the child who murdered his parents and then threw himself on the court begging for mercy because he was an orphan*.”

Laura Watson's diatribe against the JQC made me think of some info I wanted to pass along for your consideration. *Remorse or acknowledgement of guilt and acts of restitution (or failure to do so) should be factors in the ultimate outcome of her case....*

...Watson is doing everything possible to avoid *making restitution* for her wrongdoing. She is objecting to any discovery of assets or attempt to collect the judgment. In other words, there is no thought of *restitution* and absolutely no remorse...

...she has done *nothing to try to satisfy any part of that judgment* or to compel Lentner to pay his portion under their agreement.

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[21] Judge Watson’s marriage to Lentner was the first for them both.

I can testify to all this. (Emphasis added). (App. Ex. R).

08/16/2013 4:18 PM: Stewart to McGrane: Stewart attaches "*the outline/order of proof [McGrane] requested.*" (Emphasis added.) (App. Ex. R).

09/16/2013 4:18 PM: Stewart to McGrane: Stewart thinks McGrane is *"on the right track to make the wrong to the clients the primary focus of the Watson case and the wrong to us secondary,"* [22] provides Stewart's "Order of Proof;" and his opinion that he is an expert. (Emphasis added.) (App. Ex. R).

Other communications sent by Stewart to the JQC state that he was filing his Complaint against Judge Watson for conduct before she became a judge, and it would be unusual for the JQC to investigate this matter since: "**we understand that the Commission does not ordinarily address matters that occur before one becomes a judge;**" and she "**was just elected in November 2012 and has not yet been sworn in.**" (Emphasis added.) (App. Ex. S). These emails show that these lawyers are subverting the purpose of the Code of Judicial Conduct (Preamble) to gain advantage, or benefit Stewart in a manner not authorized by law, and are engaging in behavior, which violates the Rules Regulating the Florida Bar and possibly the Florida Statutes.

No other emails were disclosed by the JQC. Yet, at the final JQC hearing

[22] This email was Stewart's writing on the wall because the JQC's Recommendations artfully reflect that the clients (*none of whom testified at the Final Hearing*) were the primary focus of the JQC *allegations*.

Stewart admitted that there were more emails than those he voluntarily disclosed at his November 2013 deposition. When asked how many emails existed, he replied "I don't have a clue." (App. Ex. M, p. 222). Stewart did not bring these emails to the trial, and the Chair did not require Stewart to produce them the next day, though he was subpoenaed to provide them. (App. Ex. M, pp. 222-225, 205-252). However, more disconcerting is that as a recipient of these emails, McGrane, a lawyer and JQC prosecutor, *not only* knew of these emails, *but also* unlawfully and emphatically denied their existence to the Chair; thereby preventing these emails from seeing the light of day and being used by Judge Watson in her defense of the JQC proceedings and at trial. At the earlier January 17th, 2014 hearing regarding Stewart's and McGrane's motions for protective orders, McGrane stated that the JQC has produced everything, and that "Mr. Stewart produced all of the e-mails that he's [Sweetapple] complaining he didn't get at his deposition." (App. Ex. L, p. 36, l. 3-7). Based on Stewart's own trial admissions and McGrane's representations to the Chair, there simply is *no doubt* that McGrane improperly withheld emails in Judge Watson's JQC case and misrepresented this material fact to the Chair.

The Improperly Withheld Emails, which TFB provided to the Kanes, depict further evidence of the existence of additional emails between Stewart and the

JQC. In that disclosure is an August 6, 2013 letter from Stewart to Pettis. (App. Ex. T). *First*, this letter shows that when TFB, *quite correctly*, pushes back against Stewart's efforts to influence their decision making authority, Stewart goes over their head, writes the President and President-elect of TFB, and accuses Bar counsel of legal incompetency to ensure they "fall in line" with his entire agenda. *Second*, the letter demonstrates the nexus between Stewart's improper influence over TFB in Judge Watson's case, and then subsequently in her JQC case. As stated by Stewart: "I am therefore now asking your help in getting these cases on track and properly prepared for trial… *At a minimum these cases should have the most senior and experienced prosecutor on the Bar staff and the Bar and JQC prosecutions should be coordinated so that the referee and the JQC hearing panel hear the same case. One of the best ways to accomplish this would be to bring the JQC Special Prosecutor on the Bar trial team.* I also think that my trial advocacy experience and knowledge of the facts would be helpful and an asset to the prosecution but so far I am not 'in the loop.'" (Emphasis added.) (App. Ex. T, p. 7).

The Bar's Push Back Against Stewart:

- "I have always had great admiration and respect for the job that The Florida Bar has done in disciplining lawyers…Unfortunately I am now involved in a group of grievance cases that causes me great concern…" (App. Ex. T, p. 1).

- "On numerous occasions I have offered to help with various aspects of the cases. *Several times the response was that as a complainant I had no right to be involved in the cases and the Bar did not need my help. On other occasions the response was simply 'Thank You' and my input ignored.* I can understand why the Bar might not want to deal with lay people in their prosecutions but I am an experienced trial lawyer, having handled some of the most complex and difficult cases in the nation…" (Emphasis added.) (App. Ex. T, p. 3).

- "When the Respondents sent Interrogatories and Requests for Production and I was not contacted by the Bar, I prepared draft responses *since I knew that Bar counsel on their own did not know what the responses should be. Some of what I suggested was rejected and the Bar is now in the position of having to file Amended Responses or it will face non-disclosure objections at trial.*" (Emphasis added.) (App. Ex. T, p. 4).

- "I have diligently raised these concerns with Bar counsel and various others in the Office of Professional Regulation. *The response has been that this is the Bar's case, as a complainant I have no right to be involved and that I would just have to trust the Bar to get it right*." (Emphasis added.) (App. Ex. T, p. 6).

The Criticism of Bar Counsel and the Requirement to "Fall in Line":

- "*Effective cross-examination is therefore going to be key to a successful prosecution. That will require mastery of the facts as well as the extensive documentary evidence.* This is not something that can be done at the last minute; they are complex and it will take considerable time. *To date, Bar counsel has not yet begun that process of review and time is quickly slipping away.*" (Emphasis added.) (App. Ex. T, p. 2).

- "Other than a mostly 'meet and 'greet' meeting in advance of presenting the cases to the local grievance committee, Bar counsel did not meet with us or examine any additional document (other than what we initially provided with the grievance letter) before drafting the complaints. *As drafted, the complaints had significant factual errors and omissions. Had I not insisted that they be sent to me for review, these cases would have started out on the*

wrong foot." (Emphasis added.) (App. Ex. T, 3).

- As to the Responses to the Requests for Production that Stewart provided to the Bar, he noted: "*I see no evidence that Bar counsel has yet began to study and learn those documents*…"and "[a]lthough Bar counsel was aware of the foregoing [i.e. Stewart's knowledge of the facts] *they elected to not list me as an expert. Their explanation is that they preferred to get an independent expert."*[23] (Emphasis added.) (App. Ex. T, p. 4).

Stewart's Improper Influence Over Judge Watson's JQC Case:

- "One of the lawyers involved in this scheme, *Laura Watson*, was elected to the Broward Circuit Court after the probable cause findings but before her case was filed with the Florida Supreme Court….*Nonetheless the Judicial Qualification Commission took the matter up, found probable cause to proceed and a Notice of Formal Charges has now been filed by the JQC*." (Emphasis added.) (App. Ex. T, p. 2).

- "*The preparation of the Watson JQC case is, on the other hand, already well underway*. It is being handled by a veteran trial lawyer, *Miles McGrane*, who has already done extensive preparation. *He has met with me twice, reviewed significant parts of the documentary evidence and developed a trial strategy.* …*I am concerned that there will be two prosecutions on the same facts: one that will result in Laura Watson's removal from the bench and disbarment and* the other in which her cohorts will escape discipline or only get a slap on the wrist due to inadequate preparation and trial strategy." (Emphasis added.) (App. Ex. T, p. 3).

- *"I advised Bar counsel that the JQC special prosecutor's trial strategy* was going to focus on the wrong done to the Respondent's 440 clients and I furnished them with the deposition testimony…*Bar counsel dismissed that approach as unnecessary* and instead said they are going to concentrate on the prior findings of the State and Bankruptcy Court. (Emphasis added.) (App. Ex. T, p. 5).

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[23] Stewart was listed by McGrane as an expert in Judge Watson's JQC trial.

These Improperly Withheld Emails show that Stewart has a persistent flow of communication with the Bar and the JQC. Part of Stewart's tactic was to provide other orders entered against the PIP Lawyers on unrelated cases, and to pronounce his belief that all six (6) lawyers should be disbarred. There are few more pernicious means of improperly influencing a tribunal or other decision maker than to leave the impression that the subject in question has already been pronounced guilty in the eyes of the enforcing agency or others. Moreover, the emails depict Stewart's lack of respect for others, including Bar counsel and the Referee appointed to preside over the parallel Bar cases, and confirm that he takes every opportunity to try to win over the decision makers in this case.[24] These emails are attached as a composite exhibit, in chronological order, but they in no way include all emails of which we are aware that would fit into these categories. (App. Composite Ex. U). Some are outlined below:

Stewart's Pervasive Lack of Respect for Others:

- 02/13/2013: Letter to John Berry ("Berry"): Stewart complains that he is *"frustrated and can't seem to get anywhere with the Ft. Lauderdale office. It has been 4 months from the probable cause findings" the draft complaint "was full of mistakes, events out of sequence, incomplete sentences and grammatical mistakes" and* [he is] *"even more concerned for what this may portend when [it] comes to the actual trial of the cases"* (Emphasis added.) (App. Composite Ex. U). Though probable cause had been found by the Bar,

[24] Many of these emails fall into both categories but were identified in only one.

"no one [from TFB] has been to see the actual documents—they are voluminous—or tried to discuss what we know will be the themes of defense from our experience with these lawyers." Id. (Emphasis added.) (App. Composite Ex. U).

- 05/13/2013: To Muir, Pascal, and Quintela: Stewart wants someone to contact the Chief Judge to try to get him moving on the Bar case. Quintela responds, "[w]e cannot tell the Chief Judge to get this moving. It is up to him to appoint a referee. One will be appointed and we will notify you when that happens." (App. Composite Ex. U).

- 06/17/2013: To Marvin, Berry, and others: The exchange discusses trial(s) strategy and Marvin provides Stewart with the Referee's Manual. (App. Composite Ex. U).

- 07/17/2013: To Muir: *"I'm sure you know that we have a neophyte judge (only been a judge for about 9 months and before that was a traffic court judge and magistrate) so we should cross the "t"s and dot the "I"s… I would list me as an expert witness.* There are two areas in which I am qualified as an expert: a. Matters of ethics… b. Attorney fees. Stewart then gives his qualifications and proposed expert witness opinions (Emphasis added.) (App. Composite Ex. U).

- 09/03/2013: To Muir: Stewart requests a telephone conference with Muir, who was not available because she was in trial. Stewart's response: "This is too late. One of the several things I wanted to discuss with you is the filing of M/Consolidate…It is now critical that it be filed. As a matter of strategy this motion is an opportunity to educate the judge about the inter-relationship of the PIP lawyers and the law on concerted action... Again given the inexperience of the judge, he should get all the help possible." (App. Composite Ex. U).

- 09/14/2013: To Muir, Pascal, and Quintela: "*I suggest that you file a memo of Law on this since the referee obviously does not get it [Motion to Strike] and might be prone to grant the motion.*" (Emphasis added.) (App. Composite Ex. U).

- 09/17/2013: To Muir, Pascal, and Quintela: "*More troubling is the chance*

that the judge will get confused and not understand the case. He is going to be thinking like a criminal atty since that is his background and he may dismiss the underlying judgments as having been proven only by a preponderance of the evidence…" (Emphasis added.) (App. Composite Ex. U).

- 09/22/2013: To Muir, Pascal, and Quintela: *"[G]iven the na[ivety] of the referee and his lack of any civil experience, this is ripe for disaster*….*I don't think you can adequately argue this motion without understanding the facts yourself.* That is why I have been asking when you are going to start studying the file and learning the facts. This is an extremely complex factual pattern with many nu[ances]. …It will be a tall order to learn the file, prepare a response and get ready to argue this motion in that time—especially with the M/Rehearing and M/Consolidate." (Emphasis added.) (App. Composite Ex. U).

Stewart Takes Every Opportunity to Influence the Decision Makers:

- 12/14/2012: To Stewart from Marvin (cc: Berry): "Mr. Stewart, *I just had a conversation with Mr. Berry concerning Ms. Watson* and we wanted you to be aware of this case." [The attachment was the case of Tyson v. Florida Bar, 826 So.2d 265 (Fla. 2002), which stands for the proposition that disciplinary proceedings should not be used to vindicate private rights]. (Emphasis added.) (App. Composite Ex. U).

- 03/13/2013: To Marvin: "Please e-mail me a copy [of the Bar complaints] when they are filed and send me the S. Ct. case numbers. *Will you also be sending copies of the Complaints to the JQC?*" (Emphasis added.) (App. Composite Ex. U).

- 05/31/2013: To Muir: Stewart sends Muir copies of the Kanes bankruptcy judgments. (App. Composite Ex. U).

- 07/30/2013: To Muir and Pascal: *Stewart wants TFB to provide the JQC* complaint to the Referee in the Kanes case. "*These charges could be a great opportunity to let the judge know that the JQC is proceeding on the same facts to remove the 6th PIP lawyer from the bench.* That would underscore the

gravity of charges against the other 5 and, *for a neophyte judge*, could make a considerable impression." (Emphasis added.) (App. Composite Ex. U).

- 07/31/2013: To Muir, Pascal, and Quintela: Stewart sends TFB the Appellee's Brief in the Kanes Bankruptcy case. (App. Composite Ex. U).

- 09/10/2013: To Pettis and Coleman: *"You will recall that I sent you a lengthy letter on August 6 about 5 pending grievance cases and my concerns about how those cases were being prosecuted,* specifically that these case were not being given priority and w[ere] being treated as run-of-the-mill prosecutions which was resulting in their not being prepared properly. *I believed then that there was a significant danger of an adverse result. That has now happened in of the cases…Even though they are dealing with a novice referee, Bar counsel did not file any of those materials with the referee nor did they file any memorandum in opposition*.…*Bar counsel was not prepared* to refute any of the factual allegations of the motion.…Unfortunately this is just *one of several mistakes that have already occurred" "the casual way in which these cases have been handled"* and "*I see no indication that Bar counsel is preparing for trial*...I doubt that this conduct would be tolerated in your offices and *again I ask that the Bar bring in its most senior and experienced prosecutor or , failing that, appoint an experienced Special Prosecutor under Rule 3-3.3, as has the JQC in the Watson Prosecution*." (Emphasis added.) (App. Composite Ex. U).

- 09/16/2013: To Pettis: "Gene: I see that you will [be] in WPB on the 27th for a diversity luncheon. *Would it be possible to meet for a few minutes after the lunch to briefly discuss the grievance matters that I have sent you requests about*?..." A meeting is planned for 1:30 PM. (Emphasis added.) (App. Composite Ex. U).

No Confidentiality Applies to Stewart's Emails Whether in the Possession of TFB or the JQC:

Throughout these proceedings, McGrane has taken the position that all emails and other documents are confidential, and only the materials created after the

probable cause finding can be discovered (though he refused to provide the Stewart emails after probable cause claiming they did not exist). For this proposition, McGrane cited the case of In re Graziano, 696 So.2d 744 (Fla. 1997), which the Chair relied upon in his ruling finding the materials confidential. [R. 11/20/2013]. However, that is not the holding of that case. In In re Graziano the Florida Supreme Court, *citing* Rule 12(b), stated the opposite position espoused by McGrane:

> Although not allowing for discovery of the ***complaint itself***, discovery pursuant to rule 12(b) allows an accused to have ***full access to the evidence*** upon which formal charges are based. The policy reasons for the confidentiality of the ***original complaint*** clearly outweigh any benefit the discovery of it could have in view of the discovery right provided by rule 12…" (Emphasis added). Id. at 751.

Thus, except for the original complaint, which was voluntarily provided by the JQC, Judge Watson should have been allowed unfettered access to the evidence upon which the formal charges are based.

This Court has held that evidence, which is gathered in the course of the JQC's investigation of misconduct, loses its confidential nature once formal charges are filed and the charges are made public. *See* In re Leon, 440 So.2d 1267, 1269 (Fla. 1983). In Judge Watson's case, the original complaint was provided in discovery, and therefore confidentiality was waived by The Florida Bar, the JQC, and the complaining witnesses. Similar to the holding in In re Graziano, the Court

found that evidence presented to the Investigative Panel can be relied on by the Hearing Panel and that the confidentiality of the 6 (b) hearings is thus aimed at protecting judges from unsubstantiated claims, not meritorious claims that advance to a hearing panel." In re Eriksson, 36 So.3d 580, 591 (Fla. 2010) *citing* Forbes, v. Earle, 298 So.2d 1, 4 (Fla. 1974). In the case at bar, Judge Watson waived confidentiality, and the cases cited above were brought to the JQC's attention. Irrespective of that waiver, McGrane concealed important and significant documents claiming "confidentiality".

Notwithstanding this Court's holding and that the documents provided in discovery confirm that confidentiality had been waived by The Florida Bar, the JQC, and the complaining witnesses, McGrane persisted in concealing other important and significant documents. These actions can only be seen as willful and in bad faith. It is also clear from the communications that have been retrieved that many more emails exist that have not been provided to Judge Watson. Despite both a Rule 12(b), FJQCR demand and a Request for Production, numerous documents were not provided by McGrane.

Moreover, Judge Watson should have been allowed "full access to the evidence" in the JQC's possession. Any claims of confidentiality or privilege were waived either by failing to file a privilege log, by voluntary disclosure to a third party

(Stewart and the others identified in this motion), or by disclosing a significant part of the communication terminating the privilege. On August 5, 2013 and pursuant to Rule 12(b), Judge Watson requested the following disclosures:

> The names and addresses of all witnesses whose testimony the Counsel expects to offer at the hearing, together with copies of all written statements and transcripts of testimony of such witnesses in the possession of the counsel or the Commission which are relevant to the subject matter of the hearing and which have not previously been furnished. When good cause is shown this rule may be waived. (Emphasis added). Rule 12 (b), FJQCR.

On August 26, 2013 Judge Watson served her First Request for Production on the JQC.[25] [R. 08/26/2013]. On September 20, 2013, the JQC filed a Response to this Request claiming privilege to numerous documents. [R. 09/20/2013] The JQC, however, did not file a privilege log to either the Rule 12(b) request or the First Request for Production.[26] Fla. R. Civ. P. 1.280 expressly requires that a party who

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[25] The Request sought, among other things, McGrane's response to the few emails Stewart had provided at his November 2013 deposition, and all other emails between Stewart and McGrane; the emails exchanged *between McGrane* and Hearon, Jim Tilghman and David Bianchi (Stewart's law partners), and members of The Florida Bar; the correspondence between The Florida Bar and the JQC; and correspondence included in The Florida Bar's transmittal of the file to the JQC.

[26] As part of its response to these requests, the JQC raised a "General Objection" regarding the requested information. In the Response to the Request for Production [R. 09/20/2013], the JQC identifies a section titled "General Objection" lodged by the JQC. The JQC's "General Objection" as stated is meaningless. If an objection

withholds discoverable information by claiming it is privileged "shall make the claim expressly and describe the nature of the documents, communications, or things not produced or disclosed in a manner that, without revealing the information itself privileged or protected, will enable other parties to assess the applicability of the privilege or protection." Rule 1.280(b)(6). The JQC did not comply with this rule and the failure to comply by not providing a privilege log constitutes a waiver of privilege. *See* Metabolife International, Inc. v. Holster, 888 So.2d 140, 141(Fla. 4th DCA 2004), *citing* General Motors Corp. v. McGee, 837 So.2d 1010, 1032 (Fla. 4th DCA 2002); *see also* Nationwide Mutual Fire Ins. Co. v. Hess, 814 So.2d 1240(Fla. 5th DCA 2002).

In addition to the above, Fla. R. Jud. Admin. 2.420 governs public access to judicial branch records. " 'Records of the judicial branch' are all records, regardless of physical form, characteristics, or means of transmission , made or received in connection with the transaction of official business by any judicial branch entity and consist of: 'court records'…and 'administrative records…which

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to a request for production is made, the objection must be as specific as an objection to evidence at trial. "For each item or category the response shall state that inspection and related activities will be permitted as requested unless the request is objected to, in which event the reasons for the objection shall be stated. If an objection is made to part of an item or category, the part shall be specified." Fla. R. Civ. P. 1.350 (b).

are all other records made or received…." Rule 2.420 (b) (1)(A) and (B). The Judicial Branch includes The Florida Bar ("TFB"), the Florida Board of Bar Examiners, ***the Judicial Qualifications Commission***, "and all other entities established by or operating under the authority of the supreme court or the chief justice." Rule 2.420 (b)(2). This definition is consistent with the definition of "court records" in Rule 2.075(a)(1) [renumbered to 2.420 in 2006], and the definition of "public records" contained in Ch. 119, F.S. and includes administrative records.

This rule further explains that complaints alleging misconduct against judges or other entities or individuals licensed or regulated by the courts are only confidential and exempt "until a finding of probable cause or no probable cause is established." Rules 2.420 (c)(3)(A) and (B). As you are aware, probable cause was found against Judge Watson, and therefore the requested records are no longer confidential or exempt.

V. Direct Criminal Contempt by Coxe, Muir, and McGrane, Including Perjury, Fraud, and/or Violations of Several Bar Rules:

"The Bar has consistently demanded that attorneys turn 'square corners' in the conduct of their affairs. An accused attorney has a right to demand no less of the Bar when it musters its resources to prosecute for attorney misconduct. We have

previously indicated that we too will demand responsible prosecution of errant attorneys, and that we will hold the Bar accountable for any failure to do so." The Florida Bar v. Rubin, 362 So.2d 12, 16 (Fla. 1978).

The primary reason the Chair denied Judge Watson's attempts to discover the emails between Stewart, the Bar, and the JQC, was because misrepresentations were made by Coxe, Muir, and McGrane that all of the emails in the Bar and/or JQC's possession, which listed Stewart on the distribution list, had been produced. Relying on these misrepresentations, the Chair sustained the motions for protective orders filed by Stewart, Muir, and McGrane.

Since Stewart was the *sole* JQC witness called against Judge Watson, and the newly discovered emails were improperly withheld, Judge Watson was prevented from effectively attacking the credibility of Stewart's testimony during the JQC hearing, which the Panel found credible.

A. Direct Criminal Contempt by Coxe and Violations of Bar Rules:

During the JQC proceedings, TFB hired Coxe to represent them in gathering and producing documents responsive to the subpoena duces tecum served on Muir, TFB in-house counsel.[27] (App. Ex. L). He was to determine the existence of and

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[27] The subpoena sought responsive documents through the date of service, and

extent of documents responsive to the subpoena, and make a determination as to the privileged nature of each document. The subpoena requested all documents, which by subpoena definition, included correspondence and electronic communications, that "pertains to" or "mentions"[28] Judge Watson and certain "interested individuals."[29]

At a hearing, Coxe stated that he and attorney Melissa Nelson spent a significant amount of time in the month of December 2013 going through the Bar's records, and his production *included every e-mail* communication that related to Stewart and Judge Watson. Specifically, he stated that "**[e]very single communication from Mr. Stewart's office has been provided**," including email

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specifically referenced any and all documents, correspondence, electronic communications, and communications of any nature which pertains to, refers to, mentions, concerns, contains, or relates to: Judge Watson either as a judge or an attorney, or Stewart and his associates, Muir and the Bar grievance committee members, McGrane, William C. Hearon, Esq. ("Hearon"), members of the JQC including John G. White ("White'), Alan Anthony Pascal ("Pascal"), and many others. (App. Ex. V).

[28] As used in the subpoena, the words "pertain(s) to" or "mentions" shall mean: relates to, refers to, contains, concerns, describes, mentions, constitutes, supports, corroborates, demonstrates, proves, evidence, refutes, disputes, rebuts, controverts and/or contradicts., which "pertain(s) to" or "mentions" Laura M. Watson regarding the investigation, which began in 2008 and resulted in the finding of probable cause in October 2012. (App. Ex. V).

[29] These "interested individuals" included those identified in the body of the subpoena, Judge Watson's witness list, and the JQC witness list, which together consist of more than one hundred (100) individuals. (App. Ex. V).

communications" (App. Ex. L, Tr. of Hr'g on January 17, 2014, p. 34) (Emphasis added.) The Improperly Withheld Emails demonstrate these representations were false:

> "I don't think it's self-serving –that we were making the decisions coming down in favor of Mr. Sweetapple, when in doubt, we would give them to Mr. Sweetapple. *It included every e-mail communication to the Florida Bar from Mr. Stewart or other persons in Mr. Stewart's office that related to Judge Watson. It included everything that Judge Watson would have been entitled to had she still been a lawyer in defending against the Bar accusations.*

(Emphasis added) (App. Ex. L, pp. 49-50),

Coxe further argued, "…**there is nothing in this universe that the Florida Bar essentially has that relates to Judge Watson that hasn't been produced**." (Emphasis added). Id. at p. 53.[30] Coxe's misrepresentations greatly influenced the Chair's decision to grant Muir's, Stewart's, and McGrane's motions for protective order, improperly excused Stewart from his duty to comply with the subpoena, and denied Judge Watson her due process rights to depose these individuals. In the Order on Pending Motions entered January 22, 2014, the Chair granted the Motions

[30] Notably, on the bottom of virtually every Bar email the following caveat appears: "Florida has very broad public records laws. Many written communications to or from The Florida Bar regarding Bar business may be considered public records, which must be made available to anyone upon request. Your e-mail communications may therefore be subject to public disclosure." passim.

for Protective Orders ruling: "[a]t the hearing conducted January 17, 2014, counsel for the Florida Bar represented that the Florida Bar had properly complied with its obligation to respond to the request for document[.]" (App. Ex. W).

Coxe's misrepresentations violated Rule 4-3.3. Candor Toward the Tribunal. Comments to Rule 4-3.3 Representation by a lawyer provide in pertinent part:

> "[A]n assertion purporting to be on the lawyer's own knowledge, as in an affidavit by the lawyer or in a statement in open court, may properly be made only when the lawyer knows the assertion is true or believes it to be true or believes it to be true on the basis of a reasonable diligent inquiry. There are circumstances where failure to make a disclosure is the equivalent of an affirmative misrepresentation.

Coxe's misrepresentation that he made a reasonable diligent inquiry into determining the existence of the items requested in the subpoena duces tecum served on Muir, and that no other responsive documents exist, was either willful ignorance or a deliberate and intentional concealment of at least two hundred (200) exculpatory emails exchanged between January 2008 and February 2014. Nonetheless, the Bar was definitely aware of these additional two hundred (200) emails by August 8, 2014, when Alan Pascal produced them to Attorney Scott K. Tozian who represented the Kanes. (App. Ex. X).

As of the date of filing this Notice, no one from the Bar has taken the remedial measures required by Rule Regulating the Florida Bar 4-3.3(a)(4). Neither Coxe,

Muir, nor any other Bar representative has disclosed to this Honorable Court the falsity of Coxe's and McGrane's comments and the filing of Muir's perjured affidavit. Though required by such Rule to provide the previously concealed documents to Judge Watson, plus any emails sent by Stewart and others to influence the decision makers in the Bar and the JQC, no documents have been provided to Judge Watson by Coxe, Muir, McGrane nor any agent from the Bar or JQC.

Though Rule 4-3.3(a)(4) obligates the Bar to take reasonable remedial action, including disclosing the concealment of these emails to the tribunal, contacting Judge Watson to notify her of the existence of these emails, and disclosing the information to Judge Watson, the Bar has failed in its duty to take these steps. The duties to disclose the violations under this rule "continue beyond the conclusion of the proceeding and apply even if compliance requires disclosure of information otherwise protected by rule 4-1.6 [i.e. confidential information]." Rule 4-3.3(a)(4) and (b), Rules Regulating the Florida Bar.

B. <u>Direct Criminal Contempt by Muir and Violations of Bar Rules:</u>

On February 17, 2015, the Bar filed its Notice of Discovery of Additional Materials Subject to Subpoena. (App. Ex. A). This seemingly innocuous *Notice* demonstrates that Muir perjured herself when she filed an affidavit swearing under

oath that all the records the Bar has that have not been disclosed "are confidential pursuant to the Rules Regulating The Florida Bar;" "all information [she has] relating to Respondent was obtained in connection with [her] representation of The Florida Bar in disciplinary proceedings against Respondent;" and that "[she] do[es] not have any knowledge relevant to the JQC's pending prosecution against Respondent " (App. Ex. Y, *Motion to Quash/Protective Order*, App. Ex. Z, Muir affidavit par. ¶11, ¶12, ¶13). The false nature of this affidavit is shown from the legion of Improperly Withheld Emails concealed by the Bar, wherein Muir was either the initiator, direct recipient, or copied thereon, and/or Judge Watson, her former law firm, and the JQC proceedings were directly mentioned. An attorney's obligation to make disclosures under Rule 4-3.3 is triggered when the attorney *knows* that a client or witness has made material false statements to a tribunal. A person's knowledge may be inferred from circumstances. Florida Ethics Opinion 86-3.

Many of the emails that Muir failed to produce are dated within the same time-frame as the emails listed on the Bar's privilege log. (App. Composite Ex. AA).

11/02/2012 08:40 AM: Email from Stewart to Muir (cc: Hearon): "Ghenete: This is a follow-up to our conversation Wed. You know that I believe strongly that the six PIP lawyers should be disbarred…." Stewart offers his assistance in discussing strategy, helping organize the case, and Stewart suggests filing a single complaint against all six of the

lawyers. "And of course I am ready and willing to testify. Just let me know how I can help." (App. Composite Ex. AA).

12/14/2012 03:59 PM: Email from Marvin to Stewart (cc: John T. Berry): "I just had a conversation with Mr. Berry concerning Ms. Watson and we wanted you to be aware of this case." [The case noted in the email is *Tyson v. The Florida Bar*, 826 So.2d 265 (Fla. 2002). In *Tyson,* the Court noted: "This Court routinely receives inquiries from individuals who are unhappy with the Bar's handling of their complaint against an attorney…" *Id*. The complaining witness in a bar disciplinary proceeding, does not have private rights and has no legal right to demand that the Bar proceed with disciplinary charges against an attorney.] (App. Composite Ex. AA).

Judge Watson became aware of these emails as a result of the case of the Bar against Charles J. Kane and Harley N. Kane, Case No. SC13-388 and Case No.SC13-389, wherein the Bar responded to the Kanes' request for production. While the documents provided to the Kanes should have been provided to Judge Watson because they fell within the scope of Judge Watson's request, the Kanes' request was tailored to issues specifically related to them, and not necessarily related to Judge Watson's circumstances. Therefore, it is believed there are hundreds of emails, still undisclosed, that are responsive to Judge Watson's subpoena duces tecum.[31]

[31] Judge Watson's subpoena asked for all documents, correspondence, and electronic communications, which pertains to or mentions any of the following: all witnesses listed on Exhibit "A" including but not limited to Larry Stewart, Todd Stewart, Muir, Alan Pascal, McGrane, White, JQC members, Amir Fleischer, Gary Marks, and

The emails show Stewart's improper and uninterrupted influence over the Bar and raises the likelihood of other emails showing his corruption of that process. There is every reason to believe that similar emails regarding Judge Watson from 2008 through January 2013 (before she took the oath of office) exist and have been concealed by the Bar.

Due to the perjurious affidavit by Muir, the willful untruthfulness of the statements by Coxe, and McGrane in support of the Motion to Quash Muir's deposition, and Stewart's obstruction and interference with the administration of justice, this Honorable Court should punish such persons for contempt. The Court has the authority to punish persons for contempt when perjury is established. Martin v. Case, 231 So.2d 279 (Fla. 4th DCA 1970). It is well settled law that perjured testimony obstructs the proper administration of justice. Chavez-Rey v. Chavez-Rey, 213 So.2d 596, 598 (Fla. 3d DCA 1968). The filing of a false affidavit is considered perjury. Millan v. Williams, 655 So.2d 207, 208 (Fla. 3d DCA 1995).

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those listed on the JQC's witness list including but not limited to Charles Kane, Harley Kane, Darin Lentner, Laura Watson, and any documents/communications which pertain to or mention Laura Watson or Laura M. Watson, PA, between a the Florida Bar and a member of the JQC, copy of minutes, meeting books which pertain to or mentions Laura M. Watson which reflects the votes of the Bar Grievance Committee individually on each and every numbered allegation in the probable cause finding, and phone records which reflect conversations with any of the interested persons from 1/1/2008 to the date of production. (App. Ex. V).

Furthermore, "[c]ontempt is 'any act which is calculated to embarrass, hinder, or obstruct courts in the administration of justice, or which is calculated to lessen its authority or dignity….'" Tarrant v. State, 537 So.2d 150, 152 (Fla. 2d DCA 1989), *citing* Clein v. State, 52 So.2d 117, 119 (Fla. 1950). "We think it is elementary that conduct of an attorney which is improper and unethical lessens the dignity of the court under the standard set forth in Clein and, as such, is grounds for contempt." *Id.* The improper conduct of Coxe, Muir, and McGrane violated numerous Rules Regulating the Florida Bar. Their willful and intentional concealment of these discovery materials and the filing of Muir's false affidavit appears systematic. The conduct of the agents of the Bar and JQC should be beyond reproach. As explained by the Fifth District Court of Appeal:

> The integrity of the civil litigation process depends on truthful disclosure of facts. A system that depends on an adversary's ability to uncover falsehoods is doomed to failure, which is why this kind of conduct must be discouraged in the strongest possible way.

Cox v. Burke, 706 So.2d 43, 47 (Fla. 5th DCA 1998) (dismissal for fraud because the plaintiff withheld information that stymied the defendants ability to find records and witnesses that might shed light on the issues in the case). The misconduct of Coxe, Muir, and McGrane is so contrary to the Rules Regulating the Florida Bar, and inimical to our system of justice, that the integrity and impartiality of the Bar and

JQC in these proceedings, and potentially others, should be questioned, and addressed.

The Bar moved to quash the subpoena ("Motion to Quash") and for protective order of Muir on January 14, 2014. (App. Ex. Y). In its Motion to Quash, the Bar stated "Ms. Wright Muir has no knowledge of what information was received by the probable cause panel of the JQC." Id. at ¶ 14. As a basis for this statement, the Bar cited Muir's affidavit which stated, "I do not have any knowledge **relevant to the JQC's pending prosecution against respondent.**" Id. (Emphasis added). Judge Watson was originally one of the respondents in the~~se~~ PIP Lawyers related, but separate cases, but when she was elected judge, the JQC began prosecuting her based upon the identical alleged bar violations.

In the JQC's joinder in the Bar's Motion to Quash and Protective Order as to Muir's deposition, filed January 15, 2014, McGrane, as special counsel for the JQC, stated, "[t]he information being sought by Judge Watson has no bearing on the matters that will be tried at the upcoming Judicial Qualification hearing against her." (App. Ex. BB). The newly discovered emails, improperly withheld during the JQC proceeding, show both these statements to be patently false.

For a witness to be held in direct criminal contempt based upon perjured testimony it must be shown that: (1) the alleged perjury had an obstructive effect,

(2) there was judicial knowledge of the falsity, and (3) the testimony involved was pertinent to the issues at hand. Rhoads v. State, 817 So.2d 1089 (Fla. 2d DCA 2002).

Had these Improperly Withheld Emails, which were subpoenaed, been produced, Judge Watson's entitlement to the requested depositions of Muir, Stewart, and McGrane, as well at the continued deposition of Stewart could have been established. Muir's claim in her affidavit that "*these records are confidential pursuant to the Rules Regulating The Florida Bar,*" "[a]ll information [she has] relating to Respondent was obtained in connection with my representation of The Florida Bar in disciplinary proceedings against Respondent," and *"[she] do[esn't] have any knowledge relevant to the JQC's pending prosecution against Respondent*" is shown to be false by the Improperly Withheld Emails and/or her deposition testimony in the Kanes proceedings that she met with Larry Stewart, Esq. ("Stewart") at his Miami office with other complainants in September of 2012 (two months before Judge Watson's November 2012 election). (Emphasis added.)(App. Ex. B, Muir deposition, pp. 9-10). In her August 2014 deposition, Muir testified that a) she *was completely involved* in the disciplinary proceeding and *acted in the capacity of the investigating member for The Florida Bar*, not just as an attorney for the grievance case before the referee (App. Ex. B, Muir

deposition 11:7-25)[32], b) she conceded that hundreds of emails in her possession were *not confidential* and that they should have been disclosed in the Bar case, and c) that she possessed extensive and significant information that was *not protected by attorney-client or work-product privilege*. Id.

Many of the emails produced to the Kanes, to which the subpoena to Muir requested, were exchanged during January 2013-October 2013. Muir filed her affidavit eight (8) weeks later in support of her *Motion to Quash/Protective Order*. The theory asserted by the TFB and JQC in their prosecutions of Judge Watson was that the "PIP lawyers" were acting in concert with one another, and therefore the actions of one, should be attributed to the actions of all of the lawyers. Pursuant to that theory, all of these emails should have been provided to Judge Watson, and Muir's claim that she had no relevant information was patently false.

In Muir's deposition she testified that all of the companion Bar cases--Kane files, Marks file, Lentner file and the Watson file -- are all electronic and the emails should all be in the databases. (App. Ex. B, Muir deposition 55:6-25). Muir was specifically questioned about an email from Stewart to her, and others at the Bar. In that deposition colloquy, Muir emphatically states that there was no

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[32] She also testified that she believed that *she was the only Bar investigator* and that there were no other investigating members on the case before her.

attempt to conceal this email from the Kanes. In her attempt to explain away the concealment of the e-mails from the Kanes, and the apparent subterfuge of Stewart drafting the Bar's expert's affidavit in the Kane case, Muir testified, contrary to her claims in ¶ 11 of her affidavit in this proceeding that the "records are confidential", that the Bar *has a very broad public records law and that emails or other information received from a complainant or respondent are always discoverable*:

> This is ironic because right under this, if you read it, it says, 'Please note Florida has a very broad public records laws....*This thing [Stewart's email] is more than discoverable, this is a public record. Like anybody off the street could call the Florida Bar and say, 'Send me everything.' They don't have to be a party or involved in the case. So, this is even broader than discoverable*...(Emphasis added) (App. Ex. B, Muir deposition 36-38).

None of these concealed emails appeared on the Bar's privilege log filed in Judge Watson's case. (App. Ex. O). There is no doubt that Muir had personal knowledge of the two hundred (200) emails exchanged between January 2013-October 2013 – of which she denied their existence in her affidavit in Judge Watson's JQC case. The only rational explanation for the discrepancies in Muir's affidavit, her subsequent deposition in the Kanes proceeding, and the recently disclosed Improperly Withheld Emails, is that Muir *intentionally secreted* this information and *perjured herself*.

C. Evidence of Direct Criminal Contempt by McGrane and Violations of Bar Rules:

McGrane's actions regarding the deposition of Muir is inextricably tied to Muir's Motion for Protective Order.[33] On January 15, 2014, the JQC filed its joinder in the Bar's Motion for Protective Order. McGrane adopted the motion "in haec verba" meaning he incorporated her motion verbatim. (App. Ex. BB**)**.

The Concealed E-Mails Prevented Judge Watson From Putting Forth a Full Defense.

McGrane wrongfully failed to provide the complete emails between Stewart and himself, which emails McGrane asserted were not relevant and/or did not exist, but, *to the contrary*, the JQC's sole trial witness asserted that such emails did, *in fact*, exist, *and* clearly such emails, as unprivileged communications between the

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[33] McGrane has a long standing relationship with Stewart's law partner, David Bianchi, Esq. ("Bianchi"), and it is believed to be very close. In 2001, McGrane and Bianchi served on the Special Commission on Insurance to study the practices of the property and casualty underwriters of the insurance practices. McGrane had also been on the Board of Governors from 1992-2000 and President of The Bar from 2003-2004. Bianchi was on the Board of Governors 1987-1989 and 1998-2004 serving on numerous committees. Both also served on numerous committees of TFB Board of Governor's between 2001 and 2005, traveling to various locations in Florida such as Amelia Island, Pensacola, Ponte Vedra Beach, Naples, Key West, Tallahassee, and Palm Beach, but also to Las Vegas, Nevada and Chicago, IL. *The Florida Bar Board of Governors Regular Minutes*, January 30, 2004 and similarly in 2003. For many years McGrane and his wife Patty, have been involved in supporting Kristi House, a local charity. Patty McGrane and Julie Bianchi -- David Bianchi's wife—both served on the Board of Directors of this charity.

JQC complainant and JQC Special Prosecutor, were as relevant to the JQC proceedings against Judge Watson as those between state attorneys and complainants and witnesses. In the JQC's Joinder in TFB's Motion for Protective Order, McGrane states that "Judge Watson is seeking discovery that is not relevant" and "has no bearing on the matters that will be tried at the upcoming [JQC] hearing against her." (App. Ex. BB). As detailed *supra*, at the January 17th, 2014 hearing, McGrane *also* stated that the JQC has produced everything, and that "Mr. Stewart produced all of the e-mails that he's [Sweetapple] complaining he didn't get at his deposition." (App. Ex. L, p. 36, l. 3-7). However, as detailed *supra*, the JQC's sole trial witness, Stewart, testified to the contrary. Stewart admitted that there were more emails than those voluntarily disclosed at his November 2013 deposition. (App. Ex. M, p. 222).

The more than two hundred (200) newly discovered Improperly Withheld Emails depict Stewart, and his associates' direction of a vengeful Bar and JQC prosecution against Judge Watson. The failure to properly disclose these emails prevented Judge Watson from impeaching the credibility of Stewart, the only testifying witness called by the JQC against Judge Watson (*none of Judge Watson's clients were called to testify*), and defending herself from this vengeful prosecution. As of the date of this brief, neither Coxe, Muir, nor McGrane have provided these

emails to Judge Watson. Moreover, the issue as to the deferral of any Bar action against Judge Watson, which the Bar improperly attempted to interject into the JQC proceeding, was the focus of many of the previously undisclosed emails.

On September 16, 2013, Stewart provided Muir with his extensive affidavit referencing Judge Watson and her alleged actions. (App. Ex. CC). This affidavit was not provided to Judge Watson and was not available when her counsel deposed and cross examined Stewart. The withholding of the email with Stewart's affidavit, the other Improperly Withheld Emails, and the emails Stewart admitted existed between himself and McGrane at trial, prevented Judge Watson from putting on a complete defense because these emails demonstrate, (and if fully produced believed would further demonstrate), that Stewart improperly exerted significant amounts of influence over the related Bar complaints, and strongly suggests that Stewart was able to exert similar pressure in the JQC proceeding against Judge Watson through his close friend McGrane.

There are additional emails demonstrating the depth of Stewart's involvement in the Bar prosecutions that cast a suspicious light on just how involved Stewart was in directing the actions of the JQC. For example, Stewart substantially edited the Bar complaint against Darin Lentner, Gary Marks, and Amir Fleischer. (App. Composite Ex. DD). He drafted answers to interrogatories and directed the case strategy in the

Bar complaint against Kane. (App. Composite Ex. DD). When Stewart did not receive consistent updates on the status of these related Bar complaints, and did not feel that the prosecutions were moving forward as quickly as possible, he contacted John Berry at the Bar to voice his vehement concerns and demand that action be taken. (App. Composite Ex. DD). Stewart also worked to ensure that the JQC proceeding against Judge Watson was moving in lock-step with the Bar investigations, emailing Marvin to ensure that copies of the related Bar complaints were forwarded to the independent, constitutional tribunal investigating Judge Watson. (App. Composite Ex. DD). As his dealings with the Bar counsel demonstrate, Stewart was determined to ensure that both the Bar and JQC proceedings were conducted according to the strategy he devised. Therefore, we believe the newly discovered Improperly Withheld Emails to be only the tip of the proverbial iceberg in uncovering Stewart's role in overseeing the JQC proceedings against Judge Watson.

The Improperly Withheld Emails reveal that Muir was working hand-in-hand with Stewart at the time she was served with the subpoena, yet she failed to produce any of the countless emails chains, in which she was directly involved. To avoid deposition, Muir's attorney, Coxe, represented that the "entire universe" of documents, including those that "would have been entitled to had she still been a

lawyer in defending against the Bar accusations", had been produced. (App. Ex. L). The Improperly Withheld Emails reveal that Muir's affidavit is perjurious. Moreover, the substance of such emails cast a dark shadow over the JQC proceedings against Judge Watson, and call into question Stewart's potential influence over this independent constitutional body.[34]

VI. Special Counsel to the JQC, Ross, Was Contractually Bound to Act as Liaison Between the JQC and its Special Prosecutor, Which Seemingly Constitutes Improper Ex Parte Communications, and Taints the JQC's Process and Report and Recommendations

A public records request was served on Lauri Waldman Ross, Esq. ("Ross"), who served as Special Counsel to the JQC Hearing Panel in Judge Watson's case. (App. Ex. EE). Michael Schneider, Esq. ("Schneider"), General Counsel for the JQC, responded on Ross' behalf, and provided the original contract between Ross and the JQC for payment processing. Schneider provided no other records based on the assertion that Ross "has at all times been providing legal advice to the Hearing Panel in order to discharge its adjudicatory function." (App. Ex. EE). However, this

[34] These Improperly Withheld Emails, along with the emails between Stewart and Bar Special Counsel McGrane, demonstrate Stewart's obsession with Judge Watson's case. *See* Judge Watson's Am. Principal Br. in Opp'n to the Findings, Conclusions, and Recommendations of the Hearing Panel, Judicial Qualifications Commission, at 12, 54-6. Muir's failure to comply with the subpoena and produce the newly discovered emails (along with any other unproduced emails, which are still unknown), deprived Judge Watson of her ability to attack Stewart's credibility.

response provides no support for whether Ross *actually* has documents responsive to the request for communications <u>*by and between*</u> Ross <u>*and*</u> the Stewart Lawyers, McGrane, Muir, and the numerous other Bar officials outlined *supra*.

More troubling is the contract for the appointment of Ross to the JQC Hearing Panel in the JQC proceeding against Judge Watson, which outlines her pay rate, and states that "[her] duties include liaison with special counsel [McGrane] appointed by the Commission…." (App. Ex. EE). Ross's *duty to be the liaison (and communicate) with McGrane*, the Special prosecutor on Judge Watson's JQC case by all appearances constitutes impermissible ex parte communications.

As so accurately stated by Bar counsel's Response to the Kane's Motion to Dismiss:

> It is always incumbent upon a prosecutor, be it in a criminal or a Bar case, to 'do what is right.' Though they occasionally fail, prosecutor must strive to set the bar at its greatest height.

(App. Ex. I, p. 10).

In another JQC case, Judge Ana Gardiner, the presiding judge in a death penalty case, stepped down from her position after it was exposed that she had exchanged 949 cell phone calls and 471 text messages, with the prosecutor, Howard Scheinberg. The appeals court granted the convicted defendant a new trial, and the Florida Supreme Court ruled that Gardiner as "the presiding judge at the time of her

conduct, [] had a greater responsibility to preserve the integrity of the judicial process and to ensure that the [] trial was fair" and accepted TFB's recommendation that Judge Gardiner should be disbarred permanently. The Florida Bar v. Gardiner, No. SC11-2311, 2014 WL 2516419 (Fla. June 5, 2014). In this JQC proceeding, there appears to be no procedures in place to ensure the integrity of the process.

Ross' contractual duties made her the liaison between McGrane, the Special Prosecutor and the JQC tribunal, and thereby seemingly bound to or highly likely to make impermissible ex parte communications between tribunal and prosecutor. As in the case of Judge Gardiner, this Honorable Court should *not only* "do the right thing" by rejecting the JQC's Report and Recommendations as a product of a tainted process and relationship, *but also* sanction the Special Prosecutor, JQC Liaison, and/or the JQC, who "had a greater responsibility to preserve the integrity of the judicial process and to ensure that [Judge Watson's] trial was fair." Id.

VII. The Court Should Reject the JQC's Report and Recommendation in its Entirety Based Upon Fraud and the Numerous Violations of the Counsel for the Bar and the JQC.

This Court has the power to "accept, reject, or modify in whole or in part the findings, conclusions, and recommendations of the [JQC]." Fla. Const. art. V, § 12(c). However, this Honorable Court has no authority under the Constitution to direct further proceedings before the JQC. Coxe misrepresents the law on this point

in his *Notice of Discovery of Additional Material Subject to Subpoena*, when he states: "Counsel for The Florida Bar files this Notice with this Court and before the JQC in order to promptly advise all parties of this information *in the event any party seeks to pursue remand of this matter to the JQC pursuant to Rule 18, Florida Judicial Qualifications Commission Rules* ["FJQCR"]." (Emphasis added) (App. Ex. A, ¶ 6). Rule 18, FJQCR *does not* permit the Hearing Panel to take additional evidence after the JQC's Report and Recommendation and Findings and Conclusions have been issued, and show cause order issued by the Court. The Rule allows that "[t]he Hearing Panel may order a hearing for the taking of additional evidence at any time *while the matter is pending before it*." (Emphasis added). Rule 18, FJQCR. Given the plain reading of the rule, and the breadth of experience Coxe has in these matters, Coxe's misrepresentation to this Court appears knowing and intentional. There is no constitutional authority for this Court to remand Judge Watson's case back to the JQC.

In reviewing the proceedings before the JQC, "the ultimate power and responsibility in making a determination rests with this Court." Davey, 645 So.2d at 404. The standard of proof required is clear and convincing evidence because "of the serious consequences attendant to a recommendation of . . . removal of a judge." Id. This Court has a responsibility to ensure that the JQC proceedings conform to

this high standard. In re LaMotte, 341 So.2d 513, 516 (Fla. 1977)

Clear and convincing evidence in evaluating JQC recommendations is composed of both a qualitative and quantitative standard. Davey, 645 So.2d at 404. *First*, the evidence and **witnesses** relied upon to recommend removal of a judge must be credible. *See* id. Here, the revelation that in excess of two hundred (200) emails between Stewart, Muir, and other members of the Bar were not produced to Judge Watson rises beyond the level of uncertainty noted by the Davey Court. *See* id. Much worse, the Improperly Withheld Emails establish that the witness testimony given by Stewart, and heavily relied upon by the JQC, was incomplete, one-sided, and unreliable. Throughout the JQC proceeding, Judge Watson has maintained that the entire process was orchestrated by Stewart, with the help of his long-time friend McGrane, for the sole purpose of gaining monetary restitution against Judge Watson personally. The newly discovered emails lend substantial weight to this argument, and would have been instrumental to Judge Watson in attacking Stewart's credibility as the only adverse testifying witness.

VIII. This Court Should Reject the JQC's Report and Recommendations for the Bar's Admitted Spoliation of Evidence

As a preliminary matter, there are procedures and rules regarding the

preservation of electronically stored information ("ESI")[35], documents, emails, and metadata that were not followed here. Muir's admission in her August 12, 2014 deposition[36] that thousands of documents may have been mislabeled, destroyed, or hidden raises serious concerns that TFB 1) *did not follow the rules* enacted by the Florida Supreme Court's May 4, 2010 Administrative Order AOSC10-17 (App. Ex. C), which order triggered the Bar's duty to preserve such evidence;[37] 2) *did not issue a written litigation hold order* putting the Bar employees and others (including, but not limited to, the Bar officials identified in preliminary statement section, and special counsel for TFB, Rothman and Melendez) on notice of their duty to preserve and not destroy relevant documents that exist or may exist in the future; and/or 3) *did not have a plan for establishing search and retrieval methods to collect and review ESI*, determine relevance and the applicability of claims for privilege or

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[35] Electronically stored information is the nomenclature adopted by Fla. R. Civ. P. 1.280(b)(3).

[36] The testimony was provided in the case of Harley Kane [TFB No. 2008-51,562(17B)] and Charles Jay Kane [TFB No. 2008-51,559 (17B)]. Judge Watson was originally one of the respondents in these related cases, but when she was elected judge, the JQC began prosecuting her based upon the identical alleged bar violations. The other respondents are Darin Lentner, Amir Fleischer, and Gary Marks.

[37] Generally, a duty to preserve ESI arises from statutes, rules, court orders, administrative orders, and government regulation. *See* Osmulski v. Oldsmar Fine Wine, Inc., 93 So.3d 389 (Fla. 2d DCA 20124).

confidentiality. To this point, Muir testified on in her August 12, 2014 deposition:

> *[T]hat everything is not in the [Kanes] file, it is in our database"... and "that everything should have been in the Kane file, but this is a case that's pretty unique that we have for the respondents. Some could be in the other four respondents' files.* So, unfortunately, it could have been saved somewhere else. And then *some may not* have made it to the database...*This is the first time since I've been at the bar that we've had to ask IT to help us. This is the most documented case that I've had. Probably in the top 10, maybe, at the present for my office. It is a lot of paperwork. Which is really a lot of data.* So everything should have gone into the Kane and Kane file if it had anything to with the Kane and Kane case. *But, like I said, some could have gone into one of the other four respondents and some maybe were not saved at all.…Unfortunately, they were not saved the way they should be and they all should have been in the file*. (Emphasis added.) (App. Ex. B, Muir deposition, pp. 53-55).

When Muir was asked by Scott Tozian, the attorney for the Kanes, if they have received all of the relevant emails, Muir admitted that she was not certain, that the procedures and protocols were not being followed, and that some of the emails may have been destroyed:

> *My sense—my sense—I can't tell you definitely*, but being in the office and *knowing what should occur, it didn't seem that everything occurred.* Meaning, everything regarding the Kane[s] should have gone in the Kane[s]. *These are electronic files. So this case could easily have 10,000—I mean, thousands of documents. So, some of them may have, instead of going to the Kane[s], gone into Marks, gone into Fleischer, gone into Lentner, gone into Watson.* [There are] four other respondents. So, *obviously, we didn't capture all of the things that came in.* So, I can't tell you exactly, 'Scott, this is what happened. This

> email went here. This email went there.' *But I can tell you they should have been all in the database and, unfortunately, they weren't.* (Emphasis added.) (App. Ex. B, Muir deposition, p. 55).

It should be noted that neither TFB, nor the JQC, raised any objections regarding the requested ESI, claiming the requested form was not available or accessible, or that the production would be unduly burdensome.

Muir's testimony reveals that the method employed by TFB for the creation, utilization, maintenance, retention, preservation, storage, and disposition of electronic records in the Kane's cases, in Judge Watson's case and the other PIP Lawyers cases, failed to implement the electronic recordkeeping standards ordered by the Florida Supreme Court. Based upon her testimony, it appears the Bar has no "security measure to ensure the integrity of the records, in accordance with the requirements of chapter 282, F.S. security controls should include, at a minimum, physical and logical access controls, back-up and recovery procedures, and training for custodians and users." (App. Ex. C, p. 10). According to Muir, the Bar seems to have no real standards regarding the capturing of retrieving ESI.

Administrative Order AOSC10-17, Standards for Electronic Recordkeeping Systems, requires the Judicial Branch, which includes TFB and the JQC,[38] to adhere

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[38] Fla. R. Jud. Admin. 2.420 governs public access to judicial branch records. " 'Records of the judicial branch' are all records, regardless of physical form,

to recordkeeping systems "authorized by the Supreme Court of Florida." (App. Ex. C, p. 2). The Court required:

> Each records management officer for court and administrative records shall comply with these standards by developing and implementing a program for the management of electronic records. Such programs, must ensure that maintenance of electronic records complies with retentions schedules for court and administrative records and the public access requirements contained in Article v, section 24(a), Florida Constitution, as implemented by rule 2.420, Florida Rules of Judicial Administration. (App. Ex. C, p. 4).

The standards are attached to the administrative order and require the annual certification by the custodians of court and administrative records to certify annually that they have complied with these standards. These standards require 1) ensuring that maintenance complies with retention schedules; 2) "[e]stablish procedures for addressing records management requirements including recordkeeping requirements and disposition…"; and 3) ensure the minimum standards are met including, but not limited to, providing a method for all authorized users of the system to retrieve

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characteristics, or means of transmission , made or received in connection with the transaction of official business by any judicial branch entity and consist of: 'court records'…and 'administrative records…which are all other records made or received…." Rule 2.420 (b) (1)(A) and (B). The Judicial Branch includes The Florida Bar ("TFB"), the Florida Board of Bar Examiners, ***the Judicial Qualifications Commission***, "and all other entities established by or operating under the authority of the supreme court or the chief justice." Rule 2.420 (b)(2).

desired records; ensure that procedures and controls are in place to protect information that incorporate electronic management objectives, responsibilities. (App. Ex. C, pp. 3-5).

Muir's testimony that she, one of the key players, initially acted as custodian in attempting to locate, search , and collect potentially relevant ESI, most probably added to the destruction of evidence, unless she has the requisite expertise in this area. ESI can be instantly lost, altered, or destroyed. Allowing one of the key players to collect the data is often dangerous due to their technical limitations and possibility of intentional or accidental deletions. *See* National Day Laborer Organizing Network et al. v. United States Immigration and Customs Enforcement Agency, et al., 2012 U.S. Dist. Lexis 97863 (SDNY, July 13, 2012). In addition to the individuals employed by the local Broward Office of TFB, the emails show numerous exchanges between Stewart and/or Hearon and the numerous individuals identified in the Preliminary Statement. Furthermore, Rothman and Melendez, for example, are Special Prosecutors hired by TFB to prosecute the parallel Bar cases, and McGrane was the Special Prosecutor for the JQC, but their email addresses are not ones controlled by the Florida courts,[39] giving rise to serious concerns about the security

[39] Rothman and Melendez's email account addresses are dbr@rothmanlawyers.com and jtm@rothmanlawyers.com), and McGrane's is miles@mcgranelaw.com.

and preservation of emails exchanged between those individuals. Due to the issuance of Administrative Order AOSC10-17, and the general nature of Bar proceedings, of which it is reasonably foreseen results in litigation, the Bar and the JQC were on notice that these records were to be preserved. *See* Osmulski v. Oldsmar Fine Wine, Inc, 93 So.3d 389 (Fla. 2d DCA 2012).

Based upon the testimony of Muir that thousands of emails may have been misfiled or destroyed, Judge Watson believes she has shown good cause to allow an inspection of the computers of TFB and the JQC by a neutral, qualified IT technician with sufficient expertise in this area. *See* Menke v. Broward County School Board, 916 So.2d 8 (Fla. 4th DCA 2005).

IX. This Court Should Issue an Order to Show Cause, Direct the Bar and the JQC to Provide the Records Responsive to the Public Records Request, and Sanction the JQC and the Bar Pursuant to Rule 9.410, Including Awarding Attorneys' Fees and Costs for Judge Watson's Defense of this Action.

In an attempt to finally determine the level of Stewart's influence over the JQC, Judge Watson has issued public records requests to members of this independent, constitutional body, including McGrane. (App. Ex. FF). Judge Watson respectfully requests that this Court take original jurisdictions over these requests, as they relate directly to the action of TFB and JQC proceeding against Judge Watson. *See* Fla. Const. art. V, § 12. Thus far, the JQC has consistently, and

improperly, prevented Judge Watson from conducting a full discovery of her case.

Stewart even offered to prepare the Bar's brief himself in an apparent attempt to expedite the process and ensure that he had the ability to drive the narrative. Id. Stewart followed up with this email on February 10, 2014, again urging the Bar to intervene and improperly seek restitution from Judge Watson. (App. Ex. P). Stewart's improper attempt to influence these proceedings, as well as his long-time personal relationship with JQC Special Prosecutor McGrane, raises substantial doubts regarding the legitimacy of the JQC proceeding below.

The JQC has previously refused to provide Judge Watson with their email communications, relying primarily on this Court's decision in In re Graziano, 696 So. 2d 744 (Fla. 1997). The JQC stated in its ruling that any communications were "privilege[d] . . . [and such privilege is], in part, designed to protect complainants who file complaints against a particular Judge through the [JQC]."(App. Ex. GG). [40] However, based on the newly discovered Improperly Withheld Emails, Stewart was/is much more than a complaining witness: he is the prosecutor seeking monetary restitution for alleged harm suffered. Stewart was in contact with the Bar[41] over two

[40] The JQC also denied Judge Watson's motion to produce at trial. (App. Ex. HH).
[41] Many of the Improperly Withheld Emails reference telephone conferences, but despite Judge Watson's requests for phone records, she has not received them.

(200) hundred times in an attempt to assume control over those proceedings, making it impossible to believe that he did not attempt to assert similar improper influence over the JQC proceeding against Judge Watson.

Furthermore, the Florida Legislature has made clear that any communications between Stewart and members of the JQC would not be exempt from disclosure under the State's public records law. *See* Fla. Stat. § 119.071. Removing the guise of confidentiality and requiring the JQC to produce any communications with Stewart is the only way to allow Judge Watson to attack the credibility of the only adverse testifying witness and defend herself in these proceedings. Thus, this Court should take original jurisdiction over the public record request and require the JQC's immediate compliance. *See* Fla. Const. art. V, § 12; McCain, 361 So.2d at 705.

Conclusion

The Improperly Withheld Emails, the acts of perjury and fraud on the court, the relentless and improper influence by Stewart of the TFB and JQC, and/or the destruction and/or misfiling of material documents hampering the presentation of Judge Watson's case, demonstrate that TFB and JQC deliberately set in motion an unconscionable scheme calculated to interfere with the judicial system's ability to impartially adjudicate these matters. Where a situation exists where those involved in the litigation "sentiently set in motion some unconscionable scheme" calculated

to interfere with the judicial system's resolution of the case, dismissal of the appeal is appropriate. *See* King v. Taylor, 3 So.3d 405, 410 (Fla. 2d DCA 2009) (appeal dismissed as a sanction for conduct of former husband for submitting fraudulent order).

WHEREFORE, this Honorable Court should enter an order granting the following relief:

1) reject the JQC's Report and Recommendation based upon fraud, spoliation of evidence, numerous violations of the Rules Regulating the Florida Bar, and the JQC's failure to meet its burden of proof;

2) appoint an independent and neutral expert, paid for by The Florida Bar and JQC jointly and severally, to perform an IT examination of all the Bar and JQC records regarding Judge Watson, her public record requests, and her discovery requests in the JQC proceedings;

2) issue an order to show cause to Bar Counsel, Henry M. Coxe, III and Ghenete Wright Muir;

4) issue an order to show cause to JQC Special Prosecutor, Miles A. McGrane, III;

5) award Judge Watson her attorneys' fees and costs for this Notice/Motion;

6) award Judge Watson her attorneys' fees and Costs incurred in defense of

the JQC proceedings against her, including the investigative, hearing, and appellate levels;

7) award Judge Watson pre-judgment and post judgment interest on any award of attorneys' fees and costs; and

8) enter sanctions as this Court deems appropriate.

Respectfully submitted,

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Co-counsel for Respondent, The Honorable Laura M. Watson

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a true and correct copy of the foregoing was furnished via the E-Filing Portal on this 11th day of March, 2015 to: The Honorable Laura M. Watson, 17th Judicial Circuit, 201 S.E. 6th Street, Room 1005B, Fort Lauderdale, Florida 33301 (Email: jwatson@17th.flcourts.org; ltucker@17th.flcourts.org); Robert A. Sweetapple, Esquire, Sweetapple, Brocker & Varkas, P.I., 20 SE 3rd Street, Boca Raton, Florida 33432 (Email:

pleadings@sweetapplelaw.com); Jay S. Spechler, Esquire, Museum Plaza, Suite 900, 200 S. Andrews Ave, Fort Lauderdale, Florida 33301-1964 (Email: jay@jayspechler.com); (Marvin E. Barkin, Esquire, and Lansing C. Scriven, Esquire, Special Counsel for the JQC, Trenam, Kemker, Scharf, Barkin, Frye, O'Neill & Mullis, P.A. 101 East Kennedy Boulevard, Suite 2700, Tampa, Florida 33602 (Email: mbarkin@trenam.com; lscriven@trenam.com); Henry M. Coxe, III, Esquire, Bedell, Dittmar, DeVault, Pillans & Coxe, P.A. Attorney for Florida Bar, 101 East Adams Street, Jacksonville, Florida 32202 (Telephone: 904-353-0211; E-Mail:hmc@bedellfirm.com); Lauri Waldman Ross, Esquire, Counsel to the Hearing Panel of the JQC, Ross & Girten, 9130 South Dadeland Boulevard, Suite 1612, Miami, Florida 33156 (Email: RossGirten@Laurilaw.com, Susie@Laurilaw.com); Michael L. Schneider, Esquire, General Counsel to the JQC, 1110 Thomasville Road, Tallahassee, Florida 32303 (Email: mschneider@floridajqc.com); David B. Rothman, Esquire, Rothman & Associates, P.A., Special Counsel to the Florida Bar, 200 S. Biscayne Blvd, Suite 2770, Miami, Florida 33313 (Email: dbr@rothmanlawyers.com); Ghenete Wright Muir, Esquire, Bar Counsel, The Florida Bar, 1300 Concord Terrace, Suite 130, Sunrise, Florida 33323 (Email: gwrightmuir@flabar.org); Alan Anthony Pascal, Esquire, Bar Counsel, The Florida Bar, 1300 Concord Terrace, Suite 130, Sunrise, Florida 33323 (Email:

apascal@flabar.org); Adria Quintela, Esquire, Staff Counsel The Florida Bar, 1300 Concord Terrace, Suite 130, Sunrise, Florida 33323 (Email: aquintela@flabar.org).

Pursuant to FJQCR Rule 10(b) a copy is furnished by e-mail to: The Honorable Kerry I. Evander, Chair of the JQC, 300 S. Beach Street, Daytona Beach, Florida 32114 (Email: evanderk@flcourts.org).

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