IN THE SUPREME COURT OF FLORIDA

THE FLORIDA BAR, Complainant, vs. NEAL J. BLAHER, Respondent.	Supreme Court Case No. SC14-2241 The Florida Bar File No. 2014-31,028(18A)(CES)

NOTICE OF CLOSURE OF
LAW OFFICE OF NEAL J. BLAHER

Respondent hereby gives notice of the closing of his law office as of December 31, 2014, and in connection therewith, provides the following statement for inclusion in the record of the above-captioned matter.

Preliminary Statement

After assessing the extraordinary nature of the relief sought by the organized bar association of the State of Florida, the Florida Supreme Court's apparent endorsement of that action, and the overall conduct of this proceeding, it quickly became clear that the rightness of my position and my candidly disclosed actions would not be properly considered. I therefore could not justify the expenditure of further time and energy on futile attempts at defending myself, nor did I deserve being put on trial like a common criminal. Instead, I acceded to the will of The Florida Bar and of the Supreme Court of Florida that I exit the practice of law.

In connection with this closure, I am compelled to make a final statement to set the record straight on the horrific allegations that The Florida Bar has lodged against me.

Events Leading up to the Present Action

As the nature of my law practice and the types of matters I handled changed over the last several years, I found myself receiving less and less for the same time and effort expended. I also found myself in the position of rendering services and often having to wait to get paid. As a result, there were instances where I drew advances from my trust account equal to the amount of fees due me for past or current services. When a client payment came in, those funds were placed into the trust account, since I had already received the compensation by then. At no time were indiscriminate amounts disbursed, nor were client funds ever unavailable to pay or cover any obligations of that (or any) client.

At some point a notice from my bank to The Florida Bar triggered a review of my accounts. Bar counsel requested account documents, and I provided everything that was requested of me. I also attempted to explain --- without being asked to do so --- the advances I had taken (and then deposited upon receipt of client payments) so that the Bar reviewers could better understand the records I was sending them.

Months passed, additional records were requested, and all such records were timely produced. I was then asked to come in for a deposition to answer questions about the documents I had provided. What puzzled me was the fact that the questions presented at the deposition suggested that the reviewers were looking hard for any possible discrepancy they could find, no matter how insignificant or inconsequential. When it was over, Bar counsel offered to give me a "heads up" as soon as she knew what course of action the Bar planned on taking.

Guidance from Analogous Rules and
Honoring The Florida Bar Client Protection Mandate

Putting aside the common-sense support for the propriety of the advances taken, more concrete support exists in an analogous situation governed by Rule 5-1.1(j) (Disbursement Against Uncollected Funds) of the Rules Regulating Trust Accounts. That rule provides, in relevant part:

> [C]ertain categories of trust account deposits are considered to carry a limited and acceptable risk of failure so that disbursements of trust account funds may be made in reliance on such deposits without disclosure to and permission of clients owning trust account funds subject to possibly being affected. Except for disbursements based upon any of the 6 categories of limited-risk uncollected deposits enumerated below, a lawyer may not disburse funds held for a client or on behalf of that client unless the funds held for that client are collected funds.

After enumerating the 6 categories, the Rule continues:

> A lawyer's disbursement of funds from a trust account in reliance on deposits that are not yet collected funds in any circumstances other than those set forth above, when it results in funds of other clients being used, endangered or encumbered without authorization, may be grounds for a finding of professional misconduct. In any event, such a disbursement is at the risk of the lawyer making the disbursement. . . . However, if the lawyer accepting any such check personally pays the amount of any failed deposit or secures or arranges payment from sources available to the lawyer other than trust account funds of other clients, the lawyer shall not be considered guilty of professional misconduct.

At no time did I contend to Bar Counsel that this rule references the very specific situation here (which is why I referenced it as an analogous rule). However, two key elements of Rule 5-1.1(j) are consistent with the advances that were taken here for current work on matters for established clients. The first element is "limited and acceptable risk of failure." The second is the attorney's ability to "personally pay[] the amount of any failed deposit" as the basis for "the lawyer . . . not be[ing] considered guilty of professional misconduct." Although the fee advances in question were not taken from funds already deposited as this Rule addresses, these two conditions of the Rule nevertheless were present when the advances were taken.

Petition for Emergency Relief filed without advance notice

Approximately one month following the deposition, and with no advance warning or any other communication in the interim, I was served electronically with a Petition for Emergency Suspension. In order to support the extraordinary relief being requested, the Bar's Petition represented that I was "causing great public harm," thus requiring an immediate suspension of my entire law practice.

What I later learned from reviewing the Bar's rules for these types of proceedings was that, by electing to file this type of Petition, the Bar had deprived me of the right to respond to the allegations prior to entry of an "emergency" order suspending and shutting down my law practice indefinitely. Even more disturbing was the Petition's outright distortions and mischaracterizations of certain material facts.

In short, the Bar had gone far beyond its deposition questions searching for whatever discrepancies it could find. It was now characterizing me as a thief and a threat that necessitated closing down my law practice after nearly 30 years with an unblemished record so that I could no longer "cause great public harm."

Although I managed to file a response within 24 hours despite the absence of any provision for a response, the Supreme Court granted all of the relief requested, reciting almost verbatim the directives asked for in the Bar's Petition.

The Court's order offered no further explanation, including whether or not the court had considered --- or even saw and/or read --- my response.

The effect of all this was that my law practice was shut down; I was directed to notify all clients and opposing counsel of this action; and I would have to face a trial to defend my actions against The Florida Bar's exposē of my trust account transactions. All this was the result of nothing more than advances on fees earned and ultimately received.

Even more disturbing, the Bar and the Supreme Court found it necessary to grant "emergency relief" and find "great public harm" being created by an attorney who had been cooperating fully, providing all information requested of him, and offering unsolicited explanations of his activities. Moreover, long before the Petition was filed, the last of the fee advances had been fully funded and paid up by my clients, and nothing remained outstanding. This was not exactly the kind of situation, one would think, that warranted extraordinary injunctive relief.

<u>About the Attorney who has been "Causing Great Public Harm"</u>

For nearly 30 years, I have represented clients the way we are all told we should do it: Strongly advocating for our clients but doing so with civility and professionalism; treating all tribunals and opposing counsel with the utmost respect and unquestionable civility, and in the process encouraging amicable resolution instead of inciting continued litigation (even though the Bar's

requirement for Board Certification discourages settlement and encourages proceeding to trial); taking as much time, and having as many meetings and phone calls, as is necessary to explain everything to clients, assess and advise them on their problems, and timely report back to them and keep them informed on the matters I am handling for them; accommodate clients' financial limitations and otherwise treat them fairly with respect to my fees; and volunteering my services to clients and to the community whenever asked to do so, and when not asked. *See Illustrations attached hereto collectively as Exhibit A.*

Family, friends and, yes, other attorneys and members of The Florida Bar have expressed outrage over how I have been treated, and have urged me to fight to continue my right to practice law. Unfortunately, the events of the past two months have only furthered my growing doubts about our legal system and the propriety of the actions of those who control it --- not exactly something I find worth fighting for.

Conduct of These Proceedings

Attached hereto collectively as Exhibit B are communications exchanged in this proceeding that illustrate my ongoing concerns over how this matter has been handled. Among these communications is an email that the Referee --- in an opinion apparently prepared by Jan Witchowski of The Florida Bar Counsel's Office ---only selectively quoted. One omitted passage is particularly noteworthy:

> . . . Bar Counsel continues to ignore (and not mention or disclose) that no money is 'missing.' 'Misappropriation' means to take or steal property to which one is not entitled and not return it. An 'advance' is to draw funds that are expected, and when those funds are received, the account is replenished, the result being ***no money is missing***. The omission of this fact is what exposes Bar Counsel's continued mischaracterizations and inexplicably adversarial stance. The Bar's mission is found further in its offer to 'assist' the Referee in writing his report to the Supreme Court.

Closure of Law Practice

I am advising my active clients of the termination of my law practice, withdrawing as counsel of record in all currently pending matters (including those in which I serve as Guardian ad Litem, a service I have volunteered to provide for more than 25 years to help protect the interests of abused and neglected children, and for which I was honored by The Florida Bar and the Florida Supreme Court just four years ago), and refunding all unused retainer and cost deposit funds to them.

In short, The Florida Bar, with the assistance of the Florida Supreme Court, has shut a good lawyer (just ask his clients, colleagues and even opposing counsel) out of the system, and the individuals that control these two bodies must live with that decision.

Date: *31 December 2014*

/s/Neal J. Blaher
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CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on the date written above, the foregoing Response was electronically filed with the Supreme Court and thereby served on Florida Bar Counsel, JoAnn M. Stalcup, at jstalcup@flabar.org.

/s/Neal J. Blaher
NEAL J. BLAHER