IN THE SUPREME COURT
STATE OF FLORIDA
CASE NO. SC03-1856

HOWARD A. ENGLE, M.D., et al.,
Petitioner,
v.
LIGGETT GROUP, INC., et al.,
Respondents.

BRIEF OF AMICUS CURIAE PAUL REMILLARD

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TABLE OF CONTENTS

TABLE OF CITATIONS

STATEMENT OF IDENTITY OF INTEREST OF AMICUS CURIAE PAUL REMILLARD

Paul Remillard is a member of the Florida Bar, Colorado Bar, and the U.S. District Courts of the Southern and Middle Districts of Florida. His law firm, Remillard Law Firm, offers many services to lawyers and law students. He travels the southeast to mediate complex litigation. Mr. Remillard has mediated several hundred cases since 1995. He is certified by the Supreme Court of Florida.

He also acts as an expert witness on ethics issues, and serves as counsel for lawyers facing disciplinary proceedings, while using his experience to help law students with special needs who are seeking Florida Bar admission. He works as a trial attorney, in selected cases, involving ethical and professional matters.

He worked as an Assistant State Attorney for the Eleventh Judicial Circuit under the direction of The Honorable Janet Reno. Mr. Remillard began working for The Florida Bar as a trial lawyer in 1992. In 1995, after this Court approved the creation of The Florida Bar's Ethics School, Mr. Remillard designed, authored and founded the course, which he taught for almost five years. The Ethics School was initially designed to give first time lawyer-offenders an excellent "in service tune-up" on conflicts, trust accounting, fees, advertising, law office management, and professionalism.

Eventually, the program's material became so popular that this Court ordered all newly admitted lawyers to take the course within one year of admission. Mr. Remillard, during his tenure with The Florida Bar, was the lead instructor at over 90% of all such

training. This Court then ordered the program's name to be changed from "bridge the gap" to "Practicing with Professionalism." To date, Mr. Remillard has taught nearly two hundred seminars to members of the Judiciary, legislators, lawyers, legal assistants, law students, and multinational corporations.

Mr. Remillard was chosen to be the first Executive Director of The Florida Bar's Center for Professionalism (the Center). This Court created the Supreme Court Commission on Professionalism and funding for the Center. Continuing Legal Education (CL) is now awarded for attending professionalism seminars. The effectiveness of this "higher calling" mission has been widely recognized, especially by organizations such as the American Bar Association, which awarded the Center unprecedented "back to back" national awards, and the Association of Chief Justices, which adopted a vast majority of the Center's accomplishments as part of its proposed, national model. Mr. Remillard submits this brief to ask the question: will the past and present collective efforts and resources of this Court, The Florida Bar, practice specific and local bar associations be considered as meaningful or meaningless?

STATEMENT OF IDENTITY OF INTEREST OF AMICUS CURIAE DRI

The Defense Research Institute ("DRI") is an organization with more than 21,000 individual lawyer and 400 corporate members throughout the United States. It seeks to advance the cause of the civil justice system in America by ensuring that issues important to the defense bar, its clients and to the preservation and enhancement of the judicial process are properly and adequately addressed.

These objectives are accomplished through the publishing of scholarly material, educating the bar by conducting seminars on specialized areas of law, through testimony before Congress and state legislatures on select legislation impacting the civil justice system, and by participation as amicus curiae on issues of significance to the defense bar and its clients. DRI provides a forum for the networking of state and local defense organizations who share a concern for the proper and efficient operation of the civil justice system.

Both parties provided written consents to the filing of this brief.[1]

I. PLAINTIFF'S COUNSEL'S CONDUCT VIOLATED THE LETTER AND SPIRIT OF FLORIDA LAW RESULTING IN AN UNFAIR TRIAL

A jury trial is not only a very special and honorable tradition, it is one of the hallmarks of our democracy. A fair trial before a fair and impartial jury is a fundamental right, born of experience which is protected by the Constitutional right to due process under the law. The Third District Court of Appeal correctly ruled that the jury trial verdict in this case was tainted, and a new trial warranted, because the plaintiffs' attorney repeatedly violated those rules that experience has taught us are essential to a fair trial.

Simply put, a fair trial must be based on the jury's dispassionate view of the facts under the applicable law. A fair trial is one in which the parties, jury, attorneys, court and witnesses comply with fundamental rules that lessen the possibility of surprise, prejudice, inflamed passion and bias that interfere with the jury's dispassionate deliberation of

[1] Pursuant to Rule 37(6) of the Supreme Court of the United States, DRI states that counsel for Petitioner and Respondent had no part in authoring any portion of this brief. No one other than DRI made a monetary contribution to the preparation or submission of this brief.

admissible facts in light of the applicable law as given by the court. The circumstances under which a mistrial must be declared, as it should have been here, was so colorfully described in O'Rear v. Fruehauf Corp., 554 F.2d 1304 (5th Cir. 1977):

> "(y)ou [can] throw a skunk into the jury box and instruct the jurors not to smell it, but it doesn't do any good." Stated another way, the bench and bar are both aware that cautionary instructions are effective only up to a certain point. There must be a line drawn in any trial where, after repeated exposure of a jury to prejudicial information, a judge realizes that cautionary instructions will have little, if any, effect in eliminating the prejudicial harm. It is at this point that a motion for a mistrial should be granted.

The Fifth Circuit went on to cite the United States Supreme Court where it held that "civil or criminal, a trial is not a contest in which no holds are barred. It is the determination of basic rights under our Constitution....Winning, so called, at all costs puts the cost too high. Id., *quoting* Kotteakos v. United States, 328 U.S. 750, 756 (1946). Bocher v. Glass, 29 Fla L. Weekly D1282 - May 28, 2004. Our review of the record shows that the plaintiffs' attorney conducted himself in a manner designed to inflame the emotions of the jury rather than prompt a "logical analysis of the evidence in light of the applicable law. "See Murphy v. Int'l Robotic Systems, 766 So.2d 1010, 1028 (Fla. 2000)(quoting Bertolotti v. State, 476 So. 2d 130 (Fla. 1985). During voir dire, plaintiffs counsel made comments that could have only been designed to ingratiate himself to the potential jurors. Likewise was counsel's statement of his personal belief regarding the unfairness of armchair quarterbacking, and counsel even went on to tell the jury that, "I'm pretty much a straight ahead guy." Further, he told the venire that the decedent had owned one but was not a racist and that he had black friends and white friends.

The only conceivable purpose behind counsel's argument was to suggest that jurors imagine themselves in the place of Jeffrey's parents. "Golden rule" arguments are improper because they depend upon inflaming the passions of the jury and inducing fear and self interest. See Tremblay v. Santa Rosa County, 668 So.2d 985, 987 (Fla.1st DCA 1997).

> In reaching your verdict[s], you are not to be swayed from the performance of your duty by prejudice, sympathy or any other sentiment for or against any party. Your verdict[s] must be based on the evidence that has been received and the law on which I have instructed you."

Fla.Std.Jury Instr. (Civ.)7.1. If Florida is truly interested in the integrity of the process by which a jury determines disputed facts, including damages in personal injury cases, we must not allow this instruction to become mere window dressing for a procedure that, without proper application by trial judges, can be steered all too easily into a morass of prejudice, sympathy, bias, and emotion. See also, The Florida Bar v. Milian, 6,1,95 FLA(table cite only)-Referring to opposing lawyers as "poor excuses for human beings, giving opinions about the evidence, and telling the jury that any mistakes will be corrected by appellate courts. This court found violations of 4-3.4(c), 4-3.5(a) a lawyer shall not seek to influence a judge or juror..."), 4-8.4(d)a lawyer shall not engage in conduct prejudicial to the administration of justice). Forman v. Wallshein, 671 So.2d, 872, 3rd DCA (1996) "Calling opposing counsel a liar, improper attacks without record evidence. The court found that the comments could even be deducted (witness lied) using the most liberal standards. Telling the jury that the expert hates his guts with no factual basis. Also see Craig v. State, 510 So.2d 865, Watkins v. Simms, 88 So.2d 767. "It is improper for counsel to inject his personal opinions, beliefs or attitudes into the case at any time. It is improper and unethical for an attorney to assert personal knowledge of the facts in issue or state a personal opinion as to the justness of a cause"... these comments suggest to the jury that he has off the record information.

Each insult to the fundamental right to a fair and just trial here was the direct result of plaintiffs' counsel deliberate violation of the most basic rules of court conduct. He blatantly appealed to racial animosity, comparing tobacco companies to perpetrators of the holocaust or to slavery and segregation. Right thinking and compassionate human beings of course identify with the brave souls who went to their deaths in the gas chambers of Nazi Germany and heroes and heroines such as Rosa Parks and Martin Luther King who finally freed our country from the chains of legal segregation. Appeals to passion and prejudice instead of evidence undoubtedly permeate and improperly influence any trial, "gravely impairing the jury's calm and dispassionate consideration of the evidence and the merits." Muhammad v. Toys "R" Us, Inc., 668 So. 2d 254, 258 (Fla. 1st DCA 1996) new trial because of the comments on inadmissible evidence, and personal opinions about the evidence and witnesses of the opposition).

At the same time plaintiff's counsel played the race card and sought to invoke the bias of genocide. Plaintiff's counsel also incited the jury to ignore the law. It is plain error to encourage the jury to ignore the law regarding punitive damages as to how it should be determined and how it can be paid. Harding v. State, 736 So.2d 1230 (Fla. 3rd DCA 1999) *citing* United States v. Trujullo, 714 F.2d 102 (11th Cir. 1983). Sadly, counsel for plaintiff trivialized the holocaust, slavery and segregation in doing so. He argued the jurors to become "heroes" and to punish the tobacco company defendants, comparing them to racists and Nazi's. Rather, under our laws and system of just, "It is fundamental to our system of justice that persons are to be held responsible for their own conduct and not for the conduct

of their ancestors." Bird v. Glacier Elec. Coop., Inc., 255 F.3d 1136, 1151 (9th Cir. 2001). In the no holds barred effort to incite the jury to anger, in Bird, there were references in plaintiff's closing argument to General Custer, killing, blood, and Indians versus whites. *See also*, Rose v. Mitchell, 443 U.S. 545, 555, 99 S. Ct. 2993, 3000, 61 L. Ed. 2d 739, 749 (1979) ("[d]iscrimination on the basis of race, odious in all aspects, is especially pernicious in the administration of justice.) His motives were clear when he suggested his "payment plan" option regarding punitive damages.

The jury was robbed of its opportunity for cool and calm deliberation. Those very important areas of human belief and thoughts that are least amenable to certifiable facts–religion and philosophy–have fueled the most bitter and bloody fights in human history. Jury trials are sacred and dampening the effect of bias is the most paramount responsibility of both lawyers and judges.

In conclusion, it is entirely too easy to sway jurors where, as here, the atmosphere was dangerously electrified with appeals to bias, prejudice, misinformation, rather than focusing on the facts and the applicable law of a case.

The Third District got it right. Plaintiffs' counsel not only violated the law, this court has correctly found ethical violations and imposed sanctions for less misconduct in addressing a jury, than that here.

II. FLORIDA SET THE STANDARD FOR PROFESSIONALISM

A. PROFESSIONALISM: A LOOK BACK

In 1986, The American Bar Association Commission on Professionalism studied

professionalism and published a report entitled "In the Spirit of Public Service: A Blueprint for the Rekindling of Lawyer Professionalism." That report noted:

> Lawyers' efforts to comply with the rules is sharply on the rise... Lawyers' professionalism may well be in steep decline. The ABA 's observation reflects a crucial distinction: [W]hile a canon of ethics may cover what is minimally required of lawyers, "professionalism" encompasses what is more broadly expected of them—both by the public and by the best traditions of the legal profession itself.

B. FLORIDA'S REACTION

In response to the growing and deepening concerns surrounding the legal profession, the Florida Bar leadership set the goal of making professionalism one of the highest priorities. For the first time, a Supreme Court Justice chaired the Standing Committee on Professionalism. Together, The Florida Bar and this Court recommended that The Florida Bar propose the creation of a Commission on Professionalism (the Commission) and a freestanding Center for Professionalism. In early 1996, a proposal was presented to this Court calling for the creation of both. Clearly, there was an intent to promote a system that truly reflects the concept of justice.

> "Justice is that mixture of experience distilled and preserved in the traditions of our law, the common sense of the human heart called equity, and a measured wisdom that produces a result of which men will say: This is TRUE, This is FAIR, This is RIGHT and which, when applied in other cases, will so weather the test of passing years that it will also be found to have been GOOD....Always guided by the abiding conviction that the sound administration of justice is the first and firmest foundation of good government."
> Thomas Jefferson to John Adams, 1823.

Chief Justice Gerald Kogan in July of 1996, made a special appearance at a conclave attended by The Florida Bar Board of Governors, justices of this Court and others, and signed an administrative order that not only created the Commission and the Center, but also adopted the Bar's original proposal. Later that year, the Commission was chosen and the vision and mission statements were drafted.

> **Vision:** Supreme Court's Commission on Professionalism "To realize a just legal system based upon the rule of law and a legal profession that warrants the respect and trust of society".
>
> **Mission:** Supreme Court's Commission on Professionalism "To promote the fundamental ideals and values of the justice system the legal system, and to instill those ideals of character, competence, and commitment in all those persons serving therein."

The first director of the Center was named in late December, and the Center was fully staffed by March 1, 1997. The Center focuses on promoting professionalism through presentations to law schools, the judiciary, and The Florida Bar membership. The Commission provides focus and direction to the Center.

C. THE FIRST YEAR

Within the first year, Board of Governor members facilitated approximately 35 programs dedicated to promoting higher standards of professionalism. It is estimated that well over 1,500 lawyers participated. The following is a brief summary of some of the programs:

- Local Bar Associations held 23 programs.
- Inns of Courts held eight 8 programs.

There were major meetings which used professionalism as the centerpiece:

- Stetson College of Law held a "Conclave" dedicated to professionalism where professors, law students, judges, lawyers and representatives of The Bar gathered for two days to raise professionalism standards.
- Town Hall meetings were held in Miami and Orlando in which lawyers, judges and non-lawyers gathered to debate issues of professionalism. It is estimated that over 400 people attended.
- Solo and Small Practitioners Educational Conferences were held in Miami, Orlando and Tampa, and featured segments on professionalism.
- The 1997 All Bar Conference, attended by approximately 200 lawyers was dedicated to professionalism and even provided a format where hypothetical vignettes were propounded and debated rigorously.
- Diversity was the subject of numerous presentations and training courses.

During that same time period, there were (a) 19 professionalism articles published, (b) four new professionalism committees and three peer-review panels were established, (d) mentorship programs were either established or planned in two locations, (d) professionalism standards and guidelines were either established or published in four circuits, and (e) two professionalism award programs were established. To date, the pace has not receded. No doubt, the first two years were both tough and expensive, but this Court and The Florida Bar Board of Governors were determined to fundamentally change the practice of law.

No doubt some of the problems reflect the win at all cost mentality that seems to permeate the approach taken by to many lawyers. The vision of professionalism is to measure success by what lawyers do for others, not what they do for themselves. This view can be expressed as follows:

> "They teach them law in school, not humanity. Our individual challenge in this crises of change is to retain our humanity, share it, and humanize the way we work the clients, the public, and each other. Our role is peacemakers, bringing justice where it is lacking, tranquility where there is turmoil, freedom where it is deprived, and rewards where they are due.
> Ray Ferrera, Jr., former Bar president.
>
> "Among leaders in every field there is an amazing convergence of opinion on what is 'total success' in life. The consensus is that the two great tragedies are 'never to have had a dream to strive for" and "ever to have fully reached it.' Happiness seems to be associated more with the experience of the journey, than in the fleeting moment of the recognition of having arrived Although no one ever will achieve 'total success' in his or her daily pursuits, a definition of success you can live by is this: <u>total success is the continuing involvement in the pursuit of a worthy ideal, which is being realized for the benefit of others - rather than at their expense."</u>
> Denis Waitley.

If nobly undertaken these efforts will deepen the awareness of a lawyer's particular professional situation providing a sense of empowerment over a professional career rather than a passive acceptance of an untenable situation. In short Florida lawyers can do well by doing good. No one is forced to take the low road to succeed, it is a choice freely but sadly made. If made, especially at trial, there must be consequences to choosing the low road.

It was clear, according to the report, that only one model could achieve the task – **The Florida Model**. The primary implementation arm was a commission headed by this Court was created to oversee a stand-alone Center and a Professionalism Standing Committee.

Heed well the moral of the often told seminar anecdote about the frog who thought he was just taking a nice warm bath, when in fact he was **dinner?** Florida lawyers and Courts must realize they were about to become dinner. The legal profession's headlong nosedive in public opinion was not taken seriously enough. On April 22, 2003, an investigation was undertaken to look into the Program Evaluation Committee's concerns. The investigation was to be accomplished by an appointed committee. The mission of the committee was to see if the existing structure could be improved or condensed.

The result was a comprehensive, 47- page report discussing the current status of the professionalism effort. The report cites at page 14 that this Court and Florida Bar leadership early on discovered that efforts in the mid-1990's around the country were to be applauded for their sincerity and passion, but they were just piecemeal efforts and that comprehensive coordination fundamental to success was missing.

This investigation noted that the **Florida** model was so successful that specific recognition about **Florida's** initiative was contained in the Conference of Chief Justices (CCJ) national action plan. The CCJ endorsed the model and encouraged other states to follow suit. **"The CCJ speaks directly to the need for a coordinated effort, not just individual initiatives, to effect any meaningful change in the level of professionalism**

demonstrated by the legal community." Members of the Florida judiciary and bar can be justifiably proud that there success was suggested as the model for others.

The report concluded that it was critical to provide for accountability and thus be able to measure the impact of or return on the investment dollars (approximately $500,000.00 a year). **THE REPORT FOUND THAT FLORIDA'S COORDINATED APPROACH WAS EFFICIENT AND SUCCESSFUL.** ["we have reviewed the self reported data on satisfaction, level of learning, anticipated job behavior change and are encouraged by the valuation reports."] The Center received an average rating of 4.6 on a 5 point scale, and narrative responses suggest changed attitudes which we believe is highly indicative of transference of increased professionalism behaviors". (REPORT AND RECOMMENDATION FROM THE SPECIAL COMMITTEE TO STUDY THE PROFESSIONALISM DELIVERY SYSTEM).

D. FLORIDA LEADS THE WAY TOWARD PROFESSIONALISM

The report and recommendation analyzed Florida's approach to other states addressing professionalism. According to the report, **Florida** is the only state where the professionalism entity offers web-based on-line CLE courses in partnership with a major university. **Florida** is the only state where the professionalism entity conducts educational needs assessment and assists in identifying poor competency for new lawyers. **Florida** is the only state where the Center and standing committee are charged with developing a statewide mentor network. **Florida** is the only state to have involvement of deans of all accredited law schools on their

commission. **Florida** does the most extensive systematic long-range and strategic planning. **Florida** is the only state to measure satisfaction, report data on behavioral change and measure systematic behavior change or its correlation to improvements or attitude change in the justice system at large. **Florida** is the only state with circuit committees that function as entities of the commission and operate under the direction of a chief or presiding judge in that jurisdiction. **Florida** is the only state whose education and training role expressly extends to the judiciary. **Sadly, Florida is ALSO the only state to have a $144,000,000,000.00 verdict rendered as a result of unprofessional, and perhaps even unethical, courtroom behavior. This distinction contradicts the successful efforts in this state which began in 1987. We cannot have it both ways.**

Since its inception, the Center, through its efforts with this Court and the Commission, have conducted hundreds of seminars on professionalism. All indications are that the pace is quickening and not slowing down which demonstrate that most members of the Florida bar want to raise the quality of our services to our clients and to the system of justice.

This Court should note that diversity training has increased tremendously and the Center now has 60 certified diversity trainers. Diversity issues are potentially explosive and can when intentionally ignited, lead to outcomes such as before this Court today.

Currently, The Florida Bar emphasizes professionalism in many different ways: The state presents on-line mentoring, professionalism awards, awards for law school faculty members, awards for students who write essays on professionalism, awards to groups that create programs aimed at encouraging professionalism among lawyers that can be duplicated

throughout the state. There is a wealth of information that has been gathered through **historical videos** (the brain child of Paul Lipton,) Lipton envisioned the loss of great wisdom if we did not chronicle the collective wisdom of our most respected members.

To date, over 32 of our most coveted members have been interviewed. These videos preserve the foundational underpinnings of the true spirit of the Florida Bar. A familiar theme becomes obvious when viewing them: Honesty, service to the community, advocacy without acrimonious behavior, and the legacy of how your practice will be viewed by others when you are done.

Clearly, Florida is putting significant resources, both time and money into its professionalism efforts. When asked, how is professionalism different from ethics, the best reply is that "the 'Rules' are the floor of conduct tolerated without discipline, professionalism is the ceiling of behavior in lawyering that fosters trust in the legal system."

THE RESULT HERE WILL SHOW WHETHER FLORIDA EMBRACED PROFESSIONALISM

CONCLUSION

Thousands of volunteer hours and over a million dollars have been spent on this effort. Local courts and bar associations have adopted standards of professionalism that are making a difference. Florida has oaths, creeds, and inspirational goals. The fifty year-old logo of The Florida Bar has been changed to reflect the promoting of professionalism. Every CLE course has a section at the beginning encouraging professionalism.(See the Center for Professionalism archives.) The oaths, creeds and guidelines all speak to the serious

misbehavior chronicled in the case at bar. Are they merely words which ring hollow or do they create the foundation and framework for lawyer conduct.

CREED OF PROFESSIONALISM

I will strictly adhere to the spirit as well as the letter of my profession's rules of ethics, to the extent that the law permits and will at all times be guided by a fundamental sense of honor, integrity, and fair play.

I will not knowingly misstate, distort, or improperly exaggerate any fact or opinion and will not improperly permit my silence or inaction to mislead anyone.

I will abstain from all rude, disruptive, disrespectful, and abusive behavior and will at all times act with dignity, decency, and courtesy.

OATH OF ADMISSION TO THE FLORIDA BAR

I will abstain from all offensive personality and advance no fact prejudicial to the honor or reputation of a party or witness, unless required by the justice of the cause with which I am charged.

GUIDELINES FOR PROFESSIONAL CONDUCT

Trial conduct and courtroom decorum.

A lawyer should avoid disparaging personal remarks or acrimony toward opposing counsel.

A lawyer should abstain from conduct calculated to detract or divert the fact-finder's attention from the relevant facts or otherwise cause it to reach a decision on an impermissible basis.

A lawyer should not allude to any matter that he or she has no reasonable basis to believe is relevant to the case or that will not be supported by admissible evidence.

A lawyer should never attempt to place before a tribunal or jury, evidence known to be clearly inadmissible, nor make any remarks or statements which are intended to improperly influence the outcome of any case. These things should never happen. If they do, there must be adverse consequences. Here, the verdict improperly obtained must be set aside and a new trial required as was the view of the Third Circuit.

This brief is offered to shed light on fundamental problems in the legal profession that negatively affect lawyers reputations and unnecessarily add to the expense of seeking justice. This brief is about the heart and soul of lawyering. If the kind of courtroom behavior presented for argument before this honorable court is allowed to stand, then turn the heat up because, just like that unsuspecting frog, *we are cooked.*

HAS FLORIDA BEEN WASTING OUR TIME AND MONEY OR ARE WE SERIOUS ABOUT UPGRADING THE PROFESSIONAL BEHAVIOR RIGHTLY EXPECTED FROM ALL FLORIDA LAWYERS?

Those who have toiled so long and so hard in this effort have good reason to be proud to have raised the bar for professionalism in Florida. It is professionalism that can make every Florida lawyer's life more enriching. But sadly, if the Court of Appeal's decision is not upheld, the message will be clear – you may ignore the rules, guidelines, oaths and creeds for there is no real consequence when you chose to ignore them. The bar will not have been lowered – it will have disappeared.

IV. PERSONAL STATEMENT OF AMICI PAUL REMILLARD

I had the opportunity to speak with former Chief Justice Allen Sunberg before his illness curtailed his daily activities. I first met him as an opponent in a Bar discipline case when he traveled to Miami to defend a respondent. His request to me was to provide him access to a witness who had to be flown in from another country. He assured me that I would see the light and dismiss one or perhaps even several cases as a result. I took him at his word even though the file reflected a strained relationship between himself and the previous bar counsel on the case. I had spent my days in the belly of the Metro Justice building and had **no idea** who he was. I was schooled that day on taking depositions and he was true to his word. He was polite, respectful, and professional even though he had the equivalent of rock solid proof my best witness was not truthful. When he left I was told by everyone WHO HE WAS. We got to know each other a bit better when I arrived in Tallahassee.

Our last encounter took place while I was still at my post at the Center for Professionalism. He could see I was haggard and at the point of wondering if my efforts were really having any effect at all. Chief Justice Sunberg told me to keep fighting because "you are doing GODS work". I did because I also thought the professionalism effort was a call to a higher standard and one that was truly worthwhile and righteous. ***The rest is history.***

"When I think of how quickly time flies, I am always sorry that I did not do better yesterday or last year, because that particular opportunity will never come again. But I

comfort myself with thinking that the opportunity to do better next time lies before me."

Edward Chipman Guild (1831-1899) Clergyman and Lecturer

> "I am only one, but still, I am one. I cannot do everything but I can do something. And, because I cannot do everything, I will not refuse to do what I can." Unknown

This decision will define the future of professionalism in Florida. May this decision be viewed years from now as "TRUE, FAIR, and RIGHT and which, when applied in other cases, will so weather the test of passing years that it will also be found to have been GOOD.

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CERTIFICATE OF COMPLIANCE

I hereby certify that this brief was prepared in Times New Roman, 14-point font, in compliance with Rule 9.210(a)(2) of the Florida Rules of Appellate Procedure.