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IN THE CIRCUIT COURT OF THE SECOND JUDICIAL CIRCUIT,
IN AND FOR LEON COUNTY, FLORIDA

ROSE MARIE PREDDY,
candidate for Circuit Court Judge,
Group 11, Seventh Judicial Circuit,

Plaintiff,

V. CASE NO.: 24-CA-000653

SCOTT C. DUPONT, candidate for
Circuit Court Judge, Group 11,
Seventh Judicial Circuit, et al.

Defendants.
______________________________________/

DEFENDANT SCOTT DUPONT'S RESPONSE TO PLAINTIFF'S AMENDED MOTION FOR FINAL JUDGMENT ON THE PLEADINGS

Defendant SCOTT C. DUPONT hereby files this Response to Plaintiff's Amended Motion for Final Judgment on the Pleadings, and states:

Introduction

Defendant is eligible to hold the office of Circuit Judge because he is and has been a member of the Florida Bar for the five years preceding the date he would assume office. First, because this Court is not bound by either of the two main cases discussed in Plaintiff's Motion that may hold otherwise: *McCallum v. Kramer* and *In re Advisory Op. to Governor re Comm'n of Elected Judge*. Second, because a fair reading of article V, section 8 of the Florida Constitution, regarding membership in the Florida Bar, confirms Defendant's eligibility. Therefore, this court should deny Plaintiff's Motion.

Facts

Defendant agrees to the Facts set forth on page 2 of Plaintiff's Motion.

Legal Standard

Defendant agrees with the Legal Standard for a Motion for Judgment on the Pleadings set forth on page 4 of Plaintiff's Motion.

Argument

1. Defendant is constitutionally eligible to serve as Circuit Judge.

A. This Court is not bound by *McCallum v. Kramer*.

Defendant and Plaintiff agree that this case involves a single dispositive question of constitutional interpretation: whether a person who receives a suspension within the five years preceding the date he would assume office has been a "member of the bar of Florida" for the preceding five years under article V, section 8, of the Florida Constitution. For the reasons below, the answer is yes, and Defendant is therefore eligible to serve as Circuit Judge.

Plaintiff argues that this court is bound by *McCallum v. Kramer*, 299 So. 3d 630 (Fla. 1st DCA 2020). *McCallum* construed article V, section 17 of the Florida Constitution, which provides that in order to be eligible to serve as a State Attorney in Florida, one must "be and have been a member of the bar of Florida for the preceding five years." *Id*. at 631. For two reasons, this court is not bound by that decision here.

First, *McCallum*'s three sentence written opinion cites only *In re Adv. Op. to Gov. re Comm'n of Elected Judge*, 17 So. 3d 265 (Fla. 2009) ("Commission of Elected Judge"), an advisory opinion from the Florida Supreme Court that construed the constitutional term "a member of the bar of Florida" to mean "a member with the privilege to practice law." *Id.* at 267. But because the Florida Supreme Court was not acting in its appellate capacity in that case, it's construal of that term is not binding. *See*

Sec'y of State Byrd v. Black Voters Matter Capacity Bldg. Inst., Inc., 375 So. 3d 335 (Fla. 1st DCA 2023). (holding that when there is no lower court judgment under review, the Court's opinion cannot be the exercise of appellate jurisdiction and that it does not function *judicially* in a capacity as head of the branch. (emphasis added.))

Second, this court is not bound by *McCallum*, because the First District in *McCallum* construed only article V, section 17 of the Florida Constitution, an identical phrase but *separate article* of the Florida Constitution, and therefore it's holding is not binding. It may be persuasive, but not binding on this court.

Therefore, this court is free to construe the phrase "member of the bar of Florida" in accordance with "the supremacy-of-text principle" outlined in *Advisory Opinion to the Governor re: Implementation of Amendment 4, the Voting Restoration* Amendment, 288 So. 3d 1070 (Fla. 2020), among other decisions.

B. This Court is not bound by *In re Advisory Op. to Governor re Comm'n of Elected Judge.*

As discussed above, *Commission of Elected Judge* does not bind this court because advisory opinions issued to the Governor, such as *Commission of Elected Judge*, are not binding judicial precedents. *Ray v. Mortham*, 742 So. 2d 1276, 1285 (Fla. 1999). They may be persuasive, but not binding.

Furthermore, as to the persuasiveness of *Commission of Elected Judge*, that opinion concerned the commission a circuit judge-elect who was suspended *at the time* he was to take office, which likely guided the Court in a direction away from a more simple and natural reading of the clause in an effort to immediately remedy the issue at hand. (i.e. "Hard cases make bad law.")

C. A fair reading of article V section 8 of the Florida Constitution confirms Defendant's eligibility.

The Florida Constitution provides that "no person is eligible for the office of circuit judge unless the person is, and has been for the preceding five years, a member of the bar of Florida." Art. V, § 8, Fla. Const. Under a fair reading of this clause, member clearly means someone who belongs to the Florida Bar, whether they can practice at the time or not.

The Court in *Commission of Elected Judge* may have created one definition of "member," in the sense that it set a floor, but not a ceiling of the term's meaning. To suggest otherwise is highly reductionistic to the point of re-definition. The "privilege to practice law" is sufficient, but not necessary, for being a member. It is one such definition—but not itself *definitive*.

The common definition of member, is "a person . . . belonging to a particular group." *Member,* New Oxford American Dictionary (3rd ed. 2010)). Being part of a group does not denote that a member has each the privileges exercised by that group. For example, a member of a sports team who is suspended from the team is still a member of the team. What is under suspension, is the privilege of playing on the team for a time. Similar to practicing law, a member of the bar is suspended from practicing law for a time, but still a member.

This is the way the drafters, ratifiers, and citizens of Florida understood the term at the time of the ratification of the 1972 amendments to the Florida Constitution: not in a legalistic, hyper-technical, reductionist, sense, but in the common understanding of the words by Floridians.

Additionally, the fact that a member can be *expelled* from the Florida Bar makes absurd the claim that a suspended member is no member at all, given that an expulsion is markedly different than suspension. The claim that “member” be equated strictly with “the privilege to practice law” is reductionistic to a fault; it reduces the meaning down so something less than what voters would have understood in their common sense understanding of the term.

Furthermore, under Rule Regulating the Florida Bar 3–5.1(e), a suspended lawyer is a member of the Bar without the privilege to practice, yet still a member. Although the Supreme Court argued that in adopting the Rules Regulating the Florida Bar, it “in no way intended for those rules . . . to define the phrase ‘a member of the bar of Florida’, the phrase is still left undefined outside of that advisory opinion and this court should turn to how Floridians in 1972 would have understood the words to mean at the time. *Id.* at 266

Finally, the Florida Constitution itself makes a distinction between a “member” and a “member in good standing of the bar of Florida,” violating the canon against surplusage. This parallel constitutional eligibility requirement for rural county court judges, versus others in the same section and article, forces the conclusion that a bar member may be a member *not* in good standing (i.e. suspended) and yet still be a “member of the bar.”

WHEREFORE, Defendant requests that this court deny Plaintiff’s Motion.

DATED: May 21, 2024.

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CERTIFICATE OF SERVICE

I hereby certify that a copy hereof has been furnished via electronic service to all parties of record on May 21, 2024.

/s/ Anthony F. Sabatini