UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF FLORIDA

CASE NO. 06-80334-CIV-ZLOCH

RENEE BETTIS,

Plaintiff,

ORDER RE: SANCTIONS

vs.

TOYS "R" US,

Defendant.
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CASE NO. 08-60565-CIV-ZLOCH

SONYA GOSSARD,

Plaintiff,

vs.

JP MORGAN CHASE & CO.,

Defendant.
_______________________________/

CASE NO. 06-20418-CIV-ZLOCH

RAMON SABATIER,

Plaintiff,

vs.

SUNTRUST BANK,

Defendant.
_______________________________/

CASE NO. 09-60259-CIV-ZLOCH

LAISNER PAUL,

Plaintiff,

vs.

D & B TILE OF HIALEAH, INC.,

Defendant.
_______________________________/

THIS MATTER is before the Court sua sponte and upon Defendant Toys "R" Us's Motion For Sanctions Against Plaintiff's Counsel

(Case No. 06-80334-CIV-ZLOCH, DE 200), Defendant Suntrust Bank's Motion For Rule 11 And/Or 28 U.S.C. Section 1927 Sanctions (Case No. 06-20418-CIV-ZLOCH, DE 122), and Defendant JP Morgan Chase & Co.'s Motion For Sanctions Against Plaintiff's Counsel (Case No. 08-60565-CIV-ZLOCH, DE 102). The Court has carefully reviewed said Motions and the entire court file in each of the above-styled causes and is otherwise fully advised in the premises.

This has to be stated from the outset: I take no pleasure in issuing this ruling. These cases and the behavior of Loring Spolter, Esq. have been a great drain on my time and attention. Meritorious cases and motions have had to sit while I address the matters surrounding Mr. Spolter and his accusations. Nonetheless, his actions demand redressing.

Mr. Spolter has violated Rule 11 of the Federal Rules of Civil Procedure; he has violated 28 U.S.C. § 1927; he has publicly impugned the dignity of the undersigned and the United States District Court for the Southern District of Florida with scurrilous and baseless accusations. All of this has been done in a dogged and relentless pursuit of an illegitimate purpose: to force a Federal judge to recuse from cases where there is no basis in law or fact warranting recusal.

Also at the outset, the undersigned notes that the teachings and instructions of the Eleventh Circuit Court of Appeals opined in In re Evergreen Sec., Ltd., 570 F.3d 1257 (11th Cir. June 11,

2009), have been meticulously followed, and so has all other applicable caselaw. Indeed, the facts in Evergreen are quite similar to those surrounding Mr. Spolter.

Mr. Spolter has been persistent in seeking my recusal from his cases. Two years ago, in 110-pages of court filings, he raised my Catholic faith and political affiliations as supposed evidence of bias against him and his clients. Contemporaneous with filing a recusal Motion, he gave an interview to a local tabloid about my alleged bias and called into question the credentials of some of my former law clerks. See Julie Kay, *Federal Judge Accused of Religious Bias*, Daily Business Review, Aug. 13, 2007. I ignored the article as scurrilous nonsense and denied his Motion as meritless. On appeal, he again sought my recusal from his cases; that relief was denied twice by two separate panels of the Eleventh Circuit Court of Appeals.[1]

Undeterred, Mr. Spolter recently conjured up a new reason for me to recuse: he alleged a complex web of prejudice and abuse-of-power that came together in a grand conspiracy against him and his clients. In this scheme, I am to have manipulated the case assignment system of the entire Southern District of Florida, for the sole purpose of ensuring that I receive a disproportionate

[1] Bettis v. Toys "R" Us, Inc., 273 Fed. Appx. 814, 820 (11th Cir. 2008), Case No. 06-80334-CIV-ZLOCH, DE 135, p. 14 (Mandate of the Court of Appeals); Sabatier v. SunTrust Bank, 301 Fed. Appx. 913, 915 (11th Cir. 2008), Case No. 06-20418-CIV-ZLOCH, DE 80 (Mandate of the Court of Appeals).

number of Mr. Spolter's cases. The sinister purpose of this plot is plain: I did it so I would have the opportunity to rule against Mr. Spolter's clients more frequently than the normal case assignment system would otherwise allow. He claimed that he had proof of this beyond his intuition——he had an expert's Report that established I received more of Mr. Spolter's cases than a pure blind, random case assignment system would provide. Like a good pulp novel, the tentacles of this conspiracy went far beyond Fort Lauderdale, stretching across the nation's judiciary. He bolstered his statistical proof with allegations that as Chief Judge and while serving on the Financial Disclosure Committee of the Judicial Conference of the United States, I wielded my power to protect a Federal Circuit Court Judge who is also Catholic.

Conjecture and fantasy of this sort are usually scrawled on loose leaf and filed by inmates; however, those filings seldom make it past an initial screening. 28 U.S.C. § 1915A. But the filings in these cases are different: besides paying the filing fee and using a computer, Mr. Spolter has a Juris Doctorate and he is an Officer of the Court. His allegations are also unique in that they were made and pursued with an improper purpose in mind: judge shopping, with the happy consequence that he could ridicule and insult a Federal judge with impunity along the way. Mr. Spolter's conduct, recounted briefly below and reflected in the factual findings made by United States Magistrate Judge Robin S. Rosenbaum

in her very thorough and comprehensive Report And Recommendation (DE 205),[2] adopted with additional comment (DE 220), warrants the imposition of sanctions against him and his law firm.

However, the Court wishes to make absolutely clear that Mr. Spolter is not being punished for his criticism of the undersigned. Despite Magistrate Judge Rosenbaum's thorough and articulate 92-page Report and Recommendation confirming the same, this Court will state the basis for sanctions once more——for those who continue to mislead the public by characterizing Mr. Spolter as some sort of First Amendment martyr.[3] Mr. Spolter has the absolute right to criticize a judge, but what he does not have the right to do is to file pleadings in Federal court for an improper purpose and in bad faith. For this, and for engaging in behavior that no reasonably competent lawyer in like circumstances would have engaged in, and for these reasons alone, Mr. Spolter will be suspended from practice in this District for 42 months, he will be referred to the Florida bar, a reasonable fine will be imposed, and reasonable

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[2] Magistrate Judge Rosenbaum filed her Report was in each of the above-styled causes. Bettis v. Toy "R" Us, Inc., Case No. 06-80334-CIV-ZLOCH (DE 205); Gossard v. JP Morgan Chase & Co., Case No. 08-60565-CIV-ZLOCH (DE 99); Sabatier v. Suntrust Bank, Case No. 06-20418-CIV-ZLOCH (DE 110); Paul v. D & B Tile of Hialeah, Inc., Case No. 09-60259-CIV-ZLOCH (DE 34). For the sake of simplicity, the Docket Entries referred to in this Order will correspond with Bettis v. Toys "R" Us, Inc., Case No. 06-80334-CIV-ZLOCH.

[3] See John Pacenti, *Judge Considers Sanctions For Lawyer Critic: Attorney In Trouble Over Criticism of Judge Zloch*, Daily Business Review, September 9, 2009.

attorney's fees assessed against him and his law firm, Loring N. Spolter, P.A.

Introduction

This is a complex Order, with four cases, three Motions For Sanctions, and the Court's own imposition of sanctions being resolved, so a basic outline of the Order is provided to aid any reviewing Court. First, there is a cursory review of the facts surrounding Mr. Spolter's behavior. To appreciate the full flavor of Mr. Spolter's conduct, any interested reader should read Magistrate Judge Rosenbaum's Report (DE 205). Bettis v. Toys "R" Us, 646 F. Supp. 2d 1273 (S.D. Fla. August 5, 2009). Second, because there are several legal bases for imposing sanctions, the Court has attempted to fully articulate the findings it is making and those that the Eleventh Circuit requires when imposing such sanctions. Third, the Court addresses whether Mr. Spolter has been afforded due process, by being provided with an evidentiary hearing, a show-cause order, a hearing on the matter of sanctions, and a 30-day extension to gather character references in mitigation of sanctions. Fourth, the Court explains why Mr. Spolter's behavior warrants sanctions. Fifth, the Court addresses why it has chosen the sanctions imposed. Sixth, the Court has attempted to aid any reviewing Court with a precise breakdown of the authority invoked for each sanction listed, the amount, and the precise form that each will take.

I.

Two years ago, in Sabatier and Bettis, Mr. Spolter claimed that I was a Catholic zealot bent on ruling against women who returned to work after giving birth. He extrapolated as much from the facts that I am Catholic, some of the law clerks I have hired attended Catholic law schools, and I have affiliations with the Federalist Society. Based on these facts, he moved for my recusal from both cases. In Sabatier, he did this before me and on appeal; in Bettis, he first raised the issue at the appellate level. The Eleventh Circuit, by two separate panels, twice found that there was no reason to recuse. Bettis v. Toys "R" Us, Inc., 273 Fed. Appx. 814, 820 (11th Cir. 2008), Case No. 06-80334-CIV-ZLOCH, DE 135, p. 14 (Mandate of the Court of Appeals); Sabatier v. SunTrust Bank, 301 Fed. Appx. 913, 915 (11th Cir. 2008), Case No. 06-20418-CIV-ZLOCH, DE 80 (Mandate of the Court of Appeals). Notably, in Bettis, the Eleventh Circuit found that "[Bettis] is attempting to create an appearance of impropriety to further her request for recusal and reassignment. There is no appearance of impropriety." 273 Fed. Appx. at 820.[4]

Mr. Spolter altogether ignored these decisions from the Court of Appeals, and at some point, the exact date being unknown, he says he realized that there was something even more nefarious

[4] A complete procedural history of Mr. Spolter's cases is provided in Magistrate Judge Rosenbaum's Report and Recommendation (DE 205), which has been adopted by this Court (DE 220).

afoot. From the training he received in a graduate-level statistics class, Mr. Spolter came to believe that it was statistically impossible for me to receive as many of his cases as I had received in the past three years. See DE 211, p. 6 (Transcript of hearing held on June 24, 2009). With his suspicion roused, he drafted a twenty-four paragraph Freedom of Information Act (FOIA) request to get to the bottom of it all. He sent this request to me, to Steven Larimore, Esq., the Court Administrator and Clerk of Court, and to the Honorable Federico A. Moreno, Chief Judge of this District.[5] Id. Much of his request amounted to unabashed harassment, but to Mr. Larimore's credit and despite the fact that the Judiciary is not subject to the Freedom of Information Act, many of the general inquiries made in the request were answered.

Mr. Larimore wrote Mr. Spolter notifying him that the case assignment system is explained in the Internal Operating Procedures of this District; he even went so far as to direct Mr. Spolter to the District's website and the heading under which a copy can be found. Mr. Larimore's letter also addressed the charge at the heart of Mr. Spolter's allegations—stating that the Clerk's Office "has at no time received any directive to treat assignment of cases filed by [Mr. Spolter] any differently than we would treat the

[5] A copy of the FOIA request is filed as an Exhibit to the instant Motion (DE 200) filed by Toys "R" Us, and it is quoted in full in the Court's Order (DE 220) adopting and supplementing Magistrate Judge Rosenbaum's Report And Recommendation.

random assignment of cases filed by any other attorneys." Clerk's Exhibit 9.[6]

Unsatisfied, Mr. Spolter then sought an expert in the field of Statistics who could confirm his suspicions. He retained Dragan Radulovic, Ph.D., a professor in the mathematics department of a local university. Mr. Spolter hired Professor Radulovic to determine whether "[i]n the absence of a special arrangement what are the statistical odds that one specific judge would be assigned 5 of the 8 new cases we [sic] assigned -on a true random basis?" Plaintiffs' Exhibit 3. Not surprisingly, Professor Radulovic explained in the Report following his analysis that, assuming a pure blind, random case assignment system, it was statistically impossible that one Judge out of twenty-two possible assignees would receive five of the fifteen cases filed by a single attorney. DE 155-4, Ex. 1.[7] With this, Mr. Spolter believed he was finally vindicated: absent a special arrangement I could not have received as many of his cases as I had.

Mr. Spolter then proceeded to conclude that since a special arrangement must have been in place in order for me to receive as

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[6] The citations to Plaintiffs' Exhibits and Clerk's Office Exhibits are, unless otherwise specifically referenced, those that were entered into evidence at the Evidentiary Hearing held before Magistrate Judge Rosenbaum on June 24, 2009.

[7] So the record is clear, between 2006 and 2009, I have been assigned five of Mr. Spolter's cases. Clerk's Exhibit 3. Despite the representation in Mr. Spolter's letter, he has filed fifteen, not eight, cases in the Southern District during that time. Id.

many of his cases as I had received, I must have been the one to manipulate the system. See DE 156, pp. 9-11. The Report also served as ostensible proof for Mr. Spolter that he was, just as he alleged, a victim of my machinations: my previous rulings were mere pretext for my personal animus against him and his clients. Armed with this Report and all that he asserted it established, Mr. Spolter filed Motions To Recuse in each of the instant cases. He then sat for a second interview with a local tabloid to showcase his findings and further fan the flames of his allegations. John Pacenti, *Lawyer Says Statistics Prove He's Been Treated Unfairly*, Daily Business Review, June 8, 2009, at A1 (hereinafter "Pacenti, *Lawyer Says*").

There is no question that these were very serious allegations on Mr. Spolter's part. He accused the Southern District of Florida of operating anything but a blind, random system and he charged the Clerk's Office with being involved in an elaborate conspiracy to fix the assignment of cases in the District. Mr. Spolter accused me personally of perverting the course of justice and engaging in criminal activity in violation of a number of Federal laws. See 18 U.S.C. §§ 1503, 1509, 2071, 2076.[8] Any member of the public who

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[8] If Mr. Spolter's allegations were true, I would expect a full investigation by the United States Attorney. I would likely be prosecuted for influencing an Officer of the United States, 18 U.S.C. § 1503, because to execute my scheme I would have had to use my authority over the Clerk of the Court. Also, under §§ 2071, 2076, I would possibly be committing various crimes that involve tampering with Clerk's Office reports, documents, and other things, depending on the precise form my tampering with the case assignment

happened upon the article or Mr. Spolter's pleadings would have to wonder what was happening in the Southern District of Florida—what sort of kangaroo court do the citizens of South Florida have administering their rights? Although I contemplated dismissing his filings as just another one of Mr. Spolter's personal attacks against me, I could not. These attacks were far from being limited to me and my law clerks' credentials. Mr. Spolter's allegations were a direct attack upon the integrity of the Southern District of Florida. Further, these charges were not isolated to a poorly drafted and ill-advised footnote, or even to a paragraph in the body of a long motion. No, Mr. Spolter went on for pages and pages about this, and he reiterated it in his later filings.

Following Mr. Spolter's public allegations of District-wide criminal misconduct, I referred the matter to Magistrate Judge Rosenbaum for an evidentiary hearing to determine whether there was any factual support for Mr. Spolter's accusations. See DE 173. I, of course, knew that I had not directed anyone to manipulate the case assignment system, but if by some chance a rogue employee of the Clerk's Office had done so, then such facts needed to be brought out and a full investigation launched. The more likely scenario, and the one that came to bear, was that Mr. Spolter had

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system took. As far as § 2076 is concerned, I would be guilty of aiding and abetting the Clerk's Office employee who is not doing his duty as required by law. 18 U.S.C. § 2. Needless to say, I would also fully expect to be impeached if such conduct were true. Again, these were not petty allegations.

no such evidence, just scurrilous invective made in furtherance of his illicit ends.

In addition to giving a public airing to Mr. Spolter's claims, Magistrate Judge Rosenbaum was also directed to determine whether the recusal motions were made for an improper purpose and whether a reasonable attorney in Mr. Spolter's circumstances would find that his allegations were factually and legally justified. Id. To be clear, if Mr. Spolter had evidence of the chicanery he alleged then he could produce it at the hearing; however, if he did not have such evidence, then the public would be provided with the opportunity to confirm the fact that its judiciary is independent and honest.

The hearing proceeded, and during the proceeding it came out that Professor Radulovic's Report was based on a fundamentally false assumption: that the cases in this District are assigned on a pure blind, random basis, and not on a weighted or supervised, blind, random basis. Notably, this false premise was provided to Professor Radulovic by Mr. Spolter.[9] Most importantly, however, it was an assumption that Mr. Spolter knew to be false at the time he provided it to Professor Radulovic: Mr. Spolter received Mr.

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[9] See DE 205, p. 51 ("In conducting his study, Dr. Radulovic assumed at Mr. Spolter's direction that each active judge in the Southern District of Florida had an equal chance of being assigned any new case filed.") (emphasis added); Plaintiffs' Exhibit 4, p.1 ("When first retained by Mr [sic] Loring Spolter I worked under the assumption that Federal judges were assigned to cases by a random blind process . . .").

Larimore's letter detailing the case assignment system's preferences before he commissioned the Report.[10] See Clerk's Exhibit 9. At the hearing before Magistrate Judge Rosenbaum, Mr. Spolter had no other evidence to present in support of his Motions other than his expert's Report and Mr. Larimore's testimony, neither of which did anything to support Mr. Spolter's case. In fact, after hearing Mr. Larimore's testimony, Professor Radulovic disavowed the notion that his Report uncovered anything to support Mr. Spolter's allegations, stating: "As far as I understand the situation, random blind assignment is definitely not in place. It's clear. So my report was correct, it's not in place." DE 211, p. 121. Now, Professor Radulovic's Report was correct——to the extent that it stated the assignment of Mr. Spolter's cases to me between 2006-2009 was not the product of a pure blind, random case assignment system. But when considered in context, that is, that this District does not actually operate a pure blind, random case assignment system, the Report was rendered an utterly futile exercise.

The findings made by Professor Radulovic relied on the information provided by Mr. Spolter as being accurate: that this District operated on a pure blind, random case assignment system. Hence, his Report provided ostensible support to the mendacious

[10] See Clerk's Exhibit 9 (Letter to Mr. Spolter from Mr. Larimore dated March 6, 2009) and Plaintiffs' Exhibit 3 (Solicitation letter from Mr. Spolter dated March 11, 2009).

conclusion by Mr. Spolter that without some manipulation of the case assignment system, his cases could not have been assigned to me at the frequency that they were. A valid analysis, based in the truth, would reveal that there was nothing whatsoever amiss in the Court's case assignment system. So, Mr. Spolter had one prepared about what he would prefer the system to be: a pure blind, random assignment system. He did this knowing full well the truth that undergirds the system, being advised of such in Mr. Larimore's letter responding to his FOIA request. Clerk's Exhibit 9.

After losing the only "evidence" in support of his Motion, Mr. Spolter did the unexpected: he simply rested on his pleadings and continued to assert that a reasonable person fully informed of the facts would doubt my impartiality. DE 211, pp. 216-217. On June 24, 2009, after hearing the day's testimony, Magistrate Judge Rosenbaum announced from the bench that she found that no evidence existed to support Mr. Spolter's allegations. Id. pp. 213-15. She later memorialized this finding in her 92-page Report and Recommendation. Bettis, 646 F. Supp. 2d 1273; DE 205, p. 60. In the same Report, she also found that a "reasonably competent attorney" in like circumstances to Mr. Spolter could not believe that his filings were legally or factually justified and that his Motions were filed for an improper purpose. Id. pp. 71, 91.

After reviewing Mr. Spolter's Objections (DE 217) to the Report, the Court adopted Magistrate Judge Rosenbaum's findings, with additional comments of its own, Bettis, 646 F. Supp. 2d 1273,

all of which are incorporated herein by reference. The Court then issued a show-cause Order (DE 221) to Mr. Spolter concerning why sanctions should not be imposed against him.

II.

There are three bases for imposing sanctions against Mr. Spolter: Rule 11 of the Federal Rules of Civil Procedure, 28 U.S.C. § 1927, and the Court's inherent power. Under each source of authority, similar standards are used to determine if his conduct warrants the imposition of sanctions. When the Court uses more than one power to sanction an attorney or party, the Court is compelled to state precisely what power it is using when imposing which sanction; thus, a reviewing court may easily determine whether sanctions are "permissible under at least one of those sources of authority." Amlong & Amlong, P.A. v. Denny's, Inc., 500 F.3d 1230, 1238 (11th Cir. 2007).

A.

The initial basis for imposing sanctions on Mr. Spolter, and that which pertains to all of the pleadings the Court has deemed sanctionable, is Rule 11 of the Federal Rules of Civil Procedure. The Rule provides that

> sanctions are proper '(1) when a party files a pleading that has no reasonable factual basis; (2) when the party files a pleading that is based on a legal theory that has no reasonable chance of success and that cannot be advanced as a reasonable argument to change existing law;

> and (3) when the party files a pleading in bad faith for an improper purpose.'

Jones v. Int'l Riding Helmets, Ltd., 49 F.3d 692, 694 (11th Cir. 1995) (quoting Souran v. Travelers Ins. Co., 982 F.2d 1497, 1506 (11th Cir. 1993)). Rule 11 incorporates an objective standard. Kaplan v. DaimlerChrysler, A.G., 331 F.3d 1251, 1255 (11th Cir. 2003). In the Eleventh Circuit, the analysis is focused on whether "a reasonable attorney in like circumstances could believe that his actions were factually and legally justified." Id. (citing Riccard v. Prudential Ins. Co., 307 F.3d 1277, 1294 (11th Cir. 2002)). When assessing Rule 11 sanctions sua sponte and under the law of this Circuit, the Court is required to employ "a show-cause" order to provide "notice and an opportunity to be heard; and [] a higher standard ('akin to contempt') than in the case of party-initiated sanctions." Kaplan, 331 F.3d at 1255.[11]

B.

Section 1927 provides that any attorney who so multiplies the proceedings "in any case unreasonably and vexatiously may be required by the court to satisfy personally the excess costs, expenses, and attorneys' fees reasonably incurred because of such

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[11] In Kaplan the Eleventh Circuit adopted the akin-to-contempt standard, but it did not resolve the related issue of whether the Court would look to the sanctioned party's subjective mens rea. Kaplan, 331 F.3d at 1255 ("While we join those circuits in their 'akin-to-contempt' interpretation, three reasons excuse us from resolving the related 'mens rea' issue that split the Pennie panel."). There has been no further comment by the Eleventh Circuit on this point, but proceeding in an abundance of caution the Court will address both standards.

conduct." 28 U.S.C. § 1927. To impose sanctions under § 1927, the Court must find that "the attorney's conduct is so egregious that it is 'tantamount to bad faith.'" Amlong & Amlong, 500 F.3d at 1239 (quoting Avirgan v. Hull, 932 F.2d 1572, 1582 (11th Cir. 1991)). Indeed, the "attorney's conduct must be particularly egregious to warrant the imposition of sanctions—the attorney must knowingly or recklessly pursue a frivolous claim." Id. at 1242 (emphasis in original).

Bad faith is the ultimate finding that is required for imposing sanctions on an attorney under § 1927, and it does not turn on "the attorney's subjective intent, but on the attorney's objective conduct." Id. at 1239. The crux of the finding is, "whether, regardless of the attorney's subjective intentions, the conduct was unreasonable and vexatious when measured against an objective standard." Hudson v. Int'l Comp. Negotiations, Inc., 499 F.3d 1252, 1262 (11th Cir. 2007). This does not mean that the attorney's subjective intent is completely ignored; sometimes sanctionable conduct is cloaked in otherwise permissible filings that are intentionally vexatious in that particular case. Indeed, "the attorney's subjective state of mind is frequently an important piece of the calculus, because a given act is more likely to fall outside the bounds of acceptable conduct and therefore be 'unreasonabl[e] and vexatious[ ]' if it is done with a malicious purpose or intent." Id. (quoting Amlong & Amlong, 457 F.3d at 1192) (alterations in the original).

C.

The Court also possesses certain inherent powers to address the affairs before it, including the conduct of attorneys. These powers are seldom employed, but when they are, the Court uses both abundant caution and discretion "to fashion an appropriate sanction." Chambers v. NASCO, Inc., 501 U.S. 32, 44-45 (1991). Inherent powers are vested in the very nature and essence of the Court; without such power the Court would be unable to manage the expeditious disposition of its docket, enforce its orders, and guard the integrity of its proceedings. See id. at 45; see also Hutto v. Finney, 437 U.S. 678, 690 n.14 (1978).

Among the remedial measures the Court may employ to address abuses of the judicial process is the dismissal of a party's action. Id. at 45. In Chambers, the Supreme Court noted that if it is within the discretion of the district courts to impose the sanction of dismissing an action, then a less severe sanction is undoubtedly within a court's inherent power. Chambers, 501 U.S. at 45 (citing Roadway Express, Inc. v. Piper, 447 U.S. 752, 765 (1980)). The Supreme Court listed several distinct instances when sanctions are appropriate, namely, when a party has acted in bad faith. Id. at 45-46. Such conduct includes the instance of an attorney slandering or maligning the dignity and reputation of the court. Thomas v. Tenneco Packaging Co., Inc., 293 F.3d 1306, 1317-21 (11th Cir. 2002) (upholding sanctions against an attorney for attacking opposing counsel's character); see also id. at 1318 n.15

(citing the sanctioned attorney's attacks against the court).

In this Circuit, "a district court's authority to issue sanctions for attorney misconduct under § 1927 is either broader than or equally as broad as the district court's authority to issue a sanctions order under its inherent powers." Amlong & Amlong, 500 F.3d at 1239; see also Cordoba v. Dillard's, Inc., 419 F.3d 1169, 1178 n.6 (11th Cir. 2005). When imposing sanctions under § 1927 or the Court's inherent power, the finding that must be made is that the sanctioned party or attorney has acted in bad faith. Barnes v. Dalton, 158 F.3d 1212, 1214 (11th Cir. 1998) (noting "[t]he key to unlocking a court's inherent power is a finding of bad faith"). The Court has qualified whether sanctions under the Court's inherent power may be imposed if they are warranted under § 1927, because, as addressed below, some of the language in the Eleventh Circuit's caselaw suggests a higher burden for imposing sanctions under the Court's inherent power.

D.

The Court has given Mr. Spolter every opportunity to defend his allegations and to show cause why sanctions should not be imposed upon him for his bad-faith filings. An evidentiary hearing was held for him to give full air to his allegations and establish a licit purpose for his filings, and he had an opportunity to object to Magistrate Judge Rosenbaum's Report. It was only after Mr. Spolter failed to provide any defense for his filings at the

hearing, or in response to the Report, that the Court issued a show-cause Order notifying Mr. Spolter that he should respond to why sanctions should not be imposed against him under Rule 11, § 1927, and the Court's inherent power.

While Mr. Spolter did not accept responsibility for his filings or provide a legitimate defense for them, in his Objection to the Report, he did take issue with Magistrate Judge Rosenbaum making findings under a Rule 11 analysis. See DE 217. In a separate filing in Response to the Defendants' Motions for sanctions, he conceded that his behavior was sanctionable under § 1927. See DE 218. In response to the Court's show-cause Order, he also conceded that sanctions "may apply under each authority listed by the Court in its Order." DE 226, p. 2.

However, in his concession, Mr. Spolter continued to assert that he acted in subjective good faith. He stated:

> Having reviewed additional information obtained immediately before, during, and after the evidentiary hearings conducted by the Magistrate Judge, and, after having consulted with my own counsel, I do not contest that certain factual assertions made in the Motion for Reconsideration (DE 156), although made in subjective good faith based on the information then known, and, for the purpose of zealously representing Plaintiff, nonetheless can be viewed as not being objectively reasonable.

DE 226, pp. 1-2. In this Circuit, it is unclear whether sanctions may be imposed sua sponte under Rule 11 and the Court's inherent power for conduct that is not undertaken in subjective bad faith. A careful reading of the Eleventh Circuit's opinions in these areas

supports the understanding that sanctions may only be imposed under the Court's inherent power for conduct that is taken in subjective bad faith. See Kaplan, 331 F.3d at 1256 ("While we join those circuits in their 'akin-to-contempt' interpretation, three reasons excuse us from resolving the related 'mens rea' issue that split the *Pennie* panel."); see also Amlong & Amlong, 500 F.3d at 1242 (noting the "attorney's conduct must be particularly egregious to warrant the imposition of sanctions—the attorney must knowingly or recklessly pursue a frivolous claim.")(emphasis in original). Thus, the Court will proceed in an abundance of caution, with Mr. Spolter's concession in mind, and address for the benefit of any reviewing court whether Mr. Spolter's actions were in fact taken in subjective bad-faith.

Despite Mr. Spolter's concession that sanctions are warranted under Rule 11, § 1927, and the Court's inherent power, the Court is entering this Order for two purposes. First, the Order is being entered in the event Mr. Spolter later claims that the Court was not warranted in imposing sanctions under Rule 11 and its inherent power, because his actions were not taken in subjective bad faith. Second, it is for the benefit of any reviewing court to know precisely how the Court has exercised its discretion in fashioning the sanctions it is imposing on Mr. Spolter and his firm.

III.

In these collected cases there is no question that Mr. Spolter acted in bad faith, both objective and subjective, when he filed his Motions To Recuse. He filed these Motions knowing they had no basis in fact or law and he continued to defend them in the face of overwhelming evidence of their baselessness. See DE 205, pp. 60-71. He did this for an improper purpose: to defame and cast a cloud over the Federal judiciary in relentless pursuit of recusal. All of Mr. Spolter's conduct warrants sanctions under Rule 11, § 1927, and the Court's inherent power; however, before addressing these points in more detail, the Court pauses to address the procedural niceties of imposing sanctions against Mr. Spolter under Rule 11 and the Court's inherent power.

When Rule 11 sanctions are initiated by the Court, they are distinguished from attorney-initiated Rule 11 proceedings in two ways. The first is that the initiating court must employ a show cause order. The second is that a higher standard is employed, one "akin to contempt." Kaplan, 331 F.3d at 1255. The standard for reviewing Mr. Spolter's behavior is discussed at length below, but the Court is first obliged to address Mr. Spolter's objections concerning the Court's procedure in initiating sanctions proceedings against him.

In his original Objection (DE 217) to Magistrate Judge Rosenbaum's Report (DE 205), he stated that "Plaintiff objects to the Magistrate Judge conducting a *de facto* Rule 11 hearing because

the procedural prerequisites to such a hearing did not occur." DE 217, p. 3. He then discussed how the Court may "initiate a *sua sponte* Rule 11 proceeding only by issuing an order to show cause. Here, no order to show cause was issued." Id. (citations omitted).

Contrary to Mr. Spolter's position, nothing in the Eleventh Circuit caselaw states that a court may only initiate a Rule 11 proceeding by issuing an order to show cause. Rather, the Advisory Committee notes to Rule 11 and the Eleventh Circuit caselaw establish that the "initiating court must employ (1) a "show-cause" order to provide notice and an opportunity to be heard." Kaplan, 331 F.3d at 1255. Clearly, nothing prohibits "a proceeding" before a show-cause order; the caselaw and the text of Rule 11 itself merely prohibit the imposition of sanctions prior to a show-cause order. Here, the Court issued its show-cause Order only after the findings made by Magistrate Judge Rosenbaum had been adopted with some additional comments, fully informing Mr. Spolter for the basis upon which sanctions may be imposed.

There were several reasons the Court declined to combine the show-cause Order with the Order of referral and instead directed Magistrate Judge Rosenbaum to first make the underlying findings. First, nothing prescribes the precise procedure for the imposition of Rule 11 sanctions; all that is required is that a show-cause order issue, and that has been done in these cases. See DE 221. Second, Magistrate Judge Rosenbaum was not conducting a typical hearing: Mr. Spolter requested a hearing, after making truly

incredible allegations. I knew that there was no basis for the conjecture that I orchestrated a manipulation of the case assignment system, but if there were something inappropriate going on in the Clerk's Office, the hearing would provide a basis for discovering and giving air to that. To seek this sort of public airing and vindication, and at the same time tell Mr. Spolter to show cause why sanctions should not be imposed, would border dangerously on being insincere.[12]

Third, Magistrate Judge Rosenbaum was also in a unique position to conserve resources. With the public airing and the findings that she was directed to make, she was also equipped to determine Mr. Spolter's motivation for the Motions To Recuse and whether they were justified. This undergirds the third basis for referral: it provided a detached fact-finder. I wanted to give Mr. Spolter and his clients every opportunity to prove their case, and public confidence in the integrity of Magistrate Judge Rosenbaum's finding was paramount. Prudence dictated that I could not rule on my own role in the hearing, even though the law would allow it. See In re Evergreen Sec., Ltd., 570 F.3d 1257, 1274-75 (11th Cir. 2009).

Fourth, Mr. Spolter knew that he was to produce evidence at

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[12] The Court also notes that Mr. Spolter himself demanded this public hearing. DE 156-2, p. 8. He stated: "'[t]he suggestion that the case assignment process is being manipulated for motives other than the efficient administration of justice casts a very long shadow . . . . Such charges, to the extent they are being raised, must not remain unexamined and unanswered.'" Id. (quoting Cruz v. Abbate, 812 F.2d 571, 573-74 (9th Cir. 1987)).

the hearing concerning the factual and legal justification for his Motions and concerning his purpose in filing them. Nothing in the manner of his evidence or the substance of his testimony would change with a Rule 11 show-cause order versus the Order that issued directing him to present exactly the same evidence.

Fifth, before entering the instant Order, the Court has issued a show-cause Order (DE 221), it has held a hearing (DE 245), and it has allowed Mr. Spolter to submit separate documentation concerning his character (DE 246).[13] While the facts pertaining to Mr. Spolter's bad faith are established, he has had a hearing and two opportunities to object to them: first in the objections to Magistrate Judge Rosenbaum's Report and second in response to the Court's show-cause Order. The Court has denied Mr. Spolter a second hearing, because this matter has already taxed the Court's resources and an additional hearing is not necessary. See Baker v. Alderman, 158 F.3d 516, 526 (11th Cir. 1998) (noting that the Court is not required to hold a hearing before imposing sanctions).

Mr. Spolter has conceded that his filings violate Rule 11 and § 1927; his only objection to the Magistrate Judge's Report centered on the procedure the Court employed and not on the

[13] As to the 19 form affidavits submitted concerning Mr. Spolter's character, the Court notes that it has reviewed and considered them in fashioning the appropriate sanctions. See DE 263. The Court notes that each affiant was given the option to attach a personal letter addressed to the undersigned, though not one elected to do so. The Court also notes that the affidavits of James Saunders III and Michael Stein were each submitted in duplicate. Id.

ultimate factual findings of Magistrate Judge Rosenbaum. He has also withdrawn the Motions For Recusal as flawed. DE 216. But the fact that the offending Motions have been withdrawn is of no consequence to the fact that they were made in the first instance. See United States v. Ramirez, 162 F.R.D. 253, 255 (D. P.R. 1995) (issuing Rule 11 order to show cause one day before dismissing offending complaint), aff'd 81 F.3d 147 (1st Cir. 1996) (table). Reading Mr. Spolter's Motions To Withdraw, it is clear that his retraction and stance concerning their purpose are insincere and self-serving, and more than anything they serve to bolster the Court's finding that Mr. Spolter has proceeded in subjective bad faith. Had Mr. Spolter issued a sincere retraction, one that put forth in a mature and believable manner his fault in all of this, I would still have imposed sanctions under § 1927, but I would not have done so under Rule 11 or my inherent power. Again, there is no schadenfreude in employing either to sanction an attorney. In almost twenty-five years on the bench, I have never employed Rule 11 sua sponte to sanction an attorney. And even as this Order is being drafted, the Court is mindful of the economy and the toll that this will take on Mr. Spolter and his practice.

For the sake of clarity, the Court rejects Mr. Spolter's argument that the Court must initiate any proceeding related to Rule 11 sanctions with a show-cause order. Nothing in the Rule, the Advisory Notes, or caselaw suggests such a requirement.

Instead, the Court's choice to have Magistrate Judge Rosenbaum find certain facts pertaining to Mr. Spolter's Motions, allowing Mr. Spolter to object to those factual findings, and then giving him a second opportunity to address the specific issue of whether sanctions should issue, is perfectly sound and within the Court's discretion to control the proceedings before it.

IV.

Turning again to the substance of Mr. Spolter's filings, it is clear that all of Magistrate Judge Rosenbaum's findings support imposing sanctions under Rule 11, § 1927, and the Court's inherent power, and the Court incorporates them and the Court's additional comments by reference. For the sake of brevity, the Court will highlight the four facts that stand out most as warranting sanctions. While others are naturally folded into these specific findings, these four speak loudest of Mr. Spolter's subjective and objective bad faith and why it warrants the sanctions imposed. They are: his utter disregard for the holdings of this Court and the Court of Appeals; his mendacious filings; his attempt to create an appearance of impropriety to further his own illicit ends; and his scurrilous attacks upon the integrity of the judiciary, the Court system, and the Southern District of Florida.

A.

Mr. Spolter has thumbed his nose at the Federal judiciary in so many ways that it is hard to know just where to begin. Apart from the unbelievable tone and content of his Federal court filings, his inability to accept and abide by this Court's rulings and those of the Court of Appeals is a good place to start: it provides a clear example of his bad faith.

It is axiomatic that once a ruling has been made, unless the court revisits it, the issue has been decided for the rest of the suit. 18B Charles Allen Wright & Arthur R. Miller, Federal Practice And Procedure: § 4478 (2d ed. 2002 & West Supp. 2009). This is especially true of rulings by the United States Courts of Appeal. Absent word by the United States Supreme Court, the Courts of Appeal's rulings are final. In our system "the 'mandate rule' . . . binds a lower court on remand to the law of the case established on appeal." Id.

Mr. Spolter raised the issue of my faith, my law clerks' credentials, and my affiliation with the Federalist Society as a basis for my recusal to two separate panels of the Eleventh Circuit. After full review of the Records and Mr. Spolter's manifestos, both panels found that there was no reason for me to recuse, and Mandates were returned on that point. Bettis, 273 Fed. Appx. at 820; Sabatier, 301 Fed. Appx. at 915.

At the moment the Mandate is received and jurisdiction returns to the district court, the final word on the matter has been

issued. Pelletier v. Zweifel, 987 F.2d 716, 718 (11th Cir. 1993) (noting that the mandate rule "is derived from the law of the case doctrine . . . and simply means that 'a district court is not free to deviate from the appellate court's mandate'") (citation omitted) (quoting Barber v. Int'l Bhd. of Boilermakers, 841 F.2d 1067, 1070 (11th Cir. 1988) (quoting Wheeler v. City of Pleasant Grove, 746 F.2d 1437, 1440 n.2 (11th Cir. 1984))). It cannot be said enough: A point decided on appeal cannot be raised again—it is settled. "[B]oth the district court and the court of appeals are bound by findings of fact and conclusions of law made by the court of appeals in a prior appeal of the same case." United States v. Williams, 563 F.3d 1239, 1242 (11th Cir. 2009) (quoting United States v. Stinson, 97 F.3d 466, 469 (11th Cir. 1996)). There is nothing new about this. While Mr. Spolter may disagree with the Eleventh Circuit's holdings that there was no reason for me to recuse in Bettis and Sabatier, he is not free to ignore their findings and pursue the very same arguments again here.[14]

This seemingly endless litigation by Mr. Spolter concerning my faith, some of my law clerks' education, and my affiliation with the Federalist Society was done in utter disregard for the law of the case. In Bettis and Sabatier, Mr. Spolter's Motions (DE 155) proceeded with a foreclosed argument. He did not approach the

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[14] There are certain limited circumstances when a Mandate may be ignored, but none of them are present here. See Wright & Miller, supra § 4478.

Motion under some exception to the law of the case doctrine. Instead, he simply ignored the fact that this point was previously decided——twice——by the Court of Appeals. Even more outrageous, in Sabatier he proceeded with a Motion To Recuse when the case had been affirmed on appeal and the Mandate returned six months earlier; the decision in Sabatier was final. Mr. Spolter may believe that he can file a mendacious Report and start all over again. See Pacenti, *Lawyer Says*, supra (quoting Mr. Spolter as saying "This [Report] reopens everything in my opinion."). However, that is not how our system works. Wright & Miller, supra § 3:1013.

Mr. Spolter has taken issue with the assertion that he is re-litigating the issue of my faith and political affiliations. DE 218, p. 4. He makes two arguments against it. The first is that the Court of Appeals rejected his recusal arguments on different standards: the Bettis panel employed plain error review and Sabatier used an abuse of discretion standard. Id. pp. 3-5. While the distinctions are important for appellate matters, they have no bearing on whether or not the Parties and the Court are bound by the Circuit Court's holdings. Id.; Williams, 563 F.3d at 1242. The Court of Appeals could have omitted the standard of review altogether and it would not matter. All that matters is that the decision was affirmed and the mandate was returned. At that point, all discussion on the matter is over.

Mr. Spolter's second argument is disingenuous and betrayed by the record. He states:

> In his most recent motion, Counsel did not reassert the same grounds as an independent basis for recusal. Rather, he argued that under the totality of the circumstances standard of the recusal statute, recusal was warranted by the combination of the old and new grounds.

DE 218, p. 4. That is true in part: Mr. Spolter did not simply restate the fact that my faith and assumed political leanings provide grounds for recusal. No, he amplified that tired and foreclosed argument with a couple of baseless conspiracy theories and an expert's Report. The more recent Motions were clearly not limited to me being a simple robed zealot. Now I am also a criminal, willfully obstructing justice and abusing my office. Simply put, the fact that Mr. Spolter cloaked his argument that my faith and political affiliations are grounds for recusal in outlandish conspiracy theories does not change the fact that they were raised again. In actuality, my faith and political affiliations served as the fulcrum for every one of Mr. Spolter's allegations. They are the sine qua non of all of this.

To the extent that Mr. Spolter's filings raised issues previously decided, he has proceeded in an unreasonable manner. They have been filed in utter disregard for the Court of Appeals' rulings; they have been filed in bad faith; and they have had the effect of vexatiously multiplying these proceedings. See DeSisto College, Inc. v. Line, 888 F.2d 755, 766 (11th Cir. 1989)

(upholding sanctions against an attorney whose filings violated the law of the case).

B.

Mr. Spolter's disregard for this Court's and the Court of Appeals' decisions on whether my faith and political affiliations serve as a basis to recuse is alone enough to warrant the finding of bad faith and imposing sanctions against him. Id. But Mr. Spolter's filings go even further: not only did his Motions re-raise an issue that was already the law of the case, but they did so in conjunction with a scurrilous and mendacious argument. While it is no small thing to call a Federal judge a zealot, it is a much more significant allegation to claim in a court filing that the same judge is filled with such illicit prejudice in deciding even the most routine employment cases, that he would undermine the integrity of the judicial process of an entire district by diverting cases solely for the purpose of handing out adverse rulings. Yet Mr. Spolter made such a claim, and in doing so he certified that he had a reasonable, good-faith basis for making it. Fed. R. Civ. P. 11(b). In essence, the Motions To Recuse sought to litigate my alleged religious and political bias once more——only this time with the added sensationalism of my rigging the case assignment system to facilitate the exercise of such bias. With such additional, outlandish allegations, Mr. Spolter was assured a

second round of headlines.

As spelled out in Magistrate Judge Rosenbaum's Report, Mr. Spolter knew that the information he supplied his expert about the case assignment system was false. DE 205, p. 51. He fashioned this assumption for his expert knowing it would lead to a conclusion that would further his own ends. Thus, it would create an appearance of impropriety that would make it difficult for me not to recuse, something he has been known to do. Bettis, 273 Fed. Appx. at 820 ("[Plaintiff] is attempting to create an appearance of impropriety to further her request for recusal and reassignment."). He then trumpeted these false findings as the ultimate proof of wrongdoing on my part. DE 156. His expert's Report was his irrefutable proof that it was impossible, sans chicanery, for me to get as many of his cases as I had, and that I was, of course, the one responsible for any such wrongdoing. Mr. Spolter's conduct surrounding his statistical expert is a most extreme example of bad faith. See Greenberg v. Hilton Int'l Co., 870 F.2d 926, 938-39 (2d Cir. 1989), vacated on other grounds 875 F.2d 39 (2d Cir. 1989).

Here, as an Officer of the Court, Mr. Spolter had an expert's Report prepared to serve his own preconceived ends. A simple reading of Mr. Spolter's solicitation of his expert dated March 11, 2009, reveals his intentions:

> Issue we wish to have analyzed/calculated.
>
> There are 24 Federal Judges in South Florida. Once a lawsuit is filed, there is supposed to be a blind random

> assignment to one of the 24 Federal Judges. Our law firm seems to be assigned the same judge over an [sic] over. We have filed eight (8) federal lawsuits on behalf of employment law clients during and after 2006. We have been assigned one judge in five (5) of these cases. We don't believe that this has been a random occurrence.
>
> Four judges are on "senior status" and are given fewer new cases then [sic] the other judges. All non-senior judges are supposed to have an equal chance of being assigned to a new case. In the absence of a special arrangement what are the statistical odds that one specific judge would be assigned to 5 of the 8 new cases we assigned [sic] - on a true random basis?

Plaintiffs' Exhibit 3. Mr. Spolter's solicitation lays bare his purpose: he wanted someone with a credential beyond a graduate level statistics class to confirm for the world what he knew: it is impossible for me to get 62% of his cases.[15] If Mr. Spolter were a layman and all the information he had about the case assignment system was limited to a quick skim of Local Rule 3.4, this solicitation would be improper, but it might not rise to the level of subjective bad faith. S.D. Fla. L.R. 3.4

But, again, Mr. Spolter is an attorney and an Officer of the Court. And five days before he sent this solicitation for an expert, Mr. Larimore sent him a letter informing him that

> [p]rocedures concerning the random assignment of cases are set forth in the Internal Operating Procedure 2.00.00 - 2.17.00 of the United States District Court for the Southern District of Florida, ... The Clerk's Office, which administers those policies, has at no time received any directive to treat assignment of cases filed by you any differently than we would treat the random

[15] Arriving at the figure of 62%, I used Mr. Spolter's figure of five out of eight cases, notwithstanding that the real fraction is five out of fifteen cases. Clerk's Exhibit 3.

assignment of cases filed by any other attorneys.

Clerk's Office Exhibit 9. A review of the operating procedures cited in that letter makes clear that the case assignment system does not operate on a pure blind, random basis. See, e.g., Int. Op. Proc. 2.02.00 ("One Division" Rule); id. 2.03.00 (Calculation of Senior Judge Participation); id. 2.05.03 (Cases Excluded from Reassignment); id. 2.15.00 (Transfer of Refiled and Similar Actions and Procedures); id. 2.17.00 ("Assignment of Cases to Chief Judge"). As Magistrate Judge Rosenbaum's Report makes very clear, the assignment of cases in this District is, in fact, a very complicated procedure. Bettis, 646 F. Supp. 2d 1273. While the full breadth of its complexity may not be apparent from the Local Rules and the Internal Operating Procedures, it is clear that the cases are not assigned on a "true random basis." DE 205, p. 51. Also, Mr. Spolter's solicitation references the fact that the Judge in question has received five of his eight cases,[16] but Mr. Spolter's filings show that he has filed fifteen cases in that three-year period.[17] Again, Mr. Spolter provided his expert with another premise he knew to be false and then trumpeted the expert's Report as the truth.

i.

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[16] Plaintiffs' Exhibit 3.

[17] Clerk's Exhibit 3.

Now, Mr. Spolter has two arguments against finding that such conduct was taken in bad faith. The first is that he was not accusing me of those things, he was merely stating that a reasonable person could justifiably question whether I could be impartial. The Court is unpersuaded: little difference can be found between Mr. Spolter's statements and the law of defamation with statements of false light. Restatement (Second) of Torts § 652E. When imposing sanctions for meritless recusal motions, a party's attempt to distance himself from the motion by attributing the inference to the reasonable person has also been rejected. See In re Raspanti, 2008 WL 1743899, *1 (5th Cir. 2008) (rejecting the sanctioned attorney's argument that "he was not suggesting that a conspiracy existed, but instead that a reasonable person could justifiably question whether Judge Schiff could remain impartial under the circumstances").

ii.

His second argument is that he did not really mean to do it. Mr. Spolter has issued three variants of this apologia. The one that follows contains the most information, though the others are equally unconvincing. He states:

> Prior to filing the Motion for Reconsideration, Counsel engaged in a good faith search for the truth about the Court's case assignment system. He wrote to the Court to ask for information. He employed an expert who he believed was qualified to analyze the data. Counsel concedes that, after receiving a response letter from the

> Clerk, he should have investigated the Court's Internal Operating Procedures. This oversight was negligent. Because he lacked sufficient information to accurately and fully understand the case assignment system – partially from his own negligence and partially because this information is not publically available, Counsel mistakenly directed the expert to assume a pure blind random assignment system. Had counsel reviewed the Internal Operating Procedures, he would have known that the case assignment system was not a pure blind random system, although he still would not have known precisely how it deviated from such a system. This mistake was made in good faith. Counsel did not purposely mislead the expert to obtain a skewed or pre-determined result.

DE 218, pp. 3-4. Let us consider this statement for a moment. This is the first time that Mr. Spolter has made such a statement, at least in the Court file. Distilled to its essence, it is a very lawyerly mea culpa; it is the old "mistakes were made" apologia. But attorneys are held to a higher standard——at least with respect to their filings with the Court.

Mr. Spolter states that "[p]rior to filing the Motion for Reconsideration, [he] engaged in a good faith search for the truth about the Court's case assignment system. He wrote to the Court to ask for information." Id. Now that is not entirely true. What Mr. Spolter did was send a twenty-four paragraph Freedom of Information Act request to me, the Chief Judge, and the Clerk of the Court. As explained in detail in the Court's prior Order (DE 220), his request was mere judicial harassment. DE 220, p. 15. "Requests in that form belie an honest search for the truth and reflect the bad faith that motivated and permeated Mr. Spolter's Motions." Id. Mr. Spolter's initial search for the truth was not

done in good faith. And as explained more fully in the Court's prior Order (DE 220), if he had such concerns and presented them in a legitimate manner that evidenced his good-faith concern, I or the Chief Judge, would have seen to it that his concerns were assuaged. Unfortunately, rather than investigating the matter as a professional, Mr. Spolter decided to "pull[] the fire alarm." Pacenti, *Lawyer Says*, supra (quoting Mr. Spolter as saying "This is not a case involving a fishing expedition. I'm only pulling the fire alarm when I'm seeing the flame right in front of me.").

Next he argues: "Counsel concedes that, after receiving a response letter from the Clerk, he should have investigated the Court's Internal Operating Procedures. This oversight was negligent." DE 218, pp. 3-4. Ridiculous. Here, Mr. Spolter based his entire assumption that the case assignment system was blind random on his reading of a single sentence of Local Rule 3.4. When, in response to Mr. Spolter's FOIA inquiry he was provided with further clarification that the case assignment system is outlined in the Internal Operating Procedures, he says he ignored it. Why did he ignore it? He states: "partially from his own negligence and partially because this information is not publically available." Id. The Internal Operating Procedures are on the Court's publicly available website. In fact, despite the District's extremely user-friendly website, Mr. Larimore's letter went so far as to provide the web address and—to eliminate any

undue confusion——he told Mr. Spolter the heading under which they could be found. Clerk's Exhibit 9 ("Procedures concerning the random assignment of cases are set forth in the Internal Operating Procedures . . . , found at our website at www.flsd.uscourts.gov under the heading Rules."). Even if Mr. Spolter is to be believed, deliberate ignorance of the truth is not negligence: it is bad faith. Amlong & Amlong, P.A. v. Denny's, Inc., 500 F.3d 1230, 1239 (11th Cir. 2007) (noting an attorney must act knowingly or recklessly to warrant a finding of bad faith).

In the apologia, Mr. Spolter then carefully cast off the balance of the responsibility he shouldered in this, stating: "Had counsel reviewed the Internal Operating Procedures, he would have known that the case assignment system was not a pure blind random system, although he still would not have known precisely how it deviated from such a system. This mistake was made in good faith." DE 218, p. 4. Apparently Mr. Spolter would like to have it both ways: he should have read the Internal Operating Procedures, but even if he had he would not have known how it all worked, so his conjecture and allegations of criminal misconduct by myself, the Clerk's Office, and the Southern District of Florida were all done in good faith.

It does not matter whether Mr. Spolter knew how it all worked. Few people other than Kevin Kappes, the Chief Deputy Clerk of Administration for the District, and now possibly Magistrate Judge

Rosenbaum and her tireless staff, know precisely how the system works. All that matters is that Mr. Spolter had the information publicly available to him that the system was not as he suspected and he, at best, willfully ignored that information. Whether he was given the system's algorithms and logarithms is of no moment to whether he provided a fundamentally false assumption to his expert and represented the same as proof of my bias. This point is further rebutted by the fact that Mr. Spolter also laced his solicitation letter with inaccurate data concerning precisely how many of his cases I had been assigned.

iii.

Mr. Spolter commissioned a Report with false data in furtherance of his efforts to have me recuse. There can be no clearer example of an attorney filing a factually and legally unjustified motion than here: An attorney has had motions to recuse denied by the District Court and the Court of Appeals, making it the law of the case, and then he advances a new reason for recusal——wild allegations created out of whole cloth. What is more, he gives those mendacious accusations the imprimatur of a statistician and represents them to the Court and the world as the truth.

As Magistrate Judge Rosenbaum found, <u>no attorney, no reasonable person could believe that Mr. Spolter was justified in</u>

his behavior surrounding his statistical Report and his later representations of its truthfulness. DE 205, p. 71. This conduct in knowing disregard of the truth maligned the Court, threatened the public's trust in an honest judiciary, and vexatiously multiplied these proceedings. This surreptitious course of action was taken in both objective and subjective bad faith. Objectively, no attorney acting in good faith would have proceeded in this manner knowing what Mr. Spolter knew. Subjectively, Mr. Spolter did all of this in a calculated and malicious fashion. His public pursuit of these baseless allegations, running to the local tabloid, and the defamatory and accusatory tone that he takes in all of it fully informs the Court's finding that Mr. Spolter has acted in subjective bad faith,[18] which is akin to contempt of court. See Gompers v. Buck's Stove & Range, Co., 221 U.S. 418, 449 (1911) ("Th[e contempt power] 'has been uniformly held to be necessary to the protection of the court from insults and oppression while in the ordinary exercise of its duty . . . .") (quoting Bessette v. W.B. Conkey Co., 194 U.S. 324, 333 (1904)).

C.

Two things are clear in these cases: Mr. Spolter has conducted himself in bad faith and he wants me to recuse from his

[18] See In re Evergreen Sec. Ltd., 570 F.3d at 1274 ("[C]ontinually advancing 'groundless and patently frivilous' is 'tantamount to bad faith'") (citing Glass v. Pfeffer, 849 F.2d 1261, 1267 (10th Cir. 1988).

cases. There is no question that the two are connected. His Motions are not simply the raving words of a disgruntled attorney who is blowing off steam against a judge at the local watering hole or on his anonymous blog. No, Mr. Spolter's attacks came in an attempt to aid his clients to get a new judge who might presumably, though it is unlikely, not apply the Local Rules or the proper legal analysis to his clients' claims and allow them to proceed to trial. Mr. Spolter himself has repeatedly stated that his actions were born of zealous advocacy for his clients. DE 247, pp. 29-30 (Transcript of 8/20/2009 Sanctions Hearing); DE 226, pp. 1-2 ("I do not contest that certain factual assertions made in the Motion For Reconsideration (DE 156), although made in subjective good faith based on the information then known, and, for the purpose of zealously representing Plaintiff, nonetheless can be viewed as not being objectively reasonable.") (emphasis added); DE 218, p. 1 ("for the purpose of zealously representing Plaintiff"). In actuality, they were done in a calculated manner and came in the form of a scurrilous attack on the integrity of the judiciary.

i.

The first time the issue of recusal was raised by Mr. Spolter on the Bettis appeal, the Court of Appeals stated: "Bettis has established no bias——or even an appearance of bias. Moreover, a review of the record establishes that the court was even-handed in

resolving the motions before it." Bettis, 273 Fed. Appx. at 820. It also observed, quite tellingly, that "[Bettis] is attempting to create an appearance of impropriety to further her request for recusal and reassignment." Id.

Normally, a motion to recuse cites a Judge's extrajudicial comments or behavior or comments made in the course of a case as a basis for recusal. E.g., United States v. South Fla. Water Management Dist., 290 F. Supp. 2d 1356, 1359-60 (S.D. Fla. 2003). In this way it is easy to determine whether the comments indicate bias or suggest any impropriety. But in these cases Mr. Spolter has not cited a single statement attributed to me. Nothing I have said or done, whether out of court or in open court, would give rise to these attacks, and I have done nothing in his cases that would suggest bias—other than, of course, ruling against his clients. Rulings alone, however, are never a basis to seek recusal. Liteky v. United States, 510 U.S. 540, 555 (1994) (noting "judicial rulings alone almost never constitute a valid basis for a bias or partiality motion").

The Court's Orders have been clear. They are not cryptic or cursory, with Mr. Spolter's clients mysteriously always coming out on the losing side. Magistrate Judge Rosenbaum points out in her Report, the Eleventh Circuit noted in the Bettis opinion, and a review of the Record in each case reveals that the rulings in Mr. Spolter's cases have been even-handed. The rulings that have come

out against Mr. Spolter's clients have been accompanied with very thorough reasoning. Granted, the pages that an order spans do not establish whether it is a faithful and correct application of the governing law to the facts of the case, but what it does establish is that the Court's Orders were not arbitrary or capricious or done in some result-oriented fashion. In Sabatier, Gossard, and Bettis, the Orders on summary judgment were all in excess of thirty pages. And they would all be reviewed de novo by the Court of Appeals. Burke-Fowler v. Orange County, Fla., 447 F.3d 1319, 1322 (11th Cir. 2006) (noting in Title VII cases "[w]e review a district court's grant of summary judgment de novo."). If Mr. Spolter thought my Orders were result-oriented or wrong, the proper course is appeal, where a three-judge panel will review them. Liteky, 510 U.S. at 555. On appeal, the Eleventh Circuit affirmed the Court's ruling in Sabatier.

Beyond the fact that creating an appearance of impropriety is inappropriate, there is no reason to do so here. If Mr. Spolter takes such issue with the Court's rulings, he can and should take it up on appeal. Id. As every district court judge knows, the Eleventh Circuit is not afraid to reverse a court when summary judgment is improperly granted. But instead of trusting in the system, Mr. Spolter has used whatever contacts he has at a local tabloid to make this a public issue, one that is completely divorced from the facts and the law involved in these cases.

While it is tempting to dismiss Mr. Spolter's allegations as delusion and not deviance, the Court cannot. Mr. Spolter's filings are calculated; he has intentionally pursued these baseless claims as a means to his desired end: my recusal. He is simply playing a very costly and errant version of judge shopping. All of this sprung from his desire to have his cases transferred to another judge, before whom Mr. Spolter believes he has a greater chance at success for his clients. The method Mr. Spolter has chosen for this end is sanctionable, but it speaks even more to his calculated bad faith when it is looked at through the lens of "further[ing] his [calculated] request for recusal and reassignment." Bettis, 273 Fed. Appx. at 820. Quite clearly, the merits of my summary judgment orders should be raised and settled on appeal; a recusal motion is an improper means of arguing such a point. In re Evergreen Sec. Ltd., 570 F.3d at 1274 ("[A] recusal motion is an improper vehicle to dispute disagreeable rulings. It is a clear abuse of such a pleading."). And for this Mr. Spolter must be sanctioned.

ii.

In Magistrate Judge Rosenbaum's Report (DE 205) and in the Order (DE 220) adopting it, great time is spent addressing the public nature of Mr. Spolter's attacks. Both his filings and his tabloid interviews display his refusal to follow the proper

channels and to conduct himself as an Officer of the Court, with a modicum of prudence and respect. This behavior is also manifested in his disregard for the Court of Appeals and the law of the case and in his insistence to use motions for recusal as a means of gaining reconsideration.

Mr. Spolter's behavior was undertaken in bad faith, and it would be both improper and dangerous to leave it unsanctioned. The Local Rules make clear that such public statements regarding ongoing cases are prohibited when they are "reasonably likely to interfere with a fair trial of the action." S.D. Fla. L.R. 77.2.A.7.e. To indulge Mr. Spolter's conduct would not only reinforce this type of behavior, it would also be exceedingly dangerous, because it would mean that any attorney who had a fortuitous connection with a local tabloid would be able to force a court into recusing from a case when facts in the record alone would not warrant recusal. <u>You cannot force a judge to recuse by inventing reasons to do so.</u> <u>Cheney v. U.S. Dist. Court for Dist. of Columbia</u>, 541 U.S. 913 (2004) (Scalia, J.) (Mem.).

D.

Mr. Spolter's filings establish his utter disrespect for this Court and the Court of Appeals; they establish a blatant disregard for Rule 11 and the dictates of honesty and good faith that apply to court filings; they establish the calculating and illicit

choices that Mr. Spolter is willing to make to further his own ends; and they show contempt for the position of a Federal judge, the integrity of the judicial process and the Judges and staff of this District, as well as my individual person. All except the last cannot stand unredressed.

Mr. Spolter's first filing seeking my recusal was shocking. It was a 110-page dossier on myself, my former law clerks, and several very honorable appellate Judges, all of whom were open to the most vicious of attacks by Mr. Spolter on the basis of being Catholic. Insults are made every day. Cafeterias and coffee breaks are filled with speculation and rampant conjecture colored with insults touching on a judge's religious and political beliefs. While civility and good manners should provide their own check to such remarks, they often do not, and there is no redressing such private insults. But here, Mr. Spolter has taken his insults and wild allegations out of the backroom and placed them in court filings and a local tabloid. I saw fit to ignore Mr. Spolter's first round of insults; I believed, as I still do, that they speak more of him than they do of me.

But now, with the filings in the instant cases, Mr. Spolter has decided to repeat and multiply them. He has decided that my silence on the matter was a license for him to insult me and the judiciary with impunity. While I cannot convince Mr. Spolter of my lack of bias in his cases, I can and must ensure that he

understands that accusing a Federal judge of a crime, running to the press with baseless allegations that impugn the integrity of the judicial process, and filing pleadings with baseless personal attacks alleging that my Catholic faith provided a motivation for me to corrupt the judicial process are all impermissible.

"Judges are supposed to be men of fortitude, able to thrive in a hardy climate." In re Little, 404 U.S. 553, 555 (1972) (quoting Craig v. Harney 331 U.S. 367, 376 (1947). Indeed, "[t]rial courts . . . must be on guard against confusing offenses to their sensibilities with obstruction to the administration of justice." Brown v. United States, 356 U.S. 148, 153 (1958). Here, Mr. Spolter's comments on my faith and my law clerks' credentials are troubling, and they serve as a worthy reflection of his own character. United States v. Cooper, 675 F. Supp. 753, 756, 760 (D.R.I. 1987). If Mr. Spolter's comments were limited to these attacks, the imposition of sanctions would not be necessary—for both professionally and personally, that kind of behavior has natural consequences.

However, Mr. Spolter's most recent attack rises to an entirely different level. It aggressively calls into question the honesty and integrity of the judiciary and the judicial system. Mr. Spolter does not merely claim that my faith is foolish or that I am ardent in it, but that it would serve as the motivation for violating my oath and undermining the judicial process. This bold

accusation is now paired with an allegation that I actively engaged in criminal activity, in concert with the Clerk's Office staff, to achieve my sinister ends. Sanctions are warranted——they are necessary——when an attorney attacks the integrity of the Court in the fashion Mr. Spolter has so thoroughly done. Thomas, 293 F.3d at 1330.

Here, Mr. Spolter has accused me of conspiring with others in the Clerk's Office to disrupt our justice system and direct his cases to me. He has made this point numerous times in his pleadings and in the press. And by doing this, he has placed the reputation of the entire Court in disrepute. He has tainted, in the eyes of some, the integrity of this Court, of the fine personnel in the Clerk's Office, and to a certain extent the entire judiciary of this District. This harm has to be remedied. In re Evergreen Sec., Ltd., 570 F.3d at 1276 ("Conduct that is degrading and disrespectful to judges and fellow attorneys is neither zealous advocacy nor a legitimate trial tactic. Lying to a tribunal and making false accusations against judges and fellow attorneys can never be condoned.") (quoting Columbus Bar Assn. v. Vogel, 881 N.E.2d 1244, 1249 (Ohio 2008)).

V.

This entire ordeal has been unpleasant and extremely taxing: I have deliberated at length on the appropriate sanctions. And I

believe that the sanctions I am imposing are fair and that they remedy, in so far as remedy can be achieved, the harm Mr. Spolter has caused. They also address the most serious aspect of his behavior: his complete failure to conduct himself as an Officer of the Court and abide by the standards of professional conduct that are incumbent upon all attorneys, certainly all those who practice in Federal court. In re Snyder, 472 U.S. 634, 644 (1985). To this end, I believe that my sanctions are actually light, both measured and restrained; accomplishing what they need to without leaving Mr. Spolter bankrupt or out of business. In re Dyer, 322 F.3d 1178, 1193 (9th Cir. 2003); In re Evergreen Sec., Ltd., 570 F.3d at 1280.

A.

An attorney has two obligations: one to serve as an Officer of the Court and the other as an advocate for his client. As Justice Cardozo once observed:

> Membership 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. at 644 (quoting People ex rel. Karlin v. Culkin, 162 N.E. 487, 489 (1928)). Members of our ancient fellowship violate this trust when they engage in behavior that is unbecoming a member of the bar. And this standard is defined in

"the 'complex code of behavior' to which attorneys are subject." Id. (quoting In re Bithoney, 486 F.2d 319, 324 (1st Cir. 1973). As attorneys, we are held to behavior beyond that required by the Canons of the State Bars, though those Canons do inform the standards to which attorneys in Federal court are held. In re Finklestein, 901 F.2d 1560, 1564 (11th Cir. 1990).

Here, Mr. Spolter has directly impugned the qualifications and integrity of myself, the Clerk's Office, and the Southern District of Florida. Rule 4-8.2(a) of the Rules Regulating the Florida Bar states: "A lawyer shall not make a statement that the lawyer knows to be false or with reckless disregard as to its truth or falsity concerning the qualifications or integrity of a judge . . . ." Rule 4-8.2 of the Rules Regulating the Florida Bar. There is no question that Mr. Spolter's conduct has transgressed this Rule. The Florida Bar v. Nunes, 734 So. 2d 393, 395 (Fla. 1999) (suspending attorney for three years for conduct less egregious than Mr. Spolter's). Accordingly, the Court will forward this Order to the Florida Bar. See Bernal v. All American Inv. Realty, Inc., 479 F. Supp. 2d 1291, 1293 (S.D. Fla. 2007).

B.

There is no question that Mr. Spolter has vexatiously multiplied the proceedings in these cases. He has conceded as much in two separate filings. See DE Nos. 218 & 226. His seemingly

incorrigible conduct has wasted the time and money of all parties involved in these actions. In the case of my staff and me, as well as Magistrate Judge Rosenbaum and her staff, this waste will never be recovered. There are tools at the Court's disposal, though, to attempt to make whole the Defendants in these cases, as well as the United States Attorney's Office, all of whom employed the work of able counsel to address these matters. They must be compensated for their loss. Fed. R. Civ. P. 11(c)(4) (allowing the award of reasonable attorney's fees resulting from the violation), including the United States Attorney's Office. Doyle v. United States, 817 F.2d 1235, 1327-28 (5th Cir. 1987) (affirming the district court's award of fees to Assistant United States Attorneys); In re Yagman, 796 F.2d 1165, 1185 (9th Cir. 1986) (noting that recovery should include "those expenses and fees that were reasonably necessary to resist the offending action"). Therefore, to fully compensate the Defendants and the Clerk of the Court and the Office of the United States Attorney, the Court will award the Defendants and the Clerk of the Court their reasonable attorney's fees and costs spent litigating this matter. This recompense, however, does not begin to redress Mr. Spolter's behavior——it simply acts to makes the Defendants and the Clerk of the Court whole once more.

C.

The Court has the inherent power to impose reasonable and

appropriate sanctions upon counsel for violations of court orders and for behavior that sullies the dignity of the Court. See Chambers v. NASCO, 501 U.S. 32, 43-44 (1991); In re Walker, 532 F.3d 1304, 1310 (11th Cir. 2008); Eagle Hosp. Physicians, LLC v. SRG Consulting, Inc., 561 F.3d 1298, 1306 (11th Cir. Mar. 12, 2009) (quoting Chambers, 501 U.S. at 43). When the Court imposes such sanctions, it does so with great restraint and discretion, and they may be entered against an individual attorney or a party. In re Mroz, 65 F.3d 1567, 1575-76 (11th Cir. 1995); Kleiner v. First National Bank of Atlanta, 751 F.2d 1193, 1209-10 (11th Cir. 1985) (upholding a $50,000 fine imposed by a district court under its inherent power to sanction attorneys practicing before it). But these sanctions may only be levied when the Court finds that the offending attorney has acted in bad faith. In re Walker, 532 F.3d at 1309. And "[a] finding of bad faith is warranted where an attorney [or a client] knowingly or recklessly raises a frivolous argument, or argues a meritorious claim for the purpose of harassing an opponent. A party also demonstrates bad faith by delaying or disrupting the litigation or hampering enforcement of a court order." Byrne v. Nezhat, 261 F.3d 1075, 1121 (11th Cir. 2001) (quoting Barnes, 158 F.3d at 1214); In re Evergreen Sec., Ltd., 570 F.3d at 1274 ("'If particularly egregious, the pursuit of a claim without reasonable inquiry into the underlying facts can be the basis for a finding of bad faith.'")(quoting Barnes, 158 F.3d

at 1214).

Mr. Spolter has already conceded that reasonable attorney's fees should be imposed against him for his conduct. See DE 226. However, as stated above, the imposition of fees does not act to remedy the harm. The amount of the attorney's fees does not weigh heavily upon the Court's analysis regarding sanctions; their imposition is not a punishment. These fees were the progeny of Mr. Spolter's bad faith filings, the precise cost of the necessary response by opposing counsel he instigated. Therefore, beyond the imposition of reasonable attorney's fees, sanctions are warranted.

Regarding his ability to pay a reasoanble fine, Mr. Spolter has filed a Financial Affidavit (DE 249) on behalf of himself and his law firm; however, it is insufficient to fully inform the Court of their financial conditions. In his Affidavit, which purports to describe last year's finances, Mr. Spolter asserts that his law firm had gross revenues of $232,000. He summarily reports having taken home $18,000 in wages, paid a secretary a $30,000 salary and compensated two law students at a rate of $15.00 per hour. Id. Apart from wages, Mr. Spolter does not delineate the expenses of his law firm. Without a more complete itemization, the Court is left totally in the dark as to just how Mr. Spolter compensated his secretary at a rate which is nearly double that which he himself took home in wages last year. This uncertainty is only amplified by the personal monthly expenses Mr. Spolter reports, in addition

to those he fails to report.

The incomplete itemization of Mr. Spolter's personal monthly expenses is similarly of no help to the Court. His Affidavit leaves completely blank all components related to his average monthly income. His personal monthly expenses are delineated as follows: a $4,200 mortgage payment, $175.00 for utilities, $250.00 for home maintenance, and $300.00 for medical expenses. Id. As for food, clothing, transportation, property insurance, homeowner's insurance, life insurance, health insurance, motor vehicle insurance, and taxes, among other monthly expenses, Mr. Spolter leaves these costs blank, either claiming to have none or electing not to disclose them. Id. Additionally, the Court is left unaware whether any money is owed to Mr. Spolter or whether he owes any money to any person or entity. Not one tax return or other more complete submission regarding his financial condition, or that of his firm, has been submitted to the Court.

Thus, all the Court has in evaluating Mr. Spolter's ability to pay a reasonable fine is the inconsistent and incomplete Affidavit before it. The limited information provided therein includes the following: Mr. Spolter's condominium has an assessed value of over half a million dollars, he owns his vehicle outright, has nearly $5,000 a month in reported expenses, but an annual income of only $18,000. Id. It is unfortunate that Mr. Spolter has taken the opportunity afforded him to mitigate any monetary sanction and used

it to continue this very costly game of his. By submitting a cryptic Affidavit, he leaves the Court in a difficult position.

The burden rests squarely on Mr. Spolter and his law firm to show that they are unable to pay a reasonable fine. His bald assertion that he and his firm are unable to do so does not suffice. Upon only the incomplete and inconsistent information before it, the Court has no choice but to find that Mr. Spolter and his law firm have failed to satisfy the burden upon them. However, given the significant information he chose not to disclose in his Affidavit and the subsequent uncertainty that remains as to the true financial condition of Mr. Spolter and his law firm, the Court will impose only a nominal fine upon him: $2,500.00 for each of the four (4) cases in which he has filed his baseless motions in bad faith. But the Court finds that this is insufficient to deter Mr. Spolter from engaging in "similarly egregious behavior in the future." In re Evergreen Sec., Ltd., 570 F.3d at 1280 (holding suspension is warranted and appropriate where a monetary sanction alone is insufficient to deter an attorney who relentlessly pursued a recusal motion, even after an evidentiary hearing revealed no support for his contentions, from engaging in future such behavior).

D.

Courts have the inherent power to suspend or disbar lawyers. In re Snyder, 472 U.S. at 643 (citing Ex parte Garland, 71 U.S.

333, 378-79, (1867) and Ex parte Burr, 22 U.S. 529, 531 (1824)). This inherent power comes from the attorney's role as an officer of the Court, which has granted him admission into its practice. As noted more fully above, membership in the bar is a privilege burdened with conditions. Among them is the requirement that "members of the bar . . . conduct themselves in a manner compatible with the role of courts in the administration of justice." Id. at 644-45. That means the attorney must avoid conduct that is contrary to professional standards, that is inimical to the administration of justice, and demonstrates "an unfitness to discharge continuing obligations to clients or the courts." Id. at 645.

There are certainly many imaginable and litigated cases where reasonable parties can disagree on whether an attorney's conduct fell below the governing standards such that he should be suspended from the Federal bar for a time. In re Ruffalo, 390 U.S. 544, 556 (1968) (White, J., concurring) (noting disbarment should not take place if "responsible attorneys would differ in appraising the propriety of that conduct"); In re Snyder, 472 U.S. at 646 (overturning the Eighth Circuit's suspension of an attorney); In re Finkelstein, 901 F.2d 1560, 1565 (11th Cir. 1990) (overturning district court's suspension of an attorney noting "responsible attorneys may find no impropriety in [the attorney's] conduct."). This is not one of those cases.

Mr. Spolter has engaged in conduct that no right thinking individual, let alone an attorney, would think proper. He has litigated issues already determined on appeal. He has attacked the credibility and integrity of a Federal judge in numerous filings and two newspaper articles. He has publicly attacked the integrity of our judicial system, with only his own self-serving speculation and a mendacious expert's Report in support. There is no question that Mr. Spolter's behavior constitutes contumacious conduct. In re Snyder, 472 U.S. at 647. His behavior in all of these cases, both in isolated instances and taken as whole, is conduct unbecoming a member of the bar and warrants suspension from practice. That makes him presently unfit "'to practice law in the federal courts.'" In re Finkelstein, 901 F.2d at 1565 (quoting In re Snyder, 472 U.S. at 647).

The standards that Mr. Spolter is being held to are not vague or mysterious. There is nothing new to the idea that attorneys should not make derogatory and baseless filings that attack the integrity of the Federal judiciary. Cooper, 675 F. Supp. at 759-60; In re Evergreen Sec., Ltd., 570 F.3d at 1275-76. There is nothing new to the fact that filings must comport with Rule 11 and must certainly not be made for an improper purpose. Didie v. Howes, 988 F.2d 1097, 1104 (11th Cir. 1993). There is nothing new to the concept that issues previously decided on appeal are not to be re-litigated. Westbrook v. Zant, 743 F.2d 764, 768 (11th Cir.

1984). Here, Mr. Spolter had the added benefit and caveat of an appellate opinion stating that he was attempting to create an appearance of impropriety where none existed. There is no question that Mr. Spolter was on notice that his behavior fell well below the standards of conduct that are demanded from members of the bar. In re Ruffalo, 390 U.S. at 554 ("A relevant inquiry in appraising a decision to disbar is whether the attorney stricken from the rolls can be deemed to have been on notice that the courts would condemn the conduct for which he was removed."). Indeed, Mr. Spolter has himself stated in the Record that his conduct was objectively unreasonable. See DE 226, p. 2.

Mr. Spolter has also had many opportunities to give notice as to why such sanctions should not apply. As discussed above, in addition to a show-cause Order, the Court also issued a second Order setting a hearing and alerting Mr. Spolter to the fact that the sanction of possible disbarment from the Southern District of Florida would be considered. The Court held a hearing where Mr. Spolter was free to establish why such sanctions should not be imposed. The Court was unpersuaded by his reasons.

There are many cases where attorneys have engaged in conduct that is arguably less egregious than that of Mr. Spolter and received a five year suspension from the bar. In re Evergreen Sec., Ltd., 570 F.3d at 1280 (affirming five year suspension); In re Moncier, 550 F. Supp. 2d 768, 811 (E.D. Tenn. 2008) (suspending

attorney from practice for five years). Again, I don't want to drive Mr. Spolter out of business, but he is currently unfit to practice in Federal court. In re Snyder, 472 U.S. at 647 (noting the finding that the attorney is "not presently fit to practice law in federal courts").

My primary goal through all of this has been to restore the confidence of the public in an honest judiciary. There was an evidentiary hearing where the public was given the opportunity to hear the evidence that Mr. Spolter had. Now that this evidence has been established as a sham and Mr. Spolter himself has conceded that there was no basis to his allegations, the same public that was exposed to his statements in the tabloid should benefit from his retraction. With that in mind I gave Mr. Spolter an option: I told him that I was considering suspending him from practice in the district for five years, but that I would greatly reduce the suspension if he took out an ad in the tabloid making a public retraction of his accusations. DE 247, p. 56. He did not elect the option of making a public statement.

I want to avoid both belaboring the reasoning for this finding and villainizing Mr. Spolter, but the fact remains that he is not fit to practice in the Federal bar. He has not conducted himself "in a manner compatible with the role of courts in the administration of justice." In re Snyder, 472 U.S. at 644-45. And he cannot be trusted to do so in the future.

At the hearing held on this issue Mr. Spolter's attorney proposed that rather than suspending Mr. Spolter, the Court force him to take on a partner and undergo some mentoring. His attorney, who is a fine and respected attorney in this District, stated:

> But he needs some – what shout [sic] out to me as I reviewed this case was a couple of things, one of which is that Mr. Spolter needs some mentoring. He needs someone to work with him. He obviously had some issues complying with the Local Rules of the Court both on Summary Judgment and on the timing of discovery and some other things that – that had he been in a partnership practice with a more experienced lawyer, had he had more of a support network, more of a mentorship network, shouldn't have and wouldn't have happened.

DE 247, pp. 12-13. This was a fair suggestion by Mr. Spolter's attorney, and one raised again in Mr. Spolter's Memorandum Regarding Sanctions (DE 262). But the Court remains unconvinced that this goes far enough for three reasons.

First, Mr. Spolter's conduct was a bit more than simply falling short of compliance with the Federal and Local Rules, although that happened on many occasions in each of Sabatier, Bettis, Gossard, and Paul. Mr. Spolter was both incompetent in his representation of his clients and acted in bad faith in his prosecution of their claims, in as far as it related to his recusal motions.

Second, Mr. Spolter is not some greenhorn out of law school who did not realize what he was doing both in his filings and addressing the Court. In such a case, if the attorney were truly contrite, then there would be a very remedial sanction. But that

is not the case here. Mr. Spolter is a seasoned veteran. He has been practicing law for over 19 years,[19] and he has been a member of the Federal bar for 16 years.[20] He is no rookie. Mr. Spolter has had plenty of time to learn the Federal Rules of Civil Procedure (i.e., Rule 11), to learn how lawyers are to conduct themselves in both Federal and State court, to learn the Rules Regulating the Florida Bar and all the rules of the United States District Court for the Southern District of Florida. The time for mentoring has long past. While it may behoove Mr. Spolter to have such guidance in his practice in State court, implementing the buddy system would be an insufficient measure at this point in Mr. Spolter's career for him to retain his admission to Federal court.

Third, after observing Mr. Spolter's behavior at the hearing it is evident that no attorney can act as an adequate governor to him. Mr. Spolter hired Bruce Reinhart, Esq., who is by all accounts a very fine and experienced attorney; he has appeared before me on countless occasions and has always impressed me with his abilities. Notably, after Mr. Reinhart was retained, the tenor of Mr. Spolter's filings changed. They lacked the vitriolic conjecture that traditionally hallmarked Mr. Spolter's pleadings. This signaled to the Court that Mr. Spolter had finally found

[19] Mr. Spolter was admitted to the Florida Bar on September 26, 1990. DE 257.

[20] Mr. Spolter was admitted to practice law in the United States District Court for the Southern District of Florida on October 28, 1993. DE 260.

someone he would listen to and who talked some sense into him.

But at the hearing, it became painfully clear that Mr. Spolter would not listen to his attorney. On several occasions, while Mr. Reinhart was calmly presenting his case to the Court, Mr. Spolter interjected himself. Id. pp. 25-31 (Mr. Spolter's first interruption); id. pp. 33-35 (Mr. Spolter's second interruption). What the dry transcript fails to reflect is the awkwardness of these interruptions. They were rants that vacillated between a defense of his expert's Report, saying the system broke down and he still cannot figure out how I received some of his cases, to how all of his clients are Catholic and he does all he can to help the local Catholic law school. Id. It was a revealing part of the proceedings, and what it established is that if Mr. Spolter can have an attorney as good as Mr. Reinhart standing next to him in a proceeding as important as the hearing that was held on whether to suspend Mr. Spolter, and he still cannot be controlled, any such governor I tried to place on him would be futile. Therefore, I have decided that, for the reasons expressed, no lesser sanction than full suspension from the practice of law in this District is adequate to redress Mr. Spolter's conduct. The Court will suspend Mr. Spolter from practice in the United States District Court for the Southern District of Florida for a period of 42 months.

Additionally, it is clear to the undersigned that a significant part of Mr. Spolter's practice is in State court.

While the Court's attempt to ascertain the exact proportion of Mr. Spolter's State versus Federal court practice was not altogether successful,[21] what is clear, and what the record reflects, is that he has filed just fifteen cases in three years in Federal court. Clerk's Exhibit 3. This is not indicative of a significant Federal practice. The Court also notes that Mr. Spolter is a member of the State Bar Associations of New York and Connecticut. See DE 257. In addition, he is admitted to practice in both the Middle District of Florida and the Northern District of Florida. See DE 260. Thus, this suspension from practice in the Southern District of Florida will have little impact on Spolter's ability to support himself.

The Court also notes that at the hearing before the undersigned, Mr. Reinhart expressed that he "considered having some sort of psychological examination of Mr. Spolter to establish for the Court that he is . . . sane in his thinking." Id. p. 53. While confirmation of Mr. Spolter's sanity may be helpful prior to his readmission to this District, the Court declines to reach that issue at this time.

VI.

For the benefit of any reviewing Court, I will set out the precise authority employed for each sanction imposed.

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[21] See DE 247 pp. 6-8.

The Court is referring Mr. Spolter to the Florida Bar under its inherent power. Bernal, 479 F. Supp. 2d at 1293.

The Court is imposing attorney's fees against him and his firm for the fees and costs of the Defendants, the Clerk of the Court, and the Assistant United States Attorneys for having to respond to Mr. Spolter's filings. The fees and costs in this matter are assessed under § 1927, Rule 11, and the Court's inherent power. Fed. R. Civ. P. 11(c)(4). The fees and costs for this amount to $99,124.40.

The Court is imposing a nominal fine of $2,500.00 against Mr. Spolter and his firm for each of these cases, for a total fine of $10,000.00. That fine is made under Rule 11 and the Court's inherent power. Kleiner, 751 F.2d at 1209-10.

The Court is suspending Mr. Spolter from practice in the United States District Court for the Southern District of Florida for a period of 42 months. This suspension is made under the Court's inherent power alone. In re Evergreen Sec., Ltd., 570 F.3d at 1280.

Conclusion

Much has been made of Mr. Spolter's withdrawal of the offending Motions and loose language regarding responsibility is splattered in his more recent filings. What is altogether absent in this entire matter, however, is any meaningful accountability on

Mr. Spolter's part. At the end of the day, Mr. Spolter stands by his persistent claim that all of his conduct flowed from his zealous representation of his clients, or that he was somehow at a disadvantage because he did not have another lawyer screening the content of his pleadings. However, neither is an excuse for his wanton violation of Rule 11 and § 1927.

Mr. Spolter commissioned a Report to further his own illegitimate ends, to achieve a recusal he had been obsessed with securing for years. In doing so, Mr. Spolter has acted in bad faith and intentionally abused the judicial process by creating circumstances to further his illicit purpose of judge shopping. Despite his varied attempts, Mr. Spolter is not free to dictate through bad faith filings laced with baseless accusations of criminal conduct——or by any other impermissible means——the judge to whom his cases are assigned. If he takes issue with the Court's rulings, he should convince his clients that they ought to appeal. That is the correct and permissible course.

Meritless motions to recuse accompanied by public attacks of the scope and nature made here are wholly improper. By his bad faith filings and unreasonable behavior, Mr. Spolter has vexatiously multiplied the proceedings in each of the above-styled causes. To redress this conduct, sanctions are imposed upon him and his firm. Hopefully this is the last we hear about, and no more time is wasted addressing, these outrageous accusations.

Accordingly, after due consideration, it is

ORDERED AND ADJUDGED as follows:

1. Defendant Toys "R" Us's Motion For Sanctions Against Plaintiff's Counsel (Case No. 06-80334-CIV-ZLOCH, DE 200), Defendant Suntrust Bank's Motion For Rule 11 And/Or 28 U.S.C. Section 1927 Sanctions (Case No. 06-20418-CIV-ZLOCH, DE 122), and Defendant JP Morgan Chase & Co.'s Motion For Sanctions Against Plaintiff's Counsel (Case No. 08-60565-CIV-ZLOCH, DE 102) be and the same are hereby **GRANTED**;

2. Defendant Toys "R" Us does have and recover from Loring N. Spolter, individually and Loring N. Spolter, P.A. attorney's fees and costs in the amount of $49,223.00 for all of which let execution issue forthwith;

3. Defendant Suntrust Bank does have and recover from Loring N. Spolter, individually and Loring N. Spolter, P.A. attorney's fees and costs in the amount of $12,757.50 for all of which let execution issue forthwith;

4. JP Morgan Chase does have and recover from Loring N. Spolter, individually and Loring N. Spolter, P.A. attorney's fees and costs in the amount in the amount of $24,571.95 for all of which let execution issue forthwith;

5. The Office of the Clerk of the Court for the Southern District of Florida does have and recover from Loring N. Spolter, individually and Loring N. Spolter, P.A. attorney's fees and costs

in the amount of $12,738.61 for all of which let execution issue forthwith;

6. By noon on Monday, February 1, 2010, Mr. Spolter is directed to pay to the Clerk of the Court a fine of $10,000.00;

7. The Clerk of the Court is **DIRECTED** to forward a copy of this Order to the Florida Bar Office of Lawyer Regulation and Professional Responsibility; and

8. Loring N. Spolter is hereby **SUSPENDED** from practice in the United States District Court for the Southern District of Florida for a period of 42 months. This suspension is effective February 1, 2010.

DONE AND ORDERED in Chambers at Fort Lauderdale, Broward County, Florida, this 30th day of December, 2009.

WILLIAM J. ZLOCH
United States District Judge

Copies furnished:

Steven M. Larimore, Esq.
Court Administrator • Clerk of Court

All Counsel of Record in the above-styled causes

Florida Bar Office of Lawyer Regulation and Professional Responsibility