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IN RE: NICKOLA CUNHA FEB 15 2022 JUDICIAL DISTRICT OF MIDDLESEX

:

Judicial District of Middlesex
State of Connecticut

at MIDDLETOWN

FEBRUARY 15, 2022

**WRIT OF ERROR ON BEHALF OF NICKOLA CUNHA**

1. This is a writ of error filed pursuant to Practice Book Section 72-1, et seq., and directed toward an order of the trial court, Moukawser, J., disbarring the petitioner, Nickola Cunha. The writ asserts, among other claims, that Ms. Cunha was disciplined in violation of settled judicial rules and precedent; her prosecution and disbarment reflect a growing, and disturbing, trend among trial court judges in dispensing summary judgment against aggressive lawyers, a tendency that cannot help but undermine the adversarial system and create a more limpid inquisitorial regime.
2. Ms. Cunha was admitted to the bar of the Superior Court for the State of Connecticut in 1999. She is a graduate of the Quinnipiac School of Law.
3. Ms. Cunha was disbarred by order of the Court via a memorandum of decision on January 25, 2022, in a case bearing the caption and docket number: *Christopher Ambrose v. Karen Ambrose*, FBT-FA-19-6088163-s, a case originating in the Judicial District of Fairfield and thereafter transferred to the Regional Family Trial Docket in Middletown, hereinafter the "Middletown matter." The trial court then appointed a trustee to wind up Ms. Cunha's practice, including seizure of any funds she held in trust, the gathering of the



108.00MK

files pertaining to Ms. Cunha's representation of parties, and such other matters incident to disbarment.

4. For many years, Ms. Cunha has represented litigants in highly contested matters, including personal injury plaintiffs and parties in high-conflict divorces.

5. Consistent with her duties of loyalty to her client and zealous advocacy, Ms. Cunha developed a reputation as a contentious and sometimes troublesome advocate. This reputation was shared among judges and was well known within the legal community. Clients came to her because they knew she would not back down in asserting their claims that could be supported by collateral evidence.

6. In the course of her representation of Ms. Ambrose, Ms. Cunha filed an application for an injunction in the Judicial District of Hartford, *Karen Riordan, a.k.a. Karen Ambrose, et al., v. Ned Lamont*, et al, Docket No. HHD cv21-6146061, on August 23, 2021. On October 20, 2021, Judge Adelman openly expressed his frustration with the filing of the injunction, entering orders absent evidence akin to a restraining order, and canceled trial and related proceedings in the Middletown matter. Judge Adelman issued additional related orders on October 21, 2021.

7. On November 9, 2021, Judge Adelman held a status conference to set future trial dates. During this remote status conference, Judge Adelman stated that he had never been subject to the sort of complaints raised by Ms. Cunha and her client. Ms. Cunha responded that she was aware of similar prior

complaints, including a complaint raised before the Legislature's Judiciary Committee on the occasion of Judge Adelman's retention hearing. Judge Adelman *sua sponte* referred the case to Judge Moukawsher to hold a hearing on potential recusal.

8. Judge Moukawsher held a hearing and refused to hear argument on recusal based on Judge Adelman's referral alone. Ms. Cunha filed a motion to disqualify Judge Adelman on November 24, 2021.
9. Ms. Cunha raised claims that Judge Adelman showed bias in favor of Jewish litigants and trial participants and the disabled, and that he had abandoned his role as a neutral and detached magistrate in cases involving allegations of pedophilia.
10. The issue referred to Judge Moukawsher was not in the form of a grievance alleging that Ms. Cunha had engaged in misconduct before Judge Adelman.
11. In fact, there was no case or controversy pending before Judge Moukawsher when Ms. Cunha was ordered to appear before him: the matter proceeded by way of a sua sponte inquisition.
12. When Ms. Cunha appeared before Judge Moukawsher, the judge noted that there was nothing pending before him. Aware that the matter had been referred to him by Judge Adelman due to claims of judicial misconduct made before Judge Adelman in the Middletown Matter, Judge Moukawsher asked Ms. Cunha if she wanted to file a motion to disqualify Judge Adelman. Ms. Cunha responded affirmatively, and filed such a motion.

13. On December 10, 2021, Judge Moukawsher entered an order and finding of facts. Judge Moukawsher then proceeded to hold a hearing involving the motion to disqualify Judge Adelman.

14. In the course of that hearing, Judge Moukawsher made findings of factrelating to Ms. Cunha's oral argument and the evidence presented during the divorce trial. This evidence included material emailed to the Court on December 1, 2021, consisting of reference to five other cases involving Judge Adelman and a transcript of Judge Adelman's reappointment hearing.

15. A hearing was set for January 10, 2022, to which Judge Moukawsher invited a representative of the Chief Disciplinary Counsel's Office to appear. Judge Moukawsher suggested Ms. Cunha appear with counsel as the court was considering sanctions due to the Court's finding that Ms. Cunha failed to provide evidence in support of her claims against Judge Adelman. Ms. Cunha was apparently unable to substantiate her claims of Judge Adelman's bias in favor of Jewish litigants and trial participants to the satisfaction of Judge Moukawsher.

16. The claims of Semitic favoritism bore an uncanny similarity to claims routinely raised by a certain blog that routinely publishes hostile commentary about the Connecticut family courts, to wit: Family Court Circus. This blog is well known to members of the Connecticut judiciary, and it refers to particular judges using inflammatory racial and ethnic characterizations, even referring to the judges of the family courts as the "Jewdiciary." As obnoxious and distasteful

as the blog contents may be, the speech asserted there is protected speech under the First Amendment to the United States Constitution.

17. Judge Moukawsher appears not to have considered Ms. Cunha's claim that Judge Adelman favored abusive males, to wit: pedophiles. Ms. Cunha's client believes that her husband is a pedophile, and that belief is central to the litigation in the Middletown matter.

18. Judge Moukawsher found that Ms. Cunha's claims were unfounded, going so far as to disclose, in a written opinion, matters otherwise privileged involving an investigation of allegations involving the children in the Middletown matter.

19. Ms. Cunha challenged the Court's conclusions and findings in open court in a highly aggressive, outspoken, and even disrespectful manner.

20. The Court concluded that Ms. Cunha violated seven rules of the Rules of Professional Conduct, to wit:

    i. Rule 3.1, forbidding making "meritless claims" in court;

    ii. Rule 3.2, requiring lawyers to expedite, rather than delay, cases;

    iii. Rule 3.3, prohibiting lawyers from knowingly making false claims in court;

    iv. Rule 3.5, requiring decorum and barring lawyers from disrupting proceedings;

    v. Rule 8.2, prohibiting lawyers from recklessly impugning a judge's integrity;

vi. Rule 8.4(3), prohibiting lawyers from engaging in dishonesty and deceit;

vii. Rule 8.4(4), prohibiting lawyers from hindering the administration of justice.

21. Although given the opportunity to appear with counsel before Judge Moukawsher, Ms. Cunha elected to appear pro se.

22. At the time Ms. Cunha appeared before Judge Moukawsher, she was suffering from a then-undiagnosed medical condition that materially hampered her ability to participate in the proceedings.

23. Judge Moukaswher evoked the authority of the Court under Practice Book Section 2-45 to conduct the hearings involving Ms. Cunha.

24. After issuance of the order dated January 25, 2022, Judge Moukawsher ordered the clerk of the Middlesex Judicial District opened a civil case, *In re: Nickola Cunha*, MMX-CV22-5014533-S, to handle the closing of Ms. Cunha's law practice.

25. On February 8, 2022, the Court issued a final judgment in this case.

**DENIAL OF DUE PROCESS OF LAW**

26. Paragraphs one through 25 are incorporated herein.

27. Ms. Cunha enjoyed a property interest in hew law license.

28. Judge Moukawsher deprived her of her property interest in a proceeding over which he had no jurisdiction or authority.

29. When it became apparent that no case or controversy had been referred to him, the matter should have ended.

30. Instead, Judge Moukawsher invited Ms. Cunha to file a motion to disqualify Judge Adelman.

31. When Ms. Cunha made such a motion, the matter should have been referred to Judge Adelman.

32. The question of whether Judge Adelman demonstrated bias or other judicial misconduct arose in the context of a hearing taking place before Judge Adelman.

33. Under Practice Book Section 2-45, Judge Adelman, and Judge Adelman alone, had the jurisdiction to decide the disqualification issue.

34. Judge Moukawsher invented, sua sponte, and without the request of either party, an inquisitorial proceeding not contemplated by either the Practice Book or existing law.

35. Upon information and belief, Judge Moukawsher was aware of, and was troubled by, the allegations made by the Family Circus Blog against fellow judges individually, the judicial branch in general, and, potentially himself

36. Judge Moukawsher's impartiality could reasonably be challenged based on this bias.

37. In order to assure that lawyers standing under the threat of potential discipline receive fair process, the Practice Book created a statewide grievance system with independent fact finders.

38. Judge Moukaswher's unprecedented creation of a sua sponte inquisitorial proceeding deprived Ms. Cunha of due process of law and the consequent loss of her law license.

## THE PUNISHMENT WAS DISPROPORTIONATE TO THE OFFENSE

39. Paragraphs one through 38 are incorporated herein.

40. Ms. Cunha's advocacy was unusually aggressive as she presented claims her client insisted she present in open court.

41. At worst, Ms. Cunha failed to perceive a conflict between her duty of zealous advocacy and her other duties as an officer of the court.

42. Assuming that Ms. Cunha erred and violated Rules of Professional Conduct, she did so neither for purposes of personal gain nor to serve her own interests.

43. High-conflict family law cases are often typified by inflammatory claims as the parties cope with the trauma of potential loss of their children.

44. Disbarment for a lawyer aggressively advocating claims on behalf of a client in a high-conflict family law proceeding is disproportionate and excessive.

45. The trial court made no inquiry as to any underlying medical issues that may have affected Ms. Cunha at the time of the hearing.

46. Judge Moukawsher's disciplinary remedy was fueled in substantial part by his personal animus against and distaste over the Family Circus Blog, which he associated with Ms. Cunha's attack on Judge Adelman's perceived bias in favor of Jewish litigants and trial participants.

## DISBARMENT IN THIS CASE PUNISHES THE PLAINTIFF FOR AGGRESSIVE ADVOCACY

47. Paragraphs one through 46 are incorporated herein.

48. Judge Moukawsher's decision to punish Ms. Cunha for aggressively litigating her client's claims punishes Ms. Cunha for fulfilling her duties of loyalty to her client and zealous advocacy.

## THE COURT DISCIPLINED IN THE ABSENCE OF CLEAR AND CONVINCING EVIDENCE AND/OR RELIED UPON CLEARLY ERRONEOUS FINDINGS OF FACT

49. Paragraphs one through 48 are incorporated herein.

50. The trial court referred to facts outside the record of the proceedings in imposing discipline, to wit: conclusions regarding the pending Middletown matter that were not before the Court at the time of the instant disciplinary proceedings; findings of fact regarding delay of the proceedings; and, factual conclusions about the nature of the evidence presented in the Middletown matter.

51. The trial court made clearly erroneous factual findings in support of its disciplinary decision,

52. The trial court's decision to discipline Ms. Cunha for seven violations of the Rules of Professional Conduct was not supported by clear and convincing evidence as to each claim.

WHEREFORE, the petitioner petitions for a writ of error and claims relief as follows:

A. An order vacating the judgment and setting aside the disbarment of Ms. Cunha;

B. An order vacating all ancillary orders incident to the disbarment, including, but not limited to, the disgorgement of funds and the turning over of client files to a trustee;

C. A remand to Judge Moukawsher for the purpose of supervision of the return of files and disgorged funds from the court appointed trustee to Ms. Cunha;

D. An order returning the Middletown Matter to Judge Adelman for further proceedings.

THE PETITIONER
By: /s/ Norman A. Pattis /s/
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## CERTIFICATION OF SERVICE

This is to certify that the Petitioner has begun the process of serving the above captioned petition by normal service of process procedures pursuant to Practice Book § 72-3(b) on the above date to:

Judge Thomas Moukawsher
Connecticut Superior Court
1 Court Street, Middletown, CT 06457

Judge Gerald Adelman
Connecticut Superior Court
1 Court Street, Middletown, CT 06457

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Law Offices of Edward Nusbaum
c/o Lynch, Trembicki, & Boynton
63 Cherry Street
Milford, CT 06460

/s/ Norman A. Pattis /s/

RETURN DATE:

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| MMX-CV-22-5014533-S | : | SUPERIOR COURT |
| IN RE: NICKOLA CUNHA | : | JUDICIAL DISTRICT OF MIDDLESEX |
| | : | at MIDDLETOWN |
| | : | FEBRUARY 15, 2022 |

**PRESENTATION OF WRIT OF ERROR FOR SIGNATURE**

Pursuant to Practice Book § 72-3, the attached writ of error having been duly presented and heard, the same is hereby ordered: SIGNED/DENIED

BY THE COURT:

Date: 2/15/2022

~~Judge~~/Clerk of the Superior Court