STATE OF FLORIDA
DIVISION OF ADMINISTRATIVE HEARINGS

ROBERT W. RUNCIE,
Superintendent of Schools,

CASE NO: 13-002437TTS

Petitioner,

vs.

SERENA JONES,

Respondent.
_______________________________________/

RESPONDENT'S CONSOLIDATED RESPONSES IN OPPOSITION TO (1) PETITIONER'S MOTION FOR PROTECTIVE ORDER TO EXCLUDE TESTIMONY OF ROBERT W. RUNCIE, SUPERINTENDENT OF SCHOOLS; (2) PETITIONER'S MOTION TO STRIKE RESPONDENT'S EXHIBIT NO.1 FOR PROTECTIVE ORDER (3) MOTION FOR RELIEF FOR OBSTRUCTION; AND (4) MOTION FOR AGREED ORDER OF RELEASE OF RECORDS

Respondent, SERENA JONES, by and through her undersigned counsel, Whitelock & Associates, P.A., hereby files this Consolidated Response, and states as follows:

I. Preliminary Statement

Now, on the eve of trial, the Petitioner has filed four (4) Motions, which are either the result of Petitioner's failure to prosecute this case or based upon mischaracterizations. Quite frankly, Respondent's counsel is frustrated with what should be basic issues on cooperation and professionalism, but will address each motion below, and not, the personal attacks.

II. Argument

A. *Motion for Protective Order*

The Petitioner was subpoenaed in this matter on October 31, 2013, yet Petitioner's counsel waited until the eleventh hour to file this Motion. In addition to waiting almost six (6) weeks to file this Motion, the Petitioner also implies that Respondent's counsel blindly subpoenaed the Petitioner and never provided a reason as to why his testimony was relevant in this matter.

Specifically, the Petitioner waited until December 4, 2013 to inquire why he was subpoenaed and a response was provided. In this matter, the Petitioner is the only one who made the decision in terms of terminating the Petitioner, not Chief Golt. Respectfully, and knowing Chief Golt, Petitioner's counsel represents that Chief Golt, through Section 4.9, will presumably testify as the decision maker, or implies such. However, Chief Golt has nothing to do with an actual decision; rather, he simply hands-off a recommendation to the Petitioner, who renders the ultimate decision, and Chief Golt is not a decision-maker on any level. If the Petitioner wants to stipulate that Chief Golt is not a decision-maker, then the Respondent will release the Petitioner on this particular subject.

The Broward County School District ("District") has also treated the Respondent differently than another employee at the District, which has already been identified as Principal Mark Kaplan.[1] This is one of the issues under the Just Cause analysis. The only, true individual who can testify to this treatment of the Respondent in this matter would be the Petitioner. If the Petitioner wants to stipulate to the facts regarding Principal Kaplan and that the Respondent was treated differently by the District in comparison to Principal Mark Kaplan, the Respondent will release the Petitioner on this subject.[2]

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[1]Specifically, Principal Mark Kaplan, who allegedly committed a felony against his spouse, which included approximately eighteen (18) months of abuse and physically strangling his spouse, was never removed from the school or reassigned, never lost a day of pay, the alleged crimes were never reported to the Department of Education and he was immediately placed back into the school once the criminal charges were dismissed.

[2]Notably, nothing among the recent wave of motions is any request to preclude the Kaplan evidence, and Mr. Kaplan is subpoenaed to testify, but he cannot testify as to why the Petitioner treated the Respondent differently. Instead, only the Petitioner can provide this

Lastly, there are only two (2) charges basically in this case, and one of the charges is immorality. As this Court is aware, the Petitioner will be required to testify with respect to the alleged public disgrace of the Respondent which somehow allegedly impairs her service. The only person who qualifies in this matter to testify to this charge is the Petitioner, or the Respondent's former principal. The Petitioner however never identified the Respondent's Principal as a witness. If the Petitioner is not going to call himself as a witness despite filing this Amended Complaint, then the Respondent is going to call the Petitioner and have him testify with respect to the alleged public disgrace and impairment of service of the Respondent.

B. *Motion to Strike*

The plain language of section 90.408 prohibits the admission of evidence of compromises and offers of compromise only when such evidence is offered "to prove liability or absence of liability for the claim or its value." § 90.408, Fla. Stat. (2012). However, under Florida's Evidence Code, evidence that is inadmissible when offered for one purpose may be admissible when offered for a different purpose. See § 90.107, Fla. Stat. (2006) ("When evidence that is admissible as to one party or for one purpose, but inadmissible as to another party or for another purpose, is admitted, the court, upon request, shall restrict such evidence to its proper scope and so inform the jury at the time it is admitted."); see also Breedlove v. State, 413 So.2d 1, 6 (Fla.1982) ("Merely because a statement is not admissible for one purpose does not mean it is inadmissible for another purpose.").[3] Therefore,

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evidence.

[3]The similar federal evidentiary rule explains that the prohibition against admitting evidence of compromises or offers to compromise when offered to prove liability does not prohibit the admission of such evidence when offered to prove something other than liability. See e.g. Fed.R.Evid. 408(b) ("This rule does not require exclusion if the evidence is offered for purposes not prohibited by subdivision (a); see also Reichenbach v. Smith, 528 F.2d 1072, 1075

while evidence of a settlement is inadmissible to prove liability pursuant to Section 90.408, such evidence is clearly admissible for other purposes. See Bankers Trust Co. v. Basciano, 960 So.2d 773, 780 (Fla. 5th DCA 2007) ("If the evidence is offered for another purpose, the evidence is not barred by section 90.408 and will be admissible if it is relevant to prove a material fact or issue, subject to section 90.403."); Wolowitz v. Thoroughbred Motors, Inc., 765 So.2d 920, 925 (Fla. 2d DCA 2000) ("Section 90.408 excludes evidence of settlement negotiations only when the evidence is offered to prove liability, the absence of liability, or value). Thus, evidence of settlement negotiations is admissible to establish other relevant facts. See Agan v. Katzman & Korr, P.A., 328 F.Supp.2d 1363 (S.D.Fla.2004) (holding that settlement documents were admissible under both section 90.408 and Federal Rule of Evidence 408 because the documents were offered not to establish liability, but to establish violation of consumer credit laws).

In this matter, the Petitioner is claiming that the Respondent cannot be trusted as an instructor and should not be subject to any recommendation of reinstatement. This is a remedy argument. In fact, the Petitioner made this very naked representation in its Motion for Summary Recommended Order presumably to bolster the immorality charge. See Motion at at ¶¶ 24-25. Here, the evidence will show however that the Petitioner knew there were both dependency and criminal proceedings pending, yet requested the Respondent to return to work. Thus, the Petitioner already knew the Respondent could be 'trusted' in the classroom and evidenced this very belief by requesting her to return to that classroom knowing full well that both of these proceedings were pending. In fact, the dependency case had nothing to do with the Respondent's return as a contingency. As a matter of

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(5th Cir.1976) (emphasizing that rule 408 prohibits evidence of a compromise to prove liability, but does not prohibit such evidence to prove the bias or prejudice of a witness) law, this evidence is therefore admissible to rebut this remedy argument or, at the very least, this evidence goes to the weight of the evidence on this issue, not admissibility. Bankers Trust Co. v. Basciano, 960 So.2d 773, 780 (Fla. 5th DCA 2007) (evidence offered for purpose other than liability is not barred by settlement rule and will be admissible if relevant to prove a material fact or issue); Jackson v. Albright, 120 So.3d 37 (Fla. 4th DCA 2013) (same).

C. *Motion for Relief for Obstruction*

This Motion is very unprofessional and it is difficult to respond to such without addressing the implications therein. The fact that Petitioner's counsel has not spoken to a witnesses in over a year before a trial is of little concern to the undersigned.[4] What is concerning is labeling this Motion as a form of obstruction by the undersigned. The theme of threatening counsel with sanctions, bar complaints and other personal attacks should be beyond this profession, but not here, and this continual pattern now culminating into a claim of 'obstruction' against the undersigned is false and completely unprofessional. The undersigned has provided the current addresses at different times to Petitioner's counsel, who notably never called or emailed the undersigned about the latest address until the eve of trial, and yet injected another motion into this proceeding. This address is the current address for this witness and there really is no more to say. Otherwise, and respectfully, and aside from providing this current address, it is not the Respondent's job to contact and locate the Petitioner's primary witness on the eve of trial, while the Petitioner has an entire police force with certified law enforcement officers and investigators.

Furthermore, the Petitioner's claim that it has a right to depose the witness is correct but misses the point. The Petitioner had this matter since February 27, 2012, Petitioner's "new" counsel

[4]Notably, Petitioner's counsel has not even represented that she has called this witness.

appeared in this matter in July 2, 2013, received discovery in August 30, 2013 and conducted no depositions in this matter. Petitioner's counsel never requested a deposition, nor did Petitioner's counsel even mention this witness until the eve of this hearing. Petitioner's counsel also has not called, or attempted to contact this witness to date, other than to recently subpoena her for trial, not for deposition. Since such time, the undersigned has provided Petitioner her correct addresses on two (2) occasions and even accepted service for the other two (2) children who are minors, despite such children being subpoenaed on December 10, 2013 – at the last minute. Thus, it is really disappointing that Petitioner's counsel has sunk to this level by implying and even claiming that the undersigned has "purposefully delayed the process."[5]

D. *Motion for Agreed Order of Release of Records.*

This Motion is not "agreed" and is unclear as to why the Petitioner characterized this request as such. The Motion is not agreed. The Motion referenced on the eve of trial apparently relates to a Dr. Shulman and the Child Protective Team, and records, which these records have not been disclosed to date. As such, the Court should not grant any order releasing records two (2) days before a hearing which were available to the Petitioner for the last two (2) years. Lastly, the physician identified by the Petitioner was never identified as an expert and obviously any testimony by this physician would have to be qualified as expert testimony particularly for child abuse. In this matter, and as stated in the Pre-Hearing Stipulation, the Respondent objected to this physician providing any expert testimony in this matter and that the only testimony which would be relevant from this physician would be for abuse, which is an expert category.

[5]The "obstructionist" undersigned also accepted service for the minor children.

CONCLUSION

Based upon the foregoing, the Respondent requests that the Petitioner's Motion for Protective Order be denied without prejudice until the Petitioner rests his case. The Respondent requests that the Motion to Strike, the Motion for Obstruction and the Motion for an Agreed Order, be denied.

Respectfully submitted,

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CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a true and correct copy of the foregoing was furnished via e-mail to: Carmen Rodriguez, Esq., Law Office of Carmen Rodriguez, P.A., 15715 S. Dixie Highway, Suite 411, Palmetto Bay, FL 33157, e-mail: crlaborlaw@gmail.com, this 12 day of December, 2013.

CHRISTOPHER J. WHITELOCK