

IN THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF FLORIDA

JOHN B. THOMPSON,

Plaintiff,

v.

Case No. 07-21256 (Judge Adalberto Jordan)

THE FLORIDA BAR and
DAVA J. TUNIS,

Defendants.

PLAINTIFF'S MOTION FOR LEAVE TO FILE DOCUMENTS

COMES NOW plaintiff, John B. Thompson, hereinafter Thompson, as an attorney on his own behalf, and hereby moves the court for leave to file certain documents that relate to defendants' motions to dismiss, to be heard on October 9, stating:

One of the issues in this case is whether Referee Dava Tunis, a defendant herein, is affording Thompson any modicum of due process which he could utilize to defend himself in the state disciplinary proceedings. We will hear again on this coming Tuesday, of course, from defendants' counsel that Mr. Thompson is literally showered by due process available to him from The Bar: Appearances before Bar Governors and grievance committees to argue his constitutional defenses, guaranteed in *Mason v. Florida Bar*, despite the fact that such appearances have all been denied. All the documents he wants, as long as they are letters that Thompson himself has written, with no Privilege Log to be made as to documents that might actually be useful to Thompson. Depositions of anyone, save the people Thompson wants to depose, like Ben Kuehne. The shadow game never ends.

Thompson now has a document in needs to file in this case from the hand of defendant Tunis herself that proves that she is the gift to Thompson that keeps on giving. If the people who want to get Thompson actually their wits about them and played by the rules that actually are there that afford both sides the opportunity to fairly litigate a matter, then a) we could really litigate these things, and b) they wouldn't by their obstruction caused by their sloppy rage, be giving Thompson the opportunity to shut this whole thing down. "Whom the gods would destroy, they first make mad."

As proof, then, Thompson now has an order entered this past week by Ms. Tunis prohibiting Thompson from introducing witnesses at his trial! Why? Because he has not characterized what their testimony will be, per a request from The Bar by a time that came and went.

Well, the reason why Thompson could not do that and still cannot do that is that:

a. Thompson has repeatedly asked in writing for dates and times The Bar's prosecutor is available for depositions prior to the time of the trial. Ms. Tuma refuses to provide those dates and times, as to either when she will or will not be available. Thompson has to ask for that, because the constantly perplexed Ms. Tunis says that she will not sign a subpoena for Thompson to take these depositions until and unless Ms. Tunis is available for the depositions and unless the deponents are available. So this is how these two women, who are so very clever, have worked this out: Thompson can't get a subpoena unless he gives the date and time of the depo, and Thompson can't give the time and date of the depositions because Ms. Tuma is not willing to give him any dates and times she is available. Actually, this is not clever. This is silly. It is more than silly, it is fraud.

The court is asked to indulge the following, which is not intended to hurt Ms. Tuma's tender feelings, but to make an apt and relevant observation: Ms. Tuma has never practiced law. She has spent her entire vocational life prosecuting lawyers—in Illinois and Florida. She has no idea what it is like to do real discovery in a real litigative setting in which the “hearing officer” is not chosen by one of the parties. So Ms. Tuma apparently is not trained to grasp *the fact* that Thompson gets to secure a subpoena for a witness when and where he likes after extending Ms. Tuma the courtesy of telling him what time and place works for her. She does not get to respond by saying: When the cows come home.

Here's a pretty simple concept that Thompson does not expect someone who has never practiced law to grasp but which this court will grasp, since he actually tried cases and has cases tried before him: Thompson is not some idiot savant clairvoyant who can tell The Bar or anyone else what a deponent is going to testify at trial about before he takes his discovery deposition. How in God's name can Thompson tell The Bar, then, what his testimony is going to be before he takes it?

Now The Bar has such clairvoyance to be sure. Every time Thompson has wanted to depose, for example, the “person designated by The Bar for the purposes to taking his/her deposition about the issues in this case,” Ms. Tuma saunters into the proceedings and says “Judge Tunis, all Mr. Thompson wants to query the witness about is privileged information, and he cannot be allowed to do that.” If we have heard that once, we have heard it 25 times. The Bar's prosecutor has no earthly idea that Thompson wants privileged information. In point of fact, if he asks a question in a depo that seeks that, then what a lawyer would do who knows how litigation—real litigation, not that

which one finds in quasi-judicial proceedings—works would then object to the asking of that question, and cite the privilege or other objection.

So, with all respect for whatever Thompson is supposed to have respect for these days, if this federal court wants to begin to appreciate how screwed up this Bar has made this whole thing, it should let Thompson file with it the documents that prove just what Thompson has asserted, or, failing that, deny their motions to dismiss and let Thompson prove his case. What we have now is a Bar, and documents that prove it that the following silliness is going on in these “state disciplinary proceedings” that, according to the great Barry Richard, afford Thompson an adequate state remedy:

- A complaint that does not tell Thompson was he did wrong;
- Repeated formal discovery requests for documents that might shed light on what he did wrong, so that he might not only be able to know what is coming prior to the trial but also so that he might be able to frame his defense and then do discovery (what a novel thought) based upon a defense theory that is supported by the facts;
- Subpoenas unsigned by Referee Tunis because she won’t sign them without the clearing of dates and times by Ms. Tuma first;
- Letters to Ms. Tuma asking for what dates and times she is available, all gone unanswered;
- Written pleas from Thompson to Tuma that went were penned two years ago asking for a clue, a simple clue, as to what Thompson failed to tell Alabama about his disciplinary history, only to learn from Judge Moore

that he in fact told more than was required of him, and still The Bar won't dismiss that count.

- More requests for relevant information too numerous to mention here.

Look, to be frank, if Thompson has done something wrong, he will apologize. He even apologized to Norm Kent once. Confession is good for the soul. If Thompson violated some Bar Rules, he'll admit it.

The problem here, to put it in the first person, is that I keep asking these people what I did wrong, and they refuse to say. They want to roll into trial and ambush Thompson with whatever they think they have.

When I seek discovery, they simply say I want something I'm not entitled to and won't tell me what it is, even as to a general description so the court can rule on relevance and privilege. And when I seek to set a depo, Referee Tunis says: Not unless Ms. Tuma is available, and Ms. Tuma won't tell me when she is available.

These people think they have Thompson totally checkmated and there's not a thing he can do about it. They are convinced that no court in the Southern District of Florida is going to tell the Guardians of Democracy that they have to play by their own Rules. They're so fearful to play by those Rules, that they hired Barry Richard to tell this court that Thompson has all of these remedies, hoping that this court is either dumb or compromised or totally lacking in curiosity to grasp if those remedies actually exist. They do not. If I have a remedy to appear before the Bar Governors, as Ms. Richard claims in *Mason v. Florida Bar*, then why have I not been there?

This court is supposed to decide this case, at this stage, on the facial merits of the pleadings. These defendants, on the other hand, keep telling this court that that should

not be done, that you, this court, are to trust them, not proper pleading practice, and assume that their “facts” will prove to be true, and everything Thompson alleges can be discounted.

In point of fact, Referee Tunis won’t allow discovery, won’t allow hearings on constitutional arguments, won’t allow depositions, won’t tell Ms. Tuma to tell Thompson when she is available, and won’t act like a jurist when it comes to Thompson anymore than The Bar can bring itself to abide by the Rules of Civil Procedure.

The indictment of these folks is to be found in the documented games they are playing, and the court must behold it, literally, to believe it.

I HEREBY CERTIFY that this has been served upon record counsel this 6th day of October, 2007, electronically.

/s/ JOHN B. THOMPSON, Plaintiff
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