SUPREME COURT OF FLORIDA

THE FLORIDA BAR, Petitioner,	)	Case No.: SC07-1197
	)	[TFB File No.: 2007-90, 387 (OSC)]
vs.	)	
MILES JAY GOPMAN, Respondent.	)	

RESPONDENT'S PLEA OF NOT GUILTY AND NOTICE OF ALIBI

Respondent, MILES JAY GOPMAN, a/k/a Miles J. Gopman, appearing pro se, and pursuant to Rules 3-5.1(c) and 3-7.7(g), Rules Reg. Fla. Bar; and Rules 3.170, 3.200 and 3.840, Fla. R. Crim. P., and responds to the Court's Order To Show Cause, dated June 28, 2007, as amended by this Court's Order dated July 13, 2007, as follows:

A. PLEA OF NOT GUILTY

1) Pursuant to Rule 3.170, Fla. R. Crim. P., Respondent enters his plea of **NOT GUILTY** to the charge of contempt, and demands strict proof thereof.

B. NOTICE OF ALIBI

2) Pursuant to Rule 3.200, Fla. R. Crim. P., Respondent states:

i) That as a consequence of correspondence and discussions between this Respondent and Mr. Kenneth L. Marvin, Director, Lawyer Regulation, over whether The Florida Bar had the constitutional and legal authority to petition this Court for the imposition of a sanction in the nature of criminal contempt, as represented in the Show Cause order, and as previously represented in Mr. Marvin's letter to the undersigned Respondent dated March 28,

2006 (attached to the Bar's petition as Exhibit "B"), the Bar modified the nature of the sanction as reflected in Mr. Marvin's letter to the undersigned Respondent dated April 12, 2006 (attached to the Bar's petition as Exhibit "D").

ii) In Mr. Marvin's letter of April 12, 2006, the Bar advised that it would petition this Court to compel Respondent's compliance with the condition in the referee's report to "submit to a comprehensive mental health evaluation by a mental health practitioner approved by FLA", through means of a civil contempt sanction.

iii) The referee's recommended condition is inherently vague and indefinite as to what the undersigned Respondent is being required to do other than "to initiate this evaluation within 30 days of the Supreme Court order"; and "for contacting FLA, Inc., to whether execution of a contract is deemed appropriate".

iv) The Florida Bar, by its letter to the undersigned Respondent dated April 12, 2006, clarified that this Respondent needed only to "have taken *the necessary steps to comply* with the Court's order", to forestall the filing of "a Petition for Contempt [that] seek[s] an indefinite suspension until [Respondent does] comply".

v) The Disposition Order of this Court in Case No. SC04-87, FBN: 2003-71,056(11M) contains the standard legend: "Not final until time expires to file motion for rehearing, and if filed, determined." This Respondent filed a timely motion for rehearing that was not ruled upon until its denial without explanation by the Court's order dated February 6, 2006. Subsequent thereto, based upon the clarification given by Mr. Marvin in his letter of April 12, 2006, Respondent did comply with the condition of the referee's report, by contacting FLA on April 17, 2006, in order to schedule an evaluation with Dr. Scott M. Weinstein,

Clinical Director for FLA, on April 24, 2006.

vi) Respondent did further comply with the condition of the referee's report, by meeting with Dr. Weinstein on April 24, 2006; by being interviewed by Dr. Weinstein; by furnishing Dr. Weinstein with the "Psychological Evaluation Report" by Dr. Leonard Haber, dated April 11, 2001; by signing releases for Dr. Weinstein to obtain and review psychiatric and neuro-psychological records; and by agreeing to return to undergo psychological testing administered by Dr. Weinstein, if it is required.

vii) As the clinical director of FLA, and holder of a Ph.D., Dr. Weinstein is "a mental health practitioner approved by [FLA]", and, as such, Respondent's meeting with Dr. Weinstein in April 2006 complied with the evaluation requirement of the referee's report.

viii) As the clinical director of FLA and holder of a Ph.D., Respondent's meeting with Dr. Weinstein in April 2006, was compliant with the clarified instructions within Mr. Marvin's letter of April 12, 2006 for an "FLA evaluation".

ix) At all material times subsequent to Respondent's evaluation session with Dr. Weinstein on April 24, 2006, Respondent believed he had fully complied with the referee's recommended condition in that at no time did Dr. Weinstein contact Respondent to return for psychological testing; at no time did Dr. Weinstein inform Respondent of some additional or unfinished mental health procedure that needed to be performed in order to complete "a comprehensive evaluation"; at no time did Dr. Weinstein state that he "would work on finding a FLA, Inc. approved provider in Respondent's area"; and at no time was Respondent notified by FLA of the need for "execution of a contract … with FLA".

x) Not until Dr. Weinstein's letter dated January 22, 2007 did Respondent receive

any word from FLA about another evaluation "by an FLA certified professional". Unlike Dr. Weinstein, the named "provider" is a psychiatrist who does not perform psychological testing.

xi) Because psychiatrists do not administer objective, psychological tests, a psychiatrist cannot, unlike Dr. Weinstein, complete a "comprehensive mental health evaluation".

xii) Dr. Weinstein's letter attached to the Bar's petition as Exhibit "E" speaks of "***an updated request from The Florida Bar*** to schedule an evaluation" demonstrating that this "updated request" had not originated from FLA, was not shown to be related to Respondent's evaluation by Dr. Weinstein in April 2006, and gave no reason for Respondent to believe he had not fulfilled the evaluation requirement of the referee's report.

xiii) In letters to FLA dated January 29 and February 5, 2007, Respondent questioned the timing of the Bar's "updated request", coming just weeks after the death of his father, and under what authority could he "be obligated to pay for an evaluation by a drug treatment specialist".

xiv) In Respondent's letter to FLA dated February 5, 2007, attached to the Bar's petition as Exhibit "F", Respondent stated:

> "As I indicated in our last week's conversation, I will gladly see any mental health practitioner, whom you select, including Dr. Kahn, provided I am not made to bear the resulting charges. Alternatively, if I am required to pay, and provided I am informed in writing as to the nature and purpose of this follow-up evaluation, so that the consulting psychiatrist and I will know what I am to be evaluated for, I will select a psychiatrist, who is more appropriate to my individual needs and whose financial arrangement would be more reasonable and flexible. Of course, as suggested in my letter to you of January 29, 2007, my first preference has been and remains to have a follow-up evaluation conducted by [Dr. Weinstein]".

xv) By letter dated February 12, 2007, Myer J. Cohen, FLA's executive director, rep-

lied to Respondent's question regarding the basis on which he should be obligated to pay for this evaluation by stating merely: "this is the procedure utilized in all cases such as yours", thereby failing to give any legal basis for the imposition of this financial obligation.

xvi) In this same letter, FLA's executive director replied to Respondent's inquiry as to the basis for "the Bar's request for an evaluation", by stating "Mr. Mulligan or Mr. Marvin would be better able to speak to that point", thereby demonstrating that FLA had no reason previously to believe that "respondent would still need to have a comprehensive mental health evaluation"; and that previous to the Bar's "updated request", Dr. Weinstein had not been at "work on finding a FLA, Inc. approved provider in respondent's area".

xvii) In this same letter, FLA's executive director replied to Respondent's request to have Dr. Weinstein perform the "updated" evaluation by stating that "it appears that the evaluation should be performed by a psychiatrist, rather than a psychologist, due to the possible involvement of your previous head injury" and, as such Dr. Weinstein "would be unable to perform the assessment", demonstrating once again that FLA did not know the reason for the Bar's "updated request" for an evaluation by a psychiatrist, rather than by "a mental health practitioner", such as Dr. Weinstein, in conformity with the evaluation condition in the referee's report.

xviii) In this same letter, FLA's executive director advised that a "comprehensive evaluation *as requested by the Bar* includes an in-depth psychiatric psychosocial interview and psychological testing", demonstrating that the Bar had unilaterally and without court authorization, altered the referee's recommendation for an "evaluation by a mental health practitioner approved by Florida Lawyers Assistance" by interfering with FLA's prerogative to

have its own clinical director perform a follow-up "psychosocial interview" with Respondent, much like Dr. Weinstein has performed on April 24, 2006, and to administer the "psychological testing" that a psychiatrist does not administer.

xix) In this same letter, FLA's executive director offered to "make other [provider] recommendations" and to accommodate Respondent's preference "for alternative referrals".

xx) Respondent expressed an interest "for alternative referrals", but FLA had not furnished Respondent with "other recommendations" as of the date the Bar filed the instant petition to show cause.

xxi) Respondent had furnished FLA with the name of forensic psychiatrist, Dr. Evan Zimmer to perform the "psychosocial interview", and with the name of forensic neuropsychologist, Hyman Eisenstein, Ph.D., to administer the psychological testing, but as of the date the Bar filed its instant petition to show cause, FLA had not approved either of these proposed evaluators.

xxii) On July 16, 2007, Respondent did undergo to an "in-depth psychiatric psychosocial interview" with Stephen Kahn, M.D.

xxiii) Respondent's evaluation by psychiatrist Stephen Kahn, by means of "psychosocial interview" did not differ substantially in method and content from the evaluation of Respondent by Dr. Weinstein on April 24, 2006.

xxiv) The Bar's action caused Respondent to expend $800.00 for a two-hour interview with psychiatrist Dr. Stephen Kahn on July 16, 2007.

3) After complying with the Court's order of October 18, 2005, as clarified by Mr. Marvin's letter of April 12, 2006, Respondent filed a petition for writ of certiorari to the

United States Supreme Court, Docket No. 05-1602, to which the Executive Director of The Florida Bar served a waiver on June 29, 2006.

4) Rule 15 of the Supreme Court of the United States speaks to the contents of an opposition brief. Rule 15(2) states inter alia:

> "…In addition to presenting other arguments for denying the petition, the brief in opposition should address any perceived misstatement of fact or law in the petition that bears on what issues properly would be before the Court if certiorari were granted. Counsel are admonished that they have an obligation to the Court to point out in the brief in opposition, *and not later*, any perceived misstatement made in the petition. ***Any objection to consideration of a question presented based on what occurred in the proceedings below, if the objection does not go to jurisdiction, may be deemed waived unless called to the Court's attention in the brief in opposition.***" (Emphasis supplied).

5) Therefore, the number of occurrences described in Respondent's petition for writ of certiorari that relate to the unlawful and unconstitutional means the Bar used to procure the referee's recommendation for Respondent's comprehensive mental health evaluation, and the consequent flagrant violation of Respondent's guarantees of substantive due process under Amendment XIV to the United States Constitution, and of privacy under Article I, Section 23 of Florida's Constitution, to which The Florida Bar waived objection, are recited below:

> "… On July 1, 2004, The Bar served its motion requiring Petitioner to provide 'a factual basis for statements subject to Rule 4-8.2,' and notice for hearing on July 14, 2004, within a week prior to the trial. At the hearing on July 14, 2004, the Referee granted The Bar's motion without explanation or clarification as to what this would require. App. E. The referee gave the Petitioner 20 days to comply, thereby causing the trial to be cancelled. *Id.* Without Petitioner's knowledge, and outside of his presence, the Bar counsel prepared and presented the order granting its motion, which the Referee signed ex parte. *Id.* As the consequence of the events surrounding the Referee's order granting The

Bar's motion requiring the factual basis for statements, on July 26, 2004, the Petitioner moved for disqualification of Judge Esquiroz as a referee…

"On August 10, 2004 the Referee denied the Petitioner's motion for disqualification. Concurrently, in her motion dated August 11 and filed with the court on August 16, 2004, the Referee requested the extension of time to file her report due to her vacation plans from 'August 16, 2004 through September 3, 2004.' That motion was granted on August 18, 2004, extending the Referee's report time until October 22, 2004. On that same day, The Bar moved to compel Petitioner to comply with the referee's July 14th order requiring imposition of discovery sanctions in accordance with Florida Rule of Civil Procedure 1.380(b).

"During this extension period, The Bar's investigator met with Judge Dennis on August 30, September 7, and September 13, 2004. On September 20, 2004, the Petitioner renewed his motion for disqualification based upon the events subsequent to August 10, 2004. On September 29, 2004, the Referee held an ex parte hearing in violation Fla. Stat. § 38.10 and Rule 2.160 of the Florida Rules of Judicial Administration prohibiting any case activity until disposition of pending motion for disqualification. That notwithstanding, the Referee issued ex parte order granting The Bar's motion and requiring Petitioner to provide a factual basis within 10 days. App. F."

"Thereafter, during the week of November 1, 2004, Petitioner received telephone notice from the office of Hon. Esquiroz regarding her plans to hold a final hearing in his disciplinary case on the following Monday, November 8, 2004. Thereafter, the Petitioner prepared his second renewed motion for disqualification complaining about inadequacy and impropriety of the telephone notice and apparent ex parte method by which this hearing was scheduled. This motion for disqualification was delivered to chambers on the morning of November 8, 2004, prior to the commencement of the hearing. However, once again, the Referee proceeded with the hearing in this Petitioner's absence without ruling on his motion for disqualification.

"On November 24, 2004, Petitioner received a copy of The Bar's proposed report and statement of costs, in which by cover letter the Bar counsel asked the Referee to sign and file with the Florida Supreme Court without affording this Petitioner an opportunity to object or seek a modification. App. L. The Referee signed and dated that report on December 21 and filed it on December 27, 2004. App. B. Thereafter, on Feb. 25, 2005, the Petitioner filed a timely petition for review in ac accordance with the Bar Rule 3-7.1. The Petition for review was amended on March 3, 2005, pursuant to the order of the Florida Supreme Court granting same. App. H."

"On March 3, 2005, Petitioner filed the transcripts of the hearings relevant

to his petition for review with the respect to the hearings held on June 1 and June 3, 2004 upon his motions to dismiss, and [the hearing] on July 14, 2004, ... held upon The Bar's motion to require a factual basis for statements made by Petitioner in the criminal case. In addition, the Petitioner furnished the original transcript of final hearing held on November 8, 2004. Upon review of the transcript of the final hearing, this Petitioner discovered for the first time that the Referee had an ex parte meeting with the Bar counsel as late as October 19, 2004, to revalidate The Bar's witness subpoenas for already prearranged trial on November 8, 2004. The trial was conducted without holding a calendar call or pre-trial conference as required by Rule 3-7.6(c).

"In addition, Petitioner discovered that the Bar counsel and the Referee had subpoenaed the circuit court judges – Hon. Dennis and Hon. Crespo – to give testimony prohibited by Rules 3(B)(9), (11) of the Florida Code of Judicial Conduct and by Rule 2.160 (f) of the Florida Rules of Judicial Administration. In addition, The Bar called several Dade County Assistant State Attorneys to give incompetent testimony regarding the validity of his court filings without producing a single record or transcript from the criminal case that contradicted anything that Petitioner alleged in his filings. As demonstrated by the transcript, in the midst of the trial, The Bar changed the theory of the case from allegations of improper statements regarding judges and officers of the court to that of 'disruption' of the proceeding. However, nowhere had Petitioner been notified of additional charges. In fact, The Bar Rule 4-3.5(c) specifically covers the disruption of tribunal, which violation had not been charged against him. Nor had he been charged with the violation of Rule 3-3.3(a), requiring candor towards the tribunal. Nor had he been charged 4-8.4(c), for conduct 'involving dishonesty, fraud, deceit, or misrepresentation.' The most egregious of the numerous instances of dishonest testimony appearing in the transcript was given by Judge Dennis, who claimed that she disqualified herself due to the Petitioner's refusal to submit to the competency evaluation. Of course, this testimony was false, and the Bar Counsel and Judge Dennis knew of its falsity as evidenced by the investigative pre-hearing contacts with her on August 30, September 7 and September 13, 2004. Moreover, the Bar counsel used this false testimony to justify a recommended order that the Petitioner be evaluated by the Florida Lawyers Assistance, Inc., a treatment program affiliated by the Florida Bar." (Petition for a Writ of Certiorari, Gopman v. Florida Bar, at 16-20 [No. 05-1602]).

C. ANSWER TO BAR'S PETITION

6) Pursuant to Rule 3.840(b), Fla. R. Crim. P., Respondent answers the allegations of the petition for contempt as follows:

i) As to paragraph 1, Respondent denies the existence of an order or judgment stating the conditions of an indefinite period of probation, in conformity with Rule 3-5.1(c), Rules Reg. Fla. Bar.

ii) As to paragraph 2, Respondent denies he received constitutional notice of the alleged condition in violation of substantive due process, based upon the holding in Lambert v. People of the State of California, 355 U.S. 225, 229-30 (1957).

iii) Paragraphs 3, 4 and 5 are denied as impertinent and immaterial, and Respondent further denies lawful and fair notice.

iv) Paragraphs 6 and 7 are admitted.

v) The allegations of paragraphs 8, 14, 15, 16, 17 and 18 are denied.

vi) The allegations of paragraph 9, 10, 11 and 12 are denied as inaccurate representation of Exhibits "E", "F", "G" and "H", respectively.

vii) Paragraph 13 is denied for the lack of knowledge.

D. DEFENSES TO BAR'S PETITION

7) The Bar's "updated request" for Respondent's psychiatric evaluation violates the American with Disabilities Act, 42 U.S.C. §§ 12112, 12203.

8) The Bar's "updated request" for Respondent's psychiatric evaluation violates the Anti-trust laws of the United States under 15 U.S.C. §§ 1, 2.

9) The Bar's "updated request" for Respondent's psychiatric evaluation violates the right of privacy established under the United States Constitution in Griswold v. Connecticut, 381 U.S. 479 (1965).

10) The Bar's "updated request" for the Respondent's psychiatric evaluation is based

upon fraud on proceedings and constitutional illegality as alleged above in paragraph 5 of Section B, which is incorporated by reference herein.

Respectfully submitted:

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Miles J. Gopman, Esq.
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CERTIFICATE OF SERVICE

I HEREBY CERTIFY that the Respondent's foregoing response to the Court's Order To Show Cause, dated June 28, 2007, was served by Express Mail upon The Florida Bar, c/o Kenneth L. Marvin, Esq., Director, Lawyer Regulation, at 651 East Jefferson Street, Tallahassee, FL 32399-2300 this ___ day of July, 2007.

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Miles J. Gopman, pro se