

IN THE UNITED STATES ELEVENTH CIRCUIT COURT OF APPEALS

In re:

John B. Thompson,

Petitioner,

v.

The Florida Bar, Dava J. Tunis,
Frank Angones, and John Harkness,

Respondents.

**PETITION FOR WRIT OF PROHIBITION AND/OR WRIT OF MANDAMUS,
AND REQUEST FOR EMERGENCY STAY OF DISTRICT COURT
PROCEEDINGS AND STATE DISCIPLINARY PROCEEDINGS**

COMES NOW petitioner, John B. Thompson, (Thompson) an attorney on his own behalf, and pursuant to Federal Rules of Appellate Procedure, Rule 21, petitions this honorable court for the entry of a writ of prohibition and/or a writ of mandamus, and also requests an emergency stay of the lower court proceedings and of the state bar disciplinary proceedings, as more fully set forth below.

PREFACE

Earlier this year, petitioner Thompson filed a federal civil rights lawsuit seeking injunctive relief and well as declaratory relief. The Bar is presently seeking permanent disbarment of Thompson a) in retaliation for his successes against two entertainment industry entities--the maker of the violent *Grand Theft Auto* video games and the broadcasters of the *Howard Stern Show*, and b) in pursuit of a vendetta The Bar began fifteen years ago when Thompson defeated The Bar's illegal attempts then to destroy his career by its collaboration with some of Thompson's same current Bar complainants.

The Bar, this time around, has denied Thompson all meaningful discovery in the state disciplinary proceedings and seeks to punish Thompson for truthful speech fully protected by the First Amendment for which Thompson seeks declaratory relief in the court below. The Bar is proceeding to disciplinary trial refusing to tell Thompson how he has violated certain Bar rules. Thompson has now proven that one entire set of Bar complaints is based upon perjury by two lawyers at the Blank Rome law firm in Philadelphia. The Bar still will not relent, refusing even to dismiss those complaints. Thompson is not before this Eleventh Circuit Court of Appeals because he wants to leap frog the District Court in any of this. He is here as a result of the U.S. District Court trial judge's misconduct in the early stages of this civil rights lawsuit, his discrimination against Thompson, and his patent, expressed bias. No layman knowing the facts could reasonably expect the trial judge to be fair and impartial toward petitioner. Indeed, the trial judge has displayed his unfairness in a remarkable way most recently, which has resulted in great harm to petitioner already. As a result of this misstep by the trial court judge below, fine lawyers within Florida and around the country are now assisting Thompson, having read of his misdeeds in the *ABA Journal*. Thompson only seeks a fair trial from a fair judge. This judge may be fair in other cases. Not in this one.

Petitioner, with great respect for the duties of judges who are in the front lines of assuring the proper administration of justice, and with regret that he has had to do so, has moved, repeatedly now, for the judge's recusal because this judge's own behavior has disqualified him. He refuses to recuse. The Bar's November disciplinary "trial" approaches, which, without federal relief granting him due process and equal protection, will be a sham proceeding.

Petitioner, by this filing, seeks orders disqualifying this judge and staying the lower court proceedings and state disciplinary proceedings until such time as the new judge can address the constitutional issues posed by The Florida Bar's vendetta against Thompson.

THE PARTIES

Thompson is a citizen of the United States, more than eighteen years of age, a resident of the State of Florida, domiciled in Miami-Dade County, an attorney practicing law in continuous good standing in Florida since 1977, and plaintiff in District Court Case No. 07-21256, Southern District of Florida, Thompson v. The Florida Bar, *et alia*.

The Honorable Adalberto Jose Jordan (Jordan) is a United States District Court Judge, Southern District of Florida, presiding over the aforementioned case.

The Florida Bar (The Bar) considers itself an "arm" of the Florida Supreme Court, and as such regulates the practice of law in Florida.

Dava Tunis (Tunis) is a Miami-Dade County Circuit Court Judge serving as "referee" in certain Bar disciplinary proceedings against Thompson.

Frank Angones (Angones) is currently president of The Bar.

John Harkness (Harkness) is the long-time executive director of The Bar.

THE RELEVANT FACTS GIVING RISE TO THE STATE BAR DISCIPLINARY PROCEEDINGS TO PROVIDE CONTEXT FOR THE DISTRICT COURT ACTION

Off and on for twenty years, The Bar has illegally and unconstitutionally used its "disciplinary" powers to try to infringe upon Thompson's First Amendment rights of speech and religion, in violation of the federal civil rights laws. For example, in 1989, The Bar, at the behest of both a porn industry lawyer by the name of Norm Kent and the

former chairman of the Florida ACLU, secured from the Florida Supreme Court an order threatening Thompson with his immediate suspension from the practice of law if he did not submit to a battery of psychiatric and psychological tests to be administered by The Bar's own chosen psychiatrist and psychologist.

The Bar's, the porn industry lawyer's, and the ACLU former chairman's assertion was that "Jack Thompson is so obsessed in his efforts against pornography that he is mentally disabled by that obsession and thus unfit and unable to practice law."

While allegedly mentally disabled, Thompson had secured the first decency fines ever levied by the Federal Communications Commission (FCC), against three "shock radio" stations in Miami whose peripatetic host, Neil Rogers, was represented by the aforementioned Norm Kent. Thompson had commenced efforts before the FCC because Rogers was, according the Adam Walsh Foundation, founded by John Walsh (*America's Most Wanted* host) "soliciting teenaged boys for sex on the public airways." That accurate statement was made in a letter to the FCC by the Foundation's Executive Director after he listened to tapes provided the Foundation by Thompson. This led to testimony before the United States Senate Commerce Committee, which then led to the FCC fines, which would not have been levied and collected but for Thompson's *pro bono* efforts while, according to The Bar, "mentally disabled." The Bar also asserted that Thompson was suffering from "brain damage."

As a result of The Bar's coerced mental health examination of Thompson, reported in all major media in South Florida, Thompson is the only officially Bar-certified sane lawyer in the State of Florida. The Bar's insurance carrier paid Thompson damages for what it had done to sully Thompson's career. The psychiatrist and

psychologist, chosen by The Bar and not by Thompson, found that Thompson's IQ was 150, that he suffered from no brain damage, and that "Thompson is simply a Christian acting out his faith in a public-spirited fashion."

On February 24, 2004, Thompson heard nationally-syndicated "shock jock" Howard Stern air the following comment on his program, while interviewing the man who had sexual intercourse with Paris Hilton and commercially distributed the video taped romantic interlude:

"Ever bang any famous nigger chicks? What do they smell like? Watermelons?"

This indecent comment was aired outside the "safe harbor," at approximately 8 am, in violation of federal criminal statute 18 USC 1464, which statute has been held constitutional by the United States Supreme Court in *FCC v. Pacifica*.

Thompson transmitted a partial transcript of the above broadcast to Clear Channel Communications within an hour of its airing, and Clear Channel, the largest radio broadcaster in America, withdrew the *Howard Stern Show* from all of its radio stations. In doing so, Clear Channel quoted verbatim Thompson's letter to it.

Thompson also provided this transcript to Jordan Goldstein, chief legal counsel to FCC Commissioner Michael Copps, a Democrat on the five-person FCC who has been the most active advocate on the Commission for the enforcement of broadcast decency standards. Goldstein promised Thompson that the Commission would act upon this latest criminal act by Stern.

Indeed it did, fining Clear Channel \$495,000 for indecent material aired by Stern on its stations. Clear Channel paid the fine. Thompson was the official FCC

complainant. The *Howard Stern Show* never returned to any Clear Channel stations. Stern complained, “This lunatic lawyer in Miami got me off the air.”

On August 16, 2004, the *Howard Stern Show*, despite having been removed from South Florida airwaves by Clear Channel, returned to this part of the world because Beasley Broadcast Group, Inc., a 42 station broadcaster in Naples, Florida, decided to place it on its powerhouse station WQAM-AM. *Stern* aired in morning drive, with children in the audience, just before the WQAM mid-day host, the aforementioned Neil Rogers. Rogers’ program had been fined by the FCC again in 2000 (with one of the few decency fines handed down during the Clinton Presidency) through no effort of Thompson. Some other “lunatic” had decided to proceed against Rogers’ illegal activity. The Rogers fine was paid.

Stern while on WQAM had female amputees on his program describing the lubrication of their “stumps” and placement of them in men’s anuses to achieve orgasm. This, and other “entertainment” like it was being aired by Stern on Beasley’s WQAM-AM outside the FCC’s 10 pm to 6 am safe harbor in violation of federal criminal law 18 USC 1464.

When Thompson heard this indecent material, he filed formal FCC complaints against Beasley, and in doing so provided proof to the FCC that such material was indeed aired.

Upon filing such complaints, Thompson was immediately threatened in writing by the aforementioned porn industry lawyer, Norm Kent, who told Thompson that unless he “apologized” for filing a formal complaint with the FCC, then he, Kent, would file lawsuits and Florida Bar complaints against Thompson, and that he would seek new

lunacy proceedings by The Bar like the one that turned out so disastrously for him and The Bar years earlier. Such a threat of filing an ethics complaint unless Thompson “apologized” is, of course, unethical under Florida Bar Rules and may constitute the criminal act of extortion.

Thompson did not apologize. The FCC proceeded. Mr. Kent filed his SLAPP Bar complaints. SLAPP is an acronym for “strategic litigation against public participation.” The increase in retributive litigation by corporations intended to deter and silence critics has alarmed various legislatures, with the result that some of them, including Florida, have passed anti-SLAPP statutes.

The Florida Bar, eager apparently to try to “get it right this time,” has now renewed its demand that Thompson be psychoanalyzed in yet another brazen attempt to pathologize Thompson’s faith-based and successful activism against the shock radio industry. In other words, The Bar has taken Norm Kent’s bait again.

Not certain of Kent’s capabilities to pull this off, having failed once before, Beasley retained the prestigious Miami law firm of Tew Cardenas LLP to file a new wave of SLAPP Bar complaints against Thompson formally joined in by Beasley Broadcast Group’s CFO Caroline Beasley. See <http://www.bbgi.com>. Tew Cardenas partner and SLAPP complainant Larry Kellogg informed Thompson’s lawyer that Al Cardenas, former Florida GOP Chairman, joined in the SLAPP-happy activity to punish Thompson for writing then Florida Governor Jeb Bush about the criminal activity occurring on South Florida airwaves with the help of Cardenas’ law firm, Tew Cardenas LLP. Cardenas does not really practice law but is a lobbyist in Washington and Tallahassee who has traded on his cash bundling for the Bush-Cheney campaigns and the

Jeb Bush campaigns to gain access to both Bushes. Cardenas enjoys what is called “Super Ranger” status with the Republican National Committee because of this cash bundling. Tew Cardenas has bragged at its law firm web site, www.tewlaw.com, that it enjoys extraordinary access to certain politicians.

Thus, Beasley’s Tew Cardenas SLAPP complaints against Thompson were designed to a) serve Beasley’s corporate interests and b) protect Cardenas’ influence in Tallahassee and in Washington.

Because of The Bar’s decision to proceed with these SLAPP Bar complaints against Thompson, and because of The Bar’s stunning violation of constitutionally-guaranteed due process, equal protection, and First Amendment rights in pursuing these SLAPP complaints, Thompson filed in the Southern District of Florida’s District Court Case No. 07-21256, over which now presides Judge Jordan.

One of Thompson’s grounds for his suit is The Florida Bar’s selective prosecution of him, which a substantial line of cases from the U.S. Supreme Court on down, deem to be a denial of equal protection. Thompson will not burden this court now with citations of those cases.

The Bar, represented ably by Barry Richard of the Greenberg Traurig law firm, has improperly asserted, at the motion to dismiss stage, that Thompson cannot prove “selective prosecution,” nor can he prove “bad faith,” “extraordinary circumstances,” or any of the other clear exceptions to federal court “abstention” from interfering with state regulatory, judicial, or quasi-judicial proceedings. The Bar’s decision to argue its own set of “facts” rather than merely asserting that Thompson’s civil rights action fails to state

a cause of action within its four corners has been allowed by Judge Jordan as he is presently decided whether to dismiss Thompson's well-pled complaint.

Of course, abstention turns on factual determinations of "bad faith," "selective prosecution," etc., after what should be evidentiary proceedings before either the court or the magistrate, as indicated in *Middlesex Ethics Commission, v. Garden State Bar Association*, 457 U.S. 423 (1982).

Since Judge Jordan has allowed an improper pleading of *facts* by The Bar at this state, over the objection of Thompson, Thompson provided to the court the best evidence, which The Bar asserted did not exist, that The Bar was selectively prosecuting Thompson for alleged and fanciful "ethics" violations while ignoring real ethics violations by other lawyers, most notably Thompson's actual SLAPP complainants. The court has been allowing a pre-adjudication of the facts, and thus the court invited facts from Thompson's side.

It is noted, parenthetically, that The Florida Bar has itself inadvertently and embarrassingly identified its chronic propensity to pursue Bar complaints against its members selectively. A formal poll of Florida Bar members by then outgoing Florida Bar President Miles McGrane found that many within our ranks have been distressed by our Bar's practice of protecting influential lawyers while harassing sole practitioners like Thompson who are not part of what The Bar poll itself called "the good ol' boy network." Thompson calls it "The Club." Indeed, a former prosecutor for The Florida Bar has told Thompson that The Bar has a "Watch List" with which it monitors and prosecutes specific lawyers it finds inconvenient.

For example, Tom Tew, name partner in Tew Cardenas, stalked one of Thompson's clients, JR Rosskamp, to persuade her to drop Thompson as her lawyer. Despite repeated pleas both to The Bar and to Tew, Tom Tew would not stop stalking her. As a result, she has suffered a stroke and permanent physical disability. This matter is a subject of an upcoming mediation. The Bar, in refusing even to consider Tew's behavior, stated in writing that since he was possibly stalking Thompson's client but was not doing so on behalf of a billable client, The Bar was not interested. This is so bizarre that Thompson could not possibly make this up. Thompson has the letter.

The most shocking example of selective prosecution by The Bar, which if proven should result in a dismissal of all of the baseless SLAPP Bar complaints against Thompson, is found in The Bar's protection of the aforementioned porn lawyer, Norm Kent. Mr. Kent, for example, has admitted in a Broward County Circuit Court case that he consumes marijuana without a medical prescription. Mr. Kent is a national director of NORML. Mr. Kent owns and operates his official, Bar-regulated web site at www.normkent.com. The Florida Supreme Court has determined that such sites are to be operated in accordance with The Bar's advertising rules, which heretofore did not apply to lawyer's Internet sites. The Florida Supreme Court now says, however, that such sites must not in any fashion impact deleteriously upon the "dignity of our profession.

On the home page of www.normkent.com, Mr. Kent encourages all visitors to visit his new site at www.nationalgaynews.com. This site is a gay porn portal featuring material such as that found at www.justusboys.com.

The Bar's referee, Ms. Tunis, has improperly blocked all meaningful discovery in the pending state disciplinary proceedings, denying Thompson thereby all of his constitutional defenses, including his selective prosecution defense.

The Bar has blocked Thompson's review of his own Bar files, demanding an upfront payment of \$4000 for him to review his own files, from which it says it will remove any materials it wants to without providing a privilege log.

The Bar's referee, Ms. Tunis, refuses to issue subpoenas for depositions Thompson wishes to take, defying Florida's law that subpoenas are to be issued, as a purely clerical function, upon the oral request of any party or attorney.

Referee Tunis has denied Thompson hearings on his constitutional defenses, as has the Board of Governors, which right, prior to disciplinary trial, is guaranteed by The Bar.

The Bar's conduct is so outrageous in its denial of basic due process to Thompson, of course, because it knows it has no law and no evidence on its side with which to discipline Thompson. As an example of how flawed the disciplinary proceedings are, note the following:

Thompson's "designated reviewer" in these 38-month-old proceedings was, for three years, Bar Governor Ben Kuehne. Under Florida's system, the designated reviewer is the most important person in the entire disciplinary process. He guarantees and then certifies the "fairness" of the proceedings every step of the way, and has the power to make The Bar do it right if it fails to do so.

Mr. Kuehne is a major figure in the American Civil Liberties Union, the radical gay rights movement, and the darling of the People for the American Way. All three of

these entities have, at the local and national level, opposed Thompson's social activism, with both the ACLU and the People for the American Way issuing national press releases attacking Thompson. In 1992, the ACLU named Thompson and Lt. Col. Oliver North its "Censors of the Year" because they successfully persuaded Time Warner to pull rapper Ice-T's "Cop Killer" from store shelves worldwide. Ice-T now plays a cop on tv.

During Bar Governor Kuehne's service as Thompson's designated reviewer, over Thompson's objections, given his ideological bias, Mr. Kuehne received a target letter from the U.S. Justice Department for allegedly laundering money from the Medellin (Colombia) cocaine cartel. Thompson has met with federal officials from Washington on this. The serious investigation is ongoing. The Bar Governors have known of the ethical cloud under which Mr. Kuehne has been laboring, and did not disclose it to Thompson. Thompson found out about the target letter inadvertently. It has been reported by ABC News. Still, Mr. Kuehne continues to serve on The Bar's Board of Governors and on disciplinary grievance committees despite the U.S. Government's concerns that Mr. Kuehne is a crook. Kuehne gave Thompson no equivalent of a McLain Hearing to disclose his embarrassing situation, although he did so in court proceedings.

Mr. Kuehne, as designated reviewer, allowed the resuscitation of Norm Kent's SLAPP Bar complaints against Thompson after The Bar's outside investigator found they were baseless. Mr. Kuehne then had The Bar demand that Thompson undergo, yet again, a series of psychological tests by experts of The Bar's own choosing. This attempt to pathologize Thompson's faith-based activism had been tried before and failed.

After three years of Kuehne's and The Bar's assaults upon Thompson constitutional rights, with absolutely no facts to support any ethics violations, Kuehne

recused himself recently as Thompson's designated reviewer, now that the "trial" of Thompson was in place. Kuehne has been replaced in that role by Bar Governor Steven Chaykin, a partner in the Akerman Senterfitt firm. Mr. Chaykin is known for his recent public pronouncements that anyone who opposes gay adoption is "outside the core values of The Florida Bar" and "is an enemy of The Bar." Thompson, by definition provided by Mr. Chaykin, is thus an enemy of The Bar because he is outside its core values. Is it any wonder that such people have denied due process in these state disciplinary proceedings?

Indeed, The Bar and the referee will not even allow Thompson to discover why Mr. Kuehne has recused himself. The referee will not allow even a deposition of The Bar's outside investigator, David Pollack of the Stearns Weaver firm, to ascertain what is the basis for The Bar's attempted discipline of Thompson.

The Florida Bar, then, has turned itself, at least when it comes to Thompson, into a latter day Star Chamber, using the mental exam techniques of the *Gulag Archipelago*. The alleged terrorist detainees held at Guantanamo Bay have received more due process than has Thompson, yet The Bar's immediate past president Hank Coxe has lectured our Bar members and the nation that we need to give them more. The Bar's current president, Frank Angones, born in Cuba, has taken to the pages of *The Florida Bar Journal* proclaiming that The Florida Bar is the champion of human and civil rights. Not when it comes to Thompson, as Angones now knowingly supervises and approves of the use of state power to enforce speech codes against Thompson that are reminiscent of what Castro does in Angones' native Cuba.

THE PATENT MISCONDUCT OF JUDGE JORDAN AND HIS REFUSAL TO RECUSE

Earlier this year, Thompson filed a federal lawsuit, Case No. 07-21256 in the Southern District of Florida. It was assigned to Judge Adalberto Jordan. Thompson was pleased because of the excellent reputation Judge Jordan enjoys, so excellent in fact that he has sat with this Eleventh Circuit as a designated judge when it has needed his help. Thompson has no doubt that in other cases Judge Jordan has been fair and judicious.

However, in this case, as sometimes happens with flawed humans, of which Thompson is one, Judge Jordan has gone off the deep end, and how.

At the first hearing in this case, Judge Jordan sternly warned Thompson that he was not going to recruited to Thompson's "cause" to right the wrongs of society. He was referring specifically to Thompson's efforts against the marketing of adult and adult entertainment to children. Thompson is well known in South Florida and elsewhere for his efforts in these regards. Proof of Biblical truth that "a prophet is without honor in his own backyard" (Thompson is no prophet, but the principle holds), Thompson, according to a writer for the *Ft. Lauderdale Sun-Sentinel* "is the most despised man in South Florida." On the other hand, Thompson has appeared on more than 200 national and international television programs to discuss the illegal marketing, sale, and distribution of adult entertainment to children. He has appeared on *60 Minutes* twice, the *Today* show eight times, and yes, even *Oprah*. Yesterday he granted an hour-long interview by the BBC about Howard Stern (see above), but he is attacked in local media, which apparently Judge Jordan consumes, as some sort of Luddite Neanderthal. Norm Kent yesterday in a South Florida publication suggested that Thompson is actually a closeted homosexual,

having asserted that, unethically, in violation of a specific Florida Bar Rule, 4-8.4 (d), in an email he entitled “The Gay Christian Cometh.”

Thompson is doing a Fox News Channel interview this afternoon about a new “game” to be released on Halloween called *Manhunt 2* in which the player removes his opponents’ testicles and drives syringes into their eyeballs. Now that’s entertainment. *Manhunt 2* is presently being pre-sold to children of all ages in America, and yet it is banned for sale even to adults in the United Kingdom. The makers of this game also made the *Grand Theft Auto* games. When Thompson appeared on *60 Minutes* at the personal request of Ed Bradley to discuss a case in which an Alabama teen trained on these specific cop killing games to kill three cops in Alabama, the makers had their Blank Rome attorneys file their own SLAPP Bar complaints against Thompson, having followed Mr. Kent’s SLAPP-happy lead. Sitting on The Florida Bar’s Board of Governors is Ian Comisky, an out-of-state Governor who practices out of Blank Rome’s Philadelphia headquarters.

Thompson’s point in the above is not to congratulate himself for what he has accomplished. He is simply a foot soldier in what some have called “the culture war.” He is a flawed, imperfect person, a sinner, who is pleased by be used, in any fashion, by the God he worships. The Bar’s willingness to be hijacked by commercial interests intent upon using “discipline” as a collateral means of “shooting the messenger” because they cannot defend, in a court of law or anywhere else their mental molestation of minors for money, is a technique as old as the hills.

Thompson is not entitled to and does not want in his federal civil rights action a judge who agrees with him as to what he does against the entertainment industry. What

he wants and deserves, as a matter of constitutional right, is a judge who will fairly determine whether The Florida Bar is acting improperly in its alleged use of “discipline” to grossly infringe upon Thompson’s due process, equal protection, speech, and petition rights under the US Constitution. No judge, who has read the complaint at the trial level could possibly think Thompson wants this or any other judge to saddle up with him and take on the Sony Corporation. Thompson simply seeks federal relief congruent with 42 USC 1983, *et sequitur*, regardless of what any judge thinks about Thompson’s *pro bono*, faith-based public activism that drives folks like Ben Kuehne and Steve Chaykin apparently out of their minds.

Thus, the stern warning at the first hearing, on August 23, by Judge Jordan that we was not going to align himself with Thompson’s causes was odd (who would expect any judge to take sides on the underlying issues?) but Thompson filed it away as an assurance of impartiality. It has turned out to be just the opposite. It was an inadvertent heads up that the court would indeed become a participant for the other side, to-wit:

Since The Bar was serially asserting, improperly, at the motion to dismiss phase before Judge Jordan that Thompson could not prove The Bar’s selective prosecution of Thompson and The Bar’s unconscionable protection of Thompson’s SLAPP Bar complainants, despite their patently unethical conduct, Thompson submitted the best evidence available to him and to the court of The Bar’s selective prosecution, since The Bar was being allowed to assert, improperly, by the court, that no such evidence exists. The motions to dismiss should be based upon whether Thompson has stated a cause of action within the four corners of the complaint, with facts alleged presumed to be true.

Since Judge Jordan was allowing this improper practice by the defendants, over Thompson's objection, on September 19, 2007, Thompson submitted to Judge Jordan, by means of the CM/ECF filing system, three sexually graphic pictures then and still offered by Norm Kent at his web site to people of all ages, with no age filters.

Kent's open and brazen use of his official law firm web site to route people to his gay porn portal is problematic, in light of the Florida Supreme Court's requirement, as of January of this year, that Florida lawyers' web sites must not adversely affect the public's perception of the "dignity of the legal profession." The Bar will not even address ethics issues raised by Mr. Kent's graphic photographs of older men engaging in oral and anal sex and spraying one another with semen to anyone of any age. Mr. Kent, at his law firm's site, offers articles about his own marijuana use and his participation, as an impaired reveler, at "foam parties" the details of which Thompson will not share with this court.

Mr. Kent is welcome to his perverse pleasures. He is not entitled, however, to protection by The Florida Bar as one of its "untouchables" simply because he conforms with Bar Governor Steve Chaykin's view of normalcy and because he is The Bar's most abiding and most useful SLAPP Bar complainant against Thompson, its avowed "enemy of The Bar outside its core values." Mr. Kent can do whatever he wants in his free time. He is not free to repeatedly use The Bar to try to destroy Thompson's career, to the applause of The Bar's Board of Governors.

In a state in which the Supreme Court has disciplined two lawyers for referring themselves to "pit bulls" (a phrase used by President Bush to describe Harriet Meier when he nominated her to sit on the Supreme Court), then that court and its Bar cannot

blithely ignore the antics of a lawyer who has used The Bar's discipline machinery to punish Thompson for his successes against Howard Stern, Neil Rogers, Ice-T, 2 Live Crew, the *Grand Theft Auto* games and The Bar itself. What is going on down at The Florida Bar is an attempt to use its disciplinary machinery and Thompson's enemies in order to protect The Bar from him and from the inconvenient truths in his social agenda. The Bar is also helping the porn industry, of which Mr. Kent is a part, protect itself from laws democratically enacted. The Bar has stood the entire disciplinary process on its head because it simply cannot abide Thompson, and is even going so far as to give Norm Kent, and others, the green light to distribute pornography to children.

This is what Thompson sought to show Judge Jordan with his filing, since Judge Jordan was allowing the defendants to assert, unchallenged, the *fact* that Thompson had absolutely no facts to support his bad faith and due process and equal protection claims in his lawsuit.

In making this submission to the court, via the court's electronic CM/ECF system, Thompson preceded these three graphic pictures with a large **WARNING** sign in red that what followed on the next two pages were sexually graphic materials being lined to and offered through Kent's two web sites. Anyone proceeding further was warned what followed, and thus anyone who went further had chosen to do so. Nobody was ambushed.

It should be noted what this court knows: The CM/ECF/PACER electronic filing system is a system available only to record counsel and to members of the public who pay for access to it. There is no "search engine" at PACER. A child, upon deciding to pay for the service, would have to know what file to go to and specific pleadings to go to

in what are undoubtedly millions of filings in the PACER system. On the other hand, anyone can “Google” gay news and readily find the www.justusboys.com material offered by Norm Kent to people of all ages for free.

One user of this site calls it a site designed for “pedophiles,” given its clear graphic emphasis upon older men have sex with younger ones. This is particularly troubling in light of the recent arrest of a Florida Assistant US Attorney, Mr. Atchison, who flew from the Panhandle to Michigan to have sex with what he thought was a four-year-old girl. Mr. Atchison’s exploits would have been impossible, in the form they took, without the Internet which Mr. Kent fully aware of the dangers.

Judge Jordan was apparently shocked by what he saw that Thompson had filed. Thompson, before, submitted this material to Judge Jordan, solicited and obtained an opinion from a nationally recognized and respected member of the law enforcement community familiar with obscenity prosecutions. This expert stated to Thompson that the material being trafficked in by Mr. Kent is clearly “obscenity” under *Miller v. California*.

Indeed, Judge Jordan entered a Show Cause Order (attached hereto) when he saw this material, calling it “indecent,” “offensive,” and “obscenity.” However, Judge Jordan entered a Show Cause Order against Thompson, telling him that he had until October 5 to show cause why Thompson should not be turned over by him to the Southern District’s *Ad Hoc* Committee for disciplinary action against Thompson.

In this show cause order, Judge Jordan cites an Alaska case, *Adams v. Nankervis* as the legal basis for his threat against Thompson. This obscure Alaska case involved a *pro se* criminal defendant who was threatening, in the court file, to kill the judge and the

litigants. The Ninth Circuit, in issuing the opinion, stated that it was not to be cited as authority. *Nankervis* has nothing to do with what Thompson did. Judge Jordan said it stood for the proposition that no one can file in a federal court file indecent material, and so forth, as his attached order states.

Judge Jordan, in his show cause order, this court will note, states that Thompson has exposed “children” to “obscenity” with his filing in the paid-for PACER system. This is demonstrably false for the above and other reasons.

Even though Judge Jordan gave Thompson until October 5 to show cause why he should not be turned over to the *Ad Hoc* Committee, Judge Jordan short-circuited his own order and turned Thompson over to the Committee three days early on October 2, prior to having any hearing on the matter.

Norm Kent, of course, generated national publicity claiming that Thompson’s legal career was now over, since a federal judge had found him to be an “obscenity trafficker.” He now asserts, as noted above, that Thompson is a closeted homosexual.

When Thompson plaintively requested a hearing on the show cause order, after Judge Jordan had violated his own deadline therein, and upon Thompson’s showing that sitting on the Committee were law partners of Greenberg Traurig’s Barry Richard, law partners of Florida Bar President-Elect John White, law partners of Thompson’s designated reviewer, Steven Chaykin, Judge Jordan apparently had second thoughts about his precipitous referring of Thompson to the *Ad Hoc* Committee for the purpose of disciplining him.

Thompson had asserted, in asking for a hearing on the matter, that what the court had done was akin to citing Paul Revere for disturbing the peace with his Midnight Ride.

This court will see by all of the attached orders hereto that Judge Jordan scoffs at the simile and further, in a way more brazen than at the August 23 hearing, suggests that Thompson wants the judge to be the moral arbiter of what ails society but over “which I have no jurisdiction.” It is a humorous turn of phrase whose intent is clearly to attribute to Thompson an absurd motive which he demonstrably does not have. Thompson has repeatedly told Judge Jordan that the last thing he wants is for the federal judiciary to decide the culture war. The very last thing.

At an October 9 hearing, Judge Jordan asserted that he never said Thompson had endangered “children.” That assertion is right in the order. Judge Jordan demanded that Thompson admit that he had done something wrong in submitting this evidence of criminal activity to it. Thompson informed the court that it had, appropriately, tremendous power, but it did not have the power to command Thompson and violate his conscience by stating that he had done something morally, ethically, or legally wrong.

Judge Jordan retorted and asked “How can I permanently vacate my show cause order” if you do not admit you acted improperly?” Thompson responded, as best he can recall his comments, as follows:

“At the risk of offending Mr. Kent, who is eagerly sitting in this courtroom to see what this court will do, as Mr. Kent has actually sought, in the past, a court order commanding Thompson to cease quoting Scripture, I should like to quote one passage of Scripture to answer the court. When Jesus Christ was confronted with the trick question from the Pharisees whether a person of faith should pay taxes to Rome, Jesus asked, ‘Whose face is on that coin?’ Someone answered, ‘Caesar’s.’ Then render unto Caesar what is Caesar’s and unto God what is God’s.’ The point, Your Honor, in this context, is

that if you order me not to do this again, then I, being a lawyer as well as a Christian, have no choice but to obey the civil authority, as the Apostle Paul, echoing Jesus, counseled. The fact that I may disagree with this court's opinion and findings in this or any regard does not entitle me to violate the law and violate court orders. Others do that. So if you tell me you want me, and you order me, not to do this again, then I would be as crazy as The Bar says I am, to do otherwise. The problem, Your Honor, is that what you should have done is summon me down here, along with counsel for the other parties, if you wanted it not to be *ex parte* and tell me your concerns, and then I would have done what you ordered me to do. Instead, you went immediately to Defcon One and gave Mr. Kent the opportunity to smear me as an 'obscenity' trafficker nationally."

Apparently satisfied, Thompson, opposing counsel, and the court got on with a hearing on defendants' motions to dismiss.

But apparently Judge Jordan could not let the issue go. He has since entered an Omnibus Order, attached hereto, attacking Thompson personally, as has been his custom in his orders. Judge Jordan has grossly misrepresented Thompson's concerns about the make-up of the *Ad Hoc* Committee. Thompson filed a new motion to recuse because of the *ad hominem* content in the latest Omnibus Order. Jordan's latest order contains numerous factual errors and knowing misstatements which would convince any lay person, familiar with the facts, that Judge Jordan cannot be reasonably expected to be impartial toward Thompson.

Indeed, here is a judge, presiding over the issue of whether The Bar is properly attempting to discipline Thompson for his social views, while this judge then adopting the use of *discipline*, through the *Ad Hoc* Committee, to stigmatize and marginalize his

efforts, in response to coming forward with the best evidence The Bar was being allowed to argue *did not exist*. This court will note that Judge Jordan reproves Thompson, in his order, for not supplying a mere “link” to Kent’s “obscurity.” That, of course, would have been insufficient and foolish, as Kent “took down” from his site the “Porn Sites,” as he himself calls them, because he had been caught. Now that Judge Jordan has gone out of his way to lampoon Thompson, the “obscurity” is back up on his gay porn portal site, linked to by his office law firm web site’s front page.

Then, Thompson was delivered on October 17, 2007, the “last straw” than convinced him that seeking the extraordinary writ of prohibition from this Circuit Court of Appeals must be done. Because of the national news coverage generated by Judge Jordan’s show cause order, most notably at the *ABA Journal’s* Internet site, Thompson was contacted by a number of constitutional experts stunned by Judge Jordan’s improper order and actions against Thompson. The news coverage was picked up by ALM’s *Daily Business Review*, which is the South Florida legal community’s newspaper. On the afternoon of October 17, the *Review’s* reporter interviewed Thompson about the “obscurity” matter and the Show Cause Order, and in doing so, the reporter informed Thompson that the Southern District’s Chief Judge Federico Moreno had entered an administrative order pertaining to CM/ECF/PACER filings *subsequent* to Judge Jordan’s show cause order. The Administrative Rule 6 (c) declares it now improper to file sexually explicit materials in open court files for any reason whatsoever. It is not clear if the Rule is improper and if it was properly formulated and imposed. That is of little concern to Thompson. If Chief Judge Moreno wants to enter such an order, fine, but this leads us to Judge Jordan’s threats and actions against which are not just injudicious but

deceptive. They betray a lack of fairness that is more shocking than Norm Kent's "obscenity."

What is extremely troubling is what is now known: Judge Jordan collaborated with Chief Judge Moreno to come up with this *new rule after Thompson did his filing*, and then Judge Jordan sought to impose it upon Thompson, claiming there was some rule against filing such materials. This is an *ex post facto* stunt by Judge Jordan prohibited, clearly, by Article I, Section 9 of the United States Constitution. Because there was no such rule against doing what Thompson did, Judge Jordan had to come up with this obscure, non-authoritative, inapposite *Adams v. Nankervis* case out of Alaska to assert the pretence that there was such a rule against filing such evidence.

Thompson notes in passing, that he was *amicus curiae* in the federal obscenity trial of *2 Live Crew v. Sheriff Nick Navarro*. Thompson started the national law enforcement effort against the distribution of *As Nasty As They Wanna Be*. Despite Thompson's position in that case, this same Eleventh Circuit correctly overturned trial judge Jose Gonzalez' verdict, in the Southern District of Florida, that the album was obscene because defendant Navarro submitted absolutely no record evidence as to any of the three prongs of the *Miller* test. This Eleventh Circuit Court was not attacked by Thompson for its decision. Courts are entitled to decide cases; it is their awesome duty to do so. Thompson had strenuously told Judge Gonzalez that there was no record showing of obscenity, and Thompson was right. Judge Gonzalez, unlike Judge Jordan, did not threaten Thompson with disciplinary action for putting obscenity into the court file. The Judge *thanked him for doing so*. Contrast that with what Judge Jordan has done.

Putting it another way, if what Thompson did was so clearly unethical and so deserving of public humiliation by means of a show cause order, then why in the world did Chief Judge Moreno have to enact and impose *a new rule* that declared improper what Thompson had done. In other words, the imposition of this new rule proves there was no rule when Thompson did what he did. Thompson also reads Rule 83, Federal Rules of Civil Procedures as strictly forbidding a District Court from imposing a “rule” in just this fashion. Here is the new rule put in place by Chief Judge Moreno a full month after Thompson put the evidence that he did into the court file:

6C. FILING OF MATERIALS, INCLUDING IMAGES, INAPPROPRIATE FOR DISPLAY OR DISTRIBUTION TO THE PUBLIC, INCLUDING MINORS

Pursuant to Administrative Order 2007-50 [entered Oct. 15, 2007], Users shall not electronically file materials which would otherwise be inappropriate for display or distribution to the public, including minors, through PACER or the CM/ECF System.

These inappropriate materials include images (not textual descriptions) depicting sexual acts or excretory acts that could be described as pornography or indecent or vulgar even if not legally obscene. A document containing such visual materials may only be filed electronically in a redacted version describing in words the images, but removing all images.

Alternatively, such documents may be filed in the conventional manner, along with a motion to seal.

Counsel and parties are cautioned that failure to protect such images from public dissemination, which includes minors, may subject them to the disciplinary authority of the Court.

No judge, acting fairly, would have threatened and then sought to impose discipline on a lawyer who violated a “rule” that he (the judge) knew full well did not exist until a month after that lawyer did what he did.

Thompson has moved Judge Jordan to recuse himself from this case, as his serial *ad hominem* comments about Thompson, his patent misstatement of the law, with all respect, his fabrication of facts that are not facts, his entry of orders that patently conflict

with one another, his violation of his own show cause order by closing the window on October 2 that he ordered would be open until October 5, and so on, show a lack of impartiality. Finally, his assertion in one of his order that “obscenity” (his word) may enjoy First Amendment protection, reflects either a gross misunderstanding of the law or a willful and knowing misrepresentation of it. Obscenity, *by definition*, is not protected by the First Amendment.

Further, what did Judge Jordan do when Thompson brought him evidence of The Bars’ duplicity which The Bar said, in pleadings, did not exist? Jordan went after Thompson for placing “obscenity” in a court file rather than expressing any concern whatsoever about the fact that a lawyer was disseminating this openly to anyone of any age. This is the same “shoot the messenger” strategy used by The Bar and Thompson’s SLAPP complainants.

Judge Jordan will not disqualify himself. Thompson is entitled to a fair judge. He does not have one, as the actions of Judge Jordan indicate. Thompson, in practicing law for nearly 31 years, is used to adverse rulings from judges. That goes with the territory. That is not what prompts this petition.

What we have, sadly, in Judge Jordan, who enjoys a fine reputation, is someone who has, for whatever reason, gone off kilter, off base, off the deep end in this case. Maybe it is plaintiff’s manner, which can be annoying, and which may come at least in part from having been lied to by his Bar for twenty years, with having also Norm Kent telling all of South Florida this very morning that Thompson is a closeted homosexual. Judge Jordan has discriminated against petitioner with a series of orders that wildly attribute motives to Thompson that he demonstrably does not have. Even if he had those

motives, Judge Jordan should not be guessing and attributing such motives to him. When Thompson has defended himself from the effect of these very public threats and attacks by Judge Jordan upon him, Judge Jordan complains in his orders about plaintiff's "attacks upon me" as not a basis for recusal. Thompson did not start this; Judge Jordan did.

In doing this, Judge Jordan has borrowed some of the methods of The Florida Bar in using "discipline" against Thompson in a case about "discipline." Judges make mistakes. That's fine. There are no Solomons among us. But when a judge fabricates a "rule" that doesn't exist and then gets in place a new rule, never disclosing to the target of his wrath the new passage of the new rule two weeks after he supposedly violated it, and when that judge threatens the whistleblower rather than the one who is truly trafficking in "obscenity" to all people of all ages, and in doing so violates his own show cause order, then plaintiff clearly has, presiding over him, a judge who cannot be fair because he has inserted himself into the case in an improper and unthinkable fashion.

Petitioner has the highest regard for the office of federal district court judge. Any lawyer who does not respect the judiciary should not be a lawyer. But since when does respect for an "independent judiciary" plausibly take the form of looking the other way at corrupt judges, as Thompson has found two of them, one in Alabama, and another sitting on the civil bench in state court in Miami. Thompson is not referring to Judge Jordan, who is ethical but in this case biased. The last time Thompson came across a corrupt judge, he wrote the Broward State Attorney about it and Governor Crist, because of Thompson, appointed a special prosecutor. Instead, what Thompson gets is Bar complaints from the leftwing extremists like Kuehne and Chaykin who run The Florida

Bar, with its paranoically imagined “enemies outside the core values of The Bar,” running what is supposed to be a professional organization as if it were the Taliban.

Thompson bears absolutely no animus against this particular judge, but because the office is so important and so vital to the proper administration of justice, this district court judge must be removed from this case because his actions raise grave questions about his impartiality and his ability to command public trust in discharging his duties in Case 07-21256. No reasonable layman knowing the facts would think otherwise. It would be highly unreasonable for anyone to think Judge Jordan can be fair to Thompson. He has been grossly unfair to date.

RELIEF SOUGHT BY PETITIONER

Petitioner Thompson petitions this court for entry of the writ of prohibition, thereby ordering and directing Judge Adalberto Jose Jordan to refrain from presiding further in Case No. 07-21256 and to cease all other activities by him in the case.

In the alternative and in addition, petitioner seeks the entry of a writ of mandamus directing the lower court to disqualify himself from the aforementioned case so that it might be assigned to another judge.

Because of the swift approach of the state bar disciplinary proceedings in November, petitioner also seeks an emergency stay of the lower court’s proceedings which is set to rule on defendants’ motions to dismiss. He seeks also a stay of the state bar disciplinary proceedings so that another judge might properly address the relief to which petitioner believes he is entitled prior to the November disciplinary trial, namely certain injunctive relief and declaratory relief against the various defendants therein.

Petitioner in good faith represents that he has a substantial likelihood of success in the federal action below. Otherwise, he would not have brought it. Plaintiff is not suing his own Bar lightly. These are weighty matters that affect far more than just Thompson, which is why others around the country have contacted Thompson to help him stand for the proposition that attorney discipline is supposed to be about discipline to protect the public from unethical lawyers, not about protecting the porn-to-kids industry, that Norm Kent has built a career upon, from the full force of our democratically enacted laws.

WHEREFORE, petitioner prays this court for all of the relief herein requested.

I HEREBY certify that this pleading has been served upon Judge Jordan and upon record counsel for all of the parties herein this October 19, 2007.

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