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 RESPONSE TO THE BAR'S LATEST NOTICE OF SUPPLEMENTAL AUTHORITY

COMES NOW plaintiff, John B. Thompson, hereinafter Thompson, as an attorney on his own behalf, and hereby moves this court for leave to file this response to its remarkable Notice of Supplemental Authority dated October 23, 2007, stating:

There they go again. Once again Greenberg Traurig, The Bar's record counsel herein have placed before the court case "authority" which it claims supports dismissal of this action, when in fact it does not. Please note:

THOMPSON V. ROGERS, ET ALIA

The Bar has submitted the *sua sponte* order of Judge Jordan's colleague and friend in the Southern District, The Honorable Paul C. Huck dismissing Thompson's civil rights action against Thompson. Judge Huck, in that order, states, for example, at page 4:

Thompson's second claim of "selective prosecution" also fails to meet a showing of bad faith. " [A]llegations of selective prosecution are insufficient in themselves to meet the bad faith exception."*Carbone v. Zollar,* 845 F.Supp. 534, 538 (N.D.Ill.1993); *see also Gwynedd Properties v. Lower Gwynedd Township,* 1991 WL 270004 (E.D.Pa. Dec.12, 1991). The Bar has further averred that it has only proceeded with disciplinary action against Thompson upon the receipt of third-party complaints about his professional conduct (as opposed to independently seeking to punish Thompson.) Pl.'s Reply at 4-5. To the contrary, Thompson submits nothing beyond wild accusations of a vast conspiracy against him that the Bar is unfairly proceeding against him. Thompson's

Let's take a look at what Judge Huck says above. First of all, Judge Huck states that Thompson has alleged no facts supportive of the allegations of selective prosecution. That is not the case in the case now before Judge Jordan. Facts pertaining to The Bar's collaboration with Norm Kent and its protection of him, facts pertaining to The Bar's collaboration with Tew Cardenas while protecting Tom Tew and his stalking, facts pertaining to Blank Rome's perjury in claiming Thompson "hid his colorful disciplinary history" from Judge Moore, with Judge Moore now testifying (which he had not done at the time of the Huck dismissal) that Thompson had provided *more* of his disciplinary history to him than he was required to do, etc. No rational person can read the current complaint before this court, Judge Jordan's court, and assert that Thompson has not

asserted facts that support the bad faith exception to abstention. Thompson, for example, has asserted the additional ***fact*** that The Bar is demanding now $4000 for Thompson to look at his own file! Since Judge Huck entered the order which The Bar is so enthused about here, The Bar's prosecutor, Sheila Tuma, has issued a demand for a new mental health exam. This is all asserted in the "Judge Jordan complaint." These are facts. The implication now by Greenberg Traurig that Thompson has asserted no "facts" in the complaint before this court is beyond a misrepresentation.

Then let's look at Judge Huck's value-loaded words: "Thompson submits nothing beyond wild accusations of a vast conspiracy against him…" Now that assertion was not only false but clearly demonstrative of an injudicious bias against Thompson that would be worthy of Judge Jordan, as we have seen in this present case. A review of the complaint filed in the Huck case shows specific delineations of the Ben Kuehne fiasco. In that same complaint The Bar's refusal to produce a charging document that told Thompson what he had done to violate Bar Rules is asserted. These and other fact-based assertions are not "wild accusations" concocted out of thin air. They are facts demonstrably true independent of what Thompson was asserting. Judge Huck was simply acting like Judge Huck is known to act, and doing so at the behest of the same Bar from whose earlier case he had recused himself, disingenuously stating it was because he had to pay Bar dues, apparently not caring to note that those Bar dues are reimbursed by the federal government.

Further, Judge Huck asserts in the above remarkable passage that The Bar avers that it has only processed third-party complaints from others. We now know this to be a lie, and Thompson has asked this court to refer the misconduct of defendants' attorney

who have asserted this to the *Ad Hoc* Committee. Judge Huck thought this averment to be consequential, *and it is.* We now know that The Bar has filed its own complaints against Thompson. The Bar's practice of doing that, which Judge Huck apparently thought had not occurred, show bad faith in two regards: its willingness to be a SLAPP complainant in its own right and its willingness to lie to courts of law, claiming that it had not initiated its own complaints.

Here we have The Bar, now adding a third layer of deceit, by filing the Huck ruling that it knows to based upon its own misrepresentations. It is obvious that The Bar will not stop with its bad faith until Thompson stops them.

Finally, Judge Huck erroneously states that he has no jurisdiction over state statutory claims brought by Thompson. Apparently Judge Huck is unfamiliar with 42 USC 1988 which specifically grants authority to a federal court to apply state statutes, as if they were federal remedies, in a federal civil rights action. Thompson has done just that in this "Judge Jordan case" as to Florida's Anti-SLAPP statute and its RFRA statute.

Apparently Judge Huck is so hung up in trying to prove Thompson's "conspiracy" that he didn't find the time to look at 42 USC 1988. That judicial preoccupation provides absolutely no excuse for this court to make the same error.

There are other numerous errors in the Huck ruling. This court's reliance upon it would be akin to relying upon a 1926 road map of Miami provided by a cartographer who wants the driver to end up in Biscayne Bay.

HIRSH V. SUPREME COURT OF FLORIDA

This case is completely inapposite to the one now before this court. There were found in *Hirsch* to be absolutely no basis for any exception to "abstention." Plaintiffs

could prove no bias. They could prove no "extraordinary circumstances." They could prove no denial of "equal protection." All the plaintiffs even alleged therein there was a general, systemic, miasmic design defect in California's lawyer disciplinary machinery, not a due process and equal protection flaw specific to them as individual disciplinary respondents.

There was, for example, no allegation such as that bar's efforts to pathologize their faith, in violation of that bar's own Rule prohibiting such threats. There were no allegations about charging the respondents thousands of dollars to review their own files. There were no allegations about their SLAPP complainants in fact being unethical lawyers whose own acts were whitewashed by the bar. There were no allegations in *Hirsh* that the California bar wanted to punish them for *pro bono* efforts against corporate entities undertaken on behalf of ***no clients***. See Florida Bar Rule 4-8.4(d) which authorizes only bar complaints under that Rule if the targeted lawyer is representing a client!

So here goes Greenberg Traurig again, citing as "authority" cases that are completely inapposite to what is before this court. Thompson got so fed up with this that he just called Barry Richard and asked him "Barry, why are you citing cases for the proposition that this court should abstain, when I have been denied the very remedies that these cases show were afforded to the respondents therein?" Here is what Barry Richard said, "Jack, this is a big office. A lot of pleadings go out with my name on them that I don't know what is in them." This is nonsense, and unethical nonsense at that. If the great Barry Richard puts his name on pleadings, then he had better make sure they state applicable law.

We come back to the *Mason v. Florida Bar* case to underscore how disingenuous Bar's counsel is in citing to this court a Ninth Circuit case that rebuts *Mason.* In *Mason,* the federal court held that abstention was appropriate because in Florida, a respondent has a right to argue his constitutional defenses to the grievance committee and to The Florida Bar's Board of Governors *prior to trial, not after trial, as in Hirsch!* Thompson asked Mr. Richard in the aforementioned phone call why he keeps citing *Mason* for abstention purposes when I have been denied the right to appear before the Governors that *Mason* says he has. "Because you have no right to appear to before them prior to trial, Jack." So there, may it please the court, is the great lie: *Mason,* a Florida case, says the undersigned has a right to appear before the Governors before trial, and Barry Richard now says the federal court is wrong, that Thompson has no right. Mr. Richard admits that in a phone call with Thompson and yet says just the opposite, in pleadings to this court.

Thompson, as the court knows, has been denied his right to argue his constitutional defenses not only to the Governors and to the Grievance Committee, but also before Referee Tunis. If this is not a denial of basic due process, then there is no such thing.

FIEGER V. THOMAS

There goes Greenberg Traurig again. Look at what the court actually says in this 1995 case:

a master. M.C.R. 9.110, 9.117. The Michigan Court Rules specify that "[e]except as otherwise provided in these rules, the rules governing practice and procedure in a nonjury civil action apply to a proceeding before a hearing panel." M.C.R. 9.115(A). A lawyer called to answer disciplinary charges before a hearing panel (the "respondent") must answer the complaint, may be represented by a lawyer, can conduct discovery, may depose unavailable witnesses, and may, for good cause shown, depose other witnesses. *See*M.C.R.

Thompson has been denied the above-noted discovery in his case, despite the fact that Florida and Michigan's Rules in this regard are the same. This shows "bad faith" which this case says is an exception to the abstention doctrine.

At least Fieger was allowed to come forward with what he felt was proof of "bad faith." This opportunity has been wholly denied him at every stage of the state disciplinary process, and now The Bar is seeking to knock this case out of federal court, improperly, at the motion to dismiss stage, with there having been NO EVIDENTIARY PROCEEDINGS AS TO BAD FAITH OR ANY OTHER ABSTENTION EXCEPTION. By contrast, note what is held in *Fieger v. Thomas*:

> Fieger has not demonstrated that the Commission is using the lawyer disciplinary proceeding against him solely for the purpose of suppressing his exercise of free speech rights and with no real hope of ultimate success. We find that the disciplinary proceedings were brought lawfully and instituted in good faith.

Finally, Thompson is seeking a declaratory judgment that certain speech code Rules are being applied unconstitutionally to Thompson's speech, including his petition speech, because of the bad faith of The Bar. Note how that prayed for relief differs from what Fieger was able to allege and not show:

> construction. As the Court concluded in *Younger*, "the possible unconstitutionality of a statute 'on its face' does not in itself justify an injunction against good-faith attempts to enforce it," especially absent "any showing of bad faith, harassment, or any other unusual circumstance that would call for equitable relief." 401 U.S. at 54, 91 S.Ct. at 755.

It is fascinating that The Bar would dare bring up, let alone misrepresent *Fieger v. Thomas'* alleged applicability to what is now before this court. Why? Because as the court knows and as The Bar knows, a full eleven years after that *Fieger* case was decided, the federal District Court in the Eastern District of Michigan held in *Fieger v. Supreme Court of Michigan* that lawyers do not give up their First Amendment rights to criticize judges when they become lawyers. US District Judge Arthur Tarnow was fully aware of the first *Fieger* case, and yet he handed down his ruling that is squarely apposite to what

The Florida Bar seeks to do to Thompson in retaliation for HIS TELLING THE TRUTH about Judge Ron Friedman and Judge James Moore.

If The Bar is going to be citing a case involving the same Geoffrey Fieger (yes, *that* Geoffrey Fieger), then they're going to have to live with ALL of the Fieger cases. The latest one informs this court that a state bar must not enforce speech codes against First Amendment speech. This is a rather simply concept, even for the "goose-stepping brigades" at The Florida Bar, predicted by Justice Douglas in *Lathrop*.

I HEREBY CERTIFY that this has been served upon record counsel this 25th day of October, 2007, electronically.

/s/ JOHN B. THOMPSON, Plaintiff
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