

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, JOHN HARKNESS,
AND FRANK ANTONES,

Defendants.

**PLAINTIFF'S MOTION FOR LEAVE TO AMEND COMPLAINT WITH
AMENDMENT TENDERED HERWITH**

COMES NOW plaintiff, John B. Thompson, hereinafter Thompson, as an attorney on his own behalf, and moves to amend his complaint herein, stating:

Plaintiff is fully mindful that this court has indicated its desire that the complaint under which he is traveling not be amended further. Unfortunately, that desire is trumped by the circumstances in which the parties and this court now find themselves.

The defendant Bar has, remarkably, despite a) the filing of this lawsuit, and b) its receipt of the formal Forensic Psychological Evaluation by Dr. Oren Wunderman of plaintiff *refused* to drop its demand that Thompson first plead guilty to all charges and *then* submit to a Florida Lawyers Assistance program evaluation of his mental health. The Bar has made a psych evaluation of Thompson a stigmatizing punishment of Thompson in violation of federal law, as more fully set forth in the tendered amendment to the complaint

Any sane Bar would be able to grasp that if there is to be an evaluation of Thompson, it must occur before a plea. Anyone in the first month of law school knows that there must be a capacity to contract in order to contract.

Obviously, The Bar and its Board members know that, which underscores the bad faith of The Bar in making such a demand after having disastrously tried such a bad faith stunt years ago with Thompson. How this court cannot fathom that this latest stunt might be probative of the “bad faith” issue boggles the mind. However, what Thompson asserts with this amendment is more than just bad faith. There is a patently demonstrable ongoing violation by The Florida Bar of the Americans with Disabilities Act.

With The Bar now, this day, November 1, 2007, refusing to withdraw its mental health examination demand and with the referee refusing to address the incongruity and illegality of The Bar’s lunacy stunt as a means to punish Thompson, plaintiff must be allowed, according to the liberal Federal Rules of Civil Procedure which favor a party’s right to amend its pleadings, to do just that. Thompson is not going anywhere. The Bar is not going anywhere. The “disciplinary trial” now scheduled for November 26 is not going anywhere, and if it needs to be delayed by virtue of The Bar’s illegal, unconstitutional, and actionable use of Thompson’s alleged disability that it, not Thompson alleges, then so be it. The following amendment to the already pending complaint is as follows:

THE BAR’S VIOLATION OF THE AMERICANS WITH DISABILITIES ACT

All factual allegations in the third amended complaint are incorporated into this count.

In 1990, the United States Congress passed and the President signed into law the Americans with Disabilities Act (ADA) to afford a remedy to citizens who are discriminated against by the government and by the private sector on the basis of physical or mental disabilities, real or alleged. What is “disability” under the ADA? Section 12102 (2) states:

“(2) Disability

The term "disability" means, with respect to an individual

(A) a physical or mental impairment that substantially limits one or more of the major life activities of such individual;

(B) a record of such an impairment; or

(C) being regarded as having such impairment.” (emphasis added)

Is the state, in this case the State of Florida, the Supreme Court, and its wandering “arm,” The Bar, prohibited from violating the ADA? Yes. Note:

“Sec. 12131. Definitions

As used in this subchapter:

(1) Public entity

The term "public entity" means

(A) any State or local government;

(B) any department, **agency**, special purpose district, or other **instrumentality** of a State or States or local government;” (emphasis added)

What can The Bar, then, not do to Thompson that is “discrimination:”

“Sec. 12132. Discrimination

Subject to the provisions of this subchapter, no qualified individual with a disability shall, by reason of such disability, be excluded from participation in or be denied the benefits of services, programs, or activities of a public entity, or be subjected to discrimination by any such entity.”

What relief can this court afford plaintiff for a violation of the ADA? Note:

“In a civil action under paragraph (1) (B), the court

(A) may grant any equitable relief that such court considers to be appropriate, including, to the extent required by this subchapter

(i) granting temporary, preliminary, or permanent relief;”

Case law in this country, too voluminous to mention here, clearly states that state professional licensure and regulatory boards must comply with the ADA and may not in any fashion discriminate against any of its members, including lawyers and bar members, on the basis of either a disability or *an alleged disability, including an alleged mental disability*.

The Florida Bar has its Rule 3.7.13, which sets forth the procedures whereby The Bar can legitimately, properly, and with due process determine if a lawyer is impaired and thus unable to perform his duties as a lawyer who poses a danger to members of the public availing themselves of his legal services. Thompson does not refute that function of a Bar, but any bar that does not follow its own procedures in that regard and/or uses an alleged mental disability for ulterior purposes is in clear violation of the ADA.

The Florida Bar has violated every single procedural safeguard intended to protect a lawyer from an improper attempt to submit Thompson to a mental health examination. It has totally ignored Bar Rule 3-7.13. Ken Marvin, The Bar’s Director of

Lawyer Regulation, confirmed that in a telephone call between him and the plaintiff herein. Marvin's self-inflicted admissions are not necessary, however, to prove the violation of the ADA. There has been no sworn complaint in this regard, no evidence submitted to a grievance committee, no impaneling even of a grievance committee, no probable cause finding, and no submission of any of this to the Florida Supreme Court for an order commanding a mental exam. None of these procedural safeguards, designed to protect both The Bar and Thompson, have been utilized. *None of them.*

This failure to follow any of these procedures, set forth in Rule 3-7.13, is *prima facie* and in fact irrefutable evidence of The Bar's violation of the ADA. Why?

Because The Bar asserts, in writing, that Thompson must be examined for an alleged mental disability and then it refuses to follow its very procedures to deal with that out-of-thin-air allegation. Thompson has asked for well over a year what the basis for this is. The Bar refuses to answer. It simply demands.

As noted above, discrimination against a person by the state or any agency thereof, on the basis of an *asserted disability*, whether that disability exists or not, constitutes a violation of the ADA. This is precisely what The Bar is doing today.

Further, The Bar is violating Section 12203 of the ADA:

“Sec. 12203. Prohibition against retaliation and coercion

(a) Retaliation

No person shall discriminate against any individual because such individual has opposed any act or practice made unlawful by this chapter or because such individual made a charge, testified, assisted, or participated in any manner in an investigation, proceeding, or hearing under this chapter.

(b) Interference, coercion, or intimidation

It shall be unlawful to coerce, intimidate, threaten, or interfere with any individual in the exercise or enjoyment of, or on account of his or her having exercised or enjoyed, or on account of his or her having aided or encouraged any other individual in the exercise or enjoyment of, any right granted or protected by this chapter.”

Thompson alleges that this latest assault upon Thompson’s constitutional rights stems in large part from his successful thwarting of The Bar’s last attempt, in violation of the ADA and other laws, to pathologize his faith-based activism in 1992. The Bar got its head handed to it on a platter in 1992, two years after the ADA was passed, because The Bar, illegally and with no factual basis whatsoever, alleged a mental defect to Thompson that rendered him “because of his obsession against pornography mentally disabled and unfit to practice law.” The Bar has been itching for an opportunity to pay Thompson back for its stunning defeat of its lunacy stunt ever since. Thus, what The Bar is doing now is clearly “retaliation” under the ADA. It never has gotten over being bested by an attorney whom it claimed was mentally ill. What does that say about their skill as lawyers?

If The Florida Bar were in fact acting upon a good faith concern that Thompson is suffering from a mental disability, then it would utilize the procedures in its own Rule 3-7.13 to proceed in that regard. It would want to secure treatment for him. It does not want treatment. It wants to use the stigma of mental illness, splashed across the *Daily Business Review* as it was the last time, to end Thompson’s legal career and his public career.

The fact that The Bar is not acting on this alleged concern for Thompson’s health and “disability” proves that this demand for another round of mental health exams, in the

face of its prior unsuccessful efforts in that regard and in the face of Dr. Wunderman's expert analysis, shows that The Bar does not seek diagnosis and treatment but rather stigmatization and punishment. This is precisely why The Bar, extortionately, has threatened Thompson with *permanent disbarment* if he does not submit to the public stigmatization of a mental health examination, just as it humiliated him with that in 1992. So baseless was that foray into stigmatizing mental health examinations that The Bar's insurance carrier paid Thompson damages to compensate him for the criminal assault.

Further proof of the punitive and bad faith nature of The Bar's unauthorized current demand for a coerced mental health exam of Thompson is that it demands that he plead guilty to all ethics violations and *then* it will conduct the coerced mental examinations. No competent lawyer does not know that mental capacity and health must be assessed *prior* to contracting with an allegedly mentally ill person, particularly if the party demanding the assessment seeks to be bound to the contract! The Bar, on the one hand, alleges mental incapacity on the part of Thompson, and then, on the other, it says that he has the mental capacity to plead guilty. This is beyond *Catch-22*. It is the formulation of a depraved mind at the highest (or lowest) levels of The Florida Bar.

A further proof of The Bar's violation of the ADA by its patent use of his alleged mental disability demand for the purposes of stigmatizing and punishing Thompson is the fact that Thompson's alleged mental illness has been denied by The Bar as any sort of *mitigation* of his alleged ethics high crimes and misdemeanors. This violates the ABA Standards and The Florida Bar's own formal Standards of Punishment that are supposed to take into account the alleged mental illness of the wrongdoer as mitigation. For The Bar, Thompson's mental illness is being treated as an *aggravating* factor!

Finally, if Thompson really were mentally ill, then this Florida Bar would not do the outrageous things to Thompson anymore than it would harass someone in a wheelchair or a lawyer with cerebral palsy. The Bar's line prosecutor, Sheila Tuma has treated Thompson in a fashion that Michael Vick would not treat a dog. The Bar is not treating Thompson as if he were disabled, while claiming itself that he is disabled. It is treating him as if he were a pariah and quite literally and factually seeking to deny him the ability to earn a living by permanently disbaring him unless he agrees to the stigmatization in violation of the ADA.

If this Bar were to comply with the ADA and its own Rules, then it would follow Rule 3-7.13 and get Thompson the help that it claims he needs. To truncate the argument and the cause of action stated herein further, The Bar is supposed to be dealing with Thompson's alleged mental disability (its allegation of mental disability) as a shield for him and for the public. Instead, it is using it as a sword against both.

Finally, we come to the issue of immunity that so interests the defendants herein and the court. Here is what the ADA says about that:

"Sec. 12202. State immunity

A State shall ***not*** be immune under the eleventh amendment to the Constitution of the United States from an action in Federal or State court of competent jurisdiction for a violation of this chapter. In any action against a State for a violation of the requirements of this chapter, remedies (including remedies both at law and in equity) are available for such a violation to the same extent as such remedies are available for such a violation in an action against any public or private entity other than a State."

Thus, there is NO sovereign immunity for The Florida Bar because of its violation of the ADA at plaintiff's expense. The ADA wipes out any sovereign immunity defense of The Bar to the relief plaintiff seeks under the ADA.

WHEREFORE, plaintiff seeks injunctive relief, as well as monetary damages, against The Bar for its past and now ongoing violations of the Americans with Disabilities Act on the basis of The Bar's violations thereof.

I HEREBY CERTIFY that this has been served upon record counsel this 1st day of November, 2007, electronically.

/s/ JOHN B. THOMPSON, Plaintiff
Attorney, Florida Bar #231665
1172 South Dixie Hwy., Suite 111
Coral Gables, Florida 33146
Phone: 305-666-4366
amendmentone@comcast.net