UNITED STATES COURT OF APPEALS
ELEVENTH CIRCUIT

No. 07-14967-J

JOHN B. THOMPSON,

Petitioner,

v.

THE FLORIDA BAR, DAVA J. TUNIS,
FRANK ANGONES, and JOHN HARKNESS,

Respondents.

PETITIONER'S REPLY TO THE FLORIDA BAR'S RESPONSE

COMES NOW petitioner, Thompson, on his own behalf, and files this reply to The Florida Bar's response to the petition, stating:

The Bar has filed a remarkable response with this court. The Bar misspells the trial court's name, and it goes downhill from there.

The only issue before this appellate court is whether Judge Adalberto Jordan has disqualified himself, by his conduct which reveals a bias, from presiding further over the civil rights case below. Nevertheless, The Bar consumes four pages of its nine-page response text with its view, through the eyes of Greenberg Traurig, what the civil rights case is really about and how deserving Thompson is of the "discipline" The Bar wants to mete out. This is improper. The issue here is the recusal/disqualification of Judge Jordan. Petitioner is understandably tempted to correct the gross factual errors in The Bar's "Background of This Matter," but that is for another day. As to Judge Jordan:

The Bar's always creative counsel states at page 5:

"Here, Mr. Thompson makes the *general allegations* that Judge Jordan has 'gone off kilter, off base, off the deep end in this case' and the *general allegations* that Judge Jordan has made *unspecified* 'public threats and attacks' upon him and is 'biased.' These allegations are wholly insufficient to require or justify Judge Jordan's recusal and insufficient to merit a stay of proceedings." (emphases added)

The undersigned petitioner has not made mere "general allegations" about Judge Jordan's bias. With *specificity*, petitioner has asserted to this appellate court that Judge Jordan deceptively cited an obscure Alaska case, which the Ninth Circuit should not even be cited as authority, that was inapposite to anything petitioner had done and used it as a *faux* basis to enter a show cause order why Thompson should not be turned over to this District's *Ad Hoc* Committee for Discipline.

What had Thompson done that justified discipline of him in a case about lawyer discipline? He had, without violating any court rules, sent evidence of The Bar's selective prosecution of Thompson and its protection of a South Florida attorney who distributes what Judge Jordan found was "obscenity" through his supposedly Bar-regulated web site. This obscenity trafficker just happens to be The Bar's favorite filer of SLAPP Bar complaints against Thompson. Thompson, with adequate preliminary warnings as to the nature of this evidence, transmitted it to the court because The Bar's record counsel, Greenberg Traurig, had repeatedly and improperly told the trial court that *Thompson had no such evidence*, just as this same law firm is falsely telling this court that The Bar could not possibly, in any fashion, have violated Thompson's civil rights in the state disciplinary proceedings.

Judge Jordan not only falsified the case authority for his show cause order, he also fabricated the supposed danger Thompson had posed "to children" (see that assertion in his show causer order) by placing "obscenity" in the PACER court system. When Thompson, at a hearing on whether the court should vacate its referral of Thompson to the *Ad Hoc* Committee, raised the inaccuracy of the court's assertion that he had exposed "children" to harm, Judge Jordan actually said, on the record, that he had asserted no such thing. This was the judicial equivalent of ABC sportscaster Howard Cosell's famous assertion that he had not said during a football broadcast "Look at that little monkey run."

Judge Jordan had entered his show cause order, and in doing so gave Thompson until October 5 to show cause why he should not be referred to the *Ad Hoc* Committee for Discipline. Judge Jordan then violated his own order and made the referral prior to the deadline, closing the show cause window four days early.

It then became known that Judge Jordan and Chief Judge Moreno ***after*** Thompson had submitted the graphic and frankly irrefutable evidence of The Bar's selective prosecution actually formulated a new Rule prohibiting such filings. Jordan tried to apply that rule *post facto.* So here was Judge Jordan claiming Thompson had violated a Rule that did not exist.

Judge Jordan, not *generally*, but very *specifically,* has twice, once from the bench in open court and once in an order, reproved Thompson for allegedly trying to enlist him into his social activism crusade. The assertion is absurd. The last thing Thompson would want is the federal judiciary to take sides in what some have called "the culture war." Judge Jordan's finger-wagging at Thompson that Thompson wants Judge Jordan "to preside over the moral issues of the day" is as silly as it is revealing. Thompson wants

Judge Jordan simply to be fair on the issue of whether The Bar has violated Thompson's civil rights. Apparently that is asking too much of Judge Jordan.

The assertion now to this appellate court that Thompson has nothing but "general allegations" about Judge Jordan's bias is ridiculous. The trial court threatened Thompson with discipline, cited falsely an inapposite case as the basis for that discipline, violated its own show cause order by prematurely terminating the show cause period, cited in that show cause order the danger to "the children" posed by Thompson, then the court said it didn't write that, then the court came up with a *post facto* Rule to cover what Thompson had properly done, and to top it all off Judge Jordan placed in the electronic file a private letter Chief Judge Moreno had sent Thompson, copied to Judge Jordan, in order to further try to lampoon Thompson.

How "general" was the above recounting? Were there any "specifics" contained therein?

No "objective, disinterested, lay observer fully informed on the facts underlying the grounds on which recusal of Judge Jordan was sought would" ***not*** entertain a significant doubt about Judge Jordan's impartiality. This Judge, moving like a nervous water bug on the surface of a pond, first tried to use discipline against Thompson in a case about "discipline" and then had to backtrack from that when Thompson showed the baselessness and impropriety of Judge Jordan's tactic.

The on-line version of the *ABA Journal* got wind of what Judge Jordan was doing, with no help whatsoever from Thompson, and published a fair report of it. Lawyers from around the country contacted Thompson and offered assistance to him. Said one: "This

is the most ridiculous thing I have ever seen a federal judge do. He's adopted the illegal tactics of The Florida Bar."

CONCLUSION

The Florida Bar, as its response herein indicates, wants to pre-litigate right now the merits of Thompson's civil rights claim. This court should not let it. The Bar's record counsel in this case and in the court below knowingly misrepresents both the facts and the law (see Exhibit A hereto) because counsel knows that The Bar has been guilty of gross violations of Thompson's due process and other rights. The Bar's demonstrated bad faith alone is sufficient to defeat an abstention argument.

But the only issue now before this court is whether Judge Jordan has so sullied the perception that he can be fair by his own behavior that a new jurist should be assigned to the case. Thompson has not sought a stay of the state disciplinary proceedings on the basis of the *merits* of his case. The Bar knows that and yet argues the alleged merits of Thompson's case to this court. Thompson has sought a stay on the sole basis that he is entitled to a fair and timely hearing on sufficiency of his complaint prior to the disciplinary trial, which is now set for November 26. Thompson knows this appellate court can't sort this all out now. But it can sort outwhether Judge Jordan, with his repeated denigrations and misrepresentations from the bench about Thompson and let a fair judge take over. Judge Jordan does not have some property interest in this case. What the Judge and the parties should have is a mutual interest in a fair decision in the case below. Thompson cannot get that from this dissembling judge.

If this appellate court ever is asked to look at the actual merits of the underlying case, it will see that Supreme Court Justice Douglas' prediction in the *Lathrop* dissent,

Lathrop v. Donohue, 367 U.S. 820. (1961), that integrated state bars, if allowed to pursue their ideological agendas, will eventually become "goose-stepping brigades" has come true with The Florida Bar.

Wherefore, Thompson respectfully asks that this court simply rule on the recusal/disqualification issue prior to the November 26 "disciplinary" trial. *That* is the issue before this court, not The Bar's fictionalized accounts, purloined from the SLAPP Bar complaints filed by out-litigated opposing attorneys at Blank Rome and elsewhere, now regurgitated by The Bar in its response herein, of what Thompson has, in their wildest dreams, supposedly done.

I HEREBY CERTIFY that the foregoing has been provided this November 15, 2007, to all counsel of record and to Judge Adalberto Jordan.

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