

UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF FLORIDA

MIAMI DIVISION

CASE NO. 07-21256-CIV-JORDAN

JOHN B. THOMPSON,	)
	)
Plaintiff,	)
	)
vs.	)
	)
THE FLORIDA BAR, et al.,	)
	)
Defendants.	)
	)

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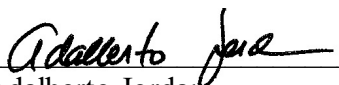
**ORDER DENYING MOTION TO VACATE AND TO STAY**

Mr. Thompson's motion to vacate for fraud on the court and for a stay of the ongoing disciplinary proceedings [D.E. 362], treated as a motion under Rule 60(b), is DENIED. Mr. Thompson argues that the Bar failed to disclose that the current version of Florida Bar Rule 3-4.6 was not in effect when Mr. Thompson was practicing law in Alabama. He contends that this failure constitutes fraud on the court. I disagree.

Fraud on the court "embrace[s] only that species of fraud which does or attempts to, defile the court itself, or is a fraud perpetrated by officers of the court so that the judicial machinery cannot perform in the usual manner its impartial task of adjudging cases that are presented for adjudication." *See Zakrzewski v. McDonough*, 490 F.3d 1264, 1267 (11th Cir. 2007) (citing *Travelers Indem. Co. v. Gore*, 761 F.2d 1549, 1551 (11th Cir. 1985)). In determining whether relief for fraud on the court is appropriate here, I need to consider to what extent the alleged fraud influenced the order of dismissal that Mr. Thompson seeks to vacate. *See id.*

I conclude that Mr. Thompson's allegations, even if true, do not constitute fraud on the court as I did not rely on the current version of Rule 3-4.6(a) in the order of dismissal. *Younger/Middlesex* abstention was warranted because of the existence of a pending bar disciplinary proceeding, irrespective of the rules that Mr. Thompson was accused of violating. To the extent that Mr. Thompson has an ex post facto claim as to the current version of Rule 3-4.6(a), he can raise this claim before Referee Tunis and the Florida Supreme Court together with his other constitutional challenges.

DONE and ORDERED in chambers in Miami, Florida, this 29<sup>th</sup> day of November, 2007.

  
Adalberto Jordan  
United States District Judge

Copy to: All counsel of record