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Ken Marvin
Director of Lawyer Regulation
The Florida Bar
651 East Jefferson Street
Tallahassee, Florida 32399

Re: Formal Sworn Bar Complaint against Larry Kellogg and Al Cardenas

Dear Mr. Marvin:

The above two lawyers, who are partners in the Miami law firm of Tew Cardenas, filed a sworn Bar complaint against me alleging a number of things, most importantly asserting, under oath, that their client, Beasley Broadcast Group, Inc., had “no link to the porn[ography] industry.” In asserting this under oath, they told The Florida Bar that I had lied in asserting that Beasley was involved with such material.

The Bar commenced a trial against me on November 26, 2007, and in doing so put Mr. Kellogg and Mr. Cardenas on the witness stand. By means of their testimony, we found, and the transcript shows, that their prior sworn assertion in the above regard was false and constitutes perjury.

In point of fact, the following came out during their trial testimony:

- a) Beasley was fined by the FCC in 2000 for airing pornographic, indecent material on Miami station WQAM-AM, and it paid the fine for airing this indecent material. See <http://www.fcc.gov/eb/Orders/fcc00266.html>.
- b) The FCC hit Beasley with a Forfeiture Order in November 2004 for airing indecent, pornographic material on the Scott Ferrall Show on WQAM. Here is the order that Kellogg and Cardenas knew existed when they executed their false sworn Bar complaint: <http://www.fcc.gov/eb/Orders/2004/FCC-04-225A1.html>.
- c) In April 2004, the FCC fined Clear Channel Communications \$495,000 for airing indecent, pornographic material on its various stations that were broadcasting the *Howard Stern Show* one year earlier. Clear Channel had aired Stern’s discussion of “sphincterine,” which is a product that enables oral/anal sex; in order words, the placement of one’s person’s mouth on the anus of another. I was the FCC complainant

who secured that fine against Clear Channel. Beasley aired that same “sphinctertine” program on its WRXK station in Ft. Myers. Thus, Beasley knew and Kellogg and Cardenas knew that yet another broadcast deemed by the FCC to be indecent and pornographic had been aired by Beasley, and yet Kellogg and Cardenas swore to the Bar that I had fabricated the link between Beasley and pornographic material. See FCC order at <http://www.fcc.gov/eb/Orders/2004/FCC-04-88A1.html>.

d) Additionally, at the moment in 2005 that Kellogg and Cardenas swore that Beasley had not in any fashion been involved with pornography, there was already in place a \$3.5 million Consent Decree entered months earlier in 2004 by the FCC which determined that certain broadcasts of the *Howard Stern Show* had indeed been indecent/pornographic. These same programs had been aired on Beasley’s WRXK in Ft. Myers. Kellogg and Cardenas knew this. See http://www.hollywoodreporter.com/hr/search/article_display.jsp?vnu_content_id=1000726039.

e) Now we have proof from Beasley itself that Kellogg and Cardenas are liars under oath. Beasley’s own 10-K filing with the United States Securities and Exchange Commission admits that Beasley has a problem with the FCC regarding the alleged airing of pornographic/indecent material. This is from the Beasley SEC filing at http://www.sec.gov/Archives/edgar/data/1099160/000119312507052193/d10k.htm#tx35416_5:

“ITEM 3.LEGAL PROCEEDINGS

On February 13, 2004, the FCC initiated an enforcement inquiry in response to allegations that WQAM-AM had broadcast indecent material on one day in September 2003. On November 23, 2004, the FCC issued to us a notice of apparent liability for a monetary forfeiture of \$55,000 for alleged indecency violations relating to broadcasts on two additional days in September 2003 at WQAM-AM. On December 6, 2004, the FCC initiated an enforcement inquiry in response to allegations that WQAM-AM had broadcast indecent material on eight different dates in 2004 on the Howard Stern Show; that inquiry also relates to WRXK-FM, which also carried the Howard Stern Show at that time. On August 15, 2005, the FCC initiated an enforcement inquiry in response to allegations that WQAM-AM had broadcast indecent material on four different occasions; that inquiry also relates to WRXK. Other complaints involving the broadcast of alleged indecent or profane material by radio stations we own remain pending.”

Thus, at the very moment in 2005 that Kellogg and Cardenas *swore* to The Florida Bar that I was fabricating this “porn” charge about Beasley, the FCC had already put Beasley on notice of the seriousness and reasonableness of this charge, and now Beasley is admitting in its SEC filing that it is serious and that there is a reasonable basis for this concern, as indicated by the FCC’s action. If I had made this up out of whole cloth, then why is the FCC *still* persisting on this matter?

Indeed, this is so serious that the following is now admitted by Beasley in the same SEC filing:

“WOAM-AM’s license renewal is currently subject to objections and indecency-related proceedings at the FCC, described below, and that renewal has not yet been granted.”

http://www.sec.gov/Archives/edgar/data/1099160/000119312507052193/d10k.htm#tx35416_2

My cross-examination of Larry Kellogg and Al Cardenas at my trial on these points is found in The Bar’s transcript. Kellogg and Cardenas each pretend that the findings by the FCC as to the airing of indecent, pornographic material on programs aired by Beasley do not exist. Al Cardenas goes so far as to maintain that because Beasley has not lost any licenses, then he was justified in asserting under oath that I had fabricated, lied about Beasley’s connection to pornographic material.

It is clear to anyone who heard the tortured, twisted, false testimony of Kellogg and Cardenas at my “disciplinary” trial that they lied under oath in executing their Bar complaints against me and that they lied at the trial.

This dishonesty by these two Florida-licensed attorneys clearly violates Bar Rules 4-3.1, 4-3.3, 4-3.4, especially subsection (h), 4-8.4(a), (b), and (c).

In addition, you will recall that Larry Kellogg first threatened me with a Bar complaint and then brought a Bar complaint when I found a “smoking gun” document in Beasley’s FCC Public File and sent it to the FCC. Kellogg asserted that I had stolen the document. Even The Bar found this assertion baseless and dismissed this ridiculous complaint brought by Kellogg in violation of Rule 4-3.4(h). This constitutes yet another ethics violation by Kellogg. Kellogg, on the stand at my trial, still maintained I had acted unethically in this regard, despite the clear finding of The Bar in this regard that Kellogg’s complaint was baseless.

The Bar’s utter refusal, to date, to dismiss the Tew Cardenas Bar complaint with prejudice, which it once offered to do, in writing, constitutes demonstrable *bad faith* by The Bar.

Now that Kellogg and Cardenas have been shown at my trial to have lied under oath in having sworn to their Bar complaint, it constitutes gross misconduct by The Bar if it a) does dismiss their complaint forthwith, and b) does proceed against these two perjurers for what The Bar now knows is their perjury.

The above recitation of the facts gleaned from the FCC’s own web site, from independent news accounts, and from Beasley’s own SEC filing proves that Kellogg and Cardenas lied when they asserted, under oath, that I had fabricated Beasley’s commercial link to pornography.

I solemnly swear, under oath and under penalty of perjury, that the foregoing recitation of the facts is true, correct, and complete, so help me God.

Signed, John B. Thompson, January 6, 2008