

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, *et alia*,

Defendants.

PLAINTIFF'S VERIFIED MOTION TO VACATE DISMISSAL ORDER

COMES NOW plaintiff, John B. Thompson, hereinafter Thompson, as an attorney on his own behalf, and moves this court, pursuant to Rule 60 (a) and (b), Federal Rules of Civil Procedure, to vacate this court's order of dismissal herein stating:

With all respect, Thompson would appreciate it immensely if this court would analyze the law and facts, as they should be applied to this case, in order to follow where they both lead rather than to protect this court's dismissal order.

Toward that end, Thompson now, for the first time, cites to this court the case of *U.S. v. Bullis*, 77 F.3d 1553, 1559 (7th Cir. 1996). That case holds that for the target of a prosecution to prove claim of prosecutorial vindictiveness, that defendant must show through objective evidence that prosecutorial conduct was motivated by prosecutorial animus, such as personal stake in outcome of case or attempt to seek self-vindication; if defendant successfully bears that burden, prosecution must produce evidence that proper motivation behind charges exists.

Thompson has shown this court that The Bar went from a demand of a 90-day suspension, after which time Thompson would be automatically reinstated as an attorney,

to a demand for permanent disbarment. Thompson has that unexplained shift in writing from The Bar.

It is also incontrovertible that the only thing that happened between the demand for a 90-day suspension and the demand now for permanent disbarment is that Thompson filed this federal lawsuit seeking a remedy for The Bar's prosecutorial misconduct; in other words, the only reason for the shift appears to be The Bar's animus-driven desire of vindictiveness.

What this court, under *Bullis*, was *required* to do, was actually conduct a hearing as to whether The Bar's prosecution was motivated by animus and/or a desire for self-vindication in light of the otherwise inexplicable shift from 90-days to eternity.

Instead, what this court improperly did was make an extra-judicial determination that Thompson could not prove bad faith at an evidentiary hearing and that The Bar could easily disprove any assertion thereof. As a result, this court turned a dismissal motion by The Bar into a bizarre effort to pre-litigate a *Bullis* hearing by submitting its version of facts which Thompson, at a real hearing, could have rebutted. This court based its dismissal order on nonexistence evidence at a hearing that never occurred.

Referee Tunis did her expected part in all this by refusing to sign Thompson's subpoena for testimony of The Bar's designated reviewers, Ben Kuehne and Steve Chaykin, so that Thompson could never ask these two fellows why there was a draconian increase in demanded punishment after Thompson sought a federal remedy.

Thus, this court, having seen that Thompson met his preliminary burden, as enunciated in *Bullis*, that The Bar's prosecutorial demand for heightened punishment of Thompson was motivated by animus and a desire for prosecutorial vindication, had a

duty to convene and preside over a hearing at which it could see what really was behind the prosecutorial shift.

Because this court did not do that, it denied him, improperly, the evidentiary hearing Thompson had an absolute right to expect and at which he could have proven bad faith. If the bad faith had been proven, then abstention would have been defeated. A reading of this court's dismissal order reveals that it decided facts that The Bar never submitted as evidence.

If Thompson is wrong about the facts that prove the bad faith, then let The Bar explain at a hearing before this court as to why it went from 90 days to infinity. If this court is not afraid of the truth, then let's hear what it is, in an adversarial evidentiary proceeding.

Vacate the dismissal order. It is erroneous because it has ignored the law, the latest proof of which is this filing re *Bullis*.

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

I HEREBY CERTIFY that this filing has been served upon record counsel herein by the court's electronic filing system this February 13, 2008.

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