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,

Defendants.

SUPPLEMENT TO PLAINTIFF'S VERIFIED 60(d)(3) MOTION FOR RELIEF FROM THIS COURT'S ORDER OF DISMISSAL FOR FRAUD ON THE COURT

COMES NOW plaintiff, John B. Thompson, hereinafter Thompson, on his own behalf, and supplements his motion filed last week, January 19, pursuant to Rule 60 (d) (3), Federal Rules of Civil Procedure, for relief from its order of dismissal without prejudice, on the basis of fraud on the court by the defendant Bar, stating:

1. A respected Tampa trial attorney, former ***Florida Bar prosecutor*** by the name of Brett Geer, Florida Bar # 61107, has corroborated plaintiff Thompson's allegations as to The Florida Bar's bad faith in its treatment of certain types of Bar respondents.

2. More specifically, Mr. Geer has filed a federal lawsuit in the Middle District of Florida, Case No. 08-00308, Brown v. The Florida Bar, *et alia*, on behalf of a Florida lawyer who "has been impermissibly targeted to be run out of the practice of law through the Bar's misuse of a flawed and inequitable system, as explained herein, all because ***she previously had the temerity to sue the Bar*** to try to expose and address this flawed and inequitable system." Emphasis added, page 17 of the Complaint, paragraph 99.

3. Attached Exhibit A hereto are just four pages of the Brown v. Bar complaint, with portions highlighted by red underlining that speak of the bad faith of The Florida

6. What some would call Thompson's "nothing but wild allegations" are not, by Geer's brave corroboration, so wild and not so incredible now that a former Florida Bar prosecutor is the one proclaiming them.

7. This court and its law clerk are implored to read Mr. Geer's complaint filed on behalf of Ms. Brown, readily available to them through the federal court's PACER system, Case No. 08-00308. Insert "Thompson" for "Brown," and Thompson could have written it, most importantly in this crucial regard:

8. Thompson asserts here, ***under oath***, that The Florida Bar offered Thompson, prior to his disciplinary "trial," a settlement deal: a 90-day suspension, with an automatic full reinstatement after that 90 days as a lawyer in good standing. The Bar attached to that sanction, however, a demand that Thompson submit to *subjective* psychiatric and psychological tests. Dr. Oren Wunderman, a respected clinical psychologist recognized as such by The Florida Bar itself, categorically warned Thompson that this was a trap and that The Bar, by the nature of the unreliable subjective tests it wanted to use as opposed to the objective tests he administered, it wanted to use, would find Thompson mentally ill, disabled, and unfit to practice law, and that this would be the illicit means by which Thompson would be permanently banished and "run out of the practice of law" to use Mr. Geer's phraseology.

9. So Thompson objected to this lunacy stunt and filed this federal lawsuit to seek relief from it. This court, to its credit, in dismissing this case without prejudice, commented that this lunacy stunt might indeed have been "unreasonable." It was not just unreasonable. It was the extortionate stunt by which The Bar got what it wanted—the end of a law career of a man that had been a thorn it its side for two decades. The Bar

was so intent upon pulling this stunt that it waived its insurance coverage for any wrongs it committed in pursuit of Thompson, so intent was it to achieve that result that it has now visited upon Ms. Brown because she, too, complained too loudly.

10. What did The Florida Bar then do, on the direction of Thompson's then Designated Reviewer, Steve Chaykin, who had announced to the public that people of faith such as Thompson should not be allowed to practice law because of their objection to "gay adoption"? The Bar "enhanced" its disciplinary sanction of Thompson from 90 days to permanent disbarment, ALL IN RETRIBUTION FOR THOMPSON'S HAVING, LIKE MS. BROWN, SUED THE BAR TO SHOW "THE BAR'S MISUSE OF A FLAWED AND INEQUITABLE SYSTEM." See Brown complaint, paragraph 99 and elsewhere.

11. Again, Thompson states all of this supplement including the following assertion under oath: On the first day of Thompson's Bar "trial" he asked the Referee to require of The Bar either to proceed with its conviction that Thompson was disabled especially since Thompson was proceeding pro se while, according to The Bar, he was incapacitated, or, in the alternative, drop the pretense. The Bar announced to the Referee that it was dropping this assertion. This proved this was nothing but a stunt, yet the "enhanced" discipline was now what would be imposed, because federal abstention had been secured by fraudulent misrepresentations to this court by The Bar's outside record counsel herein.

11. To further prove the "bad faith" nature of this lunacy stunt—what this court said might be "unreasonable"—Thompson, after the first day of trial, told The Bar, "Now that you have dropped this lunacy nonsense, I'll take the 90 days." Said Bar prosecutor

Tuma, "Mr. Chaykin wants permanent disbarment." All that had changed was that Thompson had, like Ms. Brown, asserted her rights.

12. Finally, the culminating fraud perpetrated upon this court by The Bar and the Florida Supreme Court used to try to insulate it from the consequences of its four years of litigative bad faith was the outright lie that the Florida Supreme Court had the legal authority to prohibit Thompson from filing pro se a Petition for Review of the Referee's Report. Thompson's filing of his motion last week deals extensively and directly with this ultimate fraud—proven by the ex post facto/bill of attainder Rule 3-7.17—which fraud this court must address because it is a) so patent, and b) so consequential. This fraud stripped Thompson of his most basic and most important right—his right to assert his other rights.

CONCLUSION

A lawyer who made his living representing The Florida Bar in its disciplinary cases has now blown the whistle on what The Bar does and why it does it to those Bar respondents who will not go quietly. In doing so, he has at least raised the *prospect* that what Jack Thompson had been asserting for years just *might* be true.

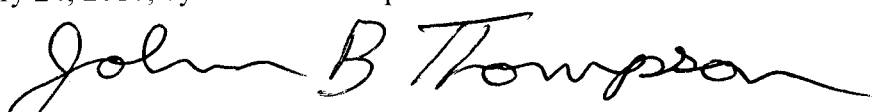
Let us assume Thompson is guilty as all Hell—that everything The Bar has said about him is the Gospel truth. Thompson is sufficient compos mentis that he can posit such a hypothetical. That assumption does not address in any fashion the alleged systemic and far-flung bad faith of The Bar in trying to end the career not just of the evil Jack Thompson but of the evil Ms. Brown as well. One set of alleged facts is a theory. Two sets of allegations give rise to the possibility of a pattern.

WHEREFORE, plaintiff Thompson respectfully prays this court to set aside its dismissal order, as the fraud upon this court by The Bar and the Supreme Court of Florida is now patent, and its "bad faith" more than fanciful. Rule 3-7.17 sealed the deal for The Bar and the Supreme Court, in that it prevented Thompson from even filing a Petiton for Review certain constitutional concerns about The Bar's "bad faith" in targeting whistle-blowing lawyers that former Florida Bar Prosecutor Brett Geer now asserts is standard operating procedure for the lawless Florida Bar.

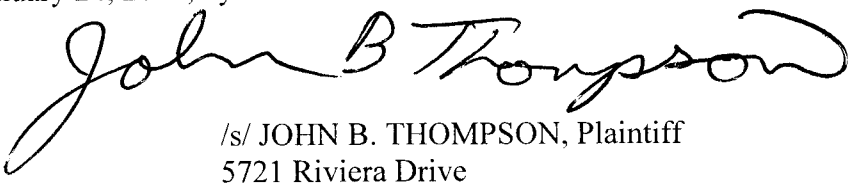
The ABA McKay Commission warned this would happen. Justice Douglas in *Lathrop* said this day would come. A unanimous US Supreme Court in *Keller* warned that integrated state bars cannot be trusted. Yet the 1949 Florida Supreme Court pledged that such a perversion of lawyer discipline would never occur in this state. Thompson and Brown and Geer knew and know better. It is, with all respect, time for this federal court to tell The Florida Bar: You cannot target citizens thusly.

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

Signed, January 24, 2010, by John B. Thompson:



I HEREBY CERTIFY that this has been served upon record counsel for The Florida Bar and Dava Tunis this January 24, 2010, by US mail.



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they do have substantial support in the record.

72. A cursory survey of the case law reveals that the Supreme Court does not shy from relying on and citing to this towering legal hurdle (in re: overturning a referee's factual findings) in the multitude of cases where the disciplined attorney has sought to overturn them; however, in Ms. Brown's case, it was the Bar that sought to overturn them, and the Supreme Court unanimously obliged the Bar's request to overturn the referee's findings and to substitute its own.

73. Ms. Brown alleges this result stems from unconscious or institutional bias favoring the Bar, or bias or bad faith against her, because she showed the Bar to be incompetent, twice, in Case No. 1. She feels the findings and conclusions in Case No. 1 were materially altered to harm her, or with a reckless disregard as to her legal rights and interests because she previously alleged (in this Court) that the Bar's prosecution of Case No. 1 lacked substantial merit, and because she had sued for damages for having to pay to defend the Bar's insubstantial case with no equal remedy as to fees and ended up challenging the Bar's sacred Eleventh Amendment immunity (which exists only by virtue of *stare decisis* that is, frankly, outdated; *see* Count V, *post*).

74. From the perspective of the Bar's parent and overseer, there could hardly be a better way to dispel such allegations about the Bar's competence and motives than by fashioning a remedy whereby the subject prosecution is deemed (twice now on appeal) to have some actual merit and to bootstrap that deemed substance into a 90-day suspension of Ms. Brown's license. To do so, however, the Supreme Court had to ignore its own case law, interpret an ethical rule in a surprisingly broad, new, unsupported way, overturn the referee's factual findings and legal conclusions, and substitute its own findings. Ms. Brown contends that this set of circumstances evinces her claim of bad faith or impermissible bias.

Exhibit A

convincing evidence. *See* Exhibit 11. (Motion for Fees and Costs).

84. Based on the outcome of Case No. 1, the Bar has every reason to believe that if or when the referee dismisses its Complaint in Case No. 2, for the reasons set forth in Ms. Brown's motion to dismiss, the Supreme Court will correct or rehabilitate any defect in its case, pleadings or evidence that the Bar might encounter in prosecuting Case No. 2. Ms. Brown has every reason to believe this as well.

85. There are no checks or balances, no separation of power, regarding any aspect of an attorney discipline case in the State of Florida. The cases all originate in the Supreme Court, are investigated by agencies of the Supreme Court, are prosecuted in the Supreme Court by the "official arm" of the Supreme Court (the Bar), and are then appealed to the Supreme Court, which imposes discipline as it chooses, with no pretense of any participation by any authority or agency of the legislative or executive branches of state government. *See* Rule 3-3.1, *R. Regulating Fla. Bar.* This construct permits total and utter domination over the initiation, prosecution, and ultimate outcome of such proceedings, and fosters bias and inequity.

86. Other than attorneys, no other licensed professionals in the State of Florida are subjected to such an all-dominating and inherently unfair disciplinary process or system.

87. All other licensed professionals are investigated and tried by agencies of the Executive (agencies created by the Legislature), under rules promulgated by the Executive, with a right of appeal to the Judiciary.

88. Attorneys are tried in the Supreme Court, by the Supreme Court, based on rules promulgated by the Supreme Court, after which they may appeal to the Supreme Court.

89. There is no rational basis for this disparate treatment of Florida attorneys.

90. A most serious and inequitable disparity inuring to attorney disciplinary cases is that no attorneys fees may ever be taxed to the Florida Bar for prosecuting claims or contentions that lack substantial merit. This rule and law have been constructed by the Supreme Court in alliance with the Bar, which proposes, advises the Supreme Court on, such rules and rulemaking. *See* Rule 3-7.6(q); Rule 3-7.15, *R. Regulating Fla. Bar.*

91. Every other licensed professional in the state has rules and law in place protecting him or her (via a potential fee award) from being subjected to defending claims or contentions that lack substantial merit. *See* Fla. Stat. § 57.105(5) (2003).

92. There is no rational basis for the disparate treatment of Florida attorneys denying them potential fee awards as a check against incompetent, biased or bad faith Bar prosecutions. The Bar simply is not exposed to the downside risk that applies to all other (executive) agencies that prosecute professional licensees in Florida.

93. Case No. 2 against Ms. Brown is a Bar prosecution lacking substantial merit that is proceeding through incompetence, bias, or bad faith.

94. Ms. Brown, a black female attorney, previously alleged in this Court that, in a case similar to Case No. 2, which involved a white male attorney, Brian Almengual, Esq., the grievance committee had found no probable cause to believe that he had interfered in the administration of justice by knowingly filing false pleadings. The grievance committee reasoned that Mr. Almengual had a right to rely on the (false) representations made to him by his client.

95. Ms. Brown alleges that the 20th Circuit grievance committee seeks and intends for the Bar to prosecute her in Case No. 2, by and through its finding of probable cause under facts virtually indistinguishable from Mr. Almengual's case, based on her race and gender.

96. Based on the ultimate outcome of Case No. 1, Ms. Brown fears that she will be forced to expend tens of thousands of dollars defending herself in a proceeding that she is predestined to lose [e.g., to have a referee dismiss the insubstantial case; to have the Bar appeal to its parent to rehabilitate its case; to have the case remanded; to have it tried and to prevail, only to have the Bar's parent fashion another remedy so that the Bar doesn't look incompetent], with no adequate remedy at law to forestall all of this from happening to her, all over again.

97. Based on the Complaint and Motion to Dismiss filed in Case No. 2, it is obvious beyond peradventure that the Bar's exhibits facially negate its pleaded cause of action, because the exhibits prove on their face that Ms. Brown's client, Lisa Blumenstock importuned Ms. Brown with an "emergency" involving a minor child, using facts that Ms. Blumenstock verified under oath in pleadings that she prompted Ms. Brown to draft and file in court. As such, it is clear that Ms. Brown's motion to dismiss should be granted, and therefore that she has a substantial likelihood of prevailing on the merits of the case.

98. For the Bar's prosecution of Case No. 2 to go forward at this juncture – instead of when it should have gone forward, some two years ago – places Ms. Brown at the risk of irreparable harm for further fees and costs and further discipline if the Bar and Supreme Court deal with Case No. 2 the same way they dealt with Case No. 1 – which she rightly fears.

99. Based on the foregoing, Ms. Brown has every reason to believe she has been impermissibly targeted to be run out of the practice of law through the Bar's misuse of a flawed and inequitable system, as explained herein, all because she previously had the temerity to sue the Bar to try to expose and address this flawed and inequitable system.

100. Ms. Brown will suffer irreparable harm unless the Florida Bar is enjoined from