

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)
_____)

ORDER DENYING VERIFIED MOTION FOR RELIEF FROM JUDGMENT

Mr. Thompson's verified motion for relief from judgment under Rule 60(d)(3) [D.E. 441], as supplemented [D.E. 442], is DENIED.

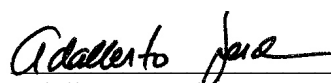
Fraud upon the court under Rule 60(d)(3) "embrace[s] only that species of fraud which does or attempts to, defile the court itself, or is a fraud perpetrated by officers of the court so that the judicial machinery cannot perform in the usual manner its impartial task of adjudging cases that are presented for adjudication." *Zekrezewski v. McDonough*, 490 F.3d 1264, 1267 (11th Cir. 2007). In his motion and supplement, Mr. Thompson makes two arguments. First, he asserts that, contrary to the assumption I made in the dismissal/abstention order, Judge Tunis (the referee), the Florida Bar Board of Governors, and the Florida Supreme Court did not provide him with an opportunity to raise his constitutional arguments (and in fact never addressed any such arguments). Second, he contends that Judge Tunis was not chosen as the referee in alphabetical order from the list of eligible sitting state circuit judges in the 11th Judicial Circuit, as should have occurred. He says that Chief Judge Farina appointed Judge Tunis as the referee by skipping 22 judges whose names came before hers and who were eligible for selection as referees. Neither of these arguments warrants the relief Mr. Thompson seeks, which is vacatur of the dismissal/abstention order.

As to the first argument, I will assume, as Mr. Thompson alleges, that Judge Tunis refused to consider and address his constitutional arguments. The problem for Mr. Thompson is that he could have challenged Judge Tunis' rulings (or lack of rulings) on appeal to the Florida Supreme Court, and could have raised his constitutional arguments there. The reason he was not able to do so was because the Florida Supreme Court barred Mr. Thompson from proceeding pro se due to his

abusive filings, and required that filings on his behalf be made by an attorney in good standing. *See Fla. Bar v. Thompson*, 979 So.2d 917, 919-21 (Fla. 2008). Mr. Thompson did not obtain counsel and continued to file pro se in the Florida Supreme Court, but his pro se filings were rejected by the clerk. The Florida Supreme Court therefore concluded that there was no petition from Mr. Thompson to review, treated the disbarment proceeding as an uncontested one, affirmed Judge Tunis' report, and disbarred Mr. Thompson. *See Fla. Bar v. Thompson*, 2008 WL 4456933, *1-*2 (Fla. 2008). In my view, Mr. Thompson – due to his litigation conduct – only has himself to blame for not being able to assert (and be heard on) his constitutional arguments in the Florida Supreme Court.

Turning to the second argument, I will assume, as Mr. Thompson alleges, that Chief Judge Farina did not go by alphabetical order when he selected Judge Tunis as the referee. But that assumption does not get Mr. Thompson very far. As an initial matter, there was nothing to prevent Mr. Thompson from presenting this argument here before entry of the dismissal/abstention order. Moreover, Mr. Thompson has already raised Judge Tunis' allegedly improper selection in at least one prior Rule 60 motion, *see* Order Denying Verified Motion for Relief from Judgment [D.E. 434] at 1 (May 5, 2010), and he therefore cannot raise the issue again (even in a slightly different form) in a successive Rule 60 motion. *See, e.g., Lathman v. Wells Fargo Bank*, 987 F.2d 1199, 1204 (5th Cir. 1993) (“absent truly extraordinary circumstances,” a party cannot raise arguments for a second time in a successive Rule 60(b) motion).

DONE and ORDERED in chambers in Miami, Florida, this 30th day of September, 2010.


Adalberto Jordan
United States District Judge

Copy to: All counsel of record & John Thompson, pro se