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.

PLAINTIFF'S MEMORANDUM OF LAW IN RESPONSE TO THE FLORIDA BAR'S MOTION TO DISMISS SECOND AMENDED COMPLAINT

COMES NOW plaintiff, John B. Thompson, hereinafter Thompson, as an attorney on his own behalf, and files this response to The Bar's latest motion to dismiss, stating:

THE BAR'S BAD FAITH IS AS BAD AS BAD FAITH GETS

Plaintiff is gratified that The Bar has acknowledged on page 3 of its August 21, 2007, motion to dismiss that "bad faith" provides a plaintiff an exception to what it calls Younger abstention and the line of cases spawned by *Younger*.

There are three legs to The Bar's bad faith stool in its remarkable dealings with Thompson over the last three years, and here they are:

1. The Bar has made repeated written demands that Thompson *cannot* resolve the ethics complaints unless he agrees to a forensic psychological evaluation to be done *after* he pleads guilty, even though the logic of The Bar's position is that he is likely incompetent to practice law and thus lacking the mental capacity to consent, effectually, to anything. That alone is bad faith about as bad as bad faith can get.

2. The "designated reviewer" throughout this "disciplinary" process has been Bar Governor Ben Kuehne whose ideological exploits have been on behalf of organizations that have targeted Thompson for nearly two decades for harm in the "culture war." Kuehne has a) overridden the factual findings of The Bar's own outside investigator, David Pollack, b) received a target letter from DOJ alleging he is a money launderer for the Medellin cocaine cartel, c) presided in the "disciplinary" assault upon Thompson by corporations who have more money than the cowboys of Medellin, and d) refused to recuse himself for three years from the proceedings against Thompson despite these bias problems. Now, at 11:59 pm in the disciplinary day which Thompson has endured for three years, Kuehne has recused himself from these proceedings, refusing to give a reason why and refusing, along with The Bar, to allow any discovery to find out the *reason* for the recusal.

3. The cornerstone allegation against Thompson in the massive "Alabama Bar complaints" is that Thompson withheld from the Alabama State Bar and the trial court there his disciplinary history in order to fraudulently secure *pro hac vice* admission. Yesterday the deposition of the Alabama Judge who kicked off this "disciplinary" assault upon Thompson admitted, because he was finally under oath for the first time, that Thompson actually provided *more* information about his disciplinary history than he was required to do!

As a result of this sworn admission, and in light of Thompson's literally begging The Bar for more than two years for some indication of what he failed to disclose to the folks in Alabama, Thompson has sent The Bar the attached letter demanding a transmitted promise to dismiss this count from the complaint by 2 pm today. Thompson

anticipates he will not get that promise, because of the patent bad faith of The Bar. It knows this count is based upon perjury. North Carolina's Mike Nifong may have a new career for himself as a Florida Bar prosecutor.

PLAINTIFF HAS ONLY MADE "CONCLUSORY ALLEGATIONS"?

Plaintiff has nothing but the highest regard for the legal abilities of The Bar's outside counsel in this cause, Barry Richard of Greenberg Traurig. Thompson wishes he were half the lawyer Mr. Richard is. But The Bar and its counsel should be embarrassed to argue that all Thompson has come forward with in his complaint are mere "conclusory allegations about the denial of due process." This is boilerplate language purloined from that law firm's other attempts to thwart the granting of preliminary injunctions.

A careful reading of the second amended complaint shows that plaintiff has assiduously avoided making mere "conclusory allegations about the denial of due process." He has been *very specific*. Plaintiff has alleged, in no particular order of importance: Denial of discovery as to Ben Kuehne; a blanket thwarting by Bar staff line counsel of compliance with the production of documents under the Florida Public Records law and the Rules of Civil Procedure; discovery from SLAPP Bar complainant Norm Kent, who is the single greatest proof of The Bar's selective prosecution of Thompson; denial of recusal, with no explanation, by the referee who branded Thompson's defensive pleadings "propaganda;" denial of *any* discovery whatsoever from Bar Governors, Bar personnel, and grievance committee members that would corroborate evidence of prosecutorial misconduct, improper motive in the prosecution of Thompson; denial of two continuances on the basis of Thompson's wife, Carlton Fields partner Patricia Thompson's, two medical crises in fighting ovarian cancer; and the refusal—the

utter refusal by The Bar—to tell Thompson what he did that violates ethics Rules. The Bar has simply said: "Here are the Rules you violated. Here are five file drawers of materials. You figure it out, Mr. Thompson." If the California prosecutor in the LaBianca murder trial had come up with such a flimsy indictment and "you figure it out" taunt, Charles Manson would have walked, and should have.

If The Bar and the court think that this last breach of due process is inconsequential, just consider again what happened yesterday: After two years of being stiffed by The Bar as it has refused to tell Thompson was disciplinary history he failed to disclose to Alabama, the sloppy Alabama judge, James Moore, admitted under oath that Thompson actually gave more disciplinary information than he was required to provide. Can this court imagine what Thompson may be able to find out if a preliminary injunction is granted and Thompson gets to depose Ben Kuehne? Neither can Thompson.

In addition to the foregoing, The Bar has violated certain enumerated, listed Bar Rules as set forth in Thompson's very specific complaint. They deal with processing an Alabama Bar complaint as if it were a Florida Bar complaint (violation of Rule 3-4.6), seeking a compulsory forensic psych exam in violation of Rule 3-7.13 and Rule 3-5.2, a failure to comply with Rule 3-7.3 as to how complaints are to be processed and screened, and so on. These are not "conclusory allegations." They are demonstrable, specific breaches by The Bar of its own Rules which are consequential in their own right but which betray an improper motive to "get" Thompson no matter what damage The Bar does to its own Rules in the process.

THE 11TH AMENDMENT DOES NOT WIPE OUT THE BILL OF RIGHTS

Of all of The Bar's arguments, the argument that the Eleventh Amendment bars application of the U.S. Constitution, notably the Bill of Rights, to residents of states, through the Fourteenth Amendment, is possibly its most specious argument of all.

The federal civil rights laws, passed *after* ratification of the Eleventh Amendment, gives citizens remedies against states and state officials who, under color of state law, deny citizens their federal constitutional rights. The Florida Supreme Court, in creating The Florida Bar, did not revoke the federal constitutional rights of Florida lawyers.

When The Florida Bar hauls out as "authority" on its point *Florida is the land that the constitution forgot*, a case decided in 1904—103 years ago—that aloneshould serve as a red flag that The Bar is really reaching.

In point of fact, the United States Supreme Court in *Supreme Court of Virginia v. Consumers Union*, 466 US 719 (1980), held that ***a federal district court can enjoin a state bar from the improper enforcement of its disciplinary rules***! Ruled the High Court in a unanimous opinion penned by Justice White:

"The court and its chief justice were properly held liable in their enforcement capacities. Since the state statute gives the court independent authority on its own to initiate proceedings against attorneys, the court and its members were proper defendants in a suit for declaratory and injunctive relief, just as other enforcement officers and agencies are." Pp. 734-737.

In the above case in which the US Supreme Court ruled that a state bar can be enjoined if it seeks to impose "discipline" unconstitutionally, the plaintiff therein was proceeding under 42 USC 1983, which is *precisely* the federal statute under which

Thompson is proceeding. The entire opinion in *Supreme Court of Virginia* is attached hereto because of its importance to this case now before this court.

CONCLUSION

If this were just the first time The Florida Bar got caught using "discipline" to try to destroy Thompson's legal career, then Thompson's arguments and proofs thereof might be more easily dismissed. But this is not the first time. The Bar's insurance carrier claims person, fifteen years ago, when he heard what The Bar did to Thompson in the last go-round said (and this is a verified pleading, so Thompson states this under oath): "That is the worst thing I have ever heard a state government do to anyone." Corroboration is proof that The Bar's carrier paid Thompson money damages for hijacking The Bar's disciplinary machinery to pursue a politically correct *jihad* against Thompson. The Bar got caught, and it has never gotten over being caught. John Harkness, who was at the helm of The Bar when it acted so foolishly before, is still at the helm. His vendetta is betrayed by his using the same methods—demanded psych evaluations, etc.—that didn't work the last time. Lawyer leopards, it seems, don't lose their spots.

What does plaintiff want that The Bar is so eager to deny him that it now seeks a dismissal of this complaint? Plaintiff first seeks a preliminary injunction to shut down, *temporarily*, The Florida Bar's assault upon Thompson so that he can prove, through the discovery and the other litigative processes denied him in the "disciplinary" setting, that a) The Bar's pursuit of Thompson has nothing whatsoever to do with discipline but is instead an outrageous attempt to infringe upon his First Amendment speech, religion, petition, and assembly rights in collaboration with the porn-to-kids industry. If Thompson fails to prove his case for a permanent injunction as to the very *nature* and

reason for the proceedings, then his alternate remedy he seeks is that the discipline of Thompson, if it really is about ethics discipline, must proceed in compliance with The Bar's own Rules and procedures and with the requirements of due process set forth and guaranteed by the U.S. Constitution. Thompson's second amended complaint is really *specific* as to what The Bar has done wrong.

Any state bar that really wants to uphold the law, the rule of law, and the public's faith that its disciplinary system is really about discipline, ought to be the first ones to want to cross their t's and dot their i's in their pursuit of a lawyer who has had no client complaint to The Bar about him. The fact that The Bar has for three years now gutted its own rules and procedures in a vendetta against Thompson is probative, at least, of motive. But The Bar's motive aside, its Rules should be obeyed, and Thompson seeks, at the very least, an injunction in that regard.

Thompson does not seek, like some Luddite, to disable The Bar's disciplinary machinery. The Bar is managing to do a pretty good job of that on its own. He simply seeks to hold it up to scrutiny as to what this "discipline" is about and whether it complies with procedural safeguards that he asserts The Bar is in fact violating wholesale. It is apparently an irony lost on The Bar that an organization that seeks to enforce Rules would do well to obey its own Rules. Thompson understands how power blinds the powerful to their foibles, but this is getting, after three years, a bit ridiculous.

The Florida Supreme Court, by its inert ignoring of Thompson's writ of mandamus remedy has denied him *any* state remedy for the ongoing assault upon his rights. In *Pulliam v. Allen,* already cited to this court in the body of his second amended complaint, the US Supre me Court makes it amply clear, along with *Virginia*, *supra,* that

state courts are not free to violate the rights of their citizens just because they believe they are above the law. The Bar and its lawyers can cite *Younger* abstention until the cows come home: *Younger* did not repeal the Bill of Rights, the rest of the US Constitution, the federal civil rights laws, held constitutional, and the right of any citizen, whether he is a lawyer or not, to due process. Here, for example, is The Florida Bar proceeding to the trial of Thompson without telling him with any specificity what he has done to violate certain Bar Rules and denying him discovery to find out what in the world The Bar is going to allege he did wrong at that trial!

If Thompson secures a preliminary injunction against The Bar, which would simply provide him a window in which to try to prove his allegations, the sky will not fall. The Florida Bar will not be abolished. Unethical lawyers will still be prosecuted and convicted. Law will still rule. If Thompson cannot prove his case, then the preliminary injunction will be vacated, The Bar may proceed, and the public can then be "saved" from this lawyer who has simply sought to slow down the corporate predation on our children with adult-rated porn, violence, all facilitated by marketing fraud.

The porn-to-kids industry has literally hijacked The Florida Bar to use its disciplinary powers to destroy its most abiding and successful critic. Thompson can prove it. The lunacy gambit alone proves it. Thompson, in asking this court not to dismiss his second amended complaint, simply seeks the opportunity to prove his case. As seen above, the case authority enabling him to do just that is on his side.

I SOLEMNLY AFFIRM, UNDER PENALTY OF PERJURY, THAT THE FOREGOING FACTS ARE TRUE, SO HELP ME GOD.

I HEREBY CERTIFY that the foregoing has been sent to opposing counsel by the court's electronic filing system, this August 22, 2007.

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