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 RESPONSE TO THE BAR'S FILING OF SUPPLENTAL AUTHORITY IN OPPOSITION TO GRANTING PRELIMINARY INJUNCTION

COMES NOW plaintiff, John B. Thompson, hereinafter Thompson, as an attorney on his own behalf, and hereby responds to The Bar's supplemental authority filed in opposition to the granting of a preliminary injunction herein, stating:

1. *Mason v. The Florida Bar* case cited by The Bar's counsel is inapposite to the one now before this court, although The Bar's record counsel was the same in both.

Note:

ADEQUATE OPPORTUNITY TO TIMELY RAISE CONSTITUTIONAL ISSUES

2. The magistrate and then the court in *Mason* applied the abstention doctrine in *Middlesex* and in *Younger* but in doing so found that there was, under the third prong of *Younger,* "an adequate opportunity in the proceeding to raise constitutional challenges." Thompson has had *no* opportunity to raise these constitutional challenges. Referee Tunis, a defendant herein, has not allowed Thompson to make these constitutional challenges

and she has denied Thompson ***all*** discovery by which to credibly assert and prove these defenses even at the time of trial.

3. For example, Thompson has a "selective prosecution" defense, which is a denial of equal protection by virtue of The Bar's prosecution of Thompson while refusing to process ethics charges against the SLAPP complainants, which have included perjury, illegal drug use, stalking, and extortion. The referee will not allow discovery of Bar documents which would prove this selective prosecution, despite the clear holding that he is entitled to such discovery under *U.S. v. Armstrong*, 517 US 456 (1996).

4. By contrast, when Thompson was allowed such discovery back in 1991 to 1992, he found "smoking gun" documents in The Bar's files which proved selective prosecution and which led to a dismissal of charges. The Bar has apparently learned from that earlier lesson as to what can happen if Thompson is allowed to see documents which can prove this selective prosecution this time around.

5. The Bar has even gone so far as to renege on its promise to produce, this time around, document requests pursuant to Florida's Public Records Law. First it agreed through Greenberg Traurig to produce them, and then The Bar's staff counsel refused to produce them. Thompson can't prove his defenses if he is not allowed to see the documents he was promised.

6. The magistrate in *Mason* goes on to say that Mason could assert his constitutional claims to the grievance committee, and he could "***petition the Board of Governors*** to dismiss the disciplinary action on constitutional grounds, and there is no reason to find that the grievance committee or ***the Board***, both of which are composed primarily of lawyers, ***would refuse to consider*** such claims." [emphasis added]

7. With all respect, Thompson asks the court to look at the emphasized portions of the immediately preceding quoted text from *Mason*. Thompson has been begging the Board of Governors to entertain his constitutional defenses *for two years now*. He has asked to address either the entire Board or a committee of the Board, which could be what is called the Board Disciplinary Review Committee so that he might timely make his constitutional arguments. The Board has not only refused to grant him an audience; it has also refused even to respond to his requests. What opportunity, then, under the holding in *Mason,* has Thompson had to make these constitutional arguments to the Board? Answer: None.

8. Thompson has filed with this court in the last 24 hours proof that Bar President Frank Angones has even gone so far as to block e-mails from Thompson asking, again, to address either the entire Board or a committee of the Board at its Board meeting at the Ritz Carlton in Coconut Grove next week about these constitutional issues. Barry Richard of Greenberg Traurig has told Thompson to stop petitioning the Board of Governors for a redress of grievances. Who is Mr. Richard to tell Thompson that he has no right to exercise a remedy delineated in *Mason*?

It is an irrefutable fact, not a surmise, that the remedy that the magistrate in *Mason* notes Mason had which he did not even choose to exercise—to come before the Board of Governors—is a remedy Thompson has asked for and has been totally ignored when he has repeatedly asked. This is not due process. This is institutional intransigence and isolation. Thompson was even denied an appearance before his grievance committee at which he wanted to make these constitutional arguments. He was denied that appearance and that remedy that *Mason* holds a respondent should have.

9. Thompson has repeatedly raised these constitutional defenses to the Florida Supreme Court in his writ of mandamus actions, and the state's highest court has steadfastly ignored his repeated requests for a determination of those constitutional defenses that *Mason* holds should be timely heard. The high court, which has a duty to hear such arguments before a disciplinary trial, simply says: "Tell it to Tunis."

Why in the world The Bar would even cite *Mason* to this court when The Bar has steadfastly denied Thompson the remedies enunciated in *Mason* is beyond him.

BAD FAITH AND MASON'S HOLDING

10. Now we come to the "bad faith" portion of the *Mason* case. The magistrate states: "Mason introduced ***no*** evidence of bad faith prosecution by the Florida Bar. The state proceeding marks the ***first time*** Mason has ever been charged by the Florida Bar and there is ***no*** evidence that that Bar harbors ***animus*** of any sort against Mason. Testimony presented at hearing demonstrated that the Bar is proceeding in accordance with its routine procedures in investigating the complaints against him."

11. Does this sound like how The Bar has treated Thompson, as set forth in his Third Amended Complaint? The facts of Masoncould not be any more inapposite to those before this court in this regard: This is ***not*** the first time The Bar has come after Thompson at the behest of the entertainment industry. It is ***not*** the first time The Bar has demanded a lunacy exam in order to harass Thompson, with no factual basis for doing so. Thompson, further, unlike in *Maso,n* has been denied crucial discovery from The Bar, including even a refusal of The Bar to tell him what of his disciplinary history he hid from the Alabama court, what ways in which he violated other Bar Rules, and it has routinely denied him discovery by deposition in accordance with the Rules of Civil

Procedure that our Bar Rules assert apply in Bar disciplinary matters. The denial of due process, even to the point of The Bar's refusal to tell him why Ben Kuehne was finally removed from his case three years too late, is legion. Mason did not face this wholesale, bad faith ignoring of The Bar's own procedures and Rules, yet Thompson has. If these are not "extraordinary circumstances" as that term is used in *Mason,* then it would be hard to fathom what would be. Does The Bar routinely demand lunacy proceedings against respondents and then refuse to secure them when the respondent himself asks The Bar to do so if it has a factual basis for them? Answer: Of course not.

WHEREFORE, Thompson respectfully moves this court to grant his preliminary injunctive relief, as not only the facts, but the holding in Mason, usefully provided to this court, makes a powerful case, on the strength of its authority, that Thompson is entitled to that equitable relief.

I HEREBY CERTIFY that this has been served upon record counsel this 28th day of August, 2007, electronically.

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