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 *VERIFIED* NOTICE TO COURT IN LIGHT OF ITS SEPTEMBER 6 OMNIBUS ORDER AND NOTICE OF FILING SUPPLEMENTAL AUTHORITY IN SUPPORT OF HIS THIRD AMENDED COMPLAINT

COMES NOW plaintiff, John B. Thompson, hereinafter Thompson, as an attorney on his own behalf, and provides notice to the court in light of its September 6 Omnibus Order, stating:

FEDERAL COURT HAS JUST STRUCK DOWN BAR RULES THAT PUNISH THE VERY KIND OF SPEECH FOR WHICH THE FLORIDA BAR SEEKS TO PUNISH PLAINTIFF THOMPSON

The attached federal court ruling in *Fieger v. Michigan Supreme Court*, this very week struck down the speech code rule as to judges with which The Florida Bar has been harassing Thompson for two years. There will be more, *infra*, about the declaratory relief sought by Thompson in his Third Amended Complaint which Thompson has sought and to which he is now clearly entitled by order of this court.

THE COURT'S RULINGS AND THEIR APPLICATION
TO THE THIRD AMENDED COMPLAINT

Plaintiff appreciates the court's helpful guidance found in its recently entered September 6 Omnibus Order and respectfully brings to the court's attention certain facts law which the now filed Third Amended Complaint seeks to address further, to-wit:

BAD FAITH

The court, plaintiff, and even the defendants are in agreement that there is a bad faith exception to *Younger* abstention. The issue is whether there is bad faith or "extraordinary circumstances" in this instance *sufficient* to warrant the granting of injunctive relief. Plaintiff believes he has now laid that out in the Third Amended Complaint, which the court understandably did not address in its Omnibus Order.

Respectfully, however, plaintiff would argue to the court that his "disciplinary history" is only *one* possible means of proving The Bar's bad faith. It is not the only means, nor does the case law mandate that it is the only means. However, before noting the means of proving this bad faith, plaintiff particularly notes what The Bar did to Thompson through its Norm Kent/Beasley complaint that was spawned by Thompson's opposition to the airing of illegal, indecent content on the *Howard Stern Show*.

Over the objection of The Bar's outside investigator, David Pollack, The Bar, with Bar Governor Ben Kuehne presiding as designated reviewer, resuscitated the moribund Kent/Beasley Bar complaint over Pollack's written objection, found probable cause because of this resuscitation, and then hectored Thompson with it for more than two years just for the heck of it, to use common parlance. This caused tremendous harm to Thompson, as Kent paraded publicly this ultimately aborted prosecution of Thompson as proof of how unethical Thompson was. Thompson finally persuaded The Bar, more than two years after it was brought, to drop it with prejudice. Even the Duke lacrosse

players did not have to put up with Mike Nifong's baseless prosecution for that long. Did North Carolina's final dropping of the charges somehow wipe the slate clean of Nifong's misconduct and bad faith? Apparently not. Mr. Nifong is today getting out of jail.

It is disingenuous of The Bar and its record counsel herein to file what it represented to the court to be Thompson's "full disciplinary history" when it knowingly withheld from this court what it knew to be the Kent/Beasley disciplinary history which actually has a case number attached to it and which is part of the formal public record before the Florida Supreme Court. The Bar knew this Kent/Beasley SLAPP complaint was a baseless Bar complaint when it was filed in August 2004, and its outside investigator, David Pollack of Stearns Weaver concluded just that. And then, when the court asks for an accounting of Thompson's full disciplinary history, somehow this Bar "forgets" about the Kent matter. If plaintiff may address the court directly: Your Honor, this is the very type of disingenuousness and bad faith that Thompson has had to put up with for more than three years. This court, with all respect, should be concerned that The Bar utterly failed to disclose to this court in its filing the two-year harassment of Thompson through the Kent/Beasley complaint, pretending as if it never happened.

There are other instances of bad faith prosecution by The Bar, which have now been filed with this federal court and which are thus a matter of record. See Thompson's filed Motion to Strike herein for a listing of other improper Bar proceedings against Thompson resulting ultimately in findings favorable to him. The complaint by the video game "news" site run by a Dennis McCauley is one of them.

But we come to the worst thing that The Bar ever did to Thompson and the *worst* embarrassment ever to The Bar for trying to do it: The court in its September 6 order has

failed to acknowledge the failed attempt by The Florida Bar to secure Thompson's suspension from the practice of law, in 1992, on the basis "of Thompson's obsession against pornography that is so severe that he is disabled by it and thus unfit to practice law."

With all respect, how could this court have missed that? It is found in every one of the iterations of Thompson's complaint herein. How is it that The Bar "forgot" to include it when it filed with this court last week what it claimed was a full rending of Thompson's "disciplinary history?" This attempt to pathologize Thompson's activism through The Bar's *disciplinary power* (Rule 3-7.13) actually has a Bar file number and an official order entered by the Florida Supreme Court at the eager insistence of The Florida Bar.

This was the single most hurtful thing that The Bar has done to Thompson and *could* have done to him. It was a disciplinary rape. It resulted in major media coverage here in the community (*The Miami Herald*) and in the legal community in which Thompson practices law, with a front-page story in what is now called the *Daily Business Review* with the headline "Is This Lawyer Too Crazy to Practice Law?" This disciplinary assault upon Thompson by The Bar is not some wild conjuring up of nonexistence events in a merky past. Thompson nearly *daily* gets phone calls and e-mails from detractors who reference The Bar's efforts in the past to find, officially, that Thompson was mentally ill. This previous bad faith assault upon Thompson and his alleged mental ill-health resulted in a disastrous finding (for The Bar) that Thompson is a "Christian motivated to action by his faith." The Bar's carrier paid Thompson damages. But as some other target of a vindictive state assault upon his credibility once said: "Where do I go to get my good

name back?" But Thompson does not ask for the court's sympathy. He asks the court not to ignore that this happened *and that The Florida Bar is doing it* ***again***.

The court, remarkably, notes in footnote #3 in its Omnibus Order the following: "Mr. Thompson also filed a motion for leave to file his psychiatric [*sic*, it is a forensic *psychological*, not a psychiatric report] evaluation as evidence of the Florida's Bar's bad faith. While I do not see the *relevance* of this evidence, the motion is granted, and Mr. Thompson is free to argue its *relevance* when abstention is litigated as to the third amended complaint." [emphasis added]

Relevance? Here is why the exonerating report of Dr. Wunderman is *relevant*, with all respect, to the issue of bad faith: It is because The Bar, uncomfortable with proving the alleged ethical lapses of Thompson, has fallen back upon its favorite gambit with Thompson: the pathologization of his conservative activism and techniques. Thompson does not ask this court to agree with his conservatism. What he seeks is a court ruling that it is at least probative of possible bad faith that a state bar would dare, not once but now twice, to pathologize such conservatism as the last refuge of scoundrels who cannot enforce their illiberal speech codes by any other means.

Relevance? The Bar has demanded, in writing (which Thompson has verified in this court file to be the case, which The Bar has not rebutted, so the only record showing in this regard is Thompson's) that Thompson must plead guilty to ethics breaches (as set forth in the Bar complaints that are before this court) and *then* submit, by forced agreement, to a psych evaluation to determine whether he is *unfit* to practice law. The Bar has wedded its mental ill-health claim to the ethics prosecution. Thompson has not done this. The Bar has been formally asked by Thompson to put up or shut up--to

proceed with its mental health concerns pursuant to Bar Rule 3-7.13, which is the only way if it feels it has a factual and a reasonable basis for doing so. The Bar refuses to do so. It refuses to do so because it has no complaint from anyone in this regard, which is mandated by Rule 3-7.13.

Plaintiff is not sure, with all respect, why this honorable court does not see the relevance to the bad faith issue of a Bar that repeatedly seeks to stigmatize Thompson publicly with its claims of mental illness when it, at the same time, is unwilling to proceed, according to its own Rules in how to do just that. The Bar's cowardice is a facet of its bad faith. It wants to smear Thompson and extort him with its Catch-22 ploy, tying any possible resolution of this matter to Thompson's acceding to this psych-evaluation gambit, which The Bar knows would be a matter of public information and thus ending what is left of Thompson's career. It is a clever ploy. This court should see through it.

So, how is Dr. Wunderman's finding *relevant* to the bad faith issue? How in the world is it not relevant, when we have here a Bar that is a recidivist in its mental health demands made to Thompson?

By contrast this court now has in its file the dui and bipolar problems of Tampa lawyer John Hamel. The Bar had evidence of both and did *nothing*. This is a bad faith gift to Thompson, tied up with a pretty selective prosecution bow.

As to bad faith, here is what The Bar is *presently* doing, not what it did in 1992: a) refusal of meaningful discovery, guaranteed by Bar Rules, b) refusal to identify what letters written by Thompson violate what Bar Rules, c) processing of an Alabama bar complaint as a Florida Bar complaint in violation of our Bar's specific Rule requiring that the Alabama Bar act first, d) blocking the depositions of the "designated reviewer" and of

the "outside investigator" because they would elicit only "privileged" information when plaintiff has said he wants ***no*** privilege information, e) refusal of The Bar to answer a question as simple and as key as "What harm has Thompson done?" because that "would call for a legal conclusion" when in fact that is the core issue in any disciplinary proceeding, as The Bars own Standards of Discipline state, f) prosecuting Thompson for alleged ethics breaches in matters in which he had absolutely no client, while at the same time The Bar's prosecutor therein, Sheila Tuma, has admitted in writing that the stalking of Thompson's client, JR Rosskkamp, by Tom Tew of the same law firm that has filed SLAPP complaints against Thompson, is of no concern to The Bar because Tew was "not acting on behalf of a client," g) the processing and prosecution of *unsworn* Bar complaints against Thompson when Bar Rules specifically mandate that all complaints must be sworn or they are null and void, and h) the incredible, two-year-long refusal of The Bar to answer Thompson's question as to ***what he failed to disclose of his "colorful disciplinary history" to the Alabama State Bar and the Alabama trial court***, only to find, through the deposition of Alabama's Judge Moore just last month, that Thompson disclosed *more* of his disciplinary history than he was required to disclose. Upon the taking of that sworn testimony, The Bar has been asked by Thompson to drop at least that preposterous count in the complaint, ***and The Bar refuses to do even that!*** If The Bar alleged Thompson had robbed a Miami bank while he was demonstrably in California, The Bar would not drop such a count.

Thompson could go on; there is more evidence of bad faith asserted in the Third Amended Complaint, but Thompson highlights the above to underscore to the court that there is more here than just what happened fifteen years ago. It is happening now. It is

not a part of Thompson's "disciplinary history." It is a current and ongoing outcropping of bad faith. These have not been, as the court asserts in its Omnibus Order of September 6, mere allusions to bad faith in some general sense. The Third Amended Complaint, the court will see, recounts with specificity, and under oath by means of verified pleadings, what The Bar is doing. Let The Bar try to make a record showing, by its own sworn statements, that these specific things have not occurred. The court should encourage The Bar to do so as well.

Therefore, what concerns Thompson presently is The Bar's current bad faith, and whereas what is past is prologue, what The Bar is doing now is what motivates him to seek injunctive relief now, not for what The Bar did fifteen years ago, but what it is doing now to deny Thompson due process and equal protection through its selective prosecution, its denial of discovery, its denial of access to discoverable documents, and its overarching tactic of demanding that he submit to The Bar's baseless assertion that he is probably mentally ill.

THOMPSON SEEKS INJUNCTIVE RELIEF AGAINST BAR OFFICIALS AND REFEREE TUNIS, AS ALLOWED UNDER *WILL* CASE

Despite his alleged mental incapacity, Thompson was actually listening to and comprehending the court's concerns at the August 23 hearing. That is precisely why Thompson, in an alleged state of derangement, nevertheless fashioned the Third Amended Complaint and named two additional defendants—John Harkness, who is the Executive Director of The Bar and Frank Angones, who is the President of The Florida Bar. The former is responsible for the day-to-day operations of The Bar, including ultimately the line supervision of discipline by his subordinate, Ken Marvin, and the

latter is the functional leader of The Bar's policy-making function, including the formulation and adoption of Bar Rules, including the Rules of Discipline.

The court noted on August 23 and notes in footnote 1 of its September 6 Omnibus Order that Thompson certainly can seek injunctive relief against Bar operatives and officers. There is no Eleventh Amendment impediment to that. Thompson appreciates that acknowledgment of what is indeed the law in this country.

As to injunctive relief against Referee Tunis, Thompson may secure that as well, particularly in light of the U.S. Supreme Court case of *Johnson v. Mississippi*, which Thompson has provided both to Referee Tunis and to this court since the August 23 hearing. *Johnson* holds that a state court judge ***must not*** continue to preside in a state proceeding against an individual who is or has been the plaintiff in a federal civil rights action against that state court judge. What could be clearer? Yet Referee/Judge Tunis, having received the entire text of *Johnson* from Thompson, refuses not only to recuse herself but also refuses to grant a hearing to Thompson on the matter. She also refuses to execute subpoenas, even under conditions she has laid down for the execution of those subpoenas. She refuses to convene hearings on Thompson's constitutional defenses. This refusal on her part makes, in a word, silly The Bar's representations to this court that Thompson has some sort of state forum in which to argue his constitutional defenses. He has none.

Referee Tunis months ago gave up any pretense of being a fair arbiter in the state disciplinary proceedings. When she, from the bench, labeled Thompson's formal defensive pleadings mere "propaganda," she made her recusal necessary and she made her defendant status in this federal action necessary. Now she refuses even to address the

Johnson v. Mississippi dilemma she has created for herself. If Thompson is not entitled to a fair referee and is even denied by that referee a hearing on whether she can be fair while being a defendant in a federal civil rights action, then just how "fair" can the state disciplinary proceedings be?

Finally, regarding the need for injunctive relief and the appropriateness of it against Referee Tunis, *Thompson has absolutely no state remedy* above this biased referee. Thompson has asked Chief Judge Farina to reconsider his appointment of Tunis. He refuses. The Florida Supreme Court is asked to timely address these issues, including the recusal of Tunis, and it blithely commands Thompson to take up the recusal issue with Judge Tunis, who refuses to do so. The Florida Supreme Court, which is authorized and mandated by the Florida Constitution to entertain writ of mandamus actions, totally refuses to do so in this instance. It takes Thompson's $300 filing fees when he files these writs and then, keeping his money, refuses to process the writ of mandamus actions. What does Thompson have to do, bring a criminal charge for conversion against the Justices?

As to the alleged "state remedy" that Thompson has, record counsel herein for The Florida Bar has helpfully proven Thompson has none. On August 23, Greenberg Traurig filed with this court document #69 which cites to this court another *Mason v. The Florida Bar* and which states that for *Younger* abstention to apply and to block injunctive relief, one of the three conditions—an adequate *state* remedy must be available to the complaining party. Look at what the court says in footnote 6 of *Mason*:

> ***6** Mason may assert his constitutional claims before the grievance committee, or possibly even prior to that. See Rule 3-7.3(d) and Rule 3-7.4(h). Even after the Chief Justice assigns the complaint to a referee for trial, the Board of Governors may terminate the proceedings before any evidence is received under Rule 3-7.5(e). Nothing prohibits Mason from petitioning 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. The referee may grant a

Thompson has *repeatedly*, in writing, asked to appear before his Grievance Committee and to appear before the Board of Governors, or a subset thereof, in order to present his constitutional arguments to the Board of Governors, as the court in *Mason* says could and presumably should be done. What have the Governors done in response to Thompson's repeated written requests? They have consistently utterly ignored the requests. Has this state bar afforded Thompson the state remedy set forth and recommended in *Mason*? The answer is clear. And The Bar hangs itself with its truculence.

The Florida Supeme Court claims it "oversees" the functioning of The Florida Bar, and then refuses to do so when it finds its Bar's actions, for example in the recidivist attempts to pathologize Thompson's successful activism, when The Bar's antics are so embarrassing that the Supreme Court doesn't want to get near them. It is far easier for our State's High Court to let The Bar is oversees to totally destroy Thompson's career than to discharge its alleged constitutional duty to do its job. This was the same Supreme

Court that was hoodwinked fifteen years ago by The Bar's last lunacy stunt as to Thompson.

DECLARATORY RELIEF

With all respect to this court and to the defendants, it seems to plaintiff that the declaratory relief he has been seeking for quite sometime has been lost in the pleadings shuffle. There is no Eleventh Amendment impediment to the granting of the declaratory relief Thompson seeks, which pertains, for example, to the Bar Rules identified in Thompson's Third Amended Complaint that are violative of the First Amendment on their face and/or in their application.

See for example the case of *Steven G. Mason v. Florida Bar* (Eleventh Circuit, Case No. 99-2138). Thompson cited this case to the defendants and to the court on August 23. The Eleventh Circuit ***granted the declaratory relief*** Mason sought because Bar Rule 4-7.2 (j) was an unconstitutional constraint upon First Amendment commercial speech. Thompson seeks similar declaratory relief. He has spoken the truth about two judges, and The Bar thinks and acts as if Thompson can be disbarred for this. Thompson did not lose his First Amendment right to speak the truth about government officials when he became a lawyer.

Further, he respectfully requests a timely hearing on the declaratory relief he seeks unencumbered by discussions of "abstention" and "bad faith" and "extraordinary circumstances" and "past disciplinary history" and the like, which are germane and interesting as to injunctive relief but have absolutely *nothing* whatsoever to do with whether certain Bar Rules violate the U.S. Constitution. Either these questionable Bar Rules are constitutional as drafted and applied or they are not. The US Supreme Court

struck down various state bars' efforts to enforce a speech code on judicial candidates (*Republican Party of Minnesota v. White,* 536 U.S. 765 (2002)) which the Florida Supreme Court ignored for years.

In this regard, plaintiff notes that Judge Tunis filed with this court the actual two Bar complaints pending against him. The court can see that The Bar seeks punishment of Thompson for writing letters not just *about* two judges but *to* the President of the United States, to Governor Bush, to the Attorney General, to the Federal Communications Commission and to others about the airing of indecent material on the public airways in violation of 18 USC 1464 and the sale of adult video games to children. Who the heck does The Bar think it is that it can, by quasi-judicial fiat, rescind the right of a citizen to write the executive branch of government about matters of public policy and public concern? Bar Governors on Bar brochures call themselves the "Guardians of Democracy." They are Guardians all right, but not of democracy.

The Bar is relying upon specific Bar Rules to assert that Thompson, by virtue of his being a lawyer, is not allowed to write such "petition speech" letters to government officials, as The Bar does not even assert that Thompson said anything untrue in those letters. Surely this court can and should address whether Florida Bar Rules have somehow revoked a citizen's absolute First Amendment "petition the government" right by virtue of his being a lawyer. If that is the case, why would anyone *in his right mind* wish to be a lawyer?

Finally, plaintiff has asked this honorable court, through its declaratory relief power, to rule, as a matter of law, whether The Bar actually is an arm of the government or whether, by virtue of its unilateral exemption of itself from the requirements of

government, it is in fact the functional equivalent of a guild. This is not some esoteric argument and request by plaintiff. If an entity looks like a duck, quacks like a duck, and walks like a duck, it's a duck. The Bar wants all of the protections and immunities of government (like the Eleventh Amendment) and yet it seeks to act act like a private sector guild, denying someone like Thompson due process, equal protection, and discovery of its public documents because it simply wants them to be private and secret. This is alleged with specificity in the Third Amended Complaint.

The attached *Fieger* ruling by a federal court gives The Florida Bar no choice but to drop its similar "speech code" prosecution of Thompson for his criticism of two judges which compromises a significant portion of The Bar's ethics assault upon Thompson. If it does not do so this coming week, then the court should enter an injunction ordering The Bar to do so, as it is evidence of The Bar's remarkably deepening bad faith and/or enter a declaratory judgment on behalf of Thompson in this regard. Thompson is thrilled at his vindication in this regard.

CONCLUSION

Thompson has not lightly sued The Florida Bar and the referee, along with others, who now dangle disbarment like a Damocletian sword over his head. Thompson learned, like other sane people, quite sometime ago that it is convenient to anger those who can hurt you. Thompson is also aware that some of the things he alleges against The Bar may sound preposterous on their face, until one actually bothers to look at the evidence wholly independent of Thompson that proves these allegations are true. Whenever Thompson tells an audience that he is now "the only officially Bar-certified sane lawyer in Florida" they laugh, not at Thompson's assertion that he is sane but at the

preposterous self-righteousness and arrogance of a bunch of alleged government officials who would go down such a loony path, now not once but twice.

Voltaire wrote "It is dangerous to be right when the government is wrong." The plaintiff has been right, repeatedly, about what is illegal in the public square and what one highly motivated lawyer, who happens to be a person of faith, can do about that illegal activity. Ask Thompson's losing targets Neil Rogers, Howard Stern, 2 Live Crew, Ice-T, the Miami Film Festival, the University of Wisconsin-Madison's "gay is normal" sex tapes in our local schools, Take-Two and its *Grand Theft Auto* games, and also, but not exhaustively, The Florida Bar and its "Christians are crazy" *jihad* as an adjunct to its Bar Foundation Funding of the ACLU. One stupidity goes with the other.

Thompson does not seek some court imprimatur of approval on his social agenda. Thompson neither seeks it nor wants it. What Thompson wants is to be treated by The Bar as if he were actually a citizen of this country, bound by the privileges and duties of being a lawyer, but not stripped of his constitutional rights in such a bizarre fashion that he is a second-class citizen with fewer rights than alleged Gitmo terrorists for whom former Bar President Hank Coxe lobbies.

Thompson seeks a hearing on his relief for a preliminary injunction and then on a permanent injunction, as well as on his prayer for declaratory relief from the dictates of a Bar that acts as if it has repealed the First Amendment to the United States Constitution.

Thompson seeks his day in court, because it is very clear he is going to be denied it in his state disciplinary proceedings.

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

I HEREBY CERTIFY that this has been served upon record counsel this 8th day of September, 2007, electronically.

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