IN THE SUPREME COURT OF FLORIDA

THE FLORIDA BAR, Complainant, v.	Supreme Court Case No. SC20-1602 Florida Bar File
BRUCE JACOBS, Respondent. _____/	No. 2019-70, 188 (11 H) No. 2019-70,358 (11H) No. 2020-70,056 (11 H)

PETITIONER/RESPONDENT'S INITIAL BRIEF

Respectfully submitted,

___/davidjwinker/_____
David J. Winker, Esq., B.C.S
Fla. Bar. No. 73148
David J. Winker, PA
4720 S. LeJeune Rd
Coral Gables, Fl 33146
305-801-8700
dwinker@dwrlc.com
Counsel for Petitioner/Respondent

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SYMBOLS AND REFERENCES

The following abbreviations and symbols are used in this brief:

Pet.	=	The Florida Bar's Petition for Emergency Suspension, dated June 5, 2020.
Pet. Exh.	=	Exhibits to The Florida Bar's Petition for Emergency Suspension.
TFB Exh.	=	The Florida Bar's exhibit from final hearing.
ROR	=	Amended Report of Referee, dated November 6, 2020.
T.	=	Transcript of final hearing before Referee on September 8-16, 2020.
MT.	=	Transcript of hearing on Respondent's Motion to Dissolve Order of Suspension Dated June 9, 2020, before the Referee on July 7, 8, and 10, 2020.

STATEMENT OF THE CASE AND FACTS

Respondent respectfully submits this brief is being forced to be filed before it is fully ready due to deadlines imposed after TFB insisted, unfairly, that his counsel was improperly seeking to delay these proceedings. The Respondent was in North Carolina on a long scheduled camping trip with Troop 7 of Coral Gables. Respondent has been denied a reasonable extension of even a few days. Respondent submits his counsel's motion to withdraw and for extension tolled the time.

In an abundance of caution, Jacobs has decided to file this pleading without Mr. Winker who has no opportunity to review and has concerns about his ethical obligation to withdraw under these difficult circumstances. Jacobs intends to seek to file an amended pleading in accordance with the rules of appellate procedure due to the tolling of time.

In her report, the Referee made a finding by clear and convincing evidence "that respondent used reckless and disparaging language in his various pleadings to malign and impugn the qualifications and/or integrity of the judiciary." (ROR 17). The Referee made no finding whether statements were of opinion or fact, or that any statements of fact were false.

The Referee concluded this misconduct was a deliberate tactic where Jacobs files disparaging and inflammatory motions to disqualify that "serve

no other purpose than to allow respondent to 'express the bottomless depth of the displeasure that one might feel" for having lost his appeal. (ROR 18).

Jude M. Faccidomo, the Assigned Investigating member and Chair of Florida Bar Grievance Committee 11-H reached a different conclusion in his Supplemental Memorandum on Investigation dated November 13, 2019. See (TFB Exh pg 640-642). In his memo, Mr. Faccidomo reacted to the Third DCA's position that Jacobs filed frivolous and bad faith motions to disqualify the entire court because his three prior motions in other cases were denied.

Mr. Faccidomo wrote "… it should be noted that to deem the pleading frivolous is a significant finding. Further, a lawyer is obligated by the Oath of Attorney and Rules Governing the Florida Bar to provide zealous representation of their client. This includes properly preserving appellate issues. In fact, if an attorney failed to preserve an appellate issue, they can be deemed ineffective in their representation." The Florida Bar ignored Mr. Faccidomo's finding in an effort to deny Jacobs his ability to practice law.

At the bar trial guilt phase, TFB set forth a series of statements made in a Motion for Rehearing En Banc, a Motion to Disqualify the Third DCA, and a Motion to Disqualify Miami-Dade Circuit Judge Michael Hanzman. Some of those statements presented by TFB at (T1 50:14-71:23) include.

> No court should dare make the front page of the paper for jailing an attorney for asking about false documents and evidence.

This court's insistence on ignoring established Florida Supreme Court Law to Benefit bad corporate citizens is certain to cause chaos.
This is a biblical journey for me. I have faith I would be protected because I am acting so clearly within the law and [the Third DCA] is not.

If only the court enforce the 2001 amendments to Article 9 and force banks to bring their contracts to prove their purchase of the debt.

Banks have all the resources to do it right but made the business decision to do it fraudulently.

These banks have so much and keep taking more. They don't care if you are rich or poor, white or black.

The Court is sworn to protect and defend the constitution of the United States of America. Not the foreclosure fraud of Bank of America or HSBC.

Why would anyone sworn to protect and defend the constitution stay silent while domestic enemies destroy our democracy from within. Is this really the world Americans should live in when those in power do not do what is right?"

I am fighting the modern day monopoly. I'm calling all the patriots who swore the oath to protect and defend the constitution to join me. Any court that protects the monopoly over the rule of law is a traitor to the constitution and should be tried for treason."

In Simpson, this Court violated the standard of review, ignored Florida Supreme Court precedent, and falsified the facts in contradiction of the record.

The impartiality of this court is objectively questioned and it cannot issue a ruling with integrity in this case.

The opinion of this Court misrepresented the facts, ignored Florida Supreme Court law, and disregarded evidence showing fraud.

This Court attempted to cover up, protect and ignore well-documented fraud on the court in foreclosures, all to ensure a predetermined result – foreclosure. The Third DCA's opinion is pretextual and arbitrary.

Judge Hanzman has repeatedly ignored obvious fraud on the court by large financial institutions in foreclosures while abusing his power to kill defense counsel's zealous advocacy against those financial institutions.

Judge Haznman has made repeated statements on the record and off the record that reflect his indifference to large financial institutions presenting false evidence to the court to obtain the equitable relief of foreclosure. His personal finances appear to be heavily invested in the financial services sector which gives Mr. Atkin a reasonable fear Judge Hanzman will not be fair and impartial because it would negatively impact his significant personal financial holdings.

[Judge Hanzman] has allowed the most rich and powerful segment of our society, the financial sector, in which he is personally heavily invested in to engage in felony misconduct and walk away without punishment, in violations of the judicial canons and the rule of law. The court was unimpressed with these allegations of felony misconduct based on a prior foreclosure trial that involved entirely different misconduct which the court similarly excused.

It is objectively reasonable to fear the Third DCA acted to reach a predetermined outcome that favors banks over homeowners, foreclosure.

Democracy will not fail if financial institutions are held to the rule of law. To the contrary, democracy fails if the public is allowed to believe courts are biased in favor or bad corporate citizens and a fraudulent foreclosure process.

TFB called not witnesses and relied on the statements and findings of the Third DCA in its case in chief. Over objection. Jacobs responded to TFB's case by noting the Honorable Eleventh Circuit Court of Appeal Judge Barbara Lagoa, before elevating, dissented in the opinion which referred Mr. Jacobs to TFB for prosecution in HSBC v. Aquasol. (T.1 84:5-21).

Jacobs also noted "Mr. Atkin further fears Judge Hanzman will not be fair and impartial based on his comments in another trial conducted with undersigned counsel involving a fraudulent mortgage assignment prepared by the infamous law offices of David J. Stern, the, quote, King of Robo signing, end quote, who the Florida Bar permanently disbarred for filing documents in foreclosures across Florida. (T1, 93:5-14)

Jacobs also noted, "Judge Hanzman failed to disclose significant personal financial holdings that are heavily invested in the financial sector generally, and BONYM, that's Bank of New York Mellon, the initials for it, specifically, which is an objective reason to fear his rulings ignoring fraud on the court by large financial institutions is to protect its own -- his own personal investments rather than to protect the rule of law. (T1, 94:2-12)

Jacobs also noted, Mr. Atkin has also reviewed Judge Hanzman's financial disclosures filed with the Florida Commission on Ethics. It appear that as of 2017 Judge Hanzman had approximately $8 million invested in five

mutual funds which appears to have earned him interest in excess of $1.1 million in 2017… It appears that one of the mutual funds Judge Hanzman is personally invested in GLD is managed by BONYM as trustee, which is the same trustee for the plaintiff trust in the Atkin foreclosure and which would be negatively affected in order to show cause finding felony foreclosure misconduct, in violation of the $25 billion national mortgage settlement by BONYM, BANA, Bank of America, N.A., and the LGP firm. (T1, 97:2-96-7).

Jacobs also noted, “the Court can see a notarization section and a signature page, this is pdf page 87, still part of Exhibit 9. This is the signature verification page signed by Ryan Atkin, the client in this case involving the motion for disqualification with the client verifying, and I'm quoting the notarization section: Before me the undersigned authority personally appeared, Ryan Atkin, who, being first duly sworn on oath deposes and says that he has reviewed the motion to disqualify and verifies the allegations are true and correct. (T1, 97:18-98:5).

Jacobs also noted he admitted making the statements referenced by TFB in these proceedings but “denied the assertion of disparaging or reckless comments” (T100, 5-101:21).

After the close of TFB’s case in chief, Jacobs took the stand to testify. He explained how he took a “baby moon” to Israel with his wife who was

pregnant with their second son in 2008. He devoted himself to foreclosure defense in a “David v. Goliath” battle on behalf of people that couldn’t afford attorneys. His “pro bono” days in court helped many people on the “rocket dockets” that plagued Florida’s courts during the foreclosure crisis. His wife had to intervene to get him to stop representing so many clients for free. (T. 125:21-128:2).

Jacobs testified that in 2010, he joined Max Gardner’s army travelling across the nation to meet with industry experts and insiders at the time the robo-signing scandal broke. (T1 128:17-129:10). He was part of a national movement to share information and began presenting at CLE courses. (T1, 130:5-12). He testified about working with Kathleen Cully, the “Mother of Securitization” and how securitization was intended to work, and how he eventually was a speaker at a Max Gardner seminar. (T1, 130:20-132:10).

Jacobs testified to the $25 Billion National Mortgage Settlement that addressed the “robo-signing” scandal” involving systemic frauds in foreclosures, including fabrication of false evidence of standing (i.e. millions of false and fictitious mortgage assignments and fraudulent endorsements that supported an unclean hands defense.) (T1, 140:10-143:23). Through the orders of many judges, Jacobs discovered evidence and filed a federal false claims act case against Bank of America, N.A. before the Honorable

U.S. District Judge Ursula Ungaro who found these forged endorsements and false assignments would violate the National Mortgage Settlement. (T1, 151:19-153:23.

Jacobs testified he obtained evidence that Bank of America, JP Morgan Chase, and other banks engaged in fraud and had top tier law firms assist them with that fraud by mispresenting the law and the fact and presenting perjured testimony in violation of their duty of candor to the court. Jacobs explained how Miami-Dade Circuit Judge Beatrice Butchko found unclean hands and fraud in an extensive order. Miami-Dade Circuit Judge Pedro Echarte Jr., also initiated contempt proceedings for false testimony about the loan boarding process in trials. (T1, 166:21-170:6).

Jacobs testified that Miami-Dade Circuit Judge David Miller, Third DCA Judge Bronwyn Miller, Miami-Dade Circuit Judge Specer Eig and Palm Beach Circuit Judge Howard Harrison took action in response to these allegations of systemic fraud. Judge Harrison made findings of unclean hands which ultimately ended with a settlement that satisfied the mortgage and included a confidential payment. (T1, 170:6-25). Many other judges identified that took action against this fraud and banks stopped prosecuting "well over a million dollars worth of mortgages" to avoid these defenses of fraud and unclean hands. (T1, 171:1-16).

Jacobs testified how the Third DCA ruled in Bank of America v. Morales that even if the case is dismissed, there would still be jurisdiction to prosecute banks and their counsel for sanctions under the inherent contempt powers of the courts. (T1, 172:9-20).

Jacobs also testified he files motions to disqualify judges to preserve arguments for the further appellate review. (T1, 181:24-182:11). He moved to disqualify Judge Hanzman for the first time in HSBC v. Aquasol after he was threatened with jail and contempt for asking questions about a "David J. Stern" robo-signed assignment introduced into evidence. Judge Hanzman said he didn't care if David Stern or Howard Stern prepared the false evidence. He prejudged the case and refused to consider unclean hands as a defense. (T. 204:4-205:3).

On Appeal, the Third DCA affirmed Judge Hanzman's refusal to grant disqualification finding "Aquasol's motion to disqualify the trial judge was legally insufficient because it was premised on nothing more than its disagreement with an adverse legal ruling. *Aquasol Condo. Ass'n, Inc. v. HSBC Bank USA, Nat'l Ass'n*, 312 So. 3d 105, 108 (Fla. 3d DCA), cause dismissed, No. SC18-2009, 2018 WL 6326238 (Fla. Dec. 4, 2018). The Third DCA never addressed Judge Hanzman's threat of jail or his refusal to

enforce the Florida Supreme Court's doctrine of unclean hands for admitting false evidence into the trial.

Jacobs testified that in the Aquasol appeal, the Third DCA initiated contempt proceedings and accused him of lack of candor for failing to disclose the decision overturning Judge Butchko in HSBC v. Buset. Although the lack of candor charge said Judge Haznman had relied Buset for his ruling, Buset did not come down until after Jacobs filed his initial brief in Aquasol. The Banks' own brief in Aquasol didn't mention Buset. (T1, 206:22-212:19). Yet, the Third DCA accused Jacobs of lack of candor which the referee ultimately rejected by entering a directed verdict to violation of Fla. Bar Rule 4-3.3. (ROR 16).

Jacobs testified he cancelled his son's bar mitzvah in Miami and moved it to Israel after the Third DCA started contempt proceedings against him in Aquasol. Even after accusing Jacobs of criticizing the court, the Third DCA did not grant disqualification and started a second contempt charge for filing a motion to disqualify the entire court in *Bank of New York v. Atkin*. Jacobs went to spend time in prayer and make it right. He was still intending to fight his David v. Goliath battle of homeowners against the nation's largest banks engaged in fraud on the court. He just committed to be more careful in making his arguments, believing it may be how he said it, not what he said.

(T1, 214:1-216:6). He explained his words in the charged pleadings were his "truth" and although his opinions were taken out of context to make them seem unethical, he never accused a judge of taking bribes or stealing. He gave his motions to disqualify to his counsel, Ben Kuehne to approve so TFB could not say he was just attacking judges without any good faith basis. (T1, 219:13-222:25).

Jacobs testified how the Atkin case before Judge David Miller was fraud on the court because of 11 years of forgery, perjury, false assignments, false mortgage loan schedules. However, Bank of America got Judge Miller removed from the case claiming he was not fair or impartial. (T1, 234:2-236:22). Bank of America and its lawyers asked the Third DCA to remove Judge Miller knowing he had entered two orders finding "outrageous" and "bad faith" misconduct for blocking discovery into the same fraud. Jacobs testified his response to that appeal included a motion to disqualify the Third DCA which was factually true. (T1, 238:16-240:11).

Jacobs testified the Third DCA's rulings conflicted with a Second DCA ruling in Bank of New York v. Sorenson but he was never allowed to present his evidence of fraud on the court. He was put in a very difficult position because the Third DCA insisted it was frivolous to file a motion to disqualify but necessary to file to preserve the issue for further appellate review. Just

because a pleadings may be futile does not make it frivolous. (T1, 242:14-244:1). Jacobs testified when the law and the facts say a judge must recuse themselves it is up to the judge who swore the oath to the constitution to follow that law. (T1, 244:21-245:7).

Ultimately, another judge vacated Judge Miller's orders on sanctions. However, Judge Miller testified at the bar trial that "he hasn't been convinced otherwise" that Bank of America and its counsel engaged in willful and intentional and bad faith responses" to discovery warranting sanctions. (T2, 150:5-14. TFB cross-examined Judge Miller, a seasoned judge with over 20 years on the bench, about whether there is a difference between zealous advocacy and attacking the integrity of the court. Judge Miller explained in the "school of Irving Younger" the effectiveness comes when you're dancing on that fuzzy line. (T2, 159:3-14).

Jacobs testified that he had filed a proper claim for attorneys fees under the court's inherent contempt powers for fraud upon the court. After the show cause hearing was set to go forward, Bank of New York dismissed the 11 year old foreclosure of a $700,000 mortgage and Jacobs filed a motion to preserve the right to fees. There was a good faith basis to seek fees because of the dismissal. The motion was filed as a place holder. The

first motion for order to show cause clearly asked for fees under the court's inherent contempt powers for fraud on the court. (T1, 258:3-261:23).

After Judge Miller was removed from the Atkin case, Judge Hanzman came in to cover a hearing for Judge Rodney Smith's division, and then took over the Atkin case without any order transferring the case to his division. Judge Hanzman set a hearing on the attorney's fees issue when Jacobs had filed a notice of unavailability because he was going to be in Israel for his son's bar mitzvah. (T1, 271:2-273:17).

The day Jacobs gave his son a pair of tefillin for the first time, Judge Hanzman wrote the order calling his motion to disqualify "scurrilous" and referring him to Ms. Avery for prosecution by TFB. (T2, 21:24-22:3). Jacobs testified Judge Hanzman commented on the motion which truthfully said he prejudged the case and was "kind of boastful" about the fact that he was going to be affirmed on appeal. (T2, 23:3-25).

Judge Hanzman accused Jacobs of lack of candor for failing to provide a legal basis for fees after the bank voluntarily dismissed its case to avoid being held in contempt, when I had already filed a memorandum explaining how I am entitled to fees under the Court's inherent contempt powers, even without a contractual right. (T2, 26:8-20).

Jacobs testified at trial that it was the client's decision that Judge Hanzman was objectively not fair or impartial. It was the client's request to have Judge Hanzman disqualified. (T2, 34:14-36:7). The motion to disqualify Judge Hanzman was filed in good faith as there was a clear refusal to consider that Bank of America and Bank of New York Mellon had unclean hands and were using fraudulent evidence of standing. (T2, 36:18-39:1). Jacobs testified the facts supported the topic headings which TFB insisted impugned Judge Hanzman's integrity. (T2, 39:17-47:25).

By calling the motion to disqualify "scurrilous" Judge Hanzman created an independent basis to require his disqualification. It is improper for a judge to comment on the truthfulness of a motion to disqualify. (T2, 52:8-53:10). Jacobs testified in no uncertain terms that his motion to disqualify Judge Hanzman did not recklessly disregard the truth. (T2, 123:3-15). It was truth. Mr. Atkin testified at the bar trial that he signed the motion to disqualify verifying the facts were true and he believed Judge Hanzman was being unfair to him by taking over his case despite having a financial entanglement with the Plaintiff. Mr. Atkins testified he wanted a fair trial with a judge that did not have a financial tie with the plaintiff in his case. (T2, 170:22-179:9).

Mr. Atkin swore that Judge Hanzman's financial disclosures showed about $8 million invested in banks was enough reason to him to fear the

judge would not listen to any arguments about fraud. Mr. Atkin believed the evidence supported his position “100 percent” that Judge Hanzman was biased against him. (T2, 179:17-180:23). Mr. Atkin swore he instructed Jacobs to file the motion to disqualify Judge Hanzman and that all the facts were true. (T2, 181:4-12).

Throughout the bar trial, TFB was allowed over strenuous objection to introduce evidence of uncharged bar complaints from Broward Circuit Judge Andrea Gundersen and Judge Hanzman. Jacobs objected because TFB introduced the motion to disqualify Judge Gundersen on cross-examination of Jacobs’ therapist, who had never seen the motion and had no idea that Judge Gundersen granted the motion to disqualify.

Jacobs objected that the Gunderson disqualification was not part of the three counts at issue in the bar trial. There was no testimony that opened the door to additional bar complaints, no probable cause determination, no bar grievance committee meeting, and that its introduction is highly prejudicial and not probative. (T2, 5:4-6:25). TFB used the Gundersen disqualification motion to cross examine Jacobs over objection. (T2, 86:2-9)

TFB asked Jacobs if he said “No honorable court should accept the materially false argument that there is some privilege or absolute immunity to commit fraud upon the court in foreclosures. He responded that Judge

Gundersen entered an order stating Bank of America a privilege to commit fraud and felonies in foreclosure which is unconstitutional. Jacobs testified as a former prosecutor with 25 years of experience, anyone presenting false evidence should be prosecuted and disbarred. He explained how he was a "Teddy Roosevelt" Republican who believed JP Morgan Chase could not become more powerful than the government. That is bad for democracy. TFB should prosecute bank lawyers who lied to Judge Gundersen and committed fraud. No person shall be deprived of their property without due process loses all meaning if judges decide to allow fraud. (T2, 94:13-100:8).

Judge Gundersen's ruling did not sanction Jacobs for filing the RICO lawsuit against Bank of New York Mellon for systemic fraud because other judges agreed with the work Jacobs is doing. (T2, 103:11-16). Jacobs objected to the Gundersen complaint a third time under a due process argument because they were not charged and not part of the case. (T2, 106:8-20). Moreover, Jacobs testified he believed Florida law does not grant a litigation privilege to commit fraud on the court. If there was such a litigation privilege, then Judge Gundersen was obligated to exercise her inherent contempt powers to confront the fraud. (T2, 118:17-120:24).

Jacobs testified over 20 clients signed verified motions to disqualify Judge Gundersen. (T2, 121:5-12:9). Judge Gundersen granted all the

motions to disqualify. R. Exh. 5. These motions were part of a series of motions filed after Judge Gundersen allowed Bank of New York and Bank of America's counsel to offer false statements of fact and law with impunity during a series of hearings.

As set forth in the motion to disqualify Judge Gundersen, she initially ***recused herself*** after the second hearing and then commented on motions to disqualify her insisting the cases where she granted disqualification "**WAS NOT" (**emphasis in original) consolidated with the other pending foreclosures. (R. Exh. 55). Judge Gundersen also allowed Akerman partner Nathaniel Callahan to argue "fraud on the court is not a defense to foreclosure" citing a case that said submitting forged evidence with the intent to defraud is fraud on the court. (R. Exh. 55).

Jacobs introduced into evidence the bar complaints he filed against Bank of America and JP Morgan Chase's counsel. (R. Exh 1). His client Maria Williams James testified she also filed bar complaints for fraud on the court and lack of candor that TFB took no action on. (T2, 208:14-209:11). David Winker, an attorney who also defended foreclosures testified he would never bring the evidence these bank lawyers bring out of fear of being sanctions because they are obviously false. (T2, 222:11-20).

Another experienced foreclosure defense lawyer, Margery Golant, testified she advanced the same fraud on the court arguments because she believed they were meritorious. She swore some judges just reject the argument and refuse to allow it at all, even denying the right to proffer the evidence. The judges get angry and impatient. Ms. Golant swore that Jacobs had good reason for his frustration and that he is very bright, honorable and kind. (SH2, 13:2-17:1).

Jacobs' former partner, Court Keeley, testified that Jacobs has studied the constitutionality of taking people's property without due process. Mr. Keeley testified "the frustrating part, and it was shocking to me when I started working with Bruce and had tried foreclosure cases with him, what was shocking to me was the absolutely kind the lack of due process that would be afforded to people, you know. Mr. Keeley also swore that "it is shocking how the rules of evidence have been bent" and lamented that "the constant frustration, the constant lack of due process, the constant being shut down when you have good viable arguments, and documents being submitted into evidence in trials that are just blatantly false and provably false, but yet, what we would see, unfortunately, is that, those things, they're letting them in and let slide by." (T2, 52:22-54:18).

After the bar trial, the Referee denied Jacobs' Motion to reopen the case for consideration of new evidence of selective prosecution. The same Akerman attorney that got Judge Gundersen to strike all defenses under the litigation privilege tried the same argument before Judge Beatrice Butchko. Judge Butchko initiated criminal contempt charges against Bank of America, Bank of New York Mellon, and Mr. Callahan. Then his Akerman partners filed a specious and bad faith appeal demanding the Third DCA hold Judge Butchko accountable for initiating the contempt proceedings in bad faith. Without evidence, the Akerman lawyers accused Judge Butchko of being biased and under a "special influence" of Jacobs.

TFB and the Third DCA took no action against Akerman or its clients for their lack of candor that impugned Judge Butchko's integrity. The same charges brought against Jacobs were not being brought against the Akerman lawyers who engaged in the same behavior. The case against Akerman was much stronger and easier to prove. The Referee denied the motion to reopen the case even though she denied the lack of candor charge against Jacobs. This appeal ensued.

SUMMARY OF THE ARGUMENT

Jacobs cannot be punished for filing motions to disqualify that preserves the issue of bias for further appellate review. Jacobs is obligated to report unethical behavior of lawyers and judges. He has a first amendment right to petition the government. His words go to the heart of what the first amendment was designed to protect, a person's right to say the government is not following the constitution.

The testimony is uncontroverted that Jacobs had a factual basis to say the Third DCA and Judge Hanzman were not fair and impartial. There is systemic fraud and their decisions have allowed the fraud to continue. Truth is an absolute defense to these charges. A court that refuses to grant disqualification and uses its power to punish an attorney for criticizing its refusal is acting unethically. The U.S. Supreme Court instructs due process requires disqualification under these circumstances.

The selective prosecution doctrine says TFB cannot prosecute Jacobs for lack of candor and impugning the integrity of the judiciary. The case against the Akerman partner who accused Judge Butchko of lacking integrity is much stronger. That Akerman partner engaged in fraud upon the court and lacked candor to cover it up. The Referee found Jacobs did not lack candor despite the Third DCA and Judge Hanzman both accusing him.

The selective prosecution defense should prevail. TFB is pursuing a weak case against Jacobs while ignoring systemic fraud and dishonest attacks against Judge Butchko. TFB has appealed the Referee's 90 suspension to seek a greater length that would remove Jacobs from the Bar and require his readmission. The prosecution is brought in bad faith to stop Jacobs from continuing to exercise his first amendment right to say there is systemic fraud by the most powerful banks in the nations, and certain judges are violating their oath by refusing to grant disqualification when there are objective reasons to question their impartiality.

ARGUMENT

> That contempt power over counsel, summary or otherwise, is capable of abuse is certain. Men who make their way to the bench sometimes exhibit vanity, irascibility, **457 narrowness, arrogance, and other weaknesses to which human flesh is heir. Most judges, however, recognize and respect courageous, forthright lawyerly conduct. They rarely mistake overzeal or heated words of a man fired with a desire to win, for the contemptuous conduct which defies rulings and deserves punishment. They recognize that our profession necessarily is a contentious one and they respect the lawyer who makes a strenuous effort for his client.
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> *Sacher v. United States*, 343 U.S. 1, 12, 72 S. Ct. 451, 456–57, 96 L. Ed. 717 (1952)
>
> > Public awareness and criticism have even greater importance where, as here, they concern allegations of police corruption, see *Nebraska Press Assn. v. Stuart,* 427 U.S. 539, 606, 96 S.Ct. 2791, 2825, 49 L.Ed.2d 683 (1976) (Brennan, J., concurring in

judgment) (“[C]ommentary *1036 on the fact that there is strong evidence implicating a government official in criminal activity goes to the very core of matters of public concern”), or where, as is also the present circumstance, the criticism questions the judgment of an elected public prosecutor. Our system grants prosecutors vast discretion at all stages of the criminal process, see *Morrison v. Olson,* 487 U.S. 654, 727–728, 108 S.Ct. 2597, 2637–2638, 101 L.Ed.2d 569 (1988) (SCALIA, J., dissenting). The public has an interest in its responsible exercise.

Gentile v. State Bar of Nevada, 501 U.S. 1030, 1035–36, 111 S. Ct. 2720, 2725, 115 L. Ed. 2d 888 (1991)

At the very least, our cases recognize that disciplinary rules governing the legal profession cannot punish activity protected by the First Amendment, and that First Amendment protection survives even when the attorney violates a disciplinary rule he swore to obey when admitted to the practice of law. See, *e.g., In re Primus,* 436 U.S. 412, 98 S.Ct. 1893, 56 L.Ed.2d 417 (1978); *Bates v. State Bar of Arizona, supra.* We have not in recent years accepted our colleagues' apparent theory that the practice of law brings with it comprehensive restrictions, or that we will defer to professional bodies when those restrictions impinge upon First Amendment freedoms. And none of the justifications put forward by respondent suffice to sanction abandonment of our normal First Amendment principles in the case of speech by an attorney regarding pending cases.

Gentile v. State Bar of Nevada, 501 U.S. 1030, 1054, 111 S. Ct. 2720, 2734, 115 L. Ed. 2d 888 (1991)

Because attorneys participate in the criminal justice system and are trained in its complexities, they hold unique qualifications as a source of information about pending cases. “Since lawyers are considered credible in regard to pending litigation in which they

are engaged and are in one of the most knowledgeable positions, they are a crucial source of information and opinion." *Chicago Council of Lawyers v. Bauer,* 522 F.2d 242, 250 (CA7 1975). To the extent the press and public rely upon attorneys for information because attorneys are well informed, this may prove the value to the *1057 public of speech by members of the bar. If the dangers of their speech arise from its persuasiveness, from their ability to explain judicial proceedings, or from the likelihood the speech will be believed, these are not the sort of dangers that can validate restrictions. The First Amendment does not permit suppression of speech because of its power to command assent.

Gentile v. State Bar of Nevada, 501 U.S. 1030, 1056–57, 111 S. Ct. 2720, 2735, 115 L. Ed. 2d 888 (1991)

Even if one were to accept respondent's argument that lawyers participating in judicial proceedings may be subjected, consistent with the First Amendment, to speech restrictions that could not be imposed on the press or general public, the judgment should not be upheld. The record does *1038 not support the conclusion that petitioner knew or reasonably should have known his remarks created a substantial likelihood of material prejudice, if the Rule's terms are given any meaningful content.

We have held that "in cases raising First Amendment issues ... an appellate court has an obligation to 'make an independent examination of the whole record' in order to make sure that 'the judgment does not constitute a forbidden intrusion on the field of free expression.' " *Bose Corp. v. Consumers Union of United States, Inc.,* 466 U.S. 485, 499, 104 S.Ct. 1949, 1958, 80 L.Ed.2d 502 (1984) (quoting *New York Times Co. v. Sullivan,* 376 U.S. 254, 284–286, 84 S.Ct. 710, 728–729, 11 L.Ed.2d 686 (1964)).

Neither the disciplinary board nor the reviewing court explains any sense in which petitioner's statements had a substantial likelihood of causing material prejudice. The only evidence against Gentile was the videotape of his statements and his own testimony at the disciplinary hearing. The Bar's whole case rests on the fact of the statements, the time they were made, and petitioner's own

justifications. Full deference to these factual findings does not justify abdication of our responsibility to determine whether petitioner's statements can be punished consistent with First Amendment standards.

Rather, this Court is

"compelled to examine for [itself] the statements in issue and the circumstances under which they were made to see whether or not they do carry a threat of clear and present danger to the impartiality and good order of the courts or whether they are of a character which the principles of the First Amendment, as adopted by the Due Process Clause of the Fourteenth Amendment, protect." *Pennekamp v. Florida,* 328 U.S. 331, 335, 66 S.Ct. 1029, 1031, 90 L.Ed. 1295 (1946).

" 'Whenever the fundamental rights of free speech ... are alleged to have been invaded, it must remain open to a defendant to present the issue whether there actually *1039 did exist at the time a clear danger; whether the danger, if any, was imminent; and whether the evil apprehended was one so substantial as to justify the stringent restriction interposed by the legislature.' " *Landmark Communications, Inc. v. Virginia,* 435 U.S., at 844, 98 S.Ct., at 1544 (quoting *Whitney v. California,* 274 U.S. 357, 378–379, 47 S.Ct. 641, 649–650, 71 L.Ed. 1095 (1927) (Brandeis, J., concurring)).

Gentile v. State Bar of Nevada, 501 U.S. 1030, 1037–39, 111 S. Ct. 2720, 2726, 115 L. Ed. 2d 888 (1991)

The nature of the proceedings presupposes, or at least stimulates, zeal in the opposing lawyers. But their strife can pervert as well as aid the judicial process unless it is supervised and controlled by a neutral judge representing the overriding social interest in impartial justice and with power to curb both adversaries. The rights and immunities of accused persons would be exposed to serious and obvious abuse if the trial bench did not possess and frequently exert power to curb prejudicial and excessive zeal of prosecutors. The interests of society in the preservation of courtroom control by

the judges are no more to be frustrated through unchecked improprieties by defenders.

*9 3 Of course, it is the right of counsel for every litigant to press his claim, even if it appears farfetched and untenable, to obtain the court's considered ruling. Full enjoyment of that right, with due allowance for the heat of controversy, will be protected by appellate courts when infringed by trial courts. But if the ruling is adverse, it is not counsel's right to resist it or to insult the judge—his right is only respectfully to preserve his point for appeal. During a trial, lawyers must speak, each in his own time and within his allowed time, and with relevance and moderation. These are such obvious matters that we should not remind the bar of them were it not for the misconceptions manifest in this case.

In general, the Supreme Court has recognized "presumptive bias" as the one type of judicial bias other than actual bias that requires recusal under the Due Process Clause. *Buntion,* 524 F.3d at 672. Presumptive bias occurs when a judge may not actually be biased, but has the appearance of bias such that "the probability of actual bias ... is too high to be constitutionally tolerable." *Id.* (quoting *Withrow v. Larkin,* 421 U.S. 35, 95 S.Ct. 1456, 1464, 43 L.Ed.2d 712 (1975)). The Supreme Court has only found that a judge's failure to recuse constitutes presumptive bias in three situations: (1) when the judge "has a direct personal, substantial, and pecuniary interest in the outcome of the case," (2) when he "has been the target of personal abuse or criticism from the party before him," and (3) when he "has the dual role of investigating and adjudicating disputes and complaints."[5] *Buntion,* 524 F.3d at 672 (quoting *Bigby v. Dretke,* 402 F.3d 551, 559 (5th Cir.2005)); *see also Crater v. Galaza,* 491 F.3d 1119, 1131 (9th Cir.2007) (coming to the same conclusion).

Richardson v. Quarterman, 537 F.3d 466, 475 (5th Cir. 2008)

"Attorneys play an important role in exposing valid problems within the judicial system." *The Fla. Bar v. Ray*, 797 So. 2d 556, 560 (Fla. 2001). In *Ray*, the Florida Supreme Court recognized an "attorney's legitimate criticism of judicial officers" may be necessary to "publicize problems that legitimately deserve attention….

because attorneys are perceived by the public as having special knowledge of the workings of the judicial branch." *Id.*

Respectfully submitted,

/s/ Scott K. Tozian_____
SCOTT K. TOZIAN, ESQUIRE
Florida Bar No. 253510
Primary: stozian@smithtozian.com
Secondary: mrenke@smithtozian.com
GWENDOLYN H. DANIEL,
ESQUIRE
Florida Bar No. 83062
Primary: gdaniel@smithtozian.com
Secondary: email@smithtozian.com SMITH, TOZIAN, DANIEL &
DAVIS, P.A.
109 North Brush Street, Suite 200
Tampa, Florida 33602
813-273-0063
Counsel for Petitioner/Respondent

CERTIFICATION OF FONT SIZE AND STYLE

The undersigned counsel does hereby certify that this brief is submitted in 14 point proportionally spaced Times New Roman font.

/s/ BRUCE JACOBS_____
Respectfully submitted,

JACOBS LEGAL, PLLC
ALFRED I. DUPONT BUILDING
169 EAST FLAGLER STREET, SUITE 1620
MIAMI, FLORIDA 33131
TEL (305) 358-7991
FAX (305) 358-7992
SERVICE EMAIL: EFILE@JAKELEGAL.COM

BY: */S/ BRUCE JACOBS*
BRUCE JACOBS
FLORIDA BAR NO. 116203

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that the foregoing was filed with the Florida Courts e-filing Portal, and served on all those on the Service List, either via Notices of Electronic Filing generated by the e-Portal system or another authorized manner on June 20, 2022.

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