IN THE SUPREME COURT OF FLORIDA

THE FLORIDA BAR,

Complainant, CASE NO.: SC20-1602

vs. The Florida Bar File Nos.
2019-70,188 (11H)
2019-70,358 (11H)
BRUCE JACOBS, 2020-70,056 (11H)

Respondent.
_____/

CORRECTED REPLY/ANSWER BRIEF OF RESPONDENT

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

TABLE OF CONTENTS

TABLE OF CITATIONS

Rules & Statutes

ANSWER TO ARGUMENTS ON CROSS-REVIEW

The Florida Bar ("TFB") insists the Referee's recommendation of a 90 day suspension plus conditions, which the Referee expressly stated already accounted for this Court's admonitions to expect harsher bar discipline, is far too lenient. TFB seeks a 2 year suspension. (ROR. 29)(AB pg. 75-80).

The main difference is Jacobs will be automatically reinstated after a 90 day suspension, but must reapply to the Bar if the suspension is for 91 days or longer. Respectfully, any suspension, certainly a 2 year suspension, will have the same effect as disbarment. Jacobs will lose his foreclosure defense practice which is his sole source of support for his wife and four children. His clients and future foreclosure defendants will lose counsel willing to zealously advocate against banks depriving them of their property without due process. Finally, Jacobs will have no guarantee of readmission to TFB once his 2 year suspension expires.

Jacobs fears his steadfast belief in his oath of attorney led to this conflict. Unless this Court acts, the political impact of these Bar proceedings and the Referee's rejection of his claims of remorse and rehabilitation due to the uncharged bar complaint from Judge Andrea Gundersen will ensure he is never accepted back into TFB despite his honorable intentions. Jacobs again submits no testimony opened the door to additional bar complaints that

still have no probable cause determination and no bar grievance committee meeting to this day. Its introduction was highly prejudicial. (T2, 5:4-6:25).

The aggravating factors that warrant harsh sanctions under Fla. Bar R. 3.2 squarely fit opposing counsel's fraudulent misconduct in foreclosures while the mitigating factors under Fla. Bar R. 3.3 apply to Jacobs who is fundamentally risking his livelihood to protect his clients' constitutional rights.

I. The Objective Reasons in Fact that Required Judge Andrea Gundersen to Grant Disqualification from Jacobs' Cases

TFB leads its Answer Brief with a very brief analysis of the Motion to Disqualify Judge Gundersen that apparently destroyed Jacobs' credibility during the guilt phase to impeach his therapist's testimony that Jacobs took therapy seriously and had taken steps to improve his mental health. (AB p.6). TFB does not address the due process violation of injecting these uncharged bar complaints, which still never went to a grievance process, into this trial.

TFB insists Jacobs impugned Judge Gundersen's integrity by stating she had "knowingly misused" her position to advantage the bank in the commission of "systemic fraud." (TFB-Ex.15, p.2). This language is from the Florida's Standard for Attorney Discipline 5.2 (Failure to Maintain the Public Trust) which states any judge who "knowingly misuses the position… with

the intent to cause potentially serious injury to a party or the integrity of the judicial process" is to be disbarred.

TFB ignores that Jacobs filed a series of motions to disqualify before and after Judge Gundersen entered an order summarily striking all defenses and RICO counterclaims alleging fraud, unclean hands, and forgery "with prejudice under the litigation privilege." TFB Ex. 15. TFB ignores that the attorney who obtained that order striking all defenses (not just the fraud) was none other than Nathaniel Callahan, Esq. -- the same Akerman attorney the Honorable Miami-Dade Associate Administrative Circuit Judge Beatrice Butchko later hit with criminal contempt charges for making the same bad faith arguments to cover up the exact same systemic fraud. *See infra.*

As set forth in the Motion to Disqualify Miami-Dade Circuit Judge Michael Hanzman filed in Bank of New York Mellon v. J*akubow*, ***Jacobs only filed the first motion to disqualify Judge Gundersen after she recused herself in two of the cases the Honorable former Fourth DCA Chief Judge Stone, sitting as a senior judge in Broward's foreclosure Court, had consolidated with this same fraud fact pattern years before***.

Judge Gundersen became openly frustrated after the lawyer from Liebler, Gonzalez, and Portuando, ("the LGP firm") who misrepresented

facts and law without consequence in a bad faith effort to undue years of orders from Judge Stone. (R. Ex. 56:13-15).

As set forth in the motion to disqualify, Judge Gundersen initially ***recused herself*** after the second hearing and then commented on motions to disqualify her insisting those cases "**WAS NOT**" (emphasis in original) consolidated with the other pending foreclosures (they were). (R. Exh. 55). Judge Gundersen allowed Mr. 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).

Judge Gundersen then hit Jacobs' client with attorney's fees for filing the RICO counterclaim claim "without substantial fact or legal support." Judge Gundersen denied sanctions against Jacobs noting the Honorable Miami-Dade Circuit Judge Spencer Eig allowed his RICO claims to proceed in the *Abadia* case. (R. Ex. 56:13-15).

II. The Upside Down of Suspending Jacobs for 2 Years for Properly Seeking the Disqualification of Judge Gundersen

The Referee found Jacobs' Motions to Disqualify Judge Gundersen "conclusive" evidence to negate testimony he acted in good faith in seeking disqualification of judges. The Referee noted Jacobs filed a series of motions to disqualify Judge Gundersen without "derogatory or inflammatory

language" but the motions were legally insufficient and only intended to "force the recusal that he could not otherwise legally obtain." ROR. 19-20.

The Referee and TFB never explained how Jacobs acted unethically by seeking Judge Gundersen's disqualification and raising her two *sua sponte* recusals from consolidated cases involving the same fraud, her comments on the truthfulness of subsequent motions to disqualify, her failure to take any action to confront the fraud, and her forcing a client to pay attorney's fees for RICO counterclaims stricken under a litigation privilege. ROR. 19-20. Jacobs had objective reasons in fact to make these arguments. It would be a violation of his oath of zealous advocacy to not preserve these issues of bias for appeal, if only to protect himself from risk of consequences.

Mr. Winker testified the Gundersen Motions to Disqualify showed an escalation over time and swore it was a "disservice" to present only the last motion to disqualify" as TFB did over objection. The motions escalated and the judge disqualified herself because this was "the process working, not Bruce doing something wrong." (T2, 222:11-232:6).

The Referee erred in allowing the uncharged complaint related to the disqualification of Judge Gundersen to be central to finding Jacobs had no remorse, rehabilitation, or legitimate reason to seek disqualification of any court. According to his research, Jacobs is the first attorney ever in Florida

to face an emergency suspension petition for the type of conduct described herein. His emergency petition for suspension is also the first one this Court has ever disapproved. Respectfully, this Court and TFB should protect Jacobs' right to zealously advocate for his clients, not punish him for it.

III. Further Punishment Does Not Serve the Purposes of Attorney Discipline, Especially After the Third DCA Disciplined Jacobs without Due Process or Jurisdiction

Generally, "Lawyers are disbarred only in cases where they commit extreme violations involving moral turpitude, corruption, defalcations, theft, larceny or other serious or reprehensible offenses. *Inquiry Concerning Davey*, 645 So. 2d 398, 407–08 (Fla. 1994). The repercussions of disbarment are enormous, as explained by Chief Judge Major of the Seventh Circuit Court of Appeals in *In re Fisher*, 179 F. 2d 361, 370 (1950), quoting earlier Illinois State Court Opinions:

> The disbarment of an attorney is the destruction of his professional life, his character, and his livelihood. **** A removal of an attorney from practice for a period of years entails the complete loss of a clientele with its consequent uphill road of patient waiting to again re-establish himself in the eyes of the public, in the good graces of the courts and his fellow lawyers. In the meantime, his income and livelihood have ceased to exist. * * * * * The power, however, is not an arbitrary and despotic one, to be exercised at the pleasure of the court, or from passion, prejudice, or personal hostility; but it is the duty of the court to exercise and regulate it by a sound and just judicial discretion, whereby the rights and independence of the bar may be as

> scrupulously guarded and maintained by the court, as the rights and dignity of the court itself.

Jacobs believes TFB insists on a suspension beyond 91 days only to "backdoor" him into a disbarment to end his zealous advocacy in foreclosure defense, in contravention of the purpose of attorney discipline. Normally, "the purposes of attorney discipline are: (1) to protect the public from unethical conduct without undue harshness towards the attorney; (2) to punish misconduct while encouraging reformation and rehabilitation; and (3) to deter other lawyers from engaging in similar misconduct." *Fla. Bar v. Dupee*, 160 So. 3d 838, 853 (Fla. 2015). Suspending Jacobs from the practice of law under these facts accomplishes none of these purposes.

On August 18, 2022, a U.S. District Court Judge for the Northern District of Florida, the Honorable Mark E. Walker, enjoined Governor Ron De Santis' Stop Woke Act in an order that began:

> In the popular television series Stranger Things, the "upside down" describes a parallel dimension containing a distorted version of our world. See Stranger Things (Netflix 2022). Recently, Florida has seemed like a First Amendment upside down. Normally, the First Amendment bars the state from burdening speech, while private actors may burden speech freely. But in Florida, the First Amendment apparently bars private actors from burdening speech, while the state may burden speech freely. Now, like the heroine in Stranger Things, this Court is once again asked to pull Florida back from the upside down." *Honeyfund.com, Inc. v. DeSantis*, No.

4:22CV227-MW/MAF, 2022 WL 3486962, at *1 (N.D. Fla. Aug. 18, 2022)(citations omitted).

Respectfully, this Court is called to pull TFB back from the upside down and protect Jacobs from being unfairly disciplined. Jacobs has already suffered for fighting injustices against his clients by public reprimands and monetary sanctions. He has suffered the indignity of being ordered to pay up to $40,000 attorney's fees to the banks and their counsel who impugned the integrity of Judge Butchko's integrity and committed criminal frauds on the court in *Aquasol* and *Azran*. Yet, TFB insists:

> Jacobs has cited no authority that supports his theory that a defense of unclean hands for the conduct of lenders in handling assignments or transfers of notes pooled for securitization can successfully avoid a foreclosure judgment when the borrower is in default and the plaintiff is in lawful possession of the note that is secured by a recorded mortgage… His claims of dishonesty and illegality against judges and courts who are simply trying to obey and apply the established law of foreclosure are not zealous advocacy; they are a violation of his duties as a licensed lawyer to the judicial system and to the public."

However, this Court should consider whether any further punishment is warranted where Jacobs had objective reasons in fact to impugn the integrity of courts who violated the judicial canons by refusing to grant disqualification. The judicial canons set the baseline for Courts to have integrity. Jacobs should not be punished for impugning the integrity of courts that refused to disqualify itself or take action to confront banks and their

counsel depriving his clients of their property without due process through fraud on the court in violation of those judicial canons. Any punishment should take into consideration the harsh punishments already imposed by the Third DCA, and the fact that Jacobs has always had an unselfish, honorable motive in his actions. He is not benefitting from this fight.

IV. Jacobs Has a First Amendment Right to Truthfully Criticize Judges and Expose Valid Problems in the Judicial System

TFB and Jacobs agree this Court instructs "Although attorneys play an important role in exposing valid problems within the judicial system, statements impugning the integrity of a judge, when made with reckless disregard as to their truth or falsity, erode public confidence in the judicial system without assisting to publicize problems that legitimately deserve attention." *The Fla. Bar v. Ray*, 797 So. 2d 556, 560 (Fla. 2001).

In *Ray*, the referee and this Court listened to the tape recording and reviewed the transcript from the hearing to find no evidence supported Ray's statements impugning the integrity of the judge and that "nothing transpired in that hearing that would justify such outrageously false accusations. *Id.* at 559. TFB correctly notes Ray had the burden to prove a factual basis for his statements that concerned the integrity of the judge. *Id.*

TFB insists "Jacobs continues to see nothing wrong in his unsubstantiated attacks on the judiciary, claiming he has a First Amendment right as a crusader for his own vision of justice to attack all judges who disagree with him – the Bar submits that a two-year suspension is warranted to address the circumstances underlying Mr. Jacobs' conduct." (AB p.69).

TFB sets up the issue that there is no support for Jacobs' "novel" theories of unclean hands and systemic frauds so "Jacobs is impugning the judges because they will not agree with his version of the law, not because they are disobeying the actual law." (AB p.3). Jacobs respectfully submits there is objective reasons in fact to say the Third DCA is refusing to recuse themselves as required by law and disobeying the law of this Court.

The ultimate issue for this Court to decide is whether Jacobs' commentary about the Third DCA and Judge Hanzman warrant protection under the First Amendment to the U.S. Constitution and Article 1, §9 of the Florida Constitution. TFB dismisses controlling U.S. Supreme Court law that instructs attorneys cannot be disciplined for truthful statements protected by the First Amendment as only addressing extrajudicial statements to the press. *Gentile v. State Bar of Nevada*, 501 U.S. 1030 (1991). (AB p. 50).

TFB ignores that *Gentile* held "cases recognize that disciplinary rules governing the legal profession cannot punish activity protected by the First

Amendment … First Amendment Protections survives even when the attorney violates a disciplinary rule he swore to obey when admitted to the practice of law. *Id. Gentile* squarely protects Jacobs and instructs there is no justification to abandon normal First Amendment principles in cases of speech by attorneys regarding pending cases. *Id.*

Gentile also holds "on 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.'" *Id.* at 2726.

The U.S. Supreme Court instructs to determine if an attorney's speech critical of the judiciary is privileged under the First Amendment, courts examine "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." *Id.; citing Pennekamp v. Fla.*, 328 U.S. 331, 335, 66 S.Ct. 1029, 1031, 90 L.Ed. 1295 (1946).

The U.S. Supreme Court recognizes "***the vehemence of the language used is not alone the measure of the power to punish for***

contempt. The fires which it kindles ***must constitute an imminent, not merely a likely, threat to the administration of justice***. The danger must not be remote or even probable; ***it must immediately imperil***…. (T)he law of contempt is not made for the protection of judges who may be sensitive to the winds of public opinion. Judges are supposed to be men of fortitude, able to thrive in a hardy climate.' *Craig v. Harney*, 331 U.S. 367, 376 (1947). 'Trial courts . . . must be on guard against confusing offenses to their sensibilities with obstruction to the administration of justice.' *Brown v. U.S.*, 356 U.S. 148, 153, (1958) (emphasis added); *In re Little*, 404 U.S. 553, 555 (1972).

TFB recently presented almost the same accusations of misconduct to this Court as an emergency petition asking for Jacobs to be suspended from the practice law for causing great public harm. The Court voted overwhelmingly (5-2) to disapprove of the emergency suspension. *Fla. Bar v. Jacobs*, No. SC22-559, 2022 WL 1423181 (Fla. May 5, 2022).

Respectfully, if Jacobs presented a "clear and present danger" or "imminent, not merely a likely threat" that would "immediately imperil" either "the impartiality and good order of the courts" or "the administration of justice" the Court would have immediately suspended him from the practice of law.

Jacobs cannot be prosecuted under *Gentile* and its progeny. To the contrary, Jacobs truthful statements tried to protect the impartiality and good

order of the courts. They are clearly "of a character which the principles of the First Amendment, as adopted by the Due Process Clause of the Fourteenth Amendment, protect." *Id.* The integrity of the Third DCA and Judge Hanzman are certainly matters of public importance that may be publicized with statements that have an objective basis in fact. The vehemence of his language in trying to protect his clients cannot overshadow the objective basis in fact for his statements made to protect his clients.

V. **Jacobs Has Proven His Defense of Selective Prosecution**

Jacobs and TFB agree selective prosecution may be raised as a defense to bar discipline under *Thompson v. The Florida Bar*, 526 F. Supp. 2d 1264 (S.D. Fla. 2007); In *State v. A.R.S.*, 684 So. 2d 1383 (Fla. 1st DCA 1996). TFB correctly states selective prosecution "is an affirmative defense in the nature of an equal protection violation."

Although TFB claims there is no case in Florida where the defense has been successful, Jacobs directs this Court to *State v. Parrish*, 567 So.2d 461 (Fla. 1st DCA 1990). In *Parrish*, the First DCA held "the first part of the test requires a showing that the defendant was prosecuted while others similarly situated were not…. [t]he similarly situated group is the control group. The control group and the defendant are the same in all relevant respects, except that defendant was for instance, exercising his first amendment rights. If all

other things are equal, the prosecution of only those persons exercising their constitutional rights gives rise to an inference of discrimination." *Id.* at 465.

"To establish the second part of her selective prosecution defense, it was incumbent upon Patricia Parrish to show that the decision to prosecute was based on a desire to prevent her exercise of constitutional rights." *Id.* at 467. The First DCA ultimately concluded the Parrishes properly raised the selective prosecution defense because they "were singled out for prosecution for political reasons." *Id.*

A. Nathaniel Callahan Lacked Candor and Impugned Judge Butchko's Integrity Without Consequence, Even After Jacobs was Found Not Guilty of Lack of Candor

TFB insists "Jacobs was not singled out for prosecution while others similarly situated were not prosecuted. Mr. Jacobs did not even attempt to establish that other lawyers who have violated Rule 4-8.2(a) by impugning the integrity of the judiciary have not been prosecuted." (AB p. 63).

TFB ignores that Miami-Dade Associate Administrative Circuit Judge Beatrice Butchko initiated criminal contempt proceedings against BANA, BONYM, and Nathaniel Callahan in *BONYM v. Julie Nicolas* for offering perjury about systemic fraud. This is a clear violation of Rule 4-3.3 (lack of candor) which assisted BANA and BONYM in systemic criminal frauds on the court in foreclosures.

Mr. Callahan and his Akerman partners then attacked Judge Butchko's integrity insisting she be "urgently held accountable" making a baseless accusation she had an "improper" professional relationship where Jacobs had a "special influence" over her. (R. 65). This impugned Judge Butchko's integrity dishonestly in violation of Rule 4-8(2).

In full candor, starting at page 13 of his Initial Brief, Jacobs appealed the Referee's denial of his request to reopen the bar trial to present new evidence of selective prosecution. TFB had uncontroverted evidence Mr. Callahan and his partners lacked candor, committed fraud on the court, and impugned Judge Butchko's integrity dishonestly and with reckless disregard for the truth. TFB never even opened a grievance investigation. (R. 73.) TFB abdicated its duty to hold all foreclosure lawyers equally to the same rules.

While TFB does acknowledge Jacobs filed four bar complaints against opposing counsel engaged in fraud, TFB insists Jacobs "did not send the Bar copies of orders finding that his opponents had violated the Florida Rules of Professional Conduct or indicating that the Bar should investigate. He was simply trying to get the Bar to prosecute the opposing counsel in his clients' cases when those cases were still pending and unresolved." (AB p. 64).

In full candor, the letter Jacobs' counsel sent in response to the attempt by Chase's counsel to weaponize the Bar against him by gave extensive and

case specific examples of the many orders and admissions to prosecute Bank counsel for violations of Fla. Bar Rule 4-3.3 (Lack of Candor). (Exh. 1 pgs. 75-104). The Referee noted Jacobs filed bar complaints with TFB against bank attorneys for systemic frauds, forgery, and fabricating evidence. (ROR. 20-21). The Referee also noted Circuit judges, including Judge David Miller, issued sanctions orders against banks and their counsel for "stonewalling discovery, bad faith litigation tactics and unclean hands." (ROR. 21-23).

Jacobs respectfully submits, under *Thompson*, TFB cannot prosecute Jacobs for weak cases under charges of violating Fla. Bar Rule 4-3.3 (lack of candor) and Fla. Bar Rule 4-8.2 (impugning the integrity of a judge dishonestly or with reckless disregard for the truth) while refusing to prosecute much stronger cases against Mr. Callahan and his Akerman partners who engaged in the exact same rule violations. The Referee noted attorneys privileged to practice law "must agree to follow the Rules Regulating TFB and TFB 'has a duty to investigate and prosecute alleged violations of the rules.'" (ROR 21-23).

The Referee noted her "mindfulness of the Supreme Court's trend in favor of imposing stronger sanctions against attorneys in bar disciplinary proceedings, a more severe sanction is warranted in this case." (ROR 29).

By more severe, the Referee recommended a non-rehabilitative suspension of 90 days with other conditions. Yet, TFB wants Jacobs removed from the Bar and forced to reapply after a 2 year suspension, ending his foreclosure defense career, while taking no action against Mr. Callahan or his partners much clearer violations of the same exact bar rules.

Respectfully TFB just wants to violate Jacobs' First Amendment rights and prevent him from exposing valid problems within the judicial system" and "publicize problems that legitimately deserve attention" as permitted in *Ray.* TFB should be helping Jacobs to ensure attorneys obey TFB rules and Courts honor the judicial canons so his clients are not deprived of their property without due process by fraudulent evidence.

As set forth in the *Jakubow* Motion to Disqualify, TFB had either disbarred or suspended prominent foreclosure defense lawyers such as Mark Stopa, Kenneth Trent, Kelly Bosecker, Charles Gallagher, and Darin Letner. (R Ex. 56:2). Attorneys on both sides of Jacobs' cases are bound by the same ethical obligations under TFB rules. TFB cannot silence Jacobs for his foreclosure defense work by prosecuting him for weak cases while ignoring substantial evidence attorneys like Mr. Callahan and his Akerman are engaged in the exact same rule violations (i.e. Fla. Bar Rule 4-3.3 (lack

of candor) and Fla. Bar Rule 4-8.2 (impugning the integrity of a judge dishonestly or with reckless disregard for the truth)).

Selective prosecution does not require Jacobs prove TFB never prosecuted anyone for violating Rule 4-3.3 or Rule 4-8.2. Selective prosecution is akin to an equal protection violation. If foreclosure plaintiffs are clearly violating Rule 4-3.3 and Rule 4-8.2, but TFB is only prosecuting Jacobs for weak cases on the same rules, Jacobs has met prong 1 of the test to prove selective prosecution defense. Jacobs has met prong 2 by showing TFB is selectively prosecuting him to violate his First Amendment rights and silence his prosecution of fraud by banks.

B. *Silencing Jacobs Gives BANA Tactical Advantages in Hawaii*

To the point, on June 6, 2022, the Honorable U.S. Magistrate Judge for the District Court of Hawaii, Wes Reber Porter, denied Jacobs' Motion to Appear Pro Hac Vice on behalf of his client, Brandon Makaawaawa, the president of Na Poe Kokua ("NPK"), a grass roots non-profit organization fighting to hold BANA accountable for a $150 Million commitment to provide affordable housing for native Hawaiians. Mr. Makaawaawa testified NPK spent decades looking for a lawyer with integrity willing to take on their fight against BANA until they found Jacobs. (SH1, 200:25-208:1).

Jacobs filed suit for the native Hawaiian non-profit group against BANA for violations of the RICO Act and KKK Act of 1871. ***After BANA objected*** to Jacobs appearing pro hac vice citing the Amended Referee Report from this case, Jacobs was denied the ability to make his arguments in Hawaii. See order in *Nā Po'e Kōkua v. Bank of America Corporation;* Civil No. 22-00238 JMS-WRP attached as App. I. BANA's own counsel stands accused of fraud on the court in that litigation but blocked Jacobs from appearing in Hawaii because of these allegations he is unethical here in Florida.

Moreover, on September 2, 2022, the Honorable U.S. Magistrate Judge for the District Court of Hawaii Rom A. Trader, also denied Jacobs permission to appear pro hac vice on behalf of three women of color from Miami and five Hawaiian class representatives all suing BANA in an historic national RICO/FHA class action Jacobs filed alleging the same systemic frauds of forgery, perjury and obstruction of justice. *Nathan Earl Aiwohi, et al. vs. Bank of America, N.A., the Bank of New York Mellon.* Civ. No. 22-00312 JAO-RT. See order attached as App. II.

If this were purely a legal matter, Jacobs, Callahan, and the attorneys representing BANA, BONYM, and JP Morgan Chase would all be investigated and prosecuted as appropriate for violating Fla. Bar Rule 4-3.3 and/or Rule 4-8.2. However, this is political and banks are too powerful.

Normally, attorneys assisting in criminal frauds involving forgery, perjury, racketeering, and obstruction of justice are disbarred under Florida's Standard for Attorney Discipline 5.1(a)(2) and (a)(6) (Failure to Maintain Personal Integrity). This violates "one of the most basic professional obligations to the public, the pledge to maintain personal honesty and integrity." FL ST LWYR SANCTIONS Standard 5.1 (comment 1).

Jacobs has an ethical obligation to report attorneys and judges who violate TFB rules or the Judicial Canons to judges required to take appropriate action under those judicial canons. Respectfully, Jacobs never called for violence. He called for action by patriotic judges who swore to protect the constitutional rights of Jacobs and his clients. The courts must enforce the law equally in all cases, including foreclosures. The constitution should apply even to banks taking borrowers homes during this historic affordable housing crisis

XIII. The Uncontroverted Record Evidence Shows an Objectively Reasonable Basis in Fact for Jacobs to Say What he Said

As TFB notes, the Massachusetts Supreme Judicial Court discussed many cases adopting the same objective approach as Florida and explained:

> Judges are not above criticism or immune from review of their court room conduct. (citations omitted). Under the objective knowledge standard, an attorney does not lose his right to free speech. He may make statements critical of a judge in a pending

> case in which the attorney is a participant. He may even be mistaken. What is required by the rules of professional conduct is that he have a reasonable factual basis for making such statements before he makes them. *See Office of Disciplinary Counsel v. Gardner, supra* at 423, 793 N.E.2d 425.

Jacobs met his burden to prove he had an objectively reasonable basis in fact to make the statements at issue herein. TFB presented the statements from his pleadings, out of context, with no other evidence to show if there was an objectively reasonable basis in fact or not. Jacobs presented his own sworn testimony, the testimony of four foreclosure defense attorneys, and the testimony of five Miami-Dade Circuit Court judges to establish an objectively reasonable basis for his statements that impugned courts who refused to grant disqualification as required, failed to address false evidence, and deprived his clients of their property without due process.

TFB acknowledged Jacobs' uncontroverted testimony is that he wrote "everything straight and clean as persuasively as I could before the conclusion. And then the conclusion was really me sitting down to tell my truth." (T1:220-21). Jacobs denied that he "in any way, shape or form tr[ied] to attack the judges and say with false statements thinking that I was going to lie and impugn their integrity." (T1:221). (AB p. 20). The TFB concedes Jacobs apologized, but swore he did not write his motion with reckless disregard for the truth. (AB p. 27).

Jacobs conceded the motion was unprofessional and expressed the argument too strongly, but he is not charged with filing unprofessional pleadings. TFB insists Jacobs apologized and "fully understands the nature and wrongfulness of his conduct." (AB p. 16). However, the apology was not for violating Fla. Bar Rule 4-8(2)(a) or making false statements to impugn the integrity of the court. The apology was for breaking character and lowering his own standards of practice to tell his personal truth in an argument he agrees was less than professional. (AB 28).

TFB correctly notes Jacobs essentially abandoned the emotional and personal issues presented by his prior lawyers and instead argues he has an affirmative ethical duty to report lawyers engaged in fraud and judges who violate the judicial canons, refuse to grant disqualification, ignore fraud, and deprive his clients of property without due process." (AB p.44-45). Once Jacobs reports misconduct of lawyers and judges to other judges, those judges have their own ethical obligation to take appropriate action under Judicial Canons 3(d)(1) and 3(d)(2).

A. The Uncontroverted Testimony of Four Experienced Foreclosure Defense Lawyers Corroborated Jacobs's Testimony He Had an Objectively Good Faith Basis in Fact for the Statements He Made

Jacobs presented corroborating testimony of four experienced foreclosure defense attorneys: Court Keeley, Esq., Margery Golant, Esq.,

David Winker, Esq., and Ricardo Corona, Esq., who all swore foreclosures are being prosecuted with false evidence and without due process. These witnesses establish objective reasons in fact to hold Jacobs' statements truthfully impugned the integrity of the Third DCA and Judge Hanzman.

TFB neglected to mention any of this testimony in its answer brief. At best, TFB referenced Mr. Winker, but only to suggest he gave opinions, (despite not being an expert) that Jacobs is a bare knuckle brawler in a world of bare knuckle brawlers, and that he and his opposition are both vehement advocates for their clients. (AB p. 32). TFB cited no evidence to contradict the testimony of Jacobs and his four colleagues who all support a finding that Jacobs had an objectively reasonable basis in fact for his statements.

Mr. Keeley testified as a former Miami prosecutor like Jacobs, "it was shocking to me" after trying foreclosure cases "the lack of due process afforded to people." (SH2, 48:20-39:25). Mr. Keeley noted it is "shocking" how "the rules of evidence are bent" in foreclosures. Mr. Keeley explained "this whole situation" with TFB arose from the "constant lack of due process, the constant being shut down…, documents being submitted into evidence in trials that are just blatantly false and provably false." Yet, "they're letting them in and let slide by." Mr. Keeley swore Jacobs "absolutely, absolutely"

has a good faith basis to raise his arguments of fraud on the court and Article 9 of the UCC. (SH2, 48:20-55:24).

Mr. Keeley testified "since this whole mess" started, Jacobs became much more careful about his pleadings but he "just has very strong beliefs, I think, that what he's doing is right. Back on to the constitutional grounds, upholding due process, not depriving people of their property without due process of law, I think he has very strong personal beliefs of what he would say is fighting the good fight." (SH2, 57:11-18).

Ms. Golant testified Jacobs' unclean hands defense for had merit. Ms. Golant presented the same defenses after the "robo-signing scandal" but some judges "refuse to allow it" and even a proffer of evidence. Those judges become angry, impatient and said in open court they "don't want to hear it" which is "extremely frustrating" to her ethical duty to her clients. She testified these bar issues come from Jacobs' frustrations from being denied a meaningful opportunity to be heard. (SH2, 13:2-16:25).

Mr. Winker swore Jacobs is "a bulldog" about fighting false evidence in equitable actions. (T2, 213:22-217:23). Mr. Winker is sympathetic to Jacobs because in his own cases he's seen "documents so obviously false" he would be sanctioned if he offered them into evidence. He saw evidence a Countrywide endorsement added after the fact and believed it would be "a

failure in advocacy" to not raise the defense, even if the judge refused to hear it. Mr. Winker feels this all comes down to one basic truth: "Either Bruce is out of line or the judge is out of line." (T2, 222:11-232:6).

Mr. Corona is another foreclosure defense attorney who raised the same fraud arguments and swore some judges were more receptive than others. Mr. Corona testified few lawyers actually litigate foreclosures ethically or pro bono, as Jacobs routinely does. Mr. Corona swore if Jacobs was disbarred it would be a loss to homeowners and the foreclosure defense bar. Homeowners would find it more difficult to find quality representation if Jacobs was removed from the practice of law. (SH1, 143:23-146:6).

B. Of the Five Circuit Judges that Testified on Jacobs' Behalf, Miami-Dade Circuit Judge David Miller Clearly Corroborated Jacobs Testimony that He Had an Objectively Good Faith Basis in Fact for the Statements He Made

Five Circuit Court judges testified on Jacobs' behalf including the Honorable Miami-Dade Circuit Judge David Miller who swore he "knows Jacobs to be 'at the top of his game' and 'always well-informed of his clients' facts and the legal position relating to those facts." Judge Miller testified to his own order finding bad faith discovery tactics and awarding sanctions under the Inequitable Conduct Doctrine in *Bank of America, N.A. v. Genny*

Rodriguez in Circuit Case Number 203-30447 dated December 12, 2014. Judge Miller swore "I certainly haven't been convinced otherwise since then."

Judge Miller testified to his order finding bad faith discovery tactics and awarding sanctions under the inequitable conduct doctrine. R. 30. The order described that the Liebler, Gonzalez, and Portuondo law firm ("the LGP firm") appeared in Jacobs' cases with BANA and BONYM after he deposed a senior BANA executive about forged endorsements and false assignments presented in foreclosures.

Judge Miller's order noted the Fourth DCA had previously certified a question of great public importance to this Court finding "many, many foreclosures appear tainted with suspect documents" in *BONYM v. Pino*, 57 So. 3d 950, 954 (Fla. 4th DCA 2011). Judge Miller noted the Honorable former Fourth DCA Chief Judge Barry M. Stone and the Honorable Miami-Dade Circuit Judge Darryl Trawick both entered orders finding similar misconduct by BANA and the LGP firm.

Judge Miller found the LGP firm's objections were "filed in **bad faith**." (emphasis in original). Judge Miller found "It is **outrageous** that Plaintiff and the LGP firm would force Defense Counsel to jump through so many hoops clearly intended to deliberately block discovery ordered by several Circuit Court judges." (emphasis in original). Judge Miller made "an express finding

of bad faith and outrageous conduct by the Plaintiff and the LGP firm" and awarded sanctions under the Inequitable Conduct Doctrine. (R Ex. 30:3).

This all establishes beyond a preponderance of the evidence Jacobs had an objectively reasonable basis in fact to make the statements he made. The statements either documented his experience in foreclosures or giving his honest opinions to be drawn from those experiences. Other attorneys and judges had similar experiences. In contrast, *Ray* fabricated statements that never happened, attributed them to the judge, and was exposed once the audio tape and transcript of the hearing showed nothing *Ray* had represented in his statements ever happened at all.

Jacobs again submits he meets the exception carved out by this Court in *Ray* that acknowledged "attorneys play an important role in exposing valid problems within the judicial system" and should assist "to publicize problems that legitimately deserve attention" so long as their statements are not made with reckless disregard to their truth or falsity.

C. *There is an Objective Basis in Fact for the Statement that This Court Repeatedly Declined to Protect the Constitutional Rights of Foreclosure Defendants*

TFB insists Jacobs had no evidence to suggest this Court "repeatedly declined to protect the constitutional rights of foreclosure defendants." (AB p. 44). However, TFB cited some cases where this Court declined to accept

jurisdiction of his appeals challenging biased courts and fraud on the court that deprived his clients of property without due process. (AB p. 20, fn. 4).

Respectfully, this Court should take judicial notice of its own online docket now showing 25 different cases where Jacobs seeks or sought to invoke jurisdiction of the court through conflict jurisdiction, mandamus, all writs, and any other possible basis. Jacobs does "understand the limits of this Court's jurisdiction" and recognizes the only path for this Court to hear these arguments is by discretionary jurisdiction, or these bar proceedings. Respectfully, there is an objectively reasonable basis in fact for Jacobs to say this Court has repeatedly declined to exercise jurisdiction so far.

A silver lining to these bar proceedings is Jacobs may finally present his arguments on the law in foreclosures to this Court. As the next wave of foreclosures looms over the courts, and the affordable housing crisis worsens, it is never too late to take appropriate action to ensure Florida courts follow the 2001 amendments to Article 9 enacted by the legislature and signed into law by the governor. It is always the perfect time to protect constitutional rights and hold banks and their counsel accountable for these ongoing systemic frauds in foreclosures.

D. <u>There is an Objectively Reasonable Basis In Fact that Judge Hanzman "Has Repeatedly Ignored Obvious Fraud on the Court by Large Financial Institutions"</u>

TFB insists Jacobs failed to produce "very specific evidence of the documents introduced by a bank that were fraudulent and the fact that Judge Hanzman ignored that evidence in at least one case. (AB p. 54). Yet, Jacobs testified that in *HSBC v. Aquasol* that Judge Hanzman threatened him 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, refused to consider the unclean hands defense, and refused to hear evidence of fraud. (T. 204:4-205:3).

TFB ignores that Judge Hanzman himself admitted foreclosure defense lawyers often accuse lenders of obtaining standing by fraud in cases before him and other courts." (SH1, 63:24-66:11). Judge Hanzman admitted he refused to consider Jacobs argument in *Aquasol* that the David J. Stern robo-signed mortgage assignment was fraud finding it "irrelevant" whether David Stern or Howard Stern created false evidence. (SH1, 73:15-78:22).

In *BONYM v. Atkins*, Jacobs again swore he filed the motion to disqualify Judge Hanzman in good faith as there was a clear refusal to consider that BANA and BONYM had unclean hands and were engaged in forgery and perjury. (T2, 36:18-39:1). Judge Hanzman testified he "entered

a reasoned order as to why I had no jurisdiction to entertain his claims of fraud." (SH1, 27:18-28:6). Thus, there is an objective reason in fact to state Judge Hanzman repeatedly ignored obvious fraud on the court by large financial institutions in *Aquasol* and *Atkin.* Judge Hanzman has the authority and ethical obligation under the judicial canons to initiate contempt for fraud or refer banks and their counsel to the proper authorities for prosecution.

E. The Objectively Reasonable Basis in Fact for Jacobs Statements on the Third DCA's Handling of Simpson

TFB accuses Jacobs of failing to provide an objectively reasonable basis for his statements that "the Third DCA violated the standard of review, ignored Florida Supreme Court precedent, and falsified the facts in contradiction to the record" in *BONYM v. Simpson*.

TFB acknowledged the letter Jacobs' counsel wrote in response to JP Morgan Chase's counsel attempting to weaponize TFB while it engaged in the same systemic frauds of forgery, perjury, and obstruction of justice. Respondents Exhibit 1, pgs 94-95. The letter sets forth part of his objectively reasonable basis for his statements about *Simpson*.

This Court instructs "a consent judgment …may only be attacked in cases alleging fraud on the court." *Arrieta-Gimenez v. Arrieta-Negron*, 551 So. 2d 1184, 1186 (Fla. 1989). As set forth in the letter, even Chase' counsel,

in full candor, conceded "you can bring a 1.540 motion after a consent judge, yes, your Honor.… *Arrieta-Gimenez* … says you can do it." R. 847." The letter noted Leon Cosgrove's initial brief lacked candor by failing to mention this controlling Florida Supreme Court adverse authority in violation of Fla. Bar. R. 4-3.3(a)(3) requiring disclosure of adverse law.

In the letter, Jacobs noted the express conflict between *Arrieta-Gimenez* and the Third DCA's holding in *Simpson*. Arrieta-Gimenez treats a consent judgment the same as a contested judgment under Fla. R. Civ. P. Rule 1.540(b). Under *Simpson*, the Third District's treats a consent judgment differently from a contested judgment and does not cite *Arrieta-Jimenez*.

Moreover, the Third DCA decision overruling the decision of the Third DCA Judge Eric Hendon as a trial judge, in footnote 2 said: "Simpson …***had full access to discovery (in fact, the record reveals that he made full use of his discovery rights*** until deciding to enter into the SRA), ***and*** he ***had every right to reject the settlement offer until*** he ***could adequately explore*** his defenses." *Bank of New York Mellon v. Simpson*, 227 So. 3d 669, 671 (Fla. 3d DCA 2017) (emphasis added).

Strikingly, in *Arrieta-Gimenez,* this Court found "Appellant ***had full access to discovery (in fact, the record reveals that appellant made full use of her discovery rights), and*** she ***had every right to reject the***

settlement offer until she ***could adequately explore*** the extent of her father's holdings in Puerto Rico." *Id.* (emphasis added).

Respectfully, there is an objectively reasonable basis to make the statements critical of the Third DCA in *Simpson*. The *Simpson* opinion directly conflicts with *Arrieta-Gimenez,* copied the facts of *Arrieta-Gimenez* almost verbatim, but never discussed the *Arrieta-Gimenez* holding. The Third DCA disobeyed the law of this Court without justification.

XIV. Jacobs is Protecting the Constitutional Rights of His Clients and the Integrity of the Judicial System

Jacobs respectfully submits answer brief filed by TFB insists his conduct is "harmful to his clients, to the public, and to the judicial system" (AB p.4). TFB insists Jacobs "claims of dishonesty and illegality against judges and courts who are simply trying to obey and apply the established law of foreclosure are not zealous advocacy; they are a violation of his duties as a licensed lawyer to the judicial system and to the public."

TFB argues "[Jacobs'] argument was that it was not enough to possess the note for standing; that even a bank with standing should not be able to foreclose if the bank had "unclean hands." His special affirmative defenses were also sometimes accompanied by a counterclaim alleging a RICO violation for forgery and perjury." (p. 11).

TFB insists Jacobs is injuring his clients by raising defenses of systemic frauds in foreclosure "which can only add to the fees imposed as a lien against their homes and as damages in subsequent deficiency judgments." (p.70). There is no evidence a single client faced a deficiency judgment from Jacobs' work in this record (because none ever did).

To the contrary, Ana Lazara Rodriguez, a former political prisoner who endured 19 years of torture in a Cuban prison for women testified Jacobs represented her *pro bono* after she was "trapped" in a Countrywide loan. "He's the only one that has been fighting for me." Ms. Rodriguez testified "I have been fighting my whole life for freedom, for integrity, for justice, for decency. So I know when a human being has integrity. I want justice. I want freedom. He's a good fighter for all those things." (SH2, 41:3-46:1).

Another client, Rabbi Yochanon Klein testified he fell into foreclosure after his 16 month old daughter was diagnosed with liver cancer. Jacobs' *pro bono* efforts helped his family get through a difficult time. (SH1, 156-1-159:22). Another client who testified for Jacobs, Maria Williams James, swore she was "up against bank lawyers" that lacked candor and lied to the court "a lot" and reported them to TFB several times. TFB took no action to discipline any bank layer engaged in fraud or lack of candor in her case. "They left me hanging." (T2, 208:14-209:11).

VIII. **There is Authority to Support the Defense of Unclean Hands**

TFB insists "no authority supports his theory that a defense of unclean hands for the conduct of lenders in handling assignments or transfers of notes pooled for securitization can successfully avoid a foreclosure judgment when the borrower is in default and the plaintiff is in lawful possession of the note that is secured by a recorded mortgage." (AB p. 70).

In full candor, Jacobs testified to Palm Beach County Circuit Judge Howard Harrison's findings of unclean hands by JP Morgan Chase acting as servicer for a securitized which ultimately ended with a settlement that satisfied the mortgage with a confidential payment. (T1, 170:6-25).

Judge Harrison's order set forth controlling law that "One who comes into equity must come with clean hands else all relief will be denied him *regardless of merit of his claim*, and it is not essential that act be a crime; it is enough that it be condemned by honest and reasonable men." *Roberts v. Roberts*, 84 So.2d 717 (Fla. 1956). See Riley Order attached as App. III.

As set forth in the Riley Order, "even if Plaintiff had standing to foreclose (a meritorious claim), Plaintiff would be denied the equitable relief of foreclosure upon a finding that Plaintiff took actions in pursuing this foreclosure that reasonable and honest men would condemn."

Over 166 years ago, the United States Supreme Court pronounced: "equitable powers can never be exerted on behalf of one who has acted fraudulently, or who, by deceit or any unfair means, has gained an advantage." *Bein v. Heath*, 47 U.S. 228, 6 How. 228, 1848 WL 6464 (U.S.La.), 12 L.Ed. 416 (1848). This Court noted "the principle or policy of the law in withholding relief from a complainant because of 'unclean hands" is punitive in its nature." *Busch v. Baker*, 83 So. 704 (Fla. 1920); *Shahar v. Green Tree Servicing, LLC*, 125 So. 3d 251, 253 (Fla. 4th DCA 201)(unclean hands defense bars equitable claims regardless of the merits where plaintiff engaged in unscrupulous conduct, overreaching, or trickery that would be "condemned by honest and reasonable men"); *MTGLQ Inv'rs., L.P. v. Moore*, 293 So. 3d 610, 617 (Fla. 1st DCA 2020)("unclean hands is reserved for those who act unlawfully and attempt to trick and deceive others").

Where criminal fraudulent conduct is directed to the court the Doctrine of Unclean Hands applies because there is a clear connection to the matter in litigation. *Marin v. Seven of Five Ltd.,* 921 So.2d 699, 700 (Fla. 4th DCA 2006) ("Generally, conduct constituting unclean hands must be connected with the matter in litigation").

In *Riley*, Judge Harrison found unclean hands after Chase introduced into evidence a false mortgage assignment, a false mortgage loan schedule,

and perjured testimony. Chase also violated a discovery order to turn over evidence that would show the blank endorsement was a forgery. After the finding of unclean hands, Chase dismissed its appeal, satisfied the mortgage, and paid confidential settlement to resolve the unclean hands.

IX. **Whether the Third DCA and Judge Hanzman are Fair Impartial, Independent, or Lack Integrity is a Matter of Public Interest that Warrants First Amendment Protection**

In December of 2021, a former Florida Supreme Court Justice, Peggy A. Quince authored a Miami Herald op-ed entitled ***Florida is Dangerously Close to Losing its Independent, Impartial and Fair Judiciary.***[1] Justice Quince warned that our courts are right now being captured by special interests in Florida. Justice Quince explained those of certain ideologies and campaign donors spent heavily to capture the courts.

Justice Quince warned this "perversion ... threatens to turn our higher courts and to some extent our trial courts into little more than of an extension of the executive branch. The rule of law is in imminent danger."

[1] https://news.yahoo.com/florida-dangerously-close-losing-independent-215531969.html?soc_src=community&soc_trk=fb

On June 8, 2022, the Sun Sentinel Editorial Board published its own editorial entitled **A Loss of Independence in Florida's High Courts**.[2] warning "One of Florida's greatest reforms has degenerated into one of its greatest failures. Florida's highest courts are now effectively the judicial arm of the Republican Party. Not so long ago, they were esteemed for their independence. Most lawyers see no future there for themselves."

The Sun Sentinel and Justice Quince agree "the debasement of the Florida judiciary is the result of a 2001 law that gave governors total control of the 26 formerly independent judicial nominating commissions."

The impartiality, independence and fairness of the courts are a matter of public interest which Jacobs has specialized knowledge about from his practice. It should be a matter of public interest whether the courts are fair and impartial or lack integrity, especially as it relates to powerful special interests like banks. Jacobs has a First Amendment right and obligation to publicize legitimate problems in the judicial system and should not be punished for doing his best under difficult circumstances.

[2] https://www.sun-sentinel.com/opinion/editorials/fl-op-edit-judicial-nominating-commission-reform-florida-supreme-court-20220608-z42ggm2qangk3mhhih3d4xoqhi-story.html

Jacobs acted ethically questioning the integrity of the Third DCA and Judge Hanzman for violating the judicial canons. These judicial canons hold judges to higher ethical standards than attorneys to uphold the rule of law. “A judge's fundamental responsibility is to protect the constitutional rights of others.” *In re Sloop*, 946 So. 2d 1046, 1058 (Fla. 2006).

Earlier this year, the Honorable Florida Supreme Court Justice John D. Couriel spoke at the South Florida Council Eagle Scout recognition dinner, and then at a Chabad of Downtown Coral Gables Judicial Luncheon on the topic ***“Is It a Legal Obligation to Be a Mensch?”***

At the Eagle Scout dinner, Justice Couriel spoke of how the Scout law is about the obligation to serve others. At the judicial luncheon, Justice Couriel spoke of the difference between secular law, which protects the rights of others, and Gd’s natural law, that requires us all to always do the right and just thing, and yes, to be a Mensch.

In many respects, TFB Rules and the Judicial Canons are Florida’s codification of Gd’s natural law. They protect the rule of law ensuring lawyers and judges always do the right and just thing. As the Old Testament instructs:

> You shall appoint for yourself judges and officers in all your towns which the Lord your God is giving you, according to your tribes, and they shall judge the people with righteous judgment. You shall not distort justice; you shall not be partial, and you shall not take a bribe, for a bribe blinds the eyes of the wise and perverts

> the word of the righteous. Justice, and only justice, you shall pursue, that you may live and possess the land which the Lord your God is giving you" (Deut. 16:18-20).

The Judeo-Christian law governing judges as set forth by Maimonides in the laws of the Sanhedrin chapter 23, §8-9[3], states:

> A judge should always see himself as if a sword is drawn on his neck and Hell is open before him. He should know Who he is judging, before Whom he is judging, and Who will ultimately exact retribution from him if he deviates from the path of truth, as indicated by Psalms 82:1: 'God stands among the congregation of the Almighty.' And II Chronicles 19:6 states: 'See what you are doing. For you are not judging for man's sake, but for God's.' Whenever a judge does not render a genuinely true judgment, he causes the Divine presence to depart from Israel…. When a judge adjudicates a case in a genuinely true manner for even one moment, it is as if he has corrected the entire world and he causes the Divine Presence to rest within Israel."

Jacobs respectfully submits it is reasonable to infer TFB Rules and the Judicial Canons of Florida codify Gd's natural law to ensures secular laws are protected under our constitution. The obligation to act with integrity in the judiciary is paramount to protect the rule of law. As the New Testament warns

> Beware of the scribes, who like to walk around in long robes, and love respectful greetings in the market places, and chief seats in the synagogues, and places of honor at banquets, ***who devour***

[3] As researched by Yaakov Friedman, a 17 year old rabbinical student who is the son of Jacobs' rabbi and the great-grandson of Rabbi Yehuda Krinsky, chairman of Chabad-Lubavitch and secretary of Chabad Rebbe Menachem Mendel Schneerson, upon request by Jacobs.

> ***widows' houses***, and for appearance's sake offer long prayers; these will receive greater condemnation" (Luke 20:46-47)."[4]

Justice Quince and the Sun Sentinel both raised the fairness and independence of Florida's judiciary to be a matter of public interest. Jacobs has a First Amendment right to publicize legitimate problems in the judicial system. There is an objective basis in fact for Jacobs to make statements that impugn the integrity of the Third DCA and Miami-Dade Circuit Judge Michael Hanzman, particularly after former Justice Quince's warnings.

The basis for judicial power, referenced in Article V, Section 1 of the Florida Constitution, is found in Federalist Number 78, written by Alexander Hamilton[5] and warns that:

> Impartiality is not only an individual duty but a systemic ideal to which the judiciary is institutionally committed by explicit constitutional commands. The Constitution's promise of due process of law is, among other things, a promise of impartial adjudication in the courts—a promise that people challenging assertions of government power will have access to a neutral tribunal that is not only free from actual bias but free even from the appearance of bias. To the extent that private citizens cannot reasonably be confident that they will receive justice through litigation, they will be tempted to seek extra-legal recourse.

---

[4] https://bible.org/seriespage/7-psalm-82-judgment-gods (emphasis added)

[5] http://www.fed-soc.org/blog/detail/judicial-impartialitymust-not-be-a-mere-facade-on-the-dangers-of-individual-andsystematic-judicial-bias.

The Third DCA has made it a practice to usurp this Court's exclusive jurisdiction to impose bar discipline on Jacobs for his criticisms. This Court instructs "Article V, section 15 of the Florida Constitution vests [the Florida Supreme Court] with the 'exclusive jurisdiction to regulate … the discipline of persons admitted [to the Florida Bar]." *State ex rel. Chiles v. Public Employees Relations Com'n*, 630 So.2d 1093, 1094-1095, (Fla. 1994)(*citing Fla. Senate v. Graham*, 412 So.2d 360 (Fla.1982)).

This Court instructs "these rules contemplate that an attorney who has run the gauntlet of the grievance process and a trial by referee, and has emerged with only a private reprimand as recommended discipline, is entitled to be admonished for his errant conduct without the severe reputational damage which accompanies a public revelation of acts violative of his professional code. *The Florida Bar v. Rubin*, 362 So. 2d 12, 15 (Fla. 1978). The Third DCA repeatedly said it would reprimand Jacobs, repeatedly did publicly reprimand Jacobs, all without honoring his calls for its disqualification, his factual defenses, or affording him due process.

It is without question that "an attorney's most valuable asset is [his/her] professional reputation. *See Cooter & Gell v. Hartmarx Corp.,* 496 U.S. 384, 413, 110 S. Ct. 2447, 2464 (1990)(Stevens, J., concurring in part). The U.S. Supreme Court has held the reputational harm done by a judicial sanction

implicates the Due Process Clause of the Constitution. See *In Re Ruffalo*, 390 U.S. 544 (1968)("absences of fair notice as to the reach of the grievance procedure and the precise nature of the charges deprived [attorney] of procedural due process").

Accordingly, many courts have held than an order rising to the level of a public reprimand is a sanction." *Bowers v. National Collegiate Athletic Association*, 475 F.3d 524, 543 (3rd Cir. 2007)(and cases cited). This Court instructs "Appellate courts, therefore, should impose sanctions against an appellee only in rare circumstances. Moreover, because a district court of appeal is, in the vast majority of cases, the court of last resort, it should exercise great restraint in imposing appellate sanctions." *Boca Burger v. Forum*, 912 So. 2d 561, 570-571 (Fla. 2005).

X. **Jacobs Apologized Only for Telling His Personal Truth in an Unpersuasive and Less than Professional Manner**

This Court should consider the circumstances Jacobs found himself in four years ago, and since the Third DCA first issued a show cause order accusing him of dishonesty, in analyzing his diametrically opposed statements of facts from what TFB submitted.

According to TFB, Jacobs admitted guilt, apologized, and had no good faith basis to suggest the Third DCA or Judge Hanzman were not following

the law, required to grant disqualification under the judicial canons, or protecting systemic frauds on the court in foreclosures.

When the Third DCA first accused Jacobs of dishonestly criticizing the court in the *Aquasol* case in 2018, his counsel pursued the path most likely to protect his law license. Jacobs apologized without challenge, enrolled in counselling, and had board certified counsel review pleadings going forward.

Jacobs did not challenge the Third DCA to disqualify itself or argue the First Amendment. He never argued of his objectively reasonable basis in fact for his statements or raised any challenge on the merits at all. Jacobs followed counsel's advice, and fell on his sword to protect his family, clients, and license to practice law.

By March of 2021, it became clear TFB wanted Jacobs suspended for more than 90 days so he would be out of the Bar and forced to reapply. Jacobs saw his apology was not working and raised selective prosecution as another defense. R. 18. TFB even acknowledged that, by the bar trial, Jacobs "had shifted positions and described his motion for rehearing in *Aquasol* as telling 'my truth.'" (AB p. 44).

TFB invited this Court to review the full *Aquasol* motion for rehearing (2018 WL 4204477) in its entirety even though neither party admitted the motion into evidence. Jacobs joins that invitation knowing the full motion in

context shows Jacobs' statements were not made with reckless disregard for the truth. They were his truthful arguments and opinions based on his experience. The uncontroverted evidence shows his statements have an objectively reasonable basis in fact.

XI. The Third DCA Failed to Recuse Itself from Jacobs' Cases Making these Bar Complaints "Fruit of the Poisonous Tree"

TFB ignores that the Third DCA initiated criminal contempt[6] proceedings by two show cause orders against Jacobs in *Aquasol,* and again in *Atkin*, to punish him for criticizing the Court dishonestly and with reckless disregard for the truth. Accordingly, the Third DCA was obligated to disqualify itself so another court could adjudicate whether Jacobs acted unethically.

By not disqualifying itself, the Third DCA violated Jacobs' due process rights under established Florida law and U.S. Supreme Court law. Jacobs cannot be punished for impugning the integrity of the Third DCA which violated Judicial Canon 3(e)(1) by failing to disqualify itself as required by law. Such a serious violation of the judicial canons is an objective basis in fact to conclude the Third DCA decisions in Jacobs' cases lack integrity.

[6] This Court instructs "the purpose of criminal contempt ... is to punish [and] … vindicate the authority of the court." *Parisi v. Broward Cty.*, 769 So. 2d 359, 364 (Fla. 2000).

Fla. R. Crim. P. 3.840(e) provides "If the contempt charged involves disrespect to or criticism of a judge, the judge shall disqualify himself or herself from presiding at the hearing. Another judge shall be designated by the chief justice of the supreme court." Fla. R. Crim. P. 3.840(e).

"[T]he purpose of the rule is to assure that a person cited for a contempt of court which involved a criticism of a judge, would not be tried on the contempt charge before the judge who was the subject of the criticism." *Bumgarner v. State*, 245 So. 2d 635, 637 (Fla. 4th DCA 1971). Strict compliance is required. *Fiore v. Athineos*, 9 So.3d 1291, 1293 (Fla. 4th DCA 2009); *Rosenwater v. Deutsche Bank National Trust Co.*, 220 So. 3d 1204 (Fla. 4th DCA 2017); *In re Weiner*, 278 So. 3d 767 (Fla. 2d DCA 2019).

U.S. Supreme Court precedent instructs, "[a] fair trial in a fair tribunal is a basic requirement of due process." *Caperton v. A.T. Massey Coal Co.*, 556 U.S. 868, 876, 129 S. Ct. 2252, 2259, 173 L. Ed. 2d 1208 (2009).

This Court has recognized it could be appropriate to disqualify an entire District Court of Appeal. *5-H Corp. v. Padovano*, 708 So. 2d 244, 244–45 (Fla. 1997). In *Padovano*, "in a footnote, Arslanian referred to opposing counsel's argument as "ridiculous" and "a joke," adding that "the use of the term 'total b[——]s [——]' without the inclusion of at least 2 or 3 intervening expletives is very kind and generous under the circumstances." *Id.*

This Court rejected Arslanian's writ of prohibition to disqualify the entire First DCA for referring his comments to TFB for prosecution. *Id.* Strikingly, TFB dismissed its complaint against Arslanian finding "no probable cause" for his language *Id.* Yet, TFB is prosecuting Jacobs for statements made in plain English, brought in good faith, based on facts showing the Third DCA had to recuse itself ethically and constitutionally. This Court held the First DCA could refer Arslanian to TFB without requiring disqualification because:

> All Florida judges are, first and foremost, attorneys and members of The Florida Bar. See generally art. V, § 8, Fla. Const. As such, Florida judges, just like every other Florida attorney, have an obligation to maintain the integrity of the legal profession and report to The Florida Bar any professional misconduct of a fellow attorney. See R. Regulating Fla. Bar 4–8.3(a). This obligation is reiterated in the Florida Code of Judicial Conduct, which explicitly provides that "[a] judge who receives information or has actual knowledge that substantial likelihood exists that a lawyer has committed a violation of the Rules Regulating The Florida Bar shall take appropriate action." Fla.Code Jud. Conduct, Canon 3D(2).6 *Id.*

This Court noted, however, "of course, regardless of whether such reports to The Florida Bar or the JQC have been filed, ***disqualification remains available where it can be shown that "the judge has a personal bias or prejudice concerning a party or a party's lawyer***[.]" Fla. Code Jud. Conduct Canon 3E(1)(a)(emphasis added). *Id.* at 248.

The Third DCA expanded *Padovano* holding disqualification is mandatory once a judge files a bar complaint that alleges dishonesty by the

attorney. *Afanasiev v. Alvarez*, No. 3D20-0803, 2021 WL 1201433, at *4 (Fla. 3d DCA Mar. 31, 2021)(disqualification required where judge filed a bar complaint that accused a party's counsel of dishonesty). *See also, Brown v. St. George Island, Ltd.*, 561 So. 2d 253, 257 n.7 (Fla. 1990); *Molina v. Perez*, 187 So. 3d 909 (Fla. 3d DCA 2016). *S.S. v. Dep't of Child. & Fams.*, 298 So. 3d 1184, 1185 (Fla. 3d DCA 2020).

Respectfully, this prosecution violates U.S. Supreme Court law, Florida Supreme Court law, and Third DCA law. The Third DCA should have disqualified itself under Judicial Canon 3(e)(1) after its first show cause order in *Aquasol*, and certainly after its bar complaints accusing Jacobs of dishonesty in *Aquasol* and *Atkin*. *Mayberry v. Pennsylvania*, 400 U.S. 455, 915 S.Ct. 499, 27 L.Ed.2d 532 (1971); *Taylor v. Hayes*, 418 U.S. 488, 501–02, 94 S. Ct. 2697, 2705, 41 L. Ed. 2d 897 (1974); *Arnett v. Kennedy*, 416 U.S. 134, 198, 94 S. Ct. 1633, 1665–66, 40 L. Ed. 2d 15 (1974); *Mongelli v. Fla. Health Scis. Ctr., Inc.*, 339 So. 3d 480, 481 (Fla. 2nd DCA 2022); *Kline v. JRD Mgmt. Corp*., 165 So. 3d 812, 815 (Fla. 1st DCA 2015).

The Third DCA recently compounded its error initiating four new contempt charges accusing Jacobs of more dishonest criticisms, threatening to "reprimand" him, then publicly reprimanding him, and ordering he pay up to $35,000 to attorneys and banks held in contempt and found to be acting

in bad faith by the trial judges on appeal. *Azran Miami 2, LLC v. US Bank Tr., N.A.*, No. 3D20-1712, 2022 WL 3051065 (Fla. 3d DCA Aug. 3, 2022).

The Third DCA accused Jacobs "filing frivolous and bad-faith motions and *leveling false, malicious and meritless accusations against adverse parties, opposing counsel* and judges alike, after a trial court or an appellate court has rejected Mr. Jacobs' claims and arguments." *Id.* (emphasis added). Strikingly, the same order imposing sanctions also stated:

> To be clear, the issue before us is not whether a bank or lender that is a party to these appeals engaged in misconduct, but whether Mr. Jacobs has engaged in misconduct. ***Indeed, it is certainly possible that Mr. Jacobs may at some point be able to prove the claims of misconduct he so vociferously ascribes to the bank or lender in each of these consolidated matters***." *Id.* (emphasis added).

Under *Padovano*, a judge must take appropriate action against all parties engaged in misconduct, not just foreclosure defense counsel. It ***should*** be an issue whether the banks engaged in misconduct. Yet, the Third DCA is objectively biased against Jacobs, especially after initiating contempt ***six times*** to punish his criticisms of the court, while calling his claims of fraud meritless, while also acknowledging those claims may be proven true. Due process required the Third DCA to disqualify itself so another court could adjudicate the contempt since *Aquasol*.

These proceedings flow from the Third DCA's violation of Fla. Code Jud. Conduct Canon 3E(1)(a). They are all fruit of the poisonous tree that should not result in discipline. A court that violates the judicial canons cannot complain the attorney preserved the appellate issue by filing a motion to disqualify that impugns the integrity of the court.

XII. Judge Hanzman Also Failed to Recuse Himself Making His Bar Complaint "Fruit of the Poisonous Tree"

TFB lacks candor in arguing Jacobs sought disqualification of Judge Hanzman after "he convinced himself that any judge who did not accept his novel theories had to be dishonest and a traitor to the constitution." (AB p.13). Respectfully, Jacobs filed the Motion to Disqualify because Mr. Atkin had an objective basis in fact to fear "Judge Hanzman was not 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 swore he filed the Motion to Disqualify Judge Hanzman because he refusal to even hear evidence BANA and BONYM 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).

Judge Hanzman testified he denied another Motion to Disqualify Jacobs filed in *Bank of New York v. Jakubow* that cited "the fact that I had referred him to the Bar,… my refusal to enforce fraud against banks, my repeated refusal to honor my oath and adjudicate claims involving banks fairly, and … my alleged financial interests showing I have millions of dollars invested in the financial sector in March of 2021." (SH1, 28:19-32:23).

Judge Hanzman admitted he filed another bar complaint with TFB against Jacobs after he appeared in *Jakubow*, but had still not recused himself in *Jakubow*. (SH1, 35:23-36:9). Judge Hanzman admitted he was biased against Jacobs by testifying he referred Jacobs to TFB because he "repeatedly, without foundation, accuses judges, litigants and their lawyers of criminal conduct, fraud….." Judge Hanzman also swore "there's no question in my mind that [Jacobs] should not be entrusted to practice law and represent people in matters involving their life and their property." (SH1, 28:19-32:23). That is clear evidence of bias.

Judge Hanzman admitted he refused to consider Jacobs argument the David J. Stern robo-signed mortgage assignment was fraud finding it “irrelevant” whether David Stern or Howard Stern created false evidence. On redirect, Judge Hanzman again accused Jacobs of accusing lawyers of fraud “without any evidence and without any basis” (SH1, 73:15-78:22).

In *Jakubow*, Jacobs filed an affidavit in support of the motion to explain how BANA and BONYM acted in concert to present forged endorsements and false assignments in Countrywide originated loans. There was evidence of fraud on the court, forgery, perjury, and obstruction of justice.

In *Jakubow*, Jacobs asked for an expedited hearing to adjudicate whether “the Countrywide endorsement in this case is a forgery, supported by perjury, and covered up by obstruction of justice by defiance of multiple subpoenas by the destruction of nearly 2 billion records, backdated records, defiance of court orders, and intentional misrepresentations of fact and law by counsel” for BANA and BONYM. (R Ex. 56:3).

The Motion set forth evidence showing BANA gave contradictory statements under oath (a felony) and created a clandestine “delinquent note endorsement process” in defiance of federal regulators and the U.S. Department of Justice investigating the "robo-signing scandal” to forge Countrywide endorsements (another felony). (R Ex. 56:6-7).

The *Jakubow* Motion set forth that a Pasco County foreclosure defense attorney is presently disbarred and serving 9 years in prison for forgery of endorsements in BANA foreclosures. This Court instructs resorting to forgery to defraud a court is "completely contrary to the most basic ideals of the legal profession." *The Florida Bar v. Salnik*, 599 So.2d 101, 103 (Fla. 1992).

Florida Statute §831.06 defines forgery as when a "fictitious or pretended signature, purporting to be the signature of an officer or agent of a corporation, is fraudulently affixed to …a note, … issued by such corporation, with intent to pass the same as true." Florida Statute §831.06. Forgery is a third degree felony. Fla. Stat. §831.01. Perjury by contradictory statements is also a third degree felony. Fla. Stat. §837.021. Forgery and perjury are felonies and predicate acts that violate Florida's RICO statute. Fla. Stat. §895.02(8)(38) and (41). Respectfully, it is unclean hands to foreclose using systemic forgery and perjury.

The Jakubow Motion set forth that the Second DCA, the Fourth DCA, the Hawaii Supreme Court, U.S. District Court Judge for the Southern District of Florida Ursula Ungaro, and U.S. District Court Judge for the Southern District of New York Kevan Karas all enters orders supporting Jacobs' theory of fraud on the court. (R. Ex. 56:9-11).

The *Jakubow* Motion argued the Third DCA instructs even if a case is dismissed, this Court holds there is jurisdiction and authority to consider a motion for sanctions. *BANA v. Morales*, 2020 WL 7233359 (Fla. 3d DCA 2020). The Motion also disclosed the Third DCA dismissed a RICO counterclaim alleging this fraud citing the litigation privilege but provided no analysis of the facts or the issue of law. *Bank of New York v. Abadia*, 202 WL 7635978. The Third DCA denied a motion for contempt while granting a litigation privilege which is based on the rationale that a Court will punish misconduct under its inherent contempt powers. (R. Ex. 56:12-13).

TFB suggests (without any support in the record) that Atkin's Verified Motion for Disqualification was untimely and insufficient because it was unknown how long the information had been known Judge Hanzman had substantial financial entanglements with the BONYM specifically, and financial institutions generally. (AB p. 29). Jacobs respectfully insists his Motion to Disqualify was timely and legally sufficient.

Respectfully, TFB presented the false narrative to the Referee that Jacobs deploys a "deliberate and knowing litigation tactic" to "manipulate the system" by filing disparaging and inflammatory motions to disqualify to revenge unfavorable rulings 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).

The record reflects Judge Hanzman did refuse to take action against a David J. Stern “robo-signed” and fictitious mortgage assignment introduced into evidence at trial. Judge Hanzman did refuse to hear evidence BONYM engaged in forgery and perjury in Atkin’s case (both felonies). Judge Hanzman also conceded Jacobs could properly ask for sanctions against a bank engaged in fraud, even after a voluntary dismissal. (SH1, 44:3-48:9).

The Third DCA affirmed Judge Hanzman’s ruling that he lacked jurisdiction to take action for the fraud after a voluntary dismissal in *Atkin.* Later, the Third DCA held a judge has jurisdiction to sanction BANA even after a voluntary dismissal. *Bank of Am., N.A. v. De Morales*, 314 So. 3d 528, 531 (Fla. 3d DCA 2020)(“The mortgagor is correct that the trial court had inherent authority to consider her motion for sanctions even after a dismissal, such as would have resulted from a favorable ruling on the bank's motion, as part of its jurisdiction over ancillary matters. *See, Cutler v. Cutler*, 84 So. 3d 1172, 1173 (Fla. 3d DCA 2012) (*citing Tobkin v. State*, 777 So. 2d 1160, 1163-64 (Fla. 4th DCA 2001)); *see Echevarria, McCalla, Raymer, Barrett & Frappier v. Cole*, 950 So. 2d 380, 384 (Fla. 2007)(“adequate remedies still exist for misconduct in a judicial proceeding, most notably the trial court's

contempt power," *quoting Levin, Middlebrooks, Mabie, Thomas, Mayes Mitchell, P.A. v. U.S. Fire Ins. Co*., 639 So. 2d 606, 608-09 (Fla. 1994)).

Judge Hanzman should have disqualified himself from Jacobs' cases under Fla. Code Jud. Conduct Canon 3E(1)(a) rather than initiate his bar complaint against Jacobs. There was an objective basis in fact to seek disqualification of Judge Hanzman. He did take no action against HSBC for introducing a David J. Stern false assignment in *Aquasol* or against BONYM for the felonies of forgery and perjury in *Atkin.*

Judge Hanzman did have significant personal investments tied to BONYM and the financial sector. He did call the motion to disqualify "scurrilous" which is commenting on the truthfulness of the motion. He did admit telling Jacobs he would be disbarred if he continued to accuse bank attorneys of fraud on the court. He did file a second bar complaint before Jacobs filed the motion to disqualify in *Jakubow.* He did refuse to grant disqualification in Jacobs cases, including Jakubow, even as he testified that Jacobs should be disbarred for criticisms of himself and the Third DCA.

XIII. Jacobs Has No Prior Bar Discipline and His Facts are Entirely Inapposite to *Norkin* and *Patterson* Who Were Punished Harshly for Dramatically More Egregious Behavior

TFB cannot fairly compare Jacobs and his zealous advocacy in the face of courts that refuse to grant disqualification even after repeatedly initiating contempt accusing him of dishonesty with any case that has come before the Court before him.

It is an unfair to suggest his punishment should be consistent with *The Florida Bar v. Norkin*, 132 So. 3d 77 (Fla. 2013) or *The Florida Bar v. Patterson*, 257 So. 3d 56 (Fla. 2018). Respectfully, it is intellectually dishonest to compare Jacobs to *Norkin* or *Patterson* who both had prior discipline and were both convicted of far more extensive and serious bar rule violations than just Fla. Bar Rule 4-8.2. Neither had an honorable motive or put themselves at risk to protect their clients' constitutional rights.

Jacobs respectfully submits under a totality of the circumstances, the Third DCA unduly and harshly punished him after refusing to grant disqualification as required by the judicial canons. Jacobs has objective reasons in fact for his statements which are privileged under the First Amendment. These bar proceedings are being selectively prosecuted to silence Jacobs and prevent him from speaking out about systemic frauds in

two RICO lawsuits filed against BANA in Hawaii. He should not be punished further. He should be protected from this prosecution for speaking truth and protecting his clients' constitutional rights.

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 and believed attorneys swear an oath to fight JP Morgan Chase from becoming more powerful than the government, which is the death knell of democracy. Jacobs insisted TFB should prosecute bank lawyers, like Mr. Callahan, who lied to Judge Gundersen and committed fraud. (T2, 94:13-100:8).

Jacobs is no danger to the impartiality and good order of the courts by fighting to ensure "no person shall be deprived of their property without due process" by fraud in their case or a biased judge ignoring that fraud. To the contrary, Jacobs is fighting to protect the impartiality and good order of the courts and has a First Amendment right to make his truthful statements.

Respectfully, TFB, the Third DCA, Judge Hanzman, and this Court should be joining Jacobs in protecting the impartiality and good order of the courts. There is no ethical way to discipline Jacobs for trying to protect the fair administration of justice while allowing his opposing counsel to defile the judiciary with fraudulent evidence and bad faith legal arguments.

Accordingly, this Court should reject TFB's request to increase Jacobs's punishment to a 2 year suspension and find the Referee's recommendation of 90 days plus conditions is unfair, unnecessary in light of the discipline imposed without jurisdiction or due process by the Third DCA, and unwarranted as Jacobs acted ethically in defending his clients' constitutional rights by publicizing legitimate problems in the judicial system.

REPLY ARGUMENTS

I. The Evidence of Systemic Frauds in Foreclosures

TFB suggests the infamous "robo-signing" scandal where banks engaged in systemic frauds on the court in foreclosures was just "massive confusion" resulting from securitization of home loans. (AB p. 45). TFB attempts to whitewash the robo-signing scandal by admitting only that notes and mortgages were "altered by banks, sometimes with the help of lawyers." In full candor, the robo-signing scandal involved banks and their lawyers fabricating false assignments and forging endorsements to use as false evidence of standing in millions of foreclosures across the nation. (AB p. 45).

These "systemic frauds" of forgery, perjury, and obstruction of justice by BANA, BONYM, Chase, and their counsel are still ongoing and should normally result in disbarment of bank counsel, not Jacobs.

Florida Statute §831.06 defines forgery as when a "fictitious or pretended signature, purporting to be the signature of an officer or agent of a corporation, is fraudulently affixed to …a note, … issued by such corporation, with intent to pass the same as true." Florida Statute §831.06. Forgery is a third degree felony. Fla. Stat. §831.01. Perjury by contradictory statements is also a third degree felony. Fla. Stat. §837.021. Forgery and perjury are felonies and predicate acts that violate Florida's RICO statute. Fla. Stat. §895.02(8)(38) and (41). It is certainly unclean hands to foreclose using systemic forgery, perjury and obstruction of justice.

Jacobs presented testimony from Ian Chan Hodges that the Hawaii Supreme Court issued rulings in *BANA v. Reyes-Toledo* that dealt with these same fraudulent foreclosure issues. Mr. Chan Hodges learned about Jacobs fighting BANA when he saw an article on CNBC.com describing how BANA purged nearly 2 billion records in Jacobs' cases. Mr. Chan Hodges connected to Jacobs and joined forces to hold BANA accountable for its fraudulent practices in Hawaii. (T2, 184:12-187:23).

The uncontroverted evidence in the record is these systemic frauds are documented by orders of state and federal trial judges. The frauds are now the basis of a class action lawsuit Jacobs filed in Hawaii federal district court against BANA and BONYM for violating the RICO and Fair Housing Acts.

Aiwohi, et al. v. Bank of America, N. A. and Bank of New York Mellon, 1:22-cv-00312-JAO-RT.

BANA and BONYM stand defied a consent order from its federal regulators that found both banks litigated cases "without properly endorsed notes" during the robo-signing scandal in 2011. *In the Matter of: Bank of America, N.A. Charlotte, NC*, 2011 WL 6941540, at *2 (O.C.C.). The Class Action shows BANA defied the $25 Billion National Mortgage Settlement.

On March 29, 2011, the Office of the Comptroller of the Currency ("the OCC") forced BANA Bank into a Consent Order which created the "Independent Foreclosure Review" to investigate a myriad of foreclosure related misconduct. *Id.* at *2. Pursuant to page 3 of the Consent Order, the OCC found that, *inter alia*, BANA "litigated foreclosure proceedings … without always ensuring that either the promissory note or the mortgage document were properly endorsed or assigned…." *Id.*

In 2016, the Honorable U.S. District Court Judge Kenneth M. Karas affirmed the Honorable Robert N. Drain, U.S. Bankruptcy Court Judge for the Southern District of New York, and both found Wells Fargo also employed a process of "improving its own position by creating new documents and indorsements from third parties to itself to ensure that it could enforce its

claims." *In re Carssow-Franklin (Wells Fargo Bank, N.A. v. Carssow-Franklin)*, --- F. Supp. 3d ---, --- [2016 WL 5660325, *6-10] (S.D.N.Y. 2016).

In *Franklin*, Judge Drain applied the same law found in Fla. Stat. §673.3081, noting Wells Fargo systematically created "after-the-fact" documentation "on behalf of third parties" by in-house "assignment and indorsement teams" which Wells Fargo tried to cover-up with an invalid assignment by Mortgage Electronic Registration System, Inc ("MERS"). That assignment was dated two months after Wells Fargo signed the $25 Billion National Mortgage Settlement.[7] *Id.*

Jacobs was the Whistleblower/Relator in a false claims act case *United States of America, ex. rel. Bruce Jacobs v. Bank of America, N.A.* in Southern District of Florida case number 1:15-cv-24585-UU. BANA submitted false claims using forged and false evidence in foreclosures, committing perjury to cover it up, and ordering the destruction of nearly 2 billion records in defiance of subpoenas for those records to cover up the cover up. BANA eventually settled and paid a substantial penalty to U.S. taxpayers[8] after the Honorable U.S. District Court Judge Ursula Ungaro

[7] https://d9klfgibkcquc.cloudfront.net/Consent_Judgment_WellsFargo-4-11-12.pdf

[8] https://news.bloomberglaw.com/business-and-practice/bank-of-america-reaches-5-million-false-claims-act-accord

denied a motion to dismiss finding that "[u]sing rubber-stamped endorsements on promissory notes or relying on MERS transfers to foreclose on properties or obtain orders of sales falls within the scope of actions barred by the [$25 Billion National Mortgage Settlement] Servicing Standards…." *Jacobs v. Bank of Am. Corp*., No. 1:15-CV-24585-UU, 2017 WL 2361943, at *10 (S.D. Fla. Mar. 21, 2017).

The Hawaii Supreme Court has twice found the exact same fraud Jacobs alleges in the RICO/FHA lawsuit and the false claims act case involving forged endorsements and false assignments would be wrongful, deceptive, and unfair. *Bank of Am., N.A. v. Reyes-Toledo*, 139 Hawai'i 361, 390 P.3d 1248 (2017); *Bank of Am., N.A. v. Reyes-Toledo II*, 143 Hawai'i 249, 428 P.3d 761 (2018), as corrected (Oct. 15, 2018).

II. **Judge Hanzman, the Third DCA and TFB "Whiffed" on the Article 9 Argument**

TFB insists Judge Hanzman "pretty much called [Jacobs] out" when he ruled against Jacobs' arguments on "Article 9 of the UCC and fraud by both lawyers and lender in the 'EMC Mortgage' case in 2016." (AB p. 33). Jacobs respectfully submits there is an objectively reasonable basis to disagree.

TFB represents to this Court, without citation, that by 2016 "it was established law that actual possession of a promissory note provided

standing to foreclose and the mortgage followed the note. Thus, older law prior to Article 3 of the UCC is no longer applicable. See, e.g. Wells Fargo Bank v. *Morcom,* 125 So. 3d 320,322 (Fla. 5th DCA 2013). Article 9 of the UCC does not apply to transfers of interests in real property. *See HSBC Bank USA, N.A. v. Perez*, 165 So. 3d 696,699 (Fla. 4th DCA)." (AB p.45).

Jacobs respectfully submits as a former Miami prosecutor who spent the last 15 years of his otherwise unblemished 25 year career studying and practicing the law of foreclosures, this is argument lacks candor and misrepresents Florida law.

A party in mere possession of an original note cannot enforce the note under Article 3 unless that party is the named payee, there is a proper endorsement, or the party proves it is the owner entitled to enforce the note. Forgery does not give a party "holder" status. *Ederer v. Fisher*, 183 So. 2d 39, 41–42 (Fla. 2nd DCA 1965); *Bennett v. Deutsche Bank Nat. Tr. Co*., 124 So. 3d 320, 323 (Fla. 4th DCA 2013).

TFB also misrepresents *Perez* as holding Article 9 does not apply to transfers of interests in real property as does Judge Hanzman's order in *EMC*. However, Judge Hanzman only quotes part of Fla. Stat. §679.1091(4)(k) to reach this clearly erroneous conclusion, writing:

X. Article 9 of the UCC

> Finally, the Court also rejects Defendant's claim that enforcement of the Note governed by Chapter 679 as this Article of the UCC does not apply to transfers of an interest or lien on real property. *See* § 679.1091(4)(k), Fla. Stat. (2005). *See OneWest Bank, FSB v. Jasinski*, 173 So. 3d 1009 (Fla. 2d DCA 2015); *U.S. Bank Nat. Ass'n v. Degen*, 2016 WL 4249466 (Fla.Cir.Ct.)(Rebull, J). Pg. 25.

It is true Fla. Stat. §679.1091(4)(k) states that Article 9 does not apply to "**the creation or transfer of an interest in or lien on real property."** However, subsection (4)(k) as amended in 2001, also states: "**except to the extent that provision is made for: 1. Liens on real property in ss. 679.2031**…." Fla. Stat. Ann. § 679.1091 (West). Judge Hanzman supports his ruling with citation to the Second DCA decision in *OneWest Bank, FSB v. Jasinski*. However, *Jasinski* makes no reference to Article 9 at all.

A. <u>*Morcom and Aquasol are Wrongly Decided and Violate this Court's Common Law Rule on Standing to Foreclose*</u>

Jacobs has an objectively reasonable basis to argue "Fla. Stat. § 673.3011 controls enforcement of negotiable instruments, not mortgages. Ownership controls the right to enforce the mortgage. [The Third District] is acting illegally by instructing the law is otherwise." (AB p. 44).

Both the First, Third and Fourth DCA hold the enactment of Article 3 of the UCC dealing with negotiable instruments changed the common-law rule requiring proof of ownership. *Tilus v. AS Michai LLC*, 2015 WL 1545223 (Fla. 4th DCA 2015). The Third DCA cited *Morcom* and *Tilus* for the same holding

in affirming Judge Hanzman's final judgment in *Aquasol Condo. Ass'n, Inc. v. HSBC Bank USA, Nat'l Ass'n*, No. 3D17-352, 2018 WL 5733627, at *5 (Fla. 3rd DCA 2018).

Under *Morcom*, *Tilius*, and *Aquasol,* any party in possession of the note with a blank endorsement, even a thief, has the right to foreclose. Yet a thief would have unclean hands that bars the equitable relief of foreclosure.

In the late 1800's, this Court established the common law rule that a party must own and hold the note and mortgage to have standing to foreclose. *Morcom*, 2013 WL 5575634 (Fla. 1st DCA 2013); *See also, Smith v. Kleiser*, 107 So. 262 (Fla. 1926); *Edason v. Central Farmers Trust Co*., 129 So. 698 (Fla. 1930). Another common-law rule in Florida foreclosures is that a party "would be entitled to foreclose in equity ***upon proof of his purchase of the debt***." *Johns v. Gillian*, 134 Fla. 575, 184 So. 140, 144 (Fla. 1938) (emphasis added). *Id*.

This Court similarly instructs, "statutes in derogation of the common law are to be construed strictly, however. They will not be interpreted to displace the common law further than is clearly necessary. Rather, the courts will infer that such a statute was not intended to make any alteration other than was specified and plainly pronounced." *Carlile v. Game & Fresh Water Fish Comm'n*, 354 So. 2d 362, 364 (Fla. 1977).

Under *Carlile*, no reading of Fla. Stat. §673.3011 suggests an intention to change the common-law rule that a party must prove it owns and holds the note and mortgage to have standing to foreclose. Fla. Stat. §673.3011 does not mention "standing" or "mortgage" or "foreclosure" as those words have nothing to do with negotiable instruments.

There are many examples of statutes that unequivocally change the common law. See, Fla. Stat. Ann. § 741.23 (West) ("The common-law rule whereby a husband is liable for the torts of his wife is hereby abrogated"); See also, §794.02, Fla. Stat. and §689.225, Fla. Stat. Under *Carlile*, Fla. Stat. §673.3011 did not change the common-law rule a plaintiff must plead it "owns and holds the note and mortgage" to establish standing to foreclose.

Respectfully, Jacobs has an objectively reasonable basis to argue ownership controls the right to enforce the mortgage. Under the Florida Constitution, District Courts must follow the Florida Supreme Court and the common law. No lower court can "reject" the law of this Court. The 1967 codification of Fla. Stat. §673.3011 did not speak in clear, unequivocal terms that the legislature intended to change the common law rule that a party must both own and hold the note and mortgage to establish standing to foreclose.

B. *Miami-Dade Circuit Judge Jon Gordon Embarrassed Foreclosure Plaintiffs Engaged in Systemic Frauds in Foreclosures after the 2001 Amendments to Article 9*

The conflict between the common law and present DCA holdings disavowing the law of ownership, this Court should look to the earliest wave of foreclosures filed by MERS. The Honorable Miami-Dade Circuit Court Judge Jon Gordon summarily dismissed those MERS cases as sham, after a Show Cause hearing where MERS conceded it never "owns and holds" the notes or mortgages. See Judge Gordon's Order attached as App. IV.

Judge Gordon relied on the common law rule that a party must own and hold the note and mortgage to have standing to foreclose. *Smith v. Kleiser*, 107 So. 262 (Fla. 1926); *Edason v. Central Farmers Trust Co.*, 129 So. 698 (Fla. 1930). Judge Gordon also noted form foreclosure complaints promulgated by this Court under Fla. R. Civ. P. 1.110 and its accompanying Form 1.944, in 1992, and again in 2000, required plaintiffs plead they "own and hold" the note and mortgage. *In re Amendments to the Florida Rules of Civil Procedure*, 604 So. 2d 1110, 1182 (Fla. 1992); *In re Amendments to the Florida Rules of Civil Procedure*, 773 So. 2d 1098, 1144 (Fla. 2000).

C. *The Baker Hostetler Report to Fannie Mae re: the "MERS Florida Embarrassment"*

In 2006, the Washington DC law firm of Baker Hostetler investigated the "Florida MERS Embarrassment" for the Federal National Mortgage Association, ("Fannie Mae") and issued a report published by the New York

Times in 2012.[9] See "BH Report" attached as App. V. Fannie Mae's lawyers wrote: "We conclude that foreclosure attorneys in Florida are routinely filing false pleadings … regarding the plaintiffs - MERS or servicers - interest in the proceedings …. The practice could be occurring elsewhere. It is axiomatic that the practice is improper and should be stopped." (BH Pg. 35.)

At page 38, the BH Report included a section entitled "Effects of Note Endorsed in Blank" which explained: "the sale of promissory notes is also now covered under Revised UCC Article 9," and cites the official comment stating UCC Revised §9-203(g) that "codifies the common-law rule" that the mortgage follows the note. Id. at 39, fn. 129. Strikingly, the BH Report describes an October of 2005, interview with the Fannie Mae Deputy General Counsel, Daniel C. Smith, who stated:

> **Fannie Mae's position is that it does not need to appear in the land records in order to have the benefit of the security provided by the mortgage …** Once the note is sold to Fannie Mae, the mortgage also transfers, despite the fact that the servicer, lender or MERS' name appears in the land records. Borrowers thus cannot determine the chain of owners from the public records.

The BH Report further explained Article 9 of the UCC now codified the common law rule that the "mortgage follows the note" upon proof of purchase

[9] http://www.nytimes.com/interactive/2012/02/05/business/05fannie-doc.html?action=click&contentCollection=Business%20Day&module=RelatedCoverage&pgtype=article&region=Marginalia&_r=0

of the debt. This comports with Fla. Stat. §679.2031(2) and Fla. Stat. §679.2031(7) which codified that the sale of right to payment secured by mortgage is also sale of mortgage.

As early as 2006, the foreclosure plaintiff industry *knew* it had to present the note and the contracts or receipts proving its purchase of the debt under Article 9 to establish standing to foreclose. The foreclosure plaintiff industry also knew attorneys were making false statements to Florida Courts that MERS assignments were proof of purchase of the debt.

In 2007, the Third DCA overturned Judge Gordon's ruling from 2005, and this Court's common law rule that MERS had to prove it *owns and holds* the notes and mortgages in order to foreclose. The Third DCA concluded "we simply don't think that this makes any difference." *MERS v. Revoredo*, 955 So. 2d 33, 34 (Fla. 3rd DCA 2007). Yet, this Court instructs: "[t]o allow a District Court of Appeal to overrule controlling precedent of this Court would be to create chaos and uncertainty in the judicial forum, particularly at the trial level." *Hoffman v. Jones*, 280 So. 2d 431, 434 (Fla. 1973).

The 2001 Amendments to Article 9 of the Florida UCC, which expanded its scope to include the sale of promissory notes and codified the common law rule that the mortgage follows the note. Foreclosure plaintiffs should be forced to comply with Article 9 of the Florida UCC, specifically Fla.

Stat. 679.2031(2) to show proof of purchase of the debt. Thereafter, the mortgage follows the note under Fla. Stat. 679.2031(7).

The 2001 amendments enacted a clear legislative intent to expand the scope of Article 9 such that proof of the sale of a promissory note under Fla. Stat. §679.2031(2) triggers Fla. Stat. §679.2031(7) which codified the common law rule that the mortgage follows the note upon proof of purchase of the debt. As official comment 7 for Fla. Stat. §679.1091 states:

> **It also follows from subsection (b) that an attempt to obtain or perfect a security interest in a secured obligation by complying with non-Article 9 law, as by an assignment of record of a real-property mortgage, would be ineffective.** *Id. at Off. Cmt. 7.*

TFB and Judge Hanzman's misread Fla. Stat. 679.1091(4)(k). Under Official Comment 7 to Fla. Stat. §679.1091 a David J. Stern assignment, even if not fraud, would still be "ineffective" to show HSBC obtained or perfected a security interest in *Aquasol* by "complying with non-Article 9 law, as by an assignment of record of a real property mortgage."

The UCC is extraordinarily complex and, due to its reliance on counterintuitive definitions and cross-reference, sometimes extraordinarily impenetrable. Nevertheless, Chapter 679 does in fact explicitly apply to certain transfers of an interest or lien on real property, including liens on real property under §679.2031. Fla Stat. Ann. 679.1091(4)(k).1 & U.C.C. § 9-101,

Official Comment 4.a, Supporting obligations and property securing rights to payment ("This Article also addresses explicitly . . . any property (including real property) that secures a right to payment or performance"). Consequently, Article 9 applies not only to the sale of mortgage notes under § 679.2031(2), but also to the transfer of the related mortgages under §679.2031(6) and (7).

The only way to sell promissory notes such as mortgage notes is by complying with § 679.2031(2). Because, as compelled by the word "solely," this provision is the exclusive way to sell promissory notes, a mortgage note simply cannot be sold by selling or assigning the related mortgage.

Respectfully, banks, their counsel, Judge Hanzman, the Third DCA, TFB, and this Court should all give meaning to the statutory scheme enacted by the Florida legislature in the 2001 amendments to Article 9 and the 2005 amendments to Fla. Stat. 701.02.

Chapter 673 specifically sets forth that "[i]f there is a conflict between [Article 3] and … [Article 9]" that Article 9 governs. Florida Statute §679.1021(l)(ccc) expressly defines the term "mortgage" which appears 33 times throughout Chapter 679. §679.1021(l)(ccc), Florida Statutes (2001).

Chapter 673 of the Florida Statutes applies only to negotiable instruments, and does not mention mortgages once. See F.S. §673.1021.

Jacobs has an objectively reasonable basis to argue "Ownership controls the right to enforce the mortgage." (AB p. 44). The law in Florida is ownership is proven under Article 9 by the plaintiff producing the original note (irrespective of Article 3 endorsements) and the contracts proving its purchase of the debt. Our judiciary cannot allow judges to decide to reject the law.

III. The Fourth DCA Conducts the Correct Statutory Analysis of the Article 9 Argument in HSBC v. Perez

The Fourth DCA in *Perez* never held "Article 9 of the UCC does not apply to transfers in real property" as TFB represents. (AB. P. 44). *Perez* analyzed the 2001 Amendments to Article 9 of the UCC, albeit for competing lenders attempting to foreclose upon the same mortgage loan.

As HSBC proved its purchase of the debt before LaSalle under Fla. Stat. §679.2031(2), HSBC was deemed the **owner *and* holder** of the note and mortgage with standing to foreclose. The LaSalle assignment recorded before HSBC was ineffective to convey standing to foreclose. Proof of purchase of the debt controlled, not the assignments prepared by the Plaintiff on behalf of third parties and recorded in the public records. *Perez* explains:

> Legislative history of the 2005 amendment supports the notion that it is the Uniform Commercial Code that determines priority of mortgage assignments and not section 701.02. The staff analysis explained its purpose as deriving from the concerns of warehousing banks dealing in large volumes of mortgages that they would not "be secure in the underlying mortgages without

> having to record the assignment of the security interest and incur the costs of recording." Fla. S. Justice Approp. Comm., S.B. 370 (2005) Staff Analysis 4 (Apr. 4, 2005).
>
> The source of the banks' uneasiness derived from *Rucker v. State Exchange Bank*, 355 So.2d 171, 174 (Fla. 1st DCA 1978), which held that "the assignment of a real estate mortgage securing a promissory note as collateral for a bank loan is not a secured transaction under Article 9" of the UCC. Some in the mortgage-servicing industry interpreted Rucker as potentially standing "for the proposition that the assignment of a security interest in a mortgage or the assignment of a mortgage must be recorded in order to perfect the security interest in the mortgage." Id. at 5.
>
> The staff analysis explained the bill sought to debunk this myth, stating: ***Article 9 of the [UCC], which is codified as ch. 679, F.S., was revised since Rucker to clearly indicate that the assignment of a mortgage securing a promissory note is a secured transaction.*** Under s. 679.3131, F.S., one perfects a security interest in a real estate mortgage by possession of the promissory note... The act of recording an interest in a mortgage is costly to the mortgage lending industry in terms of time and money. As a result, many assignments of an interest in Florida mortgages are not recorded. These unrecorded mortgage assignments are viewed by warehousing banks as having more risk than recorded assignments. Florida borrowers may pay for the increased risk borne by warehousing banks through higher borrowing costs. *Id.*

Finally, *Perez* correctly conclude "In general the rules in Article 9 are not designed to deal with the transaction in which there are two 'originals'...." *Id*. The Provident Bank approach recognizes that perfection by possession of a note will not be problematic in the vast majority of cases and avoids the cost of imposing a recording procedure disruptive to the lending industry based on difficult facts." *Id.*

Essentially, *Perez* acknowledges Article 9 is designed for foreclosure cases, now that assignments of mortgages, Article 3 endorsements, and any other means of compliance with non-Article 9 law would be ineffective. Under Fla. Stat. §679.2031(2), a plaintiff should produce the original note and its receipts (contracts) showing it purchased the note. Then the mortgage follows the note under Fla. Stat. §679.2031(7).

IV. This Court Should Protect Jacobs from this Selective Prosecution and Take Actions to Protect the Judicial System from Banks and their Counsel Engaged in Fraud

TFB should concede its Article 9 analysis was wrong and that substantial and uncontroverted evidence proves Jacobs exposed systemic frauds in foreclosure intended to avoid compliance with Article 9. TFB should be prosecuting Mr. Callahan, his Akerman partners, and bank counsel that engaged in lack of candor and impugning the integrity of a judge, not Jacobs.

In the Preamble to the U.S. Constitution, our founding fathers pronounced the purpose of government is to establish justice, ensure domestic tranquility, provide for the common defense, and promote the general welfare. This Court should join Jacobs and take appropriate action to protect the independence of our judicial system from banks that seek to capture it for their own profits. This Court should enforce Article 9, punish

banks and their counsel committing fraud, and protect Jacobs from this selective prosecution.

The Court should protect Jacobs right under the First Amendment to make statements with an objectively reasonable basis in fact to publicize legitimate problems in the judicial system. The Court should ensure Jacobs is not unfairly or harshly punished for fighting on behalf of his clients before judges who refused to grant disqualification as the judicial canons required.

CONCLUSION

WHEREFORE, in the interests of justice, Jacobs respectfully requests this Court overrule the Referee's report, find Jacobs' conduct was ethical, zealous advocacy, and protected by the First Amendment, and grant any further relief deemed mete and just.

This Brief is only being signed by Jacobs to protect his counsel, David Winker, Esq. and Richard Greenberg, Esq. so TFB cannot prosecute them for assisting Jacobs to speak his truth and have his fight.

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a true copy of the foregoing was served by e-Filing with the Clerk of Court and via Florida e-Filing Portal to the following, this 19th day of September, 2022.

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 COMPLIANCE

I CERTIFY that this Brief complies with the applicable font and word count limitations pursuant to Florida Rule of Appellate Procedure 9.045(e), as this Brief was prepared using Arial 14-point font, and contains 12,995 words in the Cross-Answer and 4,000 words in the Reply brief, excluding the parts of the Brief exempted by Rule 9.045(e).