

IN THE SUPREME COURT OF FLORIDA

THE FLORIDA BAR,

Case No.: SC20-1602

Complainant,

The Florida Bar File Nos.

v.

2019-70, 188 (11H)

2019-70, 358 (11H)

2020-70, 056 (11H)

BRUCE JACOBS,

Respondent.

/

THE FLORIDA BAR'S MOTION TO STRIKE BRIEFS
AND
RESPONSE IN OPPOSITION TO RESPONDENT'S NEW MOTIONS

THE FLORIDA BAR, by and through its undersigned attorney, moves to strike four briefs filed by Mr. Jacobs during the week of June 20, and responds in opposition to three motions served by Mr. Jacobs at 7:15 p.m. on June 24, 2022. The Bar shows to this Court that:

The Bar's Motion to Strike

1. Mr. Jacobs filed a notice of intent to seek review of the Referee's Report on February 2, 2022. At that time he knew he was expected to file a brief in an expedited Bar proceeding by March 4, 2022.

2. The Bar will not repeat in this motion the history of unusual motions and unnecessary delays that Mr. Jacobs has brought to this proceeding. But on June 13, 2022, this Court granted an extension for Mr. Jacobs to file his

initial brief, taking the exceptional step of making it clear that the brief had to be filed by 5:00 p.m. on June 20, 2022. That date was 138 days from the filing of Mr. Jacobs' notice. Nevertheless, Mr. Jacobs filed an additional motion to extend the time on June 17, which this Court denied on June 20.

3. A minute before the brief was due, Mr. Jacob filed a brief, which the docket notes has deficiencies. Indeed, the brief was a shamble that even had an incorrect sign-off at the end of the brief by a lawyer who has never been involved in this case. Five hours later, another brief was filed by Mr. Jacobs without a motion to file it late or to substitute it for the earlier brief. The docket notes that this brief too is deficient. This brief was apparently filed pro se despite the fact that Mr. Jacobs had three lawyers of record to represent him.

4. On June 22, 2022, two of his lawyers moved to withdraw.

5. On June 23, 2022, Mr. Jacobs' lawyer, Mr. Winker, filed yet another untimely brief, which oddly says it was served by Mr. Jacobs. The docket notes that this brief is also defective, and this brief was unaccompanied by any motion to strike the earlier briefs and to accept this brief as timely filed.

6. A little after midnight on June 24, 2022, a fourth version of the initial brief was filed without any accompanying motion. It was filed and served by Mr. Jacobs himself, but the cover page claims it is 'respectfully submitted'

by Mr. Winker. Later that day at 7:15 p.m., Mr. Jacobs himself served three motions, one of which is a motion to accept the brief filed earlier that day as timely filed. The motion appears to be signed by Mr. Winker and alleges the same problems as earlier motions – the continuing orders to show cause being filed against Mr. Jacobs in the Third District and the filing of bar complaints that are still confidential proceedings. There is no explanation why the brief could not have been prepared in the first three months following Mr. Jacobs' notice of intent.

7. Despite filing four briefs, neither Mr. Jacob nor any of his attorneys have filed the transcripts of the final hearing or the sanction hearing. The Bar has copies of those transcripts and will file them with its cross-review brief if Mr. Jacobs does not file them as required by the rules.

8. The untimely fourth brief is not a typical challenge to the Referee's recommendation that he violated Rule 4-8.2(a) by impugning the integrity of multiple judges by many statements in three separate cases. Indeed, the brief only references that rule twice on pages 13 and 56, which are each a page earlier than identified in the table of authorities.

9. The brief begins with eight pages of discussion of the evidence relevant to his effort to prove mitigation concerning the Referee's recommended sanction even though he is not challenging that

recommendation. It then launches into a First Amendment discussion that is simply an argument improperly placed in the statement of facts. Section X of this section argues that “Banks have Weaponized these Bar Proceedings to Excuse Illegal Behavior Across the Nation.” But the Bar is the party commencing these proceedings, which are based on judicial referrals and reviews by grievance committees finding probable cause to believe that he violated Rule 4-8.2(a). The “facts” relating to his claim that banks have “weaponized” these proceedings are based on evidence introduced by Mr. Jacobs about unrelated activities in Hawaii that frankly have no relevance to the issue of whether Mr. Jacobs’ court filings for his clients in Florida and in the U.S. Supreme Court have impugned the integrity of Florida judges.

10. Mr. Jacobs is now claiming he had an extraordinary First Amendment right to file a brief on behalf of a client in the U.S. Supreme Court stating:

“[I]n virtually every appeal where the trial judge ruled in favor of undersigned counsel’s client, including Simpson, the Third DCA reversed with intellectually and factually dishonest opinions.”

“The Florida Supreme Court has repeatedly declined to protect the constitutional rights of foreclosure defendants.”

“This Court is called on to act because the Florida Supreme Court has taken no action to prevent the Third DCA from improperly ignoring fraudulent conduct in foreclosures.”

(ROR p.12)

11. What is most troubling is that Mr. Jacobs has come full circle in these proceedings. Under the counsel of his first attorney, Mr. Jacobs filed two responses to orders to show cause in the Third District concerning his statements in that Court. In the first case, Mr. Jacobs filed a verified response apologizing for impugning the integrity of the judiciary. In that verified response he stated that he “fully understands the nature and wrongfulness of his conduct.” (TFB-Ex.3). He explained his emotional state and that he was seeking professional help to solve his problem.

12. In the second case, Mr. Jacobs filed a verified response to the order to show cause “humbly” apologizing for impugning the integrity of the judiciary. (TFB-Ex 7). In the verified response “[h]e acknowledges that his commentary referenced in the Order to Show Cause was unprofessional and unwarranted.” He again explained his emotional issues and the professionals he had contacted to help to solve his problem. Those emotional issue apparently derive from childhood trauma. (R-Ex. 53, p. 1).

13. But having filed these documents that essentially admit under oath that he violated Rule 4-8.2(a), seeking a mitigated sanction due to his life-long psychological problems and a promise that he had stopped the misconduct, he now wishes to file an untimely brief claiming this proceeding should be dismissed because the First Amendment gives him a right to continue making such statements.

Accordingly, the Bar moves to strike the first brief because of its procedural errors. It moves to strike the next two briefs both for procedural errors and because they are untimely.

The Bar moves to strike the fourth brief for presenting irrelevant argument in the statement of facts and because it is untimely. It makes this motion with some hesitancy because it knows that this will only result in further allegations by Mr. Jacobs against this Court and the Bar, apparently in a federal lawsuit that he intends to file alleging a deprivation of his constitutional rights. If this Court wishes to accept this defective brief simply to keep this proceeding moving forward, the Bar is completely willing to respond to the fourth brief and to file the transcripts.

The Bar would ask that in any order resolving the pending motions, this Court state that the Bar's 20 days to file its cross-review brief commences

on the date of that order because currently the Bar is uncertain which brief, if any, to answer or the date by which its cross-review initial brief is due.

Response to Respondent's Motion to Stay these Proceedings

1. Respondent's motion, served by Mr. Jacobs but signed by Mr. Winker, claims that Mr. Jacobs intends to file a federal lawsuit because "these disciplinary proceedings are a sham that violate his First Amendment right to truthfully criticize judges presiding over fraudulent foreclosures who refused to recuse themselves in violation of the Florida and U.S. Constitutions, the Judicial Canons, and controlling U.S. Supreme Court law."

2. It is not entirely clear whom Mr. Jacobs plans to sue for depriving him of his claimed right to free speech as a licensed lawyer filing documents on behalf of clients in court files.

3. The Bar will not here debate whether such a claim can be alleged. If it can be alleged, no stay of this proceeding is required to do so. If his claims are filed in federal court and they suffice to warrant a stay of this proceeding, he can seek that stay from the federal court. There is no legal or practical reason to stay this proceeding at this time.

The Motion to Stay should be denied.

Response to Respondent's Motion to Supplement Record

1. Months after both the final evidentiary hearing and the commencement of this review stage of the proceeding, Mr. Jacobs wishes to supplement the evidence. He wishes to add a memorandum prepared by Jude M. Faccidomo, the assigned investigative member and chair of Florida Bar Grievance Committee 11-H. That Committee found probable cause to bring this disciplinary proceeding.

2. The motion suggests that the memorandum was discovered while reviewing the Bar's exhibits in this case. However, the document is not one of the exhibits introduced by either party at the final hearing. The memorandum discusses whether there was probable cause to charge a violation of the Florida Rules of Professional Conduct for the filing of a frivolous or bad faith motion.

3. A frivolous motion or a proceeding filed in bad faith is normally charged as a violation of Rule 4-3.1. See *The Florida Bar v. Committee*, 136 So. 3d 1111, 1115 (Fla. 2014) ("Bar Rule 4-3.1 provides that a lawyer shall not 'bring or defend a proceeding, or assert or controvert an issue therein, unless there is a basis in law and fact for doing so that is not frivolous.'").

4. The Bar's complaint in this proceeding does not allege a violation of Rule 4-3.1. The Complaint charged violations of only two rules. It charged a violation of Rule 4-8.2(a) because Mr. Jacobs filed motions containing content that impugned the integrity of judges. The Bar is not claiming that Mr. Jacobs filed a motion for rehearing or a motion to disqualify for a client in bad faith; it is claiming that the motions filed contained factual statements impugning the integrity of judges that were made with reckless disregard as to the truth of those statements. The Referee is recommending a finding of guilt as to that charge, not as to any violation of Rule 4-3.1.

5. To be clear, the Bar's complaint also charged a violation of Rule 4-3.3(a)(3) for failing to disclose controlling precedent adverse to the position advocated by the lawyer. This involved Mr. Jacobs' failure to cite to *HSBC Bank, USA, NA v. Buset*, 241 So. 3d 882 (Fla. 3d DCA 2018) to the Third District. The Referee recommends a finding of not guilty on that charge, and the Bar in its cross-review does not intend to challenge that finding.

6. Thus, Mr. Jacobs' proposed supplemental evidence is not relevant to a material issue in the charges filed by the Bar against Mr. Jacobs or to the recommendations of the Referee. That probably is why

his experienced, former counsel did not introduce it as evidence at the final hearing.

The motion to supplement the record should be denied.

Response to Respondent's Motion to Deem Initial Brief Timely Filed.

1. When Mr. Jacobs filed his notice of intent to seek review in February, he knew he needed to be prepared to file a brief in thirty days.

2. When Mr. Winker filed his notice of appearance in March, he knew he needed to be prepared to file the brief by the end of the 30-day extension granted by this Court.

3. The Bar will be asking this Court to impose a rehabilitative suspension in this case when it files its initial cross-review brief in large part because Mr. Jacobs has recognized that he has a psychological condition from childhood trauma that causes his impulsive behavior, but he has not successfully resolved this problem, which now seems to be regressing. All of Mr. Jacobs' motions are aimed to prevent this Court from entering the final order in this case, which the Bar hopes will require him to address his problems seriously.

4. Mr. Jacobs certainly has no right to have this Court deem the fourth brief of the week of June 20 as timely filed. But as explained earlier, if this Court accepts the fourth brief as timely filed, the Bar will respond to that brief. It only asks that the 20-day response period run from the date of this Court's order resolving these motions.

Respectfully submitted,

/s/ Chris W. Altenbernd

Chris W. Altenbernd, Esq.

Florida Bar No: 197394

Email: [service-](mailto:service-caltenbernd@bankerlopez.com)

caltenbernd@bankerlopez.com

Eleanor H. Sills, Esq.

Florida Bar No: 1024668

Email: service-esills@bankerlopez.com

BANKER LOPEZ GASSLER P.A.

501 E. Kennedy Blvd., Suite 1700

Tampa, FL 33602

(813) 221-1500; Fax No: (813) 222-3066

Attorney for the Complainant

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on this 27th day of June, 2022, the foregoing was filed and served via the State of Florida's E-Filing Portal to:

Benedict P. Kuehne
Kuehne Davis Law, P.A.
Miami Tower, Ste 3105
100 S.E. 2 St.
Miami, FL 33131-2154

Roy D. Wasson
Wasson & Associates Chartered
Courthouse Plaza – Ste 600
28 West Flagler St.
Miami, FL 33130

(305) 789-5989; Fax (305) 789-5987
ben.kuehne@kuehnelaw.com
efiling@kuehnelaw.com

Attorney for Respondent

David J. Winker
David J. Winker, PA
4270 S. Lejeune Rd.
Coral Gables FL 33146
(305) 801-8700
dwinker@dwrlc.com

Attorney for Respondent

Tonya L. Avery
Bar Counsel
444 Brickell Ave, Ste M100
Miami, FL 33131
tavery@floridabar.org
Attorney for The Florida Bar

(305) 372-5220; Fax (305) 372-8067
roy@wassonandassociates.com
e-service@wassonandassociates.com

Attorney for Respondent

Patricia Ann Toro Savitz, Esq.
Staff Counsel
651 E. Jefferson St.
Tallahassee, FL 32399
psavitz@floridabar.org
Attorney for The Florida Bar

/s/ Chris W. Altenbernd

Chris W. Altenbernd, Esq.