

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 RESPONSE IN OPPOSITION
TO RESPONDENT'S MOTION TO RELINQUISH CASE TO THE
REFEREE.**

THE FLORIDA BAR, by and through its undersigned attorney, responds in opposition to BRUCE JACOBS' motion to relinquish jurisdiction to the Referee to considered "newly discovered evidence" supporting a defense of selective prosecution. The Bar shows to this Court that:

1. Once again, Mr. Jacobs has filed a motion attempting to delay this proceeding and avoid filing his brief, which is due by Court order on June 13, 2022. His last such motion was filed on June 1, 2022, and denied by this court on Friday, June 3, 2022. Late that same day he filed this motion.

2. The current motion claims there is a need to relinquish jurisdiction to consider newly discovered evidence that supports his defense of selective prosecution. The motion alleges only that there are 10 pending Bar proceedings against him in which he allegedly has raised the same defense.

These are proceedings pending prior to any finding of probable cause by a grievance committee.¹

3. Mr. Jacobs is not being candid with this Court about the proceedings that occurred before the Referee on his defense of selective enforcement or the reason the Referee in the Amended Report of Referee rejected his defense. (Tab # 79, pp. 20-23).

4. In a nutshell, a defense of selective enforcement is a defense in the nature of an equal protection violation. As explained in *State v. A.R.S.*, 684 So. 2d 1383, 1385 (Fla. 1st DCA 1996), to establish this defense:

a defendant bears the heavy burden of establishing at least *prima facie*, (1) that, while others similarly situated have not generally been proceeded against because of conduct of the type forming the basis of the charge against him, he has been singled out for prosecution, and (2) that the government's discriminatory selection of him for prosecution has been invidious or in bad faith, i.e., based upon such impermissible considerations as race, religion, or the desire to prevent his exercise of constitutional rights.

1. Similar to his last motion, Mr. Jacobs, as a respondent, is not prohibited from disclosing the existence of preliminary discipline proceedings, but the Bar is required to treat disciplinary matters pending at the initial investigatory and grievance committee levels as confidential. See Rule 3-7.1(a).

5. The Referee found that Mr. Jacobs failed to prove this defense because he failed to prove the first element – that others similarly situated have not generally been prosecuted.

6. Whatever may be the content of the Bar complaints that Mr. Jacobs describes, they are not new evidence of “others similarly situated” who were not prosecuted. He is asking this matter to be relinquished to a Referee in order to present evidence that will not change the basic failure of proof that caused the Referee to recommend against this defense.

7. Mr. Jacobs first raised this defense in a First Amended Answer on March 24, 2021. (Tab #18, ¶ 35-36). He alleged and identified lawyers he thought were similarly situated in that defense. The amendment was accompanied by a memorandum of law that recognized the heavy burden involved in proving this defense. (Tab #20). He relied primarily on *Thompson v. The Florida Bar*, 526 F.Supp.2d 1264, 1267 (S.D. Fla. 2007), a case in which the federal court dismissed a lawsuit against the Bar under the abstention doctrine. The Bar filed a memorandum in opposition to the motion to amend that addresses this legal issue in more detail than does this response. (Tab # 21).

8. In September 2021, after the final hearing and the sanction hearing occurred in April and May 2021, Mr. Jacobs moved to reopen the evidence, attaching a recently filed petition for writ of prohibition filed by a bank's lawyer. (Tab #65). He wanted the Referee to consider the Bar's alleged refusal to take appropriate action against this lawyer who he claimed "ruthlessly attacked" Judge Butchko in a foreclosure action. That motion was denied. (Tab # 73). Later, the Third District quashed the order to show cause in the contempt proceeding initiated by Judge Butchko against that lawyer and required that the case be transferred to a different judge. See *Carrington Mortgage Services, LLC v. Nicolas*, 2021 WL 5499732, at *5 (Fla. 3d DCA November 24, 2021, 2021)

9. Thus, this issue of selective enforcement, which appears to be the primary issue Mr. Jacobs intends to raise on review, has been thoroughly considered by the Referee and Mr. Jacobs has had an ample opportunity to develop his record for this review. Remanding to consider evidence of pending, preliminary bar proceedings will not change the Referee's recommendation that he failed to prove the first element of his defense.

10. This motion appears designed to further delay the filing of his brief. The motion should be denied, and Mr. Jacobs should be required to

file his brief on June 13, 2022. If the brief is not timely filed, his review of the Report of Referee should be dismissed.

Respectfully submitted,

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CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on this 6nd day of June, 2022, the foregoing was filed and served via the State of Florida's E-Filing Portal to:

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