

IN THE SUPREME COURT OF FLORIDA

CASE NO.:

LOWER TRIBUNAL CASE NOS.:

The Florida Bar File No.: 2021-70,452 (11P)

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IRAIN ALBERTO GONZALEZ,
an individual, ALEXANDER C.
FLINT, an individual, and ARIEL
RAPAPORT, an individual,

Petitioners,

v.

THE FLORIDA BAR,

Respondent.

_____/

**PETITIONERS' EMERGENCY MOTION TO STAY DISCIPLINARY
PROCEEDINGS PENDING THIS HONORABLE COURT'S RULING
ON PETITIONERS' PETITION FOR WRITS OF MANDAMUS AND
PROHIBITION**

Petitioners, Irain Alberto Gonzalez, Esq., Alexander C. Flint, Esq., and Ariel Rapaport, Esq. (collectively hereinafter referred to as "Petitioners"), pursuant to Rule 9.300, Florida Rules of Appellate Procedure, hereby file Petitioners' Emergency Motion to Stay Disciplinary Proceedings Pending this Honorable Court's Ruling on

Petitioner's Petition for Writ of Mandamus and Prohibition, and state as follows ("Emergency Motion to Stay"):

1. On June 4, 2021, concurrently with this Emergency Motion to Stay, Petitioners filed a Petition for Writ of Mandamus and Prohibition ("Petition for Writs") seeking that this Honorable Court issue a writ of mandamus compelling The Honorable Michael A. Hanzman ("Judge Hanzman") to retract his post-recusal bar complaint against Petitioners, and a writ of prohibition precluding The Florida Bar from proceeding with any disciplinary proceedings against Petitioners on the basis of Judge Hanzman's post-recusal bar complaint against Petitioners.

2. In their Petition for Writs, Petitioners respectfully request the foregoing relief on the basis that Judge Hanzman's submission of his bar complaint, dated April 28, 2021, against Petitioners ("Bar Complaint")¹ four (4) months after recusing himself from any matters involving Petitioners, on the basis of his self-professed lack of objectivity and actual bias against Petitioners, is: (1) a judicial act

¹ Judge Hanzman submitted his Bar Complaint in his capacity as a Miami-Dade County Circuit Court Judge and on his judicial letterhead.

that is legally null and void under Florida law; (2) a judicial act in violation of Canons 2A and 3 of the Florida Code of Judicial Conduct; and (3) a judicial act in violation of Petitioners' fundamental right to fairness under the Due Process Clause.

3. On December 1, 2020, at 8:16 a.m., less than two (2) hours before a hearing on Petitioners' motion to withdraw in Miami-Dade County Circuit Court Case No.: 2020-022425-CA-01 ("Chun Liu Derivative Action"), Judge Hanzman entered an Order to Show Cause against Petitioners, in which Judge Hanzman charges Petitioners, sua sponte, with numerous alleged violations of the Rules Regulating The Florida Bar and orders Petitioners, among other things, to show cause why they should not be referred to the Florida Bar ("Order to Show Cause Against Petitioners"). Pursuant to its express terms, the Order to Show Cause Against Petitioners was to be heard on December 14, 2020 at 3:00 p.m.

4. On December 11, 2020, Petitioners filed a Petition for Writ of Prohibition in the Third District Court of Appeal ("Third District"), which was assigned Case No. 3D20-1846 ("Petition for Writ of Prohibition"), seeking, among other relief, that the Third District Court of Appeal quash the Order to Show Cause Against Petitioners.

The Petition for Writ of Prohibition sought relief on the basis that Judge Hanzman entered the Order to Show Cause Against Petitioners without jurisdiction or authority in light of an order entered by the Third District on November 16, 2020 in Case No. 3D20-1629. In addition to the Petition for Writ of Prohibition, Petitioners filed an emergency motion to enforce mandate and stay lower court proceedings against Petitioners in Case No. 3D20-1629, seeking, among other relief, to quash the Order to Show Cause Against Petitioners without jurisdiction or authority in light of an order entered by the Third District on November 16, 2020 in Case No. 3D20-1629.

5. On December 14, 2020, less than three (3) hours before the hearing on the Order to Show Cause Against Petitioners, the Third District entered an order in Case No. 3D20-1629 cancelling the December 14, 2020 hearing on the Order to Show Cause Against Petitioners and staying any proceedings as against Petitioners (“Third DCA December 14, 2020 Order Staying Proceedings and Cancelling Hearing”). The Third DCA December 14, 2020 Order Staying Proceedings and Cancelling Hearing essentially nullified the Order to Show Cause Against Petitioners, which, pursuant to its express

terms, required that Petitioners appear before Judge Hanzman on December 14, 2020 at 3:00 p.m. Judge Hanzman's Order to Show Cause Against Petitioners was essentially nullified because Judge Hanzman would have been required to enter a new order to show cause against Petitioners requiring Petitioners to appear before him on another date to show cause why they should not be sanctioned and referred to the Florida Bar – something that Judge Hanzman has been unable to do in light of his Order of Recusal (as defined in paragraph 6 below).

6. On December 28, 2020 – the same day on which any response to a Petition for Writ of Prohibition filed by Petitioners in the Third District was due - Judge Hanzman, *sua sponte*, entered his Order of Recusal on Matters Involving Former Counsel (“Order of Recusal”), stating as follows:

“THIS CAUSE is before the Court *Sua Sponte*. This Court believes: (a) that its Order to Show Cause directed at Defendants’ **former** counsel addresses non-arbitrable completely collateral to the case and, for that reason, the issuance of that Order [to Show Cause Against Petitioners] was not a violation of the Third District’s Order staying the case pending the Court’s ruling on Defendants’ Motion to Compel Arbitration; and” (emphasis in the original); and

(b) that its Order to Show Cause is warranted and should be addressed on the merits. Nevertheless, in light of recent inflammatory (and accusatory) appellate filings in this case, **a reasonable person could question this Court's ability to dispassionately and objectively preside over any matters involving FIBF's former counsel and recusal therefore mandated as to any such matters. See Canon 3(E)(1)(a). The Court therefore recuses itself from any further proceedings involving former counsel.**" (emphasis added); and

"Because the issuance of an Order to Show Cause against former counsel raises issues that are completely unrelated to the substantive case and never "subject to...arbitration" § 682.03(6), Fla. Sta., this Court did not even consider the possibility that the issuance of that Order reasonably could be interpreted as violating the Third District's stay, just as the Court (and presumably former counsel) did not consider the possibility that the stay was an impediment to the Court conducting a hearing on (and granting) former counsel's Emergency Motion to Withdraw. Nor does the Court believe that the Third District's Stay was intended to cabin its inherent authority to address matters of attorney misconduct...Former counsel now, however, takes the position that the issuance of the Order to Show Cause was in violation of the Third District's stay, whereas the Court's decision to permit their withdrawal was not. In any event, this Court understands its obligation to dutifully comply with appellate orders/directives and it does not believe it violated the stay order. And as directed this Court fully adjudicated Defendant's Motion to Compel Arbitration *prior* to addressing any further matters related to the case. **But at this point the Court recognizes that it cannot objectively adjudicate its Order to Show Cause.**" (emphasis added); and

“As FIBF has formally withdrawn the prior Motion for Recusal filed by its former counsel, and all parties want this Court to continue hearing the merits of the case, the Court does not recuse itself from these consolidated matters. **Its recusal is limited to any matter involving former counsel.**” (emphasis added).

7. On January 7, 2021, the Third District entered an order in Case No. 3D20-1629 stating that the “...issues pending in this appeal have been mooted by the sua sponte recusal of the trial judge...,” and an order in Case No. 3D20-1846 stating that “[u]pon consideration of the trial court’s orders entered on December 28, 2020, it is ordered that the Petition for Writ of Prohibition is hereby denied as moot.”

8. On April 28, 2021, one hundred and twenty-one (121) days after recusing himself from any matters involving Petitioners, Judge Hanzman entered his Sua Sponte Order (“Sua Sponte Order”), which pertains to Petitioners and states as follows:

“THIS CAUSE is before the Court sua sponte. On November 3, 2020 this Court entered an “Order to Show Cause” (DE 58) directed at attorneys I. Albert Gonzalez, Alexander C. Flint, and Ariel Rappaport, based on this Court's finding probable cause to conclude that they had : (a) knowingly misrepresented material information to this Court,

(b) knowingly failed to disclose material information to this Court and the Third District Court of appeal, and (c) knowingly submitted false testimony to this Court. The Court subsequently recused itself from this Show Cause proceeding only. Accordingly, the Clerk is directed, consistent with CBL procedures, to transfer the Show Cause proceedings to the Honorable William Thomas for adjudication on the merits.”²

9. Judge Hanzman’s Sua Sponte Order was not a ministerial order.

10. On May 12, 2021, Petitioners were notified by The Florida Bar that Judge Hanzman had submitted his Bar Complaint dated April 28, 2021. Judge Hanzman’s Bar Complaint is based exclusively on the Order to Show Cause Against Petitioners, and states, in pertinent part, as follows: “as set forth in the attached ‘Order to Show Cause’ this Court believes that these lawyers....”

11. On May 20, 2021, Petitioners filed their Petition for Writ of Mandamus and Prohibition with the Third District, which was assigned Case No. 3D21-1164 (“Petition for Writs of Mandamus and

² Judge Hanzman did not enter the Order to Show Cause Against Petitioners on November 3, 2020, as the Sua Sponte Order states, but on December 1, 2020. On November 3, 2020, Judge Hanzman entered the Order to Show Cause against Defendants FIBF and Wai Kin Benny Lam, which order was vacated by the Third District.

Prohibition”), seeking, among other relief, that: (a) the Third District quash the Order to Show Cause Against Petitioners and preclude Judge Hanzman or any Miami-Dade County Circuit Court judge, including but not limited to The Honorable William Thomas (“Judge Thomas”), from conducting a hearing on the Order to Show Cause Against Petitioners; and (b) the Third District quash the Sua Sponte Order. Petitioners seek the foregoing relief on the basis that Judge Hanzman entered the Order to Show Cause Against Petitioners and the Sua Sponte Order without jurisdiction or authority.

12. On May 24, 2021, Petitioners sent Rita Florez, Esq. (“Attorney Florez”), Bar Counsel for the Florida Bar, an email requesting an extension, through June 28, 2021, to respond to the Bar Complaint. On May 25, 2021, Attorney Florez sent an email to Petitioners indicating that The Florida Bar would only grant an extension through June 10, 2021.

13. On June 3, 2021, Judge Hanzman filed his Response to Petition for Writs of Mandamus and Prohibition with the Third District (“Response to Petition for Mandamus and Prohibition”).

14. In his Response to Petition for Mandamus and Prohibition, Judge Hanzman chooses not to address Petitioners’ argument that

the Sua Sponte Order should be quashed on the basis that it was entered by Judge Hanzman without jurisdiction or authority. Instead, Judge Hanzman, without factual or legal support, refers to his post-recusal entry of the Sua Sponte Order as a “ministerial sua sponte order,” which is simply not true. The Sua Sponte Order – entered four (4) months after the Order of Recusal - did not memorialize an earlier oral ruling and is a void order entered by a recused judge. *See Campos v. Campos*, 230 So. 3d 553, 557 (Fla. 1st DCA 2017).³

15. In *Campos*, the First District Court of Appeal stated that “...judicial action by a recused judge is void, with the exception of the judge’s memorializing in writing a ruling already rendered orally...[t]he ‘proceedings’ subject to being voided are limited to judicial acts.” *Id.* at 557.

16. Judge Hanzman’s submission of his Bar Complaint, in discharge of Jude Hanzman’s disciplinary responsibility, constitutes

³ Petitioners shall be filing a reply with the Third District to Judge Hanzman’s Response to Petition for Mandamus and Prohibition.

a judicial act under Canons 3A and 3D(3)⁴ of the Florida Code of Judicial Conduct, and is a judicial act carried out by a recused judge. Consequently, Judge Hanzman’s Bar Complaint is legally null and void under *Campos*.

17. Moreover, Judge Hanzman’s submission of the Bar Complaint is a judicial act in violation of Canons 2A and 3 of the Florida Code of Judicial Conduct.

18. With respect to judicial acts, Florida Code of Judicial Conduct, Canon 3, states that a “...judge shall perform the duties of judicial office **impartially** and **diligently**.” (emphasis added). Florida Code of Judicial Conduct, Canon 2A states that “[a] judge shall respect and comply with the law and shall act at all times in a manner that promotes public confidence in the integrity and **impartiality** of the judiciary. (emphasis added)

19. The Preamble to Florida’s Code of Judicial Conduct states, in pertinent part, as follows:

⁴The expansion of the meaning of judicial acts in Canon 3D(3) to include any act by a judge in the discharge of his or her disciplinary responsibilities is in conformity with the United States Supreme Court’s landmark holding in *Stump v. Sparkman*, 435 U.S. 349 (1978).

“Our legal system is based on the principle that an independent, fair and competent judiciary will interpret and apply the laws that govern us...[th]e Code of Judicial Conduct establishes standards for ethical conduct of judges...[w]hen the text uses "shall" or "shall not," it is intended to impose binding obligations the violation of which, if proven, can result in disciplinary action...[t]he Canons and Sections are rules of reason. They should be applied consistent with constitutional requirements, statutes, other court rules and decisional law and in the context of all relevant circumstances.” (emphasis added)

20. By carrying out the judicial act of submitting his Bar Complaint four (4) months after recusing himself on the basis of actual bias and an inability to objectively determine if Petitioners should be referred to The Florida Bar for disciplinary proceedings, Judge Hanzman subjectively determined to refer Petitioners to The Florida Bar for disciplinary proceedings, and in doing so, breached his obligations under the Florida Code of Judicial Conduct, to be fair, to perform the duties of his judicial office impartially and diligently, to comply with the law, and to act at all times in a manner that promotes the impartiality of the judiciary.

21. Judge Hanzman’s post-recusal Bar Complaint is not justified by his stated belief that Petitioners engaged in misconduct⁵ or possible misconduct.⁶ This Honorable Court has previously held that a judge’s purported justification of taking “appropriate action” cannot pass muster when said “appropriate action” violates Florida law or judicial canons. In that regard, in *In re Cohen*, 99 So.3d 926, 940 (Fla. 2012), this Honorable Court stated as follows:

“Judge Cohen argued before the JQC that he questioned the defendants in Gibbs and Butler because he believed Melnick had engaged in misconduct. Canon 3D(2) provides: ‘A judge who receives

⁵ As stated in the Petition for Writs, Judge Hanzman’s “charges” of misconduct against Petitioners are meritless. In addition, as set forth in the Petition for Writs of Mandamus and Prohibition filed by Petitioners with the Third District, the evidence suggests that Judge Hanzman’s Order to Show Cause Against Petitioners, entered without jurisdiction or authority and in violation of and in contravention to orders entered by the Third District, was retaliatory in nature. Petitioners genuinely believe that Judge Hanzman’s entry of the Order to Show Cause Against Petitioners and the Sua Sponte Order, and his submission of the Bar Complaint, are meant to punish Petitioners solely for exercising their legal rights and those of FIBF in Case No. 3D20-1629; *See In re Eriksson*, 36 So.3d 580, 593 (Fla. 2010)(even when a judge believes that a defendant who is exercising a legal right is attempting to interfere with the orderly administration of justice, a judge cannot punish the defendant solely for exercising that legal right)..”

⁶ In his Response to Petition for Mandamus and Prohibition, Judge Hanzman argues, in pertinent part, as follows: “...the issuance of the Order to Show Cause against Petitioner based upon a finding of possible attorney misconduct did not violate the stay....”

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.’ ‘Appropriate action may include direct communication with the judge or lawyer who has committed the violation, other direct action if available, or reporting the violation to the appropriate authority or other agency.’ Fla.Code of Jud. Conduct, Canon 3D cmt. We agree with the Hearing Panel that ‘appropriate action’ does not extend to conduct that constitutes a violation of the law or other canons. By holding evidentiary hearings on the motions to recuse in Gibbs and Butler, Judge Cohen violated the Code of Judicial Conduct.”
(emphasis added)

22. Here, like Judge Cohen in *In re Cohen*, Judge Hanzman’s “appropriate action” of submitting his Bar Complaint, four (4) months after recusing himself from “any further proceedings” against Petitioners, on the basis of actual bias and lack of objectivity, violates Canons 2A and 3 of the Florida Code of Judicial Conduct, and Florida law as set forth in this Honorable Court’s holding in *In re Cohen*. *In re Inquiry Concerning a Judge*, J. Q. C. No. 77-16, 357 So. 2d 172 at 180 (“If we follow such a course in Judge Taunton's case, in which he was motivated by compassion, we would be obliged to condone the same judicial misconduct brought about by the opposite emotion if the subject judge were to have acted in the belief that he was right. There can be no condonation of judicial failure to follow the law or

failure to obey the impartiality and objectivity required by the Code of Judicial Conduct, whether the judge be tough, tender or something in between.”); *In re Eriksson*, 36 So.3d 580, 593 (Fla. 2010) (“...[N]either the alleged misconduct of others nor the good motives of a judge excuse departure from the guidelines established in the Code of Judicial Conduct.”) (citing *In re Barnes*, 2 So.3d 166, 171 (Fla.2009) (citing *In re Shea*, 759 So.2d 631, 638-39 (Fla.2000))).

23. Moreover, "...under a realistic appraisal of psychological tendencies and human weakness," *Withrow v. Larkin*, 421 U. S. 35, 421 U. S. 47 (1975), and taking into account that a judge's submission of a bar complaint carries a presumption of great weight and legitimacy, Petitioners cannot possibly be afforded due process in disciplinary proceedings initiated by Judge Hanzman's Bar Complaint, irrespective of its procedures, when the fundamental procedural safeguards of neutrality and impartiality under the Due Process Clause, as codified in the Florida Code of Judicial Conduct, were breached by Judge Hanzman's initiation of the disciplinary proceedings in the first place.

24. In that respect, the fact that Petitioners would have the right to appeal any finding in the disciplinary proceeding to this

Honorable Court is of no consequence to and would not cure the constitutional infirmity created by Judge Hanzman's submission of the Bar Complaint in violation of Canons 2A and 3 of the Florida Code of Judicial Conduct.

25. In *Ward*, the United States Supreme Court stated as follows:

“Respondent also argues that any unfairness at the trial level can be corrected on appeal and trial *de novo* in the County Court of Common Pleas. We disagree. This "procedural safeguard" does not guarantee a fair trial in the mayor's court; there is nothing to suggest that the incentive to convict would be diminished by the possibility of reversal on appeal. Nor, in any event, may the State's trial court procedure be deemed constitutionally acceptable simply because the State eventually offers a defendant an impartial adjudication. Petitioner is entitled to a neutral and detached judge in the first instance. Accordingly, the judgment of the Supreme Court of Ohio is reversed, and the case is remanded for further proceedings not inconsistent with this opinion.” (Emphasis added). *Ward v. Vill. of Monroeville, Ohio*, 409 U.S. 57 at 61.

26. This Honorable Court has exclusive jurisdiction over matters of attorney discipline pursuant to Article V, Section 15 of the Florida Constitution. Moreover, pursuant to Florida Rules of Appellate Procedure 9.030(3), this Honorable Court has original

jurisdiction to issue writs of prohibition to courts and all writs necessary to the complete exercise of its jurisdiction, and may issue writs of mandamus and quo warranto to state officers and state agencies.

27. Through its “all writs” power, this Honorable Court possesses the jurisdiction to stay disciplinary proceedings against Petitioners pending its adjudication of Petitioners’ Petition for Writs. *See Fraternal Order of Police Lodge 92 v. Freeman*, 372 So.2d 945 (Fla. 3d DCA 1979).

28. In light of the good cause set forth above, Petitioners respectfully request that this Honorable Court stay disciplinary proceedings against Petitioners pending this Honorable Court’s ruling on Petitioners’ Petition for Writs, grant Petitioners fifteen (15) days from the date of this Honorable Court’s adjudication of the Petition for Writs to respond to Judge Hanzman’s Bar Complaint, if still necessary after this Honorable Court’s adjudication of Petitioners’ Petition for Writs, and grant Petitioners such other relief as this Honorable Court may deem just, equitable, and proper.

Respectfully submitted,

G&F Law Group, LLP

15807 Biscayne Blvd., Suite
217

North Miami Beach, Florida
33160

Telephone: 305-503-9073

iag@gflawgroup.com

acf@gflawgroup.com

arap@gflawgroup.com

/s/ I. Albert Gonzalez

I. Albert Gonzalez, Esq.

FBN: 695971

/s/ Alexander C. Flint

Alexander C. Flint, Esq.

FBN: 117715

/s/ Ariel Rapaport

Ariel Rapaport, Esq.

FBN: 1011939

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a true and correct copy of the foregoing was served via electronic mail this 4th day of June, 2021, on: Rita Florez, Esq., in her capacity as Bar Counsel, (rflorez@floridabar.org), Arlene K. Sankel, Esq., in her capacity as Chief Branch Discipline Counsel, (asankel@floridabar.org), The Florida Bar, 444 Brickell Avenue, Suite M-100, Miami, Florida 33131, Patricia L. Gladson, Esq. (pgladson@jud11.flcourts.org), and the Honorable Michael A. Hanzman (11thFC43@jud11.flcourts.org, cbl43@jud11.flcourts.org, mhanzman@jud11.flcourts.org), The Circuit Court of the Eleventh Judicial Circuit in and for Miami-Dade County, Florida.

/s/ I. Albert Gonzalez
I. Albert Gonzalez, Esq.