

SC06-671

IN THE SUPREME COURT OF THE STATE OF FLORIDA

THE FLORIDA BAR,

Petitioner,

vs.

ROBERT M. MONTGOMERY, JR.,

Respondent.

Case No. _____
L.T. Case No. 502005CA
08522XXXXMB (PALM BEACH)

FILED
THOMAS D. HALL
2006 APR 16 P 2:31
CLERK OF THE SUPREME COURT
BY [Signature]

PETITION FOR WRIT OF PROHIBITION

The Florida Bar files this petition seeking a writ of prohibition against the Honorable Elizabeth T. Maass, Circuit Court Judge of the Fifteenth Judicial Circuit, on the grounds that the court is exceeding its jurisdiction and usurping the exclusive jurisdiction of this Court with respect to the discipline of persons admitted to the practice of law in Florida.

JURISDICTION

This Court has jurisdiction pursuant to Article V, Section 3(b)(7), Florida Constitution. *Moffitt v. Willis*, 459 So. 2d 1018 (Fla. 1984); *State v. Boyer*, 360 So. 2d 388 (Fla. 1978).

STATEMENT OF THE FACTS

On or about March 20, 2003, Robert M. Montgomery, Jr., filed two complaints with The Florida Bar ("the Bar") concerning Christopher M. Larmoyeux, Jr., and Patrick J. Casey. Mr. Montgomery alleged that Mr. Larmoyeux and/or Mr. Casey made comments in the local press, court filings and court proceedings that impugn the qualifications and integrity of the three arbitrators who presided over an arbitration in which Mr. Montgomery was the claimant, Mr. Larmoyeux was the respondent, and Mr. Casey served as Mr. Larmoyeux's attorney. The Bar complaints were considered by the Fifteenth Judicial Circuit Grievance Committee "G," and two Notices of Finding Probable Cause were filed with this Court on November 18, 2004, against Mr. Larmoyeux and Mr. Casey.

On September 9, 2005, The Florida Bar was served with Mr. Montgomery's Complaint, filed in the Circuit Court for the Fifteenth Judicial Circuit. The initial Complaint sought mandamus, injunctive and declaratory relief essentially: (1) requiring the Bar to permit Mr. Montgomery to inspect and copy all materials relating to Mr. Montgomery's Bar complaints against Mr. Larmoyeux and Mr. Casey, (2) requiring that the Bar state in writing the basis of any claimed exemption, if any exemption applied, and (3) granting Mr. Montgomery's

attorneys' fees and costs.¹ Mr. Montgomery filed an amended complaint on December 9, 2005, seeking essentially the same mandamus, injunctive and declaratory relief except that Mr. Montgomery no longer sought to require the Bar to state the basis of any claimed exemption.²

Mr. Montgomery was granted leave on January 12, 2006 to file a Second Amended Complaint. The Second Amended Complaint sought substantially the same relief as the amended complaint with the exception that a fourth count was added. Count IV of the Second Amended Complaint requested: a writ of mandamus commanding The Florida Bar to file formal Bar complaints against Mr. Casey and Mr. Larmoyeux under Rule 3-7.4(1) of the Rules Regulating The Florida Bar;³ alternatively, an order to show cause why the formal Bar complaints had not been filed; and an order awarding costs and such other relief as the court deemed fit. (App. 1⁴ at pgs. 14 - 16).

¹ Mr. Montgomery also requested that the court declare the parties' rights and obligation regarding Mr. Montgomery's records requests to The Florida Bar.

² The Amended Complaint sought relief under Rule 2.051 of the Florida Rules of Judicial Administration, as opposed to Chapter 119, Florida Statutes.

³ All subsequent references to "Rule" shall mean the Rules Regulating The Florida Bar, unless specifically provided otherwise.

⁴ For the purposes of this petition, "App." refers to an attached appendix exhibit.

The Bar filed its Motion to Dismiss Count IV of Plaintiff's Second Amended Complaint on January 23, 2006, based in part upon lack of jurisdiction.⁵ (App. 2 at pgs. 5 - 6) On February 24, 2006, the Board of Governors of The Florida Bar overturned the grievance committee's finding of probable cause and found no probable cause as to Mr. Casey for the violation of Rule 3-4.2. (App. 3 at Exhibit "A") The Board of Governors likewise voted to overturn the finding of probable cause with regard to Mr. Larmoyeux, recommending diversion to ethics school instead. (App. 3 at Exhibit "B"). The Bar filed a Supplement to Defendant's Motion to Dismiss Count IV of Plaintiff's Second Amended Complaint on March 17, 2006, attaching notice of the Board of Governor's actions and advising the circuit court that Count IV was moot. (App. 3 at pg. 1). On March 24, 2006, the circuit court denied the motion to dismiss and ordered the Bar to file its answer to the Second Amended Complaint within thirty days. (App. 4)

ARGUMENT

I

THE CIRCUIT COURT LACKS JURISDICTION TO REVIEW DISCIPLINARY ACTIONS OF THE FLORIDA BAR.

The jurisdiction of the circuit courts with respect to the discipline of lawyers does not emanate from the Florida Constitution or statutes. It exists solely by virtue

⁵ The Florida Bar did not contest the circuit court's jurisdiction over Counts I - III of the Second Amended Complaint as disposition of Counts I - III does not require the circuit court to review actions taken by The Florida Bar in the course of a disciplinary proceeding.

of this Court's delegation of a measure of its exclusive authority over the discipline of Florida lawyers established by Article V, Section 15 of the Florida Constitution. The circumstances under which this Court has authorized the circuit courts to hear actions regarding disciplinary proceedings is extremely limited and expressly set forth in Rule 3-7.8. Rule 3-7.8 authorizes circuit courts to conduct disciplinary proceedings where the circuit court asserts jurisdiction over a disciplinary matter prior to The Florida Bar taking jurisdiction.⁶

The relief requested under Count IV of Mr. Montgomery's Second Amended Complaint does not fall within the narrow confines of Rule 3-7.8. Count IV essentially asks the circuit court to review the actions taken by The Florida Bar in the course of disciplinary proceedings against Mr. Casey and Mr. Larmoyeux. The circuit courts possess no authority to review actions by the Bar in connection with attorney discipline. That power has been reserved solely to this Court pursuant to Rule 3-7.7. When the circuit court denied the motion to dismiss and ordered the Bar to file its answer, it agreed to engage in such review, thus exceeding its jurisdiction and usurping the exclusive jurisdiction of this Court.

II THE CIRCUIT COURT LACKS JURISDICTION TO ENJOIN THE FLORIDA BAR FROM FULFILLING

⁶ The circuit courts have concurrent jurisdiction with The Florida Bar as to the authority delegated under Rule 3-7.8. *See* Rule 3-3.5.

ITS DISCIPLINARY RESPONSIBILITIES AS
DELEGATED TO IT BY THIS COURT.

This Court has granted *concurrent* authority to the Bar and the circuit courts to initiate disciplinary action against attorneys. In the exercise of that authority, both entities are performing administrative functions as coequal arms of the Supreme Court. Nothing in the constitution, the statutes or the rules of court grant to the circuit courts the power to enjoin or interfere with the authority of the Bar to take action in fulfillment of its responsibilities as delegated from this Court. This Court is the only entity with the authority to limit the Bar's exercise of its delegated function. By agreeing to entertain a request for mandamus relief commanding the Bar to file formal Bar complaints, the circuit court has exceeded its jurisdiction and usurped the authority that lies exclusively with this Court.

III

THIS COURT SHOULD ASSUME JURISDICTION
AND ISSUE A WRIT OF PROHIBITION IN ORDER
TO PRESERVE THE INTEGRITY AND EFFICIENCY
OF THE BAR DISCIPLINARY SYSTEM.

This Court has designed a disciplinary system that is both efficient and fair. Matters proceed expeditiously from initiation to final disposition while ensuring procedural due process.⁷ An important aspect of the system that enables it to

⁷ This matter was an unfortunate exception. Due to inefficient handling by a single staff lawyer, the matter took an inordinantly long time to reach final disposition. Even if this were not an exception, the appropriate forum to seek correction of the process would be the Board of Governors or this Court, not a circuit court.

operate at relatively high speed and low cost for both the attorney and the Bar is that the proceedings remain exclusively within the forum initiating an investigation until final disposition and are reviewable solely by this Court. If lawyers were permitted to seek relief in circuit court to Bar actions in completed disciplinary cases, particularly those closed without discipline, the result would be a significant and unnecessary decrease in efficiency and increase in cost of the entire process.⁸

CONCLUSION

For the foregoing reasons, The Florida Bar requests that this Court issue a writ of prohibition that bars the Fifteenth Judicial Circuit from exercising jurisdiction over Count IV of Mr. Montgomery's Second Amended Complaint or from otherwise encroaching upon the exclusive jurisdiction of this Court to review actions taken by The Florida Bar in the course of Bar disciplinary proceedings.

⁸ The Bar closes over 7,000 investigations without discipline annually, which accounts for approximately 85% of the total number of matters on which investigations are commenced.

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a copy of this brief was sent by U.S. Certified Mail to Honorable Elizabeth T. Maass, Circuit Court Judge of the Fifteenth Judicial Circuit, 205 North Dixie Highway, Room 11.1208, West Palm Beach, Florida 33401, Sharon Bock, Clerk Of Circuit Court, 301 N. Olive Avenue, Room 503, West Palm Beach, FL, 33401, and James Beasley, Jr., 505 South Flagler Drive, Suite 1500, West Palm Beach, Florida, 33401, this 19th day of April, 2006.

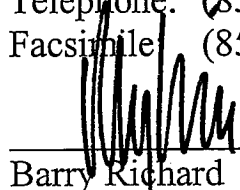


Barry Richard

CERTIFICATE OF COMPLIANCE

I HEREBY CERTIFY that this writ was prepared using Times New Roman 14-point type, a font that is proportionately spaced and that complies with the font requirements of Florida Rule of Appellate Procedure 9.210(a)(2).

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