Filing # 187910846 E-Filed 12/13/2023 06:16:41 AM

IN THE SUPREME COURT OF FLORIDA

THE FLORIDA BAR,
Appellant/Petitioner,
v.
JEFFREY ALAN NORKIN
Appellee/Respondent.
_____/

Supreme Court Case No. SC-21-1025

The Florida Bar File No. 2021-50, 193 (17F)

RESPONDENT'S ANSWER TO THE BAR'S "INITIAL BRIEF" and RESUBMISSION OF EARLIER MOTIONS TO DISMISS THIS CASE AND FOR SANCTIONS

Respondent, Jeffrey A. Norkin, *pro se*, files this response memorandum to the Bar's "Initial Brief" and hereby moves the Florida Supreme Court preliminarily to disqualify itself as the presiding authority as a matter of law. Alternatively, if that relief is rejected for yet another time, Respondent moves the Court to dismiss this case on any of numerous grounds including lack of subject matter jurisdiction, complete and utter deprivation of due process, and most fundamentally, on the merits, to issue an order to show cause why the Bar and Bar Counsel should not be held in contempt of Court, and order the Bar to pay the State of Florida all costs and fees the State has incurred in paying for Mr. Norkin's defense during the two years of the Bar's prosecution of this sham, false, and malicious prosecution.

INTRODUCTION

The prosecutor, The Florida Bar, will be referred to as "The Bar." Respondent, Jeffrey Norkin, who appears before this Court pro se, having prepared and filed this submission on his own behalf, shall be referred to as "Respondent." The trial transcript, which is in six volumes including the sentencing hearing, shall be referred to as (TT-Vol__). Trial Exhibits shall be referred to as (TE-__). The Florida Supreme Court shall be referred to as "this Court" and the Third District Court of Appeals shall be referred to as "the "Third DCA".

The charging document in this case, Petition for Contempt and Order to Show Cause, shall be referred to as "the Petition."

As the Bar did before, Respondent has moved the Court to take judicial notice of all contents of the court files in *Gary Ferguson v. Beem v. Kim Ferguson*, Miami-Dade Circuit Court case no. 07-234789, and *David Beem and Jeffrey Norkin*, Third DCA case no. 3D18-1725.

ISSUES PRESENTED

To keep this submission as brief and concise as possible, and to make it as digestible as possible for a reviewing Federal court, Respondent will organize it according to the following issues presented:

I. The documents the Referee cites as proof of guilt instead prove that Respondent never represented Mr. Beem while disbarred. The Bar at all times knew or should have known this allegation was false, because the case style, the court docket, and every pleading cited as illegal by the Referee identifies Respondent as a *pro se*, named party appellant and the

Third DCA accepted and ruled on his motions and briefs accordingly, in accordance with his Constitutional right to represent himself in Court.

II. Chapter 10 of the Florida Bar Rules gives this Court jurisdiction over disbarred lawyers and the subject matter of this case; Chapter 3 does not. Because the Bar pled this case "Pursuant to Chapter 3," and it has argued throughout that it is controlled by the provisions of Chapter 3, and has rejected the position that it is governed by Chapter 10, this Court has no subject matter jurisdiction over this case, or *in personam* jurisdiction over Respondent, Jeffrey Norkin.

III. Chapter 10 does not require a respondent in UPL cases to file any petition for review after a Referee issues a ruling. Instead, this Court is required to review all such reports de novo. The Bar's argument that because Respondent failed to timely file a brief, and therefore the Court must accept all statements in the Referee's Report as true, is only viable under Chapter 3, which does not apply to this case. Further, for a prosecutor to seek a criminal conviction based on Referee findings it knows to be false, is a crime and is unimaginably egregious and despicable, which should be sanctioned by this Court with contempt and imprisonment.

IV. This is not an appeal; it is a mandatory review pursuant to R.Reg.Fla.Bar 10-7.2, which requires this Court to review the correctness and legality of the Referee's Report (which was required to be a judgment but is not) regardless of whether Respondent files any challenge to it at all. Further, the Bar and Referee violated other provisions of that section, which also render the Court's "Dismissal of Respondent's appeal" a nullity. The Court must, as a matter of law, review all issues presented de novo.

V. Jeffrey Norkin's Facebook page and company website, which was taken down at the inception of the case, explicitly state that Respondent is a disbarred lawyer and discuss his disbarment at length and in many entries. The Referee's finding that he represented himself as an attorney to the public is false and is based on grossly inadmissible, deceptive, fraudulently presented evidence.

VI. The allegation that Respondent used the email address Jeff@Norkinlaw.com is false, unsupported by any competent evidence, and even if true, cannot be the basis of criminal contempt because no court order specifically prohibits the use of the word law in an email

address and because no law criminalizes the conduct, prosecuting it violates Respondent's right to substantive due process.

VII. Allegations that Respondent used the filing portal with his attorney account cannot be the basis of criminal contempt because no court order specifically prohibits the use of the word law in an email address and because no law criminalizes the conduct, prosecuting it violates Respondent's right to substantive due process.

VIII. This Court and the Florida Bar, at all times from its inception, have been prohibited from presiding over and prosecuting this case respectively when the issues presented, as explicitly recited in the charging document, involve conduct which this Court and the Bar consider offensive and where the two entities have clearly demonstrated animus toward Respondent and a long, terrible history of abuse pursuant to that animus.

IX. This prosecution violates Respondent's right to be free from Double Jeopardy. The same acts were prosecuted and dismissed by the State of Florida and the Bar's arbitrary imposition of a date limitation is fictional and of no avail.

X. Based on the foregoing, and the fact that the amount imposed is outrageous in relation to the gravity of the charged acts, even if they were true, and because no court can require someone to undergo mental healthcare without expert testimony or some extraordinary public interest, the imposition of the $24,000 in costs and mental health treatment are null and void.

STATEMENT OF THE CASE

The facts of this case, as stated above, are now presented and categorized according to the above issues presented.

I. The documents the Referee cites as proof of guilt instead prove that Respondent never represented Mr. Beem while disbarred. The Bar at all times knew or should have known this allegation was false, because the case style, the court docket, and every pleading cited as illegal by the Referee identifies Respondent as a pro se, named party appellant and the

Third DCA accepted and ruled on his motions and briefs accordingly, in accordance with his Constitutional right to represent himself in Court.

In the first Report of Referee, the Bar Referee holds as follows:

> Respondent moved the Third District Court of Appeal to add him as a coappellant on all issues in the appeal. (TFB Ex. 3, p. 5). On April 22, 2019, the Third District Court of Appeal denied his request to be added as a co-appellant.
>
> (TFB Ex. 2).

(First Report of Referee, pp. 8-9). Any attorney or judge who actually read, or even scanned the subject motion, or the docket, or any ruling of the Third DCA, or anything Respondent has written in this case, would know that it was not a motion to be added to an appeal as an appellant. Respondent had an appeal and Mr. Beem had an appeal and Mr. Norkin sought to litigate the issues in Mr. Beem's appeal in addition to those in his appeal. Other than this motion, every one of Respondent's pleadings was filed in his appeal, as a named appellant.

This erroneous reading perhaps gave the Bar a weak explanation as to why it falsely prosecuted Respondent, but there is no excuse for continuing to prosecute him after Respondent showed the truth about his status in the appeal after the Referee issued his report.

Making matters exponentially worse, the Bar actually argues herein that Respondent should be incarcerated not for the illegal 10 days recommended by the Referee, but for 60 days. entire case fails when it is read correctly. In the subject motion, Mr. Norkin did not seek leave to become an appellant in the appeal. He was

already the appellant in *his* appeal of Kim Ferguson's $155,000 judgment against him. Rather, in the subject motion, he sought to be added as a co-appellant in Mr. Beem's appeal, seeking reversal of court orders that blocking Mr. Beem's efforts to collect his $500,000 judgment against Gary Ferguson.

The Referee, in the Report, continues:

> Undeterred by the Third District Court of Appeal's ruling, Respondent continued to file several pleadings as follows:
>
> - April 24, 2019 - Motion for rehearing
> - May 20, 2019 - Initial brief on the merits ● May 21, 2019 - Appendix
> - July 24, 2019 - Response
> - October 2, 2019 - Motion for oral argument
> - October 7, 2019 - Motion to dismiss
> - October 16, 2019 - Reply
> - December 10, 2019 - Motion for extension of time to file reply brief
> - December 12, 2019 - Response
> - December 18, 2019 - Motion to strike
> - December 18, 2019 - Respondent filed Mr. Beem's joinder in and adoption of Respondent's motion to strike
> - December 23, 2019 - Reply brief
> - December 23, 2019 - Respondent filed Mr. Beem's reply brief
> - December 27, 2019 - Motion for rehearing
> - January 7, 2020 - Motion to supplement the record
> - January 23, 2020 - Notice of filing
> - March 19, 2020 - Motion for rehearing/rehearing en banc
> - March 20, 2020 - Respondent filed Mr. Beem's amended motion for rehearing
> - April 23, 2020 - Amended motion for rehearing/rehearing en banc
> - April 23, 2020 - Respondent filed Mr. Beem's amended motion for rehearing/rehearing en banc.
> - July 3, 2020 - Notice of discretionary jurisdiction to the Supreme Court of Florida.

(TFB Ex. 2).

(1st Referee Report, pp. 9-10).

Bar Counsel has at all times, at least since the beginning of the trial, known that Respondent was a party in the Appeal. She reads one, and only one of the pleadings at issue: "Appellant Norkin's Response to appellee's motion for rehearing…." (TT-I, p. 135). Is it possible that an attorney could read those words and not know that Jeffrey Norkin was an appellant in the appeal? If an attorney could do so, one should question whether she should be an attorney.

Instead of reading the motion to understand what it's purpose was, the Referee somehow concludes that "Rather than abiding by legal rulings, it is clear that Respondent will "act within this case as [he] please[s]." (Referee Report, 10/13/22, p. 9). The Referee actually thought that the Third DCA denied Respondent's motion to be a party to the appeal and then just allowed Respondent to file all kinds of pleadings for Mr. Beem. That is simply laughable.

There is not a single document where Mr. Beem submits a pleading that is signed solely by Respondent. On occasion their interests aligned exactly and they filed joint motions, or Mr. Beem filed a separate joinder in Mr. Norkin's submissions. There is nothing illegal about this and this is not a charged act.

Mr. Norkin was clearly a party: Alan Geffin, Esq., the Bar's witness whom Respondent has proven committed millions of dollars in fraud on the court, testified:

"Mrs. Ferguson filed two satisfactions of judgment, this one satisfying the judgment that she had secured against Mr. Norkin and a second different satisfaction satisfying the judgment that she had secured against Mr. Beem." (TT-I, p. 158).

Finally, the Referee's Report is fraught with vague statements of guilt, such as:

> The Referee finds that by filing joint motions on behalf of Mr. Seem, advocating and negotiating on Seem's behalf, and using his norkinlaw.com, email address in pleadings, Respondent intentionally engaged in the unlicensed practice of law in violation of the Supreme Court of Florida's disbarment order.

(1st Report, p. 14). This is not a sufficient ruling on which to base a sentence of incarceration. The law, the Constitution, requires concise, detailed, precise findings of particular acts, not just general, sweeping, conclusory statements. There are dozens of critical reasons why precision is required in both charging documents and in conviction documents.

Then there are passages such as this:

> By filing pleadings and **appearing pro se on behalf of a party with joint interests**, Respondent continued to flaunt the Supreme Court of Florida's order of disbarment when he continued to represent his own perceived interests, but also Mr. Beem's interests

(Id. at 15). This language is inherently self-contradictory and nonsensical. Does the Florida Supreme Court consider this competent language on which to send someone to jail? If so, the Court should recite this sentence in its decision doing so. More importantly, Respondent NEVER APPEARED IN ANY PROCEEDING ON

BEHALF OF MR. BEEM. That is proven incontrovertibly by the Record in both cases. If the Referee felt he did so, he was required to point to specific instances, and citing specific pieces of evidence; not just utter broad, sweeping dramatic statements of Respondent's evil motives.

Any reasonable person would realize that Respondent did the work he did in the Norkin and Beem appeal in order to vacate a $155,000 judgment against him. If Respondent wishes to "Flout" this Court's authority, he has made other efforts that do not subject him to prison sentences right under the nose of an appellate court. These findings by the Referee are not only completely unsupported by evidence; they fly in the face of common sense.

II. Chapter 10 of the Florida Bar Rules gives this Court jurisdiction over a disbarred lawyer and the subject matter of this case; Chapter 3 does not. Whereas the Bar pled this case under Chapter 3, has argued throughout that it is controlled by the provisions of Chapter 3, and has rejected the position that it is governed by Chapter 10, this Court has no subject matter jurisdiction over this case, or in personam jurisdiction over Respondent, Jeffrey Norkin.

The charging document in this case, the begins as follows: "COMES NOW, The Florida Bar, petitioner, pursuant to Rule 3-7.7(g) and 3-7.11(f) of the Rules of Discipline…." (Petition, p. 1). Throughout, the Bar has attempted to transform an Unlicensed Practice of Law case into a criminal contempt case pursuant to Chapter 3.

The problem is that Chapter 3's mention of contempt proceedings applies only to contempt committed by LICENSED ATTORNEYS during and in relation to attorney disciplinary proceedings that are actually governed by Chapter 3:

> In addition to this Court's inherent contempt powers, rule 3-7.11(f), Rules Regulating The Florida Bar, specifically provides in pertinent part that "**a respondent <u>in a disciplinary proceeding</u>** may be cited for contempt by petition for an order to show cause filed and heard in the Supreme Court of Florida."

The Fla. Bar v. Ross, 732 So. 2d 1037, 1041 (Fla. 1998). This does not give this Court perpetual jurisdiction over people once it has disbarred them. The Court gives further clarification:

> Chapter 10 of the Rules Regulating The Florida Bar, which governs the investigation and prosecution of the unlicensed practice of law, specifically provides that "*for purposes of this chapter*, a nonlawyer or nonattorney is an individual who is not a member of The Florida Bar. This includes, but is not limited to . . . disbarred lawyers, and suspended lawyers during the period of suspension." R. Regulating Fla. Bar 10-2.1(b).

Id., at 1040 (Fla. 1998)(emphasis added).

Wrapping this up, the Referee's first Report correctly states, in language the Bar in its "Initial Brief" states that this Court must accept as correct, that:

> Respondent is a disbarred attorney whose unlicensed practice of law subjects him to the jurisdiction and the disciplinary rules of the Supreme Court of Florida pursuant to **<u>Chapter 10 of the Rules Regulating the Florida Bar</u>**….

(1st Report, p. 3);

As if any additional authority was needed to support this most obvious, fundamental fact and legal principle, the Florida Supreme Court holds that "Chapter 10 of the Rules Regulating the Florida Bar governs the investigation and prosecution of the unlicensed practice of law."). *Fla. Bar v. Hughes*, 824 So. 2d 154, 160 (Fla. 2002).

Yet, for some inexplicable and incomprehensible reason, since the Referee issued his first Report, and The Florida Bar has argued, and the Florida Supreme Court has ruled that Chapter 3, not Chapter 10 govern this Court's review of the Referee's clearly erroneous Report, which finds that Respondent somehow committed the unlicensed practice of law by filing documents on behalf of himself, *pro se*.

In fact, prior to trial, Respondent filed a motion to clarify which law or laws govern this matter. (DE___). Among the laws Respondent moved the Referee to rule applied or did not apply to this case was Chapter 10 of the Bar Rules.

III. This is not an appeal; it is a mandatory review pursuant to R.Reg.Fla.Bar 10-7.2, which requires this Court to review the correctness and legality of the Referee's Report (which was required to be a judgment but is not) regardless of whether Respondent files any challenge to it at all. Further, the Bar and Referee violated other provisions of that section, which also render the Court's "Dismissal of Respondent's appeal" a nullity. The Court must, as a matter of law, review all issues presented de novo.

This proceeding is not an appeal. It is a mandatory review as required by R.Reg.Fla.Bar 10-7.2, provided as follows:

> **e) Judgment. Review by the Supreme Court of Florida.** The referee must forward the ***judgment*** and recommended sentence on a ***finding of "guilty"*** together with the ***entire record of proceedings to the Supreme Court of Florida for approval, modification, or rejection based on the law***. The petitioner or the respondent ***may file objections, together with a supporting brief or memorandum of law***, to the referee's judgment and recommended sentence ***within 30 days of the date of filing with the court of the referee's judgment, recommended sentence, and record of proceedings.***

R.Reg.Fla.Bar. Rule 10-7.2(e). To Respondent's knowledge, the Referee to this day has not forwarded the entire record to this Court, and if he did, a copy was not served upon Respondent.

Instead of the above, correct law, the Bar, a prosecutorial, pseudo-governmental agency, argues to this Court that because Respondent did not file an appellate brief months before the Bar would file the trial transcript, which the Court held it was required to do, the remedy is that, despite his proven innocence, Respondent should go to jail not for the 10 days the Referee recommended, but for 60 days, based on some imagined mechanism of law that this Court is required to accept as true findings of the Referee it and the Bar know to be false, and which the Bar achieved via fraud arguments leading the Referee, somehow, to conclude that pleadings reading "Appellant, Jeffrey Norkin, pro se, moves this Honorable Court" somehow were documents filed by Respondent for Mr. Beem.

The Bar's position is not only grossly unethical; it is illegal: Rule 3.840(e) provides that: "A defendant's omission to file motions or answer shall not be deemed as an admission of guilt of the contempt charged." Truly incredible.

IV. Jeffrey Norkin's Facebook page and company website, which was taken down at the inception of the case, explicitly state that Respondent is a disbarred lawyer and discuss his disbarment at length and in many entries. The Referee's finding that he represented himself as an attorney to the public is false and is based on grossly inadmissible, deceptive, fraudulently presented evidence.

In his Report, the Referee admits that his finding of guilt with regard to Respondent's Facebook page is based on incompetent, inadmissible evidence: "The Referee viewed pictures and screenshots of portions of Respondent's Facebook page." (1st Report, p. 19). No "portions" of a document are admissible. Only entire, complete documents, authenticated by custodians, are admissible. None of that mattered to the Referee.

The following is an excerpt of testimony of the Bar's investigator, who assembled the Bar's Facebook evidence, will give the Court a fairly complete picture of how incompetent and inadmissible the Bar's evidence in this area is:

> Q. So is page 19 a screenshot or a photo of a computer?
> A. Page 19 is a photo of the law firm Facebook page that was inactive.
> Q. And do you know when it was deactivated? You don't, right?
> A. No.
> Q. You didn't subpoena Facebook in order to get those records, correct?
> A. No.
> Q. Moving on to page 20, is that a screenshot or a photograph?

A. That's a photograph.
Q. Okay. And it was you who had the discretion to decide what part of the screen to take a photo of, correct?
A. Correct.
Q. And none of this is dated, correct?
A. Correct.
Q. Page 20 is not dated?
A. Correct.
Q. Okay. Now, looking at page 21, is that the same Facebook page as 20?
A. Yes.
Q. Yet that is a screenshot?
A. Yes.
Q. Not a photograph?
A. Yes.
Q. Okay. Can you think of any reason, as you sit here today, why you chose to take a picture of only a portion of the front page of his Facebook page, yet the rest of it is screenshots? Was there something on that front page that you did not want to photograph?
A. No, that's not the reason.
Q. Is there a reason?
A. Other than that I was working from home and trying to use the equipment that was available to me.
Q. Okay. Now, I also note the posts, the Facebook posts that are included here are not dated, correct?
A. Which page?
Q. Let's go to page --well, I went ahead. So you said this was done in October of 2020?
A. Correct.
Q. So if I look at page 30 and it says June 6th, right?
A. Yes.
Q. That would be a post that happened in 2020?
A. Yes.
Q. And you don't know who posted that, correct?
A. No.
Q. Okay. And the same is true for the rest of the posts, you don't know who posted them, correct?
A. Which page are you referring to?
Q. 33, 32, 31, the ones, you know --the posts.
A. Okay. It's labeled "Jeffrey Norkin."

Q. I get that, but you don't know who posted them, correct?
A. No,
Q. Did you send a subpoena to Facebook at all?
A. No, I've never done that.
….
Q. Okay. And you already testified that 19 was an inactive page, that his law firm page was inactive when you checked, right?
A. Yes.
Q. His personal page, right? I'm looking at page 20 now. Can you turn to page 20?
A. Yes.
Q. Okay. That indicates he hasn't been a lawyer for five years already, right, under work?
A. Hasn't been an attorney – yes.
….
Q. Again, you don't know who posted this stuff, the LinkedIn?
A. No.
Q. And you didn't send any subpoenas to LinkedIn?
A. No.
Q. Now, you referred to my client's website assuranceclientsupport.com, correct? That's the Assurance website you were talking about?
A. Yes.
Q. Okay. You have a printout of that?
A. Some of the information --some of the pages are from that.
Q. Can you indicate which pages are from that website?
A. I'm looking at number 16 and 17, 18.
Q. What about the rest of the pages on that website, they're not in here, correct?
A. No.

(TT-II, pp. 274-7). The above clearly demonstrates the incompetence of the Bar's process of evidence-gathering; that none of its Facebook, company website, or LinkedIn evidence was authenticated; and that because the three sites all had information that clearly stated that Respondent was no longer a practicing attorney,

it is impossible for a court to find beyond a reasonable doubt that Mr. Norkin was intentionally, explicitly representing to the public that he was a licensed attorney.

In the only competent, admissible testimony on the subject, Respondent testified: “The Facebook posts they have in there, that's only a small fraction of my Facebook profile. 8 80 percent of my posts have to do with justice. My body is crying out for justice. The deprivation of justice in this case. (TT-IV at 718, ll. 6-10).

Further, Rule 3.840(f), which the Bar has admitted governs this proceeding, requires a judgment of guilty to include "a recital of the facts constituting the contempt of which the defendant has been found and adjudicated guilty." *Ensign v. State*, 67 So. 3d 353, 355 (Fla. 2d DCA 2011). The Referee did not come close to meeting this standard. For example, the following conclusion of guilt lacks a single specific finding of fact:

> Respondent testified that he did not give legal advice and proudly stated on his website that he was a disbarred attorney. The Referee finds, however, at best, his website was misleading about the true nature of his status with the Florida Bar. It is unclear which page on his website stated he was a disbarred attorney, but it does not appear that the page with the link to his book clarified that he was in fact disbarred. The Referee finds that Respondent intentionally violated the Supreme Court of Florida 's disbarment order by holding himself out as a practicing attorney on the ACS website.

(1st Report, p. 19). Just as insufficient, the Report bases findings of guilt on such leaps of logic as this:

> The website invited the viewer to "learn the concept underlying [their] work." (TFB Ex. 7, p. 17). The website stated

> The problem is that the overbilling and ineffective representation can only be analyzed by attorneys! In "The Attorney's Achilles Heel," a veteran, retired attorney sickened by the abuse and teaching of our economy that he witnessed for decades, exposes and explains how to combat the myths that attorneys fabricate and use to get away with this brazen cheating, which most non-lawyers would call theft.
>
> (TFB Ex. 7, p. 17). Since only an attorney can tackle the problems of overbilling and ineffective representation, it follows that the author of a book, on how to end "attorney deception, intimidation and overbilling", is also an attorney. That he is a "veteran, retired attorney" does not dispel the misimpression that he practices law.

(1st Report, pp. 18-19). Again, the Referee does not find that Respondent explicitly held himself out to the public as a licensed lawyer. There can be nothing illegal about telling the public that one is a former attorney; that is the truth. And, the Referee's attempt at logic, that only an attorney could perform the work of ACS, is obviously absurdly flawed: a license does not make someone capable of anything. It is training, education and experience that makes one capable of spotting an attorney overbilling his client. And as this Court must realize, any attempt to require that only licensed attorneys can audit attorney bills would endanger the entire licensing process of the profession as an anti-trust violation. Any individual has the right to hire whomever he wants to help him oversee his lawyer, because that is what a client does; that is not what a lawyer does. The lawyer does the lawyering, the client does the overseeing. Lawyers cannot dictate that their clients must be ignorant of the law in order to be a client.

All of that aside, the Petition did not charge Respondent with anything related to the operation of ACS, so the Referee's language here is nothing but *dicta* that reveals his bias against Respondent.

V. The allegation that Respondent used the email address Jeff@Norkinlaw.com is false, unsupported by any competent evidence, and even if true, cannot be the basis of criminal contempt because no court order specifically prohibits the use of the word law in an email address and because no law criminalizes the conduct, prosecuting it violates Respondent's right to substantive due process.

During the trial, Respondent testified that he had not sent out any emails on jeff@norkinlaw.com for years. He maintained the address only because many vendors and people would not be able to reach him if he took it down.

No person in American history of this country has been incarcerated for using an email address that had the word "Law" in it. More importantly, no court order explicitly prohibited Respondent from doing so. Therefore, contempt cannot be based on its use.

VI. Allegations that Respondent used the filing portal with his attorney account, use of jeff@norkinlaw.com, and the purported language in his Facebook page and company website, do not state causes of action for contempt or the violation of any existing law. Prosecution of these acts without prior notice violates Respondent's right to substantive due process and thus only an injunction is available as a remedy.

It is universally held, and a matter of substantive due process that:

> In either the civil or criminal contempt scenario, a person cannot be held in contempt for violating a court's order if the order is not sufficiently explicit or precise to put a party on notice of exactly what

> it must or must not do. *Marcus v. Marcus*, 902 So. 2d 259, 262 (Fla. 4th DCA 2005).

Wilcoxon v. Moller, 132 So. 3d 281, 286-87 (Fla. 4th DCA 2014).

The counts other than the false and erroneous allegations of the unlicensed practice of law fail as a matter of law because, among other grounds, the Bar did not allege or argue that any particular language in any Court order expressly and explicitly prohibited the use of the email address jeff@norkinlaw.com or his portal account, implying to the public that he was a licensed lawyer without more. The IRR does not cite any such order language. Therefore, the Referee's findings and recommendations of guilt fail as a matter of law:

Neither the Bar nor the Referee cited any such language in any order of this Cout because none exists.

VII. This Court and the Florida Bar, at all times from its inception, have been prohibited from presiding over and prosecuting this case respectively when the issues presented, as explicitly recited in the charging document, involve conduct which this Court and the Bar consider offensive and where the two entities have clearly demonstrated animus toward Respondent and a long, terrible history of abuse pursuant to that animus.

A. The Bar is prohibited from prosecuting this case.

A respondent in a criminal contempt proceeding has an absolute "right to be prosecuted by an impartial prosecutor…" *Young v. United States ex rel. Vuitton Et Fils S. A.*, 481 U.S. 787, 789, 107 S. Ct. 2124, 2128 (1987).

In *Young,* the United State Supreme Court held "Counsel for a party that is the beneficiary of a court order may not be appointed to undertake criminal contempt

prosecutions for alleged violations of that order. A private attorney appointed to prosecute a criminal contempt should be as disinterested as a public prosecutor, since the attorney is appointed solely to pursue the public interest in vindication of the court's authority." *Id at 2134.*

In its pleadings, the Bar does not pretend to be unbiased and has gone far above and beyond merely presenting it's accusation by unnecessarily, gratuitously, pompously, and gleefully criticizing Mr. Norkin. Moreover, no serious observer would argue that the Bar is a disinterested party, as they are arguing that Mr. Norkin has offended the profession over which the Bar presides. Indeed there is a long history of animosity between the Bar and Mr. Norkin. Moreover, the Bar is accusing Mr. Norkin of violating a court order that the Bar sought and received from the Florida Supreme Court. Now they stand before the Referee asking that Mr. Norking be punished for what they imagine to be a violation of that order that the Bar procured on their behalf.

Not only is there an appearance of impropriety, there is an actual conflict which the United State Supreme Court has warned against. Indeed Justice Brennan, joined by three other justices added that the harmless-error doctrine did not apply when a court appoints counsel for an interested party as contempt prosecutor, since such error is so fundamental and pervasive that it requires reversal without regard to the facts or circumstances of the particular case.

An additional quote from *young* is apropos here: “Between the private life of the citizen and the public glare of criminal accusation stands the prosecutor. That state official has the power to employ the full machinery of the state in scrutinizing any given individual. Even if a defendant is ultimately acquitted, forced immersion in criminal investigation and adjudication is a wrenching disruption of everyday life. For this reason, we must have assurance that those who would wield this power will be guided solely by their sense of public responsibility for the attainment of justice. A prosecutor of a contempt action who represents the private beneficiary of the court order allegedly violated cannot provide such assurance, for such an attorney is required by the very standards of the profession to serve two masters.” *Id.*

In *Holloway*¸ cited by *Young,* the United States Supreme Court explained that “[a]ppointment of an interested prosecutor is also an error whose effects are pervasive. Such an appointment calls into question, and therefore requires scrutiny of, the conduct of an entire prosecution, rather than simply a discrete prosecutorial decision. Determining the effect of this appointment thus would be extremely difficult. A prosecution contains a myriad of occasions for the exercise of discretion, each of which goes to shape the record in a case, but few of which are part of the record.” *Holloway v. Arkansas,* 435 U.S. 475 (1978).

While *Young* does not categorically forbid an interested party from having any involvement in a prosecution, it forbids an interested party from controlling the

prosecution . *United States v. Siegelman*, 786 F.3d 1322 (11th Cir. 2015). Here, the Bar controls the prosecution. While, counsel for the beneficiary of a court order cannot "be in control" of a later contempt prosecution, it may "be put to use in assisting a disinterested prosecutor" *Person v. Miller*, 854 F.2d 656, 663–64 (4th Cir.1988)

The Bar is not an independent, impartial prosecutorial authority. Respondent has alleged, with dozens of pieces of evidence in support, that the Bar has been fraudulently persecuting him for over 13 years. The Bar never had any reason to investigate the criminal, Kim Ferguson's complaint and broke the law and caused massive catastrophic harm by obstructing justice by investigating and prosecuting Respondent in the midst of *Ferguson v. Beem*. The Bar has frequently and vociferously voiced its offense and displeasure at Respondent's allegations, including in the Petition that initiated this case.

The fact that this was sanctioned by the Florida Supreme Court does nothing to resolve the problem; even the courts are bound by the law.

B. The Florida Supreme Court is strictly prohibited from presiding over this case.

Florida Rule of Criminal Procedure 3.840(e) provides as follows:

> **(e) Disqualification of Judge.** 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.

Accordingly, because this case involves allegations of disrespect and insult of that court, it must, and has at all times been required to disqualify itself or be disqualified from this proceeding.

In addition to the foregoing, this quasi-judicial body cannot assert that Respondent has committed contempt of "court" because, in this procedural framework, the Florida Supreme Court *is not a court*. Rather, it is an administrative body pursuant to its own rules. Fla. Bar Rule 3-7.6(f). "Procedures Before a Referee," states:

> Nature of Proceedings.
>
> **(1)** *Administrative in Character.* A disciplinary proceeding is neither civil nor criminal but is a quasi-judicial administrative proceeding. The Florida Rules of Civil Procedure apply except as otherwise provided in this rule.

This is the procedural framework of this case. It is a matter before a Referee. Administrative bodies do not have contempt powers.

Most importantly, there is no clear provision entitling contempt defendant to the right to appeal contempt orders in the course ordinarily provided to all other Floridians. This is an essential right and if it is deprived, then these proceedings are void as unconstitutional, in violation of the 14th Amendment's guarantees of procedural due process and equal protection of the laws

VIII. This prosecution violates Respondent's right to be free from Double Jeopardy. The same acts were prosecuted and dismissed by the State of

Florida and the Bar's arbitrary imposition of a date limitation is fictional and of no avail.

The Double Jeopardy Clause's protection attaches in criminal contempt prosecutions just as it does in other criminal prosecutions. *United States v. Dixon,* 509 U.S. 688, 113 S. Ct. 2849, 125 L. Ed. 2d 556 (1993)

Mr. Norkin has been prosecuted for allegedly practicing law in matters related to the Beem-Ferguson litigation. Here the accusation, when distilled from the myriad of unrelated aspersions against Mr. Norkin, is that Mr. Norkin practiced law in the Been v. Ferguson case. This very conduct was the subject of the criminal case brough against Mr. Norkin in *State of Florida v. Jeffery Norkin,* Miami-Dade case number F1618439 .

The Bar attempted to skirt this issue by summarily asserting in its Rule to Show Cause that "It is important to note, however, that the charging document in the 11th Circuit criminal case references a specific window of time during which the alleged illegalities occurred: December 2, 2013 to November 14, 2017." Thus, the Bar believes that it has cured both the letter and spirit of the constitutional prohibition against double jeopardy by splicing Mr. Norkin's alleged actions in the Beem v. Ferguson litigation into units separated by an arbitrary date; one unit to be prosecuted by the State and one by the Bar. However, double jeopardy forbids excessive prosecutions and cumulative punishments whatever the sequence. *See Brown v. Ohio,* 432 U.S. 161 (1977).

The allegations as they relate to the Beem v. Ferguson litigation could have or should have been prosecuted as one case rather than allowing the State and Bar two bites at the same apple by arbitrarily splitting the case into two (prosecution by the State for the dates of December 2, 2013 to November 14, 2017, and prosecution by the Bar from November 14, 2017, and after) . This is precisely the evil that the constitutional prohibition against double jeopardy seeks to prevent. Constitutional protection does not allow for two opportunities to incarcerate Mr. Norkin for the same alleged course of conduct.

The State filed it's amended charging document in February of 2020, long after the bulk of that which is complained of in the Rule to Show Cause filed by the Bar transpired. Moreover, the plea negotiations and talks concerning the appropriate resolution of the matter (think punishment/jeopardy) in the Miami-Dade criminal case were not confined to December 2, 2013 to November 14, 2017, nor has the Bar confined its complaints in the Rule to Show Cause to actions that allegedly occurred after November 14, 2017.

While it is conceded that exceptions to the constitutional prohibition against double jeopardy exist where the state is unable to proceed on a charge at the outset because additional facts necessary to sustain that charge have not occurred or have not been discovered despite exercise of due diligence, here that is not the case. *See Diaz v. United States*, 223 U.S. 442, 448-449, (1912). In February of 2020, the state

knew everything they needed to include all the "ongoing conduct" from December 2, 2013 until February of 2020. In fact, the state could have and should have included the entire transaction or occurrence. As United State Supreme Court held in *Brown v. Ohio*, "Prosecutors cannot avoid limitations of double jeopardy clause by simple expedient dividing single crime into a series of **temporal** or spatial units." *Brown v. Ohio*, 432 U.S. 161 (1977)(emphasis added). *See also*, *Sanabria v. United States*, 437 U.S. 54 (1978) This is precisely what was done here.

Moreover, the Bar has alleged in its Rule to Show Cause that this was a series of "ongoing conduct." It would therefore be audacious and abusive for the Bar to now-in an attempt to punish Mr. Norking for a course of conduct for which jeopardy has attached-argue that they are separate offenses; separated by the arbitrary date of November 14, 2017.

The Referee, in his Report, cemented the violation of Respondent's double jeopardy rights when he openly considered events that occurred before the 2018 starting point. (*See*, 1st Report, pp. 14-15)

The State did not prosecute Mr. Norkin for any individual pleading he is alleged to have filed in *Beem v. Ferguson*. In February of 2020, it prosecuted Mr. Norking for practicing law without a license from December 2, 2013 to November 14, 2017. Pursuant to the case law cited above, the crime could not be arbitrarily divided into two temporal units to allow for two attempts to prosecute Mr. Norkin.

IX. Based on the foregoing, and the fact that the amount imposed is preposterous in relation to the gravity of the charged acts even if they were true, and because no court can require someone to undergo mental healthcare without expert testimony or some extraordinary public interest, the imposition of the $24,000 in costs and mental health treatment are null and void.

Obviously, if this case is dismissed, as it must be, the $24,000 in imposed costs and imposition of involuntary mental health examination and treatment would also be vacated. However, even if any part or even all of the Referee's recommendations survive, these sanctions must be vacated.

The State cannot just take $24,000 from Respondent without total, full due process. This case cannot be said to have provided that to Respondent. And no legal authority gives this Court or the Referee the right to require, and absolutely no evidence was submitted to support a requirement that Respondent undergo any kind of mental health treatment or diagnosis.

Where am I? North Korea? Afghanistan? Please, someone tell me!

WHEREFORE, Respondent, Jeffrey A. Norkin, *pro se*, responds to the Bar's "Initial Brief" and hereby moves the Florida Supreme Court preliminarily to disqualify itself as the presiding authority as a matter of law. Alternatively, if that relief is rejected yet another time, Respondent moves the Court to dismiss this case on any of the above grounds, including lack of subject matter jurisdiction, complete and utter deprivation of due process, and most fundamentally, on the merits, to issue an order to show cause why the Bar and Bar Counsel should not be held in contempt

of Court, and order the Bar to pay the State of Florida all costs and fees the State has incurred in paying for Mr. Norkin's defense during the two years of the Bar's prosecution of this sham, false, and malicious prosecution..

CERTIFICATE OF SERVICE

I hereby certify that a true and correct copy of the foregoing has been served via electronic filing and via email on this 26th day of October, 2023 to Patty Savitz, Bar Counsel, The Florida Bar and to the Bar Referee.

Jeffrey A. Norkin,
Appellant/Respondent *pro se*
305-321-6675
Jnork68@gmail.com

/S/ Jeffrey Norkin
Jeffrey Norkin