

UNITED STATES DISTRICT COURT FOR THE
SOUTHERN DISTRICT OF FLORIDA
MIAMI DIVISION

08-20533-CIV-ALTONAGA/TURNOFF

FLORIDA J.A.I.L. 4 JUDGES, FLORIDA DIVISION
OF ELECTIONS COMMITTEE #35025,

Case. No.:

PLAINTIFF,

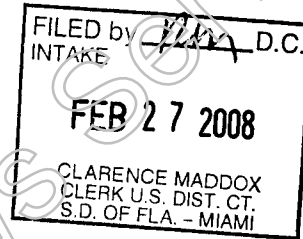
**COMPLAINT FOR DECLARATORY AND
INJUNCTIVE RELIEF**

VS.

ADVISORY JURY TRIAL REQUESTED

THE FLORIDA BAR, THE FLORIDA SUPREME
COURT, CHIEF JUSTICE R. FRED LEWIS, JUSTICE
CHARLES T. WELLS, JUSTICE HARRY LEE
ANSTEAD, JUSTICE BARBARA J. PARIENTE,
JUSTICE PEGGY A. QUINCE, JUSTICE RAOUL G.
CANTERO, AND JUSTICE KENNETH B. BELL,

DEFENDANTS.



Plaintiff, Florida J.A.I.L. 4 Judges, Florida Division of Elections Committee #35025, sues Defendants, The Florida Bar, The Florida Supreme Court, and, solely in their official capacities, Chief Justice R. Fred Lewis, Justice Charles T. Wells, Justice Harry Lee Anstead, Justice Barbara J. Pariente, Justice Peggy A. Quince, Justice Raoul G. Cantero, and Justice Kenneth B. Bell and alleges:

INTRODUCTION

By this suit, Plaintiff seeks federal district court review of the federal and Florida constitutionality of Defendants' rules and practices, both on their face and as applied, which:

- (i) Deny an impartial tribunal;
- (ii) Usurp Political Power Reserved to the People;
- (iii) Disparage The Right to Petition for Redress;

- (iv) Violate Constraints Relating To Engaging In Political Activity; and
- (v) Violate Florida Statutes, Chapter 106.

JURISDICTION AND VENUE

1. Jurisdiction of this Court is invoked pursuant to (i) Article III of the United States Constitution, (ii) the provisions of 28 U.S.C. §1331, §1343(a)(3) and (4), §2201 and §2202 and 42 U.S.C. §1983, and (iii) the provisions of 28 U.S.C. §1367.

2. Venue in this district is proper under 28 U.S.C. §1391 as a substantial part of the events or omissions giving rise to the claims herein occurred in this Court's district.

PARTIES

3. Plaintiff Florida J.A.I.L. 4 Judges, Florida Division of Elections Committee #35025 is a Political Action Committee recognized by the Florida Department of State, Division of Elections and at all times relevant was "active" as Committee #35025. United under the banner of Florida JAIL4Judges is a broad coalition of citizens from all backgrounds, professions, and political persuasions who are dedicated to the mission of re-instating the accountability of the Florida judiciary.

4. The Defendant Supreme Court of Florida established Defendant The Florida Bar as "an official arm of the Court." *Rules Regulating the Florida Bar*, 494 So.2d 977, 979 (Fla.1986). Defendant The Florida Bar is an integrated bar. *Rules Regulating the Florida Bar*, §§ 1-3.1, 1-3.2. As a creation of the Florida Supreme Court, Defendant The Florida Bar is under that Court's supervision and subject to that Court's regulation. *The Florida Bar re Schwarz*, 552 So.2d 1094 (Fla. 1989).

5. Defendant Florida Supreme Court is the highest Court of the State of Florida and,

pursuant to Florida Constitution, Article V, §15, “shall have exclusive jurisdiction to regulate the admission of persons to the practice of law and the discipline of persons admitted.”

6. Defendants Chief Justice R. Fred Lewis, Justice Charles T. Wells, Justice Harry Lee Anstead, Justice Barbara J. Pariente, Justice Peggy A. Quince, Justice Raoul G. Cantero, Justice Kenneth B. Bell are, and at all time relevant were, Justices of the Defendant Florida Supreme Court. (“Defendant Justices”).

GENERAL ALLEGATIONS

7. Plaintiff Florida J.A.I.L. 4 Judges seeks to amend Article V of the Florida Constitution with certain provisions known as “The Judicial Accountability Law”.

8. “The Judicial Accountability Law” proposal would create special grand juries to investigate complaints against judges. These grand juries would have the power to discipline judges by levying fines, removing them from the bench and, where appropriate, subjecting them to criminal proceedings before special trial juries.

9. The Florida Bar, through its members, officers and employees has and is presently engaged in direct and indirect political activities and controls editorial content in its two publications, “The Florida Bar News” and “The Florida Bar Journal”, which are regularly distributed to all 80,000± members of the Florida Bar.

10. The Florida Bar Journal has repeatedly reported the activity of Defendant The Florida Bar’s opposition to Plaintiff’s activities to amend the Florida Constitution. On July 15, 2006, the Florida Bar News reported: “A constitutional amendment petition drive by Florida J.A.I.L. 4 Judges ‘claims to be able to sanction corrupt judges with civil lawsuits and even jail. It claims that J.A.I.L. (Judicial Accountability Initiative Law) is totally in the hands of the people and is accountable to

no government body,” [Former Florida Supreme Court Justice Major] Harding said. “And, my friends, this is an effort to undermine the very foundation of our country and places at risk freedoms and liberties we have been so blessed to have.” A copy of that article is attached as Exhibit “A”.

11. In the same July 15, 2006, edition of the Florida Bar News, it was reported that:

The Bar’s Judicial Independence Committee is looking locally and internationally at possible threats to the ability of judges and lawyers to do their jobs. . . . The viability of the group’s Florida campaign remains uncertain. Dana Watson, a legislative aide with the Bar who serves as staff for the committee, said the group began its state petition drive four years ago, but has collected only 16 signatures. About 611,000 verified signatures are necessary to get the amendment on the ballot. . . . Diner noted the Web site lists county directors, although most counties, including some of the largest in the state, apparently do not yet have directors. The committee did not vote to take any action on the group, but Diner said, “Let’s keep our eyes open on this and be as informed as we can be”.

A copy of that article is attached as Exhibit “B”.

12. In the January 15, 2007, edition of the Florida Bar News, Defendant The Florida Bar had reported under a headline that read: “*Despite SD loss, J.A.I.L.4Judges targets Florida – Attorneys urged to be prepared for the fight*”:

If backers of an amendment known as J.A.I.L.4Judges succeed in getting their constitutional amendment on the Florida ballot, the state’s lawyers should be ready to lead a campaign to defeat it. . . . Tom Barnett, executive director of the State Bar of South Dakota, gave that advice to the Bar Board of Governors at its December meeting. Barnett led the campaign last year that resulted in the defeat of a J.A.I.L.4Judges initiative in South Dakota that wound up failing by an 89-to-11 percent margin. . . . He advised the Bar to begin preparing early for the potential campaign, and outlined how the anti-amendment campaign was waged in South Dakota. . . . “Start building coalitions today,” he said. “Who uses the court system? Business. Who has the money to do appeals? Business. Tell them this will hurt the court system.”

A copy of that article is attached as Exhibit “C”.

13. On February 15, 2007, Defendant The Florida Bar's Judicial Independence Committee met in Miami, Florida, and agreed upon a new mission statement to better capture its evolving purpose which, after a reasonable opportunity for further investigation or discovery, Plaintiff will establish was to covertly oppose Plaintiff's political activities. That newly-adopted mission statement was: "To educate the people of Florida regarding the importance of protecting, preserving, and maintaining a fair, impartial, and independent judiciary. To study activities that might impact a fair, impartial, and independent judiciary and make recommendations to address those activities. To assist The Florida Bar, together with local and voluntary bar associations, in responding to efforts that infringe upon or attack a fair, impartial, and independent judiciary." A copy of that article is attached as Exhibit "D".

14. On February 21, 2007, Plaintiff petitioned the Defendant Florida Supreme Court to "Enjoin the Florida Bar from Political Activities Related to the Article XI, §3 Initiative of Florida J.A.I.L. 4 Judges". That petition was assigned Case Number SC07-400. On May 18, 2007, after the Defendant Justices refused to disqualifying themselves from consideration of that petition or declare their *ratio decidendi* for their decision on the motion to disqualify to insure that their ruling comported with the requirements of *stare decisis*, dismissed the petition in SC07-400, claiming that it lacked jurisdiction to hear that petition.

15. Plaintiff timely filed a petition for a writ of certiorari with the United States Supreme Court from the decision in SC07-400. That matter was assigned Case Number 07-885. On February 19, 2008, the United States Supreme Court denied the petition for certiorari.

16. After a reasonable opportunity for further investigation or discovery, Plaintiff will establish that Defendant The Florida Bar's Judicial Independence Committee has been working

disqualify to insure that their rulings comport with the requirements of *stare decisis*;

C. Retain jurisdiction of this matter to enforce this declaratory degree if subsequently violated by Defendants Florida Supreme Court and Justices;

D. Issuing a permanent injunction against the Defendants Florida Supreme Court and Justices to force them to conform their response to motions to disqualify to federal and Florida Constitutional constraints;

E. Awarding reasonable costs, disbursements and attorney fees pursuant to 42 U.S.C. §1988; and

F. Enter such other and further relief as the Court deems just and proper.

SECOND CLAIM
DECLARATORY RELIEF AND PERMANENT INJUNCTIVE RELIEF
(Usurping Political Power)

19. Plaintiff re-alleges paragraphs 1 through 16 and incorporates them herein by reference.

20. The Florida Constitution, Article I, §1 states “All political power is inherent in the people. The enunciation herein of certain rights shall not be construed to deny or impair others retained by the people.” Likewise, the Ninth Amendment to the United States Constitution similarly states: “The enumeration in the Constitution, of certain rights, shall not be construed to deny or disparage others retained by the people.”

21. The only authority granted by the People regarding attorneys is found at Florida Constitution, Article V, §15, which states: “The supreme court shall have exclusive jurisdiction to regulate the admission of persons to the practice of law and the discipline of persons admitted.” Hence, the limited power ceded to the Defendant Florida Supreme Court from the People permits

that Court to only regulate (i) admission and (ii) discipline of persons admitted to practice law.

22. From this limited grant of power, Defendant Florida Supreme Court has usurped the additional political power to create – as its “official arm” – Defendant The Florida Bar whose purpose the Defendant Florida Supreme Court has greatly expanded beyond the limited grant of regulating attorney admission and discipline to: “inculcate in its members the principles of duty and service to the public, to improve the administration of justice, and to advance the science of jurisprudence.” Moreover, through one of its official committees, Defendant The Florida Bar is now assisting “local and voluntary bar associations, in responding to efforts that infringe upon or attack a fair, impartial, and independent judiciary.” As such, Defendant The Florida Bar is now taking political or ideological position on matters that are not germane to Defendant The Florida Bar's stated sole purpose, to wit, the admission and discipline of persons admitted to practice law in Florida.

23. Plaintiff challenges the federal and Florida constitutionality of this radical and unauthorized expansion of the political and ideological role of Defendant The Florida Bar by Defendant Florida Supreme Court and its Justices from Defendant The Florida Bar's basic function as an usurpation of political power from the People both on its face and as applied further alleging the threat that the Plaintiff has and will continue to lose political power is real, immediate, and continuing given Defendant The Florida Bar's on-going direct and indirect opposition to Plaintiff's Florida constitutional amendment initiative.

WHEREFORE, Plaintiff requests that this Court:

- A. Assume jurisdiction of this action;
- B. Declare that the Defendants The Florida Bar, Florida Supreme Court and Justices

have usurped political power from the Plaintiff which power is secured by the Common Law, the First and Fourteenth Amendments of the Federal Constitution and the Florida Constitution by the radical and unauthorized expansion of the political role of Defendant The Florida Bar by Defendant Florida Supreme Court and its Justices;

C. Retain jurisdiction of this matter to enforce this declaratory decree if subsequently violated by Defendants The Florida Bar, Florida Supreme Court and Justices;

D. Issuing a permanent injunction against the Defendants The Florida Bar, Florida Supreme Court and Justices to force them to conform their political behavior to federal and Florida Constitutional constraints;

E. Awarding reasonable costs, disbursements and attorney fees pursuant to 42 U.S.C. §1988; and

F. Enter such other and further relief as the Court deems just and proper.

THIRD CLAIM

DECLARATORY RELIEF AND PERMANENT INJUNCTIVE RELIEF (Disparaging The Right to Petition for Redress)

24. Plaintiff re-alleges paragraphs 1 through 16 and incorporates them herein by reference.

25. Under Florida Constitution, Article I, § 5: “The people shall have the right peaceably to assemble, to instruct their representatives, and to petition for redress of grievances.” Likewise, under the Federal Constitution, First Amendment, “Congress shall make no law . . . prohibiting . . . the people . . . to petition the government for a redress of grievances.” The Acts of Reconstruction, 39 Cong. Ch. 153, §5, makes the First Amendment binding on the State of Florida.

26. The government may not abridge “equality of status in the field of ideas” by granting

the use of public forums to those whose views it finds acceptable while denying their use to those with controversial views. Through the mediums of its publications and its iron-grip on committee appointments and their policies, Defendant The Florida Bar has *de facto* reserved the public field of ideas to itself, invoked *ad hominem* arguments against its adversaries, and banned any discussion contrary to its “orthodox” views.

27. The government may not monopolize the “marketplace of ideas” thus drowning out private sources of speech. By its afore-described activities, Defendant The Florida Bar has monopolized communications to lawyers and the public given the exorbitant cost to access the “marketplace of ideas” and the prestige, power and purse that the Florida Bar brings to that “captured” and “controlled” marketplace – Florida’s admitted lawyers and by far the largest representative group in the legislature.

28. The government may not “compel persons to support candidates, parties, ideologies or causes that they are against.” Defendants The Florida Bar, Florida Supreme Court and its Justices have articulated a theory which they surmises allows Defendant the Florida Bar to establish, maintain and supervise “a program for providing information and advice to the courts and all other branches of government concerning current law and proposed or contemplated changes in the law.” Rules Regulating Fla. Bar 2–3.2(d)(4). Here, Defendant The Florida Bar is impermissibly using compulsory dues to endorse or advance a political objective, to wit, the defeat of Plaintiff’s Florida constitution initiative.

29. Plaintiff raises claim have heretofore not addressed or adjudicated: to wit, whether the political activities of Defendant The Florida Bar violates the right to petition.

30. Plaintiff challenges the federal and Florida constitutionality of the radical and

unauthorized expansion of the political and ideological role of Defendant The Florida Bar by Defendant Florida Supreme Court and its Justices as a violation of Florida and federal constitutional right upon the grounds of: (i) “equality of status in the field of ideas”, (ii) monopolizing the “marketplace of ideas” and (iii) compelling persons to support candidates, parties, ideologies or causes that they are against, by the Defendant The Florida Bar’s afore-described activities both on their face and as applied further alleging the threat that the Plaintiff has and will continue to lose constitutionally-protected rights is real, immediate, and continuing given Defendant The Florida Bar’s direct and indirect past, continuing and future opposition to Plaintiff’s Florida constitutional amendment initiative.

WHEREFORE, Plaintiff requests that this Court:

- A. Assume jurisdiction of this action;
- B. Declare that the Defendants The Florida Bar, Florida Supreme Court and Justices have violated the right to petition secured by the Common Law, the First and Fourteenth Amendments of the Federal Constitution and the Florida Constitution their political activities of the Defendants The Florida Bar, Florida Supreme Court and its Justices and directing Defendant The Florida Bar to level the playing field by providing space in its publication to fairly compete in the field and marketplace of ideas;
- C. Retain jurisdiction of this matter to enforce this declaratory decree if subsequently violated by Defendants The Florida Bar, Florida Supreme Court and Justices;
- D. Issuing a permanent injunction against the Defendants The Florida Bar, Florida Supreme Court and Justices to force them to conform their political behavior to federal and Florida Constitutional constraints;

E. Awarding reasonable costs, disbursements and attorney fees pursuant to 42 U.S.C. §1988; and

F. Enter such other and further relief as the Court deems just and proper.

FOURTH CLAIM

DECLARATORY RELIEF AND PERMANENT INJUNCTIVE RELIEF

(Violate Constitutional Constraints Relating To Engaging In Political Activity)

31. Plaintiff re-alleges paragraphs 1 through 16 and incorporates them herein by reference.

32. Florida's Code of Judicial Conduct, Canon 7A(3)(d)(ii) provides that a judge shall not make statements that commit or appear to commit him or her with respect to cases, controversies, or issues that are likely to come before the court.

33. Defendant The Florida Bar is "arm" of Defendant Florida Supreme Court over which Defendant Florida Supreme Court enjoys complete authority. Rules Regulating the Florida Bar, 2-3.1; Rules Regulating the Florida Bar, 1-12.1.

34. Plaintiff's Florida Constitutional initiative will come before Defendant Florida Supreme Court either directly through action of the Florida Constitution, Art. IV, §10 and Article V, § 3(b)(10) or indirectly as a challenge to the Florida J.A.I.L. 4 Judges initiative if enacted.

35. For the "arm" of the Defendant Florida Supreme Court to engage in political activity against the Plaintiff's Florida J.A.I.L. 4 Judges initiative is prohibited by Canon 7A(3)(d)(ii) and a very violation of that fundamental right to an "independent, fair and competent judiciary" whom the People trust to judge them fairly and impartially.

WHEREFORE, Plaintiff requests that this Court:

A. Assume jurisdiction of this action;

B. Declare that Defendant Justices violate Canon 7A(3)(d)(ii) and Florida and federal constitutional guarantees to an impartial judiciary by permitting their “official arm” Defendant The Florida Bar’s afore-described activities against Plaintiff’s Florida constitutional initiative.

C. Retain jurisdiction of this matter to enforce this declaratory degree if subsequently violated by Defendants The Florida Bar, Florida Supreme Court and Justices;

D. Issuing a permanent injunction against the Defendant Justices to force them to conform their and their official arm’s political behavior to Canon 7A(3)(d)(ii).

E. Awarding reasonable costs, disbursements and attorney fees pursuant to 42 U.S.C. §1988; and

F. Enter such other and further relief as the Court deems just and proper..

FIFTH CLAIM
DECLARATORY RELIEF AND PERMANENT INJUNCTIVE RELIEF
(Violate Florida Statutes Chapter 106)

36. Plaintiff re-alleges paragraphs 1 through 16 and incorporates them herein by reference.

37. Florida Statute §106.011(1)(a)1.c defines “Political committee” to include “A combination of two or more individuals, or a person other than an individual, that, in an aggregate amount in excess of \$500 during a single calendar year: . . .Makes expenditures that expressly advocate the election or defeat of a candidate or the passage or defeat of an issue.”

38. Each “Political committee” is required – as Plaintiff properly has – to register with the Florida Division of Elections pursuant to Florida Statute, §106.03. A review of the Division’s records by the undersign reveal no such registration by Defendant The Florida Bar.

39. The Florida Legislature intended by enacting §106.03 that there be a public

disclosure of persons who have organized to seek substantial contributions or make substantial expenditures for a political purpose.

40. Defendant The Florida Bar has and is in the process of organizing and expending Defendant The Florida Bar resources to “defeat” the “issue” proposed by Plaintiff. Indeed, at present it is known that the Florida Bar’s Board of Governors has sought expert counsel – at presently unknown expense to the Florida Bar – on how to oppose Florida J.A.I.L. 4 Judges and the importance of raising money to do so.

41. Significantly, that expert counsel’s advice included raising money from the only group that can afford Florida’s prohibited costs of access to its so-called appellate process – “businesses”.

42. When Plaintiff brought this violation of Chapter 106 to the Defendant Florida Supreme Court’s attention in SC07-400, Defendant Florida Supreme Court – which has complete authority of Defendant The Florida Bar – declined to act by inaccurately stating they lacked “jurisdiction”.

WHEREFORE, Plaintiff requests that this Court:

- A. Assume jurisdiction of this action;
- B. Declare that Defendant The Florida Bar is violating Chapter 106 by engaging in opposition to Plaintiff’s Florida constitutional initiative without complying with the registration requirements of Chapter 106.
- C. Retain jurisdiction of this matter to enforce this declaratory degree if subsequently violated by Defendants The Florida Bar, Florida Supreme Court and Justices;
- D. Issuing a permanent injunction against the Defendant The Florida Bar to force them

to comply with Chapter 106;

E. Awarding reasonable costs, disbursements and attorney fees pursuant to 42 U.S.C. §1988; and

F. Enter such other and further relief as the Court deems just and proper.

Plaintiff demands a jury trial on all issues so triable herein or, alternatively, requests pursuant to Federal Rules of Civil Procedure, Rule 39(c), an advisory jury.

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By: _____


Montgomery Blair Sibley

Fla. Bar No.: 725730

July 15, 2006

The profession faces challenges that must be met

By Jan Pudlow

Senior Editor

Even though former Florida Supreme Court Justice Major Harding considers himself an optimist, challenges faced by the judiciary can be downright depressing.

"I feel like the guy walking around with the sign: 'Repent! The end is near!'" Harding said in his keynote address at the General Assembly at the Bar's Annual Convention in Boca Raton June 23.

"But there is something we can do. We can repent. We can change. And we can meet this challenge."

Among the challenges Harding listed:

- There is a need to educate those who come to America from other countries about the value of an independent judiciary.

"One out of two people living in Miami-Dade County was born in another country. Did you know that?" Harding asked.

"Yeah, I did," said Bar President-elect Frank Angones, born in Cuba.

"He's one of the two," Harding continued, to laughter.

"These people come into our country, many of them have no tradition of an independent and nonpoliticized judiciary. I've been told by lawyers and judges, throughout the state and throughout the country, that many of these people have a tradition of bribery and corruption to get favorable decisions. I think it presents to us, as members of the Bar, a significant challenge to tell these friends what a wonderful system we have and how things get done better the way we do it."

- There is a growing divide between the rich and the poor.

"We hear that many families making a living wage cannot find adequate housing for their families. A startling headline in the Jacksonville paper just a few days ago said that one out of 50 on the First Coast are homeless. One out of 50! My friends, that is startling!"

- County courts have become a collection court, primarily for credit card debt.

"Whether these assertions are true, they are statewide; they are a concern; and we as members of the Bar should consider them a

Exhibit "A"

send money to legal aid associations in your area. You can be the one who will help change the course of history and help preserve this wonderful heritage created for us by our founders. You can be the one who will help the efforts of our new Florida Bar President Hank Coxe, who this year will walk in the shoes of those who have so faithfully gone before him."

[Updated: 07-11-2006]

July 15, 2006

Independence panel concerned by threats

J.A.I.L.4Judges seeks to subject sitting judges to civil and criminal penalties imposed by special tribunals

By Gary Blankenship
Senior Editor

The Bar's Judicial Independence Committee is looking locally and internationally at possible threats to the ability of judges and lawyers to do their jobs.

The committee met June 22 at the Bar's Annual Convention in Boca Raton. Its discussion items included efforts in England and Wales to place regulation of lawyers under the executive branch and a voter initiative in Florida — called J.A.I.L.4Judges — that seeks to subject sitting judges to civil and criminal penalties imposed by special tribunals.

The committee also discussed problems with judicial elections.

Committee Chair Jesse Diner said the J.A.I.L.4Judges campaign in Florida, although established a couple years ago, recently set up a Web site for its campaign for a constitutional amendment. He said the effort is based on an existing campaign in South Dakota where the initiative goes to voters this fall.

"Basically, they want to take away the immunities that are provided to a judge in this state, except as specifically provided in the amendment, which is basically nothing," Diner said. "It is statewide grand juries for the purpose of prosecuting judges for deviating from what they consider the standards of what a judge should do.

"The proposed amendment seeks to not only hold accountable judges, justices, and magistrates, but also judicial mediators and arbitrators and referees and anyone who is shielded by judicial immunity," he added.

Tax on Judges

Other features provide that the program would be paid for by a 2.9 percent tax on judges' salaries, and grand jurors — who would serve for a year — would be paid a salary equal to that of circuit judges. Committee member Debra Curtis said there would be no appeal from the special grand jury's rulings and that the grand jury could initiate criminal charges without the involvement of a state attorney.

Exhibit "B"

Committee member Richard Levenstein noted the amendment provides that a grand juror must be at least 30, have been a citizen for nine years, and may not be a judge or a lawyer.

The amendment also provides that it takes precedence over any conflicting state constitutional provisions. Judges found by the grand jury to have made three mistakes would be automatically removed from office and would have whatever pension benefits they were due reduced by one-half. Judges are also prohibited from billing the public when they defend themselves from any charges filed with a grand jury.

Diner said the goal of the national campaign is to pass the amendment in South Dakota, and then undertake campaigns in California and Florida.

According to the Florida J.A.I.L. Judges Web site, "Our goal is to take Florida and California by storm, then the other states by fall-out. What begins in Florida and California sweeps the nation. With pressure from the other states, we will create a call for federal judicial accountability."

The viability of the group's Florida campaign remains uncertain. Dana Watson, a legislative aide with the Bar who serves as staff for the committee, said the group began its state petition drive four years ago, but has collected only 16 signatures. About 611,000 verified signatures are necessary to get the amendment on the ballot.

That could change, however, as the group just posted its Web site on the Internet, which could raise its visibility. Diner noted the Web site lists county directors, although most counties, including some of the largest in the state, apparently do not yet have directors.

The committee did not vote to take any action on the group, but Diner said, "Let's keep our eyes open on this and be as informed as we can be."

England and Wales

The international discussion came on a bill expected to pass the British Parliament that changes the regulation of the bar. The committee discussed that with Brock McClane, a member of the International Law Section and the International Bar Association, who attended a recent IBA conference in London.

"It's a troublesome development," McClane said.

The issue arose from an investigation of a single issue on whether the bar was being responsive to consumers, and the report concluded that the self-regulated bar was doing a poor job on that issue. Consequently, the report recommended that the government take over that regulation and a bill has been drafted and, being sponsored by the Labor Party, is expected to pass.

"It will establish a new bureaucracy in England and Wales that will take over the regulation of lawyers," McClane said. "To address the lawyers' concern that they should not be regulated by the government for independence reasons, certain duties will be delegated back to the bar. But consumer complaints will be regulated by the government.

"It's probably not going to ruin the legal profession in England, but it's a concern to us that the regulation of lawyers is being delegated to the government. It's not a positive trend. It's a slippery slope that we should be concerned about."

Panel members said they were worried that action could be used as justification to take away regulation of the Florida legal profession by the Supreme Court and put it under the executive branch. There have been periodic attempts, they said, to place lawyer regulation under the Department of Business and Professional Regulation.

"Once the nose is under the tent, it's only a matter of time until the other pieces will follow," said incoming Committee Chair Eugene Pettis. "We need to be in the position of not blinking."

"In terms of a change from the Bar to DBPR, it comes up periodically," said former Bar President Kelly Overstreet Johnson. "It's a problem and you have to keep fighting it off. It's always on the radar screen."

Judicial Elections

On judicial elections, committee member Benjamin Chavies said contested judicial races raise troubling issues.

"The thought a judge might pause before she makes a decision in a case because the person who is appearing before her might turn against her in the next race or because it might offend a group of persons . . . is very disturbing," he said.

Chavies also said it continues to be a problem, especially in Miami-Dade County, where "publicists" charge candidates \$25,000 for their services in elections. Those who don't pay may find themselves opposed in an election by another candidate backed by the publicist.

Even respected judges who are doing outstanding jobs can find themselves opposed in an election, he said,

"This year, we had 15 active races [for circuit and county judgeships in Miami-Dade], 11 races involving sitting judges," Chavies said. Two of those races involve circuit judges and nine involve county judges. He suggested the committee should invite the judges back to talk about their experiences, after the election.

Committee member Kim Bald said in the 12th Circuit, which covers the

Sarasota-Bradenton area, two judges had been removed by the Supreme Court after winning election because their election tactics violated judicial canons.

Committee members discussed the value of using local bar campaign monitoring committees to help police judicial races and prevent abuses, and Bar General Counsel Paul Hill said that issue would be part of the Bar's upcoming voluntary bar leaders conference.

Pettis, who takes over at the committee's September meeting, closed the gathering noting the committee has had profitable discussions on a wide range of issues in the past year. In the coming year, he hopes the committee begins making concrete recommendations on dealing with the difficult problems related to preserving judicial independence.

[Updated: 07-11-2006]

January 15, 2007

Despite SD loss, J.A.I.L.4Judges targets Florida

Attorneys urged to be prepared for the fight

By Gary Blankenship

Senior Editor

If backers of an amendment known as J.A.I.L.4Judges succeed in getting their constitutional amendment on the Florida ballot, the state's lawyers should be ready to lead a campaign to defeat it.

The public face of that campaign should not be judges and lawyers, but rather regular citizens who would be adversely affected by the amendment that nominally seeks to strip civil and criminal immunity from the judiciary in cases where a special grand jury decides they have acted improperly.

Tom Barnett, executive director of the State Bar of South Dakota, gave that advice to the Bar Board of Governors at its December meeting. Barnett led the campaign last year that resulted in the defeat of a J.A.I.L.4Judges initiative in South Dakota that wound up failing by an 89-to-11 percent margin.

"When we planned our campaign, we immediately decided that the worst people to talk about attacks on judges were judges and the second worst people were lawyers," Barnett said. "What we needed were people on the street."

He identified those people as the "four B's" – bankers, beauticians, barbers, and bartenders, or "people who talk with people every day."

"The whole central theme to this campaign was to build coalitions and for the good of us all, let's try to maintain those coalitions," Barnett said. "Build your coalitions now, because J.A.I.L.4Judges has announced that the next two target states are Nevada and Florida. Michigan is third."

The Florida chapter of the organization (its Web site is <http://floridajail4judges.org>) is already trying to get signatures for an initiative petition. It provides that judges and those who act in a judicial capacity can lose immunity from civil and criminal prosecution in some cases. Under the amendment, the losing party in a case, civil or criminal, can file a petition with a special statewide grand jury once all appeals have been exhausted. The grand jury can overturn the outcome of the case and, if it decides a judge acted improperly, make the judge subject to civil or criminal liability.

While judges might be unpopular, Barnett noted the amendment would

Exhibit "C"

have far-reaching impacts. One is that many locally elected officials, including city and county commissioners and school board members, can have judicial duties, and hence be covered under the amendment. So can ordinary residents when they serve on juries — a fact the South Dakota anti-amendment campaign highlighted as ad after ad hammered that criminal defendants would be able to harass or sue jurors.

Barnett said one poll showed that allowing jurors to be sued was opposed by 86 percent of the voters. "It's a very, very powerful message," he said. "That's why we used that."

In seeking support for its campaign against the amendment, he said opponents looked to the users of the court system, particularly the business community.

Barnett said he explained the consequences of the amendment, including that relatively simple matters like repossessions of cars and mortgage foreclosures could become much more complicated and expensive if the debtors decided to fight their cases through the special statewide grand jury. That jury, he added, would be able to nullify contracts which could leave lenders with an empty bag.

The consequences? Car dealers might find lenders unwilling to finance automobile purchases and banks might be unwilling to issue mortgages, he said.

Hence, the anti-amendment campaign was able to get financial and political support from bankers, insurance companies, car dealers, and even the U.S. Chamber of Commerce and tort reform groups that recognized the potential mayhem from the amendment, Barnett said.

In Florida, Barnett said a key factor will be whether the J.A.I.L.4Judges campaign hires professionals to gather signatures to get its initiative on the ballot. In South Dakota, he said the effort was headed nowhere until backers hired professional signature gatherers. The same is likely to happen in Florida.

He advised the Bar to begin preparing early for the potential campaign, and outlined how the anti-amendment campaign was waged in South Dakota.

The first phase of the campaign, when resources were scarce, was a public outreach that paired lawyers and judges with laypeople for appearances at civic and community groups. The emphasis, Barnett said, was on having the nonlawyers speak, with the legal professionals available to provide detailed answers if needed.

"Lawyers are very poor explainers of legal issues," he said. "People expect the lawyer to be very glib and polished . . . But the hardware

store owner they listened to, he's not very polished, but people leave persuaded."

Early last year when Barnett geared up the campaign against the amendment, initial polls showed that voters had a favorable impression of the measure by a 3-1 to 4-1 margin.

Initially short on funds, Barnett launched the local outreach program and began building coalitions with various groups. By the early fall, when more money began coming in, the local outreach program had shifted sentiment to 3-1 against the amendment, but still with over half the voters undecided.

With more money, Barnett was able to begin television and radio ads. Those emphasized that convicted criminals could use the amendment to harass jurors and try to get out of jail, and that the amendment did not spring from South Dakotans but rather was imported from a California group.

In building coalitions, Barnett said he got every major town and city in the state to pass a resolution opposing the amendment. He reached out to doctors, hospitals, bankers, insurance companies, accountants, and others and explained how the amendment could upset the legal system and even allow the reopening of previously settled and decided cases since the amendment applied retroactively.

"When it comes to a full-scale attack on our court system, they have to be on our side because they use the court system," Barnett said.

He estimated that the personal outreach campaign got 60 percent of the voters to oppose the amendment, and the media campaign raised that to nearly 90 percent. Indeed, the campaign was so successful that while it required 47,000 signatures to get the amendment on the ballot, it got only about 36,500 votes even though 72 percent of the state's voters went to the polls.

Even if it appears the J.A.I.L.4Judges organization is weak in Florida, Barnett advised gearing up for a campaign because of the seriousness of the issue.

"Start building coalitions today," he said. "Who uses the court system? Business. Who has the money to do appeals? Business. Tell them this will hurt the court system."

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February 15, 2007

Judicial Independence Committee ready to move past just talking

After finessing and philosophizing, members of the Committee on Judicial Independence agreed upon a new mission statement to better capture its evolving purpose.

"To educate the people of Florida regarding the importance of protecting, preserving, and maintaining a fair, impartial, and independent judiciary.

"To study activities that might impact a fair, impartial, and independent judiciary and make recommendations to address those activities.

"To assist The Florida Bar, together with local and voluntary bar associations, in responding to efforts that infringe upon or attack a fair, impartial, and independent judiciary."

That mission statement was unanimously adopted at the Bar's Midyear Meeting in Miami January 18.

The purpose, explained Chair Eugene Pettis, a Board of Governors member from Ft. Lauderdale, is to "incorporate the initial focus" of the origination of the committee and find ways to advance the goals with action, beyond talking to each other in committee meetings.

The committee began as a special board committee in the fall of 2004, formed to explore potential changes in the composition and appointment of the judicial nominating commissions, money-raising options to endorse candidates supporting judicial independence, and other reforms.

In 2005, the Board of Governors approved it as a standing committee.

Since then the focus has been refined to focus on educating people about the judicial branch.

"I spoke to the Seminole Bar Association meeting on this topic," said Richard Levenstein of Stuart, who helped craft the mission statement.

"It's amazing how little people knew about what this committee does. Many have never heard of J.A.I.L.4Judges," he added, referring to the backers of a failed constitutional amendment initiative in South Dakota that is targeting Florida next. (The initiative, according to the Florida chapter's Web site (<http://floridajail4judges.org>) bills itself as "a check against judicial misconduct and abuse of power" and would "create two

Exhibit "D"

statewide Special Grand Juries in Florida for the sole purpose of investigating complaints against judges." The grand jury could overturn the outcome of a case and, if it decides the judge acted improperly, make the judge subject to civil or criminal liability.)

Pushing the committee from talk to action has its challenges.

As Gwynne Young of Tampa said, "The Bar has a lengthy procedure that talks about how the Bar responds. The reality is, we, as a committee of the Bar, don't have the ability to respond. We can assist and be a resource. I don't think we can effectuate responses."

Former Bar President Kelly Overstreet Johnson of Tallahassee, who created the original committee, said: "We want the local and voluntary bars to do their own responding. There are a lot of things they can talk about that we can't talk about."

Pettis said, "This committee does not have the ability, resources, or time to recreate the wheel. But the resources are out there and need a clearinghouse and central place and then be properly disseminated" through the Bar's public information department.

The committee agreed to go forward with establishing "point persons" at local bar associations to rapidly respond — ready to give speeches at civic groups and write letters to the editor — on the issue of maintaining a fair and impartial judiciary.

[Updated: 02-15-2007]

JS 44 (Rev. 11/05)

CIVIL COVER SHEET

The JS 44 civil cover sheet and the information contained herein neither replace nor supplement the filing and service of pleadings or other papers as required by law, except as provided by local rules of court. This form, approved by the Judicial Conference of the United States in September 1974, is required for the use of the Clerk of Court for the purpose of initiating the civil docket sheet. (SEE INSTRUCTIONS ON THE REVERSE OF THE FORM.) NOTICE: Attorneys MUST Indicate All Re-filed Cases Below.

I. (a) PLAINTIFFS
Florida J.A.I.L. 4 Judges
(b) County of Residence of First Listed Plaintiff
(c) Attorney's (Firm Name, Address, and Telephone Number)
Montgomery Blair Sibley
50 W. Montgomery Avenue, Suite B-4
Rockville, MD 20850 (301-251-5200)
DEFENDANTS
The Florida Bar, The Florida Supreme Court, Chief Justice R. Fred Lewis, Justice Charles T. Wells, Justice Harry Lee Anstead, Justice

(d) Check County Where Action Arose: [x] MIAMI-DADE [] MONROE [] BROWARD [] PALM BEACH [] MARTIN [] ST. LUCIE [] INDIAN RIVER [] OKEECHOBEE HIGHLANDS

II. BASIS OF JURISDICTION (Place an "X" in One Box Only)
[] 1 U.S. Government Plaintiff
[x] 3 Federal Question (U.S. Government Not a Party)
[] 2 U.S. Government Defendant
[] 4 Diversity (Indicate Citizenship of Parties in Item III)
III. CITIZENSHIP OF PRINCIPAL PARTIES (Place an "X" in One Box for Plaintiff and One Box for Defendant)
Citizen of This State [] PTF [] DEF
Citizen of Another State [] PTF [] DEF
Citizen or Subject of a Foreign Country [] PTF [] DEF

IV. NATURE OF SUIT (Place an "X" in One Box Only)
CONTRACT: [] 110 Insurance, [] 120 Marine, [] 130 Miller Act, [] 140 Negotiable Instrument, [] 150 Recovery of Overpayment & Enforcement of Judgment, [] 151 Medicare Act, [] 152 Recovery of Defaulted Student Loans (Excl. Veterans), [] 153 Recovery of Overpayment of Veteran's Benefits, [] 160 Stockholders' Suits, [] 190 Other Contract, [] 195 Contract Product Liability, [] 196 Franchise
REAL PROPERTY: [] 210 Land Condemnation, [] 220 Foreclosure, [] 230 Rent Lease & Ejectment, [] 240 Torts to Land, [] 245 Tort Product Liability, [] 290 All Other Real Property
TORTS: PERSONAL INJURY: [] 310 Airplane, [] 315 Airplane Product Liability, [] 320 Assault, Libel & Slander, [] 330 Federal Employers' Liability, [] 340 Marine, [] 345 Marine Product Liability, [] 350 Motor Vehicle, [] 355 Motor Vehicle Product Liability, [] 360 Other Personal Injury
PERSONAL INJURY: [] 362 Personal Injury - Med. Malpractice, [] 365 Personal Injury - Product Liability, [] 368 Asbestos Personal Injury Product Liability
PERSONAL PROPERTY: [] 370 Other Fraud, [] 371 Truth in Lending, [] 380 Other Personal Property Damage, [] 385 Property Damage Product Liability
PRISONER PETITIONS: [] 510 Motions to Vacate Sentence, [] 530 General Habeas Corpus, [] 535 Death Penalty, [] 540 Mandamus & Other, [] 550 Civil Rights, [] 555 Prison Condition
FORFEITURE/PENALTY: [] 610 Agriculture, [] 620 Other Food & Drug, [] 625 Drug Related Seizure of Property 21 USC 881, [] 630 Liquor Laws, [] 640 R.R. & Truck, [] 650 Airline Regs., [] 660 Occupational Safety/Health, [] 690 Other
LABOR: [] 710 Fair Labor Standards Act, [] 720 Labor/Mgmt. Relations, [] 730 Labor/Mgmt. Reporting & Disclosure Act, [] 740 Railway Labor Act, [] 790 Other Labor Litigation, [] 791 Empl. Ret. Inc. Security Act
BANKRUPTCY: [] 422 Appeal 28 USC 158, [] 423 Withdrawal 28 USC 157
PROPERTY RIGHTS: [] 820 Copyrights, [] 830 Patent, [] 840 Trademark
SOCIAL SECURITY: [] 861 HIA (1395ff), [] 862 Black Lung (923), [] 863 DIWC/DIWW (405(g)), [] 864 SSID Title XVI, [] 865 RSI (405(g))
FEDERAL TAX SUITS: [] 870 Taxes (U.S. Plaintiff or Defendant), [] 871 IRS-Third Party 26 USC 7609
OTHER STATUTES: [] 400 State Reapportionment, [] 410 Antitrust, [] 430 Banks and Banking, [] 450 Commerce, [] 460 Deportation, [] 470 Racketeer Influenced and Corrupt Organizations, [] 480 Consumer Credit, [] 490 Cable/Sat TV, [] 810 Selective Service, [] 850 Securities/Commodities/Exchange, [] 875 Customer Challenge 12 USC 3410, [] 890 Other Statutory Actions, [] 891 Agricultural Acts, [] 892 Economic Stabilization Act, [] 893 Environmental Matters, [] 894 Energy Allocation Act, [] 895 Freedom of Information Act, [] 900 Appeal of Fee Determination Under Equal Access to Justice, [] 950 Constitutionality of State Statutes

V. ORIGIN (Place an "X" in One Box Only)
[x] 1 Original Proceeding
[] 2 Removed from State Court
[] 3 Re-filed- (see VI below)
[] 4 Reinstated or Reopened
[] 5 Transferred from another district (specify)
[] 6 Multidistrict Litigation
[] 7 Appeal to District Judge from Magistrate Judgment

VI. RELATED/RE-FILED CASE(S).
a) Re-filed Case [] YES [x] NO
b) Related Cases [] YES [x] NO
DOCKET NUMBER

VII. CAUSE OF ACTION
Cite the U.S. Civil Statute under which you are filing and Write a Brief Statement of Cause (Do not cite jurisdictional statutes unless diversity):
Declaratory Judgment on the constitutionality of the Florida Supreme Court Bar Rules
LENGTH OF TRIAL via 3 days estimated (for both sides to try entire case)

VIII. REQUESTED IN COMPLAINT:
[] CHECK IF THIS IS A CLASS ACTION UNDER F.R.C.P. 23
DEMAND \$
CHECK YES only if demanded in complaint:
JURY DEMAND: [x] Yes [] No

ABOVE INFORMATION IS TRUE & CORRECT TO THE BEST OF MY KNOWLEDGE
SIGNATURE OF ATTORNEY OF RECORD
DATE February 25, 2008

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02/28/08