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(Cite as: 863 So.2d 445)

H

District Court of Appeal of Florida,
Fourth District.
STATE of Florida, Appellant,
v.
Bryce RUTHERFORD, Appellee.


No. 4D02-3765.
Jan. 7, 2004.
Rehearing Denied Feb. 5, 2004.

Background: Defendant who brought complaint against attorney was charged by information with perjury by false declaration, alleging she knowingly signed and verified as true and correct state bar inquiry complaint form when she knew the contents of complaint form were false. The Circuit Court, Seventeenth Judicial Circuit, Broward County, *Ilona M. Holmes, J.*, entered order granting defendant's motion to dismiss, finding that, pursuant to *Tobkin*, defendant enjoyed absolute immunity from criminal charges for filing complaint against member of the bar. State appealed.

Holding: The District Court of Appeal, *Shahood, J.*, held that *Tobkin* did not afford defendant immunity against criminal charges.

Reversed.

West Headnotes

[1] Perjury 297  15

297 Perjury
297I Offenses and Responsibility Therefor
297k15 k. Defenses. [Most Cited Cases](#)

Defendant who brought complaint against attorney was not immune to criminal charge of perjury by false declaration, for knowingly signing and verifying as true and correct bar inquiry complaint form; while *Tobkin* provided complainants absolute immunity against retaliatory civil lawsuits brought by attorneys who were subject of bar complaints, it

did not go so far as to shield complainants from action by State for abusing process by filing false complaint under penalties of perjury. [West's F.S.A. Bar Rule 3-7.3\(c\)](#).

[2] Perjury 297  10

297 Perjury
297I Offenses and Responsibility Therefor
297k10 k. Administration, Form, and Making of Oath or Substitute Therefor. [Most Cited Cases](#)

It is not necessary that a bar complaint against an attorney contain an oath administered by an official or that the signature be notarized in order to subject complainant to laws of perjury, for knowingly filing false complaint form. [West's F.S.A. Bar Rule 3-7.3\(c\)](#).

*446 [Charles J. Crist, Jr.](#), Attorney General, Tallahassee, and [Donna L. Eng](#), Assistant Attorney General, West Palm Beach, for appellant.

[Carey Haughwout](#), Public Defender, and [Allen J. DeWeese](#), Assistant Public Defender, West Palm Beach, for appellee.

SHAHOOD, J.

This is an appeal by the State of Florida from an order granting appellee's, Bryce L. Rutherford, motion to dismiss. At issue is whether the trial court erred in granting appellee's motion to dismiss based on a finding that appellee had absolute immunity from prosecution for filing an allegedly false Florida Bar complaint. We hold the trial court erred, and reverse the order of dismissal.

Appellee was charged by information with perjury by false declaration. It was alleged that she knowingly signed and verified as true and correct a Florida Bar inquiry complaint form when she knew the contents of the complaint form were false. The subject of the complaint was appellee's former employer, attorney John Carter. The complaint was investigated and resolved in favor of Mr. Carter.

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Thereafter, the law firm of Carter & Thomas, L.L.P. and John E. Carter filed a complaint for malicious prosecution, defamation, tortious interference with a business relationship, and injunction against appellee. The suit was dismissed without prejudice to refile in Palm Beach County. An appeal was filed, but ultimately voluntarily dismissed.

Four months later, the State filed criminal charges against appellee. In the initial stages of the proceedings, the State sought a pre-trial determination of whether appellee was entitled to dismissal pursuant to *Tobkin v. Jarboe*, 710 So. 2d 975 (Fla . 1998). It was the State's position that the facts presented a prima facie case of perjury by false statement. The State argued that prosecution was entirely proper because appellee knowingly made a false statement and asserted its truthfulness under penalties of perjury. Concluding that *Tobkin* grants absolute immunity to citizens who file complaints against members of the bar, the trial court granted appellee's motion to dismiss.

[1] In *Tobkin*, the supreme court addressed the issue of “ **what immunity, if any, is afforded an individual who files a complaint against an attorney with The Florida Bar.**” *Tobkin*, 710 So. 2d at 975-76. In that case, The Florida Bar investigated a complaint against an attorney, found there was no probable cause, and dismissed the complaint. *Id.* Thereafter, the attorney filed a civil action against the complainant for defamation, but the case was dismissed. On appeal, this court affirmed the dismissal based on a finding of absolute privilege under *Stone v. Rosen*, 348 So.2d 387 (Fla. 3d DCA 1977). *Tobkin*, 710 So. 2d at 975-76.

On review, the supreme court affirmed the dismissal concluding that the following reasoning from *Stone* was sound:

For the sake of maintaining the high standards of the profession and disciplining those who violate the Canons of Legal Ethics, one who elects to enjoy the status and benefits as a member of *447 the legal profession must give

up certain rights or causes of action which, in this instance, is the right to file an action against a complainant who lodges an unsuccessful complaint with the Grievance Committee of The Florida Bar.

Tobkin, 710 So. 2d at 976 (quoting *Stone*, 348 So.2d at 389). As a result, the *Tobkin* court held:

[T]hat an individual who files a complaint against an attorney and makes no public announcement of the complaint, thereby allowing the grievance procedure to run its natural course, is afforded absolute immunity from a defamation action by the complained-against attorney. However, if, after filing a complaint, the complainant comments publicly or outside the grievance process, then the afforded immunity ceases to exist.

Id. at 977. The court reasoned that this result “ **will prevent any chilling effect on Bar complaints while at the same time adequately protect attorneys.**” *Id.*

The State acknowledges *Tobkin's* applicability in civil cases, but disputes that it controls in criminal prosecutions where an allegedly false bar complaint was attested to and filed “under penalties of perjury.” The Florida Bar inquiry/complaint form used in this case states, “[u]nder penalty of perjury, I declare the foregoing facts are true and correct and complete.” [Rule 3-7.3\(c\), Rules Regulating The Florida Bar](#), provides that “[a]ll complaints, except those initiated by The Florida Bar, shall be in writing and under oath.” The supreme court has held that “a signed declaration using the language contained in [rule 3-7.3\(c\)](#) subjects a person to the laws of perjury.” *The Florida Bar v. Vernell*, 721 So.2d 705, 707 (Fla.1998) (citing [section 92.525, Florida Statutes \(1995\)](#)).

[2] It is not necessary that the bar complaint contain an oath administered by an official or that the signature be notarized. *Id.* at 707-08.

We therefore hold that, while *Tobkin* provides

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an absolute immunity against retaliatory civil law-suits brought by attorneys who were the subject of bar complaints against the complainants, it does not go so far as to shield a complainant from an action by the State for abusing the process by filing a false complaint under penalties of perjury. To hold otherwise would render [rule 3-7.3\(c\), Rules Regulating The Florida Bar](#), meaningless. There would be no other reason for requiring the oath language if “penalties of perjury” did not mean that the complainant could be prosecuted for perjury for filing a false complaint.

Accordingly, it was error for the trial court to dismiss the case against appellee.

REVERSED.

[STONE](#) and [HAZOURI](#), JJ., concur.

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Date of Printing: Mar 20, 2011

KEYCITE

H [State v. Rutherford](#), 863 So.2d 445, 29 Fla. L. Weekly D168 (Fla.App. 4 Dist., Jan 07, 2004) (NO. 4D02-3765)

History

Direct History

=> [1 State v. Rutherford](#), 863 So.2d 445, 29 Fla. L. Weekly D168 (Fla.App. 4 Dist. Jan 07, 2004) (NO. 4D02-3765), rehearing denied (Feb 05, 2004)

Review Denied by

H [2 Rutherford v. State](#), 874 So.2d 1192 (Fla. May 12, 2004) (Table, NO. SC04-347)

Court Documents

Appellate Court Documents (U.S.A.)

Fla. Appellate Petitions, Motions and Filings

- [3](#) Bryce RUTHERFORD, Petitioner, v. STATE OF FLORIDA, Respondent., 2004 WL 725488 (Appellate Petition, Motion and Filing) (Fla. Mar. 01, 2004) **Respondent's Brief on Jurisdiction** (NO. SC04-347)
- [4](#) Bryce RUTHERFORD, Petitioner, v. State of Florida, Respondent., 2004 WL 632692 (Appellate Petition, Motion and Filing) (Fla. Mar. 05, 2004) **Jurisdictional Brief** (NO. SC04-347)

Dockets (U.S.A.)

Fla.

- [5](#) BRYCE RUTHERFORD v. STATE OF FLORIDA, NO. SC04-347 (Docket) (Fla. Mar. 01, 2004)

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- [6](#) STATE OF FLORIDA v. BRYCE RUTHERFORD, NO. 4D02-3765 (Docket) (Fla.App. 4 Dist. Sep. 19, 2002)

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