

Monday, June 27, 2011

The Florida Bar sat on its "bureaucratic asses" while an influential member maliciously prosecuted a client for complaining to it

INFLUENTIAL LAWYER SUED FOR MALICIOUS PROSECUTION
The Florida Bar sat on its “bureaucratic asses”

By David Arthur Walters
The Miami Mirror
June 27, 2011

MIAMI BEACH – David Johnson and his wife Jane Johnson, former residents of Palm Beach County, have filed a complaint in the circuit court of Palm Beach County against Palm Beach attorney Allen H. Libow, his wife Melissa Libow, and Boca Raton law firm Libow & Shaheen LLP et al, for malicious prosecution, conspiracy to commit malicious prosecution, and abuse of process, in regards to a defamation action first asserted by the defendants against the Johnsons in 2004 for filing an absolutely privileged complaint against Libow with The Florida Bar, the agency of the Florida Supreme Court that licenses lawyers in the state, regulates their conduct, and presently represents mainly the political and business interests of the dominant professional elite.

The defamation suit against the Johnsons was prosecuted by Mrs. Libow’s father, affluent Miami attorney Arthur W. Tifford, who has not yet been named as a defendant in the Johnsons’ malicious prosecution complaint, and who has now appeared to defend his son-in-law from that complaint. According to the court docket, attorneys Lisa Weiss and Bruce L. Udolf of Boca Raton law firm Udolf Libow have appeared to defend Mrs. Libow. The Johnsons are represented by Steven Jeffrey Rothman. (See case 502011CA001121XXXXMB).

Mr. Johnson’s long-running Bar complaint, originally filed on August 16, 2004, alleged that Mr. Libow had filed a false police report as part of an attempt to extort a \$100,000 settlement for a disputed legal fee amounting to \$1,621. According to Mr. Johnson, that amount due had allegedly been reduced from \$5,014 after Mr. Johnson, who had already paid several thousand dollars in fees, demanded an accounting and discovered that he had even been billed for his attorney’s failure to appear for him in the case. The law firm even billed Mr. Johnson another \$397 for itemizing the bill, at the hourly rate of \$200. At one point, Mr. Libow, who is also a certified public accountant, allegedly told Mr. Johnson that clients at his firm had been overbilled for research by his lawyer, that downward adjustments to one client’s bill had been \$11,000, and that he, David Johnson, did not owe the law firm a dime; but he changed his mind when Johnson decided to let that attorney, who had withdrawn from the Libow law firm and whom Mr. Libow was defaming in his conversation with Mr. Johnson, continue to handle his case. The suit for the \$1,621 fee balance was brought in the small claims court, where Eric Stockel, an attorney for the

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Libow law firm, admitted that the complaint to the Bar was privileged; nevertheless, Mr. Libow asserted a defamation cause of action there and managed to have the issue removed to the circuit court (see *Libow v. Johnson and Johnson*, 05-3299 CAA1, 502005CA003299XXXXMB) where it was prosecuted by Mr. Tifford. Mrs. Johnson was named in the defamation suit although she had not signed the Bar complaint against Mr. Libow and other members of his firm.

The Bar complaint stated that Mr. Libow had claimed that his wife put him up to making the police report, and complained that Mr. Libow was making “over death threats.” Mr. Johnson opined that Libow was emotionally disturbed, having likened his Bar complaint with the January 2005 murderer of Mr. Libow’s babysitter, Shanette Jones, and her two daughters, Ashley and Joanna Robinson; the girls’ step-father, who had attempted suicide, was suspected in the shooting. The family had made a lot of money in real estate; Mr. Libow would represent Shanette Jones’ parents in the wrongful death civil suit.

Mr. Johnson disparaged Mr. Libow’s character in his complaint to the Bar, stating, for example, that, while “Jessie James used a horse and a six-gun to carry out his robberies, Mr. Libow uses a computer and the United States Mail to carry out his.” He further claimed that Mr. Libow carried out said robberies on “less sophisticated clients”; had a “total absence of ethics”; was guilty to “concocting a story and filing a false police report”; “modified (forged)” email; was a pathological liar predisposed to “wild accusations”; overbilled and used unlawful collections methods; abused the legal process; was a “psychotic misfit” with a “psychotic agenda,” besides being a “creative, twisted, lying son of a bitch.” After nine months had passed since Mr. Johnson filed the original complaint, he besought the Bar, which had yet done nothing, to “get off your bureaucratic asses and do something before this twisted madman lands us all on the six o’clock news.”

The defamation suit against the Johnsons was ultimately dismissed by the circuit court and the dismissal was affirmed on appeal. The lower court held that most of the statements made were mere opinions or were hyperbole not to be seriously construed as statements of fact, and that other assertions were not otherwise actionable. The few fact-like statements that would be actionable if false were protected or absolutely privileged because they were made in a complaint to public officials for redress of grievances. Therefore there was nothing to be taken to trial. But that was not the end of the duress for the Johnsons, who refused to be slapped into silence and who claimed they had fronted nearly a quarter million dollars to defend themselves, which they were at a loss to fully recover.

As for The Florida Bar, it took no action against Mr. Libow or other lawyers at his firm or against his father-in-law, Mr. Tifford, even though threatening to file or filing a suit against someone for bringing an inquiry or complaint to The Florida Bar is a prima facie violation of the ethical standards promulgated by the Bar.

For example, in *The Florida Bar v James Daniel Eckert*, File No. 2009-11,071 (6C), The Florida Bar averred that Mr. Eckert had represented Jean Camposecco in post dissolution of marriage

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proceedings, and that, while the case was pending, the opposing party, Robert Camposecco, filed an Inquiry/Complaint form against the lawyer with The Florida Bar, which it received on March 4, 2009, alleging that Mr. Eckert had blackmailed him, and had personally called him at home although he was represented by an attorney, one Phillip McLeod. Those complaints were dropped or dismissed by the Bar although it did not create a record explicitly discharging them.

However, the Bar on its own initiative charged Mr. Eckert with threatening to sue Mr. Camposecco with defamation for bringing the complaint. On December 30, 2009, the Sixth Judicial Circuit Grievance Committee found probable cause for further disciplinary proceedings, that the Respondent had violated Florida Bar: Rule 4-8.4(d), stating that a lawyer shall not engage in conduct in connection with the practice of law that is prejudicial to the administration of justice. The probable misconduct was stated as: “On or about July 9, 2009, Respondent wrote a letter to a complainant threatening to sue him for defamation and damages unless he withdrew his Bar complaint and issued a letter of apology within five days.” The lawyer and his attorney claimed ignorance of the Rule and the common law involved, and copped a plea.

To the best of our information and belief, The Florida Bar has not been sued for its gross negligence or otherwise taken to task for its dereliction of duty in the Libow v. Johnson matter although it has been aware of the infraction of its Rules since 2004 (the Bar has as recently as this 2011 reviewed documents in the matter) yet did nothing to stop the malicious prosecution of the Johnsons, which would have saved the courts and everyone else concerned a great deal of aggravation, time and money.

It is reasonable to assume that the power elite at the Bar have a favorable relationship with Msrs. Libow and Tifford, or that the persons involved at the Bar are incompetent; in either case they should be discharged from their offices forthwith, as they would be if they worked for a good law firm, and perhaps subjected to Bar investigations themselves. That is highly unlikely to happen, however, unless the Press, the so-called fourth branch of government, is willing to shed light on the matter, something that mainstream publications including the Miami Herald and the South Florida Business Journal have failed to do, despite being fully informed of the particulars of the public record over the past year, presumably because professional journalists dare not alienate the judiciary, the source of their press shield and one of their main news sources.

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