



THE FLORIDA BAR

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EXECUTIVE DIRECTOR

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December 7, 2011

Mr. Neil J. Gillespie
8092 SW 115th Loop
Ocala, Florida 34481

Dear Mr. Gillespie:

Paul Hill asked me to respond to your email since it relates to discipline, wherein you state: "Over the past year or so a number of people have contacted me through my website about attorney misconduct and dissatisfaction with the Bar's discipline of these attorneys. The following are some of the attorneys complained about, and all are profiled on my website:

Michael Vincent Laurato, Bar ID # 181447
Ryan Christopher Rodems, Bar ID # 947652
Allen Howard Libow, Bar ID # 899135
Robert W. Bauer, Bar ID #11058

Bar complaints have been made against all of the above, and the only one disciplined has been Mr. Laurato. In addition, all of the above have been sued by clients or vendors. In every case the amount of court resources consumed by these lawsuits is out of proportion to the initial dispute because the lawyers are able to litigate at little expense. Each of the above attorneys have been involved in multiple disputes with clients or other parties. These disputes are often public and bring discredit to the practice of law.

It seems a small percentage of Florida's lawyers are responsible for the bulk of the alleged misconduct. This undermines the profession and respect for the courts. Why is the Bar reluctant to stop the practice of this small number of lawyers who misuse their law license in a manner of revenge against people with legitimate disputes?"

The Bar is not reluctant to enforce the rules that all lawyers must follow. The Bar has no authority to prohibit anyone, including lawyers, from filing a law suit. The Constitution requires each individual have access to the Courts. If the lawsuit has merit then the plaintiff will prevail, if not then the defendant will prevail and the Bar has no authority to intervene in a civil lawsuit on either side.

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If the lawyer files a lawsuit against someone who has filed a complaint against that lawyer, the complainant has the immunity provided for in *Tobkin v. Jarboe*, 710 So. 2d 975 (Fla. 1998). If the Judge hearing the case makes a finding that the lawyer filed a frivolous pleading, then that lawyer would have violated the below rule. In the case of *The Florida Bar v. Kelly*, 813 So. 2d 85 (Fla. 2002), Mr. Kelly was suspended for 91 days for filing a frivolous lawsuit against his former client who had filed a grievance against him.

RULE 4-3.1 MERITORIOUS CLAIMS AND CONTENTIONS

A lawyer shall not bring or defend a proceeding, or assert or controvert an issue therein, unless there is a basis in law and fact for doing so that is not frivolous, which includes a good faith argument for an extension, modification, or reversal of existing law. A lawyer for the defendant in a criminal proceeding, or the respondent in a proceeding that could result in incarceration, may nevertheless so defend the proceeding as to require that every element of the case be established.

Comment: The advocate has a duty to use legal procedure for the fullest benefit of the client's cause, but also a duty not to abuse legal procedure. The law, both procedural and substantive, establishes the limits within which an advocate may proceed. However, the law is not always clear and never is static. Accordingly, in determining the proper scope of advocacy, account must be taken of the law's ambiguities and potential for change.

The filing of an action or defense or similar action taken for a client is not frivolous merely because the facts have not first been fully substantiated or because the lawyer expects to develop vital evidence only by discovery. What is required of lawyers, however, is that they inform themselves about the facts of their clients' cases and the applicable law and determine that they can make good faith arguments in support of their clients' positions. Such action is not frivolous even though the lawyer believes that the client's position ultimately will not prevail. The action is frivolous, however, if the lawyer is unable either to make a good faith argument on the merits of the action taken or to support the action taken by a good faith argument for an extension, modification, or reversal of existing law.

The lawyer's obligations under this rule are subordinate to federal or state constitutional law that entitles a defendant in a criminal matter to the assistance of counsel in presenting a claim or contention that otherwise would be prohibited by this rule.

Sincerely,



Kenneth Lawrence Marvin
Staff Counsel
Director, Lawyer Regulation



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