



Select **'Print'** in your browser menu to print this document.

Copyright 2011. ALM Media Properties, LLC. All rights reserved. Daily Business Review

Page printed from: [Daily Business Review](#)

[Back to Article](#)

Lawyers investigated for criticizing system

Julie Kay

2011-05-18 12:00:00 AM

No attorneys are facing disciplinary charges for their work in foreclosure cases despite a firestorm of complaints about purported fraudulent court filings on behalf of lenders.

But two foreclosure defense attorneys have been actively investigated for publicly criticizing the gridlocked foreclosure process.

The Bar investigated Jacksonville attorney Chip Parker for telling CNN, "Foreclosure courts throughout the state of Florida have adopted a system of ramming foreclosure cases through the final judgments and sale — with very little regard to the rule of law." He also said, "What I am seeing now is an attack upon the citizens of the state of Florida by retired judges."

The Bar also is investigating Tampa lawyer Matthew Weidner for "exercising free speech in the courtroom" in violation of a Pinellas County ordinance. Weidner, a prominent foreclosure defense lawyer, runs a blog critical of the state's foreclosure process and is frequently quoted in national publications.

The Florida Bar has closed 46 investigations with no charges filed against foreclosure plaintiff attorneys out of 272 complaints, according to statistics from The Bar. The Bar also has closed without charges 29 investigations into foreclosure defense attorneys out of 58 complaints filed since last October.

Consumer groups and foreclosure defense lawyers have alleged there has been a systemic problem of fraud and "robo-signing" for more than a year. The Florida attorney general's office opened investigations into a number of law firms. Attorneys also have complained about "rocket dockets" before overloaded judges who might devote a minute or less to a single foreclosure case.

Fannie Mae and Freddie Mac have pulled thousands of files from law firms including the Law Offices of David J. Stern, dubbed by critics as Florida's foreclosure king, amid Bar investigations, civil suits and depositions by employees who acknowledged they didn't read foreclosure documents before signing court

papers to take away people's homes.

Attorneys general in all 50 states launched investigations of foreclosure law firms in response to allegations of irregularities in residential foreclosures. The Florida attorney general's office reached a \$2 million settlement in March with the Law Offices of Marshall C. Watson in Fort Lauderdale.

Among the South Florida attorneys The Bar has confirmed it is investigating are Stern, Watson, Marc Ben-Ezra, Barry Fishman, Robert Kahane and Gerald Shapiro. The Daily Business Review also learned defense lawyers Parker and Weidner were among those under investigation.

No Joke

Parker learned he was under scrutiny in a letter from Bar counsel Shanell Schuyler last Dec. 3. The letter, obtained by the Review, includes a link to Parker's CNN interview and advises him to explain his on-camera statements in writing by Dec. 20 in light of The Bar's Rule of Professional Conduct 4-8.2 prohibiting lawyers from making false or reckless comments about court personnel.

"I was shocked," Parker said. "I said, 'This is a joke, right?' I have a First Amendment right to free speech. I've said a lot worse and been more pointed in my speech in the past. CNN actually toned down my comments."

Parker responded to The Bar by quoting Oliver Wendell Holmes Jr., the late associate justice of the U.S. Supreme Court, saying his criticism was "consistent with the great traditions of American lawyers."

Parker said he hasn't been told who filed the complaint due to confidentiality rules, but he heard it was an offended judge. He reached out to constitutional lawyer Talbot "Sandy" D'Alemberte, a former president of the American Bar Association and Florida State University, whom he had met at a recent dinner honoring Parker. D'Alemberte intervened at The Bar, and the case was dropped Jan. 13, 2011.

D'Alemberte also is helping Weidner at the request of the Florida Press Association and the First Amendment Foundation, which were contacted by Weidner. He declined comment on his pending investigation. But D'Alemberte said he believes the case also will be dropped.

"I am pleased that The Bar is not going forward with these complaints," he said. "My sense from talking to The Bar people is they feel there's a duty to investigate whenever there's a complaint. It seems like one of the complainants may have been a judge. We saw possible implications for free speech purposes."

Pleased With Progress

Florida Bar president Mayanne Downs said The Bar occasionally receives complaints about lawyers criticizing judicial proceedings.

"The point is not to undermine the public's confidence in the judicial system," she said. "Very often there is tension with the First Amendment, and the First Amendment wins."

As for why The Bar has not disciplined any foreclosure lawyers on the lender's side, Downs said investigations take time and insisted The Bar takes foreclosure misdeeds seriously. The Bar hired a contract attorney to sift through cases and also is using volunteer lawyers.

"They are working through the process deliberately without focusing on speed because there is already a mechanism at the front end of the discipline process to get out the lawyer immediately if there is public harm," she said. "We have a lot of cases pending. I'm pleased with the progress and pleased with the resources we have available. We're much more interested in getting the right outcome than being fast."

Of 90,000 lawyers in Florida, 8,100 disciplinary files were opened by The Florida Bar, and 155 lawyers were disbarred last year. Downs said: "Find me a profession that disciplines its own like that. How many doctors do you think were kicked out of the profession last year?"

Bob Jarvis, a law professor at Nova Southeastern University, said he is deeply concerned about The Bar's prosecution of lawyers for what they say.

"I'm a big believer in the First Amendment," he said. "I believe lawyers should be able to criticize the judicial system. Who knows better what is going on inside? This could have a chilling effect on those who need their law licenses or wind up living under a bridge. It sends a bad message because The Bar should welcome criticism on how the courts and The Bar could do better."

Parker said he will continue speaking out about foreclosure problems despite the Bar inquiry.

"I told them from the beginning, 'If this is to shut me up, it's going to do the opposite,??'" he said. "I feel strongly about protecting consumers, and I know what I know. The Florida Bar and the Legislature are manipulated by the banking industry."

"But it still stressed me out. It's my livelihood. You take my Bar license away, and I'm done. I go build houses."