

Office, regarding alleged attorney misfeasance related to a patent. Complaint, ¶¶ 61, 63. Plaintiffs do not allege that a disciplinary complaint was filed with The Florida Bar Defendants, that The Florida Bar Defendants had authority to discipline the attorneys committing the misfeasance, or that The Florida Bar Defendants were otherwise connected in any way with the Plaintiffs' complaints. In fact, the Complaint does not contain a single factual allegation of wrongdoing committed by The Florida Bar Defendants. Even if the vague allegation that Plaintiffs' complaints about attorneys were "white washed" could be applied to The Florida Bar Defendants,² the Complaint must be dismissed with prejudice as this Court lacks personal jurisdiction over The Florida Bar Defendants, The Florida Bar Defendants are immune from financial liability and the Complaint fails to state a claim upon which relief may be granted.

ARGUMENT

POINT I

THIS COURT LACKS IN PERSONAM JURISDICTION

"On a Rule 12(b)(2) motion to dismiss for lack of personal jurisdiction, the plaintiff bears the burden of showing that the court has jurisdiction over the defendant." *Kernan v. Kurz-Hastings, Inc.*, 175 F.3d 236, 240 (2d Cir. 1999). To satisfy this burden, Plaintiffs must demonstrate that The Florida Bar Defendants have sufficient minimum contacts with New York "such that the maintenance of the suit does not offend traditional notions of fair play and

² See Complaint, ¶¶ 82, 85, and 88 regarding allegations that Defendants "white washed" attorney complaints. Plaintiffs claim that "all factual allegations derive from Plaintiffs' denial of due process at the State of New York Supreme Court Disciplinary Committees and Appellate Courts." Complaint, ¶ 6. The Florida Bar Defendants have no control over these forums and cannot be held liable for any wrong committed therein. Moreover, even if Plaintiffs had alleged that they filed a complaint with The Florida Bar Defendants that was not acted upon, the decision as to whether or not to initiate disciplinary proceedings is solely within the discretion of The Florida Bar, subject only to the review by the Florida Supreme Court. No private right of action against The Florida Bar exists in any person for the failure to institute disciplinary proceedings.

substantial justice.” *International Shoe Co. v. Washington*, 66 S.Ct. 154, 158, 326 U.S. 310, 316 (1945). Plaintiffs have not shown that The Florida Bar Defendants have had any contact with the state, much less contact sufficient to satisfy Due Process requirements. Moreover, the vagueness of the Complaint makes it impossible to decipher precisely what actions taken by The Florida Bar Defendants are being contested. Such “conclusory allegations are not enough to establish personal jurisdiction.” *Gmurzynska v. Hutton*, 257 F.Supp.2d 621, 625 (S.D.N.Y.2003). The Complaint must therefore be dismissed as Plaintiffs have failed to satisfy their burden to establish this Court has personal jurisdiction over The Florida Bar Defendants.

POINT II

THE FLORIDA BAR DEFENDANTS ARE ENTITLED TO ABSOLUTE IMMUNITY

The Florida Bar is an official arm of the Florida Supreme Court, acting at all times under the supervision and control of the Supreme Court. *See Rules Regulating the Florida Bar*, Introduction, Rule 3-3.1; *Dade-Commonwealth Title Insurance Co. v. North Dade Bar Ass'n*, 152 So. 2d 723 (Fla. 1963). As such, both State and Federal courts have consistently held that The Florida Bar and its agents³ enjoy absolute immunity from liability in connection with the

³ Numerous cases have applied absolute immunity to professional regulatory boards and their members, including Bar related boards, with respect to the conduct of their disciplinary function and the decision as to whether or not disciplinary action should be taken. *Horwitz v. State Board of Medical Examiners*, 822 F.2d 1508 (10th Cir. 1987); *Werle v. Rhode Island Bar Association*, 755 F.2d 195 (1st Cir. 1985)[Unauthorized practice of law committee]; *Clulow v. State of Oklahoma*, 700 F.2d 1291 (10th Cir. 1983)[Bar Association disciplinary proceeding]; *Slavin v. Curry*, 574 F.2d 1256 (5th Cir. 1978)[modified on other grounds, 583 F.2d 779][Bar Grievance Committee]; *Ivancie v. State Board of Dental Examiners*, 678 F.Supp. 1496 (D. Col. 1988); *Rosenfeld v. Clark*, 586 F.Supp. 1332 (D. Vt. 1984)[Board of Bar Examiners]; *Hicks v. Georgia State Board of Pharmacy*, 553 F.Supp. 314 (N.D. Ga. 1982); *Schneider v. Colegio de Abogados de Puerto Rico*, 546 F.Supp. 1251 (D. Puerto Rico 1982)[Bar Association disbarment proceedings]; *Hoke v. Board of Medical Examiners of North Carolina*, 445 F.Supp. 1313 (W.D.N.C. 1978). Moreover, the United States Supreme Court has extended the doctrine of absolute immunity, which has traditionally protected judges and prosecutors, to administrative

performance of its disciplinary functions. *Carroll v. Gross*, 984 F.2d 392 (11th Cir. 1993); *Kee v. Bailey*, 634 So. 2d 654 (Fla. 3d DCA 1994); *Mann v. Grolock*, 454 So.2d 75 (Fla. 1st DCA 1984); *The Penthouse, Inc. v. Saba*, 399 So.2d 456 (Fla. 2d DCA 1981); *Berry v. State*, 400 So.2d 80 (Fla. 4th DCA 1981); *Mueller v. The Florida Bar*, 390 So.2d 449 (Fla. 4th DCA 1980). Thus, The Florida Bar Defendants -- The Florida Bar and employees⁴ of The Florida Bar -- are entitled to absolute immunity from Plaintiffs' requests for monetary relief.

POINT III

THE ACTION IS BARRED BY ELEVENTH AMENDMENT IMMUNITY

Plaintiffs' requests for monetary relief are likewise barred by the Eleventh Amendment. The Eleventh Amendment prohibits federal actions against state agencies for damages. *Pennhurst State School and Hosp. v. Halderman*, 104 S.Ct. 900, 465 U.S. 89 (1984); *Edelman v. Jordan*, 94 S.Ct. 1347, 415 U.S. 651 (1974); *Schopler v. Bliss*, 903 F.2d 1373, 1378 (11th Cir. 1990). The Florida Bar, an official arm of the Florida Supreme Court, and its agents in their official capacities, are therefore immune from suit in the exercise of a delegated constitutional function of the Court. Florida Constitution, Art. V, Sec. 15; *Rules Regulating The Florida Bar*, Introduction, Rule 3-3.1; *Carroll v. Gross*, 984 F.2d 392 (11th Cir. 1993); *Kaimowitz v. The Florida Bar*, 996 F.2d 1151, 1153 and 1155 (11th Cir. 1993) (recognizing that the Eleventh Amendment not only prohibited actions against a state, but also prohibited actions against a state's agencies and other arms, including The Florida Bar). Accordingly, The Florida Bar Defendants are absolutely immune from Plaintiffs' requests for monetary relief.

officials involved in quasi-judicial or quasi-prosecutorial functions as well. *Butz v. Economou*, 98 S.Ct. 2894, 438 U.S. 478 (1978).

⁴ The Complaint alleges that John Anthony Boggs, Kenneth Marvin, Lorraine Hoffmann and Eric Turner are all employed by The Florida Bar. Complaint, ¶¶ 54 - 57.

POINT IV

THE COMPLAINT FAILS TO STATE A CLAIM

In addition to the reasons set forth above, the Complaint must also be dismissed because:

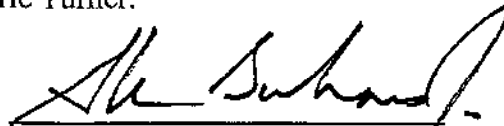
- Count 1: Article I, Section 8, Clause 8 of the U.S. Constitution does not, in and of itself, provide a cause of action and Plaintiffs have failed to establish the elements necessary to otherwise assert a cause of action founded upon this constitutional provision.
- Count 2: 15 U.S.C. §§ 1 - 2 do not provide a private right of action for monetary damages and Plaintiffs have not established the elements necessary for injunctive relief.
- Count 3: 18 U.S.C. § 81; 18 U.S.C. § 241; 18 U.S.C. § 371; 18 U.S.C. § 666; 18 U.S.C. § 1002; 18 U.S.C. § 1031; 18 U.S.C. § 1037; 18 U.S.C. § 1341; 18 U.S.C. § 1343; 18 U.S.C. § 1349; 18 U.S.C. § 1505; 18 U.S.C. § 1951; and 18 U.S.C. § 2511 do not provide a private right of action under which Plaintiffs may assert a claim. Plaintiffs do not state a claim under 18 U.S.C. § 1038 as Plaintiffs have not alleged that The Florida Bar Defendants conveyed false or misleading information or that Plaintiffs incurred expenses incident to any emergency or investigative response. Finally, Plaintiffs do not state a claim under 18 U.S.C. § 1962 for the reasons stated under Count 4, below.
- Count 4: Plaintiffs fail to state a claim under 18 U.S.C. §§ 1961 - 1968 as Plaintiffs fail to allege that The Florida Bar Defendants received any income from

a pattern of racketeering activity or through the collection of an unlawful debt; or
that The Florida Bar Defendants conspired to do so.

The Complaint, therefore, must be dismissed pursuant to Fed.R.Civ.P. 12(b)(6) for failure to state a claim against The Florida Bar Defendants.

CONCLUSION

For the foregoing reasons, The Florida Bar Defendants respectfully request that this Court dismiss the Complaint with prejudice as to The Florida Bar, John Anthony Boggs, Kenneth Marvin, Lorraine Hoffmann, and Eric Turner.



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CERTIFICATE OF SERVICE

I hereby certify that a true and correct copy of the foregoing has been served via U.S. mail this 20th day of March upon:

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