IN THE DISTRICT COURT OF APPEAL OF FLORIDA
FOURTH DISTRICT

CASE NO. 4DCA#22- _____

Lower Tribunal Case No. 50-2020-CC-005756-XXXX-MB

EVAN S. GUTMAN

Defendant - Petitioner

vs.

CITIBANK, N.A.

Plaintiff - Respondent

PETITION FOR EXPEDITED WRITS OF MANDAMUS AND PROHIBITION

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TABLE OF CONTENTS

Page

TABLE OF CONTENTS (continued)

TABLE OF AUTHORITIES

Page(s)

Cases

TABLE OF AUTHORITIES (continued)

Rules

Constitutional Provisions

EXPLANATION OF REFERENCES

PETITIONER-Defendant Evan Gutman is referred to herein as Petitioner.

RESPONDENT-Plaintiff Citibank, N.A. is referred to herein as Citibank.

The APPENDIX is referred to as (A) followed by the applicable page number of the Appendix. Thus, as an example (A159) would refer to Appendix Page Number 159.

INTRODUCTION

Pursuant to Florida Rules of Appellate Procedure 9.030(b)(3) and 9.100, Petitioner-Defendant Evan Gutman moves the Court for several measures of extraordinary relief stemming from the trial court's improper actions prior to trial, during and after trial. Specifically, Petitioner seeks:

1. A Writ of Mandamus commanding the trial judge to reverse his Order denying Petitioner's Motion to Postpone Trial. (A7 and A15)
2. A Writ of Prohibition and/or Writ of Mandamus as applicable Reversing; or commanding the trial judge to Reverse his Order denying Petitioner's Motion to Disqualify. (A17 and A157)
3. A Writ of Mandamus commanding the trial judge to Deny Citibank's Motion for Extension of Time to Respond to Discovery filed over a year ago and not yet ruled upon; OR alternatively at least a Writ of Mandamus commanding the judge to rule on Citibank's Motion for Extension and delineate detailed reasons in support. (A159)
4. A Writ of Mandamus commanding the trial judge to VACATE the Final Judgment issued by Judge Edward Garrison on September 19, 2022 and entered, based on the trial held on September 15, 2022. (A199)
5. A Writ of Prohibition prohibiting Judge Edward Garrison from proceeding further in this case upon his completion and compliance

with the duties set forth in the Writs of Mandamus and Prohibition requested in (1) - (4) above.

The court's actions throughout these proceedings have demonstrated disrespect for Court rules properly enacted by the Florida Supreme Court and appellate opinions issued by Florida District Courts of Appeal interpreting those rules. The impact of such has been a denial of Petitioner's fundamental due process right to a neutral arbiter. As a result, without the relief sought, Petitioner faces irreparable harm based upon the consequences of a trial that never should have proceeded according to the rules; and leaving no adequate remedy on plenary appeal. At a minimum Petitioner was entitled to a trial that was legally allowed to proceed.

BASIS FOR INVOKING JURISDICTION

Petitioner invokes this Court's jurisdiction under Article V, section 4(b)(3) of the Florida Constitution and Florida Rules of Appellate Procedure 9.030(b)(3) and 9.100.

STATEMENT OF THE CASE AND FACTS

Citibank filed a Complaint regarding an alleged credit card debt on or about July 8, 2020, which included an Unjust Enrichment claim even though they knew a written contract existed, which precludes such a claim. (A210) It also contained an Account Stated Claim even though they knew the validity of the alleged debt had been disputed in writing, which precludes such a claim. (A210) Citibank then waited over two months and served the Complaint upon Petitioner on or about September 22, 2020. Within 14 days of accepting service, on October 6, 2020, Petitioner filed an Answer containing affirmative defenses and a Counterclaim. On July 1, 2021, Petitioner served discovery requests upon Citibank including Requests for Admissions. (A202) On July 23, 2021, more than one year prior to trial, Citibank filed a Motion for an Extension to Respond to the discovery. (A159) In their motion to extend Citibank represented as follows (emphasis added) (A159):

> "3. Plaintiff desires a **reasonable extension of time** to complete its research and review.
>
> 4. The instant Motion is **not for purposes of delay**."

Citibank did not further respond to the discovery requests at all until February 15, 2022, approximately seven and a half months later. At that

time, they provided only an initial response consisting for the most part of a series of objections and provision of some limited documents. On July 14, 2022 more than one year after Petitioner's discovery requests, Citibank provided additional documents responsive to the request. (A153) As of September 14, 2022, the day before trial the Court had not ruled upon Citibank's Motion for an Extension, originally filed on July 23, 2021. As of the date of filing this Petition, the Court still has not issued any written Order ruling upon Plaintiff's Motion for an Extension. Thus, Judge Garrison effectively provided Citibank with a totally open-ended time period to respond to discovery requests, but nevertheless proceeded to hold a trial in the case even though the Motion for Extension had not even been ruled on.

On July 1, 2022 more than two years after filing their Complaint, Citibank served discovery requests upon Petitioner. (A154) On July 28, 2022 Petitioner requested a reasonable period of time to respond to Citibank's discovery requests. (A167) Although Judge Garrison had not yet even ruled upon Citibank's request for an extension (over a year old), he ruled upon Petitioner's similar request for an extension only 7 days later on August 3, 2022. (A171). In his Order "purporting' to Grant Petitioner's request for an extension, Judge Garrison provided a "paltry" 12 days for

Petitioner to respond to Citibank's discovery requests (3 days had lapsed when he issued his Order).

In addition to Plaintiff's Motion for an Extension to Respond to Discovery not being ruled upon, a similar issue existed regarding Plaintiff's Motion to Strike. Specifically, on June 30, 2021 (more than a year earlier) Citibank had filed a Motion to Strike the Affirmative Defenses of Petitioner. (A174) On the date of trial that motion also had not yet been ruled on. Citibank's Counsel had previously requested Petitioner's Consent for a Special Set Hearing to be held on the Motion to Strike on August 31, 2022 (14 months after its filing). Petitioner did in fact provide the Consent and as a result, Citibank Counsel set a hearing on their Motion to Strike for August 31, 2022. (A183) However, Judge Garrison then "Sua Sponte" cancelled the August 31st hearing on the motion (even though both parties consented to it); and unilaterally set a trial date for September 8, 2022 without providing either party an opportunity to have input on the matter. (A191) Subsequently, Judge Garrison Sua Sponte cancelled the September 8th trial and rescheduled such for September 15th (A195).

Based on the foregoing, on September 14, 2022 Petitioner filed a Motion to Postpone the trial set for September 15, 2022 on the ground the case was not "At Issue" as required by FRCP 1.440 (A7). Petitioner also

filed a Motion to Disqualify Judge Garrison and All Other Palm Beach County Judges at that time. (A17).

Petitioner intentionally did not appear at the trial illegally scheduled for September 15, 2022, since Petitioner determined Judge Garrison lacked authority to schedule the trial and was biased. Judge Garrison denied Petitioner's Motion to Postpone and the Motion to Disqualify and held the trial even though scheduling of such did not comply with enacted court rules or norms of due process. (A15 and A157). On September 19, 2022, Judge Garrison signed a Final Judgment in favor of Citibank. (A199). Citibank promptly moved for substantial attorney fees and then **Unilaterally** Set a Hearing on their Motion for Attorney Fees for November 9, 2022 without consulting Petitioner in any manner. The Order Setting the Hearing, which appears to be drafted by Citibank Counsel contains an abjectly false Certification by Counsel stating "Counsel requesting this Order has certified that he/she has spoken in person or by telephone with the attorney(s) for all parties who may be affected by the relief sought in the motion in a good faith effort to resolve or narrow the issues raised." (A207). **Petitioner is willing to submit Sworn Testimony no such communication occurred.** Petitioner will suffer irreparable harm, if the relief requested herein is not granted, for reasons including but not limited

to the fact that denial would allow the attorney fee hearing on November 9, 2022 to proceed based upon a trial scheduled in violation of Florida Court Rules and norms of due process. Additionally, Petitioner will suffer irreparable harm based on the fact a Final Judgment has been entered already based upon a trial that never should have proceeded. Pursuant to applicable case law delineated herein, plenary appeal is not sufficient to remedy such irreparable harm.

NATURE OF THE RELIEF SOUGHT

The nature of the relief sought by this Petition is as follows:

1. A Writ of Mandamus commanding the trial judge to reverse his Order denying Petitioner's Motion to Postpone Trial. (A7 and A15)
2. A Writ of Prohibition and/or Writ of Mandamus (as applicable) Reversing; or commanding the trial judge to reverse his Order denying Petitioner's Motion to Disqualify. (A17 and A157)
3. A Writ of Mandamus commanding the trial judge to deny Citibank's Motion for Extension of Time to Respond to Discovery filed over a year ago and not yet ruled upon; OR alternatively at least a Writ of Mandamus commanding the judge to rule on Citibank's Motion for Extension and delineate detailed reasons in support. (A159)
4. A Writ of Mandamus commanding the trial judge to VACATE the Final Judgment issued by Judge Edward Garrison on September 19, 2022 and entered, based on the trial held on September 15, 2022. (A199)
5. A Writ of Prohibition prohibiting Judge Edward Garrison from proceeding further in this case upon his completion and compliance with the duties set forth in the Writs of Mandamus and Prohibition requested in (1) - (4) above.

ARGUMENT

I. The Trial Judge declined to respect the Florida Supreme Court by refusing to comply with FRCP 1.440; and also failed to comply with appellate opinions mandating strict compliance with FRCP 1.440. A Writ of Mandamus Reversing the Denial of the Motion to Postpone Trial and Vacating the Judgment entered is Necessary to save Petitioner from Irreparable Harm.

A trial court's obligation to comply strictly with FRCP 1.440 is so well established that it may be enforced by a writ of mandamus. Melbourne HMA, LLC v Janet B. Schoof, 190 So.3d 169 (Fla. 5th DCA 2016); Citing Gawker Media, LLC v BOLLEA, 170 So.3d 125 at 130 (Fla. 2nd DCA 2015). The importance of utilizing Mandamus as the appropriate remedy for a trial court's FRCP 1.440 violation is presented by the following quote from Gawker Media, supra in which the Court elegantly wrote as follows (emphasis added):

> "Mandamus is a different animal altogether. Its purpose is not to review a lower court ruling for prejudicial error; rather, it is meant to enforce the respondent's unqualified obligation to perform a clear legal duty. . . . If the petitioner is entitled to demand performance of the duty, he or she need not preserve the issue beyond making the demand. Further, it is unnecessary for the petitioner to suffer prejudice as a result of the resondent's dereliction. . . .
>
> . . . . It is true that the Gawker defendants have available to them the legal remedy of pursuing an appeal from any future final judgment, in which they could complain of the errant order scheduling the trial. But owing to the mentioned differences between a mandamus proceeding and an appeal, **the appellate remedy is not an adequate one. As we have established, a party is absolutely entitled to strict conformance with the terms of rule 1.440**. . . .

Whereas a writ of mandamus can preserve and effectuate this right in full, an appeal following entry of final judgment is inherently incapable of doing so because the appellant already will have been forced to trial in violation of this rule."

Gawker Media, LLC v BOLLEA, 170 So.3d 125 at 130-131 (Fla. 2nd DCA 2015)

On September 14, 2022 Petitioner filed a Motion to Postpone the trial set for September 15, 2022 on the ground the case was not "At Issue" as required by FRCP 1.440 (A7). The reason the case was not At Issue is because on June 30, 2021 (more than one year earlier) Citibank had filed a Motion to Strike the Affirmative Defenses of Petitioner. (A174) On the date of trial that motion was not yet ruled on. Citibank's Counsel had requested Petitioner's Consent for a Special Set Hearing to be held on the Motion to Strike on August 31, 2022 (14 months after the motion was filed). Petitioner did in fact provide the requested Consent and as a result, Citibank Counsel set a hearing on their Motion to Strike for August 31, 2022. (A183) However, Judge Garrison "Sua Sponte" cancelled the August 31st hearing on the motion (even though both parties consented to it); and unilaterally set a trial date for September 8, 2022 without consulting or providing either party to have input on the matter. (A191) Subsequently, Judge Garrison Sua Sponte cancelled the September 8th trial and rescheduled such for September 15th (A195).

Petitioner in reliance upon the express language of FRCP 1.440 coupled with his understanding of various appellate opinions indicating the rule is to be strictly construed; did not appear for trial on September 15, 2022. Trial proceeded without Petitioner present and a Final Judgement was entered on behalf of Citibank. (A199) No Order ruling upon the Motion to Strike has ever been issued. Accordingly, the case was not "At Issue" when Judge Garrison scheduled the trial for September 8th and then September 15th.

In the Motion to Postpone Trial based on the failure to comply with FRCP 1.440 Petitioner cited the following applicable case law precedents, which Judge Garrison declined to comply with (emphasis added):

> "**Strict compliance** with rule 1.440 is required and **failure to adhere to it is reversible error**. See Lauxmont Farms, Inc. v Flavin, 514 So.2d 1133, 1134 (Fla. 5th DCA 1987). "Indeed **a trial court's obligation to hew strictly to the rule's terms is so well established that it may be enforced by a writ of mandamus** compelling the court to strike a noncompliant notice for trial or to remove a case from the trial docket." Gawker Media, LLC, 170 So.3d at 130 (citing R.J. Reynolds Tobacco Co. v Anderson, 90 So.3d 289 (Fla. 2nd DCA 2012)."
>
> Melbourne HMA, LLC v Janet B. Schoof, 190 So.3d 169 (Fla. 5th DCA 2016)

"Rule 1.440(a) states that "an action is at issue after any motions directed to the last pleading served have been disposed of or, if no such motions are served, 20 days after service of the last pleading" . . . **Appellee concedes, and we agree, that the trial court improperly issued an order setting a non-jury trial. . . . Accordingly, we reverse and remand for a new trial in compliance with rule 1.440(a)**."

Lurtz v The Bank of New York Mellon, 162 So.3d 11 (Fla. 4th DCA 2014)

"On appeal, U.S. Bank properly concedes that the final judgment must be reversed as the case not "at issue" pursuant to Rule 1.440. . . .

Because "failure to adhere strictly to the mandates of Rule 1.440 is reversible error," Precision Constructors, Inc. v Valtec Constr. Corp. 825 So.2d 1062, 1063 (Fla. 3d DCA 2002) we reverse the final judgment in favor of U.S. Bank and remand for a new trial.,"

Lopez v U.S. Bank, 116 So.3d 640 (Fla. 3rd DCA 2013)

As indicated by Melbourne HMA, LLC v Janet B. Schoof, 190 So.3d 169 (2016), above :

"a trial court's obligation to hew strictly to the rule's terms is so well established that it **may be enforced by a writ of mandamus. . . ."**

Accordingly, since Final Judgment has already been entered against Petitioner due to Judge Garrison's refusal to comply with FRCP 1.440 ; Petitioner will suffer irreparable harm if a Writ of Mandamus is not issued. (A199) The relief requested herein is also needed to preclude irreparable

harm to Petitioner for reasons including, but not limited to the fact Citibank has already filed a Motion seeking attorney fees of $ 20,937.50 as a base starting point related to the "FINAL" Judgment, and then subject to multiple unquantified "add-ons." A Hearing on Citibank's Motion for Attorney Fees has already been **UNILATERALLY Set** by Plaintiff's Counsel without Petitioner's Consent for November 9, 2022. The Unilateral Setting of the Attorney Fees Hearing is encompassed in a Court Order containing an **expressly stated false Certification in which Citibank Counsel falsely asserts "he/she has spoken in person or by telephone with the attorney(s) for all parties who may be affected by the relief sought in the motion in a good faith effort to resolve or narrow the issues raised."** (A207) Put simply, Petitioner did not receive even the slightest attempt at communication regarding Setting of the Hearing prior to receipt of the Order setting it. Not a phone call, not an email. Nothing. Petitioner is willing to submit Sworn Testimony attesting that no such Communication occurred and Citibank Counsel's Certification is False.

Petitioner thereupon, requests this Court issue a Writ of Mandamus commanding Judge Garrison to reverse his decision denying the Motion to Postpone Trial and to concomitantly **VACATE** the improperly entered Final Judgment, since it was based upon a trial illegally scheduled.

II. The Trial Judge Failed to Act Neutrally by providing grossly Biased treatment to Extension Motions filed by Respondent compared to those filed by Petitioner. A Writ of Prohibition and/or Mandamus Reversing Denial of Petitioner's Motion to Disqualify is necessary. Also, a Writ Denying Respondent's Extension Request to Respond to Discovery OR mandating a Ruling with detailed supporting reasons is necessary.

A Writ of Prohibition is the proper avenue for immediate review of a denied motion to disqualify. DUNLEVY v STATE of Florida, 201 So.3d 733 (Fla. 4th DCA 2016) citing SUTTON v STATE of Florida, 975 So.2d 1073 (Fla. 2008). In Sutton, supra, the Florida Supreme Court wrote as follows:

> "This Court has recognized that prohibition is a proper remedy to seek review of the denial of a motion to disqualify, and we have implicitly recognized in this context that the petitioners would not have an adequate remedy through direct appeal at the conclusion of the trial. The need for immediate review after a denial of a motion to disqualify arises due to practical considerations."
>
> SUTTON v STATE of Florida, 975 So.2d 1073, 1077-1078 (Fla. 2008)

Judge Garrison failed to act as a neutral arbiter by intentionally treating Extension requests filed by Citibank and Petitioner in a grossly uneven disproportionate manner. His treatment also violated Florida Rule of Judicial Administration 2.215(f).

Specifically, on July 23, 2021, more than one year prior to trial, Citibank filed a Motion for an Extension to Respond to Discovery that

Petitioner served upon them on July 1, 2021. (A159 and A202) In their motion to Citibank represented as follows (emphasis added) (A159):

> "3. Plaintiff desires a **reasonable extension of time** to complete its research and review.
>
> 4. The instant Motion is **not for purposes of delay**."

Thus, the two key points represented by Citibank in requesting the extension is that they were only requesting a "reasonable" period of time and it was "not for purposes of delay." Notwithstanding the foregoing representations Citibank did not respond to the discovery at all until February 15, 2022, approximately seven and a half months later. At that time, they provided only an initial response consisting for the most part of a series of objections and provision of some limited documents. On July 14, 2022 more than one year after Petitioner's Discovery request, Citibank provided additional documents responsive to the request. (A153) As of September 14, 2022, the day before trial the Court had not ruled upon Citibank's Motion for an Extension. As of the date of filing this Petition, the Court still has not issued any written Order ruling upon Plaintiff's Motion for an Extension. Thus, Judge Garrison effectively provided Citibank with a totally open-ended time period to respond to discovery requests.

Notably, the foregoing is particularly important and the failure to rule upon Citibank's request for an extension in any manner caused irreparable harm to Petitioner for the following reason. Petitioner's discovery requests included Requests for Admission. (A202) If Citibank's motion for an extension is denied on the ground they were not seeking a reasonable period of time, but instead filed it for purpose of delay, the impact would be the Requests for Admission would be deemed "ADMITTED." That would mean Citibank would be deemed as having committed the acts Petitioner alleged and such Liability would preclude Citibank from recovering on their Complaint. (A202).

In contrast to providing Citibank with well over a year (and counting) to respond to discovery, Judge Garrison treated Petitioner's reasonable request for an extension quite differently. More specifically, on July 1, 2022 more than two years after filing their Complaint, Citibank served discovery requests upon Petitioner. (A154) On July 28, 2022 Petitioner requested a reasonable period of time to respond to Citibank's discovery requests. **Although Judge Garrison had not yet even ruled upon Citibank's request for an extension (now over a year old), he ruled upon Petitioner's similar request for an extension only 7 days later on August 3, 2022.** (A171). In his Order "purporting' to Grant Petitioner's

request for an extension, Judge Garrison provided a "paltry" 12 days additional for Petitioner to respond to voluminous and harrasive requests (since 3 had already lapsed when he issued the Order). This issue became a key point in Petitioner's decision to file a Motion to Disqualify Judge Garrison on September 14, 2022, the day before trial. (A17, A18) and (A29-A31). In the Motion to Disqualify, Petitioner pointed out that Florida Rule of Judicial Administration 2.215(f) states as follows: (A30)

> **"(f) Duty to Rule within a Reasonable Time. Every judge has a duty to rule and announce an order or judgment on every matter submitted to the judge within a reasonable time."**

The failure of Judge Garrison to accord the Florida Supreme Court with the proper degree of respect by essentially "thumbing his nose" at the Court rule, warranted his Disqualification along with other matters delineated in the Motion to Disqualify. Similarly, since both Plaintiff's Motion to Strike and their Motion to Extend were not even ruled upon by the date of trial, such also should have precluded the trial from proceeding. The importance of trial court judges according the proper degree of respect to the Florida Supreme Court, properly enacted court rules and appellate opinions is summarized elegantly as follows (A31) :

> "The Courts of this state are not empowered to develop local rules which contravene those promulgated by the Supreme Court." Berkheimer v Berkheimer, 466 So.2d 1219, 1221 (Fla. App. 4th DCA 1985). "**Nor may courts devise practices which skirt the requirements of duly promulgated rules**."
>
> WG Evergreen Woods SH, LLC v Fares, 207 So.3d 993 (Fl. App. 5th DCA 2016)

Accordingly, since Final Judgment has already been entered against Petitioner due to Judge Garrison's Bias as evidenced in the Motion to Disqualify, which is legally sufficient coupled with his illegal setting of the trial date in violation of FRCP 1.440 ; Petitioner will suffer irreparable harm if the requested Writs are not issued. (A199) The relief requested herein is also needed to preclude irreparable harm to Petitioner for reasons including, but not limited to the fact Citibank has already filed a Motion seeking attorney fees of $ 20,937.50 as a base starting point related to the "FINAL" Judgment, and then subject to multiple unquantified "add-ons." A Hearing on the Citibank Motion for Attorney Fees has already been **UNILATERALLY set** by Plaintiff's Counsel without Petitioner's Consent for November 9, 2022. The Unilateral Setting of the Attorney Fees Hearing contradicts with **expressly stated false representations contained in the Order in which Citibank Counsel falsely asserts "he/she has spoken in person or by telephone."** (A207) Put simply, Petitioner did not

receive even the slightest attempt at communication regarding Setting of the Hearing prior to receipt of the Order setting it. Not a phone call, not an email. Nothing. Notably, the Order setting the attorney fees hearing was served upon Petitioner on September 28, 2022, the day of Hurricane Ian.

For the foregoing reasons, Petitioner requests this Court issue a Writ of Prohibition and/or Mandamus commanding Judge Garrison to Reverse his Denial of the Motion for Disqualification filed by Petitioner; Vacate the Judgment entered as a result of a trial in which the Judge should have Disqualified himself; and commanding Judge Garrison to Deny Plaintiff's pending Motion to Extend to Respond to Discovery (now pending for approximately 14 months). Petitioner additionally requests a Writ of Prohibition be issued precluding Judge Garrison from further participation in this case.

III. A legitimate and justiciable issue exists whether the Trial Judge possesses sufficient Good Moral Character to be a licensed attorney, much less a Judge due to the unconstitutional nature of the Florida State Bar's Good Moral Requirement for Admission, which impacts adversely upon a litigant's right to a fair and impartial adjudication.

The Motion to Disqualify Judge Garrison indicates that Petitioner's research indicates Judge Garrison was admitted to the Florida Bar on June 1, 1976. Like other Bar Applicants he was presumably subjected to an examination of his "Moral Character." He has now had a law license for 45 years, and been on the bench about 40 years. Yet, since his original admission his Moral Character for purposes of maintaining his law license, has not been reexamined because that is not a recurring Bar requirement. Petitioner's position is that regardless of the quality of his Moral Character in 1976, such is not representative of his "Current Moral Character" due to the lapse of time; and that fact impacts adversely upon Petitioner's right to a fair and impartial adjudication.

In support of the foregoing premise, Petitioner attached to the Motion approximately 103 pages of a book he published on CD-Rom in 2002 titled **"STATE BAR ADMISSIONS AND THE BOOTLEGGER'S SON."** (A39-A140). Also as indicated in the Motion, the book was purchased by numerous Universities and Law Schools. One Chapter of the book on the

record titled **"THE IMPORTANCE OF THE STATE BAR ADMISSIONS PROCESS"** (A55) sets forth reasons delineating how the nature of the State Bar Admissions process impacts adversely upon a litigant's right to a fair and impartial adjudication. It states (emphasis added) (A55):

> "So, I present the question again. What kind of lawyer do you want to represent you? The determination is made through the State Bar admissions process. The State Bar admissions process ultimately affects all Nonattorneys one way or the other. If it is designed to foster a fear and subservience within the attorney, then ther clients will not have zealous representation. . . . If it is designed to place new attorneys at a disadvantage compared to older attorneys, by requiring new attorneys to disclose an unreasonable amount of information about their personal life, then the clients of new attorneys are at a comparable disadvantage. **If it is designed to instill in the new attorney an understanding that rules apply one way to strong regulatory agencies, but in a different way to weak individuals, the attorney can be expected to conduct himself in accordance with such knowledge.**
>
> **If it is designed to exclude minorities, then Nonattorney minorities will not be able to obtain competent representation. If**

it is designed to glean out individuals with bad "attitudes," then clients must expect courts will ultimately adjudicate cases based upon litigant "attitudes," or the "attitude" of attorneys representing the litigants. The facts, law and evidence will have a diminished importance in comparison with the "attitudes" of those involved." (A55)

The basic humanistic principle underlying the above assertions is stated by the U.S. Supreme Court in *Eisenstadt v. Baird*, 405 U.S. 438, 454 (1972), quoting *Railway Express Agency v. New York*, Justice Jackson Concurring, 336 U.S. 106, 112-113 (1949) as follows (emphasis added):

> "The framers of the Constitution knew, and we should not forget today, that there is **no more effective practical guaranty against arbitrary and unreasonable government than to require that the principles of law which officials would impose upon a minority must be imposed generally."**

In Konigsberg v State Bar of California, 353 U.S. 252, 263 (1957) the U.S. Supreme Court wisely stated in reference to the so-called “good moral character” standard:

> “Such a vague qualification, which is easily adapted to fit personal views and predilections, can be a dangerous instrument for arbitrary and discriminatory denial of the right to practice law.”

Stated plainly, in order to avoid the danger of arbitrary admission determinations, any moral character inquiries made of an Applicant, must be asked regularly and periodically of the licensed attorney and Judge. The failure to make similar inquiries of licensed attorneys, as a matter of substance, and regardless of how the Judiciary may phrase the issue in form, results in licensed attorneys and Judges being held to a lower standard of moral conduct. This occurs because as each year passes, the conduct of a licensed attorney during the preceding year escapes any character review, unless it is illegal, or unless an ethical complaint is filed against the attorney. Since attorneys are reluctant to file ethical complaints against each other (because they want the same "courtesy" extended to them), the overwhelming portion of immoral conduct by licensed attorneys and Judges escapes any review. The Bar Applicant is being required to **"Proactively"** report his conduct, whereas in contrast the licensed attorney need only respond in a **"Reactive"** manner and only if an ethical complaint is filed or if they are convicted of a crime. This is an irrational disparity.

The U.S. Supreme Court has addressed the character and fitness review process for Bar admissions on numerous occasions. The matter was dealt with in Schware v. Board of Bar Examiners of New Mexico, 353 U.S. 232 (1957); Konigsberg v. State Bar of California, 353 U.S. 252

(1957); Konigsberg v. State Bar of California, 366 U.S. 36 (1961); In re Anastaplo, 366 U.S. 82 (1961); Willner v. Committee on Character and Fitness, 373 U.S. 96 (1963); In re Stolar, 401 U.S. 23 (1971); Law Students Civil Rights Research Council v. Wadmond, 401 U.S. 154 (1971); and Baird v. State Bar of Arizona, 401 U.S. 1 (1971). These cases were all brought under the First Amendment and the Court was sharply split. Typically, Justice Hugo Black led the portion of the Court supporting the Applicants and condemned the Bar admission committees.

Justice John Harlan consistently led the portion of the Court supporting the State Bars. Harlan was the most stalwart supporter of the State Bar admission committees. The last three U.S. Supreme Court opinions addressing the moral character issue were Stolar, Baird and Wadmond, all issued on the same day, February 23, 1971. Up until that day, Justice Harlan's support of the State Bars had been unwavering. In Stolar however, Justice Harlan in dissent made an absolutely incredible statement demonstrating he was beginning to change his mind regarding the State Bars. He wrote as follows, (Stolar at 36, emphasis added):

> ". . . Knowing something of the great importance which the New York Bar attaches to the independence of the individual lawyer, I have little doubt but that the candidates involved in *Wadmond* will promptly gain admission to the Bar if they straightforwardly answer the inquiries put them without further ado. And I should be greatly surprised if the same were not true as to Mrs. Baird and Mr. Stolar in Arizona and Ohio. **But, if I am mistaken, and it should develop that any of these candidates is excluded simply because of unorthodox or unpopular belief, it would be time enough for this Court to intervene.**"

Since Harlan wrote that momentous statement indicating that even he as the strongest supporter of the State Bars could foresee a time when the U.S. Supreme Court might need to intervene in the Bar admissions process, numerous states have denied admission to Bar Applicants because of unorthodox or unpopular beliefs. Plaintiff submits if John Harlan were around today, even he would agree there is a need to change the admissions process, because the State Bars have abused the virtually unwavering support he gave them as a U.S. Supreme Court Justice.

None of the U.S. Supreme Court cases addressing the moral character issue squarely addressed the issue Petitioner now brings to the Court. Petitioner contends simply the Equal Protection Clause of the Fourteenth Amendment to the United States Constitution is violated by allowing licensed attorney members of the Bar to be held to a lower standard of conduct than Nonattorney Bar Applicants. Concomittantly,

Petitioner contends such impacts adversely upon a litigant's right to a fair and impartial adjudication pursuant to the Due Process Clause also.

As strongly emphasized in Petitioner's book, the subjective nature of personal inquiries made of Bar Applicants is excessively irrational and unconstitutional. Accordingly, the solution is to diminish the number of questions that Bar Applicants are required to answer, and then to subject licensed attorneys and Judges to the same limited scope of questions periodically and regularly. In all fairness, it is absurd that Bar Applicants can be denied admission for not paying credit card debts, while Judges remain on the bench if they do not pay their credit card bill. The question needs to be eliminated in both instances to achieve a parity of result. Similarly, it is absurd that Bar Applicants are required to provide documents and information related to their divorces; when Judges are not required to do so periodically. The process needs to become a simplified objective process, whereby licensed attorneys and Judges report the same information as Bar Applicants. That is the only way it can be fair and that litigants can have Counsel who are not totally and completely subservient to the licensing agency providing their livelihood and the large law firms controlling those licensing agencies.

CONCLUSION

In addition to the matters set forth herein, Petitioner incorporates by reference all other matters delineated in the Motion to Disqualify denied by Judge Edward Garrison. As a result of the trial court's demonstrated Bias, refusal to act as a neutral Judge, and failure to comply with express mandates of Court rules properly enacted by the Florida Supreme Court, as well as mandates of appellate opinions, Petitioner faces irreparable harm that can not be remedied by plenary appeal.

Similarly, the failure of the Florida State Bar to subject Judges and all licensed attorneys to a periodic moral character inquiry that is equal to that of Bar Applicants encroaches upon Petitioner's right to a fair and impartial trial. Put simply, once everyone has to answer the same moral character inquiries regularly and periodically, suffice it to say, it's a safe bet the questions will become more objective, reasonable and fair in nature. The litigants are the ones who will benefit from such, when they are represented by zealous attorneys who actually represent and protect litigant interests.

Petitioner thereupon, respectfully requests this Court grant the relief requested herein, and issue the appropriate Writs of Mandamus and Prohibition requested.

Submitted humbly and graciously this 3rd day of October, 2022.

Evan Gutman, CPA, JD
Petitioner Pro Se
Member State Bar of Pennsylvania
Member District of Columbia Bar
1675 NW 4th Avenue, Apt. 511
Boca Raton, FL 33432
561-990-7440

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a true and correct copy of the foregoing is being furnished to opposing counsel by E-Mail and a follow up copy will be sent via US Mail, to Kenneth M. Curtin, Esquire, of the law firm of ADAMS AND REESE, LLP addressed as follows:

ADAMS AND REESE LLP
Attn: Kenneth M. Curtin, Esq.
100 North Tampa Street, Suite 4000
Tampa, FL 33602

Additionally, I HEREBY CERTIFY that a true and correct copy of the foregoing is being served upon and furnished to County Court Judge Edward Garrison by U.S. Mail Certified addressed as follows:

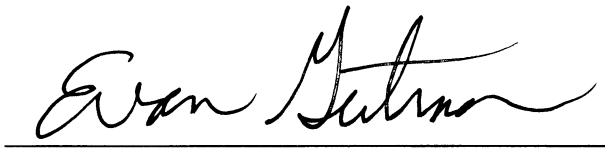
Palm Beach County Courthouse
Attn: County Judge Edward Garrison
205 North Dixie Hwy.
West Palm Beach, FL 33401

Dated this 3rd day of October, 2022.

Evan Gutman CPA, JD

CERTIFICATE OF COMPLIANCE

I HEREBY CERTIFY that to the best of my knowledge and belief, the foregoing comports with the Font and Spacing requirements of Fla. R. App. P. 9.210 and 9.045(b).



Evan Gutman CPA, JD