

No. _____

IN THE
SUPREME COURT OF THE UNITED STATES

MARIE L. HENRY,

Petitioner,

v.

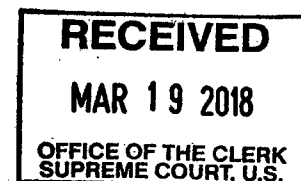
THE FLORIDA BAR, ET AL.,

Respondents.

ON PETITION FOR A WRIT OF CERTIORARI TO
THE UNITED STATES COURT OF APPEALS
FOR THE ELEVENTH CIRCUIT

PETITION FOR WRIT OF CERTIORARI

Marie L. Henry
Petitioner Pro Se
P.O. Box 953521
Lake Mary, FL 32795
mlhenry.esquire@gmail.com
704-737-1935



QUESTIONS PRESENTED

1. Is the Eleventh Circuit opinion dismissing a verified civil rights complaint, without leave to amend and without a hearing, irreconcilable with the First Amend. guarantee to redress grievances, freedom of speech, freedom of association; and the Fourteenth Amend. guarantee of due process, equal protection when the grounds are *Younger* abstention, Eleventh Amendment, absolute judicial immunity, and the complaint sought prospective money damages, declaratory judgment, injunctive relief from unlawful deprivation of rights, unconstitutional discrimination, a void judgment, compelled association, and that Rule Reg. Fla. Bar 3-1.1 is facially and factually unconstitutional?
2. Did the Eleventh Circuit fail to conform to "clearly established" Supreme Court law in *Ex Parte Young*, 209 U.S. 123 (1908) that an action to determine or protect a private party's rights against a state official who acted without legal or statutory authority is not a suit against the state that sovereign immunity bars when it interpreted a statement in plaintiff's complaint to bar the claims even though the complaint alleges *ultra vires* acts?

PARTIES TO THE PROCEEDING

The parties to the proceeding are Marie Louise Henry, individually and on behalf of her child, M.E. as her interests may appear; Petitioner, and The Florida Bar; John F. Harkness, Jr., Executive Director Florida Bar, in his professional and individual capacities; JoAnn M. Stalcup, Bar Counsel Florida Bar in her professional and individual capacities; Adria E. Quintela, Director Lawyer Regulation in her professional and individual capacities; Jan K. Wichrowski, Chief Branch Discipline Counsel, in her professional and individual capacities, Respondents. A corporate disclosure statement is not required under Supreme Court Rule 29.6.

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OPINIONS BELOW

The decision of the United States District Court is not reported. The opinion of the Eleventh Circuit has not been officially reported. Both opinions may be found in the appendix.

JURISDICTION

This Court's jurisdiction is invoked under 28 U.S.C. § 1254(1). The decision of the Eleventh Circuit was filed on July 14, 2017. Rehearing *en banc* was denied on October 16, 2017. On Jan 25, 2018 2017, Justice Thomas extended the time within which to file a petition for certiorari to March 15, 2018. The petition is timely.

CONSTITUTIONAL AND STATUTORY LAW

Amendment I

Congress shall make no law respecting an establishment of religion, or prohibiting the free exercise thereof; or abridging the freedom of speech, or of the press; or the right of the people peaceably to assemble, and to petition the Government for a redress of grievances.

Amendment V

No person shall be held to answer for a capital, or otherwise infamous crime, unless on a presentment or indictment of a grand jury, except in cases arising in the land or naval forces, or in the militia, when in actual service in time of war or public danger; nor

shall any person be subject for the same offense to be twice put in jeopardy of life or limb; nor shall be compelled in any criminal case to be a witness against himself, nor be deprived of life, liberty, or property, without due process of law; nor shall private property be taken for public use, without just compensation.

Amendment XI:

The Judicial power of the United States shall not be construed to extend to any suit in law or equity, commenced or prosecuted against one of the United States by Citizens of another State, or by Citizens or Subjects of any Foreign State.

Amendment XIV § 1

All persons born or naturalized in the United States, and subject to the jurisdiction thereof, are citizens of the United States and of the state wherein they reside. No state shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States; nor shall any state deprive any person of life, liberty, or property, without due process of law; nor deny to any person within its jurisdiction the equal protection of the laws.

42 U.S.C. § 1983. Civil action for deprivation of rights.

Every person who, under color of any statute, ordinance, regulation, custom, or usage, of any State or Territory or the District of Columbia, subjects, or causes to be subjected, any citizen of the

United States or other person within the jurisdiction thereof to the deprivation of any rights, privileges, or immunities secured by the Constitution and laws, shall be liable to the party injured in an action at law, suit in equity, or other proper proceeding for redress, except that in any action brought against a judicial officer for an act or omission taken in such officer's judicial capacity, injunctive relief shall not be granted unless a declaratory decree was violated or declaratory relief was unavailable. For the purposes of this section, any Act of Congress applicable exclusively to the District of Columbia shall be considered to be a statute of the District of Columbia.

Fla. Const., Art. V, § 3

SECTION 3. Supreme court.—

(a) ORGANIZATION.—The supreme court shall consist of seven justices. Of the seven justices, each appellate district shall have at least one justice elected or appointed from the district to the supreme court who is a resident of the district at the time of the original appointment or election. Five justices shall constitute a quorum. The concurrence of four justices shall be necessary to a decision. When recusals for cause would prohibit the court from convening because of the requirements of this section, judges assigned to temporary duty may be substituted for justices.

(b) JURISDICTION.—The supreme court:

(1) Shall hear appeals from final judgments of trial courts imposing the death penalty and from decisions of district courts of appeal declaring

invalid a state statute or a provision of the state constitution.

(2) When provided by general law, shall hear appeals from final judgments entered in proceedings for the validation of bonds or certificates of indebtedness and shall review action of statewide agencies relating to rates or service of utilities providing electric, gas, or telephone service.

(3) May review any decision of a district court of appeal that expressly declares valid a state statute, or that expressly construes a provision of the state or federal constitution, or that expressly affects a class of constitutional or state officers, or that expressly and directly conflicts with a decision of another district court of appeal or of the supreme court on the same question of law.

(4) May review any decision of a district court of appeal that passes upon a question certified by it to be of great public importance, or that is certified by it to be in direct conflict with a decision of another district court of appeal.

(5) May review any order or judgment of a trial court certified by the district court of appeal in which an appeal is pending to be of great public importance, or to have a great effect on the proper administration of justice throughout the state, and certified to require immediate resolution by the supreme court.

(6) May review a question of law certified by the Supreme Court of the United States or a United States Court of Appeals which is determinative of

the cause and for which there is no controlling precedent of the supreme court of Florida.

(7) May issue writs of prohibition to courts and all writs necessary to the complete exercise of its jurisdiction.

(8) May issue writs of mandamus and quo warranto to state officers and state agencies.

(9) May, or any justice may, issue writs of habeas corpus returnable before the supreme court or any justice, a district court of appeal or any judge thereof, or any circuit judge.

(10) Shall, when requested by the attorney general pursuant to the provisions of Section 10 of Article IV, render an advisory opinion of the justices, addressing issues as provided by general law.

Fla. Const., Art. V, § 15:

The supreme court shall have exclusive jurisdiction to regulate the admission of persons to the practice of law and the discipline of persons admitted.

Rule Regulating Florida Bar

RULE 1-4B BOARD OF GOVERNOR

The board of governors shall be the governing body of The Bar. It shall have 52 members, 51 of whom shall be voting members, and shall consist of the president and the president-elect of The Florida

Bar, president and president-elect (who shall vote only in the absence of the president) of the young lawyers division, representatives elected by and from the members of The Florida Bar in good standing, and 2 residents of the state of Florida who are not members of The Florida Bar. There shall be at least 1 representative from each judicial circuit and at least 1 representative from among the members in good standing residing outside of the state of Florida, all of whom shall be apportioned among and elected from the judicial circuits and the nonresident membership, on the basis of the number of members in good standing residing in each circuit and outside of the state. The formula for determining the number of representatives apportioned to and elected from each judicial circuit and the nonresident.

RULE 3-1.1 PRIVILEGE TO PRACTICE

A license to practice law confers no vested right to the holder thereof but is a conditional privilege that is revocable for cause.

STATEMENT OF THE CASE

The law license of Marie Henry, a Black female, was suspended on March 31, 2015. *Fla. Bar v. Henry*, 168 So.3d 230 (Fla. 2015). Henry came into conflict with the Florida Bar ("the Bar"), a mandatory bar association, for exercising her lawful constitutional rights. The facts plead in her civil rights complaint are unchallenged that she was not "engaged in the practice of law" or any activity under the jurisdiction of the Bar.

A. The Florida Bar Acts in Derogation of Law

The decision below extends beyond the interests of the parties in this litigation and confronts issues of national importance affecting fundamental human rights. This Court recognized that to support oneself in one's chosen profession is one of the most important abilities a person can have; and Second, the threat of disbarment and the loss of professional standing, professional reputation, and of livelihood are powerful forms of compulsion. (*McKune v. Lile*, 536 U. S. 24, 50 (2002).

In 1989, a Marquette Law Review, explored legal and political divisiveness that have been the hallmark of mandatory or integrated state bar associations since the inception. See Peter A. Martin, *A Reassessment of Mandatory State Bar Membership in Light of Levine v. Heffernan*, 73 Marq. L. Rev. 144 (1989). Available at: <http://scholarship.law.marquette.edu/mulr/vol73/iss1/6>.

This Court held in a plurality opinion that Wisconsin's mandatory bar membership requirement did not violate the plaintiff's first amendment right not to associate with the state bar. (*Lathrop v. Donahue*, 367 U.S. 820, 843 (1961)). However, the free speech and free association arguments advanced in *Lathrop* were not rejected by the prevailing opinion. The Court merely found that more facts were needed for them to be considered.

This case confronts fundamental constitutional issues left unresolved in *Lathrop, supra* and *Keller v. State Bar of California*, 496 U.S. 1, 12 (1990), *infra*. These issues go well beyond compelled financial support. They go to a government sanctioned monopoly whose officials and agents chills free speech, stifle dissent, discriminate, and break the law with impunity. This Court should now address unresolved issues to safeguard Americans from the unlawful deprivation of life, liberty or property.

More than 50 years ago, this Court's decisional law interpreted the First Amendment to hold that "a State may not, under the guise of prohibiting professional misconduct, ignore constitutional rights." (*NAACP v. Button*, 371 U.S. 415, 439 (1963) (citations omitted). Similarly, in *Florida Bar re Schwarz*, 526 So. 2d 56 (Fla 1988), the FSC recognized the danger of compelled association and said:

To practice law in the courts of Florida we require that all lawyers be members of The Florida Bar. Exception can be made for a particular case, but, for the day-by-day practice, there is no exception — membership in The Florida Bar is compelled. This compelled membership should limit the activities of The Florida Bar to the stated purposes.

B. Compelled Association is Constitutionally Intolerable

In *Withrow v. Larkin*, 421 U.S. 35, 47 (1975), this Court conceded that a "fair trial in a fair tribunal is a basic requirement of due process." This applies to administrative agencies which adjudicate as well as to courts. See *Gibson v. Berryhill*, 411 U.S. 564, 579 (1973) "our system of law has always endeavored to prevent even the probability of unfairness." (citations omitted).

The structure and governance of the Bar permit the exercise of executive-legislative-judicial power without constitutionally adequate safeguards. Individuals charged with violating the Rules Regulating Florida Bar or the Unlicensed Practice of Law ("UPL"), face a tribunal that makes its' own rules, enforces its' own rules then permit self-interested members to sit in adjudication of its' own rules.

In addition to being a member of Bar, its' Executive Director is an Officer, and he prosecutes cases on behalf of the Bar. His salary and emoluments of office are approved by the board of governor and paid from the income derived from the Bar's operations funded by member fees, and through the FSC orders directing disciplined lawyers to pay prosecution costs.

The law is clearly established that a professional has a valuable property interest in an occupational license. As such, every Florida Bar member has a property interest in his/her law

license. Every federal or state judge who holds a Florida law license is a member of the Bar. Although lawyers serving on the board of governor are not paid a salary, they derive indirect remuneration in the form of reputation, Resume experience, which in turn leads to lucrative careers; or a pathway to fulfill future political ambitions.

In *Caperton v. AT Massey Coal Co., Inc.*, 129 S.Ct. 2252, 2254 (2009), this Court reiterated that it is unconstitutionally intolerable when a judge has a direct, personal, substantial, pecuniary interest in the outcome of a case, explicitly finding that: "no man can be a judge in his own case;" and "no man is permitted to try cases where he has an interest in the outcome." Id. 2255.

The issues this Court found constitutionally intolerable are analogous to what Henry confronted due to compulsory membership: 1) conflicts of interest; 2) lack of impartial tribunal; 3) forced payment of dues; 3) restraint on speech; and 4) an illegal restraint on her opportunity to practice law.

Rule Regulating Fla. Bar 3-5.1(e), specifically provides that "[d]uring ... suspension the respondent shall continue to be a member of the Bar but without the privilege of practicing." A suspended member is 1) forced to financially support the Bar but without the legal right to practice, 2) comply with continuing Legal requirements promulgated by the Bar; and 3) are banned from voting to elect the governing body of the Bar.

In *Supreme Court of NH v. Piper*, 470 U.S. 274, 281 (1985), this Court observed that the opportunity to practice law is a fundamental right guaranteed by the Privileges and Immunities Clause of the United States Constitution, Art. IV, § 2. By depriving Henry of a “membership in good standing” the Bar prescribed an unlawful restraint on her opportunity to practice law in Florida or any other place in the United States or its territories.

C. Proceedings in the District Court

On June 19, 2015, Henry filed a verified civil rights complaint, invoking the court’s federal question jurisdiction under 28 U.S.C. §§1331 and 1343. She asserted claims under 42 U.S.C. §§ 1983, 1985, 1986 for violations of rights secured by the First, Fourth, Fifth and Fourteenth Amendments. On August 26, 2015, the court dismissed the complaint as a “shotgun pleading.”¹ Henry filed an amended complaint on September 10, 2015. And on September 24, 2015, she filed a motion supporting her claims for emergency injunctive relief and declaratory judgment.

The Defendants did not Answer. On October 5, 2015, the Defendants, moved for dismissal under Fed. R. Civ. P. 12(b)(1) and 12(b)(6) asserting Eleventh Amendment immunity; *Rooker-Feldman*

¹ See *Weiland v. Palm Beach Cty. Sheriff’s Office*, 792 F.3d 1313, 1320 (11th Cir. 2015) (discussing four types of complaints that the Eleventh Circuit describes as “shotgun pleadings.”)

doctrine; absolute immunity and on the ground that *Younger v. Harris*, 401 U.S. 37 (1971) required the District Court to abstain from hearing the lawsuit. Henry opposed the dismissal.

The District Court granted the defendants motion to dismiss, without leave to amend, on May 27, 2016.

D. Proceedings in the Eleventh Circuit

On appeal, Henry argued that the Bar should not be entitled to Eleventh Amendment immunity because it is not truly an arm of the state, that the individual defendants are not immune from suit, and that the principles of comity implicated in *Younger* are not involved and, therefore, the District Court erred in abstaining. Nonetheless, the Eleventh Circuit affirmed the district court's dismissal, without leave to amend, in all relevant respects. And the Eleventh Circuit held that the individual official capacities claims are barred by the Eleventh Amendment.

E. Facts

JoAnn Marie Stalcup ("Stalcup or Bar Counsel"), with approval of her supervisors and the board of governor, investigated and prosecuted Henry because she complained about police misconduct, racial animus in her child's juvenile proceedings; and sought an impartial tribunal for a

personal lawsuit. Lake County, FL has historically used the criminal justice system to control Blacks.²

October 15, 2012, Stalcup ascribed the following "burden of proof and production" to Henry and said:

[S]he is accusing the judge and the prosecutor of inappropriate conduct because of the race of her daughter - she needs to prove it and the best way to do so is to let me read the transcripts - I believe it is incumbent upon her to get them [juvenile records] to me."

On May 2, 2013, Henry was subjected to probable cause vote allegations before the Bar's Grievance Committee (18A) on a two Count referral containing eight specifications of misconduct.

Count I (TFB File No.: 2013-30,074(18A)) emanated from the following:

1) ASA Responses to Henry's Ethics Complaint

On February 23, 2012 Henry filed an Ethics complaint with the Bar against Assistant State Attorney, John Carnahan ("ASA" or "Carnahan"). Before filing the complaint, she spoke at length with Bill Wilhelm, Attorney Consumer Assistance

² See King, Gilbert, *Devil in the Grove*: Thurgood Marshall, the Groveland Boys, and the Dawn of a New America, New York, NY: Harper 2012.

Program ("ACAP")³ who instructed her that the ASA's conduct, described, violated the Rules Regulating the Florida Bar. He informally opened (Case #11-123) and instructed her on filing a written complaint.

Henry filed the written Ethics complaint on concerns that on January 25, 2010, the ASA initiated a Petition for Delinquency against Henry's 13-year old daughter charging her with a First-Degree Misdemeanor pursuant to F.S. § 843.02 (2009). The Petition was subsequently served on Henry by a Sheriff from the Lake County Sheriff Department. A parent is responsible for a legally dependent child. (F.S. § 61.29). And F.S. §§985.318, 985.319 places a parent of a child charged with delinquency or a violation of law under the jurisdiction of the circuit court. Under F.S. §§ 985.030, 985.039) the court has authority to directly order parents to pay restitution, cost of supervision and care.

The case proceeded to trial on April 19, 2010, after the speedy-trial time frame had elapsed. The conduct charged in the petition "not giving the police

³ Attorney/Consumer Assistance Program. ACAP purpose is: "For individuals who are unsure if a lawyer has acted ethically or who are dissatisfied and wish to consider whether filing a complaint may be appropriate, The Florida Bar operates the Attorney Consumer Assistance Program (ACAP). ACAP staff, including attorneys, handle complaints and may be able to resolve problems before a complaint is filed. The ACAP telephone number is toll-free: 1-866-352-0707." <https://www.floridabar.org/public/acap/> (last visited 1/3/2017).

her name" could not be criminalized under F.S. 843.02 (Resisting an Officer Without Violence). See (*Robinson v. State*, 550 So.2d 1186, 1187 (Fla 5th DCA 1989) ("a defendant's failure to give his name and answer questions cannot itself be criminal consistent with the fourth and fifth amendment protections)."

June 30, 2011, the FSC entered an Order sealing the juvenile's case and said:

Pursuant to Florida Rule of Appellate Procedure 9.145(e), and pursuant to Sections 985.04(2) and 985.05 (2), Florida Statutes, the file in this matter shall remain sealed effective immediately. Unless otherwise ordered by the Court, this file shall remain sealed in the Clerk's Office, except when in use by the Court, and may only be reviewed by the parties or their attorneys.

The Bar required that the ASA file a response to Henry's Ethics complaint. He filed responses on March 16, 2012 and July 16, 2012 in which he made false and unsubstantiated allegations from the juvenile records. He urged the Bar to take action against Henry's law license. An investigation completed by the Office of Inspector General, DJJ in July 2014, confirmed that the ASA used his official position to obtain juvenile records and provided them to Stalcup.

Stalcup closed the Ethics filed against the ASA on November 19, 2012. On November 20, 2012,

she notified Henry's attorney by letter that she was referred to the Grievance Committee (18A) for further investigation. Only page 1 of the 2-page referral letter was sent to Henry's attorney. Page 2, designated "CONFIDENTIAL" pertinently said:

The respondent (Henry) initially filed a complaint regarding the complainant's (ASA) conduct in regard to the prosecution of her daughter. She alleged the prosecutor's prosecution of her daughter was based upon racial animus and he engaged in prosecutorial misconduct. That matter has been closed. The complainant (Mr. Carnahan) in this matter alleges that the respondent misstated the law to the court, that she made false accusations against him, and that she misrepresented facts regarding her daughter's conduct to the court. Respondent assert that she did not misstate the law, that she believes the complainant treated her daughter differently and that it was due to racial bias, and that she did not make any misrepresentations in regard to her daughter or her daughter's circumstances. Possible Rule Violations not limited to: 4-3.1 Meritorious Claims and Contentions; 4-3.3 Candor Toward the Tribunal; and 4-8.4(c) and (d) Misconduct."

The ASA was a fact witness at Henry's trial on November 12, 2013. In his testimony, he called Henry diabolical, mentally insane, mentally deranged, and litigious. He called her daughter a liar and testified about a 13-year old "nipple." In addition, he testified:

It was my understanding that she [Henry] filed a motion to recuse and from what I've seen, it had a lot of the language in it that was used against me, the same kind of -- all racial animus, everything he did was based on race and prejudice and so forth. She wanted him removed. And my understanding was, is that he did not feel that the recusal was adequate. I mean, it was just not anything true whatsoever. But he found it so extreme, that he said, "Based on this, I'm going to file a Bar complaint against you, Marie Henry, and that means I do now have a legal reason to recuse myself," which he did. And then that foreclosure case went to a different docket.

2) Citizen's Complaint Henry Filed Against Mount Dora Police Officers

On Halloween night 2009, Henry's 13-year old daughter and a group of other minority children were detained while walking peacefully up a public street in downtown Mount Dora. The children were accused of criminal mischief and their names demanded for a criminal data base. When Henry's daughter did not immediately provide her name, she was forcibly arrested in front of hundreds of onlookers, handcuffed, placed in the back of a police car and taken to jail where she was photographed, finger-printed, and searched. Her parents were not notified and her requests to call her parents were refused.

October 31, 2009 and March 3, 2010, Henry filed a citizen's complaint against Mount Dora Police officers Brett Livingston and Iverlise Severance. Henry was investigated and subjected to probable cause vote allegations by the Florida Bar (18A) Grievance Committee on the following grounds:

- The citizen's complaint and the subsequent Internal Investigation (IR#2010-01) signed by Lt. Robert Newsome and Chief T. Randall Scoggins, Mount Dora Police;
- Officer Brett Livingston email dated 3/11/2012 styled "FYI" and copied to Lt. Robert Bell that he sent to Shirley Coleman, Bar Investigator, on 7/13/2012. The email recounted a conversation he had with Henry at a Publix grocery store when her daughter pointed him out;
- Statements of Mount Dora Police Chief T. Randall Scoggins to Shirley Coleman, Bar Investigator, on 7/13/12 including saying that the arrest of Henry's juvenile daughter was a "slam-dunk."
- Chief Scoggins letter of commendation to Officer Livingston dated 7/14/2009, citing a November 20, 2009 letter from Andrew Mullen, President of Mount Dora Historical Society, in which he called Henry's daughter and minority teens "hoodlums" and "miscreants";

- A 9/14/2010, letter Henry wrote to Chief Scoggins expressing her concerns that the internal investigation of Officers Livingston and Severance would not be fair and impartial.

3) Department of Juvenile Justice (DJJ)

As a result of the Ethics complaint Henry filed against the ASA the Bar Investigator, Shirley Coleman, interviewed Julie Vest, DJJ Supervisor and Sr. Probation Officer, Kacey Edmonson.

During the interview, the Probation Officer made derogatory remarks about Henry. She also testified to an out of court telephone conversation with Henry and cited it as grounds to issue an affidavit for an arrest warrant of Henry's minor child. The affidavit was submitted to Judge Takac who issued a summons for the child's arrest for "absconding" probation. The child was arrested at her home on Friday, March 4, 2011. She was taken away in tears, shackles, handcuffs and placed in secured detention in Marion County, FL.

On March 4, 2011, Florida law made it illegal for a judge to issue a pick-up order on an affidavit that a child ran away, without establishing intent to avoid legal process. See for e.g. *B.M. v. Dobuler*, 979 So.2d 308 (Fla. 3d. DCA, 2008). *Dobuler* at 318 n.4, the court addressed the DJJ handbook provision equating "run-away" to an "absconder." The court specifically rejected that provision on numerous grounds including that it would vitiate the remainder of the definition requiring "intent" to avoid legal process. The Referee, who has absolutely

no jurisdiction to adjudicate juvenile proceedings, found Henry guilty of lying under oath that her child had not “absconded” probation.

Count II of the letter referring Henry to the Bar (18 A) Grievance Committee (TFB File No.: 2012-31,557(18A)) emanated from the following:

1) Order of Circuit Judge Michael Takac in Response to Henry’s Motions to Disqualify

On August 4, 2009, Henry filed a predatory lending lawsuit against her mortgage company, Bank of America (“BOFA”) et al (2009-CA-004537). On March 8, 2012, pursuant to F.S. § 38.10, and Fla. R. Jud. Admin. 2.330, Henry filed an initial motion to disqualify Circuit Judge Michael Takac from proceeding in the lawsuit. The motion was filed with the Clerk, but not simultaneously served on the judge, as required by Fla. R. Jud. Admin. 2.330(c)(4).

May 22, 2012, Henry filed a new Motion to disqualify Judge Takac and served him. June 19, 2012, Judge Takac issued a 7-page order finding the initial motion and the one effected after personal service legally insufficient. He served his Order on Liebler Gonzalez & Portuondo P.A., Counsel for BOFA and the Clerk. Judge Takac remarked in his Order:

Having found two (2) motions of the Plaintiff to be legally insufficient for disqualification and due to the contents of Plaintiff’s legally insufficient motions, the court finds them to

be sham pleadings of scurrilous content and orders them stricken from the file. They along with this Order, are to be furnished to the Florida Bar as a complaint against the Plaintiff by the undersigned Judge for her un-professional behavior in violation of the Rules of Professional conduct.

The content of the rambling, illogical, inconsistent "motions" are rife with adjective, invective and accusations, but short on fact(s), and constitute either a display of ineptitude, or calculated violation of professional conduct rules, that require submission to the Florida Bar for consideration of appropriate sanction(s) against her [Henry].

Judge Takac also remarked that the initial motion accused him of "depart[ing] from the essential requirements of justice purely based on perceived racial animus, profiling and political motives in prosecuting this [child's juvenile] case."

2) Actions of Circuit Judge after Disqualification

Judge Takac, is a member of the Bar. On June 25, 2012, he sent his Order with a letter written on judicially issued letterhead to Jan Wichrowski, Chief Branch Discipline Counsel, he included juvenile records, judicial canons and other documents totaling 34 pages. The letter said:

Sadly, I write to inform you that I find it to be my duty as a Circuit Judge for the Fifth

Circuit to forward to you the enclosed Order which for the reasons stated therein constitute my charges against Ms. Henry for unethical and unprofessional conduct that violate the Rules of professional conduct of the Rules Regulating the Fla. Bar. Should the Order be insufficient or there are any questions you may contact me at the office number below.

On July 11, 2012, the Florida Bar Investigator documented that Judge Takac said in response to the Ethics Complaint Henry filed against the ASA:

[T]he complainant [Henry] is delusional, has tunnel vision, and has a fixation on this case... The complainant also brought up "race" because the juveniles were referred to as "black youths"..... toward the end, the complainant made comments concerning racial bias that made everyone uncomfortable.

Judge Takac gave a deposition on November 5, 2013 and said:

She [Henry] is not qualified to practice law.... Ms. Henry made the argument that her daughter had been racially profiled. And, you know, that's something that we can't tolerate. But she had latched on to a call -- somehow or other the word "black" came up because her daughter is black. And I think it was the caller said, "Black children

are throwing rocks," or something like that. And she had a concern about the racial profiling.

On November 20, 2012, Stalcup notified Henry's attorney by letter that she was referred to the Grievance Committee (18A) for further investigation. Only page 1 of the 2-page referral letter was sent to Henry's attorney. Page 2, designated "CONFIDENTIAL" pertinently said:

In a civil matter involving the respondent, respondent filed two motions to disqualify the judge based upon his handling of the juvenile matter. Both motions were denied by the court. The first motion filed in March 2012 was legally insufficient. The certificate of service failed to copy the motion to the judge." The respondent also alleged the judge's actions in the juvenile case were based upon perceived racial animus, racial profiling, and political motives and that he misinterpreted and refused to follow the law. It appears respondent failed to act in good faith in the filing of the motions. Possible Rule Violations not limited to: 4-3.3 Candor Toward the Tribunal; 4-3.5 Impartiality and Decorum of the Tribunal; 4-8.2 Judicial and Legal Officials; and 4-8.4(c) and (d) Misconduct.

Clayton Simmons, former Chief Judge, Eighteenth Judicial Circuit, was assigned as the Grievance Committee (18A), Investigator. He accused Henry of calling Judge Takac a "racist" and said she would pay. Mr. Simmons later

acknowledged that he recommended probable cause for the Bar to prosecute Henry because:

· · · · you [Henry] alleged · · The officer who arrested your [Henry] daughter was motivated by racial prejudice. You alleged that the ASA was motivated -- in his prosecution of your daughter's case was motivated by racial prejudice, and you alleged and inferred that Judge Takac was racially prejudiced. And those are all violations of the code of conduct.

The Bar filed a 20-page complaint on June 26, 2013. The complaint was approved by the FSC. County Judge, Hon. Thomas Jaworski, Eight Judicial Circuit was assigned as the Referee. Judge Jaworski, a member of the Bar, was tasked with being an impartial arbiter to preside over Henry's trial, to make findings of fact and a recommendation to the FSC. The burden of proof in a bar discipline case is "clear and convincing evidence."

Henry's civil rights complaint alleged that the Bar's trial on November 12-13, 2013, was conducted in derogation of the law and with such degradation that she broke down in tears. She contacted the Bar Ethics Hotline after the trial to discuss her concerns. On December 30, 2013, she wrote a letter to the Bar Officers, Executive Director John Harkness Jr. and President Eugene Pettis. She addressed the unethical conduct and abuses she suffered at the trial. She also complained of discrimination, unfair treatment, violation of her constitutional rights, invasion of her child's privacies, and made a Public Records request.

February 27, 2014, Stalcup expressly threatened that: “[t]he bar anticipates presenting correspondence with accompanying attachments Ms. Henry wrote, dated December 30, 2013 to Mr. Eugene K. Pettis, President of the Bar, and Mr. John F. Harkness, Jr. Executive Director of the Florida Bar, in aggravation.” On March 17, 2014, Stalcup made good on the threat. She presented the letter and attachments, which are identified as “Florida Bar Composite Exhibit 1.” She urged the Referee to impose a “rehabilitation”⁴ suspension of Henry’s law license and he did.

Rule Regulating Fla. Bar 3-7.6(m) require that: (A) the referee’s report shall include a finding of fact as to each item of misconduct (B) Recommendations as to whether the respondent should be found guilty of misconduct justifying disciplinary measures. On April 30, 2014, the Referee issued a 29-page Report of Referee to the FSC. The following, while not exhaustive, are some of the Referee’s findings of fact and recommendations, which the FSC adopted:

- 1) “[a]fter the final hearing respondent [Henry] filed with the President of the Florida Bar and the Executive Director of the Florida Bar, a twenty-one page letter, excluding the attachments, wherein respondent continues

⁴ For bar fitness purposes, rehabilitation is the reestablishment of the reputation of a person by his or her restoration to a useful and constructive place in society. See Webster’s Third International Dictionary (Unabridged) (1967). (In Re Cason, 249 Ga. 806, 808 (GA 1982).

to challenge the verdict rendered in her child's juvenile case, continues to assert that the individuals involved in the arrest and prosecution of her daughter acted solely based upon improper conduct (racial animus and prosecutorial misconduct) and motivations, and now asserts that the Bar's investigation and prosecution of the Bar's case was also based upon improper conduct and motivations; (Id. at 20);

- 2) In her motion to disqualify the judge, made "numerous statements that disparaged the integrity and motivations of the judge." (Id. at 7);
- 3) Failed to serve her motion on the judge as required by the Florida Rule of Judicial Administration (Id. at 7);
- 4) "Continued to disparage the judge in [her] second motion to disqualify." (Id. at 8);
- 5) The judge voluntarily recused himself because "he felt compelled to make further comment on respondent's motions beyond their mere denial and he believe [sic] Henry's conduct needed to be reviewed by the Florida Bar." (Id. at 9);
- 6) In her motion to disqualify the trial judge, Ms. Henry "deliberately and knowingly made a misrepresentation by omission. (Id.).

March 31, 2015, the same day Henry filed an appeal in the civil rights lawsuit her daughter filed against the city of Mount Dora and its officers, her license was suspended. The cursory, unelaborated order adopted the 29-Page Report of Referee findings of fact and recommendations in all respects. Except the suspension was enhanced from 91 days to 6 months. The Order and the 29-Page Report of Referee are published on the Bar's public website at www.floridabar.org.

REASONS FOR GRANTING THIS PETITION

This case presents an opportunity for this Court to: 1) reassess the constitutionality of compulsory association; 2) determine whether the Bar is an agency of the State within the meaning of the Eleventh Amendment and 3) say whether it is unconstitutional for an Article III court to deny a citizen access to the federal court to redress grievances against the Bar.

As recognized by this Court, "attorney discipline is an important state interest which bears a close relationship to State proceedings that are criminal in nature." (*Middlesex County Ethics Comm. v. Garden State Bar Assn.*, 457 U.S. 423, 432 (1982) (citations omitted). The legitimate state interest underlying licensing statutes and the regulation of the practice of law is "the protection of the public, the purification of the bar and the prevention of a re-occurrence." *Id.* at 434.

In the instant case, the actions of the Bar, have nothing to do with the practice of law or protecting the public. The conduct is emblematic of a system riddled with conflicts of interest, and power to chill free speech or political dissent. Disfavored members, like Henry, are subjected to unlawful deprivation of the property interest in their law license and the liberty interest in their good name. Henry, a suspended member, has been forced to pay compulsory dues, ordered to pay the Bar's prosecution costs, and ordered to financially subsidize a private company, Florida Lawyer's Assistance Inc.

ARGUMENT

- I. **The Eleventh Circuit is Required to Apply a Strict Scrutiny Analysis**
 - A. **Before the Government Deprives a Citizen of a Fundamental Right It Must Satisfy the Prohibition Against Unlawful Deprivation**

In addition to monetary damages, Henry's federal civil rights complaint sought injunctive and declaratory relief that: 1) compulsory association with Florida Lawyer's Assistance Inc. ("F.L.A.")⁵ is a constitutionally impermissible burden on her individual rights of association and speech; 2) Rule Regulating Fla. Bar 3-1.1 is unconstitutional,

⁵ F.L.A. is a program that "was created to help substance-abusing attorneys overcome their addictive disorders." In re Norris, 581 So.2d 578, 579 (Fla.1991).

facially and as applied; and 3) the Order of suspension is void *ab initio*.

The Fifth Amendment provides that a person shall not be deprived of life, liberty, or property, without due process of law. The Fourteenth Amendment guarantees that:

[n]o state shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States; nor shall any state deprive any person of life, liberty, or property, without due process of law; nor deny to any person within its jurisdiction the equal protection of the laws.

The Eleventh Circuit decision emphatically denied Henry an adequate determinative means to a legal forum to redress her grievances to enforce her constitutional rights. In *United Mine Workers of America, District 12 v. Illinois State Bar Association*, 389 U.S. 217, 222 (1967) this Court held that "the freedom of speech, assembly, and petition guaranteed by the First and Fourteenth Amendments" gave the union "the right to hire attorneys on a salary basis to assist its members in the assertion of their legal rights." *Id.* The Court based this conclusion on:

[t]he rights to assemble peaceably and to petition for a redress of grievances are among the most precious of the liberties safeguarded by the Bill of Rights. These rights, moreover, are intimately connected, both in origin and in purpose, with the other

First Amendment rights of free speech and free press. "All these, though not identical, are inseparable.

More than 200 years ago, this Court said that the violation of vested legal right requires a remedy:

The government of the United States has been emphatically termed a government of laws, and not of men. It will certainly cease to deserve this high appellation, if the laws furnish no remedy for the violation of a vested legal right. (*Marbury v. Madison*, 5 U.S. 137 (1803).

Henry does not contend that the State's licensing of attorney is not rationally related to an important state interest. She contends that the current system is unconstitutionally intolerable because it stifles speech, political dissent, and denies due process. Judicial deference is necessarily constrained where Constitutional protections are implicated and where this Court has settled an issue of Federal law.

The suspension and sanctions the Bar imposed are not reasonably related to the public health and welfare. They amount to an arbitrary and impermissible interference with rights guaranteed by the Constitution and statutory law. The deprivation of these rights denied Henry the opportunity to practice her profession, which is a valuable property right protected by the due process

clause. (*Dent v. West Virginia*, 129 U.S. 114, 121 (1889)).

Moreover, Florida has long recognized that a professional has a property and liberty interest in an occupational license protected by the Art. I § 9 Fla. Const. and U.S. Const. Amends. V, XIV. See for e.g. *Florida Medical Ass'n v. Department of Professional Regulation*, 426 So.2d 1112, 1116 (Fla. 1st DCA 1983); *Delk v. Department of Professional Regulation*, 595 So.2d 966, 967 (Fla. 5th DCA 1992):

A professional has a property interest in his license to practice his profession protected by the due process clauses of the state and federal constitutions which provide that no person shall be deprived of life, liberty or property without due process of law, citing *Robinson v. Florida Board of Dentistry*, 447 So.2d 930 (Fla. 3d DCA 1984). (internal quotations omitted).

Rule Regulating Fla. Bar 3-1.1 provides "A license to practice law confers no vested right to the holder thereof but is a conditional privilege that is revocable for cause." The Rule is plainly unconstitutional on its face. It imposes a classic unconstitutional condition in which the government conditions the issuance of a license on the relinquishment of a constitutional right.

Whether a Bar rule is unconstitutional is a question of law that is reviewed *de nova*. (*Doe v. Fla. Bar*, 640 F.3d 1336, 1342 (11th Cir. 2011)). Infringement of a fundamental right, requires a

strict scrutiny analysis. *Troxel v. Granville*, 530 U.S. 57, 80 U.S (2000) (Justice Thomas, concurring). Henry's complaint averred facts that Rule 3-1.1 is unconstitutional. And deprived her of her rights to free speech, association, an impartial tribunal, and due process. The application of the Rule deprived her of the property interest in her law license, liberty interest in her good name. Furthermore, she was harassed, humiliated, degraded and lost her employment. Deprivation of fundamental rights are subject to a strict scrutiny analysis. Neither the district court nor the Eleventh Circuit applied such an analysis.

The Eleventh Circuit had a duty to allow Henry's First Amendment claim to proceed on its merit. In *Harrell v. Florida Bar*, 608 F.3d 1241, 1261-62 (11th Cir. 2010), the court established that a First Amendment challenge to a Bar Rule may go forward on the merits when three things are met:

- 1) The attorney has made statements and unless prohibited from doing so will continue to make statements that may violate the challenged Bar rule;
- 2) The attorney faces a credible threat of disciplinary action if the attorney continues to make the statements; and
- 3) Nothing would be gained by requiring the attorney to obtain a more definitive interpretation of the rule because the rule application is clear on its face.

**B. Government Action Taken in Complete
Absence of Jurisdiction is Void**

Henry's civil rights complaint sought equitable relief from a judgment that is *void ab initio*.

Rule Regulating Fla. Bar 3-7.6(d) require that a disciplinary proceeding trial must be conducted "in the county in which an alleged offense occurred or in the county where the respondent resides or practices law or last practiced law in Florida." June 28, 2013, the FSC entered an Order of Referee Appointment (Disciplinary) to Hon. Robert Roundtree, Jr. C.J. Eight Judicial Circuit, Alachua County, Gainesville, FL. On July 8, 2013, County Judge, Hon. Thomas M. Jaworski, Eight Judicial Circuit, was appointed as the Referee to conduct a disciplinary proceeding and to consider the Florida Bar's Complaint against Henry. When the FSC purported to authorize a prosecution outside the jurisdiction set by Rule Regulating Fla. Bar 3-7.6(d), the FSC was without jurisdiction to do so;

Regulating Fla. Bar. 3-7.11(d), require the referee to serve a subpoena for trial in accordance with F. S. § 48.031. Henry was a witness in the Bar proceedings against her. The Referee did not serve a subpoena. Instead, she was threatened with "contempt" if she did not appear in Gainesville, FL for the trial.

Rule Regulating Fla. Bar 3-7.6 (h) requires that the Bar's Complaint be filed in the FSC. Paragraph 2 of the Bar's complaint plainly assert

that Henry “resided and practiced law in Lake County, FL at all times material.” Therefore, it is clear on the face of the Bar’s own complaint that Henry formed no jurisdictionally relevant contacts with the Eight Judicial Circuit, Alachua County, Gainesville, FL. Moreover, during the relevant time, Henry was not engaged in the practice of law. She was employed full-time as a Team Leader in Lake Mary, Florida, Seminole County.

Henry has a Constitutional right to privacy and to be left alone, Art. I § 23 Fla. Const. The Bar does not exercise jurisdiction over Henry’s private life. Even if the Bar mounts a countervailing argument that Henry’s personal acts in filing Ethics complaints, complaints of discrimination, and seeking to disqualify a judge are acts of an attorney because she is a member of the Florida Bar, The U.S. Const. Amendments I, XIV, and F.S. §§ 454.11, 38.10 eliminated the State’s power to proscribe Henry’s conduct or to impose the Bar’s prosecution or suspension of her license.

The Referee was without jurisdiction to: 1) conduct a trial; 2) adjudicate findings of facts relating to a juvenile case; 3) recommend punishment not authorized by law.⁶ His finding of

⁶ F.S. § 38.10, Fla. R. Jud. Admin. 2.330 prescribe the conduct of a judge against whom a motion to disqualify is filed. F.S. § 38.10 gives litigant a substantive right to disqualify a judge. (*MacKenzie v. Super Kids Bargain Store, Inc.*, 565 So. 2d 1332, 1334-1335 (Fla.1990)). And “[w]hether a judge ruled correctly in denying a motion for disqualification as legally insufficient, s/he shall not pass on the truth of facts alleged nor adjudicate the question of disqualification....to do so creates an

facts, supra, show that he acted with actual bias, in derogation of law and without jurisdiction. A sentence that patently fails to comport with statutory or constitutional limitations is by definition "illegal." *State v. Mancino*, 714 So.2d 429, 433 (Fla. 1998).

Likewise, on March 31, 2015, the FSC was without jurisdiction to enter its unelaborated order citing no authority and accepting the advisory recommendation of Referee Jaworski that were entered in the clear absence of any jurisdiction.

**C. Congress Established the Declaratory
Judgment Act 28 U.S.C. §§ 2201-2202
to Remedy Ongoing Violations of
Constitutional and Statutory Rights**

Under the Declaratory Judgment Act, "[i]n a case of actual controversy within its jurisdiction...any court of the United States may declare the rights and other legal relations of any interested party seeking declaration whether or not further relief is or could be sought." The Act creates a remedy, not an independent source of subject matter jurisdiction. (*Kelly Oil Co. v. Phillips Petroleum Co.*, 339 U.S. 667, 671 (1950).

It follows as a matter of principle, that a court has no authority to leave in place a conviction or

intolerable adversary atmosphere between the trial judge and the litigant." (*Bundy v. Rudd*, 366 So.2d 440, 443-442 (Fla. 1978).

sentence that violates a substantive rule. This Court has held that a conviction imposed in a violation of a substantive rule is not just erroneous but contrary to law and as a result void. See for e.g. *Henry Montgomery v. Louisiana*, 136 S. Ct. 718, 731 (2016) citing (*Ex parte Siebold*, 100 U.S. 371, 376 (1879)).

The Eleventh Circuit's own controlling authority supports the court's duty to address an action where the judgment is asserted to be void.⁷ The controlling authority in the circuit says:

We believe that a judgment, whether in a civil or criminal case, reached without due process of law is without jurisdiction and void...because the United States is forbidden by the fundamental law to take either life, liberty or property without due process of law, and its courts are included in this prohibition...." *Bass v. Hoagland*, 172 F.2d 205, 209 (5th Cir.), cert. denied, 338 U.S. 816 (1949).

See also *Rhoades v. Penfold*, 694 F.2d 1043, 1047, (5th Cir. 1983) "[w]here a party asks a federal court to declare a state court judgment null and void, we should consider this as praying for an injunction enjoining its enforcement." (citations omitted).

An Article III court dismissal of a litigant's claim of a void judgment, and admonishing her not

⁷ Decisions of former 5th Cir., decided before 10/1/1981 shall be binding as precedent in the 11th Cir. (*Bonner v. City of Prichard*, 661 F.2d 1206, 1207 (11th Cir.1981) (en banc)).

to pursue further challenges, (App. 19a) is prejudicial to the effective and expeditious administration of the business of the court.

II. The Eleventh Circuit's Opinion Conflicts with the Decisions of this Court Limiting the Application of Younger Abstention

The district court held that the complaint fails to allege sufficient irreparable injury to justify equitable relief. App. 17a. The district court and the Eleventh Circuit relied on *Middlesex County Ethics Comm. v. Garden State Bar Ass'n*, 457 U.S. 423 (1982) to deny Henry an adjudication on the merits of her federal civil rights complaint. The facts in the instant case are completely distinguishable from *Middlesex* and the holding of this Court. This Court held: "federal courts should abstain from interfering with "ongoing disciplinary proceedings within the jurisdiction of the New Jersey Supreme Court." *Middlesex* Pp 431-437.

In the instant case, the federal complaint averred unchallenged facts, that the disciplinary action was not within the jurisdiction of the Bar. Moreover, she specifically asked for relief from a void judgment, and from being forced to associate with F.L.A., as a condition precedent, to being reinstated to membership in good standing.

In *Middlesex*, 457 U.S. at 432, an attorney disciplinary proceeding, the Court held that *Younger* abstention applies only if (1) there are pending state proceedings at the time of the federal action, (2) the proceedings implicate important state interests, and (3) the proceedings provide an

adequate opportunity for raising federal constitutional questions). In the absence of a pending prosecution, the principles that provided the rationale for abstention — equity, comity, and federalism — “have little force.” *Steffel v. Thompson*, 415 U.S. 452, 462 (1974).

The Constitution of the State of Florida establishes and describes the duties, powers, structure and function of the government of the State and establishes the basic law of the State. This Court took pains to emphasize that Respondent Hinds had abundant opportunity to present his constitutional challenges in the state disciplinary proceedings.” *Middlesex* 457 U.S. at 436.

Unlike Hinds, the facts set forth in Henry’s complaint show that: 1) she fully cooperated with the Bar proceedings; 2) she has no right of appeal within the state judicial system; and 3) Referee Jaworski found that the December 30, 2013, letter she wrote to challenge the constitutionality of the Bar’s proceedings and complaints she raised about harassment was itself found to be evidence of her misconduct.

Art. V. § 3(b)(1-10) grants the FSC discretionary jurisdiction to hear cases in its role as a state court. Disciplinary proceedings do not fall within the court’s discretionary jurisdiction. Art. V § 15 Fla. Const. states that “the Supreme Court shall have exclusive jurisdiction to regulate the admission to the practice of law and the discipline of persons admitted.” In discussing *Younger* abstention, *Middlesex*, *supra* held that a NJ Bar disciplinary case was “judicial.” Arguably, *Forrester v. White*,

484 U.S. 219 (1988) implicitly overruled *Middlesex* by interpreting *Supreme Court of Virginia v. Consumers Union*, 446 U.S. 719 (1980) that judges enforcing a Bar Code lack judicial immunity but are considered prosecutors. Four concurring justices in *Middlesex* at page 439 said "Furthermore, it is unclear whether proceedings before the Ethics Committee are more accurately viewed as prosecutorial rather than judicial proceedings."

Furthermore, Henry's factually based allegations, are supported by substantial evidence, that the action comes within a *Younger* exception for bad faith. Henry plead specific facts showing harassment for complaints she made about "racial animus and intentional interference with her license without jurisdiction. This is precisely the type of bad faith exception that this Court recognized in *Dombroski v. Pfeister*, 380 U.S. 479 (1965). *Dombroski*, at 486 saying:

For "[t]he threat of sanctions may deter . . . almost as potently as the actual application of sanctions. . . ." *NAACP v. Button*, 371 U. S. 415, 433. Because of the sensitive nature of constitutionally protected expression, we have not required that all of those subject to overbroad regulations risk prosecution to test their rights. For free expression—of transcendent value to all society, and not merely to those exercising their rights—might be the loser. Cf. *Garrison v. Louisiana*, 379 U. S. 64, 74-75.

The three exceptions to the abstention doctrine enunciated in *Younger* were satisfied from

the face of Henry's civil rights complaint. Abstention is not warranted if (1) there is evidence of state proceedings motivated by bad faith, (2) the state law being challenged is patently unconstitutional, or (3) there is no adequate alternative state forum where the constitutional issues can be raised. *Younger*, 401 U.S. at 45, 53-54.

Judge Takac had no jurisdiction to issue the 7-page Order, or to send it to Respondent Jan Wichrowski; or order the Bar to impose sanctions against Henry's law license. His conduct illegal under F.S. §§ 38.01, 38.10, Fla. R. Jud. Admin. 2.330.

Henry acted as a private citizen when she: 1) filed the motion to disqualify the judge; 2) filed a "citizen's" complaint against the police involving herself and her child; and 3) filed an Ethics complaint against a public official involving her own personal involvement with the ASA, as a parent placed under the jurisdiction of the DJJ and the circuit court. The Bar's own rule 4-3.4(h) bars improper disciplinary-charge for filing complaints. See *Tobkin v. Jarboe*, 710 So.2d 975 (Fla. 1998) (absolute immunity for filing disciplinary charges against a Florida Bar member.)

The dismissal of Henry's complaint violates Henry's Constitutional right to access the court guaranteed by the First Amendment U.S. Const., Art. I § 21 Fla. Const. and her Fourteenth Amendment guarantee of due process and equal protection. This Court has said:

[G]enerally, as between state and federal courts, the rule is that the pendency of an action in the state court is no bar to proceedings concerning the same matter in the Federal court having jurisdiction...." Colorado River Water Conservation District v. United States, 424 U.S. 800, 817 (1976) (marks and citations omitted). Federal courts have a "virtually unflagging obligation ... to exercise the jurisdiction given them." Id. A policy permitting federal courts to yield jurisdiction to state courts cavalierly would betray this obligation. Thus, federal courts can abstain to avoid duplicative litigation with state courts only in "exceptional" circumstances. Id. at 818.

In short, under this Court's precedents there is no basis for abstention.

III. Eleventh Amendment Immunity does not Apply to the Florida Bar or Action of its Officials Taken in Derogation of the Law and Constitutional Rights

In its Order of dismissal entered on May 27, 2016, the district court said the only claims dismissed under the Eleventh Amendment were claims for damages against the Florida Bar. (App. 18a).

But, the Eleventh Circuit dismissed Henry's individual official capacities claims on Eleventh Amendment grounds and said:

Henry failed to show that the individual defendants acted according to unconstitutional authority or acted outside of their authority to remove them from Eleventh Amendment immunity; in fact, Henry stated in her complaint that the individual defendants were acting in the course and scope of employment, (App. 6a).

The Eleventh Circuit opinion conflicts with this Court's precedent in *Ex Parte Young*, 209 U.S. 123 (1908). The civil rights complaint alleged lack of jurisdiction, acts in derogation of statutory laws promulgated by the State, and acts outside the authority delegated to the Bar. Henry's assertion that the individual defendants were acting in the course and scope of employment was stated merely to demonstrate that the individuals' were acting under the "color of state law." (*West v. Atkins*, 487 U.S. 42, 49 (1988)).

The Eleventh Circuit adopted the law of the Circuit that the Florida Bar is an arm of the State for Eleventh Amendment purposes in *Kaimowitz v. Fla. Bar*, 996 F.2d 1151 (11th Cir. 1993) (per curiam). The panel essentially adopted the opinion of the district court, which simply pointed to the preamble of the Rules Regulating the Florida Bar.

This Court has made clear that a state bar is not necessarily an arm of the state and the determination of a state court is not binding upon

this Court. See *Keller v. State Bar of California*, 496 U.S. 1 (1990).⁸ As this Court said in *Keller*:

The State Bar of California is a good deal different from most other entities that would be regarded in common parlance as "governmental agencies." Its principal funding comes not from appropriations made to it by the legislature, but from dues levied on its members by the Board of Governors.

The same analysis applies in ascertaining if the Bar is a state entity that is entitled to Eleventh Amendment immunity. "The factors include such things as the degree of state control over the entity, the way in which the entity is described and treated by its enabling legislation and other state statutes, how state courts have viewed the entity, the functions performed by the entity, and whether the entity is separately incorporated." *United States v. Univ. of Mass., Worcester*, 812 F.3d 35, 40 (1st Cir., 2016), citing, inter alia, *Hess v. Port Auth. Trans-Hudson Corp.*, 513 U.S. 30, 44–46 (1994).

Under this analysis, there is no Eleventh Amendment immunity. First, the Bar receives no funding from the state. The salaries of its Executive

⁸ In *Fleck v. Welsch*, Doc. No. 17-886, certiorari is sought to determine whether a mandatory bar system is constitutional under the First Amendment and whether *Keller* should be "overruled insofar as it permit[s] the state to force Petitioner to join a trade association he opposes as a condition of earning a living in his chosen profession."

Director and employees are paid by the membership dues. Second, the Bar is not a participant in the State Risk Management Trust Fund and no pre-suit notice of claim is required to the Department of Financial Services under Fla. Stat. § 768.28. Third, the FSC loosely supervises the Bar but not pursuant to its' constitutional authority as a state court. Fourth, by way of governance, the Bar is not operated as a traditional state agency. Rather, the board of governors "the governing body of The Bar," is elected by the attorneys who are mandatory members of the Bar.

Under Florida law, the state bar is not a court. Its power does not come from a Legislative enactment, and its decisions are "advisory." See *Fla. Bar v. McCain*, 330 So.2d 712, 718 (Fla.1976) (Sundberg, J., concurring) ("it is this Court which renders the ultimate decision in disciplinary matters, not the Florida Bar."); Cf. *Florida Bar v. Pape*, 918 So.2d 240 (Fla. 2005).

IV. No Basis for Individual Immunity

This Court has been cautious in recognizing absolute immunity claims other than those decided by constitutional or statutory enactment. See *Forrester v. White*, 484 U.S. 219, 220 (1988). Therefore, this Court has —applied a "functional" approach under which the nature of the functions entrusted to particular officials is examined in order to evaluate the effect that exposure to particular forms of liability would likely have on the appropriate exercise of those functions.

In *Mireles v. Waco*, 502 U.S. 9, 11-12 (1991), this Court said:

[o]ur cases make clear that the immunity is overcome in only two sets of circumstances. First, a judge is not immune from liability for nonjudicial actions, i. e., actions not taken in the judge's judicial capacity. *Forrester v. White*, 484 U. S., at 227-229; *Stump v. Sparkman*, 435 U. S., at 360. Second, a judge is not immune for actions, though judicial in nature, taken in the complete absence of all jurisdiction. *Id.*, at 356-357; (citation omitted).

The complaint sufficiently alleges articulable facts that the individual respondents acted in the complete absence of jurisdiction. This Court in *Stump* made clear that "whether an act by a judge is a 'judicial' one relate[s] to the nature of the act itself, i.e., whether it is a function normally performed by a judge, and to the expectations of the parties, i. e., whether they dealt with the judge in his judicial capacity." 435 U. S., at 362. See also *Forrester v. White*, 484 U. S., at 227-229.

Moreover, as is this Court's practice, see, e.g., *Middlesex*, 457 U.S. at 432-34., the Eleventh Circuit should defer to the State's own description of its disciplinary proceedings. The State treats the Bar as prosecutor. In *Florida Bar v. Tranzenfeld*, 833 So.2d 734 (Fla. 2002), the FSC recognized the role of the Bar's Grievance Committee is "similar to that of a grand jury." Rules regulating the bar 1-4.2(a), 1-4.2(b)(1), 3-2.1(a), 3-7.6(g) plainly treats the Bar's

role as prosecutorial. Florida's State courts also treat the role as prosecutorial. See e.g. *Mueller v. The Florida Bar*, 390 So. 2d 449, 452 (Fla. 4th DCA 1980). "[T]he initiation of grievance matters is a prosecutorial function of the Florida Bar." And the Bar's own website, found at floridabar.org, instructs the public that its role and jurisdiction is prosecutorial.

Whether absolute prosecutorial or judicial immunity apply to the individual defendants, is determinable only after an analysis of "the nature of the function performed, not the identity of the actor who performed it." *Forrester v. White*, 484 U. S. 219, 229 (1988). No such analysis was undertaken in the instant case.

CONCLUSION

The petition for a writ of certiorari should be granted.

Respectfully submitted,
Marie L. Henry
Petitioner *Pro Se*
P. O. Box 953521
Lake Mary, FL 32795
(704) 737-1935
mlhenry.esquire@gmail.com
March 15, 2018

[DO NOT PUBLISH]
IN THE UNITED STATES COURT OF APPEALS
FOR THE ELEVENTH CIRCUIT

No. 16-15869
Non-Argument Calendar

D.C. Docket No. 6:15-cv-01009-CEM-TBS

MARIE HENRY,
Individually and on behalf of her child,
M.E. as her interests may appear,

Plaintiff-Appellant,

versus

THE FLORIDA BAR,
JOHN F. HARKNESS, JR.,
Executive Director Florida Bar, in his
professional and individual capacities,
JOANN M. STALCUP,
Bar Counsel Florida Bar in her
professional and individual capacities,
ADRIA E. QUINTELA,
Director Lawyer Regulation in her
professional and individual capacities,
JAN K. WICHROWSKI,
Chief Brank [sic] Discipline Counsel, in
her professional and individual capacities,

Defendants-Appellees.

Appeal from the United States District Court
for the Middle District of Florida

(July 14, 2017)

Before TJOFLAT, HULL and WILSON, Circuit Judges.

PER CURIAM:

Marie Henry, proceeding *pro se* on behalf of herself and her child, appeals the dismissal of her civil rights complaint against the Florida Bar and John F. Harkness, the executive director of the Florida Bar; JoAnn Stalcup, counsel for the Florida Bar; Adria Quintela, director of lawyer regulation for the Florida Bar; and Jan Wichrowski, chief branch discipline counsel for the Florida Bar (collectively, “individual defendants”), alleging violations of 42 U.S.C. §§ 1981, 1983, 1985, 1986, 1988 and state laws, as being barred by immunity and the *Younger*¹ abstention doctrine. On appeal, Henry argues that the Florida Bar should not be entitled to Eleventh Amendment immunity because it is not an arm of the state, that the individual defendants are not immune from suit, and that the *Younger* abstention doctrine should not apply. We address each argument in turn.

¹ *Younger v. Harris*, 401 U.S. 37 (1971).

I.

We review *de novo* the grant of a motion to dismiss based upon a state's Eleventh Amendment immunity. *In re Employment Discrimination Litig. Against State of Ala.*, 198 F.3d 1305, 1310 (11th Cir. 1999). We also review *de novo* whether an entity constitutes an arm of the state under Eleventh Amendment immunity analysis. *Lightfoot v. Henry Cnty. Sch. Dist.*, 771 F.3d 764, 768 (11th Cir. 2014).

Eleventh Amendment immunity bars suits by private individuals against a state in federal court unless the state consented to be sued, waived its immunity, or Congress abrogated the states' immunity. *Bd. of Trs. of Univ. of Ala. v. Garrett*, 531 U.S. 356, 363-64 (2001). Congress has not abrogated Eleventh Amendment immunity in 42 U.S.C. §§ 1981, 1983, or 1985 cases, and Florida has not waived its Eleventh Amendment immunity in federal civil rights actions. *Sessions v. Rusk State Hosp.*, 648 F.2d 1066, 1069 (5th Cir. June 26, 1981); *Gamble v. Florida Department of Health and Rehabilitative Services*, 779 F.2d 1509, 1511 (11th Cir. 1986); *Fincher v. State of Fla. Dept of Labor & Employment Sec. Unemployment Appeals Comm'n*, 798 F.2d 1371, 1372 (11th Cir. 1986). A successful claim under 42 U.S.C. § 1986 is predicated on a successful action under § 1985. *Morast v. Lance*, 807 F.2d 926, 930 (11th Cir. 1987).

"To receive Eleventh Amendment immunity, a defendant need not be labeled a 'state officer' or 'state official,' but instead need only be acting as an 'arm of the

State.’” *Manders v. Lee*, 338 F.3d 1304, 1308 (11th Cir. 2003) (en banc). We previously held that the Florida Bar is an arm of the state to which Eleventh Amendment immunity is extended. *Kaimowitz v. Florida Bar*, 996 F.2d 1151, 1155 (11th Cir. 1993); *Nichols v. Alabama State Bar*, 815 F.3d 726, 732 (11th Cir. 2016); see also Rules Regulating the Florida Bar, Chapter 1, Introduction (“The Supreme Court of Florida by these rules establishes the authority and responsibilities of The Florida Bar, an official arm of the court.”). Furthermore, we previously held that the Florida Bar Rules establish that officials acting in disciplinary proceedings are agents of the Florida Supreme Court; thus, they are entitled to absolute immunity. *Carroll v. Gross*, 984 F.2d 392, 393 (11th Cir. 1993).

Suits against state officials in their official capacities are treated as suits against the state. *Hafer v. Melo*, 502 U.S. 21, 25 (1991). Official-capacity defendants may assert the same immunities that the governmental entity possesses. *Id.* However, the Eleventh Amendment does not bar claims against a state official who acted outside the scope of his statutory authority or pursuant to an unconstitutional authority. *Cate v. Oldham*, 707 F.2d 1176, 1180 (11th Cir. 1983). Furthermore, under the doctrine enunciated in *Ex parte Young*, a suit requesting injunctive relief on a prospective basis for an ongoing constitutional violation against a state official in his or her official capacity is not a suit against the state, and thus does not violate the Eleventh Amendment. *Grizzle v. Kemp*, 634 F.3d 1314, 1319 (11th Cir. 2011). Additionally, we previously held that

neither a state nor its officials acting in their official capacities are “persons” under § 1983. *Will v. Michigan Dep’t of State Police*, 491 U.S. 58, 71 (1989).

Under the prior panel precedent rule, subsequent panels are bound by the holding of a prior panel until it is overruled or undermined to the point of abrogation by a decision of the Supreme Court or this Court sitting *en banc*. *United States v. Archer*, 531 F.3d 1347, 1352 (11th Cir. 2008). There is no “overlooked reason or argument” exception to the prior precedent rule. *United States v. Johnson*, 528 F.3d 1318, 1320 (11th Cir. 2008), *rev’d on other grounds*, 559 U.S. 133 (2010). An intervening decision of the Supreme Court can overrule the decision of a prior panel, but the Supreme Court decision must be clearly on point. *Archer*, 531 F.3d at 1352.

Eleventh Amendment immunity bars Henry’s claims against the Florida Bar under 42 U.S.C. §§ 1981, 1983, and 1985 because neither Congress nor the state of Florida have abrogated Eleventh Amendment immunity under those claims. *See Bd. of Trs. of Univ. of Ala.*, 531 U.S. at 363-64; *Sessions*, 648 F.2d at 1069; *Gamble*, 779 F.2d at 1511; *Fincher*, 798 F.2d at 1372. We previously held that the Florida Bar is entitled to Eleventh Amendment immunity as an arm of the state, and the prior panel rule requires that we adhere to that holding. *Kaimowitz*, 996 F.2d at 1155; *Archer*, 531 F.3d at 1352. Furthermore, because Eleventh Amendment immunity bars Henry’s 42 U.S.C. § 1985 claim against the Florida Bar, she cannot make a successful § 1986 claim. *See Morast*, 807 F.2d at 930.

The individual defendants are likewise immune as state officials from Henry's claims against them in their official capacities for monetary damages. *See Hafer*, 502 U.S. at 25. Henry failed to show that the individual defendants acted according to unconstitutional authority or acted outside of their authority to remove them from Eleventh Amendment immunity; in fact, Henry stated in her complaint that the individual defendants were acting within the course and scope of their employment with the Florida bar during her disciplinary proceedings. *See Cate*, 707 F.2d at 1180. The *Ex Parte Young* exception to Eleventh Amendment immunity only applies to prospective injunctive relief and thus does not overcome immunity for monetary damages. *Grizzle*, 634 F.3d at 1319. Finally, the individual defendants were entitled to absolute immunity as agents of the Florida Supreme Court and were not "persons" subject to suit under 42 U.S.C. § 1983. *See Carroll*, 984 F.2d at 393; *Will*, 491 U.S. at 71.

II.

We review the district court's decision to apply *Younger* abstention for an abuse of discretion. *Hughes v. Attorney General of Florida*, 377 F.3d 1258, 1262 (11th Cir. 2004). A district court abuses its discretion when it makes an error of law. *United States v. Pruitt*, 174 F.3d 1215, 1219 (11th Cir. 1999).

In *Younger v. Harris*, the Supreme Court held that a federal court should not act to restrain an ongoing state court criminal prosecution. 401 U.S. at 55. The

Supreme Court expanded the *Younger* abstention doctrine to apply to pending civil proceedings which implicate state courts' important interests in administering certain aspects of their judicial systems, including state disciplinary proceedings because they are judicial in nature and implicate important state interests. *Green v. Jefferson Cty. Comm'n*, 563 F.3d 1243, 1250-51 (11th Cir. 2009); *Middlesex Cnty. Ethics Comm. v. Garden State Bar Assoc.*, 457 U.S. 423, 434-35 (1982). *Younger* abstention applies to claims for injunctive relief, as well as claims for declaratory judgment that would effectively enjoin state proceedings. *Old Republic Union Insurance Co. v. Tillis Trucking Co.*, 124 F.3d 1258, 1261 (11th Cir. 1997).

For *Younger* abstention to apply, state judicial proceedings must be ongoing, the proceedings must implicate important state interests, and the federal plaintiff must have an adequate opportunity to raise constitutional challenges in the state proceedings. 31 *Foster Children v. Bush*, 329 F.3d 1255, 1274 (11th Cir. 2003). The first factor is met when a state proceeding is ongoing and the relief sought by the plaintiff would interfere with the state proceeding. *Id.* at 1275-76. The plaintiff's requested relief can interfere with the state proceeding if it would disrupt the normal course of action in the state proceeding, even if the relief sought would not terminate an ongoing proceeding. *Id.* at 1276. We previously held that, in determining whether a proceeding is ongoing and *Younger* is applicable, the date of filing of the federal complaint is the relevant

date. *Liedel v. Juvenile Court of Madison Cty., Ala.*, 891 F.2d 1542, 1546 n. 6 (11th Cir. 1990).

For the third factor, the plaintiff has the burden to show that the state proceeding will not provide him an adequate remedy for his federal claim. *31 Foster Children*, 329 F.3d at 1279. "A federal court should assume that state procedures will afford an adequate remedy, in the absence of unambiguous authority to the contrary." *Id.* (internal quotation omitted).

Exceptions to *Younger* abstention include bad faith, harassment, or a patently invalid state statute. *Redner v. Citrus County*, 919 F.2d 646, 649 (11th Cir. 1990). A proceeding is initiated in bad faith if it is brought without a reasonable expectation of obtaining a valid conviction. *Id.* at 650. A state statute may cause irreparable injury, justifying an exception to *Younger* abstention, when it flagrantly and patently violates express constitutional prohibitions. *Hughes*, 377 F.3d at 1264. Extraordinary circumstances may justify an exception to *Younger* abstention when the state court cannot fairly and fully adjudicate the constitutional issues and the plaintiff presents "an extraordinarily pressing need for immediate federal equitable relief." *Kugler v. Helfant*, 421 U.S. 117, 124-25 (1975).

The district court did not abuse its discretion in determining that Henry's remaining claims, including her claims for injunctive relief, were barred by the *Younger* abstention doctrine. See *Old Republic Union Insurance Co.*, 124 F.3d at 1261. *Younger* is applicable because the state proceeding was ongoing due to the

fact that the Florida Supreme Court judgment was not final at the time that Henry filed her complaint, the disciplinary proceedings were judicial and implicated important state interests, a decision in federal court would interfere with the state proceeding, and Henry had an opportunity to raise her constitutional concerns in the state proceedings. *31 Foster Children v. Bush*, 329 F.3d at 1274-76; *Liedel*, 891 F.2d at 1546 n. 6; *Middlesex*, 457 U.S. at 434-35. Henry did not show that she could not raise her concerns in the state proceedings, and she did not show that any of the exceptions to *Younger* should apply. *31 Foster Children*, 329 F.3d at 1279; *Redner*, 919 F.2d at 649.

AFFIRMED.

UNITED STATES DISTRICT COURT
MIDDLE DISTRICT OF FLORIDA
ORLANDO DIVISION

MARIE L. HENRY,
Plaintiff,

v.

**THE FLORIDA BAR, Case No: 6:15-cv-
JOHN F. HARKNESS, JR., 1009-Orl-41TBS
JOANN M. STALCUP,
ADRIA E. QUINTELA and
JAN K. WICHROWSKI,**
Defendants. /

ORDER

(Filed Aug. 8, 2016)

THIS CAUSE is before the Court on Plaintiff's Motion to Alter or Amend Judgment (Doc. 47). Defendants responded thereto. (*See* Resp., Doc. 48). For the reasons set forth below, the motion will be denied.

On March 31, 2015, *pro se* Plaintiff Marie L. Henry was suspended from the practice of law for six months by the Florida Supreme Court. (Am. Compl., Doc. 10, ¶ 57; *see also* Order of Suspension, Ex. 1 to Mot. Emergency Inj. Relief, Doc. 12-1). In the present case, Ms. Henry alleges various errors, constitutional or otherwise, in her disciplinary proceedings before the Florida Bar. The Court dismissed the initial Complaint (Doc. 1) as a shotgun pleading. (*See* Aug. 26, 2015 Order, Doc. 7, at 4-6). Thereafter, the Court dismissed Plaintiff's

Amended Complaint with prejudice on a number of grounds. (See May 27, 2016 Order, Doc. 46, at 8). Presently, Plaintiff seeks reconsideration of the latter dismissal.

District courts are afforded considerable discretion to reconsider prior decisions. See *Harper v. Lawrence Cty.*, 592 F.3d 1227, 1231-32 (11th Cir. 2010) (discussing reconsideration of interlocutory orders); *Lamar Advert. of Mobile, Inc. v. City of Lakeland*, 189 F.R.D. 480, 488-89, 492 (M.D. Fla. 1999) (discussing reconsideration generally and under Federal Rule of Civil Procedure 54(b)); *Sussman v. Salem, Saxon & Nielsen, P.A.*, 153 F.R.D. 689, 694 (M.D. Fla. 1994) (discussing reconsideration under Rule 59(e) and Rule 60(b)). Generally, there are “three grounds justifying reconsideration of an order: (1) an intervening change in controlling law; (2) the availability of new evidence; and (3) the need to correct clear error or manifest injustice.” *McGuire v. Ryland Grp., Inc.*, 497 F. Supp. 2d 1356, 1358 (M.D. Fla. 2007) (quotation omitted); see also *Merrett v. Liberty Mut. Ins. Co.*, No. 3-10-cv-1195-J-12MCR, WL 5289095, at *1 (M.D. Fla. Sept. 19, 2013).

“Reconsideration of a previous order is an extraordinary measure and should be applied sparingly.” *Scelta v. Delicatessen Support Servs., Inc.*, 89 F. Supp. 2d 1311, 1320 (M.D. Fla. 2000). “[M]otions for reconsideration should not be used to raise arguments which could, and should, have been previously made.” *Id.* (quotation omitted); see also *Michael Linet, Inc. v. Vill. of Wellington*, 408 F.3d 757, 763 (11th Cir. 2005) (“[The movant] however cannot use a Rule 59(e) motion to

relitigate old matters, raise argument or present evidence that could have been raised prior to the entry of judgment.”). Stated differently, “[a] party who fails to present its strongest case in the first instance generally has no right to raise new theories or arguments in a motion for reconsideration.” *McGuire*, 497 F. Supp. 2d at 1358 (quotation omitted). To permit otherwise would “essentially afford[] a litigant two bites at the apple.” *Am. Home Assurance Co. v. Glenn Estess & Assocs., Inc.*, 763 F.2d 1237, 1239 (11th Cir. 1985) (quotation omitted). “A district court’s denial of reconsideration is especially soundly exercised when the party has failed to articulate any reason for the failure to raise an issue at an earlier stage in the litigation.” *Lusier v. Dugger*, 904 F.2d 661, 667 (11th Cir. 1990).

Here, the Order at issue (Doc. 46) dismissed the Amended Complaint in its entirety. Particularly, the Court held that, insofar as Plaintiff sought damages against the Florida Bar, such claims were barred by the Eleventh Amendment and were not cognizable under § 1983. (May 27, 2016 Order at 2-3, 8). Next, the Court held that, insofar as there remained any claims against the bar officials in their official capacity, such claims were precluded by the *Younger* abstention doctrine. (*Id.* at 3-8). Lastly, the Court held that, insofar as there remained any claims against the bar officials in their individual capacity, such officials were personally immune. (*Id.* at 8).

From what the Court can gather, Plaintiff seeks reconsideration under Rule 59(e) based on miscellaneous contentions of “legal error” within the May 27,

2016 Order. As a general matter, all of *pro se* Plaintiff's arguments lack merit. Only some are presented in such a way to either permit or warrant judicial attention. See M.D. Fla. R. 3.01(a) (requiring that all motions "include a concise statement of the precise relief requested, a statement of the basis for the request, and a memorandum of legal authority in support of the request").

First, to the extent that Plaintiff argues that the Court erred in dismissing Plaintiff's individual capacity claims under the Eleventh Amendment, (see Mot. Reconsider at 2, 6), that argument is without merit. The Court did not dismiss any individual capacity claims under the Eleventh Amendment. (May 27, 2016 Order at 2-3, 8 (applying the Eleventh Amendment only to bar claims for damages against the Florida Bar)). The individual capacity claims were dismissed based on personal immunities. (See *id.* at 8).

Second, to the extent that Plaintiff argues that the Court erred by not applying the appropriate standard for determining whether the Florida Bar is an arm of the state for purposes of Eleventh Amendment immunity, (see Mot. Reconsider at 3-4), that argument is without merit. As the Court noted, that issue has already been conclusively resolved by the Eleventh Circuit. (See May 27, 2016 Order at 2-3 (quoting *Kaimowitz v. Fla. Bar*, 996 F.2d 1151, 1155 (11th Cir. 1993))). Moreover, the case cited by Plaintiff – *Nichols v. Alabama State Bar*, 815 F.3d 726 (11th Cir. 2016) (per curiam) – for the relevant standard explicitly states that the Eleventh Circuit "has previously concluded that the

Florida State Bar is an ‘arm of the State’ that enjoys Eleventh Amendment immunity.” *Id.* at 732. Citation to *Nichols*, followed by argument that the Florida Bar is not an arm of the state bespeaks sanctionable conduct. *See* Fed. R. Civ. P. 11(b)(2) (requiring certification that a party’s “legal contentions are warranted by existing law or by a nonfrivolous argument for extending, modifying, or reversing existing law”). In any event, that Plaintiff would have preferred more explanation on the issue is of no consequence, and that Plaintiff might disagree with the Eleventh Circuit’s conclusion cannot be resolved here. *See McGinley v. Houston*, 361 F.3d 1328, 1331 (11th Cir. 2004) (per curiam) (“A circuit court’s decision binds the district courts sitting within its jurisdiction.”); *see also In re Lambrix*, 776 F.3d 789, 794 (11th Cir. 2015) (per curiam) (“[U]nder [the Eleventh Circuit’s] prior-panel-precedent rule, a prior panel’s holding is binding on all subsequent panels unless and until it is overruled or undermined to the point of abrogation by the Supreme Court or by [the Eleventh Circuit] sitting *en banc*.”).

Third, to the extent Plaintiff argues that the Court erred by not considering whether the Eleventh Amendment was abrogated by the miscellaneous statutes peppered throughout Plaintiff’s Amended Complaint, (*see* Mot. Reconsider at 3-5), that argument is without merit. Despite Plaintiff’s matter-of-fact assertion that “Congress . . . abrogate[d] [Eleventh Amendment] immunity under the Civil Rights Act of 1866,” (*id.* at 4), none of the substantive statutes cited by Plaintiff abrogate the Eleventh Amendment. (*See* May 27, 2016

Order at 3 (noting that § 1983 does not abrogate Eleventh Amendment immunity (citing *Odebrecht Constr., Inc. v. Sec’y Fla. Dep’t Transp.*, 715 F.3d 1268, 1289 (11th Cir. 2013)))); *Fincher v. Fla. Dep’t of Labor & Emp’t Sec.*, 798 F.2d 1371, 1372 (11th Cir. 1986) (per curiam) (noting that § 1985 does not abrogate); *Sessions v. Rusk State Hosp.*, 648 F.2d 1066, 1069 (5th Cir. Unit A June 26, 1981) (noting that § 1981 does not abrogate); see also *Alyshah v. Georgia*, 239 F. App’x 473, 474 (11th Cir. 2007) (per curiam) (noting that claims under §§ 1981, 1983, and 1986 against that state were barred by the Eleventh Amendment). Even if Plaintiff could still pursue fees as “costs” under § 1988, see *Hutto v. Finney*, 437 U.S. 678, 693-700 (1978) (noting that the Eleventh Amendment does not bar costs under § 1988 in relation to an award of prospective, injunctive relief), there are, as noted, no surviving claims upon which such an award could be derived, see 42 U.S.C. § 1988 (permitting “costs” for the “prevailing party”).

Fourth, to the extent Plaintiff argues that the Court misapplied the *Younger* abstention doctrine as a bar to any official capacity claims for injunctive relief, (see Mot. Reconsider at 11–18), that argument is without merit. Particularly, Plaintiff argues that the Court misapplied the third *Younger* factor – whether there was an adequate opportunity to raise the relevant constitutional issues during the state proceedings.¹ In

¹ Insofar as Plaintiff maintains that the Court misconstrued her request for declaratory relief, (see Mot. Reconsider at 19-20), when discussing the first *Younger* factor – whether the federal

doing so, Plaintiff seems to generally argue that the factual allegations did, in fact, show that Plaintiff lacked an opportunity to raise her constitution claims; but, Plaintiff fails to consider that the Court's prior holding was limited to her failure to carry her burden as to the third factor. By definition, Plaintiff's argument on reconsideration is an attempt to either re-litigate or raise foregone arguments. Next, insofar as Plaintiff argues that she lacked an adequate opportunity to pursue money damages for the purported constitutional violations in the state proceeding, Plaintiff fails to consider that the Court only applied *Younger* abstention to Plaintiff's equitable claims; the claims for damages, as already noted, had not survived. In any event, Plaintiff is correct that she could not pursue retroactive relief for deprivations that either had yet to occur or were presently occurring; that would be illogical.

Fifth, to the extent Plaintiff argues that the Court erred by not applying the bad faith exception to the *Younger* doctrine, (Mot. Reconsider at 12-15), that argument is without merit. Again, Plaintiff seems to generally argue that her factual allegations did support a reasonable inference of bad faith – i.e., that her prosecution was “brought without a reasonable expectation

relief would interfere with the state proceedings – the Court did not misconstrue the request. The language with which Plaintiff takes issue merely describes the underlying rule. In any event, Plaintiff does not argue that, but for the purported error, the first factor would not have been satisfied. Nor does Plaintiff appear aware of the context in which her request for declaratory relief was discussed.

of obtaining a valid conviction” (May 27, 2016 Order at 6 (quotation omitted)); but, as with above, Plaintiff fails to consider that the Court’s prior holding was limited to her failure to carry her burden as to the exception. By definition, Plaintiff’s argument on reconsideration is an improper attempt to present foregone arguments. Next, insofar as Plaintiff argues that the Court’s reference to “complaints made by third parties,” (*id.* at 7), misconstrues her factual allegations, Plaintiff fails to consider that such allegations were, in fact, presented in the Amended Complaint. (See Am. Compl. ¶¶ 47 (noting that the state court judge directed his order to be filed with the Florida Bar), 52 (noting that the state prosecutor filed a complaint)). The Court’s use of the term “complaint” was not a term of art.

Insofar as Plaintiff argues that the Court’s reference to *Watson v. Florida Judicial Qualifications Commission*, 618 F. App’x 487 (11th Cir. 2015) (per curiam) was improper, Plaintiff fails to consider that any factual distinctions are irrelevant; the Court did not rely on the facts of *Watson*. That the *Watson* decision was unpublished is irrelevant; the Court did not rely on *Watson* as binding authority – instead, the Court cited it as persuasive authority, i.e., a panel of the Eleventh Circuit interpreting binding case law. Additionally, that the *Watson* court remanded to consider individual capacity claims is irrelevant; the remand had nothing to do with any exception to the *Younger* doctrine, which was the context in which this Court cited *Watson*. And, the individual capacity claims in this case were

independently dismissed on other grounds. Lastly, with regard to the exceptions to *Younger* abstention, Plaintiff continues to point to purported errors in her prosecution; such an approach offers little in the way of why the charges against her were meritless or brought without a reasonable expectation of conviction. Indeed, Plaintiff was ultimately suspended from the practice of law.

Sixth, to the extent Plaintiff argues that the Court erred in granting immunity for the individual capacity claims, (see Mot. Reconsider at 8-11), such argument is without merit. Particularly, Plaintiff seems to argue that the Court's reference to *Caffey v. Alabama Supreme Court*, 469 F. App'x 748 (11th Cir. 2012) (per curiam) was improper. However, despite Plaintiff's argument to the contrary, the Court did not rely on *Caffey* to dismiss the individual Defendants on Eleventh Amendment grounds; the only claims dismissed under the Eleventh Amendment were the claims for damages against the Florida Bar. Additionally, that the *Caffey* court discussed immunity with regard to state judges is irrelevant; the Court relied on *Caffey* for its dismissal of the state bar employees. That *Caffey* is unpublished is irrelevant; the Court relied on *Caffey* for its persuasive value and even offered the relevant binding authority via parenthetical. Lastly, insofar as Plaintiff argues that the Court misconstrued *Caffey* while applying the *Younger* doctrine, (see Mot. Reconsider at 11), the Court did not cite *Caffey* when applying the *Younger* doctrine; *Caffey* has nothing to do with the *Younger* doctrine.

In sum, each of the arguments discussed above are without merit. To the extent Plaintiff pursues other challenges, they are either wholly meritless or irrelevant, thereby frustrating any attempt at resolution. Moreover, to the extent Plaintiff seeks clarification on various legal points, Plaintiff cites no authority for permitting such a maneuver, which, in the context of Plaintiff's requests, would be tantamount to merely counseling Plaintiff on the law.² Accordingly, Plaintiff's Motion to Alter or Amend Judgment (Doc. 47) is **DE-NIED**.

DONE and **ORDERED** in Orlando, Florida on August 8, 2016.

/s/ Carlos E. Mendoza

 CARLOS E. MENDOZA
 UNITED STATES
 DISTRICT JUDGE

Copies furnished to:
 Counsel of Record
 Unrepresented Party

² The Court takes no position on whether there exists a need for said counseling, only that the Court would not be the appropriate entity to lead any such discussion.

UNITED STATES DISTRICT COURT
MIDDLE DISTRICT OF FLORIDA
ORLANDO DIVISION

MARIE L. HENRY,
Plaintiff,

v.

THE FLORIDA BAR, **Case No: 6:15-cv-**
JOHN F. HARKNESS, JR., **1009-Orl-41TBS**
JOANN M. STALCUP,
ADRIA E. QUINTELA and
JAN K. WICHROWSKI,
Defendants. /

ORDER

(Filed May 27, 2016)

THIS CAUSE is before the Court on Defendants' Motion to Dismiss (Doc. 26), to which Plaintiff responded, (*see* Resp., Doc. 29). For the reasons set forth below, the motion will be granted.

On March 31, 2015, *pro se* Plaintiff Marie L. Henry was suspended from the practice of law for six months by the Florida Supreme Court. (Am. Compl., Doc. 10, ¶ 57; *see also* Order of Suspension, Ex. 1 to Mot. Emergency Inj. Relief, Doc. 12-1). In the present case, Ms. Henry alleges various errors, constitutional or otherwise, in her disciplinary proceedings before the Florida Bar. The initial Complaint (Doc. 1) was dismissed as a shotgun pleading, (*see* Aug. 26, 2015 Order, Doc. 7, at 4-6), and the Amended Complaint followed shortly

thereafter. Presently pending is Defendants' Motion to Dismiss, which challenges the Amended Complaint in its entirety on both jurisdictional and Rule 12(b)(6) grounds.

At the outset, it bears noting that the content of the Motion to Dismiss leaves much to be desired. The heedlessness with which defense counsel applies the law to the factual allegations has undoubtedly hindered efficient resolution of its Motion to Dismiss. As one example, Defendants initial *Rooker-Feldman* argument is followed by a *Younger* abstention argument; that latter – according to Defendants – favors dismissal “[t]o the extent the disciplinary proceedings against [Ms. Henry] are deemed not to be concluded and barred by the *Rooker-Feldman* doctrine.” (Mot. Dismiss at 5). Such qualification begs the question – in what way might the Florida Supreme Court’s Order of Suspension be non-final? To that question, Defendants provide no answer.

Only a *sua sponte* review of the record reveals that Ms. Henry filed an April 14, 2015, motion for rehearing, (see Am. Compl. ¶ 129), and that the Order of Suspension states, “Not final until time expires to file [a] motion for rehearing, and if filed, determined,” (Order Suspension at 2). It is also noteworthy that Defendants offer no guidance as to what it means for “the state proceedings [to have] ended,” so that the *Rooker-Feldman* doctrine applies to preclude district court review of a state court judgment. *Nicholson v. Shafe*, 558 F.3d 1266, 1274 (11th Cir. 2009) (quoting *Exxon Mobil Corp. v. Saudi Basic Indus. Corp.*, 544 U.S. 280, 291

(2005)). Regardless, in light of the motion for rehearing, the state proceedings had not ended, and the *Rooker-Feldman* doctrine does not require dismissal of this case. *See id.* at 1278 (noting that, for purposes of *Rooker-Feldman*, the state proceedings had not ended where “the Appellants filed the [federal] action while the state court action continued in the appeals process in state court”); *cf.* Fed. R. App. P. 4(a)(4)(A) (tolling the time to appeal pending resolution of a motion to reconsider).

Nevertheless, Defendants will prevail on their motion. First, “[t]he Eleventh Amendment prohibits federal courts from exercising subject matter jurisdiction in suits brought against a state by a citizen of that state.” *Kaimowitz v. Fla. Bar*, 996 F.2d 1151, 1155 (11th Cir. 1993) (per curiam) (quotation omitted). It extends to “state agencies and other arms of the state,” which includes “state courts and state bars.” *Id.* (quotation omitted). Thus, the Florida Bar is entitled to Eleventh Amendment immunity unless “its immunity is abrogated by an act of Congress under section 5 of the Fourteenth Amendment.” *Grizzle v. Kemp*, 634 F.3d 1314, 1319 (11th Cir. 2011) (discussing exceptions to Eleventh Amendment immunity). Here, Ms. Henry’s federal claims against the Florida Bar seek damages and rely on 42 U.S.C. § 1983. It goes without saying that the Florida Bar, as an arm of the state, is not a “person” within the meaning of § 1983, *see GeorgiaCarry.Org., Inc. v. Georgia*, 687 F.3d 1244, 1254 (11th Cir. 2012), and that Congress has not abrogated Eleventh Amendment immunity in § 1983 cases, *see Odebrecht Constr.*,

Inc. v. Sec’y Fla. Dep’t Transp., 715 F.3d 1268, 1289 (11th Cir. 2013). Thus, Ms. Henry’s federal claims for monetary relief against the Florida Bar will be dismissed.

Next, insofar as Ms. Henry proceeds against a Florida Bar official in his or her official capacity for prospective equitable relief, *see Grizzle*, 634 F.3d at 1319 (discussing *Ex Parte Young*, 209 U.S. 123 (1908) and noting that a suit “against a state official in his official capacity for injunctive relief on a prospective basis is not a suit against the state, and, accordingly, does not violate the Eleventh Amendment”), the *Younger* abstention doctrine requires dismissal. In *Younger v. Harris*, 401 U.S. 37 (1971), the Supreme Court “espouse[d] a strong federal policy against federal-court interference with pending state judicial proceedings absent extraordinary circumstances.” *Middlesex Cty. Ethics Comm. v. Garden State Bar Ass’n*, 457 U.S. 423, 431 (1982). The policy is based, in part, on notions of “comity,” which instruct that “[m]inimal respect for the state processes, of course, precludes any presumption that the state courts will not safeguard federal constitutional rights.” *Id.* (emphasis omitted). While *Younger* arose in the context of criminal proceedings, the Supreme Court has applied *Younger* abstention “to bar a federal court from entertaining a lawyer’s challenge to a . . . state ethics committee’s pending investigation of the lawyer.” *Sprint Commc’ns, Inc. v. Jacobs*, 134 S. Ct. 584, 593 (2013) (citing *Middlesex*, 457 U.S. at 433-35); *cf. Am. Civil Liberties Union v. Fla. Bar*, 999 F.2d 1486, 1493 n.15 (11th

Cir. 1993) (“*Younger* applies to state disciplinary proceedings because they are ‘judicial in nature.’” (quoting *Middlesex*, 457 U.S. at 433-34)). Such proceedings, according to the Court, are “akin to a criminal proceeding.” *Sprint*, 134 S. Ct. at 593 (quotation omitted). Altogether, under *Younger*, a federal district court should abstain from interfering with a state proceeding where – (1) the state proceeding “constitute[s] an ongoing state judicial proceeding”; (2) “the proceedings implicate important state interests”; and (3) “there [is] an adequate opportunity in the state proceedings to raise constitutional challenges.” *31 Foster Children v. Bush*, 329 F.3d 1255, 1274 (11th Cir. 2003) (quoting *Middlesex*, 457 U.S. at 432).

The first factor is satisfied. It requires that the state proceedings be ongoing as of the “date of filing of the federal complaint.” *Liedel v. Juvenile Court Madison Cty.*, 891 F.2d 1542, 1546 n.6 (11th Cir. 1990) (citing *Pennzoil Co. v. Texaco, Inc.*, 481 U.S. 1, 17 (1987)); see also *Beltran v. California*, 871 F.2d 777, 782 (9th Cir. 1988) (“*Younger* abstention requires that the federal courts abstain when state court proceedings were ongoing *at the time the federal action was filed.*” (emphasis added)). It “also requires that the federal relief the plaintiffs seek would interfere with those proceedings.” *31 Foster Children*, 329 F.3d at 1275.

Here, by way of Ms. Henry’s April 14, 2015, motion for rehearing, the Florida Bar proceedings were ongoing at the time this case was initiated. Additionally, the requested equitable relief would directly interfere with such proceedings. Particularly, Ms. Henry requests

that the Court enjoin Defendants “from interfering with her rights to practice law” and undo the Florida Supreme Court’s Order of Suspension. (Am. Compl. at p. 37). Ms. Henry also requests a declaration that Rule 3-1.1 of the Rules Regulating the Florida Bar, establishing the revocability “for cause” of her license to practice law, be declared unconstitutional. Thus, under the first factor, the Florida Bar proceedings constitute an ongoing judicial proceeding for purposes of *Younger* abstention, and the requested relief would interfere with such proceedings.

The second factor is satisfied. It requires that the state proceedings implicate “important state interests,” which include “[p]roceedings necessary for the vindication of important state policies or for the functioning of the state judicial system.” *Middlesex*, 457 U.S. at 432. Here, the Florida Bar proceedings involve “maintaining and assuring the professional conduct of the attorneys it licenses,” *id.* at 434, which, according to the Supreme Court, is sufficiently important, *see id.*; *Thompson v. Fla. Bar*, 526 F. Supp. 2d 1264, 1275 (S.D. Fla. 2007) (Jordan, J.); *cf. Fla. Bar v. Went For It, Inc.*, 515 U.S. 618, 625 (1995) (“[W]e have little trouble crediting the [Florida] Bar’s interest [in regulating its attorneys] as substantial.”).

Lastly, the third factor is satisfied. It requires that there be an adequate opportunity to raise the relevant constitutional issues during the state proceedings. “[T]he plaintiffs have the burden of establishing that the state proceedings do not provide an adequate remedy for their federal claims.” 31 *Foster Children*, 329

F.3d at 1279. As noted, there is no “presumption that the state courts will not safeguard federal constitutional rights,” *id.* (emphasis omitted) (quoting *Middlesex*, 457 U.S. at 431), and a “federal court ‘should assume that state procedures will afford an adequate remedy, in the absence of unambiguous authority to the contrary,’” *id.* (quoting *Pennzoil*, 481 U.S. at 15). Here, Ms. Henry fails to show that there was not an adequate *opportunity* to present her federal claims. See *Thompson*, 526 F. Supp. 2d at 1275 (“[T]he Florida Supreme Court is able to hear and address any federal constitutional claims asserted by Mr. Thompson in the disciplinary proceedings if those claims have been unsuccessful before the referee, the grievance committee, or the Board of Governors.”). From what the Court can gather via Ms. Henry’s allegations, she either failed to adequately raise her federal issues before the Florida Supreme Court or her arguments on those issues fell short. Per the Order of Suspension, the Florida Supreme Court’s silence as to Ms. Henry’s federal issues confirms that dichotomy. See *News-Journal Corp. v. Foxman*, 939 F.2d 1499, 1509 (11th Cir. 1991) (noting that a court’s silence on an argument may imply its rejection); see also *Nolan v. Turner*, 737 So. 2d 579, 580 (Fla. 4th DCA 1999). Stated differently, Ms. Henry does not point to a lack of opportunity; she only takes issue with the fact that she lost or that her arguments were given only short shrift. Thus, Ms. Henry fails to carry her burden to demonstrate that the Florida Bar proceedings do not provide an adequate remedy for her federal claims.

To the extent Ms. Henry relies on an exception to the *Younger* abstention doctrine, she fails to carry her burden. Even if otherwise appropriate, *Younger* abstention will not apply where the state proceedings are based on “bad faith, harassment, or a patently invalid state statute.” *Sprint*, 134 S. Ct. at 591; *see also Watson v. Fla. Judicial Qualifications Comm’n*, 618 F. App’x 487, 490 (11th Cir. 2015) (per curiam) (“Exceptions to *Younger* abstention include bad faith, harassment, or a patently invalid state statute.” (citing *Redner v. Citrus Cty.*, 919 F.2d 646, 649 (11th Cir. 1990))). “A prosecution is undertaken in bad faith when ‘a prosecution has been brought without a reasonable expectation of obtaining a valid conviction.’” *Redner*, 919 F.2d at 650 (quoting *Kugler v. Helfant*, 421 U.S. 117, 126 n.6 (1975)). Also, to be “patently invalid,” the challenged statute must be “flagrantly and patently violative of express constitutional prohibitions in every clause, sentence and paragraph, and in whatever manner and against whomever an effort might be made to apply it.” *Juidice v. Vail*, 430 U.S. 327, 338 (1977) (quotation omitted). The plaintiff bears the burden as to the exceptions. *See Thompson*, 526 F. Supp. 2d at 1277 (citing *Juidice*, 430 U.S. at 338).

Here, Ms. Henry points to no allegations from which it could be reasonably inferred that the Florida Bar proceeded despite no reasonable expectation of obtaining a valid conviction. Assuming the truth of Ms. Henry’s non-conclusory allegations, the Florida Bar faced complaints made by third parties, and it investigated those complaints. *See id.* at 1277-78. That her

prior conduct was considered during the course of the Florida Bar proceedings goes to the nature of the grievance process; it does not mean that the Florida Bar was proceeding in bad faith or for purposes of harassment because of such prior conduct. That Ms. Henry generally disagrees with the manner or extent to which her prior conduct was considered, such a challenge goes to the merits of the Florida Supreme Court's ultimate determination and cannot overcome *Younger* abstention. See *id.* at 1278 (“[A]n attorney involved in disciplinary proceedings cannot avoid *Younger/Middlesex* abstention by the simple expedient of maintaining (under oath or not) that the disciplinary charges against him lack merit.”); see also *Dandar v. Church of Scientology Flag Serv. Org., Inc.*, 619 F. App'x 945, 949 (11th Cir. 2015) (per curiam) (“Dandar has shown neither bad faith nor irreparable injury because his arguments for both essentially challenge the merits of the state-court proceedings.”). To the extent that Ms. Henry maintains that Florida Bar Rule 3-1.1 is patently invalid, it bears noting that Ms. Henry's apparent vagueness challenge does not comprise an actual count of her Amended Complaint. In any event, Ms. Henry makes no attempt to show how the rule is “flagrantly and patently violative of express constitutional prohibitions in every clause, sentence and paragraph, and in whatever manner and against whomever an effort might be made to apply it.” Thus, Ms. Henry has not carried her burden as to any of the exceptions, and the *Younger* abstention doctrine requires dismissal insofar as Ms. Henry alleges federal claims for prospective injunctive relief against an officer of the Florida Bar in his or her

official capacity. *See Parris v. Taft*, 630 F. App'x 895, 899 (11th Cir. 2015) (per curiam) (distinguishing monetary from equitable claims and noting that, where *Younger* abstention applies, the latter requires dismissal).

Lastly, insofar as there remain claims against any individual Defendants, such claims are subject to dismissal. Where, as here, members of a state bar were acting as agents of the Florida Supreme Court, they “enjoy[] immunity for actions taken during the course of their official duties.” *Caffey v. Ala. Supreme Court*, 469 F. App'x 748, 752 (11th Cir. 2012) (per curiam) (citing *Carroll v. Gross*, 984 F.2d 392, 393 (11th Cir. 1993) (per curiam)). Here, Ms. Henry's allegations as to the individual Defendants go to conduct undertaken during the course of their official duties. Thus, they are immune.

In sum, Ms. Henry's federal claims for damages against the Florida Bar are barred by the Eleventh Amendment and not cognizable under § 1983. *See GeorgiaCarry.Org.*, 687 F.3d at 1254 (“The District Court dismissed the State under the Eleventh Amendment, but could have dismissed it on the ground that it is not amenable to § 1983 liability.”). Any federal claims for prospective injunctive relief are dismissed under the *Younger* abstention doctrine. And, to the extent any claims remain pending, the individual Defendants are immune, and the Court declines to exercise jurisdiction over the state law claims. *See* 28 U.S.C. § 1367(c)(3).

Accordingly, it is **ORDERED** and **ADJUDGED** as follows:

1. Defendants' Motion to Dismiss (Doc. 26) is **GRANTED**.
2. The Amended Complaint (Doc. 10) is **DISMISSED** without leave to amend. *See Marantes v. Miami-Dade Cty.*, ___ F. App'x ___, No. 15-13333, 2016 WL 1696838, at *8 (11th Cir. Apr. 28, 2016) ("[O]ur case law does not require a district court to give a *pro se* litigant *multiple* opportunities to amend." (emphasis added)).
3. All pending motions are **DENIED as moot**.
4. The Clerk is directed to close this case.

DONE and **ORDERED** in Orlando, Florida on May 27, 2016.

/s/ Carlos E. Mendoza

CARLOS E. MENDOZA
UNITED STATES
DISTRICT JUDGE

Copies furnished to:

Counsel of Record
Unrepresented Party

31a

IN THE UNITED STATES COURT OF APPEALS
FOR THE ELEVENTH CIRCUIT

No. 16-15869-EE

MARIE HENRY,
Individually and on behalf of her child,
M.E. as her interests may appear,

Plaintiff-Appellant,

versus

THE FLORIDA BAR,
JOHN F. HARKNESS, JR.,
Executive Director Florida Bar, in his
professional and individual capacities,
JOANN M. STALCUP,
Bar Counsel Florida Bar in her
professional and individual capacities,
ADRIA E. QUINTELA,
Director Lawyer Regulation in her
professional and individual capacities,
JAN K. WICHROWSKI,
Chief Brank [sic] Discipline Counsel, in
her professional and individual capacities,

Defendants-Appellees.

Appeal from the United States District Court
for the Middle District of Florida

ON PETITION(S) FOR REHEARING AND PETI-
TION(S) FOR REHEARING EN BANC

(Filed Oct. 16, 2017)

Before TJOFLAT, HULL and WILSON, Circuit Judges.

PER CURIAM:

The Petition(s) for Rehearing are DENIED and no Judge in regular active service on the Court having requested that the Court be polled on rehearing en banc (Rule 35, Federal Rules of Appellate Procedure), the Petition(s) for Rehearing En Banc are DENIED.

ENTERED FOR THE COURT

/s/ Gerald Bard Tjoflat
UNITED STATES CIRCUIT JUDGE
