

IN THE CIRCUIT COURT OF THE 15th JUDICIAL CIRCUIT
IN AND FOR PALM BEACH COUNTY, FLORIDA

Case No. 50-2010-CA-0212-XXXXMB

SHAPIRO & FISHMAN, LLP,

Petitioner,

v.

STATE OF FLORIDA,
OFFICE OF THE ATTORNEY
GENERAL,

Respondent.

_____ /

**ATTORNEY GENERAL'S MOTION FOR REHEARING on
PETITIONER'S PETITION TO QUASH INVESTIGATIVE SUBPOENA in the
alternative MOTION TO AMEND ORDER or in the alternative
MOTION FOR RELIEF FROM ORDER**

Pursuant to Florida Rules of Civil Procedure 1.530 and 1.540 Respondent seeks this court to permit a rehearing and reconsideration of the Order entered on October 4, 2010 granting the petition to quash the investigative subpoena issued by the Respondent to Petitioner based on the following allegations and argument, as well as the original affidavit of Kenneth L. Marvin, Director of Lawyer Regulation for the Florida Bar, which is filed simultaneously with this Motion:

1. This court, following argument by counsel, entered an order regarding the investigative subpoena directed to the law firm of Shapiro and Fishman, LLP, deciding that the Florida Supreme Court, pursuant to the Florida Constitution, Article V, section 15, was the sole entity with authority over Florida lawyers and the law firm which is the subject of the pending investigation by Respondent.
2. The original affidavit of Kenneth L. Marvin reflects the position of the Florida Bar that it's authority extends to individual attorneys, not law firms, or other business entities.
3. The trial court's fundamental premise that only the Florida

Bar and Florida Supreme Court have jurisdiction of a law firm's conduct (assuming it is the sole target of the investigation) is mistaken. When an attorney is suspected of creating and then using forged documents, even in court, the judicial and executive branches have concurrent jurisdiction. See e.g., *The Florida Bar v. Klausner*, 721 So.2d 720 (Fla. 1998) (attorney forged documents used in court; convicted of felony and suspended from practice of law); *Florida Bar v. Kickliter*, 559 So.2d 1123 (Fla. 1990) (attorney forged client's signature on will and submitted forged will for probate; convicted and disbarred); *The Florida Bar v. Hall*, 2010 WL 3339168 (Fla. Aug. 26, 2010) (attorney filing forged documents in county records commits a felony); *The Florida Bar v. Baker*, 810 So.2d 876 (Fla. 2002). See also, *In re Sniadecki*, 924 N.E.2d 109, 116-118 (Ind. 2010) (attorney falsifying loan documents committed criminal act that also subjected him to bar discipline). Additionally, Florida Statute §817.234 provides that an attorney assisting, or conspiring, in insurance fraud is guilty of a felony. The conclusions of the court's order would prevent attorneys from being sued for malpractice, since their conduct would only be regulated by the Florida Supreme Court.

4. Yet, the Florida Supreme Court in *Echevarria, Mccalla, Raymer, Barrett & Frappier V. Cole*, 950 So.2d 380 (Fla. 2007) reviewed the litigation privilege as it applied to the law firm which was a party. At no point in the opinion did the court suggest the case could not proceed because the law firm of *Echevarria, Mccalla, Raymer, Barrett & Frappier* was only subject to regulation, discipline and control of the court. This 2007 opinion of the Florida Supreme Court cannot be reconciled with the court's order in this matter.

5. Although the court's order refers to a 2010 Florida district court case which discusses the application of FDUTPA to attorneys, the court has, somehow, completely ignored the holding in *Kelly v. Palmer*, 681 F. Supp. 2d 1356 (S.D. Fla. 2010) which specifically acknowledges that no Florida case has held that attorney conduct will not give rise to a FDUTPA claim, and refers to the *Echevarria* case at page 1371,

In holding that attorneys could avail themselves of the litigation privilege for FDUTPA claims, the court necessarily determined that attorney conduct fell within the purview of the statute.

6. The court here, instead chose to rely on a 2000 Delaware Supreme Court ruling addressing a Delaware consumer protection statute in a case which involved an action against an attorney, not a law firm, unlike the investigation currently pending in this case.

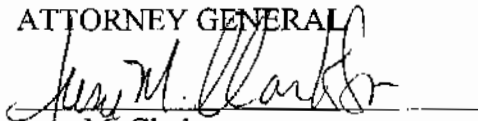
WHEREFORE, Respondents respectfully request that this court either grant a rehearing or amend it's order of October 4, 2010 to quash the investigative subpoena only as to the individual attorneys, Gerald M. Shapiro and Barry S. Fishman not as to the law firm SHAPIRO & FISHMAN, LLP.

CONCLUSION

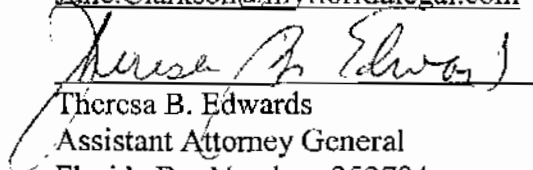
For these reasons, the respondent asks the court to grant its motion.

Respectfully submitted,

BILL McCOLLUM
ATTORNEY GENERAL



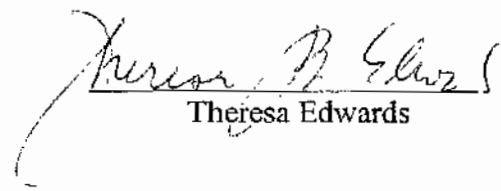
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CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a true and correct copy of the foregoing was sent via U.S. Mail to Gerald Richman, One Clearlake Center, Suite 1504, 250 Australian Ave. South, West Palm Beach, FL 33401, this 11 day of October, 2010.



Theresa Edwards