

IN THE MATTER OF JAABLOG
by Haydee Oropesa, Esquire

(Haydee is a Stetson grad, [practicing in the Tampa Bay area](#))

I don't know Bill Gelin, don't practice law in his neck of the woods, and never heard of his blog until now. I hear the Florida Bar is investigating him. I've perused that blog and can't say I personally endorse it; in fact, I find some of the postings and commentaries distasteful.

Mr. Gelin suspects that he is being investigated for being critical of two local judges. He says he is not being told what rule he has violated or who submitted the complaint against him. In any event, a local reporter, Bob Norman, covered his story and prominent politicians went on the record in his defense. Broward Property Appraiser Lori Parrish, who is married to a Circuit Court Judge, claims that Mr. Gelin's blog efforts in commenting about the local courthouse has resulted in a public good worthy of praise and appreciation - not an investigation. Howard Finkelstein, Broward's Public Defender, also chimed in supporting Mr. Gelin and called the investigation a "travesty." If Mr. Gelin is having to undergo every attorney's worst nightmare for making truthful public commentary about judges, the much dreaded and anxiety-producing experience that is a Florida Bar investigation, Mr. Finkelstein is right.

I contacted Mr. Gelin and expressed an interest in supporting his efforts of truthfully raising legitimate issues however critical of the judiciary. Mr. Gelin expressed appreciation but kindly cautioned me against identifying myself as he did not want me being drawn into the fray or potentially coming under scrutiny myself. I appreciate you looking out for me, Mr. Gelin, but, no thanks. I am Haydee Oropesa, and here is my complaint. If Mr. Gelin has not said anything false or with reckless disregard to the truth in commenting publicly about the judiciary (should that be the basis of his investigation), the chilling effect on the speech of attorneys fearful of such investigations is problematic and detrimental to the public at large.

Freedom of speech and our ability to petition the Government for a redress of grievances is a right that we as Americans cherish deeply. Since early childhood, my Cuban parents, who fled communism in Cuba, continually reminded me of how fortunate I was to have been born in a free country. Soon we will be celebrating the 4th of July and the adoption of our Declaration of Independence. Prior to listing the King's repeated injuries and abuses, which included his control of the judiciary, the signers declared, "To prove this, let Facts be submitted to a candid world." I would venture to guess, had the technological advances of our day been available, this massive document would have appeared on a blog like Mr. Gelin's.

Americans, however, do not enjoy an unbridled right to free speech. In discussing this issue, routinely one is met with the famous, "you do not have the right to run into a crowded theater and falsely shout fire." Conversely, what happens when there is a fire in the theater and you fail to run in and alert those in danger of being set ablaze because you have been conditioned and stifled by fear of negative repercussions? Attorneys who fear

becoming the subject of investigation and fail to publicly comment on valid issues may therefore achieve the very thing Rule 4-8.2 is in place to prevent, namely deteriorating public confidence in the judicial system.

The Florida Bar's interest in regulating an attorney's speech under Rule 4-8.2 serves a legitimate interest and is a reasonable limitation on what attorneys say. Rule 4-8.2 reads in part, "A lawyer shall not make a statement that the lawyer knows to be false or with reckless disregard as to its truth or falsity concerning the qualifications or integrity of a judge...." The Florida Supreme Court in The Florida Bar v. Ray, 797 So.2d 556 (Fla. 2001), made it abundantly clear that the purpose of this rule is not to shield judges from criticism by attorneys in exposing valid problems within the judicial system, but to rightly prohibit the practice of attorneys making false and reckless statements without regard for truth. The Florida Supreme Court stated that the purpose of the rule is to preserve public confidence in our judicial system. Litigants at times justifiably walk out of courtrooms with their confidence in the system compromised and not because of comments made by a lawyer. When an attorney speaks out publicly to call attention to valid problems within the judiciary, the public's confidence in the system is reinforced and, if it has waned, has a chance of being restored.

Who gets to sit on the bench and administer justice on behalf of the public is decided by voters. Judges wield immense power over the lives of those brought before him or her. As such, one casts a vote and hopes it is a well cast vote. "Robitis" is a term known by lawyers as meaning someone who changes dramatically upon being clothed with the mighty black robe. A good inoculation program against "Robitis" is blogging the truth about judicial conduct when warranted for the benefit of voters. We the people should be well informed in order to quarantine from the bench those we deem necessary come election time. A good number of the electorate will never have occasion to enter a courtroom and see their elected judge in action, much less regularly observe how a particular judge daily carries out his or her judicial duties. Attorneys, on the other hand, have that unique position. As such, commenting publicly gives any interested voter the means to gain knowledge on who should or should not remain on the bench.

Mr. Gelin's truthful blogging efforts can achieve this goal and I stand with him towards this end. The news and controversy surrounding his story has already reached the Tampa Bay area where attorneys are discussing the issues. I will remain hopeful that the Florida Bar will sort through the facts of this interesting case and make the right decision.

(Disagree with Haydee, or anything else on the blog? [As always](#), JAABLOG will print any viewpoint you may have, so long as it's written in coherent English. [Just drop us a line](#)...)

THANK YOU HAYDEE!