

**IN THE CIRCUIT COURT OF THE THIRTEENTH JUDICIAL CIRCUIT
IN AND FOR HILLSBOROUGH COUNTY, FLORIDA
GENERAL CIVIL DIVISION**

NEIL J. GILLESPIE,

Plaintiff,

CASE NO.: 05-CA-7205

vs.

BARKER, RODEMS & COOK, P.A.,
a Florida corporation; WILLIAM
J. COOK,

DIVISION: G

Defendants.

**PLAINTIFF'S MOTION TO DISQUALIFY
CIRCUIT COURT JUDGE MARTHA J. COOK**

Plaintiff pro se, Neil J. Gillespie, moves to disqualify the Honorable Martha J. Cook as trial judge in this action pursuant to chapter 38 Florida Statutes, Rule 2.330, Florida Rules of Judicial Administration, and the Rules of Judicial Conduct. Plaintiff fears that he will not receive a fair trial because of specifically described prejudice or bias of the judge. The specific grounds in support of this motion are:

Disqualification Standard

1. Canon 3E(1) of the Florida Code of Judicial Conduct provides a judge shall disqualify himself or herself in a proceeding in which the judge's impartiality might reasonably be questioned. The Commentary to 3E(1) states that under this rule, a judge is disqualified whenever the judge's impartiality might reasonably be questioned, regardless of whether any of the specific rules in Section 3E(1) apply. **The question whether disqualification of a judge is required focuses on those matters from which a litigant may reasonably question a judge's impartiality rather than the judge's perception**

of his ability to act fairly and impartially. (underline and emphasis added). A judge has a duty to disclose information that the litigants or their counsel might consider pertinent to the issue of disqualification. A judge's obligation to disclose relevant information is broader than the duty to disqualify. Stevens v. Americana Healthcare Corp. of Naples, 919 So.2d 713, Fla. App. 2 Dist., 2006.

2. Recusal is appropriate where one of the parties or their counsel had dealings with a relative of the court, or whenever a modicum of reason suggests that a judge's prejudice may bar a party from having his or her day in court. The function of the trial court on motion to recuse the trial judge is limited to a determination of the legal sufficiency of an affidavit, without reference to its truth and veracity. McQueen v. Roye, 785 So.2d 512, Fla. App. 3 Dist., 2000.

Disclosure under Rule 2.330(c)(4), Fla.R.Jud.Admin

3. Pursuant to Rule 2.330(c)(4), a motion to disqualify shall include the dates of all previously granted motions to disqualify filed under this rule in the case and the dates of the orders granting those motions. In this case two judges previously recused themselves and one judge was disqualified.

The Honorable Richard A. Nielsen, Circuit Court Judge

4. Plaintiff's motion to disqualify Judge Nielsen was filed November 3, 2006. Judge Nielsen denied the motion November 20, 2006 as legally insufficient because it was not filed in a timely manner. Judge Nielsen recused himself two days later sua sponte stating that it is in the best interest of all parties that this case be assigned to another division.

5. Misconduct by Defendants' counsel Ryan Christopher Rodems is responsible for the recusal of Judge Nielsen. On March 6, 2006 Mr. Rodems made a verified pleading that

falsely named Judge Nielsen in an “exact quote” attributed to Plaintiff, putting the trial judge into the controversy. The Tampa Police Department recently determined that the sworn affidavit submitted by Mr. Rodems to the court about an “exact quote” attributed to Plaintiff was not right and not accurate.

6. Initially Plaintiff had a good working relationship with Judge Nielsen and his judicial assistant Myra Gomez. Plaintiff attended the first hearing telephonically September 26, 2005 and prevailed on Defendants’ Motion to Dismiss and Strike. After Rodems’ stunt Judge Nielsen did not manage the case lawfully, favored Defendants in rulings, and responded to Plaintiff sarcastically from the bench.

7. According to news stories and an editorial published in the St. Petersburg Times, Judge Nielsen has a prior public history of misconduct on the bench.

a. On May 28, 2002, a news story by Kathryn Wexler appeared in the St. Petersburg Times about the Honorable Richard R. Nielsen entitled “Without an attorney, boy falters before judge”. The story describes how Judge Nielsen failed to provide an attorney to an indigent minor during a restitution hearing.

b. On May 31, 2002, a news story by Kathryn Wexler appeared in the St. Petersburg Times about the Honorable Richard R. Nielsen entitled “Teen who defended self gets attorney”. The story describes how two days after the St. Petersburg Times detailed the teen’s courtroom predicament, Judge Nielsen made room on his docket to determine whether the family was indigent and, hence, entitled to free counsel. The hearing was over in 10 minutes, and the teen got a court-appointed Spanish translator and a public defender, the Times reported.

c. On May 29, 2002, the St. Petersburg Times published an editorial about the Honorable Richard R. Nielsen entitled “Judge should have known better”. The editorial begins “What was Hillsborough County Circuit Judge Richard Nielsen thinking when he forced a 16-year-old to represent himself in court?”

8. When a circuit court judge mistreats a minor in court - a minor who requires an English translator - it is a violation of the public trust, reflects discredit on the judicial process, and suggests partiality in the consideration of matters before the court.

The Honorable Claudia Rickert Isom, Circuit Court Judge

9. This lawsuit was reassigned to Judge Isom effective November 22, 2006. A notice on Judge Isom’s official judicial web page advised that the judge had a number of relatives practicing law in the Tampa Bar area and “If you feel there might be a conflict in your case based on the above information, please raise the issue so it can be resolved prior to me presiding over any matters concerning your case”. One of the relatives listed was husband Mr. A Woodson “Woody” Isom, Jr.

10. Plaintiff found a number of campaign contributions between Defendant Cook and witness Jonathan Alpert to both Judge Isom and Woody Isom. This lawsuit is about a fee dispute. The only signed fee contract is between Plaintiff and the law firm of Alpert, Barker, Rodems, Ferrentino & Cook, P.A. Plaintiff’s Motion To Disclose Conflict was submitted December 15, 2006 and heard February 1, 2007. Judge Isom failed to disclose that husband Woody Isom is a former law partner of Jonathan Alpert. Mr. Rodems represented Defendants at the hearing and also failed to disclose the relationship. Plaintiff only recently learned (March 2010) of the relationship in the course of researching accusations contained an offensive letter from Rodems to the Plaintiff.

11. Subsequently Judge Isom did not manage the case lawfully and ignored her own law review on case management and discovery, Professionalism and Litigation Ethics, 28 STETSON L. REV. 323, 324 (1998). Judge Isom's law review shows how she coddles lawyers but slams ordinary people with extreme sanctions. It explains why Judge Isom favored the Defendants in rulings, and was prejudiced against the Plaintiff. A motion to disqualify Judge Isom was submitted February 13, 2007. Judge Isom denied the motion as legally insufficient but recused herself sua sponte. A Court Order Of Recusal And Directing Clerk To Reassign To New Division was prepared and signed by Judge Isom February 13, 2007.

The Honorable James M. Barton, II, Circuit Court Judge

12. This case was reassigned to Judge Barton February 14, 2007. Plaintiff retained attorney Robert W. Bauer of Gainesville to represent him. Plaintiff could not find an attorney in the Tampa Bay area to litigate against Barker, Rodems & Cook, PA because of their bad reputation and the general professional courtesy not to sue another lawyer. Judge Barton was pleased with Mr. Bauer, and stated so on the record:

THE COURT: It is a good thing for Mr. Gillespie that he has retained counsel. The way in which Mr. Gillespie's side has been presented today with - with a high degree of professionalism and confidence reflects the wisdom of that decision. (Transcript, hearing July 3, 2007, p. 21, line 6)

13. Nonetheless, Judge Barton made disparaging comments on the record about the Plaintiff, did not manage the case lawfully, and was prejudiced against the Plaintiff. Judge Barton provided copious hearing time to Defendants to obtain sanctions for a discovery error and a misplaced defense to a counterclaim. Judge Barton sanctioned

Plaintiff the extreme amount of \$11,550 and allowed Defendants to garnish Plaintiff's bank account and client trust fund with Mr. Bauer.

14. During hearings on October 30, 2007, and July 1, 2008, Judge Barton allowed Mr. Rodems to misrepresent that there was a signed written fee agreement between plaintiff Neil Gillespie and defendant Barker, Rodems & Cook, PA when none exists. Judge Barton accepted Rodems' false testimony as true and dismissed three of the four counts of Plaintiff's original pro se complaint. This necessitated Plaintiff's Motion for Rehearing submitted by Mr. Bauer July 16, 2008. The motion still remains unheard.

15. Judge Barton issued an Order Adjudging Contempt against Plaintiff July 7, 2008 for allegedly failing to comply with the Final Judgment of March 27, 2008. In fact Plaintiff's counsel Mr. Bauer failed to inform Plaintiff of this requirement. Mr. Bauer notified Judge Barton of his error by letter July 24, 2008. (Exhibit 1). Even though Bauer admitted his error, Judge Barton failed to reverse the contempt finding against Plaintiff.

16. Attorney Bauer complained about Mr. Rodems on the record: "...Mr. Rodems has, you know, decided to take a full nuclear blast approach instead of us trying to work this out in a professional manner. It is my mistake for sitting back and giving him the opportunity to take this full blast attack." (transcript, August 14, 2008, emergency hearing, the Honorable Marva Crenshaw, p. 16, line 24).

17. Mr. Bauer moved to withdrawal October 13, 2008. Judge Barton took no action and allowed the case to languish with no activity for almost one year. Judge Barton failed to fulfill his case management duties imposed by Rule 2.545, Fla.R.Jud.Admin. Plaintiff also notes that Mr. Rodems failed to take any action during that one year time period, undercutting his claim that Defendants' are prejudiced by the length of this lawsuit.

18. One year after Mr. Bauer moved to withdrawal, Judge Barton released him from the case upon Plaintiff's request October 1, 2009. Plaintiff moved to disqualify Judge Barton October 5, 2009, because he feared that he will not receive a fair trial because of specifically described prejudice or bias of the judge. Judge Barton denied Plaintiff's motion for disqualification as legally insufficient by order October 9, 2009.

19. Plaintiff's Motion to Disqualify Judge Barton was submitted May 20, 2010. The motion specified 12 counts of wrongdoing and was 41 pages, limited only by time, not the amount of judicial misconduct, some of which is still coming to light. Among other things, Mr. Rodems' law firm paid thousands of dollars last year to the wife of Judge Barton for court reporting services through her company. Mr. Rodems knew this was unlawful but did not report it until Plaintiff moved for disclosure. Judge Barton also failed to lawfully consider Plaintiff's accommodation request made under the Americans With Disabilities Act (ADA). Federal case law interpreting the ADA is applicable to claims arising under the Florida Civil Rights Act (FCRA). Americans with Disabilities Act of 1990, § 101 et seq., 42 U.S.C.A. § 12111 et seq.; West's F.S.A. § 760.01 et seq. Moore v. Hillsborough County Board of County Commissioners, 544 F.Supp.2d 1291. Since Judge Barton violated Plaintiff's rights under the ADA, Judge Barton also violated the Florida Civil Rights Act (FCRA).

20. Plaintiff's Motion to Disqualify Judge Barton was found lawfully sufficient and Judge Barton entered an Order of disqualification May 24, 2010. Even so, Judge Barton failed to provide Plaintiff a copy of the Order Granting Plaintiff's Motion to Disqualify Judge Barton, requiring Plaintiff to travel 200 miles to obtain a copy from the clerk.

Count 1, Plaintiff's Motion to Disqualify Circuit Court Judge Martha J. Cook

21. This case was reassigned by the Clerk of the Circuit Court to the Honorable Martha J. Cook, Division G, effective date May 24, 2010.

22. Almost immediately defense counsel Ryan Christopher Rodems embarked on a course of unethical conduct with malice aforethought to disrupt the proceedings. This is an ongoing problem with Mr. Rodems throughout the litigation. Mr. Rodems is Board Certified by the Florida Bar in Civil Trial law since 2007 with 18 years experience as a lawyer. He cannot claim ignorance of the law or inexperience for his misconduct.

a. Rodems unilaterally scheduled hearings for June 9, 2010 at 9:00 AM, and July 12, 2010 at 10:30 AM, without coordinating the time and date with the Plaintiff.

b. The notice for the June 9th hearing was legally insufficient. Rule 1.080(b), Fla.R.Civ.P, requires (relevant portion) that service shall be made by leaving it at the person's usual place of abode with some person of his or her family above 15 years of age and informing such person of the contents. Plaintiff was not home when FedEx delivered the notice, and Plaintiff did not find it until the next day. Plaintiff did not receive the notice on the day delivered nor was he informed of its contents. Rodems failed to provide the minimum 7 days notice. Plaintiff notified Rodems by fax June 7, 2010. (Exhibit 3).

c. Mr. Rodems knowingly scheduled the hearings at an inconvenient time for the Plaintiff, who must travel 100 miles from Ocala to Tampa. Previously Plaintiff requested hearings be scheduled in the afternoon. Mr. Rodems violated the Hillsborough County Bar Association (HCBA) Standards of Professionalism, and The Florida Bar Guidelines for Professional Conduct by failing to coordinate the time and date with Plaintiff, and by knowingly scheduling the hearing early in the morning which is inconvenient for Plaintiff

who must travel from Ocala. Hillsborough County Administrative Order S-2008-145, paragraph 26, Professional Conduct and Courtroom Decorum, mandates counsel will adhere to The Florida Bar's Guidelines for Professional Conduct and the Hillsborough County Bar Association's Standards of Professional Courtesy. Rodems has failed to do so.

d. When the aforementioned misconduct was brought to his attention, Rodems responded by letter of June 7, 2010 (Exhibit 4) as follows: (relevant portion) "I made multiple telephone calls to coordinate the hearing on June 9, 2010 with you. I telephoned you twice on Thursday, May 27, 2010 and again on Tuesday, June 1, 2010, leaving voice mails each time, but you did not return my calls." In fact, Rodems did not call or leave messages for the Plaintiff. Rodems is prohibited from calling Plaintiff for any reason whatsoever. Plaintiff responded by fax June 11, 2010 (Exhibit 5) and reminded Rodems that on February 5, 2007 Judge Isom directed Rodems not to call Plaintiff. Rodems agreed. This is what Rodems said on the record: (Feb-05-10, page 75, beginning line 2)

MR. RODEMS: I will not, Your Honor. No phone messages, no direct calls. I'll conduct all of my communications with Mr. Gillespie in writing.

THE COURT: I think that would be advisable. That way we don't have to be concerned with whether or not there's any other improper statements or contact.

A similar agreement was reached during the hearing with Judge Barton January 26, 2010: no phone calls, no faxes, no email.

e. There is a history of Rodems abusing the telephone privilege. On March 3, 2006, Rodems called Plaintiff at home about setting a hearing on Plaintiff's Motion To Disqualify Counsel. During the call Rodems threatened to reveal client confidences

learned during his firm's representation of Plaintiff. An argument ensued. On March 6, 2006, Mr. Rodems submitted Defendants' Verified Request For Bailiff And For Sanctions. Rodems made a sworn affidavit under the penalty of perjury that falsely named the Honorable Richard A. Nielsen in an "exact quote" attributed to Plaintiff, putting the trial judge into the controversy. Judge Nielsen recused sua sponte. The Tampa Police Department recently determined that the sworn affidavit submitted by Rodems to the court about an "exact quote" attributed to Plaintiff was not right and not accurate.

23. In response to Mr. Rodems' unethical conduct described in the preceding paragraph, Plaintiff prepared and hand delivered to Judge Cook a letter dated June 3, 2010 and filed same with the clerk. (Exhibit 2). The letter sets forth the following issues:

- a. Request to cancel Defendants' hearing unlawfully set for 9:00 AM June 9, 2010
- b. Request to set hearings in the afternoon since Plaintiff must travel 100 miles.
- c. Request for the Court to take control of the case required by Rule 2.545, Fla.R.Jud.Admin. and designate this lawsuit a complex action and proceed with case management pursuant to Rule 1.200(a), Rule 1.201, and Professionalism and Litigation Ethics, 28 STETSON L. REV. 323, 324 (1998). Request the Court prohibit either side from scheduling motions until case management is decided. Notified the Court that Plaintiff cannot register or use JAWS.
- d. Notified the Court that due to Mr. Rodems prior behavior, he is restricted to communication with Plaintiff by letter only, no calls, no email, no fax.
- e. Notified the Court that Plaintiff submitted an ADA accommodation request (ADA Request), and ADA Assessment and Report by Ms. Karin Huffer, MS, MFT,

(ADA Report) to Mr. Gonzalo B. Casares, ADA Coordinator for the 13th Judicial Circuit by hand delivery February 19, 2010. Plaintiff has not received a response to his request.

f. Object to Defendants' Motion for Examination, §56.29(2) Florida Statutes.

g. Notified the Court that Defendant's Motion for an Order compelling Plaintiff to Respond to the Defendant's Request for Production and Attend Deposition, is subject to contempt, see Plaintiff's Motion to Hold Ryan Christopher Rodems in Civil Contempt of Court. The motion violated Judge Barton's Stay Order of October 1, 2009.

h. Notified the Court that Plaintiff will timely move to reconsider prior factual or legal rulings of Judge Barton pursuant to Rule 2.330(h), which states: Prior factual or legal rulings by a disqualified judge may be reconsidered and vacated or amended by a successor judge based upon a motion for reconsideration, which must be filed within 20 days of the order of disqualification, unless good cause is shown for a delay in moving for reconsideration or other grounds for reconsideration exist. Judge Barton was disqualified May 24, 2010 and notice mailed. A motion to reconsider is due 20 days later, plus 5 days for service by mail of the notice of disqualification, 25 days total, or June 17, 2010. All of Defendants' motions pertain to collection of an extreme \$11,550 sanction imposed by Judge Barton. (Plaintiff now seeks 10 more days due to Rodems disruption).

i. Notified the Court that a motion to disqualify Mr. Rodems is being prepared. This is at the suggestion of Judge Barton (and other law) during the January 25, 2010 hearing: (page 31, line 17)

THE COURT: All right. Well, I assume there will be a renewed motion to disqualify that will be filed and then again set for a hearing once we establish our procedure...

j. Notified the Court that Plaintiff contacted Senior Justice (Retired) Ben F. Overton of the mediation firm Upchurch Watson White & Max to see if he can serve as judge ad litem, per section 38.13 Florida Statutes, and is awaiting a response.

k. Requested disclosure of consanguinity to the third degree that would serve as a basis to disqualify pursuant to Judicial Cannon 3(E), or any other known conflict with Defendant William J. Cook who has the same surname as the trial judge.

l. Notified the Court that all calls on the home office business telephone extension (352) 854-7807 are recorded for quality assurance purposes pursuant to the business use exemption of Florida Statutes chapter 934, section 934.02(4)(a)(I), and the holding of *Royal Health Care Servs., Inc. v. Jefferson-Pilot Life Ins. Co.*, 924 F.2d 215 (11th Cir. 1991).

24. On June 8, 2010 at 10:33 AM Plaintiff spoke by telephone with Judge Cook's judicial assistant Mary A. Fish. The call was recorded for quality assurance purposes pursuant to the business use exemption of Florida Statutes chapter 934, section 934.02(4)(a)(I), and the holding of *Royal Health Care Servs., Inc. v. Jefferson-Pilot Life Ins. Co.*, 924 F.2d 215 (11th Cir. 1991). Ms. Fish said she had a letter in front of her from Mr. Rodems and hopefully Plaintiff had the letter. Plaintiff informed her he did not. Ms. Fish said Judge Cook reviewed Plaintiff's first letter and Judge Cook said she did need to go forward with the hearing and according to the letter if you talk to Rodems he can cancel the hearing...did you get the letter from him? Plaintiff reiterated no. Ms. Fish read the letter to Plaintiff over the phone. Ms. Fish said for Plaintiff to call Rodems and discuss whatever with him then Rodems will cancel otherwise Judge Cook wants the hearing to go forward. Plaintiff was shocked to hear Rodems' claim that "I made multiple

telephone calls to coordinate the hearing on June 9, 2010 with you. I telephoned you twice on Thursday, May 27, 2010 and again on Tuesday, June 1, 2010, leaving voice mails each time, but you did not return my calls” since Rodems had not telephoned Plaintiff and was prohibited from calling Plaintiff. When Plaintiff tried to explain this to Ms. Fish she cut him off and said “she can’t hear any of this”. Ms. Fish offered to fax the letter to a UPS retail store Plaintiff suggested since his fax is not fully operational and can send but not receive. Ms. Fish promised to fax the letter in 15 minutes but it never arrived. Plaintiff asked if Judge Cook was refusing to cancel the unlawfully set hearing and Ms. Fish said Judge Cook reviewed the letter you sent, and we filed it on the file, and there was no reason she could see why this hearing shouldn’t go forward, so I wouldn’t use the word refused, okay? When Plaintiff began asking about the ADA, Ms. Fish hung up the phone.

25. Following the proceeding telephone call Plaintiff drove to the UPS retail store to pick up the fax Ms. Fish promised to send but there was nothing waiting for him, and nothing the next day when he checked.

26. When Plaintiff arrived home he found a message from Ms. Fish left at approximately 1:10 PM stating that Judge Cook is ill so the hearing for tomorrow is canceled, the hearing for June 9, 2010 at 9:00 AM.

27. Plaintiff returned the called to Ms. Fish at 2:16 PM to confirm that the hearing was canceled and she did. Ms. Fish also objected to the call being recorded and claimed she did not have prior notice even though notice is printed on Plaintiff’s June 3, 2010 letter to Judge Cook. In addition, Plaintiff’s fax cover letter to Judge Cook of June 4, 2010 also contains a notice that all calls are recorded. Plaintiff’s Notice of Telephone

Recording was filed with the clerk December 30, 2009. In the past notices of recording calls were provided to Judge Barton. Notice of Mr. Rodems' Written Consent To Record Telephone Conversations With Him was submitted to the clerk December 29, 2006.

28. Plaintiff's understanding of the forgoing is that Judge Cook read his letter of June 3, 2010 and does not intend to comply with any of his requests. Judge Cook also overlooked the following misconduct of Mr. Rodems:

- a. Rodems unilaterally scheduled hearings without coordinating with the Plaintiff.
- b. Rodems notice for the June 9th hearing was legally insufficient.
- c. Rodems knowingly scheduled the hearings at an inconvenient time for Plaintiff.
- d. Rodems lied to the Court in his letter to Plaintiff of June 7, 2010 that "I made multiple telephone calls to coordinate the hearing on June 9, 2010 with you. I telephoned you twice on Thursday, May 27, 2010 and again on Tuesday, June 1, 2010, leaving voice mails each time, but you did not return my calls." Rodems did not call or leave messages for the Plaintiff and he is prohibited from calling the Plaintiff for any reason whatsoever. Therefore Plaintiff fears that he will not receive a fair trial in the court where the suit is pending on account of the prejudice of the judge of that court against the Plaintiff and/or in favor of the Defendants.

Count 2, Plaintiff's Motion to Disqualify Circuit Court Judge Martha J. Cook

29. There is a controversy between Plaintiff and Ms. Fish over whether notice was provided to record calls with her. Because of the controversy with the judicial assistant of the trial judge, Plaintiff fears that he will not receive a fair trial in the court where the suit is pending on account of the prejudice of the judge of that court against the Plaintiff and/or in favor of the Defendants.

Count 3, Plaintiff's Motion to Disqualify Circuit Court Judge Martha J. Cook

30. Upon information and belief, Judge Cook has a serious illness and should retire from the bench. In the alternative, official proceedings should commence to cause the involuntary retirement of Judge Cook due to serious illness.

a. On June 3, 2010 at 4:05 PM HCSO Deputy Henderson informed Plaintiff that Judge Cook and judicial assistant Mary Fish left work early. This prevented Plaintiff from getting a copy of a public record from the court file, a copy of a motion for a writ of garnishment. File clerk Marcus and two other employees spent considerable time searching for the document before concluding that it was locked in the office of Judge Cook and not available.

b. On June 4, 2010 at 3:14 PM Mr. Dale Bohner, Legal Counsel for the Clerk of the Circuit Court, called Plaintiff and said Judge Cook was in the hospital, and due to HIPPA could not further state her condition. Mr. Bohner said Judge Cook's judicial assistant also left work early and the document was locked in Judge Cook's office. This prevented Plaintiff from obtaining a public record from the court file, a copy of a motion for a writ of garnishment.

c. On June 8, 2010 judicial assistant Mary A. Fish informed Plaintiff less than 24 hours prior to a hearing June 9, 2010 at 9:00 AM that Judge Cook was too ill to preside and canceled the hearing.

d. On June 11, 2010 at 4:45 PM file clerk Ron informed Plaintiff that Judge Cook and judicial assistant Mary Fish were not present. This prevented Plaintiff from getting a copy of a public record from the court file, a copy of Order on Case Mgmt Conference.

31. Upon information and belief, Judge Cook is suffering illness that required hospitalization and is disabling the judge from the performance of her duties. In the period of one week, from June 3, 2010 to June 11, 2010, Judge Cook was so ill and so disabled that she was hospitalized and could not perform her duties on at least four days and had to cancel a hearing and was unable to provide public records. Because Judge Cook is ill, was hospitalized, and too disabled to work, Plaintiff fears that he will not receive a fair trial in the court where the suit is pending.

Count 4, Plaintiff's Motion to Disqualify Circuit Court Judge Martha J. Cook

32. On June 3, 2010, the Plaintiff made a public records request for a copy of "Motion For Writ Of Garnishment" filed 05/26/2010 with the clerk and appearing on the docket in Gillespie v. Barker, Rodems & Cook, P.A., case no.: 05-CA-7205, Division G. Plaintiff made a 200 mile round trip to the clerk of court to obtain the document pursuant to chapter 119 Florida Statutes.

33. On June 3, 2010 at 4:05 PM HCSO Deputy Henderson informed Plaintiff that Judge Cook and judicial assistant Mary Fish left work early. This prevented Plaintiff from getting a copy of a public record from the court file, a copy of a motion for a writ of garnishment. File clerk Marcus and two other employees spent considerable time searching for the document before concluding that it was locked in the office of Judge Cook and not available.

34. On June 4, 2010, the Plaintiff faxed a public records request to Judge Cook for the document. Judge Cook did not respond.

35. On June 4, 2010, the Plaintiff faxed a public records request to Pat Frank, Clerk of Court c/o Dale Bohner, Legal Counsel to the Clerk. Mr. Bohner called Plaintiff June 4,

2010 at 3:14 PM and said that Judge Cook was in the hospital and due to HIPPA could not further state her condition. Mr. Bohner said Judge Cook's judicial assistant also left work early and the document was locked in Judge Cook's office. This prevented Plaintiff from obtaining a public, a copy of a motion for a writ of garnishment.

36. On June 7, 2010, Ms. Joy Mestas of Clerk's Administration provided the document to Plaintiff. Judge Cook still did not respond to Plaintiff's record request.

37. On June 11, 2010, the Plaintiff made a public records request for a copy of "Order on Case Mgmt Conference" filed 03/30/2010 with the clerk of court and appearing on the docket in Gillespie v. Barker, Rodems & Cook, P.A., case no.: 05-CA-7205, Division G. Plaintiff made a 200 mile round trip to the clerk of court to obtain the document pursuant to chapter 119 Florida Statutes.

38. On June 11, 2010 at 4:45 PM file clerk Ron said the entire file was locked in the office of Judge Cook and not available. Plaintiff was told to check back next week.

39. Judge Cook has unlawfully denied Plaintiff access to public records by keeping documents and the court file locked in her office during normal business hours. Judge Cook has denied Plaintiff access to public records to assist the Defendants. Because Judge Cook unlawfully denied access to public records to Plaintiff, he fears that he will not receive a fair trial in the court where the suit is pending on account of the prejudice of the judge of that court against the Plaintiff and/or in favor of the Defendants.

Count 5, Plaintiff's Motion to Disqualify Circuit Court Judge Martha J. Cook

40. The Florida Division of Elections shows the following campaign contributions from defendants and defendants counsel in this lawsuit to Judge Cook:

- a. Cook, Martha (NOP)(CTJ) 07/16/2002 100.00 CHE RODEMS RYAN C.

b. Cook, Martha (NOP)(CTJ) 07/16/2002 100.00 CHE COOK WILLIAM

41. The official 13th Judicial Circuit online biography for Judge Cook states “Year Elected to the Bench: 2003” but the campaign contributions and The Florida Division of Elections website show 2002 as the year elected to the bench. Plaintiff believe this misstatement is calculated to mislead those searching for campaign contributions.

42. Because of the misleading information about the year elected to the bench, and campaign contributions from the defendants and the defendants counsel to Judge Cook, Plaintiff, he fears that he will not receive a fair trial in the court where the suit is pending on account of the prejudice of the judge of that court against the Plaintiff and/or in favor of the Defendants.

Count 6, Plaintiff’s Motion to Disqualify Circuit Court Judge Martha J. Cook

43. On June 3, 2010, Plaintiff requested disclosure of consanguinity to the third degree that would serve as a basis to disqualify pursuant to Judicial Cannon 3(E), or any other known conflict with Defendant William J. Cook who has the same surname as the trial judge. Judge Cook did not respond. Because Judge Cook did not respond to a pertinent question relative to disqualification pursuant to Stevens v. Americana Healthcare Corp. of Naples, 919 So.2d 713, Fla. App. 2 Dist., 2006, Plaintiff fears that he will not receive a fair trial in the court where the suit is pending on account of the prejudice of the judge of that court against the Plaintiff and/or in favor of the Defendants.

Count 7, Plaintiff’s Motion to Disqualify Circuit Court Judge Martha J. Cook

44. In his letter to Judge Cook of June 3, 2010, Plaintiff requested the Court take control of the case required by Rule 2.545, Fla.R.Jud.Admin. and designate this lawsuit a complex action and proceed with case management pursuant to Rule 1.200(a), Rule

1.201, and Professionalism and Litigation Ethics, 28 STETSON L. REV. 323, 324 (1998).

Plaintiff requested the Court prohibit either side from scheduling motions until case management is decided. Plaintiff notified the Court that he cannot register or use JAWS.

45. Judge Cook failed to respond to Plaintiff's letter and he takes that to mean that Judge Cook does not intend to comply with any of his requests. Plaintiff fears that he will not receive a fair trial in the court where the suit is pending on account of the prejudice of the judge of that court against the Plaintiff and/or in favor of the Defendants.

Count 8, Plaintiff's Motion to Disqualify Circuit Court Judge Martha J. Cook

46. In his letter to Judge Cook of June 3, 2010, Plaintiff notified the Court that he submitted an ADA accommodation request (ADA Request), and ADA Assessment and Report by Ms. Karin Huffer, MS, MFT, (ADA Report) to Mr. Gonzalo B. Casares, ADA Coordinator for the 13th Judicial Circuit by hand delivery February 19, 2010 and has not received a substantive response, denial, or accommodation.

47. Because Judge Cook failed to respond to, deny, or accommodate Plaintiff's ADA request, Plaintiff fears that he will not receive a fair trial in the court where the suit is pending on account of the prejudice of the judge of that court against the Plaintiff and/or in favor of the Defendants.

Count 9, Plaintiff's Motion to Disqualify Circuit Court Judge Martha J. Cook

48. In his letter to Judge Cook of June 3, 2010, Plaintiff notified the Court that due to Mr. Rodems prior behavior, he is restricted to communication with Plaintiff by letter only, no calls, no email, no fax. Because Judge Cook failed to exercise control of the case and instead allowed Rodems act unprofessionally, Plaintiff fears that he will not receive a

fair trial in the court where the suit is pending on account of the prejudice of the judge of that court against the Plaintiff and/or in favor of the Defendants.

Count 10, Plaintiff's Motion to Disqualify Circuit Court Judge Martha J. Cook

49. In his letter to Judge Cook of June 3, 2010, Plaintiff notified the Court that he contacted Senior Justice (Retired) Ben F. Overton of the mediation firm Upchurch Watson White & Max to see if he can serve as judge ad litem, per section 38.13 Florida Statutes, and is awaiting a response. Because Judge Cook failed to respond or consider a judge ad litem per section 38.13 Florida Statutes, Plaintiff fears that he will not receive a fair trial in the court where the suit is pending on account of the prejudice of the judge of that court against the Plaintiff and/or in favor of the Defendants.

Count 11, Plaintiff's Motion to Disqualify Circuit Court Judge Martha J. Cook

50. In his letter to Judge Cook of June 3, 2010, Plaintiff notified the Court that he will timely move to reconsider prior factual or legal rulings of Judge Barton pursuant to Rule 2.330(h), which states: Prior factual or legal rulings by a disqualified judge may be reconsidered and vacated or amended by a successor judge based upon a motion for reconsideration, which must be filed within 20 days of the order of disqualification, unless good cause is shown for a delay in moving for reconsideration or other grounds for reconsideration exist. Judge Barton was disqualified May 24, 2010 and notice mailed. A motion to reconsider is due 20 days later, plus 5 days for service by mail of the notice of disqualification, 25 days total, or June 17, 2010. All of Defendants' motions pertain to collection of an extreme \$11,550 sanction imposed by Judge Barton.

51. Because Judge Cook failed to respond, or cancel the unlawfully set hearing for June 9, 2010 that pertains to collection of an extreme \$11,550 sanction imposed by Judge

Barton, Plaintiff believes Judge Cook has already made a decision against Plaintiff before considering his motion for reconsideration. Therefore Plaintiff fears that he will not receive a fair trial in the court where the suit is pending on account of the prejudice of the judge of that court against the Plaintiff and/or in favor of the Defendants.

Count 12, Plaintiff's Motion to Disqualify Circuit Court Judge Martha J. Cook

52. In his letter to Judge Cook of June 3, 2010, Plaintiff notified the Court that a motion to disqualify Mr. Rodems is being prepared. This is at the suggestion of Judge Barton (and other law) during the January 25, 2010 hearing: (page 31, line 17)

THE COURT: All right. Well, I assume there will be a renewed motion to disqualify that will be filed and then again set for a hearing once we establish our procedure...

53. Because Judge Cook failed to respond, or cancel the unlawfully set hearing for June 9, 2010 Plaintiff believes Judge Cook has already made a decision against Plaintiff before considering his motion to disqualify. Therefore Plaintiff fears that he will not receive a fair trial in the court where the suit is pending on account of the prejudice of the judge of that court against the Plaintiff and/or in favor of the Defendants.

Count 13, Plaintiff's Motion to Disqualify Circuit Court Judge Martha J. Cook

54. Plaintiff filed a Motion For Dissolution Of Writ Of Garnishment April 28, 2010. The garnishment took \$598.22 from Plaintiff's bank accounts, all of which is exempt as Social Security disability income or other exempt money. The motion set forth that Defendants failed to comply with the notice requirement under section 77.041(1) Florida Statutes, and failed to provide the "Notice to Defendant" required by section 77.041(2) Florida Statutes. Also, Plaintiff noted that Mr. Rodems made a bad-faith garnishment of Plaintiff's bank account and social security disability benefits. With malice aforethought

Mr. Rodems timed the garnishment to coincide with Plaintiff's automatic deposit of Social Security disability benefits. Rodems knows the benefits are exempt under § 222.18 Florida Statutes. Rodems knows Plaintiff receives Social Security disability benefits from his firm's prior representation of Plaintiff in a substantially related matter, from discovery in this lawsuit, and from the Fact Information Sheet.

55. The court is holding \$598.22 belonging to the Plaintiff. Section 77.07(1) Florida Statutes states that "The court shall set down such motion for an immediate hearing." Judge Cook failed to set the motion down for an immediate hearing. Because Judge Cook failed to set the motion down for an immediate hearing, Plaintiff fears that he will not receive a fair trial in the court where the suit is pending on account of the prejudice of the judge of that court against the Plaintiff and/or in favor of the Defendants.

The undersigned movant certifies that the motion and the movant's statements are made in good faith. Submitted and Sworn to this 14th day of June, 2010.

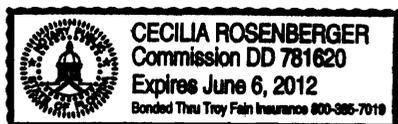

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Telephone: (352) 854-7807

STATE OF FLORIDA
COUNTY OF marion

BEFORE ME, the undersigned authority authorized to take oaths and acknowledgments in the State of Florida, personally appeared NEIL J. GILLESPIE, known to me, who, after having first been duly sworn, deposes and says that the above matters contained in this document are true and correct to the best of ~~her~~ knowledge and belief.
his

WITNESS my hand and official seal this 14th day of June 2010.


Notary Public
State of Florida



Certificate of Service

I HEREBY CERTIFY that a true and correct copy of the foregoing has been furnished by mail June 14, 2010 to the office of Ryan Christopher Rodems, attorney for the Defendants, at Barker, Rodems & Cook, PA, 400 North Ashley Drive, Suite 2100, Tampa, Florida 33602.

Neil C. Gillespie

A handwritten signature in black ink, appearing to read "Neil C. Gillespie", written over a horizontal line. The signature is fluid and cursive.