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UNITED STATES DISTRICT COURT  
MIDDLE DISTRICT OF FLORIDA  
OCALA DIVISION

CLERK, US DISTRICT COURT  
MIDDLE DISTRICT OF FL  
OCALA FLORIDA

ESTATE OF PENELOPE GILLESPIE,  
NEIL J. GILLESPIE,

CASE NO.: 5:11-cv-539-oc-10TBS

Plaintiffs,

vs.

JURY TRIAL DEMANDED

THIRTEENTH JUDICIAL CIRCUIT, FLORIDA,  
JAMES M. BARTON, II, Circuit Court Judge, and individually,  
THE LAW OFFICE OF ROBERT W. BAUER, P.A.,  
ROBERT W. BAUER,

Defendants.

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FIRST AMENDED COMPLAINT

Pursuant to Rule 15(a)(1) FRCP, a party may amend its pleading once as a matter of course within 21 days after serving. The Complaint in this action was not served. Therefore Plaintiff Gillespie amends the Complaint, sues the Defendants, and alleges:

JURISDICTION AND VENUE

1. This Court has jurisdiction under 28 U.S.C. § 1331 and 42 U.S.C. § 1983 Civil action for deprivation of rights that was the proximate cause of the wrongful death of Penelope Gillespie, for Defendants' violation the Plaintiffs' rights guaranteed under the Constitution and Laws of the United States including the Fifth and Fourteenth Amendments to the U.S. Constitution as to Due Process; The Eight Amendment to the U.S. Constitution as to Cruel & Unusual Punishment; and the Fourteenth Amendment to the U.S. Constitution as to Equal Protection; The Americans With Disabilities Act

("ADA"), 42 U.S.C., Chapter 126, §§ 12101 et seq., Subchapter II, Public Services, Part A, §§ 12131 - 12134, Subchapter III, Public Accommodations and Services Operated by Private Entities, §§ 12181 - 12189, Subchapter IV, §§12201 - 12213, including the ADA Amendments Act of 2008 (ADAAA) updates; 42 U.S.C. § 1981. Equal rights under the law to make and enforce contracts, to sue, be parties, give evidence, and to the full and equal benefit of all laws and proceedings; 42 U.S.C. § 1982. Property rights of citizens to inherit, hold, and convey personal property; 42 U.S.C. § 1985. Conspiracy to interfere with civil rights (2) Obstructing justice; intimidating party, witness; 42 U.S.C. § 1986. Action for neglect to prevent the wrongs conspired to be done, and mentioned in section 1985; 42 U.S.C. § 1988. Proceedings in vindication of civil rights (b) for attorney's fees; the Federal Protection and Advocacy for Mentally Ill Individuals Act, 42 U.S.C. 10801 et seq.; 18 USC 1346 (fraud and honest services); 18 USC 1951 (interference with commerce), Title 15 of the United States Code pertaining to restraint of trade and monopolies (anti-trust law); These violations of law are pervasive and ongoing in nature.

This Court has supplemental jurisdiction under 28 U.S.C. § 1367 for Article 1, Section 2, of the Constitution of Florida, Basic rights that do not include protection of persons with mental disabilities, in conflict with federal law. Penelope Gillespie had a mental disability, Alzheimer's Disease. Neil Gillespie has mental illness as set forth herein; and for violations of the Constitution of the State of Florida; Article 1, Section 21, Access to Courts; Article 1, Section 17, Excessive Punishments, excessive fines; Article 1, Section 9, Due Process; for claims under The Florida Wrongful Death Act, §§ 768.16 to 768.26, Florida Statutes. The wrongful death claim is brought by the Decedent's

Personal Representative, to recover for the benefit of the Decedent's Survivors and Estate, all damages, as specified in this act, caused by the injury resulting in death. (§ 768.20 Fla. Stat.).

2. Venue is proper in this Court, the Ocala Division, pursuant to Rule 1.02(c), Local Rules. The Decedent resided in Ocala, and Ocala has greatest nexus with the cause.

NOTICE OF PENDENCY OF RELATED ACTIONS, LOCAL RULE 1.04(d)

3. In compliance with Local Rule 1.04(d), Gillespie gives notice of the following related actions:

Neil J. Gillespie v. Thirteenth Judicial Circuit, Florida, et. al, case no. 5:10-cv-00503-oc, US District Court, MD Florida, Ocala Division, a federal civil rights lawsuit for the misuse and denial of judicial process under the color of law, and disability claims under the Americans with Disabilities Act (ADA). ("federal action")

Petition For Writ Of Mandamus, Supreme Court of Florida, case no. SC11-1622, Neil J. Gillespie v. Barker, Rodems & Cook, PA, et al, lower tribunal nos.: 2D10-5197, 05-CA-7205, to rescind a "walk-away" settlement agreement of June 21, 2011 and other relief. ("Petition")

PARTIES

4. Plaintiff, the Estate of Penelope Gillespie. ("Estate"). The Decedent Penelope Gillespie died September 16, 2009. Ms. Gillespie was an unremarried widow who resided at 8092 SW 115th Loop, Ocala, Florida. On November 19, 2008 Neil J. Gillespie assigned and transferred to Penelope Gillespie for her use and benefit a security interest in all rights of Gillespie to receive any proceeds in the case of Gillespie v. Barker,

Rodems & Cook, P.A., et. al, case no. 05-CA-7205, Hillsborough County Circuit Court, Florida. The security interest became part of the Estate upon the death of Ms. Gillespie. The estate has not been settled. A copy of the assignment is at Appendix 1, Exhibit 1.

5. Plaintiff NEIL J. GILLESPIE is the Personal Representative of the Estate, the son of the Decedent, and a survivor as defined by § 768.18, Fla. Stat., and resides at 8092 SW 115th Loop, Ocala, Florida, 34481. (“Gillespie”). Under to Rule 20(a)(1), FRCP, Gillespie, individually, has a right to relief jointly, severally, or in the alternative with respect to or arising out of the same transaction, occurrence, or series of transactions or occurrences, and has question of law or fact common to all plaintiffs in this action.

Gillespie is the Plaintiff in the federal action, and the Petitioner in the Petition.

6. Former plaintiff Mark J. Gillespie is removed from this first amended complaint.

7. Former plaintiff Elizabeth Bauerle is removed from this first amended complaint.

8. Defendant THIRTEENTH JUDICIAL CIRCUIT, FLORIDA (“13th Circuit”) is a state court of original jurisdiction in and for Hillsborough County located in the George E. Edgecomb Courthouse, 800 E. Twiggs Street, Tampa, Florida. Gillespie was Plaintiff and Counter-Defendant in Neil J. Gillespie v. Barker, Rodems & Cook, PA and William J. Cook, Case No. 05-CA-7205, Circuit Civil Court, 13th Circuit. The lawsuit commenced August 11, 2005 and ended June 21, 2011. (“state action”). January 9, 2012 Gillespie filed the Petition upon leave of the Supreme Court of Florida to rescind a “walk-away” settlement agreement of June 21, 2011 and other relief.

9. Defendant JAMES M. BARTON, II is a Circuit Court Judge for the 13th Circuit and a natural person. (“Judge Barton”). At all times pertinent Judge Barton was married

to Chere J. Barton, President of Regency Reporting Service, Inc. ("Regency Reporting"). Judge Barton presided over the state action from February 13, 2007 to May 24, 2010, and was disqualified for cause, a business relationship involving thousands of dollars paid by Barker, Rodems & Cook, P.A. to Regency Reporting owned by the wife of Judge Barton. Ms. Barton also transcribed Gillespie's deposition of May 14, 2001 in the underlying litigation, Gillespie v. Amscot Corporation, case no: 8:00-CV2795-T-26EAJ. ("Amscot). The transcript was stored in a home office of Judge Barton and contained substantial information about Gillespie's disabilities. The transcript is Exhibit 4 of Gillespie's disability notice, Verified Notice of Filing Disability Information of Neil J. Gillespie, May 27, 2011 in the state action. (Appendix 2). Judge Barton failed to provide Gillespie accommodation under the Americans with Disabilities Act (ADA), and sanctioned Gillespie \$11,550 for discovery errors, for "discovery" already in the possession of Barker, Rodems & Cook, PA, from their earlier representation of Gillespie. Part of the sanction under section 57.105, Florida Statutes, was for Gillespie's misplaced defense of economic loss to a libel counterclaim, an *Abuse of Process* brought by Mr. Rodems on behalf of Barker, Rodems & Cook, PA and William J. Cook. The libel counterclaim was vexatious litigation and voluntarily dismissed by Mr. Rodems September 28, 2010.

10. Defendant THE LAW OFFICE OF ROBERT W. BAUER, P.A., is a Florida professional service corporation and law firm located at 2815 NW 13<sup>th</sup> Street, Suite 200E Gainesville, Alachua County, Florida 32609. ("Bauer Law"). Bauer Law formerly represented Gillespie as Plaintiff and Counter-Defendant in the state action, and in two related interlocutory appeals, 2D07-4530 and 2D08-2224. Bauer Law formerly

represented Penelope Gillespie in medical malpractice, and insurance matters, through a power of attorney with Gillespie as attorney-in-fact.

11. Defendant ROBERT W. BAUER is an attorney, Florida Bar ID No. 11058, a corporate officer of Bauer Law, and a natural person. ("Mr. Bauer or Bauer"). Mr. Bauer formerly represented Gillespie as Plaintiff and Counter-Defendant in the state action, and in two related interlocutory appeals, 2D07-4530 and 2D08-2224. Bauer Law formerly represented Penelope Gillespie in medical malpractice, and insurance matters, through a power of attorney with Gillespie as attorney-in-fact. Mr. Bauer was a referral by The Florida Bar Lawyer Referral Service February 27, 2007 for the libel counterclaim in the state action.

#### CONDITIONS PRECEDENT

12. Gillespie served July 12, 2010 notice in compliance with § 768.28(6)(a), Florida Statutes, which requires that prior to instituting any action on a tort claim against the state or one of its agencies or subdivisions, the claimant must present the claim in writing to the appropriate agency and the Department of Financial Services.

#### GENERAL ALLEGATIONS

13. My name is Neil Gillespie and I am the pro se Plaintiff in this action appearing as the Personal Representative of the Estate; the former caregiver of Penelope Gillespie, my Mother; the former attorney-in-fact for Penelope Gillespie; and individually as a party in interest. Penelope Gillespie was disabled as defined by the Americans with Disabilities Act (ADA), and Chapter 825 Florida Statutes, with mental illness, Alzheimer's Disease, and other disabilities. I am disabled as defined by the Americans with Disabilities Act

(ADA), the Federal Protection and Advocacy for Mentally Ill Individuals Act, and Chapter 825 Florida Statutes. A disability report prepared by Dr. Karin Huffer for the court shows I have the following mental illness: Depression 296/3, and Post Traumatic Stress Disorder, 309.81 with chronic and acute symptoms anxiety, and other disabilities like type 2 adult onset diabetes and communication disorders. (Appendix 2).

As set forth in the state action, in August 2005 I sued my former lawyers Barker, Rodems & Cook, PA for fraud and breach of contract for stealing \$7,143 during their prior representation of me in the Amscot case, a case at the heart of the present case. Ryan Christopher Rodems unlawfully represented his firm and partner against me, a former client, in the same matter as the prior representation. I prevailed on a motion to dismiss and established a cause of action. Judge Nielsen denied Mr. Rodems' claim of entitlement to \$50,000 in "court-awarded" fees and costs under the Truth In Lending Act (TILA), by Order January 13, 2006, as did three federal judges before him. The doctrine of res judicata bars future action on matters that have been "definitively settled by judicial decision". Having lost on the facts and the law, Mr. Rodems intentionally disrupted the tribunal March 6, 2006 by filing a false affidavit that I planned a violent attack in Judge Nielsen's chambers, a claim later disproved by investigation of the Tampa Police Department. This resulted in Judge Nielsen's recusal, and began a chain where each successor judge acted with retaliation against me. However Judge Nielsen's sua sponte recusal November 22, 2006 was improper because a judge has a duty to remain on a case assigned to him or her unless he or she is legally disqualified. State ex rel. Palmer v. Atkinson, 116 Fla. 366, 156 So. 726, 96 AL.R. 539 (1934); Micale v.

Polen, 487 So. 2d 1126 (Fla. Dist. Ct. App. 4th Dist. 1986). Judge Nielsen denied a motion to disqualify him as legally insufficient November 20, 2006. Rodems also filed a vexatious libel counterclaim, which he later voluntarily dismissed, as a vehicle to obtain excessive sanctions. Rodems demanded and obtained excessive sanctions for my discovery errors, for “discovery” already in Rodems’ possession from his firm’s prior representation of me. Judge Barton awarded Mr. Rodems \$11,550 in excessive sanctions against me, then authorized the garnishment of my bank accounts. Judge Barton failed to hold a hearing on claims of exemption from the garnished funds, and failed to lawfully manage the case. Judge Barton failed to provide me disability accommodation under the ADA. Judge Barton also allowed Mr. Rodems to re-litigate dismissed claims, to present false testimony in doing so, and dismiss some of the claims based on Rodems’ false testimony. I hired attorney Robert Bauer to represent me, but he allowed Mr. Rodems to re-litigate the dismissed claims too, and prevented me from appearing in court to testify in my own case. After churning \$33,000 in legal fees, without even filing an amended complaint, Bauer dropped the case, and joined with Rodems in the effort to obstruct justice under the color of law. For example, Mr. Bauer lied to the Bar during an inquiry, and denied filing Plaintiff’s Motion for Rehearing, served July 16, 2007, to hold Rodems accountable for lying to Judge Barton about having a signed representation contract with me. There is no signed contract because I did not sign one. Judge Barton was disqualified for cause over a business relationship between a court reporting service owned by his wife Chere Barton and Mr. Rodems’ law firm. In addition, the Chere Barton took my deposition in the Amscot case and stored the transcript in a home office in the home of

Judge Barton. The transcript contained testimony about my disabilities and the Amscot case, the case at the heart of the current case. Successor Judge Cook conspired with Mr. Rodems to misuse and deny me judicial process under the color of law as set forth in the federal action and the Petition. Successor Judge Arnold conspired with Mr. Rodems to issue a politically-motivated warrant for my arrest to force a “walk-away” settlement in the state and federal actions, as set forth in the Petition. Dr. Huffer assessed the foregoing in a letter dated October 28, 2010. Dr. Huffer wrote in part:

“As the litigation has proceeded, Mr. Gillespie is routinely denied participatory and testimonial access to the court. He is discriminated against in the most brutal ways possible. He is ridiculed by the opposition, accused of malingering by the Judge and now, with no accommodations approved or in place, Mr. Gillespie is threatened with arrest if he does not succumb to a deposition. This is like threatening to arrest a paraplegic if he does not show up at a deposition leaving his wheelchair behind. This is precedent setting in my experience.” (p1, ¶2). “He [Gillespie] is left with permanent secondary wounds” (p2, top). “Additionally, Neil Gillespie faces risk to his life and health and exhaustion of the ability to continue to pursue justice with the failure of the ADA Administrative Offices to respond effectively to the request for accommodations per Federal and Florida mandates.” (p2, ¶1). “It is against my medical advice for Neil Gillespie to continue the traditional legal path without properly being accommodated. It would be like sending a vulnerable human being into a field of bullies to sort out a legal problem.” (Appendix 1, Exhibit 6).

These violations of law are pervasive and ongoing in nature.

In the federal action Mr. Rodems appeared for his firm and himself and engaged in new wrongdoing. (Doc. 48, Doc. 60). I notified this Court in the federal action as early as June 1, 2011 (Doc. 31) as follows:

3. Mr. Rodems is unethically representing his firm against Gillespie, a former client in a matter that is the same or substantially similar to the prior representation, and Mr. Rodems' independent professional judgment is materially limited by his interest and conflict. Mr. Rodems has previously misled this Court in violation of Rule 11 (b) in pleadings he submitted. In turn this Court relied

upon Mr. Rodems' pleadings as correct and incorporated false or untrue statements in this Court's orders.

4. Gillespie seeks leave to move for sanctions against Mr. Rodems under Rule 11(C)(2) for making false or untrue statements to this Court in his pleadings.

Because of the foregoing, Defendants violations of law are pervasive and ongoing in nature and in violation of 42 U.S.C. § 1983 Civil action for deprivation of rights that was the proximate cause of the wrongful death of Penelope Gillespie for Defendants' violation the Plaintiff's rights guaranteed under the Constitution and Laws of the United States including the Fifth and Fourteenth Amendments to the U.S. Constitution as to Due Process; The Eight Amendment to the U.S. Constitution as to Cruel & Unusual Punishment; and the Fourteenth Amendment to the U.S. Constitution as to Equal Protection; The Americans With Disabilities Act ("ADA"), 42 U.S.C. § 12101 et seq.,; 42 U.S.C. § 1981. Equal rights under the law to make and enforce contracts, to sue, be parties, give evidence, and to the full and equal benefit of all laws and proceedings; 42 U.S.C. § 1982. Property rights of citizens to inherit, hold, and convey personal property; 42 U.S.C. § 1985. Conspiracy to interfere with civil rights (2) Obstructing justice; intimidating party, witness; 42 U.S.C. § 1986. Action for neglect to prevent the wrongs conspired to be done, and mentioned in section 1985; the Federal Protection and Advocacy for Mentally Ill Individuals Act, 42 U.S.C. 10801 et seq.; 18 USC 1346 (fraud and honest services); 18 USC 1951 (interference with commerce), Title 15 of the United States Code pertaining to restraint of trade and monopolies (anti-trust law); Article 1, Section 2, of the Constitution of Florida, Basic rights that do not include protection of persons with mental disabilities, in conflict with federal law; violations of the

Constitution of the State of Florida; Article 1, Section 21, Access to Courts; Article 1, Section 17, Excessive Punishments, excessive fines; Article 1, Section 9, Due Process; and claims under The Florida Wrongful Death Act, §§ 768.16 to 768.26, Florida Statutes.

AMERICANS WITH DISABILITIES ACT (ADA)

14. Penelope Gillespie was disabled as defined by the Americans with Disabilities Act (ADA), 42 U.S.C. § 12102. As such she was entitled to protection for mental and physical disabilities under 42 U.S.C., Chapter 126, §§ 12101 et seq., Subchapter II, Public Services, Part A, §§ 12131 - 12134, Subchapter III, Public Accommodations and Services Operated by Private Entities, §§ 12181 - 12189, Subchapter IV, §§ 12201 - 12213, including the ADA Amendments Act of 2008 (ADAAA) updates.

15. Neil Gillespie is disabled as defined by the Americans with Disabilities Act (ADA), 42 U.S.C. § 12102. As such he is entitled to protection for mental and physical disabilities under 42 U.S.C., Chapter 126, §§ 12101 et seq., Subchapter II, Public Services, Part A, §§ 12131 - 12134, Subchapter III, Public Accommodations and Services Operated by Private Entities, §§ 12181 - 12189, Subchapter IV, §§ 12201 - 12213, including the ADA Amendments Act of 2008 (ADAAA) updates.

THE FEDERAL PROTECTION AND ADVOCACY FOR  
MENTALLY ILL INDIVIDUALS ACT

16. Gillespie is an individual with mental illness as defined by 42 U.S.C. Chapter 114 The Protection and Advocacy for Individuals with Mental Illness Act, § 10802(4)(A) and (B)(i)(III). Gillespie was involuntarily confined in a municipal detention facility for reasons other than serving a sentence resulting from conviction for a criminal offense.

Gillespie's involuntary confinement was in the George E. Edgecomb Courthouse, 800 E. Twiggs Street, Tampa, Florida. On June 1, 2011 Judge Arnold issued a politically-motivated warrant to arrest Gillespie for the purpose of harming Gillespie by abuse as defined § 10802(1) and neglect as defined by § 10802(5) to force a walk-away settlement agreement in the state action, and to force a walk-away settlement agreement in the federal action, Gillespie's civil rights and ADA lawsuit against the Thirteenth Judicial Circuit, Florida, et al., for the misuse and denial of judicial process under the color of law, and denial of disability accommodation. Gillespie was involuntarily confined by two (2) fully armed deputies of the Hillsborough County Sheriff's Office, and involuntarily held during an improper full deposition, post final summary judgment, an open-ended deposition without time limit, with no lunch break, and no meals usually given to an inmate, until Gillespie suffered injury and agreed to sign a walk-away settlement agreement. Gillespie was so impaired when he signed the agreement that the record shows he was unable to make the settlement decision himself.

#### CHAPTER 825, FLORIDA STATUTES

##### Abuse, Neglect, and Exploitation of Elderly Persons and Disabled Adults

17. Penelope Gillespie was an elderly person as defined by section 825.101(5) and 78 years-old. Ms. Gillespie was suffering from the infirmities of aging including Alzheimer's disease, aerial fibrillation, and other ailments. Neurologist William Gaya, M.D, of the Ocala Neurodiagnostic Center, treated Ms. Gillespie for Alzheimer's disease. On October 23, 2008 Dr. Gaya examined Ms. Gillespie, said she scored 20 on the Mini Mental Exam (MME), and said it would be another five years before she was bedridden in the final

stage of Alzheimer's disease. Also on October 23, 2008 Dr. Gaya certified that Ms. Gillespie was competent to cast a vote for general elections.

18. Gillespie is a disabled adult as defined by section 825.101(4), Florida Statutes, and as further described in ADA documents in the state action, including the "Verified Notice of Filing Disability Information of Neil J. Gillespie". (Appendix 2).

19. Gillespie was caregiver to Penelope Gillespie as defined under § 825.101(2),

Florida Statutes:

(2) "Caregiver" means a person who has been entrusted with or has assumed responsibility for the care or the property of an elderly person or disabled adult. "Caregiver" includes, but is not limited to, relatives, court-appointed or voluntary guardians, adult household members, neighbors, health care providers, and employees and volunteers of facilities as defined in subsection (7).

Gillespie was appointed "Designated Health Care Surrogate" by Penelope Gillespie under Florida law February 21, 2006.

Gillespie was designated proxy by Penelope Gillespie under her "Advance Medical Directive" or living will May 4, 2006 under Florida law.

Gillespie was appointed attorney-in-fact several times by Penelope Gillespie under Florida law through power of attorney

#### FLORIDA WRONGFUL DEATH ACT

20. Sections 768.16-768.26 Florida Statutes may be cited as the "Florida Wrongful Death Act." Section 768.17 Florida Statutes, Legislative intent. It is the public policy of the state to shift the losses resulting when wrongful death occurs from the survivors of the decedent to the wrongdoer. Sections 768.16-768.26 are remedial and shall be **liberally construed**. (underline and bold emphasis added)

a. Section 768.18 Florida Statutes, Definitions. As used in ss. 768.16-768.26:

(1) "Survivors" means the decedent's spouse, children...(3) "Support" includes contributions in kind as well as money. (5) "Net accumulations" means the part of the decedent's expected net business or salary income, including pension benefits, that the decedent probably would have retained as savings and left as part of her or his estate if the decedent had lived her or his normal life expectancy.

b. Section 768.19 Florida Statutes, Right of action. When the death of a person is caused by the wrongful act, negligence, default, or breach of contract or warranty of any person...and the event would have entitled the person injured to maintain an action and recover damages if death had not ensued, the person....that would have been liable in damages if death had not ensued shall be liable for damages as specified in this act...

c. Section 768.20 Florida Statutes, Parties. The action shall be brought by the decedent's personal representative, who shall recover for the benefit of the decedent's survivors and estate all damages, as specified in this act, caused by the injury resulting in death...

d. Section 768.21 Florida Statutes, Damages. All potential beneficiaries of a recovery for wrongful death, including the decedent's estate, shall be identified in the complaint, and their relationships to the decedent shall be alleged. Damages may be awarded as follows:

(1) Each survivor may recover the value of lost support and services from the date of the decedent's injury to her or his death, with interest, and future loss of support and services from the date of death and reduced to present value...

(3) Minor children of the decedent, and all children of the decedent if there is no surviving spouse, may also recover for lost parental companionship, instruction, and guidance and for mental pain and suffering from the date of injury.

(5) Medical or funeral expenses due to the decedent's injury or death may be recovered by a survivor who has paid them.

(6) The decedent's personal representative may recover for the decedent's estate the following:

(a) Loss of earnings of the deceased from the date of injury to the date of death, less lost support of survivors excluding contributions in kind, with interest. Loss of the prospective net accumulations of an estate, which might reasonably have been expected but for the wrongful death, reduced to present money value, may also be recovered...

(b) Medical or funeral expenses due to the decedent's injury or death that have become a charge against her or his estate or that were paid by or on behalf of decedent, excluding amounts recoverable under subsection (5).

Death of Ms. Gillespie September 16, 2009

21. Penelope Gillespie died September 16, 2009 at the Odyssey House Hospice in Forth Worth, Texas. Dementia is the cause of death reported on the Certificate of Death. Ms. Gillespie was a Florida resident since 1993 and had lived continuously at 8092 SW 115th Loop, Ocala, Florida until February 2009 in the Oak Run retirement community.

22. Since February, 2005 Gillespie was the primary caregiver to his then 75-year-old mother, an unremarried widow. Ms. Gillespie needed full-time care due to Alzheimer's

dementia and other ailments. This put additional stress on Gillespie's existing disabilities. Attorney Bauer improperly moved to withdrawal from the state action October 13, 2008. In February 2009 Gillespie's brother in Texas agreed to take in their Mother so he could have respite, and attend to Mr. Bauer's breach of duty, and the Court's breach of duty. Ms. Gillespie sustained injuries from leaving home and died from those injuries September 16, 2009.

23. On October 23, 2008 Dr. Gaya examined Ms. Gillespie and said it would be another five years before she was bedridden in the final stage of Alzheimer's disease, or October 2013. Upon information and belief, Ms. Gillespie's life was cut short by four (4) years and one (1) month.

24. The Defendants owed the Plaintiffs a duty as set forth herein. The Defendants breached their duty to the Plaintiffs. As a proximate cause of that breach of duty to the Plaintiffs, Ms. Gillespie sustained injury that resulted in her death September 16, 2009.

COUNT 1 - DEFENDANTS 13TH CIRCUIT AND JUDGE BARTON

25. Plaintiffs incorporate the foregoing paragraphs and reassert them here.

26. Defendant Judge Barton and the 13th Circuit presided over Neil J. Gillespie v. Barker, Rodems & Cook, PA and William J. Cook, Case No. 05-CA-007205, Circuit Civil Court, 13th Circuit. ("state action"). Judge Barton presided over the action February 13, 2007 until disqualified for cause May 24, 2010.

27. Gillespie was a plaintiff and counter-defendant in the state action.

28. Robert W. Bauer and The Law Offices of Robert W. Bauer, P.A. represented Gillespie in the state action from March 2007 through October 1, 2009. Mr. Bauer and

his firm represented the Decedent in matters related, and not related, to the state action.

29. Ms. Gillespie paid money to Mr. Bauer and Bauer Law for his fees in the state action. Ms. Gillespie had a security interest in this action from the time Mr. Bauer entered appearance in 2007. Ms. Gillespie's interest in this action is memorialized by an Assignment of Unliquidated Lawsuit Proceeds dated November 19, 2008, prepared by attorney Jeffrey Shelquist, and filed by Gillespie with the Clerk of Court, Marion County, March 31, 2009. (Appendix 1, Exhibit 1).

30. As a proximate cause of Judge Barton's negligence, the Decedent, Penelope Gillespie, died September 16, 2009. Judge Barton negligently managed the state action, and failed to timely conclude the litigation. Judge Barton negligently exceeded the time to conclude this litigation by many years, and thereby denied Gillespie time that would otherwise have been devoted to the care of Ms. Gillespie. Judge Barton negligently failed to hold a hearing on a claim of exemption of garnished wages used to support Ms. Gillespie. By failing to hold a hearing as required by law, Judge Barton negligently denied funds needed to support Ms. Gillespie. Judge Barton failed to rule for one year on a motion by Mr. Bauer to withdrawal from the case. During the interim and thereafter, Mr. Bauer abandoned his clients. Gillespie's brother in Texas agreed to take in their Mother, to allow Gillespie time for respite, and to address Defendants' breach of duty, but Ms. Gillespie sustained injuries as a result of leaving her home and died.

31. Specifically, the 13th Circuit and Judge Barton were negligent as follows:

a. Judge Barton was negligent as to the Florida Rules of Judicial Administration:

(i). Pursuant to Rule 2.250(a)(1)(B), the time standard for a civil trial case is 18 months from filing to final disposition.

(ii). Pursuant to Rule 2.545 Case Management (a) Purpose. Judges and lawyers have a professional obligation to conclude litigation as soon as it is reasonably and justly possible to do so. Pursuant to Rule 2.545(b) Case Control. The trial judge shall take charge of all cases at an early stage in the litigation and shall control the progress of the case thereafter until the case is determined. The trial judge shall take specific steps to monitor and control the pace of litigation.

(iii). This civil jury case was filed August 11, 2005. Under Rule 2.250(a)(1)(B) the case should have concluded 18 months later, on or about February 11, 2007. Judge Barton assumed control of the case February 13, 2007 and negligently managed the case contrary to Rule 2.545. Judge Barton did not engage in case management. Judge Barton negligently allowed Mr. Rodems to re-litigate matters already decided by the Order of Judge Nielsen entered January 13, 2006. Judge Barton accepted as true false testimony by Mr. Rodems in the re-litigation of the Order of Judge Nielsen entered January 13, 2006. Judge Barton negligently allowed this case to languish and failed to perform case management duties imposed by Rule 2.545 for a period of one year following the motion to withdrawal by Gillespie's lawyer Robert W. Bauer on October 13, 2008<sup>1</sup>. Three years

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<sup>1</sup> In contrast, the Second District Court of Appeal denied Mr. Bauer's motion to withdrawal in case no. 2D08-2224, also filed October 13, 2008. The 2dDCA denied the motion in a timely manner, October 30, 2008.

and three months after assuming the case, Judge Barton was still presiding when he was disqualified for cause May 24, 2010<sup>2</sup>.

b. Judge Barton was negligent in his failure to conduct a hearing on a Claim Of Exemption And Request For Hearing served August 14, 2008 by Gillespie's attorney Robert W. Bauer. (Appendix 1, Exhibit 2). Judge Barton entered Order Granting Defendants' Motion For Writ of Garnishment After Judgment<sup>3</sup> July 24, 2008. On July 29, 2008 Mr. Rodems obtained Writs of Garnishment against Gillespie's bank accounts, and

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<sup>2</sup> Judge Barton was disqualified for cause May 24, 2010 pursuant to the holding of Aurigemma v. State, 964 So.2d 224 (Fla. 4th DCA 2007), for an ongoing business relationship between Mr. Rodems' law firm and Regency Reporting Service, Inc. owned by Chere Barton, the wife of Judge Barton. On March 31, 2009 alone Barker, Rodems & Cook, PA paid \$1,992.15 to Regency Reporting Service, Inc., creating the requisite well-founded fear to support a motion to disqualify.

<sup>3</sup> Judge Barton awarded judgment of \$11,550 in favor of Mr. Rodems' law firm and partner, for attorneys fees as sanctions, punishment against Gillespie under section 57.105 for a misplaced defense of economic loss to a libel counterclaim brought by Rodems. The counterclaim was an abuse of process as set forth in Plaintiff's First Amended Complaint, Count 11. Rodems voluntarily dismissed the counterclaim September 28, 2010. Judge Barton also sanctioned Gillespie for discovery errors, which is ironic since Mr. Rodems failed to provide most of the discovery due in this case. Because of the forgoing Gillespie retained attorney Robert Bauer to represent him, a move that pleased Judge Barton. Nonetheless, Judge Barton slammed Gillespie with sanctions of \$11,550 contrary to Article 1, Section 17 of the Constitution of the State of Florida excessive punishments and fines, without the benefit of a jury, ordinarily guaranteed by Article 1, Section 22 of the Constitution of the State of Florida. On the federal level, Judge Barton's extreme sanction of \$11,550 denied Gillespie his right to due process under the Fifth and Fourteenth Amendments to the Constitution of the United States. In *Haines v. Kerner*, 404 U.S. 520 (1971) the United States Supreme Court found that *pro se* pleadings should be held to "less stringent standards" than those drafted by attorneys. Judge Barton's extreme sanction of \$11,550 denied Gillespie his right to protection against cruel and unusual punishment under the Eight Amendment to the Constitution of the United States. Judge Barton's extreme sanction of \$11,550 denied Gillespie his right to equal protection of the law under the Fourteenth Amendment to the Constitution of the United States.

client account with Mr. Bauer. Mr. Rodems successfully garnished \$598.22 from Gillespie's bank accounts. The Claim of Exemption stated in relevant part:

"The following exemptions from garnishment apply to the Plaintiff, Neil Gillespie, herein as stated:

1. Head of Family Wages
  - a. Plaintiff provides more than one-half of the support for a child or other dependent and have net earnings of \$500 or less per week.
  2. Social Security benefits.
  3. Disability income benefits."

c. Social Security Disability benefits are exempt from garnishment under section 222.18 Florida Statutes. Head of Family Wages are exempt from garnishment under section 222.11(1)(c) Florida Statutes. A claim of exemption was filed by Gillespie's attorney Mr. Bauer. (Exhibit 2). Judge Barton negligently failed to conduct a hearing on the claim of exemption required under section 222.12 Florida Statutes<sup>4</sup>.

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<sup>4</sup> Both Judge Barton, and later Judge Martha Cook, refused to hold a hearing to determine the validity of the claimed exemptions as required by section 77.041(3) Florida Statutes. The Court also refused to hold a hearing pursuant to section 77.07 Florida Statutes for dissolution of a writ of garnishment. Mr. Rodems never attempted to collect the garnished funds. In a letter dated December 21, 2010 Dale Bohner, legal counsel to the Clerk, informed Gillespie that "the referenced funds were never received into the registry of the court" and were still held by Park Avenue Bank. All the garnished funds were returned to Gillespie December 28, 2010. Pursuant to section 77.07(5) Florida Statutes, after 6 months a writ is automatically dissolved and the garnishee is discharged from further liability. Since the writ was issued 29 months prior the bank had no current liability and no authority to hold the garnished funds. Park Avenue Bank returned Gillespie's funds of \$598.22 by check dated December 28, 2010. Park Avenue Bank failed April 29, 2011 and was assumed by Bank of the Ozarks. This is especially problematic for Judge Cook, who ruled July 29, 2010 "Plaintiff's "Motion Dissolve Writ" (5-3-10) is DENIED as lacking legal basis. The Defendants are entitled to this Writ by a final judgment and a judgment granting motion for sanctions; moreover, the Second District Court of appeal has *affirmed* and issued a "mandate," which means this Court has no option but to enforce the judgment."

32. Under the Florida Wrongful Death Act, the basis for an action for wrongful death is a death caused by a “wrongful act, negligence, default or breach of contract or warranty”. (§768.19, Fla. Stat.). There must be evidence of a breach of duty owed by the defendant to the plaintiff’s decedent, or an underlying tort. In the case of negligence, to establish a cause of action in a wrongful death action, the plaintiff must allege and prove:

- (1) the existence of a legal duty owed to the decedent;
- (2) the breach of that duty;
- (3) legal or proximate cause of death was that breach; and
- (4) consequential damages.

In connection with the requirement in wrongful death actions of an underlying tort or breach of duty, proof of the defendant’s violation of a statute or regulatory provision that either is designed to protect a particular class of persons from their inability to protect themselves or establishes a duty to take precautions to guard a certain class of persons from a specific type of injury, establishes negligence per se. Florida Freight Terminals, Inc. v. Cabanas, 354 So. 2d 1222 (Fla. Dist. Ct. App., 3d Dist. 1978).

33. The wrongful act, negligence, default or breach of contract or warranty of the 13th Circuit and Judge Barton established negligence per se.

34. Gillespie is a disabled adult as defined by section 825.101(4), Florida Statutes, and as further described in documents in the lawsuit and provided to Mr. Bauer.

35. Ms. Gillespie was an elderly person as defined by section 825.101(5) and 77 years-old at the start of representation. Ms. Gillespie was suffering from the infirmities of aging including Alzheimer’s disease, aerial fibrillation, and other ailments.

36. Judge Barton, a representative of the Court, had a business relationship with Gillespie as defined by section 825.101(1) a relationship between two or more individuals or entities where there exists an....agreement for...[court] services. Judge Barton engaged in deception as defined by section 825.101(3)(a) misrepresenting or concealing a material fact relating to (1) services rendered, disposition of property, or use of property, when such services or property are intended to benefit an elderly person or disabled adult. Judge Barton obtained or used as defined by section 825.101(10) any manner of (a) taking or exercising control over property; or (b) making any use, disposition, or transfer of property. Judge Barton had a position of trust and confidence with respect to Gillespie as defined by section 825.101(11)(e), Florida Statutes, "any other person who has been entrusted with or has assumed responsibility for the use or management of the elderly person's or disabled adult's funds, assets, or property". Judge Barton entered the order granting writs of garnishment to Mr. Rodems who knowingly garnished exempt social security benefits belonging to Gillespie. After Gillespie's exempt funds were taken by Rodems, Mr. Bauer filed a claim of exemption, but Judge Barton, by deception or intimidation, failed to conduct a hearing on the claim required by section 222.12 Florida Statutes, to the detriment of Gillespie and his mother, and for the benefit of Mr. Rodems.

37. Judge Barton violated section 825.103, Florida Statutes, exploitation of an elderly person or disabled adult (1)(a) knowingly, by deception or intimidation, obtaining or using, or endeavoring to obtain or use, an elderly person's or disabled adult's funds, assets, or property with the intent to temporarily or permanently deprive the elderly

person or disabled adult of the use, benefit, or possession of the funds, assets, or property, or to benefit someone other than the elderly person or disabled adult, by a person who:

1. Stands in a position of trust and confidence with the elderly person or disabled adult;
- or 2. Has a business relationship with the elderly person or disabled adult.

ADMISSION OF WRONGDOING BY JUDGE BARTON

38. Plaintiff's Motion To Disqualify Judge was served October 5, 2009. (Appendix 1, Exhibit 3). Paragraph 8 states: "As a proximate cause of Judge Barton's actions, plaintiff's mother, Penelope Gillespie, died September 16, 2009." Since that time opposing counsel Ryan Christopher Rodems has been very vocal in his criticism of paragraph 8 of the motion as described in Appendix 1, Exhibit 4.

39. Judge Barton denied Plaintiff's Motion To Disqualify Judge without a hearing, and entered "Order Denying Plaintiff's Motion To Disqualify Judge" October 9, 2009. (Appendix 1, Exhibit 5). In paragraph 2, Judge Barton wrote: "The instant motion is legally insufficient and therefore DENIED."

40. Under Florida law, a judge making a determination of whether a motion to disqualify is legally sufficient must accept all accusations and facts plead in the motion as true. Paragraph 8 of the motion to disqualify, states: "As a proximate cause of Judge Barton's actions, plaintiff's mother, Penelope Gillespie, died September 16, 2009."

41. Under Florida law, in denying the motion to disqualify, Judge Barton accepted as true paragraph 8 of the motion to disqualify that states: "As a proximate cause of Judge Barton's actions, plaintiff's mother, Penelope Gillespie, died September 16, 2009." This amounts to an admission of wrongdoing by Defendant Judge Barton.

42. The 13th Circuit denied property rights of the Plaintiffs to inherit, hold, and convey personal property, the rights contained in Assignment of Unliquidated Lawsuit Proceeds dated November 19, 2008, when, as set forth further in the Petition, the 13th Circuit issued a politically-motivated warrant to arrest Gillespie and involuntarily detain him to force a “walk-away” settlement agreement in the state action and federal action.

WHEREFORE, Plaintiffs seeks damages as provided by law, for actual damages, statutory damages, punitive damages, attorney’s fees for attorneys representing or working on Plaintiffs’ behalf as provided by 42 U.S.C. § 1988. Proceedings in vindication of civil rights (b) for attorney’s fees; costs, and a general request that the Court grant such other and further relief as it deems just and equitable.

COUNT 2 - DEFENDANTS BAUER LAW AND MR. BAUER

43. Plaintiffs incorporate the foregoing paragraphs and reassert them here.

44. Robert W. Bauer (bar #11058) is an attorney who operates the Law Office of Robert W. Bauer, PA, located at 2815 NW 13<sup>th</sup> Street, Suite 200E, Gainesville, FL 32609.

45. Mr. Bauer was a referral from The Florida Bar Lawyer Referral Service, February 26, 2007 for the area of Libel and Slander. (Appendix 3). Mr. Bauer appears to have little or no experience in the area of Libel and Slander and he was not competent to practice in that area of law. Apart from the requirements of the LRS, lawyers are bound by the Rules Regulating the Florida Bar:

Rule 4-7.2, communications concerning a lawyer’s services  
(b) Prohibited Statements and Information  
(5) Advertising areas of practice - a lawyer or law firm shall not advertise for legal employment in an area of practice in which the advertising lawyer or law firm does not currently practice law

Mr. Bauer violated Lawyer Referral Rule 8-1.1, Statement of Policy and Purposes, states that “Every citizen of the state should have access to the legal system” ... and (a) “make legal services readily available to the general public through a referral method that considers the client’s financial circumstances...” Mr. Bauer failed to consider Gillespie’s financial circumstances and maintains he is not obligated to do so. (Transcript, February 9, 2009 phone call). Mr. Bauer violated LRS application, Rules, IV, states:

D. A panel member, in filing an application as provided, agrees to:  
(2) charge for further services only as agreed upon with the client in keeping with the stated objectives of the Service and the client’s ability to pay;

Mr. Bauer never considered Gillespie’s ability to pay, he simply took this case to churn fees, deplete Gillespie’s funds, and drop the case, leaving Gillespie in a worse position.

Mr. Bauer failed to execute a contingent fee agreement as promised.

46. Mr. Bauer failed to remit to the LRS 12% of any attorneys’ fees due for services performed in connection with any Regular Panel cases. Mr. Bauer has received \$19,212.44 in attorney’s fees from Gillespie but has not remitted any of the approximately \$2,305.49 he owes to the LRS according to Ms. Karen Kelly, Director of the Florida Bar’s Public Service Programs Department.

47. Mr. Bauer was incompetent and appears to have little legal knowledge. Law is a second career for him. Mr. Bauer graduated law school in 2005 at the age of 35, just two years prior to this representation. Previously Mr. Bauer worked for Alachua County Fire Rescue as a paramedic and later a fireman.

48. Mr. Bauer does not appear to possess sufficient literacy to practice law. His writing contains numerous spelling and other errors. Mr. Bauer compensates for his insufficient literacy by hiring law students and recent law school graduates to work for him and do the legal work that he himself is not capable of producing. Mr. Bauer also uses the text from the pro se pleadings of his clients as his own work product, then charges the client for the work as his own, and submits the work to the court as his own. This is set forth in the Bar complaint, Gillespie v. Robert W. Bauer, The Florida Bar File No. 2011-073(8B). (Appendix 3).

49. Opposing counsel Mr. Rodems complained about Mr. Bauer using Gillespie's pro se pleadings as his own. Rodems email to Bauer April 26, 2007 at 9:56 a.m. states in part, "I am surprised you would rely on any portions of the pleadings Gillespie filed."

50. Mr. Bauer submitted a "counter-counter complaint" in April 2007. The pleading was essentially a "cut and paste" of Gillespie's initial pro se complaint where Bauer added claims for breach of fiduciary duty to Gillespie's claims of fraud and breach of contract. The pleading was rejected out of hand by the court because there is no provision under Rule 1.100(a) Fla.R.Civ.P., for a counter-counter complaint.

51. Mr. Bauer has had a number of bar complaints, and other complaints, by former clients. A large number of the complaining clients are disabled and/or elderly, suggesting a pattern disregard by Mr. Bauer toward elderly and disabled clients. Some of his clients have contacted Gillespie. This list is some of Mr. Bauer's unhappy clients:

a. Anna Hodges contacted Gillespie July 8, 2011 by email "help advise! I hired and fired bauer..nightmare". Hodges hired and later fired Robert Bauer as counsel in a

libel case, Susan Hodges Helvenston v. Anna White Hodges, Case No. 38-2010-CA-1423, Eight Judicial Circuit, in and for Levy County. Hodges has new counsel now, and believes Mr. Bauer should be brought to justice for mishandling her case, stating "I plan to raise the ROOF off this mess!" (Appendix 1, Exhibit 11).

b. Angela V. Woodhull, Ph.D. states Robert Bauer filed a number of improper "Attorney Charging Liens" in cases involving Dr. Woodhull's mother, including the Guardianship of Louise A. Falvo, Case No. 2008-CP-000741, and the Estate of Louise A. Falvo, Case No: 01-2008-CP-1083, Eight Judicial Circuit, Alachua County; and other cases, including in the Fifth District Court of Appeal. Dr. Woodhull provided Gillespie January 4, 2012 a certified copy of her pro se pleading in the estate case, the docket entry of December 18, 2009, "Response To And Motion To Strike Or In The Alternative Motion To Dismiss Attorney Bauer's Motions For Attorney's Charging Lien And Motion For Sanctions Against Attorney Robert Bauer". (Appendix 1, Exhibit 10). Dr. Woodhull's pleading complains about a number of the same issues as Gillespie, that Bauer uses law students and unlicensed law school graduates to draft his pleadings, as well as using his client's pro se pleadings and submitting them to the court as his own work.

c. Phillip Strauss, who is 90 years old, called Gillespie January 4, 2012 to discuss his Bar complaint against Robert Bauer, Phillip Strauss v. Robert W. Bauer. TFB File No.: 2012-00,146 (8B), August 24, 2011. Mr. Strauss was dissatisfied with Mr. Bauer's representation in a small claims action involving his homeowners insurance company.

d. James and Betty DeCoursey v. Robert W. Bauer, TFB File No. 2012-00,054(8b), July 8, 2011. The complaint alleges that the DeCourseys are disabled and elderly, and that Mr. Bauer failed to properly represent them in a foreclosure matter.

35. Mr. Bauer and Gillespie had a business relationship as defined by section 825.101(1), Florida Statutes. The business relationship was reflected by a number of documents, including an Attorney Consultation and Fee Contract executed in April 2007 (Exhibit 6) related to the action.

52. Mr. Bauer had a business relationship with the Penelope Gillespie, as defined by section 825.101(1), Florida Statutes. Mr. Bauer represented Ms. Gillespie on several matters including investigation of medical malpractice, and wrongful termination of insurance related to the state court action, a result of Mr. Rodems' claim for libel and demand for \$10,000 against the homeowners policy of Ms. Gillespie.

53. Ms. Gillespie paid money to Mr. Bauer for his fees in the action. Ms. Gillespie had a security interest in this action from the time Mr. Bauer entered appearance in 2007. Ms. Gillespie interest in this action is memorialized by an Assignment of Unliquidated Lawsuit Proceeds dated November 19, 2008, prepared by attorney Jeffrey Shelquist, and filed by Gillespie with the Clerk of Court, Marion County, March 31, 2009. (Appendix 1, Exhibit 1).

54. Gillespie is a disabled adult as defined by section 825.101(4), Florida Statutes, and as further described in documents in the lawsuit and provided to Mr. Bauer.

55. Ms. Gillespie was an elderly person as defined by section 825.101(5) and 77 years-old at the start of representation. Ms. Gillespie was suffering from the infirmities of aging including Alzheimer's disease, aerial fibrillation, and other ailments.

56. Mr. Bauer had a position of trust and confidence with respect to Gillespie as defined by section 825.101(11)(c), Florida Statutes, a legal or fiduciary relationship his my attorney. The Florida Bar Lawyer Referral Service referred Mr. Bauer in February 2007. Mr. Bauer provided professional services as defined by section 825.101(13)(b), Florida Statutes.

57. Mr. Bauer had a position of trust and confidence with respect to Ms. Gillespie as defined by section 825.101(11)(c), Florida Statutes, a legal or fiduciary relationship as attorney. Mr. Bauer provided professional services as defined by section 825.101(13)(b), Florida Statutes.

58. Mr. Bauer engaged in deception with regard to the business relationship as defined by section 825.101(3), Florida Statutes, (a)(1) misrepresenting or concealing a material fact relating to services rendered intended to benefit a disabled adult; (a)(2) terms of a contract or agreement entered into with a disabled adult; and (b) using any misrepresentation, false pretense, or false promise in order to induce, encourage, or solicit a disabled adult to enter into a contract or agreement.

59. Mr. Bauer's deception deprived Gillespie and Ms. Gillespie of property as defined by section 825.101(12), Florida Statutes. Mr. Bauer took from Gillespie and Ms. Gillespie over \$19,000 in fees and has asserted a charging lien that exceeds \$12,000.

60. Mr. Bauer violated section 825.103(1)(a), Florida Statutes, exploitation of an elderly person or disabled adult, knowingly, by deception, obtaining an elderly person's or disabled adult's funds, assets, or property to benefit himself, a lawyer who stood in a position of trust and confidence with the elderly person or disabled adult and who had a business relationship with the elderly person or disabled adult.

It is long established that the relationship between an attorney and his client is one of the most important, as well as the most sacred, known to the law. The responsibility of an attorney to place his client's interest ahead of his own in dealings with matters upon which the attorney is employed is at the foundation of our legal system. (*Deal v. Migoski*, 122 So. 2d 415). It is a fiduciary relationship involving the highest degree of truth and confidence, and an attorney is under a duty, at all times, to represent his client and handle his client's affairs with the utmost degree of honesty, forthrightness, loyalty, and fidelity. (*Gerlach v. Donnelly*, 98 So. 2d 493).

61. Under section 825.103(2)(b), Florida Statutes, Mr. Bauer committed a felony of the second degree because the funds, assets, or property involved in the exploitation of the elderly person or disabled adult is valued at \$20,000 or more, but less than \$100,000. The funds directly benefiting Mr. Bauer amount to \$19,212.44, with an additional \$12,650.13 owing him, plus thousands of dollars spent for filing fees, transcripts, etc.

62. Mr. Bauer assumed representation of an already-filed ongoing pro se lawsuit, Neil J. Gillespie v. Barker, Rodems & Cook, PA and William J. Cook, case no. 05-CA-7205, Circuit Civil, Hillsborough County, Florida. Gillespie filed the lawsuit pro se August 11, 2005 against his former lawyers Barker, Rodems & Cook, P.A. ("BRC") who wrongfully took \$6,224.78 (later determined \$7,143.68) from a contingent fee case settlement. Gillespie's initial pro se complaint survived a motion to dismiss and strike by Order of

January 13, 2006, and established a cause of action for fraud and breach of contract. BRC countersued Gillespie for libel on January 19, 2006. BRC obtained sanctions against Gillespie for discovery errors and a misplaced defense to the counterclaims on § 57.105 Fla. Stat. sanction. Gillespie voluntarily dismissed his claims February 7, 2007. The Florida Bar LRS referred Mr. Bauer to Gillespie February 26, 2007. Gillespie retained Mr. Bauer and he reinstated the dismissed-claims but failed to zealously represent Gillespie and dropped the case before completion. Mr. Bauer spent much time and money securing sanctions of \$11,550 for the benefit BRC, and Mr. Bauer caused Gillespie to be held in contempt of court, as set forth in Gillespie v. Robert W. Bauer, The Florida Bar File No. 2011-073(8B)(Appendix 3), the federal action, and the Petition.

63. On March 29, 2007 Mr. Bauer called Gillespie after his initial review of this matter. Mr. Bauer said the pending sanctions against Gillespie were “entirely and wholly inappropriate” (Transcript, p29, line 17). Mr. Bauer said “If we can substantiate that that stuff was willful and if I can get, you know, the jury would love to punish a slimy attorney.” (p28, line 7). Gillespie’s ultimate repose to that and other of Mr. Bauer’s statements was “You know, I want to get a good outcome with the case, I’m not interested in any personal ax to grind.” (p33, line 5).

64. In his letter to Gillespie of April 5, 2007 Mr. Bauer wrote “I also reviewed the original complaint and determined that it appeared to contained (sic) two well plead causes of actions (sic) that could reasonably be pursued in a court action.” From a legal standpoint this was false and deceptive. While Gillespie’s original complaint survived a motion to dismiss, it was legally deficient and required amendment.

65. In July 2009 Gillespie hired attorney Seldon Childers to review this matter, and he concluded the following about the original complaint: (Appendix 1, Exhibit 7).

“Plaintiff has already paid twice the actual damages in attorneys fees to date in the case and there is still essentially no complaint filed. [at footnote 3] i.e. the current complaint is deficient and will have to be amended by a new complaint that is largely re-written, which will re-set all case deadlines and permit more discovery, new motions to dismiss, motions for summary judgment, and a new answer with affirmative defenses and counter-claims, all of which will have to be dealt with just as they were the first time around.” (Analysis of Case, Sep-17-09, page 3, ¶2.)

66. Attorney Childers prepared three documents dated September 17, 2009:

Analysis of Case and Recommendation (Appendix 1, Exhibit 7)  
Economic Analysis Spreadsheet (Appendix 1, Exhibit 8)  
Case Spreadsheet (Appendix 1, Exhibit 9)

67. Based upon Mr. Childers’ review, Mr. Bauer should never have undertaken this representation on an hourly fee basis. Even under the best case scenario, this case would loose \$7,475.34. Under the worst case scenario the case would loose \$204,067.41. This litigation was never in Gillespie’s interest, only Mr. Bauer’s interest, a clear breach of fiduciary duty and a violation of section 825.103(1)(a), Florida Statutes.

68. In April 2009 Mr. Bauer agreed to a contingent fee agreement but never signed the agreement. (Appendix 3, Exhibit 1)

69. Mr. Bauer engaged in wrongdoing as set forth in Gillespie’s complaint to The Florida Bar June 15, 2010. (Appendix 3, Exhibit 1).

70. In a letter to Florida Gov. Charlie Crist dated January 4, 2010 Mr. Bauer endorsed Mr. Rodems for judge and praised him as “honorable and professional”. (Appendix 3,

Exhibit 11) This is in contrast to Mr. Bauer's statement that Rodems misled Judge Barton. (Transcript, page 11, Feb-09-09)

MR. BAUER:...[I] think it clearly puts  
12 before the Court the mistake or perjury, whichever  
13 the Court determines that they wish to interpret as  
14 Mr. Rodems misleading the Court when he said that  
15 certain things were present that weren't. If you  
16 read those motions I clearly said that in there.

Mr. Bauer is referring to Rodems' false statement to the Court about a signed representation agreement. An attorney who mislead the Court is not "honorable and professional". This letter was little more than a quid pro quo in exchange for Rodems' support in Gillespie's Florida Bar complaint against Mr. Bauer. (Appendix 3).

71. Under the Florida Wrongful Death Act, the basis for an action for wrongful death is a death caused by a "wrongful act, negligence, default or breach of contract or warranty". (§768.19, Fla. Stat.). There must be evidence of a breach of duty owed by the defendant to the plaintiff's decedent, or an underlying tort. In the case of negligence, to establish a cause of action in a wrongful death action, the plaintiff must allege and prove:

- (1) the existence of a legal duty owed to the decedent;
- (2) the breach of that duty;
- (3) legal or proximate cause of death was that breach; and
- (4) consequential damages.

In connection with the requirement in wrongful death actions of an underlying tort or breach of duty, proof of the defendant's violation of a statute or regulatory provision that either is designed to protect a particular class of persons from their inability to protect themselves or establishes a duty to take precautions to guard a certain class of persons

from a specific type of injury, establishes negligence per se. Florida Freight Terminals, Inc. v. Cabanas, 354 So. 2d 1222 (Fla. Dist. Ct. App., 3d Dist. 1978).

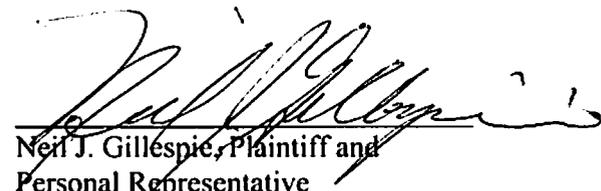
72. The wrongful act, negligence, default or breach of contract or warranty of Mr. Bauer and Bauer Law established negligence per se.

73. Defendants Mr. Bauer and Bauer Law owed the Plaintiffs a duty as set forth herein. The Defendants breached their duty to the Plaintiffs. As a proximate cause of that breach of duty to the Plaintiffs, Ms. Gillespie sustained injury that resulted in her death September 16, 2009.

WHEREFORE, Plaintiff seeks damages as provided by law, for actual damages, statutory damages, punitive damages, attorney's fees for attorneys representing or working on Plaintiff's behalf as provided by 42 U.S.C. § 1988. Proceedings in vindication of civil rights (b) for attorney's fees; costs, and a general request that the Court grant such other and further relief as it deems just and equitable.

Demand for Jury Trial Pursuant to Rule 38

RESPECTFULLY SUBMITTED January 17, 2012.



Neil J. Gillespie, Plaintiff and  
Personal Representative  
8092 SW 115<sup>th</sup> Loop  
Ocala, Florida 34481  
(352) 854-7807

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2012 JAN 17 PH 3:41

UNITED STATES DISTRICT COURT  
MIDDLE DISTRICT OF FLORIDA  
OCALA DIVISION

CLERK, US DISTRICT COURT  
MIDDLE DISTRICT OF FL  
OCALA, FLORIDA

ESTATE OF PENELOPE GILLESPIE,  
NEIL J. GILLESPIE,

CASE NO.: 5:11-cv-539-oc-10TBS

Plaintiffs,

vs.

JURY TRIAL DEMANDED

THIRTEENTH JUDICIAL CIRCUIT, FLORIDA,  
JAMES M. BARTON, II, Circuit Court Judge, and individually,  
THE LAW OFFICE OF ROBERT W. BAUER, P.A.,  
ROBERT W. BAUER,

Defendants.

\_\_\_\_\_ /

APPENDIX 1

1. Assignment of unliquidated lawsuit proceeds, recorded
2. Plaintiff's Claim of Exemption and Request for Hearing
3. Plaintiff's Motion to Disqualify Judge
4. Ongoing Criticism and Harassment of Ryan Christopher Rodems
5. Order Denying Plaintiff's Motion to Disqualify Judge
6. Letter of Dr. Karin Huffer, October 28, 2010
7. Seldon Childers, Analysis of Case and Recommendation
8. Seldon Childers, Economic Analysis Spreadsheet
9. Seldon Childers, Economic Spreadsheet
10. Dr. Woodhull, Response-Motion Strike RWB Charging Lien, Sanctions
11. Email, Anna Hodges, Bauer nightmare, July 08, 2011

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UNITED STATES DISTRICT COURT  
MIDDLE DISTRICT OF FLORIDA  
OCALA DIVISION

2012 JAN 17 PM 3:41

CLERK, US DISTRICT COURT  
MIDDLE DISTRICT OF FL  
OCALA FLORIDA

ESTATE OF PENELOPE GILLESPIE,  
NEIL J. GILLESPIE,

CASE NO.: 5:11-cv-539-oc-10TBS

Plaintiffs,

JURY TRIAL DEMANDED

vs.

THIRTEENTH JUDICIAL CIRCUIT, FLORIDA,  
JAMES M. BARTON, II, Circuit Court Judge, and individually,  
THE LAW OFFICE OF ROBERT W. BAUER, P.A.,  
ROBERT W. BAUER,

Defendants.

\_\_\_\_\_ /

APPENDIX 2

Verified Notice of Filing Disability Information of Neil J. Gillespie,

May 27, 2011, 13th Circuit, Florida.

~~FILED~~  
~~RECEIVED~~

UNITED STATES DISTRICT COURT  
MIDDLE DISTRICT OF FLORIDA  
OCALA DIVISION

2012 JAN 17 PM 3:41

CLERK, US DISTRICT COURT  
MIDDLE DISTRICT OF FL  
OCALA FLORIDA

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NEIL J. GILLESPIE,

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JAMES M. BARTON, II, Circuit Court Judge, and individually,  
THE LAW OFFICE OF ROBERT W. BAUER, P.A.,  
ROBERT W. BAUER,

Defendants.

\_\_\_\_\_ /

APPENDIX 3

Gillespie v. Robert W. Bauer, The Florida Bar File No. 2011-073(8B)

- Exhibit 1 Complaint of misconduct against Robert W. Bauer, July 15, 2010
- Exhibit 2 Mr. Rodems letter to the Bar in support of Bauer, August 13, 2010
- Exhibit 3 Response of Robert Bauer to the Florida Bar, August 18, 2010
- Exhibit 4 Rebuttal of Neil Gillespie to the Florida Bar, September 18, 2010
- Exhibit 5 Exhibits 1-19, Gillespie rebuttal of Mr. Bauer, exceeded 25 page limit
- Exhibit 6 Rebuttal of Gillespie to Mr. Rodems to the Florida Bar, Sep-20, 2010
- Exhibit 7 Letter of No Probable Cause, James Watson, Florida Bar, Mar-18-2011
- Exhibit 8 Gillespie email to James Watson, The Florida Bar, April 11, 2011
- Exhibit 9 Letter of Carl Schwait, Designated Reviewer, June 27, 2011
- Exhibit 10 Gillespie letter to Carl Schwait, Designated Reviewer, July 31, 2011
- Exhibit 11 Robert Bauer letter in support of Ryan Rodems for judge, January 4, 2010

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2012 JAN 17 PH 3:41

UNITED STATES DISTRICT COURT  
MIDDLE DISTRICT OF FLORIDA  
OCALA DIVISION

CLERK, US DISTRICT COURT  
MIDDLE DISTRICT OF FL  
OCALA, FLORIDA

ESTATE OF PENELOPE GILLESPIE,  
NEIL J. GILLESPIE,

CASE NO.: 5:11-cv-539-oc-10TBS

Plaintiffs,

vs.

JURY TRIAL DEMANDED

THIRTEENTH JUDICIAL CIRCUIT, FLORIDA,  
JAMES M. BARTON, II, Circuit Court Judge, and individually,  
THE LAW OFFICE OF ROBERT W. BAUER, P.A.,  
ROBERT W. BAUER,

Defendants.

\_\_\_\_\_ /

APPENDIX 1

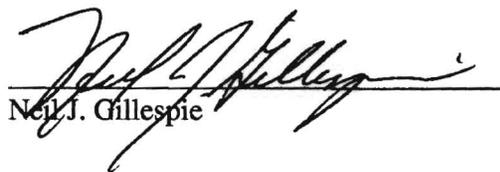
1. Assignment of unliquidated lawsuit proceeds, recorded
2. Plaintiff's Claim of Exemption and Request for Hearing
3. Plaintiff's Motion to Disqualify Judge
4. Ongoing Criticism and Harassment of Ryan Christopher Rodems
5. Order Denying Plaintiff's Motion to Disqualify Judge
6. Letter of Dr. Karin Huffer, October 28, 2010
7. Seldon Childers, Analysis of Case and Recommendation
8. Seldon Childers, Economic Analysis Spreadsheet
9. Seldon Childers, Economic Spreadsheet
10. Dr. Woodhull, Response-Motion Strike RWB Charging Lien, Sanctions
11. Email, Anna Hodges, Bauer nightmare, July 08, 2011



**ASSIGNMENT OF UNLIQUIDATED LAWSUIT PROCEEDS**

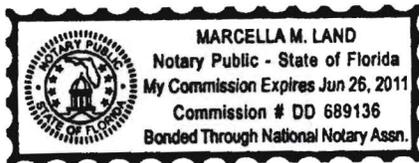
Neil J. Gillespie (hereinafter "Assignor") assigns and transfers to Penelope M. Gillespie (hereinafter "Assignee"), for her use and benefit, a security interest in all rights of Neil J. Gillespie to receive any proceeds in the case of Neil J. Gillespie v. Barker, Rodems & Cook, P.A., Hillsborough County Circuit Court Case Number 05-CA-7205. The cause of action itself is retained by Neil J. Gillespie and only the right to the litigation proceeds is hereby assigned. Neil J. Gillespie retains the right of action and retains complete control over the handling and the management of the lawsuit, including the right to make any and all decisions regarding the lawsuit and any decisions regarding settlement of the lawsuit.

DATED this 19<sup>th</sup> day of November, 2008.

  
Neil J. Gillespie

November 19, 2008  
DATE

The foregoing instrument was acknowledged before me this 19 day of November, 2008, by Neil J. Gillespie, who is personally known to me or has produced \_\_\_\_\_ as identification.



  
Notary Public, State of Florida

Marcella M Land  
Print, Type or Stamp Name of Notary

My Commission Expires: June 26, 2011

DAVID R. ELLSPERMANN, CLERK OF COURT MARION COUNTY  
DATE: 03/31/2009 11:58:27 AM  
FILE #: 2009026691 OR BK 05177 PG 0547

RECORDING FEES 10.00



IN THE CIRCUIT COURT OF THE THIRTEENTH JUDICIAL CIRCUIT  
IN AND FOR HILLSBOROUGH COUNTY, FLORIDA

NEIL J. GILLESPIE

Plaintiff,

v.

Case No.:05-CA-007205

Division: C

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

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CLAIM OF EXEMPTION AND  
REQUEST FOR HEARING

Plaintiff, Neil J. Gillespie, by and through his undersigned attorneys files this CLAIM OF EXEMPTION AND REQUEST FOR HEARING, and states in support thereof:

The following exemptions from garnishment apply to the Plaintiff, Neil Gillespie, herein as stated:

1. Head of family wages.
  - a. Plaintiff provides more than one-half of the support for a child or other dependent and have net earnings of \$500 or less per week.
2. Social Security benefits.
3. Disability income benefits.

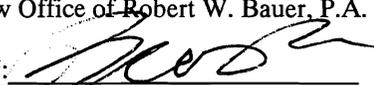
WHEREFORE, Neil Gillespie, requests a hearing to decide the validity of these claims.

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a true and correct copy of the NOTICE OF HEARING was served to the following by the method indicate below on August 14, 2008.

Ryan C. Rodems, Esquire  
400 N. Ashley Dr., Suite 2100  
Tampa, FL 33602  
Fax: 813-489-1008  
U.S. Mail and Fax

Law Office of Robert W. Bauer, P.A.

BY:   
Robert W. Bauer, Esq.  
Florida Bar No. 0011058  
Tanya M. Uhl Esq.  
Florida Bar No. 0052924  
2815 NW 13<sup>th</sup> Street, Suite 200E  
Gainesville, Florida  
Telephone: (352) 375-5960  
Fax: (352) 337-2518

FILED  
CIRCUIT CLERK  
2008 JUN 20 AM 3:07  
Jg

THE LAW OFFICES OF  
**ROBERT W. BAUER, P.A.**

2815 NW 13th Street, Suite 200, Gainesville, FL 32609  
www.bauerlegal.com

*Robert W. Bauer, Esq.*  
*Tanya M. Uhl, Esq.*

Phone: (352)375.5960  
Fax: (352)337.2518

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August 14, 2008

To : Hillsborough County Clerk of Court  
cc : Ryan Rodems, Esq.  
From : Robert W. Bauer, Esq.  
Re : Gillespie v. Barker, Rodems, & Cook; Case No.: 05CA7205

Enclosed please find the below enumerated items. If you have any questions, please do not hesitate to contact us at the above listed number

1. Claim of Exemption and Request for Hearing.

Clerk, please file in the Court Record. Thank you.

HILLSBOROUGH COUNTY  
CIRCUIT CIVIL  
2008 AUG 20 AM 3:07  
[Signature]

**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: C

Defendants.

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**PLAINTIFF'S MOTION TO DISQUALIFY JUDGE**

Plaintiff pro se, Neil J. Gillespie, moves to disqualify the Honorable James M. Barton as judge in this action pursuant to Rule 2.160(d)(1), Fla. R. Jud. Admin. 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: (Note: Transcripts of the hearing October 1, 2009, has been ordered but not received, and this motion contains Plaintiff's recollection pending the transcripts).

1. Plaintiff's attorney Robert W. Bauer scheduled his Motion to Withdrawal as Counsel on October 1, 2009 at 10:30am. Mr. Bauer complained on August 14, 2008 during an emergency hearing before Judge Crenshaw that he could not litigate against defendants' attorney Ryan Rodems because of Mr. Rodems' bad behavior. Specifically Mr. Bauer said the following: "Mr. Rodems has, you know, decided to take a full nuclear blast approach instead of 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."

**EXHIBIT**

**3**

Judge Barton did not allow Mr. Bauer to present his argument even though Mr. Bauer was present and prepared to do so.

2. Judge Barton failed to take testimony from Mr. Bauer, and otherwise failed to conduct a proper hearing into the matter.

3. Judge Barton's behavior is prejudicial or biased to the rights of plaintiff Neil Gillespie to receive a fair trial and hearing of this case.

4. Judge Barton is prejudiced or biased against plaintiff Neil Gillespie because Gillespie sued his former lawyers, Barker, Rodems & Cook and William J. Cook.

5. On March 20, 2008, Judge Barton wrongly awarded defendants' attorney Ryan Rodems \$11,550 in sanctions against plaintiff pro se Neil Gillespie. The award is currently on appeal to the 2DCA. Judge Barton refused to stay the award pending the ruling of the 2DCA or the outcome of this case.

6. Judge Barton further aided defendants' attorney Ryan Rodems in aggressively collecting the \$11,550 judgment, and allowed Mr. Rodems to garnish plaintiff's bank accounts and plaintiff's attorney trust fund with Mr. Bauer. Judge Barton is merely paying "tag team" with Mr. Rodems in this case to the prejudice of plaintiff.

7. As a proximate cause of Judge Barton's actions, the judge denied plaintiff the right to counsel, the right to due process under the Fifth and Fourteenth Amendments to the Constitution of the United States, and protections afforded under the Americans With Disabilities Act.

8. As a proximate cause of Judge Barton's actions, plaintiff's mother, Penelope Gillespie, died September 16, 2009.

The undersigned movant certifies that the motion and the movant's statements are made in good faith. Submitted October 5, 2009.

  
Neil J. Gillespie, Plaintiff pro se  
8092 SW 115<sup>th</sup> Loop  
Ocala, Florida 34481  
Telephone: (352) 854-7807

Under penalties of perjury, I declare that I have read the foregoing motion and the facts stated in it are true.

  
Neil J. Gillespie

## Ongoing Criticism and Harassment of Ryan Christopher Rodems

1. Plaintiff's Motion To Disqualify Judge was submitted October 5, 2009. Since that time opposing counsel Ryan Christopher Rodems has been very vocal in his criticism of paragraph 8 of the motion, which states: "As a proximate cause of Judge Barton's actions, plaintiff's mother, Penelope Gillespie, died September 16, 2009."

2. Gillespie's motion was filed nineteen (19) days after the death of Penelope Gillespie, his Mother. Gillespie's grief and depression at the time reduced his ability to serve a fully detailed motion. Gillespie had planned to raise the issues presented in the motion orally during a hearing, but Judge Barton denied the motion without a hearing.

3. Mr. Rodems responded<sup>1</sup> to the motion the same day it was submitted, see Defendants' Response To Plaintiff's Motion To Disqualify Judge Barton. Since then Rodems has harassed Gillespie over paragraph 8, most recently June 21, 2011 during a deposition. Mr. Rodems has also criticized paragraph 8 outside this litigation in letters to third parties. The following is representative, but not exhaustive, of Rodems harassment on this issue, which he has raised about twenty-one (21) times, about once a month since the motion was submitted in October 2009:

a. In a letter dated December 28, 2009 to Pedro F. Bajo, Jr., Chair Thirteenth Judicial Circuit JNC;

b. To Colleen Jenkins, a reporter for the St. Petersburg Times, on or about January 23, 2010, see *Client-turned-adversary accuses Tampa law firm of conflict in judicial bid*, a story that described Mr. Rodems' conflict in the JNC process with partner Chris Barker;

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<sup>1</sup> There is no Rule allowing such response to a motion to disqualify a judge, but that does not stop Mr. Rodems. His purpose is to accumulate hours, then seek sanctions against Gillespie for an award of attorney's fees.

- c. In a letter Gillespie received from Mr. Rodems on or about March 24, 2010;
- d. In a 13-page diatribe to the Florida Bar dated August 13, 2010;
- e. In Defendants' Notice of Case Management Conference And Statement of the Case and Proceedings, June 1, 2010;
- f. In Motion For An Order To Show Cause As To Why Plaintiff Should Not Be Prohibited From Henceforth Appearing Pro Se, submitted July 26, 2010;
- g. In Appellees' Answer Brief<sup>2</sup> in 2D10-5197 submitted February 14, 2011;
- h. In a pleading<sup>3</sup> attached to an email sent June 20, 2011 at 3:28 PM to attorney Eugene P. Castagliuolo, where in the email Rodems wrote (in part) : "I think most people reading it would agree that Gillespie is a repulsive human being, but I am a professional, and I will not let his appalling actions prevent me from conducting myself appropriately."
- i. During the deposition duces tecum of Gillespie June 21, 2011.

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<sup>2</sup> The brief was later stricken on another basis by the 2d DCA.

<sup>3</sup> Motion For An Order To Show Cause As To Why Plaintiff Should Not Be Prohibited From Henceforth Appearing Pro Se, submitted July 26, 2010.

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

NEIL J. GILLESPIE,  
Plaintiff,  
vs.

CASE NO. 05-7205

DIVISION C

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

\_\_\_\_\_ /

**ORDER DENYING PLAINTIFF'S MOTION TO DISQUALIFY JUDGE**

THIS CAUSE coming before the Court on Plaintiff's Motion to Disqualify Judge and the Court having considered the motion and being fully advised in the premises, it is hereby ORDERED AND ADJUDED:

1. Plaintiff has filed a motion pursuant to Fla. R. Jud. Admin. 2.160 (now renumbered 2.330). The instant motion is Plaintiff's third such motion in this case, with two predecessor judges having recused themselves on their own motion upon being served Plaintiff's Motion to Disqualify.

2. The instant motion is legally insufficient and therefore DENIED.

DONE AND ORDERED this 9<sup>th</sup> day of October, 2009.

  
HON. JAMES M. BARTON, II  
CIRCUIT JUDGE

copies to:

Neil J. Gillespie  
8092 SW 115<sup>th</sup> Loop  
Ocala, Florida 34481

Ryan Christopher Rodems, Esq.  
400 North Ashley Drive, Suite 2100  
Tampa, Florida 33602

## DR. KARIN HUFFER

Licensed Marriage and Family Therapist #NV0082  
ADAAA Titles II and III Specialist  
Counseling and Forensic Psychology  
3236 Mountain Spring Rd. Las Vegas, NV 89146  
702-528-9588 www.lvaallc.com

October 28, 2010

To Whom It May Concern:

I created the first request for reasonable ADA Accommodations for Neil Gillespie. The document was properly and timely filed. As his ADA advocate, it appeared that his right to accommodations offsetting his functional impairments were in tact and he was being afforded full and equal access to the Court. Ever since this time, Mr. Gillespie has been subjected to ongoing denial of his accommodations and exploitation of his disabilities

As the litigation has proceeded, Mr. Gillespie is routinely denied participatory and testimonial access to the court. He is discriminated against in the most brutal ways possible. He is ridiculed by the opposition, accused of malingering by the Judge and now, with no accommodations approved or in place, Mr. Gillespie is threatened with arrest if he does not succumb to a deposition. This is like threatening to arrest a paraplegic if he does not show up at a deposition leaving his wheelchair behind. This is precedent setting in my experience. I intend to ask for DOJ guidance on this matter.

While my work is as a disinterested third party in terms of the legal particulars of a case, I am charged with assuring that the client has equal access to the court physically, psychologically, and emotionally. Critical to each case is that the disabled litigant is able to communicate and concentrate on equal footing to present and participate in their cases and protect themselves.

Unfortunately, there are cases that, due to the newness of the ADAAA, lack of training of judicial personnel, and entrenched patterns of litigating without being mandated to accommodate the disabled, that persons with disabilities become underserved and are too often ignored or summarily dismissed. Power differential becomes an abusive and oppressive issue between a person with disabilities and the opposition and/or court personnel. The litigant with disabilities progressively cannot overcome the stigma and bureaucratic barriers. Decisions are made by medically unqualified personnel causing them to be reckless in the endangering of the health and well being of the client. This creates a severe justice gap that prevents the ADAAA from being effectively applied. In our adversarial system, the situation can devolve into a war of attrition. For an unrepresented litigant with a disability to have a team of lawyers as adversaries, the demand of litigation exceeds the unrepresented, disabled litigant's ability to maintain health while pursuing justice in our courts. Neil Gillespie's case is one of those. At this juncture the harm to Neil Gillespie's health, economic situation, and general diminishment of him in terms of his legal case cannot be overestimated and this bell

cannot be unrung. He is left with permanent secondary wounds.

Additionally, Neil Gillespie faces risk to his life and health and exhaustion of the ability to continue to pursue justice with the failure of the ADA Administrative Offices to respond effectively to the request for accommodations per Federal and Florida mandates. It seems that the ADA Administrative offices that I have appealed to ignore his requests for reasonable accommodations, including a response in writing. It is against my medical advice for Neil Gillespie to continue the traditional legal path without properly being accommodated. It would be like sending a vulnerable human being into a field of bullies to sort out a legal problem.

I am accustomed to working nationally with courts of law as a public service. I agree that our courts must adhere to strict rules. However, they must be flexible when it comes to ADA Accommodations preserving the mandates of this federal law Under Title II of the ADA. While public entities are not required to create new programs that provide heretofore unprovided services to assist disabled persons. (*Townsend v. Quasim* (9th Cir. 2003) 328 F.3d 511, 518) they are bound under ADA as a ministerial/administrative duty to approve any reasonable accommodation even in cases merely regarded as having a disability with no formal diagnosis.

The United States Department of Justice Technical Assistance Manual adopted by Florida also provides instructive guidance: "The ADA provides for equality of opportunity, but does not guarantee equality of results. The foundation of many of the specific requirements in the Department's regulations is the principle that individuals with disabilities must be provided an equally effective opportunity to participate in or benefit from a public entity's aids, benefits, and services." (U.S. Dept. of Justice, Title II, *Technical Assistance Manual* (1993) § II-3.3000.) A successful ADA claim does not require excruciating details as to how the plaintiff's capabilities have been affected by the impairment, even at the summary judgment stage. *Gillen v. Fallon Ambulance Serv., Inc.*, 283 F.3d. My organization follows these guidelines maintaining a firm, focused and limited stance for equality of participatory and testimonial access. That is what has been denied Neil Gillespie.

The record of his ADA accommodations requests clearly shows that his well-documented disabilities are now becoming more stress-related and marked by depression and other serious symptoms that affect what he can do and how he can do it particularly under stress. Purposeful exacerbation of his symptoms and the resulting harm is, without a doubt, a strategy of attrition mixed with incompetence at the ADA Administrative level of these courts. I am prepared to stand by that statement as an observer for more than two years.



# CHILDERSLAW

— L L C —

Attorney at Law

TEL 866.996.6104  
FAX 407.209.3870  
URL [www.smartbizlaw.com](http://www.smartbizlaw.com)

**Jeff Childers**  
[jchilders@smartbizlaw.com](mailto:jchilders@smartbizlaw.com)

Thursday, September 17, 2009

Neil Gillespie  
8092 SW 115th Loop  
Ocala, Florida 34481

RE: Analysis of Case and Recommendation

Dear Neil,

My thinking on how to recommend that you should proceed has matured as I have reviewed the extensive materials you provided as well as carefully considered the matter. I have spoken with both Mr. Bauer as well as Mr. Rodeems at this point. I have also performed an economic analysis of the case, which is represented by a spreadsheet and an attached letter explaining the spreadsheet's figures and assumptions. **Please review the economic analysis materials before proceeding to read this letter.**

### Merits of the Case

There are two challenges facing this case. The first is the diminished probability of success on the merits from this point forward in the case. The second challenge is the small total or economic projected recovery, compared to the high investment which would be required to achieve a successful verdict.

The case at this point is not a clear winner. The basic facts of the case make the case appear strong such that *if it were to get in front of a jury*, prospects for success on the merits are similarly strong because of the egregious disparity in the split between the attorneys and the plaintiffs in the AMSCOT case, which appears facially unreasonable (as you put it, 90% of the recovery was paid to the attorneys). But there are problems with the case that both may preclude it surviving until trial and also may serve to diminish any potential recovery even if it is litigated to a successful verdict.

The first substantive problem with the case is the fundamental confusion as to whether there is a contract (which is not entirely clear because the copy attached to the complaint is not executed), or whether there is no contract and the claim lies purely in tort (i.e., fraud). The economic loss rule, as properly alleged by the Defendants, precludes a suit for fraud in a breach

of contract case on the same transaction. Of the two possible claims (contract or tort), the contractual claim is probably stronger because it will be more difficult to prove actual damages in tort (i.e. if there was no fee splitting agreement by contract, Defendants will argue that the Defendant's split was proper even if wrongfully documented). The contractual claim is also easier to prove than a claim founded in fraud. The problem with the contract claim is that punitive damages are generally precluded in breach of contract.<sup>1</sup>

Many of the actions of the Defendants appear to have been reprehensible. As one example, it appears that the Plaintiff's name was forged onto the bottom of the "Closing Statement." However, the legal significance of this act is limited to defeating the affirmative defense of waiver (i.e. the Plaintiff never "accepted" the closing statement because it is not really his signature). Forgery is a crime and this forgery may give rise to some criminal liability, but it is not a basis for additional damages. Further, this issue will have to be litigated along with the other alleged defenses, adding to the cost of the litigation.

Even if the issue of liability were found in Plaintiff's favor, the Defendants have yet more arguments about the amount of damages. They may be able to show by *quantum meruit* that they are entitled to a portion larger than the 40% allowed by the Bar's rules.<sup>2</sup> It is not difficult to imagine that more than \$50,000 in attorneys fees and costs may have been expended in the case, as it apparently was litigated through appeal. The court may give weight to an equitable *quantum meruit* argument, given that Plaintiff is relying on equity to such an extent and because of the potential unclean hands defense.

Next, the Defendants have some defenses which are not trivial, both legal defenses as well as equitable appeals which may be made to a jury. First, the letter written by Plaintiff advising the AMSCOT defendant that the settlement he agreed to was too large might be successfully characterized by the Defendants as an admission by Plaintiff that the damages are smaller than Plaintiff claims. Next, because Plaintiff inartfully worded a communication regarding his intention to file bar grievances against the Defendants in the same communication wherein a settlement was discussed, the possibility exists that Defendants may be able to successfully characterize this as an extortive and improper attempt to force a settlement where none was otherwise merited. This particular defense might be used by a skillful advocate to turn a jury against the Plaintiff and make the Plaintiff out to be a "professional litigator" instead of a deserving victim. Finally, pre-settlement documents exist suggesting that the Plaintiff admits he would have been satisfied with a \$1,000 settlement amount, which will be used by

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<sup>1</sup> . Farnsworth, *Contracts*, § 12.3, at 157 (3d ed. 1999) ("Punitive damages should not be awarded for breach of contract because they will encourage performance when breach would be socially more desirable.").

<sup>2</sup> In cases where there is no contract or a breached contract, the court will frequently set aside the language of the contract and look to the actual value of the services provided as a guide to how much an attorney should be paid. This doctrine is known as *quantum meruit*, a Latin phrase meaning "as much as he has deserved".

Defendants to imply that Plaintiff, who actually received twice that amount, is improperly trying to “grab” a share of an award that was larger than he expected. Furthermore, it appears from these documents that Plaintiff had prior knowledge of the amount he might receive in settlement and did not object at that time. The Defendants will use this fact to question why Plaintiff only objected after the fact.

The issue of the projected recovery looms large and advocates strongly against continuing the litigation. Even if the Plaintiff could prove he was entitled to a 55% share of the cost-adjusted recovery, that share must be reduced by two-thirds (because it would have had to have been shared with the other two plaintiffs in that case), making the actual damages relatively small. This affects the potential recovery for punitive damages, as three times the relatively small actual damages is still small. To put these figures in context, it appears that the Plaintiff has already paid twice the actual damages in attorneys fees to date in the case and there is still essentially no complaint filed.<sup>3</sup> I have seen nothing in the pleadings filed to date which would provide a legal basis for the Plaintiff to recover his fees and costs, which will be governed by the American Rule.<sup>4</sup> Therefore, setting aside the fees expended to date as a sunk cost, the economic analysis looks only at the costs of going forward, which do not justify the investment to recover either the projected economic recovery amount or even the full potential recovery amount.

Finally, my opinion is just that – an opinion. Another attorney might have a different take or discover another cause of action that would provide a larger potential recovery justifying the investment. For example, Mr. Bauer is more optimistic about success on the merits than I am. You may wish to consider getting another opinion. But, it appears from my analysis that the only substantive result of continuing to litigate would be an expensive “scorched earth” endgame or potlatch.<sup>5</sup>

### Recommendations

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<sup>3</sup> I.e. the current complaint is deficient and will have to be amended by a new complaint that is largely re-written, which will re-set all case deadlines and permit more discovery, new motions to dismiss, motions for summary judgment, and a new answer with affirmative defenses and counter-claims, all of which will have to be dealt with just as they were the first time around.

<sup>4</sup> The American rule provides that each party is responsible to pay its own attorney's fees unless specific authority granted by statute or contract allows the assessment of those fees against the other party. Under the American rule every party — even the party prevailing — must pay its own attorneys' fees. The American rule contrasts with the English rule, under which the losing party pays the prevailing party's attorneys' fees. Contrast this case with TILA or FDCPA claims, where both statutes provide for attorneys fees. Here, the claims are common-law and not statutory, and no basis has yet been proposed for payment of attorneys fees.

<sup>5</sup> An American-Indian ceremony whereby valuable possessions are destroyed in the sight of allies or enemies in order to demonstrate the strength or wealth of the destroying party.

Neil, I recommend that you negotiate and execute a three-way mutual release of all claims against the Defendants and Mr. Bauer. Given the economics of the case, the complexity of the current issues including those which have arisen since the inception of the case, and the physical, psychic and emotional toll it is taking on you personally, it seems to me that it is time to exercise mature discretion and abandon this project in favor of more productive activities.

In no way should you interpret my recommendation as a critique of your entitlement to the damages. I believe you win the abstract argument. The problem is that enormous cost is required in order to prove in a court of law that you are right. Furthermore, the issues have been clouded by the subsequent (understandable) actions of yourself and those of others.

I have spoken with both parties and I believe that some minor outstanding issues could be successfully negotiated. I think such an agreement is not only possible but likely if you concur with this course of action. Such a release should require no parties to pay any other party any amount. For example, Mr. Bauer told me that he would be willing to waive his outstanding attorneys fees to achieve the settlement and release from all current and future claims. The Defendants would waive any entitlement to their counter-claims. You would waive your claims against the Defendants and against Mr. Bauer for any potential professional malpractice or negligence.

Thus, by settling via a "walk away" agreement, you would be relieved of liability for and thus to the good in the amount of almost \$25,000 (\$11,550 plus \$12,517).

There is an outstanding issue of the disposition of approximately \$600 in cash which has been garnished but not yet turned over. I believe it may be possible to require the other parties to allow you to keep this amount as part of the settlement, but this is not certain and the \$600<sup>6</sup> should be considered a negotiating asset.

Neil, you may wish to work with Mr. Bauer to put this settlement together. Or, if you prefer to have independent counsel, I would be happy to represent you in drafting the settlement and causing it to be executed. My estimate for this service would be two hours (1.5 hours to draft an agreement satisfactory to all parties, and .5 hours for negotiating via phone and email).

I hope that you have found this analysis to be helpful.

Very best regards,

Jeff Childers

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<sup>6</sup> Or whatever the actual amount is.



# CHILDERSLAW

— L L C —

Attorney at Law

TEL 866.996.6104  
FAX 407.209.3870  
URL www.smartbizlaw.com

Jeff Childers  
jchilders@smartbizlaw.com

Thursday, September 17, 2009

Neil Gillespie  
8092 SW 115th Loop  
Ocala, Florida 34481

RE: Economic Analysis Spreadsheet

Dear Neil,

In this letter, I will explain my thoughts and assumptions relative to the economic analysis of your case, as represented by the spreadsheet which you should have received contemporaneously with this letter.

The spreadsheet concludes that the case's return on investment is *negative*.

There are four columns. The "Item" column represents either a potential recovery, which *increases* the net value of the case, or a projected cost, which *decreases* the net value of the case. Costs can be either "hard" costs such as attorneys fees and court costs, or "soft" costs such as the cost of litigation-related illnesses and emotional harms. The "Amount" column represents the best estimate of the actual recovery or cost for the category. The "Prob%" column represents the probability of achieving the recovery or incurring the cost. The "Eco Value" column represents the economic value of the item, i.e. the projected amount times the probability the amount will actually be recovered or incurred.

Next I will discuss each individual item.

Actual Damages.<sup>1</sup> I calculated actual damages as follows. The award of \$56,000 was reduced by 45%, the amount a jury would likely allow the Defendants for their contingent fee. This figure is based on the unexecuted contract attached to the Complaint. Furthermore, the Bar allows that attorneys may pay actual costs *before* application of the contingent fee. Accepting the costs as recited in the Complaint, the award is reduced by \$6,125.46. Next, the amount is

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<sup>1</sup> The Complaint calculates actual damages a little differently. I went with my figures because they are more favorable (and I believe, correct).

divided by three to obtain the amount that should have been paid to the Plaintiff, and further reduced by the \$2,000 that was already paid to Plaintiff. I.e.:

Actual Award	\$56,000	\$56,000
-Costs	-\$6,125.46	\$49,874
- 45% Contingent Fee	-\$22,443	\$27,431
- 2/3 due to the 2 other clients	-\$18,286	\$9,143
- \$2,000 already paid	-\$2,000	\$7,143
	=====	
Total Actual Damages	\$7,143.00 <sup>2</sup>	

Thus, as you can see, the maximum recoverable actual damages in this case are likely to be \$7,143. Next, the spreadsheet adjusts the maximum actual damage figure by the probability of prevailing, which I calculated as 51%, or just more likely than not. Of course, these estimates are largely subjective. I would have calculated the chance of prevailing on the merits as 75% at the outset of the case, but given the case's history and the events which have transpired since inception, I am forced to reduce the probability of succeeding on the merits to 51%. Thus, the economic value of the actual damages in this case is \$3,643.00.

Punitive Damages. As you know, punitive damages are more difficult to obtain. There are both legal and factual barriers to pleading and proving punitive damages.<sup>3</sup> The Defendants may convince the court that punitive damages were not plead properly or are not available in this case, in which event the jury is not permitted to consider punitive damages. Also, punitive damages are granted *up to* three times actual damages, and there is no guarantee that a jury would award the full treble damage amount. Still, I used treble damages, which is a maximum recoverable amount of \$21,431. Furthermore, any punitive damages award can be overruled by the judge, and appealed separately. Therefore, the probability of succeeding with punitive damages is accounted for as half of the probability of succeeding with actual damages, or 25%. Therefore, the economic value of the punitive damages at this point in the case is only \$5,357.00.

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<sup>2</sup> As you can see, I did an independent calculation of damages, which amount was very close to your own figures.

<sup>3</sup> In fact, on January 13, 2006, the court ordered the demands for punitive damages to be stricken from the Complaint, so, actually, no current demand for punitive damages exists (presumably it might be re-plead in an amended complaint). Also, to the extent that the suit succeeds on a breach of contract and not tort claim, punitive damages are excluded. Farnsworth, *Contracts*, § 12.3, at 157 (3d ed. 1999) ("Punitive damages should not be awarded for breach of contract because they will encourage performance when breach would be socially more desirable.").

Award of Attorney's Fees. Under the American Rule, each party must pay its own attorneys fees and costs. Unless an exception is granted by agreement between the parties or by statute, there is no provision for the prevailing party to recover its fees and costs. The un-executed representation contract attached to the Complaint contains no provision for attorneys fees. I am aware of no other such agreement or statute that would apply in this case, beyond a bare equitable appeal to the court. The spreadsheet therefore allows for no recovery from the Defendants of fees and costs.

Subtotal, Forecast Recovery. Thus, the maximum recovery at 100%, i.e. full certainty of succeeding in the litigation as to both actual and punitive damages, is \$28,574. However, adjusted for the probability of succeeding on the merits *at this point in the case*, the maximum economic recovery is only \$9,001.

Bauer's Outstanding Fees. Mr. Bauer has a claim to his fees of \$12,517.41, at least as of the most current invoice that I was provided. On the one hand, he may have difficulty proving his entitlement to the fees, due to some evidence that an attempt was made to renegotiate the contract to a contingency basis. However, since that evidence is not conclusive and represents a triable issue of fact, the probability of incurring additional costs to litigate the fees issues offsets the reduction in probability that Mr. Bauer can recover them. Furthermore, generally speaking, most ethical attorneys would require the Plaintiff to resolve the fees issue with predecessor counsel before agreeing to take the case (as I would). Thus, there will be pressure to pay the fees or come to an amicable settlement. Accepting Bauer's figures, the economic cost of the outstanding fees to Mr. Bauer at this point in the case is \$12,517.41.

New Attorney's Fees. A new attorney would be required to litigate the case through trial. Given the extensive history of the case, some non-trivial cost would be incurred in reviewing and understanding the almost four-year history of this litigation (8 hrs). Then, amendment of the complaint (4 hrs), response to various outstanding motions and issues including the garnishment and counter-claims (26 hrs), preparation for trial on the substantive issues and defenses (30 hrs), and the trial itself (30 hrs) will require substantial attorney time. At an estimated \$250 per hour, for 98 estimated attorney hours (loosely including paralegal time, costs etc as part of the hours estimate), the fee for completing the case would be \$24,500. Note that any new attorney would have to consider the highly aggressive and acrimonious nature of this particular litigation. This cost to complete the case is certain to be incurred, accounted therefore at 100% probability. The economic value of this cost is \$24,500.<sup>4</sup>

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<sup>4</sup> It is unlikely a new attorney will offer a discounted, flat-rate, or contingency fee to take this case. The Defendants have shown there is NO likelihood of a positive-cash settlement. Thus, there is no possible reward offsetting the risks posed by this case. The only conceivable basis for a new attorney to proceed would be on a strict time and materials basis with a substantial up-front retainer.

Cost to Litigate Appeal. Based on their litigious behavior to date, the Defendants in this case are almost certain to appeal any favorable ruling. Thus the spreadsheet reflects a probability of 99% that any favorable verdict would be appealed. An average state-court appeal is typically valued at \$25,000, making the economic cost of this item \$24,750.

Unpaid Judgment to Rodeems. Defendants are entitled to collect on their judgment for sanctions in the amount of \$11,550. As I understand the present status, some \$400-\$600 were garnished by the bank and are awaiting an order of the court for release. If Plaintiff prevails at trial, it is likely any award will be setoff by this amount if it is not already paid. Thus, 100% probability the entire cost will be incurred, economic value \$11,550.

Subtotal, Projected Costs. The total projected costs, which will likely be incurred whether or not Plaintiff prevails, are \$73,317.41. *This amount should be considered the direct costs avoided by ceasing litigation at this point.* I note that the smallest cost in this category, the Unpaid Judgment, eliminates almost entirely the projected recovery.

Non-Pecuniary Cost of Litigation. Plaintiff is likely suffering from physical and emotional ill effects resulting from the litigation, as described in Legal Abuse Syndrome, the book provided to me by Plaintiff. It is always difficult to put a dollar figure on the non-pecuniary costs of any case, and this case is no different. In attempting to evaluate the physical and emotional costs of going forward with the litigation, I considered both short and long-term effects, and the opportunity cost caused not just by direct time invested in the case but also by loss of energy related to physical and emotional side-effects. My estimate was \$100,000, but this figure is subjective and the Plaintiff may wish to adjust this figure upwards or downwards. There is 100% probability these costs will be incurred regardless of the outcome of the litigation.

Net Value of Case. The net value of the case is calculated on the spreadsheet by netting all the projected costs of litigation from the projected economic recovery. In this case, the spreadsheet calculates that the net value of the case is *negative* \$164,316.

In summary, even if the figures are manipulated in the most favorable way, such as by raising the probability of succeeding with actual and punitive damages to 100%, erasing Mr. Bauer's attorney's fees, forecasting that no appeal would be filed, and waiving the emotional and physical costs to Plaintiff, the case still would still be in the red by over \$7,000 ((7,143+21,431)-24,500-11,550). The assumptions that the costs would be limited in this way are, obviously, unrealistically optimistic.

The issue to my mind, therefore, is how to exit the case with the lowest possible cost. Please see my letter regarding a recommended course of action for my suggestions in this regard.

Respectfully,

Jeff Childers

## Gillespie, Economic Analysis of Litigation

Item	Amount	Prob%	Eco. Value
Actual Damages = $(\$56,000 - 6125.46 - ((\$56,000 - 6125.46) \times 45\%)) / 3 - \$2,000$	\$ 7,143.67	100%	7,143.67
Punitive Damages ( <i>up to</i> 3x actual damages)	\$ 21,431.00	100%	21,431.00
Award of Attorney's Fees	\$0	0%	0.00
<b>Subtotal, Projected Recovery</b>			<b>28,574.66</b>
Bauer's Outstanding Fees	\$ (12,517.41)	0%	0.00
New Attorney fees: review and litigate case through trial	\$ (24,500.00)	100%	(24,500.00)
Cost to Litigate Appeal	\$ (25,000.00)	0%	0.00
Unpaid Judgment to Rodeems (sanctions)	\$ (11,550.00)	100%	(11,550.00)
<b>Subtotal, Projected Costs</b>			<b>(36,050.00)</b>
Non-pecuniary cost of litigation-provoked illness and emotional costs	\$ (100,000.00)	0%	0.00
<b>Subtotal, Non-Pecuniary Costs</b>			<b>0.00</b>
<b>NET VALUE OF CASE (RETURN ON INVESTMENT)</b>			<b>(7,475.34)</b>

## Gillespie, Economic Analysis of Litigation

Item	Amount	Prob%	Eco. Value
Actual Damages = $(\$56,000 - 6125.46 - ((\$56,000 - 6125.46) \times 45\%)) / 3 - \$2,000$	\$ 7,143.67	51%	3,643.27
Punitive Damages ( <i>up to</i> 3x actual damages)	\$ 21,431.00	25%	5,357.75
Award of Attorney's Fees	\$0	0%	0.00
<b>Subtotal, Projected Recovery</b>			<b>9,001.02</b>
Bauer's Outstanding Fees	\$ (12,517.41)	100%	<b>(12,517.41)</b>
New Attorney fees: review and litigate case through trial	\$ (24,500.00)	100%	<b>(24,500.00)</b>
Cost to Litigate Appeal	\$ (25,000.00)	99%	<b>(24,750.00)</b>
Unpaid Judgment to Rodeems (sanctions)	\$ (11,550.00)	100%	<b>(11,550.00)</b>
<b>Subtotal, Projected Costs</b>			<b>(73,317.41)</b>
Non-pecuniary cost of litigation-provoked illness and emotional costs	\$ (100,000.00)	100%	<b>(100,000.00)</b>
<b>Subtotal, Non-Pecuniary Costs</b>			<b>(100,000.00)</b>
<b>NET VALUE OF CASE (RETURN ON INVESTMENT)</b>			<b>(164,316.39)</b>

## Gillespie, Economic Analysis of Litigation

Item	Amount	Prob%	Eco. Value
Actual Damages = $(\$56,000 - 6125.46 - ((\$56,000 - 6125.46) \times 45\%)) / 3 - \$2,000$	\$ 7,143.67	0%	0.00
Punitive Damages ( <i>up to</i> 3x actual damages)	\$ 21,431.00	0%	0.00
Award of Attorney's Fees	\$0	0%	0.00
<b>Subtotal, Projected Recovery</b>			<b>0.00</b>
Bauer's Outstanding Fees	\$ (12,517.41)	100%	(12,517.41)
New Attorney fees: review and litigate case through trial	\$ (30,000.00)	100%	(30,000.00)
Cost to Litigate Appeal	\$ (50,000.00)	100%	(50,000.00)
Unpaid Judgment to Rodeems (sanctions)	\$ (11,550.00)	100%	(11,550.00)
<b>Subtotal, Projected Costs</b>			<b>(104,067.41)</b>
Non-pecuniary cost of litigation-provoked illness and emotional costs	\$ (100,000.00)	100%	(100,000.00)
<b>Subtotal, Non-Pecuniary Costs</b>			<b>(100,000.00)</b>
<b>NET VALUE OF CASE (RETURN ON INVESTMENT)</b>			<b>(204,067.41)</b>

**IN THE CIRCUIT COURT OF THE EIGHTH JUDICIAL CIRCUIT  
IN AND FOR ALACHUA COUNTY, FLORIDA**

**IN RE: ESTATE OF  
LOUISE A. FALVO,  
Deceased.**

**File No: 01-2008-CP-1083**

**Division: PROBATE**

**RESPONSE TO AND MOTION TO STRIKE OR IN THE  
ALTERNATIVE MOTION TO DISMISS ATTORNEY BAUER'S  
MOTIONS FOR ATTORNEY'S CHARGING LIEN AND  
MOTION FOR SANCTIONS AGAINST ATTORNEY ROBERT  
BAUER**

2009 DEC 18 PM 3:57

FILED  
CLERK

1. Sometime in 2008 Woodhull hired Attorney Robert Bauer to defend her against the Tower Oaks Homeowners' Association. Woodhull gave Mr. Bauer \$2,500.00 in cash as a retainer. Bauer said that law student David Sams would be working on preparing the defenses and counterclaim in order to save Woodhull money, even though this was the unauthorized practice of law.
2. Woodhull provided law student David Sams with rough draft defenses as the answer to the civil complaint filed by the Tower Oaks Homeowners' Association, that included "selective enforcement" and "statute of limitations" as defenses; however, when Attorney Bauer via the work produce of Sams (based upon Woodhull's rough draft) filed in the "answer",

Case: 2008 CP 001083  
2005551356  
Dkt: RE22-P

“selective enforcement” and “statute of limitations” were not included as defenses. Woodhull asked Mr. Bauer about the failure to include “selective enforcement” and “statute of limitations” as defenses in a follow up phone call. Attorney Bauer said that “selective enforcement” did not need to be plead. Attorney Bauer also failed to list “statute of limitations” as a defense, although this defense also appeared on the rough draft answer that Woodhull had provided to David Sams, the law student who was composing legal documents without a law license.

3. The “counterclaim” was phrased very weakly—so weakly that no relief could be granted --even if Woodhull had prevailed-- according to final judgment rendered by Judge Toby Monaco.
4. Attorney Bauer failed to pay the \$300.00 counterclaim fee in the TOHA case; the clerk of court had to send Bauer a letter to pay that fee and then and only then did he pay the \$300.00 filing fee.
5. Thereafter, Mr. Bauer simply “sat” on the case for approximately six months and conducted no discovery and did nothing. Certainly, the “answer” to the original civil complaint did not cost \$2,500.00 to compose, especially since the writing of it paralleled precisely what Woodhull had already pre-composed and given to law student David Sams as a rough draft guideline to

follow (which had included the additional defenses of “statute of limitations” and “selective enforcement”).

6. Meanwhile, Woodhull’s mother died and Woodhull subsequently initiated an administration of the estate in Alachua County. Shirley Mascarella then decided to hire an attorney and initiate a will contest.
7. The court then mandated that if Woodhull wished to be the personal representative Woodhull would have to hire an attorney. Attorney Robert Bauer was then paid an additional \$2,500.00 retainer to become the attorney of record on the Estate of Louise A. Falvo will contest.
8. The first hearing was a challenge of venue, a threshold issue. Woodhull told Robert Bauer that they would have to prove that Woodhull’s mother had lived (homesteaded) and died in Alachua County and Woodhull told Bauer she had a paper in her possession signed to the tax collector, homestead office, stating that Falvo wished to keep her homestead in Alachua County. In a phone conversation with Woodhull, Mr. Bauer stated that that particular paper proving Falvo’s homestead intentions, would not be necessary to bring to court.
9. Woodhull brought the paper anyway which proved Falvo’s homestead intentions to the court .

10. Getting Attorney Bauer to enter that paper into the court record took some effort on Woodhull's part. Woodhull tapped Bauer on the shoulder, pointed at the paper, etc., until finally he entered the necessary paper into the court record.

11. Based largely upon that paper that Louise A. Falvo signed declaring she wished to keep her homestead in Alachua County, the Judge Monaco ruled that venue would stay in Alachua County.

12. After the hearing that day, walking down the courthouse hall with Attorney Bauer, Attorney Bauer turned to Woodhull's fiancé, David A. Newman, and stated, "She is rather obnoxious. How do you put up with her?"

13. David replied that we put up with each other and that he loves me dearly.

14. Woodhull tried to brush off Bauer's comment as a "joke" but thereafter Woodhull had some serious reservations about Attorney Bauer representing her. This inappropriate and unprofessional comment had quite an unsettling effect. However, Woodhull had no problem with law student David Sams.

15. Woodhull was in the middle of another legal matter, a wrongfully taken guardianship that had been commenced against her mother,

Louise A. Falvo, in Seminole County with a forgery of Woodhull's signature. The attorneys and guardian who had taken possession of Woodhull's mother and her assets were billing ex parte quite excessively.

16. Woodhull scheduled an appointment with Attorney Bauer to speak about the excessive billing. Woodhull had been challenging the wrongfully taken guardianship pro se, both in Seminole County and at the 5<sup>th</sup> DCA. Woodhull had even opened a guardianship file in Alachua County so that the guardianship could be transferred to the correct venue. Attorney Bauer suggested that in order to prevail on the will contest in Alachua County, it would be best to represent Woodhull in ALL cases (the appeals at the 5<sup>th</sup> DCA, the guardianship, etc.). Woodhull stated "I will think about it." Attorney Bauer stated that BEFORE he could get started, he would need a retainer of \$4,000.00—just to obtain and read the files from Seminole County and the 5<sup>th</sup> DCA.

17. Woodhull never returned to Mr. Bauer's office with the mandated \$4,000.00 retainer. Woodhull never signed a contract(s).

18. A few weeks later, Woodhull was in Daytona Beach looking over her appeal file when lo and behold, there was an "Entry of Appearance"

from Attorney Robert Bauer! Woodhull sent Bauer and/or Sams an e-mail about this matter, seeking an explanation.

19. Bauer had also put in a Motion for Stay at the 5<sup>th</sup> DCA. This was exactly OPPOSITE of what I wanted. Woodhull wanted the 5<sup>th</sup> DCA to expedite their decision because if the guardianship were set aside, then a will contest in Alachua County would also become unnecessary. The POD/ITF designations that the guardian had destroyed would be restored and Woodhull could simply walk into the banks and claim her inheritance money.

20. Woodhull then wrote a motion to the 5<sup>th</sup> DCA telling them that Attorney Bauer was not authorized to represent Woodhull and that Woodhull wished to continue representing herself pro se. The 5<sup>th</sup> DCA asked Attorney Bauer to write back an explanation. Attorney Bauer stated that “we” had a “verbal agreement.” Based upon that malarkey, the 5<sup>th</sup> DCA allowed Woodhull to start representing myself again.

21. On the day that Woodhull put in the motion to the 5<sup>th</sup> DCA to continue representing herself, pro se, Woodhull sent a copy of that motion to Attorney Bauer. Woodhull also included a small piece of

paper in which she had written, something to the effect “Please also remove yourself from 08-GA-0508 and 08-GA-0509.”

22. Woodhull realized after she had mailed that little piece of paper that she had no proof that it had been sent. However, the “angels” must have been with Woodhull.

23. Woodhull called Mr. Bauer’s secretary and asked her to send, via e-mail, a copy of the motion to the 5<sup>th</sup> DCA regarding continuing to represent myself. She agreed to do so, and lo and behold, she also sent, via e-mail a copy of the little note stating “Please also remove yourself from 08-GA-0508/0509.”

24. Woodhull then showed this paper to Mr. Bauer, via an e-mail. Mr. Bauer then stated in an e-mail back to Woodhull that he “didn’t like Woodhull’s attitude.” Woodhull stated that she I didn’t like Bauer’s attitude, either, and the two therefore parted company on the two legitimate cases for which Bauer had legitimately been retained.

25. However, Attorney Bauer continued to say he was representing Woodhull. He sent several e-mails stating that he needed “clarification” regarding which cases he was representing Woodhull on and saying that he would continue to represent Woodhull on ALL cases until Woodhull said otherwise.

26. Attorney Bauer then “sat” on Woodhull’s case, unauthorized, until there was an objection to billing statement filed by Attorney Nardella and then Attorney Bauer put in a motion to withdraw. During the alleged “three months” that Attorney Bauer alleges he “represented” Woodhull in the Seminole County proceedings Attorney Bauer took no action, conducted no discovery, knowing full well that he was not authorized to take any action.

27. On December 16, 2009, Woodhull received notice that Attorney Bauer has placed liens on the will contest and filed this notice of lien into every and all cases. Woodhull is charging Woodhull approximately \$10,000.000 PLUS the costs of filing all of those liens. Attorney Bauer has no final judgment that states he prevailed in a breach of contract against Woodhull. Yet, Attorney Bauer is charging Woodhull \$10,000.00 for unauthorized representation plus the cost of preparing papers to file the various liens.

28. Attorney Bauer is looking to be paid out of the estate of Louise A. Falvo from curator Judith Paul. Attorney Bauer suspected a “conflict of interest” in this arrangement since Attorney Judith Paul is part of Knellinger and Associates who works with Attorney Bauer in bill collection proceedings. And Attorney Paul was formerly the attorney

for the Eighth Judicial Circuit, Alachua County, prior to going into private practice.

29. Woodhull received a letter of non-engagement (probably a standard form letter) from Mr. Bauer 2007—the first time Woodhull met with Attorney Bauer regarding the homeowners' association who threatened legal action against Woodhull for two years prior to commencing actual civil litigation. The follow up (form) letter from 2007 states that Mr. Bauer does not represent me, even though we had an initial meeting, and that unless he receives a retainer and we sign a letter of engagement, he is not my attorney (standard procedure).
30. Attorney Bauer produced no favorable fruits for Angela V. Woodhull.
31. As it stands, Attorney Bauer charged \$2,500.00 in the homeowners' association dispute for creating nonsubstantive documents that Woodhull was then forced to hire another attorney to amend. These nonsubstantive documents, based upon Woodhull's own compositions and legal research, certainly did not cost \$2,500.00 to compose and therefore a refund is due Woodhull.
32. In the Estate of Louise A. Falvo, Attorney Bauer attended one hearing, yet held a retainer of an additional \$2,500.00. Certainly the lax preparation for one hearing on the issue of venue did not cost

\$2,500.00 and again, it was Woodhull's research and documentation that saved the day. Woodhull also was forced to create her own appellate brief as the result of ineffective representation from Mr. Bauer. Therefore, a refund of the balance is due to Woodhull.

33. Attorney Bauer claims that there was a "verbal" contract entered into between Woodhull and Bauer. However, the supporting documents show otherwise.

34. In addition, the supporting documents show that there was "NO" "meeting of the minds, as Attorney Bauer asked for "**clarification**" of which cases he was on or off. Mr. Bauer therefore cannot ask for compensation when there was **no meeting of the minds** and **no written contract** whatsoever.

35. Attorney Bauer does not state the alleged terms of the alleged verbal agreement; it therefore remains unenforceable, nebulous, and undefined. As such, Attorney Bauer cannot be compensated. In fact, there was no agreement—whether verbal or written because there was no meeting of the minds or meeting of the terms of an agreement. Attorney Bauer demanded \$4,000.00 up front to get started. No \$4,000.00 was ever forthcoming by Woodhull to Attorney Bauer. Bauer therefore violated his own written

policy of requiring a retainer accompanied with **a written contract** PRIOR to commencing legal engagement.

36. In e-mail correspondence to Attorney Bauer, Mr. Bauer was properly noticed that he had violated his own policies (of mandating a retainer and signed contract prior to putting in a Notice of Appearance).

37. As a result of all of the above, a Florida Bar complaint has been filed.

38. "Where there is unethical misconduct on the part of the attorney, a charging lien is not permitted. *Andrew Hall & Associates v. Ghanem*, 679 So. 2d 60, 61-62 (Fla. 4th DCA 1996)

39. Here, we have an attorney who conducted no discovery on each and every case for which he claims to have "represented" Woodhull. This also violates the Florida Bar rules of "due diligence."

40. At the very least, if Attorney Bauer had obtained a transfer of venue of the guardianship proceedings in Seminole County to the appropriate venue, Alachua County, "something" would have been accomplished. However, Attorney Bauer entered a Notice of Appearance on the guardianship of a deceased woman, and this, too, is a peculiar and irregular request for reimbursement from the assets of the deceased.

41. A charging lien cannot be applied to the Guardianship of Louise A. Falvo in Seminole or Alachua County because Attorney Bauer never worked

on the cases. He simply put in an unauthorized notices of appearance, and then motions for withdrawal. Likewise, with the appellate case at the 5<sup>th</sup> DCA: Attorney Bauer simply put in an unauthorized Notice of Appearance, a Motion for Stay (contrary to his client's desire for the case to be decided expeditiously), a reply to justify his Notice of Appearance, and then a Motion to Withdraw. This is not called "working on the case." "In other words, his equitable lien never attached to the recovery in this case, because **he never worked on this case.**" (as quoted from **Hogbenvs. Wyndham International** (United States District Court Southern District of Florida Case No. 05-20944-Civ-LENARD/TORRES))

42. There is no express or implied contract between Bauer and Woodhull.

43. The undisputed fact that Bauer sent Woodhull several letters demanding "clarification" of a non-issue (even though Woodhull had already clearly stated "Remove also from 08-GA-0508/0509) show that Robert Bauer's Motion for Attorneys' Charging Lien" must fail since the first element ("express or implied contract") cannot be proved or supported by Attorney Bauer and therefore must be stricken from the record and/or dismissed with prejudice. (See **Sinclair, Louis, Siegel, Heath, Nussbaum & Zavertnik, P.A. v. Baucom**, 428 So.2d 1383, 1384 (Fla.1983) as cited in: **In re: Rosa Beatrice Washington, Martha Irene Weed v. Rosa Beatrice Washington,**

Case No. 99-14373 United States Court of Appeals, Eleventh Circuit. Feb. 28, 2001).

44. Woodhull never even knew until December 16, 2009 what a “charging lien” even is. In order to charge a “charging lien” the client needs to be informed ahead of time. Woodhull was never informed prior receiving mail on December 16, 2009—the charging liens.
45. Attorney Alan Hawkins advised Woodhull “not to worry” about any bills from Attorney Bauer because they were not legitimate and that there is a big difference between sending a bill and collecting on that bill. (Woodhull had explained to Hawkins how Bauer imposed himself on ALL of Woodhull’s cases—without authority)
46. The pattern of behavior of Woodhull is clearly to opt for self-representation-- unless attorney’s fees are guaranteed by the prevailing party, or unless the law mandates legal representation. Therefore, for Bauer to claim that a “verbal agreement” existed with someone (Woodhull) who is known to always select “pro se” is also not believable.
47. Woodhull at no time has waived or waives her right to homestead protection guaranteed to her under the Florida Constitution, ARTICLE X, SECTION 4(A) OF THE FLORIDA CONSTITUTION.

Nor has Woodhull ever agreed verbally or in writing to a waiver of homestead protection guaranteed to her under the Florida Constitution, Article X, Section 4(a).

48. No charging lien has been written as part of the court orders that permitted Attorney Bauer to withdraw shortly after making his (unauthorized) appearances in any of Woodhull's pro se cases.
49. Woodhull was never fully informed regarding the contents of a retainer agreement because there never was any retainer agreement.
50. Attorney Bauer is obligated to READ a written agreement to Woodhull (*In re Kindy's Estate*, 310 So.2d 349, 350 (Fla. 3DCA), *cert.den.* 324 So.2d 83 (Fla. 1975)). However, there was no written agreement, in fact, no verbal agreement, no agreement whatsoever, and there was no meeting of the minds between Attorney Bauer and Woodhull.
51. No notice of a charging lien was included in any of Attorney Bauer's notice of withdrawals. In fact, up until December 16, 2009, Woodhull have never ever heard of the word "charging lien."
52. All invoices of Attorney Bauer are disputed and it actually appears that Woodhull is owed a refund of her retainers in both the Estate of

Louise A. Falvo and Tower Oaks Homeowners' Association given the little work that Attorney Bauer actually performed.

53. Attorney Bauer can make no claims on Woodhull's jewelry, personal property, or automobile, as none of these items were part of the litigation. ("By definition, an attorney's charging lien cannot attach to property not involved in the suit and not before the court." (*Cole v. Kehoe*, 710 So. 2d 705, 706 (Fla. 4th DCA 1998) as cited in *Rudd v. Rudd* No. 4D06-102 [July 18, 2007]). (*Braverman v. Oliveri*, 564 So. 2d 190 (Fla. 1990) ; *Glickman v. Scherer*, 566 So. 2d 574 (Fla. 4th D.C.A. 1990))

54. The Federal Uniform Commercial Code requires a "written" contract for any amount over \$500.00. Therefore, Florida case law allowing for charging liens can be challenged all the way to the U.S. Supreme Court. Attorneys are not above the law.

55. Just the fact that Attorney Bauer has placed these various unsubstantiated "charging liens" in various courts shows further evidence of wrongdoing and incompetence and further reason why Woodhull was rationale enough to not wish to hire Attorney Bauer on any additional cases and terminate Attorney Bauer from two cases, since the required mandates set forth regarding "charging liens" cannot (and were not) be met by Attorney Bauer.

56. As further evidence of incompetence, Attorney Bauer has filed one of his “charging liens” in a closed case for which he never even entered his appearance. (5D08-1899). Even if the case were still open, Attorney Bauer’s Motion for Charging Lien would be untimely, as the court cannot grant relief once final judgment has been entered.

57. As further evidence of incompetence, Attorney Bauer styled the Alachua County probate of the Estate of Louise A. Falvo as a “guardianship” case (01-C)-001983) on all of his motions and notices to the various clerks of court. For this “work,” Attorney Bauer believes he is “entitled” to compensation when he cannot even style a case appropriately? I think not.

**MEMORANDUM OF LAW**

“It is not enough to support the imposition of a charging lien that an attorney has provided his services; the services must, in addition, produce a positive judgment or settlement for the client, since the lien will attach only to the tangible fruits of the services.” *Mitchell v. Coleman*, 868 So. 2d 639, 641 (Fla. 2d DCA 2004) (as cited in *Rudd v. Rudd* DISTRICT COURT OF APPEAL OF THE STATE OF FLORIDA FOURTH DISTRICT July Term 2007 No. 4D06-102 [July 18, 2007] .

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Arabia v. Siedlecki, 789 So.2d 380, 383 (Fla. 4DCA 2001), *rev. denied sub nom. Lavallo, Brown, Ronan & Soff, P.A. v. Arabia*, 817 So.2d 848 (Fla. 2002), “An attorney must be clear and precise in explaining the terms of a fee agreement. To the extent the contract is unclear, the agreement should be construed against the attorney.” In the instant case, the “contract” is completely unclear because there was no contract read to the alleged “client.”

\*\*\*\*\*

“We next turn to appellant’s arguments regarding the lien’s scope and the inclusion of improper fees. “By definition, an attorney’s charging lien cannot attach to property not involved in the suit and not before the court.” *Cole*, 710 So. 2d at 706.” (As cited in Rudd v. Rudd, APPEAL OF THE STATE OF FLORIDA FOURTH DISTRICT, July Term 2007, No. 4D06-102 [July 18, 2007]).

\*\*\*\*\*

“As in this case, the charging lien at issue in Cole also included fees incurred in enforcing the lien. *Id.* We found the inclusion of these fees improper because the attorney’s efforts in enforcing the lien did not contribute to the wife’s interests . . . .

“The fees associated with enforcing and perfecting the lien should be stricken.” (As cited in *Rudd v. Rudd* APPEAL OF THE STATE OF FLORIDA FOURTH DISTRICT July Term 2007 No. 4D06-102 [July 18, 2007]).

\*\*\*\*\*

“It is not enough to support the imposition of a charging lien that an attorney has provided his services; the services must, in addition, produce a positive judgment or settlement for the client, since the lien will only attach to the tangible fruits of the services.” *Rudd*, 960 So. 2d at 887 (quoting *Mitchell v. Coleman*, 868 So. 2d 639, 641 (Fla. 2d DCA 2004)) (as cited in *Richman, Green, Weil, Brumbaugh, Mirabito & Christensen v. Michael Chernak, Kathleen Chernak, and the Watershed Treatment Programs, Inc, The Watershed-Act II, Inc., a Florida Corporation* DISTRICT COURT OF APPEAL OF THE STATE OF FLORIDA FOURTH DISTRICT January Term 2008 No. 4D07-647 [March 12, 2008]).

\*\*\*\*\*

“Where there is unethical misconduct on the part of the attorney, a charging lien is not permitted.” *Andrew Hall & Associates v. Ghanem*, 679 So. 2d 60, 61-62 (Fla. 4th DCA 1996)

\*\*\*\*\*

An evidentiary hearing may be in order, in which it may be determined that NO award of attorneys' fees is in order under the circumstances and the evidence presented. In Crown Custom Homes, Inc. v. Sabatino (2D08-1612, 2D08-1613) the Second District reversed the trial court's determination of the amount of attorneys fees for a new evidentiary hearing

\*\*\*\*\*

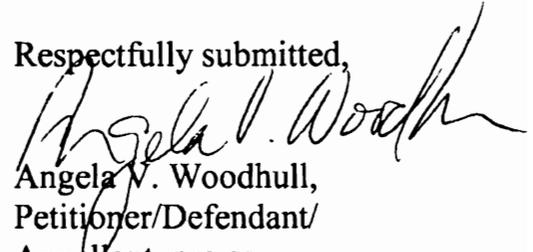
A charging lien is a lien against the fruits of the litigation in question. By definition it does not apply to property outside the subject matter of the litigation, and it will not apply in cases where there are no tangible fruits of the litigation. (Braverman v. Oliveri, 564 So. 2d 190 (Fla. 1990) ; Glickman v. Scherer, 566 So. 2d 574 (Fla. 4th D.C.A. 1990))

\*\*\*\*\*

In order to have a valid charging lien the attorney's services must contribute to a positive judgment or settlement for the client. (Rochlin v. Cunningham, 739 So. 2d 1215 (Fla. 4th D.C.A. 1999); Litman v. Fine, Jacobson, et al., 517 So. 2d 88, 91-92 (Fla. 3d D.C.A. 1987), rev. denied, 525 So. 2d 879 (Fla. 1988)). (If this court schedules an evidentiary hearing, Attorney Bauer will be very hard pressed to show how his unauthorized Entry of Appearances followed by Motions for Stay and Motions to Withdraw helped to "contribute to a positive judgment or settlement for the 'client.'")

**WHEREFORE**, Attorney Bauer's "liens" (entered in three courts) for alleged (and **unauthorized**) attorney's "services" should be **dismissed with prejudice** and stricken from the record, and Attorney Bauer should be sanctioned for his actions.

Respectfully submitted,



Angela V. Woodhull,  
Petitioner/Defendant/  
Appellant, pro se  
P.O. Box 14423  
Gainesville, FL 32604  
(352) 327-3665  
(352) 682-9033

### **CERTIFICATE OF SERVICE**

In order to properly defend herself, Angela V. Woodhull had to file the above document in three different courts. Therefore, a true and correct copy of the above styled document, with various and appropriate court names listed in the style of the case, was mailed by U.S. mail this 17<sup>th</sup> day of December 2009 to:

Maryann Morse, Clerk of Court  
Seminole County  
Eighteenth Judicial Circuit Court  
301 N. Park Avenue  
Sanford, Florida 32771

Clerk of Court  
Fifth District Court of Appeal  
300 Beach Street  
Daytona Beach, Florida 32114

Alachua County Clerk of Court  
201 E. University Avenue

Gainesville, Florida 32601

Judith Paul, Esq.  
Law Firm of Richard Kenllinger, P.A.  
2815 NW 13<sup>th</sup> Street, Suite 305  
Gainesville, FL 32609

Alan T. Hawkins, Esq.  
1502 N.W. Sixth Street, Suite C  
Gainesville, FL 32601

John Stinson, Esq.  
Jesse Caedington, Esq.  
Scruggs and Carmichael  
One S.E. First Avenue  
Gainesville, Florida 32601

Attorney Anthony Nardella  
c/o Zimmerman, Kiser, & Sutcliffe  
315 E. Robinson Street  
Suite 600  
Orlando, FL 32801

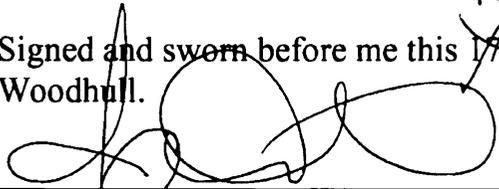
  
\_\_\_\_\_  
Angela V. Woodhull, Appellant/Defendant/Petitioner, pro se

I swear and attest, under penalties of perjury, that all of the above information is true and correct.

  
\_\_\_\_\_  
Angela V. Woodhull, Appellant/Defendant/Petitioner, pro se

STATE OF FLORIDA  
COUNTY OF ALACHUA

Signed and sworn before me this 18<sup>th</sup> day of December 2009 by Angela V. Woodhull.

  
\_\_\_\_\_  
Notary Public

My commission expires:





RE: 2909--Emergency Request. Thank you.

Tuesday, December 23, 2008 11:17 AM

From Robert W. Bauer, Esq. Tue Dec 23 08 17:32 2008

X-Apparently-To: angelawoodhull@yahoo.com via 206.190.37.40, Tue, 23 Dec 2008 08:17:36 -0800  
 Return-Path: <rw@bauerlegal.com>  
 X-YMailISG: uP2XtGAWLDS9!.....aqwuGC4.7BRMgbkY1EiBR0yuapixYelrmeEpbQCw OWafCEna .dmUeC2Pp9qk26C1sWQf3OrfBHhQH4pRegDUKeBkKubeVv .6Wb0LdbcnvKUKu2VUAK10zQx5HC6tFcyud1g51Xk .Ssoa1K73WYNUSI  
 X-Originating-IP: [74.208.4.194]  
 Authentication-Results: mta184.mail.ac4.yahoo.com; from=bauerlegal.com; domainkeys=neutral; no sig;  
 Received: from 74.208.4.194 (EHLO mout.perfora.net); 174.208.4.194; by mta184.mail.ac4.yahoo.com with SMTP; Tue, 23 Dec 2008 08:17:35 -0800  
 Received: from STATIONS (wsp-98-190-41-72.ga.at.cox.net [98.190.41.72]); by mrelay.perfora.net (node=mrus1) with ESMT (Nemesis) id 0MKpCa-1LF9wp2gBH-0007e7; Tue, 23 Dec 2008 11:17:35 -0500  
 From: "Robert W. Bauer, Esq." <rw@bauerlegal.com>  
 To: <angelawoodhull@yahoo.com>  
 Cc: "David M. Sams" <dms@bauerlegal.com>  
 References: <181AAAAAAAAAAAAAAAAAAAAJbra3TcB55Hp1Y5bq1jZH/CgAAAAEAAAACvno+Lre4pCpOCdyfQA3L1BAAAAAAAA==@bauerlegal.com> <339040.58144.qm@web53603.mail.re2.yahoo.com>  
 In-Reply-To: <339040.58144.qm@web53603.mail.re2.yahoo.com>  
 Subject: RE: 2909--Emergency Request Thank you  
 Date: Tue, 23 Dec 2008 11:17:32 -0500  
 Message-ID: <181AAAAAAAAAAAAAAAAAAAAJbra3TcB55Hp1Y5bq1jZH/CgAAAAEAAAACvno+Lre4pCpOCdyfQA3L1BAAAAAAAA==@bauerlegal.com>  
 MIME-Version: 1.0  
 Content-Type: multipart/alternative; boundary="----- NextPart 000 005F 01C964FG 115EBDB0"  
 X-Mailer: Microsoft Office Outlook 12.0  
 Thread-Index: Aclj5Bp9h0L Gpgk8QA+IXqAH6ZrCwB0MY:z  
 Content-Language: en-us  
 Disposition-Notification-To: "Robert W. Bauer, Esq." <rw@bauerlegal.com>  
 X-Prvags-ID: V01U2FsdGVkX19;Vw10C13h0hQYAE:CSxn9U;QsAZX2douxkx bPmiNBu0TV5P8T7V9ZghG3YruFHUhnHKPwuKF:RIK17Av2s251 wHpLTRAoSvJy2xyoJ8vUK9eJoDD4  
 Content-Length: 8751

There has been substantial confusion on our part regarding the cases that you wish us to represent you in. Please be aware that all your cases are connect except for the Home Owners association case. Therefore, that were paid out of your mother's estate. However, it is always your choice. I need a clear understanding of what cases you want us to represent you in. Please advise us as to what cases you wish for us to assist

Robert W. Bauer, Esq.  
 Law Office of Robert W. Bauer, P.A  
 2815 NW 13th St. Suite 200E  
 Gainesville, FL 32609  
 352 375.5960  
 352 337.2518 - Facsimile  
 Bauerlegal.com

From: Angela V. Woodhull [mailto:angelawoodhull@yahoo.com]  
 Sent: Sunday, December 21, 2008 3:43 AM  
 To: Robert W. Bauer, Esq.  
 Subject: 2909--Emergency Request. Thank you.

Robert,  
 Please remove from 2909. I petitioned the Alachua County court several months ago to "stay" proceedings until 2909 had been decided. The opposite has now been done, which sabotages 2909. I d  
 Angela Woodhull

P.S.--Please also remove NOA from Seminole County 2008-GA-0508/0509. I will not be signing the agreements that you sent to me AFTER putting in your NOAs.

No virus found in this incoming message.  
 Checked by AVG - http://www.avg.com  
 Version: 8.0.176 / Virus Database: 270.10.0/1861 - Release Date: 12/22/2008 11:23 AM

**ATTORNEY CONSULTATION AND FEE CONTRACT**

THIS AGREEMENT ("Agreement") is made on \_\_\_\_\_, in Gainesville, between Angela Woodhill ("Client"), and Law Office of Robert W. Bauer, P.A., of Gainesville, Alachua County, FL ("Attorney"):

In consideration of the mutual promises herein contained, the parties hereto agree as follows:

**I. PURPOSE OF REPRESENTATION**

1.01 The Client hereby retains and employs the Attorney to represent Client in the following matter:

Pursuing claims against guardian and review probate issues for Alachua County Probate Division File No. 01-2008-CP-001083.

**II. ATTORNEY'S FEE**

2.01 In consideration of services rendered and to be rendered by the Attorney, Client agrees to pay for the Attorney's time at the following hourly rates:

Robert W. Bauer	\$200.00
Law Clerks	\$100.00-125.00
Paralegals	\$75.00

However, if Client's claim is governed by a statute or law which sets the Attorney's fees, and the law precludes any other fee arrangement other than the amount set by law, then the amount payable to the Attorney shall be limited to the maximum allowed by law.

**\*\*\*\*\*It is often the practice of law firms to include the cost of general secretarial duties or other costs into an increased rate for attorney's fees in order to cover general overhead. That is not the practice of this firm. This firm believes that this is not the fairest manner of billing and that by applying the above rates to all personnel and charging for all duties there is greater clarity of the services provided and each client is paying a correct and fair amount for the services provided. This practice allows for duties to be performed by the member of the firm that has the skills required to perform a task yet has the lowest chargeable fees available to the client. Please initial in the space provided to indicate that you agree to this type of billing structure. \_\_\_\_\_ initial. (If you do not agree to this structure you have the right to request an hourly attorney fee that is**

**calculated to cover overhead costs)\*\*\*\*\***

2.02 Client agrees to deposit a non-refundable retainer of \$0 with the Attorney to pay for the Attorney's initial research, review and preparation of Client's case.

2.03 At the time of each billing, the amount of legal services and expenses billed by the Attorney shall be disbursed from the Attorney's Trust Account to the Attorney's Operating Account.

- a. Each billing will reflect the legal services rendered and the deposit necessary to cover the estimated legal services and expenses for the next billing period.
- b. Client agrees to make such additional deposits for expenses as are required by the Attorney within ten (10) days from the statement's date.
- c. Unpaid fees and expenses, if not paid within ten (10) days from the statement's date, shall bear interest at the rate of 10% percent per annum until paid.
- d. All sums due and to become due are payable at the Attorney's office in Alachua County, FL.

### **III. APPROVAL NECESSARY FOR SETTLEMENT**

3.01 The Attorney is authorized to enter into any and all settlement negotiations on behalf of those whom the Attorney represents. This includes, but is not limited to, the Attorney's prerogative to pursue cash or structured payment settlement negotiations.

3.02 Client grants to the Attorney a power of attorney to handle negotiations and settlement discussions regarding Client's legal matter to the same extent as fully as Client could do so in person.

- a. This expressly includes the right to sign Client's name on and to any insurance company drafts, money orders, cashier's checks, checks or other negotiable instruments made payable to the Attorney and Client, the Attorney, or to Client without the joinder of the Attorney, submitted to the Attorney on behalf of Client in full or partial settlement of this case.
- b. This limited power of attorney further authorizes the Attorney to place the monies, referred to above, in the Attorney's trust account and from that trust account, make distributions and payments to the Attorney for the agreed to fee stated above, reimbursement to Attorney for any and all expenses incurred by the Attorney in handling this case, payments to Client of Client's interest in the monies recovered as stated above, and payments to parties other than Client and Attorney for their services performed, fees charged or bills rendered in connection with representing Client, including but not limited to expert witness fees, trial preparation bills paid to outside services, court reporter fees, deposition fees, investigative services, costs of

exhibits or other expenses incurred by Attorney on behalf of Client.

3.03 No settlement shall be made without Client's approval, nor shall Client obtain any settlement on the aforesaid claims without the Attorney's approval.

3.04 Attorney is granted a limited power of attorney so that the Attorney may have full authority to prepare, sign and file all legal instruments, pleadings, drafts, authorizations and papers as shall be reasonably necessary to conclude this representation, including settlement and/or reduce to possession any and all monies or other things of value due to Client under this claim as fully as Client could do so in person.

#### **IV. REPRESENTATIONS**

**4.01 It is expressly agreed and understood that no promises or guarantees as to the outcome of the case have been made to Client by Attorney. Attorney has not represented to Client that Client will recover all or any of the funds so desired. Client also acknowledges that obtaining a judgment does not guarantee that the opposing party will be able to satisfy the judgment. It is further expressly understood and agreed that no other representations have been made to Client, except for those set out in this Agreement.**

#### **V. EXPENSES**

5.01 All reasonable expenses incurred by the Attorney in the handling of this legal matter shall be paid by Client as incurred.

5.02 The expenses contemplated include but are not limited to court costs, consultants' costs, bonds, records, copy costs, supply costs that may be directly attributed to the client, certified copies, transcripts or depositions, telephone calls, duplication costs, photographs, expert and other witness fees, cost of investigation and investigator's fees, postage, travel, parking, and any other case expenses. Client shall deposit with Attorney an expense deposit in the amount of \$2,500.00 which shall be deposited in the Attorney's Trust Account. The Attorney may draw against the expenses in the trust account as the expenses are incurred.

5.03 Any expenses not timely paid by Client shall be deducted by the Attorney prior to Client receiving her interest in the amount set forth in paragraph two (2) above. Client shall remain liable and promptly pay for all expenses incurred in this representation.

#### **VI. COOPERATION OF CLIENT**

6.01 Client shall keep the Attorney advised of Client's whereabouts at all times, and provide the Attorney with any changes of address, phone number or business affiliation during the time period which Attorney's services are required. Client shall comply with all reasonable requests of the Attorney in connection with the preparation and presentation of Client's legal matter.

6.02 The Attorney may withdraw from the case and cease to represent Client for any reason, including without limitation: Client's failure to timely pay fees and expenses or deposits in

accordance with this Agreement, subject to the professional responsibility requirements to which Attorneys are subject.

6.03 It is further understood and agreed that upon such termination of any services of the Attorney, any of Client's deposits remaining in Attorney's Trust Account shall be applied to any balance remaining owing to Attorney for fees and/or expenses and any surplus then remaining shall be refunded to Client.

#### **VII. ASSOCIATION OF OTHER ATTORNEYS OR SERVICES**

7.01 The Attorney may, at Attorney's sole discretion, employ any other person or service that the Attorney believes is necessary to help or assist in this legal representation this shall include the use of contract Attorney's or Foreign Resource Attorneys who are familiar with the laws rules and practice of law in the jurisdiction which the clients case is being forwarded. The Attorney may charge the rate stated in the above rate structure for "Associated Attorneys" which shall be reflected on the clients bill as ASAvfor any such retained assistance. Any such work shall be review and supervised by the Attorney such that the work can reasonably be forwarded as the work of the Attorney.

7.02 The rights set forth in this Agreement are subject to the professional responsibility requirements which regulate Attorneys.

#### **VIII. FLORIDA LAW TO APPLY**

8.01 This Agreement shall be construed under and in accordance with the laws of Florida, and venue for the adjudication of any dispute relating to this Agreement shall be Alachua County, FL.

#### **IX. PARTIES BOUND**

9.01 This Agreement shall be binding upon and inure to the benefit of the parties hereto and their respective heirs, executors, administrators, legal representatives, successors and assigns where permitted by this Agreement.

#### **X. LEGAL CONSTRUCTION**

10.01 In case any one or more of the provisions contained in this Agreement shall, for any reason, be held to be invalid, illegal, or unenforceable in any respect, such invalidity, illegality, or unenforceability shall not affect any other provisions thereof and this Agreement shall be construed as if such invalid, illegal, or unenforceable provision had never been contained herein.

#### **XI. PRIOR AGREEMENTS SUPERSEDED**

11.01 This Agreement constitutes the sole and only agreement by and between the parties. It supersedes any prior understandings or written or oral agreements between the parties concerning the subject matter discussed herein.

**XII. RESOLUTION OF FEE DISPUTES BY ARBITRATION**

12.01 Any controversy or claim arising out of or relating to a fee charged pursuant to this Contract shall be settled by arbitration under Chapter 682, Florida Statutes. Judgment upon the award rendered may be entered in any court having competent jurisdiction.

**TAX DISCLOSURE AND ACKNOWLEDGMENT:**

**CLIENT IS ADVISED TO OBTAIN INDEPENDENT AND COMPETENT TAX ADVICE REGARDING THESE LEGAL MATTERS SINCE LEGAL TRANSACTIONS CAN GIVE RISE TO TAX CONSEQUENCES.**

**THE UNDERSIGNED LAW FIRM AND ATTORNEY HAVE NOT AGREED TO RENDER ANY TAX ADVICE AND ARE NOT RESPONSIBLE FOR ANY ADVICE REGARDING TAX MATTERS OR PREPARATION OF TAX RETURNS, OR OTHER FILINGS, INCLUDING, BUT NOT LIMITED TO, STATE AND FEDERAL INCOME AND INHERITANCE TAX RETURNS.**

**FURTHERMORE, CLIENT SHOULD OBTAIN PROFESSIONAL HELP REGARDING THE VALUATION AND LOCATION OF ALL ASSETS WHICH MAY BE THE SUBJECT OF A LEGAL MATTER INCLUDING BUT NOT LIMITED TO PENSIONS, EMPLOYMENT BENEFIT AND PROFIT SHARING RIGHTS THAT MAY BE CONTROLLED BY ANY OTHER PARTY TO THE LEGAL MATTER.**

I certify and acknowledge that I have had the opportunity to read this Agreement. I further state that I have voluntarily entered into this Agreement fully aware of its terms and conditions.

**SIGNED** on this \_\_\_\_\_ day of \_\_\_\_\_, 2008.

**SIGNED** on this \_\_\_\_\_ day of \_\_\_\_\_, 2008.

## Statement and Acknowledgement of Office and Billing Policies

Please initial in the space provided to acknowledge that you understand the proceeding statements:

I have retained the services of this law office under the complete knowledge that I am obliged to pay fees in accordance with how much time the attorney, associate attorneys, law clerks, paralegals, and legal assistants devote to my case.

\_\_\_\_\_ Initials

I am aware that the billing is done in .1 increments, (meaning that every 6 minutes allotted to my case I will be billed the corresponding amount for each of the aforementioned persons), as specified in the Fee Agreement.

\_\_\_\_\_ Initials

I am aware that phone calls to the office, including calls to assistants, will be billed to the client in accordance with the billing procedure. That is to say, that a one minute phone call to the attorney or assistants will result in a charge reflective of the .1 increment, regardless if the duration of the call is not this amount.

\_\_\_\_\_ Initials

I am aware that while telephone calls to the office regarding my case will be billed, telephone calls to the office regarding my bill will not be. If I require clarification as to a charge on my billing statement, I will not hesitate to call.

\_\_\_\_\_ Initials

I am aware that this billing procedure is not standard practice, but it is one that my attorney believes to be the most equitable agreement for the client. Other firms forego charging the client a specific fee for each individual working on their case and may instead increase the attorney's fees or increase the time increments to cover employee overhead. I agree with this firm's billing practices and accept the rates set out in the Fee Agreement\*.

\_\_\_\_\_ Initials

I acknowledge that delays will occur in my case, and these delays may or may not be the direct result of difficulties in negotiations with the opposing party, delays in the Court's operation, or the amount of work a case may require from this office.

\_\_\_\_\_ Initials

I am aware that responses to my calls, messages, and e-mails, depending on the week, may take several days, so I must be patient in waiting for a reply.

\_\_\_\_\_ Initials

I acknowledge that in order to ensure that delays are not made due to this office's oversight I will be kept up to date, via U.S. mail, of all items sent and received regarding my case. I will read over these

---

\* If client does not agree with this billing practice, a written notice must be submitted and client will be subject to an hourly fee calculated to cover all overhead.

documents and retain these for my records.

\_\_\_\_\_ Initials

I acknowledge that I am in receipt of "Keys to Reducing your Attorney's Fees," and I will read these instructions so that I can be up to date with the status of my case, while not incurring unnecessary attorney's fees.

\_\_\_\_\_ Initials

## **Keys to Reducing your Attorney's Fees**

It is often the case that client billing statements reflect charges that could have been avoided if the client had taken steps so as not to incur unnecessary charges. In order to provide the client with the best service and the most equitable means of charging for these services, this office has devised a list on how to reduce the client's attorney's fees:

1. Refrain from asking to speak to the attorney when you have a question that can be answered easily by a legal assistant or a paralegal. Over the long run, this can save the client hundreds of dollars since the assistant and paralegal hourly rate is significantly less than the attorney's rate.
2. Refrain from contacting the attorney's office several times throughout the day. It is more cost effective to gather all documents and write down every question you have regarding your case. Since a 1 minute phone call will be charged the same as a 6 minute phone call, several calls will amount to a greater fee than one phone call that lasts a bit longer. Remember we bill in .1 increments which is a 6 minute increment.
3. Refrain from sending numerous faxes, e-mails, and any other correspondence. The same charges considered for telephone calls are applicable to faxes, e-mails, and correspondence. Send the information by grouping it together in one document.
4. Before calling the office about a letter or document you have received please read over the document carefully. At times the impulse is to call the attorney's office to explain why a certain document was sent when the answer lies in the document itself.
5. When dates for hearings, depositions, or mediations are made over the telephone with the legal assistant ensure that you have a calendar to confirm you are available that date. Having to cancel a hearing and rescheduling will significantly increase billing charges. Costs to telephone opposing counsel, the JA, client, and mailing new notices are billed to the client in the event of a cancellation.
6. If you are contacted to come into the office and sign a document, please read over the copy of the document that has been mailed to you prior to your meeting. Reading it at the time of the signing will only make the duration of the meeting longer and thereby increase the amount you are billed.
7. Do not make any unscheduled visits to the office. The attorney may have an appointment scheduled and may not be able to speak with you, but nevertheless the time spent speaking with assistants while they determine what your needs are will be billed.

If you choose to disregard these suggestions, this office will nevertheless handle your requests in a courteous manner. We are always happy to assist you, but please note that you will be billed.

Dec. 23, 2008

Robert -

Please remove also from  
Seminole County GA08-0508/0509  
your Notice of Appearance.

Thank you  
Angel Wooten

**IN THE FLORIDA DISTRICT COURT  
OF APPEAL FOR THE FIFTH DISTRICT**

CASE NO.: 5D08-~~2899~~<sup>2909 AW</sup>

ANGELA WOODHULL,  
Appellant, pro se

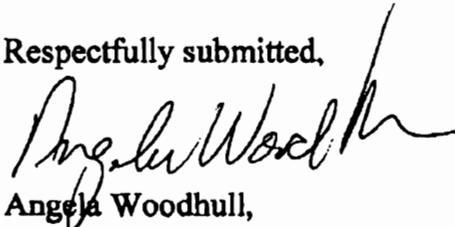
v.

**GUARDIANSHIP OF  
LOUISE A. FALVO, etc.**  
Appellees

**NOTICE TO COURT/CONTINUOUS NOTICE OF APPEARANCE  
NOTICE OF CLARIFICATION TO THIS COURT**

This Appellant (Appellant Angela Woodhull) has filed this case pro se  
and continues and remains pro se in this appeal 5D08-2909 throughout  
this appeal.

Respectfully submitted,



Angela Woodhull,  
Appellant, pro se  
P.O. Box 14423  
Gainesville, FL 32604-2423  
(352) 332-0515

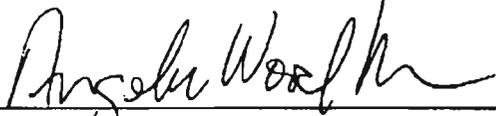
**CERTIFICATE OF SERVICE**

I HEREBY CERTIFY that a true and correct copy of Appellant Angela  
Woodhull's **NOTICE TO COURT/CONTINUOUS NOTICE OF**

**APPEARANCE/ NOTICE OF CLARIFICATION TO THIS COURT**

has been furnished via U.S. Mail this <sup>22<sup>nd</sup></sup> ~~23<sup>rd</sup>~~ day of December, 2008 to  
**Anthony Nardella, Jr., Esquire**, counsel for Appellee Rebecca Fierle, c/o  
Zimmerman, Kiser, and Sutcliff, P.A., 315 E. Robinson Street, Suite 600,  
Orlando, Florida 32801, and Robert W. Bauer, 2815 NW 13th Street, Suite  
200, Gainesville, FL 32609.

I SWEAR AND ATTEST, UNDER PENALTIES OF PERJURY, THAT  
THE ABOVE INFORMATION IS TRUE AND CORRECT  
TO THE BEST OF MY KNOWLEDGE.

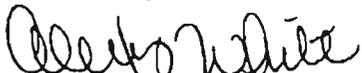
  
\_\_\_\_\_  
Angela Woodhull

STATE OF FLORIDA

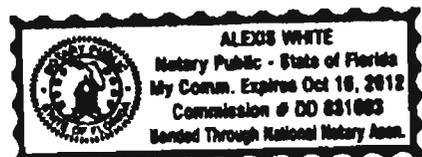
COUNTY OF Leon

I HEREBY CERTIFY that on this day, before me, an officer duly  
authorized in the above county and state, to take acknowledgments, **Angela  
Woodhull**, personally appeared to me known to be the person described in and  
who executed the foregoing instrument and acknowledged before me that they  
executed same.

Witness my hand and official seal on this 22nd day of December, 2008.

  
\_\_\_\_\_  
Notary Public

My commission expires: Oct 16, 2012



**IN THE FLORIDA DISTRICT COURT  
OF APPEAL FOR THE FIFTH DISTRICT**

CASE NO.: 5D08-~~1359~~ <sup>2909 AW</sup>

ANGELA WOODHULL,  
Appellant, pro se

v.

**GUARDIANSHIP OF  
LOUISE A. FALVO, etc.**  
Appellees

**NOTICE TO COURT  
AND PETITION FOR EXPEDITIOUS REVIEW OF  
APPEAL #5DO-2909 AND MONETARY SANCTIONS OF ATTORNEY  
ANTHONY NARDELLA**

Petitioner ANGELA WOODHULL, pro se, would like to point out to this court two important matters.

1. There appears to have been a misunderstanding between Attorney Robert W. Bauer and Petitioner Woodhull due to the unauthorized Notice of Appearance that was entered on December 8, 2008 in this case.
2. On December 8, 2008, Mr. Bauer entered a Notice of Appearance in this appeal 5D08-2909.
3. On December 11, 2008, I received an e-mail from Mr. Bauer's office asking me to sign fee agreements. It therefore appears that the cart was accidentally placed before the horse. (See Exhibit A)
4. I cannot afford legal representation in multiple cases, unfortunately,

as most of the human race cannot, I suspect. I therefore sent an e-mail to Mr. Bauer asking him to withdraw from appeal 5D08-2909 because the stay I previously requested was in the **Alachua County probate court**, not here.

5. I pray that this 5<sup>th</sup> District Court of Appeal will therefore expeditiously decide the matter of these ex parte orders that were appealed in 5D08-2909 from Seminole County probate 2008-GA-0508/0509. I fear that because a curator has now been appointed in the Alachua County probate matter (proper venue) that the closing of the guardianship in Seminole County could once again render this appeal moot which, in effect, would be an obstruction of justice. “Mootness” is never appropriate when matters of the law are still undetermined and remain unsolved and/or affect the outcomes of other related cases (See, for example *Merkle v. Guardianship of Jacoby*, 912 So.2d 595 (Fl, 2005), *Godwin v. State*, 593 So.2d 211 (Fla., 1992), *Montejo v. Martin Memorial Medical Center, Inc.*, Case No. 4D03-2638 (FL 5/5/2004) (Fl, 2004), *Holly v. Auld*, 450 So.2d 217 (Fla., 1984), *Clark v. State ex rel. Rubin*, 122 So.2d 807 (Fla. App. 3 Dist., 1960))

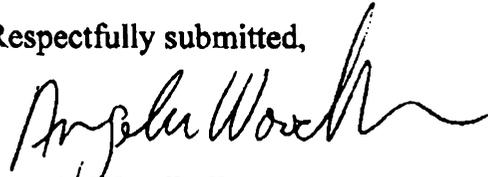
6. Therefore, the erroneous decision of “mootness” in Appeal 5D08-1899 should not also be misapplied to 5D08-2909.
7. The estate of Louise A. Falvo cannot continue to be liable for attorneys who surreptitiously remove assets from Louise A. Falvo’s estate.
8. While this appeal has been pending, Attorney Anthony Nardella has taken an additional approximately \$20,000.00 from the estate of Louise A. Falvo on or about October 22, 2008 – again, ex parte—and yet and still another undisclosed amount on or about November 22, 2008.
9. These are exorbitant amounts removed for “watching” and “protecting” a dead woman in a still open guardianship and an appropriate accounting is in order.
10. In addition, the Alachua County Court wrote an order somewhere in the last week of October 2008 that no one in possession of Louise A. Falvo’s assets should remove them or waste them while the issue of venue was pending for decision in Alachua County. When Anthony Nardella then removed assets of Louise A. Falvo’s estate on or about November 22, 2008—he was clearly in contempt of the Alachua County Court. A “clarification” order was later written that

“absolved” Nardella but Nardella clearly went ahead and in a clandestine manner (ex parte) removed the assets to himself PRIOR to any clarification.

11. The taking of additional funds are appealable matters under 1.540(b)(3) and should have never occurred while the pendency of this appeal—regarding the same, identical issue (ex parte orders written)—exists for this appellate review.
12. Therefore, Anthony Nardella should be sanctioned for the removing of these additional and exorbitant funds from the estate of Louise A. Falvo during the pendency of an appeal that involves the same, identical matter. It is as though Anthony Nardella has already held court, and as “judge” of this court has already decided that Petitioner Woodhull is the loser and therefore Attorney Anthony Nardella can flaunt his victory by removing additional assets from the estate of Louise A. Falvo without any consequence. This is rather a rather outrageous obstruction of justice and should be of concern to this court.

WHEREFORE, Petitioner Woodhull prays for an expeditious review of 5D08-2909 and the sanctioning of Attorney Anthony Nardella (in, at least, the equal amount of his stealthy taking) for brazenly removing additional assets of Louise A. Falvo's estate, ex parte, during the pendency of this appeal which involves the same, identical issues.

Respectfully submitted,



Angela Woodhull,  
Appellant, pro se  
P.O. Box 14423  
Gainesville, FL 32604-2423  
(352) 332-0515

### CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a true and correct copy of Appellant Angela Woodhull's **NOTICE TO COURT AND PETITION FOR EXPEDITIOUS REVIEW OF APPEAL #5DO-2909 AND MONETARY SANCTIONS OF ATTORNEY ANTHONY NARDELLA** has been furnished via U.S. Mail this <sup>2<sup>nd</sup></sup>~~2<sup>nd</sup>~~<sub>AN</sub> day of December, 2008 to **Anthony Nardella, Jr., Esquire**, counsel for Appellee Rebecca Fierle, c/o Zimmerman, Kiser, and Sutcliff, P.A., 315 E. Robinson Street, Suite 600, Orlando, Florida 32801, and Robert W. Bauer, 2815 NW 13th Street, Suite 200, Gainesville, FL 32609.

I SWEAR AND ATTEST, UNDER PENALTIES OF PERJURY, THAT THE ABOVE INFORMATION IS TRUE AND CORRECT TO THE BEST OF MY KNOWLEDGE.

Angela Woodhull  
Angela Woodhull

STATE OF FLORIDA

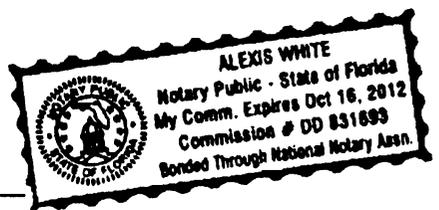
COUNTY OF Leon

I HEREBY CERTIFY that on this day, before me, an officer duly authorized in the above county and state, to take acknowledgments, **Angela Woodhull**, personally appeared to me known to be the person described in and who executed the foregoing instrument and acknowledged before me that they executed same.

Witness my hand and official seal on this 23<sup>rd</sup> day of December, 2008.

Alexis White  
Notary Public

My commission expires: Oct 16, 2012





Please sign attached fee agreements

Thursday, December 11, 2008 1:03 PM

From April H. Ray Thu Dec 11 10:03:51 2008

Return-Path: <ahr@bauerlegal.com>  
 Authentication-Results: mta195.mail.ac4.yahoo.com from=bauerlegal.com; domainkeys=neutral (no sig)  
 Received: from 74.208.4.195 (EHLO mout.perfora.net) (74.208.4.195) by mta195.mail.ac4.yahoo.com with SMTP; Thu, 11 Dec 2008 10:03:53 -0800  
 Received: from STATION1 (wslp-98-190-41-72.ga.at.cox.net [98.190.41.72]) by mrelay.perfora.net (node=mrus0) with ESMTP (Nemesis) id 0MKp8S-1LApt4342Z-0002Pb; Thu, 11 Dec 2008 13:03:53 -0500  
 From: "April H. Ray" <ahr@bauerlegal.com>  
 To: <angelavwoodhull@yahoo.com>  
 Subject: Please sign attached fee agreements  
 Date: Thu, 11 Dec 2008 13:03:51 -0500  
 Message-ID: <000001c95bbe\$d643ebf0\$82cbc3d0\$@com>  
 MIME-Version: 1.0  
 Content-Type: multipart/mixed; boundary="====\_NextPart\_000\_0001\_01C95B90.ED6DE3F0"  
 Thread-Index: AcIbuoWQEn29qhf4Sj6YCNkT+4+3xw==  
 Content-Language: en-us ofxIlZaEFODZcXC6L/mpCy0DJjraXsS929U8/YZw7fVPhP9C9 NAKay3LNxCVW4+MBmzXWLWLHicttHT6  
 Content-Length: 210104  
 12-10-08 Attorney Fee Agreement for Hourly Clients for Appeal 1899.docx (25KB),  
 12-10-08 Attorney Fee Agreement for Hourly Clients for Appeal 2909.docx (25KB),  
 12-10-08 Attorney Fee Agreement for Hourly Clients for Case Number 2008-GA-508.docx (25KB),  
 12-10-08 Attorney Fee Agreement for Hourly Clients for Case Number 2008-GA-509.docx (25KB),  
 12-10-08 Attorney Fee Agreement for Hourly Clients for File No 01 2008 CP 001083.docx (25KB),  
 Attorney Fee Agreement for Hourly Clients.doc (25KB)

Please sign and date the attached agreements for clarification of your files. Please mail or drop off the completed agreements as soon as possible, you do not have to make an appointment.

April Ray  
 The Law Office of Robert W. Bauer, P.A.  
 2815 NW 13<sup>th</sup> St. Suite 200 E  
 Gainesville, FL  
 (352) 375-5906  
 Fax- (352) 337-2518

EXHIBIT "A"



Please sign attached fee agreements

Thursday, December 11, 2008 1 03 PM

From April H. Ray Thu Dec 11 10:03:51 2008

X-Apparently-To: angelavwoodhull@yahoo.com via 206.190.37.43, Thu, 11 Dec 2008 10:03:54 -0800  
 Return-Path: <ahr@bauerlegal.com>  
 X-YMailISG: 5MLRQekWLDsDc6EWve.X5KFXV19hdmki0mh0b1cT56xkgRDOzG0qA5Kkj0lVfjMyx0sbz416G1ZnR039v1GAYsr5fx30Ge It.NbwtHQVvmt1PY2B16aQ7rmabw0aBG-HQ.uz7.WAu9f.4JxVL.BU3PMY58ju8RzxYMuKvexf  
 X-Originating-IP: [74.208.4.195]  
 Authentication-Results: mta195.mail.ac4.yahoo.com from=bauerlegal.com; domainkeys=neutral (no sig)  
 Received: from 74.208.4.195 (EHLO mout.perfora.net) [74.208.4.195] by mta195.mail.ac4.yahoo.com with SMTP; Thu, 11 Dec 2008 10:03:53 -0800  
 Received: from STATION1 (wsjp-98-190-41-72.ga.at.cox.net [98.190.41.72]) by mrelay.perfora.net (node=mrus0) with ESMTPL (Nemesis) id DMKp85-1LApr4342Z-0002Pb; Thu, 11 Dec 2008 13:03:53 -0500  
 From: "April H. Ray" <ahr@bauerlegal.com>  
 To: <angelavwoodhull@yahoo.com>  
 Subject: Please sign attached fee agreements  
 Date: Thu, 11 Dec 2008 13:03:51 -0500  
 Message-ID: <00001c95bbasd643ebf0s82cbc3d0s@com>  
 MIME-Version: 1.0  
 Content-Type: multipart/mixed; boundary="-----\_NextPart\_000\_0001\_01C95890\_ED6DE3F0"  
 X-Mailer: Microsoft Office Outlook 12.0  
 Thread-Index: ActbuoWQEn29qh45j6YCHIT+4+3zw==  
 Content-Language: en-us  
 X-Prevags-ID: V01U2FsdGVkX18JzLjw92bfx+PUA.Tyoyniuq0LrflR6JoLn2 ofxiiZaEFODZcXC6L;mpCy0DJjraXs5929UB/Y2w7VfHpo9C9 NAKay3LNxCVW4+MBm:KWLWLIctHTt6  
 Content-Length: 210104

6 Files (150KB)



12-10-08... 12-10-08... 12-10-08... 12-10-08... 12-10-08... Attorney ...

Please sign and date the attached agreements for clarification of your files. Please mail or drop off the completed agreements as soon as possible, you do not have to make an appointment.

April Ray  
 The Law Office of Robert W. Bauer, P.A.  
 2815 NW 13<sup>th</sup> St. Suite 200 E  
 Gainesville, FL  
 (352) 375-5906  
 Fax- (352) 337-2518



Files you requested

Tuesday, January 20, 2009 10:01 AM

From April H. Ray Tue Jan 20 07:01:46 2009

**X-Apparently-To:** angelavwoodhull@yahoo.com via 206.190.37.39, Tue, 20 Jan 2009 07:01:52 -0800  
**Return-Path:** <ahr@bauerlegal.com>  
**X-YMailISG:** QAPSDDIWLDv1ioDP.JyWK85kxjH.o1CUIC sWAhrK2bawKvViv6OUXEYryj0Yxyv5z88CRgt4ASsTa3b5Bh\_mLyK0h8JyAqtTJUnX6NSOR1V7hByjp60UIkr6LEpmfj4PZSrwDAg2KPBK5apzLh5eUpvJgIX4vCUVhkh P2eRwM  
**X-Originating-IP:** [74.208.4.194]  
**Authentication-Results:** mta240.mail.mud.yahoo.com from=bauerlegal.com; domainkeys=neutral (no sig);  
**Received:** from 74.208.4.194;EHLO mout.perfora.net [74.208.4.194] by mta240.mail.mud.yahoo.com with SMTP, Tue, 20 Jan 2009 07:01:51 -0800  
**Received:** from STATION1 [wsip-98-190-41-72.ga.at.cox.net [98.190.41.72]] by mrelay.perfora.net [node=nirusi] with ESMTP (Nemesis) id 0MKpCa-1lP16rjZ9m-0007Hz, Tue, 20 Jan 2009 10:01:51 -0500  
**From:** "April H. Ray" <ahr@bauerlegal.com>  
**To:** <angelavwoodhull@yahoo.com>  
**Subject:** Files you requested  
**Date:** Tue, 20 Jan 2009 10:01:46 -0500  
**Message-ID:** <001701c97b10605b486a05111d93e0\$@com>  
**MIME-Version:** 1.0  
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**Content-Length:** 266710

1 File (192KB)



12-29-20...

Mrs Woodhull,

I am emailing you with the files that you requested from Mr. Sams. If there are any problems with the file please let me know and I will resend them.

April Ray  
 Law Office of Robert W. Bauer, P.A  
 2815 NW 13th St. Suite 200E  
 Gainesville, FL 32609

352.375.5960  
 352.337.2518 - Facsimile  
 Bauerlegal.com



Here is your reply

Tuesday, January 20, 2009 12:51 PM

From Angela V. Woodhull Tue Jan 20 09:51:01 2009

**Received:** from [74.230.134.224] by web53609.mail.re2.yahoo.com via HTTP; Tue, 20 Jan 2009 09:51:01 PST  
**X-Mailer:** YahooMailWebService/0.7.260.1  
**Date:** Tue, 20 Jan 2009 09:51:01 -0800 (PST)  
**From:** "Angela V. Woodhull" <angelavwoodhull@yahoo.com>  
**Reply-To:** angelavwoodhull@yahoo.com  
**Subject:** Here is your reply  
**To:** "Beverly E. Lowe" <bel@bauerlegal.com>  
**In-Reply-To:** <017b01c97b26\$181f2dc0\$485d8940s@com>  
**MIME-Version:** 1.0  
**Content-Type:** multipart/alternative; boundary="0-1226690025-1232473861=:7544"  
**Content-Length:** 4779

On December 23, 2008, I sent a note to your office which read "Please remove also from Seminole County GA-08-0508/0509 Your Notice of Appearance.

Thank you,  
Angela Woodhull

*It does get much clearer than that.*

*In fact, you just sent me verification that that note was received by your office, so any representation that I never agreed to in writing has never been a representation.*

*Mr. Bauer represents me in two matters--*

- 1. The probate of the estate*
- 2. The Tower Oaks Homeowners' Association.*

*This has been and will remain the only two sources of representation that have been agreed upon from the onset of representation.*

*Thank you,  
Angela Woodhull*

*You are holding David Newman hostage? Ha! Ha! That's too funny!!  
Have a great day and thank you for your assistance today. AW*

--- On Tue, 1/20/09, Beverly E. Lowe <bel@bauerlegal.com> wrote:

From: Beverly E. Lowe <bel@bauerlegal.com>  
Subject: Please call our office as soon as possible  
To: angelavwoodhull@yahoo.com  
Date: Tuesday, January 20, 2009, 12:39 PM

Mr. Bauer needs the clarification of representation he sent you.

We need an answer before your representative leaves our office.

Beverly Lowe  
Office Manager  
Law Office of Robert W. Bauer, P.A.  
bel@bauerlegal.com  
(352)375-5960



Excuse the type

Tuesday, January 20, 2009 12:52 PM

From Angela V. Woodhull Tue Jan 20 09:52:44 2009

**Received:** from [74.230.134.224] by web53609.mail.re2.yahoo.com via HTTP; Tue, 20 Jan 2009 09:52:44 PST  
**X-Mailer:** YahooMailWebService/0.7.260.1  
**Date:** Tue, 20 Jan 2009 09:52:44 -0800 (PST)  
**From:** "Angela V. Woodhull" <angelavwoodhull@yahoo.com>  
**Reply-To:** angelavwoodhull@yahoo.com  
**Subject:** Excuse the type  
**To:** bel@bauerlegal.com  
**MIME-Version:** 1.0  
**Content-Type:** multipart/alternative; boundary="0-937777381-1232473964=:8382"  
**Content-Length:** 5899

"It **doesn't** get much clearer than that." sorry for the typo AW

--- On Tue, 1/20/09, Angela V. Woodhull <angelavwoodhull@yahoo.com> wrote:

From: Angela V. Woodhull <angelavwoodhull@yahoo.com>  
Subject: Here is your reply  
To: "Beverly E. Lowe" <bel@bauerlegal.com>  
Date: Tuesday, January 20, 2009, 12:51 PM

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Subject: Please call our office as soon as possible  
To: angelavwoodhull@yahoo.com  
Date: Tuesday, January 20, 2009, 12:39 PM

Mr. Bauer needs the clarification of representation he sent you.

We need an answer before your representative leaves our office.

Beverly Lowe  
Office Manager  
Law Office of Robert W. Bauer, P.A.  
bel@bauerlegal.com  
(352)375-5960

**Angela V. Woodhull, Ph.D.**

September 25, 2008

Robert Bauer, P.A., et al.  
2815 NW 13th St  
Gainesville, FL 32609

Dear Mr. Bauer,

I am going to continue representing myself in the 5<sup>th</sup> DCA Court of Appeals regarding Cases 5D08-1899/2909. However, I did provide you yesterday with a retainer for representing me in : 01-2008-CP-01083, Alachua County Circuit Eight Judicial, regarding the probating of Louise A. Falvo's Last Will and Testament dated March 22, 2008. Please let me know when you have entered your appearance on this probate matter: 01-2008-CP-01083,

Sincerely,

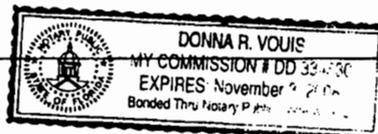
  
Angela V. Woodhull.

STATE OF FLORIDA  
COUNTY OF ALACHUA

The above letter was signed and sworn before me this 25<sup>th</sup> day of September 2008 by Angela Woodhull.

  
\_\_\_\_\_  
Notary Public

My commission expires:



IN THE DISTRICT COURT OF APPEAL OF THE STATE OF FLORIDA  
FIFTH DISTRICT

ANGELA WOODHULL,

Appellant,

v.

CASE NO. 5D08-2909

GUARDIANSHIP OF LOUISE A. FALVO,

Appellee.

DATE: January 9, 2009

**BY ORDER OF THE COURT:**

ORDERED that within ten days from the date hereof, Attorney Robert W. Bauer, Esq., shall file a response to Appellant's assertion that she will proceed pro se and file a motion to withdraw, if appropriate.

*I hereby certify that the foregoing is  
(a true copy of) the original Court order.*

  
SUSAN WRIGHT, CLERK  


cc: Robert W. Bauer, Esq.  
Angela Woodhull  
Anthony M. Nardella, Esq.



J. K. Irby, Clerk of the Circuit & County Court,  
Eighth Judicial Circuit of Florida, in and for  
Alachua County, hereby certifies this to be a  
true and correct copy of the document now of  
record in this office. Witness my hand and seal  
this 9th day of January 2009  
J. K. Irby, Clerk of the Circuit & County Court  
By [Signature]  
Deputy Clerk

**Neil Gillespie**

---

**From:** "Anna Hodges" <annahodges77@gmail.com>  
**To:** <neilgillespie@mfi.net>  
**Sent:** Friday, July 08, 2011 9:56 AM  
**Subject:** help advise! I hired and fired bauer..nightmare

Dear Mr. Gillespie,

My name is Anna Hodges. I was served a ridiculous defamation complaint filed by my husband's ex wife.

Naturally she made sure it was served a few weeks before Christmas. I had a hard time finding an attorney during that time so ended up with Bauer.

Now I know WHY he was available at Christmas.

The EX's case which is frivolous was dismissed with leave to amend. After her attorney amended my attorney had 10 days to answer.

I didn't even know there was a hearing or about the 10 days I was in the process of trying to find another attorney for many OTHER Bauer office issues.

Anyway I finally got rid of him, it took over a month, and now the case is allowed to continue due to HIS negligence. I have more to this story but must run,

another meeting with my new attorney trying to help fix this mess.

I would like to talk with you, if you have the time.

I plan to raise the ROOF off this mess!

Thank -you

Anna Hodges

352-949-2733

or email



~~FILED~~  
~~RECEIVED~~

UNITED STATES DISTRICT COURT  
MIDDLE DISTRICT OF FLORIDA  
OCALA DIVISION

2012 JAN 17 PM 3:41

CLERK, US DISTRICT COURT  
MIDDLE DISTRICT OF FL  
OCALA FLORIDA

ESTATE OF PENELOPE GILLESPIE,  
NEIL J. GILLESPIE,

Plaintiffs,

CASE NO.: 5:11-cv-539-oc-10TBS

vs.

JURY TRIAL DEMANDED

THIRTEENTH JUDICIAL CIRCUIT, FLORIDA,  
JAMES M. BARTON, II, Circuit Court Judge, and individually,  
THE LAW OFFICE OF ROBERT W. BAUER, P.A.,  
ROBERT W. BAUER,

Defendants.

\_\_\_\_\_ /

APPENDIX 2

Verified Notice of Filing Disability Information of Neil J. Gillespie,

May 27, 2011, 13th Circuit, Florida.

**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.

**RECEIVED**

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

DIVISION: J

**MAY 27 2011**

Defendants.

**CLERK OF CIRCUIT COURT  
HILLSBOROUGH COUNTY, FL**

**VERIFIED NOTICE OF FILING DISABILITY INFORMATION  
OF NEIL J. GILLESPIE**

Plaintiff pro se Neil J. Gillespie (“Gillespie”) gives *Notice Of Filing Disability Information of Neil J. Gillespie* and states as follows:

**Introduction**

1. Since March 3, 2006, Ryan Christopher Rodems, counsel for the Defendants, has directed, with malice aforethought, a course of harassing conduct toward Gillespie that has aggravated his disability, caused substantial emotional distress and serves no legitimate purpose. This is a violation of section 784.048, Florida Statutes (Stalking), and chapter 825 et seq., Florida Statutes (Abuse, Neglect, and Exploitation or Elderly Persons and Disabled Adults). Gillespie is disabled, and Mr. Rodems knows of Gillespie’s disability from Defendants’ prior representation of him.

2. This six year-long lawsuit is to recover \$7,143 stolen<sup>1</sup> by Barker, Rodems & Cook, PA and William J. Cook from Gillespie during prior representation. The Defendants also countersued Gillespie for libel. See Plaintiff’s First Amended Complaint

filed May 5, 2010. Mr. Rodems is unethically representing his law firm, the Defendants, against former client Gillespie on matters that are the same or substantially similar to the prior representation. Mr. Rodems' independent professional judgment is materially limited by his own interest and conflict. See *Emergency Motion to Disqualify Defendants' Counsel Ryan Christopher Rodems & Barker, Rodems & Cook, PA* filed July 9, 2010.

3. Mr. Rodems has set a level of animosity in this lawsuit best described by Gillespie's former attorney Robert W. Bauer<sup>2</sup> August 14, 2008 during an Emergency Hearing on garnishment before Judge Marva Crenshaw (p16, line 24):

24 Mr. Rodems has, you know, decided to take a full  
25 nuclear blast approach instead of us trying to work  
1 this out in a professional manner. It is my  
2 mistake for sitting back and giving him the  
3 opportunity to take this full blast attack.

Mr. Rodems' "full nuclear blast approach" has aggravated Gillespie's disability to the point where Gillespie can no longer represent himself at hearings. Gillespie becomes easily distracted and confused, and can no longer speak coherently enough during a hearing to represent himself. See *Plaintiff's Motion For Appointment Of Counsel, ADA Accommodation Request, and Memorandum of Law* filed May 24, 2011.

4. Gillespie's former lawyer Robert W. Bauer believed Mr. Rodems so volatile that Bauer prohibited Gillespie from appearing as a witness in his own case. Mr. Bauer sent Gillespie an email July 8, 2008 at 6.05PM stating in part:

"No - I do not wish for you to attend hearings. I am concerned that you will not be able to properly deal with any of Mr. Rodems comments and you will enflame the

---

<sup>1</sup> And other offenses, see Plaintiff's First Amended Complaint, filed May 5, 2010.

<sup>2</sup> Gillespie incurred \$33,000 in legal fees by Mr. Bauer in this matter.

situation. I am sure that he makes them for no better purpose than to anger you. I believe it is best to keep you away from him and not allow him to prod you. You have had a very adversarial relationship with him and it has made it much more difficult to deal with your case. I don't not wish to add to the problems if it can be avoided.:

See Plaintiff's Notice of Filing Affidavit of Neil J. Gillespie filed September 18, 2010.

This is evidence that Gillespie was denied access to court in his own case.

### **Circuit Judge James D. Arnold Is Uninformed About Gillespie's Disability**

5. During a hearing May 3, 2011 the record shows Judge Arnold is uninformed about Gillespie's disability. (Transcript, p7, line 7). Judge Arnold held the hearing ex parte. Gillespie was not present at the hearing and he was not represented by counsel at the hearing. Opposing counsel Mr. Rodems mislead the court about Gillespie's disability. In order to end the ignorance and misrepresentation and about Gillespie's disability and request for accommodation under the Americans With Disabilities Act (ADA), he decided to make this information public. Gillespie desires to bring this matter out of the closet and into the public domain for the benefit of future litigants. Perhaps this information will someday help the courts function better.

### **Dr. Karin Huffer is Gillespie's ADA Advocate**

6. Because of Mr. Rodems' unethical and unlawful conduct<sup>3</sup> that aggravated his disability and disrupted the proceedings, Gillespie sought accommodation under Title II of the Americans With Disabilities Act (ADA). Gillespie retained Dr. Karin Huffer as his ADA advocate at his own expense.

Dr. Karen Huffer  
Legal Victim Assistance Advocates (LVAA)

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<sup>3</sup> Gillespie was able to work amicably with counsel Traci H. Rollins and David J. D'Agata, of Squire, Sanders & Dempsey, LLP in another lawsuit, see Gillespie v. HSBC Bank, et al, case no. 5:05-cv-362, US District Court, Middle District of Florida, Ocala Division. The HSBC lawsuit was resolved in fifteen (15) months with a good result.

http://www.lvaallc.com/  
3236 Mountain Spring Road  
Las Vegas, NV 89146  
Tel. 702.528.9588  
Email: legalabuse@gmail.com

Dr. Huffer consulted with Gillespie and prepared a medical report of his disability.

**Gillespie Filed ADA Accommodation Request February 19, 2010**

7. Gillespie filed *Notice of Americans With Disabilities Act (ADA) Accommodation Request of Neil J. Gillespie* February 19, 2010. The Notice shows Gillespie provided his ADA Request, and ADA Report by Karin Huffer to Gonzalo Casares, ADA Coordinator for the 13th Circuit, with a copy to Judge Barton. The Notice states:

“The ADA Request and ADA Report are to be kept under ADA Administrative confidential management except for use by the ADA Administrator revealing functional impairments and needed accommodations communicated to the Trier of Fact to implement administration of accommodations. This information is NOT to become part of the adversarial process. Revealing any part of this report may result in a violation of HIPAA and ADAAA Federal Law.”

8. Gillespie’s completed and signed ADA form for the 13th Circuit is attached to his *Notice Of Americans With Disability Act (ADA) Accommodation Request Of Neil J. Gillespie*. (Exhibit 1). The ADA form specifies that Mr. Rodems is the problem relative to Gillespie’s disability, see item 6, Special requests or anticipated problems (specify): “I am harassed by Mr. Rodems in violation of Fla. Stat. section 784.048.” Mr. Rodems withheld this information from Judge Arnold during the ex parte hearing May 3, 2011.

9. A person’s ADA information is confidential and protected from public disclosure like any other private medical information. Gillespie finds the public disclosure of his private information contained in Dr. Huffer’s report and his ADA request objectionable just as any reasonable person would find it objectionable. In Gillespie’s view this is a

wrongful intrusion into his private life, in such manner as to outrage or cause mental suffering, shame, or humiliation to a person of ordinary sensibilities. Gillespie made the information public to stop the ongoing damage to his case, as well as for the benefit of others who are either in a similar situation, or may encounter one in the future. Just like Brian Sterner, a disabled quadriplegic man, made a public disclosure about being dumped from a wheelchair by the Hillsborough County Sheriff's Office, perhaps Gillespie's public disclosure can move the court system to improvement for the greater good. Below is a link to the CNN YouTube video about the incident with Brian Sterner.

[http://www.youtube.com/watch?v=huRYZAJ8wzA&feature=player\\_embedded](http://www.youtube.com/watch?v=huRYZAJ8wzA&feature=player_embedded)

10. A copy of Dr. Huffer's ADA report is submitted as Exhibit 1. The report is addressed as follows:

Mr. Gonzalo B. Casares  
Americans with Disabilities Act (ADA)  
Coordinator for the 13th Judicial Circuit  
800 E. Twiggs Street, Room 604  
Tampa, Florida 33602  
(813) 272-7040 - (813) 272-6169  
email: ada@fliud13.org

11. A copy of Gillespie's ADA Accommodation Request is submitted as Exhibit 2.

**Gonzalo B. Casares Unqualified As ADA Coordinator**

12. Gonzalo B. Casares serves as the ADA Coordinator for the Thirteenth Judicial Circuit but there is substantial evidence that he is unqualified for this position in terms of his education, training, experience and authority. Mr. Casares is a building repair and maintenance person with no qualifications to review Gillespie's ADA medical report, or authority to grant or implement ADA accommodations based upon the ADA medical report. In an email to Gillespie April 14, 2010, Mr. Casares wrote: (relevant portion)

“Court Facilities Management is the point of contact for all facilities related issues such as repairs and/or maintenance work. As such, we can determine if an ADA function is at issue in our set of buildings and track requests for accommodations. Your request is not within our means to resolve and was referred to the Legal Department for the appropriate course of action.”

In an email to Gillespie May 4, 2010, Mr. Casares wrote: (relevant portion)

“The medical file was never within our department’s means to help and was handed over to Legal.”

13. In a letter to Gillespie dated July 9, 2010 from David A. Rowland, Counsel to the Thirteenth Judicial Circuit, Mr. Rowland denied Gillespie’s request for accommodation under Title II of the ADA. (Exhibit 3). Upon information and belief, Mr. Rowland is a lawyer, not a medical doctor, and therefore he is unqualified in terms of his education, training, experience and authority to review Gillespie’s ADA medical report, or grant or implement ADA accommodations based upon the ADA medical report.

14. As of today, Gillespie is unaware of any qualified person who has reviewed the ADA Report by Dr. Karin Huffer (exhibit 1) and evaluated Gillespie’s ADA Request (Exhibit 2) as it related to Dr. Huffer’s report and Title II of the ADA.

**Defendants Published Gillespie’s Privileged Medical Information**

15. The Defendants published Gillespie’s privileged medical information during a deposition with AMSCOT Corporation. (Eugene R. Clement v. AMSCOT Corporation, case no. 99-2795-CIV-T-26C, US District Court, MD Fla., Tampa). Gillespie was deposed May 14, 2001 by John A. Anthony, attorney for AMSCOT. Approximately twenty pages of the 122 page transcript concerned Gillespie’s disability, treatment and rehabilitation. Defendants failed to object to interrogatories about Gillespie’s privileged medical information. The transcript is submitted as Exhibit 4. The deposition was transcribed by, and a transcript produced by, Chere J. Barton, the wife of Judge James M.

Barton II who presided over this case from February 2007 through May 2010, and who sanctioned Gillespie \$11,550 for discovery errors and a misplaced defense to a motion to dismiss. Judge Barton was disqualified May 24, 2010 due to a long-standing business relationship with his wife and the Defendants.

16. I Neil J. Gillespie hereby waive my confidentiality of Exhibits 1 through 4 to this verified notice, including the ADA report prepared by Dr. Karin Huffer.

RESPECTULLY SUBMITTED AND SWORN TO May 27, 2011.

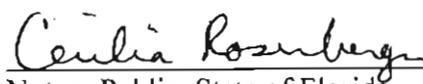
  
Neil J. Gillespie, Plaintiff pro se  
8092 SW 115<sup>th</sup> Loop  
Ocala, Florida 34481  
Telephone: (352) 854-7807

STATE OF FLORIDA  
COUNTY OF MARION

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

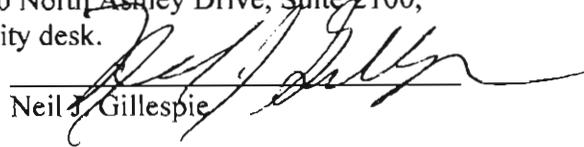
WITNESS my hand and official seal May 27, 2011.



  
Notary Public, State of Florida

Certificate of Service

I HEREBY CERTIFY that a copy of the foregoing was provided May 27, 2011 to Ryan C. Rodems, Barker, Rodems & Cook, PA, 400 North Ashley Drive, Suite 2100, Tampa, Florida 33602 by CD delivered to the security desk.

  
Neil J. Gillespie

**KARIN HUFFER, M.S., M.F.T.**

**3236 Mountain Spring Rd. Las Vegas, NV 89146**

**Request for Reasonable Accommodations ADAAA Title II  
Response from the ADA Access Coordinator Must Be Received within  
Ten Days of Receipt of this Report.**

This request and report are to be provided to the ADA Access Coordinator:

Mr. Gonzalo B. Casares  
Americans with Disabilities Act (ADA)  
Coordinator for the 13<sup>th</sup> Judicial Circuit  
800 E. Twiggs Street, Room 604  
Tampa, Florida 33602  
(813) 272-7040 - (813) 272-6169  
email: [ada@fljud13.org](mailto:ada@fljud13.org)

This report is for the administrative purpose of establishing accommodations under the Americans with Disabilities Act (ADA), Title II, to ensure equal access to court proceedings for Neil Gillespie.

Accommodations will be needed during any meeting, procedure, hearing, discovery process, and any other court-related activity. In response to the American Bar Association (ABA) Resolution of 2002 and the ADA, Title II, and the ADAAA of 2008 effective as of January 1, 2009, these requests and report are intended to assist the Court to properly accommodate Neil Gillespie.

Legal Victim Assistance Advocates (LVAA) has chosen to advocate in this case because it especially addresses the invisible disabilities. LVAA is an organization that advocates for litigants with disabilities under the ADAAA Title II. They help to monitor that accommodations are adhered to, assist in filing grievances and complaints, and generally support litigants with disabilities. I am a managing partner of LVAA. This is a case that clearly represents the unique challenge faced by litigants with disabilities as they seek equal footing in Court under the ADA, the ADA Amendments Act of 2008 (ADAAA), and ABA Resolution of 2002, all mandating accommodations for those functionally impaired. All requirements for qualification for ADA Accommodations are met and reported herein. When we advocate for a client, the client has undergone a screening process ruling out malingering or any other untoward intent.

This report is to be kept under ADA Administrative confidential management except for use by the ADA Administrator revealing functional impairments and needed accommodations communicated to the Trier of Fact to implement administration of accommodations. This information is NOT to become part of the adversarial process. Revealing any part of this report may result in a violation of HIPAA and ADAAA Federal Law.

**EXHIBIT**

**1**

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- III. Diagnosis
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  - A. Functional Impairments and Interference with Daily Activities
  - B. Physiological Impairments – Symptoms
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  - A. Definition of DSM-IV Diagnostic Axes
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- VI. ADA Accommodations Necessary for Fair Court Proceedings
  - A. Current Trend in Providing Access for All People without Disability Bias
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- VIII. Summary and Conclusions
- IX. Appendix
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  - B. Legal Considerations
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- I. Client: Neil Gillespie**
- II. Date: February 17, 2010**
- III. Diagnosis: Depression, Post Traumatic Stress Disorder**

### **Brief History**

Mr. Gillespie suffers from Chronic Depression as diagnosed by Cesar R.. Gamero, M.D. in Ocala, Florida, 2009. Dr. Gamero also concurs with earlier diagnoses as does Karin Huffer, M.S., M.F.T., of Post Traumatic Stress Disorder and recognizes that Mr. Gillespie suffers from velopharyngeal incompetence that worsens when he is stressed. This presents a barrier to managing effective communication during litigation. The Social Security Administration found Mr. Gillespie totally disabled in 1994.

Mr. Gillespie has been in need of ADA Accommodations since commencement of his legal actions. The fact that he was not protected by the ADA created an inaccurate perception of him to the Court and clearly demonstrates that Mr. Gillespie did not have equal access to the litigation proceedings or due process of law. The Americans with Disabilities Act should have protected Mr. Gillespie when he was first in litigation. With accommodations, he may well have avoided the severe trauma he suffers today.

Litigants with disabilities are vulnerable to victimization in courts from adversaries, who insist on being dominant, take advantage of trust, coerce, terrorize, and exploit the unsuspecting. Litigants, like Mr. Gillespie, are often the most shocked from both physical and non-physical injuries with which they suffer at the hands of unkind lawyers. When they report their symptoms to the court, they are often misunderstood. They are suspected of manipulation, accused of being self-pitying, and treated with impatience exacerbating their conditions.

Litigants with PTSD and other disabilities attempt to function in the legal system reporting to the Court that they are suffering. Yet, attorneys or judges rarely guide them to the ADA Administrative office for help when they clearly struggle during litigation. Our society has been slow to recognize the connection between invisible disabilities, the coercive nature of litigation, and victims' health. (Huffer, 95). Many victims like Mr. Gillespie succumb to injury, Post-Traumatic Stress Disorder (PTSD), or other somatization of trauma. What the Court has overlooked is the broadened use of the ADA as it applies to the use of ADA-mandated accommodations for invisible disabilities.

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#### **IV. Interference with Major Life Activities:**

##### **A. Functional Impairments:**

Mr. Gillespie is functionally impaired in the areas listed below. It is important to note that Mr. Gillespie's impairments are largely invisible. He may appear to be functional on a superficial level even when he is not. Mr. Gillespie's functioning is the highest when he is in supportive and safe environments. His functioning deteriorates when he is in non-supportive, unsafe, or intimidating environments or when he is under any perceived time pressure or stress. His impairments are dramatically intensified during litigation.

- Mr. Gillespie cannot sustain concentration due to depression and symptoms of PTSD in the form of flashbacks, emotionally arousing and exhausting intrusive thoughts triggered by reminders of the traumatic events.
- Mr. Gillespie cannot sustain a communication path if interrupted, distracted, or threatening body language is used toward him. Such circumstances result in cognitive disorganization, dissociation, and an inability to integrate and process information. Mr. Gillespie cannot sustain a progressive chain of communication under stress due to his congenital speech problem. This communication is critical for litigation.
- Mr. Gillespie cannot open mail or address matters pertaining to his legal case without extreme anxiety. This slows him down when he faces deadlines. He cannot manage large amounts of hard copy documents. He must have the time to scan documents for management purposes.
- Mr. Gillespie cannot sleep normally, rest, or recuperate due to Post Trauma Stress symptoms including nightmares and startle responses (i.e., he jumps when doorbell rings). He has hyperreactivity/hyperarousal and she can't eat or sleep or digest food normally.
- Mr. Gillespie is easily hyperaroused on a physiological level, especially when feeling overwhelmed or under any perceived time constraint or threat. Hyperarousal makes it impossible for him to think clearly and make logical and knowing decisions when under extreme pressure.
- Mr. Gillespie is unable to withstand stress without triggering moments of dissociation. He may be unable to consistently remember the words that are spoken in

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Court and cannot perform verbally to participate in his legal case without assistance and accommodations.

- Mr. Gillespie is vulnerable to neuroanatomical effects that can be devastating, i.e. decreased hippocampal volume and hyperadrenia. Hyperadrenia influences all of the major physiological processes in the human body and has a host of physical, emotional, and psychological effects. Physical impairments may be induced when stress is protracted and unrelenting.

#### **B. Physiological Impairments - Symptoms:**

**Often overlooked by judicial personnel are well-established physiological changes experienced with PTSD, that seriously impair a person's ability to function during litigation without accommodations:**

#### **Psychophysiological Effects**

Flashbacks;  
Startle responses;  
Hyper-reactivity/hyper-arousal

#### **Neurohormonal Effects**

Fear and extreme anxiety;  
Hyper-vigilance, unable to relax or have peace due to intrusive thoughts/emotions;  
Stress hormones reduce and down-regulate receptors, causing a feeling of being numb/exhausted and freezing the ability to process information and respond.

#### **Serotonin-dependent Effects**

Depression

#### **Memory Impairment**

Dissociation; Mr. Gillespie must use energy to fight the natural urge to deny the reality put before him; Traumatic intrusive thoughts threaten to crowd out the issue at hand during legal processes; Increased opioid response; a numbing hormone intended to protect the traumatized from pain must be overcome to deal with the legal issues at hand; It is an exhausting emotional "swim upstream" to stay focused and attentive in the courtroom, critical data is missed, and nuances escape the person with PTSD.

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### **Neuroanatomical Effects**

Decreased hippocampal volume; the hippocampus can actually shrink if trauma is not relieved;  
Decreased immune system functioning, which can invite physical illness.

### **Physical Effects**

Chronic and diffuse physical pain;  
Weight loss or gain;  
Inflammatory conditions;  
Digestion problems;  
Insomnia and nightmares

References: (van der Kolk, 94), (van der Kolk & Fisler, 95), (van der Kolk, Pelcovitz, Roth, McFarlane, Herman, 95), (van der Kolk, Hopper, Osterman, 2001), (Zucker, Spinazzola, van der Kolk, 2006), (Huffer, K. and Parrett, B., 2005), (Courtois et al, 2009).

## **V. DSM-IV Multiaxial Assessment (Axes I-V)**

### **A. Sample & Definition of DSM-IV Diagnostic Axes:**

Accepted Forensic and Psychiatric illustration of diagnostic impression and contributing factors, using Diagnostic and Statistical Manual IV Edition (DSM-IV), is presented below. Please see [www.psyweb.com](http://www.psyweb.com) for further explanation.

- Axis I: Clinical Disorders, most V-Codes, and conditions that need Clinical attention.
- Axis II: Personality Disorders and Mental Retardation
- Axis III: General Medical Conditions.
- Axis IV: Psychosocial and Environmental Problems.
- Axis V: Global Assessment of Functioning Scale.

### **B. Multiaxial Diagnosis of Subject Client**

- Axis I Depression 296/3, Post Traumatic Stress Disorder, 309.81 with chronic and acute symptoms anxiety
- Axis II NA

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Axis III Velopharyngeal incompetence <sup>1</sup> Diabetes Type II Adult Onset  
Axis IV Legal  
Axis V Global Assessment of Functioning (GAF) prior 85  
GAF with stress from legal system 60 in court

## **VI. ADA Accommodations Necessary for Fair Court Proceedings**

### **A. Current Trend in Providing Access For All People Without Disability Bias:**

American Bar Association and the United States Department of Justice in their Webinar, Grant No. 2004-WT-AX-K078 2009, urge supportive and safe judicial environments. The trend is toward moving to a social rather than a medical model for providing accommodations. The attitude is to generally promote near-normal functioning and a fair court process for all people. Courts are asked to, without special accommodations requested, assure the most-basic of human rights are provided: security, respect, dignity, the opportunity to pursue rights in a forum with a fair process, and the freedom from any type of degrading or disrespectful treatment. When special accommodations are requested, the courts are to use their imaginations and accommodate to the greatest extent possible without altering the basic functions of the court. A Florida example is found in Van Bever et al *National Center for State Courts, 2002*, when an agoraphobic woman's legal activities were held in her home due to her phobia preventing her from functioning out of her home. This attitude is affirmed consistently from the Universal Declaration of Human Rights, 1948 through the ADA of 1990 and the ADA of 2008 and Florida 13<sup>th</sup> Circuit Court ADA Policy Statement.

### **B. ADA Accommodations Specifically Needed:**

- 1) During court processes, Mr. Gillespie is likely to become symptomatic creating problems concentrating, thinking, processing information, responding and presenting his case in court. **He may request short breaks if that occurs.**
- 2) Mr. Gillespie needs **flexibility with deadlines** due to cognitive interference symptoms interfering with his ability to sustain attention to the issues at hand. Preparation for court is a greater burden for Mr. Gillespie than for litigants without his functional impairments.

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<sup>1</sup> Inadequate velopharyngeal closure (VPC) allows air to escape through the nose during the generation of consonants requiring high oral pressure, leading to inappropriate nasal resonance during speech production.

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**3) Mr. Gillespie needs directives of the Court made into written form and enforced as a Court Order.**

**4) Mr. Gillespie needs assistance in the form of case management for complex litigation per rules of the court that Mr. Gillespie will provide.**

**6) Mr. Gillespie needs assistance to halt harassment that exacerbates Mr. Gillespie's disabilities. This is restricted to behaviors designed to emotionally upset Mr. Gillespie with no purpose related to the value of the case.**

**7) Mr. Gillespie needs a continuance starting immediately allowing him to gather, organize, prepare and scan documents, and to retain an attorney.**

**8) Mr. Gillespie has attached a list of rules he needs adhered to, and accommodations that he has separately put together. He will do the from time to time. It appears that he is reasonable in this effort in that his requests are either covered under published rules, procedures, laws, or are reasonable exceptions that fall under the ADAAA Title II. This is Mr. Gillespie's best effort to comply across the board to ensure his due process of law. To the greatest extent possible, I urge the court to cooperate with Mr. Gillespie's separate list citing his needs.**

## **VII. Findings:**

**It is important to note that, in addition to physical disabilities, Mr. Gillespie suffers from PTSD, a psychiatric injury, not a mental illness. His condition is a normal reaction to abnormal circumstances. In fact, there are indications that his Depression is a part of his Traumatic Stress picture. If Mr. Gillespie did not suffer from traumatic stress, he would not be normal considering his state of affairs. Mr. Gillespie's impairments are severely disabling and without proper care can be debilitating for a lifetime.**

**Due process rights are compromised when discriminatory practices are allowed. The cruel behavior reported by this litigant needs to come to the attention of the Trier of Fact. This is a case that must have ADA protection in order to avoid exploitation.**

## **VIII. Summary and Conclusions**

**Mr. Gillespie must have a response to his Request for Accommodations timely, within ten days. The lack of ADA Accommodations has deprived him of his due process rights to be accommodated or to file a grievance or an appeal. He has been exploited, ridiculed, and**

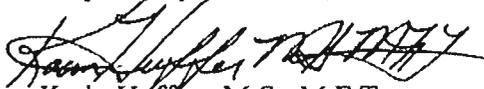
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denied his rights to a fair hearing.

Recent studies have shown that criticism and ridicule are the closest to physical violence in terms of their effect on the victim. Further, intimidating body language and invasive behaviors insult a different section of the brain destructively. Therefore, if a litigant is assaulted by criticism and ridicule verbally simultaneously with invasive power moves through body language and attempts at legally gaining access to private and personal space and belongings, the brain is attacked in two separate sections (Maurio & O'Leary, 2004)(Worldwide Intnatl 2003).

The specific psychologically aggressive stance taken by Mr. Gillespie's adversary has turned the Court process into a bully/victim cycle due to the ridicule and exploitation of Mr. Gillespie's functional impairments. Preventing this type of discrimination is precisely what the ADA is intended to accomplish fully endorsed by the State of Florida.

Respectfully submitted,



Karin Haffer, M.S., M.F.T.

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## **IX. APPENDIX**

### **A. Collateral Documents and Contacts Reviewed.**

02/16/10 Letter to Mr. Hector F Ruiz, Jr.  
United States Department of Justice – emailed

02/16/10 Letter from Gonzolo Casares – Basic form letter with generic instructions for submitting ADA Accommodations request.

02/09/10 Letter to Gonzalo Casares for directions as to submission of forms and request for accommodations.

02/03/10 ADA Title II Guidelines for State of Florida

01-26-10, TRANSCRIPT, Judge Barton, ADA and Case Management

08/25/08 Letter seeking help from Christopher Nauman, Assistant Court Counsel for Thirteenth Judicial Circuit of Florida asking for assistance to obtain reasonable accommodations for court dates.

09/26/06 Letter to Casares B. Gonzolo, ADA Coordinator requesting ADA Accommodations.

08/11/06 Memorandum sent to Casares B. Gonzolo requesting ADA Accommodations.

Spring 2000, Hillsborough County Americans with Disabilities Act Transition Plan regarding commitment to ADA Implementation.

1998 Article by Hon. Claudia Rickert Isom Stetson Law Review Vol. XXVIII Professionalism and Litigation Ethics, 322-326.

### **B. Citations, Referral Source and Recommended Supportive Resources**

American Bar Association (1980). Code of Professional Responsibility. Retrieved 4 September, 2007, from: <http://www.abanet.org/cpr/mrpc/mcpr.pdf>.

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American Bar Association ABA Urges Equal Access to Courts for Individuals with Disabilities MPDLR 26:5 September/October 2002, pp 772-774.

American Bar Association (2007a). ABA Model Code of Judicial Conduct. Retrieved 4 September, 2007, from: [http://www.abanet.org/judicialethics/ABA\\_MCJC\\_approved.pdf](http://www.abanet.org/judicialethics/ABA_MCJC_approved.pdf).

American Bar Association (2007b). Retrieved 7 September 2007 from: [http://www.abanet.org/publiced/lawday/talking/child\\_bestinterest.html](http://www.abanet.org/publiced/lawday/talking/child_bestinterest.html).

American Bar Association, Standards of Practice for Lawyers Representing Victims of Domestic Violence, Sexual Assault, and Stalking in Civil Protection Order Cases. American Bar Association; Chicago, Ill, 2007.

American Psychological Association (2002). Ethical principles of psychologists and code of conduct. Retrieved 4 September, 2007, from <http://www.apa.org/ethics/code2002.html>.

American Psychiatric Association, Diagnostic and Statistical Manual of Mental Disorders, 4<sup>th</sup> ed., revised (DSM IV-R) APA, Washington D.C., 1994.

Baker, Claudia, M.S.W., MPH & Alonso, Cessie, LCSW. Forensic Validity of a PTSD Diagnosis Department of Veterans Affairs National Center for PTSD.

Barak, A., & Buchanan, T. (2004). Internet-based psychological testing and assessment. In R. Kraus, J. Zack & G. Stricker (Eds.), Online counseling: A handbook for mental health professionals (pp. 217-239). San Diego, CA: Elsevier Academic Press.

Barak, A., & English, N. (2002). "Prospects and limitations of psychological testing on the Internet." Journal of Technology in Human Services, 19 (2/3), 65-89.

Bard, Morton, and Dawn Sangrey. The Crime Victims Book. New York: Brunner/Mazel, Inc., 1986.

Bloom, Sandra L., M.D., Reichert, Michael, Ph.D Bearing Witness Haworth Maltreatment and Trauma Press. New York, 1998.

Bond, Rod and Smith, Peter B. "Culture and Conformity: A Meta-Analysis of Studies Using Asch's (1952b, 1956) Line Judgment Task". Psychological Bulletin, 1996, Vol. 119, No 1, 111-137.

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Bremner JD, Narayan M (1998): "The effects of stress on memory and the hippocampus throughout the life cycle: Implications for childhood development and aging." *Develop Psychopath* 10:871-886.

Brown, James T. "Avoiding Litigation Neurosis: A Practitioner's Guide to Defending Post Traumatic Stress Disorder Claims." *The American Journal of Trial Advocacy*. Vol. 20, Number 1, Center for Advocacy and Clinical Education, Cumberland School of Law, Samford University, Birmingham, AL, fall 1996.

Chrousos, G.P.. The Hypothalamic-pituitary-adrenal axis and immune-mediated inflammation *The New England Journal of Medicine* Volume 332: 1351-1362 No20. 1995.

Courtois, Christine A. and Ford, Julian D. et al *Treating Complex Traumatic Stress Disorder* The Guilford Press, New York, NY, 2009 p313.

D'Amato, Anthony. *The Ultimate Injustice: When a Court Misstates the Facts*. 11 *Cardozo Law Review* 1313 (1990) (Code A900).

Goleman, Daniel. "Key to Post Traumatic Stress Lies in Brain Chemistry, Scientist Finds." *New York Times*, 12 June 1990.

Herman, Judith L. *Trauma and Recovery*. New York: Basic Books, 1997.

Huffer, Karin, M.S., M.F.T. *Overcoming the Devastation of Legal Abuse Syndrome*. Fulkort Press, Las Vegas, NV, 1995 pp 20-26, 69-77.

Huffer, K. and Parrett, B. "Judicial System Inaccessibility for Those With Psychiatric Injury – Legal Abuse Syndrome as a Psychiatric Injury and Diagnosable Subcategory of Post Traumatic Stress Disorder" Edited subtitle for publishing "Legal Abuse Syndrome: Fact or Fad" *Diogenes The Magazine*, Fall Edition, 2005, p. 8-10, 34.

Hurder, Alex J. "ABA Urges Equal Access to Courts for Individuals with Disabilities." *September/October, 2002* 26:5 *MPDLR*.

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### **C. Legal References and Considerations**

Kenneth Munson v. Del Taco, Inc., S162818, opinion filed 6/11/09, see link <http://caselaw.lp.findlaw.com/data2/californiastatecases/s162818.pdf>)

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Supreme Court of the United States re: The Board of Trustees of the University of Alabama and the Alabama Department of Youth Services v. Patricia Garrett and Milton Ash, Brief Amicus Curiae of the American Cancer Society in Support of Respondents. Question: Do Title I and Title II of the Americans with Disabilities Act of 1990, 42 U.S.C. 12101 et seq., properly invoke Congress' enforcement authority under Section 5 of the Fourteenth Amendment?

Tennessee v Lane

[http://www.supremecourtus.gov/oral\\_arguments/argument\\_transcripts/021667.pdf](http://www.supremecourtus.gov/oral_arguments/argument_transcripts/021667.pdf)

U.S. Department of Justice, Americans with Disabilities Act Handbook, U.S. Equal Employment Opportunity Commission, 12/1991 Appendix N, pp 1-11.

Van Bever, Mark Esq. National Center for State Courts, 2002 This project was supported by Grant #1999-DD-BX-0084 awarded by the Bureau of Justice Assistance, Office of Justice Programs, U.S. Department of Justice. They advise, "Use your Imagination" in accommodations to provide access. There is no frivolous or unimportant disability. Even inability to interact with others is deemed a major life activity: Jacques v. DiMarzio, Inc., Nos. 03-9080, 03-9109, 2004 WL 2223217 (2d Cir. Oct. 5, 2004.) The ruling is important because "if inability to interact with others is deemed major life activity, it significantly expands when individuals can recover under the ADA," said Duke University law professor Erwin Chemerinsky. Plaintiff Audrey Jacques worked at a Staten Island, New York, electric-guitar factory owned by DiMarzio, Inc. She had suffered what her complaint called "severe and major depressions" for years and in 1991 was diagnosed with chronic bipolar disorder. In 1996, the company fired her after she had numerous confrontations with coworkers, including her immediate supervisor. A jury in the Eastern District of New York found that DiMarzio had fired Jacques because it "perceived" her as being disabled in the major life activity of "interacting with others" and awarded compensatory and punitive damages. DiMarzio appealed, challenging how the judge instructed the jury. The judge had relied on the Ninth Circuit's ruling in McAlindin v. County of San Diego, which described "interacting with others" as "an essential, regular function, like walking and breathing," that easily qualifies under the ADA. (192 E3d 1226 (9<sup>th</sup> Cir. 1999).)

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Persons with Disabilities have recourse if they are denied accommodations.

“A plaintiff who establishes a violation of the ADA, therefore, need not prove an intentional discrimination in order to obtain damages under section 52 [of the California Civil Code]” (Kenneth Munson v. Del Taco, Inc., S162818, opinion filed 6/11/09, see link: <http://caselaw.lp.findlaw.com/data2/californiastatecases/s162818.pdf>)

#### **D. Qualifications of the Examiner/CV**

Karin D. Huffer, M.S., M.F.T.  
3236 Mountain Spring Road, Las Vegas, NV 89146  
Email: [legalabuse@gmail.com](mailto:legalabuse@gmail.com)  
<http://www.legalabusesyndrome.org>  
<http://www.lvaallc.com>  
Telephone: 702-528-9588

#### **Clinical Experience**

I have over 35 years experience as Marriage Family Therapist, Lic. #0082, researching educating, diagnosing, and treating Post Traumatic Stress Disorder (PTSD), Legal Abuse Syndrome (LAS), and a wide variety of other brain injuries and disorders in both private and public sectors.

#### ***Americans with Disabilities Act (ADA) Evaluator and Expert Witness***

My testimony has met Daubert and Frye Standards serving clients in the states of Nevada, California, Michigan, Massachusetts, Alaska, Arizona, Alabama, New York, Texas, Virginia, Illinois, Ohio, Oregon, New Hampshire, Pennsylvania, and Florida. Clients also reach to the UK, Ireland, Australia and Canada.

I rarely testify in court because once ADA Accommodations are filed, I provide basic expert information in the form of a report followed by usual discovery after which most cases settle. Case information is kept confidential due to HIPAA and ADA confidentiality as well as the sensitive nature of domestic violence cases. Exposure is limited to the following cases as verification examples:

I was accepted as an expert witness and testified in Court in Martinez Family Court – Contra Costa County, California, May 1, 2008 for a Pro Se Litigant. I testified in Federal Court in Palm Beach, Florida for a Pro Se Litigant and Miami/Dade Court for a Pro Se Litigant. I served as expert witness in San Diego, CA for Stephen Dimeff, Attorney, and in San Rafael, California for Attorney William Russell.

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I serve as a case consultant to Legal Victim Assistance Project (501c3 Public Charity Congressional District Programs and carry out the United States Department of Justice mandate in Title II of the Americans with Disabilities Act prohibiting discrimination against qualified individuals with disabilities, in the Court, 28 C.F.R. §35.130(a).

In order to facilitate compliance with The American Bar Association Resolution of 2002, and the ADA and the ADA Amendments Act, I founded Legal Victim Assistance Advocates, LLC. (LVAA), providing accommodations design and in-court advocacy for litigants with disabilities. LVAA also provides certification training for ADA Advocates and offers counseling, coaching, and leadership toward fair access to litigation for individuals with disabilities under the Americans with Disabilities Act, Title II of the ADA of 1990, 42 U.S.C. §12131-12134, Civil Rights Division, Disability Rights Section and The ADA, 2008.

### **Licenses and Certifications**

Honorary Doctorate Counseling and Forensic Psychology Kings College.  
Marriage and Family Therapy, Lic. #0082, Nevada State Board of  
Marriage and Family Therapists, with full privileges to diagnose, treat, and assess  
clients per DSMIV-V and ICD 9-10 :

Certified EMDR Therapist by Eye Movement and Desensitization Institute:  
Nevada Department of Education, licensed Psychology, Counselor, English, Social  
Studies, Special Education Title I IDEA and Section 504.

### **Education**

Post-Masters Continuing Education Units in Traumatic Stress (more than 500 units).  
M.S. 1972, University of Nevada, Las Vegas, Nevada, Psychology

***B.S. 1963, University of Idaho, Moscow, Idaho, Psychology***

Nurses Training Deaconnes Hospital, Spokane, Washington 1960.

### **Memberships**

#### ***Clinical Member, AMFT***

Nevada Association of Marriage and Family Therapists NAMFT  
EMDRIA Professional Association of EMDR Therapists  
Professional Speaker, Instructor, and Consultant with Special Experiences in the Areas of  
Trauma and Post Traumatic Stress Disorder

2009 International Conference on Violence and Trauma, September  
2009 presenter and panel member.

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- 2009 Participant in American Bar Association Commission on Domestic Violence and DOJ-OVW bi-weekly webinar series.
- 2009 Faculty, Annual Battered Mothers Custody Conference, Albany, New York.
- 2008-2009 Sunrise Hospital and Medical Center Continuing Medical Education, Regularly Scheduled Lecturer on PTSD and Legal Abuse Syndrome, granting CMEs for Physician licensure. Participating physicians gained expanded skills in diagnosing PTSD, and awareness of their ethical role as to the ADA, and that chronic extreme stress such as litigation as well as acute traumatic incidences precipitate PTSD.
- 2000-2005 Speaker on protocols for treatment of PTSD and trauma in schools. Designed and conducted research adapting FBI critical-incident debriefing protocols for children with special needs including PTSD.
- 1995-2000 Consultant for U.S. Attorney's Office and FBI in a joint effort establishing "FIRST" (Financial Institution Robbery Support Task Force) to assist victims of bank robberies (both customers and employees). This led to a collaboration with FBI field agents during which I adapted methods from their Critical-Incident Debriefing method and developed a graphic for use with those under extreme stress with Complex PTSD from non-acute traumatic exposure. A broadening of the diagnosis of PTSD in the DSM IV aligned with these findings.
- 1983-1992 I conducted more than 200 presentations for peer review regarding treatment protocols, potential ethics violations, and inadvertent abuses of those with PTSD in our bureaucratic and legal systems. These led to the development of a research instrument used for a decade to survey PTSD in employment, education, and the courts, that provided invaluable feedback.
- I served as Instructor in the areas of traumatic stress for Chapman College, La Salle University, and University of Las Vegas Nevada Extension Division.

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I was a presenter as part of the "Life Span" speakers program and special seminars at Hospital Corporation of America Montevista Psychiatric Hospital in Las Vegas, Nevada. Diagnosis of PTSD was in the early stages of being determined. I achieved a consensus that PTSD was an anxiety condition, fully compensable by insurance and treatable.

1997-2007 The unique needs of those with PTSD were identified through longitudinal research, Huffer/Alexander Longitudinal Research, 2007.

### **Employment**

- 1983-pres Accommodations Designer for access to Judicial System, schools, jobs, and public services under the Americans with Disabilities Act through LVAA.
- 1972-pres Private Practice in Marriage and Family Therapy – with emphasis on post-trauma stress..
- 1963-2003 Clark County School District, Las Vegas, Nevada, Counselor/Teacher.  
Liaison under the Americans with Disabilities Act for Section 504 and the IDEA, Special Education and Alternative Education working with expelled students. I proved that the use of accommodations were critical to fair access to education for students.

### **Published Works**

- May 2009 Training Manual for PTSD in the Courts with Ethics.
- Jan 2009 BMCC Conference, Albany, New York, Presentation of research findings: "Application of Americans with Disabilities Act to Preventable Public Health Conditions During Litigation."
- Jan 2008 BMCC Conference, Albany, New York, Presentation of research findings: "Survey of Family Court Litigation Participants Measuring Perceived Legal Abuses and Public Health Risk."

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- Fall 2005 Article, "Judicial System Inaccessibility for Those with Psychiatric Injury – Legal Abuse Syndrome as a Psychiatric Injury and Diagnosable Subcategory of Post Traumatic Stress Disorder." Edited subtitle for publishing "Legal Abuse Syndrome: Fact or Fad" Diogenes The Magazine. Fall Edition, national circulation, 2005.
- 1996~1997 Columnist, "The Human Side," for Risk Management Magazine, national circulation.
- 1995~2003 Editor and columnist, "Dear Karin," for biweekly magazine, Nevada Woman. Advice column.
- 1995 Overcoming the Devastation of Legal Abuse Syndrome, 234-page text (self-help/textbook) for preventing and treating PTSD/LAS. Seven years of peer review brought the data to the point of publication. In fifth printing, ISBN 0-9641786-0-5.
- 1997~2008 Website – <http://www.legalabusesyndrome.org> Provides guidance, facilitates research, provides outreach to the wounded litigants with PTSD.

**Conferences Professional Presentations**

(excerpted list with only most-recent presentations provided)

*Communicating in Ethically Challenging Situations*

Humana Sunrise Hospital Physicians, May 1, 2009.

*Child's View of Custody Evaluations And The Law That Helps.* Battered Mothers Custody Conference (BMCC), Albany, NY, Jan 2009.

*ADA Applied to PTSD in Litigation*, International Conference on Violence and Trauma (IVAT), San Diego, CA, Sept. 2008.

*PTSD in Courtroom*, Battered Mothers Custody Conference (BMCC) Albany, NY, Jan 2008.

Advanced Applied Ethics and Protocols for Psycholegal Trauma, Seattle, WA, May 2007.

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Research results, Survey of Family Court Litigation Participants Measuring Perceived Legal Abuses and Public Health Risk, Presented at "BMCC", Jan. 2007, Albany, NY.

Radio, Newspaper, and Television  
(excerpted list with only most-recent appearances provided)  
*Jon Ralston Show*, TV Las Vegas, NV, November 12, 2008.

**The Justice Hour, May 12, 2008, Lisa Macci, Boca Raton, FL**

*Outstanding Women in Politics*

[http://www.thewestchesternews.com/WOMEN IN POLITICS: Westchester](http://www.thewestchesternews.com/WOMEN_IN_POLITICS: Westchester)

[News Spotlight is About Outstanding Women in Politics.html](#)

*Couple Victims of 'Legal Abuse' for 15 Years* By JANE

MUSGRAVE THE PALM BEACH POST Published: Monday, July 28, 2008 at 10:50 p.m.

## **E. Documents Reviewed in Preparation of the Report**

September 17, 2009 Economic Analysis Spreadsheet by Jeff Childers giving opinion as to nonpecuniary cost of litigation.

October 27, 2008 Letter to Robert Bauer Esq. Request for Accommodations regarding Bauer motion to withdraw as counsel.

March 5, 2007 Amended Request for Accommodations.

February 20, 2007 Request for ADA Accommodations with diagnosis medical information. Request is for more time to get an attorney and flexible deadlines while he is without an attorney.

October 23, 2006 Order denying ADA accommodations for attorney and granting a continuance.

October 04, 2006 Transcript of Hearing before Judge Nielson. Mr. Gillespie too ill to appear and made a telephonic appearance.

October 3, 2006 to K. Christopher Nauman, Assistant Court Counsel requesting a continuance as an ADA Accommodation. Copy to Judge Nielson.

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October 3, 2006 Letter to Judge Nielson Request for continuance citing lack of ADA Accommodation as one reason, an attorney to speak for him.

September 22, 2006 Request for ADA Accommodations to Judge Nielson Circuit Court Division F, Tampa, FL responses through Court Counsel then put on Court Record denying appointment of an attorney.

September 12, 2006 Request for ADA Accommodations to Ms. Frank, Clerk of Circuit court 13<sup>th</sup> Judicial circuit Tampa. FL. Third Attempt – No Response.

September 26, 2006 to Judge Nielson Request for Accommodation Attorney to speak for disabled litigant.

September 29, 2006 Letter from K. Christopher Nauman, Assistant Court Counsel denying accommodation of appointment of attorney.

August 20, 1988 Medical report re: head injury criminal mugging interfered with cognition for a time.

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**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: C

Defendants.

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**Americans With Disabilities Act (ADA) Accommodation Request of Neil J. Gillespie**

This ADA accommodation request is made in conjunction with the ADA Assessment and Report provided by Karin Huffer, MS, MFT, on behalf of Mr. Gillespie.

**Accommodations Requested Under the Following**

1. Proceed under the "federal approach" suggested by the Honorable James M. Barton, II
2. Rule 1.200, Fla.R.Civ.P, Pretrial Procedure, Rule 1.200(a) Case Management Conference
3. Rule 1.201, Fla.R.Civ.P, Complex Litigation designation
4. Rule 2.545, Fla.R.Jud.Admin, Case Management by the Court
5. Florida Statutes, section 784.048, Stalking (protection from)
6. Florida Statutes, chapter 837, Perjury (protection from)
7. Law Review by the Honorable Claudia Rickert Isom, *Professionalism and Litigation Ethics*, 28 STETSON L. REV. 323, 324 (1998). Please use this standard.
8. *Haines v. Kerner*, 404 U.S. 520 (1971) Supreme Court found *pro se* pleadings should be held to "less stringent standards" than those drafted by attorneys.

### Introduction

Opposing counsel Ryan Christopher Rodems has set a level of animosity in this lawsuit described by plaintiff's former attorney Mr. Robert W. Bauer 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). Mr. Gillespie therefore requires ADA accommodations that are reasonable considering the "full nuclear blast approach" taken by Mr. Rodems in this lawsuit.

### Disability Background

Social Security determined Mr. Gillespie fully disabled in 1994. The Florida Division of Vocational Rehabilitation (DVR) notified Mr. Gillespie by letter December 4, 1997 that "It has been determined that you are not eligible for vocational rehabilitation services because your disability is too severe at this time for rehabilitation services to result in employment." Defendants are aware of Mr. Gillespie's disability from their prior representation of him. Defendants reviewed Mr. Gillespie's appeal of DVR's determination and related documents on or about March 27, 2001.

Since February, 2005, Mr. Gillespie was the primary caregiver to his then 75-year-old mother, an unremarried widow. Ms. Gillespie needed full-time care due to Alzheimer's dementia and a heart condition. This put additional stress on Mr. Gillespie's existing disabilities. In 2008 Ms. Gillespie's Alzheimer's became worse. About the same time Mr. Rodems garnished Mr. Gillespie's bank account and attorney trust fund. This led Mr. Gillespie lawyer, Robert W. Bauer, to move to withdrawal from the case October

13, 2008. In February 2009 Mr. Gillespie's brother in Texas agreed to take in their mother so he could have respite, and to attempt to get the case back on track. Ms. Gillespie did not tolerate the move and died from complications of the move September 16, 2009.

#### Non-Pecuniary Cost of Litigation

An review of this lawsuit by attorney Seldon J. Childers produced *An Economic Analysis Spreadsheet* draft dated September 17, 2009 that states the following:

“Non-Pecuniary Cost of Litigation. Plaintiff is likely suffering from physical and emotional ill effects resulting from the litigation, as described in Legal Abuse Syndrome, the book provided to me by Plaintiff. It is always difficult to put a dollar figure on the non-pecuniary costs of any case, and this case is no different. In attempting to evaluate the physical and emotional costs of going forward with the litigation, I considered both short and long-term effects, and the opportunity cost caused not just by direct time invested in the case but also by loss of energy related to physical and emotional side-effects. My estimate was \$100,000, but this figure is subjective and the Plaintiff may wish to adjust this figure upwards or downwards. There is 100% probability these costs will be incurred regardless of the outcome of the litigation.” (p.4, ¶4).

#### The Florida Bar, ACAP - Previous Attempt at Alternative Dispute Resolution

Mr. Gillespie tried to resolve his dispute with Defendants without litigation through The Florida Bar Attorney Consumer Assistance Program (ACAP). Mr. Gillespie spoke with Mr. Donald M. Spangler, Director of ACAP June 12, 2003. Mr. Spangler assigned reference #03-18867 to the matter. Mr. Spangler suggested to Mr. Gillespie that he contact Mr. Cook to try and settle the matter. The Florida Bar complaint form, Part Four, Attempted Resolution, states that “[Y]ou should attempt to resolve your matter by

writing to the subject attorney, before contacting ACAP or filing a complaint. Even if this is unsuccessful, it is important that you do so in order to have documentation of good-faith efforts to resolve your matter.” On June 13, 2003 Mr. Gillespie made a good-faith effort and wrote to Mr. Cook to resolve the matter, noting ACAP reference #03-18867. Mr. Gillespie requested \$4,523.93 to settle the matter and provided Mr. Cook an explanation for the request along with a financial spreadsheet supporting his claim.

A few days later Mr. Gillespie received a letter from Mr. Cook’s law partner, Christopher A. Barker, on behalf of Mr. Cook. In his letter Mr. Barker accused Gillespie of felony extortion pursuant to §836.05 Fla. Statutes and the holding of Carricarte v. State, 384 So.2d 1261 (Fla. 1980); Cooper v. Austin, 750 So.2d 711 (Fla. 5<sup>th</sup> DCA 2000); Gordon v. Gordon, 625 So.2d 59 (Fla. 4<sup>th</sup> DCA 1993); Berger v. Berger, 466 So.2d 1149 (Fla. 4<sup>th</sup> DCA 1985). Mr. Rodems has accused Mr. Gillespie of felony extortion in his Answer, Affirmative Defenses and Counterclaim, paragraphs 57 and 67.

#### Inequitable Balance of Power

Defendants countersued Mr. Gillespie for libel. Tobkin v. Jarboe, 710 So.2d 975, recognizes the inequitable balance of power that may exist between an attorney who brings a defamation action and the client who must defend against it. Attorneys schooled in the law have the ability to pursue litigation through their own means and with minimal expense when compared with their former clients.

The Court may take notice of the vast inequities between Mr. Gillespie and Defendants. Mr. Gillespie is 53 years-old, limited by disability, and limited in financial resources. He is unemployed and relies on disability benefits of \$22,049 a year (2009).

In contrast Defendants are a law firm with three partners, all in good health, and all at least 10 years younger than Mr. Gillespie. Mr. Rodems' reported income for 2006 was \$237,873. In 2007 Mr. Rodems reported \$130,000 income, and in 2008 Mr. Rodems reported \$164,272. Assuming the two other law partners have similar income, that amounts to between \$390,000 and \$713,619 per year to litigate this matter compared to just \$22,049 for Mr. Gillespie. In addition, Defendants are lawyers representing themselves and have the ability to pursue litigation through their own means and with minimal expense. Mr. Gillespie must bear the expenses of his lawsuit, and the expenses of defending against Defendants' counterclaim. Mr. Rodems represents Defendants. He is board-certified in civil trial law and has been practicing for 17 years. Mr. Gillespie's legal training consists of 2 business law classes (1985) and 3 paralegal classes (1998).

#### Prior ADA Accommodation Requests by Mr. Gillespie

On August 11, 2006, Mr. Gillespie sent an email to [ada@fljud13.org](mailto:ada@fljud13.org):

"I am a person with a disability representing myself pro se in circuit civil court. Judge Nielsen is presiding over my case, # 05-CA-7205, Division F. Are you the appropriate contact person for ADA compliance? Thank you.  
Neil Gillespie"

Mr. Gillespie followed this email with several inarticulate attempts to obtain ADA accommodations. Those errors were due to Mr. Gillespie's ignorance of law and manifestations of his disability aggravated by Mr. Rodems inappropriate behavior toward him. It was confusing to Mr. Gillespie that he could contemporaneously litigate a matter about his credit card in federal court<sup>1</sup> without the problems he encountered in state court.

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<sup>1</sup> Gillespie v. HSBC Bank, et al, case no. 5:05-cv-362-Oc-WTH-GRJ, United States District Court, Middle District of Florida, Ocala Division, the Honorable William Terrell Hodges presiding.

Mr. Gillespie previously submitted two ADA requests directly to the Court:

A. February 20, 2007, *Plaintiff's Accommodation Request Americans with Disabilities Act (ADA)* (Exhibit 1); and

B. March 5, 2007, *Plaintiff's Amended Accommodation Request Americans with Disabilities Act (ADA)* (Exhibit 2).

Mr. Gillespie noted on the record to Judge Isom February 5, 2007, that he was having difficulty during the hearing.

MR. GILLESPIE: I'm barely able to get myself here today.

(transcript, February 5, 2007, page 16, line 12)

MR. GILLESPIE: Well, Judge, if it pleases the Court, I'm getting confused here.

(transcript, February 5, 2007, page 39, line 7)

Judge Isom discussed an ADA accommodation with Mr. Gillespie.

(transcript, February 5, 2007, beginning page 40, line 4)

MR. GILLESPIE: Judge, I'm going to need some time to compose myself. The other matter that we haven't discussed is how my disability impacts the ability to represent myself. We haven't gotten into that. I've offered to have a hearing on that. And this is a problem.

THE COURT: I see that you had talked to Judge Nielsen about whether or not a civil judge has any ability or funds with which to appoint private counsel. Was that an ADA issue with him?

MR. GILLESPIE: I raised that issue. And let me just say on the record that I'm not looking for someone to pay the lawyer. I would be happy if the Court would appoint someone and I'll pay him.

THE COURT: On an hourly basis? Did you go through the Hillsborough County Bar Association's lawyer referral service? Didn't you say you had already tried that avenue?

MR. GILLESPIE: Yes, Judge, and I have the results from that...

Judge Isom conducted an impromptu ADA assessment of Mr. Gillespie during the February 5, 2007 hearing.

(transcript, February 5, 2007, beginning page 45, line 6)

MR. GILLESPIE: Right now, Judge, my head is swimming to the point where I'm having a hard time even hearing you. But it sounded all right.

THE COURT: What's is the nature of your disability?

MR. GILLESPIE: It's depression and post-traumatic stress disorder.

THE COURT: Are you under the care of a doctor?

MR. GILLESPIE: Yes, Judge.

THE COURT: And do you have a disability rating with the Social Security Administration?

MR. GILLESPIE: Yes, Judge. In the early '90s, I'm going to say '93 or '94, I was judged disabled by Social Security. And I applied for vocational rehabilitation. And to make a long story short, I guess it was in about '98 or '99 I received a determination from vocational rehabilitation that my disability was so severe that I could not benefit from rehabilitation.

I would say in the interim that they had prepared a rehabilitation plan for me and they didn't want to implement it. And that's the reason that they gave for not implementing it. I brought that cause of action to the Barker,

Rodems and Cook law firm and they reviewed that. And apparently they were in agreement with it because they decided not to represent me on that claim. And a copy of their letter denying that is part of my motion for punitive damages. You can read that letter. I think I have it here.

(transcript, February 5, 2007, ending page 46, line 9)

After taking testimony about Mr. Gillespie's disability, Judge Isom offered to abate the matter for three months so Mr. Gillespie could find counsel, but Mr. Rodems objected. Mr. Gillespie retained attorney Robert W. Bauer a month later.

(transcript, February 5, 2007, beginning at page 46, line 10)

THE COURT: Okay. But in terms of direction today, do you want to just stop everything and abate this proceeding for three months so that you can go out and try to find substitute counsel or --you know, I realize there's a counterclaim.

MR. GILLESPIE: Yes, Judge.

THE COURT: But originally, at least, it was your lawsuit. So if you feel that you're at a disadvantage because of your lack of counsel, I guess I could abate it and give you additional time to try to find an attorney.

MR. RODEMS: Your Honor, we would oppose that. And let me tell you why.

(transcript, February 5, 2007, beginning at page 46, line 21)

Mr. Rodems continued with a self serving diatribe and accused Mr. Gillespie of criminal extortion for trying to resolve this matter through the Florida Bar ACAP Program, and other such. Then Mr. Rodems made this accusation in open court:

MR: RODEMS: In any event, at every stage of the proceedings when Mr.

Gillespie is about to be held accountable for his actions he cries that he's got a

disability or he complains about the fact that he can't get a lawyer. The reason he can't get a lawyer is because he's not willing to pay a lawyer by the hour for the services he wants. (transcript, February 5, 2007, page 49, line 12).

And Mr. Gillespie responded:

MR. GILLESPIE: I am willing to pay an attorney by the hour. I have sent a payment of \$350 an hour to an attorney with the promise of a retainer if they would take the case. So Mr. Rodems calling me cheap and all of this name-calling and not willing to pay, that's not true. In fact, I offered Rick Mitzel who said the cost would be \$200 an hour, I gladly offered to pay him \$200 an hour. He wouldn't take the case. These lawyers don't want to litigate against this firm because they're aware of what this firm does and what they're capable of. (transcript, February 5, 2007, page 50, line 14).

Unable to find counsel in the Tampa Bay area, Mr. Gillespie sought an out-of-town referral from The Florida Bar Lawyer Referral Service. (LRS). The LRS provided a referral to attorney Robert W. Bauer, 2815 NW 13<sup>th</sup> Street, Suite 200E, Gainesville, FL. Mr. Bauer entered his notice of appearance April 2, 2007 on behalf of Mr. Gillespie. This was just 56 days after Judge Isom considered allowing three months for Mr. Gillespie to obtain counsel, until Mr. Rodems objected and Judge Isom capitulated. Mr. Gillespie paid Mr. Bauer \$250 per hour for representation. Because of the need to hire an out-of-town attorney to litigate against Mr. Rodems, Mr. Gillespie incurred an additional cost for counsel to travel from Gainesville that added \$5,700 to the cost of representation.

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, page 21, line 6)

But Mr. Rodems knows "nice guys finish last" and behaved accordingly. A year and a half later Mr. Bauer complained on the record, just like Mr. Gillespie before him.

Attorney Robert W. Bauer 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).

#### Specific ADA Accommodations Requested

**ADA Request No. 1:** Mr. Gillespie requests the Court take action to stop Mr. Rodems' behavior directed toward Mr. Gillespie that is aggravating his disability by causing substantial emotional distress that serves no legitimate purpose. Mr. Rodems behavior violates the following Florida Statutes:

##### A. Violation of Florida Statutes, section 784.048, Stalking

Since March 3, 2006, Mr. Rodems has directed, with malice aforethought, a course of harassing conduct toward Mr. Gillespie that has aggravated his disability, caused substantial emotional distress and serves no legitimate purpose. This is a violation of Florida Statutes, §784.048. As used in section 784.048(1)(a) "Harass" means to engage in a course of conduct directed at a specific person that causes substantial emotional distress

in such person and serves no legitimate purpose. As used in section 784.048(1)(b) "Course of conduct" means a pattern of conduct composed of a series of acts over a period of time, however short, evidencing a continuity of purpose. (relevant portion). As used in section 784.048(2) Any person who willfully, maliciously, and repeatedly follows, harasses, or cyberstalks another person commits the offense of stalking, a misdemeanor of the first degree, punishable as provided in s. 775.082 or s. 775.083.

Mr. Rodems has harassed Mr. Gillespie throughout this lawsuit. Mr. Rodems telephoned Mr. Gillespie and threatened to reveal client confidences from prior representation<sup>2</sup> and taunted him about his vehicle. Mr. Rodems submitted a perjured pleading to the Court falsely naming Judge Nielsen in an "exact quote" attributed to Mr. Gillespie<sup>3</sup>. Mr. Rodems has engaged in name-calling by phone and by letter. Mr. Rodems has called Mr. Gillespie "cheap" and a "pro se litigant of dubious distinction"<sup>4</sup>. Mr. Rodems has written Mr. Gillespie that "you are a bitter man who has apparently been victimized by your own poor choices in life" and "you are cheap and not willing to pay the required hourly rates for representation."<sup>5</sup> Mr. Rodems has set hearings without consulting Gillespie<sup>6</sup>. On one occasion Mr. Rodems waited outside chambers to harass Mr. Gillespie following a hearing<sup>7</sup>. Mr. Rodems has accused Mr. Gillespie of felony criminal extortion for trying to resolve this matter through the Florida Bar Attorney Consumer Assistance Program. This list of Mr. Rodems' harassing behavior is representative but not exhaustive.

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<sup>2</sup> March 3, 2006 telephone call, Mr. Rodems to Gillespie

<sup>3</sup> March 6, 2006, *Defendants' Verified Request For Bailiff And For Sanctions*

<sup>4</sup> December 13, 2006 voice mail by Mr. Rodems to Gillespie

<sup>5</sup> December 13, 2006, letter by Mr. Rodems to Gillespie

<sup>6</sup> The most recent was Dec-16-09, when Mr. Rodems set a hearing for Jan-19-10 for *Defendants' Motion for an Order Compelling Plaintiff to respond to the Defendants' Request for Production and Attend Deposition*

<sup>7</sup> Following the hearing of April 25, 2006

B. Violation of Florida Statutes, chapter 837, Perjury

On March 6, 2006, Mr. Rodems submitted, with malice aforethought, *Defendants' Verified Request For Bailiff And For Sanctions*, a pleading that falsely placed the Honorable Richard A. Nielsen into the dispute between the parties, a perjury in violation of §837.02(1) and §837.06. Mr. Rodems' verified pleading was made during an official proceeding as described in §837.011(1), made under oath as described in §837.011(2) and concerned a material matter as described in §837.011(3).

A recording of the exchange between Mr. Rodems and Gillespie impeached Rodems' verified pleading submitted March 6, 2006. Calls on Mr. Gillespie's 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)(1) and the holding of *Royal Health Care Servs., Inc. v. Jefferson-Pilot Life Ins. Co.*, 924 F.2d 215 (11th Cir. 1991). In addition Mr. Rodems provided written consent to Gillespie to record their telephone calls, see *Notice Of Mr. Rodems' Written Consent To Record Telephone Conversations With Him*, submitted December 29, 2006.

There is evidence on the record that Mr. Rodems' perjury has resulted in prejudice and/or discrimination by the Court:

1). On June 28, 2006, Mr. Gillespie asked the Court for protection from Mr. Rodems, who at a previous hearing waited outside chambers to harass him. This is Mr. Gillespie's request and Judge Nielsen's sarcastic response:

MR. GILLESPIE: Thank you, Judge. And, Your Honor, would you ask that Mr. Rodems leave the area. The last time he left, he was taunting me in the hallway and I don't want that to happen today.

THE COURT: Well, you can stay next to my bailiff until he goes home and then you can decide what you want to do, sir.

(Transcript, June 28, 2006, page 21, line 20)

2). Mr. Rodems' aforementioned perjury succeeded in causing Judge Isom to fear an attack from Mr. Gillespie. This is an exchange on February 5, 2007 where Judge Isom feared that Mr. Gillespie brought an umbrella to chambers to commence an attack:

THE COURT: When in the courthouse engaging in litigation regarding this case - - is that your umbrella right there on that chair?

MR. GILLESPIE: I don't have an umbrella.

THE BAILIFF: That's been here since this morning, Your Honor.

(Transcript, Feb-05-07, page 9, line 12)

3) There is evidence that Judge Isom knowingly denied Mr. Gillespie the benefits of the services, programs, or activities of this Court, specifically mediation services. This is an exchange from a hearing February 1, 2007:

THE COURT: And you guys have already gone to mediation and tried to resolve this without litigation?

MR. GILLESPIE: No, Your Honor.

(transcript, Feb-01-07, page 15, line 20) (please note, this is from a hearing Feb-01-07, not the later hearing of Feb-05-07 which transcript accompanies this report.)

In addition Judge Isom denied Mr. Gillespie the benefits set forth in a law review by The Honorable Claudia Rickert Isom, *Professionalism and Litigation Ethics*, 28 STETSON L. REV. 323, 324 (1998), on the issue of adversarial parties and discovery

problems when she ruled against Mr. Gillespie's *Plaintiff's Motion For Reconsideration Of Discovery*. (transcript, Feb-05-10, beginning at page 71, line 18)

Finally, it appears that the decision of the Court to forgo its case management obligations imposed by Rule 2.545, Fla.R.Jud.Admin. was due to prejudice and/or discrimination set in motion by Mr. Rodems' false portrayal of Mr. Gillespie to the Court. Mr. Rodems is an *Officer of the Court* with great influence on the Court compared to a pro se litigant and ordinary citizen who appears before the Court with a disability.

**ADA Request No. 2:** Mr. Gillespie requests the Court fulfill its case management duties imposed by Rule 2.545, Fla.R.Jud.Admin. This will stop Mr. Rodems from taking advantage of Mr. Gillespie's disabilities which has turned the court process into a bully/victim cycle due to the ridicule and exploitation of Mr. Gillespie's functional impairments. On or about January 30, 2006, Mr. Gillespie requested a case management conference from Mr. Rodems pursuant to Rule 1.200(a), *see Plaintiff's Verified Response to Defendants' Verified Request For Bailiff And For Sanctions, And To Mr. Rodems' Perjury, And Plaintiff's Motion For An Order Of Protection*, submitted March 14, 2006.

Pursuant to Rule 1.201, Fla.R.Civ.P, Mr. Gillespie requests the Court designate this case complex litigation. Pursuant to Rule 1.200(a), Fla.R.Civ.P, Mr. Gillespie requests the Court hold a case management conference. Mr. Gillespie requests the Court limit the number of motions to one per hearing unless otherwise stipulated. Mr. Gillespie requests the Court determine the motions that need a hearing. Some motions dating to 2006 have not been heard. Mr. Gillespie requests the Court set a schedule to hear the motions beginning with the oldest first, unless otherwise stipulated. A partial list of outstanding motions is attached as Exhibit 3.

In addition, Mr. Gillespie concurs with the Court to take a “federal approach” regarding the litigation. (transcript, Jan-26-10, page 4, line 15; and page 18, line 12).

**ADA Request No. 3:** Mr. Gillespie requests the benefit of the services, programs, or activities of the Court described in the Law Review by the Honorable Claudia Rickert Isom, *Professionalism and Litigation Ethics*, 28 STETSON L. REV. 323, 324 (1998). This will allow Mr. Gillespie to litigate his case on a level playing field. Currently the Court is using a “trip and trap” model with Mr. Gillespie. The Court has allowed Mr. Rodems to take advantage of Mr. Gillespie’s disabilities and turned the court process into a bully/victim cycle due to the ridicule and exploitation of Mr. Gillespie’s functional impairments. The Court has rewarded Mr. Rodems’ harassing behavior with an extreme sanction of \$11,550. This is wrong, and contrary to the legitimate use of discovery.

Pretrial discovery was implemented to simplify the issues in a case, to encourage the settlement of cases, and to avoid costly litigation. (Elkins v. Syken, 672 So.2d 517 (Fla. 1996)). In this case the parties know the issues from Defendants’ prior representation on the same matter. The rules of discovery are designed to secure the just and speedy determination of every action (In re Estes’ Estate, 158 So.2d 794 (Fla. Dist. Ct. App. 3d Dist. 1963), to promote the ascertainment of truth (Ulrich v. Coast Dental Services, Inc. 739 So.2d 142 (Fla. Dist. Ct. App. 5<sup>th</sup> Dist. 1999), and to ensure that judgments are rested on the real merits of causes (National Healthcorp Ltd. Partnership v. Close, 787 So.2d 22 (Fla. Dist. Ct. App. 2d Dist. 2001), and not upon the skill and maneuvering of counsel. (Zuberbuhler v. Division of Administration, State Dept. of Transp. 344 So.2d 1304 (Fla. Dist. Ct. App. 2d Dist. 1977)). However in this case the Court has issued a Final Judgment March 27, 2008 in the amount of \$11,550 based on the skill and maneuvering of counsel, and counsel’s aggravation of Mr. Gillespie’s disability. Contemporaneously Defendants

have not provided most of their discovery due in the lawsuit. Defendants have not provided any documents responsive to plaintiff's initial request for production served July 7, 2006. A motion to compel was submitted December 14, 2006 and remains unheard.

In conjunction with Judge Isom's law review, Mr. Gillespie requests the benefit of the services, programs, or activities of the Court described in *Haines v. Kerner*, 404 U.S. 520 (1971) where the US Supreme Court held that *pro se* pleadings should be held to "less stringent standards" than those drafted by attorneys. In the instant case Mr. Gillespie has been held to a higher standard than attorneys because there was no case management as required by Rule 2.545, Fla.R.Jud.Admin and as described in Judge Isom's law review. Nor was Mr. Gillespie given or offered the benefit of the mediation program, which is used in virtually all similar cases in the 13<sup>th</sup> Judicial Circuit.

**ADA Request No. 4:** Enforce by court order the directives imposed by Judge Isom on February 5, 2007. Judge Isom required Mr. Rodems to address plaintiff as "Mr. Gillespie" when speaking or in any written communication relative to this case, and not use nicknames or first names. Judge Isom also instructed Mr. Rodems to communicate in writing and not make telephone calls to Mr. Gillespie. (transcript, hearing of Feb-05-07, page 7, beginning at line 19).

Mr. Rodems has disobeyed Judge Isom's directives a number of times since February 5, 2007. In addition, during the January 26, 2010 hearing, Mr. Gillespie told the Court and Mr. Rodems that he was not to communicate by email. In the past Mr. Rodems was abusive in his email to Mr. Gillespie. Nonetheless, Mr. Rodems emailed Gillespie a few hours after the hearing. So a court order enforcing the directives imposed by Judge Isom must also include a prohibition on Mr. Rodems sending email to Mr. Gillespie.

**ADA Request No. 5:** Mr. Gillespie requests a 180 day stay in the case to accomplish the following ADA Requests, numbers 6 and 7. On October 1, 2009 the Court granted Mr. Gillespie a 60 day stay to find counsel. Due to the death of Mr. Gillespie's mother September 16, 2009, he spent most of that time tending to her affairs and has not had sufficient time to find counsel to replace Mr. Bauer.

**ADA Request No. 6:** Mr. Gillespie requests time to scan thousands of pages of documents in this case to electronic PDF format. This case and underlying cause of action covers a ten year period and the files have become unmanageable and confusing relative to Gillespie's disability. Mr. Gillespie is not able to concentrate when handling a large amount of physical files and documents. He is better able to manage the files and documents when they are organized and viewable on his computer. Mr. Gillespie will bear the cost of converting files and documents to PDF.

This problem has been ongoing since the beginning of this lawsuit and has resulted in sanctions against Mr. Gillespie. When initially responding to Defendants' discovery requests, Mr. Gillespie invoked Rule 1.340(c), Fla.R.Civ.P, Option to Produce Records. Mr. Gillespie offered to allow Defendants to inspect his files, at a law library if necessary, but Mr. Rodems refused. At that time Gillespie was unaware of the technology that would have allowed him to effectively manage documents relative to his disability.

**ADA Request No. 7:** Mr. Gillespie requests time to find and hire counsel to represent him. The Court allowed Mr. Bauer to withdrawal in October 2009 without alternate counsel in place. Mr. Gillespie has not been able to obtain counsel through the usual channels. The Hillsborough County Bar Association was unable to refer a single attorney willing to litigate against Mr. Rodems. The Florida Bar Lawyer Referral Service does not

make referrals in Hillsborough County. The Court may take notice of the difficulty faced by an ordinary citizen in finding counsel when suing his former lawyers who have taken a “full nuclear blast approach” in the litigation.

After four years of litigation it takes more than a phone call to hire counsel, it likely requires a sophisticated presentation and compelling arguments to prospective counsel to become involved in the litigation. Mr. Gillespie proposes the following plan:

a. Mr. Gillespie has identified an attorney, a partner firm that is uniquely situated to represent him. Mr. Gillespie is currently preparing a presentation to the attorney.

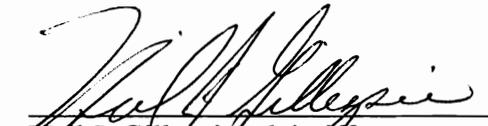
b. Mr. Gillespie is developing a web site for this litigation. From it he will search for counsel utilizing, among other things, the Wharton Global Community. Mr. Gillespie is a Wharton alumni. The Wharton alumni network has 85,000.

#### Conclusion

Mr. Gillespie believes the Court can ordinarily provide ADA accommodations in a timely and efficient manner. But this case has proved difficult because Mr. Rodems has a conflict litigating against a former client and took a “full nuclear blast attack” approach.

Mr. Gillespie apologizes to the Court for any past ADA requests that it viewed improper. Those errors were due to Mr. Gillespie’s ignorance of law and manifestations of his disability aggravated by Mr. Rodems harassing behavior toward him.

RESPECTFULLY SUBMITTED February 19, 2010.

  
Neil J. Gillespie, plaintiff pro se  
8092 SW 115<sup>th</sup> Loop  
Ocala, Florida 34481  
Telephone: (352) 854-7807

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: H

Defendants.

**COPY**

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**PLAINTIFF'S ACCOMODATION REQUEST**  
**AMERICANS WITH DISABILITIES ACT (ADA)**

Plaintiff requests an accommodation under the Americans With Disabilities Act (ADA) and states:

- 1. Plaintiff was determined totally disabled by Social Security in 1994.
- 2. Defendants are familiar with Plaintiff's disability from their prior representation of him. Defendants investigated his eligibility to receive services from the Florida Department of Vocational Rehabilitation (DVR). DVR determined that Plaintiff was too severely disabled to benefit from services. Defendants concurred, and notified Plaintiff of their decision in a letter to him dated March 27, 2001. (Exhibit A).
- 3. Plaintiff has the following medical conditions which are disabling and prevent him from effectively participating in court proceedings, including:
  - a. Depression and related mood disorder. This medical condition prevents Plaintiff from working, meeting deadlines, and concentrating. The inability to concentrate at times affects Plaintiff's ability to hear and comprehend.



b. Post Traumatic Stress Disorder (PTSD), makes Plaintiff susceptible to stress, such as the ongoing harassment by Defendants' lawyer, Mr. Rodems.

c. Velopharyngeal Incompetence (VPI) is a speech impairment that affects Plaintiff's ability to communicate.

d. The medical treatment for depression includes prescription medication that further disables Plaintiff's ability to do the work of this lawsuit, and further prevents him from effectively participating in the proceedings.

4. Prior to the onset of the most disabling aspects Plaintiff's medical condition(s), he was a productive member of society, a business owner for 12 years, and a graduate of both the University of Pennsylvania and The Evergreen State College.

5. On March 3, 2006, Ryan Christopher Rodems telephoned Plaintiff at his home and threatened to use information learned during Defendants prior representation against him in the instant lawsuit. Mr. Rodems' threats were twofold; to intimidate Plaintiff into dropping this lawsuit by threatening to disclose confidential client information, and to inflict emotional distress, to trigger Plaintiff's Post Traumatic Stress Disorder, and inflict injury upon Plaintiff for Defendants' advantage in this lawsuit.

6. On March 6, 2006, Mr. Rodems made a false verification the Court about the March 3, 2006 telephone call. Mr. Rodems submitted Defendants' Verified Request For Bailiff And For Sanctions, and told the Court under oath that Plaintiff threatened acts of violence in Judge Nielsen's chambers. It was a stunt that backfired when a tape recording of the phone call showed that Mr. Rodems lied. Plaintiff notified the Court about Mr. Rodems' perjury in Plaintiff's Motion With Affidavit To Show Cause Why Ryan Christopher Rodems Should not Be Held In Criminal Contempt Of Court and Incorporated Memorandum Of Law submitted January 29, 2007.

7. Mr. Rodems' harassing phone call to Plaintiff of March 3, 2006, was a tort, the *Intentional Infliction of Emotional Distress*. Mr. Rodems' tort injured Plaintiff by aggravating his existing medical condition. From the time of the call on March 3, 2006, Plaintiff suffered worsening depression for which he was treated by his doctors.

a. On May 1, 2006 Plaintiff's doctor prescribed Effexor XR, a serotonin-norepinephrine reuptake inhibitor (SNRI), to the maximum dosage.

b. Plaintiff's worsening depression, and the side affects of the medication, lessened Plaintiff's already diminished ability to represent himself in this lawsuit.

c. On October 4, 2006 Plaintiff began the process of discontinuing his medication so that he could improve is ability to represent himself in this lawsuit.

d. On or about November 18, 2006, Plaintiff discontinued the use of anti-depression medication, to improve his ability to represent himself in this lawsuit.

8. Mr. Rodems continued to harass Plaintiff during the course of this lawsuit in the following manner:

a. Mr. Rodems lay-in-wait for Plaintiff outside Judge Nielsen's chambers on April 25, 2006, following a hearing, to taunt him and provoke an altercation.

b. Mr. Rodems refused to address Plaintiff as "Mr. Gillespie" but used his first name, and disrespectful derivatives, against Plaintiff's expressed wishes.

c. Mr. Rodems left insulting, harassing comments on Plaintiff's voice mail during his ranting message of December 13, 2006.

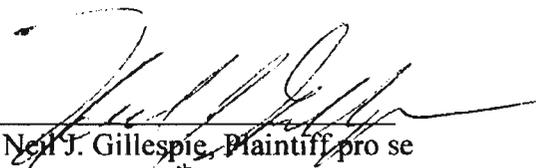
d. Mr. Rodems wrote Plaintiff a five-page diatribe of insults and ad hominem abusive attacks on December 13, 2006.

9. Plaintiff notified the Court of his inability to obtain counsel in *Plaintiff's Notice of Inability to obtain Counsel* submitted February 13, 2007.

10. Plaintiff acknowledges that this ADA accommodation request is unusual, but so are the circumstances. Defendants in this lawsuit are Plaintiff's former lawyers, who are using Plaintiff's client confidences against him, while contemporaneously inflicting new injuries upon their former client based on his disability.

WHEREFORE, Plaintiff requests additional time to obtain counsel, a stay in the proceedings for 90 days. Plaintiff also requests accommodation in the form of additional time to meet deadlines when needed due to his disability.

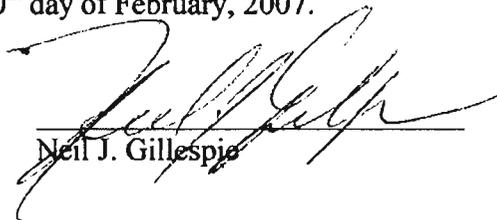
RESPECTFULLY SUBMITTED this 20<sup>th</sup> day of February, 2007.



Neil J. Gillespie, Plaintiff pro se  
8092 SW 115<sup>th</sup> Loop  
Ocala, Florida 34481  
Telephone: (352) 502-8409

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a true and correct copy of the foregoing has been furnished via US Mail to Ryan C. Rodems, attorney, Barker, Rodems & Cook, P.A., 400 N Ashley Dr., Suite 2100, Tampa, FL 33602, this 20<sup>th</sup> day of February, 2007.



Neil J. Gillespie

**BARKER, RODEMS & COOK**  
PROFESSIONAL ASSOCIATION  
ATTORNEYS AT LAW

CHRIS A. BARKER  
EVAN CHRISTOPHER RODEMS  
WILLIAM J. COOK

300 West Platt Street, Suite 150  
Tampa, Florida 33606

Telephone 813/459-1001  
Facsimile 813/459-1008

March 27, 2001

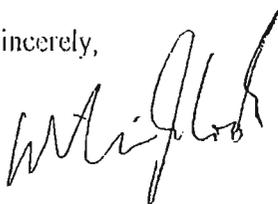
Neil J. Gillespie  
Apartment C-2  
1121 Beach Drive NE  
St. Petersburg, Florida 33701-1434

**Re: Vocational Rehabilitation**

Dear Neil:

I am enclosing the material you provided to us. We have reviewed them and, unfortunately, we are not in a position to represent you for any claims you may have. Please understand that our decision does not mean that your claims lack merit, and another attorney might wish to represent you. If you wish to consult with another attorney, we recommend that you do so immediately as a statute of limitations will apply to any claims you may have. As you know, a statute of limitations is a legal deadline for filing a lawsuit. Thank you for the opportunity to review your materials.

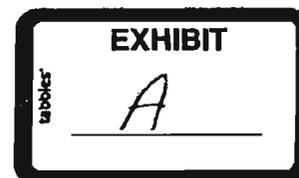
Sincerely,



William J. Cook

WJC/mss

Enclosures



**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: C

Defendants.

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**PLAINTIFF'S AMENDED ACCOMODATION REQUEST**  
**AMERICANS WITH DISABILITIES ACT (ADA)**

Plaintiff requests an accommodation under the Americans With Disabilities Act (ADA) and states:

1. Plaintiff was determined totally disabled by Social Security in 1994.
2. Defendants are familiar with Plaintiff's disability from their prior

representation of him. Defendants investigated his eligibility to receive services from the Florida Department of Vocational Rehabilitation (DVR). DVR determined that Plaintiff was too severely disabled to benefit from services. Defendants concurred, and notified Plaintiff of their decision in a letter to him dated March 27, 2001. (Exhibit A).

Defendants were also informed of Plaintiff's medication for depression by fax dated October 6, 2000, Effexor XR 150mg. (Exhibit B).

3. Plaintiff has the following medical conditions which are disabling and prevent him from effectively participating in court proceedings, including:

- a. Depression and related mood disorder. This medical condition prevents Plaintiff from working, meeting deadlines, and concentrating. The inability to



concentrate at times affects Plaintiff's ability to hear and comprehend. The medical treatment for depression includes prescription medication that further disables Plaintiff's ability to do the work of this lawsuit, and further prevents him from effectively participating in the proceedings.

b. Post Traumatic Stress Disorder (PTSD), makes Plaintiff susceptible to stress, such as the ongoing harassment by Defendants' lawyer, Mr. Rodems.

c. Velopharyngeal Incompetence (VPI) is a speech impairment that affects Plaintiff's ability to communicate.

d. Type 2 diabetes. This was diagnosed in 2006 after Defendants' representation.

4. Prior to the onset of the most disabling aspects Plaintiff's medical condition(s), he was a productive member of society, a business owner for 12 years, and a graduate of both the University of Pennsylvania and The Evergreen State College.

5. On March 3, 2006, Ryan Christopher Rodems telephoned Plaintiff at his home and threatened to use information learned during Defendants prior representation against him in the instant lawsuit. Mr. Rodems' threats were twofold; to intimidate Plaintiff into dropping this lawsuit by threatening to disclose confidential client information, and to inflict emotional distress, to trigger Plaintiff's Post Traumatic Stress Disorder, and inflict injury upon Plaintiff for Defendants' advantage in this lawsuit.

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b. Plaintiff's worsening depression, and the side affects of the medication, lessened Plaintiff's already diminished ability to represent himself in this lawsuit.

c. On October 4, 2006 Plaintiff began the process of discontinuing his medication so that he could improve is ability to represent himself in this lawsuit.

d. On or about November 18, 2006, Plaintiff discontinued the use of anti-depression medication, to improve his ability to represent himself in this lawsuit.

8. Mr. Rodems continued to harass Plaintiff during the course of this lawsuit in the following manner:

a. Mr. Rodems lay-in-wait for Plaintiff outside Judge Nielsen's chambers on April 25, 2006, following a hearing, to taunt him and provoke an altercation.

b. Mr. Rodems refused to address Plaintiff as "Mr. Gillespie" but used his first name, and disrespectful derivatives, against Plaintiff's expressed wishes.

c. Mr. Rodems left insulting, harassing comments on Plaintiff's voice mail during his ranting message of December 13, 2006.

d. Mr. Rodems wrote Plaintiff a five-page diatribe of insults and ad hominem abusive attacks on December 13, 2006.

9. Plaintiff notified the Court of his inability to obtain counsel in *Plaintiff's Notice of Inability to obtain Counsel* submitted February 13, 2007.

10. Plaintiff acknowledges that this ADA accommodation request is unusual, but so are the circumstances. Defendants in this lawsuit are Plaintiff's former lawyers, who are using Plaintiff's client confidences against him, while contemporaneously inflicting new injuries upon their former client based on his disability.

WHEREFORE, Plaintiff requests additional time to obtain counsel, a stay in the proceedings for 90 days. Plaintiff also requests accommodation in the form of additional time to meet deadlines when needed due to his disability.

RESPECTFULLY SUBMITTED this 5<sup>th</sup> day of March, 2007.

  
Neil J. Gillespie, Plaintiff pro se  
8092 SW 115<sup>th</sup> Loop  
Ocala, Florida 34481  
Telephone: (352) 502-8409

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a true and correct copy of the foregoing has been furnished via US Mail to Ryan C. Rodems, attorney, Barker, Rodems & Cook, P.A., 400 N Ashley Dr., Suite 2100, Tampa, FL 33602, this 5<sup>th</sup> day of March, 2007.

  
Neil J. Gillespie

**BARKER, RODEMS & COOK**  
PROFESSIONAL ASSOCIATION  
ATTORNEYS AT LAW

CHRIS A. BARKER  
RYAN CHRISTOPHER RODEMS  
WILLIAM J. COOK

300 West Platt Street, Suite 150  
Tampa, Florida 33606

Telephone 813/489-1001  
Facsimile 813/489-1005

March 27, 2001

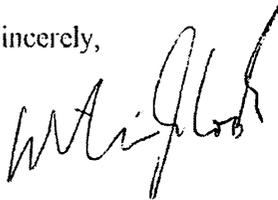
Neil J. Gillespie  
Apartment C-2  
1121 Beach Drive NE  
St. Petersburg, Florida 33701-1434

**Re: Vocational Rehabilitation**

Dear Neil:

I am enclosing the material you provided to us. We have reviewed them and, unfortunately, we are not in a position to represent you for any claims you may have. Please understand that our decision does not mean that your claims lack merit, and another attorney might wish to represent you. If you wish to consult with another attorney, we recommend that you do so immediately as a statute of limitations will apply to any claims you may have. As you know, a statute of limitations is a legal deadline for filing a lawsuit. Thank you for the opportunity to review your materials.

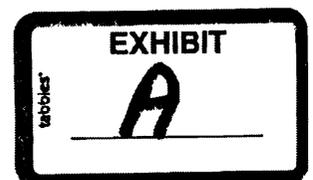
Sincerely,



William J. Cook

WJC/mss

Enclosures



# Fax

**From:** Neil J. Gillespie  
1121 Beach Drive NE, Apt C-2  
St. Petersburg, FL 33701  
Phone/Fax: (727) 823-2390

**To:** William J. Cook, Attorney at Law

---

**Fax:** (813) 228-9612

---

**Date:** October 6, 2000

---

**Pages:** just this page

---

**Re:** ACE Check Cashing deposition

---

**Urgent**     **Please Reply**     **For Your Review**

---

● **Comments:**

RE: Current medications

Effexor XR 150 mg (depression)

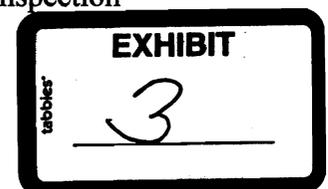
Levoxyl 0.075 mg (hormone)

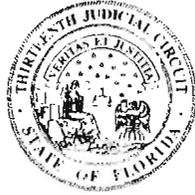


Partial list of outstanding motions and pleadings  
Gillespie v. Barker, Rodems & Cook, PA, case no. 05-CA-7205

By date beginning with the oldest. This list is incomplete due to time constraints, and includes mostly plaintiff's motions and pleadings.

1. March 6, 2006, *Defendants' Verified Request For Bailiff And For Sanctions*
2. March 14, 2006, *Plaintiff's Verified Response To Defendants' Verified Request For Bailiff And For Sanctions and Motion For An Order Of Protection*
3. April 25, 2006, *Plaintiff's Motion For Summary Judgment*
4. April 25, 2006, *Plaintiff's Motion for Appointment of Counsel, Attorney's Fees, and Legal Retainer.*
5. December 14, 2006, *Plaintiff's Motion to Compel Defendants' Discovery*
6. January 18, 2007, *Plaintiff's Motion for Punitive Damages Pursuant to Section 768.72 Florida Statutes*
7. January 29, 2007, *Plaintiff's Motion With An Affidavit For An Order To Show Cause Why Ryan Christopher Rodems Should Not Be Held In Criminal Court And Incorporated Memorandum of Law*
8. February 1, 2007, *Plaintiff's Second Motion to Compel Defendants' Discovery*
9. February 20, 2007, *Plaintiff's Accommodation Request Americans with Disabilities Act (ADA)*
10. March 5, 2007, *Plaintiff's Amended Accommodation Request Americans with Disabilities Act (ADA)*
11. July 16, 2008, *Plaintiff's Motion for Rehearing* (submitted by Mr. Bauer)
12. August 14, 2008, *Plaintiff's Claim of Exemption and Request for Hearing* (Submitted by Mr. Bauer)
13. December 15, 2009, *Plaintiff's Motion to Hold Ryan Christopher Rodems in Civil Contempt of Court*, (Violated Stay Order of October 1, 2009)
14. January 5, 2010, *Plaintiff's Motion for an Order of Protections Against Ryan Christopher Rodems* (with request to Disqualify Mr. Rodems as Counsel for Defendants)
15. January 26, 2010, *Plaintiff's Motion For Relief From Order Adjudging Contempt*
16. February 16, 2010, *Objection To Notice For Trial*
17. February 18, 2010, *Plaintiff's Motion For Order Or Protection*, premise inspection





**ADMINISTRATIVE OFFICE OF THE COURTS**  
THIRTEENTH JUDICIAL CIRCUIT OF FLORIDA  
LEGAL DEPARTMENT

DAVID A. ROWLAND

GENERAL COUNSEL

July 9, 2010

Neil J. Gillespie  
8092 SW 115<sup>th</sup> Loop  
Ocala, Florida 34481

*Via E-Mail:* [neilgillespie@mfi.net](mailto:neilgillespie@mfi.net)

Re: ADA Accommodation Request  
*Gillespie v. Barker, Rodems & Cook*, Case No.: 05-CA-007205,  
Thirteenth Judicial Circuit, General Civil Division

Dear Mr. Gillespie:

This is a response to your July 6, 2010 ADA request for accommodation directed to Gonzalo Casares, the Thirteenth Judicial Circuit ADA Coordinator. You request the same ADA accommodations previously submitted on February 19, 2010. Your February 19, 2010 ADA request was a request for the court to take the following case management actions:

1. Stop Mr. Rodems' behavior directed toward you that is aggravating your post traumatic stress syndrome.
2. Fulfill case management duties imposed by Florida Rule of Judicial Administration 2.545 and designate the above-referenced case as complex litigation under Florida Rule of Civil Procedure 1.201.
3. Offer services, programs, or activities described in Judge Isom's law review article – *Professionalism and Litigation Ethics*, 28 Stetson L. Rev. 323, 324 (1998) – so the court can “intensively” manage the case.

Neil J. Gillespie

July 9, 2010

Page 2

4. Enforce Judge Isom's directives imposed on February 5, 2007 which require both parties to only address each other by surname when communicating about this case and require parties to communicate in writing instead of telephone calls.
5. Allow a 180-day stay so you can scan thousands of documents in this case to PDF and find and hire replacement counsel.

As ADA Coordinator, Mr. Casares can assist in providing necessary auxiliary aids and services and any necessary facility-related accommodations. But neither Mr. Casares, nor any other court employee, can administratively grant, as an ADA accommodation, requests that relate to the internal management of a pending case. All of your case management requests – that opposing counsel's behavior be modified, that the court fulfill its duties under Rule 2.545, that the above-referenced case be designated as complex, that your case be "intensively" managed as suggested by Judge Isom's law review article, that Judge Isom's previous directive regarding communication between parties be enforced, that your case be stayed – must be submitted by written motion to the presiding judge of the case. The presiding judge may consider your disability, along with other relevant factors, in ruling upon your motion.

Sincerely,



David A. Rowland

cc: The Honorable Martha J. Cook  
Ryan C. Rodems, Counsel for Defendant  
Gonzalo Casares, ADA Coordinator for the Thirteenth Judicial Circuit

1 UNITED STATES DISTRICT COURT  
 2 MIDDLE DISTRICT OF FLORIDA  
 3 TAMPA DIVISION

4 -----X  
 5 EUGENE R. CLEMENT, GAY ANN :  
 6 BLOMEFIELD and NEIL GILLESPIE, :  
 7 individually and on behalf of :  
 8 others similarly situated, :  
 9 Plaintiffs, :  
 10 vs. : Case No.: 8:00-CV-  
 11 : 2795-T-26EAJ

12 AMSCOT CORPORATION, a Florida :  
 13 corporation, :  
 14 Defendant. :  
 15 -----X

16 DEPOSITION OF: NEIL J. GILLESPIE

17 TAKEN: Pursuant to Notice by  
 18 Counsel for Defendant

19 PLACE: Barker, Rodems & Cook, P.A.  
 20 300 West Platt Street  
 21 Suite 150  
 22 Tampa, Florida

23 DATE: May 14, 2001

24 TIME: 10:15 a.m.

25 REPORTED BY: Chere J. Barton  
 Notary Public  
 State of Florida at Large

REGENCY REPORTING SERVICE, INC.  
 201 East Kennedy Boulevard  
 Suite 950  
 Tampa, Florida 33602  
 (813) 222-8978

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Page 2

1 APPEARANCES:

2 WILLIAM J. COOK, ESQUIRE  
 3 Barker, Rodems & Cook, P.A.  
 4 300 West Platt Street  
 5 Suite 150  
 6 Tampa, Florida 33606  
 7 Appeared for Plaintiffs

8 JOHN A. ANTHONY, ESQUIRE  
 9 Gray, Harris, Robinson,  
 10 Shackelford, Farnior  
 11 501 East Kennedy Boulevard  
 12 Suite 1400  
 13 Tampa, Florida 33602  
 14 Appeared for Defendant

15 ALSO PRESENT: Gay Ann Blomefield

16 I N D E X

17		Page
18	EXAMINATION BY MR. ANTHONY	4
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Page 4

1 The deposition, upon oral examination, of NEIL J.  
 2 GILLESPIE, taken pursuant to notice by counsel for  
 3 Defendant, at the offices of Barker, Rodems & Cook, P.A.,  
 4 300 West Platt Street, Suite 150, Tampa, Florida, on May  
 5 14, 2001, beginning at 10:15 a.m., before Chere J. Barton,  
 6 Notary Public, State of Florida at Large.

7 Thereupon,  
 8 NEIL J. GILLESPIE,  
 9 having been duly sworn to tell the truth, the whole truth,  
 10 and nothing but the truth, was examined and deposed as  
 11 follows:

12 EXAMINATION

13 BY MR. ANTHONY:

14 Q What is your name?  
 15 A Neil, middle initial J, last name Gillespie.  
 16 Q Mr. Gillespie, how is it that you heard about  
 17 AMSCOT?  
 18 A I believe it was a listing in the Yellow Pages.  
 19 Q A listing for what?  
 20 A I don't recall.  
 21 Q Do you know what services you needed from them?  
 22 A A so-called payday loan.  
 23 Q Is that what you were looking up in the Yellow  
 24 Pages?  
 25 A I don't recall.



1 Q At the point in which you were looking up AMSCOT  
 2 in the Yellow Pages, what companies were you doing payday  
 3 advance business with?  
 4 A I believe at that time I may have been doing  
 5 business with ACE.  
 6 Q Who else? EZ Check Cashing in Clearwater?  
 7 A Well, yes. There were a number of companies.  
 8 You asked about the specific names. If I could refer to  
 9 those notes, I can maybe answer that better.  
 10 Q Let me ask you: What did you do to prepare for  
 11 your deposition today?  
 12 A To prepare for the deposition I went through the  
 13 case file and some other notes.  
 14 Q Your case file or your firm's case file?  
 15 A My own file.  
 16 Q And do you have the materials with you today that  
 17 you went through?  
 18 A No.  
 19 Q Where are they?  
 20 A At my house.  
 21 Q Have you given a copy of those documents to  
 22 AMSCOT in response to our request for production?  
 23 A Yes.  
 24 Q You have?  
 25 A Yes.

1 Q Okay. Can you identify that document?  
 2 MR. COOK: Excuse me. Let me see that first.  
 3 MR. ANTHONY: Sure.  
 4 MR. COOK: Let me just add for the record we  
 5 asked for copies of documents relating to Mr.  
 6 Gillespie's and Ms. Blomefield's transactions. We  
 7 were provided with a copy of the front page of that  
 8 document but not with the reverse side.  
 9 MR. ANTHONY: I'm surprised of that. That would  
 10 be an error on our part, if that's what happened.  
 11 Approximately two days after we got the request for  
 12 production, we had prepared the response and filed it  
 13 of record with the verification page; and we do not  
 14 have our documents of this witness. I don't know what  
 15 happened.  
 16 MR. COOK: Well, somebody didn't copy the back,  
 17 obviously.  
 18 MR. ANTHONY: I mean, we don't have any documents  
 19 from this witness in response to our request for  
 20 production.  
 21 MR. COOK: And when was that?  
 22 MR. ANTHONY: I don't know. That's the last  
 23 thing I learned from Ms. Fernandez as I was walking  
 24 out the door.  
 25 A Are you ready for a response?

1 Q (By Mr. Anthony) Sure.  
 2 A This looks like the application, AMSCOT's  
 3 application.  
 4 Q Do you see your signature anywhere on that  
 5 document or your handwriting?  
 6 A Well, as I -- there appears to be two  
 7 handwritings here. Some of it's mine. Where it says last  
 8 name, that looks like my handwriting. Where it says first  
 9 name, that's not my handwriting nor is it the correct  
 10 spelling of my first name.  
 11 With regard to my signature, it appears that my  
 12 signature is on the back of the document.  
 13 Q Okay. Why don't you put an X where your  
 14 signature is, in this blue pen here, and then date it.  
 15 A Date it what date?  
 16 Q With today's date so that we can know that you're  
 17 authenticating the signature. Did you read that document  
 18 before you signed it, or do you remember?  
 19 A I don't recall. I may have glanced through it.  
 20 The print is pretty small.  
 21 Q Can you read it?  
 22 A I can now. I have bifocals. I didn't have them  
 23 at the time that I -- back in '98.  
 24 Q Do you think in 1998 you couldn't have read it?  
 25 Is that what you're saying?

1 A I'm just saying it's small print, very small  
 2 print.  
 3 Q But you don't recall one way or another whether  
 4 you read that?  
 5 A No.  
 6 Q As best you can recall, does the information  
 7 relating to your address, social security number, et  
 8 cetera, look accurate?  
 9 A The social security number is accurate, yes. The  
 10 address, accurate, yes. Like I previously pointed out, my  
 11 first name is not spelled correctly nor is that my  
 12 handwriting.  
 13 Q Right. Now, there was a period of time -- well,  
 14 let's go back and find out a little bit about your  
 15 history. Where did you graduate from college?  
 16 A I graduated from the University of Pennsylvania  
 17 with an associate's degree and from the Evergreen State  
 18 College with a bachelor's degree.  
 19 Q And what sort of business education did you have  
 20 in college?  
 21 A I studied management and marketing was my areas  
 22 of concentration.  
 23 Q In connection with management and marketing, did  
 24 you review anything about contract documents or a basic  
 25 business law class?

1 A I had business law, yes. I didn't have  
2 commercial law, no.

3 Q Do you have any other legal education as of  
4 today, formal legal education?

5 A I took some paralegal courses at St. Petersburg  
6 Jr. College. Yes.

7 Q Have you ever worked as a paralegal?

8 A No.

9 Q Now, you've taken some psychology classes?

10 A Yes.

11 Q Have you ever been occupied in the psychology  
12 field?

13 A No.

14 Q Have you ever been treated for depression?

15 A Yes.

16 Q How recently?

17 A I'm under current treatment for depression.

18 Q I'm sorry?

19 A Currently.

20 Q Who is your physician?

21 A That would be Dr. Figueroa.

22 Q And where is he located?

23 A St. Petersburg.

24 Q And how long have you been with Dr. Figueroa?

25 A The last couple of years.

1 tell me the first time that you saw a psychiatric doctor or  
2 a psychologist or a counselor.

3 A That would have been in 1985.

4 Q 1985?

5 A Yes.

6 Q And who is that?

7 A That would have been Dr. Wainwright.

8 Q Dr. Wainwright?

9 A Yes.

10 Q How do you spell his name?

11 A Actually it's a her. I don't recall exactly how  
12 it's spelled. I think it's spelled like it sounds,  
13 W-a-i-n -- Wainwright.

14 Q And is that when you were in Philadelphia?

15 A Yes, it is.

16 Q And where was her office?

17 A Her office was on Walnut Street, about the 2300  
18 block of Walnut Street.

19 Q And is that when you were at Temple University?

20 A I'm sorry? Temple University?

21 Q Did you first see Dr. Wainwright while you were  
22 at Temple University or --

23 A I don't know what you mean by Temple -- when I  
24 was at Temple University.

25 Q Did you ever take any classes at Temple

1 Q For two years?

2 A The last couple of years. I would have to review  
3 my file if you want an exact date.

4 Q That would be helpful.

5 Prior to your help with Dr. Figueroa, were you  
6 with some other doctor with respect to any psychological or  
7 psychiatric problems or issues?

8 A I did meet with a psychologist for several  
9 sessions. Yes.

10 Q And what was that person's name?

11 A I don't remember exactly, but I think it was  
12 something like Kessler or Keller. It was a female doctor,  
13 a psychologist.

14 Q And where was she located?

15 A In Clearwater.

16 Q Do you remember the years that you went to her?

17 A That was in '97.

18 Q Anybody else in that field? Any other physician  
19 or counselor?

20 A For that period of time are you talking about?

21 I'm not sure --

22 Q I'm talking about for any period of time, from  
23 the day you were born until now. Tell me about your  
24 psychiatric history. I was trying to do it from most  
25 recent going backwards; but if that's a problem for you,

1 University?

2 A I took one non credit class at Temple.

3 Q Okay.

4 A Is that what you're referring to?

5 Q Yeah. Was that when you were at Wharton?

6 A Well, it was in 1985.

7 Q What were you doing in 1985?

8 A I had a company I was running. The reason for my  
9 visit, I was undergoing quite a bit of craniofacial  
10 reconstructive surgery, and I consulted Dr. Wainwright in  
11 conjunction with that.

12 Q What is that? What does craniofacial mean?

13 A Having to do with the head and face.

14 Q You were having surgery on your head and face?

15 A Yes.

16 Q And what did that result from? What was the need  
17 for that?

18 A That was to correct a birth defect.

19 Q And what sort of a birth defect?

20 A A cleft lip and palate.

21 Q So not as a result of any accident or trauma?

22 A No.

23 Q So that surgery was causing you emotional  
24 problems, and that's why you visited her?

25 A The procedures, yes. There was a number of

1 interrelated procedures.  
 2 Q What were the procedures that were causing you  
 3 difficulty emotionally?  
 4 A It was undergoing periodontal treatment,  
 5 endodontic treatment, the number of surgeries, scheduling  
 6 them. It was stressful.  
 7 Q How many surgeries were there?  
 8 A Well, there were two while I was in Philadelphia  
 9 and one in Miami.  
 10 Q What were the years of the ones in Philadelphia?  
 11 A You know, I have a record of my medical history,  
 12 and rather than sit here and guess about dates, I'd rather  
 13 refer to that.  
 14 MR. COOK: You need to answer the questions to  
 15 the best of your recollection.  
 16 MR. ANTHONY: You know, there's not -- so long as  
 17 you're giving me the best of your recollection, that  
 18 will be fine. We're going to check it out later on  
 19 anyway.  
 20 A What was the question again?  
 21 Q (By Mr. Anthony) When were your initial  
 22 surgeries that were craniofacial?  
 23 A In the '80s.  
 24 Q The beginning of the '80s before your counseling  
 25 sessions with Dr. Wainwright or afterwards?

1 A About a year.  
 2 Q Your responses to some interrogatories -- and if  
 3 you want to take a look at them, I'm going to be referring  
 4 to them. There's a stamp from my office that the exhibit  
 5 tag is in front of.  
 6 And at this juncture I won't ask you to refer to  
 7 any specific sessions, but I will have your prior written  
 8 testimony in the form of these interrogatories with you so  
 9 that you can check them if you want to. You seemed to work  
 10 in labor pools and temp agencies when you arrived here in  
 11 Florida, is that true, during the first couple of years?  
 12 A Let me turn to that page.  
 13 Q I'm on page 8.  
 14 A At the bottom of page 7 you'll see that I was  
 15 employed at Wal-Mart in the summer of 1993.  
 16 Q I got you.  
 17 A That was when I had initially -- about the time I  
 18 initially came here.  
 19 Q I got you. And what caused you to move to  
 20 Florida?  
 21 A My family was living here.  
 22 Q What members of your family?  
 23 A Mother, father and sister.  
 24 Q You had an auto dealership for several months in  
 25 1976 named Gillespie Motors. Is that true?

1 A They were in conjunction with.  
 2 Q And how long did you see her?  
 3 A About two years.  
 4 Q And then you moved to Miami?  
 5 A No.  
 6 Q That's just where you went for additional  
 7 surgery?  
 8 A Yes.  
 9 Q Who was your doctor in Pennsylvania for your  
 10 surgery, your lead physician?  
 11 A I really need to refer to my notes on that.  
 12 Q Okay. When did you move to Florida?  
 13 A In 1993.  
 14 Q And continuously prior to that time, you were in  
 15 Pennsylvania?  
 16 A For the most part, yes.  
 17 Q What sort of occupation did you have while you  
 18 were in Pennsylvania?  
 19 A From what dates?  
 20 Q Immediately prior to your leaving.  
 21 A Leaving in 1992?  
 22 Q Uh-huh.  
 23 A Immediately prior to that, I was essentially  
 24 unemployed.  
 25 Q How long was it that you were unemployed?

1 A Yes, it is.  
 2 Q What were the circumstances of the closing of  
 3 that company?  
 4 A The circumstances? Could you explain what you  
 5 mean by that?  
 6 Q It says the company closed. What happened? Did  
 7 it file Chapter 7?  
 8 A No. The business wasn't making a profit, and I  
 9 closed the company.  
 10 Q Did you borrow money to start that company?  
 11 A Yes.  
 12 Q Who did you borrow that money from?  
 13 A Family members, and I used some savings.  
 14 Q How much money did you borrow from family  
 15 members?  
 16 A I don't recall.  
 17 Q Was it more or less than a hundred thousand?  
 18 A Much less. I think the whole investment in the  
 19 company might have been \$10,000.  
 20 Q So this was a small used car lot or something?  
 21 A Yes. Uh-huh.  
 22 Q Did you use forms such as purchase contracts or  
 23 lease contracts or financing agreements when you were with  
 24 Gillespie Motors?  
 25 A Well, everything was a cash sale; so whatever

1 receipts we had were to reflect a cash sale.  
 2 Q You had cash sales of used cars?  
 3 A Yes.  
 4 Q During the time it was open, how many of these  
 5 cash sales did you handle personally?  
 6 A Maybe ten.  
 7 Q Was that all the sales that occurred, or were  
 8 there others that your employees handled?  
 9 A I believe that was everything.  
 10 Q Were the automobiles promptly refinanced with a  
 11 financing company even though they were cash to you?  
 12 A There was no financing involved.  
 13 Q They were all just cash-and-move-on deals?  
 14 A Yes.  
 15 Q Then you went to Pic-A-Car Auto Sales in  
 16 Langhorne?  
 17 A Yes.  
 18 Q What were the circumstances of your departure  
 19 from Pic-A-Car?  
 20 A I left for a better job with Longshore Auto  
 21 Sales.  
 22 Q With Longshore Auto sales?  
 23 A Yes.  
 24 Q I'm sorry. I don't see Longshore Auto Sales  
 25 here -- oh, I'm sorry. Longshore Auto Sales, sales

1 Q Is Kar Kingdom still operating?  
 2 A No, it isn't.  
 3 Q How did it come to pass that it's no longer  
 4 operating?  
 5 A I closed the company when I sold the real estate  
 6 in 1988.  
 7 Q How much did the real estate sell for?  
 8 A One million, nine hundred thousand dollars.  
 9 Q Okay. And of that, how much of that was  
 10 financed?  
 11 A The mortgage at that time was approximately one  
 12 million, five hundred thousand.  
 13 Q Were all payments current --  
 14 A Yes.  
 15 Q -- when that occurred?  
 16 A Yes.  
 17 Q Did you make a profit then when the company was  
 18 closed?  
 19 A Did I make a profit? Is that what you asked?  
 20 Q Was there a cachet of money left over when the  
 21 business was closed?  
 22 A From the real estate transaction, are you  
 23 asking?  
 24 Q Maybe I phrased it poorly. Did you close the  
 25 business at the same time that you sold the real estate?

1 manager. So you left on good terms with Pic-A-Car?  
 2 A Yes.  
 3 Q And who was your contact person there?  
 4 A At Pic-A-Car?  
 5 Q Yeah.  
 6 A Leon Picarello.  
 7 Q And that was a used car lot?  
 8 A Yes.  
 9 Q Now, the next used car lot was Longshore Auto  
 10 Sales?  
 11 A Yes.  
 12 Q And what were your reasons for relocating from  
 13 there?  
 14 A For leaving Longshore Auto Sales?  
 15 Q Yes.  
 16 A I went to start my own company.  
 17 Q Did you leave on good terms with Mr. Sherman?  
 18 A I think he was sorry to see me go and have  
 19 another competitor, but outside of that --  
 20 Q Did you go to another competitor, or did you  
 21 start your own company?  
 22 A I started my own company. I became a competitor  
 23 of his.  
 24 Q And that's Kar Kingdom?  
 25 A Yes.

1 A Yes.  
 2 Q Did the entity that sold the business -- I'm  
 3 sorry, that purchased the business also purchase the real  
 4 estate?  
 5 A The entity purchased the real estate but did not  
 6 purchase the business.  
 7 Q So the business completely discontinued at that  
 8 point? It didn't carry over in some other name?  
 9 A No.  
 10 Q What is the name of the purchaser?  
 11 A The purchaser was Gary Book of McAfferty Ford,  
 12 but they bought it under a real estate name that I think  
 13 was Red Garage.  
 14 Q When the Kar Kingdom was sold, was there a  
 15 quantity of savings that you had left over or a profit that  
 16 you had, a nest egg, if you will?  
 17 A Well, there was capital gains on the real  
 18 estate. Is that what you're asking?  
 19 Q No. But I appreciate your observation. Were  
 20 there net proceeds left over? Did you have a profit from  
 21 operating that business when the property was sold and the  
 22 business was wound up?  
 23 A I don't understand the question.  
 24 Q Do you know what a nest egg is?  
 25 A Not in legal terms, no.

Page 21

1 Q I'm not asking you a legal term. Do you know  
2 what a nest egg is? Do you have any idea what --  
3 A My understanding of a nest egg is something that  
4 people save for retirement.  
5 Q Did you have money left over when the property  
6 was sold? After you paid all the closing costs, after you  
7 paid your capital gains, did you have money left over to  
8 either start a new business or to save for a rainy day?  
9 A Yes.  
10 Q How much was that?  
11 A I don't recall.  
12 Q Was it more or less than a hundred thousand  
13 dollars?  
14 A I don't recall. It was probably more.  
15 Q Were you in business with any other members of  
16 your family at that time?  
17 A No, but they did work for me.  
18 Q Who in your family worked for you?  
19 A My father and my sister.  
20 Q Your father and sister worked for you?  
21 A Yes.  
22 Q What was your father's position?  
23 A He was an office manager.  
24 Q Had he previously been in the automobile  
25 business?

Page 22

1 A No.  
2 Q What did Global Business Services primarily do?  
3 A It was a consultant and acted to get other  
4 businesses started.  
5 Q What sort of consulting work did they do, like  
6 business consulting?  
7 A Yes.  
8 Q And what was the typical sort of customer or  
9 client that Global had?  
10 A At that time we had -- I had an interest in  
11 trying to get other car lots started in Philadelphia and  
12 the purchase of commercial real estate.  
13 Q So was your clientele primarily prospective car  
14 lot purchasers?  
15 A Yes. You could say that.  
16 Q And what customers did you have? Can you name  
17 one or two customers that you had?  
18 A The corporate name was Automotive Specialists,  
19 and they did business on -- their first fellow was Joe's  
20 Auto Sales, and I believe the second fellow was Dorsey's  
21 Auto Sales.  
22 Q So those are your clients? You had two?  
23 A Essentially, yes.  
24 Q That company filed for bankruptcy corporately?  
25 A What company?

Page 23

1 Q Global Business Services?  
2 A I filed a personal bankruptcy in '92, and I  
3 believe Global was listed as one of my assets.  
4 Q So the corporation never sought bankruptcy  
5 protection, or did it?  
6 A No, I don't believe so. I think it went just as  
7 I stated to you.  
8 Q In your bankruptcy case, was that filed in  
9 Pennsylvania?  
10 A Yes.  
11 Q Did any of your creditors allege that there was  
12 any fraud in connection with your bankruptcy filing or any  
13 other claims?  
14 A There was a claim from Wanamaker Department  
15 Store. Yes.  
16 Q And what did they allege?  
17 A I don't have the specifics here, but I know that  
18 it was ultimately dismissed.  
19 Q Did they allege you running up your credit  
20 without any reasonable expectation that you could repay it?  
21 A Like I said, I don't have that document in front  
22 of me. It's been quite a number of years. All I remember  
23 is that it was dismissed.  
24 Q Do you know why it was dismissed?  
25 A It was without merit.

Page 24

1 Q That's why it was dismissed?  
2 A Yes.  
3 Q So you remember that part?  
4 Are you currently taking any medication for your  
5 emotional situation?  
6 A I am taking medication. Yes.  
7 Q And what's the medication that you're taking now?  
8 A I'm taking Effexor and Levoxyl.  
9 Q Do either of those go by any other name that you  
10 know of?  
11 A No.  
12 Q Who are those prescribed by, Dr. Figueroa?  
13 A Yes.  
14 Q Let's go back to Dr. Figueroa. We've talked  
15 about Dr. Wainwright and Dr. Figueroa. Any other  
16 counselors, psychologists, psychiatrists that you're seeing  
17 in between Wainwright and Figueroa?  
18 A Before I can answer that question, I would have  
19 to go through my records and sit down and think about the  
20 past, if you want something accurate.  
21 Q So basically you can't recall any other helpers  
22 of that kind that you've consulted other than the first one  
23 and the current one?  
24 A Well, I did mention Dr. Kassos, I believe.  
25 Q No, you didn't. Who is Dr. Kassos?

1 A No. I think if you look through the records,  
 2 you'll --  
 3 MR. COOK: He testified Dr. Kessler or Keller --  
 4 MR. ANTHONY: Oh, I heard Kassos just now. Is  
 5 that --  
 6 MR. COOK: The same person?  
 7 THE DEPONENT: Yes.  
 8 A This is exactly why I would rather be able to go  
 9 through the records so that if I called the doctor Keller  
 10 and it's really Kassos, you know, you don't get apoplectic.  
 11 Q I'm sure I don't seem apoplectic right now.  
 12 MR. COOK: Neil, just do the best you can.  
 13 Okay?  
 14 Q (By Mr. Anthony) What was it that brought you to  
 15 Dr. Figueroa?  
 16 A Well, Dr. Figueroa is my primary care physician.  
 17 Q Okay. I thought he was a psychiatric or  
 18 psychological doctor. Am I wrong on that?  
 19 A I didn't testify that he was that. He's my  
 20 primary care physician.  
 21 Q So you're not seeing a doctor for psychiatric,  
 22 psychological or emotional counseling?  
 23 A Dr. Figueroa is treating me for depression. Yes.  
 24 Q Even though he's your primary care -- he's a  
 25 general practitioner who is doing that?

1 Q Who helped prepare it, not type it up? I'm sorry  
 2 about that.  
 3 A I prepared it myself.  
 4 Q Your move to Portland, Oregon, why did you go  
 5 there?  
 6 A I went there to undergo medical treatment for  
 7 speech.  
 8 Q As a result of your surgery?  
 9 A As a result of pharyngeal incompetence.  
 10 Q What does that mean in the vernacular?  
 11 A That's a speech disorder.  
 12 Q So that's independent from your surgery and the  
 13 things that required your surgery?  
 14 A I don't understand what you're asking about  
 15 surgery.  
 16 Q You said you had a cleft lip or palate?  
 17 A And palate.  
 18 Q And palate.  
 19 A It relates to a --  
 20 Q A cleft palate?  
 21 A Yes.  
 22 Q And so you went to school for that?  
 23 A I went to school? I don't understand.  
 24 Q Where did you go to get that corrected, to get  
 25 your speech disorder corrected?

1 A I believe so.  
 2 Q And he's the gentleman who has prescribed these  
 3 medications?  
 4 A Yes.  
 5 Q What was it that led you to think you needed  
 6 medications of that kind?  
 7 A That was his determination.  
 8 Q Are you depressed?  
 9 A Yes.  
 10 Q For how long has that been?  
 11 A I would say since in the mid-'90s.  
 12 Q When you lost your business?  
 13 A No. In the mid-'90s, about '95 or '96.  
 14 Q What happened?  
 15 A At that point I moved to the west coast and went  
 16 to school out there and wasn't able to really establish  
 17 myself there and came back to Florida.  
 18 Q How long were you in St. Petersburg with your  
 19 family before you moved out to the west coast?  
 20 A About a year.  
 21 Q Where did you move on the west coast?  
 22 A Eventually I moved to Portland, Oregon.  
 23 Q Who helped type up that chronology that you're  
 24 looking at?  
 25 A Who helped type it up?

1 A Are we talking about Portland, Oregon?  
 2 Q I'm asking you where you went. It's my  
 3 understanding that you went somewhere to Portland -- in  
 4 Portland, Maine or Portland, Oregon?  
 5 A Portland, Oregon.  
 6 Q And were you employed there?  
 7 A No.  
 8 Q Did your speech situation improve?  
 9 A I underwent treatment and received a speech  
 10 prosthesis.  
 11 Q And you continue to use that speech prosthesis  
 12 effectively through the present date?  
 13 A Yes.  
 14 Q Did you stay out there in Portland, Oregon? At  
 15 some point you moved. Right?  
 16 A Yes. I moved to Olympia, Washington.  
 17 Q And what did you do out there?  
 18 A I completed a bachelor's degree at the Evergreen  
 19 State College.  
 20 Q And were you employed while you were going to  
 21 school?  
 22 A Essentially, no. I did from time to time teach  
 23 English as a second language to a fellow I met in Portland,  
 24 and I may have done some odd painting jobs here and there,  
 25 but essentially I was not employed.

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<p>1 Q What did you do to support yourself -- or how did 2 you support yourself, rather?</p> <p>3 A In 1993, I believe, the Social Security Bureau 4 determined I was disabled, and I've been receiving 5 disability benefits since that time.</p> <p>6 Q How much are your benefits?</p> <p>7 A They're currently \$1,394 a month.</p> <p>8 Q What sort of disability were you found to have in 9 order to trigger these benefits? Was it depression, or did 10 it relate to your cleft lip and palate or what?</p> <p>11 A As I recall, in '93, the initial application was 12 relative to speech -- a speech disability.</p> <p>13 Q And have you continued to have that speech 14 disability?</p> <p>15 A It's -- yes, although it is mitigated with a 16 speech prosthesis.</p> <p>17 Q When was the last time you were checked to 18 determine whether or not you had a speech disability?</p> <p>19 A That would have been at the last determination, 20 and that was in '95, '96.</p> <p>21 Q Here, five years later, what is it about your 22 speech that you find to be disabling? I mean, I understand 23 every word you're saying. What is the problem?</p> <p>24 A If you're understanding me, I guess there's no 25 problem from that standpoint.</p>	<p>1 A Exposed to repeated stresses.</p> <p>2 Q What stresses? Like bankruptcy?</p> <p>3 A No. No.</p> <p>4 Q Employment?</p> <p>5 A No. I would say they would have to do with the 6 birth defect. Yes.</p> <p>7 Q What birth defect, the one that's already fixed?</p> <p>8 A The cleft lip and palate. Yes.</p> <p>9 Q That's causing you stress now?</p> <p>10 A No. It caused me stress growing up. I was 11 physically attacked by students in school from a young age, 12 and that sort of thing.</p> <p>13 Q Did that make you upset?</p> <p>14 A Yes.</p> <p>15 Q And that's continued right up until the present 16 day?</p> <p>17 A Yes.</p> <p>18 Q And that's one of the reasons that you're 19 depressed?</p> <p>20 A I think the depression is -- has many different 21 or several different origins.</p> <p>22 Q Have you ever tried to take your own life?</p> <p>23 A No.</p> <p>24 Q Do you recall ever saying that you would consider 25 that under oath?</p>
<p style="text-align: right;">Page 30</p> <p>1 Q Is there some other reason why you're disabled 2 and on disability?</p> <p>3 A Yes.</p> <p>4 Q What?</p> <p>5 A That I really don't know how to answer because 6 they don't release that information, or I haven't been told 7 of what it is.</p> <p>8 Q Who is the "they" who doesn't release information 9 as to why you're drawing a social security check now?</p> <p>10 A Social Security.</p> <p>11 Q How old are you?</p> <p>12 A 45.</p> <p>13 Q Other than your depression and the things that 14 we've talked about, your oral/facial or cranial surgery, is 15 there anything else that's an impediment to your working?</p> <p>16 A I've been diagnosed with posttraumatic stress 17 disorder.</p> <p>18 Q What does posttraumatic stress disorder mean?</p> <p>19 THE DEONENT: Is that calling for a medical --</p> <p>20 MR. COOK: Just answer to the best of your --</p> <p>21 Q (By Mr. Anthony) I know you're not a doctor, and 22 I know you're not a lawyer. I'm just asking you to tell me 23 what you think it means.</p> <p>24 A Yes. It's a stress-related illness.</p> <p>25 Q What do you think caused it?</p>	<p style="text-align: right;">Page 32</p> <p>1 A I've considered it. Yes.</p> <p>2 Q When is the most recent time you've made that 3 consideration?</p> <p>4 A I think about it from time to time.</p> <p>5 Q Even now with your medication?</p> <p>6 A Pardon?</p> <p>7 Q Even now with your medication?</p> <p>8 A Yes.</p> <p>9 Q And you're not seeing anyone other than 10 Dr. Figueroa over that?</p> <p>11 A That's correct.</p> <p>12 Q Tell me what went wrong when you were in 13 California in the mid-'90s that made -- I don't want to 14 paraphrase your prior words but --</p> <p>15 A I wasn't in California in the mid-'90s.</p> <p>16 Q I'm sorry. Good point. In Washington. The west 17 coast. Washington and Oregon?</p> <p>18 A In Washington in the mid-'90s, '95, '96, 19 insufficient resources, financial, insufficient family 20 support for my endeavors.</p> <p>21 Q What did your parents or family do that wasn't -- 22 to not support you?</p> <p>23 A They weren't interested in the idea of continuing 24 education.</p> <p>25 Q They weren't?</p>

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1 A No.

2 Q What was the reason that they -- by the way, was

3 this your mom or your dad or both of them?

4 A I would say both.

5 Q What's your dad's name?

6 A Cornelius.

7 Q Cornelius Gillespie?

8 A Yes.

9 Q Is he still alive?

10 A I believe so.

11 Q In Pennsylvania? Levittown? Where does he live?

12 A Orlando.

13 Q Oh, he's in Orlando? And your mom is still

14 alive?

15 A I believe so.

16 Q And where does she live?

17 A Orlando.

18 Q What's her name?

19 A Penelope.

20 Q How about your sister? Was she supportive?

21 A No.

22 Q Where does she live now?

23 A I don't know.

24 Q What's her name?

25 A Elizabeth.

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1 Q Do you know the state that she lives in?

2 A The last I heard she was living with my parents.

3 Q Is she married? Does she go by another name?

4 A She was married, and I believe she's divorced.

5 Q Does she still have the same name, Gillespie,

6 now?

7 A I don't know what name she's using.

8 Q What name did she have when she was married?

9 A Bowerly (phonetic).

10 Q How do you spell that?

11 A I'm not sure.

12 Q Bowerly?

13 A Yes.

14 Q So at that point your family stopped paying for

15 your education?

16 A My family wasn't paying for my education.

17 Q They weren't being emotionally supportive?

18 A No.

19 Q They weren't being financially supportive?

20 A They weren't paying for my education. That was

21 being paid through a vocational rehabilitation program.

22 Q What was the vocational rehabilitation program

23 the result of? Did you apply for it?

24 A Yes.

25 Q And what were the criteria that they looked at to

Page 35

1 determine whether or not you could get their money?

2 A Again, I would really want to refer to my notes

3 about that, but it's my recollection that it was the

4 craniofacial disorder and related psychosocial issues.

5 Q You have a tremendous vocabulary and

6 psychosocial -- is that from your psychology courses or

7 something? What does that mean?

8 A What does psychosocial mean?

9 Q Yeah.

10 A My understanding is that it's psychology as it

11 relates to social settings.

12 Q What are your problems in social settings,

13 problems with other people?

14 A Well, I get along good with other people.

15 Q Then what are your problems?

16 A Stress.

17 Q Well, does being with people in social settings

18 cause you stress?

19 A Some people.

20 Q How about in professional settings?

21 A Yes, it can.

22 Q Has that impaired your ability to get or retain

23 jobs?

24 A Yes.

25 Q Would you say that's more the cause of your lack

Page 36

1 of employment or your inability to communicate

2 physiologically?

3 A I'm not sure I understand that question.

4 Q Are you employed now?

5 A Yes. I do part-time work.

6 Q How many hours a week?

7 A Between eight and fifteen.

8 Q What are you doing?

9 A I'm working as a -- for a banquet company, yes,

10 catering company.

11 Q Doing what?

12 A Serving food to people at catered events.

13 Q And why are you not -- is that something you can

14 do without jeopardizing your governmental benefits?

15 A Yes, it is.

16 Q And is there some reason why you can't do that 40

17 hours a week? What do you think the main reason is? I'm

18 sorry. Let's strike that compound question.

19 Is there any reason that you could not do that

20 full time?

21 A I really have no interest in it. Also the stress

22 involved would be too much.

23 Q The stress involved in serving food?

24 A Yes.

25 Q Forty hours a week?

1 A Yes.

2 Q Do you have management responsibilities, or are

3 you just serving the food?

4 A I have no management responsibilities.

5 Q What does your job physically consist of?

6 A Preparing and setting tables for catered events.

7 Q That's pretty much all you do?

8 A Yes.

9 Q Have you ever given your deposition before? Do

10 you remember that?

11 A Yes, I have.

12 Q How many times have you given your deposition

13 before?

14 A I don't know.

15 Q More than five?

16 A Yes.

17 Q What's the first time that you gave your

18 deposition?

19 A I don't recall.

20 Q Have you been involved in a lot of litigation?

21 A I don't know what you mean by "a lot."

22 Q Do you remember being involved in any litigation

23 when you were in Pennsylvania?

24 A Yes.

25 Q What case or cases?

1 editor of yours. Is that a fair summation?

2 A I'm sorry. Could you repeat that?

3 Q Is it a fair summation that the academic dean for

4 your school declined to publish a letter to the editor that

5 you had written?

6 A No.

7 Q Tell me again --

8 A The academic dean was not in charge of publishing

9 letters in the school newspaper. That was not his duties.

10 Q Mr. Cushing was the academic dean?

11 A He was an academic dean, one of several. Yes.

12 Q Why did you sue him?

13 A Because he was the one that essentially called me

14 a liar to the editor of the paper.

15 Q Who was the editor of the paper?

16 A I'd have to go back through my notes to get all

17 that information.

18 Q What was the letter about?

19 A It was about the summer school, the way summer

20 school was run.

21 Q What was the alleged falsehood?

22 A He wouldn't say what the falsehood was.

23 Q And so the basis of your complaint was that he

24 said that the letter was false, so you sued him -- or the

25 letter had false allegations in it, so you sued him?

1 A Well, there was a bankruptcy proceeding that you

2 know about.

3 Q You're reading on page ten. Right?

4 A Yes. Also when I was in business from time to

5 time there were different lawsuits, mostly as far as I

6 remember, all of them small claims actions.

7 Q Did you bring that case against Mr. Cushing

8 that's referenced on your interrogatory?

9 A Yes.

10 Q Why did you do that?

11 A I had written a letter to the editor of the

12 school newspaper which was critical of Mr. Cushing and some

13 of the school's policies. And he had told me -- the editor

14 of the paper or the editor's representative -- that my

15 letter was false, but he declined to say what was false

16 about it and prohibited the publication thereof.

17 Q What was the school newspaper -- for what school?

18 A The Evergreen State College.

19 Q So what was Mr. Cushing's position?

20 A His position was that he thought the letter was

21 inaccurate but that he wouldn't give any responses.

22 Q What was his job title?

23 A He was an academic dean.

24 Q So the academic dean for the school paper for the

25 school you attended declined to publish a letter to the

1 A And that caused the editor of the paper not to

2 publish it. He was given ample time to explain himself,

3 and he declined to do that.

4 Q What sort of damages were you looking for? You

5 prepared the complaint, right, yourself?

6 A Yes.

7 Q And you handled the case yourself?

8 A Yes.

9 Q What were you looking for financially? When we

10 look at the complaint, what does it say at the end of it?

11 A The complaint was asking for \$100,000.

12 Q Plus punitive damages?

13 A I don't recall.

14 Q Now, how did the case resolve itself? How did it

15 conclude?

16 A Each side filed for a summary judgment; and my

17 summary judgment was declined, and the summary judgment for

18 the other side was granted.

19 Q Were attorney's fees assessed against the losing

20 party?

21 A No.

22 Q Now, there was a lawsuit the next year in

23 Pinellas County?

24 A Yes.

25 Q Gillespie versus Yellow Cab. What was that all

1 about?

2 A That was where the cab company had breached its

3 contract with me over a smoking issue. I had prohibited

4 cigarette smoking in the cab, and the company at that point

5 took the car; and it was in violation of the contract.

6 Q Were you a cab driver at the time?

7 A Yes.

8 Q And so you wanted a no-smoking cab, and they said

9 that people could smoke in it?

10 A Essentially, yes.

11 Q So you sued them?

12 A Yes.

13 Q And what were you asking for financially or

14 otherwise?

15 A I think \$600.

16 Q What was the resolution of that case?

17 A I received \$370, I believe. Again, I would have

18 to refer to my notes to get the exact amount, but the judge

19 ruled that the company had breached its contract. The

20 judgment was awarded to me.

21 Q Now, your employment with the U.S. Department of

22 Commerce was for the census?

23 A Yes.

24 Q Did you walk house to house doing the census or

25 did you look at data or what? What were your job

1 A I haven't had any contact with them for a number

2 of years.

3 Q Even your parents, your mom and dad?

4 A That's correct.

5 Q When is the last time you talked to your mom?

6 A Maybe '97.

7 Q Do you realize it's the day after Mother's Day?

8 A Yes.

9 MR. ANTHONY: Can I take a break?

10 MR. COOK: Sure.

11 (There was a break in the proceedings.)

12 Q (By Mr. Anthony) Do you have any other sources

13 of actual potential income besides your social security

14 checks and your payments for the catering business?

15 A No.

16 Q How much do you make in your catering business?

17 A Last year my income was \$5,000 for all the

18 different places I worked for.

19 Q How many hours would you say you worked all last

20 year?

21 A I don't know.

22 Q Thus far in this year have you worked about as

23 much as you did last year?

24 A I would have to go over the figures, but it's

25 about the same.

1 descriptions?

2 A I was walking house to house.

3 Q And what did you do when you got to each house?

4 A I knocked on the door and attempted to get people

5 to complete the census form that they had failed to send

6 into the government.

7 Q How many people did you talk to total?

8 A None.

9 Q You never talked to anybody?

10 A No.

11 Q You walked from house to house, but you never

12 talked to anybody?

13 A There was no one home.

14 Q At every house you went to?

15 A I think I worked a half a day at that job. When

16 it became apparent that no one was home at these jobs I --

17 and for other reasons, I stopped doing it.

18 Q What were the other reasons? Did you find it

19 stressful?

20 A It was stressful. Yes.

21 Q Okay. How much income do you receive from your

22 family by way of support now?

23 A Nothing.

24 Q How long has it been since you received anything

25 from them?

1 Q Now, tell me about your expenses. Are you making

2 ends meet?

3 A Yes.

4 Q Do you have a lot left over at the end of the

5 month?

6 A No.

7 Q How much would you say you have left over?

8 A I don't seem to have anything left over.

9 Q Are you on the edge of bankruptcy, or are you

10 able to carry on the --

11 A I've thought about bankruptcy, but I'm doing the

12 best I can to avoid that.

13 Q What are your total outstanding obligations on a

14 monthly basis? Let's start with rent.

15 A Rent is \$400.

16 Q How about food?

17 A I don't know what that is offhand.

18 Q Have you ever tried to figure out a budget in

19 this manner?

20 A Yes, but I haven't allotted for food. No.

21 Q How about for automobile related expenses?

22 A My car payment is \$128.

23 Q When is that due to expire? When will you have

24 the car paid off?

25 A The balance on the car is \$3,500.

Page 45	Page 47
<p>1 Q Other expenses?  2 A Telephone.  3 Q How much?  4 A \$75 or \$80.  5 Q Long distance calls on that?  6 A Not too many.  7 Q Is that a mobile phone?  8 A No.  9 Q What other expenses out there?  10 A Electric.  11 Q How much?  12 A I think my last electric bill was about \$90.  13 Q Ninety?  14 A Yes.  15 Q What else?  16 A I have a number of credit card payments.  17 Q Tell me about all your credit card debt  18 outstanding.  19 A I don't think I can remember it all.  20 Q Is it more or less than \$5,000 at this time?  21 A More.  22 Q Is it more or less than \$10,000 at this time?  23 A More.  24 Q Do you know if it's more than \$15,000?  25 A If you go to page 16 of the answers --</p>	<p>1 increase or not?  2 A My current Target balance is about \$550, and the  3 limit is \$600.  4 Q How about Amoco? Any change there?  5 A Yes. That balance is close to \$1,300. Also they  6 have increased that amount of credit.  7 Q To what?  8 A About \$1,400.  9 Q Capital One VISA. Is that pretty much the same?  10 A Yeah. Actually, it's less than that. I've  11 closed that account.  12 Q So you've paid off the 495?  13 A Yes. No. I haven't paid it off. It's somewhat  14 less than that.  15 Q How would you close the account? What do you  16 mean? You just told them that --  17 A You call up the credit card company and you say  18 I'd like to close my account, and they close the account.  19 Q And then you just pay them the balance later on?  20 A Yes.  21 Q J.C. Penney. Any difference with that account?  22 A Could I interrupt you one minute?  23 Q Sure.  24 A Because you said something about adding these  25 up. The question that you asked is list all debts that</p>
<p>Page 46</p> <p>1 Q Yep.  2 A -- you'll see a listing of my debts.  3 Q Have you added them all up at this time? And I  4 know that some of them have firm numbers there but, for  5 example, MacDill Federal Credit Union, what's your balance  6 there now?  7 A MacDill Federal Credit Union for the car loan is,  8 like I just said, \$3,500.  9 Q Oh, I see. Okay. Maybe we can add these up.  10 And Sears, your balance is --  11 A It's a little bit less than that. Some of  12 these --  13 Q Staples is all maxed out?  14 A Pardon?  15 Q Staples, you're maxed out?  16 A Staples, it's about \$910.  17 Q Okay. Target? Maxed out?  18 A I owe them about \$550.  19 Q So you're over your limit?  20 A No. My limit increases -- this document was  21 prepared --  22 Q When did it increase?  23 A It increased subsequent to the preparation of  24 this document.  25 Q So you've used that? Have you used the whole</p>	<p>Page 48</p> <p>1 Gillespie has incurred in the past three years in excess of  2 \$300. So there's some debts that were incurred prior to  3 three years ago. Those aren't listed here.  4 Q Right. I asked you for some question -- I asked  5 you some questions in written form in those  6 interrogatories. Obviously, we're not here to read  7 questions and answers. I know that you have been reading  8 heavily on your interrogatories, but I'm just saying if you  9 want to refer to that; and if we can find quick ways to  10 answer my questions today by having you look at them, then  11 we can move along.  12 But what the question I'm asking you is, and I  13 wanted to know: What are your outstanding debts at this  14 time? You took it upon yourself to say, if you want to  15 turn to page 16 it starts with a list of my debts, and now  16 we're just trying to go through and efficiently add up all  17 your debts. Do you see what I mean?  18 A What I'm saying is that by doing that you're not  19 going to maybe get the accurate answer because I believe  20 I'm saying I have to refer to my notes if you want an  21 accurate answer.  22 Q Is what you've told me so far inaccurate as of  23 today's date?  24 A Everything I told you has been accurate.  25 Q Okay. Well, then, let's keep going.</p>

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1 J.C. Penney. Do you still owe J.C. Penney money?  
 2 A Yes.  
 3 Q And how much?  
 4 A That amount, the limit, \$2,000.  
 5 Q Have you been cut off by J.C. Penney?  
 6 A No. Well, let me ask you, what do you mean by  
 7 "cut off"?  
 8 Q Do you get past due notices?  
 9 A No. The account is current.  
 10 Q Aspire VISA. Have your balances changed as of  
 11 today or your authorized amount?  
 12 A Yes. I've closed that account.  
 13 Q Does that mean you paid it off?  
 14 A No. I'm paying it off. The balance is about  
 15 \$1,850 at this point -- \$1,850.  
 16 Q Did you close that, or did they terminate it?  
 17 A I closed it.  
 18 Q What made you close it?  
 19 A I'm in the process of consolidating some of the  
 20 higher interest credit cards.  
 21 Q How are you consolidating it, with another card?  
 22 A With a lower interest rate credit card.  
 23 Q What's the credit card you're using now to  
 24 consolidate these?  
 25 A A MacDill Gold VISA.

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1 Q And is that on this list or --  
 2 A No, it isn't.  
 3 Q Tell me what your balance is on the MacDill Gold  
 4 VISA.  
 5 A I think it's around \$2,900 at this time.  
 6 Q What's your maximum authorized indebtedness?  
 7 A I think it's \$3,700.  
 8 Q And how long has that been out there?  
 9 A That was opened a week or two ago.  
 10 Q And what have you done with the proceeds that you  
 11 borrowed on that account?  
 12 A I've paid off outstanding debt.  
 13 Q Have you paid it off or just made interest  
 14 payments on existing debt?  
 15 A I've paid it off.  
 16 Q What debt have you paid off?  
 17 A If you move down to where it says Next Card VISA,  
 18 that account is closed and paid off in full.  
 19 Q Okay. So that's \$680 less?  
 20 A Yes.  
 21 Q What about the other \$2,000?  
 22 A There is a Capital One account that's not on this  
 23 list because it was incurred prior to three years. That's  
 24 been retired.  
 25 Q And so you paid that with the credit card

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1 account?  
 2 A Yes.  
 3 Q And what was the balance on that?  
 4 A About \$950. This Direct Merchants Bank Titanium  
 5 MasterCard, has been closed and paid off.  
 6 Q How about the Direct Merchants Bank Gold  
 7 MasterCard?  
 8 A That's not been paid off.  
 9 Q What's the balance there?  
 10 A That balance is about \$2,850.  
 11 Q What about Providian VISA? What's the status of  
 12 that account now?  
 13 A Providian VISA has increased my credit line to  
 14 \$1,650.  
 15 Q And what's the amount outstanding right now?  
 16 A The amount on that is about \$1,500.  
 17 Q How about Dillard's? What's the maximum allowed  
 18 balance on that?  
 19 A Dillard's has increased my credit limit to \$700.  
 20 I believe I owe them \$650.  
 21 Q And Aspire, did we already do that one?  
 22 A Yes.  
 23 Q Sallie Mae, your student loans weren't  
 24 dischargeable, were they?  
 25 A I'm sorry. I don't understand.

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1 Q At the bottom of page 17.  
 2 A Yes.  
 3 Q Those have been around since the bankruptcy case?  
 4 A No.  
 5 Q They arose after the bankruptcy case?  
 6 A That was incurred in 1998.  
 7 Q And what school were you attending at the time?  
 8 A The St. Petersburg Jr. College.  
 9 Q And was that your law classes?  
 10 A Paralegal studies. Yes.  
 11 Q Tell me what your curriculum was there. What  
 12 classes did you take?  
 13 A I took an introduction to law for paralegals. I  
 14 took a civil litigation class.  
 15 Q Did you ever hear about class action litigation  
 16 in that class?  
 17 A Yes.  
 18 Q What did you hear about it?  
 19 A I don't know if I can recall everything I've  
 20 heard about it.  
 21 Q Who was your teacher?  
 22 A From which class?  
 23 Q The class where you heard about class action  
 24 litigation.  
 25 A That would have been Susan Demers.

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<p>1 Q Is she still a professor there, or do you know?</p> <p>2 A I believe she is. Yes.</p> <p>3 Q Have you talked to her about this case?</p> <p>4 A No.</p> <p>5 Q When was the last time you talked to her?</p> <p>6 A The last day of class.</p> <p>7 Q When was that?</p> <p>8 A Actually, it may have been after that because I</p> <p>9 got a letter of recommendation from her, but it was in</p> <p>10 1998.</p> <p>11 Q What was the letter of recommendation for?</p> <p>12 A I was applying for a paralegal scholarship.</p> <p>13 Q From what source?</p> <p>14 A One of the paralegal associations, local</p> <p>15 paralegal associations.</p> <p>16 Q Did you get it?</p> <p>17 A No.</p> <p>18 Q How much is your student loan with Sallie Mae?</p> <p>19 A It's about \$9,800, \$9,900.</p> <p>20 Q What's your monthly payment for that?</p> <p>21 A The loan is currently in forbearance.</p> <p>22 Q What does that mean to you?</p> <p>23 A It means it's in forbearance until -- for one</p> <p>24 year, and then I'll resume making payments on it.</p> <p>25 Q Is that pretty much when you call and tell them</p>	<p>1 of school on this?</p> <p>2 A I've made a number of payments.</p> <p>3 Q More or less than a year's worth of payments?</p> <p>4 A Again, I'd have to consult the record to find out</p> <p>5 how many payments I've made.</p> <p>6 Q Have you gotten any bills for costs from this law</p> <p>7 firm?</p> <p>8 A Have I gotten any bills for costs from what law</p> <p>9 firm?</p> <p>10 Q I'm sorry. From your law firm in this case,</p> <p>11 Mr. Cook's law firm?</p> <p>12 A Bills? Not that I'm aware of. No.</p> <p>13 Q Like invoices for copying costs --</p> <p>14 A No.</p> <p>15 Q -- transcripts? No? Do you have a means of</p> <p>16 paying anything like that if you're asked?</p> <p>17 A I would have to talk that over with my counsel.</p> <p>18 Q Does your counsel know what your finances are</p> <p>19 better than you do? Have they helped you in financial</p> <p>20 analysis?</p> <p>21 A No.</p> <p>22 Q What other obligations do you have out there</p> <p>23 besides the ones we've already talked about, monthly</p> <p>24 recurring credit type obligations?</p> <p>25 A Well, as I indicated, I would have to check my</p>
<p>1 that you're broke, and so they give you a year to get it</p> <p>2 together?</p> <p>3 A If you're having financial difficulties, that</p> <p>4 could be one reason. Yes.</p> <p>5 Q Do you write them some sort of a letter</p> <p>6 explaining to them your situation in order to get that</p> <p>7 forbearance?</p> <p>8 A No. My understanding, it's granted rather easily</p> <p>9 if you just request it.</p> <p>10 Q All you have to do is ask for it, and then they</p> <p>11 give it to you?</p> <p>12 A I believe that they provide you with a form, and</p> <p>13 you check off that you want a forbearance. Yes.</p> <p>14 Q Do you have those documents?</p> <p>15 A Do I have the documents?</p> <p>16 Q Yeah. Like a copy of your forbearance</p> <p>17 application or whatever it is?</p> <p>18 A It may be in my file. Yes.</p> <p>19 Q About when did you ask for that forbearance?</p> <p>20 A I would have to consult with the document to give</p> <p>21 an accurate date.</p> <p>22 Q Was it this year or last year?</p> <p>23 A Again, to give an accurate date, I would have to</p> <p>24 consult with the document.</p> <p>25 Q How many payments have you made since you got out</p>	<p>1 file if you want a complete list.</p> <p>2 Q Are there other substantial obligations out</p> <p>3 there? How about furniture rental? Do you have furniture</p> <p>4 rental?</p> <p>5 A I don't have any rented furniture. No.</p> <p>6 Q Cable TV?</p> <p>7 A I don't pay for any cable TV.</p> <p>8 Q You don't pay for cable TV?</p> <p>9 A No.</p> <p>10 Q Do you have cable TV?</p> <p>11 A It's provided by the landlord. It's part of the</p> <p>12 rent.</p> <p>13 Q Do you have insurance, like life insurance or</p> <p>14 anything?</p> <p>15 A I have car insurance, and I have renter's</p> <p>16 insurance.</p> <p>17 Q How much does that run you respectively?</p> <p>18 A I believe the car insurance is about \$700 a year,</p> <p>19 and the renter's insurance is about \$150 a year.</p> <p>20 Q Do you have any assets in your house that are</p> <p>21 worth more than \$250?</p> <p>22 A More than \$250? Not that I can think of.</p> <p>23 Q Mr. Gillespie, you sued the Florida Department of</p> <p>24 Labor and Employment Security. What was that all about?</p> <p>25 A I didn't sue the Department of Labor Industry.</p>

1 Q On page ten of your interrogatory responses it  
 2 says Neil J. Gillespie versus Florida Department of Labor  
 3 and Employment Security. Gillespie appears pro se.  
 4 A Yes. That's not a lawsuit. That's an  
 5 administrative hearing.  
 6 Q Oh, I'm sorry. What was that for?  
 7 A That was relative to a vocational rehabilitation  
 8 plan.  
 9 Q What was your perceived problem that led to your  
 10 initiating that?  
 11 A Well, the State of Florida had prepared a  
 12 vocational rehabilitation plan for me and then refused to  
 13 implement it. Essentially that was it.  
 14 Q And what did that rehabilitation plan involve?  
 15 A What did it involve?  
 16 Q Yeah. What did it require?  
 17 A The State had done an evaluation of me and  
 18 determined that I was suited to be a -- go to medical  
 19 school and become a doctor.  
 20 Q And do you have a copy of that report around?  
 21 A I have it in my file. Yes.  
 22 Q And who did that evaluation on you? Was there  
 23 somebody in charge of the evaluation?  
 24 A Yes.  
 25 Q What was that person's name? Do you remember?

1 Q And what specifically did the plan provide then?  
 2 A As I just told you, it provides for training as a  
 3 medical doctor or -- and it gave some alternatives also.  
 4 Q Who is going to pay for your medical training?  
 5 A I believe this is a federally funded program.  
 6 Q So the federal government was going to pay for  
 7 your medical school?  
 8 A It would be the Division of Vocational  
 9 Rehabilitation.  
 10 Q I got you.  
 11 Now, Florida Elections Commission vs. Thompson.  
 12 What involvement did you have in that case?  
 13 A I filed a sworn complaint alleging a violation of  
 14 the election law.  
 15 Q Now, you're not listed on the style of that  
 16 complaint?  
 17 A That's correct.  
 18 Q How was it that you filed a complaint? Were you  
 19 one of the complainants? Were you one of the plaintiffs?  
 20 A I believe a citizen has a right to file a sworn  
 21 complaint with the Elections Commission.  
 22 Q And you did that to correct what wrong?  
 23 A He had paid a contribution in violation.  
 24 Q And what was the violation that you perceived?  
 25 A Initially it was too much money contributed by

1 A I'm trying to remember. Yes. It was my  
 2 counselor from 1994.  
 3 Q Wainwright?  
 4 A No. My vocational rehabilitation counselor, an  
 5 employee of the State. I can't recall his name right now.  
 6 Q And was that person a doctor?  
 7 A I don't know what their qualifications were.  
 8 Q Now, this was brought in 1998. Correct?  
 9 A Yes.  
 10 Q And that was at a time, was it not, when you had  
 11 already been depressed for a couple of years. Correct?  
 12 A Yes.  
 13 Q And you wanted to have the State of Florida  
 14 somehow proceed to teach you to become a doctor. Is that  
 15 pretty much what you wanted?  
 16 A I wanted them to fulfill their obligation that  
 17 they had made for themselves.  
 18 Q And that was what?  
 19 A Well, it's contained in the vocational  
 20 rehabilitation plan. I would note that the plan also gives  
 21 alternatives and that those weren't implemented either.  
 22 Q What did you want them to do? When we pull Case  
 23 No. 98-3444, what are we going to find that you wanted them  
 24 to do?  
 25 A To implement the plan.

1 the lawyer or law firm to a judge before whom the lawyer or  
 2 law firm regularly hears cases.  
 3 Q Okay. Who is the judge that you say got the  
 4 money?  
 5 A Andrews.  
 6 Q Judge Andrews? What was his first name?  
 7 A Michael.  
 8 Q What's his middle name?  
 9 A I don't recall.  
 10 Q Judge Michael Andrews. Is he in Pinellas County?  
 11 A Yes.  
 12 Q And who was the lawyer who contributed to his  
 13 campaign?  
 14 A Thompson.  
 15 Q What's his first name?  
 16 A I don't recall. He is the senior. His son is  
 17 also with the firm.  
 18 Q What's the name of the firm?  
 19 A Thompson, Goodis & Thompson.  
 20 Q And where are they based?  
 21 A They're in St. Petersburg.  
 22 Q How was it you came to find out about this  
 23 perceived problem?  
 24 A I had questioned one of my professors at the  
 25 junior college about why some lawyers could carry on in

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<p>1 court and seem immune to both the law and common decency;</p> <p>2 and the judge told me it's simply because these lawyers pay</p> <p>3 off the judges in the form of election contributions, and</p> <p>4 they don't want to do anything to the lawyer that would</p> <p>5 upset that flow of cash to their campaign.</p> <p>6 Q Was that the --</p> <p>7 A So what I did at that point was I went down to</p> <p>8 the campaign records for the judge, and then I found that</p> <p>9 the contribution exceeded the amount set by the statute.</p> <p>10 Q And was this the professor or the judge who</p> <p>11 explained that theory?</p> <p>12 A The professor was a judge.</p> <p>13 Q And what was that professor judge's name?</p> <p>14 THE DEPONENT: Do I need to disclose that?</p> <p>15 MR. COOK: Sure. You testified to it.</p> <p>16 A It was more than one judge. I had another judge</p> <p>17 that essentially confirmed that. That was --</p> <p>18 Q Tell me the judge's --</p> <p>19 A I can't remember his name offhand.</p> <p>20 Q Was it one of your professors?</p> <p>21 A Yes.</p> <p>22 Q At St. Pete Jr. College?</p> <p>23 A Yes. I've got it in the records. I can get that</p> <p>24 to you.</p> <p>25 Q They were both male professors?</p>	<p>1 Commission took the action. But what it turned out was</p> <p>2 that the \$509 amount was only the tip of the iceberg. It</p> <p>3 wasn't a cash contribution; it was an in-kind contribution</p> <p>4 that was actually, according to my calculations, valued at</p> <p>5 over \$1,000.</p> <p>6 Q And what was that?</p> <p>7 A An in-kind contribution.</p> <p>8 Q I know that it was in-kind, but what were they</p> <p>9 giving? Sausages? Napkins?</p> <p>10 A Essentially they were running the judge's</p> <p>11 re-election campaign, printing up his flyers, mailing them</p> <p>12 and all that sort of thing.</p> <p>13 Q So it was printing and mailing that they were</p> <p>14 doing?</p> <p>15 A The complaint has a complete listing of</p> <p>16 everything.</p> <p>17 Q And as best you recall that was printing and</p> <p>18 mailing?</p> <p>19 MR. COOK: I don't think that's what he testified</p> <p>20 to.</p> <p>21 A It was also postage. It's all contained in the</p> <p>22 complaint.</p> <p>23 Q (By Mr. Anthony) And you drafted that all by</p> <p>24 yourself?</p> <p>25 A I filed the complaint, yes, by myself.</p>
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<p>1 A Yes.</p> <p>2 Q And you can't remember who they are now?</p> <p>3 A The second one was Judge Demers.</p> <p>4 Q Judge Debers?</p> <p>5 A Demers.</p> <p>6 Q Demers. Do you remember Judge Demers' first</p> <p>7 name?</p> <p>8 A Not offhand. No.</p> <p>9 Q And do you know whether that person is still a</p> <p>10 judge?</p> <p>11 A They're the chief judge now.</p> <p>12 Q And that's exactly how it was described to you?</p> <p>13 A I don't know if that was exactly how it was</p> <p>14 described; but, yes, that's the essence of it.</p> <p>15 Q And what was your understanding as to the</p> <p>16 statutory limit on the contribution to this judge?</p> <p>17 A It was a \$500 statutory limit.</p> <p>18 Q And how much had this lawyer contributed?</p> <p>19 A \$509.</p> <p>20 Q And so you sued --</p> <p>21 A Well, first of all, it wasn't a lawsuit.</p> <p>22 Q It has a case number.</p> <p>23 A It's a complaint.</p> <p>24 Q It's an administrative complaint?</p> <p>25 A I didn't file any lawsuit. The Elections</p>	<p>1 Q Who drafted it?</p> <p>2 A I don't know what you mean by drafting.</p> <p>3 Q Who wrote it?</p> <p>4 A I filled out a complaint application.</p> <p>5 Q I got you. And you filled it out yourself?</p> <p>6 A Yes.</p> <p>7 Q You just can't remember the name of the first</p> <p>8 judge professor who told you how things worked?</p> <p>9 A Right now I'm really stressed, and that's</p> <p>10 preventing me from remembering.</p> <p>11 Q This is stressing you?</p> <p>12 A Yes.</p> <p>13 Q Do you find this to be something that you want to</p> <p>14 stop for a while?</p> <p>15 A We can go on.</p> <p>16 Q How did that case resolve itself?</p> <p>17 A Well, the Elections Commission found that they</p> <p>18 had violated the law, the letter of the law; but they</p> <p>19 deemed that the violation was something they weren't going</p> <p>20 to pursue.</p> <p>21 When it was brought to their attention, there was</p> <p>22 more involved in it than just a \$9 overage. They didn't</p> <p>23 want to pursue the case any further.</p> <p>24 Q So when you filed this complaint, were you aware</p> <p>25 that it was just a \$509 overage?</p>

1 A Yes.

2 Q And have you appealed that already?

3 A That was appealed. Yes.

4 Q Who handled the appeal?

5 A I did.

6 Q Did any lawyer help you?

7 A No.

8 Q And has it been resolved yet?

9 A No. The Second District Court of Appeal didn't

10 seem to have much interest in the matter, and the advice

11 that I got from an agent of the FBI was to bring it to the

12 attention of the governor. I've done that.

13 Q Have you brought it to the attention of the

14 governor?

15 A Yes.

16 Q Which one?

17 A Governor Bush.

18 Q When did you do that?

19 A I'd have to refer to my records if you want an

20 exact date.

21 Q Have you heard back from Governor Bush?

22 A I would say that we're in communications on that.

23 Q What does that mean? Did he call you?

24 A One of his people called me on his behalf.

25 Q Who was that?

1 Q Were you unsatisfied with that result?

2 A Well, when the judge let the lawyer misbehave in

3 court I was concerned about that. Yes.

4 Q Who was the lawyer who misbehaved in court and

5 got away with it, in your opinion?

6 A Thompson.

7 Q Did you file a Bar grievance against Thompson?

8 A No. I did write to the chief judge at the time,

9 Susan Schaeffer.

10 Q Did you get a letter back?

11 A No.

12 Q What did he do in court that made you so upset?

13 A He came up and sat down on the table in front of

14 me. When I was called to read some documents, I would say

15 that he was under a court order to produce documents, which

16 he did not do. This made me have to read them in court on

17 the day as opposed to being able to see them ahead of

18 time. When I stepped up to read the documents, he blocked

19 my view, made snide remarks, then he threatened me.

20 Q How did he threaten you?

21 A He said that I know your name, and if you ever go

22 to apply to the Florida Bar I will see that you are

23 prevented from becoming a member.

24 Q Do you want to be a member of the Florida Bar?

25 A I had thought about it at one time. Yes.

1 A Again, I'd have to refer to my notes. It was a

2 female.

3 Q What did they say?

4 A That they appreciated my work on this matter.

5 Q Were they following up with it?

6 A Like I say, we're in the process of writing back

7 and forth. Yes.

8 Q So Governor Bush's office has written you letters

9 about this?

10 A Governor Bush himself.

11 Q Has written you letters about this case?

12 A Yes.

13 Q What do they say?

14 A We're sorting out how it's going to be handled.

15 Initially he didn't know if he had jurisdiction or not, and

16 I think that that's what we have to determine, whether he

17 has jurisdiction to employ a special prosecutor.

18 Q Has he opined on whether he has jurisdiction to

19 do that?

20 A I believe at this point he doesn't believe he has

21 jurisdiction, but the FBI believes that he does have

22 jurisdiction.

23 Q Why did you check this particular judge's

24 contributions? Had you been in a case with him previously?

25 A Yes. This was the case with the taxi cab.

1 Q What law schools have you applied to?

2 A Pardon?

3 Q What law schools have you applied to?

4 A I haven't applied to any.

5 Q Have you applied to medical schools?

6 A No.

7 Q Is there a transcript of this badinage of these

8 events in that courtroom?

9 A No.

10 Q Was this the older or the younger Thompson?

11 A Older.

12 Q Now, here is Florida Elections Commission vs.

13 Andrews, 98-163. Is that pretty much the same thing but

14 where it's the judge --

15 A Yes.

16 Q -- as opposed to the lawyer? Is that also on

17 appeal still?

18 A That status is the same as Thompson.

19 Q Who is Goodis?

20 A Goodis is the partner in Thompson, Goodis &

21 Thompson.

22 Q Okay. I see your third case is Florida Election

23 Commission vs. Goodis, 99-169. What was that all about?

24 A That was his duplicity in the above two cases.

25 Q What sort of duplicity was he engaged in?

1 A He was actually the one running the campaign. He  
 2 had formed the re-election committee for the judge and in  
 3 doing so violated the Florida Election Statutes.  
 4 Q Why did he violate Florida Election Statutes?  
 5 A Well, my complaint is nine pages. I'm not even  
 6 going to attempt to go into the details on this one without  
 7 getting the complaint in front of me.  
 8 Q Is this not fresh in your mind?  
 9 A No, actually, it isn't because I filed that  
 10 complaint -- or they received my complaint on July 1st,  
 11 '99; so it's going on two years ago.  
 12 Q You have a lot of litigation going on, don't you?  
 13 A I have a few things here and there.  
 14 Q Do you do all this by yourself? I mean, with the  
 15 exception of this check cashing loan litigation, do you do  
 16 all of this yourself?  
 17 A Some of it is; some of it isn't.  
 18 Q Of all the things on this schedule, page ten and  
 19 eleven, what ones have you had lawyers representing you?  
 20 A Well, Gillespie vs. Bell Savings Bank, that was  
 21 represented by an attorney, Charles Boohar.  
 22 Q What one is that on? Oh, at the bottom?  
 23 A Yes.  
 24 Q Where is Charles located?  
 25 A I haven't had contact with him for ten years.

1 The last I knew he was in the suburbs of Philadelphia.  
 2 Q What did you sue Bell for?  
 3 A That was a contract dispute.  
 4 Q About a note, a promissory note or something?  
 5 A After I paid their mortgage of 1.1 million  
 6 dollars, they wanted to impose roughly a \$33,000 prepayment  
 7 penalty. Our contention was that we had the option of  
 8 substituting the collateral under some sort of a tax swap.  
 9 Q How did that get resolved?  
 10 A It wasn't resolved. Bell went broke. I think  
 11 they were taken over by Resolution Trust Corporation, but  
 12 I'm not sure. And in any event, that lawsuit was listed as  
 13 an asset in my 1992 lawsuit -- bankruptcy. I'm sorry.  
 14 Q Gillespie vs. Freedman Auction?  
 15 A I was represented by counsel on that, Charles  
 16 Boohar.  
 17 Q What were these paintings and money? What's this  
 18 all about?  
 19 A I had consigned paintings to the auction, and  
 20 there was some delay in getting the payment for them.  
 21 Q How much at issue?  
 22 A There were a couple of things involving  
 23 Freedman. I don't recall what this one was. One painting  
 24 was about \$20,000, and there were some other ones that were  
 25 for lesser amounts.

1 Q Who painted the \$20,000 painting?  
 2 A Ed C. Wyeth.  
 3 Q It was your painting?  
 4 A Yes.  
 5 Q Do you have any Wyeths now?  
 6 A No.  
 7 Q When is this?  
 8 A That was in the '80s.  
 9 Q Gillespie vs. Rolls Royce Motors. Did you have a  
 10 Rolls Royce at one time?  
 11 A Yes.  
 12 Q And you sued over the warranty?  
 13 A That's correct.  
 14 Q How did that get resolved?  
 15 A The judge awarded me a finding, and they  
 16 appealed. I don't know that we followed that appeal up.  
 17 Q Did you ever recover on your auto warranty?  
 18 A No.  
 19 Q Did you use a lawyer for that?  
 20 A Charles Boohar.  
 21 Q Gillespie Kar Kingdom, Inc. vs. London Motors.  
 22 What was that about?  
 23 A That was a breach of contract. London Motors  
 24 produced an automobile that I was a dealer for. They  
 25 failed to comply with the terms of the contract.

1 Q How did that resolve itself?  
 2 A I was represented by Charles Boohar, and then  
 3 Mr. Boohar at that point was working for a law firm, which  
 4 I don't remember the name of -- but he left the firm. And  
 5 the case stayed with the former law firm. I don't think  
 6 they had any interest in the case and essentially let it  
 7 die.  
 8 Q You sued British Airways pro se. What does pro  
 9 se mean to you?  
 10 A For himself.  
 11 Q How did that case get resolved?  
 12 A I sued them over smoke coming from the smoking  
 13 section into the non smoking section.  
 14 Q This is when you were a passenger on the Concord?  
 15 A Yes. The claim was barred by the Geneva  
 16 Convention. That's my understanding.  
 17 Q Where did you sue them? France?  
 18 A It was in Philadelphia.  
 19 Q Did they bring any lawsuit against you for  
 20 attorney's fees or a claim for attorney's fees or costs?  
 21 A No.  
 22 Q Did they show up with a lawyer?  
 23 A I believe they had counsel, yes.  
 24 Q You didn't know about that there's smoking on the  
 25 Concord before then, before you got on it?

1 A There was a smoking and a non smoking section. I  
 2 was seated in the non smoking section, and smoke from the  
 3 smoking section left the smoking section and went into the  
 4 non smoking section where I was sitting.  
 5 Q What year was this that you brought this claim?  
 6 A I think that was '88 -- 1988 or 1989.  
 7 Q How much money were you asking for?  
 8 A I don't recall.  
 9 Q What was Bixby Enterprises vs. Gillespie about?  
 10 A That was a complaint for unlawful detainer.  
 11 Q What does that mean?  
 12 A They were suing to have me evicted from the  
 13 apartment. Essentially I rented an apartment in a  
 14 two-story building. The apartment beneath me they had let  
 15 a business move into, and it was causing noise, smoke, etc.  
 16 It was disturbing me. They weren't going to do anything  
 17 about it. And they eventually settled with me and let me  
 18 move out of the apartment and returned my deposit.  
 19 Q What did you allege by way of your counterclaim?  
 20 A That prior to moving into the apartment I  
 21 explained to the leasing agent that I wanted a quiet  
 22 apartment where I wouldn't have a lot of disturbances.  
 23 Q Is that to keep you relaxed and not stressed?  
 24 A Yes.  
 25 Q At this point you were already depressed from

1 stress?  
 2 A Yes.  
 3 Q At this point your family and you were already on  
 4 the outs?  
 5 A Yes.  
 6 Q You were already having financial troubles?  
 7 A Yes.  
 8 Q How many months did you get to stay there without  
 9 paying rent?  
 10 A I paid for all the time I was there.  
 11 Q So why did they want to remove you?  
 12 A Because I stopped paying the rent.  
 13 Q So you ultimately paid all the rent covering the  
 14 whole time there?  
 15 A Once they filed the complaint for unlawful  
 16 detainer, I moved to another apartment. I paid for all the  
 17 time that I stayed there.  
 18 Q What's Linda Sue Coley vs. Gillespie all about?  
 19 A Linda Sue Coley is an employee of EZ Check  
 20 Cashing. Outside of that, and even at the time, I didn't  
 21 know who she was. I'd never met her anywhere else before.  
 22 I was taking a photograph of this business for  
 23 use in a lawsuit, and Ms. Coley went to the police or to  
 24 the court and alleged domestic violence or repeat  
 25 violence. The case was thrown out, and she was fined \$50

1 in court costs.  
 2 Q Were you a domestic companion of hers at the  
 3 time?  
 4 A No.  
 5 Q I don't understand this. She alleged domestic  
 6 violence?  
 7 A Repeat violence.  
 8 Q Repeat violence.  
 9 A The case had no merit whatsoever.  
 10 Q Did she employ a lawyer for that?  
 11 A No.  
 12 Q Were you just taking a picture, and she filed a  
 13 lawsuit?  
 14 A That's correct. Actually, not a lawsuit. She  
 15 went down and complained to the court, and they filed the  
 16 suit on her behalf.  
 17 Q And what was her complaint all about, that you  
 18 were taking a picture of her?  
 19 A That I was taking a picture of her building so  
 20 that I could uncover her security and break in there and  
 21 steal all her money or something like that.  
 22 Q Have you investigated any other judges the way  
 23 you've investigated Judge Andrews?  
 24 A Yes.  
 25 Q Tell me the ones you've investigated.

1 A I would have to get my list. Actually, the  
 2 information is in the -- that's part of the complaint. One  
 3 of the judges I looked into his file, he was adamant that  
 4 he wasn't going to take these campaign contributions and  
 5 the inference being that he wasn't for sale. So I thought  
 6 that was good evidence supporting my case.  
 7 Q Any other judges you've investigated?  
 8 A I think that's it.  
 9 Q Any other lawsuits not on this list either  
 10 because they occurred afterwards or because they were just  
 11 omitted?  
 12 A No. I think that's it other than AMSCOT, which  
 13 we're here for and Ace.  
 14 Q And EZ Check Cashing is also --  
 15 A Yes.  
 16 Q -- suing you and you're countersuing them.  
 17 Right?  
 18 A Yes. That's on here, page ten.  
 19 Q How was it that you first heard about payday  
 20 deferred deposit transactions?  
 21 A In some marketing media.  
 22 Q Let me stop before I go into all that. Who is  
 23 Mark Kamleiter?  
 24 A Mark Kamleiter is an attorney.  
 25 Q What's he ever done for you?

1 THE DEPONENT: Is that going to violate the  
 2 attorney/client privilege? I don't want to do that.  
 3 MR. COOK: So long as you don't reveal any  
 4 communications, it won't.  
 5 A I don't want to void my attorney/client  
 6 privilege.  
 7 Q (By Mr. Anthony) Is there any case pending in  
 8 which he's represented you?  
 9 A No.  
 10 Q Was there formerly any case pending in which he  
 11 represented you?  
 12 THE DEPONENT: If I answer that, is that going to  
 13 violate attorney/client privilege?  
 14 MR. COOK: What was the question again?  
 15 MR. ANTHONY: Was there formerly any case pending  
 16 in which Mr. Kamleiter represented the witness?  
 17 MR. COOK: You can tell him if he represented you  
 18 in a case.  
 19 A A filed case?  
 20 Q (By Mr. Anthony) Filed or threatened case.  
 21 A He was, you know, as this says, my vocational  
 22 rehabilitation lawyer.  
 23 Q Was there a case threatened against you in  
 24 connection with vocational rehabilitation issues?  
 25 A No. We were making the threats.

1 A I filed an administrative action.  
 2 Q And that's what led to the administrative action  
 3 we've already talked about?  
 4 A Yes.  
 5 Q And Mr. Kamleiter didn't represent you in that?  
 6 A No.  
 7 Q But you brought it --  
 8 A Yes.  
 9 Q -- regardless? Going back to the deferred  
 10 deposit industry, what's the first check cashing business  
 11 that you ever patronized?  
 12 MR. COOK: Do you want to break for lunch at some  
 13 point here?  
 14 MR. ANTHONY: I'm a hungry boy. I was just  
 15 thinking about that.  
 16 (There was a break in the proceedings for lunch.)  
 17 Q (By Mr. Anthony) We had briefly talked about  
 18 your bankruptcy prior to the break. And if you could take  
 19 a look at Exhibit 3, what is that?  
 20 A This appears to be a copy of a Summons and Notice  
 21 of Trial in an adversary proceeding.  
 22 Q What's an adversary proceeding?  
 23 A An adversary proceeding is -- in this case it's a  
 24 complaint to determine dischargeability of debt pursuant to  
 25 Title 11, USC 523.

1 Q And who did you make the threats to?  
 2 A Vocational rehabilitation.  
 3 Q What's the name of the -- was there a  
 4 governmental entity of some kind?  
 5 MR. COOK: I think he testified about all this  
 6 already, his vocational rehabilitation --  
 7 MR. ANTHONY: Oh, this is because you weren't  
 8 going to be -- they weren't going to go through and --  
 9 your medical deal?  
 10 A They weren't going to do anything that they had  
 11 said. I would add, just to supplement this, that the  
 12 vocational rehabilitation plan also called for medical  
 13 services and so forth and so on. It wasn't strictly a  
 14 vocational rehabilitation by way of education or career.  
 15 It also included medical restoration.  
 16 Q (By Mr. Anthony) How was that resolved, that  
 17 latter part that you mentioned?  
 18 A I'm not sure I understand what you're asking.  
 19 Q Did they cover some of that medical restoration  
 20 or any --  
 21 A Florida?  
 22 Q Yeah.  
 23 A Nothing.  
 24 Q And following the threats, did you bring  
 25 litigation?

1 Q And do you recognize that document?  
 2 A Not really.  
 3 Q Read it and see if your memory gets refreshed.  
 4 This is when Wanamaker was claiming that you ran up an  
 5 account with them without any chance of being able to repay  
 6 it. Right?  
 7 A Yes. I think that's what they allege here.  
 8 Q And finally they didn't pursue it anymore, and  
 9 you got your discharge. Right?  
 10 A No, that's not true. They were unable to prove  
 11 any of this, and this was eventually dismissed.  
 12 Q Did you counterclaim or something against them?  
 13 A No. I vaguely remember answering some  
 14 interrogatories and going through different steps, and  
 15 ultimately they weren't able to prove their allegations.  
 16 Q And Exhibit No. 4, tell me if you recognize  
 17 that --  
 18 MR. COOK: Let me see --  
 19 MR. ANTHONY: I'm sorry about that.  
 20 Q (By Mr. Anthony) That's a composite exhibit, I  
 21 will represent to you, is your initial bankruptcy filing in  
 22 your bankruptcy case. Do you recognize that document as  
 23 your initial bankruptcy filings in your bankruptcy case in  
 24 1992?  
 25 A Yes.

1 Q Do you see your signatures anywhere on those?  
 2 A My signature?  
 3 Q Yeah.  
 4 A Let me look. I have the second page. It looks  
 5 like I signed it twice.  
 6 Q Do you remember checking out those filings to  
 7 make sure that they were true and correct before you signed  
 8 them?  
 9 A Which filing was that?  
 10 Q That whole composite exhibit.  
 11 A What was the question again?  
 12 Q Do you remember looking that document, as filled  
 13 out, over before signing it to make sure everything was  
 14 correct?  
 15 A I don't really have any independent recollection  
 16 of it. No. I see now that it's signed, and it looks like  
 17 my signature.  
 18 Q Do you have any reason to believe at this time  
 19 that any information on there was false when you signed  
 20 it? Did you sign it on December 21 of 1999 -- I'm sorry,  
 21 1991?  
 22 A No.  
 23 Q You don't think that's when you signed it?  
 24 A December 31st.  
 25 Q Oh, I'm sorry.

1 A 1991.  
 2 Q Do you have any reason to believe that any  
 3 information on those documents was inaccurate when you  
 4 signed it? You can take a minute to look over it.  
 5 A No. I believe it was all accurate. Yes.  
 6 Q And in particular the page that is a summary of  
 7 schedules, about three pages -- the third page back, the  
 8 one --  
 9 A I will say that it looks like somebody has  
 10 monkeyed with the document a little bit. Everywhere where  
 11 it says 31, it looks like it could be a 21. And here I see  
 12 at the bottom of the asset column it looks like it's been  
 13 typed over. I don't remember the original having those  
 14 mistakes. It may have, but I don't remember it like that.  
 15 Q Is there a mistake on it? Do you think that that  
 16 number is inaccurate?  
 17 A I don't know.  
 18 Q Were the numbers on page three, summary of  
 19 schedules -- were the numbers in --  
 20 THE DEPONENT: See this here? I don't remember  
 21 that being that way.  
 22 MR. ANTHONY: He's looking at the total  
 23 liabilities, the second large column moving from left  
 24 to right.  
 25 Q (By Mr. Anthony) Do you have any reason to

1 believe that the value of real property in your possession  
 2 at the time of filing these is something other than  
 3 245,000?  
 4 A I don't really recall. That sounds about right.  
 5 Q And what property would that be?  
 6 A That was probably the home I was living in.  
 7 Q And do you have any reason to believe that the  
 8 value of personal property in your possession, ownership or  
 9 control as of the time of your Chapter 7 bankruptcy filing  
 10 was something other than \$4,775 as indicated in Column B?  
 11 A No. I'm relying on that figure. I would have to  
 12 go with that.  
 13 Q And then the total is 245,000 and 4,775 would  
 14 then be \$249,775. Correct?  
 15 A If that's what it says. Yes.  
 16 Q Well, I'm not asking you -- I don't want to just  
 17 read off -- do you have any reason to believe that this  
 18 bottom number is wrong then, the one that has some typing  
 19 irregularities on it?  
 20 A That could be a 2 or a 3. I don't know.  
 21 Q So it wouldn't add up if it were three, would it?  
 22 A Unless somebody made a math error.  
 23 Q Do you want to look at the backup sheets and  
 24 determine whether or not there's been a math error? We  
 25 have all day long. I have no problem with that. Take as

1 much time as you need to make sure --  
 2 A What do you want me to add up now?  
 3 Q I'd like you to be able to determine for me  
 4 whether or not the summary of schedules was accurate as of  
 5 the date that you signed.  
 6 A If this is a representation of the actual  
 7 bankruptcy then, yes, it was.  
 8 Q And that's what it appears to be to you.  
 9 Correct?  
 10 A It appears to be that. Yes.  
 11 Q With your signature?  
 12 A Except that I don't remember these figures being  
 13 messed up like that.  
 14 Q Well, put a circle around every figure that you  
 15 consider to be wrong.  
 16 A I didn't say wrong; I said messed up.  
 17 Q How do you mean messed up? Do you mean the  
 18 typing is messed up?  
 19 A Well, you can't see whether that's a 2 or a 3.  
 20 The 9 is double struck, and the 775 looks like in bold  
 21 print, and it's not all the way through, finished at the  
 22 bottom. I just don't remember it being that way.  
 23 Q You don't remember messy typing?  
 24 A I don't remember what I just described to you.  
 25 Q But, Mr. Gillespie, isn't it true that the sum of

1 the two numbers at the top of the page where the numbers  
 2 are not messed up adds up to exactly what that is?  
 3 A I believe so. Yes.  
 4 Q And we just went through that exercise. Do you  
 5 want to check the balance, your Schedule A for real  
 6 property and the Schedule B for personal property on those  
 7 two to make sure that they add up? In other words,  
 8 here's -- it seems that you remember quite well the summary  
 9 of schedules. Is that correct?  
 10 A The summary of schedules?  
 11 Q It's this third page because you don't have the  
 12 recollection that that was like that?  
 13 A I just remember the law firm that did this, and I  
 14 don't remember them doing something like that; but that's  
 15 just my recollection.  
 16 Q When we look at Schedule A for real property,  
 17 245,000, single family residence. Is that your house in  
 18 Sewell, New Jersey?  
 19 A Yes.  
 20 Q 245,000?  
 21 A Yes. Uh-huh.  
 22 Q Non secured totaling 195,000, and a second  
 23 mortgage of 32,000?  
 24 A Yes.  
 25 Q Does that make sense?

1 A Yes. Uh-huh.  
 2 Q And then Schedule B, personal -- hang on one  
 3 second. Then when we go to page three, that's the same 245  
 4 on page 3 under the assets column, the top assets column,  
 5 as this Schedule A, 245 right here, that real property.  
 6 Right?  
 7 A Yes. Uh-huh.  
 8 Q And then you see personal property under line B,  
 9 4,775. And then you have your Schedule B, also personal  
 10 property, carries over two pages, the total at the bottom,  
 11 \$4,775, the sum of all those properties. Correct?  
 12 A Yes. Uh-huh.  
 13 Q Did you have any other properties besides those  
 14 listed on Schedule A, Schedule B, real and personal  
 15 properties as of that time?  
 16 A No.  
 17 Q You know the difference between real and personal  
 18 property, don't you?  
 19 A Real property, real estate; personal property --  
 20 yes. Uh-huh.  
 21 Q And at that time did you have \$428,000 worth of  
 22 secured debt?  
 23 A Yes.  
 24 Q And you had \$239,000 worth of unsecured debt?  
 25 A That's what it says. Yes.

1 Q So you had a total of \$667,000 plus in debt when  
 2 you filed?  
 3 A That's correct.  
 4 Q And you were bringing in 150 a month -- \$150 a  
 5 month?  
 6 A That's what it says. Yes.  
 7 Q Is that true? Was it true when you signed it?  
 8 A Yes.  
 9 Q And that was before you were on disability?  
 10 A Yes. Uh-huh.  
 11 Q And I'm sorry, just for my memory, which is a bit  
 12 cloudy, I guess, what year did you go on disability?  
 13 A The disability was determined in 1993.  
 14 Q I got you. Now, when you first heard about  
 15 deferred deposit transactions, do you recall the first  
 16 company that you went with?  
 17 A Yes. Check 'n Go.  
 18 Q Check 'n Go? Where were they located?  
 19 A They were south St. Pete, 54th Avenue South, I  
 20 believe.  
 21 Q And who did you deal with there?  
 22 A I dealt with their personnel.  
 23 Q What were their names?  
 24 A I don't have their names.  
 25 Q You don't have any recollection as to first

1 names? Last names?  
 2 A Not sitting here today. No.  
 3 Q Are they written down anywhere by you?  
 4 A I don't know.  
 5 Q Were there any other Check 'n Go locations that  
 6 you did business with?  
 7 A I don't think so. No.  
 8 Q And about what time period was this that you  
 9 began working with Check 'n Go?  
 10 A Check 'n Go, I believe it was August 21st of '97.  
 11 Q How are you so able to remember that specific  
 12 day? That's my birthday, and I can't remember what  
 13 happened that day.  
 14 A Well, the date is memorialized in my  
 15 interrogatories that I answered for you.  
 16 Q So from your reviewing the interrogatories?  
 17 A Yes.  
 18 Q Have you had a chance to take a look at the  
 19 backup checks that would have been correspondent to these  
 20 deals?  
 21 A I've looked at them. Yes.  
 22 Q When did you most recently look at them?  
 23 A It's been a while. I don't recall when.  
 24 Q More or less than a month?  
 25 A I would say, for the most part, it's been more

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1 than a month. Yes.

2 Q What do you have in front of you? You have a

3 yellow lined piece of paper. What's that?

4 A Would you like to look at it?

5 Q Yeah. Sure.

6 A It's a compilation of the different start dates

7 that I compiled from my answers to the interrogatories.

8 Q When did you prepare this?

9 A During my lunch break.

10 Q And what documents did you use to prepare this?

11 A I used solely the documents marked as Exhibit 2.

12 Q Now, all of these transactions with Check 'n Go,

13 EZ, ACE, National, AMSCOT, Check Smart and Americash --

14 A Oh, are you taking my paper from me?

15 Q I took it from you to put a tab --

16 A You're taking my paper and putting it in an

17 exhibit?

18 Q Yes.

19 A Why are you doing that?

20 Q Because it's an important piece of information

21 now.

22 A Really?

23 Q Yeah.

24 MR. COOK: Can I just ask you to allow him to

25 look at that if you're going to --

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1 MR. ANTHONY: Oh, absolutely.

2 MR. COOK: -- ask him questions about --

3 MR. ANTHONY: Absolutely.

4 MR. COOK: -- the dates?

5 MR. ANTHONY: It's there on the table.

6 MR. COOK: That's the only reason he did that is

7 since you asked him a question prior to our leaving,

8 and he wanted to make sure he gave you accurate

9 answers.

10 MR. ANTHONY: He's got it.

11 Q (By Mr. Anthony) Now, all of those stopped in

12 November or December of '99. What caused them to stop?

13 A What caused what to stop?

14 Q Your relationship with those seven deferred

15 deposit outfits.

16 A I was no longer able to carry on the, quote,

17 unquote, robbing Peter to pay Paul.

18 Q What does "robbing Peter to pay Paul" mean to

19 you? Who are you robbing in that term?

20 A Myself.

21 Q How are you robbing yourself?

22 A I'm taking money out of one pocket and putting it

23 in the other.

24 Q You've used the term robbing Peter to pay Paul

25 elsewhere, haven't you?

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1 A I don't know. Have I? I may have. As far as I

2 know, it's a common term.

3 Q When you take money from one business or firm or

4 person, that's the rob; and then to pay Paul is another

5 business or firm or person. Right?

6 A I don't necessarily agree with that.

7 MR. COOK: I think he testified taking from one

8 pocket and putting it in the other.

9 MR. ANTHONY: Well, he said rob Peter to pay

10 Paul. He said it before.

11 Q (By Mr. Anthony) Who are you robbing in that?

12 A It's a figure of speech. No one was robbed.

13 Q Let me ask you a question. Of the seven

14 entities, the first one, Check 'n Go, that's the one that

15 we were talking about first?

16 A Yes.

17 Q Have you bounced any checks to them?

18 A Yes.

19 Q And when did they bounce?

20 A I don't know what day they bounced.

21 Q Why don't you take a look at page 15 of your

22 outline?

23 A Of the responses?

24 Q Yeah. Of your interrogatory responses.

25 A Yes. Okay.

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1 Q For Check 'n Go, it says here that checks

2 numbered 1365 and 1366 dated December 3rd, 1999, one for

3 \$138 and one for \$200, both bounced and haven't been paid.

4 Right?

5 A That's correct.

6 Q When those were written, were you aware that you

7 weren't going to be able to cover them except for unless

8 you got another deferred deposit transaction somewhere

9 else?

10 A What was that question again?

11 Q On December 3rd -- I'm sorry. When these two

12 checks were written, the Check 'n Go checks, were you aware

13 that you weren't going to be able to cover them?

14 A No.

15 Q What new or different thing made it such that you

16 couldn't cover them?

17 A Well, like I say, I reached the point where I

18 couldn't continue with this financial treadmill, and I

19 actually sought to get a loan from my bank at the time --

20 SouthTrust, was it -- yeah, SouthTrust, up until the very

21 end. And they denied the loan, and I wasn't able to

22 continue with the financial treadmill.

23 Q Now, did you submit a loan application to

24 SouthTrust?

25 A A loan application? I believe so. Yes.

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1 Q And did you have a financial statement with that,  
2 or no?

3 A I don't think it was that involved.

4 Q Do you remember the loan officer's name?

5 A Not off the top of my head. No.

6 Q What branch?

7 A It was the branch at 4100 4th Street North in  
8 St. Petersburg.

9 Q And was that submitted about this time period, or  
10 was it prior to that?

11 A It was submitted at this time, and I explained to  
12 the manager or whoever was there that I was involved with  
13 these loan sharks like AMSCOT and that I was also in touch  
14 with the state officials about that and --

15 Q What state officials were you in contact with?

16 A The Department of Banking.

17 Q Who did you talk with there?

18 A I have the woman's name in my notes, but I don't  
19 recall it offhand. Actually, that may have been later, but  
20 in the general sense. And because of these loan sharks, I  
21 just wasn't able to continue this financial treadmill  
22 paying these exorbitant interest rates.

23 Q So that's what you told SouthTrust to get a loan,  
24 that your interest rates were exorbitant and so you needed  
25 a new loan?

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1 A Yes.

2 Q And then they declined you?

3 A Yes.

4 Q Now, as a matter of routine, wasn't there a break  
5 in between the time period that you received an advance on  
6 a deferred deposit check and the time the check actually  
7 went in for collection at AMSCOT? Wasn't there always a  
8 break of at least a few days?

9 A I'm not sure what you're asking me. Are you  
10 speaking about the checks at AMSCOT?

11 Q Yeah.

12 A You want to know what, now, about AMSCOT?

13 MR. ANTHONY: Read him back the question.  
14 (The previous question was read by the reporter.)

15 A A break between -- what now?

16 Q (By Mr. Anthony) A break between the time that a  
17 check went in for collection --

18 A Well, now, when you say went in for collection,  
19 what do you mean by that?

20 Q When it gets deposited.

21 A When AMSCOT deposited my check?

22 Q Let's back up. Tell me what the ordinary  
23 procedure was for a transaction at AMSCOT.

24 A Well, I would go to the office.

25 Q Where was the office?

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1 A The office was on First Avenue North, I believe.  
2 I think it was First Avenue North around 37th Street. I  
3 that the office?

4 Q And then what happened?

5 A Well, I walked up to a window, the customer  
6 service window, and told them I wanted to get a -- cash a  
7 check or get a payday advance and write out a check. I  
8 think the amounts were generally \$111 or \$117.

9 And they would take the check from me and give me  
10 back about \$100 in cash. And they would, you know, go  
11 through, I guess, whatever office procedures they had  
12 there.

13 Q What were the procedures, as best you know?

14 A I don't know what their procedures were.

15 Q What procedures did you undergo?

16 A I just explained them to you.

17 Q Did you sign anything?

18 A I signed the check, and I may have signed the  
19 receipt.

20 Q Was there some time in all of your transactions  
21 with AMSCOT where on the same day that a check was due to  
22 be -- strike that.

23 What do you understand your options to have been  
24 for dealing with the check you had given to AMSCOT on the  
25 date that was the date of the check?

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1 A Well, the date of the check, I believe, was the  
2 date that I was in the office. What were my options?  
3 Options for what?

4 Q Did you have an option to let the check go in for  
5 collection?

6 MR. COOK: I'm going to object on the grounds of  
7 vague -- I mean, you asked him about the date of the  
8 check. He testified that the day of the check is the  
9 day that he went in to take out the loan. And you  
10 asked him what his options were. Do you mean what  
11 happened at the end of the two weeks?

12 MR. ANTHONY: I'd say at the end of the term.

13 Q (By Mr. Anthony) What was your understanding as  
14 to what would happen with the check when you tendered it  
15 over?

16 A At the end of the term? I believed it would be  
17 deposited.

18 Q Okay. Is that what happened in your deals at  
19 AMSCOT?

20 A I think for the most part. Are you asking if  
21 they would redeem the check or if the check was redeemable  
22 earlier? It's possible.

23 Q What is your understanding of the word "redeem"  
24 for purposes of the check issue?

25 A I guess buying back the check.

1 Q Buy the check back for cash?  
 2 A Yes.  
 3 Q Did you ever redeem a check before it went in for  
 4 collection before it was deposited?  
 5 A That may have happened once. It may have  
 6 happened.  
 7 Q The majority of the times, what happened?  
 8 A It was deposited.  
 9 Q Was there any time when AMSCOT somehow collected  
 10 from you more than the face amount of the check for a check  
 11 cashing transaction?  
 12 A More than the face amount?  
 13 Q Yes.  
 14 A I believe they collected the face amount.  
 15 Q Was there any time when you understood that  
 16 AMSCOT would collect less than the face amount of the  
 17 check?  
 18 A No.  
 19 Q At the outset, you knew they were going to  
 20 collect the face amount of the check. Correct?  
 21 A At the outset I knew they were going to collect  
 22 the face amount of the check.  
 23 Q And you knew that on the first transaction you  
 24 had with AMSCOT. Correct?  
 25 A Yes.

1 Q Why did you go to AMSCOT if it seemed high?  
 2 A Because they offered to do the transaction.  
 3 Q Why didn't you just not do it if it was too high?  
 4 A I needed that money to continue the financial  
 5 treadmill.  
 6 Q But that was your first transaction with AMSCOT?  
 7 A Yes. And that was almost a year after I started  
 8 doing payroll advances.  
 9 Q So, at that point, did you already know that you  
 10 were just writing deferred deposit checks from one firm to  
 11 cover another firm's deferred deposit checks?  
 12 A It was keeping the financial treadmill going.  
 13 Yes.  
 14 Q So that's really all that had been happening for  
 15 a year is that you were covering deferred deposit  
 16 transaction advances with the most recent deferred deposit  
 17 transaction advance?  
 18 A Yes.  
 19 Q And were all of these by the time you started  
 20 with AMSCOT -- and you can use that yellow lined paper,  
 21 Exhibit 5, to help you if you want -- how many different  
 22 deferred deposit companies had checks up in the air with  
 23 you?  
 24 A At what point?  
 25 Q Your first deal with AMSCOT, the date of your

1 Q Did the alleged problems that you told your  
 2 SouthTrust officer about, as you previously testified, make  
 3 themselves apparent during that first transaction that you  
 4 had at AMSCOT?  
 5 A I don't understand that question.  
 6 Q Well, you said that the, quote, exorbitant  
 7 interest rates were causing you difficulty?  
 8 A You're asking me about my first transaction with  
 9 AMSCOT, which was on July 23rd, '98, and then you're asking  
 10 me about something that happened with my banker in December  
 11 of '99. Is that what you're asking?  
 12 Q I'm asking: Did you not appreciate what the  
 13 charge was going to be for cashing a check on the very  
 14 first time you did one of these transactions?  
 15 A I knew that the check was -- you know, I'm  
 16 referring here to this document, which I believe is  
 17 accurate -- \$113.89, and I received \$100 cash.  
 18 Q Did that seem exorbitant to you at the time on  
 19 the first transaction?  
 20 A It seemed high. Yes. Very high.  
 21 Q Why didn't you go somewhere else?  
 22 A I've gone other places.  
 23 Q If it was exorbitant, why did you go to AMSCOT?  
 24 Why didn't you go to any other place?  
 25 A I did go to other places.

1 first deal with AMSCOT.  
 2 A I don't know how many were up in the air at that  
 3 point.  
 4 Q Who did you deal with at AMSCOT? Do you remember  
 5 anyone's name?  
 6 A No.  
 7 Q Do you remember anyone's appearance?  
 8 A I remember it was either a guy or a gal behind  
 9 the counter.  
 10 Q Either a guy or a gal doesn't narrow it down too  
 11 much. Do you remember what the person, man or woman,  
 12 looked like?  
 13 A Oh, they were just typical folks.  
 14 Q Tall? Short?  
 15 A Well, they were inside a bullet proof enclosure.  
 16 I didn't know how tall they were, what the floor level in  
 17 there was.  
 18 Q Never really got a good look at them?  
 19 A I got a good look at them but nothing memorable.  
 20 Q Now, you've had an opportunity to study your  
 21 transactions with AMSCOT. In fact, you're open to the page  
 22 in your interrogatories that summarizes that transaction.  
 23 Right?  
 24 A I believe this document was prepared by AMSCOT.  
 25 Q Right. Can you read it?

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<p>1 A Yes.</p> <p>2 Q And it's the one that says towards the back, the</p> <p>3 last page of Exhibit D, it says deferred deposits by</p> <p>4 customer, AMSCOT, Neil Gillespie. Right?</p> <p>5 A What did you say, B?</p> <p>6 Q It's the last page before Exhibit B --</p> <p>7 A Oh, before Exhibit B?</p> <p>8 Q Right.</p> <p>9 A Yes. Uh-huh.</p> <p>10 Q Have you had an opportunity to pull out and take</p> <p>11 a look at your checks evidenced by those check numbers in</p> <p>12 the left-hand column?</p> <p>13 A The left-hand column? Yes, I have looked at</p> <p>14 those checks or reproductions of them.</p> <p>15 Q When did you most recently look at them?</p> <p>16 A Well, in conjunction with this lawsuit I looked</p> <p>17 at them.</p> <p>18 Q When? Today?</p> <p>19 A The answer I'm thinking of may violate</p> <p>20 attorney/client privilege, so I don't want to do that.</p> <p>21 Q I'm just asking if you looked at them.</p> <p>22 A And I answered yes.</p> <p>23 Q Did you look at them today?</p> <p>24 A No.</p> <p>25 Q Did you look at them yesterday?</p>	<p>1 the data here and your own review of the check?</p> <p>2 A Well, I don't have the checks here to review, so</p> <p>3 I'm relying solely on this document prepared by AMSCOT.</p> <p>4 And according to --</p> <p>5 Q Where are the checks? I mean, you've had an</p> <p>6 opportunity to review the checks already, haven't you?</p> <p>7 A Well, I believe I reviewed copies of the checks.</p> <p>8 Q Okay. That's fine. Did you have any reason to</p> <p>9 dispute the accuracy of the data on the copies of the</p> <p>10 checks that you received?</p> <p>11 A Did I have any reason to dispute the data on the</p> <p>12 copies of the checks?</p> <p>13 Q Yeah. Were they falsified checks or something or</p> <p>14 did you --</p> <p>15 A Well, I'm just saying I don't have those checks</p> <p>16 here now at this time.</p> <p>17 Q Have you had an opportunity -- I'm going to ask</p> <p>18 you another question then because maybe I didn't ask it</p> <p>19 clearly the first time.</p> <p>20 Have you had an opportunity to review the checks</p> <p>21 referenced in the left-hand column of this document since</p> <p>22 you've received this document --</p> <p>23 A The left-hand column --</p> <p>24 Q -- to verify its accuracy?</p> <p>25 A There are no left-hand columns.</p>
<p>1 A No.</p> <p>2 Q Now, explain to me as we go across what your</p> <p>3 understanding is of the first transaction evidenced by</p> <p>4 check number 1372.</p> <p>5 A Actually, that was the last transaction. The</p> <p>6 first transaction was check 1079.</p> <p>7 Q Okay. Let's start with, then, the last</p> <p>8 transaction.</p> <p>9 A All right. You want to start with the last</p> <p>10 transaction?</p> <p>11 Q Yeah, the one on top. Very well done, though.</p> <p>12 What does it mean?</p> <p>13 A What does what mean?</p> <p>14 Q What does that whole horizontal --</p> <p>15 A What horizontal?</p> <p>16 Q -- set of information mean? Starting with the</p> <p>17 first transaction, check number 1372 --</p> <p>18 A You mean the last transaction?</p> <p>19 Q Right. The one that's on the top, sir.</p> <p>20 A So you're talking about the transaction that</p> <p>21 begins 001372?</p> <p>22 Q Right.</p> <p>23 A I believe that the check number on the check was</p> <p>24 1372.</p> <p>25 Q How much was the amount of the check based upon</p>	<p>1 Q Check number -- the check number column is a</p> <p>2 left-hand column, sir.</p> <p>3 A Okay.</p> <p>4 Q Check out your left. 1372, 1343, 1310 -- do you</p> <p>5 see that column?</p> <p>6 A I would call that the first of many columns.</p> <p>7 Q Okay. Well, it's left-hand moving right.</p> <p>8 A If you had two columns I would call one left and</p> <p>9 one right. If I have one, two, three, four, five, six,</p> <p>10 seven, eight, nine columns, I would call this column one.</p> <p>11 Q Okay.</p> <p>12 A I would call that column nine.</p> <p>13 Q Then let's do it your way. Column one.</p> <p>14 A Yes.</p> <p>15 Q Have you or have you not had an opportunity to</p> <p>16 see the checks that bear these numbers since you received</p> <p>17 this printout from AMSCOT?</p> <p>18 A I'm just, I think, looking at this for the first</p> <p>19 time.</p> <p>20 Q You are? Why don't you peel back two pages. Is</p> <p>21 that your signature on that? Is that your signature under</p> <p>22 oath on that document? Do you see that signature on the</p> <p>23 top page?</p> <p>24 A Yes.</p> <p>25 Q Did you sign that document before or after that</p>

<p style="text-align: right;">Page 105</p> <p>1 page was attached?</p> <p>2 A I'm sorry. I was mistaken. Yes. Yes. Now I</p> <p>3 recognize this document. Yes, I signed that. And</p> <p>4 accordingly, these are accurate figures then.</p> <p>5 Q So these are all the checks that you've had an</p> <p>6 opportunity to review prior to completing the</p> <p>7 interrogatories. Correct?</p> <p>8 A Yes.</p> <p>9 Q Okay. And then as to the top transaction, check</p> <p>10 number 1372 --</p> <p>11 A Yes.</p> <p>12 Q -- what is your understanding based upon that</p> <p>13 data of the amount of the check at issue?</p> <p>14 A My understanding of the amount is \$117.</p> <p>15 Q That's the face value of the check?</p> <p>16 A Face value of the check.</p> <p>17 Q And as to the amount that was advanced to you in</p> <p>18 cash on the date that you tendered the check, how much</p> <p>19 would you have received?</p> <p>20 A I believe \$100.</p> <p>21 Q Okay. And what is your understanding of --</p> <p>22 A But it might have been \$100.30. Yes. And,</p> <p>23 actually, it was quite confusing, but --</p> <p>24 Q What was confusing about it to you?</p> <p>25 A Well, what the 30 cents was.</p>	<p style="text-align: right;">Page 107</p> <p>1 issued. Do you see that?</p> <p>2 A Yes. Uh-huh.</p> <p>3 Q And the same date that check number 1372 was</p> <p>4 deposited and cleared, you wrote three other checks, one</p> <p>5 for EZ, one for Check 'n Go, and one for Check 'n Go. Do</p> <p>6 you remember that?</p> <p>7 A Yes.</p> <p>8 Q When you wrote these three checks, total amount,</p> <p>9 \$838, correct --</p> <p>10 A Yes.</p> <p>11 Q -- was some of the money --</p> <p>12 A I mean, I said yes. I haven't added them up,</p> <p>13 but --</p> <p>14 Q Well, add them up.</p> <p>15 A You wrote three checks.</p> <p>16 MR. COOK: It's correct.</p> <p>17 A I'm being told that it's correct.</p> <p>18 Q (By Mr. Anthony) You wrote those three checks,</p> <p>19 and you got some cash, and then you went over and paid off</p> <p>20 AMSCOT. Is that what happened, or was it deposited?</p> <p>21 A I don't recall what I did with those funds other</p> <p>22 than to, you know, pay household expenses.</p> <p>23 Q Is it your testimony that you were unaware on</p> <p>24 December 3rd, 1999 that EZ and Check 'n Go were going to</p> <p>25 bounce \$838 worth of checks if on the same day you were</p>
<p style="text-align: right;">Page 106</p> <p>1 Q Got you. Now, what is the date that you would</p> <p>2 have tendered the check to AMSCOT?</p> <p>3 A That would have been on the transaction date or</p> <p>4 the check date.</p> <p>5 Q November 15th of '99?</p> <p>6 A Yes.</p> <p>7 Q And that's the same as the check date. Correct?</p> <p>8 A Yes.</p> <p>9 Q And then there's a deposit date?</p> <p>10 A Yes.</p> <p>11 Q Is that the next column over?</p> <p>12 A Yes.</p> <p>13 Q And that would have been 12/3 of '99. Correct?</p> <p>14 A Yes.</p> <p>15 Q Do you know whether that check 1372 ever cleared?</p> <p>16 A Yes, it did.</p> <p>17 Q It cleared?</p> <p>18 A Yes.</p> <p>19 Q Now, do you want to take a look at page 15, and</p> <p>20 if you take a look at your answer to number 9, it's list</p> <p>21 the dates -- the interrogatory, list the date and check</p> <p>22 amount for any occurrence in which Gillespie ever tendered</p> <p>23 a check that was subsequently canceled or returned for</p> <p>24 insufficient funds, taking care to name the banking</p> <p>25 institution, the bank's address, and to whom the check was</p>	<p style="text-align: right;">Page 108</p> <p>1 going to make payment to AMSCOT when the check was going to</p> <p>2 go in for \$117? Were you just not aware that that was</p> <p>3 going to happen?</p> <p>4 A Was I not aware of what?</p> <p>5 Q That you were going to become overdrawn?</p> <p>6 A Yes, I was aware that that would happen.</p> <p>7 Q You were aware that Check 'n Go and EZ were both</p> <p>8 going to get a total of three NSF checks?</p> <p>9 A Yes, if my bank loan hadn't gone through. Yes.</p> <p>10 Q If your what hadn't gone through?</p> <p>11 A The bank loan I discussed with you.</p> <p>12 Q Well, you knew by December 3rd of 1999 that you</p> <p>13 weren't going to get a bank loan. Right?</p> <p>14 A No.</p> <p>15 Q Really? That's your testimony?</p> <p>16 A That's my testimony.</p> <p>17 Q And there's nothing you could know or look at</p> <p>18 that would change your testimony about this key issue</p> <p>19 today?</p> <p>20 A I don't think so.</p> <p>21 Q All right. When you wrote your three checks for</p> <p>22 EZ and Check 'n Go on December 3rd, check number 1359, 1365</p> <p>23 and 1366 --</p> <p>24 A Let me just correct you. I didn't write them on</p> <p>25 that date.</p>

1 Q Oh, that's when they were submitted?  
 2 A Well, you just said I wrote them on that date,  
 3 and that's not correct.  
 4 Q Oh, they were deposited on that date? Is that  
 5 the date that they were deposited or the day that they  
 6 bounced?  
 7 A No. I'm sorry. I think that was the date that  
 8 they were written. Yes. My apologies. Although, let me  
 9 just check here. Yeah.  
 10 The check wasn't written -- for example, the EZ  
 11 Check Cashing of Clearwater, \$500, the check was not  
 12 written on the 12th; it was written on November the 5th.  
 13 The check was dated --  
 14 MR. COOK: Do you mean the 3rd?  
 15 THE DEPONENT: November the 5th.  
 16 Q (By Mr. Anthony) So it was a month? They held  
 17 it for a month?  
 18 A Approximately a month. Yes. And that check was  
 19 dated the 12th of December. And I assume they deposited it  
 20 then or shortly thereafter. And what was your question now  
 21 about Check 'n Go? Do you have a question about Check And  
 22 Go?  
 23 Q Check 'n Go, when were those checks written?  
 24 A I believe the date of the transaction was the  
 25 11th of November of '99.

1 A I believe all my checks to AMSCOT cleared if they  
 2 were deposited.  
 3 Q Now, do you have any separate recollection of  
 4 this second to the last transaction at AMSCOT?  
 5 A Check number 1349?  
 6 Q Yeah. No. 1343.  
 7 A 1343?  
 8 Q Second to the last transaction.  
 9 A Not sitting here now. I have no independent  
 10 recollection of it.  
 11 Q Do you have any independent recollection of any  
 12 of these transactions other than as you've already  
 13 testified?  
 14 A I probably remember going in the store for the  
 15 first time and the impressions I had, and after that they  
 16 were -- it was all pretty much the same.  
 17 Q Did you ever do any transaction -- on the first  
 18 time, did you go in for a deferred deposit service, or did  
 19 you go in for something else?  
 20 A I believe it was for a deferred deposit.  
 21 Q Have you ever had your taxes done at an AMSCOT  
 22 location?  
 23 A No.  
 24 Q Have you ever done a same day check cashing  
 25 transaction at an AMSCOT location?

1 MR. COOK: Why don't you tell him what you're  
 2 looking at for the record.  
 3 A And for the record, I'm looking at the  
 4 attachment, Check 'n Go printout sheet to my answers to the  
 5 interrogatories. And the check, according to this, was  
 6 dated on 12/3/99.  
 7 Q So it's your testimony that you were not aware  
 8 that these three checks would bounce when they were  
 9 written?  
 10 MR. COOK: Asked and answered.  
 11 You can go ahead and answer it again.  
 12 A I answered that already.  
 13 Q (By Mr. Anthony) Now, if you go back to the  
 14 AMSCOT page again, Exhibit A --  
 15 A Yes.  
 16 Q -- the second transaction going down the page,  
 17 check number 1343 --  
 18 A Yes.  
 19 Q -- transaction date, 10/18. Again, it's \$117.  
 20 You would have gotten \$100 and maybe 30 cents or so?  
 21 A Yes.  
 22 Q And that would have been sent in for deposit on  
 23 11/4 of '99?  
 24 A That's what it says here. Yes.  
 25 Q Do you know whether or not that cleared?

1 A No.  
 2 Q Do you know whether or not AMSCOT charges more  
 3 for deferred deposit transactions than it does for regular  
 4 check cashing transactions where you get money, and the  
 5 check goes in on the same day?  
 6 A I don't know what their same day services are, if  
 7 any.  
 8 Q Do you recall ever asking or inquiring about  
 9 that?  
 10 A No.  
 11 Q Would you have any need for that service?  
 12 A No.  
 13 Q Based upon the data that you have on this one  
 14 page printout and whatever follow-up analysis you've done  
 15 regarding your checks, do you know whether or not you've  
 16 ever had more than one deferred deposit transaction  
 17 outstanding at the same time?  
 18 A Are you asking if I had other transactions  
 19 outstanding at the same time I had AMSCOT transactions  
 20 outstanding?  
 21 Q No. I'm asking just your relationship with  
 22 AMSCOT. Have you ever had more than one deferred deposit  
 23 AMSCOT transaction outstanding at the same time?  
 24 A For example, two or more AMSCOT checks out at  
 25 once?

1 Q Correct.  
 2 A No.  
 3 Q And hasn't there always been at least a couple of  
 4 days occurring between the date that one check has gone in  
 5 for deposit or collection and the date that you do another  
 6 transaction?  
 7 A I would believe so. Yes.  
 8 Q What is your understanding of what a roll-over is  
 9 in this industry?  
 10 A Well, a roll-over is -- in a strict sense, I  
 11 believe, is paying the interest that's due and leaving the  
 12 check with the company, the check cashing company, or  
 13 perhaps writing a new check immediately and just paying the  
 14 interest; although these companies all do things a little  
 15 bit differently, and there's many variations on that.  
 16 Q Do you understand that you've ever engaged in a  
 17 roll-over transaction with AMSCOT?  
 18 A I don't believe the complaint even alleges that.  
 19 Q I'm just asking you. I don't care about the  
 20 complaint. So is it your testimony that you've never done  
 21 a roll-over with AMSCOT?  
 22 A Not in that strict sense, no.  
 23 Q How about in a loose sense?  
 24 A Well, one could say that using the proceeds of  
 25 one pocket to pay the other pocket could be a form of

1 roll-over.  
 2 Q Have you ever used the proceeds of an AMSCOT  
 3 check cashing transaction to pay off or redeem a check on  
 4 another check cashing transaction?  
 5 A Yes. It was part of keeping the financial  
 6 treadmill going.  
 7 Q Of the checks that are on that schedule, point to  
 8 the one check that paid off another check in your loose  
 9 sense of the term.  
 10 A Yes. I would say that because I didn't go to  
 11 AMSCOT until almost a year into this, that that's what --  
 12 all of them were being used for that.  
 13 Q You mean all of the payments that you received  
 14 from AMSCOT on deferred deposit transactions you used to  
 15 make payments to other firms?  
 16 A I used them to keep that financial treadmill  
 17 going. Yes.  
 18 Q Who put you on that treadmill? Did somebody  
 19 force you to go to one of these companies?  
 20 A No. I was not forced to go to a company.  
 21 Q Was there some other obligation that you had to  
 22 one of these companies that got you started engaging in  
 23 these transactions?  
 24 A I'm sorry. What was that question again?  
 25 Q Did you have some separate contractual duty or

1 relationship with one of these seven companies?  
 2 A A contractual duty?  
 3 Q Yeah, that got you started having to borrow money  
 4 from one of them?  
 5 A I'm not sure I understand that question.  
 6 Q Well, did you have a separate obligation like a  
 7 promissory note or a rent to own arrangement or some other  
 8 obligation to any of these companies, a pawn relationship,  
 9 you needed to get something unpawned? Did you have any  
 10 other obligation to any one of these companies other than  
 11 that you walked in from the street because you wanted money  
 12 for a check?  
 13 A Not to these companies directly, but --  
 14 Q To who? Who is the cause? Who is at fault?  
 15 MR. COOK: Excuse me. I think he'd probably  
 16 prefer to finish his question -- or finish his  
 17 answer.  
 18 MR. ANTHONY: Sorry.  
 19 A I would say that there was -- I had a need for  
 20 money at one point for some expensive dental work, and that  
 21 was how I initially got into this.  
 22 Q So you had to pay your dentist, so you did  
 23 deferred deposit deals?  
 24 A Yes.  
 25 Q Now, having said all of that, isn't it true that

1 there is a several day period of time that elapses between  
 2 the closing of one deferred deposit transaction with AMSCOT  
 3 and the pick up of another on every one of those  
 4 transactions with AMSCOT. Correct?  
 5 A I believe so. Yes.  
 6 Q Did you tell the AMSCOT people that you were  
 7 working with on these transactions that you were covering  
 8 the checks as they're deposited with proceeds from other  
 9 firm's deferred deposit transactions?  
 10 A No.  
 11 Q Why not?  
 12 A They didn't ask that.  
 13 Q Do you think they would have given you the  
 14 ability to keep doing those deals if they knew that you had  
 15 checks with seven different firms?  
 16 MR. COOK: Objection. That calls for  
 17 speculation.  
 18 MR. ANTHONY: Does that call for speculation?  
 19 MR. COOK: If you can answer the question, you  
 20 can answer it.  
 21 A I believe that they would have. Yes.  
 22 Q (By Mr. Anthony) You think they would have if  
 23 they knew that you had checks all over six different other  
 24 outfits?  
 25 A Yes.

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1 Q Did you have to basically give out credit  
2 references when you started your AMSCOT relationship?  
3 A Credit references?  
4 Q Uh-huh.  
5 A No.  
6 Q Who is Bill Hindman?  
7 A Those are personal references.  
8 Q Those are personal. I'm sorry. Who is James  
9 Hill?  
10 A James Hill was my landlord and friend.  
11 Q Is he still your landlord and friend?  
12 A He's still my friend; he's not my landlord  
13 anymore.  
14 Q Where did you rent from him?  
15 A At 1121 Beach Drive Northeast.  
16 Q What was your rent back then?  
17 A My rent then -- I want to say it was 360 a month,  
18 and then I think it went up to 380 a month.  
19 Q What prompted you to move from that location?  
20 A I haven't moved from that location. I still live  
21 there.  
22 Q How come he's not your landlord now? It's sold?  
23 A Because he retired, and someone else bought the  
24 property.  
25 Q Who is that?

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1 A My new landlord goes by the name of Metcab.  
2 Q Metcab?  
3 A Yes. M-e-t-c-a-b, Inc. -- no, not inc. -- LL,  
4 limited liability, LLC.  
5 Q Who is Bill Hindman?  
6 A Bill Hindman is a friend of mine.  
7 Q And do you have any business together?  
8 A No.  
9 Q What does he do for a living?  
10 A He's retired.  
11 Q Where does he live?  
12 A He lives at 432 Beach Drive Northeast.  
13 Q The same place you used to live?  
14 A No. I never lived there.  
15 Q Is that right near by or something?  
16 A I live at 1121 Beach Drive; he lives at 432 Beach  
17 Drive.  
18 Q It's another unit?  
19 A No. It's several blocks down the street.  
20 Q Have you ever had any business dealings with him?  
21 A No.  
22 Q Who is John Gillespie?  
23 A That's my uncle.  
24 Q How frequently do you communicate with him?  
25 A I last spoke with him, I think, when I was over

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1 at his house in Orlando in maybe 1997.  
2 Q That's the last time you spoke with him?  
3 A Yes.  
4 Q And he was a personal reference for you in July  
5 of '98?  
6 A Yes.  
7 Q Were you permanently employed in July of '98?  
8 A I'm sorry? What was the question?  
9 Q Were you permanently employed in July of '98?  
10 A Permanently employed in July of '98? I don't  
11 believe so.  
12 Q Was there a method to your covering the AMSCOT  
13 check and allowing the other three checks to bounce, or was  
14 that just luck of the draw for the check cashing firms?  
15 A In other words, you want to know why AMSCOT's  
16 check cleared and the others didn't?  
17 Q Correct.  
18 A I believe that was a bank error.  
19 Q AMSCOT's check cleared is a bank error?  
20 A Yes.  
21 Q Have you been deposed before in connection with  
22 any litigation involving deferred deposit transactions?  
23 A Yes.  
24 Q Who has deposed you?  
25 A Well, I've been deposed -- deposed by ACE.

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1 Q Do you remember the name of the lawyer?  
2 A Paul Watson.  
3 MR. ANTHONY: Is that right?  
4 MR. COOK: Uh-huh.  
5 Q (By Mr. Anthony) How many times by Mr. Watson?  
6 A Once.  
7 Q Who else?  
8 A I was deposed by EZ Check Cashing.  
9 Q Who did the deposition? Do you know?  
10 A Ronald Collier.  
11 Q How many times?  
12 A Once.  
13 Q Anyone else?  
14 A I believe that's everything.  
15 Q Do you still have an account with First of  
16 America?  
17 A No.  
18 Q Were any checks drawn on First of America used in  
19 your AMSCOT relationship?  
20 A No.  
21 Q How about with any of the other six firms you  
22 used?  
23 A Well, just so you're aware, First of America was  
24 acquired by SouthTrust.  
25 Q I got you.

1 A So the one account flowed through to the other,  
 2 and that happened in, I believe, January of '98; so that  
 3 was prior to my transaction with AMSCOT. It may not have  
 4 been prior to transactions with other companies.  
 5 Q Have you ever met any other AMSCOT deferred  
 6 deposit customers?  
 7 A AMSCOT deferred deposit customers? I've met Ann  
 8 today. Yes.  
 9 Q Have you met her prior to today?  
 10 A No. And I met Eugene Clement.  
 11 Q When did you meet him?  
 12 A I met him on the day of the deposition with Paul  
 13 Watson.  
 14 Q Your deposition with Paul Watson?  
 15 A And his. Yes. We were both deposed. Yes.  
 16 Uh-huh.  
 17 Q When was that?  
 18 A Whenever the date of that deposition was.  
 19 Q What did you have occasion to talk about without  
 20 your counsel present?  
 21 A I don't think we spoke about much of anything.  
 22 Q Have you talked to him any time since?  
 23 A He was in the office the other day when I was  
 24 here, and I saw him on television once.  
 25 Q What was he doing on TV?

1 RE: EUGENE R. CLEMENT, et al.  
 vs. AMSCOT Corporation  
 2  
 3  
 4 ERRATA SHEET  
 5 I, NEIL J. GILLESPIE, have read the foregoing  
 6 deposition given by me on May 14, 2001, in Tampa, Florida.  
 7 Corrections should be made as follows:  
 8 PAGE: LINE: ERROR/AMENDMENT AND REASON THEREFORE:  
 9  
 10  
 11  
 12  
 13  
 14  
 15  
 16  
 17  
 18  
 19 Subject to these corrections, my testimony reads  
 20 as given by me in the foregoing, signed this \_\_\_\_\_ day of  
 21 \_\_\_\_\_, 2001.  
 22  
 23  
 24 \_\_\_\_\_  
 25 NEIL J. GILLESPIE

1 A He was with Mr. Alpert, the lawyer representing  
 2 him in an insurance matter on a show with Kathy Fountain.  
 3 Q What sort of an insurance matter?  
 4 A I don't know. I don't recall.  
 5 Q He was on TV. Was he in a class action matter  
 6 that Mr. Alpert was covering?  
 7 A I don't recall.  
 8 Q What did Ms. Blomefield and you have the  
 9 opportunity to talk about outside of counsel's presence  
 10 today?  
 11 A Just chit chat.  
 12 Q All right.  
 13 MR. ANTHONY: I don't have any further  
 14 questions.  
 15 MR. COOK: We don't have any further questions --  
 16 any questions, and we would like to read.  
 17 \* \* \* \* \*  
 18 (Thereupon, the deposition was concluded  
 19 at 3:15 p.m.)  
 20  
 21  
 22  
 23  
 24  
 25

1 CERTIFICATE OF REPORTER  
 2 STATE OF FLORIDA :  
 COUNTY OF HILLSBOROUGH :  
 3  
 4 I, CHERE J. BARTON, a Notary Public in and for  
 the State of Florida at Large, certify that I was  
 5 authorized to and did stenographically report the foregoing  
 proceedings; and that the transcript is a true record of  
 6 the testimony given by the witness.  
 7 I further certify that I am not a relative,  
 employee, attorney or counsel of any of the parties, nor am  
 8 I a relative or employee of any of the parties' attorney or  
 counsel connected with the action, nor am I financially  
 9 interested in the action.  
 10 Dated this 28th day of May, 2001.  
 11  
 12  
 13  
 14  
 15 STATE OF FLORIDA:  
 COUNTY OF HILLSBOROUGH:  
 16  
 17 I, the undersigned authority, certify that NEIL  
 J. GILLESPIE personally appeared before me and was duly  
 18 sworn.  
 19 WITNESS my hand and official seal this 28th day  
 of May, 2001.  
 20  
 21  
 22  
 23 Notary Public  
 State of Florida at Large  
 My commission No.:  
 24 My commission expires: \_\_\_\_\_  
 25



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UNITED STATES DISTRICT COURT  
MIDDLE DISTRICT OF FLORIDA  
OCALA DIVISION

2012 JAN 17 PM 3:41

CLERK, US DISTRICT COURT  
MIDDLE DISTRICT OF FL  
OCALA FLORIDA

ESTATE OF PENELOPE GILLESPIE,  
NEIL J. GILLESPIE,

CASE NO.: 5:11-cv-539-oc-10TBS

Plaintiffs,

vs.

JURY TRIAL DEMANDED

THIRTEENTH JUDICIAL CIRCUIT, FLORIDA,  
JAMES M. BARTON, II, Circuit Court Judge, and individually,  
THE LAW OFFICE OF ROBERT W. BAUER, P.A.,  
ROBERT W. BAUER,

Defendants.

\_\_\_\_\_ /

APPENDIX 3

Gillespie v. Robert W. Bauer, The Florida Bar File No. 2011-073(8B)

- Exhibit 1 Complaint of misconduct against Robert W. Bauer, July 15, 2010
- Exhibit 2 Mr. Rodems letter to the Bar in support of Bauer, August 13, 2010
- Exhibit 3 Response of Robert Bauer to the Florida Bar, August 18, 2010
- Exhibit 4 Rebuttal of Neil Gillespie to the Florida Bar, September 18, 2010
- Exhibit 5 Exhibits 1-19, Gillespie rebuttal of Mr. Bauer, exceeded 25 page limit
- Exhibit 6 Rebuttal of Gillespie to Mr. Rodems to the Florida Bar, Sep-20, 2010
- Exhibit 7 Letter of No Probable Cause, James Watson, Florida Bar, Mar-18-2011
- Exhibit 8 Gillespie email to James Watson, The Florida Bar, April 11, 2011
- Exhibit 9 Letter of Carl Schwait, Designated Reviewer, June 27, 2011
- Exhibit 10 Gillespie letter to Carl Schwait, Designated Reviewer, July 31, 2011
- Exhibit 11 Robert Bauer letter in support of Ryan Rodems for judge, January 4, 2010

# The Florida Bar Inquiry/Complaint Form

Mr. Neil Gillespie  
8092 SW 115th Loop  
Ocala, FL 34481

THE FLORIDA BAR  
RECEIVED  
JUL 19 2010  
ACAP  
TALLAHASSEE, FLORIDA  
BAR # H058

**PART ONE: (Read instructions on reverse side.)**

Your Name: <u>Neil Gillespie</u>	Attorney's Name: <u>Robert W. Bauer</u>
Address: <u>8092 SW 115th Loop</u>	Address: <u>2815 NW 13th Street, 200E</u>
City: <u>Ocala</u> State: <u>Florida</u>	City: <u>Gainesville</u> State: <u>Florida</u>
Phone: <u>(352)854-7867</u> Zip Code: <u>34481</u>	Phone: <u>352-375-5960</u> Zip Code: <u>32609-2865</u>
ACAP Reference No. 10-15170	

**PART TWO:** The specific thing or things I am complaining about are:

See Accompanying Letter

**PART THREE:** The witnesses in support of my allegations are: [see attached sheet].

See Accompanying Letter

**PART FOUR:** Under penalty of perjury, I declare the foregoing facts are true, correct and complete.

[Signature] July 15, 2010  
Signature Date

**Return Completed Form to:**  
Attorney/Consumer Assistance Program  
The Florida Bar  
651 East Jefferson Street  
Tallahassee, FL 32399-2300  
Toll Free - 866-352-0707

**Neil J. Gillespie**  
8092 SW 115<sup>th</sup> Loop  
Ocala, Florida 34481

Telephone: (352) 854-7807  
email: neilgillespie@mfi.net

VIA US CERTIFIED MAIL, RRR  
Article No.: 7008 1300 0001 8054 4948

July 15, 2010

Attorney Consumer Assistance Program  
The Florida Bar  
651 East Jefferson Street  
Tallahassee, FL 32399-2300

RE: Complaint of misconduct against attorney Robert W. Bauer (bar #11058)

This is a complaint of misconduct against attorney Robert W. Bauer (bar #11058) of the Law Office of Robert W. Bauer, PA, 2815 NW 13<sup>th</sup> Street, Suite 200E, Gainesville, FL 32609. Enclosed you will find a completed inquiry/complaint form and supporting exhibits.

Mr. Bauer was a referral from The Florida Bar Lawyer Referral Service, February 26, 2007 for the area of Libel and Slander. (Exhibit 1)

I paid Mr. Bauer \$3,000 March 8, 2007 to evaluate my pro se lawsuit filed in 2005. We executed an hourly fee contract (\$250 per hour) April 24, 2007. (Exhibit 2)

#### Overview

Mr. Bauer assumed representation of my already-filed ongoing pro se lawsuit, Neil J. Gillespie v. Barker, Rodems & Cook, PA and William J. Cook, case no. 05-CA-7205, Circuit Civil, Hillsborough County, Florida. I filed the lawsuit pro se August 11, 2005 against my former lawyers ("BRC") who wrongfully took \$6,224.78 from a contingent fee case settlement. My initial pro se complaint survived a motion to dismiss and strike by Order of January 13, 2006, and established a cause of action for fraud and breach of contract. BRC counstersued me for libel on January 19, 2006. BRC obtained sanctions against me for discovery errors and a misplaced defense to the counterclaims on § 57.105 Fla. Stat. sanctions. I voluntarily dismissed my claims February 7, 2007. The Florida Bar LRS referred Mr. Bauer to me February 26, 2007. I retained Mr. Bauer and he reinstated my claims but failed to zealously represent me and dropped the case when it became too difficult for him. Mr. Bauer spent most of his time and my money securing sanctions for BRC of \$11,550 against me, and Mr. Bauer caused me to be held in contempt of court.

From the outset Mr. Bauer estimated this matter would cost me as much as \$18,000. His estimate was unrealistic. In hindsight a realistic amount might be \$200,000. Mr. Bauer collected \$19,212.44 from our family (Exhibit 3) and then dropped the case, leaving us in a far worse position than before his representation. Mr. Bauer claims I owe him another \$12,650.13 and has refused to release my client file. (Exhibit 4)

Mr. Bauer did little about the defamation claim for which I hired him. He instead pursued fraud and breach of contract claims that I had voluntarily dismissed against my former lawyers. Mr. Bauer took this course of action with the belief that "...the jury would love to punish a slimy attorney." (Transcript, March 29, 2007, page 28, line 9).

Several "walk-away" settlement offers were made by BRC, both before and after Bauer assumed representation. One such settlement offer was made by BRC February 7, 2007 just a few weeks before the bar referred me to Mr. Bauer. (Exhibit 5)

Prior to taking the case Mr. Bauer knew there were outstanding motions for discovery sanctions and § 57.105 Florida Statutes sanctions. Since the Defendants did not provide most of their discovery either, I suggested that Mr. Bauer coordinate hearings on discovery to get the Defendants' discovery, and in effect to mitigate the sanctions, but he refused. The court awarded BRC \$11,550 in sanctions March 20, 2008.

I asked Mr. Bauer to stay collection on the sanctions until after the case was decided. He filed the stay 44 days late and it was of no effect.

Opposing counsel Mr. Rodems aggressively sought collection of the \$11,550 judgment. My bank account was garnished. Mr. Bauer failed to advise me of the garnishment and he soon stop representing me. It appears Mr. Bauer calculated that since he already took \$19,212.44 from me, he abandoned my case and moved on to more profitable clients.

Mr. Bauer also failed to prevail on substantive matters when opposing counsel Rodems presented false evidence to the court. For example, Mr. Rodems mislead the court during hearings on October 30, 2007 and July 1, 2008 for the purpose of obtaining a dismissal of claims against BRC and Mr. Cook. Rodems misrepresented to Judge Barton that there was a signed written contingent fee agreement between Plaintiff Neil Gillespie and Defendant Barker, Rodems & Cook, PA when there was none. Mr. Bauer failed to present evidence that there was no signed written contingent fee agreement, such as my testimony or my affidavit.

Mr. Bauer failed to seek the disqualification of Mr. Rodems under Rule 4-1.9 and related law for litigating against a former client on the same or substantially related matter.

#### Misconduct of Robert W. Bauer

Mr. Bauer was incompetent and appeared to have little legal knowledge. Law is a second career for him. Bauer graduated law school in 2005. Previously he worked for Alachua

County Fire Rescue as a paramedic and later a fireman. Mr. Bauer was lazy, lacked attention to detail, and let deadlines pass.

Mr. Bauer breached his fiduciary duty to me by churning fees at \$250 per hour, including \$5,600 in travel time at that rate, with no strategy to win the case and little chance of prevailing. Opposing counsel Mr. Rodems is board certified by the Florida Bar in civil trial law with 16 years experience as a lawyer; the firm's three partners have about 50 years combined experience.

Mr. Bauer charged \$100 per hour for an unqualified legal assistant, Karen A. McCain, whose prior experience was a salesperson at Radio Shack. For example, a billing entry on 8/14/07 shows Ms. McCain preparing attorney for hearing, KAM \$100/hr, 0.8hr, \$80.

Most of Mr. Bauer's staff had little or no experience and constantly made mistakes. When I asked about the qualifications and experience of his staff, Mr. Bauer became angry, refused to provide the information, and accused me of harassing his staff.

Mr. Bauer charged me each time someone handled a file, copied a document, processed mail, made a phone call, or took a message, etc., etc., etc. Mr. Bauer charged me \$50 to provide his personal vacation schedule to the court. Bauer charged me for parking his car, and for a "travel meal" August 15, 2007. All these small charges represent about one-third of the \$19,212.44 paid to Mr. Bauer. Travel costs of \$5,600 plus an additional \$0.49 per mile were billed by Mr. Bauer. The detailed billing records are available upon request and exceed 110 pages.

Mr. Bauer had a high turnover of employees. This made continuity of operations difficult in his law office and resulted in mistakes. This is a partial list of his employees:

<u>billing initials:</u>	<u>name:</u>
1. RWB	Robert W. Bauer, attorney
2. TMU	Tanya M. Uhl, attorney (left) later married, now known as Tanya Bell
3. JAC	Joshua A. Cossey, law clerk, law school grad, first spoke with him Oct-26-07 (left)
4. SAA	Shylie A. Armorv, law clerk (left)
5. DS	David Sams, senior law clerk, (now an attorney, admitted 4-20-09)
6. BEL	Beverly E. Lowe, office manager & bookkeeper, met Feb-26-08
7. TLB	Toya Lawanda Bauer, temporary receptionist (wife of RWB)
8. AB	Ann Breeden, received email from her requesting transcripts (left)
9. JD	James Davidson (noticed his name on a cert. mail return green card, Jul-25-08)
10. KK	Karen Kaplan, assistant to RWB, received a call from her Aug-28-08 (left)
11. MG	Meghan Godby, answered the phone, first noticed her Aug-28-08 (left)
12. AR	April Ray, answered the phone Feb-09-09
13. AB	Alison Beal, name on cert. mail green card, answered phone Sep-28-09
14. NDR	Natalia D. Ricardo, legal assistant, gone by Aug-28-08 (left)
15. CNP	Caitlyn N. Peacock, receptionist, met Feb-26-08 (left by Jul-09-08)
16. KAM	Karen McCain, legal assistant, demoted when Josh arrived (left by Feb-26-08)

17. JRC                      Jeffery R. Clark, law clerk, noticed he left by Aug-15-07

Mr. Bauer made a referral to First Choice Court Reporting that was a disaster. The company made errors on a transcript and over-billed me. Resolving this matter was difficult. Mr. Bauer was not cooperative. He suggested I just pay the amount over-billed. Later I insisted he use Berrhill and Associates Court Reporting which I have used for years without problems.

Mr. Bauer's Admission of Wrongdoing in Open Court:

Mr. Bauer made the following statement August 14, 2008 during an Emergency Hearing on a garnishment before the Honorable Marva Crenshaw (Transcript page 16, line 24)

“...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.”

Specific Complaints of Misconduct Against Mr. Bauer:

I. Mr. Bauer failed to zealously litigate my claims against BRC and Mr. Cook.

Mr. Bauer failed to file a first amended complaint as agreed. The case is still alive on my original pro se complaint filed August 11, 2005. Bauer submitted a “counter-counter complaint” in April 2007. (Exhibit 26). The pleading was essentially a “cut and paste” of my initial pro se complaint where Bauer added claims for breach of fiduciary duty to my claims of fraud and breach of contract. The pleading was rejected out of hand by the court (Exhibit 27) because there is no provision under Rule 1.100(a), Fla.R.Civ.P., for a counter-counter complaint:

**RULE 1.100. PLEADINGS AND MOTIONS**

**(a) Pleadings.** There shall be a complaint or, when so designated by a statute or rule, a petition, and an answer to it; an answer to a counterclaim denominated as such; an answer to a crossclaim if the answer contains a crossclaim; a third-party complaint if a person who was not an original party is summoned as a third-party defendant; and a third-party answer if a third-party complaint is served. If an answer or third-party answer contains an affirmative defense and the opposing party seeks to avoid it, the opposing party shall file a reply containing the avoidance. No other pleadings shall be allowed.

Mr. Bauer made no attempt to correct his error. The court offered and allowed Mr. Bauer to submit an amended complaint several times, but he failed to do so. Another attorney who reviewed my pro se complaint said the complaint needed to be amended to add - at a minimum - a count of breach of fiduciary duty. The attorney said the complaint could be

amended under the relation back doctrine, Rule 1.190(c), Fla.R.Civ.P. I did this myself and filed Plaintiff's First Amended Complaint May 5, 2010.

Mr. Bauer failed to zealously represent me on my claims against BRC, even after reinstating those claims that I voluntarily dismissed. Mr. Bauer also failed to pursue any meaningful attempts to settle this matter.

Mr. Bauer failed to prevail on substantive matters. Mr. Rodems presented false evidence and mislead the court during hearings on October 30, 2007 and July 1, 2008 for the purpose of obtaining a dismissal of claims against BRC and Mr. Cook. Mr. Rodems misrepresented to Judge Barton that there was a signed written contingent fee agreement between Plaintiff Neil Gillespie and Defendant Barker, Rodems & Cook, PA when there was none. Mr. Bauer failed to present evidence that there was no signed contingent fee agreement, such as my testimony or my affidavit. Instead Mr. Bauer submitted Plaintiff's Motion For Rehearing July 16, 2008 but withdrew from the case before it was heard.

2. Mr. Bauer failed to zealously litigate against the BRC counterclaim.

The Florida Bar Lawyer Referral Service (LRS) provided Mr. Bauer for the area of law of Libel and Slander. (Exhibit 1). I retained Mr. Bauer for the libel counterclaims. He filed an amended answer to the counterclaim but has not done anything else. Mr. Bauer's amended answer to the counterclaim contained a "counter-counter complaint" that was rejected out of hand by the court because there is no provision under Rule 1.100(a), Fla.R.Civ.P., for this pleading. (see above paragraph #1)

3. Mr. Bauer failed to zealously pursue case management.

There was no case management in my case, either before or after Mr. Bauer represented me. In effect the court abandoned its case management duty to Mr. Rodems who turned the case into a platform to rack up sanctions against me. Mr. Bauer never raised this issue and he does not appear to understand the importance of case management.

Mr. Rodems is board certified by the Florida Bar in civil trial law with 16 years experience as a lawyer. Rodems is a "rules troll" who has used the discovery process for a purpose for which it is not by law intended, to obtain extreme sanctions of \$11,550. The rules of discovery are designed to eliminate as far as possible concealment and surprise in the trial of law suits to the end that judgments rest upon the real merits of causes and not upon the skill and maneuvering of counsel.[2] Southern Mill Creek Products Co. v. Delta Chemical Co., 203 So.2d 53.

Pretrial discovery was implemented to simplify the issues in a case, to encourage the settlement of cases, and to avoid costly litigation. Elkins v. Syken, 672 So.2d 517. In this case the parties know the issues from Defendants' prior representation on the same matter. The rules of discovery are designed to secure the just and speedy determination of every action (In re Estes' Estate, 158 So.2d 794), to promote the ascertainment of truth (Ulrich v. Coast Dental Services, Inc. 739 So.2d 142), and to ensure that judgments are

rested on the real merits of causes. National Healthcorp Ltd. Partnership v. Close, 787 So.2d 22.

Mr. Bauer failed to utilize or argue the merits of the following case management tools:

a. Professionalism and Litigation Ethics, 28 STETSON L. REV. 323, (1998) by the Honorable Claudia Rickert Isom. Judge Isom presided over this case November 22, 2006 through February 13, 2007. The law review shows how Judge Isom provided intensive case management to “Harvey M” rather than sanction him for discovery problems.

b. Fla.R.Jud.Admin., Rule 2.545, Case Management, (a) Purpose. Judges and lawyers have a professional obligation to conclude litigation as soon as it is reasonably and justly possible to do so. However, parties and counsel shall be afforded a reasonable time to prepare and present their case.

c. Fla.R.Civ.P, Rule 1.200, Pretrial Procedure, (a) Case Management Conference, At any time after responsive pleadings or motions are due, the court may order, or a party, by serving a notice, may convene, a case management conference. The matter to be considered shall be specified in the order or notice setting the conference. At such a conference the court may:

- (1) schedule or reschedule the service of motions, pleadings, and other papers;
- (2) set or reset the time of trials, subject to rule 1.440(c);
- (3) coordinate the progress of the action if the complex litigation factors contained in rule 1.201(a)(2)(A)–(a)(2)(H) are present;
- (4) limit, schedule, order, or expedite discovery;
- (5) schedule disclosure of expert witnesses and the discovery of facts known and opinions held by such experts;
- (6) schedule or hear motions in limine;
- (7) pursue the possibilities of settlement;
- (8) require filing of preliminary stipulations if issues can be narrowed;
- (9) consider referring issues to a magistrate for findings of fact; and
- (10) schedule other conferences or determine other matters that may aid in the disposition of the action.

d. Fla.R.Civ.P, Rule 1.201, Complex Litigation, (a) Complex Litigation Defined. At any time after all defendants have been served, and an appearance has been entered in response to the complaint by each party or a default entered, any party, or the court on its own motion, may move to declare an action complex. However, any party may move to designate an action complex before all defendants have been served subject to a showing to the court why service has not been made on all defendants. The court shall convene a hearing to determine whether the action requires the use of complex litigation procedures and enter an order within 10 days of the conclusion of the hearing.

(1) A “complex action” is one that is likely to involve complicated legal or case management issues and that may require extensive judicial management to expedite the action, keep costs reasonable, or promote judicial efficiency.

(2) In deciding whether an action is complex, the court must consider whether the action is likely to involve:

(A) numerous pretrial motions raising difficult or novel legal issues or legal issues that are inextricably intertwined that will be time-consuming to resolve;

(B) management of a large number of separately represented parties;

(C) coordination with related actions pending in one or more courts in other counties, states, or countries, or in a federal court;

(D) pretrial management of a large number of witnesses or a substantial amount of documentary evidence;

(E) substantial time required to complete the trial;

(F) management at trial of a large number of experts, witnesses, attorneys, or exhibits;

(G) substantial post-judgment judicial supervision; and

(H) any other analytical factors identified by the court or a party that tend to complicate comparable actions and which are likely to arise in the context of the instant action.

(3) If all of the parties, pro se or through counsel, sign and file with the clerk of the court a written stipulation to the fact that an action is complex and identifying the factors in (2)(A) through (2)(H) above that apply, the court shall enter an order designating the action as complex without a hearing. (NOTE: This is not a transfer to a Complex Business Litigation Division under Hillsborough County Administrative Order 5-2008-105)

4. Mr. Bauer failed to zealously pursue discovery.

Mr. Bauer did not conduct discovery against BRC, either as defendants or counter-plaintiffs. Prior to Mr. Bauer’s representation I submitted Interrogatories and Request for Production to both Mr. Cook and Barker, Rodems & Cook, PA. July 7, 2006. The discovery I sought from Cook/BRC was essentially the same discovery they submitted to me. Mr. Rodems objected to most of the interrogates and did not provide any documents.

I submitted two motions to compel discovery:

a. Plaintiff’s Motion to Compel Defendants’ Discovery, filed December 14, 2006

b. Plaintiff’s Second Motion to Compel Defendants’ Discovery, filed February 1, 2007

Mr. Bauer failed to conduct his own discovery or follow-up the discovery I submitted. The only item Mr. Bauer sought was the signed written contingent fee agreement between Plaintiff Neil Gillespie and Defendant Barker, Rodems & Cook, PA. Since there

is no signed written contingent fee agreement between the parties Mr. Rodems was not able to produced one, and did not produce one.

5. Mr. Bauer failed to seek disqualification of BRC's counsel Ryan Christopher Rodems.

Mr. Rodems was unlawfully representing BRC against me, see Bar Rule 4-1.9, Conflict of Interest; Former Client and related rules 4-1.6, 4-1.7 and 4-1.10. Mr. Rodems and his law partners formerly represented me in the same or a substantially related matter at BRC and a predecessor firm, Alpert, Barker, Rodems, Ferrentino & Cook, P.A. ("Alpert firm"). The Alpert firm represented me in legal matters with so-called "payday loans" which are delayed deposit check cashing schemes that charge usurious rates of interest. The Alpert firm represented me in payday loan matters with EZ Check Cashing of Clearwater, Check 'n Go, ACE Cash Express, Check Smart, Americash, National Cash Advance, and AMSCOT Corporation.

Under Florida law, attorney-client relationship that existed between counsel and former client need not have been long-term or complicated, in order to trigger obligation on part of counsel not to represent interest adverse to those of former client in the same or a substantially related matter. In re Weinhold, 380 B.R. 848.

For matters in prior representation to be "substantially related" to present representation for purposes of motion to disqualify counsel, matters need only be akin to present action in way reasonable persons would understand as important to the issues involved. McPartland v. ISI Inv. Services, Inc., 890 F.Supp. 1029.

Once I established a cause of action for Fraud and Breach of Contract against Mr. Cook and BRC, all the partners had a conflict of interest.

Partners engaged in the practice of law are each responsible for the fraud or negligence of another partner when the later acts within the scope of the ordinary business of an attorney. Smyrna Developers, Inc. v. Bornstein, 177 So.2d 16

Mr. Rodems' independent professional judgment was materially limited by the lawyer's own interest. Attorney violated rules prohibiting representation where a lawyer's independent professional judgment may be materially limited by the lawyer's own interest. The Florida Bar v Vining, 721 So.2d 1164.

During a hearing to disqualify Mr. Rodems April 25, 2006, he violated Bar Rule 4-3.3(c) when he failed to disclose to the tribunal the above cited legal authority in the controlling jurisdiction known to the lawyer to be directly adverse to the position of the client and not disclosed by opposing counsel. Counsel has a responsibility to fully inform the court on applicable law whether favorable or adverse to position of client so that the court is better able to make a fair and accurate determination of the matter before it. Newberger v. Newberger, 311 So.2d 176

Mr. Rodems' conflict has resulted in many motions for sanctions under § 57.105 Florida Statutes that would not ordinarily be filed in a lawsuit. Mr. Rodems testified at the March 20, 2008 hearing on the attorney's fees that "I am board-certified in civil trial law and I've been practicing law since 1992." (transcript, page 14, line 23). Mr. Rodems also testified that "I've been trying cases for the last 16 years." (transcript, page 15, line 4). On cross examination, Mr. Bauer asked: "How many 57.105 actions have you been involved in?" (transcript, page 15, line 18). Mr. Rodems testified: "I filed I believe two in this case and I may have filed one or two other ones in my career but I couldn't be sure exactly." (transcript, page 15, line 20).

Since the March 20, 2008 hearing, Mr. Rodems filed two additional § 57.105 motions in this lawsuit. On July 31, 2008, Mr. Rodems submitted his third § 57.105 motion in this lawsuit, because Mr. Bauer did not withdrawal my original pro se Complaint For Breach of Contract and Fraud. Mr. Rodems submitted his fourth § 57.105 motion in this case, also on July 31, 2008, because Mr. Bauer did not withdrawal his motion for rehearing, necessitated when Mr. Rodems lied to the court at the October 31, 2007 hearing about the existence of a signed contingent fee agreement - there is no signed contract between Gillespie and Barker, Rodems & Cook, PA and Rodems falsely told the court otherwise.

Furthermore, Mr. Rodems threatened to file another § 57.105 motion against Mr. Bauer in April, 2007, and again in May, 2007, regarding Mr. Bauer's reinstatement of Gillespie's claims voluntarily dismissed, which the 2DCA upheld in 2D07-4530.

The forgoing is a brief overview of the law controlling the disqualification of opposing counsel Mr. Rodems in this case. For a more complete review, see Emergency Motion to Disqualify Defendants' Counsel Ryan Christopher Rodems & Barker, Rodems & Cook, PA, submitted July 9, 2010.

6. Mr. Bauer failed to zealously defend me against sanctions of \$11,550.

The court sanctioned me \$11,550 March 20, 2008 on discovery and § 57.105 Fla. Stat. Mr. Bauer failed to zealously represent me on the hearings leading up to this judgment:

a. Mr. Bauer represented me at hearing July 3, 2007 where Judge Barton heard and granted Defendants' Amended Motion for Sanctions Pursuant to Section 57.105(1), Florida Statutes. Order Granting Defendants' Amended Motion for Sanctions Pursuant to Section 57.105(1), Florida Statutes was signed July 20, 2007. (Exhibit 6)

b. Mr. Bauer represented me at a hearing March 20, 2008 on the issue of the amount of attorneys' fees to pay Defendants as a result of the Orders entered July 24, 2006, granting Defendants' motion to compel discovery, and July 20, 2007, granting Defendants' Amended Motion for Sanctions Pursuant to Section 57.105(1), Florida Statutes. Judge Barton granted Order Determining Amount of Sanctions signed March 27, 2008 in the amount of \$11,550. (Exhibit 7). Judge Barton granted a Final Judgment on the \$11,550 amount signed March 27, 2008.

(Exhibit 8). Mr. Bauer failed to explain to me the significance of the Final Judgment (I still don't understand why this was not left to the end of the case) and Bauer failed to inform me that the Final Judgment required me to complete a Fact Information Sheet under Florida Rule of Civil Procedure Form 1.977.

All the hearings that Mr. Bauer attended were transcribed and are available. Mr. Bauer failed to introduce evidence to mitigate the sanctions, such as the lack of case management described in paragraph 3 or Judge Isom's law review on this subject.

As described in paragraph 4 above, Mr. Bauer failed to introduce mitigating evidence that BRC failed to produce the same discovery for which it was now seeking sanctions. Likewise with the misplaced defense to the counterclaim, which is an abuse of process.

The counterclaim for libel against Gillespie is a willful and intentional misuse of process for the collateral purpose of making Gillespie drop his claims against Defendants and settle this lawsuit on terms dictated by them. Defendants have perverted the process of law for a purpose for which it is not by law intended. Defendants are using their counterclaim as a form of extortion. The filing of a counterclaim may constitute issuance of process for the purpose of an abuse of process action. Peckins v. Kaye, 443 So.2d 1025, 1026. (Count 11 of Plaintiff's First Amended Complaint)

7. Mr. Bauer failed to inform me contrary to Rule 4-1.4(a); Gillespie held in contempt

Mr. Bauer's failed to keep me informed of the proceedings contrary to Bar Rule 4-1.4(a) informing a client of the status of representation. Judge Barton found me guilty of contempt July 1, 2008. Order Adjudging Contempt was signed July 7, 2008. (Exhibit 9). From the Order:

THIS CAUSE came before the Court on Tuesday, July 1, 2008, on Defendants' Motion for an Order Finding Plaintiff in Contempt of Court, and the proceedings having been read and considered and counsel having been heard, and the Court being otherwise fully advised in the premises, the Court finds and concludes that Plaintiff Neil J. Gillespie had the ability to comply with the Final Judgment entered March 27, 2008, and that Plaintiff violated and continues to violate the terms of the order by failing to complete under oath Florida Rule of Civil Procedure Form 1.977 (Fact Information Sheet).

IT IS ORDERED AND ADJUDGED that the Plaintiff Neil J. Gillespie is guilty of contempt of his Court for violating the Final Judgment of March 27, 2008 and will continue to be guilty of contempt unless and until the Plaintiff fully complies with the terms of the Final Judgment no later than July 11, 2008.

Defendant may comply with the Final Judgment of March 27, 2008 by completing the Fact Information Sheet under oath and serving a copy on counsel for the Defendants, providing notice of service of the completed Fact Information Sheet with the clerk of court.

If Defendant does not comply by July 11, 2008, then the Court shall dismiss with prejudice Plaintiffs pending claims. The Court retains jurisdiction to impose additional sanctions, as necessary, and to tax attorneys' fees and costs.

DONE AND ORDERED in Chambers, at Tampa, Hillsborough County, Florida  
this 7th day of July 2008

In a letter to Judge Barton dated July 24, 2008, Mr. Bauer admitted he made misrepresentations that resulted in me being found guilty of contempt. (Exhibit 10)

“After speaking with my client, making a thorough review of our files and computer records I must regretfully inform the court and opposing counsel that I inadvertently made misrepresentations at our last hearing. In that hearing I stated that my office had forwarded the Information Fact Sheet to Mr. Gillespie. I also stated that my office had called him to tell him to fill it out. I now understand that was not correct. Because of my assertions the Court found Mr. Gillespie to be in contempt. I wish at this time set the record straight.” (RWB, Exhibit 10, paragraph 1)

“While I did truly believe that those things had happened at the time I advised the court of such, I now know that I was in error in not having personally confirmed such. I take full responsibility for the error and I wish to clarify this to insure that the court realizes that Mr. Gillespie did not ignore the courts directive.” (RWB, Exhibit 10, paragraph 2)

“I apologize both to the court, opposing counsel and Mr. Gillespie for my error.”  
(RWB, Exhibit 10, paragraph 3)

Even though Mr. Bauer admitted his error, he did not move to correct the record and remove the contempt finding. The contempt finding still stands and carries potential consequences: “The Court retains jurisdiction to impose additional sanctions, as necessary, and to tax attorneys' fees and costs.”

8. Mr. Bauer failed to zealously stay the Final Judgment resulting in garnishment.

Mr. Bauer failed to file a timely stay of the \$11,550 Final Judgment. I asked Mr. Bauer to file a stay when he told me of the \$11,550 sanction. Mr. Bauer refused<sup>1</sup> until Mr. Rodems began action to collect the judgment. Bauer finally submitted Plaintiff's Motion For Stay June 9, 2008 (Exhibit 11) which was 44 days late and of no effect. Mr. Rodems later told the court during an emergency hearing August 14, 2008 that Bauer never even contacted him about staying collection of the \$11,550 Final Judgment.

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<sup>1</sup> The basis for Mr. Bauer's inaction is stated on the record August 14, 2008, emergency hearing on garnishment before Judge Crenshaw. Bauer was under the mistaken belief that Rodems would respect some sort of local custom adhered to in Gainesville on such matters.

Defendants obtained writs of garnishment July 29, 2008 to garnish the following accounts of Neil Gillespie:

- a. Neil Gillespie's client trust account with attorney Robert W. Bauer (Exhibit 12)
- b. Neil Gillespie's bank accounts with Park Avenue Bank (Exhibit 13)

Mr. Bauer received the writs of garnishment August 1, 2008 and failed to inform me that my bank accounts were garnished. I found out when checks started to bounce August 8, 2008. I called Mr. Bauer and he said his staff forgot to tell me. \$598.22 was garnished from Park Avenue Bank. There was no money in my client trust account with Bauer.

An emergency hearing was held August 14, 2008 but it was too late. Judge Crenshaw noted that Mr. Bauer's stay of Final Judgment was late. Judge Crenshaw offered to stay the judgment with a supersedes bond to which Bauer agreed but that I could not obtain.

Mr. Bauer filed Claim of Exemption and Request For Hearing Aug-14-08. (Exhibit 14). Bauer failed to notarize the claim of exemption and Mr. Rodems objected. Bauer never corrected his error and my money (\$598.22) is still being held by the court. The claim of exemption was for social security disability benefits, head of family wages, and providing more than one-half of the support for other dependent with net earnings of \$500 or less per week. (My 78 year-old dependent Mother).

At this point Mr. Rodems aggressively made discovery in aid of execution and deposition duces tecum. Bauer complained that this was too much work for him and that I could not expect zealous representation. Soon Bauer stopped representing me.

9. Mr. Bauer stopped providing documents; moved to withdrawal as counsel, trial court.

Mr. Bauer stopped providing documents to me in the case. September 5, 2008 I made a 200 mile round-trip to Tampa to buy the documents from the clerk of court for \$1.00 per page. I spent \$75 for 75 pages of documents Mr. Bauer failed to provide. I brought my 78-year old Mother with Alzheimer's dementia along since I could not leave her alone.

I notified Mr. Bauer by email September 15, 2008 that I was not receiving documents. Mr. Bauer did not respond. I sent a second request September 22, 2008. Bauer provided a few documents but did not answer most of my questions. Concurrently Mr. Rodems was making multiple discovery demands in aid of execution. This created extra work for Mr. Bauer and he decided to drop the case. (As noted above, Mr. Rodems should have been disqualified as counsel, see paragraph 5).

Mr. Bauer served Plaintiff's Motion for Withdrawal of Counsel October 13, 2008. (Exhibit 15). Bauer wrote "Good cause exists for withdrawal of Movant as counsel because Movant is unable to communicate effectively with Plaintiff in a manner consistent with good attorney-client relations."

I objected stating good cause does not exist for the withdrawal of Mr. Bauer as counsel. Mr. Bauer needed co-counsel to assist him. (Exhibit 16). Mr. Bauer did not reply.

October 27, 2008 I made a request to Mr. Bauer under the Americans with Disabilities Act (ADA) for accommodation to restore effective communication. (Exhibit 17). Bauer did not respond.

Almost a year passed with essentially no activity in the trial court until October 1, 2009 when the court granted Mr. Bauer's motion to withdrawal.

10. Mr. Bauer's misconduct in appeals to the Second District Court of Appeals (2DCA).

Mr. Bauer represented me on two appeals to the 2DCA, each with misconduct.

a. Case No. 2D07-4530 was a writ of certiorari by Mr. Rodems to overturn Judge Barton's decision to reinstate my claims after my voluntary dismissal. The 2DCA denied the writ, opinion filed February 8, 2008. The court held Fla. R. Civ. P. 1.420(a)(2) controlled, see *Rogers v. Publix Super Markets, Inc.*, 575 So. 2d 214,215-16 (Fla. 5th DCA 1991) (holding that when counterclaim is pending, plaintiff cannot unilaterally dismiss complaint without order of court). (Exhibit 18). Mr. Bauer's misconduct relates to the fact that he failed to obtain attorney's fees from Mr. Rodems for this frivolous appeal. Mr. Bauer failed to file a motion for sanctions under § 57.105 Florida Statutes or otherwise seek my attorney's fees from Mr. Rodems that amounted to thousands of dollars. This failure by Bauer to zealously represent me was outrageous given that that Rodems used § 57.105 Fla. Stat. against me to obtains extreme sanctions.

b. Case No. 2D08-2224 was an appeal by Mr. Bauer of the Final Judgment of the \$11,550 extreme sanctions awarded March 20, 2008 by Judge Barton. Mr. Bauer was reluctant to file this appeal and only made a notice of appearance after I commenced the appeal pro se by paying the filing fee.

Mr. Bauer submitted Appellant's Initial Brief July 3, 2008. Mr. Bauer appealed the award of attorneys fees under § 57.105 Fla. Stat. but failed to appeal the award of attorneys fees for discovery sanctions as we agreed he would. Bauer abandoned the appeal shortly after submitting his initial brief. Appellees' Answer Brief was submitted September 15, 2008, but Mr. Bauer failed to submit a rely brief pursuant to Rule 9.210(d), Fla. R. App. P.

Mr. Bauer served Plaintiff's Motion for Withdrawal of Counsel to the 2DCA October 13, 2008. (Exhibit 19). Bauer wrote "Good cause exists for withdrawal of Movant as counsel because Movant is unable to communicate effectively with Plaintiff in a manner consistent with good attorney-client relations."

I objected stating good cause does not exist for the withdrawal of Mr. Bauer as counsel. Mr. Bauer needed co-counsel to assist him. (Exhibit 20).

The 2DCA denied Mr. Bauer's motion to withdrawal October 30, 2008. (Exhibit 21). Mr. Bauer defied the order and did not represent me. On January 20, 2009 I moved to submit a pro se reply brief, because Mr. Bauer failed to do so. The motion was denied. On January 28, 2009 I moved to hold Mr. Bauer in contempt for disobeying the court's order of October 30, 2008. The motion was denied.

On October 9, 2009 the 2DCA issued an opinion that affirmed the trial court's award of \$11,550 sanctions. (Exhibit 22). Mr. Bauer failed to provide a timely copy of the opinion and failed to advise that I could seek rehearing. I made a belated pro se motion for rehearing November 6, 2009 that was denied December 4, 2009. A mandate was issued October 28, 2009. (Exhibit 23)

11. Mr. Bauer withdrew from representation of Gillespie in the trial court October 1, 2009.

Judge Barton granted Mr. Bauer's motion to withdrawal October 1, 2009. I submitted Plaintiff Neil J. Gillespie's pro se Response to Attorney Robert W. Bauer's Motion For Withdrawal of Counsel October 1, 2009. (Exhibit 24). I reluctantly submitted this response as a defense to any attempt by the judge to require payment of Mr. Bauer's outstanding attorney's fees before allowing the case to proceed without him, and to establish a record of Bauer's bad representation. The Order Granting Motion To Withdrawal As Counsel was signed by Judge Barton October 9, 2009 (Exhibit 25)

12. Evidence of fraud by Mr. Bauer in representing Neil Gillespie.

In a letter to Governor Crist dated January 4, 2010 (Exhibit 26) Mr. Bauer endorsed Mr. Rodems for judge and praised him as "honorable and professional". This is in contrast to Mr. Bauer's description to me of Mr. Rodems at Barker, Rodems & Cook as a "slimy" attorney that a jury would love to punish, or one that misled the court July 1, 2008 necessitating Plaintiff's Motion for Rehearing, submitted July 16, 2008 by Mr. Bauer.

I believe Mr. Bauer's letter to the Governor is evidence that he fraudulently took my representation against BRC merely too take attorney's fees with no regard to my interest.

### My Background

At all times pertinent I was disabled under the Americans With Disabilities Act (ADA). The Social Security Administration determined me disabled in 1994. I am currently 54 years-old. My source of income is Social Security disability. I have few assets following Chapter 7 bankruptcy in 2003. Before the disability I owned and operated a business.

In 2005 I moved to the above address and became the primary caregiver to my Mother, Penelope Gillespie, who suffered from Alzheimer's dementia and a heart condition. The above address was her home. My Mother was an unremarried widow. She was 78 years-old. We were the only residents of this home and depended on Social Security income.

Penelope Gillespie was also a client of Mr. Bauer. He represented her on a matter of Travelers Insurance Company and wrongful termination of homeowner's policy, and he began an inquiry into a possible case of medical malpractice. Mr. Bauer billed us for these two matters. I will provide the bills upon request.

Mr. Bauer moved to withdrawal from representation October 13, 2008. At the same time my Mother's dementia worsened. In February 2009 my brother in Texas agreed to take in our Mother so I could attempt to get the case back on track. Ms. Gillespie did not tolerate the move and died from complications of the move September 16, 2009.

My home office business telephone extension (352) 854-7807 is recorded for quality assurance purposes pursuant to the business use exemption of Florida Statutes chapter 934, section 934.02(4)(a)(1) and the holding of *Royal Health Care Servs., Inc. v. Jefferson-Pilot Life Ins. Co.*, 924 F.2d 215 (11th Cir. 1991). There are a number of transcripts and recordings of my conversations with Mr. Bauer in this matter.

#### Representation Contracts with Mr. Bauer:

April 5, 2007 Neil Gillespie and Mr. Bauer made an Attorney Consultation and Fee Contract, executed April 22, 2007 by Gillespie and April 24, 2007 by Bauer, copy enclosed. (Exhibit 2)

On March 31, 2008, Mr. Bauer proposed a new representation contract with higher rates for certain employees. Included with the correspondence was admission of billing errors made by Mr. Bauer in his favor. This contract was not executed. A copy of the contract is available.

On Mach 9, 2009, Mr. Bauer proposed a contingent fee agreement in this matter to replace the hourly fee contract. This was a result of our telephone conversation February 9, 2009. The call was recorded and has been transcribed and is available upon request. When Mr. Bauer later provided the contingent fee agreement, he demanded I execute a separate settlement agreement for his malpractice to date. This was not discussed or agreed to during our conversation February 9, 2009. The settlement agreement was not executed. A copy of this agreement is available upon request.

On May 14, 2009 I proposed my own contingent fee agreement to Mr. Bauer but he refused to sign or agree to the terms. A copy of this agreement is available. Also on May 14, 2009 I proposed my own settlement agreement to Mr. Bauer but he refused to sign or agree to the terms. A copy of this agreement is available upon request.

#### Complaint about Mr. Bauer's Compliance with LRS Rules:

Mr. Bauer was a LRS referral for of Libel and Slander. (Exhibit 1). Mr. Bauer appears to have little or no experience in the area of Libel and Slander and he was not competent to practice in that area of law. Apart from the requirements of the LRS, lawyers are bound by the Rules Regulating the Florida Bar. I believe the following Rule is pertinent:

Rule 4-7.2, communications concerning a lawyer's services  
(b) Prohibited Statements and Information

(5) Advertising areas of practice - a lawyer or law firm shall not advertise for legal employment in an area of practice in which the advertising lawyer or law firm does not currently practice law

Mr. Bauer violated Lawyer Referral Rule 8-1.1, Statement of Policy and Purposes, states that "Every citizen of the state should have access to the legal system" ... and (a) "make legal services readily available to the general public through a referral method that considers the client's financial circumstances..."

Mr. Bauer failed to consider my financial circumstances and maintains he is not obligated to do so. (Transcript, February 9, 2009 phone call)

Mr. Bauer violated LRS application, Rules, IV, states:

D. A panel member, in filing an application as provided, agrees to:

(2) charge for further services only as agreed upon with the client in keeping with the stated objectives of the Service and the client's ability to pay;

Mr. Bauer never considered my ability to pay, he simply took this case to churn fees, deplete my funds, and drop the case, leaving me in a worse position. Mr. Bauer failed to execute a contingent fee agreement as promised.

Mr. Bauer also agreed to remit to the LRS 12% of any attorneys' fees due for services performed in connection with any Regular Panel cases. Mr. Bauer has received \$19,212.44 in attorney's fees from me but has not remitted any of the approximately \$2,305.49 he owes to the LRS with his monthly LRS reports. I confirmed this today with Ms. Karen Kelly, Director of the Florida Bar's Public Service Programs Department.

#### Independent Assessment by Attorney Seldon J. Childers (Jeff Childers)

I retained attorney Jeff Childers to review this matter. He prepared three documents dated September 17, 2009:

Analysis of Case and Recommendation  
Economic Analysis Spreadsheet  
Case Spreadsheet

Based upon Mr. Childers review it appears Mr. Bauer should never have undertaken this representation on an hourly fee basis. Even under the best case scenario, this case loses over \$7,475.34. The worst case scenario the case loses \$204,067.41. This litigation was never in my interest, only Mr. Bauer's interest, a clear breach of fiduciary duty.

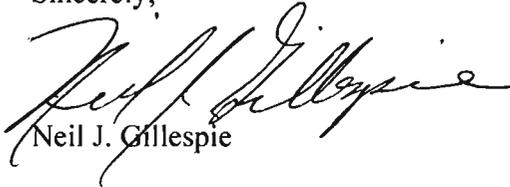
#### Gillespie Requests Return of \$19,212.44 Paid to Mr. Bauer

In addition to a finding of probable cause of violating bar rules, I want Mr. Bauer to return the \$19,212.44 we paid to him. This money is needed to pay replacement counsel.

Mr. Bauer constructively changed his billing in this matter to a contingent fee agreement February 9, 2009 and March 9, 2009, therefore he is no longer entitled to keep the money paid to him because he has not made a recovery and has withdrawn from the case.

Thank you for considering this complaint.

Sincerely,

A handwritten signature in cursive script, appearing to read "Neil J. Gillespie". The signature is written in black ink and is positioned above the printed name.

Neil J. Gillespie

Enclosures

Note: As a courtesy to The Florida Bar, my complaint and supporting documents have been scanned in PDF on the enclosed CD.

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Florida Bar inquiry/complaint against Robert W. Bauer, bar no. 11058

<i>ENClosed</i>	Exhibit 1	Florida Bar LRS referral to Robert W. Bauer, February 26, 2007
	Exhibit 2	Representation contract, Mr. Bauer and Neil Gillespie, April 2007
<i>ENClosed</i>	Exhibit 3	Spreadsheet of payments and bills, account of Neil Gillespie with Mr. Bauer
	Exhibit 4	Charging lien of \$12,650.13, Mr. Bauer letter to Gillespie, November 23, 2009
	Exhibit 5	Walk-away settlement offer, Mr. Rodems to Gillespie, February 7, 2007
	Exhibit 6	Order Granting Defendants' Amended Motion For Sanctions, §57.105 FS
	Exhibit 7	Order Determining Amount of Sanctions, \$11,550 against Gillespie, March 27, 2008
	Exhibit 8	Order of Final Judgment, \$11,550 against Gillespie, March 27, 2008
<i>ENClosed</i>	Exhibit 9	Order Adjudging Contempt against Gillespie, July 7, 2007
<i>ENClosed</i>	Exhibit 10	Robert W. Bauer letter to court, admits misrepresentations, July 24, 2008
	Exhibit 11	Plaintiff's Motion For Stay, June 9, 2008, submitted 44 days late by Mr. Bauer
	Exhibit 12	Writ of Garnishment, Robert W. Bauer, July 29, 2008
	Exhibit 13	Writ of Garnishment, Park Avenue Bank, July 29, 2008
	Exhibit 14	Plaintiff's Claim of Exemption and Request for Hearing, August 14, 2008
	Exhibit 15	Mr. Bauer's Motion to Withdrawal as Counsel, Circuit Court, October 13, 2008
	Exhibit 16	Gillespie's objection to Bauer's Motion to Withdrawal, Circuit Court, October 15, 2008
	Exhibit 17	Gillespie's Americans with Disabilities Act (ADA) request to Bauer, October 27, 2008
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	Exhibit 19	Mr. Bauer's Motion to Withdrawal as Counsel, 2DCA, October 13, 2008
	Exhibit 20	Gillespie's objection to Bauer's Motion to Withdrawal, 2DCA, October 15, 2008
	Exhibit 21	Order, Second District Court of Appeals, denied Bauer's withdrawal, October 30, 2008
	Exhibit 22	Opinion, 2DCA, affirmed \$11,550 sanctions against Gillespie, October 9, 2009
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	Exhibit 25	Order Granting Bauer's Motion to Withdrawal as Counsel, October 9, 2009
<i>ENClosed</i>	Exhibit 26	Mr. Bauer's letter to Governor Crist in support of Mr. Rodems for judge
	Exhibit 27	Mr. Bauer's "Counter-Counter Complaint" May 2, 2007
	Exhibit 28	Order Granting Withdrawal of Voluntary Dismissal; No "Counter-Counter Complaint"
	Exhibit 29	Professionalism and Litigation Ethics, <u>28 STETSON L. REV. 323</u> , Judge Claudia Rickert Isom

EXHIBITS LISTED BUT NOT ENCLOSED ARE AVAILABLE UPON REQUEST

**Lawyer Referral Service**

**Referral Confirmation**

**PLEASE PRINT AND BRING THIS CONFIRMATION FORM WITH YOU TO THE LAWYER'S OFFICE.**

**You have been referred to:**

**Robert W. Bauer  
2815 NW 13th St Ste 200E  
Gainesville FL 32609-2865  
PH: (352) 3755960**

*March 1st 2007  
Thurs Day.*

*3:45 PM*

*\$25.00*

**FOR THE FOLLOWING AREAS OF LAW: *Libel & Slander***

*K. Bauer*

**THE LAWYERS ON THE FLORIDA BAR LAWYER REFERRAL SERVICE HAVE AGREED TO PROVIDE A HALF-HOUR OFFICE CONSULTATION FOR NO MORE THAN \$25.00. PLEASE CALL THE LAWYER'S OFFICE TO MAKE AN APPOINTMENT. THE LAWYER WILL NOT CONTACT YOU. PLEASE REMEMBER TO INFORM THE OFFICE THAT YOU WERE REFERRED BY THE FLORIDA BAR LAWYER REFERRAL SERVICE.**

**TO HELP YOU PREPARE FOR YOUR CONSULTATION, PLEASE CONSIDER READING THE FOLLOWING FLORIDA BAR CONSUMER PAMPHLETS:**

**A Consumer's Guide to Clients' Rights    Attorneys' Fees**

**YOU ARE UNDER NO OBLIGATION TO HIRE THE LAWYER.**

**THE LAWYER IS UNDER NO OBLIGATION TO TAKE YOUR CASE.**

**YOU MUST CONTACT THE REFERRED LAWYER BEFORE MAKING ANOTHER REFERRAL REQUEST.**

**Your lawyer was selected based on the information provided below:**

**You requested a lawyer who is licensed in: Florida and willing to work in, but not located in a specific county**

**What county: Marion**

**We have several attorney panels, please select the panel you need: Regular**

**What area of law do you need an attorney for? Libel & Slander**

**Do you have a special language requirement?**

**Must the attorney be willing to make a Jail call? No**

**Personal Information: Neil Gillespie  
8092 SW 115th Loop**

**Ocala FL 34481  
352/8547807**



Account of Neil J. Gillespie with the Law Office of Robert W. Bauer, P.A.				
July 14, 2010				
date	amount	bill no.	transaction	trust account
Mar-01-07	\$ 25.00	n/a	Client payment, initial consult, personal check #203	n/a
Mar-08-07		n/a	Client payment, Chase Visa credit card, #64636	\$ 3,000.00
Apr-03-07	\$ 1,928.94	145	Automatic Trust Transfer	
Apr-10-07	\$ 2,000.00	n/a	Client payment, SunTrust home equity line check #107	\$ 3,071.06
May-02-07	\$ 1,210.08	174	Automatic Trust Transfer	
May-31-07	\$ 756.22	213	Automatic Trust Transfer	
Jul-02-07	\$ 117.71	235	Automatic Trust Transfer	
Aug-06-07	\$ 987.05	260	Automatic Trust Transfer	\$ -
Aug-15-07	\$ 2,651.11	260	Client payment, SunTrust home equity line check #131	\$ -
Sep-28-07	\$ 3,034.02	353	Client payment, Chase Visa credit card check #4068	
Nov-28-07	\$ 3,919.67	441	Client payment, Chase Visa credit card, #9420	\$ -
Dec-31-07	\$ 1,831.50	505	Client payment, SunTrust Visa credit card, #2789	\$ -
Jan-29-08	\$ 203.64	619	Client payment, Chase Visa credit card, #9420	\$ -
Feb-19-08	\$ 547.50	677	Client payment, Chase Visa credit card, #9420	\$ -
subtotal	\$ 19,212.44			
Mar-06-08	\$ 258.49	736	bill received	
Mar-31-08	\$ 2,005.39	810	bill received	
May-01-08	\$ 1,165.91	893	bill received	
May-28-08	\$ 2,020.00	959	bill received	
Jun-30-08	\$ 2,557.48	1030	bill received	
Jul-31-08	\$ 1,992.44	1098	bill received	
Sep-03-08	\$ 654.68	1227	bill received	
Oct-03-08	\$ 1,085.98	1261	bill received	
Nov-07-08	\$ 381.74	1347	bill received	
Dec-06-08	\$ 5.00	1421	bill received	
Jan-12-09	\$ -	1499	bill received	
Feb-03-09	\$ 76.38	1576	bill received	
Mar-26-09	\$ 297.92	1656	bill received	
Apr-29-09	\$ 25.00	1741	bill received	
Jun-18-09	\$ 25.00	1827	bill received	
Aug-10-09	\$ 49.04	1931	bill received	
Nov-13-09	\$ 48.02	2216	bill received	
subtotal	\$ 12,648.47			
total	\$ 31,860.91			

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

**NEIL J. GILLESPIE,**

**Plaintiff,**

**vs.**

**Case No.: 05CA7205**

**Division: F**

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

**Defendants.**

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FILED  
2008 JUL -1 11:38-29  
HILLSBOROUGH COUNTY, FL  
*[Signature]*

**ORDER ADJUDGING CONTEMPT**

THIS CAUSE came before the Court on Tuesday, July 1, 2008, on Defendants' Motion for an Order Finding Plaintiff in Contempt of Court, and the proceedings having been read and considered and counsel having been heard, and the Court being otherwise fully advised in the premises, the Court finds and concludes that Plaintiff Neil J. Gillespie had the ability to comply with the Final Judgment entered March 27, 2008, and that Plaintiff violated and continues to violate the terms of the order by failing to complete under oath Florida Rule of Civil Procedure Form 1.977 (Fact Information Sheet).

IT IS ORDERED AND ADJUDGED that the Plaintiff Neil J. Gillespie is guilty of contempt of this Court for violating the Final Judgment of March 27, 2008 and will continue to be guilty of contempt unless and until the Plaintiff fully complies with the terms of the Final Judgment no later than July 11, 2008.

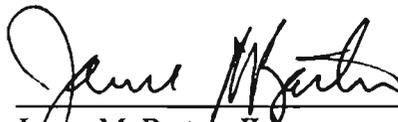
Defendant may comply with the Final Judgment of March 27, 2008 by completing the Fact Information Sheet under oath and serving a copy on counsel for the Defendants, providing

notice of service of the completed Fact Information Sheet with the clerk of court.

If Defendant does not comply by July 11, 2008, then the Court shall dismiss with prejudice Plaintiff's pending claims. The Court retains jurisdiction to impose additional sanctions, as necessary, and to tax attorneys' fees and costs.

DONE AND ORDERED in Chambers, at Tampa, Hillsborough County, Florida, this

7<sup>th</sup> day of July, 2008.



---

James M. Barton, II  
Circuit Judge

Copies to:

Robert W. Bauer, Esquire (Counsel for Plaintiff)

Ryan Christopher Rodems, Esquire (Counsel for Defendants)

THE LAW OFFICES OF  
**ROBERT W. BAUER, P.A.**

2815 NW 13th Street, Suite 200, Gainesville, FL 32609  
www.bauerlegal.com

FILED  
JUL 29 2008  
JAMES M. BARTON II  
CIRCUIT JUDGE

Robert W. Bauer, Esq.  
Tanya M. Uhl, Esq.

Phone: (352)375.5960  
Fax: (352)337.2518

July 24, 2008

The Honorable James M. Barton, II  
800 E. Twiggs St., Room 512  
Tampa, Florida 33602  
**Manner of delivery - U.S. Mail**

Re: Gillespie v. Barker, Rodems, and Cooke

05-7205

FILED  
CIRCUIT CIVIL

2008 JUL 29 AM 9:32



Dear Judge:

After speaking with my client, making a thorough review of our files and computer records I must regretfully inform the court and opposing counsel that I inadvertently made misrepresentations at our last hearing. In that hearing I stated that my office had forwarded the Information Fact Sheet to Mr. Gillespie. I also stated that my office had called him to tell him to fill it out. I now understand that was not correct. Because of my assertions the Court found Mr. Gillespie to be in contempt. I wish at this time set the record straight.

While I did truly believe that those things had happened at the time I advised the court of such, I now know that I was in error in not having personally confirmed such. I take full responsibility for the error and I wish to clarify this to insure that the court realizes that Mr. Gillespie did not ignore the courts directive.

I apologize both to the court, opposing counsel and Mr. Gillespie for my error.

Sincerely,



Robert W. Bauer, Esq.

cc: Ryan Rodems  
Neil Gillespie

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EXHIBIT  
10



*The Law Offices of*

# Robert W. Bauer, P.A.

2815 NW 13th Street, Suite 200B, Gainesville, FL 32609  
www.bauerlegal.com

*Robert W. Bauer, Esq.*  
*David M. Sams, Esq.*

Phone: (352)375.5960  
Fax: (352)337.2518

January 4, 2010

Honorable Charlie Crist  
Office of the Governor  
The Capitol, PL05  
Tallahassee, FL 32399-0001  
Fax: 850-487-0801

Ref: Ryan Christopher Rodems

Dear Governor Crist,

I have recently become aware that Ryan Rodems has been nominated for both a County Court judgeship and Circuit Court judgeship. I had the opportunity of meeting and getting acquainted with Mr. Rodems in a case in which we served as opposing counsel. The case to which I refer is Gillespie v. Baker, Rodems, and Cook, PA. et al. Case No. 2D08-2224. I would like to also take the opportunity to give you my opinion of Mr. Rodems and the professional relationship we shared in connection with the aforementioned case.

While there were times when Mr. Rodems and I strongly disagreed during the course of litigation, I believe that Mr. Rodems consistently performed in an honorable and professional manner. Even in the most contentious moments of the case, Mr. Rodems never wavered in his civility or composure towards me or my client. I found Ryan Rodems to be a zealous advocate while still maintaining a professional approach in his efforts to bring the case to a resolution. Throughout litigation, Mr. Rodems displayed an exceptional knowledge of both procedural and substantive law, including the areas of contracts, fraud, and fiduciary duty with which the case dealt. Overall, my professional relationship with Ryan Rodems was rewarding, enjoyable, and exemplary of the relationship that I hope to achieve with any opposing counsel that I may encounter. I say this even thou our styles are very different and often in complete opposition.

It is my personal opinion that Ryan Christopher Rodems is an honorable and honest gentleman capable of satisfying the duties and responsibilities of a judgeship should he be appointed to such a position in either County or Circuit Court.

Should you have any questions regarding my experiences of working with Mr. Rodems, please contact me at 352-375-5960.

Sincerely,

Robert W. Bauer, Esq.

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# BARKER, RODEMS & COOK

PROFESSIONAL ASSOCIATION  
ATTORNEYS AT LAW

CHRIS A. BARKER  
RYAN CHRISTOPHER RODEMS  
WILLIAM J. COOK

400 North Ashley Drive, Suite 2100  
Tampa, Florida 33602

Telephone 813/489-1001  
Facsimile 813/489-1008

August 13, 2010

The Florida Bar/Consumer Assistance Program  
651 East Jefferson Street  
Tallahassee, Florida 32399-2300



**Re: Neil J. Gillespie Inquiry against Robert W. Bauer, Esquire**

Dear Sir/Madam:

I have learned that Neil J. Gillespie has filed a complaint against Robert W. Bauer, Esquire, as a result of his representation of Mr. Gillespie in a lawsuit pending in the Thirteenth Judicial Circuit styled Gillespie v. Barker, Rodems & Cook, P.A. I am the attorney who is defending this action. As a result, I have interacted with Mr. Gillespie and Mr. Bauer.

While I am not in a position to comment on every allegation Mr. Gillespie makes, I am in a position to comment on Mr. Bauer's litigation of this matter and Mr. Gillespie's actions during this litigation.

In summary of my response below, I found Mr. Bauer to be competent, bright, hardworking, and very conscientious of his client's interests. During this same time period, I have found Mr. Gillespie to be erratic, difficult to deal with, threatening, irrational, lacking in understanding of the law, lacking in an understanding of professional decorum, and dishonest.

First, the Florida Bar should be aware that Mr. Gillespie has already filed bar grievances against me and both of my partners, William J. Cook, Esquire, and Chris A. Barker, Esquire, and all were determined unfounded. Gillespie then filed grievances against the Florida Bar attorneys who ruled against him. Mr. Gillespie has also moved to disqualify each of the four circuit judges presiding over the lawsuit Mr. Gillespie filed, and all were denied, except one. Mr. Gillespie learned that Judge Barton's wife was a court reporter and that our law firm had purchased copies of transcripts from her.<sup>1</sup>

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<sup>1</sup> The total amount of payments over more than eight years was about \$2,400.00. While an attorney's legal campaign contributions to a trial judge are not a legally sufficient ground for disqualification, E.I. DuPont de Nemours and Co., Inc. v. Aquamar S.A., 24 So.3d 585, 585 (Fla. 4<sup>th</sup> DCA 2009), Aurigem v. State, 964 So.2d 224 (Fla. 4<sup>th</sup> DCA 2007) held that where the trial

Second, Mr. Gillespie has engaged in a pattern of misconduct and irrational behavior such that the defendants have moved for an Order to Shows Cause as to why Mr. Gillespie should be barred from pro se representation. Mr. Gillespie has been sanctioned for filing frivolous pleadings and for discovery violations. In one motion to disqualify, under oath, Mr. Gillespie accused Judge Barton of causing the death of his mother.

Mr. Gillespie, by his actions has so upset the normal procedure of the Court that it has undoubtedly interfered with the causes of other litigants, including my clients. Mr. Gillespie has demonstrated a lack of understanding of the Florida Rules of Civil Procedure, the Rules Regulating the Florida Bar, substantive law, professional decorum, and has on two occasions displayed symptoms of illness during court proceedings, whether feigned or actual,<sup>2</sup> following Mr. Gillespie's failed requests to stop proceedings when the Court was presiding in a manner that Plaintiff found unfavorable to him. Here is a summary of his actions and omissions:

- a. On February 4, 2006, Mr. Gillespie moved to disqualify the undersigned from representing Defendants, but Judge Nielsen denied the motion with prejudice on April 25, 2006, with a written Order entered May 12, 2006.<sup>3</sup>

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judge's husband had served multiple times as an expert witness for one of the attorneys in a case, it created "the requisite well-founded fear to support the motion to disqualify." I find the holdings of E.I. DuPont de Nemours and Co., Inc. v. Aquamar S.A., 24 So.3d 585, 585 (Fla. 4<sup>th</sup> DCA 2009) and Aurigemma v. State, 964 So.2d 224 (Fla. 4<sup>th</sup> DCA 2007) to be somewhat inconsistent. Regrettably, the resolution of Gillespie's latest motion to disqualify did not involve a determination of "the truth of the facts alleged." Fla. R. Jud. P. 2.330(f). It was also regrettable that the Court in Aurigemma v. State, 964 So.2d 224 (Fla. 4<sup>th</sup> DCA 2007) did not identify how many times the counsel at issue had hired the trial judge's husband or how much money was at issue.

<sup>2</sup> On July 12, 2010, Mr. Mr. Gillespie stated to the Court during a hearing that he required medical attention, and he asked to be excused. As of 3:36 p.m. on July 12, 2010, Mr. Mr. Gillespie was well enough to send e-mails. On February 5, 2007, during a hearing before Judge Isom in this matter, Mr. Mr. Gillespie announced after several unfavorable rulings, "I don't even know why I'm sitting here. And I'm very ill. I've expressed that to you. I can't even effectively assist myself. So I'm not going to participate in this charade anymore." Whether Mr. Mr. Gillespie was actually ill in either hearing has not been established.

<sup>3</sup> Mr. Gillespie also filed a complaint against the undersigned with the Tampa Police Department, claiming the undersigned committed perjury in defending his clients in this action,

- b. After Judge Nielsen recused himself, Mr. Gillespie moved to reconsider the ruling denying his motion to disqualify and brought it for hearing on February 5, 2007. Because Mr. Gillespie claimed he could not answer the Court's questions about the motion because he was "not an attorney," Judge Isom decided not to consider any further the motion to reconsider Judge Nielsen's ruling denying Mr. Gillespie's motion to disqualify the undersigned.
- c. On July 12, 2010, Mr. Gillespie filed another motion to disqualify the undersigned, and it is largely incomprehensible, replete with citations to irrelevant portions of the Rules Regulating the Florida Bar, and citations to irrelevant case law on legal points not at issue. This motion was denied by the Court, and Judge Cook advised Mr. Gillespie that if he served another motion to disqualify, then he would be sanctioned.
- d. On February 8, 2006, Mr. Gillespie moved to dismiss Defendants' libel counterclaims, raising waiver, economic loss rule and other defenses that had no legal or factual basis. On February 28, 2006, Defendants served a section 57.105(1), Florida Statutes motion for sanctions on Mr. Gillespie, seeking an Order that Mr. Gillespie be required to obtain an attorney.
- e. In Court filings, Mr. Gillespie claims to suffer from "[d]epression and mood disorder," for which he is taking prescription medications. He has, at times, declared his qualifications to represent himself, but also filed motions under the Americans with Disabilities Act, seeking the appointment of counsel by the Court, proclaiming his mental and intellectual limitations.
- f. In response to the section 57.105, Florida Statutes motion for sanctions, on April 28, 2006, Mr. Gillespie filed a document entitled "Mr. Gillespie's Qualifications to Proceed Pro Se." Yet, three days earlier, on April 25, 2006, Mr. Gillespie filed "Mr. Gillespie's Motion for Appointment of Counsel, Attorney's Fees, and Legal Retainer," requesting that the Court appoint an attorney for him and require Defendants to pay for his attorney.

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but the Tampa Police Department, as did the Florida Bar, found that there were no perjurious statements made by the undersigned.

- g. On March 3, 2006, during a telephone conversation regarding the case, Mr. Gillespie threatened to “slam” the undersigned “against the wall;” as a result, I filed a verified request that a bailiff be present at all hearings. Subsequently, Judge Nielsen advised that a bailiff is present at all matters involving pro se litigants.
- h. On March 28, 2006, Defendants served discovery on Mr. Gillespie. Mr. Gillespie did not fully or completely respond to it, so after consultation, Defendants filed a motion to compel on May 11, 2006. Judge Nielsen heard and granted the motion to compel on June 28, 2006 and awarded attorneys’ fees and costs. The written Order was entered on July 24, 2006.
- i. On August 14, 2006, Mr. Gillespie filed a notice of appeal of the July 24, 2006 Order on discovery with the Second District Court of Appeal. The undersigned advised him in writing that it was improper to appeal a discovery order, and that Mr. Gillespie was in violation of the July 24, 2006 Order because he did not provide the discovery responses ordered. Mr. Gillespie responded by telling the undersigned not to give him legal advice. On August 25, 2006, the Second District Court of Appeal entered an “Order Denying Petitioner's Notice of Appeal.”
- j. On August 22, 2006, Mr. Gillespie filed a petition for writ of certiorari with the Second District Court of Appeal. On September 8, 2006, the Second District Court of Appeal entered the “Order Dismissing Petitioner's Petition for Writ of Certiorari.”
- k. Because Mr. Gillespie did not comply with the July 24, 2006 Order on discovery, Defendants moved for an order to show cause on August 25, 2006. The hearing on this motion was scheduled on October 4, 2006. In filings with the Court before the hearing on October 4, 2006, Mr. Gillespie represented to this Court that, because of his disabilities, he required that an attorney be appointed for him under the Americans with Disabilities Act (ADA), and he requested a continuance of the hearing on Defendants’ motion for an order to show cause.
- l. At the hearing on October 4, 2006, Judge Nielsen denied Mr. Gillespie’s request for appointment by the Court of an attorney for him. Mr. Gillespie represented to the Court during this hearing that an insurer may provide counsel to defend him on Defendants’ Counterclaims for libel, but if it did not, he intended to hire an attorney. Judge Nielsen decided to not make any other rulings to give Mr. Gillespie

time to retain counsel, and he ordered Mr. Gillespie to advise the Court of his progress in retaining counsel by October 18, 2006.

- m. Subsequently, Mr. Gillespie filed letters dated October 16 and 18, 2006 in response to the Court's request for information regarding Mr. Gillespie's progress hiring counsel. Rather than provide a progress report, Mr. Gillespie submitted numerous attachments including, among other things, transcripts of telephone conversations between Mr. Gillespie and Defendants' counsel, correspondence regarding settlement discussions, criticisms of the Court's rulings on matters in this case, allegations about an alleged act by an attorney named Jonathan L. Alpert more than five years earlier in an unrelated case, criticism of Judge Nielsen for his decisions in other cases, as well as hearsay statements purportedly from unidentified members of the Florida Bar criticizing Judge Nielsen and Defendants and Defendants' counsel. The substantial majority of the two letters was immaterial, impertinent or scandalous.
- n. Mr. Gillespie claimed an entitlement to appointment of counsel under the ADA -- an argument that would be considered frivolous by a licensed attorney. When the Court asked for citations supporting his claim for an attorney under the ADA, Mr. Gillespie declined to offer any, telling the Court "I am not an attorney and I have not been to law school." (Mr. Gillespie's October 18, 2006 letter, Exhibit 1 (Transcript of October 4, 2006, page 7)).
- o. On November 3, 2006, Mr. Gillespie moved to disqualify Judge Nielsen. Mr. Gillespie accused him of being "hostile" to pro se litigants and having a "sadistic quality." In that same motion, Mr. Gillespie also accused the undersigned of aggravating his "existing disability," which required medical treatment "that reduced Mr. Gillespie's intellectual ability to represent himself." The motion to disqualify was untimely and legally insufficient, and Judge Nielsen denied it on November 20, 2006. Two days later, however, Judge Nielsen entered an Order of recusal.
- p. On November 29, 2006, Judge Claudia Isom was assigned to the case. Mr. Gillespie filed a motion requesting Judge Isom to disclose conflicts of interest, and included in the supporting documents a transcript of a voice mail from a staffer in then-Governor Jeb Bush's office regarding some unrelated matter.

- q. On February 5, 2007, Judge Isom held a hearing, and after several rulings unfavorable to Mr. Gillespie, including the denial of his motion for rehearing on the July 24, 2006 Order on discovery, Mr. Gillespie stated “Judge, I’m going to ask that you disqualify yourself. I’m not getting a fair hearing here. I’ve asked to have an attorney present many times.<sup>4</sup> Everything I say is not considered. I don’t even know why I’m sitting here. And I’m very ill. I’ve expressed that to you. I can’t even effectively assist myself. So I’m not going to participate in this charade anymore.” (Transcript of hearing, February 5, 2007 at 72:12-19). Judge Isom terminated the proceedings to afford Mr. Gillespie an opportunity to file a written motion to disqualify her.
- r. Before moving to disqualify Judge Isom, Mr. Gillespie filed “Mr. Gillespie’s Notice of Voluntary Dismissal,” and “Mr. Gillespie’s Motion for an Order of Voluntary Dismissal” on February 7, 2007.
- s. On February 13, 2007, Mr. Gillespie moved to disqualify Judge Isom.<sup>5</sup> That same day, Judge Isom entered the “Court Order Of Recusal And Directing Clerk To Reassign To New Division,” finding the motion to disqualify her to be legally insufficient, but nevertheless recusing herself.
- t. On February 15, 2007, Mr. Gillespie served his “Withdrawal Of Mr. Gillespie’s Motion For An Order Of Voluntary Dismissal” and “Withdrawal Of Mr. Gillespie’s Notice Of Voluntary Dismissal.”

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<sup>4</sup> Of course, Mr. Gillespie, pro se, served the notice of hearing, thereby scheduling hearings on February 5, 2007. Moreover, he previously told Judge Nielsen, on October 4, 2006, that he intended to hire an attorney, and he never did so. No judge assigned to this case has ever denied Mr. Gillespie the opportunity to hire an attorney.

<sup>5</sup> In his motion to disqualify Judge Isom, Mr. Gillespie accused her of “forc[ing] Mr. Gillespie to participate in a hearing . . . without counsel.” Judge Isom denied the motion as legally insufficient. More recently, in open court, Mr. Gillespie accused me and Judge Isom of conspiring against him by agreeing to not advise him that Judge Isom’s husband was once a law partner of Jonathan L. Alpert’s at my predecessor law firm. Not only was Mr. Isom never a law partner of my predecessor law firm, but also the only occasions in which I ever spoke to Judge Isom about anything in this action is when Mr. Gillespie was present.

- u. On March 27, 2008, Judge Barton determined after an evidentiary hearing that Mr. Gillespie must pay \$11,500.00 in sanctions because of his discovery violations, which resulted in the July 24, 2006 Order entered by Judge Nielsen, and his pleading in violation of section 57.105, Florida Statutes, which resulted in Judge Barton entering the Order granting sanctions on July 20, 2007. Mr. Gillespie was represented by Mr. Bauer at this hearing.
- v. On October 13, 2008, Mr. Bauer moved to withdraw, but apparently he and Mr. Gillespie resolved their issues. Several months later, Mr. Gillespie's attorney again moved to withdraw again, which was granted on or about October 1, 2009. The case was stayed to provide Mr. Gillespie with 60 days within which to find replacement counsel.
- w. Despite the stay, on October 5, 2009, Mr. Gillespie filed a pro se motion to disqualify Judge Barton, alleging under oath that "[a]s a proximate cause of Judge Barton's actions, Mr. Gillespie's mother, Penelope Mr. Gillespie, died September 16, 2009." That motion was denied as legally insufficient on October 9, 2009.
- x. On December 16, 2009, Defendants noticed the post-judgment discovery motions to compel for hearing on January 19, 2010, but Mr. Gillespie, pro se, complained that the hearing dates were not cleared with him, and he demanded that several other motions be scheduled for hearing. Thus, Judge Barton scheduled all pending motions for hearing on January 26, 2010.
- y. At that hearing on January 26, 2010, Mr. Gillespie claimed to be disabled and that he required accommodations. Judge Barton inquired as to what accommodations were required, and Mr. Gillespie requested an opportunity to file written support, which Judge Barton granted. No other action was taken during that hearing.
- z. Thereafter, Mr. Gillespie apparently submitted a hearsay report from a purported expert *ex parte* to Judge Barton. Despite Defendants' objections to the *ex parte* communication, Mr. Gillespie has never filed the *ex parte* hearsay report or served a copy on Defendants.
- aa. Unhappy with Judge Barton, Mr. Gillespie made complaints to the Chief Judge, in writing, which was not only inappropriate in procedure, but also his complaints centered on Mr. Gillespie's belief that Judge Barton should handle the case differently.

- bb. As a result of the Court's caseload, the next hearing was not scheduled until May 5, 2010. At the May 5, 2010, Mr. Gillespie served a motion for leave to file an amended complaint, attaching an amended complaint. Defendants did not stipulate to its filing, and therefore the motion for leave to file the amended complaint remains pending. A review of it shows it is also largely incomprehensible, raises claims already dismissed, raises futile claims, and fails to comply with the pleading requirements of the Florida Rules of Civil Procedure. As discussed below, the motion for leave was denied.
- cc. After Judge Barton was disqualified, Mr. Gillespie filed a motion to disqualify Judge Cook on June 14, 2010, which was denied. The motion to disqualify was legally insufficient. Mr. Gillespie's first basis for disqualification was dissatisfaction with Judge Cook's decision not to cancel a hearing. Housing Authority of City of Tampa v. Burton, 873 So.2d 356, 358 (Fla. 2d DCA 2004)("Adverse rulings, by themselves, whether they are correct or incorrect, are not legally sufficient grounds upon which to base a motion to disqualify a judge for prejudice or bias.").
- dd. Mr. Gillespie's second basis for disqualification was his self-perceived "controversy between Mr. Gillespie and [the judicial assistant] over whether notice was provided to record calls with her:" and therefore, Judge Cook may be prejudiced against him. (Mr. Gillespie's motion to disqualify at ¶ 29). This also was legally insufficient.
- ee. On July 23, 2010, Mr. Gillespie filed a third motion to disqualify Judge Cook, this time in writing, and under oath. Mr. Gillespie alleged as follows in paragraphs 8 and 9:

Judge Cook is biased toward Mr. Gillespie on matters of disability. Judge Cook is emotional on matters of disability because daughter [ ] is disabled. This information is public knowledge and Judge Cook seeks publicity about her daughter's disability. In a St. Petersburg Times story May 13,2009 reporting on [ ]'s disability, the Times wrote "Her mother, Hillsborough Circuit Judge Martha Cook, fought back tears as [ ] told the story." (Exhibit B). Another story published April 12,2001, Birthing Bad Legislation (Exhibit C) wrote "Martha Cook-Sedgeman, chokes up with happiness as she describes her daughter" [ ] who was born two months premature. Her birth mother exited when [ ] was 1 day old. There were clearly problems at

birth, which would become apparent later as a 70 percent loss of hearing. The [ ], who had arranged to adopt [ ] before her birth, had to guarantee an unexpected \$100,000 in medical bills. "The costs were staggering," Martha recalls.

Judge Cook is typical of a certain kind of parent of disabled children who are hostile to adults with disabilities. Some of Mr. Gillespie's disabilities are congenital like [ ]'s but Mr. Gillespie's disabilities were much more extensive.

(Mr. Gillespie's Motion to Disqualify Judge Martha J. Cook, July 23, 2010, ¶¶ 8-9). There is no factual basis for these repugnant and despicable allegations. It is clear that Mr. Gillespie, having not gotten his way, will use any means to try to get rid of any judge or person involved in the case that does not conform to Mr. Gillespie's jaundiced view of justice. This motion to disqualify was beyond a desperate act; it drew into question Mr. Gillespie's mental and intellectual ability to adequately participate in these proceedings.

- ff. Mr. Gillespie is also trying to intimidate witnesses. On July 26, 2010, Mr. Gillespie sent by facsimile a letter to John Gardner, Esquire, Defendants' expert witness in connection with the sanctions against Mr. Gillespie. In the July 26, 2010 letter, Mr. Gillespie accuses Mr. Gardner of various wrongdoings connected with his expert testimony and threatens action if Mr. Gardner does not yield to Mr. Mr. Gillespie's demands -- another apparent act of extortion.<sup>6</sup>

Let me now respond with the information I have which directly pertains to Mr. Gillespie's allegations in his bar complaint against Mr. Bauer.

First, Mr. Bauer assumed representation of Mr. Gillespie after Mr. Gillespie had already committed the infractions that resulted in him being sanctioned. Moreover, Mr. Gillespie had dismissed all of his claims by the time Mr. Bauer assumed Mr. Gillespie's representation, so Mr.

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<sup>6</sup> On June 13 and 18, 2003, Mr. Gillespie wrote to Mr. Cook, threatening that if BRC did not pay him money, then he would file a complaint against Mr. Cook with the Florida Bar and contact his former clients. Mr. Gillespie's actions may have constituted extortion. See § 836.05, Fla. Stat. (2000); Carricarte v. State, 384 So. 2d 1261 (Fla. 1980); Cooper v. Austin, 750 So. 2d 711 (Fla. 5th DCA 2000); Gordon v. Gordon, 625 So. 2d 59 (Fla. 4th DCA 1993); Berger v. Berger, 466 So. 2d 1149 (Fla. 4th DCA 1985).

Bauer was charged with reviving Mr. Gillespie's dismissed claims, which he was successful in doing.

As for legal acumen, my opinion is that Mr. Bauer was well-prepared for the matters he handled. He had thoroughly researched his legal arguments, and obviously, this was demonstrated by Mr. Bauer's success at the trial level and at the appellate level where he successfully revived the claims Mr. Gillespie dismissed.

Although I cannot comment on the billing practices, some of Mr. Gillespie's complaints appear to be specious. For instance, Mr. Gillespie complains because Mr. Gillespie was charged for the time a paralegal expended preparing Mr. Bauer for a hearing. The paralegal charged a lower hourly rate than Mr. Bauer, and the use of a paralegal to prepare an attorney for a hearing is a common practice in the legal profession and a wise use of time.

Mr. Gillespie also complains because he was charged "each time someone handled a file, copied a document, processed mail, made a phone call, or took a message, etc., etc., etc. Mr. Bauer charged me \$50 to provide his personal vacation schedule to the court. Bauer charged me for parking his car, and for a 'travel meal' August 15, 2007." Obviously, this is a matter of whether the contract between Mr. Gillespie and Mr. Bauer permitted such charges; however, the custom in the legal profession is that when attorneys charge by the hour for services, the client should expect to pay for the services rendered "each time someone handled a file . . ."

To the extent Mr. Bauer referred Mr. Gillespie to a court reporter, and the court reporter made errors, this is not Mr. Bauer's fault. This is an example of Mr. Gillespie's myopic and self-centered view of the world he lives in.

As for the "full nuclear blast" comment, what it appears that Mr. Gillespie is referring to was my efforts to collect on the \$11,500 final judgment. Mr. Gillespie criticizes Mr. Bauer for not doing more to protect Mr. Gillespie, but Mr. Gillespie himself admits that he refused to post a supersedeas bond.

I can say without reservation that Mr. Bauer did everything possible to avoid collection on the final judgment short of posting a bond, and the failure to post the bond was due to Mr. Gillespie's refusal, not Mr. Bauer's. We would not have voluntarily agreed to enter into a stay.

As for the allegation that Mr. Bauer did not adequately advise Mr. Gillespie about the garnishment of his bank account, we did not tell Mr. Bauer about the garnishment in advance because the garnishment statutes expressly provide that we were not required to do so. Had we done so, Mr.

Gillespie would have had an opportunity to move the funds before garnishment. In fact, I believe Mr. Gillespie learned of the garnishment before Mr. Bauer did -- not because of some failure by Mr. Bauer.

As for Mr. Gillespie's claim that Bauer did not file an amended complaint, even though he and Mr. Bauer agreed that he would do so, I question whether Mr. Gillespie's assertion is even accurate. The amended complaint that Mr. Gillespie ultimately filed was so deficient that it was rejected by the Court.

Having had an opportunity to work against Mr. Bauer, and appreciating his commitment to ethical pleading, I seriously doubt he would have agreed to file an amended pleading that violated the pleading requirements of the Florida Rules of Civil Procedure and section 57.105, Florida Statutes.

As to Mr. Gillespie's assertion that Mr. Bauer failed on substantive matters, Mr. Gillespie claims I misled the Court on a motion for judgment on the pleadings by claiming that there was a signed contingency fee contract when there was none. This is a clear example of Mr. Gillespie's fundamental lack of understanding of the ruler of procedure. On a motion for judgment on the pleadings, the Court must accept the allegations of the complaint as true. Thus, it was Mr. Gillespie who alleged that there was a signed contract, not me. I only argued the legal impact of the allegations he made, and as a result of Mr. Gillespie's allegations, three of his four claims against my clients were dismissed as a result of a motion for judgment on the pleadings. In plainer words, Mr. Gillespie's own allegations defeated his claims. There was nothing Mr. Bauer could do to save them, and Mr. Gillespie's claim that I misled the court by pointing to Mr. Gillespie's own allegations in the complaint he drafted pro se is, frankly, absurd.

Mr. Gillespie criticizes Mr. Bauer's handling of the counterclaims we filed for defamation and for not pursuing case management, but what Mr. Gillespie ignores is that during most of the time Mr. Bauer represented him, Mr. Bauer's time was consumed with trying to revive the claims Mr. Gillespie dismissed. It would have been inefficient for Mr. Bauer to pursue discovery on the counterclaims until he knew if the claims Mr. Gillespie dismissed would be revived.

In fact, I recall me and Mr. Bauer having several discussions on how to proceed with the many different issues so as to conserve our client's resources and use court time efficiently. Mr. Bauer could have probably expended 100-200 additional hours on discovery related to the counterclaims, but it would not have aided Mr. Gillespie in resolving his claims. As Mr. Gillespie notes, there were several occasions when we offered a "walk-away" settlement, and if Mr. Gillespie's claims had not been revived, Mr. Bauer may have been successful in securing a settlement without expending the 100-200 hours on unnecessary discovery.

In fact, Mr. Bauer's conscientious decision to pursue his client's objective in a systematic and cost-efficient manner impressed me. Clearly, less scrupulous attorneys could have billed Mr. Gillespie for a lot of services that may have never been truly necessary.

As for Mr. Gillespie's claims that Mr. Bauer did not pursue discovery or bring Mr. Gillespie's motions to compel for hearing, Mr. Gillespie's bar complaint shows why Mr. Bauer's actions were proper. Mr. Gillespie sued my clients for breach of contract and fraud. My clients counterclaimed for defamation. Mr. Gillespie claims the discovery he served "was essentially the same discovery" my clients served on him. Most of the discovery necessary to defend a defamation claim would be very dissimilar to the discovery necessary to defend claims of breach of contract and fraud. Mr. Bauer should be commended for not pursuing irrelevant discovery or pursuing inappropriate discovery motions filed by Mr. Gillespie.

Mr. Gillespie also claims that Mr. Bauer somehow acted improperly by not pursuing my disqualification. As Judge Cook's recent Order makes plain, that motion was denied with prejudice early on in the case, and Mr. Gillespie's continued pressing of the issue resulted in Judge Cook's admonishment of him and assertion that if Mr. Gillespie files that motion again, then he will face sanctions. Again, Mr. Bauer should be commended for not doing what Mr. Gillespie demanded and instead complying with the Rules Regulating the Florida Bar and the substantive law and procedural rules.

As for the amount of sanctions, there is nothing Mr. Bauer could have done to mitigate the amount. Mr. Gillespie's actions before Mr. Bauer was retained resulted in the sanctions, and the amount was based on lodestar. Mr. Gillespie appealed the amount of the sanctions and lost.

Finally, Mr. Gillespie complains that Mr. Bauer withdrew from representing him. Mr. Gillespie fails to advise the Florida Bar of a serious incident of violence, and although I do not have first hand knowledge of this incident, this is how it was related to me by one of Mr. Bauer's employees: Mr. Gillespie stormed into Mr. Bauer's office, upset about something, and when he did not get an immediate response to his liking, he cursed at female employees, used the "F" word against Mr. Bauer and created such a disruption that Mr. Gillespie was ordered to leave and when he persisted with his threatening manner, one of the legal assistants began dialing "911" and that apparently prompted Mr. Gillespie to leave.

This incident, of course, follows the occasion when Mr. Gillespie threatened to "slam me against the wall;" on another occasion, Mr. Gillespie frightened one of my staffers when he burst into our office unannounced and slapped some paperwork on the counter. We wrote to him and advised

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Neil J. Gillespie Complaint  
against Robert W. Bauer, Esquire  
August 13, 2010  
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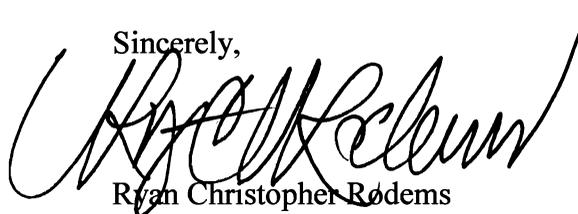
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him that he was forbidden from entering our office ever again, and if he did so, we would seek criminal charges for trespass.

In conclusion, I found Mr. Bauer to be competent, bright, hardworking, and very conscientious of his client's interests. During this same time period, I have found Mr. Gillespie to be erratic, difficult to deal with, threatening, irrational, lacking in understanding of the law, lacking in an understanding of professional decorum, and dishonest.

Should you have any questions or desire further information, including any of the pleadings, motions, letters or Orders relating to the aforementioned lawsuit, please let me know.

Sincerely,

A handwritten signature in black ink, appearing to read "Ryan Christopher Rodems". The signature is fluid and cursive, with a large initial "R" and "C".

Ryan Christopher Rodems

RCR/so

*The Law Offices of*

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August 18, 2010

William Gautier Kitchen  
The Florida Bar  
651 East Jefferson Street  
Tallahassee, FL 32399-2300

Re: Neil Gillespie; The Florida Bar File No. 2011-00,073 (8B)

Mr. Kitchen:

Please accept this letter as my response to your letter of July 30, 2010, in accordance with Rule 4-8.4(g), Rules Regulating the Florida Bar. I am also enclosing a completed disclosure form mandated by Rule 3-7.1(g).

Prior to my response to the allegations contained in Mr. Gillespie's complaint form, it is important that I provide The Florida Bar with a summary of the events leading up to my representation of Mr. Gillespie that resulted in his filing of this complaint.

## I. SUMMARY OF EVENTS PRIOR TO REPRESENTATION OF MR. GILLESPIE

Prior to this lawsuit, Mr. Gillespie was the plaintiff in a suit against Amscot Cash Advance. After losing in lower court, Mr. Gillespie appealed the ruling on grounds arising out of the Fair Debt Collection Practices Act. It appears from the record that the Defendant's were not confident that they would win on appeal and agreed to pay each of the three plaintiffs \$2000, as well as to pay \$50,000, in attorneys fees. Sometime after the close of this matter, Mr. Gillespie determined that the law firm representing him in his action against Amscot breached their fee agreement with him.

Mr. Gillespie initiated a lawsuit against Barker, Rodems, & Cook, P.A. ("BRC") in August of 2005, and was proceeding with his claims pro se. Mr. Gillespie alleged that BRC breached their contingency fee contract with him by retaining a greater percentage of the proceeds from a settlement than they were entitled to. Contemporaneous with filing his claims against BRC, Mr. Gillespie published a letter to a representative of Amscot, the defendant in the underlying lawsuit, making allegations of fraud and wrongdoing on the part of BRC and one of its partners. Based on this letter, BRC and the partner named in the letter filed a counterclaim against Mr. Gillespie alleging libel.

Despite having claims against him, Mr. Gillespie chose to proceed with the case pro se. Mr. Gillespie was without the requisite knowledge or skill required to litigate this case, but chose

**EXHIBIT**

**3**

to continue anyway. This had disastrous results and, when I met with him in early 2007, Mr. Gillespie had:

- (a) Been ordered to comply with a discovery request and to pay the Defendant's fees and costs related to his continuous non-compliance;
- (b) A motion for Section 57.105, Florida Statute sanctions filed against him, but had chosen to permit the frivolous claims to remain in place for eight months after being served with the motion before choosing to voluntarily dismiss them;
- (c) Voluntarily dismissed his claims against BRC without prejudice, while counterclaims were still pending against him. However, because the statute of limitations period had tolled, the effect was that the counts were dismissed with prejudice; and,
- (d) Filed motions to disqualify two judges who were formerly assigned to the case. Both motions were denied, but the judges subsequently recused themselves on their own motions.

As is evident from the foregoing, Mr. Gillespie was in a precarious situation when he approached me about representing him. Initially, I agreed to review the transcripts and pleadings that had been filed in the case up to that point, and to advise him as to how he should proceed with the case. In reviewing the file, it became evident that from the inception of the case, Mr. Gillespie had difficulties understanding and complying with the Rules of Civil Procedure. Mr. Gillespie was implored by the court to secure representation and the record showed that he had great difficulty in doing so. Furthermore, in April of 2007, Mr. Gillespie no longer had any claims pending against BRC, and there was no legitimate basis for a recovery on which a contingency fee agreement could be based. Mr. Gillespie represented to me, however, that due to the pending claims against him for libel and the pending motion for sanctions, he wished to be represented by counsel on an hourly fee basis. Mr. Gillespie also requested me to, if possible, reinstate his claims against BRC. I found this to be consistent with his representations to the Court during the February 5, 2007, hearing (transcript available upon request) immediately proceeding my initial consultation with him.

On April 5, 2007, I sent a letter to Mr. Gillespie advising him of his options in the pending action against BRC. In this letter I advised him that there was already an order against him awarding entitlement to attorneys' fees to BRC and that it was likely that he would be ordered to pay further attorneys' fees pursuant to the motion for section 57.105 sanctions. However, I advised Mr. Gillespie that I had negotiated a "walk away" settlement with BRC, and in consideration for both sides relinquishing their claims, BRC would not pursue the attorneys' fees that they were entitled. Because Mr. Gillespie had already dismissed his claims, I felt that I had negotiated an agreement that was very advantageous to Mr. Gillespie. However, Mr. Gillespie did not agree as he advised me that he did not wish to settle this action in the way that I had proposed and requested that I continue preparing for the case. A copy of this letter is attached as Exhibit A.

At this point, I agreed to represent Mr. Gillespie in this matter and negotiated a fee agreement with him wherein he agreed to an hourly billing rate. This fee agreement was

voluntarily entered into and signed by Mr. Gillespie on April 24, 2007. The agreement provided that I would bill for my time in connection with Mr. Gillespie's case at a rate of \$250/hour. A copy of this fee agreement is attached as Exhibit B.

II. RESPONSE TO SPECIFIC COMPLAINTS OF MISCONDUCT

1. Failure to zealously litigate claims:

During my initial conversations with Mr. Gillespie, we discussed strategy and concluded that I would attempt to reinstate his claims against BRC even though they were dismissed after the statute of limitations had tolled. Because reinstating claims in the same action as they were voluntarily dismissed was a novel legal issue and one outside of normal practice, I proceeded on dual fronts with two strategies I thought had the most prudent chances for success. I filed a motion to withdraw voluntary dismissal accompanied by a memorandum of law supporting it. Additionally, I amended the answer originally filed by Mr. Gillespie. At the time, we had no causes of action pending against BRC, so additionally, I included as part of the answer, a counter-complaint re-alleging the counts previously dismissed by Mr. Gillespie and adding a count for breach of fiduciary duty. This dual-front strategy was ultimately successful as my motion to withdraw voluntary dismissal was granted, and, as of today, the claims are still viable.

Mr. Gillespie also alleges that I "failed to present evidence that there was no signed contingent fee agreement," subsequent to Mr. Rodems' representations that there were. This allegation underscores much of the basis for my motion for withdrawal. The Complaint originally drafted by Mr. Gillespie includes a count for breach of contract and, specifically alleges in paragraph 6: "GILLESPIE and the LAW FIRM [BRC] had a written representation contract." The hearings in question were on Defendant's Motion for Judgment on the pleadings. Had I argued that no contract existed between the parties as Mr. Gillespie now claims I failed to do, it would have been repugnant to his position. Additionally, Mr. Gillespie now asserts that I failed to prove the non-existence of a contract by submitting affidavits. Clearly, Mr. Gillespie makes this assertion without an understanding of what is appropriate to argue in a hearing on a motion for judgment on the pleadings. Mr. Gillespie did not understand the procedural or substantive law surrounding this issue and now wishes to supplant his legal prowess with mine.

While Rule 4-1.2 provides that a lawyer should abide by their client's decisions concerning objectives, the comment to the Rule reads that "the lawyer should assume responsibility for the technical and legal tactical issues . . . ." Mr. Gillespie made numerous tactical and legal errors during his time as a pro se litigant. It was for this reason that he solicited my services. We met and mutually agreed upon the objectives of the representation. Mr. Gillespie acknowledges this in his Pro Se Response to Attorney Robert W. Bauer's Motion for Withdrawal of Counsel (Exhibit C). However, Mr. Gillespie was consistently unwilling to permit me to represent him in a way that was professionally and legally appropriate. He consistently insisted that I take legal and procedural actions that were inappropriate and impermissible under the Rules of Civil Procedure, in the given situation. Mr. Gillespie had difficulty understanding why I was unable to make the procedural and legal moves he mandated, and as a result, our relationship as attorney and client became strained.

Mr. Gillespie claims that I failed to amend the pro se complaint. As previously explained, the actions I pursued were first aimed at re-establishing Mr. Gillespie's claims. Upon doing so, a motion for judgment on the pleadings was filed and noticed. The resultant order from the Court granted the motion as to Count II and dismissed it as to Count I. Rather than give leave to amend, however, the court explicitly ordered "in lieu of an amended complaint, all factual allegations contained in Count II are incorporated in Count I." A responsive pleading had been filed in this matter and without leave, an amendment was not permissible. Furthermore, because of the voluntary dismissal of his claims, there were statute of limitations issues involved in attempting to bring new causes of action.

2. Failure to zealously litigate against the BRC counterclaim:

As Mr. Gillespie correctly points out, I filed an Amended Answer to Defendant's Counterclaim. This answer was and is still to my knowledge, legally sufficient and effective. During my representation of Mr. Gillespie, discovery was conducted within the scope of BRC's claims. The purposes for the counter-counter complaint were fully discussed above, and, as noted; related to re-establishing Mr. Gillespie's claims rather than defending against BRC's counterclaim.

3. Failure to zealously pursue case management:

Mr. Gillespie seems to focus on Mr. Rodems' behavior with respect to case management in this paragraph of his grievance. While that is outside of the scope of any complaint against me and therefore does not warrant a response, I will respond to the overall allegation that I did not pursue case management. When I first became involved with this matter, there were a number of motions pending and Mr. Gillespie had already been ordered to pay attorneys' fees for non-compliance with a discovery request. Additionally, Mr. Gillespie filed a motion to have Judge Neilson disqualified. The motion was denied but Judge Neilson withdrew on his own motion and Judge Isom was appointed. Shortly before I began representing Mr. Gillespie, he filed a motion to have Judge Isom disqualified as well. Again, despite the motion being denied, she withdrew sua sponte. The constant reassignment of this case that resulted left a docket full of unheard motions and a backlog of issues to address.

I contacted Mr. Rodems immediately upon becoming involved in this matter and worked with him in amicably preparing for and conducting discovery. We were able to resolve many of the issues that existed and move the case forward. The motions were set and heard in relatively short order. Again, Mr. Gillespie was dissatisfied with the procedural tactics that I employed on his behalf; however, his dissatisfaction comes from an insufficient understanding of the Rules of Civil Procedure and is not predicated upon my failure to uphold any of my duties under the Rules of Professional Conduct. While I did not march into court demanding that the Judge reserve time on his docket to help with scheduling as Mr. Gillespie suggests I should have, I did work with opposing counsel to clear the procedural matters still pending and continue the discovery that had already been ordered. Because of the number of times the courts time was unnecessarily consumed by Mr. Gillespie prior to my representation of him, I felt it was

important to strive to complete the discovery process and disposition of pretrial motions in a way that did not require the court's involvement any more than was necessary.

4. Failure to zealously pursue discovery:

As explained above, Mr. Gillespie had voluntarily dismissed his claims against BRC prior to my representation of him in this matter. Because of this, much of the discovery he sought prior to the dismissal was moot. The few items that still existed from his discovery requests had either been properly objected to by Mr. Rodems, or produced within the appropriate time limits. Because the discovery requests had been appropriately complied with by Mr. Rodems, the motions that Mr. Gillespie filed to compel discovery were improper. I conducted discovery during my time as Mr. Gillespie's legal counsel in an ethical and amicable manner as I am sure Mr. Rodems will attest. In fact, upon learning of this grievance, Mr. Rodems wrote a thirteen page letter in support of my representation of my conduct during the course of my representation of Mr. Gillespie. In his letter, which is available upon request, Mr. Rodems wrote: "I found Mr. Bauer to be competent, bright, hardworking, and very conscientious of his client's interests."

Mr. Gillespie was under the false understanding that the order of entitlement of attorneys' fees against Mr. Gillespie could somehow be "mitigated" by my filing of burdensome and frivolous discovery requests. Despite my explanations to him as to the origin of the entitlement, he continued to implore me to undertake these dilatory tactics and became upset when I explained that I could not do so in good legal or ethical conscience.

5. Failure to seek disqualification of BRC's counsel Ryan Christopher Rodems:

This issue is another where Mr. Gillespie demanded that I take a position that was not procedurally available. My repeated attempts to explain the Rules of Civil Procedure in this regard were fruitless and led to my belief that our relationship had deteriorated to the point that we could no longer effectively communicate. Mr. Gillespie originally filed a Motion to Disqualify Counsel in February of 2006. The motion was heard and an order denying the motion was entered on May 12, 2006. Mr. Gillespie made a motion for rehearing in December of 2006 which was also denied. From that time forward, Mr. Gillespie wanted me to continue to present the same arguments that had already been denied by the court.

Throughout my representation of Mr. Gillespie, he suggested that I attempt to get Mr. Rodems disqualified as counsel for Defendants. It became apparent that Mr. Gillespie had a severe dislike of Mr. Rodems and was upset that the Court had denied his original motion in this regard. This is further evidenced by Mr. Gillespie's extensively explained arguments for disqualification of Mr. Rodems that are contained in his grievance against me. These are the same arguments that were made in support of the February 2006 motion and denied. Since then, there have been no novel arguments to support Mr. Rodems disqualification. When I attempted to explain this to Mr. Gillespie, he became enraged and insisted that his legal analysis of the issue was sacrosanct.

6. Failure to zealously defend against sanctions:

The claims relative to the Section 57.105 sanctions all originate from a time prior to my representation of Mr. Gillespie. I attempted to resolve the issues surrounding those sanctions and represented him in the hearing relative to that motion. The Judge however, did not find that the fact that Mr. Gillespie was a pro se litigant, excused him from compliance with the rules, especially when he was advised by opposing counsel that his actions giving rise to the sanctions were improper and given numerous opportunities to correct them. The transcript of the July 3, 2007 hearing on Defendant's Amended Motion for Sanctions Pursuant to § 57.105, Florida Statutes, is available upon request and serves as a good barometer of the efforts I undertook to correct the issues caused by Mr. Gillespie in this matter. The Honorable Judge Barton II, as part of his order granting sanctions against Mr. Gillespie stated: "The way in which Mr. Gillespie's side has been presented today -- with a high degree of professionalism and confidence reflects the wisdom [of retaining counsel in this matter]."

I believe that the statement of the court speaks for itself with respect to my representation of Mr. Gillespie in the aforementioned hearing. Mr. Gillespie erroneously believes, as mentioned earlier, that there was a way for me to "mitigate" the fees incurred by opposing counsel as a result of Mr. Gillespie's frivolous claims. For more than eleven months, Mr. Gillespie refused to withdraw the frivolous responses to the Defendant's counter-claim. In his grievance against me, he still asserts that the counter-claim constitutes abuse of process. Because Mr. Gillespie refused to withdraw the responses, BRC was required to prepare a motion to dismiss, notice the hearing, prepare and deliver the arguments in support of their motion. Clearly, because the response had already been deemed frivolous by the Court, there was very little room for argument that BRC was not entitled to their fees. Mr. Gillespie is too personally involved in this matter to understand the requirement of the Rules of Civil Procedure in this regard, and does not understand that the claims he forwarded are inappropriate responses in an answer to a counter-claim for libel.

7. Failure to inform contrary to Rule 4-1.4(a):

Soon after my representation of Mr. Gillespie began, he became hostile towards my staff. Mr. Gillespie, on numerous occasions, acted hostilely towards my staff while attending meetings at my office (See Affidavit of Beverly Lowe, Exhibit D). He also expressed displeasure that he was being billed for time spent by my law clerks and paralegals in connection with his case. While the billing practices employed during the scope of our representation of Mr. Gillespie fell within the fee agreement he signed (Exhibit B), I advised my staff that they were no longer to work on his case in an attempt to appease him.

Because my staff was removed from his case, they did not follow our standard operating procedures in regards to Mr. Gillespie's documents. As such, he was not provided with the Fact Information Sheet required to be filled out in connection with the Final Judgment ordered against him on March 27, 2008. This was an oversight for which I apologized to Mr. Gillespie, opposing counsel, and the Court in the letter dated July 24, 2008 (Exhibit 10 of Mr. Gillespie's grievance).

This letter is evidence of both my propensity as a human being to make a mistake, and my commitment to the notions of justice and ethics. I fully admitted and took responsibility for this mistake in 2008 and worked to ensure that it did not bias my client. The Judge did not sanction Mr. Gillespie for contempt and agreed not to do so if Mr. Gillespie submitted the Fact Information Sheet within ten days. Mr. Gillespie is confused as to the Court's retention of jurisdiction; as the Fact Information Sheet has been properly filled out, there were no further sanctions imposed. I regret my oversight in this matter. However, to err is human and I don't believe that the Rules of Professional Conduct contemplate an attorney being more than that.

8. Failure to zealously stay the Final Judgment:

Mr. Gillespie's initial response to the Final Judgment ordered against him was to appeal. He asked several times that I initiate such action, but there was not a good and sufficient basis to do so. Because enforcement of judgments is done *ex parte*, it was not possible for me to know what actions Mr. Rodems was taking in that regard. Upon learning that Mr. Rodems intended to proceed with garnishment, I filed an emergency motion for stay. At this hearing, the judge agreed to stay the judgment and requested that we post a bond. I explained to Mr. Gillespie that, if we were able to get his case before a jury, he had a good possibility of being awarded a judgment that could act as a setoff against the judgment that was already entered against him. He refused, however, to post a bond with the court. This refusal resulted in further collection efforts against him.

Chapter 77, Florida Statutes, specifically provides that the judgment creditor is not required to notice the judgment debtor of a garnishment until after the response of the garnishee has been received. Because Mr. Gillespie was unwilling to post a bond, there was little I could do to defend against an action that I was, statutorily, not entitled to notice of until after the action had already commenced.

9. Withdrawal as Counsel:

As stated previously, the relationship between Mr. Gillespie and I became strained soon after I made my appearance in his case. Mr. Gillespie had difficulty understanding and accepting the procedural steps that were necessary to advance his claim. When I explained to him that the procedures that he suggested were not appropriate within the Rules of Civil Procedure, he became frustrated and angry.

For reasons unclear to me, Mr. Gillespie also became hostile towards my staff and often questioned their qualifications. This made communication with Mr. Gillespie even more difficult. In actuality, many of those individuals listed at page 3 of Mr. Gillespie's grievance are now members of our profession and the Florida Bar. I feel it is our duty as Bar Member's, especially in Gainesville, to help train our future colleagues and as such, I have continually employed law clerks while they are attending the University of Florida, Levin College of Law. It was due to Mr. Gillespie's unwillingness to treat my staff with respect coupled with his frustration and inability to communicate effectively with me, that I felt it necessary to withdraw as his counsel in this matter (See Exhibit D). My Motion was heard and considered by Judge

Barton, who agreed with me and granted the motion.

Furthermore, the issues surrounding communication between Mr. Gillespie, and I had nothing to do with his disability. As a review of the communications and transcripts in his case shows, Mr. Gillespie is a very capable individual and, if he has difficulty expressing himself, it is not apparent to those with whom he is speaking. Our inability to effectively communicate was predicated on Mr. Gillespie's desire to dictate the legal and procedural methods of his representation. When his strategies and ideas were in contradiction with what was permitted by the Rules of Civil Procedure and professional ethics, he was unable or unwilling to accept it and would project his frustration onto our relationship. Our office made many concessions to accommodate Mr. Gillespie's demanding communication requests. For example, we agreed to have all telephone conversations recorded so that he could have them transcribed and included in his records. However, despite our efforts, communication continued to deteriorate.

10. Appeals Court Misconduct:

- a. Mr. Rodems' appeal was based on a position supported with legal precedent. While I did prevail, Mr. Rodems' claims were not without merit and certainly did not rise to the level of frivolity sufficient to justify Section 57.105, sanctions against him. Unfortunately, Mr. Gillespie made a very large legal blunder in voluntarily dismissing his claims against BRC. Due to this error, I had to take significant steps to reinstate the claims. The statute of limitations had tolled and, but for my actions on his behalf, Mr. Gillespie would have no viable causes of action today.
- b. As I stated earlier, Mr. Gillespie was adamant about appealing the Final Judgment. I explained to him that an appeal was not appropriate, but he proceeded to file the appeal anyway without my knowledge or assistance. Despite this, I prepared and filed a brief on his behalf in order to protect his legal position as much as possible. A reply brief was not necessary, so one was not filed. It is important to point out the dichotomous instructions that I often received from Mr. Gillespie in situations like this one. He has complained that I billed him too much without making satisfactory advances in his case; however, he often desired me to take action that was not only unnecessary or inappropriate, but also fee inducing. When I would choose not to do so, as in the case of filing a reply brief, he was unhappy with my representation. Conversely, when I would attend a hearing, he felt the time it took me to drive to Tampa or prepare for the hearing was too much and was unhappy with my representation.

11. Withdrawal and pro se response:

Mr. Gillespie's correspondence to the court dated October 1, 2009, that is referenced in paragraph 11 of his grievance serves as a better example of why it was necessary for me to withdraw as his counsel than anything I could say to you in support of my motion for

withdrawal. As you can see from the four-corners of this correspondence, Mr. Gillespie was contemporaneously upset that I had billed too many hours on his case, and upset that I had not taken more action. The conflicting nature of his requests made it necessary for me to withdraw as his counsel. Clearly, the feelings intimidated by Mr. Gillespie in this correspondence to the court show the impossibility of an attorney-client relationship continuing. I have attached this correspondence as Exhibit C.

12. Response to Allegations of Fraud:

Mr. Gillespie points to a letter I wrote to Governor Crist endorsing Mr. Rodems for consideration as a judicial nominee, as evidence that I committed fraud. I told Mr. Gillespie, at the outset of my representation, that if we can survive summary judgment and get in front of a jury, they would love to punish a "slimy attorney." This was in regards to his claims against BRC and his accusations that they lied to him. This comment is true today as it was then; jury's have distaste for attorney's that are unethical and Mr. Gillespie alleged just that. Furthermore, the comment was based on Mr. Gillespie's claims against Mr. Cook, not Mr. Rodems.

Within the scope of his representation of BRC in this matter, Mr. Rodems conducted himself as an honorable and ethical officer of the court. At no time did I find his behavior to be unethical. Although we were engaged in litigation that was very contentious, Mr. Rodems was at all times cordial and professional and treated me with dignity and respect. I found Mr. Rodems to be a competent and skilled attorney with all of the intangible qualities of character that we look for in members of our profession and hope to find in those seated on the bench. Therefore, I was pleased to write the letter attached to Mr. Gillespie's grievance when asked.

III. RESPONSE TO OTHER ALLEGATIONS NOT COVERED BY RULES OF PROFESSIONAL CONDUCT:

In addition to the foregoing complaints, Mr. Gillespie made a number of accusations. While they do not allege a rule violation or any misconduct, they do impugn my character and, as such, I will briefly respond to them.

Mr. Gillespie clearly enjoyed the opportunity to litigate this case pro se. When it came time to turn over his representation, however, he became frustrated with his loss of control over the specific actions taken. Mr. Gillespie always appeared to me to be an intelligent man, but he did not attend law school and other than one or two paralegal courses, has no legal training. Frankly, Mr. Gillespie often wanted to give legal suggestions and advice without sufficient knowledge to do so. He continuously requested that I take actions that were inappropriate and would give rise to liability on both of our parts.

Mr. Gillespie wished to be involved in all of the minute procedural aspects of his case and as such, representation of him became difficult. He made threats to my office staff and did not wish to have my law clerks work on his case. At the same time, however, he became agitated if I would bill for research or other tasks that he did not wish me to delegate. I tried

numerous times to address these issues with Mr. Gillespie in an attempt to reach an accord. By October of 2008, our relationship was such that my representation of him was no longer possible.

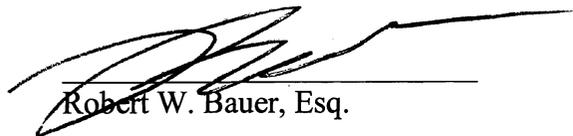
Mr. Gillespie claims that I accomplished little in my representation of him. I believe a review of the case proves otherwise. I was successful in reestablishing his claims against BRC and in securing a stay of the final judgment against him. This was done despite Mr. Gillespie's continuous undermining of my efforts. Please recall that Mr. Gillespie had made several serious legal errors, including dismissing his claims after the expiration of the statute of limitations and with counter-claims still pending.

The closing paragraph of Mr. Gillespie's grievance is, in my view, telling of his motives. Prior to filing, Mr. Gillespie asked that I cancel his bill. He threatened to file this grievance if I did not agree to his demands. Mr. Gillespie signed a fee agreement wherein he agrees to the hourly rates at which he was charged. My office conducted the work billed to Mr. Gillespie as per the terms of his agreement, and I was not going to conduct this work without compensation based upon threats of this nature. Mr. Gillespie has filed five, if not more grievances in this matter and appears to use them as his own form of leverage.

At the time I undertook his representation, Mr. Gillespie had no viable claims on which to base a contingency fee agreement. He came to me because he needed an attorney to defend against the claims that had been levied against him. I did so and was also able to revive the claims against BRC. I was up front with Mr. Gillespie about the possible costs of this litigation from the beginning, and advised while I could not anticipate the cost; it would likely be at least \$18,000. It is apparent to me that Mr. Gillespie is using the Florida Bar's formal complaint structure as his personal counsel in trying to leverage a return of the fees that I earned in prosecuting and defending claims during my representation of him. I hope that, upon review of the foregoing, the same is apparent to you. Additionally, I hope it is apparent that at all times during my representation of Mr. Gillespie, I conducted myself with professionalism, dignity, and within the bounds of the Rules of Professional Conduct. If I can provide you with any further information, please feel free to contact me.

#### **CERTIFICATE OF DISCLOSURE**

I HEREBY CERTIFY that on this 18<sup>th</sup> day of August, 2010, a true copy of the foregoing disclosure was furnished to David M. Sams, a member of the law firm of The Law Office of Robert W. Bauer, P.A., with which I was associated at the time of the act(s) giving rise to the complaint in The Florida Bar File No. 2011-00,073 (8B).

  
Robert W. Bauer, Esq.

cc: Neil J. Gillespie  
8092 SW 115th Loop  
Ocala, Florida 34481

LAW OFFICE OF

ROBERT W. BAUER, P.A.

2815 NW 13th Street  
Suite 200  
Gainesville, FL 32609

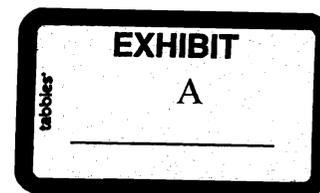
Tele: 352.375.5960

Fax: 352.337.2518

Internet address:  
RWB@bauerlegal.com

April 5, 2007

Neil Gillespie  
8092 SW 115th Loop  
Ocala, Florida 34481



Ref: Initial Status Review of Case

Dear Mr. Gillespie:

This is a follow-up to the telephone conversation which we had on March 29, 2007. During that telephone conversation we discussed that I had reviewed your case and determined that some of the pleadings may not have been legally sufficient when filed. Further, I advised that there were discovery demands that we would be required to comply with. I advised you that I believed it proper to contact opposing counsel and advise them that we would comply with such requests and you stated that you agreed. Further, we discussed the possibility of speaking with opposing counsel and deferring any hearings for 57.105 sanctions. I also reviewed the original complaint and determined that it appeared to contain two well plead causes of actions that could reasonably be pursued in a court action.

After speaking with you I contacted opposing counsel as you directed and discussed the possibility of moving forward with this case without having the hearing scheduled for April 3<sup>rd</sup> and 4<sup>th</sup>. Opposing counsel had advised that those hearings had been consolidated to a single date of April 4<sup>th</sup> at 9:30. Opposing counsel appeared willing to forego the Motion to Compel Discovery, however was not willing to forego any 57.105 sanctions - unless both parties relinquish their claims and sign a full waiver. Mr. Rodem advised that he was not fully authorized at this time to give a "walk away" offer, but he felt that likely his partners would concur with that offer. He also advised that he believed that your voluntary dismissal of your complaint would be effective and he stated that he had case law on the issue. I requested that he forward the case law to me for my review. Mr. Rodem said the case law would be coming forthwith.

Regardless of the case law, it seems likely that if your Notice of Nondismissal is not effective, it is likely that we can come up with some type of pleading to reinstate your complaints. However, I can not give you an informed opinion on that matter until I have conducted extensive research.

I make no suggestions as to what actions you should take in regards to whether or not you wish to accept their offer to walk away from this complaint with both sides bearing their own costs - but bear in mind that you do have one order against you awarding entitlement to attorney's fees

for contempt and there is a reasonable likelihood that you may bear some attorney's fees for the 57.105 complaint. It may be advantageous to you to forestall any further costs by settling at this time. However, there is always a possibility that the litigation could have a fortuitous outcome for you.

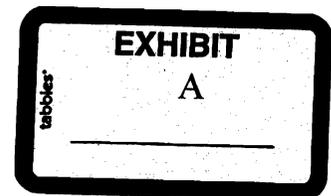
I have also advised opposing counsel that there are numerous motions outstanding and it probably would be in everyone's benefit for us to cancel the April 4<sup>th</sup> hearing and schedule a hearing wherein we can take care of all of the outstanding motions at one time. Mr. Rodems had no problem with this suggestion and agreed that that was probably in everyone's best interest. If you have any objection to doing so, please advise as soon as possible. Thank you and have a good day.

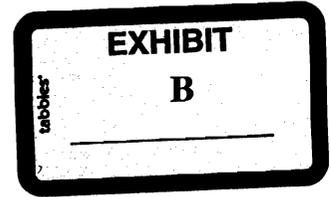
On or about April 2, 2007 I spoke with you again and you advised that you did not wish to settle this action with a "walk away" and you requested that I continue preparing for the case.

Sincerely,



Robert W. Bauer, Esq.





**ATTORNEY CONSULTATION AND FEE CONTRACT**

THIS AGREEMENT ("Agreement") is made on April 5, 2007, in Gainesville, Florida, between Neil Gillespie ("Client"), and Law Office of Robert W. Bauer, P.A., of Gainesville, Alachua County, FL ("Attorney"):

In consideration of the mutual promises herein contained, the parties hereto agree as follows:

**I. PURPOSE OF REPRESENTATION**

1.01 The Client hereby retains and employs the Attorney to represent Client in the following matter:

To represent him in case 05-CA-7205, Gillespie v. Barker, Rodems, & Cook, P.A. in the Thirteenth Judicial Circuit for Hillsborough County, Florida.

**II. ATTORNEY'S FEE**

2.01 In consideration of services rendered and to be rendered by the Attorney, Client agrees to pay for the Attorney's time at the following hourly rates:

Robert W. Bauer, Esq. \$250

Law Clerks \$100

Paralegals \$75

However, if Client's claim is governed by a statute or law which sets the Attorney's fees, and the law precludes any other fee arrangement other than the amount set by law, then the amount payable to the Attorney shall be limited to the maximum allowed by law.

2.02 Client agrees to deposit a non-refundable retainer of \$0 with the Attorney to pay for the Attorney's initial research, review and preparation of Client's case.

2.03 At the time of each billing, the amount of legal services and expenses billed by the Attorney shall be disbursed from the Attorney's Trust Account to the Attorney's Operating Account.

a. Each billing will reflect the legal services rendered and the deposit necessary to cover the estimated legal services and expenses for the next billing period.

b. Client agrees to make such additional deposits for expenses as are required by the Attorney within ten (10) days from the statement's date.

c. Unpaid fees and expenses, if not paid within ten (10) days from the

statement's date, shall bear interest at the rate of five percent (5%) per annum until paid.

d. All sums due and to become due are payable at the Attorney's office in Alachua County, FL.

### III. APPROVAL NECESSARY FOR SETTLEMENT

3.01 The Attorney is authorized to enter into any and all settlement negotiations on behalf of those whom the Attorney represents. This includes, but is not limited to, the Attorney's prerogative to pursue cash or structured payment settlement negotiations.

3.02 Client grants to the Attorney a power of attorney to handle negotiations and settlement discussions regarding Client's legal matter to the same extent as fully as Client could do so in person.

a. This expressly includes the right to sign Client's name on and to any insurance company drafts, money orders, cashier's checks, checks or other negotiable instruments made payable to the Attorney and Client, the Attorney, or to Client without the joinder of the Attorney, submitted to the Attorney on behalf of Client in full or partial settlement of this case.

b. This limited power of attorney further authorizes the Attorney to place the monies, referred to above, in the Attorney's trust account and from that trust account, make distributions and payments to the Attorney for the agreed to fee stated above, reimbursement to Attorney for any and all expenses incurred by the Attorney in handling this case, payments to Client of Client's interest in the monies recovered as stated above, and payments to parties other than Client and Attorney for their services performed, fees charged or bills rendered in connection with representing Client, including but not limited to expert witness fees, trial preparation bills paid to outside services, court reporter fees, deposition fees, investigative services, costs of exhibits or other expenses incurred by Attorney on behalf of Client.

3.03 No settlement shall be made without Client's approval, nor shall Client obtain any settlement on the aforesaid claims without the Attorney's approval.

3.04 Attorney is granted a limited power of attorney so that the Attorney may have full authority to prepare, sign and file all legal instruments, pleadings, drafts, authorizations and papers as shall be reasonably necessary to conclude this representation, including settlement and/or reduce to possession any and all monies or other things of value due to Client under this claim as fully as Client could do so in person.

### IV. REPRESENTATIONS

4.01 It is expressly agreed and understood that no promises or guarantees as to the outcome of the case have been made to Client by Attorney. Attorney has not represented to

**Client that Client will recover all or any of the funds so desired. Client also acknowledges that obtaining a judgment does not guarantee that the opposing party will be able to satisfy the judgment. It is further expressly understood and agreed that no other representations have been made to Client, except for those set out in this Agreement.**

## V. EXPENSES

5.01 All reasonable expenses incurred by the Attorney in the handling of this legal matter shall be paid by Client as incurred.

5.02 The expenses contemplated include but are not limited to court costs, consultants' costs, bonds, records, copy costs, certified copies, transcripts or depositions, telephone calls, duplication costs, photographs, expert and other witness fees, cost of investigation and investigator's fees, postage, travel, parking, and any other case expenses. Client has deposited with Attorney an expense deposit in the amount of \$3,000 which shall be deposited in the Attorney's Trust Account. The Attorney may draw against the expenses in the trust account as the expenses are incurred.

5.03 Any expenses not timely paid by Client shall be deducted by the Attorney prior to Client receiving his interest in the amount set forth in paragraph two (2) above. Client shall remain liable and promptly pay for all expenses incurred in this representation.

## VI. COOPERATION OF CLIENT

6.01 Client shall keep the Attorney advised of Client's whereabouts at all times, and provide the Attorney with any changes of address, phone number or business affiliation during the time period which Attorney's services are required. Client shall comply with all reasonable requests of the Attorney in connection with the preparation and presentation of Client's legal matter.

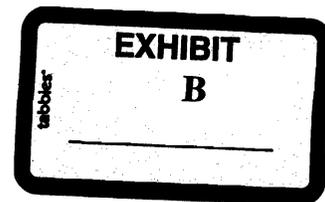
6.02 The Attorney may withdraw from the case and cease to represent Client for any reason, including without limitation: Client's failure to timely pay fees and expenses or deposits in accordance with this Agreement, subject to the professional responsibility requirements to which Attorneys are subject.

6.03 It is further understood and agreed that upon such termination of any services of the Attorney, any of Client's deposits remaining in Attorney's Trust Account shall be applied to any balance remaining owing to Attorney for fees and/or expenses and any surplus then remaining shall be refunded to Client.

## VII. ASSOCIATION OF OTHER ATTORNEYS OR SERVICES

7.01 The Attorney may, at Attorney's sole discretion and expense, employ any other person or service that the Attorney believes is necessary to help or assist in this legal representation.

7.02 The rights set forth in this Agreement are subject to the professional responsibility requirements which regulate Attorneys.



## VIII. FLORIDA LAW TO APPLY

8.01 This Agreement shall be construed under and in accordance with the laws of Florida, and venue for the adjudication of any dispute relating to this Agreement shall be Alachua County, FL.

## IX. PARTIES BOUND

9.01 This Agreement shall be binding upon and inure to the benefit of the parties hereto and their respective heirs, executors, administrators, legal representatives, successors and assigns where permitted by this Agreement.

## X. LEGAL CONSTRUCTION

10.01 In case any one or more of the provisions contained in this Agreement shall, for any reason, be held to be invalid, illegal, or unenforceable in any respect, such invalidity, illegality, or unenforceability shall not affect any other provisions thereof and this Agreement shall be construed as if such invalid, illegal, or unenforceable provision had never been contained herein.

## XI. PRIOR AGREEMENTS SUPERSEDED

11.01 This Agreement constitutes the sole and only agreement by and between the parties. It supersedes any prior understandings or written or oral agreements between the parties concerning the subject matter discussed herein.

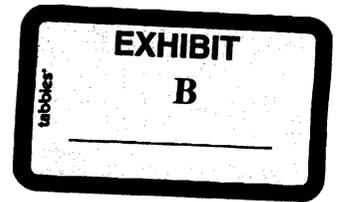
## TAX DISCLOSURE AND ACKNOWLEDGMENT:

**CLIENT IS ADVISED TO OBTAIN INDEPENDENT AND COMPETENT TAX ADVICE REGARDING THESE LEGAL MATTERS SINCE LEGAL TRANSACTIONS CAN GIVE RISE TO TAX CONSEQUENCES.**

**THE UNDERSIGNED LAW OFFICE AND ATTORNEY HAVE NOT AGREED TO RENDER ANY TAX ADVICE AND ARE NOT RESPONSIBLE FOR ANY ADVICE REGARDING TAX MATTERS OR PREPARATION OF TAX RETURNS, OR OTHER FILINGS, INCLUDING, BUT NOT LIMITED TO, STATE AND FEDERAL INCOME AND INHERITANCE TAX RETURNS.**

**FURTHERMORE, CLIENT SHOULD OBTAIN PROFESSIONAL HELP REGARDING THE VALUATION AND LOCATION OF ALL ASSETS WHICH MAY BE THE SUBJECT OF A LEGAL MATTER INCLUDING BUT NOT LIMITED TO PENSIONS, EMPLOYMENT BENEFIT AND PROFIT SHARING RIGHTS THAT MAY BE CONTROLLED BY ANY OTHER PARTY TO THE LEGAL MATTER.**

I certify and acknowledge that I have had the opportunity to read this Agreement. I further state that I have voluntarily entered into this Agreement fully aware of its terms and conditions.



SIGNED on this 22<sup>nd</sup> day of April, 2007.

  
\_\_\_\_\_  
Neil Gillespie

SIGNED on this 24 day of April, 2007.

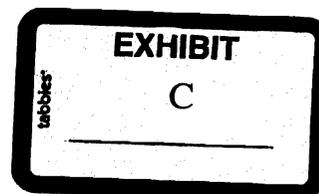
  
\_\_\_\_\_  
Robert W. Bauer, Esq  
2518 NW 13th Street  
Suite 200E  
Gainesville, FL 32609  
(352) 375-5960  
(352) 337-2518 (telefax)  
Florida Bar No. 0011058

IN THE CIRCUIT COURT OF THE THIRTEENTH JUDICIAL CIRCUIT  
IN AND FOR HILLSBOROUGH COUNTY, FLORIDA

NEIL J. GILLESPIE

Plaintiff,

Case No.: 05-CA-7205  
Division: C



vs.

BARKER, RODEMS & COOK, PA  
a Florida Corporation; and  
WILLIAM J. COOK,

Defendants.

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**Plaintiff Neil J. Gillespie's pro se Response to  
Attorney Robert W. Bauer's Motion For Withdrawal of Counsel**

Plaintiff Neil J. Gillespie, pro se, states the following regarding attorney Robert

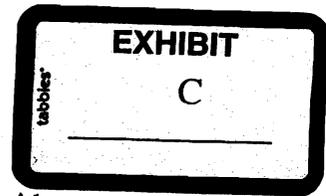
W. Bauer's motion to withdrawal as counsel served October 13, 2008:

1. Attorney Robert W. Bauer was referred to plaintiff for this matter by The Florida Bar Lawyer Referral Service February 26, 2007 for the practice area of Libel and Slander. A copy of the LRS referral is attached as Exhibit A.

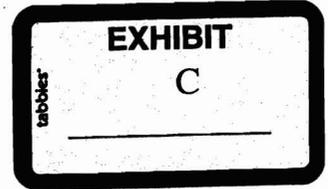
2. Lawyer Referral Rule 8-1.1, Statement of Policy and Purposes, states that "Every citizen of the state should have access to the legal system" ... and (a) "make legal services readily available to the general public through a referral method that considers the client's financial circumstances..." (Exhibit B)

3. The Florida Bar LRS application, Rules, IV, states: (relevant portion, Exhibit C)

D. A panel member, in filing an application as provided, agrees to:



- (2) charge for further services only as agreed upon with the client in keeping with the stated objectives of the Service and the client's ability to pay;
  - (3) carry, and continue to carry, professional liability insurance with limits not less than \$100,000;
  - (4) permit any dispute concerning fees arising from a referral to be submitted to binding arbitration if the client so petitions;
4. Attorney Bauer also agreed to remit to the LRS 12% of any attorneys' fees due for services performed in connection with any Regular Panel cases. Mr. Bauer has received \$19,212.44 in attorney's fees from plaintiff, but has not remitted any of the approximately \$2,305.49 he owes to the LRS with his monthly LRS reports.
5. Plaintiff retained Mr. Bauer on or about March 8, 2007. Prior to his notice of appearance in April, 2007, Mr. Bauer did a complete review of the case file and advised plaintiff on March 29, 2007 by telephone that the case was fairly strong, if we get in front of a jury, if we survive any summary judgments, we can do very well in front of a jury, if we can hold those punitive damages, Mr. Bauer said "If we can substantiate that that stuff was willful and if I can get, you know, the jury would love to punish a slimy attorney." Plaintiff responded: "You know, I want to get a good outcome with the case, I'm not interested in any personal ax to grind."
6. Mr. Bauer changed plaintiff his full hourly rate of \$250 per hour plus all expenses, including \$250 per hour for travel to Tampa, charges for associates, law clerks, legal assistants, and charges for filing, copying and mailing documents. Mr. Bauer told plaintiff the case may cost as much as \$18,000 total. Plaintiff has paid Mr. Bauer



\$19,212.44. Plaintiff does not have the ability to pay more and relies on disability income. Mr. Bauer has been churning fees at a rate that could reach six figures.

7. Mr. Bauer has been negligent in his representation of plaintiff, including:

a. Mr. Bauer has not submitted an amended complaint. This action is alive on plaintiff's pro se complaint submitted August 11, 2005. On several occasions the Court has asked Mr. Bauer about the complaint and he did not submit an amended one.

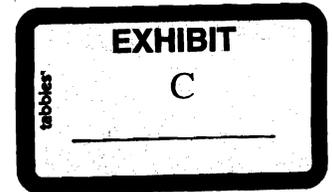
b. Mr. Bauer failed to obtain defendants' outstanding discovery, even while appearing before the court several times on plaintiff's outstanding discovery. Mr. Bauer should have simultaneously raised the issue of defendants outstanding discovery to mitigate sanctions. Plaintiff's motion to compel defendants discovery was submitted December 14, 2006. A second motion to compel was made February 1, 2007.

c. Mr. Bauer failed to timely stay the judgment pending the appeal to the 2DCA of the March 20, 2008 award to defendants of \$11,550 in attorneys fees. Instead plaintiff's bank account and attorney trust fund were garnished.

d. On July 1, 2008, Mr. Bauer misrepresented to the Court that plaintiff failed to complete a fact information sheet, resulting in a finding of contempt. Mr. Bauer later wrote to the Court about his error but the contempt stands.

e. Following the March 20, 2008 hearing and award of \$11,550 in attorneys fees, Mr. Bauer stopped providing plaintiff documents in the case. Plaintiff was forced to travel to Tampa to purchase documents from the clerk for \$1.00 per page.

f. While Mr. Bauer prevailed in the 2DCA on an interlocutory appeal to reinstate plaintiff's claims from the voluntary dismissal, he failed to move for attorney's fees.



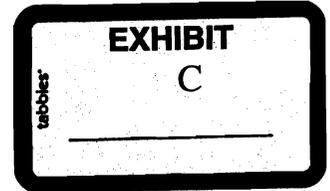
g. Mr. Bauer has been unable to maintain continuity of his office staff, and has very high employee turnover (perhaps reaching 500%) due to his narcissistic personality and unprofessional behavior. Some employees with little or no legal background were billed to plaintiff as legal assistants at \$100/hr. (KAM). When plaintiff inquired about the experience of people working on his case, Mr. Bauer became angry and accusatory.

h. Mr. Bauer has admittedly overbilled plaintiff, and continues to charge plaintiff for items not related to the case, such as his notice to the Court of his personal family vacation. There is also a question about billing for travel time at full hourly rate, and whether Mr. Bauer is conducting other business or pleasure during that time billed to plaintiff. The dates in question are July 3, 2007 (5hrs), August 15, 2007 (7.8hrs), October 30, 2007(7hrs), and March 20, 2008(3hrs), involving about \$5,700 in billed time.

i. Mr. Bauer has failed to zealously represent plaintiff. The above examples are illustrative and not exhaustive or all-inclusive as a courtesy to Mr. Bauer.

8. Mr. Bauer has grown tired of litigation that has proved difficult, and he wants to move on to easier and more profitable matters. On August 14, 2008 during an emergency hearing for a stay before Judge Crenshaw, Mr. Bauer complained to the Court that "Mr. Rodcms has, you know, decided to take a full nuclear blast approach instead of 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." (Exhibit D, pages 16-17)

9. On October 13, 2008, Mr. Bauer moved to withdrawal as counsel stating "[M]ovant is unable to communicate effectively with Plaintiff in a manner consistent with good attorney-client relations." Therefore plaintiff requested an accommodation under the Americans with Disabilities Act to restore effective communication with me in a



manner consistent with good attorney-client relations. (Exhibit E). At all times pertinent to this matter plaintiff was disabled. Plaintiff offered to retain co-counsel to assist with the case. Mr. Bauer did not respond to plaintiff's ADA request.

10. On May 14, 2009, plaintiff provided Mr. Bauer (at his request) a signed settlement agreement and a signed contingent fee contract, etc. Mr. Bauer did not respond.

11. Because of the forgoing, plaintiff has claims against Mr. Bauer for legal malpractice, fraud, breach of fiduciary duty, breach of contract, ADA violations, and other causes of actions, bar grievances, and IRS complaints. Mr. Bauer's interests are in conflict with plaintiff and Bauer can no longer represent plaintiff.

12. Plaintiff moves the Court for a 60 day stay to find replacement counsel.

13. Plaintiff moves the Court for leave to submit Plaintiff's First Amended Complaint.

14. Plaintiff requests a stay the \$11,550 judgment for sanctions to defendants pending the outcome of this case.

I certify that on October 1, 2009, a true and correct copy of the foregoing was served by hand in court on Ryan Christopher Rodems and by fax to Robert W. Bauer at:

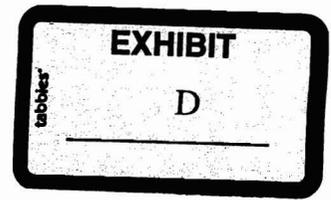
Ryan C. Rodems, Esq.  
400 N. Ashley Dr., Suite 2100  
Tampa, Florida 33601

Robert W. Bauer, Esq.  
2815 NW 13<sup>th</sup> Street, Suite 200E  
Gainesville, FL 32609

RESPECTFULLY SUBMITTED October 1, 2009

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

Neil J. Gillespie, pro se  
8092 SW 115<sup>th</sup> Loop  
Ocala, FL 34481  
Telephone: (352) 854-7807



## AFFIDAVIT OF BEVERLY LOWE

**BEFORE ME**, the undersigned authority, personally appeared Beverly Lowe, who being duly sworn, declared as follows:

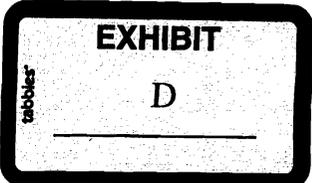
My name is Beverly Lowe.

During the relevant times hereto sworn, I was the Office Manager at The Law Office of Robert W. Bauer, P.A.

When I began at Mr. Bauer's Office, Mr. Gillespie was already a client with the firm. I was told that he suffered from some form of disability, possibly PTSD, and that we should take precautions when dealing with him. As such, I ensured that when I or others dealt with him, we were very courteous and accommodating to him. Despite these efforts, I witnessed Mr. Gillespie threaten to sue Mr. Bauer on more than one occasion if Mr. Bauer didn't do things the way that Mr. Gillespie wanted him to.

The worst incident I recall occurred on November 20, 2009. I was in my office when I heard our receptionist, Allison Beal, shouting, "You can't go back there!" While I can't remember what Mr. Gillespie said in response, I do remember him screaming back at the top of his lungs while continuing through reception and into our offices. Although I was on my way out of the office to pick up my daughter from school, I decided that I needed to stay and make sure our receptionist, Mrs. Beal, was safe. I waited in the reception area with Mrs. Beal, but could hear Mr. Gillespie screaming outside of Mr. Bauer's office.

Mr. Bauer had exited his office and came into the hallway between his office and reception where Mr. Gillespie confronted him. Mr. Gillespie put his face a few inches away from Mr. Bauer's face and screamed at the top of his lungs. I stood at Mrs. Beal's desk and told her to dial 9-1, but wait to press the last 1 until I told her. Mr. Gillespie's message did not resonate with me such that I can recall it today, but I do recall him screaming expletives over and over at Mr. Bauer. I heard Mr. Bauer tell Mr. Gillespie that he needed to leave or the police would be called. At that point, I told Mrs. Beal to press the last 1. Before she did, however, Mr. Gillespie stormed back into the reception area. I quickly moved out of the way so as not to be confronted. Despite my efforts, Mr. Gillespie stopped, turned on me and started screaming more expletives. I began to respond, but before I was able to finish, he again began screaming obscenities and stormed out of the office. I was very afraid



throughout the entire ordeal that he was going to hurt someone in the office. Additionally, I was afraid to go to my car and waited several minutes before leaving the building. After this incident, I felt the need to have a discussion with the employees on how to handle a client or previous employee that entered the office with a gun.

I declare under penalty of perjury that the foregoing is true and correct.

SIGNED on Aug 18<sup>th</sup>, 2010.

[Signature]  
Beverly Lowe, Affiant

STATE OF FLORIDA  
COUNTY OF Alachua

SUBSCRIBED AND SWORN TO BEFORE ME on 8/17/10,  
by Beverly E. Lowe.

[Signature]  
Notary Public, State of Florida



SUSAN D. REYNOLDS  
(Print, Type, or Stamp Commissioned Name of Notary Public)

Personally Known X OR Produced Identification \_\_\_\_\_

Type of Identification Produced \_\_\_\_\_

**Neil J. Gillespie**  
8092 SW 115<sup>th</sup> Loop  
Ocala, Florida 34481

Telephone: (352) 854-7807  
email: neilgillespie@mfi.net

VIA US EXPRESS MAIL - OVERNIGHT  
Article No.: EB 177834445 US

September 18, 2010

Ms. Annemarie Craft, Bar Counsel  
Attorney Consumer Assistance Program  
The Florida Bar, ACAP  
651 East Jefferson Street  
Tallahassee, FL 32399-2300

RE: Robert W. Bauer; The Florida Bar File No. 2011-00,073 (8B)

Dear Ms. Craft:

This is my rebuttal to the reply of Robert W. Bauer dated August 18, 2010. You asked that I limit this response to 25 pages, and I have done so. However the 25 page limit severely restricts my ability to submit transcripts and other documents that conclusively impeach much of Mr. Bauer's fallacious response. All the hearings Mr. Bauer attended were transcribed, and key phone calls have been transcribed. There are also hundreds of letters and emails that impeach Mr. Bauer's response. Upon request I can provide copies of the transcripts, letters and emails. I have a list of exhibits available upon request.

In addition, Mr. Bauer has incorporated a number of Mr. Rodems' untrue talking points. Mr. Bauer has made a number of false statements of material fact in his response to the Florida Bar. Mr. Bauer knowingly lied to the Bar with malice aforethought.

If Mr. Bauer's reply to my complaint is taken at face value, it is clear he should never have resurrected my claims that I voluntarily dismissed. After all, I sought the Bar's LRS referral for the libel counterclaim only. But Mr. Bauer convinced me that my claims deserved to be resurrected in the name of justice. That was awful counsel.

On March 29, 2007 Mr. Bauer called me after his initial review of this matter. Mr. Bauer said the pending sanctions against me were "entirely and wholly inappropriate" (p29, line 17). Mr. Bauer said "If we can substantiate that that stuff was willful and if I can get, you know, the jury would love to punish a slimy attorney." (p28, line 7). My ultimate repose to that and other of Mr. Bauer's statements was "You know, I want to get a good

outcome with the case, I'm not interested in any personal ax to grind." (p33, line 5). The transcript is available upon request.

Exhibit "A" of Mr. Bauer's response, his letter of April 5, 2007, is telling in his false flattery in paragraph 1, the last sentence: "I also reviewed the original complaint and determined that it appeared to contained (sic) two well plead causes of actions (sic) that could reasonably be pursued in a court action." From a legal standpoint this was false.

While my original complaint survived a motion to dismiss, it was legally deficient and required amendment. In July 2009 I hired attorney Seldon Childers to review this matter, and he concluded the following about my original complaint:

"Plaintiff has already paid twice the actual damages in attorneys fees to date in the case and there is still essentially no complaint filed. [at footnote 3] i.e. the current complaint is deficient and will have to be amended by a new complaint that is largely re-written, which will re-set all case deadlines and permit more discovery, new motions to dismiss, motions for summary judgment, and a new answer with affirmative defenses and counter-claims, all of which will have to be dealt with just as they were the first time around." (Analysis of Case, Sep-17-09, page 3, ¶2.)

#### I. Rebuttal to Mr. Bauer's "SUMMARY OF EVENTS PRIOR TO REPRESENTATION OF MR. GILLESPIE"

1. Mr. Bauer told the Bar that Mr. Gillespie was the plaintiff in a suit against Amscot Cash Advance. After losing in lower court, Mr. Gillespie appealed the ruling on grounds arising out of the Fair Debt Collection Practices Act. Mr. Bauer is incorrect about facts important to this case and the offenses of Mr. Rodems and his partners.

a. Eugene Clement was the lead plaintiff in a class action against AMSCOT Corporation. Mr. Clement was unqualified. The suit never achieved class status.

b. The AMSCOT lawsuit was commenced by Alpert, Barker, Rodems, Ferrentino & Cook, P.A. ("Alpert firm"), the predecessor law firm to Barker, Rodems & Cook, PA. (BRC). On December 9, 1999 the Alpert firm filed a class action complaint in United States District Court, Middle District of Florida, Tampa Division, Eugene R. Clement v. AMSCOT Corporation, case no. 99-2795-CIV-T-26C. ("AMSCOT").

c. The AMSCOT lawsuit contained three counts, none under the Fair Debt Collection Practices Act as Mr. Bauer claimed.

Count I alleged violation of the Federal Truth in Lending Act (TILA)

Count II alleged violation of state usury laws pursuant to sections 687.02, 687.03, and 687.04 Florida Statutes.

Count III alleged violation of the Florida Deceptive and Unfair Trade Practices Act, sections 501.201 to 501.23 Florida Statutes.

d. When it appeared that Mr. Clement would be disqualified, the Alpert firm and Mr. Cook pressured me to intervene to save the litigation. I was already a client of the Alpert firm in a lawsuit against ACE Cash Express with the same allegations as AMSCOT.

Initially I resisted suing AMSCOT. Then Mr. Cook made a number of promises to me to sue AMSCOT that I later learned were unlawful, such as help finding employment and possible representation with the Florida Division of Vocational Rehabilitation. Mr. Cook submitted Motion For Intervention As Plaintiffs And Proposed Class Representatives, November 9, 2000 naming me and Ms. Gay Ann Blomefield as intervening co-plaintiffs. See Plaintiff's First Amended Complaint filed May 5, 2010

f. While I was a client of the Alpert firm, Mr. Alpert and Mr. Rodems attended a mediation that went poorly, so Mr. Alpert physically assaulted opposing counsel Arnold Levine. A Tampa Police Department report dated June 5, 2000, case number 00-42020, alleges Mr. Alpert committed battery, Florida Statutes §784.03, upon attorney Arnold Levine by throwing hot coffee on him. At the time Mr. Levine was a 68 year-old senior citizen. The report states: "The victim and defendant are both attorneys and were representing their clients in a mediation hearing. The victim alleges that the defendant began yelling, and intentionally threw the contents of a 20 oz. cup of hot coffee which struck him in the chest staining his shirt. A request for prosecution was issued for battery." Mr. Rodems is listed as a witness on the police report and failed to inform me that Mr. Alpert attacked attorney Arnold Levine. Mr. Levine previously sued Alpert, Barker & Rodems, PA, a \$5 million dollar claim for defamation, *Buccaneers Limited Partnership v. Alpert, Barker & Rodems, PA*, US District Court, Middle District of Florida, Tampa Division, case 99-2354-CIV-T-23C.

g. When I told Mr. Bauer about the preceding incident, he decided to use the information in defense of the libel claim with me. In fact, soon after I retained Mr. Bauer he attended a CLE in Tampa (Basic Federal Practice 2007) where US District Judge James D. Whittemore repudiated the infamous coffee-throwing incident. While I was their client, Mr. Rodems and his partners concealed this information from me, and I failed to read about it in the newspaper. But in 2006 when I began looking for counsel, a number of lawyers in Tampa warned me about Mr. Alpert and his firm, but it was too late. Mr. Bauer told me to get the information from the Florida Bar about this act of violence by Mr. Rodems' partner, and I did so. The Florida Bar was very helpful, and provided me a surplus CD gratis. From there I had the CD transcribed, which the Bar authorized. Upon request I can provide the CD, the transcript, and the letter of authorization from the Bar to prepare a written transcript of the audio CD of course no. 0444C (of the live presentation of course no. 0444R -Basic Federal Practice 2007).

e. Mr. Rodems pulled a stunt with me in this litigation. Initially I had a good working relationship with Judge Nielsen and his judicial assistant Myra Gomez. I attended the first hearing telephonically September 26, 2005 and prevailed on Defendants' Motion to Dismiss and Strike.

Mr. Rodems intentionally disrupted the tribunal with a strategic maneuver to gain an unfair advantage in the litigation. During the scheduling a hearing, Rodems telephoned me at home March 3, 2006 and an argument ensued. Mr. Rodems threatened to reveal my confidential client information.

On March 6, 2006 Rodems made a sworn affidavit under the penalty of perjury falsely placing the name of the trial judge in the affidavit and therefore into the controversy. Rodems submitted Defendants' Verified Request For Bailiff And For Sanctions that falsely placed the name of the Judge Nielsen into an "exact quote" attributed to Gillespie<sup>1</sup> about a violent physical attack in Judge Nielsen's chambers.

Kirby Rainsberger, Police Legal Advisor, Tampa Police Department, reviewed the matter and established by letter February 22, 2010 that Mr. Rodems was not right and not accurate in representing to the Court as an "exact quote" language that clearly was not an exact quote. But it was too late. After Rodems' perjury of March 6, 2006 Judge Nielsen did not manage the case lawfully, favored Defendants in rulings, and responded to me sarcastically from the bench.

2. Mr. Bauer told the Bar that in a letter of April 5, 2007 he advised me that he had negotiated a "walk away" settlement with BRC. In fact, the "walk away" settlement with BRC was on the table before I met Mr. Bauer, and has been offered since he left the case. I can provide additional evidence upon request. The reason I did not take the "walk away" settlement was Mr. Bauer's confidence that he "[a]lso reviewed the original complaint and determined that it appeared to contained (sic) two well plead causes of actions (sic) that could reasonably be pursued in a court action." Of course, this was false, but I believed Mr. Bauer. Mr. Bauer also told me on March 29, 2007 that the pending sanctions against me were "entirely and wholly inappropriate" (p29, line 17). Mr. Bauer said "If we can substantiate that that stuff was willful and if I can get, you know, the jury would love to punish a slimy attorney." (p28, line 7). My ultimate repose to Mr. Bauer was "You know, I want to get a good outcome with the case, I'm not interested in any personal ax to grind." (p33, line 5). Transcript available upon request.

3. As for the sanctions incurred prior to Mr. Bauer's representation, I deferred to his judgment with poor results. Mr. Bauer represented me at the hearing for entitlement of fees on the 57.105 motion on July 3, 2007. Then he attended the hearing on the amount of the fees on March 20, 2008. Mr. Bauer anticipated fees of a few thousand dollars, not \$11,550. Mr. Bauer found an expert to testify for me, Frank H. Gassler of Fowler White, but Mr. Bauer was late in locating him. Mr. Bauer moved to continue the hearing so that Mr. Grassler could review the billing, but the court denied that, so I did not have the benefit of an expert witness. Mr. Bauer had continued the hearing twice before for other reasons not related to my case, so the judge did not want to grant another continuance.

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<sup>1</sup> The portion of Gillespie's "exact quote" in dispute is "like I did before" which refers to a September 25, 2005 telephonic hearing where he prevailed. It is a self-proving metaphor. Instead Rodems swore in an affidavit that Gillespie said "in Judge Nielsen's chambers" which is false. Rodems could have used Gillespie's exact quote but he did not. Rodems added the name of Judge Nielsen with malice aforethought and did so in a sworn statement under the penalty of perjury.

When Mr. Bauer asked for a continuance to get our expert ready, the judge denied that, and wise-cracked "how about a couple of years continuance?"

While preparing for the appeal, I found a Florida Bar Journal article he needed, but he ultimately failed to use the information in his argument to the court.

**From:** "Neil Gillespie" <neilgillespie@mfi.net>  
**To:** "Robert W. Bauer, Esq." <rwb@bauerlegal.com>  
**Sent:** Tuesday, May 13, 2008 10:26 AM  
**Subject:** Re: Fla Bar Article

May-13-08

Mr. Bauer,

Here is the link to the 57.105 article from the Florida Bar Journal, April, 2002, Volume LXXVI, No. 4:

<http://www.floridabar.org/DIVCOM/JN/JNJournal01.nsf/76d28aa8f2ee03e185256aa9005d8d9a/6 OpenDocument>

Which cites (at footnote 12) US SUPREME COURT case Haines v. Kerner, 404 U.S. 519, 520 (1972), in which the U.S. Supreme Court held that pleadings drafted by pro se litigants should be held to a less stringent standard than formal pleadings drafted by lawyers. BTW, I originally found this on a regular Google search.

Thank you. Neil Gillespie.

----- Original Message -----

**From:** Robert W. Bauer, Esq.  
**To:** 'Neil Gillespie'  
**Sent:** Tuesday, May 13, 2008 10:00 AM  
**Subject:** Fla Bar Article

I was trying to locate the article you provided for me from the Florida bar regarding regarding 57.105 motions. If you still have that link I would appreciate you sending it again.

Robert W. Bauer, Esq.

Law Office of Robert W. Bauer, P.A

## II. REBUTTAL, BAUER'S RESPONSE TO SPECIFIC COMPLAINTS OF MISCONDUCT

### 1. Failure to zealously litigate claims:

Mr. Bauer claims he filed a motion to withdraw voluntary dismissal, but that is not factual, I filed that before meeting him. Mr. Bauer filed a hybrid pleading May 2, 2007 captioned "MEMORANDUM OF LAW IN SUPPORT OF PLAINTIFF'S MOTION TO WITHDRAW VOLUNTARY DISMISSAL OR ALTERNATIVELY MOTION TO AMEND ANSWER TO INCLUDE COUNTER -COUNTER COMPLAINT" A copy of this bizarre pleading is listed as Exhibit 1 and available upon request. This strange document has three parts:

- a. Memorandum of law supporting my motion to withdraw voluntary dismissal;

- b. An amended answer to the counterclaim;
- c. A counter-counter complaint (not recognized by Fla.R.Civ.P) that included a count for breach of fiduciary duty. It was rejected by J. Barton August 31, 2007.

Mr. Bauer's enigmatic counter-counter complaint was largely a "cut and paste" of my pro se complaint, which was a defective document. Mr. Rodems threatened Mr. Bauer with a section 57.105 motion by email. Mr. Rodems wrote "We object to the motion for leave to amend because there is no such thing as a "counter-counter complaint"..." and "Given Gillespie's bizarre and inappropriate behavior in this case... I am surprised you would rely on any portions of the pleadings Gillespie filed." I was surprised too, since I was paying Mr. Bauer \$250 per hour, I did not understand why he would use my pleading, especially since it was defective. But I went along with what Mr. Bauer wanted.

On August 31, 2007 Judge Barton's ORDER GRANTING PLAINTIFF'S MOTION TO WITHDRAW PLAINTIFF'S NOTICE OF VOLUNTARY DISMISSAL clearly states that "It is further determined that as a matter of law that Plaintiff is not entitled to file a counter counter-complaint in response to Defendant's Counter-Complaint absent a modification of the current rules of civil procedure." A copy of the order is listed as Exhibit 2. This means Mr. Bauer's attempt to amend the complaint to include a count of breach of fiduciary duty failed. Mr. Bauer lied to the Florida Bar when he wrote "as of today, the claims are still viable" page 3, ¶2.

Jeffrey R. Shelquist is an attorney who I retained several times in the past, he agreed to serve as an intermediary with Mr. Bauer on the so-called failure to communicate. Mr. Bauer rejected that help. On March 28, 2008 Mr. Shelquist wrote me, "As for the breach of fiduciary duty, I see that as your only possible viable cause of action. I have never heard of a counter-counter complaint. It doesn't make sense. You are the plaintiff, it is just an amended complaint to add a new cause of action. It sounds like the judge rejected the pleading, not necessarily the cause of action."

Mr. Bauer wrote the following, page 3, ¶3. I will respond to this paragraph below.

Mr. Gillespie also alleges that I "failed to present evidence that there was no signed contingent fee agreement," subsequent to Mr. Rodems' representations that there were. This allegation underscores much of the basis for my motion for withdrawal. The Complaint originally drafted by Mr. Gillespie includes a count for breach of contract and, specifically alleges in paragraph 6: "GILLESPIE and the LAW FIRM [BRC] had a written representation contract." The hearings in question were on Defendant's Motion for Judgment on the pleadings. Had I argued that no contract existed between the parties as Mr. Gillespie now claims I failed to do, it would have been repugnant to his position. Additionally, Mr. Gillespie now asserts that I failed to prove the non-existence of a contract by submitting affidavits. Clearly, Mr. Gillespie makes this assertion without an understanding of what is appropriate to argue in a hearing on a motion for judgment on the pleadings. Mr. Gillespie did not understand the procedural or substantive law surrounding this issue and now wishes to supplant his legal prowess with mine.

As a factual matter, there was a signed representation contract with the Alpert firm, but not the BRC firm. Shortly before the AMSCOT case was dismissed, BRC prepared a written (but not signed) contract. The BRC contract was not executed. Mr. Bauer even argued this in his motion Plaintiff's Motion for Rehearing July 16, 2008. The motion is listed as Exhibit 3 and available upon request. This motion is signed by attorney Tanya M. Uhl Esq. Bar No. 0052924 (n.k.a. Tanya Bell). In a letter dated August 5, 2010. Ms. Bell wrote me "In regards to the Plaintiff's Motion for Rehearing that I signed, I did so at the direct request of Robert W. Bauer in his absence. I did not prepare that Motion or even work on that Motion." The letter is listed as Exhibit 4, available upon request.

After Mr. Rodems received the motion for reconsideration, he contacted Mr. Bauer, according to an email I received from Ann Breeden, employee of Mr. Bauer. This email is listed as Exhibit 5, and available upon request. The email establishes a number of facts that impeach Mr. Bauer's statements to the Bar.

1. The email establishes that I am working with his staff in a professional manner.
2. Mr. Bauer cannot find transcripts that were previously provided him, part of an ongoing problem with his office in disarray.
3. Mr. Bauer filed a motion for reconsideration to show the fee contract was not signed.
4. It appears Mr. Rodems lied about a signed contract and is now concerned.

**From:** "Ann G. Breeden" <agb@bauerlegal.com>

**To:** "Neil Gillespie" <neilgillespie@mfi.net>

**Sent:** Tuesday, August 12, 2008 11:25 AM

**Subject:** Transcripts

Mr. Gillespie-

Mr. Rodems has responded to Mr. Bauer regarding our Motion for Rehearing. He specifically was asking about a reference made to a statement made by Mr. Rodems about Barker, Rodems, and Cook being in possession of a signed fee agreement. Mr. Bauer has asked me to review the transcripts of the two hearings to ensure that Mr. Rodems did in fact state that at one of the hearings. We are having trouble locating the transcripts to these hearings. Mr. Bauer has asked me to contact you and ask if you would kindly forward the e-mailed transcripts of the hearings dated October 30, 2007 and July 1, 2008 so that we can respond to Mr. Rodems. I apologize for any inconvenience this may cause you.

Thank you,

Ann G. Breeden

Mr. Bauer argued October 30, 2007 at a hearing for judgment on the pleadings that the agreement was written but it was not signed. Since the transcript is available upon request, why would Mr. Bauer lie to the Florida Bar about this?

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17 [MR. BAUER] Yes. There is an written agreement, but is

18 every -- and that written agreement memorializes

19 some of the terms that are contained in it.

20 However, there is the whole problem of is that even

21 the defendant's attempting to enforce an unsigned  
22 contingency fee agreement is a breach of the  
23 professional rules of ethics, so there's an issue  
24 contained with that. But there's

Mr. Bauer wrote the following, page 4, ¶1. I will respond to this paragraph below.

Mr. Gillespie claims that I failed to amend the pro se complaint. As previously explained, the actions I pursued were first aimed at re-establishing Mr. Gillespie's claims. Upon doing so, a motion for judgment on the pleadings was filed and noticed. The resultant order from the Court granted the motion as to Count II and dismissed it as to Count I. Rather than give leave to amend, however, the court explicitly ordered "in lieu of an amended complaint, all factual allegations contained in Count II are incorporated in Count I." A responsive pleading had been filed in this matter and without leave, an amendment was not permissible. Furthermore, because of the voluntary dismissal of his claims, there were statute of limitations issues involved in attempting to bring new causes of action.

Mr. Bauer argued against his response above on the record, and in a letter to me dated September 5, 2007 listed as Exhibit 6, available upon request. The court ordered "in lieu of an amended complaint, all factual allegations contained in Count II are incorporated in Count I." late in the game July 7, 2008 because Judge Barton grew tired of listening to Mr. Bauer promise to amend the complaint, but failing to do so. Even so, the order still allows an amended complaint.

Judge Barton asked Mr. Bauer about the original pro se complaint, and Mr. Bauer responded that it needed to be amended. This is from the October 30, 2007 hearing before Judge Barton on Defendants' Motion for Judgment on the Pleadings

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8 THE COURT: So are we on the pro se version of  
9 the complaint?

10 MR. BAUER: Yes, Your Honor.

11 THE COURT: How do you feel about that?

12 MR. BAUER: I'd like to amend it and make it  
13 a

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1 [MR. BAUER] But I don't see in any way there's been -there  
2 hasn't been a single amendment to this complaint.

3 The case law clearly states that it's not

4 prejudicial to the other party to at least allow one  
5 amendment of the complaint. Many of the case law  
6 goes up to the court shall allow up to four.

7 MR. RODEMS: There is no motion to amend the  
8 complaint filed with this court.

9 MR. BAUER: The court asked a direct question  
10 to me on whether or not I would think it would be  
11 warranted to amended complaint and I responded.  
12 THE COURT: I asked if you felt comfortable  
13 with the current version.  
14 MR. BAUER: I think there's probably things -  
15 problems probably could be dealt with and clarified  
16 and issues could be better dealt with if we went and  
17 filed for an amended -an amended complaint and  
18 moved forward from that point.

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4 [MR. BAUER] I don't see that -- I have been on this case  
5 for a whole of six months. I don't think my failure  
6 to have amended the complaint in six months is  
7 overly egregious considering we have had multiple  
8 issues to deal with, the hearings that have been  
9 required to come down here, the writ of certiorari  
10 that has been filed. I don't think there's been any  
11 delay on my part or on the part of my firm.

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1 MR. BAUER: Your Honor, first of all  
2 THE COURT: Let me ask this: And we are still  
3 on this original complaint?  
4 MR. BAUER: Yes, Your Honor.

Clearly Judge Barton is exasperated that Mr. Bauer was still on my deficient original pro se complaint, but Mr. Bauer refused to amend it. The transcript is available upon request.

In a letter dated September 5, 2007 from Mr. Bauer to me, he wrote "I believe it is necessary at this time to reevaluate the initial complaint and draft an amended complaint to include allegations of malpractice and breach of fiduciary duty." (§2) This letter is listed as Exhibit 6, and available upon request.

So Mr. Bauer knew an amended complaint was needed, and he knew that "The case law clearly states that it's not prejudicial to the other party to at least allow one amendment of the complaint. Many of the case law goes up to the court shall allow up to four" (RWB, Oct-30-07, p16, line 3).

## 2. Failure to zealously litigate against the BRC counterclaim:

Mr. Bauer was hired through the LRS to represent me in the libel claim, and all he did from March 2007 through October 2008 was file an amended answer. Zealous advocacy requires, at a minimum, obtaining discovery on the counterclaim and he failed to do so.

Paragraphs 57 and 67 of the counterclaim relate to my effort with ACAP in 2003 to settle this matter without litigation. Mr. Rodems accused me of felony extortion in his Answer, Affirmative Defenses and Counterclaim, submitted January 19, 2006.

I spoke with Donald M. Spangler, Director of ACAP June 12, 2003. Mr. Spangler assigned reference #03-18867 to the matter. Mr. Spangler suggested to me that I contact Mr. Cook to try and settle the matter. The Florida Bar complaint form, Part Four, Attempted Resolution, states that “[Y]ou should attempt to resolve your matter by writing to the subject attorney, before contacting ACAP or filing a complaint. Even if this is unsuccessful, it is important that you do so in order to have documentation of good-faith efforts to resolve your matter.” Copies of the documents are available upon request.

On June 13, 2003 I made a good-faith effort and wrote to Mr. Cook to resolve the matter, noting ACAP reference #03-18867. I requested \$4,523.93 to settle the matter and provided Mr. Cook an explanation for the request along with a financial spreadsheet supporting his claim. A few days later I received a letter from Mr. Cook’s law partner, Christopher A. Barker, on behalf of Mr. Cook. In his letter Mr. Barker accused me of felony extortion pursuant to §836.05 Fla. Statutes and the holding of Carricarte v. State, 384 So.2d 1261 (Fla. 1980); Cooper v. Austin, 750 So.2d 711 (Fla. 5<sup>th</sup> DCA 2000); Gordon v. Gordon, 625 So.2d 59 (Fla. 4<sup>th</sup> DCA 1993); Berger v. Berger, 466 So.2d 1149 (Fla. 4<sup>th</sup> DCA 1985). Mr. Rodems has accused me of felony extortion in his Answer, Affirmative Defenses and Counterclaim, paragraphs 57 and 67.

### 3. Failure to zealously pursue case management

Judge Barton raised the issue of case management with Mr. Bauer relative to jurisdiction and filing an amended complaint. On August 15, 2007 - five months into the case - Judge Barton kept asking Mr. Bauer over and over about the complaint and what kind of damages were pled. Mr. Bauer could not answer because he was unprepared. This went on for several pages of the transcript but Mr. Bauer kept making excuses. Judge Barton was concerned that Defendants’ motion for judgment on the pleadings was upcoming.

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1 THE COURT: That's why this is kind of a case  
2 management. I mean, we hear a judgment -motion  
3 for judgment on the pleadings is going to be set.  
4 But if you can do that, maybe get a little extra  
5 time. Because the first step, based on what you've  
6 just told me, is to see if it's going to remain in  
7 circuit court.

In his response to the Bar, Mr. Bauer blames me for “the number of times the courts time was unnecessarily consumed by Mr. Gillespie prior to my representation of him” but Judge Barton was focused on getting the complaint and damages established.

### 4. Failure to zealously pursue discovery:

Mr. Bauer has misled the Bar in his response to discovery. Mr. Bauer wrote, "Mr. Gillespie had voluntarily dismissed his claims against BRC prior to my representation of him in this matter. Because of this, much of the discovery he sought prior to the dismissal was moot." Judge Barton made it clear that my claims were not dismissed - see his order of August 31, 2007. Voluntary Dismissal cannot be filed pursuant to Rule 1.420 when a counter-claim is pending without first receiving leave of court. *Rogers v. Publix Super Markets, Inc.*, 575 So.2d 214 (Fla. 5th DCA, 1990) This was affirmed at the 2DCA. In addition Mr. Rodems did not produce a single document responsive to request for production. Rodems merely sent me a letter stating that he provided the documents when in fact he did not.

Mr. Bauer also said he wanted to take the deposition of one of the co-plaintiff's in the AMSCOT case, that would be Gay Ann Bloomfield (because the other co-plaintiff, Mr. Clement, had his sanity called into question and would be a terrible witness) but Ms. Bloomfield died recently at the age of 63, forever ending that possibility.

During our phone call of February 9, 2009 I tried to explain the importance of discovery, The transcript is available upon request.

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21 [MR. GILLESPIE]...without having their discovery you  
22 don't know what they have. You don't know what  
23 they plan to bring up. And that's a problem. It's  
24 a problem. They haven't provided a single page of  
25 discovery responsive to Request for Production.

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1 And that's a problem. Because they could spring  
2 anything at any time and say that you already had  
3 it and you knew about it. And there is nothing you  
4 can say against that.  
5 MR. BAUER: If you would like --  
6 MR. GILLESPIE: I mean --  
7 MR. BAUER: If you would like I will draw up  
8 an agreement on how I continue to represent you on  
9 this case, the things that I will and the things  
10 that I won't do. I will ask for reasonable  
11 discovery. I'm not necessarily going to ask for  
12 the carbon copy of what you had before.  
13 MR. GILLESPIE: Well, like I say, I think a  
14 lot of that has passed already, because we have  
15 gone through the discovery, we have had the  
16 discovery hearings. They could have been done in  
17 tandem. When he was -- called a discovery hearing  
18 and we were standing there it was just as easy to  
19 schedule one for them. But all that has passed.

5. Failure to seek disqualification of BRC's counsel Ryan Christopher Rodems:

In his response to the Bar, Mr. Bauer misstated Judge Nielsen's Order of May 12, 2006, on disqualification of Mr. Rodems as counsel. The order states: "The motion to disqualify is denied with prejudice, except as to the basis that counsel may be a witness, and on that basis, the motion is denied without prejudice." The Order is listed as Exhibit 7 and is available upon request. When I argued the motion April 25, 2006 I did not cite any case law and merely relied on Bar Rule 4-1.9, conflict of interest, former client. This was a big mistake on my part. A transcript of the hearing is available. In March 2010 I researched this question again and found good case law supporting disqualification. I did not discuss this with Mr. Bauer because he was long gone from the case. Here are the issues.

Judge Nielsen's Order of May 12, 2006, begs the question of disqualification, the last part of the order: "...except as to the basis that counsel may be a witness, and on that basis, the motion is denied without prejudice." The question is not whether Rodems may be a witness, but whether he "ought" to be a witness. Proper test for disqualification of counsel is whether counsel ought to appear as a witness.[1] *Matter of Doughty*, 51 B.R. 36. Disqualification is required when counsel "ought" to appear as a witness.[3] *Florida Realty Inc. v. General Development Corp.*, 459 F.Supp. 781. For a complete review, see [Emergency Motion to Disqualify Defendants' Counsel Ryan Christopher Rodems & Barker, Rodems & Cook, PA](#), submitted July 9, 2010.

The counter-claim provided a new basis for disqualification of Mr. Rodems. When Judge Nielsen ruled, the counter-claim was not established, so the counter-claim allows another chance for disqualification that Mr. Bauer failed to pursue.

Mr. Rodems will litigate this case forever, and this has caused a problem for Mr. Bauer as discussed during our phone call of February 9, 2009. Transcript available on request.

Page 4

23 [MR. BAUER] Yes, I admit, this case has taken a  
24 long time because there has been a lot of  
25 distractions done by Mr. Rodems. You have some

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1 limited resources. I have limited resources on  
2 everything that I can do. I can't do a case that's  
3 going to do every possible thing that could ever be  
4 done that's going to bankrupt my firm in the  
5 attempt to do it.

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19 [MR. GILLESPIE]...Mr. Rodems, because he has a conflict of  
20 interest, will lie about anything in this case.  
21 And that's why he needs to be disqualified. And I  
22 think you have as much as acknowledged that already  
23 that the problem you're having is litigating  
24 against him and he will devote every resource he  
25 has to this and you won't. That's the problem.

page 10

1 MR. BAUER: I can't -- do you expect me to go  
2 bankrupt in representation of you, sir?

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7 [MR BAUER]... And I strongly suggest  
8 that you pursue, you know, the other motions that  
9 are outstanding. I think they're warranted. And I  
10 think they get the message out that we're fighting,  
11 we're moving on things. I think it clearly puts  
12 before the Court the mistake or perjury, whichever  
13 the Court determines that they wish to interpret as  
14 Mr. Rodems misleading the Court when he said that  
15 certain things were present that weren't. If you  
16 read those motions I clearly said that in there.

6. Failure to zealously defend against sanctions: .

Mr. Bauer cites the transcript of the July 3, 2007 hearing on Defendant's Amended Motion for Sanctions Pursuant to § 57.105, Florida Statutes, as a good barometer of the efforts I undertook to correct the issues caused by Mr. Gillespie in this matter. That transcript, and all the others, show that Mr. Bauer failed to show how Mr. Rodems used knowledge of my disability against me, knowledge Rodems learned during his firm's representation of me on disability issues, as set forth in the following:

Plaintiff's Accommodation Request Americans with Disabilities Act (ADA), February 20, 2007, listed as Exhibits 8 and 9 respectively, available upon request.

Plaintiff's Amended Request Americans with Disabilities Act (ADA), March 5, 2007

I raised the issue with Judge Barton January 26, 2010 and this was the Court's response:

page 8

11 I mean  
12 if you are saying your disability, which is yet  
13 unclear to me, hasn't been dealt with accordingly  
14 -- I believe this is the first time we are hearing  
15 about this.  
16 MR. GILLESPIE: Actually it is not, Your  
17 Honor. This information was presented to you when  
18 you were a Judge way back on March 5th, 2007,  
19 Plaintiff's Amended Accommodation Request under the  
20 ADA. What had happened is shortly after that date,  
21 Mr. Bauer took the case over and this motion wasn't  
22 heard.

page 12

13 THE COURT: Right. Well, because clearly if  
14 folks have disabilities we could make  
15 accommodations and again, you had filed it before

16 but, again, when you had an attorney and he was  
17 representing you and could have pressed that  
18 forward and apparently there were other matters to  
19 address.

20 MR. GILLESPIE: I'm sorry that he didn't do  
21 that. He was instructed to do that but for  
22 whatever reason, Mr. Bauer failed to do that and he  
23 failed to do a lot of other things.

In an email to me July 8, 2008 Mr. Bauer wrote he does not wish for me to attend hearings because he is concerned that Mr. Rodems' comments to me will enflame the situation. How did Mr. Bauer intend to conduct a trial, if he did not want me to attend court? Concerning Mr. Rodems' comments, Mr. Bauer wrote: "I am sure that he makes them for no better purpose than to anger you. I believe it is best to keep you away from him and not allow him to prod you." Upon information and belief, the behavior Mr. Bauer has attributed to Defendants counsel Mr. Rodems, comments made "for no better purposes than to anger you", is unlawful harassment and a violation of section 784.048, Florida Statutes. See Notice of Filing Affidavit of Neil J. Gillespie, September 18, 2010 (RWB email), listed as Exhibit 10, available upon request.

**From:** "Robert W. Bauer, Esq." <rwb@bauerlegal.com>

**To:** "Neil Gillespie" <neilgillespie@mfi.net>

**Sent:** Tuesday, July 08, 2008 6:05 PM

**Subject:** RE: attached, Notice of Filing Fact Information Sheet

It was my understanding that my office did contact you. I have already apologized and have stated that I will correct the error with the court. I can do nothing more.

No – I do not wish for you to attend hearings. I am concerned that you will not be able to properly deal with any of Mr. Rodems comments and you will enflame the situation. I am sure that he makes them for no better purpose than to anger you. I believe it is best to keep you away from him and not allow him to prod you. You have had a very adversarial relationship with him and it has made it much more difficult to deal with your case. I don't not wish to add to the problems if it can be avoided.

I agree that there are personal exemptions – but as you may note I have already filled a stay which we are scheduling for hearing at this time.

Robert W. Bauer, Esq.  
Law Office of Robert W. Bauer, P.A  
2815 NW 13th St. Suite 200E  
Gainesville, FL 32609

7. Failure to inform contrary to Rule 4-1.4(a):

Mr. Bauer's failed to keep me informed of the proceedings contrary to Bar Rule 4-1.4(a) informing a client of the status of representation. Judge Barton found me guilty of contempt July 1, 2008. Order Adjudging Contempt was signed July 7, 2008.

How could Mr. Bauer attend a contempt hearing without speaking to his client! This is simply outrageous and beyond all excuse. What was Mr. Bauer thinking for the long, two hour ride from Gainesville to Tampa to attend the hearing? What was Mr. Bauer thinking he would tell Judge Barton? Why did Mr. Bauer fail to call me from his car on that long drive to Tampa, on his way to the contempt hearing?

Mr. Bauer is wrong when he wrote "Mr. Gillespie is confused as to the Court's retention of jurisdiction; as the Fact Information Sheet has been properly filled out, there were no further sanctions imposed." In fact, Judge Cook as set a hearing for September 28, 2010 to decide matters related to this contempt. Judge Cook rejected Mr. Bauer's letter that I provided in a motion for reconsideration of the contempt. Judge Cook did that without hearing. This is what Judge Cook wrote in NOTICE OF CASE MANAGEMENT STATUS and ORDERS ON OUTSTANDING RES JUDICATA MOTIONS signed July 29, 2010. Paragraph 14:

14. At this mandatory hearing the parties must also be prepared to discuss the effect of the "Order Adjudging Contempt" entered by Judge Barton on July 7, 2008. This order found that the Plaintiff had ability to comply with the "Final Judgment" entered on March 27, 2008 and that the Plaintiff violated the terms of that order by failing to complete Form 1.977 Fact Information Sheet. The Plaintiff was ordered to complete the sheet and to serve a copy to the Defendant no later than July 11, 2008. If the Plaintiff did not timely submit Form 1.977, as ordered, then pursuant to the "Order Adjudging Contempt," "the Court *shall* dismiss" with prejudice, the Plaintiff's last remaining claim (i.e. Count 1, Plaintiff's breach of contract claim against Defendant law firm). Because this dismissal sanction may render hearing on the Defendant's "Motion for Final Summary Judgment" to be moot, the parties are ORDERED to provide proof to this Court that this prior contempt sanction has been addressed.

Judge Cook's NOTICE OF COURT-ORDERED HEARING ON DEFENDANTS' MOTION FOR FINAL SUMMARY JUDGMENT signed July 29, 2010 states:

At this mandatory hearing the parties must be prepared to address the ORDER ADJUDGING CONTEMPT entered by Judge Barton on July 7, 2008, as instructed by this Court's prior order.

The parties are further advised that failure to appear or to comport with either the "Notice of Case Management Status and Orders on Outstanding Res Judicata Motions" or this "Notice of Court-Ordered Hearing on Defendants' Motion for Final Summary Judgment" may constitute contempt of court, which could result in the imposition of sanctions, including without limitation fine, incarceration or dismissal of the action with prejudice.

This document is being provided to Mr. Bauer separately, with copy to the Bar.

Mr. Bauer wrote the following, page 6, ¶3. I will respond to this paragraph below.

Soon after my representation of Mr. Gillespie began, he became hostile towards my staff. Mr. Gillespie, on numerous occasions, acted hostilely towards my staff while attending meetings at my office (See Affidavit of Beverly Lowe, Exhibit D). He also expressed displeasure that he was being billed for time spent by my law clerks and paralegals in connection with his case. While the billing practices employed during the scope of our representation of Mr. Gillespie fell within the fee agreement he signed (Exhibit B), I advised my staff that they were no longer to work on his case in an attempt to appease him.

Mr. Bauer falsely wrote that I became hostile toward his staff shortly after his representation began. This is a complete and utter falsehood. I did not act hostility towards his staff while attending meetings at his office while I was a client. I did not express displeasure that I was being billed for time spent by his law clerks and paralegals in connection with my case. I questioned the practice of billing \$100 paralegal rates to do secretarial duties like open mail and put documents in files, which was contrary to the contract<sup>2</sup>. As for Beverly Lowe, she arrived after I had been a client for one year and was not present to observe anything during that time. Ms. Lowe's affidavit for an alleged incident when I was no longer a client is irrelevant. Nonetheless I made an affidavit in rebuttal that is listed as Exhibit 11, available upon request. I also made an affidavit of Mr. Bauer's refusal to return my case file, listed as Exhibit 12, available upon request.

Here is another false statement of Mr. Bauer:

Because my staff was removed from his case, they did not follow our standard operating procedures in regards to Mr. Gillespie's documents. As such, he was not provided with the Fact Information Sheet required to be filled out in connection with the Final Judgment ordered against him on March 27, 2008. This was an oversight for which I apologized to Mr. Gillespie, opposing counsel, and the Court in the letter dated July 24, 2008 (Exhibit 10 of Mr. Gillespie's grievance).

Mr. Bauer falsely wrote that his staff was removed from my case. In fact I was in frequent contact with Mr. Bauer's staff through the time I was a client. There are many, many emails showing my contact and friendly communication with his staff at all times during the representation. I even have a personal email with one employee offering

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<sup>2</sup> I questioned a number of instances of overbilling which Mr. Bauer admitted and made corrections. In retaliation Mr. Bauer sent me a new fee contract March 31, 2008 with higher rates. In a cover letter Mr. Bauer wrote "Please be advised that this is appropriate under the Laws of Florida as the type of fee agreement we have is construed to be an employment at will and may be modified or terminated at anytime. If you have any concerns regarding the validity of this statement would instruct you to contact another attorney to advise you on this issue." In my view if the contract can be "modified or terminated at anytime" and is between unequal bargaining partners such as a law firm and a private party, this amounts to an adhesion contract that exploits unequal power relations. Mr. Bauer also admitted that it is often the practice of law firms to include the cost of general secretarial duties or other costs in the rate for attorney's fees, but that is not the practice of his firm. This was not clear in our original contract, and added thousands and thousands of dollars to the cost of litigation.

suggestions for a law school that does not require the LSAT. I would be happy to provide copies of the emails upon request.

This question goes to the essence of a major problem with Mr. Bauer, his inattention to detail, and an office operating in disarray. As I noted, Mr. Bauer kept firing his employees or they left voluntarily when they realized their mistake in working for him.

8. Failure to zealously stay the Final Judgment:

Mr. Bauer wrote "Because Mr. Gillespie was unwilling to post a bond, there was little I could do to defend against an action that I was, statutorily, not entitled to notice of until after the action had already commenced." (p7, ¶3). This is false, and a material misrepresentation to the Bar.

I immediately applied for a supersedes bond through the Juris Company suggested by Mr. Bauer. Here is the text of the email from Josh Cossey with a status on the bond. Again, this also shows I was working closely with Mr. Bauer's staff. Listed as Exhibit 13, available upon request.

**From:** "Joshua A Cossey" <jac@bauerlegal.com>

**To:** "Neil Gillespie" <neilgillespie@mfi.net>

**Sent:** Tuesday, August 19, 2008 12:45 PM

**Subject:** Bond status update.

Mr. Gillespie,

I have received your fax, submitted all relevant issues to Mr. Bauer, and submitted the application for initial review to Juris Co. I have also called them and they have acknowledge receipt. I will notify you of any further developments. Additionally, I expressed your concerns regarding the head of household statement, and will follow up with him today.

Respectfully,

Joshua A. Cossey, JD

The Law Office of Robert W. Bauer, P.A.

Here is the text of an email from Mr. Bauer; he said a bond was not in my best interest for the reasons stated in his email. Listed as Exhibit 14, available upon request.

**From:** "Robert W. Bauer, Esq." <rwb@bauerlegal.com>

**To:** "Neil Gillespie" <neilgillespie@mfi.net>

**Sent:** Tuesday, August 19, 2008 4:24 PM

**Subject:** Bond

We received a response from several bonding companies. While we have been able to receive court bonds in the past that where based on a percentage – we are not able to do so at this time. They are now requiring 100% collateral for the bond. Then they charge a service fee of several thousand dollars. I cannot see any advantage for you with this. We still have the option that you can post the full amount with a disinterested third party escrow agent – I should be able to get

another attorney to do that for little or nothing. Again, considering our review of what they can get I am not sure this is in your best interest. Please advise me of your desires in this as soon as possible.

Robert W. Bauer, Esq.  
Law Office of Robert W. Bauer, P.A

My email to Mr. Bauer telling him I don't have money to post for a bond. Listed as Exhibit 15, available upon request.

**From:** "Neil Gillespie" <neilgillespie@mfi.net>  
**To:** "Robert W. Bauer, Esq." <rwb@bauerlegal.com>  
**Sent:** Tuesday, August 19, 2008 5:35 PM  
**Subject:** Re: Bond  
August 19, 2008  
Mr. Bauer,

I do not have the money you request to pay for the bond, nor do I have that amount to post with a third party. Barker Rodems & Cook took the last few hundred dollars out of my checking account on August 11, 2008 by garnishment. As you know, thus far I have paid your legal bills with credit cards or home equity loan checks. I am indebted to my mother for over \$18,000 for your attorney's fees, plus many more thousands for transcripts, other lawyer's fees, etc (See the email for the rest of the text, Exhibit 15)

Mr. Bauer wrote "Because enforcement of judgments is done ex parte, it was not possible for me to know what actions Mr. Rodems was taking in that regard. Upon learning that Mr. Rodems intended to proceed with garnishment, I filed an emergency motion for stay." (p7, ¶2). The problem with this statement is Mr. Bauer received the garnishment August 1, 2008 but did not tell me! (His trust account was garnished too). I found out about the garnishment when my checks started bouncing August 8, 2008. For over a week Mr. Bauer knew about the garnishment and did not tell me. See my email to him on this subject of August 11, 2008. Listed as Exhibit 16, available upon request.

**From:** "Neil Gillespie" <neilgillespie@mfi.net>  
**To:** "Robert W. Bauer, Esq." <RWB@bauerlegal.com>  
**Cc:** "Natalia D Ricardo" <ndr@bauerlegal.com>; "Beverly Lowe" <bel@bauerlegal.com>  
**Sent:** Monday, August 11, 2008 11:18 AM  
**Subject:** writ of garnishment

Dear Mr. Bauer,  
Today my bank informed me that a writ of garnishment has been served against my accounts. On Friday evening, August 8, 2008, I noticed checks I had written were not being paid. It turns out that my accounts were frozen. Today the bank would not disclose who initiated the writ of garnishment. I am assuming it was Mr. Rodems on behalf of his client Barker, Rodems & Cook, PA for their final judgment of \$11,550. The bank said the sheriff would be serving papers upon me, but as of now that has not happened.

In a letter to you dated April 8, 2008, I requested that you stay any action on the final judgment. While you have made a motion to stay the judgment, you have not even scheduled a hearing. (See the email for the rest of the text, Exhibit 16)

On August 12, 2008 I sent Mr. Bauer another email outlining the chain of events leading to the garnishment. Listed as Exhibit 17, available upon request.

**From:** "Neil Gillespie" <neilgillespie@mfi.net>  
**To:** "Robert W. Bauer, Esq." <RWB@bauerlegal.com>  
**Cc:** "Tanya Uhl" <TMU@bauerlegal.com>; "Joshua Cossey" <jac@bauerlegal.com>; "Natalia D Ricardo" <ndr@bauerlegal.com>; "Beverly Lowe" <bel@bauerlegal.com>; "Ann Breeden" <agb@bauerlegal.com>  
**Sent:** Tuesday, August 12, 2008 10:05 AM  
**Subject:** Writ of Garnishment

August 12, 2008

Mr. Bauer,

Please provide a copy of the Writ of Garnishment by email. When did you first become aware that Mr. Rodems obtained a Writ of Garnishment?

Now that my bank accounts have been emptied, what else can I expect to happen?

1. Will my car be taken away? Yesterday I transferred the car to my mother's name.
2. Will things from my home be taken away? My cloths? My Computer?
3. Will there be a sheriff sale? If so, when?
4. Will my family's assets (not in my name) be taken?
5. What else can I expect as a result of the Writ of Garnishment?

During our March 27, 2008 phone call I instructed you to stay the final judgment, and you agreed to file a motion to stay. It goes without saying that the motion to stay must be filed, scheduled, and heard in a timely manner. "Timely" means BEFORE the execution of the judgment, writ of garnishment, etc. Otherwise it is a case of closing the barn door after the horse has escaped. On April 8, 2008, I instructed you by letter to stay the final judgment. Why did you fail to act in a timely matter? Why did you wait until June 9, 2008 to submit Plaintiff's Motion For Stay? Why did you fail to schedule a hearing in June? Why did you fail to schedule a hearing in July? Now that we are in the month of August, your current excuse that the judge is on vacation strains credulity. (See the email for the rest of the text, Exhibit 17)

In addition to the garnishment, Mr. Rodems was aggressively pursuing discovery in aid of execution against our trust, The Gillespie Family Living Trust. The only asset in the trust was our retirement home and furnishings but Mr. Bauer said he knew of no way to keep Mr. Rodems out of the trust. This was the final breakdown in our relationship.

Earlier this year I found good case law protecting property in trusts. Mr. Bauer claimed he could not object to Rodems discovery into our trust. But this case law holds otherwise,

see 13 Fla. Jur 2d Creditors' Rights § 91. The creditors of the trustee are not entitled to an attachment to subject trust property held by the trustee to the payment of the trustee's debts. Tillman v. Taylor, 99 Fla. 1326, 128 So. 846, Fla. 1930. The remedy is not available even if the debt is chargeable to the trust itself. Johnston v. Smith, 76 Fla. 474, 80 So. 184, Fla. 1918. The equitable interest of a defendant as beneficiary of a trust is not subject to garnishment, at least in the absence of express statutory authorization. McLeod v. Cooper, 88 F.2d 194, C.A.5 1937.

#### 9. Withdrawal as Counsel:

Mr. Bauer wrote, "As stated previously, the relationship between Mr. Gillespie -and I became strained soon after I made my appearance in his case." (p7, ¶4). This is false, and a material misrepresentation to the Bar.

Mr. Bauer wrote the following, page 7, ¶5. I will respond to this paragraph below.

For reasons unclear to me, Mr. Gillespie also became hostile towards my staff and often questioned their qualifications. This made communication with Mr. Gillespie even more difficult. In actuality, many of those individuals listed at page 3 of Mr. Gillespie's grievance are now members of our profession and the Florida Bar. I feel it is our duty as Bar Member's, especially in Gainesville, to help train our future colleagues and as such, I have continually employed law clerks while they are attending the University of Florida, Levin College of Law. It was due to Mr. Gillespie's unwillingness to treat my staff with respect coupled with his frustration and inability to communicate effectively with me, that I felt it necessary to withdraw as his counsel in this matter (See Exhibit D).

When I first met Mr. Bauer March 2, 2007 he said he had been in business for about a year. This was false; it was a couple of months. When I became a client Mr. Bauer had one employee, Karen McCain. She was young and pleasant, and I liked her. She confided in me her fear about taking the LSAT. I suggested she look at Massachusetts School of Law in Andover that does not require the LSAT. Karen was also considering a Master of Arts in Legal Studies at University of Illinois at Springfield.

But Mr. Bauer fired Karen, and he was somewhat justified, since her previous job was a sales clerk at Radio Shack and she lacked sufficient legal experience to bill clients at \$75 to \$100 per hour. Mr. Bauer also complained that Karen could not multitask.

Within a few months of me becoming a client Mr. Bauer hired more employees. Then I noticed another problem. Mr. Bauer likes the ladies too much for a married man running a law office. Mr. Bauer is tall and handsome and it soon became apparent he liked the attention of all the young pretty women he hired. I recall one day when I was in his office, a young woman stopped by from a neighboring office, perhaps to notarize something. After she left Mr. Bauer began making sexual comments about her body. I just smiled and nodded to appease him. I believe some of these women were a distraction to Mr. Bauer. And for others, I believe they resented Mr. Bauer's playboy demeanor. I believe this contributed to a high turnover of staff.

As a former businessman myself, I tried to counsel Mr. Bauer on the value of experienced staff, committed to the long term, who could provide continuity of service to the client. Mr. Bauer believes he has a “duty as Bar Member's, especially in Gainesville, to help train our future colleagues”. In fact, the client is his first responsibility.

It is long established that the relationship between an attorney and his client is one of the most important, as well as the most sacred, known to the law. The responsibility of an attorney to place his client's interest ahead of his own in dealings with matters upon which the attorney is employed is at the foundation of our legal system. (Deal v. Migoski, 122 So. 2d 415). It is a fiduciary relationship involving the highest degree of truth and confidence, and an attorney is under a duty, at all times, to represent his client and handle his client's affairs with the utmost degree of honesty, forthrightness, loyalty, and fidelity. (Gerlach v. Donnelly, 98 So. 2d 493).

Otherwise I got along fine with his staff, although since he kept firing them or they left of their own accord at a high frequency, I never got to know most of them.

#### 10. Appeals Court Misconduct:

Mr. Bauer wrote: “As I stated earlier, Mr. Gillespie was adamant about appealing the Final Judgment. I explained to him that an appeal was not appropriate, but he proceeded to file the appeal anyway without my knowledge or assistance.” Actually Mr. Bauer helped me file the appeal and he had full knowledge of my effort. It was done this way because Mr. Bauer did not want to pay the filing fee. I paid the filing fee with my own funds. Here is the email from Josh Cossey, cc to Mr. Bauer. Listed as Exhibit 18.

**From:** "Joshua A Cossey" <jac@bauerlegal.com>

**To:** <neilgillespie@mfi.net>

**Cc:** "Robert W. Bauer, Esq." <rwb@bauerlegal.com>

**Sent:** Thursday, April 24, 2008 6:36 PM

**Attach:** Florida Rules of Appellate Procedure 2007.pdf

Greetings Mr. Gillespie,

It was a pleasure speaking with you today regarding the questions and concerns raised surrounding case 05-CA-007205. Per our conversation, I have attached the Florida Rules of Appellate Procedure so that you may have it on hand if needed. While I can not advise you or provide legal opinions as to what should be done (strictly defaulting to Mr. Bauer), I note my personal attention to Rule 9.110. You will hear from this office before close of business tomorrow regarding this offices involvement and direction surrounding the appeal and other issues raised in our conversation.

Respectfully,

Joshua A. Cossey, JD

The Law Office of Robert W. Bauer, P.A.

Here is the email from Natalia D. Ricardo providing the appellate filing documents. There are quite a few emails showing that Mr. Bauer knew about and assisted with the appeal. Listed as Exhibit 19, available upon request.

**From:** "Natalia Ricardo" <ndr@bauerlegal.com>

**To:** <neilgillespie@mfi.net>

**Sent:** Friday, April 25, 2008 10:54 AM

**Attach:** 04-25-08-Notice of Filing Appeal.pdf

**Subject:** Law Office of Robert W. Bauer, P.A.

Mr. Gillespie,

Attached please find the Notice of Filing Appeal as well as the Final Judgment (in one pdf). Should you have any problems viewing the attachment, please do not hesitate to contact me via e-mail or at the telephone number listed below.

Sincerely,

Natalia D. Ricardo

Legal Assistant to Robert W. Bauer, P.A.

#### 11. Withdrawal and pro se response:

As for Exhibit C to Mr. Bauer's response, Plaintiff Neil J. Gillespie's pro se Response to Attorney Robert W. Bauer's Motion for Withdrawal of Counsel, that was a last minute effort. In July 2009 I retained attorney Seldon Childers to review this matter, negotiate with Mr. Bauer, and advise about the future of the case. But Mr. Childers failed to advise me about the motion to withdrawal, and I was concerned that Judge Barton would not allow the case to proceed unless I paid Mr. Bauer's \$12,650 outstanding legal bill. So I drafted my pleading to mitigate that possibility. Once I agreed to release Mr. Bauer from the case, the hearing was over. Transcript available upon request.

#### 12. Response to Allegations of Fraud:

As shown in this rebuttal, Mr. Bauer made many misrepresentations of material fact to the Florida Bar. In addition, I spoke with Karen Kelly of the LRS September 14, 2010. Ms. Kelly said Mr. Bauer has not paid his LRS fee for this case, which she identified as case no. 2007-13518. She said Mr. Bauer marked this matter "case pending".

Mr. Bauer wrote "Although we were engaged in litigation that was very contentious, Mr. Rodems was at all times cordial and professional and treated me with dignity and respect." This is not what Mr. Bauer told me. He said Mr. Rodems lied to the court about a signed contingent fee agreement among other things. As for the "slimy attorney" comment, Mr. Bauer said "Furthermore, the comment was based on Mr. Gillespie's claims against Mr. Cook, not Mr. Rodems." That is contrary to the holding of Smyrna Developers. Partners engaged in the practice of law are each responsible for the fraud or negligence of another partner when the later acts within the scope of the ordinary business of an attorney. Smyrna Developers, Inc. v. Bornstein, 177 So.2d 16. This is especially true in a small three-attorney firm where they conspire to deceive their clients.

III. RESPONSE TO OTHER ALLEGATIONS NOT COVERED BY RULES OF PROFESSIONAL CONDUCT:

Mr. Bauer wrote "Frankly, Mr. Gillespie often wanted to give legal suggestions and advice without sufficient knowledge to do so. He continuously requested that I take actions that were inappropriate and would give rise to liability on both of our parts." In fact I was busy caring for my mother who was dying of Alzheimer's and did not have time to do all the things Mr. Bauer claimed. Late in the representation when my bank account was garnished and Mr. Rodems wanted discovery on the trust, I had to act for mere economic survival, but it was too late.

Mr. Bauer wrote "He made threats to my office staff and did not wish to have my law clerks work on his case." This is nonsense and I deny this accusation. As shown in the emails, I worked well with his staff. The biggest threat to Mr. Bauer's staff was Mr. Bauer. He kept firing or loosing them.

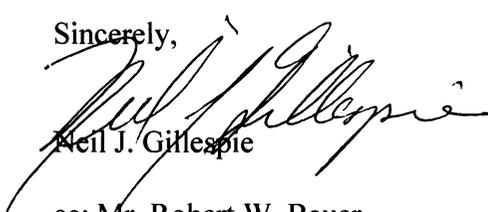
Mr. Bauer wrote "I was successful in reestablishing his claims against BRC and in securing a stay of the final judgment against him." Reestablishing the claims is of little value without amending the complaint and litigating the case. Securing a stay of final judgment is worthless if one cannot meet the terms of the stay.

Mr. Bauer wrote "He threatened to file this grievance if I did not agree to his demands." That statement is false. I did not make any threats against Mr. Bauer.

Attorney Seldon Childers reviewed this matter and wrote: "Bauer's Outstanding Fees. Mr. Bauer has a claim to his fees of \$12,517.41, at least as of the most current invoice that I was provided. On the one hand, he may have difficulty proving his entitlement to the fees, due to some evidence that an attempt was made to renegotiate the contract to a contingency basis."

Given the number of misrepresentations and outright lies Mr. Bauer put forth in his response, I would be satisfied if Mr. Bauer is disbarred to protect the public.

Sincerely,

  
Neil J. Gillespie

cc: Mr. Robert W. Bauer

Enclosures: List of Exhibits, available upon request.

Exhibit 6, September 5, 2007 letter of Robert W. Bauer, to Neil Gillespie stating "I believe it is necessary at this time to reevaluate the initial complaint and draft an amended complaint to include allegations of malpractice and breach of fiduciary duty.

September 5, 2007

Neil Gillespie  
8092 SW 115<sup>th</sup> Loop  
Ocala, FL 34481

Ref: Case Status

Dear Mr. Gillespie,

This letter is to provide you with a brief description of what occurred at last month's hearing on your motion to withdraw voluntary dismissal. As I indicated in my telephone messages after the hearing, we prevailed in our motion and your cause of action has been reinstated.

I believe it is necessary at this time to reevaluate the initial complaint and draft an amended complaint to include allegations of malpractice and breach of fiduciary duty. I believe that it is likely from the comments of opposing counsel that at this time, they are going to attempt to seek an interlocutory appeal in regards to the issue of jurisdiction over this case.

The issue of jurisdiction is more clearly stated in that they believe the court no longer has jurisdiction to hear your causes of action after the voluntary dismissal. I, of course, am willing to handle any appeal that is filed in this action and will advise you as soon as possible for a need to respond to this. However, I must advise you that the defendant seeking interlocutory appeal while the case is pending is going to cause us to have two cases to focus our attention on at one time. This is going to cause a significant amount of work on the part of our office. I only advise you of this so that you will not be surprised when the monthly attorney's bills increase significantly over the coming months.

I do not anticipate any problems from you in regard to the payment of your bills as you have been most courteous and prompt in your responses and payments to bills that have been forwarded. I simply advise you of this to give you advance warning of what might be a financial difficulty for you.

If you have any questions or concerns regarding this, please contact me.

Sincerely,



Robert W. Bauer, Esq.

RWB/kam

**EXHIBIT**

**6**

Exhibits available upon request. Exhibits were not provided due to the Bar's request that I limit this response to 25 pages.

1. MEMORANDUM OF LAW IN SUPPORT OF PLAINTIFF'S MOTION TO WITHDRAW VOLUNTARY DISMISSAL OR ALTERNATIVELY MOTION TO AMEND ANSWER TO INCLUDE COUNTER -COUNTER COMPLAINT, May 2, 2007

2. ORDER GRANTING PLAINTIFF'S MOTION TO WITHDRAW PLAINTIFF'S NOTICE OF VOLUNTARY DISMISSAL, August 31, 2007

3. Plaintiff's Motion for Rehearing July 16, 2008

4. August 5, 2010 letter of attorney Tanya Bell Esq. Bar No. 0052924 (f.k.a. Tanya Uhl).

5. Email of Ann G. Breeden, August 12, 2008

6. Letter of Robert W. Bauer, September 5, 2007 to Neil Gillespie

7. Judge Nielsen's Order of May 12, 2006, on disqualification of Mr. Rodems as counsel

8. Plaintiff's Accommodation Request Americans with Disabilities Act (ADA), February 20, 2007

9. Plaintiff's Amended Request Americans with Disabilities Act (ADA), March 5, 2007

10. Notice of Filing Affidavit of Neil J. Gillespie, September 18, 2010 (RWB email)

11. Affidavit of Neil J. Gillespie in Rebuttal to Beverly Lowe

12. Affidavit of Neil J. Gillespie, Mr. Bauer's refusal to return my case file

13. Email of Josh Cossey, August 19, 2008, supersedes bond through the Juris Company

14. Email of Mr. Bauer, August 19, 2008, stating a supersedes bond is not in my interest

15. My email August 19, 2008 to Mr. Bauer telling him I don't have money to post for a bond.

16. My email August 11, 2009 to Mr. Bauer telling him my bank account was garnished

17. My email August 12, 2008 to Mr. Bauer outlining chain of events leading to garnishment

18. Email of April 24, 2008 from Josh Cossey, assistance with appeal to the 2DCA

19. Email of April 25, 2008 from Natalia D. Ricardo providing the appellate filing documents

Exhibits available upon request. Exhibits were not provided due to the Bar's request that I limit this response to 25 pages.

1. MEMORANDUM OF LAW IN SUPPORT OF PLAINTIFF'S MOTION TO WITHDRAW VOLUNTARY DISMISSAL OR ALTERNATIVELY MOTION TO AMEND ANSWER TO INCLUDE COUNTER -COUNTER COMPLAINT, May 2, 2007

2. ORDER GRANTING PLAINTIFF'S MOTION TO WITHDRAW PLAINTIFF'S NOTICE OF VOLUNTARY DISMISSAL, August 31, 2007

3. Plaintiff's Motion for Rehearing July 16, 2008

4. August 5, 2010 letter of attorney Tanya Bell Esq. Bar No. 0052924 (f.k.a. Tanya Uhl).

5. Email of Ann G. Breeden, August 12, 2008

6. Letter of Robert W. Bauer, September 5, 2007 to Neil Gillespie

7. Judge Nielsen's Order of May 12, 2006, on disqualification of Mr. Rodems as counsel

8. Plaintiff's Accommodation Request Americans with Disabilities Act (ADA), February 20, 2007

9. Plaintiff's Amended Request Americans with Disabilities Act (ADA), March 5, 2007

10. Notice of Filing Affidavit of Neil J. Gillespie, September 18, 2010 (RWB email)

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IN THE CIRCUIT COURT OF THE THIRTEENTH JUDICIAL CIRCUIT,  
IN AND FOR HILLSBOROUGH COUNTY, FLORIDA

NEIL J. GILLESPIE,  
Plaintiff,

vs.

CASE NO.: 2005-CA-7205

BARKER, RODEMS, & COOK, P.A.,  
A FLORIDA CORPORATION, AND  
WILLIAM J. COOK, AN INDIVIDUAL,  
Defendant.

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MEMORANDUM OF LAW IN SUPPORT OF PLAINTIFF'S MOTION TO WITHDRAW  
VOLUNTARY DISMISSAL OR ALTERNATIVELY MOTION TO AMEND ANSWER TO  
INCLUDE COUNTER – COUNTER COMPLAINT

Plaintiff, Neil Gillespie, by and through his undersigned attorney files this  
MEMORANDUM OF LAW IN SUPPORT OF PLAINTIFF'S MOTION TO WITHDRAW  
VOLUNTARY DISMISSAL OR ALTERNATIVELY TO AMEND ANSWER TO INCLUDE  
COUNTER – COUNTER COMPLAINT and states in support thereof:

On or about February 7, 2007, pro se plaintiff, Neil J. Gillespie filed a PLAINTIFF'S  
NOTICE OF VOLUNTARY DISMISSAL dismissing his cause of action without prejudice  
pursuant to Rule 1.420 (a). The dismissal allowed for the defendant's counter-claim to remain for  
adjudication and did not completely dismiss the action. On February 15, 2007 pro se plaintiff,  
Neil J. Gillespie filed a WITHDRAWAL OF PLAINTIFF'S NOTICE OF VOLUNTARY  
DISMISSAL citing mistake and inexperience with the practice of law for the reason in  
submitting the previous dismissal. In opposition, counsel for defendants, Barker, Rodems, &  
Cook, P.A., and William J. Cook, have forwarded to plaintiff's counsel a copy of an order on  
NOTICE OF WITHDRAWAL OF COMPLAINT AND PLAINTIFF'S MOTION TO  
WITHDRAW NOTICE OF WITHDRAWAL OF COMPLAINT from the Hillsborough County  
Circuit Court case number 03-1727. Exhibit A. Defendant's counsel has incorrectly asserted  
that the above authority holds that there is no meritorious claim to be made in regards to the  
WITHDRAWAL OF PLAINTIFF'S NOTICE OF VOLUNTARY DISMISSAL.

The above order cites United Services Automobile Association v. Johnson, 428 So. 2d  
334 (Fla. 2<sup>nd</sup> DCA 1983); Piper Aircraft Corporation v. Prescott, 445 So. 2d 591 (Fla. 1<sup>st</sup> DCA

EXHIBIT

1

1984) in the courts denial of that case's WITHDRAWAL OF PLAINTIFF'S NOTICE OF VOLUNTARY DISMISSAL. All three of the above referenced cases were actions where no counter-complaints were filed. Further, all three cases dealt with actions where the plaintiff dismissed the entire action completely under 1.420. The fact that no counter-complaints were filed in the above cited cases makes any comparison to them inapplicable as they presume that a proper dismissal pursuant to rule 1.420 had in fact occurred. In the instant case, this Court has continuing jurisdiction over this matter as a counter-claims were filed by Barker, Rodems, and Cook, P.A., a Florida Corporation; and William J. Cook, defendants in this action.

Rule 1.420 states that where a counter-claim is filed by a defendant or a third party, the plaintiff cannot voluntarily dismiss the action without an order of the trial court. No such order has been entered in this action. The First DCA in evaluating Rule 1.35, the predecessor to Rule 1.420, found that the procedure for dismissal was only effective when filed in strict compliance with the Rules of Civil Procedure. Scott v. Permacrete, Inc. 124 So.2d 887, 889 (Fla. 1<sup>st</sup> DCA 1960). In that case the court held that a defendant, who had been dismissed by the plaintiff under Rule 1.35, was still subject to a default judgment against them granted to a counter-plaintiff. The court reasoned that the dismissal had been ineffective in releasing the defendants as a party and therefore were still subject to the court's jurisdiction. In the instant case, the PLAINTIFF'S NOTICE OF VOLUNTARY DISMISSAL was ineffective in removing the plaintiff as a party and he fully retains the right to reassert his claims. Id.

Admittedly, the rules allowing dismissal have changed some since being put in place as Rule 1.35. Rule 1.35 allowed an action to be dismissed by the plaintiff without a court order only when an answer had not been filed, a motion for summary judgment had not been entered, or that a stipulation of dismissal had been filed. The new rule under 1.420 allows a voluntary dismissal at almost anytime if there is no counter-complaint. However, it specifically states that when a counter-claim is present, the plaintiff may only have a dismissal of their action after the court enters an order of dismissal and upon such terms and conditions as the Court deems proper. As it is undisputed that there is a counter-claim in this action, strict compliance with the procedural rules of 1.420 still requires that no dismissal has taken place until such time as the court has ruled on it. Since the Court has not ruled upon the MOTION TO WITHDRAW, and the plaintiff has withdrawn such motion prior to the Court adjudicating the issue, the voluntary

dismissal has not occurred.

Slightly more recent support of this can be found in the Third DCA when it held that “the problem presented...is that [Rule 1.420] refers to dismissal of ‘an action’ and does not appear to authorize dismissal by such notice of a part of the action.” Cooper v. Carroll, 239 So.2d 511, 513 (Fla. 3<sup>rd</sup> DCA 1970). In Cooper the court compared and contrasted Rule 1.540, Rule 1.420 and Rule 1.250 to determine which should be used to seek relief after an inadvertent dismissal of defendant. The court held that a Rule 1.540 motion for relief was appropriate in that case. However, its logic shows that a Rule 1.540 motion is not necessary in this case because a Rule 1.420 dismissal never occurred. Specifically, the Court showed that Rule 1.420 can only be used for the purpose of dismissing an entire action and any other type of dismissal must use Rule 1.250 to facilitate dropping a portion of an action. In the instant case, the MOTION FOR VOLUNTARY DISMISSAL was not properly filed under Rule 1.250 and was ineffective in dismissing the plaintiff’s case.

Even assuming that the notice of dismissal is valid and the plaintiff’s cause of action has been dismissed, the plaintiff still remains a party to this action as a counter-defendant and thereby should be entitled to file an amended answer to the defendant’s counter-complaint. This answer would necessarily include a confusingly titled Counter-Counter Complaint. This of course gives rise to the possibility of the Plaintiff becoming the Counter-Counter-Plaintiff. While theoretically possible – this just seems confusing. However, if the plaintiffs request to withdraw the voluntary dismissal is not granted, then this pleading should stand as a MOTION TO AMEND PLAINTIFF’S ANSWER AND FILE A COUNTER- COUNTER COMPLAINT a copy of which is attached. Exhibit B.

Additionally, it is in the interest of judicial economy to allow the withdraw of the voluntary dismissal. A dismissal under Rule 1.35, or the current 1.420, is not adjudication on the merits and is no bar to a subsequent suit on the same cause of action. Drady v. Hillsborough County Aviation Authority , 193 So.2d 201, 205 (Fla. 1<sup>st</sup> DCA 1966). This leaves the plaintiff free to file a separate complaint with the same set of facts. If this is done then it would be appropriate to consolidate the two cases into one. This extended process would seem to be a waste of the Court’s time.

## CONCLUSION

This Court should find that the plaintiff did not enter a proper NOTICE OF VOLUNTARY DISMISSAL and should allow the WITHDRAWAL OF PLAINTIFF'S NOTICE OF VOLUNTARY DISMISSAL such that plaintiff is entitled to proceed forward with his cause of action as originally pled.

## CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a true copy of the above MEMORANDUM OF LAW IN SUPPORT OF PLAINTIFF'S MOTION TO WITHDRAW VOLUNTARY DISMISSAL OR ALTERNATIVELY TO AMEND ANSWER TO INCLUDE COUNTER – COUNTER COMPLAINT has been sent by U. S. Mail to RYAN C. RODEMS, ESQ. this 2 day of May 2007.

Ryan C. Rodems, Esq.  
400 N Ashley Dr., Ste 2100  
Tampa, FL 33602

Law Office of Robert W. Bauer, P.A.

By:  \_\_\_\_\_

Robert W. Bauer, Esq.  
Florida Bar No.: 0011058  
2815 NW 13<sup>th</sup> St., Ste 200E  
Gainesville, FL 32609  
352.375.5960  
352.337.2518 fax

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

DAVID FULLER,

PLAINTIFF,

CASE NUMBER: 03-1727

vs.

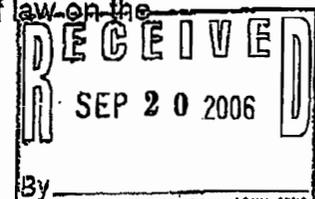
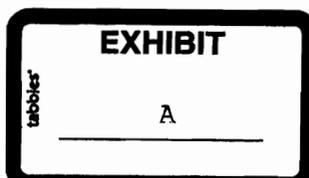
DIVISION " F "

JEFFREY B. STARLING, M.D.,  
JAMES E. ALVER, M.D., and  
BAY AREA UROLOGICAL ASSOCIATES,  
P.A., a Florida Professional Services  
Corporation,

DEFENDANTS.

ORDER ON NOTICE OF WITHDRAWAL OF COMPLAINT  
AND PLAINTIFF'S MOTION TO WITHDRAW NOTICE OF  
WITHDRAWAL OF COMPLAINT

THIS CAUSE came on for hearing on August 23, 2006, for consideration of motions for summary judgment filed by several defendants. The plaintiff also set for hearing his motion to continue the hearing on the motions for summary judgment. At the beginning of the hearing the defendants brought to the attention of the court that the plaintiff served on July 17, 2006, a Notice of Withdrawal of Complaint which was filed on July 19, 2006. The plaintiff and counsel for the defendants presented argument on the effect of the Notice of Withdrawal of Complaint and argued Plaintiff's Motion to Withdraw His Notice of Withdrawal of Complaint. At the conclusion of the hearing the parties were given an additional two weeks to provide case law and memoranda of law on the



Issues raised at the hearing. The court has considered all of the foregoing and makes the following findings:

(1) Plaintiff's Notice of Withdrawal of Complaint was intended to be a Notice of Voluntary Dismissal pursuant to Fla. R. Civ. P. 1.420(a). Paragraphs 15-17 of the plaintiff's Notice make it clear that the plaintiff intended to dismiss the action voluntarily and absolutely. Plaintiff recognized "that once a timely voluntary dismissal is taken the trial court loses its jurisdiction...."

(2) Although plaintiff argued at the hearing and in his brief that his Notice of Withdrawal of Complaint was not "voluntary" in the sense that he was under duress and "pressure," including the pending motions for summary judgment, Plaintiff has not established legal duress and has not cited any persuasive case authority to support his argument.

(3) The court is unable to discern all that may have motivated the plaintiff to voluntarily dismiss the action. However, at least plaintiff sought to avoid any possible taxing of costs and attorney fees by the court.

(4) On August 7, 2006, plaintiff filed Plaintiff's Motion to Withdraw His Notice of Withdrawal of Complaint.

(5) This court is without jurisdiction to consider Plaintiff's Motion to Withdraw His Notice of Withdrawal of Complaint because plaintiff's voluntary dismissal of the action divested this court of jurisdiction. *United Services Automobile Association v. Johnson*, 428 So.2d 334 (Fla. 2<sup>nd</sup> DCA 1983); *Piper Aircraft Corporation v. Prescott*, 445 So.2d 591 (Fla. 1<sup>st</sup> DCA 1984).

(6) Arguably, this court lacks jurisdiction even to enter this order and the purpose of this order is only to clarify the effect of plaintiff's Notice of Withdrawal of Complaint.

Based upon the foregoing it is thereupon

**ADJUDGED** as follows:

1. The Notice of Withdrawal of Complaint filed by the plaintiff is deemed to be a voluntary dismissal pursuant to Fla. R. Civ. P.1.420(a).
2. The court has been divested of jurisdiction to consider Plaintiff's Motion to Withdraw His Notice of Withdrawal of Complaint.

**ORDERED** in Chambers, at Tampa, Hillsborough County, Florida, this \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_\_.

**ORIGINAL SIGNED**

**SEP 19 2006**

**RICHARD A. NIELSEN  
CIRCUIT COURT JUDGE**

**RICHARD A. NIELSEN  
CIRCUIT JUDGE**

Copies furnished to:

David T. Fuller, Pro Se  
3109 Emerson Place  
Plant city, Florida 33568

Barbara J. Chapman, Esquire  
101 East Kennedy Blvd., Suite 2500  
Tampa, Florida 33602

Tyler E. Batteese, Esquire  
100 South Ashley Drive, Suite 1190  
Tampa, Florida 33602

IN THE CIRCUIT COURT OF THE THIRTEENTH JUDICIAL CIRCUIT,  
IN AND FOR HILLSBOROUGH COUNTY, FLORIDA

NEIL J. GILLESPIE,  
Plaintiff,

vs.

CASE NO.: 2005-CA-7205

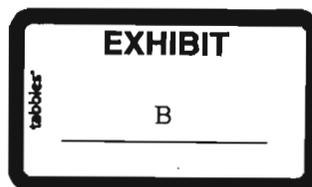
BARKER, RODEMS, & COOK, P.A.,  
A FLORIDA CORPORATION, AND  
WILLIAM J. COOK, AN INDIVIDUAL,  
Defendant.

---

**AMENDED ANSWER TO COUNTER-COMPLAINT**

Counter-Defendant, Neil J. Gillespie (Plaintiff), answers Counter-Plaintiffs', Barker, Rodems, & Cook, P.A.(Defendants BRC) and William J. Cook (Defendant Cook), Counter-Claims against Plaintiff, Neil J. Gillespie , and state the following in response to their numbered paragraphs:

61. Admit for jurisdictional purposes only.
62. Admit.
63. Admit as to Defendant BRC being a Florida Corporation; Denied as to remainder.
64. Admit.
65. Denied.
66. Denied.
67. Denied.
68. Denied.
69. Without Knowledge.
70. Re-alleges responses to paragraph 61 – 68.
71. Denied.
72. Without Knowledge.
73. Re-alleges responses to paragraph 61 – 68.
74. Admit as to actions of Defendants; Denied as to action of Plaintiff.



## **COUNTER – COUNTER COMPLAINT**

### **INITIAL STATEMENT**

In order to alleviate the confusion of the parties actually being Counter – Counter Plaintiff and Counter – Counter Defendants, the Counter – Counter Plaintiff, Neil J. Gillespie shall be referred to as GILLESPIE, Counter – Counter Defendant, Barker, Rodems, & Cook, P.A. shall be referred to as LAW FIRM, and Counter – Counter Defendant, William J. Cook shall be referred to as COOK. Additionally, as the legal sufficiency of the original complaint has previously been ruled upon the initial Counts I and II are unchanged excluding that they have been redacted in compliance with the Court’s January 13, 2006 Order on Defendants’ Motion to Dismiss and Strike. Counts III and IV are additional counts.

### **COMPLAINT FOR BREACH OF CONTRACT AND FRAUD**

Plaintiff, NEIL J. GILLESPIE, by and through his undersigned attorney, sues defendants, BARKER, RODEMS, & COOK, P.A., a Florida professional service corporation, and WILLIAM J. COOK, a corporate officer and natural person, and alleges:

#### **Parties**

1. Plaintiff, NEIL J. GILLESPIE, resides in Ocala, Marion County, Florida. (Hereinafter called “GILLESPIE”).
2. Defendant BARKER, RODEMS & COOK, P.A. is a Florida professional service corporation and law firm with offices located at 300 W. Platt Street, Suite 150, in the city of Tampa, Hillsborough County, Florida, 33606. (Hereinafter called the “LAW FIRM”).
3. Defendant WILLIAM J. COOK is a lawyer, a member of the Florida Bar, a corporate officer of the LAW FIRM, and a natural person. (Hereinafter called “COOK”).

### **Jurisdiction and Venue**

4. This is an action for damages that exceed \$15,000.00.
5. The events complained of occurred in the city of Tampa, Hillsborough County, Florida, 33606. The LAW FIRM has offices located at 300 W. Platt Street, Suite 150, Tampa, Hillsborough County, Florida, 33606.

### **Background Information**

6. GILLESPIE hired the LAW FIRM to represent him in litigation with Amscot Corporation. GILLESPIE and the LAW FIRM had a written Representation Contract. The litigation failed and Amscot settled for business reasons and to avoid an appeal. The LAW FIRM was not satisfied with its contractual entitlement to 45% of the Total Recovery for attorney's fees. The LAW FIRM wanted more money. In fact, the LAW FIRM took over 90% of the Total Recovery. In an effort to break the Representation Contract and legitimize taking 90% of the Total Recovery, COOK used deceit as described in this Complaint. Ultimately though, COOK lied to GILLESPIE about a Court ruling. COOK told GILLESPIE that the *United States Court of Appeals for the Eleventh Circuit* awarded the LAW FIRM \$50,000 in attorney's fees and costs, triggering a "whichever is higher clause" for Court awards. The LAW FIRM then created a false Closing Statement to effect the deception. In fact, GILLESPIE later discovered that the *United States Court of Appeals* never awarded \$50,000 to the LAW FIRM, but ruled that each party must bear their own costs and attorney's fees. The LAW FIRM's unjust enrichment was \$18,675.54.

## COUNT I - BREACH OF CONTRACT

7. GILLESPIE realleges and incorporates by reference paragraphs 1 through 6, and alleges and incorporates by reference paragraphs 22 through 51.
8. GILLESPIE entered into a written Class Representation Contract with the LAW FIRM to perform legal services. (Hereinafter the “Representation Contract”). (Exhibit 1).
9. The legal service performed by the LAW FIRM was a contingency lawsuit, further identified as the matter styled Eugene R. Clement, et al. v. Amscot Corporation, Case No. 8:99-cv-2795-T-26C in the United States District Court, Middle District of Florida, Tampa Division; and on appeal Eugene R. Clement, et al. v. Amscot Corporation, Case No. 01-14761-A in the United States Court of Appeals, For the Eleventh Circuit. (Herein after called the “Action”). The subject matter was “payday loan” consumer litigation.
10. There were three plaintiffs in the Action: Eugene R. Clement, Gay Ann Blomefield, and Neil Gillespie.
11. The Action sought class action status but the LAW FIRM’s various motions for class action status were denied by the Court.
12. The Action settled in GILLESPIE’s favor on October 30, 2001. The Action settled for business reasons, and the LAW FIRM did not prevail on the merits or appeal.
13. The Total Recovery for the Action was \$56,000 (Exhibit 2).
14. The LAW FIRM refused to honor the terms of the Representation Contract with GILLESPIE when disbursing his share of the \$56,000 Total Recovery.
15. Under the terms and conditions of the Representation Contract, and Florida Bar Rule 4-1.5(f)(4)(B)(i), the LAW FIRM was entitled to \$31,325.46 calculated as follows:

- a. Attorney's fees of \$25,200 (45% of the Total Recovery); and
  - b. Cost and expenses, \$3,580.67; and
  - c. Expenses paid to a former law firm, \$2,544.79 (Jonathan L. Alpert).
16. Contrary to law and the Representation Contract, the LAW FIRM took \$50,000 from the Total Recovery under the guise of court-awarded attorney's fees and costs.
  17. The LAW FIRM's unjust enrichment was \$18,675.54.
  18. GILLESPIE's lawful share of the settlement is \$8,224.78. (Exhibit 3).
  19. The LAW FIRM paid GILLESPIE \$2,000.00.
  20. The LAW FIRM owes GILLESPIE \$6,224.78.

WHEREFORE plaintiff demands judgment for \$6,224.78 against defendants, together with interest, costs, expenses, and attorney's fees.

#### **COUNT II - FRAUD**

21. GILLESPIE realleges and incorporates by reference paragraphs 1 through 20.
22. On August 1, 2001, United States District Judge Richard Lazzara issued an order in the Action denying Class Certification as moot, dismissed Count I with prejudice, dismissed Counts II and III without prejudice to bring in state court, and closed the file.
23. Soon after the ruling described in paragraph 22, COOK told GILLESPIE that during a telephone conversation with lawyer John Anthony, the attorney for Amscot Corporation ("Amscot"), that John Anthony offered COOK a \$5,000 "consulting fee" or "non-refundable retainer" to refrain from appealing the ruling or filing state law claims. COOK described this payment as an "improper payoff attempt" and not an offer to settle. COOK said that "the Florida Bar likely would prohibit such an agreement." Nonetheless COOK did not report John Anthony's "improper payoff attempt" to the Florida Bar.

24. When COOK told GILLESPIE that “the Florida Bar would likely prohibit such an agreement”, GILLESPIE believed that John Anthony did something unethical if not unlawful. Because COOK did not report John Anthony’s “improper payoff attempt” to the Florida Bar, GILLESPIE became suspect of COOK’s motivation and alliances.

25. COOK told GILLESPIE that Amscot did not want to pay the plaintiffs anything because Amscot resented the plaintiffs for suing. COOK told GILLESPIE that this was a “sticking part” or barrier to a settlement. COOK told GILLESPIE that Amscot did not resent COOK or the LAW FIRM, and Amscot wanted to pay money to COOK and the LAW FIRM to settle the Action. COOK maintained that the “sticking part” was a \$1,000 payment to each of three plaintiffs, not a \$50,000 payment to the LAW FIRM. Because this argument was counterintuitive (and later proved false), GILLESPIE became further suspect of COOK’s motivation and alliances.

26. COOK’s “sticking part” argument was his segue into evading the Representation Contract with GILLESPIE. COOK deceitfully used the “sticking part” argument to frame the settlement in terms useful to the LAW FIRM and against the interests of his clients.

27. COOK falsely told GILLESPIE that the LAW FIRM incurred costs and expenses in the Action of about \$33,000. COOK used this amount as a basis to justify his \$50,000 demand from Amscot. GILLESPIE later learned that the actual costs and expenses were only \$3,580.67, plus \$2,544.79 paid a former law firm, for a total \$6,125.46.

28. On August 15, 2001, COOK wrote GILLESPIE that he would appeal the ruling described in Paragraph 22, but not file a State lawsuit, and demand \$1,000 each to settle the plaintiff’s claims, and \$50,000 for the LAW FIRM’s attorney’s fees and costs from Amscot. COOK’s offer was consistent with his “sticking part” ruse. COOK’s separate negotiation with Amscot placed

COOK in a position of conflict with his clients. (Ex. 4).

29. On August 16, 2001 GILLESPIE wrote COOK and specifically challenged his “sticking part” argument. (Exhibit 5). GILLESPIE wrote to COOK:

“I agree with you that the Defendant will probably not accept your settlement offer. I believe the sticking point is your request for \$50,000 in attorney’s fees and costs. I do not believe the \$1,000 request each for myself, Mr. Clement and Ms. Blomefield is a barrier to settlement. Therefore I suggest you ask for a lesser amount of attorney’s fees and costs. Given your lack of success in this matter thus far, I suggest you ask for \$10,000 in attorney’s fees and costs. I believe this is a more realistic amount. Given how poorly the case has gone up to now, I believe it is in our interest to settle quickly.”

GILLESPIE was concerned that the ultimate loss of the case would leave him indebted to Amscot for its costs and attorney’s fees. COOK’s separate negotiation with Amscot placed COOK in a position of conflict with GILLESPIE.

30. In a memo dated Monday, August 20, 2001, COOK wrote the following to memorialize his conversation with GILLESPIE: (Exhibit 6).

a. COOK: “I explained to him that I did not believe that the sticking part was created through the attorney’s fees, but rather it was the payment to the clients.”

b. COOK: “I told him of my conversation with John Anthony in which he offered to pay this firm \$5,000.00 but would not agree to pay our client’s anything.”

c. COOK: “I told him I rejected that offer. He asked me why I had not mentioned the settlement offer to him previously. I told him it was not a settlement offer. It was an improper payoff attempt.”

d. COOK: "I told him that the \$50,000.00 demand was not set in stone and we would consider the \$10,000.00 offer that he suggested.

31. Once COOK admitted to GILLESPIE that the LAW FIRM would accept \$10,000 for legal fees, anything more was lawfully part of the Total Recovery to which plaintiffs were entitled a percentage under the terms of the Representation Contract. The proposed settlement was economic in nature, for business reasons, and was not based on any legal victory, nor constrained by Truth In Lending Act (TILA) limitations or its fee-shifting provision. This settlement was market driven and COOK was rolling the dice, not collecting lawyer's fees. COOK's demand was speculative and the LAW FIRM had taken a proprietary interest in the action, under the guise of collecting lawyer's fees.

32. COOK submitted an offer to Amscot on August 20, 2001, asking for \$1,000 for each plaintiff, forgiveness of any outstanding loans (GILLESPIE did not have an outstanding loan), and \$50,000 payment to the LAW FIRM for attorney's fees and costs.

33. Amscot countered COOK's offer in the preceding paragraph with an offer to pay each plaintiff \$1,000, forgive any outstanding debts (GILLESPIE did not owe Amscot any money), and a \$10,000 payment to the LAW FIRM, in a letter dated August 24, 2001.

34. Unexpectedly Amscot offered and then paid the LAW FIRM \$50,000.

35. Likewise Amscot offered and then paid each plaintiff \$2,000.

36. The \$2,000 paid by Amscot to GILLESPIE was substantially less than \$10,000 COOK told GILLESPIE he might recover as a class-action representative. In fact the \$2,000 received was only 20%, or one-fifth, the recovery GILLESPIE expected.

37. The LAW FIRM never sent a bill to Amscot for legal services, nor provided Amscot any basis for the \$50,000 in attorney's fees and cost. Amscot unexpectedly increased its offer to

COOK by \$40,000, with little or no negotiation. COOK was happy that he did not report Mr. Anthony's prior "improper payoff attempt" to the Florida Bar.

38. Once Amscot agreed to pay the plaintiffs a monetary settlement, COOK's earlier "sticking part" argument failed as a strategy to evade the Representation Contract with GILLESPIE. Therefore COOK utilized a new ruse. COOK told GILLESPIE that the *United States Court of Appeals for the Eleventh Circuit* awarded \$50,000 in attorney's fees and costs to the LAW FIRM, and that this fact precluded recovery under the Representation Contract, citing a "whichever is higher" provision for court-awarded attorney's fees and costs.

39. The LAW FIRM prepared a phony Closing Statement dated October 31, 2001 falsely reflecting the \$50,000 court-awarded attorney's fees and costs. (Exhibit 7).

40. The Closing Statement prepared by the LAW FIRM did not list any costs and expenses. In fact the LAW FIRM incurred \$3,580.67 in costs and expenses, and paid a former law firm, Jonathan Alpert, \$2,544.79, for a total of \$6,125.46. COOK did not disclose this information to GILLESPIE until May 9, 2003, over nineteen months later. Also, the LAW FIRM did not disclose that approximately 600 hours of legal work was spent on the Amscot case for GILLESPIE's benefit until June 23, 2003, over twenty months later. Since much of this time was spent at the Jonathan Alpert law firm, and has already been paid by Mr. Alpert, this could represent double-billing by the LAW FIRM. However the details of this information remain secret and concealed at this time.

41. Informed Consent. GILLESPIE lacked the knowledge to make an informed choice when he signed the Closing Statement because of the deceptions used by COOK and the LAW FIRM described in paragraphs 27, 40, and elsewhere in this Complaint.

42. GILLESPIE relied upon COOK's false statements, and the LAW FIRM's false Closing

Statement, specifically the fact that the *United States Court of Appeals for the Eleventh Circuit* awarded \$50,000 in attorney's fees and costs, and in reliance thereupon GILLESPIE approved the settlement.

43. The LAW FIRM took \$50,000 from the Total Recovery of the Action under the guise of court-awarded costs and attorney's fees on or about November 1, 2001, and paid GILLESPIE \$2,000. The LAW FIRM also paid \$2,000 each to Eugene R. Clement and Gay Ann Blomefield. This event occurred in the LAW FIRM office in the city of Tampa, Florida, Hillsborough County. (Exhibit 2).

44. On May 9, 2003 COOK disclosed to GILLESPIE the actual costs and expenses incurred by the LAW FIRM in the Action. Because of the significant discrepancy between the actual amount (\$6,125.46) and the false amount (\$33,000) that COOK said were incurred in paragraph 27, GILLESPIE further investigated the settlement.

45. GILLESPIE located the Appellate Court file and read that the *United States Court of Appeals for the Eleventh Circuit* granted a Motion for Dismissal with the parties bearing their own costs and attorney's fees. This proved the falsity of COOK's assertion that the Appellate Court awarded \$50,000 to the LAW FIRM. (Exhibit 7).

46. COOK and the LAW FIRM committed fraud because:

a. COOK's statement to GILLESPIE that the Appellate Court awarded the LAW FIRM \$50,000 in attorney's fees and costs was a material fact that was untrue, as was the LAW FIRM's Closing Statement to GILLESPIE listing court-awarded fees and costs of \$50,000. The Closing Statement's disclosure was a material fact that was untrue; and

b. The falsehood described above was known by COOK and the LAW FIRM to be untrue at the time it was made; and

c. The falsehood by COOK and the LAW FIRM was stated for the purpose of inducing GILLESPIE to approve a settlement; and

d. GILLESPIE relied upon the falsehood from COOK and the LAW FIRM as true and correct, and approved the settlement on October 30, 2001; and

e. By approving the settlement GILLESPIE suffered financial loss of \$6,224.78, by accepting the sum of \$2,000 instead of the sum of \$8,224.78 to which GILLESPIE was entitled under law and the Representation Contract.

47. When GILLESPIE joined this Action as a plaintiff, he believed Amscot had violated consumer law as COOK advised. During the course of litigation the Court ruled otherwise, and GILLESPIE accepted the fact that COOK was wrong and that Amscot acted lawfully. Also during the course of litigation it became clear to GILLESPIE that COOK was deceitful, and that the Breach of Contract and Fraud described in this Complaint were far worse than anything of which Amscot was accused. GILLESPIE recently apologized to Amscot's President, Ian Mackechnie.

WHEREFORE plaintiff demands judgment damages against defendants, together with interest, costs, expenses, and attorney's fees.

**COUNT III – BREACH OF FIDUCIARY DUTY AS TO  
BARKER, RODEMS, & COOK, P.A.,**

GILLESPIE, by and through his undersigned attorney, sues LAW FIRM and alleges:

48. GILLESPIE realleges paragraphs 1 -47

49. At all times alleged above, LAW FIRM was in a fiduciary relationship with the plaintiff.

50. The LAW FIRM's actions alleged above constituted a breach of that fiduciary obligation in that LAW FIRM sought to advance their own interests over the interests of GILLESPIE.

51. GILLESPIE was damaged in that he did not receive the full value for his claims in the lawsuit forward by LAW FIRM nor did he receive full value from their services.
52. LAW FIRM's actions were the direct cause of the Plaintiffs damages.

**COUNT IV – BREACH OF FIDUCIARY DUTY AS TO WILLIAM J. COOK**

GILLESPIE, by and through his undersigned attorney, sues COOK, and alleges:

53. GILLESPIE realleges paragraphs 1 -47
54. At all times alleged above, COOK was in a fiduciary relationship with GILLESPIE as the responsible attorney for GILLESPIE.
55. An attorney has a personal fiduciary obligation to a client independent of any employee relationship he may have with his law firm.
56. COOK's actions alleged above constituted a breach of that fiduciary obligation in that COOK sought to advance his own interest over the interests of GILLESPIE.
57. GILLESPIE was damaged in that he did not receive full value for his claims in the lawsuit forward by COOK nor did he receive full value from COOK's services.
58. COOK's actions were the direct cause of GILLESPIE's damages.

**Demand for Trial by Jury**

Pursuant to Rule 1.430(b) of the Fla. R. Civ. P., plaintiff demands trial by jury.

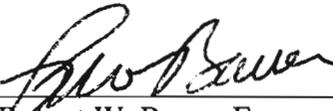
RESPECTFULLY SUBMITTED this 2<sup>nd</sup> day of May, 2007.

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a true copy of the above AMENDED ANSWER TO COUNTER-COMPLAINT has been served by U. S. Mail to RYAN C. RODEMS, ESQ. this 2 day of May 2007.

Ryan C. Rodems, Esq.  
400 N Ashley Dr., Ste 2100  
Tampa, FL 33602

Law Office of Robert W. Bauer, P.A.

By:   
Robert W. Bauer, Esq.  
Florida Bar No.: 0011058  
2815 NW 13<sup>th</sup> St., Ste 200E  
Gainesville, FL 32609  
352.375.5960  
352.337.2518 fax

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

NEIL J. GILLESPIE,

Plaintiff,

CASE NO.: 05-CA-7205

vs.

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

Defendants.

---

**ORDER GRANTING PLAINTIFF'S MOTION TO WITHDRAW PLAINTIFF'S  
NOTICE OF VOLUNTARY DISMISSAL**

This action, having come before the Court on Plaintiff's Pro Se Motion to Withdraw Plaintiff's Notice of Voluntary Dismissal, and the Court, having reviewed the file and having heard oral argument from counsel for both sides, finds:

1. The Pro Se Plaintiff filed his Notice of Voluntary Dismissal on February 7, 2007 prior to retaining his current counsel.
2. Notices of Voluntary Dismissal cannot be filed pursuant to Rule 1.420 when a counter-claim is pending without first receiving leave of court. Rogers v. Publix Super Markets, Inc., 575 So.2d 214 (Fla. 5<sup>th</sup> DCA, 1990)
3. Therefore, the Notice of Voluntary Dismissal was not effective to dismiss the Plaintiff's cause of action.
4. The Pro Se Plaintiff filed a Motion for an Order of Voluntary Dismissal prior to retaining his current counsel pursuant to Rule 1.420 on February 7, 2007 and such motion required a court order for it to be effective.
5. On February 15, 2007 the Pro Se Plaintiff filed a Notice of Withdrawal of Voluntary Dismissal.
6. Plaintiff's Motion for an Order of Voluntary Dismissal was ineffective to dismiss the Plaintiff's case.
7. It is further determined that as a matter of law that Plaintiff is not entitled to file a

**EXHIBIT**

**2**

counter counter-complaint in response to Defendant's Counter-Complaint absent a modification of the current rules of civil procedure.

ORDERED:

Plaintiff's Notice of Voluntary Dismissal is hereby withdrawn.

**ORIGINAL SIGNED**

**AUG 31 2007**

**JAMES M. BARTON, II**  
**CIRCUIT JUDGE**

---

The Honorable James M. Barton, II  
Circuit Judge

**CERTIFICATE OF SERVICE**

I HEREBY CERTIFY that a true and correct copy of the foregoing ORDER GRANTING PLAINTIFF'S MOTION TO WITHDRAW PLAINTIFF'S NOTICE OF VOLUNTARY DISMISSAL was served to the following by U.S. Mail this \_\_\_ day of \_\_\_\_\_ 2007:

Ryan C. Rodems, Esq.  
400 N Ashley Dr., Ste 2100  
Tampa, FL 33602

Robert W. Bauer, Esq.  
2815 NW 13<sup>th</sup> St., Ste 200E  
Gainesville, FL 32609

---

Judicial Assistant

IN THE CIRCUIT COURT OF THE THIRTEENTH JUDICIAL CIRCUIT  
IN AND FOR HILLSBOROUGH COUNTY, FLORIDA

NEIL J. GILLESPIE

Plaintiff,

v.

Case No.:05-CA-007205

Division: C

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

Defendant,

FILED  
2008 JUL 11 12 14 PM '08  
CLERK OF CIRCUIT COURT  
HILLSBOROUGH COUNTY, FLORIDA

*Am*

**PLAINTIFF'S MOTION FOR REHEARING**

Plaintiff, NEIL J. GILLESPIE, files this Motion for Rehearing in accordance with Rule 1.530 of the Florida Rules of Civil Procedure, and alleges the following:

1. This action was heard on October 30, 2007, and July 1, 2008, and the resulting judgment was entered on July 7, 2008. A copy of the judgment is attached as Exhibit A and made a part of this Motion for all purposes.
2. Plaintiff moves for rehearing on the grounds that the Court's judgment was based on the Defendants' representations that there was a signed attorney fee agreement between Barker, Rodems & Cook and the Plaintiff.
3. Defendants have not produced a signed copy of the attorney fee agreement between Barker, Rodems & Cook and the Plaintiff.
4. Defendants have only produced a signed copy of the attorney fee agreement between Alpert, Barker, Rodems, Ferrentino & Cook and the Plaintiff. A copy of the fee agreement is attached as Exhibit B and made a part of this Motion for all purposes.
5. Defendant Cook signed the attorney fee agreement between Alpert,

Barker, Rodems, Ferrentino & Cook and the Plaintiff.

6. Defendants breached the attorney fee agreement by disregarding the provisions of the agreement and taking an amount of attorneys' fees that far exceeded the amount enumerated in said agreement.
7. The total recovery in the class action lawsuit was \$56,000.
8. Defendants took \$50,000 under the false assertion that this was the amount of court-awarded attorneys' fees.
9. In the attorney fee agreement, the Defendants were entitled to receive either court-awarded attorneys' fees, 33.334% of total recovery prior to the time an answer is filed or a demand for appointment of arbitrators is made, or 40% of the total recovery from the time of the filing of an answer or the demand for appointment of arbitrators through the entry of judgment. The law firm was entitled 5% of the total recovery after a notice of appeal is filed by any party or if post judgment relief or action is required for recovery on the judgment.
10. Defendants were actually entitled to \$31,325.46, which consists of the attorneys' fees, costs and expenses, and the expenses paid to the former law firm.
11. Defendants received \$18,675.54 more than they were entitled to.
12. Each plaintiff in the class action suit was entitled to \$8,224.78.
13. Plaintiff recovered only \$2,000.00 from the class action suit.
14. Plaintiff was damaged by this breach of the fee agreement in the amount of \$6,224.78.

15. Defendant Cook was the Plaintiff's lawyer individually.
16. The final judgment on Defendant Cook on the count of breach of contract is contrary to law because it was through Defendant Cook's actions in negotiating and representing the settlement, in which the law firm breached the attorney fee agreement.
17. The final judgment on the count of fraud is contrary to law in that the conduct of the Defendants in making false representations to the Plaintiff is not an act in performance of the fee agreement.
18. The final judgment on the count of fraud is contrary to law in that the Plaintiff's claim is not barred by the economic loss rule because the Defendants' fraudulent actions were independent of the Defendants' actions in breaching the contract.
19. Defendants breached the contract by receiving a greater percentage of the total recovery amount than they were entitled.
20. Defendants committed fraud outside of the scope of their legal representation and the attorney fee agreement by deceiving their client, the Plaintiff.
21. The scope of the Defendants' representation of the Plaintiff did not include deceiving their client with false representations about the terms of the settlement of the case.
22. The scope of the Defendants' representation of the Plaintiff did not include falsifying a closing statement to induce the Plaintiff to settle.
23. Plaintiff is entitled to a rehearing to decide the issues based on the signed

fee agreement that is to be produced by Defendants.

24. Plaintiff is entitled to a rehearing to decide the issues based on the conduct of making false representations to the Plaintiff.

25. Plaintiff is entitled to a rehearing to decide the issues based on the conduct of preparing a false closing statement.

WHEREFORE, Plaintiff, NEIL J. GILLESPIE, requests that the Court set aside the judgment entered on July 7, 2008, and grant a new hearing.

### CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a true and correct copy of the above PLAINTIFF'S MOTION FOR REHEARING has been sent by U.S. Mail to the following this 16<sup>th</sup> day of July, 2008.

Ryan C. Rodems, Esq.  
400 North Ashley Drive, Suite 2100  
Tampa, FL 33602

Law Office of Robert W. Bauer, P.A.

BY: Tanya M. Uhl  
Robert W. Bauer, Esq.  
Florida Bar No. 0011058  
Tanya M. Uhl Esq.  
Florida Bar No. 0052924  
2815 NW 13<sup>th</sup> Street, Suite 200E  
Gainesville, Florida  
Telephone: (352) 375-5960  
Fax: (352) 337-2518

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

NEIL J. GILLESPIE,

Plaintiff,

vs.

Case No.: 05CA7205

Division: C

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

Defendants.

FINAL JUDGMENT AS TO DEFENDANT COOK

THIS ACTION was heard on Defendants' Motion for Judgment on the Pleadings on  
Tuesday, October 30, 2007 and Tuesday, July 1, 2008, and

IT IS ADJUDGED that Plaintiff Neil J. Gillespie take nothing by this action against  
Defendant William J. Cook, whose address is 400 North Ashley Drive, Suite 2100, Tampa,  
Florida 33602, and that Defendant Cook go hence without day and recover costs from Plaintiff,  
the amount of which the Court shall retain jurisdiction to determine.

DONE AND ORDERED in Chambers this \_\_\_\_\_ day of July, 2008.

ORIGINAL SIGNED

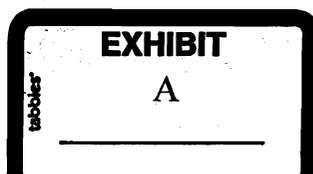
JUL 7 2008

JAMES M. BARTON, II  
CIRCUIT JUDGE

\_\_\_\_\_  
James M. Barton, II  
Circuit Judge

Copies to:

Robert W. Bauer, Esquire (Counsel for Plaintiff)  
Ryan Christopher Rodems, Esquire (Counsel for Defendants)



CLASS REPRESENTATION CONTRACT

#6

I. PURPOSE

I/We, Neil Gillespie  
do hereby retain and employ the law firm of Alpert, Barker, Rodems, Ferrentino & Cook, P.A., to investigate my potential claim resulting from My transaction  
ANSCOT  
and, if advisable, to pursue necessary litigation on my behalf.

I/We understand that I/we may be one of several plaintiff(s) or part of a class of plaintiff(s) represented by Alpert, Barker, Rodems, Ferrentino & Cook, P.A.

II. COSTS AND EXPENSES

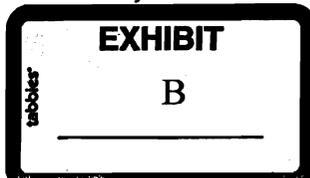
I/We hereby agree to pay for the costs and expenses of the investigation and preparation of my/our claims for damages. Should it be necessary to institute a lawsuit or arbitration proceeding, I/we agree to pay all costs and expenses associated with any Court or arbitration proceeding. If an appeal of any decision is filed, regardless of the person or party filing such appeal, I agree to pay the costs and expenses associated with initiating or responding to such appeal.

I/We authorize Alpert, Barker, Rodems, Ferrentino & Cook, P.A., to advance and pay any costs and expenses it deems appropriate to the handling of my case. I/We will pay Alpert, Barker, Rodems, Ferrentino & Cook, P.A., for the costs and expenses advanced out of the portion of any recovery remaining after attorneys' fees have been subtracted. I/We will then receive the portion of what remains, which is known as the "net recovery". Thus, the "total recovery" (all monies received or collected, including attorneys' fees, if awarded) less Alpert, Barker, Rodems, Ferrentino & Cook, P.A.'s attorneys' fees and any costs and expenses will equal the "net recovery".

I/We understand that my/our portion of the "net recovery" will be a prorated or per person share which will be proportional to that of all other class members. The amount of money I/we receive will be determined by dividing the "net recovery" (the amount of any recovery remaining after attorneys' fees and expenses have been subtracted) by the number of class members who are determined eligible to receive proceeds from any judgment or settlement. I/We understand that the Court or other tribunal may approve a different ratio or formula depending upon the circumstances.

If there is no recovery, or if the total recovery is not adequate to pay for all of the costs and expenses advanced, I/we understand that Alpert, Barker, Rodems, Ferrentino & Cook, P.A., will not seek payment from me for any expenses.

If I/we terminate this contract, then Alpert, Barker, Rodems, Ferrentino & Cook, P.A., may seek payment from me/us for any costs and expenses allowed by law.



000054

### III. ATTORNEYS' FEES

In almost all cases in America, each party to a lawsuit or arbitration proceeding pays its own attorneys' fees. In rare cases, the Defendant(s) may pay all or part of the attorneys' fees or the Court or arbitration panel may award attorneys' fees based upon a statute or otherwise.

I/We agree to pay Alpert, Barker, Rodems, Ferrentino & Cook, P.A., an attorneys' fee if it is successful in obtaining any monies or other benefit on my behalf. I/We understand that Alpert, Barker, Rodems, Ferrentino & Cook, P.A., will receive the attorneys' fees awarded by a Court or arbitration panel or will receive the applicable percentage of the "total recovery" (all monies received from the Defendant(s) including, but not limited to, money for actual damages, punitive damages, interest, penalties, attorneys' fees and expenses), whichever is higher. The applicable percentages shall be as follows:

- A. 33.334% of the "total recovery" prior to the time that an answer is filed or a demand for appointment of arbitrator(s) is made; thereafter,
- B. 40% of the "total recovery" from the time of the filing of an answer or the demand for appointment of arbitrator(s), through the entry of a judgment;
- C. An additional 5% of the "total recovery" after a Notice of Appeal is filed by any person or party or if post-judgment relief or action is required for recovery on the judgment.

In the event that my/our claim is settled on terms of an agreement calling for payment in installments, whether monthly, annually or otherwise, in the future, my/our attorneys' contingent fee percentage shall be calculated on the costs of any structured settlement or, if the cost is unknown, on the present money value of the structured settlement. If both the damages and the attorneys' fees are to be paid out in future installments, this limitation shall not apply.

I/We understand that if there is no recovery, I/we will not be indebted to Alpert, Barker, Rodems, Ferrentino & Cook, P.A., for any attorneys' fees.

If I/we terminate this contract, then Alpert, Barker, Rodems, Ferrentino & Cook, P.A., may seek payment from me/us for any attorneys' fees allowed by law.

**IV. ALPERT, BARKER, RODEMS, FERRENTINO & COOK, P.A. MAY  
WORK WITH OTHER LAWYERS ON MY CASE**

I/We understand that Alpert, Barker, Rodems, Ferrentino & Cook, P.A., in its discretion, may work with other lawyers on my/our case if deemed necessary. If Alpert, Barker, Rodems, Ferrentino & Cook, P.A., agrees to work with other lawyers on my/our case, I/we understand that the attorneys' fees I/we will have to pay will not increase. Other law firms or lawyers hired by Alpert, Barker, Rodems, Ferrentino & Cook, P.A., will be paid out of the attorneys' fees agreed to in this contract and, if I/we so desire, I/we will be advised regarding how the attorneys' fees are divided.

**V. WHAT THIS CONTRACT COVERS**

**A. Scope of Representation**

At the time of signing this contract, I/we also signed a Statement of Client's Rights as well as an Acknowledgment regarding investigation of my claim. These three documents encompass the entire agreement between me/us and Alpert, Barker, Rodems, Ferrentino & Cook, P.A. These signed agreements take the place of any prior, oral or written agreements and may only be changed or modified by a separate, written agreement signed and dated by me/us and Alpert, Barker, Rodems, Ferrentino & Cook, P.A.

This contract is to be interpreted in accordance with Florida law.

I/We understand that Alpert, Barker, Rodems, Ferrentino & Cook, P.A., has no duty to represent me/us in any matters other than my/our potential claim resulting from \_\_\_\_\_  
my transactions with AMSCOT

I/We understand that if Alpert, Barker, Rodems, Ferrentino & Cook, P.A., determines, at some later date, that my claim should not or cannot be reasonably prosecuted by the Firm, the Firm may notify me in writing of this decision and withdraw as my attorneys. Under such circumstances, I shall be responsible to Alpert, Barker, Rodems, Ferrentino & Cook, P.A., only for any fees and costs permitted by law.

**B. Documents and Information**

I/we authorize the lawyers to utilize my/our documents and/or information in any regulatory, enforcement, or other proceedings of any kind as may be necessary in the lawyers' sole discretion.

**APPROVAL OF THIS CONTRACT**

The undersigned client(s) has/have, before signing this contract, received and read the Statement of Client's Rights and understands each of the rights set forth therein. The undersigned client(s) has/have signed the Statement and received a signed copy to refer to while being represented by the undersigned attorneys.

This contract may be cancelled by written notification to the attorneys at any time within three (3) business days of the date the contract was signed, as shown below, and if cancelled the client(s) shall not be obligated to pay any fees to the attorneys for the work performed during that time. If the attorneys have advanced funds to others in representation of the client(s), the attorneys are entitled to be reimbursed for such amounts as the attorneys have reasonably advanced on behalf of the client(s).

I/We have read this contract and any documents specifically referenced herein, and agree to all terms referenced within such documents.

DATED: 11/3/2000

DATED: 11-3-2000

William G. Cook of  
Alpert, Barker, Rodems,  
Ferrentino & Cook, P.A.  
Post Office Box 3270  
Tampa, Florida 33601-3270  
813/223-4131

Paul J. Kelly  
Client  
  
\_\_\_\_\_  
Client

STATE OF FLORIDA )  
COUNTY OF HILLSBOROUGH )  
THIS IS TO CERTIFY THAT THE FOREGOING IS A TRUE  
AND CORRECT COPY OF THE DOCUMENT ON FILE IN  
MY OFFICE. WITNESS MY HAND AND OFFICIAL SEAL  
THIS 2nd DAY OF August 2010



PAT FRANK  
CLERK OF CIRCUIT COURT

BY Donna Healey C.C.

**UAW LEGAL SERVICES PLAN**  
**UAW-GM UAW-Ford UAW-Chrysler LLC**  
2454 McMullen Booth Road, Bldg. B - Suite 425, Clearwater, FL 33759  
Phone: (727) 669-5319 or (877) 309-1787 Fax: (727) 669-0978

**Robert Burrell**  
*Managing Attorney*  
**Tanya Bell**  
*Staff Attorney*

August 5, 2010

Neil J. Gillespie  
8092 SW 115<sup>th</sup> Loop  
Ocala, Florida 34481

Dear Mr. Gillespie:

I am in receipt of your letter dated August 3, 2010 in which you request that I provide you an explanation as to the extent of my involvement in your case. In regards to the Plaintiff's Motion for Rehearing that I signed, I did so at the direct request of Robert W. Bauer in his absence. I did not prepare that Motion or even work on that Motion. To my knowledge, I was not directly involved in your case.

Thank you for your time.

Sincerely,



Tanya Bell  
Attorney at Law

**EXHIBIT**

**4**

**Neil Gillespie**

---

**From:** "Neil Gillespie" <neilgillespie@mfi.net>  
**To:** "Ann G. Breeden" <agb@bauerlegal.com>  
**Sent:** Tuesday, August 12, 2008 11:37 AM  
**Attach:** 1\_july\_2008\_gillespie.ptx; 103007hearing - Vol. I.ptx  
**Subject:** Re: Transcripts  
Ms. Breeden,

Attached are the transcripts you requested. Let me know if you need anything else. I appreciate your efforts on my behalf. Thank you.

Neil Gillespie

----- Original Message -----

**From:** [Ann G. Breeden](#)  
**To:** '[Neil Gillespie](#)'  
**Sent:** Tuesday, August 12, 2008 11:25 AM  
**Subject:** Transcripts

Mr. Gillespie-

Mr. Rodems has responded to Mr. Bauer regarding our Motion for Rehearing. He specifically was asking about a reference made to a statement made by Mr. Rodems about Barker, Rodems, and Cook being in possession of a signed fee agreement. Mr. Bauer has asked me to review the transcripts of the two hearings to ensure that Mr. Rodems did in fact state that at one of the hearings. We are having trouble locating the transcripts to these hearings. Mr. Bauer has asked me to contact you and ask if you would kindly forward the e-mailed transcripts of the hearings dated October 30, 2007 and July 1, 2008 so that we can respond to Mr. Rodems. I apologize for any inconvenience this may cause you.

Thank you,  
Ann G. Breeden  
[agb@bauerlegal.com](mailto:agb@bauerlegal.com)  
The Law Office of Robert W. Bauer, P.A.  
2815 NW 13th Street, Suite 200E  
Gainesville, FL 32609  
Phone: (352) 375-5960  
Fax: (352) 337-2518

No virus found in this incoming message.

Checked by AVG - <http://www.avg.com>

Version: 8.0.138 / Virus Database: 270.6.1/1605 - Release Date: 8/11/2008 4:!



September 5, 2007

Neil Gillespie  
8092 SW 115<sup>th</sup> Loop  
Ocala, FL 34481

Ref: Case Status

Dear Mr. Gillespie,

This letter is to provide you with a brief description of what occurred at last month's hearing on your motion to withdraw voluntary dismissal. As I indicated in my telephone messages after the hearing, we prevailed in our motion and your cause of action has been reinstated.

I believe it is necessary at this time to reevaluate the initial complaint and draft an amended complaint to include allegations of malpractice and breach of fiduciary duty. I believe that it is likely from the comments of opposing counsel that at this time, they are going to attempt to seek an interlocutory appeal in regards to the issue of jurisdiction over this case.

The issue of jurisdiction is more clearly stated in that they believe the court no longer has jurisdiction to hear your causes of action after the voluntary dismissal. I, of course, am willing to handle any appeal that is filed in this action and will advise you as soon as possible for a need to respond to this. However, I must advise you that the defendant seeking interlocutory appeal while the case is pending is going to cause us to have two cases to focus our attention on at one time. This is going to cause a significant amount of work on the part of our office. I only advise you of this so that you will not be surprised when the monthly attorney's bills increase significantly over the coming months.

I do not anticipate any problems from you in regard to the payment of your bills as you have been most courteous and prompt in your responses and payments to bills that have been forwarded. I simply advise you of this to give you advance warning of what might be a financial difficulty for you.

If you have any questions or concerns regarding this, please contact me.

Sincerely,



Robert W. Bauer, Esq.

RWB/kam

**EXHIBIT**

**6**

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

NEIL J. GILLESPIE,

Plaintiff,

vs.

Case No.: 05CA7205

Division: F

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

Defendants.

\_\_\_\_\_ /

ORDER DENYING PLAINTIFF'S MOTION TO DISQUALIFY COUNSEL

THIS CAUSE having come on to be heard on Tuesday, April 25, 2006, on Plaintiff's

Motion to Disqualify Counsel, and the proceedings having been read and considered, and counsel and Mr. Gillespie having been heard, and the Court being otherwise fully advised in the premises, it is ORDERED:

The motion to disqualify is denied with prejudice, except as to the basis that counsel may be a witness, and on that basis, the motion is denied without prejudice.

DONE and ORDERED in Chambers, this 12<sup>TH</sup> day of May, 2006.

*Richard A. Nielsen*

Richard A. Nielsen  
Circuit Judge

Copies to:

Neil J. Gillespie, pro se  
Ryan Christopher Rodems, Esquire

STATE OF FLORIDA )  
COUNTY OF HILLSBOROUGH )  
THIS IS TO CERTIFY THAT THE FOREGOING IS A TRUE  
AND CORRECT COPY OF THE DOCUMENT ON FILE IN  
MY OFFICE. WITNESS MY HAND AND OFFICIAL SEAL  
THIS 3rd DAY OF August 2010



PAT FRANK  
CLERK OF CIRCUIT COURT  
BY *Donna Healy* D.C.

HILLSBOROUGH COUNTY  
CIRCUIT COURT  
2006 MAY 15 PM 1:31  
FILED  
CLERK OF CIRCUIT COURT  
*Am*

EXHIBIT  
7

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: H

Defendants.

PLAINTIFF'S ACCOMODATION REQUEST  
AMERICANS WITH DISABILITIES ACT (ADA)

Plaintiff requests an accommodation under the Americans With Disabilities Act  
(ADA) and states:

1. Plaintiff was determined totally disabled by Social Security in 1994.
2. Defendants are familiar with Plaintiff's disability from their prior representation of him. Defendants investigated his eligibility to receive services from the Florida Department of Vocational Rehabilitation (DVR). DVR determined that Plaintiff was too severely disabled to benefit from services. Defendants concurred, and notified Plaintiff of their decision in a letter to him dated March 27, 2001. (Exhibit A).
3. Plaintiff has the following medical conditions which are disabling and prevent him from effectively participating in court proceedings, including:
  - a. Depression and related mood disorder. This medical condition prevents Plaintiff from working, meeting deadlines, and concentrating. The inability to concentrate at times affects Plaintiff's ability to hear and comprehend.

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CLERK OF CIRCUIT COURT  
2007 FEB 22 AM 11:52  
THIRTEENTH JUDICIAL  
CIRCUIT CIVIL

EXHIBIT

8

b. Post Traumatic Stress Disorder (PTSD), makes Plaintiff susceptible to stress, such as the ongoing harassment by Defendants' lawyer, Mr. Rodems.

c. Velopharyngeal Incompetence (VPI) is a speech impairment that affects Plaintiff's ability to communicate.

d. The medical treatment for depression includes prescription medication that further disables Plaintiff's ability to do the work of this lawsuit, and further prevents him from effectively participating in the proceedings.

4. Prior to the onset of the most disabling aspects Plaintiff's medical condition(s), he was a productive member of society, a business owner for 12 years, and a graduate of both the University of Pennsylvania and The Evergreen State College.

5. On March 3, 2006, Ryan Christopher Rodems telephoned Plaintiff at his home and threatened to use information learned during Defendants prior representation against him in the instant lawsuit. Mr. Rodems' threats were twofold; to intimidate Plaintiff into dropping this lawsuit by threatening to disclose confidential client information, and to inflict emotional distress, to trigger Plaintiff's Post Traumatic Stress Disorder, and inflict injury upon Plaintiff for Defendants' advantage in this lawsuit.

6. On March 6, 2006, Mr. Rodems made a false verification the Court about the March 3, 2006 telephone call. Mr. Rodems submitted Defendants' Verified Request For Bailiff And For Sanctions, and told the Court under oath that Plaintiff threatened acts of violence in Judge Nielsen's chambers. It was a stunt that backfired when a tape recording of the phone call showed that Mr. Rodems lied. Plaintiff notified the Court about Mr. Rodems' perjury in Plaintiff's Motion With Affidavit To Show Cause Why Ryan Christopher Rodems Should not Be Held In Criminal Contempt Of Court and Incorporated Memorandum Of Law submitted January 29, 2007.

7. Mr. Rodems' harassing phone call to Plaintiff of March 3, 2006, was a tort, the *Intentional Infliction of Emotional Distress*. Mr. Rodems' tort injured Plaintiff by aggravating his existing medical condition. From the time of the call on March 3, 2006, Plaintiff suffered worsening depression for which he was treated by his doctors.

a. On May 1, 2006 Plaintiff's doctor prescribed Effexor XR, a serotonin-norepinephrine reuptake inhibitor (SNRI), to the maximum dosage.

b. Plaintiff's worsening depression, and the side affects of the medication, lessened Plaintiff's already diminished ability to represent himself in this lawsuit.

c. On October 4, 2006 Plaintiff began the process of discontinuing his medication so that he could improve is ability to represent himself in this lawsuit.

d. On or about November 18, 2006, Plaintiff discontinued the use of anti-depression medication, to improve his ability to represent himself in this lawsuit.

8. Mr. Rodems continued to harass Plaintiff during the course of this lawsuit in the following manner:

a. Mr. Rodems lay-in-wait for Plaintiff outside Judge Nielsen's chambers on April 25, 2006, following a hearing, to taunt him and provoke an altercation.

b. Mr. Rodems refused to address Plaintiff as "Mr. Gillespie" but used his first name, and disrespectful derivatives, against Plaintiff's expressed wishes.

c. Mr. Rodems left insulting, harassing comments on Plaintiff's voice mail during his ranting message of December 13, 2006.

d. Mr. Rodems wrote Plaintiff a five-page diatribe of insults and ad hominem abusive attacks on December 13, 2006.

9. Plaintiff notified the Court of his inability to obtain counsel in *Plaintiff's Notice of Inability to obtain Counsel* submitted February 13, 2007.

10. Plaintiff acknowledges that this ADA accommodation request is unusual, but so are the circumstances. Defendants in this lawsuit are Plaintiff's former lawyers, who are using Plaintiff's client confidences against him, while contemporaneously inflicting new injuries upon their former client based on his disability.

WHEREFORE, Plaintiff requests additional time to obtain counsel, a stay in the proceedings for 90 days. Plaintiff also requests accommodation in the form of additional time to meet deadlines when needed due to his disability.

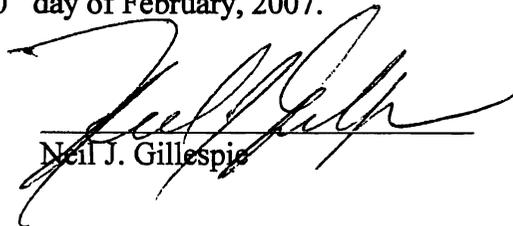
RESPECTFULLY SUBMITTED this 20<sup>th</sup> day of February, 2007.



Neil J. Gillespie, Plaintiff pro se  
8092 SW 115<sup>th</sup> Loop  
Ocala, Florida 34481  
Telephone: (352) 502-8409

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a true and correct copy of the foregoing has been furnished via US Mail to Ryan C. Rodems, attorney, Barker, Rodems & Cook, P.A., 400 N Ashley Dr., Suite 2100, Tampa, FL 33602, this 20<sup>th</sup> day of February, 2007.



Neil J. Gillespie

**BARKER, RODEMS & COOK**  
PROFESSIONAL ASSOCIATION  
ATTORNEYS AT LAW

CHRIS A. BARKER  
RYAN CHRISTOPHER RODEMS  
WILLIAM J. COOK

300 West Platt Street, Suite 150  
Tampa, Florida 33606

Telephone 813/489-1001  
Facsimile 813/489-1008

March 27, 2001

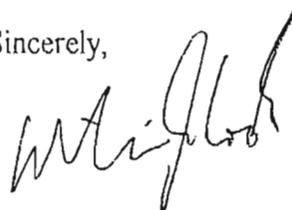
Neil J. Gillespie  
Apartment C-2  
1121 Beach Drive NE  
St. Petersburg, Florida 33701-1434

**Re: Vocational Rehabilitation**

Dear Neil:

I am enclosing the material you provided to us. We have reviewed them and, unfortunately, we are not in a position to represent you for any claims you may have. Please understand that our decision does not mean that your claims lack merit, and another attorney might wish to represent you. If you wish to consult with another attorney, we recommend that you do so immediately as a statute of limitations will apply to any claims you may have. As you know, a statute of limitations is a legal deadline for filing a lawsuit. Thank you for the opportunity to review your materials.

Sincerely,



William J. Cook

WJC/mss

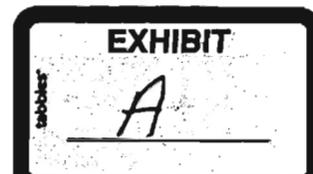
Enclosures

STATE OF FLORIDA )  
COUNTY OF HILLSBOROUGH)  
THIS IS TO CERTIFY THAT THE FOREGOING IS A TRUE  
AND CORRECT COPY OF THE DOCUMENT ON FILE IN  
MY OFFICE. WITNESS MY HAND AND OFFICIAL SEAL  
THIS 31st DAY OF August 2001



PAT FRANK  
CLERK OF CIRCUIT COURT  
BY Donna Healy D.C.

168



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: C

Defendants.

PLAINTIFF'S AMENDED ACCOMMODATION REQUEST  
AMERICANS WITH DISABILITIES ACT (ADA)

FILED  
CLERK OF CIRCUIT COURT  
2007 MAR -5 PM 3:44  
HILLSBOROUGH CNTY, FL  
CIRCUIT CIVIL

Plaintiff requests an accommodation under the Americans With Disabilities Act (ADA) and states:

1. Plaintiff was determined totally disabled by Social Security in 1994.
2. Defendants are familiar with Plaintiff's disability from their prior representation of him. Defendants investigated his eligibility to receive services from the Florida Department of Vocational Rehabilitation (DVR). DVR determined that Plaintiff was too severely disabled to benefit from services. Defendants concurred, and notified Plaintiff of their decision in a letter to him dated March 27, 2001. (Exhibit A).

Defendants were also informed of Plaintiff's medication for depression by fax dated October 6, 2000, Effexor XR 150mg. (Exhibit B).

3. Plaintiff has the following medical conditions which are disabling and prevent him from effectively participating in court proceedings, including:

- a. Depression and related mood disorder. This medical condition prevents Plaintiff from working, meeting deadlines, and concentrating. The inability to

EXHIBIT  
9

concentrate at times affects Plaintiff's ability to hear and comprehend. The medical treatment for depression includes prescription medication that further disables Plaintiff's ability to do the work of this lawsuit, and further prevents him from effectively participating in the proceedings.

b. Post Traumatic Stress Disorder (PTSD), makes Plaintiff susceptible to stress, such as the ongoing harassment by Defendants' lawyer, Mr. Rodems.

c. Velopharyngeal Incompetence (VPI) is a speech impairment that affects Plaintiff's ability to communicate.

d. Type 2 diabetes. This was diagnosed in 2006 after Defendants' representation.

4. Prior to the onset of the most disabling aspects Plaintiff's medical condition(s), he was a productive member of society, a business owner for 12 years, and a graduate of both the University of Pennsylvania and The Evergreen State College.

5. On March 3, 2006, Ryan Christopher Rodems telephoned Plaintiff at his home and threatened to use information learned during Defendants prior representation against him in the instant lawsuit. Mr. Rodems' threats were twofold; to intimidate Plaintiff into dropping this lawsuit by threatening to disclose confidential client information, and to inflict emotional distress, to trigger Plaintiff's Post Traumatic Stress Disorder, and inflict injury upon Plaintiff for Defendants' advantage in this lawsuit.

6. On March 6, 2006, Mr. Rodems made a false verification the Court about the March 3, 2006 telephone call. Mr. Rodems submitted Defendants' Verified Request For Bailiff And For Sanctions, and told the Court under oath that Plaintiff threatened acts of violence in Judge Nielsen's chambers. It was a stunt that backfired when a tape recording of the phone call showed that Mr. Rodems lied. Plaintiff notified the Court

about Mr. Rodems' perjury in Plaintiff's Motion With Affidavit To Show Cause Why Ryan Christopher Rodems Should not Be Held In Criminal Contempt Of Court and Incorporated Memorandum Of Law submitted January 29, 2007.

7. Mr. Rodems' harassing phone call to Plaintiff of March 3, 2006, was a tort, the *Intentional Infliction of Emotional Distress*. Mr. Rodems' tort injured Plaintiff by aggravating his existing medical condition. From the time of the call on March 3, 2006, Plaintiff suffered worsening depression for which he was treated by his doctors.

a. On May 1, 2006 Plaintiff's doctor prescribed Effexor XR, a serotonin-norepinephrine reuptake inhibitor (SNRI), to the maximum dosage.

b. Plaintiff's worsening depression, and the side affects of the medication, lessened Plaintiff's already diminished ability to represent himself in this lawsuit.

c. On October 4, 2006 Plaintiff began the process of discontinuing his medication so that he could improve is ability to represent himself in this lawsuit.

d. On or about November 18, 2006, Plaintiff discontinued the use of anti-depression medication, to improve his ability to represent himself in this lawsuit.

8. Mr. Rodems continued to harass Plaintiff during the course of this lawsuit in the following manner:

a. Mr. Rodems lay-in-wait for Plaintiff outside Judge Nielsen's chambers on April 25, 2006, following a hearing, to taunt him and provoke an altercation.

b. Mr. Rodems refused to address Plaintiff as "Mr. Gillespie" but used his first name, and disrespectful derivatives, against Plaintiff's expressed wishes.

c. Mr. Rodems left insulting, harassing comments on Plaintiff's voice mail during his ranting message of December 13, 2006.

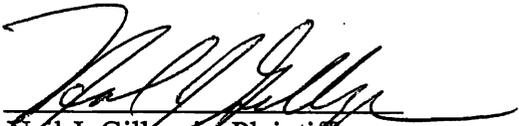
d. Mr. Rodems wrote Plaintiff a five-page diatribe of insults and ad hominem abusive attacks on December 13, 2006.

9. Plaintiff notified the Court of his inability to obtain counsel in *Plaintiff's Notice of Inability to obtain Counsel* submitted February 13, 2007.

10. Plaintiff acknowledges that this ADA accommodation request is unusual, but so are the circumstances. Defendants in this lawsuit are Plaintiff's former lawyers, who are using Plaintiff's client confidences against him, while contemporaneously inflicting new injuries upon their former client based on his disability.

WHEREFORE, Plaintiff requests additional time to obtain counsel, a stay in the proceedings for 90 days. Plaintiff also requests accommodation in the form of additional time to meet deadlines when needed due to his disability.

RESPECTFULLY SUBMITTED this 5<sup>th</sup> day of March, 2007.

  
Neil J. Gillespie, Plaintiff pro se  
8092 SW 115<sup>th</sup> Loop  
Ocala, Florida 34481  
Telephone: (352) 502-8409

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a true and correct copy of the foregoing has been furnished via US Mail to Ryan C. Rodems, attorney, Barker, Rodems & Cook, P.A., 400 N Ashley Dr., Suite 2100, Tampa, FL 33602, this 5<sup>th</sup> day of March, 2007.

  
Neil J. Gillespie

**BARKER, RODEMS & COOK**  
PROFESSIONAL ASSOCIATION  
ATTORNEYS AT LAW

CHRIS A. BARKER  
RYAN CHRISTOPHER RODEMS  
WILLIAM J. COOK

300 West Platt Street, Suite 150  
Tampa, Florida 33606

Telephone 813/489-1001  
Facsimile 813/489-1008

March 27, 2001

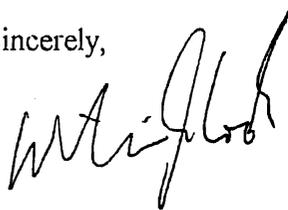
Neil J. Gillespie  
Apartment C-2  
1121 Beach Drive NE  
St. Petersburg, Florida 33701-1434

**Re: Vocational Rehabilitation**

Dear Neil:

I am enclosing the material you provided to us. We have reviewed them and, unfortunately, we are not in a position to represent you for any claims you may have. Please understand that our decision does not mean that your claims lack merit, and another attorney might wish to represent you. If you wish to consult with another attorney, we recommend that you do so immediately as a statute of limitations will apply to any claims you may have. As you know, a statute of limitations is a legal deadline for filing a lawsuit. Thank you for the opportunity to review your materials.

Sincerely,



William J. Cook

WJC/mss

Enclosures

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# Fax

**From:** Neil J. Gillespie  
1121 Beach Drive NE, Apt C-2  
St. Petersburg, FL 33701  
Phone/Fax: (727) 823-2390

**To:** William J. Cook, Attorney at Law

---

**Fax:** (813) 228-9612

---

**Date:** October 6, 2000

---

**Pages:** just this page

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**Re:** ACE Check Cashing deposition

---

**Urgent**       **Please Reply**       **For Your Review**

---

● **Comments:**

RE: Current medications

Effexor XR 150 mg (depression)

Levoxyl 0.075 mg (hormone)

STATE OF FLORIDA )  
COUNTY OF HILLSBOROUGH)  
THIS IS TO CERTIFY THAT THE FOREGOING IS A TRUE  
AND CORRECT COPY OF THE DOCUMENT ON FILE IN  
MY OFFICE. WITNESS MY HAND AND OFFICIAL SEAL  
THIS 31<sup>st</sup> DAY OF August 2010



PAT FRANK  
CLERK OF CIRCUIT COURT  
BY Donna Healy D.C.

174



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

NEIL J. GILLESPIE,

Plaintiff and Counter-Defendant,  
vs.

CASE NO.: 05-CA-007205

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

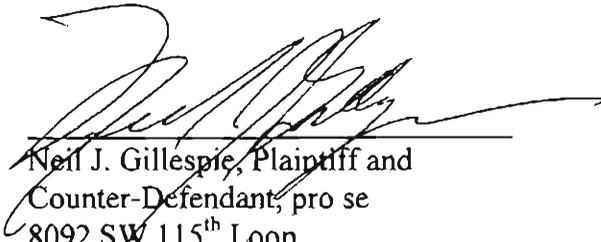
DIVISION: G

Defendants and Counter-Plaintiffs.

PLAINTIFF'S NOTICE OF FILING AFFIDAVIT OF NEIL J. GILLESPIE

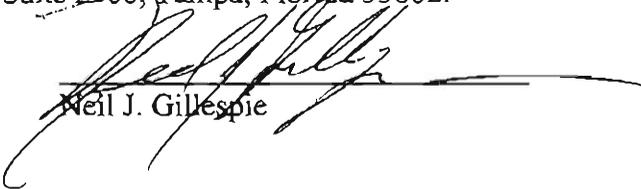
Plaintiff and Counter-Defendant pro se Gillespie hereby notice the filing of the  
Affidavit of Neil J. Gillespie.

RESPECTFULLY SUBMITTED September 18, 2010.

  
Neil J. Gillespie, Plaintiff and  
Counter-Defendant, pro se  
8092 SW 115<sup>th</sup> Loop  
Ocala, Florida 34481  
Telephone: (352) 854-7807

Certificate of Service

I HEREBY CERTIFY that copy of the foregoing was mailed September 18, 2010  
to Mr. Ryan C. Rodems, attorney for the Defendants and Counter-Plaintiffs, at Barker,  
Rodems & Cook, PA, 400 North Ashley Drive, Suite 2100, Tampa, Florida 33602.

  
Neil J. Gillespie

EXHIBIT

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

NEIL J. GILLESPIE,

Plaintiff and Counter-Defendant,  
vs.

CASE NO.: 05-CA-7205

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

DIVISION: G

Defendants and Counter-Plaintiffs.

---

**AFFIDAVIT OF NEIL J. GILLESPIE**

Neil J. Gillespie, under oath, testifies as follows:

1. My name is Neil J. Gillespie, and I am over eighteen years of age. This affidavit is given on personal knowledge unless otherwise expressly stated.
2. Attorney Robert W. Bauer, Florida Bar ID No. 11058, formerly represented me in the above captioned lawsuit. While representing me, Mr. Bauer sent me an email on July 8, 2008, a paper copy of which is attached as Exhibit A.
3. In his email Mr. Bauer wrote he does not wish for me to attend hearings because he is concerned that Mr. Rodems' comments to me will enflame the situation. Mr. Bauer wrote the following about Mr. Rodems' comments: "I am sure that he makes them for no better purpose than to anger you. I believe it is best to keep you away from him and not allow him to prod you."
4. Upon information and belief, the behavior Mr. Bauer has attributed to Defendants counsel Mr. Rodems, comments made "for no better purposes than to anger

you”, is unlawful harassment and a violation of section 784.048, Florida Statutes. As used in section 784.048(1)(a) "Harass" means to engage in a course of conduct directed at a specific person that causes substantial emotional distress in such person and serves no legitimate purpose. As used in section 784.048(1)(b) "Course of conduct" means a pattern of conduct composed of a series of acts over a period of time, however short, evidencing a continuity of purpose. (relevant portion). As used in section 784.048(2) Any person who willfully, maliciously, and repeatedly follows, harasses, or cyberstalks another person commits the offense of stalking, a misdemeanor of the first degree, punishable as provided in s. 775.082 or s. 775.083.

5. Since March 3, 2006, Mr. Rodems has directed, with malice aforethought, a course of harassing conduct toward me that has aggravated my disability, caused substantial emotional distress, and serves no legitimate purpose, as further described in the following pleadings and documents:

- a. Plaintiff's Accommodation Request Americans with Disabilities Act (ADA), February 20, 2007
- b. Plaintiff's Amended Accommodation Request Americans with Disabilities Act (ADA), March 5, 2007
- c. ADA Assessment and Report by Ms. Karin Huffer, MS, MFT, February 17, 2010.
- d. Americans With Disabilities Act (ADA) Accommodation Request of Neil J. Gillespie, February 19, 2010
- e. Notice of Americans with Disability Act (ADA) Accommodation Request of Neil J. Gillespie, February 19, 2010

f. Request For Accommodations By Persons With Disabilities And Order, 13<sup>th</sup> Judicial Circuit, February 18, 2010. Note item 6, Special requests or anticipated problems (specify): "I am harassed by Mr. Rodems in violation of Fla. Stat. section 784.048". Copy attached to this Affidavit as Exhibit B

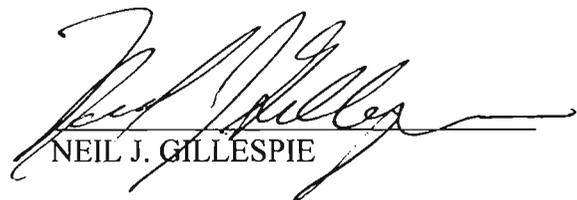
g. Emergency Motion To Disqualify Defendants' Counsel Ryan Christopher Rodems & Barker, Rodems & Cook, PA July 9, 2010

h. Numerous other pleadings and documents, see the case file.

6. Mr. Rodems set a level of animosity in this lawsuit described by Mr. Bauer 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).

FURTHER AFFIANT SAYETH NAUGHT.

Dated this 17th day of September 2010.

  
NEIL J. GILLESPIE

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 Affidavit are true and correct to the best of his knowledge and belief.

WITNESS my hand and official seal this 17th day of September 2010.



  
Notary Public  
State of Florida

**Neil Gillespie**

---

**From:** "Robert W. Bauer, Esq." <rwb@bauerlegal.com>**To:** "Neil Gillespie" <neilgillespie@mfi.net>**Sent:** Tuesday, July 08, 2008 6:05 PM**Subject:** RE: attached, Notice of Filing Fact Information Sheet

It was my understanding that my office did contact you. I have already apologized and have stated that I will correct the error with the court. I can do nothing more.

No – I do not wish for you to attend hearings. I am concerned that you will not be able to properly deal with any of Mr. Rodems comments and you will enflame the situation. I am sure that he makes them for no better purpose than to anger you. I believe it is best to keep you away from him and not allow him to prod you. You have had a very adversarial relationship with him and it has made it much more difficult to deal with your case. I don't not wish to add to the problems if it can be avoided.

I agree that there are personal exemptions – but as you may note I have already filled a stay which we are scheduling for hearing at this time.

Robert W. Bauer, Esq.  
Law Office of Robert W. Bauer, P.A  
2815 NW 13th St. Suite 200E  
Gainesville, FL 32609  
352.375.5960  
352.337.2518 - Facsimile  
Bauerlegal.com

**From:** Neil Gillespie [mailto:neilgillespie@mfi.net]**Sent:** Tuesday, July 08, 2008 1:20 PM**To:** Robert W. Bauer, Esq.**Subject:** attached, Notice of Filing Fact Information Sheet**Importance:** High

July 8, 2008

Mr. Bauer,

Attached is my Notice of Filing Fact Inforamtion Sheet, which includes the Fact Information Sheet and attachments. You know, it is pretty outrageous that you would attend the contempt hearing without calling me beforehand to find out why the Fact Information Sheet was not filed. I could have done it then and you could have presented it to the court, without risking my incarceration, posting a bond, or angering the judge. Should I attend future hearings, to be available for questions like this? Please contact me if you have any questions.

A local attorney I spoke with said there is a \$1,000.00 personal exemption that could act to protect my vehicle. He also advised me to consult with an asset protection specialist lawyer, because he warned Mr. Rodems will likely try and go after the assets in my family's trust. I wanted the opportunity to do that before filing the Fact Information Sheet, but there is no time.

Neil Gillespie



9/13/2010

No virus found in this incoming message.

Checked by AVG - <http://www.avg.com>

Version: 8.0.138 / Virus Database: 270.4.6/1540 - Release Date: 7/8/2008 6:33 AM

**No virus found in this incoming message.**

**Checked by AVG - <http://www.avg.com>**

**Version: 8.0.138 / Virus Database: 270.4.6/1540 - Release Date: 7/8/2008 6:33 AM**



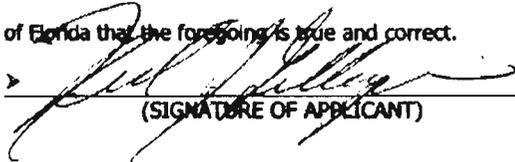
# REQUEST FOR ACCOMMODATIONS BY PERSONS WITH DISABILITIES AND ORDER

Administrative Office of the Courts

APPLICANT (name): Neil J. Gillespie APPLICANT IS: <input type="checkbox"/> Witness <input type="checkbox"/> Juror <input type="checkbox"/> Attorney <input checked="" type="checkbox"/> Party <input type="checkbox"/> Other Person submitting request (name): Neil J. Gillespie APPLICANT'S ADDRESS: 8092 SW 115th Loop, Ocala, FL 34481 TELEPHONE NO: (352) 854-7807 <b>LOCATION:</b> STREET ADDRESS: 8092 SW 115th Loop, Ocala, FL 34481 MAILING ADDRESS: 8092 SW 115th Loop, Ocala, FL 34481 CITY AND ZIP CODE: Ocala, FL 34481 E-MAIL ADDRESS: neilgillespie@mfi.net BRANCH NAME: Circuit Civil Court      DIVISION: C NAME OF JUDGE: Circuit Court Judge James M. Barton, II CASE NAME: Gillespie v. Barker, Rodems & Cook, P.A., and William J. Cook, 05-CA-7205 NAME OF ATTORNEY (if applicable): none, pro se	<b>FOR COURT USE ONLY</b> <input type="checkbox"/> Web (Date OPI received): _____ <input type="checkbox"/> Facsimile <input type="checkbox"/> Written notice Date ADA Coordinator received: _____ Case number: _____
---	---

**Applicant requests accommodations under Florida Rules of Court, Rule 2.065, as follows:**

- Division of Court:  Criminal  Civil  Juvenile
- Type of proceeding to be covered (specify: hearing, trial):  
All meetings, procedures, hearings, discovery process, trials, appeals, and any other court-related activity.
- Dates accommodations needed (specify):  
All dates and times from the commencement of this action until its final conclusion including any appeal.
- Impairment necessitating accommodations (specify):  
Please see the ADA Assessment and Report prepared by Karin Huffer, MS, MFT
- Type of accommodations (specify):  
Please see the ADA Accommodation Request of Neil J. Gillespie submitted February 19, 2010
- Special requests or anticipated problems (specify): I am harassed by Mr. Rodems in violation of Fla. Stat. section 784.048
- I request that my identity  be kept CONFIDENTIAL  NOT be kept CONFIDENTIAL

I declare under penalty of perjury under the laws of the State of Florida that the foregoing is true and correct.  
 Date: February 18, 2010  
 Neil J. Gillespie  
 (TYPE OR PRINT NAME)   
(SIGNATURE OF APPLICANT)

**ADMINISTRATIVE OFFICE OF THE COURT USE ONLY**

<input type="checkbox"/> request for accommodations is GRANTED because	<input type="checkbox"/> the request for accommodations is DENIED because
<input type="checkbox"/> the applicant satisfies the requirements of the rule.	<input type="checkbox"/> the applicant does not satisfy the requirements of the rule.
<input type="checkbox"/> it does not create an undue burden on the court.	<input type="checkbox"/> It creates an undue burden on the court.
<input type="checkbox"/> It does not fundamentally alter the nature of the service, program, or activity.	<input type="checkbox"/> it fundamentally alters the nature of the service, program, or activity (specify):
<input type="checkbox"/> alternate accommodations granted (specify):	

ROUTE TO:  
 Court Facilities  Court Interpreter Center  
 Date: \_\_\_\_\_

\_\_\_\_\_  
 ADA COORDINATOR

REQUEST FOR ACCOMMODATIONS BY PERSONS WITH DISABILITIES AND ORDER



## COPY



**AFFIDAVIT OF NEIL J. GILLESPIE IN REBUTTAL OF BEVERLY LOWE**

Neil J. Gillespie, under oath, testifies as follows:

1. My name is Neil J. Gillespie, and I am over eighteen years of age. This affidavit is given on personal knowledge unless otherwise expressly stated.

2. Attorney Robert W. Bauer, Florida Bar ID No. 11058, formerly represented me a lawsuit, Neil J. Gillespie v. Barker, Rodems & Cook, PA, and William J. Cook, Case No. 05-CA-007205, Hillsborough Circuit Civil Court, Tampa. I was referred to Mr. Bauer by The Florida Bar Lawyer Referral Service (LRS) February 26, 2007. Mr. Bauer moved to withdrawal as my attorney, and the court subsequently granted his motion October 1, 2009.

3. Mr. Bauer's representation of me was negligent. I notified Bauer by certified letter dated December 16, 2009 that the time to resolve our dispute amicably had expired. I concluded that Mr. Bauer was in breach of contract, breach of fiduciary duty, that he engaged in fraud and other unlawful and unprofessional conduct. I notified Mr. Bauer that he was not entitled to further payments from me. I notified Mr. Bauer that I would seek to recover money wrongly paid to him. I notified Mr. Bauer that he violated the Americans with Disabilities Act (ADA). I informed Mr. Bauer that he can expect a lawsuit, and a complaint for misconduct. I demanded the return of my files immediately. There was no demand for money and no threats were made.

4. On July 15, 2010 I submitted a complaint of misconduct against Mr. Bauer. The Florida Bar opened an inquiry into Mr. Bauer, File No. 2011-00,073 (8B). Mr. Bauer submitted a response to the Bar dated August 18, 2010. "Exhibit D" of Mr. Bauer's response was the "Affidavit of Beverly Lowe". The affidavit is written in a theatrical style and contains falsehoods

of material facts, material omissions, and exaggerations. The affidavit appears to be concocted to discredit the complaint of misconduct I made against Mr. Bauer.

5. Ms. Lowe swore that during the relevant times hereto, she was the Office Manager at The law Office of Robert W. Bauer. Ms. Lowe essentially described four sets of facts, three of which related to the time when I was a client of the firm, and a fourth to an incident November 20, 2009 when I was not a client of the firm.

6. First, Ms. Lowe states that I was already a client of the firm when she began. My notes show that I first met Ms. Lowe February 26, 2008, one year after the LRS referral. After that I may have met Ms. Lowe one or two times during my time as a client. The meetings were cordial. While I was a client I received billing invoices from her that contained numerous errors that were later resolved in my favor. I do not have any personal dispute with Ms. Lowe.

7. Second, Ms. Lowe states she was told I suffered “some form of disability, possibly PTSD, and that we should take precautions when dealing with him. As such, I ensured that when I or others dealt with him, we were very courteous and accommodating to him.” It is true that I am disabled. I never discussed my disability with Ms. Lowe.

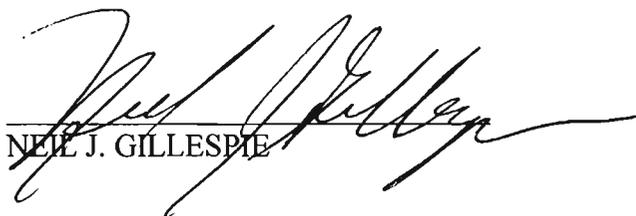
8. Third, Ms. Lowe states that “Despite these efforts, I witnessed Mr. Gillespie threaten to sue Mr. Bauer on more that one occasion if Mr. Bauer didn’t do things the way that Mr. Gillespie wanted him to.” This statement by Ms. Lowe is false. I never threatened to sue Mr. Bauer while I was a client. It is my understanding that when a client sues or threatens to sue a lawyer, that threat immediately terminates the attorney-client relationship.

9. Fourth, Ms. Lowe described an incident November 20, 2009 that she alleges occurred when I was no longer a client of Mr. Bauer. This incident was incidental to a

prearranged meeting to pick up my case file. Mr. Bauer failed to have the file ready or even know about the meeting. Mr. Bauer blamed his staff for the negligence. Ms. Lowe's affidavit contains falsehoods, omissions and exaggerations. Ms. Lowe stated that "Mr. Gillespie's message did not resonate with me such that I can recall it today..." Rather than attempt to refute each false accusation of this ridiculous account, I made a separate affidavit of the incident. Also of note, upon information and belief, Ms. Lowe and Mrs. Beal are no longer employed by Mr. Bauer. An investigator on my behalf called the law office of Mr. Bauer Monday, September 13, 2010 and spoke with "Mary" who told my investigator that Beverly Lowe and Alison Beal are no longer employed at the firm.

FURTHER AFFIANT SAYETH NAUGHT.

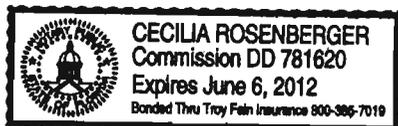
Dated this 17th day of September 2010.

  
NEIL J. GILLESPIE

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 Affidavit are true and correct to the best of his knowledge and belief.

WITNESS my hand and official seal this 17th day of September 2010.



  
Cecilia Rosenberger  
Notary Public  
State of Florida

**AFFIDAVIT OF NEIL J. GILLESPIE**

**Mr. Bauer's Refusal to Return My Case File**

Neil J. Gillespie, under oath, testifies as follows:

1. My name is Neil J. Gillespie, and I am over eighteen years of age. This affidavit is given on personal knowledge unless otherwise expressly stated.
2. Attorney Robert W. Bauer, Florida Bar ID No. 11058, formerly represented me a lawsuit, Neil J. Gillespie v. Barker, Rodems & Cook, PA, and William J. Cook, Case No. 05-CA-007205, Hillsborough Circuit Civil Court, Tampa, Florida. I was referred to Mr. Bauer by The Florida Bar Lawyer Referral Service (LRS) February 26, 2007. Mr. Bauer moved to withdrawal as my attorney October 13, 2008. The court granted his motion October 1, 2009.
3. Following his withdrawal from representation Mr. Bauer failed to return my case file and documents, and otherwise failed to discuss the matter. After Mr. Bauer left the case I was not represented by counsel. I needed my case file to proceed pro se.
4. In a letter to Mr. Bauer dated November 16, 2009, I demanded the return of my case file. I sent the letter by United States Postal Service (USPS) Certified Mail, Article No. 7009 0820 0000 6708 7187. The letter states that "Pending advice to the contrary, I will pick up the file in your office Friday, November 20, 2009, at 1:00pm." A copy of the letter is attached. (Exhibit A). The certified mail return card shows the letter was delivered November 17, 2009 and bears the signature of "A Beal". A copy of the certified mail return card, certified mail receipt, and USPS receipt is attached. (Exhibit B)
5. By Friday November 20, 2009 Mr. Bauer had not acknowledged or responded to my letter demanding the return of my file. No one from his office contacted

me about the file. Therefore I drove from Ocala to Gainesville to pickup the file as stated in my letter. (Exhibit A). The trip was delayed due to a traffic accident on I-75 and I arrived later than 1:00 PM stated in the letter.

6. Mr. Bauer's office is located on the second floor of the Bank of America building, 2815 NW 13th Street, Suite 200E, Gainesville, FL 32609. Mr. Bauer occupies several rooms among other offices occupied by unrelated tenants. All the offices on the second floor appear to share a central reception desk and waiting area across from the elevator. When I arrived I was greeted by a woman at the reception desk who identified herself as Alison Beal. I had not previously met Ms. Beal but had spoken with her on the phone. I told Ms. Beal I was here for an appointment to pick up my file.

7. Almost immediately I saw Mr. Bauer in the hall leading to the reception area. Mr. Bauer was standing facing a woman who had her back against the wall. They were close together in an intimate stance. I did not recognize the woman, and at the time I assumed it may have been his wife, Toya Lawanda Bauer. Upon subsequent information provided in the "Affidavit of Beverly Lowe" of August 17, 2010, I now believe the woman was Beverly Lowe. I did not speak with Ms. Lowe.

8. I approached Mr. Bauer and said I was here to pick up my file. Mr. Bauer claimed ignorance and said he did not receive my letter. In response I handed Mr. Bauer a copy of the letter. Mr. Bauer read the letter and said he would provide the file but needed to copy items in the file and was short of staff to do this immediately. I offered to wait while someone completed whatever had to be done to get the file ready for me. Mr. Bauer refused my offer. I explained that I sent a demand for the file by certified mail and did not understand why Mr. Bauer did not respond if the file would not be ready today. Mr. Bauer

responded with more excuses. Mr. Bauer said he is not aware of every piece of mail received and blamed his staff for overlooking my letter. Mr. Bauer said it is difficult to find qualified staff. At this point I cut him short and said "I am tired of your bullshit and I want my fucking file". Mr. Bauer continued making excuses and I repeated myself. This cycle continued whereupon Mr. Bauer asked me to leave and I immediately complied. I left his office without my file and drove back home to Ocala.

9. As of today Mr. Bauer has not returned my file. Instead Mr. Bauer sent me letters dated November 23, 2009. Mr. Bauer demanded payment of \$12,650.13 for an outstanding balance. Mr. Bauer wrote (in part) "The law allows an attorney to exercise a charging lean (sic) against a client file's prior to returning the file to the client. Please be aware that I intend to exercise my right to charging Lane (sic) against your file in the above now. Upon your satisfaction of the above lien I will happily return your file to you." The word "lien" is spelled three different ways in the letter. (Exhibit 3).

FURTHER AFFIANT SAYETH NAUGHT.

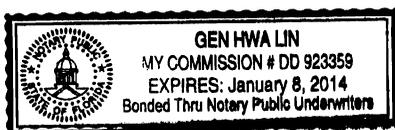
Dated this 18th day of September 2010.

  
NEIL J. GILLESPIE

STATE OF FLORIDA  
COUNTY OF MARION

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

WITNESS my hand and official seal this 18th day of September 2010.



  
Notary Public, State of Florida

**Neil J. Gillespie**  
8092 SW 115<sup>th</sup> Loop  
Ocala, Florida 34481

Telephone: (352) 854-7807  
email: neilgillespie@mfi.net

VIA US CERTIFIED MAIL, RETURN RECEIPT  
Article No.: 7009 0820 0000 6708 7187

November 16, 2009

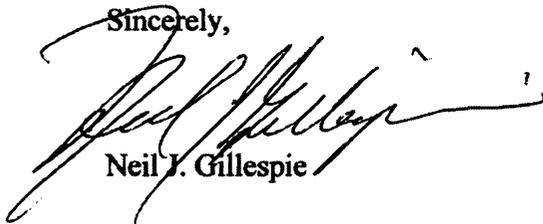
Robert W. Bauer, Attorney at Law  
Law Office of Robert W. Bauer, P.A.  
2815 NW 13<sup>th</sup> Street, Suite 200E  
Gainesville, FL 32609

RE: Gillespie v. Barker, Rodems & Cook, PA, case no.: 05-CA-7205

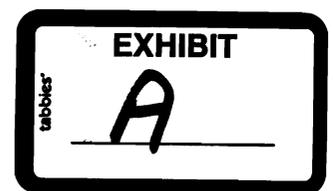
Dear Mr. Bauer:

This is a demand for return of the case file in the above captioned matter. Pending advice to the contrary, I will pick up the file in your office Friday, November 20, 2009, at 1:00pm.

Sincerely,



Neil J. Gillespie



"PADDOCK BRANCH POST OFFICE"  
 OCALA, Florida  
 344749998  
 1143840606 -0098  
 (352)861-8188 03:38:51 PM  
 11/16/2009

Product Description	Sales Receipt		Final Price
	Sale Qty	Unit Price	
44c Anna Julia Cooper PSA	3	\$0.44	\$1.32
GAINESVILLE FL 32609 Zone-1 First-Class Letter			\$0.44
0.90 oz. Return Rcpt (Green Card) Certified			\$2.30
Label #:		70090820000067087187	\$2.80

Issue PVI: \$5.54

Total: \$6.86

Paid by: Cash \$10.00  
 Change Due: -\$3.14

Order stamps at USPS.com/shop or call 1-800-Stamp24. Go to USPS.com/clicknship to print shipping labels with postage. For other information call 1-800-ASK-USPS.

Bill #: 1000202407341  
 Clerk: 16

All sales final on stamps and postage  
 Refunds for guaranteed services only  
 Thank you for your business

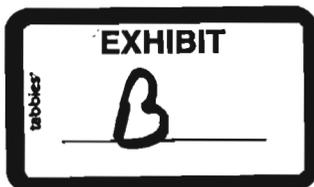
\*\*\*\*\*  
 HELP US SERVE YOU BETTER  
 \*\*\*\*\*

Go to: <https://postalexperience.com/Pos>

TELL US ABOUT YOUR RECENT POSTAL EXPERIENCE

YOUR OPINION COUNTS  
 \*\*\*\*\*

Customer Copy



U.S. Postal Service  
**CERTIFIED MAIL RECEIPT**  
 (Domestic Mail Only; No Insurance Coverage Provided)

For delivery information visit our website at [www.usps.com](http://www.usps.com)

OFFICIAL USE

9872 9029 0000 0290 6002

Postage \$ 12.00  
 Certified Fee \$ 0.44  
 Return Receipt Fee (Endorsement Required) \$ 2.30  
 Restricted Delivery Fee (Endorsement Required) \$ 2.30  
 Total Postage & Fees \$ 17.04

NOV 16 2009

Sent to Robert W. Brewer, Attorney  
 Street, Apt. No., or PO Box No. 2815 NW 13th St, Suite 200E  
 City, State, ZIP+4 Gainesville, FL 32609

2. Article Number (Transfer from service label) 7009 0820 0000 6708 7187  
 PS Form 3811, February 2004 Domestic Return Receipt 102965-02-04-1540

1. Article Addressed to:  
 Robert W. Brewer, Attorney  
 Also office of Robert W. Brewer, PA  
 2815 NW 13th St, Suite 200E  
 Gainesville, FL 32609

SENDER COMPLETE THIS SECTION

- Complete items 1, 2, and 3. Also complete item 4 if Restricted Delivery is desired.
- Print your name and address on the reverse so that we can return the card to you.
- Attach this card to the back of the mailpiece, or on the front if space permits.

3. Service Type  
 Certified Mail  
 Registered  
 Insured Mail  
 Express Mail  
 Return Receipt for Merchandise  
 C.O.D.  
 Restricted Delivery? (Extra Fee)  Yes

4. Signature  
 [Signature]  
 Agent Addressed

5. Date of Delivery  
 11-17-09

6. Is delivery address different from item 1?  Yes  No  
 If YES, enter delivery address below:

COMPLETE THIS SECTION ON DELIVERY

*The Law Offices of*

# Robert W. Bauer, P.A.

2815 NW 13th Street, Suite 200E, Gainesville, FL 32609

www.bauerlegal.com

~

*Robert W. Bauer, Esq.*

*David M. Sams, Esq.*

Phone: (352)375.5960

Fax: (352)337.2518

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November 23, 2009

Mr. Neil Gillespie  
8092 SW 115th Loop  
Ocala, Florida 34481

**By Regular and Certified Mail: 70070710000343197711**

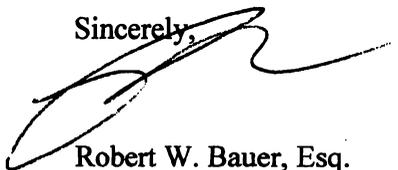
Re: Gillespie v. Barker Rodems and Cooke - 05CA007205 - 060703

Dear Mr. Gillespie:

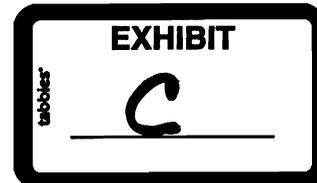
This letter will serve as confirmation that we are in receipt of your request for the return of your file. However, please be aware there is a current outstanding balance of 12,650 dollars and 13 cents in your case. The law allows an attorney to exercise a charging lean against a client file's prior to returning the file to the client. Please be aware that I intend to exercise my right to charging Lane against your file in the above now. Upon your satisfaction of the above lien I will happily return your file to you. Please be aware that I'm happy to consider any reasonable suggestion to resolve the situation.

If you have questions please feel free to contact me on an unrecorded line.

Sincerely,



Robert W. Bauer, Esq.



**Neil Gillespie**

---

**From:** "Joshua A Cossey" <jac@bauerlegal.com>  
**To:** "Neil Gillespie" <neilgillespie@mfi.net>  
**Sent:** Tuesday, August 19, 2008 12:45 PM  
**Subject:** Bond status update.  
Mr. Gillespie,

I have received your fax, submitted all relevant issues to Mr. Bauer, and submitted the application for initial review to Juris Co. I have also called them and they have acknowledge receipt. I will notify you of any further developments. Additionally, I expressed your concerns regarding the head of household statement, and will follow up with him today.

Respectfully,

Joshua A. Cossey, JD  
The Law Office of Robert W. Bauer, P.A.  
2815 NW 13th St., Suite 200 E  
Gainesville, FL 32609  
(352) 375 - 5960  
(352) 337 - 2518

This e-mail or any attachments provided may contain confidential information that may be legally privileged and is for official use only. If you have received this e-mail in error, please notify the sender immediately by return e-mail and delete this message. If this e-mail message contains a forwarded message or is a reply to a prior message, some or all of the contents of this message or any attachments to it may not have been produced by the Law Offices of Robert W. Bauer, P.A. Please email [jac@bauerlegal.com](mailto:jac@bauerlegal.com) and delete the message in its entirety.

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Version: 8.0.138 / Virus Database: 270.6.5/1620 - Release Date: 8/19/2008 6:04



**Neil Gillespie**

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**From:** "Robert W. Bauer, Esq." <rwb@bauerlegal.com>  
**To:** "Neil Gillespie" <neilgillespie@mfi.net>  
**Sent:** Tuesday, August 19, 2008 4:24 PM  
**Subject:** Bond

We received a response from several bonding companies. While we have been able to receive court bonds in the past that were based on a percentage – we are not able to do so at this time. They are now requiring 100% collateral for the bond. Then they charge a service fee of several thousand dollars. I cannot see any advantage for you with this. We still have the option that you can post the full amount with a disinterested third party escrow agent – I should be able to get another attorney to do that for little or nothing. Again, considering our review of what they can get I am not sure this is in your best interest. Please advise me of your desires in this as soon as possible.

Robert W. Bauer, Esq.  
Law Office of Robert W. Bauer, P.A  
2815 NW 13th St. Suite 200E  
Gainesville, FL 32609  
352.375.5960  
352.337.2518 - Facsimile  
Bauerlegal.com

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Checked by AVG - <http://www.avg.com>

Version: 8.0.138 / Virus Database: 270.6.5/1620 - Release Date: 8/19/2008 6:04



**Neil Gillespie**

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**From:** "Neil Gillespie" <neilgillespie@mfi.net>  
**To:** "Robert W. Bauer, Esq." <rwb@bauerlegal.com>  
**Sent:** Tuesday, August 19, 2008 5:35 PM  
**Subject:** Re: Bond  
August 19, 2008

Mr. Bauer,

I do not have the money you request to pay for the bond, nor do I have that amount to post with a third party. Barker Rodems & Cook took the last few hundred dollars out of my checking account on August 11, 2008 by garnishment. As you know, thus far I have paid your legal bills with credit cards or home equity loan checks. I am indebted to my mother for over \$18,000 for your attorney's fees, plus many more thousands for transcripts, other lawyer's fees, etc. She recently obtained a reverse mortgage because we could no longer make the mortgage payments. The underlying mortgage debt was due to this lawsuit in part, and for approximately \$40,000 that my sister lost in a business scam in 2004. The reverse mortgage yielded much lower than anticipated due to declining real estate values. The reverse mortgage barely covered the existing mortgage, home equity loan, and exorbitant closing costs. So there is no more money. The outstanding credit card debt used to pay your attorney's fees is unpaid. In fact, the unpaid credit card debt exceeds what is left in my mother's IRA-CD. She has no other assets. I have no other assets. Following my bankruptcy in 2003 I did not have any significant income. I purchased my present vehicle for \$700, that's about it. In 2005 I was preparing to work as a driver for KBR in Iraq, but that fell through because my CDL was not the type required. I have been involved in this lawsuit since.

As for the head of household designation, I told Mr. Cossesy today that is not likely factual. While I put most of my income toward supporting the family home and my mother, she likely contributes the same or more. The house belongs to her (in a family trust), plus all the debt incurred is her debt. Her debt contributes to our income because our income is not sufficient to live on. In the beginning I kept the finances separate and maintained careful records, but once she became ill and was hospitalized the record keeping became too time consuming.

So you could tell the court I essentially do not qualify for a bond, or cannot afford a bond. My bank account has been emptied by the garnishment. My vehicle was transferred to my mother as partial repayment of the debit I owe her. I have no credit in my name other than a \$14,000 student loan which is in forbearance. I own nothing other than my cloths and some books. Everything in our home belongs to my mother or the family trust, the furniture,



appliances, etc. Even my computer and office equipment belongs to her, as it was bought on her credit.

Please contact me if you need further information. Thank you.

Neil Gillespie.

----- Original Message -----

**From:** [Robert W. Bauer, Esq.](#)  
**To:** [Neil Gillespie](#)  
**Sent:** Tuesday, August 19, 2008 4:24 PM  
**Subject:** Bond

We received a response from several bonding companies. While we have been able to receive court bonds in the past that were based on a percentage – we are not able to do so at this time. They are now requiring 100% collateral for the bond. Then they charge a service fee of several thousand dollars. I cannot see any advantage for you with this. We still have the option that you can post the full amount with a disinterested third party escrow agent – I should be able to get another attorney to do that for little or nothing. Again, considering our review of what they can get I am not sure this is in your best interest. Please advise me of your desires in this as soon as possible.

Robert W. Bauer, Esq.  
Law Office of Robert W. Bauer, P.A  
2815 NW 13th St. Suite 200E  
Gainesville, FL 32609  
352.375.5960  
352.337.2518 - Facsimile  
Bauerlegal.com

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Version: 8.0.138 / Virus Database: 270.6.5/1620 - Release Date: 8/19/2008 6:04 AM

**Neil Gillespie**

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**From:** "Neil Gillespie" <neilgillespie@mfi.net>  
**To:** "Robert W. Bauer, Esq." <RWB@bauerlegal.com>  
**Cc:** "Natalia D Ricardo" <ndr@bauerlegal.com>; "Beverly Lowe" <bel@bauerlegal.com>  
**Sent:** Monday, August 11, 2008 11:18 AM  
**Subject:** writ of garnishment

Dear Mr. Bauer,

Today my bank informed me that a writ of garnishment has been served against my accounts. On Friday evening, August 8, 2008, I noticed checks I had written were not being paid. It turns out that my accounts were frozen. Today the bank would not disclose who initiated the writ of garnishment. I am assuming it was Mr. Rodems on behalf of his client Barker, Rodems & Cook, PA for their final judgment of \$11,550. The bank said the sheriff would be serving papers upon me, but as of now that has not happened.

In a letter to you dated April 8, 2008, I requested that you stay any action on the final judgment. While you have made a motion to stay the judgment, you have not even scheduled a hearing. So once again Mr. Rodems is running rings around you.

In my opinion your failure to stay the judgment or schedule a hearing on the matter amounts to professional negligence. I urge you to immediately correct your error.

By the way, my check First-Choice Court Reporting Services, Inc., issued on July 29, 2008, has not cleared, and given that my accounts were frozen, may be dishonored.

Sincerely,

Neil J. Gillespie



**Neil Gillespie**

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**From:** "Neil Gillespie" <neilgillespie@mfi.net>  
**To:** "Robert W. Bauer, Esq." <RWB@bauerlegal.com>  
**Cc:** "Tanya Uhl" <TMU@bauerlegal.com>; "Joshua Cossey" <jac@bauerlegal.com>; "Natalia D Ricardo" <ndr@bauerlegal.com>; "Beverly Lowe" <bel@bauerlegal.com>; "Ann Breeden" <agb@bauerlegal.com>  
**Sent:** Tuesday, August 12, 2008 10:05 AM  
**Subject:** Writ of Garnishment  
 August 12, 2008

Mr. Bauer,

Please provide a copy of the Writ of Garnishment by email. When did you first become aware that Mr. Rodems obtained a Writ of Garnishment?

Now that my bank accounts have been emptied, what else can I expect to happen?

1. Will my car be taken away? Yesterday I transferred the car to my mother's name.
2. Will things from my home be taken away? My cloths? My Computer?
3. Will there be a sheriff sale? If so, when?
4. Will my family's assets (not in my name) be taken?
5. What else can I expect as a result of the Writ of Garnishment?

During our March 27, 2008 phone call I instructed you to stay the final judgment, and you agreed to file a motion to stay. It goes without saying that the motion to stay must be filed, scheduled, and heard in a timely manner. "Timely" means BEFORE the execution of the judgment, writ of garnishment, etc. Otherwise it is a case of closing the barn door after the horse has escaped. On April 8, 2008, I instructed you by letter to stay the final judgment. Why did you fail to act in a timely matter? Why did you wait until June 9, 2008 to submit Plaintiff's Motion For Stay? Why did you fail to schedule a hearing in June? Why did you fail to schedule a hearing in July? Now that we are in the month of August, your current excuse that the judge is on vacation strains credulity.

Mr. Bauer, it appears that your failure to stay the judgment in a timely manner amounts to professional negligence. What is your opinion?

I suffer anxiety disorder, PTSD and depression, which has been aggravated by your failure to timely stay the judgment and resultant Writ of Garnishment. Yesterday my bank accounts were emptied without notice. I lost \$598.22. I had six outstanding checks, including one to First-Choice Court Reporting. Those check will likely be returned unpaid, and I will likely incur hundreds of dollars in bounced check fees. This money is needed for our very survival.

In addition, I am the primary caregiver for my 78 year-old mother who is dying of Alzheimer's disease. The disruption to our home caused by your failure to stay the judgment in a timely manner is extremely detrimental to our well-being. Yesterday I



was forced to take my frail mother to the motor vehicle office to change my vehicle title and registration to her name. We incurred over \$100.00 in costs. We cannot live without a vehicle. If Mr. Rodems takes our vehicle it would be a catastrophe, since we would be unable to obtain food, medicine, or ongoing medical treatment.

Neil Gillespie

**Neil Gillespie**

---

**From:** "Joshua A Cossey" <jac@bauerlegal.com>  
**To:** <neilgillespie@mfi.net>  
**Cc:** "Robert W. Bauer, Esq." <rwb@bauerlegal.com>  
**Sent:** Thursday, April 24, 2008 6:36 PM  
**Attach:** Florida Rules of Appellate Procedure 2007.pdf  
Greetings Mr. Gillespie,

It was a pleasure speaking with you today regarding the questions and concerns raised surrounding case 05-CA-007205. Per our conversation, I have attached the Florida Rules of Appellate Procedure so that you may have it on hand if needed. While I can not advise you or provide legal opinions as to what should be done (strictly defaulting to Mr. Bauer), I note my personal attention to Rule 9.110. You will hear from this office before close of business tomorrow regarding this offices involvement and direction surrounding the appeal and other issues raised in our conversation.

Respectfully,

Joshua A. Cossey, JD  
The Law Office of Robert W. Bauer, P.A.  
2815 NW 13th St., Suite 200 E  
Gainesville, FL 32609  
(352) 375 - 5960  
(352) 337 - 2518



**Neil Gillespie**

---

**From:** "Natalia Ricardo" <ndr@bauerlegal.com>  
**To:** <neilgillespie@mfi.net>  
**Sent:** Friday, April 25, 2008 10:54 AM  
**Attach:** 04-25-08-Notice of Filing Appeal.pdf  
**Subject:** Law Office of Robert W. Bauer, P.A.

Mr. Gillespie,

Attached please find the Notice of Filing Appeal as well as the Final Judgment (in one pdf). Should you have any problems viewing the attachment, please do not hesitate to contact me via e-mail or at the telephone number listed below.

Sincerely,

Natalia D. Ricardo  
Legal Assistant to Robert W. Bauer, P.A.  
2815 NW 13th St.  
Gainesville, FL 32609  
Telephone: 352.375.5960  
Fax: 352.337.2518

No virus found in this outgoing message.

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**Neil J. Gillespie**  
8092 SW 115<sup>th</sup> Loop  
Ocala, Florida 34481

Telephone: (352) 854-7807  
email: neilgillespie@mfi.net

VIA US EXPRESS MAIL - OVERNIGHT  
Article No.: EQ 372712159 US

September 20, 2010

Ms. Annemarie Craft, Bar Counsel  
Attorney Consumer Assistance Program  
The Florida Bar, ACAP  
651 East Jefferson Street  
Tallahassee, FL 32399-2300

RE: Robert W. Bauer; The Florida Bar File No. 2011-00,073 (8B)

Dear Ms. Craft:

This is my rebuttal to the letter submitted by Ryan Christopher Rodems in response to the above captioned complaint.

I have known Mr. Rodems for about 10 years, and initially met him when I was a client of the law firm Alpert, Barker, Rodems, Ferrentino & Cook, P.A. (“Alpert firm”), the predecessor law firm to Barker, Rodems & Cook, PA. (BRC).

Physical Attack on Arnold Levine, Attorney and Senior Citizen

Mr. Rodems and his law partners are bullies with law degrees. While I was a client of the Alpert firm, Messrs. Alpert and Rodems attended a mediation where Alpert physically assaulted opposing counsel Arnold Levine. A Tampa Police Department report dated June 5, 2000, case number 00-42020, alleges Mr. Alpert committed battery, Florida Statutes §784.03, upon attorney Arnold Levine by throwing hot coffee on him. At the time Mr. Levine was a 68 year-old senior citizen. The report states: “The victim and defendant are both attorneys and were representing their clients in a mediation hearing. The victim alleges that the defendant began yelling, and intentionally threw the contents of a 20 oz. cup of hot coffee which struck him in the chest staining his shirt. A request for prosecution was issued for battery.” Mr. Rodems is listed as a witness on the police report and failed to inform me that Mr. Alpert attacked attorney Arnold Levine. A copy of the Tampa Police Department report is available upon request.



Mr. Levine previously sued Alpert, Barker & Rodems, PA, a \$5 million dollar claim for defamation, Buccaneers Limited Partnership v. Alpert, Barker & Rodems, PA, US District Court, Middle District of Florida, Tampa Division, case 99-2354-CIV-T-23C.

The coffee-throwing incident made news headlines and brought disgrace upon the legal profession. After the incident Mr. Levine filed another lawsuit against the bullies at the Alpert firm, Levine v. Alpert, Case No. 00-CA-004187, Hillsborough Circuit Civil Court.

What happened next is Mr. Rodems' *modus operandi*, accuse your opponent of criminal wrongdoing. In this case the Alpert firm accused Mr. Levine of criminal extortion for making a settlement demand. This is what Sue Carlton of St. Petersburg Times reported June 10, 2000 in story titled "Bucs accused of extortion". (Copy enclosed, Exhibit 1)

"...the meeting exploded almost as soon as it began, leaving a trail of allegations, recriminations and criminal complaints."

"The latest: On Friday the lawyer for the fans announced in court that he had asked police to investigate "threats and/or extortion" by the Bucs' lawyer at Saturday's meeting. He said the fans were threatened with losing their seats if they did not agree to a settlement that day."

"Tampa police detectives are reviewing the extortion complaint, which names Levine, Bucs general manager Rich McKay and Edward and Bryan Glazer."

"The Hillsborough State Attorney's Office is deciding whether Alpert should be charged with battery, a misdemeanor, in the coffee incident. Levine also filed a civil suit seeking damages."

The Florida Bar CLE, Basic Federal Practice 2007

When I told Mr. Bauer about the preceding incident, he wanted to use the information in defense of the libel claim against me. Soon after I retained Mr. Bauer he attended a CLE in Tampa (Basic Federal Practice 2007) where US District Judge James D. Whittemore repudiated the infamous coffee-throwing incident. While I was their client, Mr. Rodems and his partners concealed this information from me, and I failed to read about it in the newspaper. But in 2006 when I began looking for counsel, a number of lawyers in Tampa warned me about Mr. Alpert and his firm, but it was too late.

Mr. Bauer told me to get the information from the Florida Bar about this act of violence by Mr. Rodems' partner against another lawyer. The Florida Bar was very helpful, and provided me a surplus CD gratis. From there I had the CD transcribed, which the Bar authorized. (Exhibit 2). The transcript is available upon request.

Judge Whittemore discussed the erosion of professionalism and cited examples. On page 23, beginning at line 6, he said the following. This is the full paragraph for context.

6 If you think that's the only example of  
7 wayward lawyer conduct during depositions just get  
8 on the internet and search around. It's just  
9 hilarious some of the things that go on. There  
10 have been fist fights in Tampa. There has been  
11 coffee thrown across the table by one lawyer  
12 against another in a Federal deposition room in the  
13 Federal courthouse. There have been lawyers  
14 clipping their nails during depositions. That kind  
15 of conduct is reprehensible.

### The WrestleReunion Lawsuit

A recent example of Mr. Rodems boorish and unprofessional behavior occurred when he served as plaintiff's counsel in *WrestleReunion, LLC v. Live Nation, Television Holdings, Inc.*, United States District Court, Middle District of Florida, Case No. 8:07-cv-2093-T-27, trial August 31-September 10, 2009. Mr. Rodems lost the jury trial and then wrote a letter attacking the credibility of defense witness Eric Bischoff.

A copy of the online letter is enclosed (Exhibit 3) and may also be found online at:  
<http://www.declarationofindependents.net/doi/pages/corrente910.html>

I learned about this lawsuit from an application Mr. Rodems made to the 13th Circuit Judicial Nominating Commission for a vacant judicial position.

Mr. Rodems' letter shows he lacks judicial temperament and calls into question his mental well-being. After the jury spoke and the case was over Mr. Rodems wrote the following: "It is odd that Eric Bischoff, whose well-documented incompetence caused the demise of WCW, should have any comment on the outcome of the *WrestleReunion, LLC* lawsuit. The expert report Bischoff submitted in this case bordered on illiteracy, and Bischoff was not even called to testify by Clear Channel/Live Nation because Bischoff perjured himself in a deposition in late-July 2009 before running out and refusing to answer any more questions regarding his serious problems with alcohol and sexual deviancy at the Gold Club while the head of WCW."

Mr. Rodems also wrote, "To even sit in the room and question him was one of the most distasteful things I've ever had to do in 17 years of practicing law. In fact, we understand that Bischoff was afraid to even come to Tampa and testify because he would have to answer questions under oath for a third time about his embarrassing past."

Mr. Rodems continued his attack on the witness, writing, "The sad state of professional wrestling today is directly attributable to this snake oil salesman, whose previous career highlights include selling meat out of the back of a truck, before he filed bankruptcy and

had his car repossessed. Today, after running WCW into the ground, Bischoff peddles schlock like "Girls Gone Wild" and reality shows featuring B-listers."

An Order in *WrestleReunion* (Document 181 filed 10/06/09; Exhibit 4) is revealing about Mr. Rodems. Defendant made an offer of judgment pursuant to §768.79 Florida Statutes. Mr. Rodems rejected the offer by email July 27, 2009. This is what Mr. Rodems wrote opposing counsel Greg Herbert:

"Greg: As I promised, the \$75,000 offer you made is rejected, and we have sent our proposal for \$12,000,000.00. Tell your client, we can arrange for a wire transfer to our trust account for the \$12M. Heck, we'll even agree not to pursue contempt for Bischoff's arguable perjury. Sincerely, Ryan Christopher Rodems, Barker, Rodems & Cook, P.A." (Copy available upon request)

After the jury found for the Defendant, Mr. Rodems accepted the offer of judgment he mockingly rejected, and then tried to enforce the accepted offer. The Court denied Rodems' motion to enforce the previously-rejected settlement. Clearly the citizens of Florida do not need someone like Mr. Rodems as judge.

#### The AMSCOT Lawsuit

The Alpert law firm sought me to serve as class-action representative in two separate lawsuits, one against ACE Cash Express and one against AMSCOT Corporation. The litigation was over so-called "payday loans" which are delayed deposit check cashing schemes that can result in usurious rates of interest for the consumer. The Alpert firm needed me to intervene and save the AMSCOT case from dismissal as its initial plaintiff Eugene Clement was unqualified. BRC assumed the cases after the Alpert firm imploded, but failed to sign new fee agreements. BRC later failed to prevail on the merits and AMSCOT settled for business reasons.

In settling AMSCOT, BRC broke the contingent fee agreement with me [the written agreement was not signed, contrary to Bar Rule 4-1.5(f)(2)], BRC lied about a claim to \$50,000 in "court-awarded fees and costs" and wrongfully took over 90% of the total recovery for themselves.

The Florida Attorney General intervened in the ACE class-action. BRC did not prevail on the merits in ACE either. BRC represented me so poorly that I called opposing counsel for help and negotiated my own settlement. The Florida AG did better for its constituencies. The AG obtained \$250,000 for the Florida State University School of Law, and \$250,000 for the Department of Banking and Finance. The AG also obtained loan forgiveness for many consumers. BRC finished poorly for their remaining client Eugene Clement, and later split their attorney's fees with him.

During the course of representation, Mr. Barker, Mr. Rodems and Mr. Cook conspired to exploit their clients, broke bar rules, and breached their duty to clients. BRC formed their

firm in secret while working for the Alpert firm. The charade went on for months. Co-conspirators Barker, Rodems and Cook secretly arranged to take clients, cases, and employees away from Jonathan Alpert. Once BRC controlled the AMSCOT case, they stopped representing my interest. BRC hijacked the case for their own benefit. They disobeyed my instructions to settle. I became a hostage in a case controlled by three bullies with law degrees.

After taking 90% of the AMSCOT settlement by fraud, BRC relied upon the parole evidence rule to enforce their scam. When I complained to the Florida Bar, BRC accused me of extortion. When I later alerted AMSCOT to the truth, BRC sued me for libel. It was all part of a corrupt business model that also involved other clients of Barker, Rodems & Cook, PA. See Plaintiff's First Amended Complaint filed May 5, 2010 for all the details of how this corrupt law firm defrauded their clients.

### The Current Litigation

Mr. Rodems pulled a stunt against me in this litigation. Initially I had a good working relationship with Judge Nielsen and his judicial assistant Myra Gomez. I attended the first hearing telephonically September 26, 2005 and prevailed on Defendants' Motion to Dismiss and Strike. The Court found I established a complaint for fraud and breach of contract against Mr. Rodems' firm and law partner. This meant that Mr. Rodems must be disqualified. Partners engaged in the practice of law are each responsible for the fraud or negligence of another partner when the later acts within the scope of the ordinary business of an attorney. Smyrna Developers, Inc. v. Bornstein, 177 So.2d 16 (Fla. Dist. Ct. App. 2d Dist. 1965). Therefore I submitted Plaintiff's Motion to Disqualify Counsel.

Mr. Rodems then intentionally disrupted the tribunal with a strategic maneuver to gain an unfair advantage in the litigation. Mr. Rodems telephoned me at home March 3, 2006 about scheduling the motion to disqualify him and an argument ensued. Mr. Rodems threatened to reveal my confidential client information and other such.

On March 6, 2006 Rodems made a sworn affidavit under the penalty of perjury falsely placing the name of the trial judge in the affidavit and therefore into the controversy. Rodems submitted Defendants' Verified Request For Bailiff And For Sanctions that falsely placed the name of the Judge Nielsen into an "exact quote" attributed to Gillespie<sup>1</sup> about a violent physical attack in Judge Nielsen's chambers. After Rodems' perjury of March 6, 2006 Judge Nielsen did not manage the case lawfully, favored Defendants in rulings, and responded to me sarcastically from the bench.

Kirby Rainsberger, the Police Legal Advisor to the Tampa Police Department, reviewed the matter and established by letter February 22, 2010 that Mr. Rodems was not right and

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<sup>1</sup> The portion of Gillespie's "exact quote" in dispute is "like I did before" which refers to a September 25, 2005 telephonic hearing where he prevailed. It is a self-proving metaphor. Instead Rodems swore in an affidavit that Gillespie said "in Judge Nielsen's chambers" which is false. Rodems could have used Gillespie's exact quote but he did not. Rodems added the name of Judge Nielsen with malice aforethought and did so in a sworn statement under the penalty of perjury.

not accurate in representing to the Court as an "exact quote" language that clearly was not an exact quote. Florida case law supports a finding of perjury against Mr. Rodems but Mr. Rainsberger did not agree and he did not pursue the matter further.

Transcript of March 3, 2006 phone call from Mr. Rodems to Neil Gillespie, page 6.

2 MR. RODEMS: -- based on the objectivity  
3 argument. I like that.  
4 MR. GILLESPIE: Now, you call here and just  
5 marched into a tirade of insults.  
6 MR. RODEMS: No, actually I haven't insulted  
7 you at all. I've never said anything about you. I  
8 just said that you don't really know the law  
9 because you don't know how to practice law. And  
10 that's not insulting, that's just actually the  
11 facts.  
12 I mean, your motion to dismiss our  
13 counterclaim demonstrates a fundamental lack of  
14 understanding. I mean, how do you plead the  
15 Economic Loss Rule to a defamation claim? I mean,  
16 that makes no sense.  
17 MR. GILLESPIE: First of all, your defamation  
18 claim has -- doesn't lie at all.  
19 MR. RODEMS: -- the Eighth Amendment or  
20 something. I mean, it just -- it really has no  
21 basis. It's kind of silly. I mean, it's  
22 embarrassing. It's -- it just has no basis at all.  
23 MR. GILLESPIE: Actually, you're wrong there.  
24 MR. RODEMS: Oh, the Economic Loss Rule  
25 applies to a defamation claim?

Transcript, March 3, 2006, page 7

1 MR. GILLESPIE: First of all, your claim  
2 doesn't even lie.  
3 MR. RODEMS: And the Economic Loss Rule deals  
4 with tort and contract claims. And when -- and  
5 when the tort arises out of a contract claim  
6 that's -- what you sent to Amscot had nothing to do  
7 with the other -- that was a action that you  
8 created against yourself. I mean, it was kind of  
9 bizarre that you would even send that letter, but  
10 you did, so now you will have to pay for that.  
11 MR. GILLESPIE: Oh, really?  
12 MR. RODEMS: Yeah.  
13 MR. GILLESPIE: I'm shaking in my boots.  
14 MR. RODEMS: Neil, I mean, I don't understand,  
15 you know, what your plans are. You know, instead  
16 of just litigating the claims you had to go out  
17 there and basically accuse us of doing something  
18 wrong on something like that. It's kind of weird,  
19 you know. But in any event, I mean, obviously --

20 MR. GILLESPIE: What is weird is you guys  
21 lying about the legal fees. Not only is that  
22 weird, that's unprofessional. And you will be  
23 called to account for that.  
24 MR. RODEMS: Didn't you at one time purchase a  
25 car so that you could get the cash rebate to get

Transcript, March 3, 2006, page 8

1 some dental work done? We're going to get to the  
2 discovery, anyhow, so just tell me, did that really  
3 happen?  
4 MR. GILLESPIE: What?  
5 MR. RODEMS: Did you purchase a car so that  
6 you could get the cash rebate to get some dental  
7 work done?  
8 MR. GILLESPIE: Listen, this is why you need  
9 to be disqualified.  
10 MR. RODEMS: No, I mean, that's -- because I  
11 know that? Because I know that to be a fact?  
12 MR. GILLESPIE: You know it to be a fact from  
13 your previous representation of me.  
14 MR. RODEMS: Well, you know, see that's --  
15 MR. GILLESPIE: If it is -- if it's a fact,  
16 anyway.  
17 MR. RODEMS: You need to study the rules and  
18 regulations of the Florida Bar because when you  
19 make --  
20 MR. GILLESPIE: I think, I think I bought a  
21 car so I would have something to drive. I don't  
22 know why you buy cars, but that's why I bought it.  
23 MR. RODEMS: Well --  
24 MR. GILLESPIE: If it had some other benefits,  
25 that's different.

Transcript, March 3, 2006, page 9

1 MR. RODEMS: I understand that car was  
2 repossessed shortly after you bought it so --  
3 MR. GILLESPIE: No, it wasn't repossessed.  
4 MR. RODEMS: Okay. Well, then you can  
5 probably drive that down to the hearing then on the  
6 28th.  
7 MR. GILLESPIE: No, it was voluntarily turned  
8 in because after 911 attack the job that I was in  
9 dried up. Okay. So listen you little, whatever,  
10 you raise anything you want, I will see you on the  
11 25th and I will slam you against the wall like I  
12 did before.  
13 MR. RODEMS: Are you threatening me?  
14 MR. GILLESPIE: Are you threatening me?  
15 MR. RODEMS: No, you just said you would --  
16 did you mean that physically or did you mean that

17 metaphorically?  
18 MR. GILLESPIE: Metaphorically.  
19 MR. RODEMS: Okay. Well, I just want to be  
20 clear because I understand that in talking with you  
21 it's very important to be precise because you don't  
22 really have a good command of the language that,  
23 you know, lawyers speak. But it did sound to me  
24 like you were physically threatening me.  
25 MR. GILLESPIE: No, no, it wasn't a physical

Transcript, March 3, 2006, page 10

1 threat. And by the way, as far as your little  
2 nonsense with this saying that you have been a  
3 victim of some kind of -- oh, it's so ridiculous I  
4 can't even think of the word now. You think  
5 that -- I'll see you on the 25th. And I will slam  
6 you legally, metaphorically against the wall like I  
7 did before.  
8 MR. RODEMS: Okay. We will see that, Neil.  
9 MR. GILLESPIE: Okay.  
10 MR. RODEMS: Okay. Bye-bye.

NOTE: The word I could not recall at line 4 was “extortion”. Rodems accused me of criminal extortion for participating in the Bar’s ACAP program in 2003. Mr. Rodems accused me of felony extortion in his Answer, Affirmative Defenses and Counterclaim, filed January 19, 2006. Paragraphs 57 and 67 of Rodems’ counterclaim relate to my effort with ACAP in 2003 to settle this matter without litigation.

Judge Nielsen’s Order of May 12, 2006 held as follows:

“The motion to disqualify is denied with prejudice, except as to the basis that counsel may be a witness, and on that basis, the motion is denied without prejudice.” A certified copy of the Order is enclosed. (Exhibit 5).

The Order begs the question of disqualification, the last part: “...except as to the basis that counsel may be a witness, and on that basis, the motion is denied without prejudice.” The question is not whether Mr. Rodems may be a witness, but whether he “ought” to be a witness. Proper test for disqualification of counsel is whether counsel ought to appear as a witness.[1] Matter of Doughty, 51 B.R. 36. Disqualification is required when counsel “ought” to appear as a witness.[3] Florida Realty Inc. v. General Development Corp., 459 F.Supp. 781. See Emergency Motion to Disqualify Defendants’ Counsel Ryan Christopher Rodems & Barker, Rodems & Cook, PA, filed July 9, 2010.

The counterclaim also provides a new basis for disqualification of Mr. Rodems. When Judge Nielsen ruled May 12, 2006 the counterclaim was not yet established.

Mr. Rodems' Accusation of a "serious incident of violence"

Most of Mr. Rodems' accusations in his 13 page diatribe are either false, exaggerated, or were justified in response to Mr. Rodems' boorish and unlawful behavior.

I will respond to one accusation on page 12. Mr. Rodems wrote "Mr. Gillespie fails to advise the Florida Bar of a serious incident of violence, and although I do not have first hand knowledge of this incident..." First, this was not an incident of violence. On November 20, 2009 I attempted to retrieve my case file from Mr. Bauer and he refused. The following affidavits set forth the facts.

Exhibit 6: Affidavit of Neil J. Gillespie, Mr. Bauer's Refusal to Return My Case File.

Exhibit 7: Affidavit of Neil J. Gillespie in Rebuttal of Beverly Lowe.

Trespass Warning Issued Against Mr. Rodems

February 12, 2010 Mr. Rodems filed Defendants' Request For Inspection and threatened to enter my residence and the home of my recently deceased mother. I filed Plaintiff's Motion For An Order Of Protection February 18, 2010. On March 22, 2010 I filed a trespass warning against Mr. Rodems, stating in part:

NOTICE IS GIVEN to Ryan Christopher Rodems and Barker, Rodems & Cook, PA. that you, your law partners, employees and/or agents are not permitted to enter plaintiff's home at 8092 SW 115th Loop, Ocala, Florida 34481, Marion County, for any reason whatsoever. If you do so you will be considered trespassing in violation of sections 810.08 and 810.12 Florida Statutes.

I also notified the Marion County Sheriff, and the security company for our retirement community that Mr. Rodems is to be arrested for trespass if he makes good on his threat. Mr. Rodems is a member of the National Rifle Association and has firearms. He was trained in killing by the military. Rodems and his law partner attacked Arnold Levine, a lawyer and senior citizen. Mr. Rodems terrorizes litigants and lawyers in litigation, as shown in this rebuttal.

Settlement Offer to Mr. Rodems March 3, 2010

In conclusion, I offered to settle this matter with Mr. Rodems on the condition he hire counsel to represent him. On March 3, 2010 I wrote Mr. Rodems and stated:

1. Your settlement offer is rejected. I will not enter into any agreement prepared by you or your firm. If you seriously want to settle this matter please retain counsel. My claims were reviewed by attorney Jeff Childers in September 2009. He recalculated my contractual damages at \$7,143, not \$6,224.78 in my original pro se complaint. He said the difference is because the Bar allows attorneys to

pay actual costs *before* application of a contingent fee. Mr. Childers also estimated \$100,000 in non-pecuniary costs. Currently I have expenses for attorney's fees of about \$40,000 because I paid attorneys their hourly rate for representation. My total expenses are approximately \$65,000. I expect Plaintiff's First Amended Complaint to add claims for breach of fiduciary duty and punitive damages.

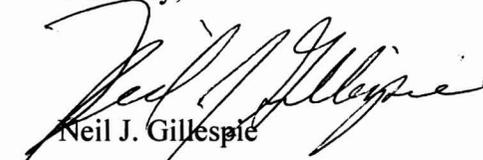
Previously I offered to settle this matter without litigation through the Attorney Consumer Assistance Program (ACAP). You responded by accusing me of criminal extortion. On September 7, 2006 attorney David M. Snyder offered to settle this matter for \$6,224.78, and noted your counterclaim had little chance of ultimate success. You rejected the offer by letter dated September 14, 2006. (see enclosures). And on December 26, 2006 you were served Plaintiff's Proposal of Settlement pursuant to section 768.79 Florida Statutes. There may have been other similar settlement offers too, all of which you rejected.

Mr. Rodems did not respond, and I take that to mean he declined. The problem is, no attorney could ethically represent Rodems' position as lawful and negotiate on that basis.

Throughout this matter Mr. Rodems has wrongfully characterized me in an effort to bolster his position. In fact, prior to the onset of the most incapacitating aspects of my disability, I was a productive member of society, a business owner for 12 years, and a graduate of both the University of Pennsylvania and The Evergreen State College. I am a law abiding citizen, and a background check from the Florida Department of Law Enforcement that shows I have no criminal history. (Available upon request).

Thank you for considering this rebuttal.

Sincerely,



Neil J. Gillespie

cc: Mr. Robert W. Bauer

Enclosures

## Bucs accused of extortion

[SOUTH PINELLAS Edition]

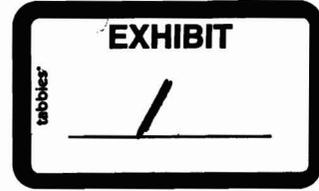
St. Petersburg Times - St. Petersburg, Fla.

Author: SUE CARLTON

Date: Jun 10, 2000

Start Page: 3.B

Text Word Count: 567



### Document Text

Four season ticket holders say they were threatened at a meeting to mediate a dispute with the team over seating assignments.

They sat across a conference table from each other in a downtown high-rise, representatives of the Tampa Bay Buccaneers on one side, the fans suing the team on the other.

The meeting last Saturday was supposed to be an attempt to settle the case of four season ticket holders who say they were treated unfairly because they got less desirable seats when the Bucs moved to a new stadium.

Instead, the meeting exploded almost as soon as it began, leaving a trail of allegations, recriminations and criminal complaints.

The latest: On Friday the lawyer for the fans announced in court that he had asked police to investigate "threats and/or extortion" by the Bucs' lawyer at Saturday's meeting. He said the fans were threatened with losing their seats if they did not agree to a settlement that day.

According to attorney Jonathan Alpert and sworn affidavits from the four fans, Bucs attorney Arnold Levine told them at the beginning of the meeting, "This is not meant as a threat, but if you do not settle this case today, you will not have seats in the stadium in 2001. You will have no seats, and you can watch the games in your living room. The Glazers do not care if you sue them." Malcolm Glazer owns the team; his sons run it.

The four fans already have paid for seats for the 2000 season, and have paid deposits on those seats for 2001 as part of a 10-year agreement.

"I am a longtime Bucs fan, and the seats for 2001 and later football seasons have both financial and emotional value to me," said an affidavit signed by Otha "Gene" Wilson.

Levine, who has accused Alpert of tossing a full cup of coffee in his face that day, said confidentiality rules prevent him from discussing what was said. He did say it is common in such mediation hearings to tell the other side "what's going to happen to you if I win." Levine also said the law is clear that a ticket to an event such as a football game is "a revokable license."

Circuit Judge Sam Pendino denied Levine's motion to dismiss the case.

According to testimony Friday, the Bucs had been prepared to offer a settlement, though no details were discussed in court. Pendino ordered both sides to attend another mediation hearing.

Tampa police detectives are reviewing the extortion complaint, which names Levine, Bucs general manager Rich McKay and Edward and Bryan Glazer.

The Hillsborough State Attorney's Office is deciding whether Alpert should be charged with battery, a misdemeanor, in the coffee incident. Levine also filed a civil suit seeking damages.

Friday, Alpert used the word "spilled" and said the incident occurred as he and his clients abruptly left the room after Levine's threat.

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### **Abstract (Document Summary)**

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**Caption:** Bucs attorney Arnold Levine shows the judge a shirt he says was stained when Jonathan Alpert, the attorney for four fans, tossed a full cup of coffee at him during a mediation hearing., (ran CITY & STATE, SS of METRO & STATE); Jonathan Alpert; says the coffee was spilled as he and his clients abruptly left the room after Arnold Levine's threat., (ran CITY & STATE, SS of METRO & STATE); Photo: BLACK AND WHITE PHOTO, TONY LOPEZ; BLACK AND WHITE PHOTO

According to attorney Jonathan Alpert and sworn affidavits from the four fans, Bucs attorney Arnold Levine told them at the beginning of the meeting, "This is not meant as a threat, but if you do not settle this case today, you will not have seats in the stadium in 2001. You will have no seats, and you can watch the games in your living room. The Glazers do not care if you sue them." Malcolm Glazer owns the team; his sons run it.

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# THE FLORIDA BAR

651 EAST JEFFERSON STREET  
TALLAHASSEE, FL 32399-2300

JOHN F. HARKNESS, JR.  
EXECUTIVE DIRECTOR

850/561-5600  
WWW.FLORIDABAR.ORG

December 30, 2008

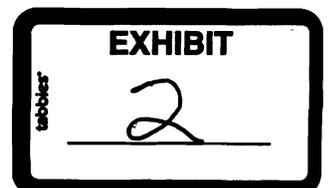
Mr. Neil J. Gillespie  
8092 SW 115<sup>th</sup> Loop  
Ocala, FL 34481

Mr. Gillespie:

After consulting with The Florida Bar legal staff, your request to prepare a written transcript of the audio CD #0444C (of the live presentation of Course #0444R – Basic Federal Practice) has been approved.

Sincerely,

Tom Miller  
Program Administrator





Sal Corrente of WrestleReunion had a lawsuit against Clear Channel/Live Nation because they reneged on a contract with him. The case went before a jury and Mr. Corrente lost the case, which many feel was unjust. But Eric Bischoff made a statement on [wrestlezone.com](http://wrestlezone.com), which is below, that caused Sal's lawyer to send his statement:

In my last post regarding the WrestleReunion/Live Nation lawsuit, I suggested that Bill Behrens and Eric Bischoff were expert witnesses for WrestleReunion. That was not the case as they were actually witnesses for the Clear Channel/Live Nation side. I just spoke with Eric Bischoff who said he agreed to be an expert witness after reading and taking interest in the case, however he was not called to the stand.

**"The case was wrapped up quickly," Bischoff told [Wrestlezone.com](http://Wrestlezone.com), "the jury didn't waste any time and came back with what I felt was the correct decision".**

Eric was happy with the outcome, to say the least. **"Rob Russen and Sal Corente give the wrestling business a bad name," he stated, "so I'm glad justice prevailed and the bottom feeders didn't win one".**

*Bischoff wanted to make sure that everyone knew his comments and opinions were solely his and did not reflect those of Clear Channel/Live Nation.*

In regards to the above statement, we have a statement from Mr. Corrente's lawyer:

**"It is odd that Eric Bischoff, whose well-documented incompetence caused the demise of WCW, should have any comment on the outcome of the WrestleReunion, LLC lawsuit. The expert report Bischoff submitted in this case bordered on illiteracy, and Bischoff was not even called to testify by Clear Channel/Live Nation because Bischoff perjured himself in a deposition in late-July 2009 before running out and refusing to answer any more questions regarding his serious problems with alcohol and sexual deviancy at the Gold Club while the head of WCW. To even sit in the room and question him was one of the most distasteful things I've ever had to do in 17 years of practicing law. In fact, we understand that Bischoff was afraid to even come to Tampa and testify because he would have to answer questions under oath for a third time about his embarrassing past.**

**The sad state of professional wrestling today is directly attributable to this snake oil salesman, whose previous career highlights include selling meat out of the back of a truck, before he filed bankruptcy and had his car repossessed. Today, after running WCW into the ground, Bischoff peddles schlock like "Girls Gone Wild" and reality shows featuring B-listers.**

**Sal Corrente, on the other hand, has always been an honorable man, and he delivered on every promise and paid every wrestler while staging the three WrestleReunion events. Unlike the cowardly Bischoff, Mr. Corrente took the stand in this case. Although his company did not prevail, Sal Corrente proved that he was man enough to fight to the finish -- something Bischoff could never understand."**

Sincerely,  
**Ryan Christopher Rodems**  
Barker, Rodems & Cook, P.A.  
400 North Ashley Drive, Suite 2100  
Tampa, Florida 33602  
813/489-1001  
E-mail: [rodems@barkerrodemsandcook.com](mailto:rodems@barkerrodemsandcook.com)

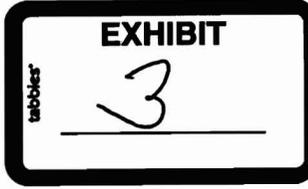
We just wanted to give Mr. Corrente's lawyer a chance to speak his mind.

Georgie [GMakpoulos@aol.com](mailto:GMakpoulos@aol.com)

Since I have always had wrestlers autograph signings as a speciality for any website I worked for, I know for sure, Mr. Corrente is an honest promoter who has NEVER stiffed a wrestler working for his shows or conventions. I would have heard about it.  
There are many promoters who do that in this business, which is very sad.

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UNITED STATES DISTRICT COURT  
MIDDLE DISTRICT OF FLORIDA  
TAMPA DIVISION

WRESTLEREUNION, LLC,

Plaintiff,

v.

CASE No: 8:07-cv-2093-JDW-MAP

LIVE NATION TELEVISION  
HOLDINGS, INC.,

Defendant.

ORDER

**BEFORE THE COURT** is Defendant's Motion to Strike "Plaintiff's Notice of Acceptance of Defendant's Offer of Judgment" (Dkt. 161) and Plaintiff's Motion to Enforce Settlement or in the Alternative for New Trial (Dkt. 168). Before trial, Defendant served an Offer of Judgment pursuant to Florida Statute § 768.79. Plaintiff rejected the offer. After entry of judgment in favor of the Defendant, Plaintiff filed a Notice of Acceptance of Defendant's Offer of Judgment. (Dkt. 160). Defendant moved to strike the notice. (Dkt. 161). Plaintiff moved to enforce the accepted offer, or alternatively, for a new trial. (Dkt. 168). Plaintiff has withdrawn the notice of acceptance (Dkt. 175) and has filed an amended motion for a new trial. (Dkt. 174). Accordingly, it is **ORDERED** that

- (1) Defendant's Motion to Strike (Dkt. 161) is **DENIED** as moot.
- (2) Plaintiff's Motion to Enforce Settlement or in the Alternative for New Trial (Dkt. 168)

is **DENIED** as moot.

**DONE AND ORDERED** in Tampa, Florida this 6<sup>th</sup> day of October, 2009.

  
\_\_\_\_\_  
JAMES D. WHITTEMORE  
United States District Judge

Copies to: Counsel of Record



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

NEIL J. GILLESPIE,  
  
Plaintiff,

vs.

Case No.: 05CA7205  
Division: F

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

Defendants.

HILLSBOROUGH COUNTY  
CIRCUIT COURT  
2006 MAY 15 PM 1:31  
FILED  
CLERK OF CIRCUIT COURT  
Am

ORDER DENYING PLAINTIFF'S MOTION TO DISQUALIFY COUNSEL

THIS CAUSE having come on to be heard on Tuesday, April 25, 2006, on Plaintiff's  
Motion to Disqualify Counsel, and the proceedings having been read and considered, and counsel  
and Mr. Gillespie having been heard, and the Court being otherwise fully advised in the  
premises, it is ORDERED:

The motion to disqualify is denied with prejudice, except as to the basis that counsel may  
be a witness, and on that basis, the motion is denied without prejudice.

DONE and ORDERED in Chambers, this 12<sup>TH</sup> day of May, 2006.

  
Richard A. Nielsen  
Circuit Judge

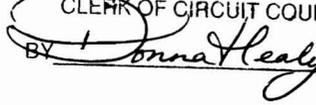
EXHIBIT  
5

Copies to:

Neil J. Gillespie, pro se  
Ryan Christopher Rodems, Esquire

STATE OF FLORIDA )  
COUNTY OF HILLSBOROUGH)  
THIS IS TO CERTIFY THAT THE FOREGOING IS A TRUE  
AND CORRECT COPY OF THE DOCUMENT ON FILE IN  
MY OFFICE. WITNESS MY HAND AND OFFICIAL SEAL  
THIS 3<sup>rd</sup> DAY OF August 2010



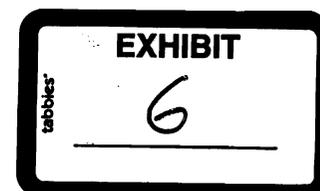
PAT FRANK  
CLERK OF CIRCUIT COURT  
BY  D.C.

**AFFIDAVIT OF NEIL J. GILLESPIE**

**Mr. Bauer's Refusal to Return My Case File**

Neil J. Gillespie, under oath, testifies as follows:

1. My name is Neil J. Gillespie, and I am over eighteen years of age. This affidavit is given on personal knowledge unless otherwise expressly stated.
2. Attorney Robert W. Bauer, Florida Bar ID No. 11058, formerly represented me a lawsuit, Neil J. Gillespie v. Barker, Rodems & Cook, PA, and William J. Cook, Case No. 05-CA-007205, Hillsborough Circuit Civil Court, Tampa, Florida. I was referred to Mr. Bauer by The Florida Bar Lawyer Referral Service (LRS) February 26, 2007. Mr. Bauer moved to withdrawal as my attorney October 13, 2008. The court granted his motion October 1, 2009.
3. Following his withdrawal from representation Mr. Bauer failed to return my case file and documents, and otherwise failed to discuss the matter. After Mr. Bauer left the case I was not represented by counsel. I needed my case file to proceed pro se.
4. In a letter to Mr. Bauer dated November 16, 2009, I demanded the return of my case file. I sent the letter by United States Postal Service (USPS) Certified Mail, Article No. 7009 0820 0000 6708 7187. The letter states that "Pending advice to the contrary, I will pick up the file in your office Friday, November 20, 2009, at 1:00pm." A copy of the letter is attached. (Exhibit A). The certified mail return card shows the letter was delivered November 17, 2009 and bears the signature of "A Beal". A copy of the certified mail return card, certified mail receipt, and USPS receipt is attached. (Exhibit B)
5. By Friday November 20, 2009 Mr. Bauer had not acknowledged or responded to my letter demanding the return of my file. No one from his office contacted



me about the file. Therefore I drove from Ocala to Gainesville to pickup the file as stated in my letter. (Exhibit A). The trip was delayed due to a traffic accident on I-75 and I arrived later than 1:00 PM stated in the letter.

6. Mr. Bauer's office is located on the second floor of the Bank of America building, 2815 NW 13th Street, Suite 200E, Gainesville, FL 32609. Mr. Bauer occupies several rooms among other offices occupied by unrelated tenants. All the offices on the second floor appear to share a central reception desk and waiting area across from the elevator. When I arrived I was greeted by a woman at the reception desk who identified herself as Alison Beal. I had not previously met Ms. Beal but had spoken with her on the phone. I told Ms. Beal I was here for an appointment to pick up my file.

7. Almost immediately I saw Mr. Bauer in the hall leading to the reception area. Mr. Bauer was standing facing a woman who had her back against the wall. They were close together in an intimate stance. I did not recognize the woman, and at the time I assumed it may have been his wife, Toya Lawanda Bauer. Upon subsequent information provided in the "Affidavit of Beverly Lowe" of August 17, 2010, I now believe the woman was Beverly Lowe. I did not speak with Ms. Lowe.

8. I approached Mr. Bauer and said I was here to pick up my file. Mr. Bauer claimed ignorance and said he did not receive my letter. In response I handed Mr. Bauer a copy of the letter. Mr. Bauer read the letter and said he would provide the file but needed to copy items in the file and was short of staff to do this immediately. I offered to wait while someone completed whatever had to be done to get the file ready for me. Mr. Bauer refused my offer. I explained that I sent a demand for the file by certified mail and did not understand why Mr. Bauer did not respond if the file would not be ready today. Mr. Bauer

responded with more excuses. Mr. Bauer said he is not aware of every piece of mail received and blamed his staff for overlooking my letter. Mr. Bauer said it is difficult to find qualified staff. At this point I cut him short and said "I am tired of your bullshit and I want my fucking file". Mr. Bauer continued making excuses and I repeated myself. This cycle continued whereupon Mr. Bauer asked me to leave and I immediately complied. I left his office without my file and drove back home to Ocala.

9. As of today Mr. Bauer has not returned my file. Instead Mr. Bauer sent me letters dated November 23, 2009. Mr. Bauer demanded payment of \$12,650.13 for an outstanding balance. Mr. Bauer wrote (in part) "The law allows an attorney to exercise a charging lean (sic) against a client file's prior to returning the file to the client. Please be aware that I intend to exercise my right to charging Lane (sic) against your file in the above now. Upon your satisfaction of the above lien I will happily return your file to you." The word "lien" is spelled three different ways in the letter. (Exhibit 3).

FURTHER AFFIANT SAYETH NAUGHT.

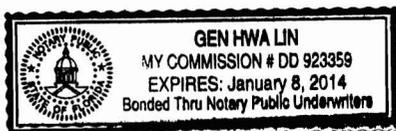
Dated this 18th day of September 2010.

  
NEIL J. GILLESPIE

STATE OF FLORIDA  
COUNTY OF MARION

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

WITNESS my hand and official seal this 18th day of September 2010.



  
Notary Public, State of Florida

**Neil J. Gillespie**  
8092 SW 115<sup>th</sup> Loop  
Ocala, Florida 34481

Telephone: (352) 854-7807  
email: neilgillespie@mfi.net

VIA US CERTIFIED MAIL, RETURN RECEIPT  
Article No.: 7009 0820 0000 6708 7187

November 16, 2009

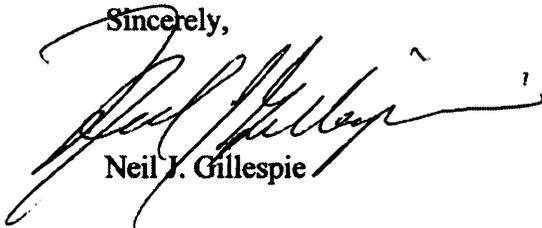
Robert W. Bauer, Attorney at Law  
Law Office of Robert W. Bauer, P.A.  
2815 NW 13<sup>th</sup> Street, Suite 200E  
Gainesville, FL 32609

RE: Gillespie v. Barker, Rodems & Cook, PA, case no.: 05-CA-7205

Dear Mr. Bauer:

This is a demand for return of the case file in the above captioned matter. Pending advice to the contrary, I will pick up the file in your office Friday, November 20, 2009, at 1:00pm.

Sincerely,



Neil J. Gillespie



"PADDOCK BRANCH POST OFFICE"  
 Ocala, Florida  
 344749998  
 1143840606 -0098  
 11/16/2009 (352)861-8188 03:38:51 PM

Product Description	Sale Qty	Unit Price	Final Price
44c Anna Julia Cooper PSA	3	\$0.44	\$1.32
GAINESVILLE FL 32609 Zone-1 First-Class Letter			\$0.44
0.90 oz. Return Rcpt (Green Card)			\$2.30
Certified			\$2.80
Label #:	70090820000067087187		

Issue PVI: \$5.54

Total: \$6.86

Paid by: Cash \$10.00  
 Change Due: -\$3.14

Order stamps at USPS.com/shop or call 1-800-Stamp24. Go to USPS.com/clicknship to print shipping labels with postage. For other information call 1-800-ASK-USPS.

Bill #: 1000202407341  
 Clerk: 16

All sales final on stamps and postage  
 Refunds for guaranteed services only  
 Thank you for your business

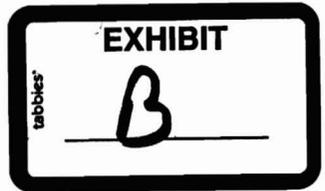
\*\*\*\*\*  
 HELP US SERVE YOU BETTER  
 \*\*\*\*\*

Go to: <https://postalexperience.com/Pos>

TELL US ABOUT YOUR RECENT POSTAL EXPERIENCE

YOUR OPINION COUNTS  
 \*\*\*\*\*

Customer Copy



U.S. Postal Service  
**CERTIFIED MAIL RECEIPT**  
 (Domestic Mail Only; No Insurance Coverage Provided)

For delivery information visit our website at [www.usps.com](http://www.usps.com)

**OFFICIAL USE**

Postage \$ 3.44  
 Certified Fee 0.44  
 Return Receipt Fee (Endorsement Required) 0.00  
 Restricted Delivery Fee (Endorsement Required) 0.00  
 Total Postage & Fees \$ 3.88

NOV 16 2009

Sent to: Robert W. Brewer, Attorney  
 Street, Apt. No., or PO Box No. 2815 NW 13th St. Suite 200E  
 City, State, ZIP+4 Gainesville, FL 32609

7187 9029 0000 0290 6000

PS Form 3811, February 2004

Domestic Return Receipt

102599-02-M-1540

**SENDER COMPLETE THIS SECTION**

1. Article Addressed to:  
 Robert W. Brewer, Attorney  
 Law Office of Robert W. Brewer, PA  
 2815 NW 13th St. Suite 200E  
 Gainesville, FL 32609

2. Article Number (Transfer from service label) 7009 0820 0000 6708 7187

**COMPLETE THIS SECTION ON DELIVERY**

3. Service Type  
 Certified Mail  
 Registered  
 Insured Mail  
 Express Mail  
 Return Receipt for Merchandise  
 C.O.D.  
 Restricted Delivery? (Extra Fee) Yes  No

4. Signature: [Signature]  
 Received by (Printed Name) [Name]  
 Date of Delivery 11-17-09  
 Is delivery address different from item 1? Yes  No   
 If YES, enter delivery address below:

*The Law Offices of*  
**Robert W. Bauer, P.A.**  
2815 NW 13th Street, Suite 200E, Gainesville, FL 32609  
www.bauerlegal.com

*Robert W. Bauer, Esq.*  
*David M. Sams, Esq.*

Phone: (352)375.5960  
Fax: (352)337.2518

---

November 23, 2009

Mr. Neil Gillespie  
8092 SW 115th Loop  
Ocala, Florida 34481

**By Regular and Certified Mail: 70070710000343197711**

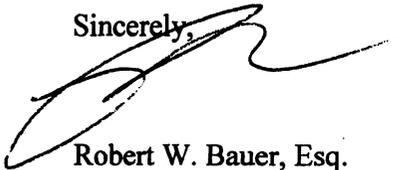
Re: Gillespie v. Barker Rodems and Cooke - 05CA007205 - 060703

Dear Mr. Gillespie:

This letter will serve as confirmation that we are in receipt of your request for the return of your file. However, please be aware there is a current outstanding balance of 12,650 dollars and 13 cents in your case. The law allows an attorney to exercise a charging lean against a client file's prior to returning the file to the client. Please be aware that I intend to exercise my right to charging Lane against your file in the above now. Upon your satisfaction of the above lien I will happily return your file to you. Please be aware that I'm happy to consider any reasonable suggestion to resolve the situation.

If you have questions please feel free to contact me on an unrecorded line.

Sincerely,



Robert W. Bauer, Esq.



**AFFIDAVIT OF NEIL J. GILLESPIE IN REBUTTAL OF BEVERLY LOWE**

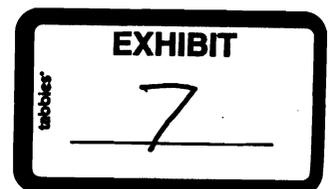
Neil J. Gillespie, under oath, testifies as follows:

1. My name is Neil J. Gillespie, and I am over eighteen years of age. This affidavit is given on personal knowledge unless otherwise expressly stated.

2. Attorney Robert W. Bauer, Florida Bar ID No. 11058, formerly represented me a lawsuit, Neil J. Gillespie v. Barker, Rodems & Cook, PA, and William J. Cook, Case No. 05-CA-007205, Hillsborough Circuit Civil Court, Tampa. I was referred to Mr. Bauer by The Florida Bar Lawyer Referral Service (LRS) February 26, 2007. Mr. Bauer moved to withdrawal as my attorney, and the court subsequently granted his motion October 1, 2009.

3. Mr. Bauer's representation of me was negligent. I notified Bauer by certified letter dated December 16, 2009 that the time to resolve our dispute amicably had expired. I concluded that Mr. Bauer was in breach of contract, breach of fiduciary duty, that he engaged in fraud and other unlawful and unprofessional conduct. I notified Mr. Bauer that he was not entitled to further payments from me. I notified Mr. Bauer that I would seek to recover money wrongly paid to him. I notified Mr. Bauer that he violated the Americans with Disabilities Act (ADA). I informed Mr. Bauer that he can expect a lawsuit, and a complaint for misconduct. I demanded the return of my files immediately. There was no demand for money and no threats were made.

4. On July 15, 2010 I submitted a complaint of misconduct against Mr. Bauer. The Florida Bar opened an inquiry into Mr. Bauer, File No. 2011-00,073 (8B). Mr. Bauer submitted a response to the Bar dated August 18, 2010. "Exhibit D" of Mr. Bauer's response was the "Affidavit of Beverly Lowe". The affidavit is written in a theatrical style and contains falsehoods



of material facts, material omissions, and exaggerations. The affidavit appears to be concocted to discredit the complaint of misconduct I made against Mr. Bauer.

5. Ms. Lowe swore that during the relevant times hereto, she was the Office Manager at The law Office of Robert W. Bauer. Ms. Lowe essentially described four sets of facts, three of which related to the time when I was a client of the firm, and a fourth to an incident November 20, 2009 when I was not a client of the firm.

6. First, Ms. Lowe states that I was already a client of the firm when she began. My notes show that I first met Ms. Lowe February 26, 2008, one year after the LRS referral. After that I may have met Ms. Lowe one or two times during my time as a client. The meetings were cordial. While I was a client I received billing invoices from her that contained numerous errors that were later resolved in my favor. I do not have any personal dispute with Ms. Lowe.

7. Second, Ms. Lowe states she was told I suffered “some form of disability, possibly PTSD, and that we should take precautions when dealing with him. As such, I ensured that when I or others dealt with him, we were very courteous and accommodating to him.” It is true that I am disabled. I never discussed my disability with Ms. Lowe.

8. Third, Ms. Lowe states that “Despite these efforts, I witnessed Mr. Gillespie threaten to sue Mr. Bauer on more that one occasion if Mr. Bauer didn’t do things the way that Mr. Gillespie wanted him to.” This statement by Ms. Lowe is false. I never threatened to sue Mr. Bauer while I was a client. It is my understanding that when a client sues or threatens to sue a lawyer, that threat immediately terminates the attorney-client relationship.

9. Fourth, Ms. Lowe described an incident November 20, 2009 that she alleges occurred when I was no longer a client of Mr. Bauer. This incident was incidental to a

prearranged meeting to pick up my case file. Mr. Bauer failed to have the file ready or even know about the meeting. Mr. Bauer blamed his staff for the negligence. Ms. Lowe's affidavit contains falsehoods, omissions and exaggerations. Ms. Lowe stated that "Mr. Gillespie's message did not resonate with me such that I can recall it today..." Rather than attempt to refute each false accusation of this ridiculous account, I made a separate affidavit of the incident. Also of note, upon information and belief, Ms. Lowe and Mrs. Beal are no longer employed by Mr. Bauer. An investigator on my behalf called the law office of Mr. Bauer Monday, September 13, 2010 and spoke with "Mary" who told my investigator that Beverly Lowe and Alison Beal are no longer employed at the firm.

FURTHER AFFIANT SAYETH NAUGHT.

Dated this 17th day of September 2010.

  
NEIL J. GILLESPIE

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 Affidavit are true and correct to the best of his knowledge and belief.

WITNESS my hand and official seal this 17th day of September 2010.



  
Notary Public  
State of Florida



# THE FLORIDA BAR

TALLAHASSEE BRANCH OFFICE  
651 EAST JEFFERSON STREET  
TALLAHASSEE, FLORIDA 32399-2300

JOHN F. HARKNESS, JR.  
EXECUTIVE DIRECTOR

(850) 561-5845  
WWW.FLORIDABAR.ORG

March 18, 2011

Neil Gillespie  
8092 SW 115th Loop  
Ocala, FL 34481

RE: Robert W. Bauer; TFB File No. 2011-00,073(8B)

Dear Mr. Gillespie:

Pursuant to Rule 3-7.4(k), this document serves as a Letter Report of No Probable Cause Finding. On the basis of a diligent and impartial analysis of all the information available, on March 15, 2011, the grievance committee found no probable cause for further disciplinary proceedings in this matter. The membership of the committee is made up of both attorneys and non-attorneys. This case is now closed.

Because the Bar only has the authority to address questions of ethics, the committee could not address any legal issues about which you may feel concerned. If you have further concerns about what your legal remedies may be, you must consult with legal counsel of your choice. The Florida Bar is unable to provide legal advice in this respect.

Pursuant to the Bar's records retention schedule, the computer record and file will be disposed of one year from the date of closing.

Sincerely,

James N. Watson, Jr.  
Chief Branch Discipline Counsel

cc: Melissa Jay Murphy, Chair  
Brian Stuart Kramer, Investigating Member  
Robert W. Bauer

EXHIBIT

7

## Neil Gillespie

---

**From:** "Neil Gillespie" <neilgillespie@mfi.net>  
**To:** "Jim Watson" <jwatson@flabar.org>  
**Cc:** "James A G Davey, Jr." <jdavey@flabar.org>; "Brian Stuart Kramer" <kramerb@sao8.org>; "Melissa Jay Murphy" <melissam@salterlaw.net>; "Carl B Schwait" <cschwait@dellgraham.com>  
**Sent:** Monday, April 11, 2011 4:46 PM  
**Attach:** NOTICE OF GRIEVANCE PROCEDURES.pdf; 2009, 04-22-09, Salter, Feiber reply.pdf  
**Subject:** Re: Complaint, Gillespie v Robert W. Bauer, The Florida Bar File No. 2011-00,073(8B)  
 Dear Mr. Watson:

Thank you for your response. I trust that your trial is complete and you are back in the office.

Attached is a "Notice of Grievance Procedures" provided to me by the Florida Bar July 30, 2010. The relevant portion to our discussion is paragraph 4:

4. The grievance committee is the Bar's "grand jury." Its function and procedure are set forth in Rule 3-7.4. Proceedings before the grievance committee, for the most part, are nonadversarial in nature. However, you should carefully review Chapter 3 of the Rules Regulating The Florida Bar.

The claim that that the grievance committee is the Bar's "grand jury" is misleading. The grievance committee bears little in common with an actual grand jury.

As previously noted, an actual grand jury issues a finding of fact or presentment that is signed by all the members. The presentment is filed with the clerk of the court and is a public record.

While the grievance committee has nonlawyer members, only a quorum is needed for a vote, and the quorum is not required to have any nonlawyer members. A grievance committee could be composed entirely of lawyers. An actual grand jury would not be composed entirely of lawyers.

The selection and composition of an actual grand jury is different than the Bar's "grand jury". Actual grand juries are larger, usually 15 to 21 members.

In an actual grand jury, jurors are selected at random and their names are taken from lists prepared by the clerk of the circuit court. Most government officials are disqualified to serve on an actual grand jury. An elected public official is not eligible to be a grand juror.

In contrast, the Bar's "grand jury" draws from a small pool of self-selected members. The Eighth Circuit Grievance Committee "B" consists of ten members; seven lawyers and three nonlawyers. The Bar's "grand jury" requires a quorum (in my case 5 members), non of whom are required to be nonlawyers. I know of no prohibition on government or elected officials serving on a grievance committee. For example, I believe that Mr. Kramer, as an Assistant State Attorney, is a government official. This is not permitted on an actual grand jury.

In an actual grand jury witnesses will be called one by one and placed under oath to tell the truth, and subject to penalties for perjury. Under Rule 3-7.4(d) grievance committees may be informal in nature and the committees shall not be bound by the rules of evidence. Under Rule 3-7.4(h) the respondent may be required to testify and to produce evidence...and given an opportunity to make a written statement, sworn or unsworn, explaining, refuting, or admitting the alleged misconduct. No one is placed under oath nor subject to the penalties for perjury in the Bar's



"grand jury".

Given the result of the grievance committee in my case, I believe Messrs. Bauer and Rodems (and perhaps others) made false statements and misrepresentations prejudicial to the administration of justice. In an actual grand jury, witnesses must be truthful of face penalty of perjury. In the Bar's "grand jury" providing false information appears commonplace, and it appears that lying goes unchecked and unpunished. From what I see, it is a routine part of the process to allow the respondent to avoid justice. Even former adversaries such as Mr. Rodems can, in essence, join with the respondent against the complainant.

I found nothing in the rules that would prevent the respondent, the respondent's counsel or designee, a witness, or a third party, from independently contacting members of the grievance committee to influence their vote.

The following are events in my bar complaint against Mr. Bauer: (please correct if needed)

Pursuant to Rule 3-7.3(a) bar counsel Annemarie Craft (ACAP) reviewed my complaint/inquiry against Mr. Bauer and determined that the alleged conduct, if proven, would constitute a violation of the Rules Regulating The Florida Bar warranting the imposition of discipline. Ms. Craft notified me (October 13, 2010) that she forwarded the complaint to The Florida Bar's Tallahassee Branch Office for consideration. Ms. Craft was the second bar counsel assigned; the initial bar counsel, William Kitchen, was removed from the inquiry.

Pursuant to Rule 3-7.3(c) my complaint (July 29, 2010) was in writing and under oath, although the response from Mr. Bauer, and a 13 page diatribe from attorney Ryan C. Rodems were not made under oath. (Note: The Bauer and Rodems correspondence contained a number of false statements and misrepresentations prejudicial to the administration of justice.)

Pursuant to Rule 3-7.3(b) bar counsel James A G Davey, Jr. in the Tallahassee Branch Office decided to pursue an inquiry, opened a disciplinary file as a complaint, and investigated the allegations contained in the complaint.

Pursuant to Rule 3-7.3(f) Mr. Davey referred the complaint (November 5, 2010) to Melissa Murphy, Chair Eighth Judicial Circuit Grievance Committee "B" for its further investigation. Mr. Davey instructed Ms. Murphy assign the complaint to a grievance committee member for investigation and enclosed a Notice of Assignment of Investigating Member and/or Panel form. Mr. Kramer was assigned as investigating member (November 15, 2010).

Pursuant to Rule 3-7.4(j) Finding of No Probable Cause (1) the grievance committee terminated the investigation by finding that no probable cause exists to believe that the respondent has violated these rules.

In a letter dated March 18, 2011, you wrote me stating that: "Pursuant to Rule 3-7.4(k), this document serves as a Letter Report of No Probable Cause Finding. On the basis of a diligent and impartial analysis of all the information available, on March 18, 2011, the grievance committee found no probable cause for further disciplinary proceedings in this matter. The membership of the committee is made up of both attorneys and non-attorneys. This case is now closed." (relevant portion)

Rule 3-7.4(k) states: "(k) Letter Reports in No Probable Cause Cases. Upon a finding of no probable cause, bar counsel will submit a letter report of the no probable cause finding to the complainant,

presiding member, investigating member, and the respondent, including any documentation deemed appropriate by bar counsel and explaining why the complaint did not warrant further proceedings." (relevant portion)

It appears that your letter of March 18, 2011 fails to comply with Rule 3-7.4(k) because it failed to explain why the complaint did not warrant further proceedings given the overwhelming evidence of misconduct. You also failed to include any documentation explaining why the complaint did not warrant further proceedings.

The second paragraph of your March 18, 2011 letter states: "Because the Bar only has the authority to address questions of ethics, the committee could not address any legal issues about which you may feel concerned. If you have further concerns about what your legal remedies may be, you must consult with legal counsel of your choice. The Florida Bar is unable to provide legal advice in this respect."

Consult with legal counsel of your choice? That statement belies the fact that Mr. Bauer, a referral from the bar, was my counsel to represent me against prior counsel Barker, Rodems & Cook, PA. Subsequent to Mr. Bauer, I retained attorney Seldon J. Childers to review the representations of Mr. Bauer and Barker, Rodems & Cook, PA. Mr. Childers prepared but refused to sign the following documents (September 17, 2009) regarding the prior representation, and dropped the matter when I would not agree to a "walk-away" settlement with the prior attorneys.

Analysis of Case and Recommendation  
Economic Analysis Spreadsheet  
Case Spreadsheet

So it appears your suggestion to "consult with legal counsel of your choice" is not tenable.

Subsequent to the closure of the complaint, I learned that Melissa Murphy, Chair Eighth Judicial Circuit Grievance Committee "B", is with the firm Salter, Feiber, Murphy, Hutson & Menet, P.A.. Attached you will find correspondence dated April 22, 2009 from Kristine Van Vorst of Salter Feiber, addressed to me, declining representation in a mortgage matter. When I called Ms. Van Vorst for a referral April 27, 2009, she was not available and I spoke with Kimberly, an assistant. Kimberly suggested Robert Bauer, then Barbara Cusumando. So it appears that Salter Feiber is biased in favor of Mr. Bauer, a fact that may have prevented a fair consideration of the complaint by Ms. Murphy, the presiding member of the grievance committee.

While a complainant has no right of appeal (Rule 3-7.4(i)) I ask that the designated reviewer request a review by the disciplinary review committee (Rule 3-7.5(a)(2)) and make a recommendation of probable cause that further disciplinary proceedings are warranted. (Rule 3-7.5(a)(5)(G)). Rule 3-7.5 refers to a "disciplinary review committee" but this term is not defined in Rule 3-2.1 so please explain. I do not believe a review by the grievance committee would be useful since it ruled 5-0 against action and appears Salter Feiber is biased in favor of Mr. Bauer, but do not reject such review out of hand.

In my view the grievance process is a parody of justice. Thank you.

Sincerely,

Neil Gillespie  
8092 SW 115th Loop  
Ocala, FL 34481

cc: Mr. James A G Davey, Jr.  
Mr. Brian Kramer  
Ms. Melissa Murphy  
Mr. Carl B Schwait

----- Original Message -----

**From:** [Jim Watson](#)

**To:** [Neil Gillespie](#)

**Sent:** Wednesday, March 23, 2011 1:36 PM

**Subject:** Re: Complaint, Gillespie v Robert W. Bauer, The Florida Bar File No. 2011-00,073(8B)

Mr. Gillespie:

I did not state that the grievance committee operated like a grand jury....what I said was that their deliberations were confidential like those of a grand jury.

It is not necessary that there be non-lawyer members present to constitute a quorum....as my original email said a quorum requires three or more members and two of those three members must be lawyers.

Mr. Schwait is one of the Board of Governors members for the 8th Judicial Circuit. He represents the interests of the attorneys who practice in the 8th circuit as well as takes part in the review of Grievance Committee actions and any disciplinary matters that are referred to the Board of Governors for actions required under our rules.

Any further matters which you might raise will have to wait until next week as I am preparing for a trial that begins on Friday. Thanking you for your consideration..Jim Watson

-----  
Jim Watson, Chief Branch Discipline Counsel  
The Florida Bar  
Tallahassee Branch Office of Lawyer Regulation  
651 E. Jefferson Street  
Tallahassee, FL 32399-2300  
(850)561-5783 / (850)561-5829 (fax)  
jwatson@flabar.org

## NOTICE OF GRIEVANCE PROCEDURES

1. The enclosed letter is an informal inquiry. Your response is required under the provisions of The Rules Regulating The Florida Bar 4 8.4(g), Rules of Professional Conduct. Failure to provide a written response to this complaint is in itself a violation of Rule 4 8.4(g). If you do not respond, the matter will be forwarded to the grievance committee for disposition in accordance with Rule 3-7.3 of the Rules of Discipline.
2. Many complaints considered first by staff counsel are not forwarded to a grievance committee, as they do not involve violations of the Rules of Professional Conduct justifying disciplinary action.
3. “Pursuant to Rule 3-7.1(a), Rules of Discipline, any response by you in these proceedings shall become part of the public record of this matter and thereby become accessible to the public upon the closure of the case by Bar counsel or upon a finding of no probable cause, probable cause, minor misconduct, or recommendation of diversion. Disclosure during the pendency of an investigation may be made only as to status if a specific inquiry concerning this case is made and if this matter is generally known to be in the public domain.”
4. The grievance committee is the Bar’s “grand jury.” Its function and procedure are set forth in Rule 3-7.4. Proceedings before the grievance committee, for the most part, are non-adversarial in nature. However, you should carefully review Chapter 3 of the Rules Regulating The Florida Bar.
5. If the grievance committee finds probable cause, formal adversarial proceedings, which ordinarily lead to disposition by the Supreme Court of Florida, will be commenced under 3-7.6, unless a plea is submitted under Rule 3-7.

# SALTER, FEIBER, MURPHY, HUTSON & MENET, P.A.

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## ATTORNEYS AT LAW

JAMES G. FEIBER, JR.\*  
DENISE LOWRY HUTSON  
DAVID E. MENET  
MELISSA JAY MURPHY  
JAMES D. SALTER  
KRISTINE J. VAN VORST

3940 NW 16<sup>TH</sup> BLVD., BLDG. B  
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\_\_\_\_\_  
\*CERTIFIED CIVIL MEDIATOR

WWW.SALTERLAW.NET

April 22, 2009  
VIA CERTIFIED MAIL

Neil J. Gillespie  
8092 SW 115<sup>th</sup> Loop  
Ocala, FL 34481

RE: Representation

Dear Mr. Gillespie:

Thank you for your correspondence dated April 20, 2009 including attachments thereto.

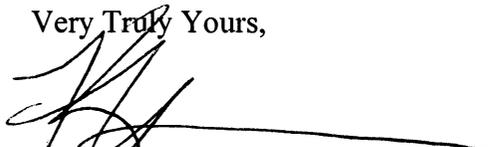
On the basis of our preliminary review of the facts of your claim, we have concluded that we are not interested in pursuing the possibility of handling of your claim. Of course, we are not passing judgment on the merits of any claims that might be made on your behalf.

This letter confirms that we have not been retained as attorneys for you on any basis. However, we do urge you to retain an attorney as soon as possible if you want to pursue any claims that might exist to recover damages on your mother's behalf.

We have not undertaken to advise you concerning any statutes of limitation that might be applicable to your claim. Again, if you want to pursue any claims, you should retain an attorney as soon as possible and obtain advice from that attorney concerning the applicable statutes of limitation. We suggest that you contact The Florida Bar Referral Service at 1-800- 342-8011 in getting a referral for an attorney in your area.

We appreciate the opportunity to discuss your case with you.

Very Truly Yours,



Kristine Van Vorst

KVV/kmc

# DELL GRAHAM

JOHN D. JOPLING\* CARL B. SCHWAIT\*† ELLEN R. GERSHOW† DALE J. PALESCHIC JENNIFER C. LESTER\* DAVID M. DELANEY SUSAN M. SEIGLE  
MARK S. THOMAS\*\* KEVIN A. MCNEILL ANDREW A. MOREY MICHAEL D. PIERCE JENNIFER E. JONES

June 27, 2011

Mr. Neil Gillespie  
8092 S.W. 115<sup>th</sup> Loop  
Ocala, Florida 34481

**Re: Gillespie v. Robert W. Bauer**  
**The Florida Bar File No. 2011-073(8B)**

Dear Mr. Gillespie:

After comprehensively reading all documents in my possession in reference to the above-styled complaint, I have determined that I wish to defer to the finding of the grievance committee.

Very truly yours,



Carl B. Schwait

CBS/vp

cc: Mr. Jim Watson  
Mr. Jim Davey  
Mr. Brian Kramer

EXHIBIT

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\*Florida Board Certified Civil Trial Lawyer † Florida Board Certified in Wills, Trusts & Estates ‡ National Board Certified Civil Trial Advocate  
\*\*Florida Board Certified in Health Law

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203 N.E. FIRST STREET GAINESVILLE FLORIDA 32601 MAILING ADDRESS: P.O. BOX 850 GAINESVILLE FLORIDA 32602

July 31, 2011

Mr. Carl B. Schwait  
Designated Reviewer  
203 N.E. First Street  
Gainesville, Florida 32601

RE: Gillespie v. Robert W. Bauer  
The Florida Bar File No. 2011-073(8B)

Dear Mr. Schwait:

Your letter of June 27, 2011 states “After comprehensively reading all documents in my possession in reference to the above-styled complaint, I have determined that I wish to defer to the finding of the grievance committee.” This is my request to review the documents you comprehensively read. Otherwise your determination does not honestly resolve this matter.

Your letter, as well as Mr. Watson’s letter of March 18, 2011, fails to comply with Rule 3-7.4(k) because it did not explain why my complaint did not warrant further proceedings given the overwhelming evidence of misconduct. You and Mr. Watson also failed to include any documentation explaining why the complaint did not warrant further proceedings.

I have made a number of meritorious complaints to The Florida Bar against lawyers guilty of multiple breaches of the Bar's Rules, which complaints the Bar has failed to honestly adjudicate. Initially my complaint was against William J. Cook of Barker, Rodems & Cook, PA (BRC). Subsequently Mr. Bauer, a referral from the Bar, determined that the Bar was incorrect in failing to proceed against Mr. Cook. Mr. Bauer encourage and reinstated my dismissed civil case against Cook and BRC, then dropped the mater when it became too difficult, leading to this complaint.

Before Mr. Bauer responded to my complaint, Mr. Rodems submitted a thirteen page diatribe to the Bar in Bauer’s defense that was a false and misleading, and a palpable conflict of interest, since he is a partner with Cook in BRC. The information provided by Mr. Rodems, and incorporated into Mr. Bauer’s response, resulted in new breaches of the ethics rules, specifically:

Rule 4-8.4(c), conduct involving dishonesty, fraud, deceit, and misrepresentation

Rule 4-8.4(d), conduct prejudicial to the administration of justice

The documents you comprehensively read must have been false and misleading to lead you to defer to the finding of the grievance committee. Therefore I need to review the documents to make a new complaint for violations of Rules 4-8.4(c) and (d).

The Florida Supreme Court has delegated to the Florida Bar the function of disciplining its members. The Supreme Court and the Bar have a fiduciary duty to protect members of the public harmed by the unethical practice of law and lawyers. The Florida Bar unfortunately is being

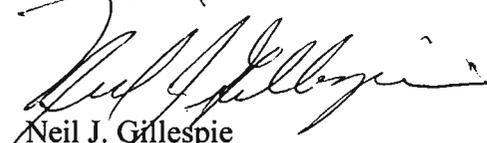
Mr. Carl B. Schwait  
Designated Reviewer

Page - 2  
July 31, 2011

operated, and demonstrably so, in a fashion as to protect itself and bad lawyers rather than the public. For example, the Bar's claim that the grievance committee is its "grand jury" is profoundly misleading as set forth in my April 11, 2011 email to Mr. Watson.

Please advise the undersigned when the documents you comprehensively read will be available for my review. Also advise when the undersigned can expect the Bar's compliance with Rule 3-7.4(k), an explanation why my complaint did not warrant further proceedings given the overwhelming evidence of misconduct. Kindly include any documentation explaining why the complaint did not warrant further proceedings. Thank you.

Sincerely,



Neil J. Gillespie  
8092 SW 115th Loop  
Ocala, Florida 34481  
(352) 854-7807

cc: Mr. James Watson  
Mr. James Davey  
Mr. Brian Kramer

*The Law Offices of*

## Robert W. Bauer, P.A.

2815 NW 13th Street, Suite 200E, Gainesville, FL 32609

www.bauerlegal.com

*Robert W. Bauer, Esq.*

*David M. Sams, Esq.*

Phone:

(352)375.5960

Fax:

(352)337.2518

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January 4, 2010

Honorable Charlie Crist  
Office of the Governor  
The Capitol, PL05  
Tallahassee, FL 32399-0001  
Fax: 850-487-0801

Ref: Ryan Christopher Rodems

Dear Governor Crist,

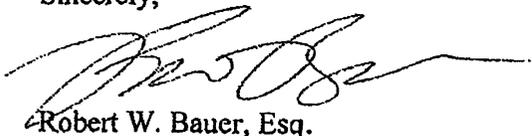
I have recently become aware that Ryan Rodems has been nominated for both a County Court judgeship and Circuit Court judgeship. I had the opportunity of meeting and getting acquainted with Mr. Rodems in a case in which we served as opposing counsel. The case to which I refer is Gillespie v. Baker, Rodems, and Cook, PA. et al. Case No. 2D08-2224. I would like to also take the opportunity to give you my opinion of Mr. Rodems and the professional relationship we shared in connection with the aforementioned case.

While there were times when Mr. Rodems and I strongly disagreed during the course of litigation, I believe that Mr. Rodems consistently performed in an honorable and professional manner. Even in the most contentious moments of the case, Mr. Rodems never wavered in his civility or composure towards me or my client. I found Ryan Rodems to be a zealous advocate while still maintaining a professional approach in his efforts to bring the case to a resolution. Throughout litigation, Mr. Rodems displayed an exceptional knowledge of both procedural and substantive law, including the areas of contracts, fraud, and fiduciary duty with which the case dealt. Overall, my professional relationship with Ryan Rodems was rewarding, enjoyable, and exemplary of the relationship that I hope to achieve with any opposing counsel that I may encounter. I say this even thou our styles are very different and often in complete opposition.

It is my personal opinion that Ryan Christopher Rodems is an honorable and honest gentleman capable of satisfying the duties and responsibilities of a judgeship should he be appointed to such a position in either County or Circuit Court.

Should you have any questions regarding my experiences of working with Mr. Rodems, please contact me at 352-375-5960.

Sincerely,



Robert W. Bauer, Esq.

EXHIBIT

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