

The Florida Bar Inquiry/Complaint Form

Mr. Neil Gillespie
8092 SW 115th Loop
Ocala, FL 34481

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) 854-7887</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.

Return Completed Form to:
Attorney/Consumer Assistance Program
The Florida Bar
651 East Jefferson Street
Tallahassee, FL 32399-2300
Toll Free - 866-352-0707


Signature

July 15, 2010
Date

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Attorney Consumer Assistance Program
The Florida Bar
651 East Jefferson Street
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The Florida Bar
651 East Jefferson Street
Tallahassee, FL 32399-2300

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Neil J. Gillespie
8092 SW 115th 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 13th 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. Armory, 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:

1. 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 refused¹ 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.

¹ 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 March 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.

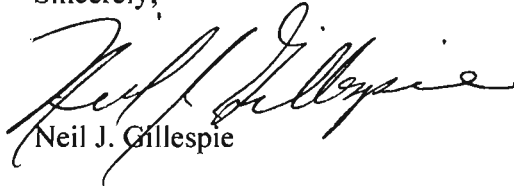
Gillespie Requests Return of \$19,212.44 Paid to Mr. Bauer

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 black ink, appearing to read "Neil J. Gillespie", written over 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.

Table of Contents

Florida Bar inquiry/complaint against Robert W. Bauer, bar no. 11058

Exhibit 1	Florida Bar LRS referral to Robert W. Bauer, February 26, 2007
Exhibit 2	Representation contract, Mr. Bauer and Neil Gillespie, April 2007
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
Exhibit 9	Order Adjudging Contempt against Gillespie, July 7, 2007
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
Exhibit 18	Order, Second District Court of Appeals, reinstated Gillespie's claims, February 8, 2008
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
Exhibit 23	Mandate, 2DCA, \$11,550 sanctions against Gillespie, October 28, 2009
Exhibit 24	Gillespie's Response to Bauer's Motion to Withdrawal as Counsel, October 1, 2009
Exhibit 25	Order Granting Bauer's Motion to Withdrawal as Counsel, October 9, 2009
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

**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*

Kauer

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**

EXHIBIT

1

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 24, 2007

Neil Gillespie
8092 SW 115th Loop
Ocala, FL 34481

Ref: Attorney Consultation and Fee Contract

Dear Mr. Gillespie:

Please find enclosed a copy of the signed and executed fee agreement for your records. If you have any questions or concerns, please do not hesitate to call.

Sincerely,



Robert W. Bauer, Esq.

RWB/kam
Enclosure

000002

EXHIBIT

2

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 22nd 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

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			

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

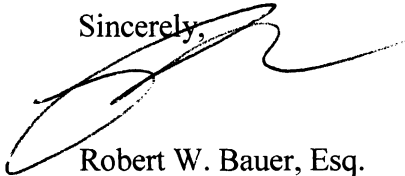
Re: Gillespie v. Barker Rodems and Cooke - 05CA007205 - 060703

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.

[Faint, illegible text, possibly a stamp or bleed-through]

000009

EXHIBIT

4

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

February 7, 2007

VIA FEDERAL EXPRESS

Mr. Neil J. Gillespie
8092 SW 115th Loop
Ocala, Florida 34481

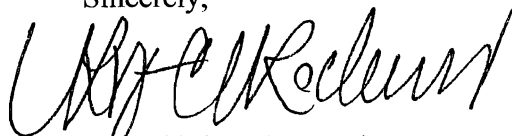
Dear Mr. Gillespie:

After the hearing on February 5, 2007, which ended when you advised that you intend to seek Judge Isom's recusal because you felt prejudiced by her rulings, today I received a call from Judge Isom's assistant requesting a telephone status conference this morning. Apparently, you sent by facsimile to the Judge "Plaintiff's Motion for An Order of Voluntary Dismissal." Judge Isom's assistant sent a copy to us by facsimile. During the status conference, I requested that your motion to dismiss be heard on the UMC hearing date already reserved by you, February 13, 2007. A notice of hearing is enclosed.

If it is your desire to end this litigation, we are prepared to offer the following settlement terms: We mutually agree to dismiss all claims pending in this action, and to waive any other claims we or you may have, with each party to bear his or its own fees and costs. We will not seek any attorneys' fees or costs from you. A mutual release is enclosed. You are free to consult with an attorney regarding this offer, at your own expense. You are not obligated to accept this offer.

If you wish to accept the offer, please sign the mutual release and send it to me by facsimile. Bring the original signature to Court on February 13, and I will bring a copy signed by us. We will enter it on the record, and ask for a copy to be filed in the Court's file.

Sincerely,



Ryan Christopher Rodems

Enclosures
RCR/so

000010

EXHIBIT

5

F

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

NEIL J. GILLESPIE,

Plaintiff,

FYI Only

COPY

vs.

Case No.: 05CA7205

Division: C

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

**No Action
Necessary**

Defendants.

_____ /

**ORDER GRANTING DEFENDANTS' AMENDED MOTION FOR SANCTIONS
PURSUANT TO SECTION 57.105(1), FLORIDA STATUTES**

THIS CAUSE came on to be heard on Tuesday, July 3, 2007, on the "Defendants' Amended Motion for Sanctions Pursuant to Section 57.105(1), Florida Statutes," and the Court, having read and considered the proceedings, having heard from counsel and being otherwise fully advised in the premises, finds as follows:

1. Plaintiff filed a "Motion to Dismiss and Strike Counterclaim" on February 8, 2006.
2. On February 28, 2006, Defendants served a motion for sanctions under section 57.105(1), Florida Statutes, providing Plaintiff with 21 days within which to withdraw or appropriately correct the challenged defenses, in compliance with section 57.105(4), Florida Statutes. Plaintiff did not withdraw or appropriately correct the challenged defenses within 21 days of service of the Defendant's motion for sanctions.
3. On April 26, 2006, Defendants wrote to Plaintiff and offered to withdraw the motion for sanctions if Plaintiff would withdraw the motion to dismiss, but Plaintiff declined to do so.

4. On May 3, 2006, Defendants served the "Amended Motion for Sanctions Pursuant to Section 57.105(1), Florida Statutes," again providing Plaintiff with 21 days within which to withdraw or appropriately correct the challenged defenses, in compliance with section 57.105(4), Florida Statutes. Over eight months later, on January 26, 2007, Plaintiff withdrew the challenged defenses.

5. Plaintiff knew or should have known that the defenses in paragraphs 1, 2, 4, 5, 7, 8, and 9 of the "Motion to Dismiss and Strike Counterclaim" were not supported by the material facts necessary to establish the defenses and would not be supported by the application of then-existing law to the defenses.

6. Plaintiff's counsel, Robert W. Bauer, Esquire, entered his Notice of Appearance after Plaintiff withdrew the offending defenses on January 26, 2007, and therefore, Mr. Bauer is not subject to sanctions under section 57.105(1), Florida Statutes.

Based on the foregoing, it is

ORDERED that Defendants' Amended Motion for Sanctions Pursuant to Section 57.105(1), Florida Statutes is GRANTED. Plaintiff is hereby ordered to pay Defendants' reasonable attorneys' fees for defending against these defenses. If the parties cannot agree on an amount, the Court shall set a hearing and determine the amount of reasonable attorneys' fees to be paid by Plaintiff to Defendants.

DONE AND ORDERED in Chambers this _____ day of July, 2007.

ORIGINAL SIGNED

JUL 20 2007

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)

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

NEIL J. GILLESPIE,

Plaintiff,

vs.

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

Defendants.

COPY

**No Action
Necessary**

Case No.: 05CA7205
Division: C

FYI Only

ORDER DETERMINING AMOUNT OF SANCTIONS

THIS CAUSE came on to be heard on Thursday, March 20, 2008, on the issue of the amount of attorneys' fees Plaintiff Neil J. Gillespie shall pay to 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, both of which ordered Plaintiff¹ to pay Defendants' reasonable attorneys' fees and taxable costs as a sanction for his conduct, as detailed in the respective Orders.

The Court, having read and considered the proceedings, considered the testimony presented at the hearing, and after hearing from counsel, and being otherwise fully advised in the premises, finds as follows:

1. The reasonable rate for the time expended by Ryan Christopher Rodems, Esquire, who is Board Certified by the Florida Bar in the area of Civil Trial law, is \$350.00 per hour. The

¹ Plaintiff's counsel, Robert W. Bauer, Esquire, entered his Notice of Appearance after the occurrence of Plaintiff's conduct which subjected Plaintiff to sanctions under section 57.105(1), Florida Statutes, and therefore, the Court ruled in the July 20, 2007 Order, Mr. Bauer is not subject to sanctions under section 57.105(1), Florida Statutes.

reasonable number of hours expended by Mr. Rodems on this matter is thirty (30).

2. The reasonable rate for the time expended by John W. Gardner, Esquire, is \$300.00 per hour. The reasonable number of hours expended by Mr. Gardner on this matter is three and one-half (3.5).

Based on the foregoing, it is ORDERED and ADJUDGED that Plaintiff shall pay Defendants a total of \$11,550.00 for attorneys' fees and taxable costs.

DONE AND ORDERED in Chambers this _____ day of March, 2008.

ORIGINAL SIGNED

MAR 27 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)

**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

This action was heard following the Court's Orders of July 24, 2006 and July 20, 2007 granting sanctions against Plaintiff and

IT IS ADJUDGED that Defendants Barker, Rodems & Cook, P.A. and William J. Cook, whose addresses are 400 North Ashley Drive, Suite 2100, Tampa, Florida 33602, recover from Plaintiff Neil J. Gillespie, whose address is 8092 SW 115th Loop, Ocala, Florida 34481, the sum of \$11,550.00, that shall bear interest at the rate of 11.00% per annum for which let execution issue forthwith.

It is further ordered and adjudged that the judgment debtor(s) shall complete under oath Florida Rule of Civil Procedure Form 1.977 (Fact Information Sheet), including all required attachments, and serve it on the judgment creditor's attorney, or the judgment creditor if the judgment creditor is not represented by an attorney, within 45 days from the date of this final judgment, unless the final judgment is satisfied or post-judgment discovery is stayed.

Jurisdiction of this case is retained to enter further orders that are proper to compel the judgment

debtor(s) to complete form 1.977, including all required attachments, and serve it on the judgment creditor's attorney, or the judgment creditor if the judgment creditor is not represented by an attorney.

DONE AND ORDERED in Chambers, at Tampa, Hillsborough County, Florida, this ____ day of _____, 2008.

James M. Barton, II
Circuit Judge

Copies to:
Robert W. Bauer, Esquire (Counsel for Plaintiff)
Ryan Christopher Rodems, Esquire (Counsel for Defendants)

**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 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).

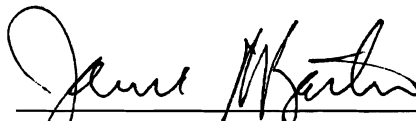
IT IS ORDERED AND ADJUDGED that the Plaintiff Neil J. Gillespie is guilty of contempt of this Court for violating the Final Judgment of March 27, 2008 and will continue to be guilty of contempt unless and until the Plaintiff fully complies with the terms of the Final Judgment no later than July 11, 2008.

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
7th 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

RECEIVED
JUL 24 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

65-7205

2008 JUL 29 AM 9:32
HALL COUNTY CIVIL

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

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

NEIL J. GILLESPIE

Plaintiff,

v.

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

Defendant,

COPY

Case No.:05-CA-007205

Division: C

PLAINTIFF'S MOTION FOR STAY

Plaintiff, NEIL J. GILLESPIE, by and through his undersigned attorney, files this Motion to Stay Order of Final Judgment, and states in support thereof:

1. This Motion to Stay is filed pursuant to FLA. R. APP. P. 9.310.
2. The Court rendered an a Final Judgment on March 27, 2008 which contained an order that the Plaintiff pay the sum of \$11,500.00 and shall complete and submit Florida Rules of Procedure Form 1.977 (Fact Informaton Sheet).
3. Defendant has filed a timely Notice of Appeal with this Court and shall submit an appeal to the 2nd District Cout of Appeal.
4. Defendant will not be prejudiced by the granting of this motion to stay.
5. There are current claims in the still pending in the above styled action which may serve to off set the damages awarded in the Partial Judgment.

WIIEREFORE the Plaintiff/Appellant moves this court to grant this Motion to Stay for Final Judgment.

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

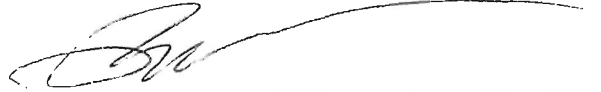


By: Robert W. Bauer, Esq.
Florida Bar No. 11058
Tanya M. Uhl.
Florida Bar No. 52924
2815 NW 13th Street
Suite 200E
Gainesville, FL 32609
Telephone: (352) 375-5960
Fax: (352) 337-2518

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a true copy of the above PLAINTIFF'S MOTION FOR STAY has been sent by U.S. Mail to the following names this day JUN 09 2008 .

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

A handwritten signature in black ink, appearing to read 'R. Bauer', is written over a horizontal line.

Robert W. Bauer, Esq

Date 8/1
Time 3:25 pm
ID 07-12-11
Int 11

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.: 05CA7285

Division: C

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

COPY

Defendants.

WRIT OF GARNISHMENT

THE STATE OF FLORIDA:
To Each Sheriff of the State:

YOU ARE COMMANDED to summon the Garnishee, ROBERT W. BAUER, P.A., 2815 N.W. 13th Street, Suite 200E, Gainesville, Florida 32609, to serve an answer to this Writ on Ryan Christopher Rodems, Esquire, the Defendants' attorney, whose address is Barker, Rodems & Cook, P.A., 400 North Ashley Drive, Suite 2100, Tampa, Florida 33602, within twenty (20) days after service on the Garnishee, exclusive of the date of service, and to file the original with the Clerk of this Court either before service on the attorney or immediately thereafter, stating whether the Garnishee is indebted to the Plaintiff, NEIL J. GILLESPIE, at the time of the answer or was indebted at the time of the service of the Writ, or at any time between such times, and in what sum and what tangible and intangible personal property of the Plaintiff the Garnishee is in possession or control of at the time of the answer or had at the time of the service of this Writ, or at any time between such times, and whether the Garnishee knows of any other person indebted to the Plaintiff or who may be in possession or control of any of the property of the Plaintiff. The amount set in the Plaintiff's Motion is \$11,550.00, Final Judgment entered March 28, 2008, bearing interest at 11% per year.

DATED this 29 day of July, 2008.



FRANK,
CLERK OF THE COURT
Deputy Clerk

5

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,

vs.

Case No.: 05CA7205

Division: C

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

Defendants.

WRIT OF GARNISHMENT

THE STATE OF FLORIDA:

To Each Sheriff of the State:

YOU ARE COMMANDED to summon the Garnishee, **PARK AVENUE BANK, 8375 SW Highway 200, Ocala, Florida 34481**, to serve an answer to this Writ on Ryan Christopher Rodems, Esquire, the Defendants' attorney, whose address is Barker, Rodems & Cook, P.A., 400 North Ashley Drive, Suite 2100, Tampa, Florida 33602, within twenty (20) days after service on the Garnishee, exclusive of the date of service, and to file the original with the Clerk of this Court either before service on the attorney or immediately thereafter, stating whether the Garnishee is indebted to the Plaintiff, **NEIL J. GILLESPIE**, at the time of the answer or was indebted at the time of the service of the Writ, or at any time between such times, and in what sum and what tangible and intangible personal property of the Plaintiff the Garnishee is in possession or control of at the time of the answer or had at the time of the service of this Writ, or at any time between such times, and whether the Garnishee knows of any other person indebted to the Plaintiff or who may be in possession or control of any of the property of the Plaintiff. The amount set in the Plaintiff's Motion is \$11,550.00, Final Judgment entered March 28, 2008, bearing interest at 11% per year.

DATED this 29 day of July, 2008.

PAT FRANK,
CLERK OF THE COURT
BY: HOALIE LOPRESTI
Deputy Clerk

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COPY

EXHIBIT

13

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,

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 13th Street, Suite 200E

Gainesville, Florida

Telephone: (352) 375-5960

Fax: (352) 337-2518

EXHIBIT

14

000024

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

Case No.: 05-CA-007205

Division: F

NEIL GILLESPIE

Plaintiff,

vs.

BAKER, RODEMS, & COOK, a Corporation
and WILLIAM J. COOK

Defendants

PLAINTIFF'S MOTION FOR WITHDRAWAL OF COUNSEL

Movant, Robert W. Bauer, Esq, Attorney for Plaintiff, Neil Gillespie, (hereinafter Plaintiff) files this Motion for Withdrawal of Counsel and alleges the following:

1. 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.

2. The settings and deadlines in this case are as follows:
NONE.

3. This Motion is not sought for the purposes of delay.

4. A copy of this motion bearing the enclosed notice has been delivered to the last known address of Plaintiff.

Neil Gillespie
8092 SW 115th Loop
Ocala, FL 34481

5. Plaintiff is hereby notified in writing of the right to object to this motion.

NOTICE

YOU ARE HEREBY NOTIFIED THAT THIS MOTION FOR WITHDRAWAL OF COUNSEL IS SET FOR HEARING AT THE TIME AND PLACE SET OUT BELOW. YOU DO NOT HAVE TO AGREE TO THIS MOTION. IF YOU WISH TO CONTEST THE WITHDRAWAL OF Robert W. Bauer, Esq AS YOUR ATTORNEY, YOU SHOULD APPEAR AT THE

**HEARING. IF YOU DO NOT OPPOSE Robert W. Bauer, Esq'S
WITHDRAWAL AS YOUR ATTORNEY, YOU MAY NOTIFY Robert W.
Bauer, Esq IN WRITING OF YOUR CONSENT TO THIS MOTION.**

6. Counsel has made a good faith effort to resolve disputes with Plaintiff and continues to be unable to effectively communicate with Plaintiff.

WHEREFORE, Movant requests that the Court enter an order discharging Movant as attorney of record for Plaintiff, Neil Gillespie, and grant such other and further relief that may be awarded at law or in equity.

I certify that on October 13, 2008, a true and correct copy of the foregoing was served by U.S. mail on Ryan Christopher Rodems, Esq. at:

Ryan C. Rodems Esq.
400 N Ashley Dr
Ste 2100
Tampa, Florida 33602



Robert W. Bauer, Esq
Attorney for Plaintiff
Florida Bar No. 0011058
Law Office of Robert W. Bauer,
P.A.
2815 NW 13th Street
Suite 200E
Gainesville, FL 32609
Telephone: (352) 375-5960
Fax: (352) 337-2518

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.

_____ /

**Plaintiff Neil J. Gillespie's Objection
to Attorney Robert W. Bauer's Motion For Withdrawal of Counsel**

Plaintiff Neil J. Gillespie objects to the motion for withdrawal of counsel
submitted by his attorney Robert W. Bauer dated October 13, 2008, and states:

1. Good cause does not exist for the withdrawal of Mr. Bauer as counsel. Mr. Bauer has done well with the substantive case, but has had problems with details and deadlines. During a hearing on contempt on July 1, 2008, Mr. Bauer inadvertently made misrepresentations that resulted in the Court wrongfully finding Plaintiff in contempt. Mr. Bauer later wrote a letter to the court admitting his error. (Exhibit 1). In another instance, Plaintiff requested Mr. Bauer stay a judgment of \$11,550 entered March 27, 2008. Mr. Bauer filed an untimely motion to stay on June 9, 2008, and failed to have the motion heard until after Plaintiff's bank accounts and attorney client trust fund were garnished. It is clear that Mr. Bauer needs co-counsel to assist him.

2. Plaintiff made a good faith effort to resolve any dispute with Mr. Bauer, and Plaintiff believes any dispute was resolved. On October 10, 2008, Plaintiff and Mr. Bauer reached an agreement where Plaintiff would retain co-counsel to assist with the case. Mr. Bauer responded by email, "I will willingly work with co-counsel if you chose to retain such". This is the second time during Mr. Bauer's representation that outside counsel was retained. In February, 2008, Plaintiff retained counsel to supplement legal research for Mr. Bauer, which allowed him to focus on the substantive case.

3. Mr. Bauer's motion does not set forth a notice of hearing as required by law.

4. Mr. Bauer's withdrawal will have an adverse effect. Plaintiff commenced this lawsuit pro se because he could not find counsel to represent him. While proceeding pro se Plaintiff made procedural errors because he is not an attorney and was sanctioned \$11,550. Yet a cause of action has been sustained against Defendants on two separate occasions - once on a motion to dismiss, and again on a motion for judgment on the pleadings. Mr. Bauer is uniquely situated and advised about the case, even if his relative inexperience would benefit from co-counsel.

5. Mr. Bauer has simply 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. Rodems decided to take a full nuclear blast approach instead of trying to work this out in a professional manner". Mr. Bauer has chosen to be a litigation attorney, and in this case he decided to litigate against a law firm with far more experience. Mr. Bauer has 3 years experience and opposing counsel 16 years experience; opposing counsel's three lawyer firm (also the defendants in this case) have 48 years combined experience.

The remedy is not to let Mr. Bauer avoid his responsibilities, but to give him the tools to proceed, namely experienced co-counsel.

6. Mr. Bauer has been paid \$19,212.44 cash to represent Plaintiff, an amount that exceeds the original estimate of \$18,000. Plaintiff considers Mr. Bauer to be paid in full, pending evidence to the contrary. Plaintiff also paid outside counsel \$1,500 in February, 2008 to do research for this case. Since Mr. Bauer began representing him, Plaintiff has paid or incurred \$46,000 in legal fees, sanctions, costs, and expenses in this action, and this has pushed Plaintiff to the brink of bankruptcy.

7. In the event Mr. Bauer's motion for withdrawal is granted, Plaintiff requests:

a. Return to Plaintiff \$19,212.44 paid to Mr. Bauer, so that plaintiff may attempt to hire new counsel;

b. Stay the \$11,550 judgment to defendants pending the outcome of this case.


WHEREFORE, Plaintiff pro se requests that the Court enter an order denying Mr. Bauer's motion to withdrawal as counsel for Neil J. Gillespie.

I certify that on October 15, 2008, a true and correct copy of the foregoing was served by US mail on Ryan Christopher Rodems and Robert W. Bauer at:

Ryan C. Rodems, Esq.
400 N. Ashley Dr., Suite 2100
Tampa, Florida 33601

Robert W. Bauer, Esq.
2815 NW 13th Street, Suite 200E
Gainesville, FL 32609

Respectfully submitted October 15, 2008


Neil J. Gillespie, pro se
8092 SW 115th Loop
Ocala, FL 34481
Telephone: (352) 854-7807

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

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

RECEIVED
JUL 24 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

65-7205

2008 JUL 29 AM 9:32
HALL COUNTY CIVIL

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

Neil J. Gillespie

8092 SW 115th Loop
Ocala, Florida 34481

Telephone: (352) 854-7807

email: neilgillespie@mfi.net

VIA US CERTIFIED MAIL, RETURN RECEIPT

Article no.: 7008 1140 0000 6023 8332

October 27, 2008

Robert W. Bauer, Esquire
Law Office of Robert W. Bauer, P.A.
2815 NW 13th Street, Suite 200E
Gainesville, FL 32609-2865

RE: Americans with Disabilities Act (ADA) request for accommodation

Dear Mr. Bauer,

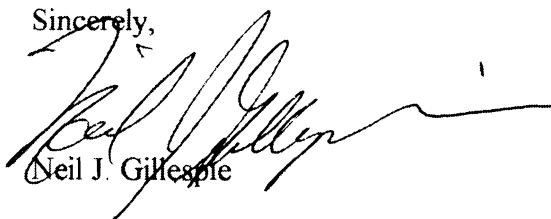
This is a request for an accommodation under the Americans with Disabilities Act (ADA) regarding your motion to withdrawal as counsel. Your motion states "[M]ovant is unable to communicate effectively with Plaintiff in a manner consistent with good attorney-client relations." Therefore I request an accommodation to restore effective communication with me in a manner consistent with good attorney-client relations.

I believe this request is reasonable because:

1. At this time I cannot obtain replacement counsel;
2. You have already been paid over \$19,000 to represent me;
3. In July, 2008, you said this case would be ready for trial in six months;
4. Currently I am in a far worse position than when you entered the case;
5. Your failure to stay the \$11,550 judgment has unnecessarily complicated this case.

Following the sanction of \$11,550 in March, 2008 I believe we should have discussed a strategy to keep this case on track. Thank you for considering my request.

Sincerely,



Neil J. Gillespie

000031

EXHIBIT

17

NOT FINAL UNTIL TIME EXPIRES TO FILE REHEARING
MOTION AND, IF FILED, DETERMINED

IN THE DISTRICT COURT OF APPEAL
OF FLORIDA
SECOND DISTRICT

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

Petitioners,

v.

NEIL J. GILLESPIE,

Respondent.

COPY

FYI Only

Case No. 2D07-4530

**No Action
Necessary**

Opinion filed February 8, 2008.

Petition for Writ of Certiorari to the Circuit
Court for Hillsborough County; James M.
Barton, II, Judge.

Ryan Christopher Rodems of Barker,
Rodems & Cook, P.A., Tampa, for
Petitioners.

Robert W. Bauer, Gainesville, for
Respondent.

PER CURIAM.

Denied. See Fla. R. Civ. P. 1.420(a)(2); 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).

WALLACE and LaROSE, JJ., and THREADGILL, EDWARD F., SENIOR JUDGE,
Concur.

000032

EXHIBIT

18

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

APPELLATE DIVISION

NEIL J. GILLESPIE,
APPELLATE CASE NO.:
Defendant/Appellant,

Case No.: 2D08-2224
Lower Court Case No. 05-CA-7205

vs.

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

Plaintiffs/Appellees.

PLAINTIFF'S MOTION FOR WITHDRAWAL OF COUNSEL

Movant, Robert W. Bauer, Esq, Attorney for Plaintiff, Neil Gillespie, (hereinafter Plaintiff) files this Motion for Withdrawal of Counsel and alleges the following:

1. 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.

2. The settings and deadlines in this case are as follows:

NONE.

3. This Motion is not sought for the purposes of delay.

4. A copy of this motion bearing the enclosed notice has been delivered to the last known address of Plaintiff.

Neil Gillespie
8092 SW 115th Loop
Ocala, FL 34481

right to object to this motion.

NOTICE

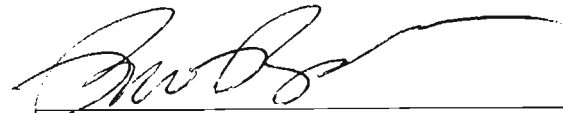
YOU ARE HEREBY NOTIFIED THAT THIS MOTION FOR WITHDRAWAL OF COUNSEL IS SET FOR HEARING AT THE TIME AND PLACE SET OUT BELOW. YOU DO NOT HAVE TO AGREE TO THIS MOTION. IF YOU WISH TO CONTEST THE WITHDRAWAL OF Robert W. Bauer, Esq AS YOUR ATTORNEY, YOU SHOULD APPEAR AT THE HEARING. IF YOU DO NOT OPPOSE Robert W. Bauer, Esq'S WITHDRAWAL AS YOUR ATTORNEY, YOU MAY NOTIFY Robert W. Bauer, Esq IN WRITING OF YOUR CONSENT TO THIS MOTION.

6. Counsel has made a good faith effort to resolve disputes with Plaintiff and continues to be unable to effectively communicate with Plaintiff.

WHEREFORE, Movant requests that the Court enter an order discharging Movant as attorney of record for Plaintiff, Neil Gillespie, and grant such other and further relief that may be awarded at law or in equity.

I certify that on October 13, 2008, a true and correct copy of the foregoing was served by U.S. mail on Ryan Christopher Rodems, Esq. at:

Ryan C. Rodems Esq.
400 N Ashley Dr
Ste 2100
Tampa, Florida 33602



Robert W. Bauer, Esq
Attorney for Plaintiff
Florida Bar No. 0011058
Law Office of Robert W.
Bauer, P.A.
2815 NW 13th Street
Suite 200E
Gainesville, FL 32609
Telephone: (352)
375-5960
Fax: (352) 337-2518

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

NEIL J. GILLESPIE

Defendant/Appellant,

Case No.: 2D08-2224

Lower Court Case No. 05-CA-7205

vs.

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

Plaintiffs/Appellees.

_____ /

**Plaintiff Neil J. Gillespie's Objection
to Attorney Robert W. Bauer's Motion For Withdrawal of Counsel**

Plaintiff Neil J. Gillespie objects to the motion for withdrawal of counsel submitted by his attorney Robert W. Bauer dated October 13, 2008, and states:

1. Good cause does not exist for the withdrawal of Mr. Bauer as counsel. Mr. Bauer has done well with the substantive case, but has had problems with details and deadlines. During a hearing on contempt on July 1, 2008, Mr. Bauer inadvertently made misrepresentations that resulted in the Court wrongfully finding Plaintiff in contempt. Mr. Bauer later wrote a letter to the court admitting his error. (Exhibit 1). In another instance, Plaintiff requested Mr. Bauer stay a judgment of \$11,550 entered March 27, 2008. Mr. Bauer filed an untimely motion to stay on June 9, 2008, and failed to have the motion heard until after Plaintiff's bank accounts and attorney client trust fund were garnished. It is clear that Mr. Bauer needs co-counsel to assist him.

2. Plaintiff made a good faith effort to resolve any dispute with Mr. Bauer, and Plaintiff believes any dispute was resolved. On October 10, 2008, Plaintiff and Mr. Bauer reached an agreement where Plaintiff would retain co-counsel to assist with the case. Mr. Bauer responded by email, "I will willingly work with co-counsel if you chose to retain such". This is the second time during Mr. Bauer's representation that outside counsel was retained. In February, 2008, Plaintiff retained counsel to supplement legal research for Mr. Bauer, which allowed him to focus on the substantive case.

3. Mr. Bauer's motion does not set forth a notice of hearing as required by law.

4. Mr. Bauer's withdrawal will have an adverse effect. Plaintiff commenced this lawsuit pro se because he could not find counsel to represent him. While proceeding pro se Plaintiff made procedural errors because he is not an attorney and was sanctioned \$11,550. Yet a cause of action has been sustained against Defendants on two separate occasions - once on a motion to dismiss, and again on a motion for judgment on the pleadings. Mr. Bauer is uniquely situated and advised about the case, even if his relative inexperience would benefit from co-counsel.

5. Mr. Bauer has simply 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. Rodems decided to take a full nuclear blast approach instead of trying to work this out in a professional manner". Mr. Bauer has chosen to be a litigation attorney, and in this case he decided to litigate against a law firm with far more experience. Mr. Bauer has 3 years experience and opposing counsel 16 years experience; opposing counsel's three lawyer firm (also the defendants in this case) have 48 years combined experience.

The remedy is not to let Mr. Bauer avoid his responsibilities, but to give him the tools to proceed, namely experienced co-counsel.

6. Mr. Bauer has been paid \$19,212.44 cash to represent Plaintiff, an amount that exceeds the original estimate of \$18,000. Plaintiff considers Mr. Bauer to be paid in full, pending evidence to the contrary. Plaintiff also paid outside counsel \$1,500 in February, 2008 to do research for this case. Since Mr. Bauer began representing him, Plaintiff has paid or incurred \$46,000 in legal fees, sanctions, costs, and expenses in this action, and this has pushed Plaintiff to the brink of bankruptcy.

7. In the event Mr. Bauer's motion for withdrawal is granted, Plaintiff requests:

- a. Return to Plaintiff of \$19,212.44 paid to Mr. Bauer, so that plaintiff may attempt to hire new counsel;
- b. Stay the \$11,550 judgment to defendants pending the outcome of this case.

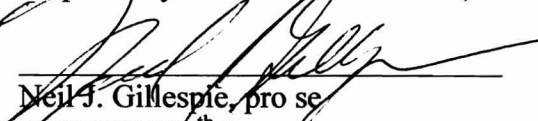
WHEREFORE, Plaintiff pro se requests that the Court enter an order denying Mr. Bauer's motion to withdrawal as counsel for Neil J. Gillespie.

I certify that on October 15, 2008, a true and correct copy of the foregoing was served by US mail on Ryan Christopher Rodems and Robert W. Bauer at:

Ryan C. Rodems, Esq.
400 N. Ashley Dr., Suite 2100
Tampa, Florida 33601

Robert W. Bauer, Esq.
2815 NW 13th Street, Suite 200E
Gainesville, FL 32609

Respectfully submitted October 15, 2008



Neil J. Gillespie, pro se
8092 SW 11th Loop
Ocala, FL 34481
Telephone: (352) 854-7807

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

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

RECEIVED
JUL 24 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

65-7205

2008 JUL 29 AM 9:32
HALL COUNTY CIVIL

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

IN THE DISTRICT COURT OF APPEAL OF THE STATE OF FLORIDA
SECOND DISTRICT, POST OFFICE BOX 327, LAKELAND, FL 33802-0327

October 30, 2008

CASE NO.: 2D08-2224

L.T. No. : 05-CA-7205

Neil J. Gillespie

v.

Barker, Rodems & Cook,
P. A. & William J. Cook

Appellant / Petitioner(s),

Appellee / Respondent(s).

BY ORDER OF THE COURT:

Attorney Bauer's motion to withdraw as counsel for the appellant is denied.

I HEREBY CERTIFY that the foregoing is a true copy of the original court order.

Served:

Tanya M. Uhl, Esq.
Robert W. Bauer, Esq.
Pat Frank, Clerk

Neil J. Gillespie
Ryan Christopher Rodems, Esq.

es


James Birkhold
Clerk



NOT FINAL UNTIL TIME EXPIRES TO FILE REHEARING
MOTION AND, IF FILED, DETERMINED.

IN THE DISTRICT COURT OF APPEAL
OF FLORIDA
SECOND DISTRICT

NEIL J. GILLESPIE,

Appellant,

v.

BAKER, RODEMS & COOK, P.A., a
Florida corporation, and WILLIAM J.
COOK,

Appellees.

Case No. 2D08-2224

Opinion filed October 9, 2009.

Appeal from the Circuit Court for
Hillsborough County; James M. Barton, II,
and Claudia R. Isom, Judges.

Robert W. Bauer, Gainesville, for Appellant.

Ryan Christopher Rodems of Barker,
Rodems & Cook, P.A., Tampa, for
Appellees.

PER CURIAM.

Affirmed.

WHATLEY, DAVIS, and KELLY, JJ., Concur.

M A N D A T E

from

DISTRICT COURT OF APPEAL OF THE STATE OF FLORIDA

SECOND DISTRICT

THIS CAUSE HAVING BEEN BROUGHT TO THIS COURT BY APPEAL,
AND AFTER DUE CONSIDERATION THE COURT HAVING ISSUED ITS OPINION;

YOU ARE HEREBY COMMANDED THAT SUCH FURTHER PROCEEDINGS
BE HAD IN SAID CAUSE , IF REQUIRED, IN ACCORDANCE WITH THE OPINION OF
THIS COURT ATTACHED HERETO AND INCORPORATED AS PART OF THIS
ORDER, AND WITH THE RULES OF PROCEDURE AND LAWS OF THE STATE OF
FLORIDA.

WITNESS THE HONORABLE DARRYL C. CASANUEVA CHIEF JUDGE OF THE
DISTRICT COURT OF APPEAL OF THE STATE OF FLORIDA, SECOND DISTRICT,
AND THE SEAL OF THE SAID COURT AT LAKELAND, FLORIDA ON THIS DAY.

DATE: October 28, 2009

SECOND DCA CASE NO. 2D08-2224

COUNTY OF ORIGIN: Hillsborough

LOWER TRIBUNAL CASE NO. 05-CA-7205

CASE STYLE: NEIL J. GILLESPIE

v. BARKER, RODEMS & COOK,
P. A. & WILLIAM J. COOK




James Birkhold
Clerk



cc: (Without Attached Opinion)

Neil J. Gillespie

Robert W. Bauer, Esq.

Ryan Christopher Rodems, Esq.

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.

**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. 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 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 LRS 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.

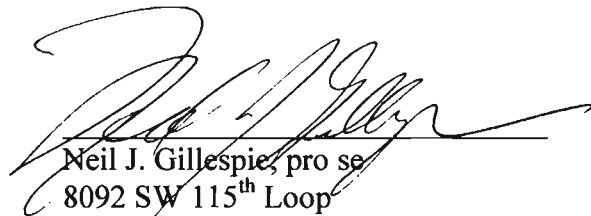
14. Plaintiff requests a stay the \$11,550 judgment for sanctions to defendants pending the outcome of this case.

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 13th Street, Suite 200E
Gainesville, FL 32609

RESPECTFULLY SUBMITTED October 1, 2009


Neil J. Gillespie, pro se
8092 SW 115th Loop
Ocala, FL 34481
Telephone: (352) 854-7807

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.*

345 PM

\$25.00

FOR THE FOLLOWING AREAS OF LAW: *Libel & Slander*

Kauer

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

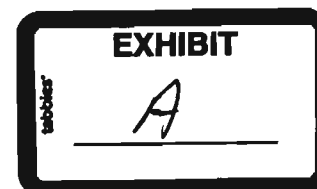
Do you have a special language requirement?

Must the attorney be willing to make a Jail call? No

Personal Information: Neil Gillespie

8092 SW 115th Loop

**Ocala FL 34481
352/8547807**



Lawyer Regulation

Rules Regulating The Florida Bar

8 LAWYER REFERRAL RULE

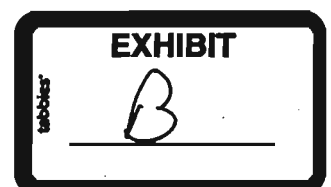
8-1 GENERALLY

RULE 8-1.1 STATEMENT OF POLICY AND PURPOSES

Every citizen of the state should have access to the legal system. A person's access to the legal system is enhanced by the assistance of a qualified lawyer. Citizens often encounter difficulty in identifying and locating lawyers who are willing and qualified to consult with them about their legal needs. To this end bona fide not-for-profit state and local bar associations are uniquely qualified to provide lawyer referral services under supervision by The Florida Bar for the benefit of the public. It is the policy of The Florida Bar to support the establishment of local lawyer referral services and to encourage those services to: (a) make legal services readily available to the general public through a referral method that considers the client's financial circumstances, spoken language, geographical convenience, and the type and complexity of the client's legal problem; (b) provide information about lawyers and the availability of legal services that will aid in the selection of a lawyer; (c) inform the public when and where to seek legal services and provide an initial determination of whether those services are necessary or advisable; and (d) provide referral to consumer, government, and other agencies when the individual's best interests so dictate.

[Revised: 08-01-2006]

© 2005 The Florida Bar



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The Florida Bar Lawyer Referral Service Rules

PREAMBLE

The Florida Bar recognizes that there exists a large group of persons of moderate means who believe that legal services are not readily available. In order to respond to the needs of those persons, it is the position of The Florida Bar that a lawyer referral service be established.

I. OBJECTIVES

The immediate objective of The Florida Bar in the establishment of the Lawyer Referral Service, hereinafter referred to as the "Service," is to assist the general public by providing a way in which any person who can afford to pay a reasonable fee for legal services may be referred to a member of The Florida Bar.

As long range objectives, The Florida Bar seeks to:

- A. Encourage lawyers to recognize the obligation to provide legal services to the general public;
- B. Acquaint people in need of legal services with the value of consultation with a lawyer;
- C. Acquaint lawyers with the fact that the needs of some clients suggest the use of a deferred payment plan.

II. COMMITTEE

A Lawyer Referral Service Committee will be charged with the operation of the Service. It will be composed of not less than six members nor more than twenty-one members appointed by The Florida Bar president. The term for each member shall be for not less than one year nor more than three years. Appointments shall be staggered so the composition of the committee shall be divided, insofar as is practical, into equal numbers of one, two and three-year members. A chair and vice chair will be selected by The Florida Bar president-elect.

III. THE SERVICE

The Service will be operated from The Florida Bar Center in Tallahassee, utilizing members of the staff and under the general supervision of the Lawyer Referral Service Committee. A person seeking a lawyer will use a toll-free line maintained at The Florida Bar to be interviewed by a staff member, and a referral will be made to a panel member of the Service on a rotating basis upon the agreement of such person to pay an initial fee of **\$25**, provided the initial consultation does not exceed one-half hour.

The Service shall not make referrals in any geographic area of the state where a local bar association lawyer referral service exists. In such cases, referrals will be made directly to the existing local bar association lawyer referral service.

IV. FORMATION OF THE PARTICIPANT-MEMBER PANEL

- A. Any Florida Bar member in good standing with no pending findings of probable cause by a grievance committee, who maintains an office in a county not served by any referral service sponsored by or affiliated with any local bar association, may qualify as a panel member.
- B. Application for membership will be grouped by county.
- C. In submitting an application for membership on the panel, any applicant shall be denied membership if, at the time of the initial application:
 - (a) the applicant has a grievance matter with a finding of probable cause pending with The Florida Bar or the Supreme

Court of Florida, or the applicant has received within the last five (5) years:

(i) Any disciplinary action by The Florida Bar or the Supreme Court of Florida; or

(ii) any judgment, conviction (whether or not adjudicated) or determination in a court or administrative proceeding, of the commission of any act of false statement, fraud, dishonesty, and/or misrepresentation; or

(b) the applicant has received within the past ten (10) years:

(i) any determination by The Florida Bar or the Supreme Court of Florida resulting in suspension.

(ii) revocation or disbarment of the applicant's license to practice law; or

(c) The applicant is currently serving probation through The Florida Bar or the Supreme Court of Florida. Such application shall not be accepted for consideration until the probationary period has been completed.

(2) Any applicant may be denied membership and any panel member may be withdrawn from the Service if the attorney has:

a. willfully failed to pay any fee, render any report, or otherwise abide by the rules of the Service;

b. signed any application or other certification or report to the Service which shall be found to be untrue in any material respect. Such action may be taken by the vote of a majority of all members of the committee, only after a hearing on reasonable notice and an opportunity to be heard, and subject to the right of appeal to the Board of Governors of The Florida Bar.

Notwithstanding the foregoing, if at any time, the committee receives notice or information giving it reasonable grounds to believe that a panel member does not meet the required standards of responsibility, capability, character, and integrity, it may suspend a panel member from participation on the Service for such reasonable time as may be necessary.

(3) Any panel member will be automatically suspended from any further referrals upon the finding of probable cause by The Florida Bar in a grievance matter. A suspended panel member may apply for readmission to the panel upon the conclusion of any grievance proceeding and may be readmitted at the committee's discretion.

D. A panel member, in filing an application as provided, agrees to:

(1) grant an initial half-hour office consultation for a fee of no more than **\$25** to any referred client on the Regular Panel.

(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;

(5) grant all clients referred by the Service an appointment as soon as practical after request is made;

(6) abide by all of the rules of the Service and indemnify and hold harmless The Florida Bar

1 exempt from this. So it does still make sense to
2 stay the underlying judgment and say, we need to
3 stop at this point.

4 We are willing to take any other possible
5 exceptions that the Court requires to make sure.
6 If the Court wants to impose the requirement that
7 Mr. Gillespie submit to a deposition for the
8 financial purposes, yes. I think that's perfectly
9 reasonable and goes along with the case law. We
10 will do those things. If the Court wants to set a
11 bond amount that is reasonable, we will happily
12 comply with whatever the Court requires.

13 We're simply asking that relief from this
14 point so that we can proceed forward with the case
15 and honestly quit having these distractions from
16 moving forward with the underlying case. There has
17 been a lot of attempts -- there was problems with
18 that when Mr. Gillespie was pro se and I have come
19 on board and attempted to have a more focused
20 approach. Me and Mr. Rodems did initially have
21 that professional discourse and were able to do
22 that. Unfortunately, there has been recently do to
23 apparently some rulings that we have received,
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.

4 I think it's appropriate for the Court to
5 issue a stay, that any reasonable exceptions that
6 the Court wants we will be happy to comply with and
7 that's what we ask for.

8 THE COURT: What precludes your client from
9 opposing a stay in accordance with the rule in the
10 form of a supersedeas bond?

11 MR. BAUER: We don't have a problem with that,
12 Your Honor. The biggest issue with this is that we
13 were caught unaware in a situation where there
14 wasn't the Court that we could go to dealing with
15 this situation and we needed -- because of what was
16 going on because of the money that he had and was
17 being seized from the bank and everything was being
18 closed up, we needed to take just as quick a return
19 approach; call the Court, get their assistance,
20 have this stopped. Whatever bond that the Court
21 requires we will get posted.

22 THE COURT: My ruling is then that he post a
23 supersedeas bond in accordance with the appellate
24 rules.

25 MR. BAUER: In the --

Neil J. Gillespie
8092 SW 115th Loop
Ocala, Florida 34481

Telephone: (352) 854-7807
email: neilgillespie@mfi.net

VIA US CERTIFIED MAIL, RETURN RECEIPT
Article no.: 7008 1140 0000 6023 8332

October 27, 2008

Robert W. Bauer, Esquire
Law Office of Robert W. Bauer, P.A.
2815 NW 13th Street, Suite 200E
Gainesville, FL 32609-2865

RE: Americans with Disabilities Act (ADA) request for accommodation

Dear Mr. Bauer,

This is a request for an accommodation under the Americans with Disabilities Act (ADA) regarding your motion to withdrawal as counsel. Your motion states "[M]ovant is unable to communicate effectively with Plaintiff in a manner consistent with good attorney-client relations." Therefore I request an accommodation to restore effective communication with me in a manner consistent with good attorney-client relations.

I believe this request is reasonable because:

1. At this time I cannot obtain replacement counsel;
2. You have already been paid over \$19,000 to represent me;
3. In July, 2008, you said this case would be ready for trial in six months;
4. Currently I am in a far worse position than when you entered the case;
5. Your failure to stay the \$11,550 judgment has unnecessarily complicated this case.

Following the sanction of \$11,550 in March, 2008 I believe we should have discussed a strategy to keep this case on track. Thank you for considering my request.

Sincerely,



Neil J. Gillespie

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

Case No.: L.T.No.05-CA-007205

Division: Civil

NEIL GILLESPIE

Plaintiff,

vs.

BAKER, RODEMS, & COOK, a Corporation and
WILLIAM J. COOK

Defendants

_____ /

**ORDER GRANTING
MOTION TO WITHDRAWAL AS COUNSEL**

The Court considered the Motion to Withdrawal as Counsel filed by Attorney Robert W. Bauer.

Plaintiff, Neil Gillespie, appeared in person, pro se.,
Defendant, Baker, Rodems, & Cook, failed to appear.
Defendant, William J. Cook, failed to appear.
Robert W. Bauer, Esq appeared in person

Based upon the pleadings, records, documents filed by counsel, and the arguments of counsel at the hearing, the Court finds that the Motion should be **GRANTED**.

IT IS THEREFORE ORDERED that the Motion to Withdrawal as Counsel is hereby **GRANTED**

IT IS FURTHER ORDERED that the above action be shall be stayed for **60 Days** to allow the Plaintiff to find replacement counsel. If within 60 days a notice of appearance has not been filed

the Plaintiff may be served at:

Mr. Neil Gillespie
8092 SW 115th Loop
Ocala, Florida 34481

DONE AND ORDERED in chambers, in Hillsborough County, Florida, this _____ day
of _____, 2009.

ORIGINAL SIGNED

OCT 9 - 2009

JAMES M. BARTON, II
CIRCUIT JUDGE

Honorable James M. Barton II, Judge Presiding

COPIES FURNISHED TO:

Ryan Christopher Rodems, Esq.
Attorney for Baker, Rodems, & Cook and William J.
Cook

Robert W. Bauer, Esq.

Neil Gillespie



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

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,

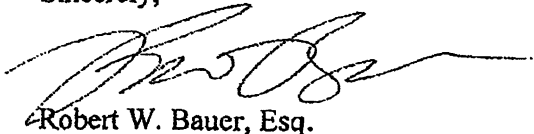
I have recently become aware that Ryan Rodems has been nominated for both a County Court judgeship and Circuit Court judgeship. I had the opportunity of meeting and getting acquainted with Mr. Rodems in a case in which we served as opposing counsel. The case to which I refer is Gillespie v. Baker, Rodems, 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 though 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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EXHIBIT

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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.

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. 2nd DCA 1983); Piper Aircraft Corporation v. Prescott, 445 So. 2d 591 (Fla. 1st DCA

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. 1st 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. 3rd 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. 1st 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 13th 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,

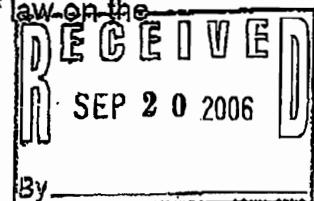
DEFENDANTS.

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

EXHIBIT

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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. 2nd DCA 1983); *Piper Aircraft Corporation v. Prescott*, 445 So.2d 591 (Fla. 1st 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.

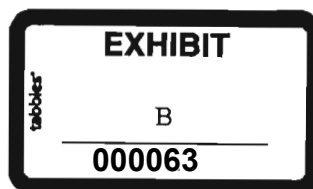
CASE NO.: 2005-CA-7205

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 2nd day of May, 2007.

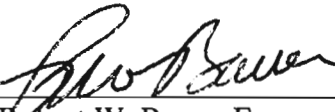
CERTIFICATE OF SERVICE

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 13th 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. 5th 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

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 13th St., Ste 200E
Gainesville, FL 32609

Judicial Assistant

C

Stetson Law Review
Fall, 1998

Essay

***323 PROFESSIONALISM AND LITIGATION ETHICS**Hon. [Claudia Rickert Isom \[FN1\]](#)

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My first assignment as a newly elected circuit judge was to the family law division. Although I considered myself to be an experienced trial attorney, I was somewhat naive about my role as a judge presiding over discovery issues. I assumed that the attorneys assigned to my division would know the rules of procedure and the local rules of courtesy. I also assumed that, being knowledgeable, they would comply in good faith with these provisions. I soon learned that attorneys who were entirely pleasant and sociable creatures when I was counted among their numbers, assumed a much different role when advocating for litigants.

For example, take Harvey M. (not his real name). Harvey and I had bantered for years, having many common interests. Perhaps this familiarity gave rise to, while not contempt, a certain lackadaisical attitude about complying with case management and pretrial orders. Harvey challenged me to establish my judicial prerogative and assist him in achieving goals not of his own making.

A common assumption regarding family law is that clients receive the quality of legal representation that they deserve. However, my time in the family law division has convinced me that this is not necessarily true. Often times, a case that has wallowed along, seemingly hung up in endless depositions and discovery problems, becomes instantly capable of resolution by bringing all parties together in the context of a pretrial conference. Apparently, some attorneys feel that "cutting up" is a large part of what their clients expect them to do. When this litigious attitude begins to restrict the trial court's ability to effectively bring cases to resolution, the judge must get involved to assist the process.

Recently, the Florida Conference of Circuit Court Judges conducted an educational seminar designed to guide circuit judges in appropriately responding to unprofessional and unethical behavior. [FN1] Various scenarios were presented on video, after which the *324 judges voted on what they felt would be the appropriate court response. A surprising number of judges voted to impose sanctions or report unethical behavior to the Florida Bar Grievance Section. However, the most common response was to do nothing or to privately counsel the offending attorney.

A common theme at meetings of the Florida Bar Standing Committee on Professionalism is that, while attorneys can aspire to greater professionalism, the courts can be a bully pulpit to encourage professional behavior. Perhaps the perceived backlash of cracking down on unprofessional behavior is unrealistic for Florida's circuit judges who are elected officials. However, that perception shapes the judicial response, even when responding theoretically at a seminar.

The Joint Committee of the Trial Lawyers Section of the Florida Bar and the Conferences of Circuit and County Court Judges' 1998 Handbook on Discovery Practice admonishes trial judges to fully appreciate their broad powers to end discovery abuses and the 1998 Handbook reassuringly states that the appellate courts will sustain the trial court's authority if it is exercised in a procedurally correct manner. [FN2] Once again, this rallying cry ignores the reality of our situation.

As a new judge, the lessons urged by bar leadership have been a matter of trial and error (pun intended). Harvey quickly established his reputation, not as a fellow member of my legal community, but as a problematic litigator whose behavior had to be controlled and modified by court order for the legal process to smoothly progress. For example, hearing time was made available to address discovery issues, very specific orders were entered regarding who was to do what, when, and how, verbal commitments were elicited on the record about document production and interrogatory responses, in an attempt to avoid additional hearings. Cases involving Harvey were, by necessity, intensely case managed.

Resentment, of course, is a by-product of such intensive case management. Attorneys may perceive that the court is trying to prevent them from earning additional attorney fees by streamlining the process. However, clients rarely complain once they realize that the underlying purpose is to bring the case to timely resolution.

In Harvey's case, extreme tools--reporting Harvey to the Florida*325 Bar, striking responses, striking witnesses, imposing financial sanctions, and conducting contempt hearings-- were never implicated. What did happen was that Harvey trained me to be a better judge by showing me how, in a nonconfrontational manner, I could effectively case manage Harvey and similar counsel without having to take off the gloves.

Fortunately, not every litigator requires the case management skills of a Harvey situation. Most attorneys are well-intentioned, have a legitimate interest in pursuing discovery efficiently, and do not seek to unnecessarily delay the resolution of a case. What a relief it is to have a case with opposing counsel who are both of this school of thought.

New attorneys, or attorneys who are appearing in front of a judge for the first time, must remember that their reputation is primarily built on the judge's personal experiences with them. No bench book exists with a list of which attorneys are trustworthy professionals and which are not. Instead, the individual judge keeps a mental catalog of experiences. For example, does this attorney routinely generate complaints from opposing counsel in other cases about not clearing depositions with their office? Is this attorney often the subject of motions to compel? Can this attorney be trusted when he tells you that the responses to interrogatories are "in the mail"? Once a negative reputation has been established with the court, an attorney's job will be much more challenging in establishing credibility with the court. And certainly, with so many issues up to the court's discretion, an attorney's reputation as trustworthy and ethical is of utmost importance.

And, what about Harvey? Do his clients suffer? Of course they do. But, with effective case management and an experienced judiciary, the damage and delay caused by the Harveys of this world can be minimized while still allowing clients the freedom to choose their own counsel.

[FNal]. Circuit Judge, Thirteenth Judicial Circuit, Tampa, Florida, 1991-Present; B.S.Ed., University of Iowa, 1972; J.D., Florida State University, 1975; Vice-Chair and member, Florida Bar Standing Committee on Professionalism; Assistant State Attorney, Thirteenth Judicial Circuit, 1979-1982; District VI Legal Counsel, Florida

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Department of Health and Rehabilitative Services, 1984-1986; Shareholder, Isom, Pingel and Isom-Rickert, P.A., 1986-1990.

[FN1]. *See* ANNUAL BUSINESS MEETING OF FLORIDA CONFERENCE OF CIRCUIT JUDGES: PROFESSIONALISM PROBLEM SOLVING (1998).

[FN2]. *See* JOINT COMMITTEE OF THE TRIAL LAWYERS SECTION OF THE FLORIDA BAR AND CONFERENCE OF CIRCUIT AND COUNTY JUDGES 1998 HANDBOOK 8-9 (1998).
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