

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

NEIL J. GILLESPIE,

Plaintiff,

CASE NO.: 05-CA-7205

vs.

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

DIVISION: G

RECEIVED

NOV 10 2010

Defendants.

CLERK OF CIRCUIT COURT
HILLSBOROUGH COUNTY, FL

PLAINTIFF'S 5TH MOTION TO DISQUALIFY JUDGE MARTHA J. COOK

1. Plaintiff pro se Gillespie moves to disqualify Circuit Court Judge Martha J. Cook as trial judge in this action pursuant to chapter 38 Florida Statutes, Rule 2.330, Florida Rules of Judicial Administration, and the Code of Judicial Conduct.

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

2. Pursuant to Rule 2.330(c)(4), a motion to disqualify shall include the dates of all previously granted motions to disqualify filed under this rule in the case and the dates of the orders granting those motions. This information is attached. (Exhibit 1)

Disqualification Mandated by Code of Judicial Conduct, Canon 3E(1)

3. Canon 3E(1) provides that a judge has an affirmative duty to enter an order of disqualification in any proceeding "in which the judge's impartiality might reasonably be questioned." The object of this provision of the Code is to ensure the right to fair trials and hearings, and to promote confidence in a fair and independent judiciary by avoiding even the appearance of partiality.

4. "Impartiality" or "impartial" denotes absence of bias or prejudice in favor of, or against, particular parties or classes of parties, as well as maintaining an open mind in considering issues that may come before the judge. (Code of Judicial Conduct).

Judge Martha J. Cook Biased, Treats Pro Se Litigants Poorly

5. Judge Cook is not impartial toward nonlawyer pro se litigants, a particular class of parties. Gillespie is a nonlawyer pro se litigant. Because Judge Cook is biased against nonlawyer pro se litigants, Judge Cook must be disqualified under Canon 3E(1) which provides that a judge has an affirmative duty to enter an order of disqualification in any proceeding "in which the judge's impartiality might reasonably be questioned."

6. The Affidavit of Neil J. Gillespie, November 8, 2010 is attached hereto as evidence that Judge Cook is biased and treats pro se litigants poorly.

WHEREFORE, the undersigned movant certifies that the motion and the movant's statements are made in good faith.

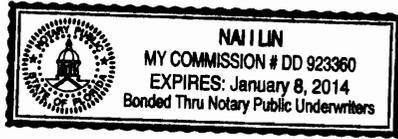
Submitted and Sworn to November 10, 2010.


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

STATE OF FLORIDA
COUNTY OF MARION

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

WITNESS my hand and official seal this 10th day of November 2010.

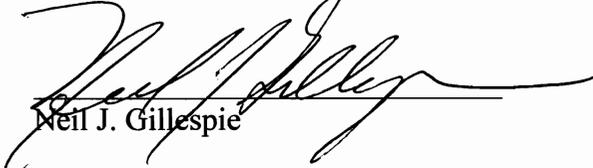




Notary Public
State of Florida

Certificate of Service

I HEREBY CERTIFY that a copy of the foregoing was mailed November 10, 2010 to Ryan Christopher Rodems, Barker, Rodems & Cook, PA, 400 North Ashley Drive, Suite 2100, Tampa, Florida 33602.



Neil J. Gillespie

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

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

- a. Plaintiff's Motion To Disqualify Circuit Judge Martha J. Cook, filed June 14, 2010; denied by Judge Cook June 16, 2010.
- b. Plaintiff's Motion To Disqualify Judge Martha J. Cook, filed July 23, 2010; denied by Judge Cook July 27, 2010.
- c. Plaintiff's Emergency Motion To Disqualify Judge Martha J. Cook, filed November 1, 2010; denied by Judge Cook November 2, 2010.

Circuit Judge Richard A. Nielsen Recused

1. Plaintiff's motion to disqualify Judge Nielsen was filed November 3, 2006. Judge Nielsen denied the motion November 20, 2006 as legally insufficient because it was not filed in a timely manner. Judge Nielsen recused himself two days later sua sponte stating that it is in the best interest of all parties that this case be assigned to another division.
2. Misconduct by Defendants' counsel Ryan Christopher Rodems is responsible for the recusal of Judge Nielsen. On March 6, 2006 Mr. Rodems made a verified pleading that falsely named Judge Nielsen in an "exact quote" attributed to Plaintiff, putting the trial judge into the controversy. The Tampa Police Department recently determined that the sworn affidavit submitted by Mr. Rodems to the court about an "exact quote" attributed to Plaintiff was not right and not accurate.



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

Circuit Judge Claudia Rickert Isom Recused

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

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

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

Circuit Judge James M. Barton, II Disqualified

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

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

8. Nonetheless, Judge Barton made disparaging comments on the record about the Plaintiff, did not manage the case lawfully, and was prejudiced against the Plaintiff. Judge Barton provided copious hearing time to Defendants to obtain sanctions for a discovery error and a misplaced defense to a counterclaim under §57.105 Florida Statutes. The counterclaim for libel against Plaintiff was an Abuse of Process, a willful and intentional misuse of process

for the collateral purpose of making Plaintiff drop his claims against Defendants and settle this lawsuit on terms dictated by them. Defendants perverted the process of law for a purpose for which it is not by law intended. Defendants used their counterclaim as a form of extortion, as described in Plaintiff's First Amended Complaint. On September 28, 2010 Mr. Rodems filed Defendants' Notice of Voluntary Dismissal of Counterclaims.

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

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

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

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

13. In May 2010 Plaintiff found that the Defendants had paid thousands of dollars to Ms. Chere J. Barton, President of Regency Reporting Service, Inc. of Tampa for her services. Chere Barton is the wife of and married to Judge Barton. Plaintiff's Motion to Disqualify Judge Barton was found lawfully sufficient and Judge Barton entered an Order of disqualification May 24, 2010.

**IN THE CIRCUIT COURT OF THE THIRTEENTH JUDICIAL CIRCUIT
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NEIL J. GILLESPIE,

Plaintiff,

CASE NO.: 05-CA-7205

vs.

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

DIVISION: G

Defendants.

_____ /

AFFIDAVIT OF NEIL J. GILLESPIE

Judge Martha J. Cook biased, treats pro se litigants poorly

Neil J. Gillespie, under oath, testifies as follows:

1. My name is Neil J. Gillespie, and I am over eighteen years of age. This Affidavit is given on personal knowledge unless otherwise expressly stated.
2. On October 24, 2010 Susan DeMichelle invited me by email to attend a hearing the next day to see her attorney Brian F. Stayton represent her at a hearing before County Court Judge Eric Myers. Ms. DeMichelle is a deposition reporter who sued Tampa attorney Michael Laurato over nonpayment of an invoice. I accepted Ms. DeMichelle's invitation and agreed to attend the hearing and said "I'll be there in the cheering section".
3. My purpose in seeing attorney Brian F. Stayton was to evaluate his performance and discuss his representation of me at a court-ordered deposition by Judge Martha Cook. Prior to meeting Ms. DeMichelle online the previous day I did not know Mr. Stayton.

4. On October 25, 2010 I drove to Tampa and attended the hearing in Judge Myers' courtroom. I watched Mr. Stayton litigate a declaration action filed by Tampa attorney Michael Laurato against Ms. DeMichelle. Mr. Laurato did not appear personally but through his counsel Ardyn Cuchel. The hearing lasted approximately three hours from about 9:00 AM to noon. Assisting Mr. Stayton was his legal assistant Dawn M. Russell.

5. During a break in the hearing I spoke with Ms. Russell in the hallway outside Judge Myers' courtroom. I told Ms. Russell that Susan DeMichelle invited me to the hearing and recommended Mr. Stayton, and I needed representation for a court-ordered deposition. Ms. Russell asked what judge ordered the deposition. I said *Judge Cook*. Ms. Russell said *We like Judge Cook, she is a good judge*. I responded *That has not been my experience*. Ms. Russell explained that *Judge Cook treats pro se poorly*. I responded *That has been my experience too*.

6. Mr. Stayton prevailed at the hearing. Afterward in the hallway outside the courtroom I congratulated Mr. Stayton, shook his hand, and said I needed representation at a court-ordered hearing by Judge Cook. Mr. Stayton said he did not know Mr. Rodems or Barker, Rodems & Cook. Susan DeMichelle told Mr. Stayton that I drove 100 miles to see him. I gave Mr. Stayton two envelopes with my documents and he told me to call Dawn for an appointment. I left the courthouse and drove back to Ocala.

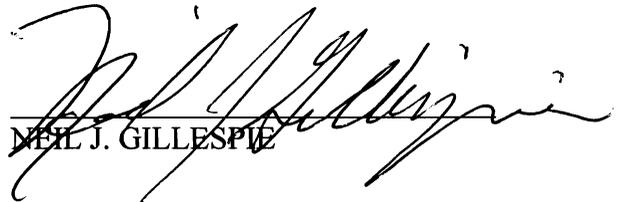
7. October 26, 2010 I called Mr. Stayton's office, spoke with Amy, and left a message. I followed up with a letter to Mr. Stayton. (Exhibit A). I sent Mr. Stayton an email November 1, 2010 asking for a reply. Mr. Stayton responded by email November 3, 2010, declined the representation, and wrote in part "I'm simply too busy with my

existing clients that are in my specialty, construction law, to take on another client in litigation against other attorneys and Judge Cook.” I responded by email November 5, 2010 “Thanks for the reply, appreciate your position. Also appreciate you returning my documents, very professional. Wednesday I sent a request for limited representation to a large law firm. I hope that works out.” (Exhibit B).

8. As described in paragraph 7, Mr. Stayton informed me November 3, 2010 that he declined representation, freeing me to proceed pro se and make this Affidavit.

FURTHER AFFIANT SAYETH NAUGHT.

Dated this 8th day of November 2010.


NEIL J. GILLESPIE

STATE OF FLORIDA
COUNTY OF MARION

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

WITNESS my hand and official seal this 8th day of November 2010.




Notary Public, State of Florida

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

Telephone: (352) 854-7807

October 26, 2010

Mr. Brian F. Stayton
Stayton Law Group, P.A.
4365 Lynx Paw Trail
Valrico, Florida 33596

RE: Gillespie v. Barker, Rodems & Cook, 05-CA-7205, General Civil Division
Judge Cook's Court-Ordered Deposition, Order of September 30, 2010

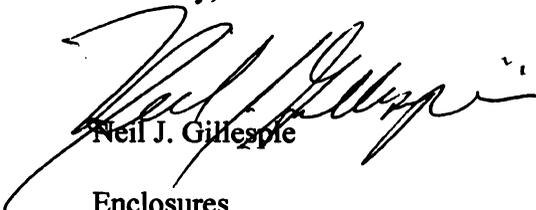
Dear Mr. Stayton:

Thank you for briefly speaking with me yesterday about representation at the court-ordered deposition in the above captioned matter. Previously I requested an order of protection because of Mr. Rodems' history of violence and defamation against a number of prior adversaries. Judge Cook denied the motion without a hearing.

Enclosed is a copy of a letter I received from Mr. Rodems dated January 13, 2010 with another ridiculous accusations, and my response. This was not included in my motion for order of protection denied by Judge Cook. Clearly I cannot attend a deposition with Mr. Rodems alone given his personal and professional conflict of interest, and temperament.

I look forward to hearing from you and getting this deposition issue resolved. Thank you.

Sincerely,


Neil J. Gillespie

Enclosures

cc. Circuit Judge Martha J. Cook
Mr. Rodems (letter only)

EXHIBIT

A

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

January 13, 2010

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

Dear Neil Gillespie:

Recently, you came to our office, apparently to deliver something. My receptionist advised that you violently slung open the door, rushed at her, and slapped a document on the counter. She was very frightened and feared that you were going to attack her.

Please be advised that due to your previous threats of violence and your recent conduct, you are no longer permitted to enter the premises at 400 North Ashley Drive, Suite 2100, Tampa, Florida 33602 for any reason whatsoever. If you do so, you will be considered trespassing, in violation of section 810.08, Florida Statutes.

Sincerely,



Ryan Christopher Rodems

RCR/so

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

Telephone: (352) 854-7807*

VIA FAX (813) 489-1008

January 20, 2010

Mr. Ryan Christopher Rodems, Attorney at Law
Barker Rodems & Cook, PA
400 North Ashley Drive, Suite 2100
Tampa, Florida 33602

Dear Mr. Rodems:

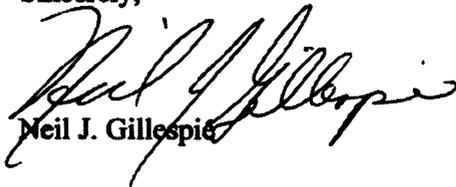
This is in response to your letter dated January 13, 2010. First, I deny the characterization of events in your letter. My visit to your office was to provide a copy of pleadings in our lawsuit. My conduct was professional and I only spent about 10 seconds in your office.

Second, I have never threatened you with violence. You have repeated this falsehood often during this lawsuit for the purpose of improper advantage. Please stop.

Otherwise I am happy to comply with your request and not enter the premises at 400 North Ashley Drive, Suite 2100, Tampa, Florida 33602 for any reason whatsoever. If there are urgent pleadings I will either slide them under the door or leave them with the security desk in the lobby of the building. Otherwise I will fax or mail them to you.

Please be advised that your inaccurate letter, your ongoing claim that I threatened you, your harassing phone calls, your failure to address me as "Mr. Gillespie" after being instructed by the Court to do so, all this may amount to criminal stalking, see Florida Statutes, §784.048. Please stop this course of conduct immediately because it causes me substantial emotional distress and serves no legitimate purpose. Thank you.

Sincerely,


Neil J. Gillespie

*All calls on my home office business telephone extension are recorded for quality assurance purposes pursuant to the business use exemption of Florida Statutes chapter 934, section 934.02(4)(a)(1) and the holding of *Royal Health Care Servs., Inc. v. Jefferson-Pilot Life Ins. Co.*, 924 F.2d 215 (11th Cir. 1991).

Neil Gillespie

From: "Neil Gillespie" <neilgillespie@mfi.net>
To: "Brian Stayton" <brian@staytonlawgroup.com>
Sent: Friday, November 05, 2010 9:34 AM
Subject: Re: limited representation for the purpose of a deposition ordered by Judge Cook
Mr. Stayton,

Thanks for the reply, appreciate your position. Also appreciate you returning my documents, very professional. Wednesday I sent a request for limited representation to a large law firm. I hope that works out.

Sincerely,

Neil Gillespie

----- Original Message -----

From: Brian Stayton
To: Neil Gillespie
Sent: Wednesday, November 03, 2010 10:25 AM
Subject: RE: limited representation for the purpose of a deposition ordered by Judge Cook

Mr. Gillespie:

I was out of town Friday last, giving a presentation to the Associated Air Balance Council (a national association of testing and balancing professionals); on Monday, I had morning appointments and an afternoon closing at a title insurance office; and on Tuesday, I had successive appointments out of the office (doctor's office and then at a client's office), voted, and did not get back to my office yesterday until 4:00 (I spent less than ten minutes at my computer, trying to do work, before I had to leave and take care of my children).

All of which I offer to you as both an explanation for my delay in responding to your email sent late Monday, below, as well as to explain why I have decided to decline your request for representing you. I'm simply too busy with my existing clients that are in my specialty, construction law, to take on another client in litigation against other attorneys and Judge Cook.

I wish you good luck. But at this time, given my current case load and demands upon my time, I cannot represent you. I will mail you all of the documents you provided to me for my review, at my cost.

Good luck and God bless.

b.



11/7/2010

Brian F. Stayton
Stayton Law Group, P.A.
4365 Lynx Paw Trail
Valrico Florida 33596
Telephone: (813) 662-9829
Facsimile: (813) 662-9830
Brian@StaytonLawGroup.com
Board Certified in Construction Law



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From: Neil Gillespie [mailto:neilgillespie@mfi.net]
Sent: Monday, November 01, 2010 9:39 PM
To: Brian Stayton
Subject: limited representation for the purpose of a deposition ordered by Judge Cook

Mr. Brian F. Stayton
Stayton Law Group, P.A.
4365 Lynx Paw Trail
Valrico, Florida 33596

11/7/2010

RE: Gillespie v. Barker, Rodems & Cook, 05-CA-7205, General Civil Division
Judge Cook's Court-Ordered Deposition, Order of September 30, 2010

Mr. Stayton,

This is a follow-up to my letter of October 26, 2010.

A week ago Monday Oct-25 we discussed limited representation for the purpose of a deposition ordered by Judge Cook. Following the hearing for Susan DeMichelle at the courthouse I provided you documents in the matter.

I called your office Oct-26 and spoke with Dawn to set up an appointment. Did you get the message? I expect the courtesy of a reply. If you have decided not to represent me at Judge Cook's court-ordered deposition please advise so that I may look for someone else. If that is the case please return my documents. I will reimburse postage or pick the documents up at your office. Please advise. Thank you.

Sincerely,

Neil J. Gillespie
8092 SW 115th Loop
Ocala, Florida 34481
(352) 854-7808

11/7/2010