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

NEIL J. GILLESPIE

Plaintiff/Petitioner,

Case No.: _____
Lower Court Case No. 05-CA-007205

vs.

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

CIRCUIT COURT JUDGE MARTHA J. COOK,

Defendants/Respondent.
_____/

VERIFIED EMERGENCY PETITION FOR WRIT OF PROHIBITION

MOTION FOR ORDER OF PROTECTION

Plaintiff/Petitioner pro se Neil J. Gillespie Petitions the Second District Court of Appeal for an Emergency Writ of Prohibition to remove CIRCUIT COURT JUDGE MARTHA J. COOK as trial court judge, and for an Order of Protection, and states:

Petitioner Gillespie Faces Risk To His Life And Health

1. Dr. Karin Huffer is Gillespie's disability advocate and wrote "...Neil Gillespie faces risk to his life and health and exhaustion of the ability to continue to pursue justice with the failure of the ADA Administrative Offices to respond effectively to the request for accommodations per Federal and Florida mandates." (October 28, 2010). Dr. Huffer's letter is attached as Exhibit 1, together with a *Curriculum Vitae*. Circuit Court Judge Martha J. Cook is intentionally inflicting severe emotional distress on Gillespie with malice aforethought, as set forth in Emergency Motion To Disqualify Judge Martha J.

Cook, November 1, 2010. (Exhibit 7). This must stop immediately. This case ended September 28, 2010 when Final Summary Judgment was rendered, but Judge Cook reopened the case to continue a personal vendetta against Gillespie. Currently pending before Judge Cook is a "Verified Motion For An Order To Show Cause Why Plaintiff Should Not Be Held In Contempt Of Court And Writ Of Bodily Attachment Should Not Be Issued". Petitioner seeks an Order of Protection to stop the threat of incarceration.

Introduction

2. Petitioner sued his former lawyers Barker, Rodems & Cook, PA for defrauding him of $6,224.78 in prior representation. Barker, Rodems & Cook, PA is unlawfully representing itself against a former client on matter that is substantially the same as the prior representation[1]. The case is in its 5th year. The case is on its 4th trial judge. There have been 4 appeals to the DCA. Petitioner was represented by counsel, Robert W. Bauer of Gainesville, but he dropped the case when it became too difficult. Attorney Seldon J. Childers subsequently reviewed the case for Petitioner and determined Barker, Rodems & Cook actually defrauded him of $7,143, not $6,224.78 claimed in the original pro se complaint. Petitioner filed Plaintiff's First Amended Complaint (Exhibit 18) but the court refused to consider even one amended complaint. This case shows that the Thirteenth Judicial Circuit obstructed justice to help Barker, Rodems & Cook avoid paying Petitioner $7,143 lawfully owed him. Therefore Petitioner brought a federal Civil Rights and ADA lawsuit, Gillespie v. Thirteenth Judicial Circuit, Florida, et al., case no.: 5:10-cv-00503, US District Court, Middle District of Florida, Ocala Division, September 28,

[1] See Emergency Motion To Disqualify Defendants' Counsel Ryan Christopher Rodems & Barker, Rodems & Cook, P.A. submitted July 9, 2010. (Exhibit 19)

2010. Plaintiff's Notice Of Filing Federal Complaint And Service of Process Against Judge Martha J. Cook is attached as Exhibit 17. (with exhibits on CD).

Court Counsel David A. Rowland - Behind The Scene Control of Judges, ADA

3. Court Counsel David A. Rowland has been preemptively defending the Thirteenth Judicial Circuit against Petitioner's lawsuit formally announced July 12, 2010 in the notice of claim made under section 768.28(6)(a) Florida Statutes (Exhibit 20) but first raised in Petitioner's letter to Mr. Rowland of January 4, 2010 requesting information about section 768.28(6)(a) Florida Statutes. (Exhibit 2). Mr. Rowland is controlling the judges in this case from behind the scene since at least January 4, 2010.

4. On July 9, 2010 Mr. Rowland seized control of Petitioner's ADA accommodation request from Gonzalo B. Casares, the Court's ADA Coordinator, and issued his own letter denying the request. (Exhibit 3). Likewise there is evidence that Mr. Rowland is controlling Judge Cook in this case from behind the scene.

5. On July 22, 2010 at 12:24 PM Petitioner spoke by phone with Mr. Rowland about his letter of July 9, 2010 denying Petitioner's ADA request. Petitioner and Mr. Rowland discussed the notice of claim made under section 768.28(6)(a) Florida Statutes. They also discussed Mr. Rodems' representation of his firm and Petitioner's emergency motion to disqualify Rodems pending before Judge Cook. Mr. Rowland expresses surprise when Petitioner informed him that the motion, filed July 9th, was still pending. Later that day Judge Cook denied the motion without a hearing. Judge Cook's Order was filed with the Clerk July 22, 2010 at 3.17 PM according to the Clerk's time stamp on the Order.

6. Petitioner believes the timing of events is not circumstantial, and that following the aforementioned phone call Mr. Rowland instructed Judge Cook to deny Petitioner's

emergency motion to disqualify Rodems pending before her. The Order itself is unlawful, *see* Affidavit of Neil J. Gillespie, October 28, 2010, *Judge Martha J. Cook falsified an official court record, and unlawfully denied Gillespie due process on the disqualification of Ryan Christopher Rodems as counsel*, filed November 1, 2010. (Exhibit 8)

Judge Cook's Unlawful Conduct So Extreme Petitioner Can't Retain Counsel

7. Judge Cook's unlawful conduct toward Petitioner is so extreme as to discourage counsel from representing him. Small firms and sole proprietors do not want to represent Petitioner before Judge Cook and cite full caseloads as an excuse. But even Tampa's premiere 'Big Law' firm Holland & Knight would not represent Petitioner for a court-ordered deposition at its full hourly rate. Judge Cook's departure from the rule of law offends public policy when litigants cannot obtain counsel lest they incur Judge Cook's wrath. Judge Cook has denied Petitioner the basic requirements of justice, fairness and equality that we should all expect from our courts. Judge Cook's behavior is immoral, unethical, oppressive, unscrupulous and substantially injurious to Petitioner. Bradford D. Kimbro, Holland & Knight's Executive Partner of the Tampa Bay Region, declined to represent Petitioner. Mr. Kimbro wrote "I have not read the letter, which was screened (but not studied) by my legal assistant... This is to notify you that Holland & Knight LLP will not represent you..." (Exhibit 4). This is one of many firms who declined representation.

Jurisdiction - Petition For Writ of Prohibition

8. A party may seek review of an order denying a motion for disqualification by filing a petition for writ of prohibition in the appellate court. See Wal-Mart Stores, Inc. v. Carter, 768 So. 2d 21 (Fla. 1st DCA 2000); Carrow v. The Florida Bar, 848 So. 2d 1283 (Fla. 2d DCA 2003); Castro v. Luce, 650 So. 2d 1067 (Fla. 2d DCA 1995); Aberdeen

Property Owners Ass'n, Inc. v. Bristol Lakes Homeowners Ass'n, Inc., 8 So. 3d 469 (Fla. 4th DCA 2009); J & J Towing, Inc. v. Stokes, 789 So. 2d 1196 (Fla. 4th DCA 2001); Cardinal v. Wendy's of South Florida, Inc., 529 So. 2d 335 (Fla. 4th DCA 1988); Hayslip v. Douglas, 400 So. 2d 553 (Fla. 4th DCA 1981).

9. Petitioner seeks review of the following motions to disqualify Judge Cook and the orders denying the motions to disqualify Judge Cook, which were wrongfully denied:

a. Plaintiff's 5th Motion To Disqualify Judge Martha J. Cook, November 10, 2010. (Exhibit 5). Sets forth Judge Cook is biased against a particular class of parties, nonlawyer pro se litigants.

b. Order Denying Plaintiff's 5th Motion To Disqualify Judge Martha J. Cook, November 15, 2010. Petitioner has not received a copy of this Order from Judge Cook, see Petitioner's letter to Dale Bohner, Counsel to the Clerk of the Circuit Court, November 18, 2010. (Exhibit 22). Petitioner will supplement this pleading once he obtains the Order from Judge Cook or the Clerk.

c. Plaintiff's 4th Motion To Disqualify Judge Martha J. Cook, November 10, 2010. (Exhibit 6). Sets forth the following:

> (i) Gillespie was under special surveillance by Judge Cook's bank, Community Bank of Manatee and its Chairman and CEO, William H. Sedgeman, Jr., husband of Judge Cook.
>
> (ii) Judge Cook failed to disclose a conflict with Gillespie September 28, 2010.
>
> (iii) Judge Cook's personal and business financial affairs violate the Florida Code of Judicial Conduct, specifically Judge Cook's insolvency and the FDIC/OFR Consent Order against Community Bank of Manatee. There is also a question concerning testimony by Mr. Marcelo Lima before the OFR about Mr. Lima's former employer, ABN Amro Bank and an action brought against it by DOJ, see Exhibit 21.

(iv) Judge Cook has a conflict of interest or bias presiding over matters involving financial institutions and related transactions.

d. Order Denying Plaintiff's 4th Motion To Disqualify Judge Martha J. Cook, November 15, 2010. Petitioner has not received a copy of this Order from Judge Cook, see Petitioner's letter to Dale Bohner, Counsel to the Clerk of the Circuit Court, November 18, 2010. (Exhibit 22). Petitioner will supplement this pleading once he obtains the Order from Judge Cook or the Clerk.

e. Emergency Motion To Disqualify Judge Martha J. Cook, November 1, 2010 (Exhibit 7) with Plaintiff's Notice of Filing Affidavits, November 1, 2010 (Exhibit 8) showing:

(i) Judge Cook not acting as judge but as partner with Defendants.

(ii) Judge Cook and the Thirteenth Judicial Circuit are defendants in a federal Civil Rights and ADA lawsuit, Gillespie v. Thirteenth Judicial Circuit et al., Case No. 5:10-cv-503-oc-WTH-DAB, US District Court, MD Florida, Ocala Division.

(iii) Judge Cook intentionally inflicting severe emotional distress on Petitioner.

(iv) Judge Cook rendered opinion on the character or credibility of Petitioner in open court, and a personal conflict has developed.

(v) Judge Cook's misconduct as set forth in the following affidavits: (Exhibit 8)

Affidavit of Neil J. Gillespie, October 28, 2010, *Judge Martha J. Cook, falsified record of Gillespie's panic attack; ADA*

Affidavit of Neil J. Gillespie, October 28, 2010, *Judge Martha J. Cook falsified an official court record, and unlawfully denied Gillespie due process on the disqualification of Ryan Christopher Rodems as counsel*

Affidavit of Neil J. Gillespie, October 28, 2010, *Judge Martha J. Cook ordered Gillespie removed from the hearing of September 28, 2010, and accused Gillespie in open court of feigning illness; ADA*

Affidavit of Neil J. Gillespie, November 1, 2010, *Judge Martha J. Cook ordered Gillespie removed from the hearing on Defendants' Final Summary Judgment Count I, proceeded without Gillespie, granted SJ for Defendants on TILA fees previously denied with prejudice and by three different federal courts*

Affidavit of Neil J. Gillespie, November 1, 2010, *Judge Martha J. Cook ordered Gillespie removed from the hearing on Defendants' Motion for an Order of Contempt and Writ of Bodily Attachment, then falsified the Order stating Gillespie voluntarily left the hearing and did not return*

f. Order Denying Emergency Motion To Disqualify Judge Cook, Nov-02-10. (Exhibit 9)

g. Plaintiff's Motion To Disqualify Judge Martha J. Cook, July 23, 2010 (Exhibit 10)

showing:

(i) Judge Cook's violation of Canon 3D(2) Disciplinary Responsibilities.

(ii) Judge Cook's conflict with Petitioner's ADA accommodation request.

(iii) Court uncooperative and disruptive in setting hearings.

(iv) Judge Cook's misconduct at July 12, 2010 hearing.

(v) Judge Cook has actual conflict with Petitioner.

h. Order Denying Motion To Disqualify Circuit Court Judge Martha J. Cook, Jul-27-10 (Exhibit 11)

i. Plaintiff's Motion To Disqualify Circuit Judge Martha J. Cook, June 14, 2010 (Exhibit 12)

showing:

(i) Judge Cook cooperated with opposing counsel to disrupt the proceedings.

(ii) Controversy between Petitioner and judicial assistant Mary Fish.

(iii) Judge Cook's reported health related absences and involuntary retirement.

(iv) Judge Cook denied access the court file keeping it locked in her office.

(v) Campaign contributions and related misinformation on Judge Cook's website.

(vi) Consanguinity to the third degree with defendant William J. Cook.

(vii) Judge Cook and obstruction related to scheduling motions.

(viii) Judge Cook's refusal to cooperate with Petitioner's ADA accommodations.

(ix) Issues related to judge ad litem per section 38.13 Florida Statutes.

(x) Failed to hear motion to reconsider prior rulings by a disqualified judge.

(xi) Failure to hear Petitioner's Motion For Dissolution Of Writ Of Garnishment contrary to § 77.07(1) Florida Statutes states that "The court shall set down such motion for an immediate hearing"

j. Order Denying Motion To Disqualify Circuit Court Judge Martha J. Cook, June 16, 2010. (Exhibit 13)

Standard On Disqualification of Trial Judge

10. The basic principles underlying the procedure for disqualification are the same as those expressed in the Code of Judicial Conduct. 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.

11. The central question in every motion for disqualification is whether the moving party has cause to believe that he or she will be treated unfairly. While it may be true that the judge could treat the litigant fairly in spite of the alleged facts, that is immaterial to the motion. As the supreme court explained "the question of disqualification focuses on those matters from which a litigant may reasonably question a judge's impartiality rather than the judge's perception of his ability to act fairly and impartially." Livingston v. State, 441 So. 2d 1083, 1086 (Fla. 1983).

12. The standard in determining legal sufficiency is whether a reasonable person would fear that he or she could not get a fair trial with the present judge under the circumstances outlined in the motion. See Department of Agriculture and Consumer Services v. Broward County, 810 So. 2d 1056 (Fla. 1st DCA 2002); Jimenez v. Ratine, 954 So. 2d 706 (Fla. 2d DCA 2007); Jarp v. Jarp, 919 So. 2d 614 (Fla. 3d DCA 2006); Deakter v. Menendez, 830 So. 2d 124, 49 U.C.C. Rep. Serv. 2d 849 (Fla. 3d DCA 2002); Baez v. Koelemij, 960 So. 2d 918 (Fla. 4th DCA 2007); Winburn v. Earl's Well Drilling & Pump Service, 939 So. 2d 199 (Fla. 5th DCA 2006).

13. Rule 2.330(d) defines the general grounds for disqualification and identifies several specific grounds. As previously noted, the legal procedure for disqualification is intended to serve the same general goals as the Code of Judicial Conduct. A judge is obligated by the Code of Judicial Conduct to enter an order of disqualification in any of these circumstances even if a party has not filed a motion for disqualification. It follows that a motion for disqualification is legally sufficient if it alleges any of these matters listed in Canon 3E(1).

14. A motion for disqualification can be based on the actions of the trial judge as well as the statements made by the judge. Improper conduct on the part of the judge may serve as a ground for disqualification if that conduct could prejudice the rights of a party to the case. Conflict arising from an association between the trial judge and a litigant may serve as a ground for disqualification depending on the circumstances of the case. So too, a personal conflict that develops during the course of a proceeding may support a motion for disqualification. There are a number of Florida cases involving a trial judge's comments about a litigant. The appellate courts have generally sustained a request for

disqualification if the trial judge has expressed a general opinion on the character or credibility of the litigant. A judge who renders an opinion on the character or credibility of a litigant should ordinarily be disqualified. See Brown v. St. George Island, Ltd., 561 So. 2d 253 (Fla. 1990); De-Metro v. Barad, 576 So. 2d 1353 (Fla. 3d DCA 1991.

15. Ordinarily the fact that a party has filed a civil lawsuit against the judge is not a legally sufficient basis for disqualification. May v. South Florida Water Management Dist., 866 So. 2d 205 (Fla. 4th DCA 2004). But May and similar cases do not apply in the instant case. In this case Court Counsel David A. Rowland began preemptively defending the Thirteenth Judicial Circuit against Petitioner's lawsuit formally announced July 12, 2010 in the notice of claim made under section 768.28(6)(a) Florida Statutes, but first raised in Gillespie's letter to Mr. Rowland of January 4, 2010 requesting information about section 768.28(6)(a) Florida Statutes. (Exhibit 2). Mr. Rowland is controlling the judges in this case from behind the scene since at least January 4, 2010, long before Judge Cook presided over the case.

16. Successive Motions. A judge may evaluate the facts alleged in a motion for disqualification if the moving party had previously disqualified another judge. Rodriguez Diaz v. Abate, 598 So. 2d 197 (Fla. 3d DCA 1992). A second motion by a party is reviewable under the stricter "legal sufficiency" standard. In Fogan v. Fogan, 706 So. 2d 382 (Fla. 4th DCA 1998), the court reversed an order by a successor judge denying a motion for disqualification because the record showed that the judge could not be impartial. In this case the record is clear that Judge Cook can not be impartial. The basic tenet for disqualification of a judge is that justice must satisfy appearance of justice, and this tenet must be followed even if record is lacking of any actual bias or prejudice on

judge's part, and even though this stringent rule may sometimes bar trial by judges who have no actual bias and who would do their very best to weigh scales of justice equally between contending parties. Kielbania v. Jasberg 744 So.2d 1027. Florida courts hold that when trial judge leaves realm of civility and directs base vernacular towards attorney or litigant in open court, there is sufficient grounds to require disqualification. Olszewska v. Ferro 590 So.2d 11. Judge Cook accused Petitioner in open court of feigning illness at a prior hearing. Tampa Fire Rescue treated Petitioner immediately following the prior hearing and produced a record supporting Petitioner's claim of illness. Judge Cook left the realm of civility and directed base vernacular toward Petitioner when she made a gratuitous, unsupported claim of feigning illness. "A judge should be patient, dignified and courteous to litigants, ... lawyers, and others with whom he deals in his official capacity...." Fla. Bar Code Jud. Conduct, Canon 3(A)(3) (1991). When a trial judge leaves the realm of civility and directs base vernacular towards an attorney or litigant in open court, there are sufficient grounds to require disqualification. See, e.g., Lamendola v. Grossman,439 So.2d 960 (Fla. 3d DCA 1983); Brown v.Rowe, 96 Fla. 289, 118 So. 9 (1928) (once a basis for disqualification has been established, prohibition is both appropriate and necessary). It is a fundamental right that every litigant is entitled to nothing less than the cold neutrality of an impartial judge, and it is the duty of a judge to scrupulously guard this right and refrain from attempting to exercise jurisdiction in any matter where his qualification to do so is seriously brought in question. Crosby v. State, 97 So.2d 181. Judge not only must be free of evil intent but he must also avoid appearance of evil. It is party's right to have judge free from any obvious source of possible unconscious bias. Aetna Life & Cas. Co. v. Thorn, 319 So.2d 82.

New Misconduct By Judge Cook

17. November 15, 2010 Judge Cook apparently entered an Order Prohibiting Plaintiff From Appearing Pro Se. Petitioner says "apparently" because he read this on the Clerk's online progress docket. Judge Cook has not provided the Order to Petitioner, and since he resides 100 miles from the court, has not made the 200 mile round-trip to obtain the Order. See Petitioner's letter to Dale Bohner, Counsel to the Clerk of the Circuit Court, November 18, 2010. (Exhibit 22). Petitioner will supplement this pleading once he obtains the Order from Judge Cook or the Clerk.

18. On November 4, 2010 Judge Cook entered an Order To Show Cause Why Plaintiff Should Not Be Prohibited From Appearing Pro Se with Petitioners response due 20 days later. (Exhibit 18). Now Judge Cook has apparently changed her mind, although Petitioner has not yet submitted a response and the time to do so has not expired.

19. On November 15, 2010 the Clerk's online progress docket showed Judge Cook closed the case, and there was an entry "Do Not Accept Additional Docs". (Exhibit 15). This would prevent Petitioner from responding to the Order To Show Cause Why Plaintiff Should Not Be Prohibited From Appearing Pro Se.

20. On November 17, 2010 the Clerk's online progress docket showed the case was reopened. An entry November 16th showed a motion for an order to show cause for writ of bodily attachment. (Exhibit 16).

21. Judge Cook apparently issued another Final Order November 15, 2010 for Defendant Barker, Rodems & Cook, P.A. which appears redundant since a Final Order was issued September 28, 2010. Petitioner says "apparently" because he read this on the Clerk's online progress docket. Judge Cook has not provided the Order to Petitioner, and

since he resides 100 miles from the court, has not made the 200 mile round-trip to obtain the Order. See Petitioner's letter to Dale Bohner, Counsel to the Clerk of the Circuit Court, November 18, 2010. (Exhibit 22). Petitioner will supplement this pleading once he obtains the Order from Judge Cook or the Clerk.

22. Judge Cook's Final Order of September 28, 2010 is on appeal, and a Contempt Order of September 30, 2010. Should Petitioner prevail on appeal, the case would again go back to the trial court and Judge Cook, again raising the issue of disqualification.

Motion For Order Of Protection

23. Currently there is a "Verified Motion For An Order To Show Cause Why Plaintiff Should Not Be Held In Contempt Of Court And Writ Of Bodily Attachment Should Not Be Issued" to incarcerate Gillespie, filed November 12, 2010. Petitioner seeks an Order of Protection on two grounds. First, final order(s) have been rendered so there is no reason for a deposition. Second, if the deposition is to occur, it must be done lawfully, and not a free-for-all for which Barker, Rodems & Cook, P.A. is infamous. An Order of Protection is needed since the filing of a petition for writ of prohibition does not divest the trial court of jurisdiction to proceed in the matter. The action is stayed only if the reviewing court issues an order to show cause. Letterese v. Brody, 2008 WL 2284819 (Fla. 4th DCA 2008).

Petitioner's Motion For Order of Protection In Circuit Court

24. June 14, 2010 Petitioner made a motion for an order of protection in the trial court. (Exhibit 24). Judge Cook denied the motion without a hearing.

25. Dr. Karin Huffer has advised Petitioner not to attend a deposition unrepresented and without ADA accommodation:

"As the litigation has proceeded, Mr. Gillespie is routinely denied participatory and testimonial access to the court. He is discriminated against in the most brutal ways possible. He is ridiculed by the opposition, accused of malingering by the Judge and now, with no accommodations approved or in place, Mr. Gillespie is threatened with arrest if he does not succumb to a deposition. This is like threatening to arrest a paraplegic if he does not show up at a deposition leaving his wheelchair behind. This is precedent setting in my experience. I intend to ask for DOJ guidance on this matter." (Exhibit 1, page 1, paragraph 2)

26. Petitioner notified Mr. Rodems that Dr. Karin Huffer has advised Petitioner not to attend a deposition unrepresented and without ADA accommodation in a letter dated November 8, 2010. (Exhibit 23). Mr. Rodems has refused to answer any questions about the deposition, even basic questions about the length of time needed, or who will conduct the deposition. Therefore Petitioner believes that Mr. Rodems plans to use the deposition as an excuse for vengeance against him. Petitioner offered to be deposed in Ocala at the office of his family lawyer Robert Stermer. Petitioner offered to have a telephonic deposition. Petitioner even offered, in lieu of a writ of bodily attachment, to voluntarily appear at the appropriate law enforcement office. (Exhibit 23). Petitioner wrote: "In any event I don't see the need for a writ of bodily attachment. If it comes to that point I would voluntarily appear at the appropriate law enforcement office and submit to a deposition under duress. At least then I would have some protection from your stunts, like throwing coffee on a deponent, or your wont of making false affidavits that you were threatened."

Infamous Reputation of Petitioner's Former Lawyers

27. Petitioner's former lawyers have an infamous reputation for stunts, unprofessional conduct, and worse. In July 2010 Mr. Rodems' law partner Chris A. Barker was either removed or resigned as Vice Chair of the 13th Circuit Judicial Nominating Commission (JNC) over conflict with Mr. Rodems ongoing applications for judge. Messrs. Rodems and Barker were working both ends of the JNC while more qualified applicants for judge were passed over, to the detriment of the citizens of Florida. In another case, Mr. Rodems was present at a mediation when his former law partner threw a 20 ounce cup of hot coffee on opposing counsel during a fit of rage.

Physical Attack on Arnold Levine, Attorney and Senior Citizen

28. Mr. Rodems and his law partners are bullies with law degrees. While Petitioner was a client of the predecessor Alpert firm, Messrs. Alpert and Rodems attended a mediation where Alpert physically assaulted opposing counsel Arnold Levine. A Tampa Police Department report dated June 5, 2000, case number 00-42020, alleges Mr. Alpert committed battery, Florida Statutes §784.03, upon attorney Arnold Levine by throwing hot coffee on him. At the time Mr. Levine was a 68 year-old senior citizen. The report states: "The victim and defendant are both attorneys and were representing their clients in a mediation hearing. The victim alleges that the defendant began yelling, and intentionally threw the contents of a 20 oz. cup of hot coffee which struck him in the chest staining his shirt. A request for prosecution was issued for battery." Mr. Rodems is listed as a witness on the police report and failed to inform Petitioner that Mr. Alpert attacked attorney Arnold Levine. A copy of the Tampa Police Department report is attached as Exhibit 25.

29. Mr. Levine previously sued Alpert, Barker & Rodems, PA, a $5 million dollar claim for defamation, Buccaneers Limited Partnership v. Alpert, Barker & Rodems, PA, US District Court, Middle District of Florida, Tampa Division, case 99-2354-CIV-T-23C.

30. The coffee-throwing incident made news headlines and brought disgrace upon the legal profession. After the incident Mr. Levine filed another lawsuit against the bullies at the Alpert firm, Levine v. Alpert, Case No. 00-CA-004187, Hillsborough Circuit Civil Court. What happened next is Mr. Rodems' *modus operandi*, accuse your opponent of criminal wrongdoing. In this case the Alpert firm accused Mr. Levine of criminal extortion for making a settlement demand. This is what Sue Carlton of St. Petersburg Times reported June 10, 2000 in story titled "Bucs accused of extortion". (Exhibit 26)

> "...the meeting exploded almost as soon as it began, leaving a trail of allegations, recriminations and criminal complaints."
>
> "The latest: On Friday the lawyer for the fans announced in court that he had asked police to investigate "threats and/or extortion" by the Bucs' lawyer at Saturday's meeting. He said the fans were threatened with losing their seats if they did not agree to a settlement that day."
>
> "Tampa police detectives are reviewing the extortion complaint, which names Levine, Bucs general manager Rich McKay and Edward and Bryan Glazer."
>
> "The Hillsborough State Attorney's Office is deciding whether Alpert should be charged with battery, a misdemeanor, in the coffee incident. Levine also filed a civil suit seeking damages."

The Florida Bar CLE, Basic Federal Practice 2007

31. Petitioner's former attorney Robert Bauer planned to use information about the battery on Mr. Levine in defense of the libel counterclaim in the instant case. Mr. Bauer attended a CLE in Tampa (Basic Federal Practice 2007) where US District Judge James D. Whittemore repudiated the infamous coffee-throwing incident. Mr. Bauer instructed

Petitioner to obtain information from the Florida Bar about this act of violence by Rodems' partner against another lawyer. The Florida Bar was helpful and provided a surplus CD gratis. The Bar authorized Petitioner to have the CD transcribed. (Exhibit 27). Judge Whittemore discussed the erosion of professionalism and cited examples. On page 23, beginning at line 6, he said the following. This is the full paragraph for context.

> If you think that's the only example of wayward lawyer conduct during depositions just get on the internet and search around. It's just hilarious some of the things that go on. There have been fist fights in Tampa. There has been coffee thrown across the table by one lawyer against another in a Federal deposition room in the Federal courthouse. There have been lawyers clipping their nails during depositions. That kind of conduct is reprehensible.

The WrestleReunion Lawsuit

32. A recent example of Mr. Rodems boorish and unprofessional behavior occurred when he served as plaintiff's counsel in *WrestleReunion, LLC v. Live Nation, Television Holdings, Inc.,* United States District Court, Middle District of Florida, Case No. 8:07-cv-2093-T-27, trial August 31-September 10, 2009. Mr. Rodems lost the jury trial and then wrote a letter attacking the credibility of defense witness Eric Bischoff. A copy of the online letter is attached as Exhibit 28 and may also be found online at: http://www.declarationofindependents.net/doi/pages/corrente910.html Petitioner learned about this lawsuit from an application Mr. Rodems made to the 13th Circuit Judicial Nominating Commission for a vacant judicial position.

33. Mr. Rodems' letter shows he lacks judicial temperament and calls into question his mental well-being. After the jury spoke and the case was over Mr. Rodems wrote the following: "It is odd that Eric Bischoff, whose well-documented incompetence caused the

demise of WCW, should have any comment on the outcome of the WrestleReunion, LLC lawsuit. The expert report Bischoff submitted in this case bordered on illiteracy, and Bischoff was not even called to testify by Clear Channel/Live Nation because Bischoff perjured himself in a deposition in late-July 2009 before running out and refusing to answer any more questions regarding his serious problems with alcohol and sexual deviancy at the Gold Club while the head of WCW." Mr. Rodems also wrote, "To even sit in the room and question him was one of the most distasteful things I've ever had to do in 17 years of practicing law. In fact, we understand that Bischoff was afraid to even come to Tampa and testify because he would have to answer questions under oath for a third time about his embarrassing past." Mr. Rodems continued his attack on the witness, writing, "The sad state of professional wrestling today is directly attributable to this snake oil salesman, whose previous career highlights include selling meat out of the back of a truck, before he filed bankruptcy and had his car repossessed. Today, after running WCW into the ground, Bischoff peddles schlock like "Girls Gone Wild" and reality shows featuring B-listers."

Mr. Rodems Strategic Maneuver To Intentionally Disrupt The Tribunal

34. Mr. Rodems pulled a stunt against Petitioner March 6, 2006 that intentionally disrupted the tribunal. Petitioner initially had a good working relationship with Judge Nielsen and judicial assistant Myra Gomez. Petitioner attended the first hearing telephonically September 26, 2005 and prevailed on Defendants' Motion to Dismiss and Strike. The Court found Petitioner established a complaint for fraud and breach of contract against Mr. Rodems' firm and law partner. This meant Mr. Rodems should be disqualified. Partners engaged in the practice of law are each responsible for the fraud or

negligence of another partner when the later acts within the scope of the ordinary business of an attorney. Smyrna Developers, Inc. v. Bornstein, 177 So.2d 16. Therefore Gillespie submitted Plaintiff's Motion to Disqualify Counsel.

35. Mr. Rodems then intentionally disrupted the tribunal with a strategic maneuver to gain an unfair advantage in the litigation. Mr. Rodems telephoned Petitioner at home March 3, 2006 about scheduling the motion to disqualify him and an argument ensued where Mr. Rodems harassed Petitioner. A recording[2] memorialize the call. Mr. Rodems also threatened to reveal Petitioner's confidential client information learned from prior representation, in particular that Petitioner used a $2,000 car buyers rebate to pay for "dental work". Mr. Rodems suggested that he would link a subsequent "repossession" of the vehicle to the $2,000 manufactures rebate used to pay for Petitioner's "dental work" as some kind of theft. In fact Petitioner's minivan was not repossessed, but voluntarily turned in after Gillespie lost part-time work following the 911 terror attack and could no longer make the payment. Mr. Rodems also knew about Petitioner's disability from prior representation and used this information to Petitioner's disadvantage to provoke his Post-traumatic Stress Disorder in the argument.

36. On March 6, 2006 Rodems made a sworn affidavit under the penalty of perjury falsely placing the name of the trial judge in the affidavit and therefore into the controversy. Rodems submitted Defendants' Verified Request For Bailiff And For Sanctions (Exhibit 29) that falsely placed the name of the Judge Nielsen into an "exact

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[2] Phone calls to Gillespie's home office business telephone extension are lawfully recorded for quality assurance purposes pursuant to the business use exemption of Florida Statutes chapter 934, specifically 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). Mr. Rodems also provided written authorization to record calls with him.

quote" attributed to Petitioner [3] about a violent physical attack in Judge Nielsen's chambers. After Rodems' perjury Judge Nielsen did not manage the case lawfully, favored Defendants in rulings, and responded to Petitioner sarcastically from the bench.

37. Mr. Kirby Rainsberger, Legal Advisor to the Tampa Police Department, reviewed the matter and established by letter February 22, 2010 that Mr. Rodems was not right and not accurate in representing to the Court as an "exact quote" language that clearly was not an exact quote. (Exhibit 30). Petitioner responded that Florida case law supports a finding of perjury against Mr. Rodems but Mr. Rainsberger did not agree and he did not pursue the matter further. (Exhibit 31).

38. This is from the transcript of March 3, 2006 phone call from Mr. Rodems to Petitioner Gillespie, beginning on page 6. (Exhibit 32)

2 MR. RODEMS: -- based on the objectivity
3 argument. I like that.
4 MR. GILLESPIE: Now, you call here and just
5 marched into a tirade of insults.
6 MR. RODEMS: No, actually I haven't insulted
7 you at all. I've never said anything about you. I
8 just said that you don't really know the law
9 because you don't know how to practice law. And
10 that's not insulting, that's just actually the
11 facts.

[3] The portion of Gillespie's "exact quote" in dispute is "like I did before" which refers to a September 25, 2005 telephonic hearing where he prevailed. It is a self-proving metaphor. Instead Rodems swore in an affidavit that Gillespie said "in Judge Nielsen's chambers" which is false. Rodems could have used Gillespie's exact quote but he did not. Rodems added the name of Judge Nielsen with malice aforethought and did so in a sworn statement under the penalty of perjury.

I mean, your motion to dismiss our counterclaim demonstrates a fundamental lack of understanding. I mean, how do you plead the Economic Loss Rule to a defamation claim? I mean, that makes no sense.

MR. GILLESPIE: First of all, your defamation claim has -- doesn't lie at all.

MR. RODEMS: -- the Eighth Amendment or something. I mean, it just -- it really has no basis. It's kind of silly. I mean, it's embarrassing. It's -- it just has no basis at all.

MR. GILLESPIE: Actually, you're wrong there.

MR. RODEMS: Oh, the Economic Loss Rule applies to a defamation claim?

Transcript, March 3, 2006, page 7

MR. GILLESPIE: First of all, your claim doesn't even lie.

MR. RODEMS: And the Economic Loss Rule deals with tort and contract claims. And when -- and when the tort arises out of a contract claim that's -- what you sent to Amscot had nothing to do with the other -- that was a action that you created against yourself. I mean, it was kind of bizarre that you would even send that letter, but you did, so now you will have to pay for that.

MR. GILLESPIE: Oh, really?
MR. RODEMS: Yeah.
MR. GILLESPIE: I'm shaking in my boots.
MR. RODEMS: Neil, I mean, I don't understand, you know, what your plans are. You know, instead of just litigating the claims you had to go out there and basically accuse us of doing something wrong on something like that. It's kind of weird, you know. But in any event, I mean, obviously --
MR. GILLESPIE: What is weird is you guys lying about the legal fees. Not only is that weird, that's unprofessional. And you will be called to account for that.
MR. RODEMS: Didn't you at one time purchase a car so that you could get the cash rebate to get

Transcript, March 3, 2006, page 8

some dental work done? We're going to get to the discovery, anyhow, so just tell me, did that really happen?
MR. GILLESPIE: What?
MR. RODEMS: Did you purchase a car so that you could get the cash rebate to get some dental work done?
MR. GILLESPIE: Listen, this is why you need to be disqualified.

MR. RODEMS: No, I mean, that's -- because I know that? Because I know that to be a fact?
MR. GILLESPIE: You know it to be a fact from your previous representation of me.
MR. RODEMS: Well, you know, see that's --
MR. GILLESPIE: If it is -- if it's a fact, anyway.
MR. RODEMS: You need to study the rules and regulations of the Florida Bar because when you make --
MR. GILLESPIE: I think, I think I bought a car so I would have something to drive. I don't know why you buy cars, but that's why I bought it.
MR. RODEMS: Well --
MR. GILLESPIE: If it had some other benefits, that's different.

Transcript, March 3, 2006, page 9

MR. RODEMS: I understand that car was repossessed shortly after you bought it so --
MR. GILLESPIE: No, it wasn't repossessed.
MR. RODEMS: Okay. Well, then you can probably drive that down to the hearing then on the 28th.
MR. GILLESPIE: No, it was voluntarily turned in because after 911 attack the job that I was in

dried up. Okay. So listen you little, whatever, you raise anything you want, I will see you on the 25th and I will slam you against the wall like I did before.

MR. RODEMS: Are you threatening me?

MR. GILLESPIE: Are you threatening me?

MR. RODEMS: No, you just said you would -- did you mean that physically or did you mean that metaphorically?

MR. GILLESPIE: Metaphorically.

MR. RODEMS: Okay. Well, I just want to be clear because I understand that in talking with you it's very important to be precise because you don't really have a good command of the language that, you know, lawyers speak. But it did sound to me like you were physically threatening me.

MR. GILLESPIE: No, no, it wasn't a physical

Transcript, March 3, 2006, page 10

threat. And by the way, as far as your little nonsense with this saying that you have been a victim of some kind of -- oh, it's so ridiculous I can't even think of the word now. You think that -- I'll see you on the 25th. And I will slam you legally, metaphorically against the wall like I did before.

8 MR. RODEMS: Okay. We will see that, Neil.

9 MR. GILLESPIE: Okay.

10 MR. RODEMS: Okay. Bye-bye.

NOTE: The word Petitioner could not recall at page 10 line 4 was "extortion". Rodems accused Petitioner of criminal extortion for participating in the Bar's ACAP program in 2003. Mr. Rodems accused Petitioner of felony extortion in his Answer, Affirmative Defenses and Counterclaim, filed January 19, 2006. Paragraphs 57 and 67 of Rodems' counterclaim relate to my effort with ACAP in 2003 to settle this matter without litigation. In December 2005 Petitioner began recording calls to make accurate notes of medical information needed for the care of his 76 year-old mother. Petitioner's disability makes this necessary. It worked well and Petitioner began recording all calls on his home office business extension. Other extensions in our home are not recorded. When Rodems called March 3, 2006 Petitioner answered on the extension in the kitchen. Then Petitioner switched to his home office extension next to his computer. That accounts for a partial recording. Petitioner forgot to switch on the recorder until Rodems started insulting Petitioner's speech. Later Petitioner upgraded to a DynaMetric Call Saver system that records automatically. In either case the home office business telephone extension intercepts the call prior to recording making it lawful under Florida law. Mr. Rodems also provided written permission to record calls with him, filed with the clerk. (Exhibit 5).

39. Mr. Rodems perjury or falsehood in his March 6, 2006 sworn affidavit shows he cannot be relied upon to tell the truth while representing himself, his partners, or his firm. Mr. Rodems' affidavit about an "exact quote" was proved false, as well as the entire premise of his affidavit when compared to the transcript of the telephone call. Florida

case law prohibits lawyers from presenting false testimony or evidence. Kneale v. Williams, 30 So. 2d 284 (Fla. 1947), holds that perpetration of a fraud is outside the scope of the professional duty of an attorney and no privilege attaches to communication between an attorney and a client with respect to transactions constituting the making of a false claim or the perpetration of a fraud. Dodd v. The Florida Bar, 118 So2d 17 (Fla. 1960), reminds us that "the courts are ... dependent on members of the bar to ... present the true facts of each cause ... to enable the judge or the jury to [decide the facts] to which the law may be applied. When an attorney ... allows false testimony ... [the attorney] ... makes it impossible for the scales [of justice] to balance." See The Fla. Bar v. Agar, 394 So.2d 405 (Fla. 1981), and The Fla. Bar v. Simons, 391 So. 2d 684 (Fla. 1980).

More Defamatory Letters From Ryan Christopher Rodems

40. Mr. Rodems has repeated defamatory statements about Petitioner many times since March 6, 2006. Petitioner learned on February 24, 2010 that Mr. Rodems repeated his perjury in a letter[4] dated December 28, 2009 to Pedro F. Bajo, Chair of the 13th Circuit JNC, and attached a copy of his verified pleading to the letter as "Exhibit 4". This is what Mr. Rodems wrote on page 2: "[Mr. Gillespie] Threatened to "slam" me "against the wall;" as a result, I requested that a bailiff be present at all hearings. (Exhibit "4"). As a precaution, I also scheduled Mr. Gillespie's deposition in a building requiring visitors to pass through a metal detector;" Clearly Mr. Rodems is referring to an actual assault, not a metaphor. Mr. Rodems' letter is part of the JNC file that was sent to Rob Wheeler, General Counsel to the Executive Office of the Governor.

[4] The letter is three pages of outright falsehoods or false-light statements.

41. In a letter to The Florida Bar dated August 13, 2010 Mr. Rodems defamed Petitioner again with a 13 page diatribe of old and new falsehoods or false-light statements. Rodems wrote the letter in support of Petitioner's former lawyer Robert Bauer who is facing a bar complaint. For example paragraph "z" on page 7:

> "Thereafter, Mr. Gillespie apparently submitted a hearsay report from a purported expert *ex parte* to Judge Barton. Despite Defendants' objections to the *ex parte* communication, Mr. Gillespie has never filed the *ex parte* hearsay report or served a copy on Defendants."

The "hearsay report from a purported expert" is Gillespie's ADA Assessment and Report prepared by Dr. Karin Huffer and provided to Mr. Casares, ADA Coordinator for the 13th Circuit, with a copy to Judge Barton. The report is to be kept under ADA Administrative confidential management except for use by the ADA Administrator revealing functional impairments and needed accommodations communicated to the Trier of Fact to implement administration of accommodations. This information is not to become part of the adversarial process.

<u>Mr. Rodems' Personal Conflict In This Litigation</u>

42. Mr. Rodems' unprofessional conduct goes to his conflict in this matter. During this lawsuit Mr. Rodems made the following statements on the record that showed his conflict, and thus his unlawful representation:

Mr. Rodems, transcript, July 3, 2007, page 5:

13 We filed a motion to dismiss or strike -- and I
14 say "we," I'm Chris Rodems. I represent Barker,

15 Rodems & Cook and William J. Cook.

Throughout his representation Mr. Rodems made similar statements that showed a confusion or commingling of the duties of counsel and client. A number of times Mr. Rodems clearly crossed the line between advocate and client:

Mr. Rodems, transcript, October 30, 2007, page 31:

23 We are being shaken down by Mr. Gillespie.

24 That's what's happening here.

Mr. Rodems, transcript, October 30, 2007, page 45:

20 But, you know, we believe that if you will

21 carefully consider this matter, you will see that,

22 you know, Mr. Gillespie is basically trying to shake

23 us down.

Because Mr. Rodems was defending against allegations of fraud and breach of contract, and believed "We are being shaken down by Mr. Gillespie", Rodems independent professional judgment was materially limited by the lawyer's own interest.

43. Bar Rule 4-1.7(b) prohibits representation where a lawyer's independent professional judgment may be 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.

44. Petitioner has shown Mr. Rodems has a conflict of interest in personally deposing him. An Order of Protection is needed, if not to disqualify Mr. Rodems outright, at least to set guidelines for the deposition.

45. Petitioner reiterates that Mr. Rodems is unlawfully representing his firm and law partner as set forth in Emergency Motion To Disqualify Defendants' Counsel Ryan Christopher Rodems & Barker, Rodems & Cook, P.A. (Exhibit 19).

Trespass Warning Issued Against Mr. Rodems

46. February 12, 2010 Mr. Rodems filed Defendants' Request For Inspection and threatened to enter Petitioner's residence. Petitioner filed Plaintiff's Motion For An Order Of Protection February 18, 2010. On March 22, 2010 I filed a trespass warning against Mr. Rodems, stating in part:

> NOTICE IS GIVEN to Ryan Christopher Rodems and Barker, Rodems & Cook, PA. that you, your law partners, employees and/or agents are not permitted to enter plaintiff's home at 8092 SW 115th Loop, Ocala, Florida 34481, Marion County, for any reason whatsoever. If you do so you will be considered trespassing in violation of sections 810.08 and 810.12 Florida Statutes.

Petitioner also notified the Marion County Sheriff, and the security company for his retirement community that Mr. Rodems is to be arrested for trespass if he makes good on his threat. Mr. Rodems is a member of the National Rifle Association and has firearms. He was trained in killing by the military. Rodems and his law partner attacked Arnold Levine, a lawyer and senior citizen. Mr. Rodems terrorizes litigants and lawyers in litigation, as shown in this pleading.

Request For Accommodation Under the Americans With Disabilities Act (ADA)

47. Petitioner requests accommodation under the ADA and ADAAA. Dr. Karin Huffer wrote in part:

"As the litigation has proceeded, Mr. Gillespie is routinely denied participatory and testimonial access to the court. He is discriminated against in the most brutal ways possible. He is ridiculed by the opposition, accused of malingering by the Judge and now, with no accommodations approved or in place, Mr. Gillespie is threatened with arrest if he does not succumb to a deposition. This is like threatening to arrest a paraplegic if he does not show up at a deposition leaving his wheelchair behind. This is precedent setting in my experience. I intend to ask for DOJ guidance on this matter." (October 28, 2010, page 1, ¶2) (Exhibit 1)

Accompanying this Petition is Petitioner's ADA accommodation request (ADA Request) and ADA Assessment and Report by Dr. Huffer (ADA Report), and other documents provided February 19, 2010 to Mr. Gonzalo B. Casares, ADA Coordinator for the 13th Judicial Circuit. The ADA Request and ADA Report are to be kept under ADA Administrative confidential management except for use by the ADA Administrator revealing functional impairments and needed accommodations communicated to the Trier of Fact to implement administration of accommodations. This information is NOT to become part of the adversarial process. Revealing any part of this report may result in a violation of HIPAA and ADAAA Federal Law.

48. Petitioner submitted a new ADA form to the ADA Coordinator for the Second District Court of Appeal, Marshal Jacinda Suhr. (Exhibit 34)

In Conclusion

49. Judge Cook wrote in Order To Show Cause Why Plaintiff Should Not Be Prohibited From Appearing Pro Se: "The *pro se* litigant is held to the same standard of competency as an attorney. (footnote *See Kohn* v. *City ofMiami Beach,* 611 So. 2d

538,539-40 (Fla. 3d DCA 1993). And he must adhere to the rules of court and of civil procedure as would any member of the Bar. (footnote *See Carr* v. *Grace,* 321 So. 2d 618 (Fla. 3d DCA 1975), *cert. denied,* 348 So. 2d 945 (Fla. 1977). There is no reason to hold the *pro se* litigant to a lesser standard of decency."

50. On the issue of "competency" a nonlawyer pro se litigant is not held to the same standard as an attorney, the United States Supreme Court held in Haines v. Kerner, 404 U.S. 520 (1971) that *pro se* pleadings should be held to "less stringent standards" than those drafted by attorneys. Tannenbaum v. U.S., 148 F.3d 1262, C.A.11 (Fla.), 1998 holds that pro se pleadings are held to a less stringent standard than pleadings drafted by attorneys and will, therefore, be liberally construed. Also see: Trawinski v. United Technologies, 313 F.3d 1295, C.A.11 (Ala.), 2002; Albra v. Advan, Inc., 490 F.3d 826, C.A.11 (Fla.), 2007. Johnson v. Board of County Comm'rs, 868 F.Supp. 1226 (D. Colo. 1994) noted *pro se* litigants are granted greater latitude in hearings and trials.

51. As for holding nonlawyer pro se litigants to the "standards of decency" practiced by attorneys, Judge Cook begs the question by presenting fallacy in which the proposition to be proved is assumed implicitly or explicitly in the premise. Lawyers often behave badly, as noted by The Honorable Claudia Rickert Isom, Circuit Court Judge, 13th Judicial Circuit in Professionalism and Litigation Ethics, 28 STETSON L. REV. 323. Judge Isom begins with the naive realization that some lawyers behave badly in court. "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." Judge Isom also concedes the relationships between judges and lawyers. She uses the example of "Harvey M." a pseudonym for a lawyer she has known a long time.

"Harvey challenged me to establish my judicial prerogative and assist him in achieving goals not of his own making" Judge Isom also pointed out the role of the trial judge: "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." Judge Isom provided an example of the uneven responses to lawyers acting badly: "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. Various scenarios were presented on video, after which the 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." Judge Isom also noted the reason: Judges are elected officials and fear retribution from lawyers. "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." Judge Isom also noted how Florida's appellate process is compromised: "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." In other words, if a judge sanctions a litigant for discovery matters, the appellate court will

"sustain the trail court's authority" and the appeal becomes a forgone conclusion. Judge Isom wrote how she coddled Harvey rather than sanction him. Is this disparate treatment fair to other litigants, both opposing and in other cases? "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…Cases involving Harvey were, by necessity, intensely case managed." Judge Isom wrote that Harvey's misconduct made her a better judge: "In Harvey's case, extreme tools — reporting Harvey to the Florida 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." In Petitioner's lawsuit where Judge Isom presided she did not afford him the consideration given to Harvey. Judge Isom paved the way for Judge Barton to award $11,550 in sanctions against him.

52. An even stronger rebuke is provided by attorney David W. Marston, former US Attorney and Harvard Law School grad who compares the practice of law to the Mafia in his book "Malice Aforethought, How Lawyers Use Our Secret Rules To Get Rich, Get Sex, Get Even...And Get Away With It", an exposé of the American legal profession. "They all have undergone the same tough initiation, and once admitted to membership, all have sworn the same oath. They live by their own rules and have fiercely resisted efforts by outsiders to penetrate their clan. The have a code of silence that makes the Mafia's dreaded omerta seem gossipy. And while the organization rigidly limits the operations of its members to their assigned turf, their criminal activities within these areas are

surprisingly varied." (Page 22, paragraphs 4 & 5). "The organization enforces its own discipline, and outsiders can piece together only the most fragmentary picture of the process. But while hard statistics about crime and misconduct by its members remain elusive, there has unquestionably been a sharp escalation in recent years" (Page 23, paragraph 2). "In every state, the organization has tentacles that reach into the legislature, as well as intimate knowledge of the local criminal justice system. Laws that might threaten operations are vigorously opposed, and when members are convicted of crimes, punishments are often lenient." (Page 23, paragraph 4). "It's not the Mafia. Not the Medellin drug cartel...The members are all lawyers. And the organization is the American legal profession." (Pages 23-24).

WHEREFORE, Petitioner pro se demands a Writ of Prohibition to remove Circuit Court Judge Martha J. Cook as trial judge in this case, close the file, and end the proceedings. Petitioner moves for an Order of Protection against a writ of bodily attachment sought by Ryan Christopher Rodems and Barker, Rodems & Cook, P.A.

RESPECTFULLY SUBMITTED November 18, 2010.

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

VERIFICATION

I, Neil J. Gillespie, under penalty of perjury, swear that the facts alleged in herein are true and accurate, and I swear that the documents attached hereto are true and correct copies.

DATED this 18th day of November, 2010

NEIL J. GILLESPIE

STATE OF FLORIDA
COUNTY OF MARION

Sworn to (or affirmed) and subscribed before me this18th day of November 2010, by Neil J. Gillespie, who personally known to me or presented identification.

CECILIA ROSENBERGER
Commission DD 781620
Expires June 6, 2012
Bonded Thru Troy Fain Insurance 800-385-7019

Notary Public, State of Florida

Certificate of Service

I HEREBY CERTIFY that a copy of the foregoing was mailed November 18, 2010 to Ryan Christopher Rodems, Barker, Rodems & Cook, PA, 400 North Ashley Drive, Suite 2100, Tampa, Florida 33602.

Neil J. Gillespie

Petitioner's Appendix of Exhibits

Exhibit 1	Letter of Dr. Karin Huffer, October 28, 2010
Exhibit 2	Letter to Court Counsel David A. Rowland, January 4, 2010
Exhibit 3	Letter of Court Counsel David A. Rowland denying ADA, July 9, 2010
Exhibit 4	Letter of Holland & Knight, declining representation, November 4, 2010
Exhibit 5	Plaintiff's 5th Motion Disqualify Judge Martha J. Cook, November 10, 2010
Exhibit 6	Plaintiff's 4th Motion Disqualify Judge Martha J. Cook, November 10, 2010
Exhibit 7	Plaintiff's Emergency Motion Disqualify Judge Martha J. Cook, November 1, 2010
Exhibit 8	Notice of Filing Affidavits of Neil J. Gillespie, November 1, 2010
Exhibit 9	Order Denying Emergency Motion Disqualify Judge Martha J. Cook, November 2, 2010
Exhibit 10	Motion to Disqualify Judge Martha J. Cook, July 23, 2010
Exhibit 11	Order Denying Motion to Disqualify Judge Martha J. Cook, July 27, 2010
Exhibit 12	Motion to Disqualify Judge Martha J. Cook, June 14, 2010
Exhibit 13	Order Denying Motion to Disqualify Judge Martha J. Cook, June 16, 2010
Exhibit 14	Order To Show Cause Why Plaintiff Should Not Appear Pro Se, November 4, 2010
Exhibit 15	Clerk's progress docket, November 15, 2010
Exhibit 16	Clerk's progress docket, November 17, 2010
Exhibit 17	Plaintiff's Notice of Filing Federal Complaint Against Judge Cook, November 1, 2010
Exhibit 18	Plaintiff's First Amended Complaint, May 5, 2010
Exhibit 19	Emergency Motion Disqualify Defendants Counsel Ryan Rodems, BRC, July 9, 2010
Exhibit 20	Notice of Filing Claim, section 768.28 Florida Statutes, July 12, 2010
Exhibit 21	Letter to John Alcorn, OFR, November 18, 2010

Exhibit 22	Letter to Dale Bohner, Counsel to Clerk of Circuit Court, November 18, 2010
Exhibit 23	Letter to Ryan C. Rodems, court-ordered deposition, November 8, 2010
Exhibit 24	Plaintiff's Motion For Order of Protection, June 14, 2010
Exhibit 25	Tampa Police Department report, coffee-throwing incident
Exhibit 26	St. Pete Times story, Alpert accuses Bucs of extortion
Exhibit 27	Letter from The Florida Bar authorizing transcript of CLE
Exhibit 28	Diatribe of Ryan C Rodems criticizing witness in federal lawsuit
Exhibit 29	Defendants' Verified Request for Bailiff And For Sanctions
Exhibit 30	Letter from Tampa Police Department Counsel K. Rainesberger
Exhibit 31	Petitioners letter to Tampa Police Department Counsel K. Rainesberger
Exhibit 32	Transcript, phone calls March 3, 2006
Exhibit 33	Notice of Filing, Permission by Ryan C. Rodems To Record Phone Calls
Exhibit 34	ADA Request to 2DCA