

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

NEIL J. GILLESPIE,
Plaintiff,

Case No. 05-7205

-vs-

Division: "H"

BARKER, RODEMS & COOK, P.A.
A Florida Corporation,
WILLIAM J. COOK,
Defendants.

-----/

TRANSCRIPT OF TELEPHONE RECORDING

RECEIVED AT: As Indicated Below

DATE & TIME: 29 March 2007

TRANSCRIBED BY: Michael J. Borseth
Court Reporter
Notary Public

(ORIGINAL)
(COPY)

1 APPEARANCES:

2 For the Plaintiff:

3 **NEIL J. GILLESPIE**
4 *8092 SW 115th Loop*
5 Ocala, Florida 34481
6 (352) 854-78077 **ROBERT W. BAUER, ESQUIRE**
8 *Law Office of Robert W. Bauer, P.A.*
9 2815 NW 13th Street
10 Suite 200E
11 Gainesville, Florida 32609
12 (352) 337-2518
13
14
15
16
17
18
19
20
21
22
23
24
25

* * * * *

1 MR. GILLESPIE: My name is Neil Gillespie.

2 The following recording was made on my own office
3 business extension telephone with my attorney,
4 Robert W. Bauer of Gainesville. We're discussing
5 his representation of me in the lawsuit Gillespie
6 versus Barker, Rodems and Cook, case number 05 CA
7 7205, Hillsborough County, Circuit Civil Court.
8 The call was made on or about March 29th, 2007.

9 MR. BAUER: Mr. Gillespie?

10 MR. GILLESPIE: Yes.

11 MR. BAUER: Hi, this is Robert Bauer, how are
12 you doing?

13 MR. GILLESPIE: Good, sir.

14 MR. BAUER: I spent a significant amount of
15 time, probably about five hours given today and
16 tomorrow or yesterday going over all of your
17 pleadings. There's quite a bunch of them. I want
18 to discuss with you how you wanted to pursue with
19 the hearings that are coming forward. My
20 understanding, if I am reading everything
21 correctly, that the -- what's going on tomorrow is
22 that there is a hearing for 57.105 for the
23 sanctions based on your motion to dismiss.

24 MR. GILLESPIE: That is correct, uh-huh.
25

1 MR. BAUER: Okay. And then there is one
2 other -- what's the one that's the next day? I
3 don't have that.

4 MR. GILLESPIE: That's a contempt motion on
5 discovery.

6 MR. BAUER: Okay. Now, there is a lot of
7 stuff going back and forth on discovery and I'm not
8 sure that I completely understand everything that's
9 going on with that. So I wanted to talk to you
10 about what the current position is. What is it
11 that you are not or providing that they want?

12 MR. GILLESPIE: Well, they have asked for
13 everything but the kitchen sink.

14 MR. BAUER: Well, generally that's what you do
15 with discovery things. I understand that there are
16 some things that they have requested -- I saw they
17 have asked for actions for legal proceedings and
18 those different things, some of which they should
19 be already in possession of them, as they're the
20 ones that filed the action. Those of course
21 wouldn't be pertinent. I saw some other ones that
22 you objected to that while to the average person
23 don't seem relevant, there are legal reasons that
24 you're entitled to have those things.
25 Specifically, one of the questions asked for who is

1 a -- the parties that lived or resided in your
2 house and those types of questions. What that is
3 is when you get the names of these people, the
4 other side, it helps you building your witness
5 list. You want to call these people and talk to
6 them or you would depose them.

7 MR. GILLESPIE: Actually, that wasn't a
8 question.

9 MR. BAUER: That was one of them that you
10 objected to as being overly obstructive.

11 MR. GILLESPIE: They asked for every place I
12 have lived for my entire life.

13 MR. BAUER: Well, what that goes to is that
14 whenever you brought up liable and slander
15 charges -- it really would seem more -- I could
16 understand me asking that of them because they have
17 made claims of, you know, that it slandered their
18 good representation and their professional
19 standing. Well, you would want to know what all
20 the places that you have lived because then what
21 you can do is you can go to all of those cities and
22 look at documents that have to do with you there.
23 They can interview people that were there and do
24 those different types of things. So there are
25 sometimes things that can be done in discovery.

1 There's also -- you made some similar requests that
2 they have objected to, which I think are fully
3 pertinent for you to be able to have copies of.

4 MR. GILLESPIE: Well, I would just say that
5 whatever they have asked for, if you think it needs
6 to be given, then you let me know and I'll get the
7 stuff together, do the best that I can.

8 MR. BAUER: Okay.

9 MR. GILLESPIE: The problem with finding
10 records over one's 51 years of life is a lot of
11 that stuff is long gone. I don't want to get in
12 the position where I make some statement about
13 something 10, 20, 30 years ago and then they use --
14 they trip me up over some -- something I have
15 forgot.

16 MR. BAUER: You don't have to -- you don't
17 have to rely on things that you don't have. Even
18 if you should have them, if -- one of the big
19 discovery things that you ask for in a lot of
20 cases, especially Family Law cases, is you ask for
21 your tax records for the last five years. Well,
22 you know, some people just don't keep those. And
23 you can just say, I don't have them, I'll sign
24 whatever you need to get them.

25 MR. GILLESPIE: Right.

1 MR. BAUER: You know, you sign a request to go
2 to the IRS to get it back, but you don't have to
3 produce things you don't have.

4 MR. GILLESPIE: Okay. Well, they didn't ask
5 for tax records per se. The way that -- you have
6 to read the phrasing of the questions, because they
7 asked for a record of every money I ever received
8 over the past lifetime or year.

9 MR. BAUER: Some of them -- I agree, some of
10 them aren't relevant.

11 MR. GILLESPIE: In other words, that could
12 include a twenty-five dollar check from my brother
13 for a birthday gift. That could include \$10 for
14 something I sold on eBay.

15 MR. BAUER: You don't have to create records
16 that you don't have.

17 MR. GILLESPIE: Uh-huh.

18 MR. BAUER: They're not entitled -- they're
19 asking for production of documents that are in
20 existence that you have in your possession. You
21 don't have to create documents that aren't already
22 in existence. You just have to turn them over.

23 MR. GILLESPIE: Okay. Well, some of those
24 were interrogatories, so they were asking
25 questions.

1 MR. BAUER: There are some things that where
2 they ask questions they provide answers --

3 MR. GILLESPIE: Anyway, you know, I did answer
4 everything. You have that. Anything you think I
5 have to add to it just let me know and I'll do it.

6 MR. BAUER: All right. I wanted to know, do
7 you have any -- I think one of the big complaints
8 that they have had in their -- in a lot of their
9 pleadings is that you haven't had legal advice to
10 assist you with these different things, that that's
11 not present, that you're doing -- have some claims
12 that are not valid. That now that you have an
13 attorney available I think we can get -- maybe get
14 rid of some of these motions for contempt and these
15 sanction motions. I can call them and speak with
16 them if you would like and see about us not having
17 these hearings. That we can get back on a more
18 regular set of complying with the discovery demands
19 and moving forward in a normal trial manner. I
20 don't think your -- your grounds for motions to
21 dismiss, I agree with them that they are not
22 legally applicable.

23 MR. GILLESPIE: And I did withdraw them.

24 MR. BAUER: You did withdraw that?

25 MR. GILLESPIE: Yeah.

1 MR. BAUER: When -- I didn't see that, when
2 did you withdraw that?

3 MR. GILLESPIE: I withdrew it -- I have to
4 look it up.

5 MR. BAUER: I do remember some notice. I do
6 remember a voluntary withdrawal. Let's see, order
7 of voluntary -- okay, let's see, there we are.
8 Okay. I have a withdrawal of a previously
9 submitted plaintiff's motion for an order of
10 voluntary dismissal.

11 MR. GILLESPIE: Yeah. That's something
12 different.

13 MR. BAUER: Okay. Let's see. Okay. Is there
14 somewhere in here that I'm missing that there was a
15 voluntary withdrawal of the motion to dismiss and
16 strike?

17 MR. GILLESPIE: Yes, a motion -- it was in
18 January.

19 MR. BAUER: How about February 7th? Is that
20 maybe it?

21 MR. GILLESPIE: No, it was before then. It
22 was before the hearing. The hearing was on the
23 5th, so it was before then.

24 MR. BAUER: Okay, now do you have --

25 MR. GILLESPIE: I have to look this up in the

1 file.

2 MR. BAUER: Okay.

3 MR. GILLESPIE: Do you have a moment?

4 MR. BAUER: Yeah.

5 MR. GILLESPIE: Let me put this on now for a
6 minute.

7 MR. BAUER: Okay.

8 MR. GILLESPIE: Hold on. (pause). Okay,
9 Mr. Bauer, it's document number 171. I believe
10 it's amended response to the defendants motion --

11 MR. BAUER: Can you give me a date for that?
12 Because I have redone the way that it's ordered. I
13 have ordered it --

14 MR. GILLESPIE: It's dated January 26th.

15 MR. BAUER: Okay. That's going to be number
16 7.

17 MR. GILLESPIE: Basically, when I --

18 MR. BAUER: Let me find that real quick before
19 you -- I'm sorry, you said January what?

20 MR. GILLESPIE: 26th, 2007.

21 MR. BAUER: January 26th. I have a -- you're
22 referring to plaintiff's amended response to
23 defendant's section 57.105 motion?

24 MR. GILLESPIE: Yes, uh-huh.

25 MR. BAUER: All right. (pause).

1 Okay. You're still holding the paragraph 3,
2 Count 1, fails to state a cause of action for
3 liable. Did the Judge rule on that one?

4 MR. GILLESPIE: Yes.

5 MR. BAUER: And it was denied?

6 MR. GILLESPIE: Yes.

7 MR. BAUER: Okay. And then paragraph 6, Count
8 2, fails to state a cause of action for liable.
9 Did the Judge rule on that one?

10 MR. GILLESPIE: Yes.

11 MR. BAUER: Okay. So both of those he has
12 ruled on and you have withdrawn all the other
13 allegations, correct?

14 MR. GILLESPIE: Yes, uh-huh.

15 MR. BAUER: Okay. So that's dealt with.
16 (pause). So there is nothing -- because I saw
17 where there was a hearing on the motion -- a motion
18 to dismiss and the Judge only got through most of
19 it, didn't -- wasn't able to rule on all of it?

20 MR. GILLESPIE: Yeah, he got through a small
21 part of it, yeah.

22 MR. BAUER: And you have withdrawn all the
23 ones that he has not gotten to, correct?

24 MR. GILLESPIE: Yes.

25 MR. BAUER: Okay.

1 MR. GILLESPIE: But this -- basically this is
2 how that whole scenario went. In March, I think it
3 was, of last year, I received this motion. I
4 didn't understand it. I called for a
5 clarification. A big argument developed. And
6 that's how it was left.

7 And in April 25th or 26th there was a hearing.
8 We got through a couple of them. And then it
9 didn't come up again until February 5th of this
10 year. And --

11 MR. BAUER: Why did it come up again in
12 February?

13 MR. GILLESPIE: To finish it.

14 MR. BAUER: Okay, so it came up before the
15 Court?

16 MR. GILLESPIE: Yes.

17 MR. BAUER: Okay.

18 MR. GILLESPIE: But before it came up the
19 second time I withdrew everything except failure to
20 state a cause of action.

21 MR. BAUER: Okay. And then that's when in
22 February that was ruled on. So all of that is
23 taken care of.

24 MR. GILLESPIE: Yes. And I went in and
25 essentially all I did was in my motion to dismiss

1 copied what they sent me to dismiss my counts. It
2 wasn't that I went out and did any research, that
3 was how I did the discovery as well. What they
4 provided me I simply turned around and sent the
5 same thing back to them. And they didn't prevail
6 on any of their things either of the motion to
7 dismiss my complaint.

8 MR. BAUER: Well, they got a couple sentences
9 struck --

10 MR. GILLESPIE: Yeah.

11 MR. BAUER: -- in references to the ethics
12 violations. Now, and I'm looking through this and
13 I was reading something -- you never signed a
14 contingency fee agreement with them, is that
15 correct?

16 MR. GILLESPIE: Well, not a second one. I
17 signed an initial one.

18 MR. BAUER: You did sign an initial one?

19 MR. GILLESPIE: Yes.

20 MR. BAUER: Where -- where is that?

21 MR. GILLESPIE: I provided that to you with my
22 first set of documents.

23 MR. BAUER: Because I see it attached to the
24 complaint and it's unsigned.

25 MR. GILLESPIE: That's the second one. Nobody

1 ever signed that. My first letter to you, it was
2 in there. My March 7th -- my March 9th letter.

3 MR. BAUER: Hold one second for me, please.

4 MR. GILLESPIE: That was item number D on page
5 3. The initial class representation contract.

6 That was with the Alpert Law Firm. (pause)

7 If you want I can just fax another one to you,
8 it's only four pages.

9 MR. BAUER: Okay. I'm just trying to find it
10 here in the correspondence. I do not see -- I have
11 all your initial letters. What's this?

12 MR. GILLESPIE: It was in the documents I
13 provided on March 9th.

14 MR. BAUER: I'm sure, sir, it's just you
15 provided lots of documents. In an attempt to try
16 and just find --

17 MR. GILLESPIE: Sure. If you want I can just
18 fax another --

19 MR. BAUER: Wait a second, I think I'm --
20 let's see, what is this?

21 MR. GILLESPIE: It has a sticker on it. This
22 is C, or at least it did. I mean, there's also a
23 whole trail of them in my summary judgment, my
24 motion for summary judgment lays out a whole chain
25 of events with the first contract then --

1 MR. BAUER: Hold on one second while I'm
2 looking through this stuff here. (pause)

3 Okay, there we go. (pause)

4 What was the reason for the second contract,
5 the one that's not signed?

6 MR. GILLESPIE: Because the firm that was
7 signed with the first contract went out of
8 business.

9 MR. BAUER: Okay. That's what I want to --
10 so --

11 MR. GILLESPIE: They left the first firm to
12 form their own firm. And it was a joint
13 stipulation for change of counsel in the record.

14 MR. BAUER: Did you sign that?

15 MR. GILLESPIE: Yes, uh-huh.

16 MR. BAUER: Okay. (pause) And the -- in the
17 closing statement there is another -- other
18 attorney's fees that are paid out. That would be
19 to one of the members of this older firm?

20 MR. GILLESPIE: Well, it wasn't in the closing
21 statement, no.

22 MR. BAUER: Was it --

23 MR. GILLESPIE: That was disclosed over a year
24 later by a separate letter. That was to the firm,
25 the original firm, what I'm going to call the

1 Alpert firm. (pause)

2 MR. BAUER: The way that I'm looking at this
3 is that they either are entitled to nothing because
4 they are attempting to enforce an oral contingency
5 fee agreement, which is against the Professional
6 Code of Ethics, or they should be entitled to
7 45 percent of 56,000.

8 MR. GILLESPIE: Yes, uh-huh.

9 MR. BAUER: Because even when, you know, doing
10 the whichever is higher clause it says: Will
11 receive attorney's fees awarded by the Court or
12 arbitration or will receive the applicable
13 percentage of the total recovery, all monies
14 received from the defendants, including but not
15 limited to money for actual damages, punitive
16 damages, interest, penalties, attorney's fees and
17 expenses.

18 Well, the contract says that they can only --
19 I mean, even if the other side wanted to call it
20 \$50,000 for attorney's fees, you can still -- a
21 total recovery of \$56,000 that they're only
22 entitled to 45 percent of.

23 MR. GILLESPIE: Yes, that's what I argued in
24 my summary judgment. And that might be a good
25 place if you want to review sort of the chain of

1 documents and everything.

2 MR. BAUER: Your summary judgment has not been
3 heard, correct?

4 MR. GILLESPIE: That's correct.

5 MR. BAUER: Okay.

6 MR. GILLESPIE: That was --

7 MR. BAUER: Yeah, you know, I agree with --
8 there is a lot of legal things, a lot of your
9 discovery things that I think you were just coming
10 from the wrong, wrong understanding and the wrong
11 point of view in doing things that maybe there is a
12 lot of stuff that's gone on here that wasn't
13 necessary.

14 MR. GILLESPIE: I agree.

15 MR. BAUER: But I also think, though, that I
16 think you have a good complaint. I mean, I think
17 you did a fairly good job with your complaint in
18 putting everything down. And I'm not really sure
19 about their countercomplaint. I think -- I haven't
20 researched yet because my first thing was to get --
21 just to understand where your case was.

22 MR. GILLESPIE: Uh-huh.

23 MR. BAUER: And that's taken me a significant
24 amount of time just to figure out procedurally
25 exactly where we are and what are the claims out

1 there and what's going on. But I think that I want
2 to look at their counterclaim for liable because
3 I'm not really sure that your letter is libelous.
4 You're entitled to state opinions. You haven't,
5 you know, made false accusations necessarily.
6 Let's see, what was your -- let me look at that
7 again while I'm talking with you.

8 MR. GILLESPIE: The other thing is -- I don't
9 know how much we discussed about this. I did speak
10 with an attorney in Tampa that was a liable
11 specialist.

12 MR. BAUER: Uh-huh.

13 MR. GILLESPIE: All he was really interested
14 in doing was helping we settle the case with no one
15 paying the other side anything. And he wrote them
16 a letter citing some case law that said that this
17 was privileged because of limited publication.
18 Essentially just to the one person. I don't know
19 if you have that or not.

20 MR. BAUER: I don't -- I have not seen -- I
21 have not come across that one yet. I have spent
22 all my time on the pleadings. I haven't been
23 looking through all the correspondence yet.

24 MR. GILLESPIE: Okay.

25 MR. BAUER: I have not got everything done in

1 your case to look at all of that stuff. Let's
2 see --

3 MR. GILLESPIE: Anyway, my letter was written
4 the way the Florida Bar suggested to me that it was
5 a comment on my Bar complaint made during the time
6 after the complaint --

7 MR. BAUER: Oh, the Bar complaint stuff is
8 absolutely privileged. That's just so ridiculous
9 about you doing anything with the Bar. I mean,
10 you're entitled to those kind of complaints.

11 MR. GILLESPIE: But once the complaint is
12 ruled upon it's a matter of public record for one
13 year. And this letter was written within that time
14 frame commenting, because what I wrote I said this
15 is what I complained to the Bar about, that they
16 didn't find sufficient to proceed further. So it
17 stated my opinion. It stated that the Bar didn't
18 take any action on it. Essentially, saying that
19 they did the wrong billing as far as the Bar was
20 concerned.

21 MR. BAUER: Yeah. And I don't think there is
22 any problem with that one. You said you filed a
23 complaint because you did, you don't have to not
24 say that you did something you truthfully did. I
25 mean, that's the truth, you did do it.

1 MR. GILLESPIE: Uh-huh.

2 MR. BAUER: The only thing -- without having
3 done a lot of investigation, and I will never say
4 that I'm an expert in liable or any of those
5 things, is during the course of the litigation it
6 became apparent to me that Mr. Cook and his
7 associates were incompetent and not truthful. It's
8 such a generality, I don't know if that's going to
9 be enough to be liable. And as well, that really
10 kind of reeks of an opinion statement and I don't
11 think opinion statements are liable either.

12 MR. GILLESPIE: Uh-huh.

13 MR. BAUER: I mean, it's not like you're
14 saying they're incompetent because they have
15 hookers in their law office every Thursday and
16 Friday afternoon.

17 MR. GILLESPIE: Well, one thing they did that
18 was incompetent was they chose as their lead
19 plaintiff in this class action lawsuit a man who
20 had hookers, who hired hookers. And that's what
21 the Judge found that he was -- or was reaching the
22 opinion that he wasn't going to be qualified and
23 the case was going to be dismissed. And that's why
24 they wanted me to step in to take the case --

25 MR. BAUER: Funny using the example of hookers

1 for that reason.

2 MR. GILLESPIE: In fact, he was arrested just
3 a couple of months before the lawsuit was filed.

4 MR. BAUER: Okay.

5 MR. GILLESPIE: And there were other criminal
6 acts.

7 MR. BAUER: I think, you know, we have got
8 some -- I need to do some research on the liable.
9 See if we can get that counterclaim. One thing I
10 have to make sure is I'm not really sure what the
11 effect of your voluntary dismissal of your claims
12 and then your withdrawal of the voluntary
13 dismissal.

14 MR. GILLESPIE: My understanding is that it's
15 of no effect because there was a counterclaim.

16 MR. BAUER: Well, that's kind of what I was
17 thinking in looking at it because it's almost -- if
18 it was voluntary -- if it was accepted as being
19 dismissed without prejudice you're -- there may be
20 a possibility that the complaint needs to be
21 refiled almost as a counter counter complaint.
22 Obviously, the whole case has not gone away because
23 the counter complaint still exists.

24 MR. GILLESPIE: Yes.

25 MR. BAUER: The case is still open, so you

1 wouldn't have to refile a new action. But you
2 know, we need to find out what the deal is with --
3 are your -- I want to make sure your complaint is
4 still alive.

5 MR. GILLESPIE: Uh-huh.

6 MR. BAUER: I think that's important. It
7 seems like it likely is. I'm not a big fan of
8 seems like it likely is.

9 MR. GILLESPIE: Okay, great. Well --

10 MR. BAUER: And I saw a letter in here, I was
11 going to see about kind of calling opposing counsel
12 as far as whether or not, you know, they would want
13 to, you know, get rid of these sanctions hearings.
14 It's clear from their letter they're not interested
15 in doing that whatsoever. I think what we'll do
16 is, I'm probably going to do -- just go ahead and
17 do the hearing. I will just show up that day and
18 file my notice of appearance. And not necessarily
19 give them any great warning that an attorney is
20 coming on board.

21 MR. GILLESPIE: Okay. Well, they scheduled
22 hearings one day after another.

23 MR. BAUER: Yes.

24 MR. GILLESPIE: Would you attend both of them
25 or try and get it done on the first day?

1 MR. BAUER: If we could try to get them both
2 done, but they're only scheduled like thirty
3 minutes apiece. It's hard to get stuff done in
4 thirty minutes.

5 MR. GILLESPIE: Uh-huh. Okay.

6 MR. BAUER: You know, I don't want to do both
7 of them simply because then I have to stay down in
8 Tampa.

9 MR. GILLESPIE: Right.

10 MR. BAUER: And that's not what I really want
11 to do. I prefer being at home at night. But if we
12 do that, I mean, that was a problem that we foresaw
13 with me being retained.

14 MR. GILLESPIE: Right.

15 MR. BAUER: But I was actually surprised when
16 I -- from the volume of all the pleadings I thought
17 that I would -- there was going to be this enormous
18 complaint, and it's a fairly straightforward two
19 count complaint.

20 MR. GILLESPIE: Yes, uh-huh.

21 MR. BAUER: So there's definitely a lot here
22 to absorb to make sure I know everything that's
23 going on. But I'm definitely working on that and I
24 just wanted to call and see if I could save a
25 little time and a little bit of your money by

1 discussing it with you and making sure I
2 understood.

3 MR. GILLESPIE: You know, I want you to, you
4 know, handle this the way you see fit at this
5 point, because I have reached the point where I
6 can't do anything else.

7 MR. BAUER: I understand. And I mean, I
8 will -- it's always -- I will handle it in a
9 tactical manner that I feel that it should be. If
10 you ever want to tell me you don't want this to go
11 on anymore, you're perfectly entitled to tell me to
12 stop. How I actually proceed with different things
13 is my professional discretion.

14 MR. GILLESPIE: My main thing is I don't want
15 to have to pay them any money for any sanctions
16 or --

17 MR. BAUER: Yeah, I don't --

18 MR. GILLESPIE: I would rather pay you the
19 money.

20 MR. BAUER: Unfortunately, I mean, there
21 really wasn't any substance to your dismissal
22 allegations. Although I think the way that I'm
23 going to try to approach that is that --

24 MR. GILLESPIE: I mean, I tried to talk to
25 them about it and he just made it into an argument

1 and then filed a false thing against me with the
2 Court that I threatened him.

3 MR. BAUER: Explain to me -- yeah, I read
4 about that. Explain to me how there is -- what
5 happened with the Judge on that? Did the Judge
6 actually say anything other than -- I read the
7 order that said, you know, you had motioned it. It
8 said your motion was not satisfactory for blah,
9 blah, blah, these reasons.

10 MR. GILLESPIE: Which Judge are you talking
11 about? The first or second one?

12 MR. BAUER: I think the second one.

13 MR. GILLESPIE: Yeah, that's Judge Isom, the
14 girl.

15 MR. BAUER: Yes. She dismissed herself even
16 though she said your allegations weren't
17 sufficient, but on her own she felt it was proper
18 for her to leave. Let's see --

19 MR. GILLESPIE: Yeah, okay, yeah, that's what
20 she said, uh-huh.

21 MR. BAUER: And what -- is that the Judge that
22 he lied to?

23 MR. GILLESPIE: No, it was the first one.
24 Okay, that was Judge Nielsen.

25 MR. BAUER: Judge Nielsen was the one that he

1 lied to?

2 MR. GILLESPIE: Yes.

3 MR. BAUER: And he recused himself. Did he
4 say anything in his order of recusal?

5 MR. GILLESPIE: No, he essentially said the
6 same thing. The first time I made the motion for
7 recusal too late. And that was correct. And he
8 denied that. And then two days later he recused
9 himself saying he thought it was in the best
10 interest of both parties. That's as much as he
11 commented.

12 MR. BAUER: Yeah, see, it's so hard to see
13 whether or not he did that because of the, you
14 know, the mischaracterization in that --

15 MR. GILLESPIE: So anyway, you know, I tried
16 to talk it over with him, Rodems. He wasn't really
17 interested in doing that, he was interested in, you
18 know, picking a fight because, look, they can't
19 rely on either the facts or the law so they have to
20 pick something else to talk about. And that's my
21 view of it.

22 MR. BAUER: Okay. I think probably the best
23 defense that I'm going to be able to assert against
24 them is simply say, Your Honor, you know, you were
25 a pro se litigant, you were following their example

1 of what things to do.

2 MR. GILLESPIE: Uh-huh.

3 MR. BAUER: And if anyone, you know, they did
4 this exact same thing and the only success that
5 they had was to have five sentences struck from the
6 complaint, which are not actual complaint issues,
7 they're just factual assertions, so the motions to
8 dismiss, you know, were completely -- his was
9 completely worthless. You're following his
10 example, doing what you thought. I think this
11 entire episode has been an example of inappropriate
12 actions on both parts and I certainly don't think
13 that a pro se litigant should be held to a higher
14 standard than counsel is. You know, I think, I
15 think, you know, his actions, his mischaracterizing
16 things, I think to levy sanctions against any party
17 in this case is just entirely and wholly
18 inappropriate.

19 MR. GILLESPIE: Uh-huh.

20 MR. BAUER: You know, the purpose of the --
21 purpose of 57.105 is to ensure that justice is
22 being done. And we'll see what we can do with
23 this. You know, I think ultimately we -- yeah, I
24 think you have a fairly strong case. I think if we
25 can get in front of a jury -- if we survive any

1 summary judgments and any of that and we get in
2 front of a jury, we can do very well.

3 MR. GILLESPIE: Uh-huh.

4 MR. BAUER: If we can hold those punitive
5 damages.

6 MR. GILLESPIE: Uh-huh.

7 MR. BAUER: If we can substantiate that that
8 stuff was willful and if I can get, you know, the
9 jury would love to punish a slimy attorney.

10 MR. GILLESPIE: Well --

11 MR. BAUER: That article of, you know,
12 throwing stuff in people's face.

13 MR. GILLESPIE: Right. And that was the
14 original partner, the original, you know, senior
15 partner.

16 MR. BAUER: That was not him?

17 MR. GILLESPIE: No.

18 MR. BAUER: Hum.

19 MR. GILLESPIE: No, that was Alpert, Jonathan
20 Alpert.

21 MR. BAUER: That was not Cook, though?

22 MR. GILLESPIE: No.

23 MR. BAUER: Has Cook done anything?

24 MR. GILLESPIE: Well, they were all there, I
25 believe, at the meeting. And they wouldn't own up

1 to anything.

2 MR. BAUER: I mean, where they --

3 MR. GILLESPIE: Where the coffee was thrown,
4 yeah.

5 MR. BAUER: Is that the one -- the other
6 article, was that done -- was that done by the
7 other senior partner?

8 MR. GILLESPIE: The coffee throwing was by
9 Jonathan Alpert.

10 MR. BAUER: Okay. And then the, no, I'm
11 sorry, the other article was about extortion; who
12 made those claims?

13 MR. GILLESPIE: Jonathan Alpert.

14 MR. BAUER: Okay.

15 MR. GILLESPIE: And then they made the same
16 claim against me for filing a Bar complaint.

17 MR. BAUER: Jonathan Alpert when you filed the
18 Bar complaint?

19 MR. GILLESPIE: No, no. Barker did. This was
20 after Alpert.

21 MR. BAUER: Do you know of anything going on
22 with Cook or any of the other attorneys who are
23 still --

24 MR. GILLESPIE: Well, Barker, yeah. And they
25 have been -- in their counterclaim they put that,

1 you know, the counterclaim that's reliable. But
2 the counterclaim also says that I extorted them
3 because I asked them to settle this matter or face
4 a Bar complaint. That's in the counterclaim.

5 MR. BAUER: Uh-huh. You know, that's
6 something that I find so interesting is a lot of
7 stuff that they struck, they wanted to get rid of
8 that letter of yours. That letter, that exhibit
9 got removed and then they attached that exhibit to
10 their answer and counter complaint.

11 MR. GILLESPIE: Yeah, I don't think they had
12 any intention of filing a counterclaim. I thought
13 they -- they thought the case was going to be
14 dismissed. And had it been dismissed there
15 wouldn't have been anything else about it.

16 MR. BAUER: Yeah.

17 MR. GILLESPIE: But it wasn't dismissed so
18 then they --

19 MR. BAUER: I don't know why in the world they
20 thought it was going to be dismissed. I think, you
21 know, I'm not saying you're right, but I think you
22 have clearly stated a cause of action.

23 MR. GILLESPIE: Yeah.

24 MR. BAUER: I don't know why in the world they
25 thought it would be dismissed. But so, okay.

1 Well, I'm going to continue working on this and you
2 still have -- they have a summary --

3 MR. GILLESPIE: They have a summary judgment
4 pending and a judgment on the pleadings.

5 MR. BAUER: Pleading pending.

6 MR. GILLESPIE: I don't -- it was my
7 understanding that judgment on the pleadings isn't
8 even acknowledged that much anymore.

9 MR. BAUER: Honestly, I was rather perplexed
10 by the dual nature of those two because they're
11 virtually identical. And a summary -- in my
12 experience a summary judgment is generally reviewed
13 after, you know, I guess it's the idea of a
14 judgment on the pleadings is just on the pleadings
15 alone and a summary judgment also has the ability
16 of entering evidence through affidavits.

17 MR. GILLESPIE: I see.

18 MR. BAUER: That's the only distinction that I
19 could come up with. I was scratching my head on
20 that, and that was one of the things on my list to
21 figure out what the heck is with that. I'm not
22 real sure why they're doing that. So -- but -- and
23 you have a summary judgment that is still pending.

24 MR. GILLESPIE: Yes, uh-huh.

25 MR. BAUER: Okay. Is that -- have I missed --

1 is there anything else that's pending? There's the
2 contempt --

3 MR. GILLESPIE: Well, I have my motion for
4 criminal contempt against him, Rodems. If you read
5 the transcript from February 5th it was raised and
6 I put it in Judge Isom's lap and she didn't want to
7 do anything with it. I mean, basically what I
8 said, you know, the Court's aware of this,
9 essentially what I said if they have any integrity
10 they should pursue it on their own.

11 MR. BAUER: I think we can just, you know, we
12 may use the facts at some other time if they would
13 be in our favor.

14 MR. GILLESPIE: Okay. And if you want to --
15 if you think it's better to call them and avoid
16 these two hearings or put, you know, I'll leave
17 that up to you. I was surprised that he scheduled
18 a hearing on the 3rd because that's Passover. I
19 think he's Jewish. So I was surprised to see that.
20 I guess he's not observing. And it may be the fact
21 that he is aware that an attorney is on the case,
22 he may take it more seriously now. I don't know.

23 MR. BAUER: Well, if you want I will call him
24 and discuss about canceling these hearings and see
25 if we can move forward in a little bit more concise

1 manner then.

2 MR. GILLESPIE: I'll leave that up to you.

3 I'll let you make that call.

4 MR. BAUER: Okay.

5 MR. GILLESPIE: You know, I want to get a good
6 outcome with the case, I'm not interested in any
7 personal ax to grind.

8 MR. BAUER: All right. That sounds good.

9 I'll call them then.

10 MR. GILLESPIE: All right.

11 MR. BAUER: Thank you.

12 MR. GILLESPIE: Thank you, sir.

13 MR. BAUER: Bye.

14 MR. GILLESPIE: Bye-bye.

15 (Whereupon, the above recording was
16 concluded.)

17

18

19

20

21

22

23

24

25

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25

C-E-R-T-I-F-I-C-A-T-E

STATE OF FLORIDA

COUNTY OF HILLSBOROUGH

I, Michael J. Borseth, Court Reporter
for the Circuit Court of the Thirteenth Judicial
Circuit of the State of Florida, in and for
Hillsborough County, DO HEREBY CERTIFY, that I was
authorized to and did transcribe a tape/CD recording of
the proceedings and evidence in the above-styled cause,
as stated in the caption hereto, and that the foregoing
pages constitute an accurate transcription of the tape
recording of said proceedings and evidence, to the best
of my ability.

IN WITNESS WHEREOF, I have hereunto set my hand
in the City of Tampa, County of Hillsborough, State of
Florida, this 19 July 2008.

MICHAEL J. BORSETH, Court Reporter
