

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

NEIL J. GILLESPIE,

Plaintiff,

vs.

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

Defendants.

COPY

CASE NO. 05-CA-007295
DIVISION C

PROCEEDINGS: Defendants' Amended Motion for Sanctions
Pursuant to Section 57.105(1), Florida
Statutes

BEFORE: The Honorable James M. Barton, II

TAKEN: Pursuant to Notice by
Counsel for the Defendants

PLACE: George Edgecomb Courthouse
800 East Twiggs Street
Room 512
Tampa, Florida 33602

DATE: July 3, 2007

TIME: 9:30 a.m. - 10:05 a.m.

REPORTED BY: Kathryn C. Spiegel
Court Reporter and
Notary Public
State of Florida at Large

1 APPEARANCES:

2 ROBERT W. BAUER, ESQUIRE
3 Robert W. Bauer, P.A.
4 2815 N.W. 13th Street
5 Suite 200E
6 Gainesville, Florida 32609
7 Telephone: 352.375.5960, Fax: 352.337.2518

8 Appeared on behalf of the Plaintiff

9 RYAN CHRISTOPHER RODEMS, ESQUIRE
10 Barker, Rodems & Cook, P.A.
11 400 North Ashley Drive
12 Suite 2100
13 Tampa, Florida 33602
14 Telephone: 813.489.1001, Fax: 813.489.1008

15 Appeared on behalf of the Defendants

16 INDEX TO PROCEEDINGS

	PAGE
17 Proceedings	3
18 Certificate of Reporter	28

1 The proceedings, Defendants' Motion for
2 Sanctions Pursuant to Section 57.105(1), Florida Statutes,
3 were taken pursuant to notice by counsel for the
4 Defendants, on the 3rd day of July, 2007, commencing at
5 9:30 a.m., at the George Edgecomb Courthouse, 800 East
6 Twiggs Street, Room 512, Tampa, Florida, before The
7 Honorable James M. Barton, II, reported by Kathryn C.
8 Spiegel, Notary Public, State of Florida at Large.

9 * * * * *

10 PROCEEDINGS

11 THE COURT: All right. In Gillespie versus
12 Barker, Rodems & Cook, P.A. and William J. Cook,
13 we're here on motions from the defendants, which I've
14 read through.

15 It looks like I'm the third judge in this
16 case --

17 MR. RODEMS: That's correct, Your Honor.

18 THE COURT: -- based on prior motions. So, I
19 mean -- normally this kind of a motion would require,
20 unless the underlying facts are agreed to, especially
21 since such fairly extreme sanctions are --

22 MR. RODEMS: Which --

23 THE COURT: -- requested to the defendant's
24 motions.

25 MR. RODEMS: Which there were two, Your Honor,

1 and one was regarding an order to show cause.

2 THE COURT: Yeah.

3 MR. RODEMS: And that has been -- the issue has
4 been cured because the discovery has now been
5 produced.

6 THE COURT: Oh, good. Okay.

7 MR. RODEMS: So that takes care of one; that
8 only leaves the motion for Section 57.105.

9 THE COURT: Okay. And even that with -- again,
10 since it's a motion for sanctions -- you know, if
11 there are facts to be established, we have to come up
12 with some -- I mean, unless it's all paper-based;
13 that is, motions were filed, pleadings were filed,
14 and here's what happened, as opposed to who may have
15 said what to whom.

16 MR. RODEMS: Yes, sir. I think it is all
17 paper-based based on the defenses that were pled.

18 THE COURT: Okay.

19 MR. RODEMS: May I give you just a brief history
20 of the case?

21 THE COURT: Well, other than what's -- I mean,
22 again, I read your memorandum in support --

23 MR. RODEMS: Okay.

24 THE COURT: -- of your motions, which I think
25 gave quite a historical background of this case that

1 was filed back in 2005.

2 And so -- now, are -- back in '06, there was a
3 petition for cert that was filed.

4 Were all appellate or what I'll call quasi-
5 appellate proceedings concluded?

6 MR. RODEMS: Yes, sir.

7 THE COURT: So you're seeking today 57.105 --

8 MR. RODEMS: Yes, sir.

9 THE COURT: -- sanctions. Okay

10 MR. RODEMS: All right. Thank you, Your Honor.

11 The complaint that Mr. Gillespie filed was filed
12 August 15th of 2005.

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.

16 We had a hearing on that. The ultimate answer
17 or the ultimate order from the court came out on
18 January 13th of 2006, while Judge Nielsen was still
19 on the case. So on January 19th of 2006, we filed
20 our answer, our affirmative defenses, and our
21 counterclaim.

22 Following that, on February 8th of 2006,
23 Mr. Gillespie filed his motion to dismiss and strike
24 the counterclaim.

25 And to make things easier today, I've made

1 copies of things just so that you don't have to dig
2 through the court file, Your Honor. But here is a
3 copy of Mr. Gillespie's motion to dismiss and strike
4 the counterclaim.

5 THE COURT: Let's see. Is that attached to your
6 motion?

7 MR. RODEMS: I'm not sure if it is or if it -- I
8 don't believe it is, actually.

9 THE COURT: In any event, I don't know that you
10 need restate all that's in your amended motion for --

11 MR. RODEMS: Oh, okay.

12 THE COURT: -- sanctions.

13 MR. RODEMS: Well, let --

14 THE COURT: Do you feel --

15 MR. RODEMS: No, sir --

16 THE COURT: -- the need to do that?

17 MR. RODEMS: No, sir. No. Let me just --

18 THE COURT: Usually it's more productive if you
19 say that, Judge, the basis of my motion is in my
20 motion --

21 MR. RODEMS: Okay.

22 THE COURT: -- to turn to the opposing party and
23 see what the opposing party has to say.

24 MR. RODEMS: All right. Well, let me summarize,
25 then, very quickly.

1 We filed a counterclaim for libel and slander.
2 And the defenses we got were listed in this motion to
3 dismiss and strike counterclaim. We advised Mr.
4 Gillespie, through the normal channels, that these
5 weren't viable, and Mr. Gillespie did not withdraw
6 them.

7 We had a hearing on April 25th of 2006 with
8 Judge Nielsen on this very motion to dismiss.
9 Because there were so many issues listed we did not
10 complete it, but Judge Nielsen made oral rulings one
11 by one. And in each case he denied Mr. Gillespie's
12 motion.

13 After that hearing, there was no order entered
14 because it was contemplated that we would come back
15 to conclude all of the issues in the motion to
16 dismiss before an order would be entered.

17 But in that interim period, we, again, advised
18 Mr. Gillespie, that look, the Court ruled against you
19 on all of these things. If you'll withdraw them --
20 if you'll withdraw these defenses and answer, you
21 know, we'll withdraw our motion for sanctions. He
22 told us that he would prevail on those, and declined
23 to do that.

24 And so ultimately, to zoom to the end of the
25 situation, on January 26th of 2007, Mr. Gillespie

1 filed an amended response to our motion for sanctions
2 pursuant to Section 57.105. And he finally withdrew
3 all of these defenses that we contended had no
4 factual basis or legal basis.

5 THE COURT: So are you -- so then your, my
6 guess, motion for fees is limited to that period of
7 time before?

8 MR. RODEMS: Yes, sir. And --

9 THE COURT: How long is that?

10 MR. RODEMS: Well, there's a couple of hearings
11 that we had to prepare for and --

12 THE COURT: Do you have all of that itemized?

13 MR. RODEMS: No, sir. We hadn't done that yet.

14 The only purpose of today was to find out --

15 THE COURT: Entitlement?

16 MR. RODEMS: Entitlement, yes, sir.

17 THE COURT: Okay.

18 MR. RODEMS: And basically the reason that we're
19 bringing this up is because in addition to potential
20 fees under 57.105, there is an outstanding order from
21 Judge Nielsen, which was the one that was taken up on
22 cert, and the Second DCA dismissed it.

23 There's an outstanding order from Judge Nielsen
24 on discovery entitling the defendants to have their
25 attorney's fees paid. So our hope today is that if

1 you will enter an order on this 57.105, also awarding
2 entitlement, we can then bring forward in another
3 hearing the amount, even -- if we can't resolve it
4 through counsel.

5 At that point the only claim that's pending
6 before the Court right now is the counterclaim for
7 libel and slander.

8 Our present intent is once we liquidate whatever
9 attorney's fees we're entitled to, to just dismiss
10 that and proceed.

11 I would point out it's not set for hearing
12 today, but Mr. Gillespie has made an effort by filing
13 a motion to withdraw his notice of dismissal of his
14 claims. So that is pending out there also. But, in
15 any event, we believe that our motion for Section
16 57.105 fees is -- should be granted, and we would ask
17 you to enter an order today that we're entitled to
18 attorney's fees and costs for having to defend
19 against these various elements of Mr. Gillespie's
20 motion to dismiss that had no legal or factual basis.

21 THE COURT: For how -- how long is that period
22 before -- between you -- the 20-day -- what we'll
23 call the 20-day grace period --

24 MR. RODEMS: Oh, okay.

25 THE COURT: -- ran and the date that the claims

1 or defenses were withdrawn?

2 MR. RODEMS: The motion for sanctions was
3 originally filed on February 28th of 2006, and the
4 defenses were finally withdrawn by Mr. Gillespie on
5 January 26th of 2007, so almost eleven months.

6 THE COURT: Okay. All right. Response?

7 MR. BAUER: May it please the Court, yes.

8 My name is Robert Bauer. I am counsel for Neil
9 Gillespie. I've recently come on in this case only
10 in the last few months. I was not present for a lot
11 of this as it was going on with the plaintiff being
12 pro se at the time.

13 What is important for the Court, I believe, to
14 look at -- and for the Court's convenience, I've put
15 all the case law that I'm going to cite today
16 together in a packet -- is that it's very difficult
17 to determine exactly where the courts are going
18 currently on whether or not you can section out only
19 these small portions of a case as being frivolous.

20 I did find case law in the First DCA that was
21 doing that, but specifically to hold it to the second
22 day -- excuse me, the Second DCA, I found in *Stagl v.*
23 *Bridgers*, 807 So. 2d 177, an award of attorney's fees
24 pursuant to 57.105, is appropriative only when the
25 action is so clearly devoid of both merit and facts

1 in law as to be completely untenable --

2 THE COURT: And isn't -- doesn't this opinion
3 predate the amendment to 57.105 that -- from
4 everything I've read and heard discussed, does allow
5 for what I call a piecemeal 57.105 approach; that is,
6 when any defense or claim is found to be devoid of
7 merit, then the aggrieved party can send out this,
8 basically, you know, demand letter, withdraw your
9 claim or defense within 20 days or we're going to
10 insist on 57.105 fees?

11 MR. BAUER: If I'm not mistaken, Your Honor, I
12 believe the change that you're referring is in 1999.

13 THE COURT: Okay.

14 MR. BAUER: This hearing is in -- excuse me,
15 this holding is in 2002. And all the 2002 holdings
16 of the Second DCA seem to still to refer to as the
17 entire action. The only --

18 THE COURT: Again, it's hard to tell. Even
19 though it's a 2002 case, when the, you know,
20 underlying motion was -- was brought -- and let's
21 look at 57.105 because I -- again, numerous articles
22 have been written on this, and we --

23 MR. BAUER: Yes, Your Honor, and that was part
24 of my confusion and I --

25 THE COURT: It seems like we discuss this at

1 every judge's conference that we have, and as I
2 recall, everything that --

3 MR. BAUER: I do know that this case refers
4 to --

5 THE COURT: -- is said -- if you'll pardon me --

6 MR. BAUER: I'm sorry.

7 THE COURT: -- is that the, you know, the
8 amendment is -- does allow what I call this piecemeal
9 approach.

10 And specifically 57.105(3), which says, "At any
11 time in any civil proceeding or action in which the
12 moving party proves by a preponderance of the
13 evidence that any action taken by the opposing party
14 including, but not limited to," so it means anything
15 they do whether it's, you know, chronically showing
16 up late for hearings, for example, or something like
17 that, "then the court shall award damages to the
18 moving party."

19 But again, as in Subsection 4, you got to give
20 them this, what I'll call a 21-day demand letter
21 grace period. And, you know, so -- and clearly what
22 the Stagl decision relates to where there was a
23 motion brought under the old standard which talks
24 about when the entire action is disposed of.

25 MR. BAUER: Yes, Your Honor. I will admit that

1 I read the statute that way and believed it that way,
2 and found the case law very confusing on the point,
3 actually, as to whether or not it had been
4 interpreted that way or the old --

5 THE COURT: And, in fact, the Stagl decision
6 clearly states that it's basing it on 57.105, the
7 1997 version.

8 MR. BAUER: I just noticed that, Your Honor,
9 while you had -- when you had earlier had that
10 question.

11 THE COURT: Right.

12 MR. BAUER: Even -- that even being said, the
13 statute itself goes on to say that the individual
14 asserting it should have knew or should have known
15 that those defenses or actions that they forwarded
16 would have been frivolous.

17 The next case I would like to cite is Wendy's of
18 Northeast Florida, Incorporated versus VanderGriff,
19 in the First DCA, 865 So. 2d, 520, Pinpoint 520,
20 which is on page 4 of the case that I gave you. And
21 the second paragraph holds, "Taxings of fees for
22 filing frivolous pleadings," clearly saying it's a
23 frivolous pleading, "is not always appropriate even
24 when the party seeking the fees was successful in
25 obtaining the dismissal of the action or summary

1 judgment in the action."

2 O'Hara Gallery, Incorporated versus Nader, the
3 Third DCA, 892 So. 2d 512, pinpoint at 513, on the
4 second page of the copy provided, in the middle of
5 the page, holds that "In determining whether a party
6 is entitled to statute attorney's fees as a sanction
7 for filing a frivolous claim is determined when the
8 claim is initially filed. What was the thought
9 process then? What were they going through?"

10 It goes further on, too, that the counsel --
11 "the court must determine if the party or its counsel
12 knew or should have known the claim or defense
13 asserted was not supported by the facts or
14 application of the law."

15 In kind of a -- in a leading up, I've cited,
16 actually, a criminal case next simply for the
17 purposes of --

18 THE COURT: Okay. Well, to go back to the
19 Wendy's case from the First District, the First
20 District found there that Wendy's position was not
21 wholly unsupported by the facts at any time because
22 there was a justiciable controversy as to whether
23 Wendy's was insured by some insurance company, which
24 was, you know, one of the big issues there. So, I
25 mean, you know, that brought into play certain --

1 that particular issue.

2 So what -- I agree with you as a general
3 statement of law that -- and that, of course, the
4 proof is in the pudding and application of that rule
5 of law to the facts of our case.

6 MR. BAUER: Yes, Your Honor. And I think that
7 what that does is go to my next point is, is the
8 general rule that -- of invited error doctrine. This
9 isn't truly an invited error doctrine issue. This is
10 just simply as I'm trying to elaborate on that
11 principle that if -- if you are the contributing
12 cause of an issue that you should not profit from it.
13 And that would be Czuback v. State, 570 So. 2d 925.

14 The point is, is that what was brought here is
15 Gillespie filed his motion in response to counsel's
16 motion that was filed. If you look at counsel's
17 claims, there is equally frivolous --

18 THE COURT: The Supreme Court on Czuback
19 rejected that error when the state tried to say that
20 the state's key witness on cross-examination -- oh,
21 by the way, this accused is an escaped convict. You
22 know, that was an invited error because that comment
23 was totally unresponsive to the defense lawyer's
24 cross-examination.

25 MR. BAUER: Yes, sir, but that is -- that is a

1 criminal case. The case that was cited simply for
2 the rule --

3 THE COURT: And also the rule of evidence.

4 MR. BAUER: Yes, sir.

5 THE COURT: -- as opposed to -- well, what
6 was --

7 MR. BAUER: -- it's just -- it's just --

8 THE COURT: -- the invited error here?

9 MR. BAUER: It's -- it's not true invited error,
10 Your Honor. It's the principle of when you are the
11 cause of something that you should not profit from
12 it.

13 Count I --

14 THE COURT: Right.

15 MR. BAUER: -- in the motion to dismiss clearly
16 asked that -- said that there should be a motion to
17 dismiss for failure to state a cause of action. This
18 is the defendant's.

19 Clearly a review of the document of the
20 plaintiff's complaint clearly states a cause of
21 action for a contract. It alleges a contract. It
22 says that things were not done in compliance with the
23 contract, and the defendant was damaged.

24 The motion to dismiss was overturned out of hand
25 and clearly with one sentence, Any of the -- Any of

1 the requests for dismissal are denied.

2 The second, the waiver and estoppel, was, again,
3 just out -- out of turn dismissed by the judge.
4 There was no allegations in the motion for dismissal
5 itself on what basis there could be any waiver or
6 estoppel.

7 The one that's especially glaring is the
8 economic loss rule. The economic loss rule is a tort
9 rule and applies only to tort cases, but it was --
10 and there was --

11 THE COURT: And how did the defense --

12 MR. BAUER: Count II was a contract claim.

13 THE COURT: -- did they invite these claims? I
14 don't understand that.

15 MR. BAUER: If you look at -- defense forwarded
16 claims themselves that were frivolous, that were not
17 just justiciable and not based in law. They
18 forwarded confusing issues of law that possibly could
19 have -- that only through the loosest interpretations
20 could have application in attempt to take advantage
21 of a pro se litigant.

22 The pro se litigant, if you'll look at his
23 response, it's exactly identical to theirs. He
24 followed their lead. All he did was look at -- if
25 this is the way that attorneys are supposed to

1 present things, I, as an inexperienced litigant, am
2 going to do the same thing. He felt that it was
3 appropriate to do what they were doing.

4 THE COURT: So you're asking me to apply a
5 different standard to Mr. Gillespie because he's a
6 pro se litigant?

7 MR. BAUER: Which I think is appropriate, and
8 the courts have found that in the Biermann v. Cook,
9 So. 2d 1029, Pinpoint 1031, page 3, it's at the
10 bottom of the page, it says, "Our power and desire to
11 impose sanctions against pro se and/or indigent
12 litigants is limited," so there a difference, "is
13 limited by the constitutional right of access to the
14 courts by statutory ambiguity of the indigents to
15 obtain court services at least at little or no cost.
16 And by well-recognized principle that non-lawyer
17 litigants not be penalized for an inability to
18 observe strict compliance with rules of procedure."

19 It does go on to say, "None of these
20 considerations, however, should inhibit a court from
21 stepping in to prevent abusive and nuisance
22 litigation."

23 I don't think this had the intent of being
24 abusive and nuisance. I think he was trying to
25 respond in kind and do what he felt was appropriate.

1 This -- the issue of the constitutional right
2 for access had been repeatedly addressed by the
3 Second District, also again in Connelly v. Old Bridge
4 Village Co-op. That's cited at 915 So. 2d 652,
5 Pinpoint 656, again showing the concern of the
6 constitutional right of access.

7 The -- this has been a situation I believe that
8 has dissolved on both sides. It's been a -- this has
9 been a case where the personal contact relation of
10 attorney-client privilege -- excuse me, of
11 attorney-client relationship has gone awry. It's an
12 intimate relationship. And when intimate
13 relationships break up, it becomes emotional. It
14 becomes difficult.

15 I believe both sides have gotten very emotional
16 in this case and have forwarded arguments that
17 weren't necessary, that weren't appropriate.

18 I don't believe it's appropriate to penalize the
19 pro se litigant when he's not entitled to ask for
20 attorney's fees because he wasn't represented at the
21 time, but allow the attorney to ask for attorney's
22 fees when the behavior has been equal on both sides.

23 I think now that we have counsel representing
24 both sides, we can go back to a situation of a less
25 emotional confrontation situation, reinject

1 professionalism into this situation on both sides.

2 I think there's clear evidence that there -- you
3 know, I admit that there's been some problems with --
4 with the plaintiff in this case, but I believe that
5 there have been problems as well on the defendant's
6 side.

7 And it is very difficult dealing with pro se
8 representatives who don't necessarily know all the
9 law. And so I can very easily see and see how
10 justifiably things could get emotional and difficult.

11 But I believe this is the situation why the
12 awarding of 57.105 sanctions is subject to an abuse
13 of discretion standard, which is the last case that
14 I've cited in Mercury Insurance Company v. Coatney,
15 910 So. 2d 925, and you'll find that on the third
16 page located at Headnote 3.

17 Your Honor, I think -- in final summation is I
18 believe that any continuing 57.105 claims back and
19 forth against each other is not in the interest of
20 justice. It's not in the interest of judicial
21 economy. We need to be before this Court addressing
22 the issues of the complaint that courts here have
23 ruled have been from properly pled. They're viable
24 counts. They need to be forwarded and determined
25 whether or not individuals have damages on them. And

1 we need to step back and not be concerned with all of
2 these 57.105 motions.

3 THE COURT: All right. Well, I -- as I've
4 indicated, I have read through the file. It has some
5 history, as has been briefly summarized. It's been
6 more than somewhat contentious. It is a good thing
7 for Mr. Gillespie that he has retained counsel.

8 The way in which Mr. Gillespie's side has been
9 presented today with -- with a high degree of
10 professionalism and confidence reflects the wisdom of
11 that decision.

12 But nevertheless, I've got to apply the statute
13 here, 57.105, as it exists. And while the cases do
14 indicate that some allowance should be made for those
15 individuals that represent themselves, it's also been
16 made clear by numerous appellate courts, including
17 the Second District in the Biermann decision.

18 I had another case I was looking at, which had
19 an excellent discussion of what the Court should be
20 looking at.

21 MR. BAUER: If I may request, Your Honor?

22 THE COURT: Pardon me?

23 MR. BAUER: If I may request, if the Court
24 determines that fees are warranted, we would request
25 that nominal fees be addressed in light of the issues

1 previously raised.

2 THE COURT: Let me look at this case that I had
3 found. What did I do with that one? I'm sure it
4 wasn't Biermann.

5 Wasn't there a -- I thought it was a Fifth
6 District decision.

7 MR. RODEMS: Are you referring to the Court's
8 consideration on pro se litigant's, Your Honor?

9 THE COURT: Yeah.

10 MR. RODEMS: Oh, okay. Well, I do have a Fifth
11 Circuit case, which is --

12 THE COURT: Fifth District?

13 MR. RODEMS: Fifth District. I'm sorry.

14 Anderson --

15 THE COURT: No. It was one that counsel for the
16 plaintiff had --

17 MR. RODEMS: Oh, I'm sorry.

18 THE COURT: -- indicated. I don't know why it's
19 not here.

20 MR. BAUER: Your Honor, we would --

21 THE COURT: Do you have that one? You read from
22 it. You quoted from it.

23 MR. BAUER: I provided everything that I quoted
24 from, Your Honor.

25 And I agree, Your Honor, that there is the

1 authority for the Court to do this. We are just
2 asking the Court, given the facts, to exercise its
3 discretion.

4 THE COURT: Yes, it is from Biermann, from the
5 Second District, actually. And it's -- it's worth
6 reading and I think it's worth quoting.

7 This is from Biermann, B-I-E-R-M-A-N-N v. Cook
8 at 619 So. 2d 1029, 1993, Florida Second District
9 Court of Appeal, where -- in the opinion, on page
10 1031, the Court talks, I think, with some candor and
11 with some common sense stating at one point on page
12 1031 that "the majority of pro se litigants conduct
13 themselves, if not always with the expertise of
14 trained attorneys, respectfully, candidly, and with
15 honest effort to abide by rules of procedure; most,
16 that is, but not all.

17 And then the court goes on to point out that
18 "This Court," meaning the appellate court, "like
19 others in this country, operates with a finite number
20 of judges and support stuff, and under a finite
21 amount of time. Each case competes with all others
22 for a fair division of judicial resources. The
23 simplest case exhausts taxpayer funds. Such costs
24 are seldom offset by filing fees, which, in any
25 event, are not assessed against indigents."

1 And then the court goes on to say that
2 "Admittedly pro se litigants have a constitutional
3 right of access to the courts and that nonlawyer
4 litigants should not be penalized for any inability
5 to observe strict compliance with rules of
6 procedure," but the court then goes on in upholding
7 the assessment of attorney fees for a frivolous
8 appeal against a pro se litigant, that, quote, none
9 of these considerations, however, should inhibit a
10 court from stepping in to prevent abusive, nuisance
11 litigation.

12 And while this case is still ongoing, the same
13 could be true of matters that need to be addressed
14 under the current version of 57.105. And that's what
15 I propose to do.

16 I'm going to find that there is an entitlement
17 to fees on behalf of the defendants under 57.105.
18 And we will assess that amount at a later hearing or
19 upon agreement.

20 And we're not going to have two amount hearings.
21 Apparently there is this outstanding discovery
22 sanction order that awarded fees, but not an amount.
23 So we have to deal with that as well. We can deal
24 with that at the same time.

25 It would -- in your discussions with each other,

1 clearly you've got to let the other side know in some
2 detail for this eleven-month period --

3 MR. RODEMS: Yes, sir.

4 THE COURT: -- and for the discovery matter
5 exactly what you're seeking, what you're basing it
6 on, the hourly entries and so forth and so on.

7 I would require -- again, the Court has some
8 flexibility because in some of these cases, unlike a
9 prevailing party attorney's fee hearing, this is for
10 sanctions. And it's not necessarily a dollar-for-
11 dollar award of time put into a case.

12 And my experience, for the most part, has been,
13 in other settings, substantially less than the amount
14 of time that an attorney has put into something.

15 In other cases, though, depending on what type
16 of sanctions should be imposed, I've taken the
17 position that it could well be more than the actual
18 time that an attorney has put in. That could be
19 stretching a point of law and I'm -- I don't think
20 I've ever done that, to be honest with you. I'm not
21 sure I want to do this in this case.

22 So it's essential, you know, the punishment
23 should fit the crime. There's no -- and that's a
24 figure of speech, obviously. There's no crime here,
25 just an award of 57.105.

1 So you-all -- it seems like you're working well
2 together, which I greatly appreciate. And I'm sure
3 your clients do, too, because it's going to make this
4 litigation go a lot smoother.

5 And then, again, these things can take on a life
6 of their own and in this case your role as counselor
7 is probably more important in this kind of a case
8 than your role as advocate. I urge you to draw on
9 your abilities and experience in that regard.

10 MR. RODEMS: May I prepare a proposed order --

11 THE COURT: Sure.

12 MR. RODEMS: -- regarding entitlement? Okay.

13 And, of course, when and if it comes to the
14 amount, I shall prepare a verified fee petition under
15 oath with the necessary hourly breakdown and send it
16 to Mr. Bauer.

17 MR. BAUER: And, Your Honor, may I assume that
18 that the entitlement will be against the pro se
19 plaintiff only --

20 THE COURT: Right.

21 MR. BAUER: -- and I was not present then.

22 THE COURT: Exactly. Right.

23 MR. RODEMS: I mean, the record should be clear
24 on that; that Mr. Bauer came in after all of these
25 issues arose.

1 THE COURT: All right. Thank you. We'll be in
2 recess.

3 (The proceedings concluded at 10:05 a.m.)

4 * * * * *

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

1 CERTIFICATE OF REPORTER

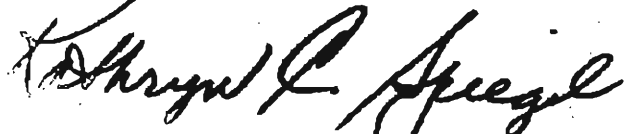
2 STATE OF FLORIDA:

3 COUNTY OF HILLSBOROUGH:

4 I, Kathryn C. Spiegel, Court Reporter and Notary
5 Public in and for the state of Florida at Large, certify
6 that I was authorized to and did stenographically report
7 the foregoing proceedings; and that the transcript is a
8 true and accurate record of said proceedings.

9
10 I further certify that I am not a relative,
11 employee, attorney, or counsel of any of the parties, nor
12 am I a relative or employee of any of the parties'
13 attorney or counsel connected with the action, nor am I
14 financially interested in the action.

15
16 Dated: November 19, 2007

17
18 

19 Kathryn C. Spiegel
20 Notary Public
21 State of Florida at Large
22 Commission No. 454068
23 My commission Expires:
24 7/24/09
25