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

NEIL J. GILLESPIE,

Plaintiff,

vs.

CASE NO: 05-CA-007205

DIVISION: "C"

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

Defendants.
_____/

TRANSCRIPT OF PROCEEDINGS

BEFORE:	HONORABLE JAMES M. BARTON Circuit Judge
TAKEN AT:	Hillsborough County Courthouse Tampa, Florida
DATE:	March 20, 2008
TIME:	1:30 p.m.
REPORTED BY:	BEVERLY ANN HUNTER Notary Public State of Florida at Large

STENOGRAPHICALLY RECORDED (ORIGINAL__)
COMPUTER-AIDED TRANSCRIPTION (COPY __)

APPEARANCES:

On behalf of the Plaintiff:

ROBERT W. BAUER, ESQUIRE
Attorney At Law
FBN: 11058
2815 NW 13th Street
Suite 200E
Gainesville, Florida 32609-2865
352-375-5960 Telephone
352-337-2518 Facsimile
RWB@bauerlegal.com E-mail

On behalf of the Defendant:

RYAN CHRISTOPHER RODEMS, ESQUIRE
Barker, Rodems & Cook, P. A.
FBN: 947652
400 North Ashley Drive
Suite 2100
Tampa, Florida 33602-4300
813-489-1001 Telephone
813-489-1008 Facsimile
rodems@barkerrodemsandcook.com E-mail

I N D E X

P R O C E E D I N G S

THE COURT: How's everybody doing?

MR. RODEMS: Good, Judge.

MR. BAUER: Fine, sir.

THE COURT: Good. All right. We're here this afternoon in Gillespie versus Barker, Rodems and Cook.

MR. RODEMS: Yes, sir. Originally, we were scheduled on the hearing on the attorney's fees and then Mr. Bauer filed a motion to continue and we were told yesterday that we would take that up this morning, or this afternoon first, and see where things went from there.

THE COURT: Yeah, I mean, it's been continued several times before. And when did the notice go out on this?

MR. BAUER: It's only been continued once, Your Honor.

THE COURT: Huh?

MR. BAUER: It's only been continued once.

THE COURT: Right, but the notice went out, for this hearing, January the 30th.

MY BAUER: Yes, sir.

THE COURT: And the motion was filed when?

MR. RODEMS: The notice, or the affidavit of

attorney's fees and the notice of hearing for the original hearing were both filed in November.

THE COURT: Last year?

MR. RODEMS: Or November of 2007.

THE COURT: So, I mean, we're way down the line here. It's been continued once and if we continue it again, for what, a couple of years? Would that be enough time?

MR. BAUER: No, sir. No, sir. All I need is two weeks at most, or even a week, just enough time I -- we have been searching for an expert that -- in this area that was willing to do a review of the hours and make a determination of it. We have spent approximately 30 hours in our office since December, since before the original hearing was scheduled. We've been unsuccessful. We have been contacting family friends of some of our secretaries to try and get somebody and only -- not yesterday but the day before, late in the afternoon, finally got a Frank H. Gassler to agree to be able to review these but he needs to come up and look through all of our files and look at all the -- find all the different issues as far as the letters --

THE COURT: Okay. Was he told when the

hearing was?

MY BAUER: Yes, sir, but, I mean, that's -- it was -- he's down here in Tampa --

THE COURT: Did you tell him the motion had been filed last year and had been continued once and that it might not be continued again, so please come and look at the files and --

MR. BAUER: I don't think he was -- wasn't available to be able to come that quick. It's only one day, Your Honor, that we had from Tuesday afternoon. I think, you know, it's appropriate to give our expert a sufficient amount of time to come and look at these things and for us to be able to discuss with him so that we can have a good opinion of the different issues and be able to forward our position for our client.

I mean, I do understand, you know, the Court's comments on the time period. Unfortunately, part of the problem with this case is it's just been the type of case that it is when it's a pro se litigant originally was suing an attorney. Um, most attorneys don't want to have anything to do with that and the client --

THE COURT: Oh, I hear the same problem when a doctor is getting sued -- oh, we don't -- but

somehow people find a way to get witnesses and, you know, it can take a while but, you know, at some point the clock's got to stop ticking.

Well, what says the defendant?

MR. RODEMS: Well, Judge, we did file a response in writing but, you know, back in November when we served our affidavit and set this hearing and we were asked to move it from January 4th to January 11th, and then from January 11th to March 20th, nobody ever said to me that there was a problem with obtaining an expert.

THE COURT: Well, until now.

MR. RODEMS: Until now, right. But, clearly, you know, this thing has been going on since November of 2007, in terms of setting this for a hearing on the fees and I've prepared Mr. Gardner twice now and, you know, I'm ready to go forward and I'd like to get this portion of the case taken care of so that we can move on with the rest of the case.

You know, I really -- I really think that at this point he's been the beneficiary of one continuance, Mr. Bauer has, by agreement and another one moving it from the 4th to the 11th of January, and I have Mr. Gardner here, I'm ready to

go and, you know, I was only contacted, I think it was two days ago, about trying to continue this one.

When I was asked to continue the hearing from January 11th, 2008, it was because Mr. Bauer had an opportunity to meet with a client in a new matter of some level. I believe it involved a serious catastrophic injury of some sort and I certainly would not have wanted Mr. Bauer to miss out on an opportunity to take that case, so I agreed to continue this hearing with the understanding that we would get it rescheduled and we couldn't get it rescheduled until March 20th. And now here we are and two days ago he wants to reschedule it again. This time not because of his own schedule but because of the fact that he was unable to find an expert and, quite honestly, Judge, the notion that he couldn't find an expert because of the nature of the case I find to be hard to believe simply because the issue in this case is about attorney's fees owed for his client's violation of this Court's orders and for filing frivolous pleadings. It's not a situation where somebody came in and said, my time was not worthwhile, or whatever, that it would create, you

know, animosity or something like that.

So, I mean, just to be honest, Judge, we're here, we're ready to go and we think we should move forward.

MY BAUER: If I could respond, Your Honor.

THE COURT: Sure.

MR. BAUER: As far as it being hard to believe, I've never been anything but open and frank and honest with this Court and opposing counsel, so.

We have discussed with many individuals and, you know, it's been a look of, well, we want to keep an ongoing, good relationship in this town. We don't want to be going up against local attorneys.

There's also been the issue is people not wanting to be qualified on the issue because of there's the appellate issue as to whether or not they're going forward with appellates. Many of the attorneys that we contacted felt that they didn't have experience in all of the different areas as far as malpractice and appellate issues and they felt that they couldn't come before the Court and qualify them as experts.

Whether -- that is the road blocks we ran up

against. Yes, we have -- we have run up against some many people unwilling. We, for the longest time, felt that, well, we're trying the best that we can to get experts. We just can't get an expert, so we'll have to go forward with the hearing.

Two days ago -- we've continued the whole time to try and get experts, and finally we found one and now that we have I've also found -- there's case law, Carpenter v. Carpenter, First Appellate, 1984, 451 So.2nd 914. The Court found that it was abuse of discretion for the Court not to grant a continuance when a party found an expert witness one day before a trial, that they would have been able to testify on various issues as far as damages.

I think it's appropriate in this situation that -- I appreciate that this has, you know, been continued before. We have been honestly and in good faith attempting to try to get an expert and only recently have gotten one.

THE COURT: And I agree with the statement of law applied here by the First District Court of Appeal back in 1984, that special circumstances may require a continuance where there has been --

there has not been sufficient time to complete discovery -- unlike here where there has -- and properly prepare for trial -- unlike here where there has been -- and where a continuance causes no substantial prejudice or injustice to the opposing party, which, again, it's been delayed for -- at least once for a couple of three months and now has somebody that if they haven't paid them, they're obligated to pay them.

So I'm going to deny the motion for a continuance. So, counsel, you may proceed.

MR. RODEMS: Thank you, Your Honor. I would like to first testify about my fees.

THE COURT: Do you both swear or affirm to tell the truth, the whole truth, and nothing but the truth?

MR. RODEMS: Yes, sir, I do.

MR. GARDNER: I do.

Thereupon,

RYAN CHRISTOPHER RODEMS,

A witness, being first duly sworn to tell the truth, the whole truth and nothing but the truth, was examined and testified as follows:

MR. RODEMS: Judge, again, I'm Ryan Christopher Rodems. I'm the attorney that's

representing the defendants in this action. This action was filed back in 2005, at a time when Mr. Gillespie was pro se.

During the course of the litigation before Mr. Bauer became involved, we served discovery on Mr. Gillespie. He did not comply with it timely. We had to file a motion to compel which was granted by the Judge Nielsen.

Subsequently, Judge Nielsen faced a motion to disqualify by Mr. Gillespie which was determined by Judge Nielsen to be legally insufficient; however, on his on volition, Judge Nielsen recused himself from the case. At that point, Mr. Gillespie immediately filed a motion for rehearing on the July 24th, 2006 discovery order, and the case was assigned to Judge Isom.

We had a hearing in front of Judge Isom and she declined to change Judge Nielsen's rulings on the discovery order, and before that hearing was even concluded then before Judge Isom, Mr. Gillespie announced the intent to disqualify Judge Isom. She stopped the hearing at that point, requested that he put his motion in writing, which Mr. Gillespie then did. Judge Isom reviewed it, found the motion to be legally insufficient, but

as did Judge Nielsen, several days later recused herself of her own volition.

At that point, we came before Your Honor by -- along the way Mr. Gillespie apparently decided to withdraw his defenses to our counterclaim, to our client's counterclaim. We had previously before that filed a motion for sanctions under 57.105. There were several occasions when I wrote to Mr. Gillespie, pro se at the time, and explained to him that the defenses that he was alleging to our counterclaim for defamation had no basis in law or fact. He had pled things such as the Economic Loss Rule. Ultimately, Mr. Gillespie disclosed that the reason he pled the defenses he pled is because he read our answer to his complaint which sounded in tort and contract and just repeated our defenses.

In any event, we had to go through one hearing on a motion -- on his motion to dismiss during which Judge Nielsen began denying the various attacks that Mr. Gillespie had filed. Shortly before Mr. Bauer took over, or possibly even right after Mr. Bauer took over, Mr. Gillespie withdrew the remainder of the offending defences. So we set a hearing before

Your Honor on the motion for sanctions pursuant to 57.105 and Your Honor granted that motion and determined that sanctions would be awarded against Mr. Gillespie.

I have prepared and filed with the Court an affidavit of the time that I have spent in this case on these two issues; the July 24th, 2006 order granting the motion to compel, and the issue relating to Mr. Gillespie's counter-defense -- defenses to our counterclaim and the total amount of time that I have incurred is 35 hours.

The -- my affidavit does contain a detailed listing of the time that I spent. The time that I spent was recorded contemporaneously. These are the hours that I would have billed to any client who would have hired our law firm, and I have reviewed all of the entries and I believe that all of these entries do relate to the tasks that were necessitated by Mr. Gillespie's failure to provide discovery leading to the July 24th, 2006 order, and by Mr. Gillespie's filing of the defenses which had no legal or factual basis.

I am board-certified in civil trial law and I've been practicing law since 1992. I'm also AV rated by Martindale-Hubbell. I am -- I have been

a member of the William Terrell Hodges Inns of Court for several years and I have published or co-authored two books. I've also taught business law at Hillsborough County College. I've been trying cases for the last 16 years. I think those qualifications are sufficient to be awarded an attorney's fee of in excess of $300 per hour but I do have Mr. Gardner to testify about attorney's fees from that standpoint. And I believe that awarding attorney's fees of 35 hours in this case is appropriate given the work that was required by Mr. Gillespie's actions.

That would be the sum of my testimony, Your Honor.

THE COURT: Okay. Cross?

CROSS EXAMINATION

BY MY BAUER:

Q. How many 57.105 actions have you been involved in?

A. I filed I believe two in this case and I may have filed one or two other ones in my career but I couldn't be sure exactly.

Q. So you were familiar with the proceedures prior to this case?

A. I'm familiar with the proceedures.

Q. For filing a 57.105?

A. Yes, sir.

Q. I noted quite a few indications on your hourly write-up; it has you personally preparing notices, you personally preparing letters for filing. Is it customary in our practice for the attorneys to do -- to do that?

A. To do -- certainly. I dictate the letters and then I review them when they've been transcribed. Occasionally, if the letter is short enough, I'll go ahead and do my own typing. As far as notices, I do dictate what needs to be in the notice and then I do review those after they've been transcribed and, you know, when necessary, make the editing changes, yes, sir.

Q. And you believe it's reasonable that it takes you 12 minutes, probably up to 15, depending on how you round with your .2 numbers, to do a very simple notice of hearing?

A. Which one are you referring to? Is there a specific entry?

Q. It would be -- one of those is referenced on 9/12/2006, prepared a notice of hearing regarding motion for order to show cause.

A. Yes, in that case that was definitely the

situation because we -- we had a situation where we had the July 24th, 2006 order, multiple letters by me to Mr. Gillespie, or contacts between me and Mr. Gillespie, and I needed to review the file. I mean, Mr. Bauer, as you're now aware, this file has been going on since 2005 sometime and Mr. Gardner brought my file with him today and it now takes up three boxes. So there is quite a bit to review and in preparing that notice, I did need to familiarize myself with what went on in the case.

So between dictating it, reviewing it and reviewing the file, I think 12 minutes is probably fairly conservative.

Q. But none of those other comments that you have are actually contained in your statement here; is that correct?

A. Correct.

Q. Okay. The only issue that you have here is 12 minutes for preparing a notice of hearing and notice of hearings are most often prepared by secretarial staff, correct?

A. Yes. I would not have billed for the secretary's time to prepare it.

Q. And you have a letter to Judge Nielsen regarding hearing on motion for order to show cause. Do you -- that's almost 30 minutes on a letter. Do you know what

the size of that letter was?

A. Can you give me the date.

Q. 10/3/2006. It's on the first page.

A. Yes, I see that. I could retrieve that letter if you'd like.

Q. Please.

A. Okay. I do have it here. It's a two-page letter.

Q. Did you type that yourself?

A. According to the letter, there's initials down at the bottom SCR/SM. That usually indicates that my assistant did the actual typing.

Q. So you would've dictated that?

A. Yes, although I may have -- it's possible that I may have typed part of it but I don't know but dictation probably makes since.

Q. Would it normally take you almost half an hour to dictate what is -- you say it's a full two pages?

A. Yes.

Q. The lettering -- the -- there's only -- well, let's see, one, two, three, four, five full paragraphs, correct?

A. Right, but if you'll note that in the letter one of the issues that we're addressing is Mr. Gillespie's request that the court appoint him an attorney under the

Americans With Disabilities Act and I actually quote from the 28 Code of Federal Regulations, Section 35.135 --

THE REPORTER: I'm sorry?

MR. RODEMS: I'm sorry. I apologize. Code of Federal Regulations, Section 35.135, and I can tell you from looking at this letter, I had to reference also three letters that Mr. Gillespie wrote; September 25th, 2006, September 27th, and October 2nd, 2006. Mr. Gillespie wrote many letters. Some of them were longer than others but reviewing those three letters, composing this letter to Judge Nielsen, opening up Lexis and getting this exact quote of this Code of Federal Regulations and the edits, a .4 or 24 minutes for this letter I think is kind of reasonable.

BY MR. BAUER:

Q. You don't have any of the research that you conducted noted in your hourly summation notes; is that correct?

A. No. To be honest, the way I would bill a letter like this normally would be to calculate the amount of time and then note that the letter, you know, was done. I don't -- I don't put everything that was in the letter and I didn't put in here that in order to compose the

letter I had to review the file and open up Lexis to get the proper quote for this provision of the Code of the Federal Regulations.

Q. Going up to February 24, 2006?

A. Yes.

Q. Did you -- it's got 1.2 hours writing a 57.105 motion?

A. February 24th, of 2006, yes. If you'll note, it was to prepare the motion and also review 57.105 and recent cases.

Q. I'm just trying to understand exactly what -- I mean, because from everything that you've said and everything that I've reviewed about you, you do seem to have a significant level of experience. I'm not sure why someone with so much experience would require -- and that experience goes into the hourly rate that we're going to be charging -- why it's going to take 1.2 hours to write what is in my limited experience a fairly simple motion?

A. Well, let me get the motion, and if it's okay I'll keep talking while I'm doing that. The -- regardless of how experienced you are, my practice as an attorney has always been that when I sign a document and submit it to the Court, I can't really go from my knowledge or understanding of the law even with the most

basic things. I always consult the statutes and always review things. In fact, I got a call from an out-of-town attorney today who asked me something about the statute of limitations, and even though I knew off the top of my head it was four years, I opened up the statutes and reviewed it with him while he was on the phone because I don't want to make a mistake.

THE COURT: Now, is there a separate entry for the memorandum that was submitted in support of the motion or not?

MR. RODEMS: I don't believe so but I would have considered that part of this. And, again, that was on February 24th.

THE COURT: Because there was a memo, a separate memo filed about a month later, so.

MR. RODEMS: Let's get to that motion. Okay. I do have it.

THE COURT: It's broken.

MR. RODEMS: The actual service date was February 28th. I would have entered the time for when the work was done on it and I'm not sure what editing took place over the next few days but it was a three-page motion.

BY MR. BAUER:

Q. And you have none of that editing noted in your

particular breakdown; is that correct?

A. What? Editing this?

Q. Yes.

A. No. But it's a three-page motion and it does track those parts of Mr. Gillespie's filing that were without sufficient factual or legal basis. It does quote directly from the -- from the complaint that -- or the pleading that Mr. Gillespie filed and, you know, obviously, I had to review the complaint and prepare an appropriate motion for it, you know, so I thought that the hour and 12 minutes that I have for it was appropriate.

Q. In reviewing -- I'm actually reviewing the defendant's amended motion for sanctions which required an additional -- I thought it was .5 but I can't find it right now.

A. May 25th, 2006, is that what you're referring to?

Q. It was .3. Thank you. In reviewing this document, this appears to be a lot of language that comes up on the standard motions. The standard language of defendants coming forward pursuant to a statute that you had filed 21 days prior, a very brief excerpt of what the facts are that give rise to this. There's little or no case law cited or a supporting memorandum of law citing it. It's not heavily loaded with

different statutes and only has one exhibit attached.

Would you agree this is not an advanced or a difficult motion?

A. I don't know what you mean by advanced or difficult but I put down that it took me 18 minutes to do the amended motion and to prepare the notice of filing.

Q. And what was the change between the original motion and the amendment?

A. If I recall correctly, and I'd have to look at the two of them, I think in one instance we were asking the Court to require Mr. Gillespie to retain counsel to go forward because of some of the things that he was doing. But I think in the second one, we were seeking just attorney's fees.

Q. Okay. So the first one is substantively very similar to the amended complaint -- or excuse me -- the amended motion absent what you just --

A. Yes, sir, I would agree with that, yes, sir.

Q. -- stated? So, again, it's very short, very brief, succinct, not a lot of case law citations or anything like that?

A. If that's your characterization of it, I wouldn't have any reason to disagree with that.

Q. And you testified that it was -- the cause of Mr.

Gillespie filing some of these was that he looked over your defenses to the filing of his complaint and he just copied those over into his motion; is that correct?

A. Yes, sir, and I'm trying to remember if he told me that or you told me that but I definitely recall hearing that from you or him.

Q. And those similar defenses, when you forwarded them, did you prevail on them?

A. Well, my defenses were listed in response to his claim that we had breached a contract and that we -- and I say "we" I mean my clients -- had committed some sort of fraud against him and the defenses we filed were appropriate for a breach of contract action and a fraud action whereas we had countersued Mr. Gillespie for defamation --

Q. If I could, just did you prevail on them?

A. They haven't all been decided yet. The case is still at issue.

Q. The defenses, actually, all of them were denied and his complaint continued on. There was only -- the only granting from your motions that he parroted was a removal of about four sentences from his complaint in regards to professional conduct; do you recall that?

A. No, I don't. I'm sorry. As far as it goes though because our defenses were affirmative defenses,

those would continue on until they're resolved by the Court and some of them have not been addressed before the Court. You were here for the last hearing on the motion for judgment on the pleadings, so, I mean, you know some of these issues have already come up and are under consideration by the Court.

Q. I'm looking at a 10/18/2006, receipt and review of October 18, 2006 filing by Gillespie and preparing response and motion to strike.

Can you explain to us and the Court why this one singular response took you 2.2 hours to be able to respond to?

A. Yes. The October 18th, 2006 letter by Mr. Gillespie was in response, if I recall correctly, to the Court's direction to Mr. Gillespie when Judge Nielsen was presiding that Mr. Gillespie identify to the Court his intentions about proceeding, and what had happened was when Mr. Gillespie didn't respond to the discovery, we had filed a motion for an order to show cause. Shortly before that, Mr. Gillespie had requested a continuance and also a court-appointed attorney under the Americans With Disabilities Act and then he also advised Judge Nielsen that his mother's homeowner's insurance company was contemplating providing him a defense based on our counterclaim for defamation. After

that, the judge -- Judge Nielsen declined to go forward with the order to show cause on that date because of these issues and asked Mr. Gillespie to file a response, which I believe was Mr. Gillespie's October 18th letter. That letter was many pages long, single spaced, and it went far beyond what Judge Nielsen directed him to do. It contained attacks, if I recall correctly, on Judge Nielsen for matters that had nothing to do with this case. It had attacks on me. It had attacks on my former partner, Jonathan Alpert, and it was about the most inflammatory piece of writing I've seen filed in a court file in quite some time. I don't know if I've ever seen a more inflammatory one. So in response to that lengthy letter, I filed a lengthy motion to strike and the combined time of reading his letter, evaluating it in light of the facts of this case and preparing a response and a motion to strike took me 2.2 hours.

Q. Many of those issues that you would have addressed in that, you've already said that you researched in the 10/3/2006 letter to Judge Nielsen, also researching on your 2/24/2006, 57.105, preparing for those issues. All those are very similar issues and you would have used that previous knowledge to go into that motion; isn't that correct?

A. No. The motion to strike dealt specifically with

Mr. Gillespie's October 18th, 2006 letter and those things that he said in there that should have not ever been filed in the court file and, quite frankly, as an officer of the court, the things that Mr. Gillespie said about Judge Nielsen were quite inappropriate and I felt as it would be appropriate to move to strike these things because, you know, regardless of the fact that Mr. Gillespie is not an attorney, there's still a minimal expected level of decorum in court filings.

Q. Is it your responsibility to ensure court decorum or is it the judge's?

A. Well, it is my responsibility to make sure that the documents that are filed in the court file are appropriate and Mr. Gillespie had far exceeded with his acidic letter what Judge Nielsen had requested that he do in compliance to the order to show cause hearing being delayed at Mr. Gillespie's request. And I would point out that all of this, all of this, the 2.2 hours, the motion to strike his letter, all this flowed from Mr. Gillespie coming in when he should have been responding to why he had not filed the discovery that Judge Nielsen had ordered back in July 24th, of 2006, and Mr. Gillespie's actions in requesting an attorney under the ADA, asking the Court to delay proceedings because he had an insurance company that might defend

his counterclaim, and those things all resulted from that motion for an order to show cause. And then, of course, Mr. Gillespie, as you know and as he reported to Judge Nielsen, directed the insurance company to not provide him a defense even though it was willing to do so because Mr. Gillespie --

MR. BAUER: Objection, that's hearsay.

THE COURT: Any exception?

MR. RODEMS: Well, Mr. Gillespie is a party so it's an admission and Mr. Gillespie already disclosed this to the Court.

THE COURT: Exception to the hearsay rule admission? All right. I'll overrule the objection.

THE WITNESS: As I was saying -- if it's overruled, as I was saying, Mr. Gillespie advised the insurance company not to provide him a defense because he found out that the insurance company was interested in resolving the counterclaim and so Mr. Gillespie instructed the insurance company not to defend him and not to settle the counterclaim.

BY MR. BAUER:

Q. And it was -- he instructed the insurance company not to enter an admission of guilt or anything that

appeared to be an admission of guilt on his behalf; isn't that correct?

A. I don't know if he had that topic of discussion with them or not but we certainly would not have requested an admission of guilt. Most settlements that I've ever experienced involved no admission of liability on either side. We thought it was a good opportunity to resolve our counterclaim in a fair manner but Mr. Gillespie intervened in that and told the insurance company that he didn't want the defense and he disclaimed coverage under the policy which was his right.

Q. And that would have required him resolving his claim as well, correct?

A. No. The insurance company made it plain to me when they were talking to me that they had no authority to act on Mr. Gillespie's behalf on his claims against our law firm and that any settlement with us would only involve the counterclaim and we were perfectly fine with that.

Q. And as far as all the issues of inappropriateness towards Judge Nielsen, is the judge empowered and able to handle those issues himself?

A. Yes, sir, of course, and that was the basis of the motion to strike to have a vehicle for this issue to

be brought up and for the judge to rule on it.

Q. So without that, that judge sua sponte couldn't have addressed those issues and handled the decorum of the court on his own?

A. Oh, I'm sure he could have, yes, sir.

Q. So your motion to strike, going after the inappropriate things addressed to the Court actually was superfluous, it was completely unnecessary because the Court, if they had been insulted by them, could have handled it itself?

A. Well, the statements against Judge Nielsen were only a small part of it. A large part of it was directed at me and for whatever reason I don't understand directed at my former partner from more than seven years ago, Jonathan Alpert, but you know, a lot of the things that were in that letter were completely unrelated to this case and should have been stricken from the record. I believe they're still part of the record. I don't know that the motion to strike ever actually was heard by the way.

Q. And beyond the ones that we've pointed out, there's several entries in here where you provide what could be described as secretarial services; preparing notices, preparing letters, preparing them for filings; is that correct?

A. I wouldn't describe some of those things as secretarial services. If you're talking about pure typing, that's -- I think that could be described as a secretarial service but my practice also is that when I am sending something to the court or specifically directly to the judge, I do have to review everything and make sure that if my secretary has assisted me in pulling those documents, that they're the correct documents. I mean, I'm sure that you have the same practice of, you know, if you send a letter out under your signature and somebody opens it up and it contains the wrong things, that a reflection of you as the attorney. So I try to -- I try to always go through whatever is going out of the office. In fact, my secretary demands it.

Q. But it only takes a minute or two to review a secretary-prepared notice of hearing, confirm it's the right date, confirm the certificate of service is correct, that the style is correct. It doesn't take two -- it doesn't take 12 minutes; it takes one or two?

A. Well, it might because sometimes what happens, and I don't know if this is the case, but if the wrong thing is attached, I'll go to the file and clip it and that way she knows exactly what to attach and I just don't know what it was but, you know, the way I do

things is that I, you know, I have -- if you go to my office, I've got a clock on the wall, I've got a clock on my shelf, I've got a clock on my computer, I've got a wrist watch. I'm a time person. I love clocks. I keep clocks. I take care of the docks. A predominant majority of my clients do require detailed hourly billings and they want to be billed for real time and that's what I do, I bill in increments of .1 to actual time.

MR. BAUER: Okay. That's all I have.

THE COURT: All right. Any redirect?

MR. RODEMS: No. I'd like to call Mr. Gardner if I could, Your Honor.

THE COURT: Sure.

Thereupon,

JOHN WILLIAM GARDNER,

A witness, being first duly sworn to tell the truth, the whole truth and nothing but the truth, was examined and testified as follows:

DIRECT EXAMINATION

BY MR. RODEMS:

Q. Mr. Gardner, for the record, would you give us your name, your address and your occupation?

A. Well, I should point out again that I've been sworn. My name is John William Gardner. My

professional address is 221 East Robertson Street, Brandon, Florida, 33511. I'm an attorney licensed to practice in the state of Florida. I have been so licensed since April 21st, 1988. I am also admitted to the Middle District of Florida. I'm also a certified -- a Florida Supreme Court certified family law mediator, and I've been so for approximately six months.

Q. Mr. Gardner, what areas of practice are you involved in currently?

A. The broad label is general civil practice. Within that, I practice personal injury and worker's compensation. I also do a pretty broad collections practice and then I have what I would call other cases. Things, frankly, such as this one are very interesting to me. That's the sort of things that I get involved with. General civil litigation, I think, is the best description for that.

Q. Have you testified as an expert before any other judges?

A. Yes, sir, I believe that I have. I was trying to review that for this hearing and I do not recall when but I believe that you have called me in a previous case to testify.

Q. Okay.

A. I just couldn't remember when and I couldn't

remember the case or the circumstances.

Q. All right. Has your opinion as an expert ever been disqualified?

A. No, sir, it hasn't.

Q. Okay. Your Honor, I would -- oh, let me ask you this. Mr. Gardner, are you familiar with the rates that attorneys charge in this community?

A. Yes, I am.

Q. And how are you familiar with that?

A. I've practiced in Hillsborough County for -- next month will be 20 years. I do this on a daily basis. This is the way I support my wife and family.

Q. Have you ever pursued court-awarded attorney's fees for work on your cases?

A. Yes, I have.

Q. Have you had experts testify on your behalf?

A. Yes, I have.

Q. Okay. And have you consulted with other attorneys in the area to find out what people are charging in this marketplace?

A. Yes, sir.

MR. RODEMS: Okay. Your Honor, I would tenter Mr. Gardner as an expert on the matter of hourly rates for attorneys and the sufficiency of the hours in this case.

THE COURT: Any --

MR. BAUER: Just a few questions, Your Honor.

THE COURT: Sure.

VOIR DIRE EXAMINATION

BY MR. BAUER:

Q. In your practice, have you had any experience with 57.105?

A. Yes.

Q. How many have you filed?

A. I have two presently pending and -- or excuse me -- actually, I have two separate cases with 57.105's in them. In one case I have two 57.105's; one against one party and one against two parties within the same case. Aside from that, I have probably filed three others. I have not kept track of them but I do have those presently pending.

Q. So I'm sorry about -- how many total is that approximately?

A. About five.

Q. About five. And how many hours of research have you conducted on 57.105's?

A. Well, I filed the most recent -- excuse me -- the second to the most recent 57.105's that I filed was in approximately January 2008, and I realized that there had been some changes to that. In preparing that

January 57.105 motion, I called another attorney, Mike Edenfield, and I had him go through the details with me and from that I went and looked at the statute and then I did run a West Law check of it and I would think that I probably spent about three hours doing that one.

Now, when I did the second one in the separate case about -- about seven -- about seven weeks later, I did not go back and redo that research because I figured that things had not changed much in seven months. So the second one I didn't research at all because I had just done it.

Q. So I'm sorry there were a couple of numbers there. If I can make sure. Was it -- so you have a total of three hours of research on 57.105's?

A. Three hours in January, 2008, and no research in -- it was about February, late February, when I filed the second -- filed the 57.105 in the second case.

Q. And have you -- have you written any articles on 57.105's?

A. No, sir.

Q. Have you participated in any board discussions on 57.105's?

A. Well, aside from Mike Edenfield and I talking about it and, of course, Rodems and I talking about it, I don't know if that qualifies as a board but I feel

like I've pretty well talked around the issue and I feel like I'm pretty familiar with it.

Q. But are you --

A. I do not hold myself out to be an expert on that particular issue. I have not done any particular study that would qualify me as an expert on 57.105. I'm not sure that there is such a thing. I think that as a general civil litigator that I do have sufficient knowledge and understanding of 57.105 to comment on Mr. Rodems' use of that in this case or application of that in this case.

Q. But you wouldn't specifically be an expert on how much time it would take, what the complexity of a 57.105 or any of the parallel motions that were filed with it?

A. If we might address the 57.105, I think that, yes, I do have a sufficient understanding that I feel that I am competent to charge people to represent them in front of judges on 57.105 motions and I have done that in these two cases that I've --

Q. But are you an expert on that?

A. Am I an expert? Well, I'm kind of getting there. I think that I am qualified and does that make me an expert that I would charge people money and that they would pay me money to represent them in court on that? I would think that, yes, that would qualify me as an

expert. Will I tell you I'm an expert? No, I'm not going to claim to be an expert but I do believe that when I go into court and I have somebody's case on the line and when they're paying me money to do that, I believe that I better know what I'm doing.

MR. BAUER: That's all. Your Honor, I would object to the witness being qualified as an expert specifically on the issues of 57.105, how much time it takes, was it an appropriate amount of time. I think he's clearly qualified to, to offer his opinion though as to the specific hourly rate as experienced in all of those issues but I think he's clearly articulated himself that he can't provide anything to the Court that the Court in its own experience, and really any attorney's experience as to what 57.105's are and how much research they take and what different issues are, I don't think this witness has anything to add in those particular areas.

THE COURT: All right. We're not talking about an expert in the substantive 57.105 field but simply time and effort, research required for an otherwise competent lawyer to research and get up to speed on a 57.105 motion. So I think he's got enough qualifications to comment on those

areas as he would on any other area that he's familiar with and by experience he's filed enough 57.105 motions to give those kind of opinions. So I'm going to overrule your objection.

MR. BAUER: Yes, Your Honor.

THE COURT: You may continue.

BY MR. RODEMS:

Q. Thank you. Mr. Gardner, are you familiar with me as an attorney?

A. Yes, sir. You and I have practiced together. I did go back and look at those cases. We were together on a federal case in 2003. We co-counseled the case and then in 1994, you and I had a case against each other that went to the First District Court of Appeal, and I was successful by the way.

Q. All right.

THE COURT: So there.

MR. RODEMS: I will --

THE WITNESS: I'm not sure you want that on the record but anyway.

MR. RODEMS: I would duly note that and put the flames out on my -- seat of my pants right after the hearing.

BY MR. RODEMS:

Q. Well, having known me since -- by the way, after

-- that case was Karzonowski versus Turner Tree and Landscape (phonetic)?

A. An employer/carrier.

Q. Okay.

A. It was definitely Karzonowski.

Q. Okay. After 1994, and up until 1993, when we co-counseled on a case together, did you have occasions to observe me as an attorney?

A. Yes, sir.

Q. Okay. And what is your opinion of me as a practitioner, or how would you describe my qualifications to the Court?

A. I have the highest opinion of your qualifications, your ethics, your representations of people. I call you periodically, at least once every other month, when I want to kick something around and you're always very helpful to me. You always have an answer or you always have some sort of direction. I believe that you are one of the most skilled litigators in this county.

Q. Well, by the way, what was it about the case in 2003 that you called me to co-counsel with you?

A. The matter was a federal case and I am -- although I am admitted to the Middle District, I do not -- I don't regularly practice in federal court and that

particular case was an automobile crash where our client ran into the back of a parked moving van that had parked in the middle of the street to unload some equipment. The gentleman hurt himself pretty badly.

Q. All right. Have you, in this case that we're here on today, have you reviewed my affidavit of time?

A. Yes, sir. More specifically I reviewed the affidavit bearing certificate of service date of November 6, 2007, I also reviewed a pleadings index and I did look through several pleadings that I've specifically noted here. I have not reviewed the other two boxes but I did go through your pleadings box.

Q. Okay.

A. And that is an 8 1/2 by 11 standard storage box and there are three boxes full for this case.

Q. Okay. And do you have an understanding of what the events were that led to the Court entering two orders entitling me as the defendant's counsel to be paid an attorney's fee?

A. Yes, sir, I do.

Q. Okay. And briefly, what is your understanding?

A. The first matter was a discovery issue with regard to interrogatories and requests to produce that were propounded on March 28th, 2006. There was a motion to compel, a response to those. Subsequently, there was

a -- I believe there were two show cause orders. There also was a certiorari application for appeal with regard to the discovery. There was a reconsideration motion. I was not aware of the disqualification motions. I didn't see those in your affidavit and I didn't review those but apparently there were at least two issues with regard to recusing the judge and that was all that I had noted with regard to those.

There was a second matter with regard to the 57.105 motion. You filed a motion to dismiss or a motion to strike on February the 8th, 2006. There was an amended motion that was filed 21 days later as is appropriate. There was also a motion to reconsider that. You had filed a memorandum of law. The plaintiff responded a couple of times. There was a request that the bailiffs show up for all proceedings in this case. I did review the pleadings that were filed by the plaintiff that you had moved to strike and I found them to be nonsensical, I believe, is the most appropriate way to describe them. They weren't appropriate responses to your requests.

Q. Did you review the specific tasks in the itemized sheet that was attached to my affidavit for the hours that I'm seeking compensation for?

A. I did. I went through the -- I read both of the

orders that are attached to your affidavit and I reviewed every single time entry and then on a couple of occasions I did go and compare them to the pleadings index. I did not then go back to the pleading to see that it was eight pages or 12 pages but I did review those two in conjunction with each other.

Q. Based on your review of the file and your experience as a lawyer, are the tasks that I'm seeking to be compensated for reasonable tasks to be performed in connection with these two matters?

A. I do believe that the tasks are reasonable and I do believe that the amount of time that you spent to perform those tasks are reasonable as well.

Q. Okay. Do you -- based on my experience and qualifications as you know them to be and as I've testified to here today, do you have an opinion on what the appropriate hourly rate is for a person such as me?

A. Yes, I do have an opinion.

Q. Okay. And what is that opinion?

A. I note that you have requested -- this is Paragraph 3 of your affidavit -- you're requesting $350 per hour. I do believe that $350 an hour is appropriate. I know of two other attorneys, both of them practice in my specific area in Brandon who are charging $400 per hour. One is predominately a family

law attorney. The other is a condominium land use attorney and both of those are charging $400. I believe that your skills far exceed those attorneys. I am very familiar with both of those attorneys and their skills having been employed for five years by one of them.

I also mentioned Mike Edenfield. I've talked with him about his hourly rate and his is $325 an hour. I believe that you and Mike have similar experience and similar qualifications but I do note that you practice in Tampa. I do recognize that expenses in Tampa -- for parking, we don't pay for parking out in Brandon. So I do believe that your hourly rate should be the $350.

Q. And what is your knowledge of what other attorneys are charging in the area?

A. It's -- can you be more specific, I mean, I can tell you who -- Mike McDermott is the one that's at $400 an hour and Cliff Curry is the other one that's at $400 an hour, Edenfield is at $325, I'm at $300.

Q. And what of these attorneys are board certified or AV rated?

A. Cliff Curry may be board certified in family law. I'm honestly not sure of that. I do believe that McDermott or Edenfield are certified in any category. I do note that you are trial practice certified, I believe, yes, sir.

Q. In your experience or in your opinion, should the hourly rate for attorneys who are board certified be higher than for attorneys who are not board certified?

A. No question. You went to the trouble to acquire the skills necessary, to have the number of trials that are necessary, and you also took the test and you studied for the test and I think that you should be compensated at a rate higher than attorneys who have not done that.

Q. And Mr. Gardner, are you expecting to be paid for your expert testimony here today?

A. I am, sir.

Q. And what is your hourly rate?

A. My hourly rate is $300 per hour.

Q. And how many hours have you expended up to the time of this hearing, not including the time of this hearing?

A. I started this morning at -- well, you and I have had a couple of telephone conversations. I've not included those but I did start working on the file this morning at 10:30. I knocked off at 12:30, I ate lunch and then at about ten minutes to 1:00 I got in my car and headed over here and the hour now is 2:26 p.m. So I've now been at it about two hours this morning and then another hour-and-a-half this afternoon.

Q. So a total of three-and-a-half hours?

A. Yes, sir.

Q. Okay. Now, when we were scheduled for hearing back in January, did I send you documents by e-mail and other things to review?

A. You did and I -- honestly, I only gave them a cursory review because you had given me the alert that this was probably going to be continued. You -- I do not believe you brought your file but you did send me the affidavits and the other things and I knew they were there. I just didn't put a lot of time into it but I did review but didn't know what was going on.

Q. Whatever your review may have been earlier on or as this case has progressed, you have not included that in your three-and-a-half hours that you're seeking today?

A. No, sir.

MR. RODEMS: Okay. That's all I have, Your Honor.

THE COURT: How much cross do you have?

MY BAUER: Five minutes.

THE COURT: Okay.

CROSS EXAMINATION

BY MY BAUER:

Q. You testified previously that you went through

each time stamp and determined that they were appropriate?

A. The times -- the time records that are attached to the affidavit bearing certificate of service date of November 6, 2007, that is correct.

Q. Did -- how did you make a determination that preparing a motion for 57.105 fees would take an hour-and-a-half? Did you make any attempts to look at the statute, determine the research, what would be entailed with that or did you just look at it and go, yeah, that looks right?

A. Well, what I did, as we discussed a moment ago, was I did one in January and I recollected that it took me about three hours to do it and I believe that Mr. Rodems' skills are superior to my own in legal research and so he spent about half as much as I did, so I figured that that was reasonable, and I did review the -- I did read the motion and he has several very detailed entries that are in there. So, you know, I thought it was a pretty good motion and 1.2 seemed like a very reasonable amount of time for him to have spent on that.

Q. What about the motion did you feel was very detailed?

A. It was where -- may I specifically review the

motion. What he talks about is the -- fails to state a cause of action in order to determine whether or not -- it's a motion to dismiss. I'm looking at the wrong one. Motion for sanctions at 17.

Q. You have -- oh, I'm sorry.

A. I have Volume One and you have Volume Two.

MR. RODEMS: Well, the motion to dismiss is in that first volume.

THE WITNESS: Yeah, but I think you were asking about the 57.105.

MY BAUER: Yes, I was asking about the 57.105.

THE WITNESS: See, what he did was that he has numbered paragraphs and this -- I'm looking at defendant's motion for sanctions pursuant to 57.105 Florida Statutes bearing a certificate of service date of February 28, 2006. And what he did was that he went through and first of all recited Paragraph Number 1, the 21 days that the copy was provided --

BY MR. BAUER:

Q. Which is standard language out of the statute, correct?

A. That's out of the statute.

Q. So he would have had that in seconds? I mean,

you just go to West Law, you type in FLST 57.105, the statute's in front of you, there's the language, you cut and paste it?

A. I tell you how I got it was when I did my motion in January, I got the book out and I read it but 57 has -- 57.105 has several subparts and so I had to, you know, identify the subpart and then read it very closely so as not to make a mistake in sending it to the Court and blow the procedure, frankly.

The next thing he did in the motion was that he recited the motion to dismiss the counterclaim that the plaintiff had served and then he goes through their allegations under subparagraph -- identified with small alphabet letters. And then under Paragraph D, he specifically goes through and identifies what allegations the plaintiff has made and then recites how it is improper and I believe that that required some effort. And I don't mean "some effort," I mean some above-the-ordinary effort in order to go through and specifically recite that. So when I saw that it was 1.2 hours, to me, that seems reasonable just for the motion on -- in and of itself, not necessarily coupled with any research and then if he did the research and drafted the motion in 1.2, then he is a good lawyer.

Q. Comparatively to other statutes, 57.105 has eight

subparts in it, is that correct?

A. I think it's seven.

Q. Seven; that's really not a long statute, is it?

A. I think it's seven.

Q. They're very much short, brief little quick paragraphs?

A. Yeah, but they deal with a bunch of stuff. Number Seven deals with reciprocal attorney's fees. I believe that this is Number Six, isn't it?

Q. That's a real short sentence.

A. Well --

Q. I mean, it's really not -- as statutes go, it's not a complicated statute?

A. I've practiced worker's comp for 17-18 years and nothing is more complicated that worker's comp. So when you compare 57.105 to worker's comp, 57.105 pales compared to the worker's comp section, okay.

Q. Okay.

A. But to call it a simple statute, I don't think so. I would not necessarily agree.

Q. And did you go through -- you said when you looked at the letters and determined -- did you go back -- strike that. When you reviewed each entry for the different letters, did you go back and read the letters?

A. No, sir, I didn't read any of the letters.

Q. And did you look at any -- what did you look at to give you the indication that 2.2 hours would be reasonable for the entry on 10-18-2006?

A. It isn't so much as what I reviewed as the explanation that I heard from Mr. Rodems on cross examination this afternoon where he explained all of the steps that he had to go through in order to --

Q. So other than his testimony, you have no personal -- you've made no examination of that document to come up with it? You've just looked over this, said 2.2, yeah, that looks good?

A. No. What I did was that I took the 2.2 on 10/18, and then I looked at this -- what do you call this? A pleadings index -- and I realized what was done in addition. I believe it's number -- let's see, the date is -- the entry for -- the entry in Mr. Rodems' pleading index indicates the following: Defendant's motion to strike plaintiff's October 18, 2006 letter, and plaintiff's October 18 letter and plaintiff's motion to stay proceedings until the determination is made concerning representation.

So when I looked at that in conjunction with the letter, the motion to stay, I realized that there was more than just, you know --

Q. So you just looked at -- you looked at the

pleading index and you looked at the names of the pleadings?

A. And then I heard Mr. Rodems explanation this afternoon where he talked about how the letter was inappropriate. It was -- I think he said it was either --

Q. But you have -- but you have no personal -- you have no personal knowledge about that looking at it yourself?

A. I did not look at the letter.

Q. Okay.

A. And I did not look at that specific pleading. I did look at his time entry in the index.

MR. BAUER: That's all I have, Your Honor.

THE COURT: Okay.

MR. RODEMS: I have no redirect.

THE COURT: All right. Argument? Brief.

MR. RODEMS: Well, I would like to add one more piece of testimony, Your Honor, just about my efforts in this.

THE COURT: Well, we're already past the time.

MR. RODEMS: I just -- briefly, I just want to say that in preparing for this hearing today I spent approximately two hours getting ready and --

THE COURT: Do you get that?

MR. RODEMS: Well, that's the point I was going to make in my closing. I don't know if he had any question about that but --

THE COURT: I don't think you do, do you?

MR. RODEMS: Well, yes, sir, I do have some case law that says in a -- in a case where you're seeking sanctions as opposed to statutory attorney's fees that the Court can award the time expended for proving the amount of the attorney's fee. And that would be the case of Condren vs. Bell. I've got a 2003 Fla.App. Lexis 13988 cite. And also Bates vs. Islamorada, and that's 939 So.2nd 171. And here's the two cases, Your Honor, and I've highlighted the pertinent portions. Let me just get you a copy here.

In the Bates case, the appellants argue that fees may not be awarded for pursuing the amount of attorney's fees that the trial court awards. And then the Third District says that they agree with the Court in Condren vs. Bell, which is a 4th DCA, which holds that: "Because the fees awarded for litigating the issue of fees was a sanction and supported by substantial competent evidence, the award does not run afoul of State Farm Fire and

Casualty vs. Palma, 629 So.2nd 830.

THE COURT: Okay. All right.

MR. RODEMS: And then --

THE COURT: And that wasn't -- well.

MR. RODEMS: And then the only other case --

THE COURT: Well, any cross on the additional testimony?

MY BAUER: In preparing for this hearing, what exactly -- you'd already drafted motions, you'd already drafted your memorandums, you'd already done those. What, in addition to that, did it require you to do?

MR. RODEMS: I had to look at every component related to these two issues, review again all of the documents affiliated with it and brief my expert, you know, by telephone and in person, and I would suggest that that took about two hours of time. And then, of course, this hearing has been going for about an hour-and-a-half.

MR. BAUER: If I may just have one moment to review this case.

THE COURT: Well, that will be for anyway.

MR. BAUER: I have nothing else on cross.

THE COURT: Okay.

MR. RODEMS: All right. Your Honor --

THE COURT: Well, we're kind of over the time so I don't know, you know.

MR. RODEMS: Well, the only other case I would cite to the Court then would be -- and I don't know if you need this but there is a 2nd DCA law that says if an attorney is testifying as an expert and expects to be paid, then it's presumed that he'll be compensated for his time and that may be common law to everybody but I brought two cases.

THE COURT: Yeah, I've done that.

MR. BAUER: I agree with that.

MR. RODEMS: Okay. Then --

THE COURT: Okay. So on this, how do you want to present your argument? I mean, I don't think that you need an extra hearing on that. Are you willing to stand on the testimony or you want to -- I mean, what can you say on the movant's side?

MR. RODEMS: No, I would stand on the testimony. If you need to hear something else from me, I'll be happy to do whatever the Court pleases.

THE COURT: All right.

MY BAUER: Your Honor, I -- very briefly, two

minutes possibly. It's just I think clearly that the Court has already awarded that they're entitled to sanctions; however, I think given that the movant in this issue is asking for amounts in even excess of what their own expert charges. I think the amount of $350 is excessive specially when it's going up against a pro se litigant.

There is -- I briefly raised the defense previously at this hearing that there should be a different standard and I will just give quickly for the Court's review Hanes v. Kerner, 404 US 515. Even the United States Supreme Court rules that when it comes to pleadings there is a different standard that's to be held with pro se litigants and I believe it's, at the very least, it's not appropriate to consider whether the award; it's to award -- how many -- how much sanctions should be applied and I do not think that this Court should give the heaviest hand it possibly can against a pro se litigant in this case when he was, and has presented to the Court, vehemently tried to find counsel, presented affidavit after affidavit showing how many times he tried to get counsel and wasn't able to.

Regardless of what the testimony has been

here, 57.105 is a very very simple statute. A beginning attorney can figure it out very quickly. 1.25 hours is, I think, excessive for hearings. I don't think it's appropriate to award time for what is otherwise secretarial costs. If they're charging secretarial rate or something different but I certainly don't think those hours should be at $305 an hour and I think certainly 2.2 hours in attempting to find relief for the Court when the Court was quite capable of finding it's own relief, I think that's certainly excessive.

I think probably more appropriate award is approximately somewhere between ten and 15 hours to do this type of work. It's not difficult, it's not complicated, it was fairly straightforward. I think that would be a more appropriate award.

THE COURT: Relatively speaking, the language of 57.105 is concise, but as we in Louisiana would say, there's boo coo cases involving issues of interpretation and application of the different sections and subsections of 57.105, and they still keep coming out along with the occasional amendment to the statute by the legislature.

That being said, I would find that the hourly rate of $350 an hour is reasonable. And, again,

this is a sanction. The amount of time is a factor but I haven't looked at a sanction award of fees as the same way I do as a statute based on fees, based on a contractural provision or a statute, a prevailing party statute, for example. It is designed to punish and I think the case law even allows sometimes the sanction to be more than that the actual attorney time if the conduct, the underlying conduct involved, is sufficiently egregious. But on the other hand, I think that can be taken into account in awarding less than the actual attorney time, and while I think the overall time of the -- looks like it's about 38-and-a-half hours is overall reasonable, I'm inclined to award 30 hours under the facts of this case, but I am going to award Mr. Gardner $300 an hour plus three-and-a-half hours for his time. Okay. So if you'll prepare an order.

MR. RODEMS: I will, Your Honor.

THE COURT: Run it by the other side.

MR. RODEMS: Thank you.

THE COURT: We'll be in recess.

(Whereupon, the proceedings concluded.)

C E R T I F I C A T E

STATE OF FLORIDA

COUNTY OF HILLSBOROUGH:

I, BEVERLY ANN HUNTER, Associate Reporter, Berryhill & Associates, 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 report in shorthand the proceedings and evidence in the above-styled cause, as stated in the caption hereto, and that the foregoing pages, numbered 1 through 59, inclusive, constitute a true and correct transcription of my shorthand report of said proceedings and evidence.

IN WITNESS WHEREOF, I have hereunto set my hand in the City of Tampa, County of Hillsborough, State of Florida, April 11, 2008.

BERRYHILL & ASSOCIATES

By:_____
BEVERLY ANN HUNTER
Associate Reporter
Notary Public
State of Florida At Large

B

C

D

E

F

G

M

N

Q

R

Y