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August 18, 2010

William Gautier Kitchen
The Florida Bar
651 East Jefferson Street
Tallahassee, FL 32399-2300

Re: Neil Gillespie; The Florida Bar File No. 2011-00,073 (8B)

Mr. Kitchen:

Please accept this letter as my response to your letter of July 30, 2010, in accordance with Rule 4-8.4(g), Rules Regulating the Florida Bar. I am also enclosing a completed disclosure form mandated by Rule 3-7.1(g).

Prior to my response to the allegations contained in Mr. Gillespie's complaint form, it is important that I provide The Florida Bar with a summary of the events leading up to my representation of Mr. Gillespie that resulted in his filing of this complaint.

I. SUMMARY OF EVENTS PRIOR TO REPRESENTATION OF MR. GILLESPIE

Prior to this lawsuit, Mr. Gillespie was the plaintiff in a suit against Amscot Cash Advance. After losing in lower court, Mr. Gillespie appealed the ruling on grounds arising out of the Fair Debt Collection Practices Act. It appears from the record that the Defendant's were not confident that they would win on appeal and agreed to pay each of the three plaintiffs \$2000, as well as to pay \$50,000, in attorneys fees. Sometime after the close of this matter, Mr. Gillespie determined that the law firm representing him in his action against Amscot breached their fee agreement with him.

Mr. Gillespie initiated a lawsuit against Barker, Rodems, & Cook, P.A. ("BRC") in August of 2005, and was proceeding with his claims pro se. Mr. Gillespie alleged that BRC breached their contingency fee contract with him by retaining a greater percentage of the proceeds from a settlement than they were entitled to. Contemporaneous with filing his claims against BRC, Mr. Gillespie published a letter to a representative of Amscot, the defendant in the underlying lawsuit, making allegations of fraud and wrongdoing on the part of BRC and one of its partners. Based on this letter, BRC and the partner named in the letter filed a counterclaim against Mr. Gillespie alleging libel.

Despite having claims against him, Mr. Gillespie chose to proceed with the case pro se. Mr. Gillespie was without the requisite knowledge or skill required to litigate this case, but chose

to continue anyway. This had disastrous results and, when I met with him in early 2007, Mr. Gillespie had:

- (a) Been ordered to comply with a discovery request and to pay the Defendant's fees and costs related to his continuous non-compliance;
- (b) A motion for Section 57.105, Florida Statute sanctions filed against him, but had chosen to permit the frivolous claims to remain in place for eight months after being served with the motion before choosing to voluntarily dismiss them;
- (c) Voluntarily dismissed his claims against BRC without prejudice, while counterclaims were still pending against him. However, because the statute of limitations period had tolled, the effect was that the counts were dismissed with prejudice; and,
- (d) Filed motions to disqualify two judges who were formerly assigned to the case. Both motions were denied, but the judges subsequently recused themselves on their own motions.

As is evident from the foregoing, Mr. Gillespie was in a precarious situation when he approached me about representing him. Initially, I agreed to review the transcripts and pleadings that had been filed in the case up to that point, and to advise him as to how he should proceed with the case. In reviewing the file, it became evident that from the inception of the case, Mr. Gillespie had difficulties understanding and complying with the Rules of Civil Procedure. Mr. Gillespie was implored by the court to secure representation and the record showed that he had great difficulty in doing so. Furthermore, in April of 2007, Mr. Gillespie no longer had any claims pending against BRC, and there was no legitimate basis for a recovery on which a contingency fee agreement could be based. Mr. Gillespie represented to me, however, that due to the pending claims against him for libel and the pending motion for sanctions, he wished to be represented by counsel on an hourly fee basis. Mr. Gillespie also requested me to; if possible, reinstate his claims against BRC. I found this to be consistent with his representations to the Court during the February 5, 2007, hearing (transcript available upon request) immediately proceeding my initial consultation with him.

On April 5, 2007, I sent a letter to Mr. Gillespie advising him of his options in the pending action against BRC. In this letter I advised him that there was already an order against him awarding entitlement to attorneys' fees to BRC and that it was likely that he would be ordered to pay further attorneys' fees pursuant to the motion for section 57.105 sanctions. However, I advised Mr. Gillespie that I had negotiated a "walk away" settlement with BRC, and in consideration for both sides relinquishing their claims, BRC would not pursue the attorneys' fees that they were entitled. Because Mr. Gillespie had already dismissed his claims, I felt that I had negotiated an agreement that was very advantageous to Mr. Gillespie. However, Mr. Gillespie did not agree as he advised me that he did not wish to settle this action in the way that I had proposed and requested that I continue preparing for the case. A copy of this letter is attached as Exhibit A.

At this point, I agreed to represent Mr. Gillespie in this matter and negotiated a fee agreement with him wherein he agreed to an hourly billing rate. This fee agreement was

voluntarily entered into and signed by Mr. Gillespie on April 24, 2007. The agreement provided that I would bill for my time in connection with Mr. Gillespie's case at a rate of \$250/hour. A copy of this fee agreement is attached as Exhibit B.

II. RESPONSE TO SPECIFIC COMPLAINTS OF MISCONDUCT

1. Failure to zealously litigate claims:

During my initial conversations with Mr. Gillespie, we discussed strategy and concluded that I would attempt to reinstate his claims against BRC even though they were dismissed after the statute of limitations had tolled. Because reinstating claims in the same action as they were voluntarily dismissed was a novel legal issue and one outside of normal practice, I proceeded on dual fronts with two strategies I thought had the most prudent chances for success. I filed a motion to withdraw voluntary dismissal accompanied by a memorandum of law supporting it. Additionally, I amended the answer originally filed by Mr. Gillespie. At the time, we had no causes of action pending against BRC, so additionally, I included as part of the answer, a counter-complaint re-alleging the counts previously dismissed by Mr. Gillespie and adding a count for breach of fiduciary duty. This dual-front strategy was ultimately successful as my motion to withdraw voluntary dismissal was granted, and, as of today, the claims are still viable.

Mr. Gillespie also alleges that I "failed to present evidence that there was no signed contingent fee agreement," subsequent to Mr. Rodems' representations that there were. This allegation underscores much of the basis for my motion for withdrawal. The Complaint originally drafted by Mr. Gillespie includes a count for breach of contract and, specifically alleges in paragraph 6: "GILLESPIE and the LAW FIRM [BRC] had a written representation contract." The hearings in question were on Defendant's Motion for Judgment on the pleadings. Had I argued that no contract existed between the parties as Mr. Gillespie now claims I failed to do, it would have been repugnant to his position. Additionally, Mr. Gillespie now asserts that I failed to prove the non-existence of a contract by submitting affidavits. Clearly, Mr. Gillespie makes this assertion without an understanding of what is appropriate to argue in a hearing on a motion for judgment on the pleadings. Mr. Gillespie did not understand the procedural or substantive law surrounding this issue and now wishes to supplant his legal prowess with mine.

While Rule 4-1.2 provides that a lawyer should abide by their client's decisions concerning objectives, the comment to the Rule reads that "the lawyer should assume responsibility for the technical and legal tactical issues . . ." Mr. Gillespie made numerous tactical and legal errors during his time as a pro se litigant. It was for this reason that he solicited my services. We met and mutually agreed upon the objectives of the representation. Mr. Gillespie acknowledges this in his Pro Se Response to Attorney Robert W. Bauer's Motion for Withdrawal of Counsel (Exhibit C). However, Mr. Gillespie was consistently unwilling to permit me to represent him in a way that was professionally and legally appropriate. He consistently insisted that I take legal and procedural actions that were inappropriate and impermissible under the Rules of Civil Procedure, in the given situation. Mr. Gillespie had difficulty understanding why I was unable to make the procedural and legal moves he mandated, and as a result, our relationship as attorney and client became strained.

Mr. Gillespie claims that I failed to amend the pro se complaint. As previously explained, the actions I pursued were first aimed at re-establishing Mr. Gillespie's claims. Upon doing so, a motion for judgment on the pleadings was filed and noticed. The resultant order from the Court granted the motion as to Count II and dismissed it as to Count I. Rather than give leave to amend, however, the court explicitly ordered "in lieu of an amended complaint, all factual allegations contained in Count II are incorporated in Count I." A responsive pleading had been filed in this matter and without leave, an amendment was not permissible. Furthermore, because of the voluntary dismissal of his claims, there were statute of limitations issues involved in attempting to bring new causes of action.

2. Failure to zealously litigate against the BRC counterclaim:

As Mr. Gillespie correctly points out, I filed an Amended Answer to Defendant's Counterclaim. This answer was and is still to my knowledge, legally sufficient and effective. During my representation of Mr. Gillespie, discovery was conducted within the scope of BRC's claims. The purposes for the counter-counter complaint were fully discussed above, and, as noted; related to re-establishing Mr. Gillespie's claims rather than defending against BRC's counterclaim.

3. Failure to zealously pursue case management:

Mr. Gillespie seems to focus on Mr. Rodems' behavior with respect to case management in this paragraph of his grievance. While that is outside of the scope of any complaint against me and therefore does not warrant a response, I will respond to the overall allegation that I did not pursue case management. When I first became involved with this matter, there were a number of motions pending and Mr. Gillespie had already been ordered to pay attorneys' fees for non-compliance with a discovery request. Additionally, Mr. Gillespie filed a motion to have Judge Neilson disqualified. The motion was denied but Judge Neilson withdrew on his own motion and Judge Isom was appointed. Shortly before I began representing Mr. Gillespie, he filed a motion to have Judge Isom disqualified as well. Again, despite the motion being denied, she withdrew sua sponte. The constant reassignment of this case that resulted left a docket full of unheard motions and a backlog of issues to address.

I contacted Mr. Rodems immediately upon becoming involved in this matter and worked with him in amicably preparing for and conducting discovery. We were able to resolve many of the issues that existed and move the case forward. The motions were set and heard in relatively short order. Again, Mr. Gillespie was dissatisfied with the procedural tactics that I employed on his behalf; however, his dissatisfaction comes from an insufficient understanding of the Rules of Civil Procedure and is not predicated upon my failure to uphold any of my duties under the Rules of Professional Conduct. While I did not march into court demanding that the Judge reserve time on his docket to help with scheduling as Mr. Gillespie suggests I should have, I did work with opposing counsel to clear the procedural matters still pending and continue the discovery that had already been ordered. Because of the number of times the courts time was unnecessarily consumed by Mr. Gillespie prior to my representation of him, I felt it was

important to strive to complete the discovery process and disposition of pretrial motions in a way that did not require the court's involvement any more than was necessary.

4. Failure to zealously pursue discovery:

As explained above, Mr. Gillespie had voluntarily dismissed his claims against BRC prior to my representation of him in this matter. Because of this, much of the discovery he sought prior to the dismissal was moot. The few items that still existed from his discovery requests had either been properly objected to by Mr. Rodems, or produced within the appropriate time limits. Because the discovery requests had been appropriately complied with by Mr. Rodems, the motions that Mr. Gillespie filed to compel discovery were improper. I conducted discovery during my time as Mr. Gillespie's legal counsel in an ethical and amicable manner as I am sure Mr. Rodems will attest. In fact, upon learning of this grievance, Mr. Rodems wrote a thirteen page letter in support of my representation of my conduct during the course of my representation of Mr. Gillespie. In his letter, which is available upon request, Mr. Rodems wrote: "I found Mr. Bauer to be competent, bright, hardworking, and very conscientious of his client's interests."

Mr. Gillespie was under the false understanding that the order of entitlement of attorneys' fees against Mr. Gillespie could somehow be "mitigated" by my filing of burdensome and frivolous discovery requests. Despite my explanations to him as to the origin of the entitlement, he continued to implore me to undertake these dilatory tactics and became upset when I explained that I could not do so in good legal or ethical conscience.

5. Failure to seek disqualification of BRC's counsel Ryan Christopher Rodems:

This issue is another where Mr. Gillespie demanded that I take a position that was not procedurally available. My repeated attempts to explain the Rules of Civil Procedure in this regard were fruitless and led to my belief that our relationship had deteriorated to the point that we could no longer effectively communicate. Mr. Gillespie originally filed a Motion to Disqualify Counsel in February of 2006. The motion was heard and an order denying the motion was entered on May 12, 2006. Mr. Gillespie made a motion for rehearing in December of 2006 which was also denied. From that time forward, Mr. Gillespie wanted me to continue to present the same arguments that had already been denied by the court.

Throughout my representation of Mr. Gillespie, he suggested that I attempt to get Mr. Rodems disqualified as counsel for Defendants. It became apparent that Mr. Gillespie had a severe dislike of Mr. Rodems and was upset that the Court had denied his original motion in this regard. This is further evidenced by Mr. Gillespie's extensively explained arguments for disqualification of Mr. Rodems that are contained in his grievance against me. These are the same arguments that were made in support of the February 2006 motion and denied. Since then, there have been no novel arguments to support Mr. Rodems disqualification. When I attempted to explain this to Mr. Gillespie, he became enraged and insisted that his legal analysis of the issue was sacrosanct.

6. Failure to zealously defend against sanctions:

The claims relative to the Section 57.105 sanctions all originate from a time prior to my representation of Mr. Gillespie. I attempted to resolve the issues surrounding those sanctions and represented him in the hearing relative to that motion. The Judge however, did not find that the fact that Mr. Gillespie was a pro se litigant, excused him from compliance with the rules, especially when he was advised by opposing counsel that his actions giving rise to the sanctions were improper and given numerous opportunities to correct them. The transcript of the July 3, 2007 hearing on Defendant's Amended Motion for Sanctions Pursuant to § 57.105, Florida Statutes, is available upon request and serves as a good barometer of the efforts I undertook to correct the issues caused by Mr. Gillespie in this matter. The Honorable Judge Barton II, as part of his order granting sanctions against Mr. Gillespie stated: "The way in which Mr. Gillespie's side has been presented today -- with a high degree of professionalism and confidence reflects the wisdom [of retaining counsel in this matter]."

I believe that the statement of the court speaks for itself with respect to my representation of Mr. Gillespie in the aforementioned hearing. Mr. Gillespie erroneously believes, as mentioned earlier, that there was a way for me to "mitigate" the fees incurred by opposing counsel as a result of Mr. Gillespie's frivolous claims. For more than eleven months, Mr. Gillespie refused to withdraw the frivolous responses to the Defendant's counter-claim. In his grievance against me, he still asserts that the counter-claim constitutes abuse of process. Because Mr. Gillespie refused to withdraw the responses, BRC was required to prepare a motion to dismiss, notice the hearing, prepare and deliver the arguments in support of their motion. Clearly, because the response had already been deemed frivolous by the Court, there was very little room for argument that BRC was not entitled to their fees. Mr. Gillespie is too personally involved in this matter to understand the requirement of the Rules of Civil Procedure in this regard, and does not understand that the claims he forwarded are inappropriate responses in an answer to a counter-claim for libel.

7. Failure to inform contrary to Rule 4-1.4(a):

Soon after my representation of Mr. Gillespie began, he became hostile towards my staff. Mr. Gillespie, on numerous occasions, acted hostilely towards my staff while attending meetings at my office (See Affidavit of Beverly Lowe, Exhibit D). He also expressed displeasure that he was being billed for time spent by my law clerks and paralegals in connection with his case. While the billing practices employed during the scope of our representation of Mr. Gillespie fell within the fee agreement he signed (Exhibit B), I advised my staff that they were no longer to work on his case in an attempt to appease him.

Because my staff was removed from his case, they did not follow our standard operating procedures in regards to Mr. Gillespie's documents. As such, he was not provided with the Fact Information Sheet required to be filled out in connection with the Final Judgment ordered against him on March 27, 2008. This was an oversight for which I apologized to Mr. Gillespie, opposing counsel, and the Court in the letter dated July 24, 2008 (Exhibit 10 of Mr. Gillespie's grievance).

This letter is evidence of both my propensity as a human being to make a mistake, and my commitment to the notions of justice and ethics. I fully admitted and took responsibility for this mistake in 2008 and worked to ensure that it did not bias my client. The Judge did not sanction Mr. Gillespie for contempt and agreed not to do so if Mr. Gillespie submitted the Fact Information Sheet within ten days. Mr. Gillespie is confused as to the Court's retention of jurisdiction; as the Fact Information Sheet has been properly filled out, there were no further sanctions imposed. I regret my oversight in this matter. However, to err is human and I don't believe that the Rules of Professional Conduct contemplate an attorney being more than that.

8. Failure to zealously stay the Final Judgment:

Mr. Gillespie's initial response to the Final Judgment ordered against him was to appeal. He asked several times that I initiate such action, but there was not a good and sufficient basis to do so. Because enforcement of judgments is done ex parte, it was not possible for me to know what actions Mr. Rodems was taking in that regard. Upon learning that Mr. Rodems intended to proceed with garnishment, I filed an emergency motion for stay. At this hearing, the judge agreed to stay the judgment and requested that we post a bond. I explained to Mr. Gillespie that, if we were able to get his case before a jury, he had a good possibility of being awarded a judgment that could act as a setoff against the judgment that was already entered against him. He refused, however, to post a bond with the court. This refusal resulted in further collection efforts against him.

Chapter 77, Florida Statutes, specifically provides that the judgment creditor is not required to notice the judgment debtor of a garnishment until after the response of the garnishee has been received. Because Mr. Gillespie was unwilling to post a bond, there was little I could do to defend against an action that I was, statutorily, not entitled to notice of until after the action had already commenced.

9. Withdrawal as Counsel:

As stated previously, the relationship between Mr. Gillespie and I became strained soon after I made my appearance in his case. Mr. Gillespie had difficulty understanding and accepting the procedural steps that were necessary to advance his claim. When I explained to him that the procedures that he suggested were not appropriate within the Rules of Civil Procedure, he became frustrated and angry.

For reasons unclear to me, Mr. Gillespie also became hostile towards my staff and often questioned their qualifications. This made communication with Mr. Gillespie even more difficult. In actuality, many of those individuals listed at page 3 of Mr. Gillespie's grievance are now members of our profession and the Florida Bar. I feel it is our duty as Bar Member's, especially in Gainesville, to help train our future colleagues and as such, I have continually employed law clerks while they are attending the University of Florida, Levin College of Law. It was due to Mr. Gillespie's unwillingness to treat my staff with respect coupled with his frustration and inability to communicate effectively with me, that I felt it necessary to withdraw as his counsel in this matter (See Exhibit D). My Motion was heard and considered by Judge

Barton, who agreed with me and granted the motion.

Furthermore, the issues surrounding communication between Mr. Gillespie, and I had nothing to do with his disability. As a review of the communications and transcripts in his case shows, Mr. Gillespie is a very capable individual and, if he has difficulty expressing himself, it is not apparent to those with whom he is speaking. Our inability to effectively communicate was predicated on Mr. Gillespie's desire to dictate the legal and procedural methods of his representation. When his strategies and ideas were in contradiction with what was permitted by the Rules of Civil Procedure and professional ethics, he was unable or unwilling to accept it and would project his frustration onto our relationship. Our office made many concessions to accommodate Mr. Gillespie's demanding communication requests. For example, we agreed to have all telephone conversations recorded so that he could have them transcribed and included in his records. However, despite our efforts, communication continued to deteriorate.

10. Appeals Court Misconduct:

- a. Mr. Rodems' appeal was based on a position supported with legal precedent. While I did prevail, Mr. Rodems' claims were not without merit and certainly did not rise to the level of frivolity sufficient to justify Section 57.105, sanctions against him. Unfortunately, Mr. Gillespie made a very large legal blunder in voluntarily dismissing his claims against BRC. Due to this error, I had to take significant steps to reinstate the claims. The statute of limitations had tolled and, but for my actions on his behalf, Mr. Gillespie would have no viable causes of action today.
- b. As I stated earlier, Mr. Gillespie was adamant about appealing the Final Judgment. I explained to him that an appeal was not appropriate, but he proceeded to file the appeal anyway without my knowledge or assistance. Despite this, I prepared and filed a brief on his behalf in order to protect his legal position as much as possible. A reply brief was not necessary, so one was not filed. It is important to point out the dichotomous instructions that I often received from Mr. Gillespie in situations like this one. He has complained that I billed him too much without making satisfactory advances in his case; however, he often desired me to take action that was not only unnecessary or inappropriate, but also fee inducing. When I would choose not to do so, as in the case of filing a reply brief, he was unhappy with my representation. Conversely, when I would attend a hearing, he felt the time it took me to drive to Tampa or prepare for the hearing was too much and was unhappy with my representation.

11. Withdrawal and pro se response:

Mr. Gillespie's correspondence to the court dated October 1, 2009, that is referenced in paragraph 11 of his grievance serves as a better example of why it was necessary for me to withdraw as his counsel than anything I could say to you in support of my motion for

withdrawal. As you can see from the four-corners of this correspondence, Mr. Gillespie was contemporaneously upset that I had billed too many hours on his case, and upset that I had not taken more action. The conflicting nature of his requests made it necessary for me to withdraw as his counsel. Clearly, the feelings intimidated by Mr. Gillespie in this correspondence to the court show the impossibility of an attorney-client relationship continuing. I have attached this correspondence as Exhibit C.

12. Response to Allegations of Fraud:

Mr. Gillespie points to a letter I wrote to Governor Crist endorsing Mr. Rodems for consideration as a judicial nominee, as evidence that I committed fraud. I told Mr. Gillespie, at the outset of my representation, that if we can survive summary judgment and get in front of a jury, they would love to punish a "slimy attorney." This was in regards to his claims against BRC and his accusations that they lied to him. This comment is true today as it was then; jury's have distaste for attorney's that are unethical and Mr. Gillespie alleged just that. Furthermore, the comment was based on Mr. Gillespie's claims against Mr. Cook, not Mr. Rodems.

Within the scope of his representation of BRC in this matter, Mr. Rodems conducted himself as an honorable and ethical officer of the court. At no time did I find his behavior to be unethical. Although we were engaged in litigation that was very contentious, Mr. Rodems was at all times cordial and professional and treated me with dignity and respect. I found Mr. Rodems to be a competent and skilled attorney with all of the intangible qualities of character that we look for in members of our profession and hope to find in those seated on the bench. Therefore, I was pleased to write the letter attached to Mr. Gillespie's grievance when asked.

III. RESPONSE TO OTHER ALLEGATIONS NOT COVERED BY RULES OF PROFESSIONAL CONDUCT:

In addition to the foregoing complaints, Mr. Gillespie made a number of accusations. While they do not allege a rule violation or any misconduct, they do impugn my character and, as such, I will briefly respond to them.

Mr. Gillespie clearly enjoyed the opportunity to litigate this case pro se. When it came time to turn over his representation, however, he became frustrated with his loss of control over the specific actions taken. Mr. Gillespie always appeared to me to be an intelligent man, but he did not attend law school and other than one or two paralegal courses, has no legal training. Frankly, Mr. Gillespie often wanted to give legal suggestions and advice without sufficient knowledge to do so. He continuously requested that I take actions that were inappropriate and would give rise to liability on both of our parts.

Mr. Gillespie wished to be involved in all of the minute procedural aspects of his case and as such, representation of him became difficult. He made threats to my office staff and did not wish to have my law clerks work on his case. At the same time, however, he became agitated if I would bill for research or other tasks that he did not wish me to delegate. I tried

numerous times to address these issues with Mr. Gillespie in an attempt to reach an accord. By October of 2008, our relationship was such that my representation of him was no longer possible.

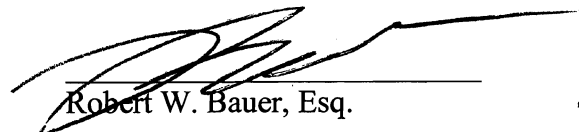
Mr. Gillespie claims that I accomplished little in my representation of him. I believe a review of the case proves otherwise. I was successful in reestablishing his claims against BRC and in securing a stay of the final judgment against him. This was done despite Mr. Gillespie's continuous undermining of my efforts. Please recall that Mr. Gillespie had made several serious legal errors, including dismissing his claims after the expiration of the statute of limitations and with counter-claims still pending.

The closing paragraph of Mr. Gillespie's grievance is, in my view, telling of his motives. Prior to filing, Mr. Gillespie asked that I cancel his bill. He threatened to file this grievance if I did not agree to his demands. Mr. Gillespie signed a fee agreement wherein he agrees to the hourly rates at which he was charged. My office conducted the work billed to Mr. Gillespie as per the terms of his agreement, and I was not going to conduct this work without compensation based upon threats of this nature. Mr. Gillespie has filed five, if not more grievances in this matter and appears to use them as his own form of leverage.

At the time I undertook his representation, Mr. Gillespie had no viable claims on which to base a contingency fee agreement. He came to me because he needed an attorney to defend against the claims that had been levied against him. I did so and was also able to revive the claims against BRC. I was up front with Mr. Gillespie about the possible costs of this litigation from the beginning, and advised while I could not anticipate the cost; it would likely be at least \$18,000. It is apparent to me that Mr. Gillespie is using the Florida Bar's formal complaint structure as his personal counsel in trying to leverage a return of the fees that I earned in prosecuting and defending claims during my representation of him. I hope that, upon review of the foregoing, the same is apparent to you. Additionally, I hope it is apparent that at all times during my representation of Mr. Gillespie, I conducted myself with professionalism, dignity, and within the bounds of the Rules of Professional Conduct. If I can provide you with any further information, please feel free to contact me.

CERTIFICATE OF DISCLOSURE

I HEREBY CERTIFY that on this 18th day of August, 2010, a true copy of the foregoing disclosure was furnished to David M. Sams, a member of the law firm of The Law Office of Robert W. Bauer, P.A., with which I was associated at the time of the act(s) giving rise to the complaint in The Florida Bar File No. 2011-00,073 (8B).


Robert W. Bauer, Esq.

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

LAW OFFICE OF

ROBERT W. BAUER, P.A.

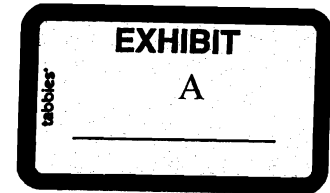
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April 5, 2007

Neil Gillespie
8092 SW 115th Loop
Ocala, Florida 34481



Ref: Initial Status Review of Case

Dear Mr. Gillespie:

This is a follow-up to the telephone conversation which we had on March 29, 2007. During that telephone conversation we discussed that I had reviewed your case and determined that some of the pleadings may not have been legally sufficient when filed. Further, I advised that there were discovery demands that we would be required to comply with. I advised you that I believed it proper to contact opposing counsel and advise them that we would comply with such requests and you stated that you agreed. Further, we discussed the possibility of speaking with opposing counsel and deferring any hearings for 57.105 sanctions. I also reviewed the original complaint and determined that it appeared to contain two well plead causes of actions that could reasonably be pursued in a court action.

After speaking with you I contacted opposing counsel as you directed and discussed the possibility of moving forward with this case without having the hearing scheduled for April 3rd and 4th. Opposing counsel had advised that those hearings had been consolidated to a single date of April 4th at 9:30. Opposing counsel appeared willing to forego the Motion to Compel Discovery, however was not willing to forego any 57.105 sanctions - unless both parties relinquish their claims and sign a full waiver. Mr. Rodem advised that he was not fully authorized at this time to give a "walk away" offer, but he felt that likely his partners would concur with that offer. He also advised that he believed that your voluntary dismissal of your complaint would be effective and he stated that he had case law on the issue. I requested that he forward the case law to me for my review. Mr. Rodem said the case law would be coming forthwith.

Regardless of the case law, it seems likely that if your Notice of Nondismissal is not effective, it is likely that we can come up with some type of pleading to reinstate your complaints. However, I can not give you an informed opinion on that matter until I have conducted extensive research.

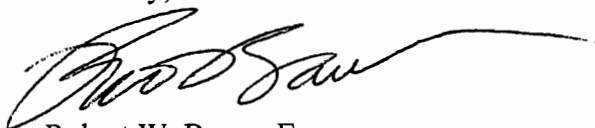
I make no suggestions as to what actions you should take in regards to whether or not you wish to accept their offer to walk away from this complaint with both sides bearing their own costs - but bear in mind that you do have one order against you awarding entitlement to attorney's fees

for contempt and there is a reasonable likelihood that you may bear some attorney's fees for the 57.105 complaint. It may be advantageous to you to forestall any further costs by settling at this time. However, there is always a possibility that the litigation could have a fortuitous outcome for you.

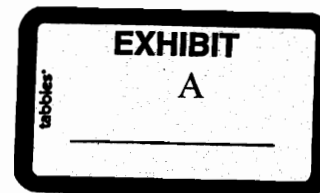
I have also advised opposing counsel that there are numerous motions outstanding and it probably would be in everyone's benefit for us to cancel the April 4th hearing and schedule a hearing wherein we can take care of all of the outstanding motions at one time. Mr. Rodems had no problem with this suggestion and agreed that that was probably in everyone's best interest. If you have any objection to doing so, please advise as soon as possible. Thank you and have a good day.

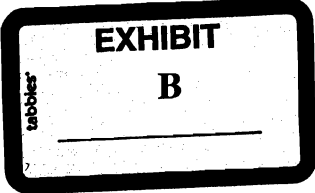
On or about April 2, 2007 I spoke with you again and you advised that you did not wish to settle this action with a "walk away" and you requested that I continue preparing for the case.

Sincerely,



Robert W. Bauer, Esq.





ATTORNEY CONSULTATION AND FEE CONTRACT

THIS AGREEMENT ("Agreement") is made on April 5, 2007, in Gainesville, Florida, between Neil Gillespie ("Client"), and Law Office of Robert W. Bauer, P.A., of Gainesville, Alachua County, FL ("Attorney"):

In consideration of the mutual promises herein contained, the parties hereto agree as follows:

I. PURPOSE OF REPRESENTATION

1.01 The Client hereby retains and employs the Attorney to represent Client in the following matter:

To represent him in case 05-CA-7205, Gillespie v. Barker, Rodems, & Cook, P.A. in the Thirteenth Judicial Circuit for Hillsborough County, Florida.

II. ATTORNEY'S FEE

2.01 In consideration of services rendered and to be rendered by the Attorney, Client agrees to pay for the Attorney's time at the following hourly rates:

Robert W. Bauer, Esq. \$250

Law Clerks \$100

Paralegals \$75

However, if Client's claim is governed by a statute or law which sets the Attorney's fees, and the law precludes any other fee arrangement other than the amount set by law, then the amount payable to the Attorney shall be limited to the maximum allowed by law.

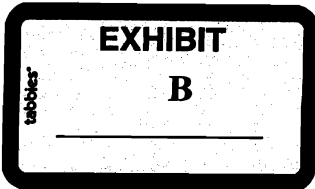
2.02 Client agrees to deposit a non-refundable retainer of \$0 with the Attorney to pay for the Attorney's initial research, review and preparation of Client's case.

2.03 At the time of each billing, the amount of legal services and expenses billed by the Attorney shall be disbursed from the Attorney's Trust Account to the Attorney's Operating Account.

a. Each billing will reflect the legal services rendered and the deposit necessary to cover the estimated legal services and expenses for the next billing period.

b. Client agrees to make such additional deposits for expenses as are required by the Attorney within ten (10) days from the statement's date.

c. Unpaid fees and expenses, if not paid within ten (10) days from the



statement's date, shall bear interest at the rate of five percent (5%) per annum until paid.

d. All sums due and to become due are payable at the Attorney's office in Alachua County, FL.

III. APPROVAL NECESSARY FOR SETTLEMENT

3.01 The Attorney is authorized to enter into any and all settlement negotiations on behalf of those whom the Attorney represents. This includes, but is not limited to, the Attorney's prerogative to pursue cash or structured payment settlement negotiations.

3.02 Client grants to the Attorney a power of attorney to handle negotiations and settlement discussions regarding Client's legal matter to the same extent as fully as Client could do so in person.

a. This expressly includes the right to sign Client's name on and to any insurance company drafts, money orders, cashier's checks, checks or other negotiable instruments made payable to the Attorney and Client, the Attorney, or to Client without the joinder of the Attorney, submitted to the Attorney on behalf of Client in full or partial settlement of this case.

b. This limited power of attorney further authorizes the Attorney to place the monies, referred to above, in the Attorney's trust account and from that trust account, make distributions and payments to the Attorney for the agreed to fee stated above, reimbursement to Attorney for any and all expenses incurred by the Attorney in handling this case, payments to Client of Client's interest in the monies recovered as stated above, and payments to parties other than Client and Attorney for their services performed, fees charged or bills rendered in connection with representing Client, including but not limited to expert witness fees, trial preparation bills paid to outside services, court reporter fees, deposition fees, investigative services, costs of exhibits or other expenses incurred by Attorney on behalf of Client.

3.03 No settlement shall be made without Client's approval, nor shall Client obtain any settlement on the aforesaid claims without the Attorney's approval.

3.04 Attorney is granted a limited power of attorney so that the Attorney may have full authority to prepare, sign and file all legal instruments, pleadings, drafts, authorizations and papers as shall be reasonably necessary to conclude this representation, including settlement and/or reduce to possession any and all monies or other things of value due to Client under this claim as fully as Client could do so in person.

IV. REPRESENTATIONS

4.01 It is expressly agreed and understood that no promises or guarantees as to the outcome of the case have been made to Client by Attorney. Attorney has not represented to

Client that Client will recover all or any of the funds so desired. Client also acknowledges that obtaining a judgment does not guarantee that the opposing party will be able to satisfy the judgment. It is further expressly understood and agreed that no other representations have been made to Client, except for those set out in this Agreement.

V. EXPENSES

5.01 All reasonable expenses incurred by the Attorney in the handling of this legal matter shall be paid by Client as incurred.

5.02 The expenses contemplated include but are not limited to court costs, consultants' costs, bonds, records, copy costs, certified copies, transcripts or depositions, telephone calls, duplication costs, photographs, expert and other witness fees, cost of investigation and investigator's fees, postage, travel, parking, and any other case expenses. Client has deposited with Attorney an expense deposit in the amount of \$3,000 which shall be deposited in the Attorney's Trust Account. The Attorney may draw against the expenses in the trust account as the expenses are incurred.

5.03 Any expenses not timely paid by Client shall be deducted by the Attorney prior to Client receiving his interest in the amount set forth in paragraph two (2) above. Client shall remain liable and promptly pay for all expenses incurred in this representation.

VI. COOPERATION OF CLIENT

6.01 Client shall keep the Attorney advised of Client's whereabouts at all times, and provide the Attorney with any changes of address, phone number or business affiliation during the time period which Attorney's services are required. Client shall comply with all reasonable requests of the Attorney in connection with the preparation and presentation of Client's legal matter.

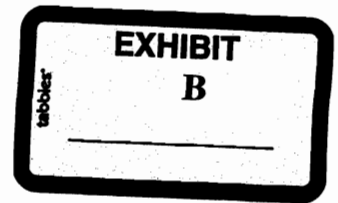
6.02 The Attorney may withdraw from the case and cease to represent Client for any reason, including without limitation: Client's failure to timely pay fees and expenses or deposits in accordance with this Agreement, subject to the professional responsibility requirements to which Attorneys are subject.

6.03 It is further understood and agreed that upon such termination of any services of the Attorney, any of Client's deposits remaining in Attorney's Trust Account shall be applied to any balance remaining owing to Attorney for fees and/or expenses and any surplus then remaining shall be refunded to Client.

VII. ASSOCIATION OF OTHER ATTORNEYS OR SERVICES

7.01 The Attorney may, at Attorney's sole discretion and expense, employ any other person or service that the Attorney believes is necessary to help or assist in this legal representation.

7.02 The rights set forth in this Agreement are subject to the professional responsibility requirements which regulate Attorneys.



VIII. FLORIDA LAW TO APPLY

8.01 This Agreement shall be construed under and in accordance with the laws of Florida, and venue for the adjudication of any dispute relating to this Agreement shall be Alachua County, FL.

IX. PARTIES BOUND

9.01 This Agreement shall be binding upon and inure to the benefit of the parties hereto and their respective heirs, executors, administrators, legal representatives, successors and assigns where permitted by this Agreement.

X. LEGAL CONSTRUCTION

10.01 In case any one or more of the provisions contained in this Agreement shall, for any reason, be held to be invalid, illegal, or unenforceable in any respect, such invalidity, illegality, or unenforceability shall not affect any other provisions thereof and this Agreement shall be construed as if such invalid, illegal, or unenforceable provision had never been contained herein.

XI. PRIOR AGREEMENTS SUPERSEDED

11.01 This Agreement constitutes the sole and only agreement by and between the parties. It supersedes any prior understandings or written or oral agreements between the parties concerning the subject matter discussed herein.

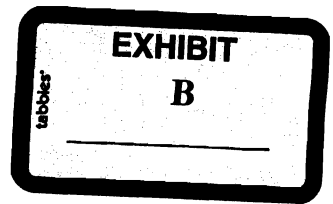
TAX DISCLOSURE AND ACKNOWLEDGMENT:

CLIENT IS ADVISED TO OBTAIN INDEPENDENT AND COMPETENT TAX ADVICE REGARDING THESE LEGAL MATTERS SINCE LEGAL TRANSACTIONS CAN GIVE RISE TO TAX CONSEQUENCES.

THE UNDERSIGNED LAW OFFICE AND ATTORNEY HAVE NOT AGREED TO RENDER ANY TAX ADVICE AND ARE NOT RESPONSIBLE FOR ANY ADVICE REGARDING TAX MATTERS OR PREPARATION OF TAX RETURNS, OR OTHER FILINGS, INCLUDING, BUT NOT LIMITED TO, STATE AND FEDERAL INCOME AND INHERITANCE TAX RETURNS.

FURTHERMORE, CLIENT SHOULD OBTAIN PROFESSIONAL HELP REGARDING THE VALUATION AND LOCATION OF ALL ASSETS WHICH MAY BE THE SUBJECT OF A LEGAL MATTER INCLUDING BUT NOT LIMITED TO PENSIONS, EMPLOYMENT BENEFIT AND PROFIT SHARING RIGHTS THAT MAY BE CONTROLLED BY ANY OTHER PARTY TO THE LEGAL MATTER.

I certify and acknowledge that I have had the opportunity to read this Agreement. I further state that I have voluntarily entered into this Agreement fully aware of its terms and conditions.




SIGNED on this 22nd day of April, 2007.



Neil Gillespie

SIGNED on this 24 day of April, 2007.



Robert W. Bauer, Esq
2518 NW 13th Street
Suite 200E
Gainesville, FL 32609
(352) 375-5960
(352) 337-2518 (telefax)
Florida Bar No. 0011058

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

NEIL J. GILLESPIE

Plaintiff,

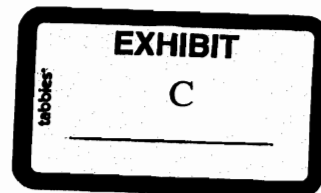
Case No.: 05-CA-7205

Division: C

vs.

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

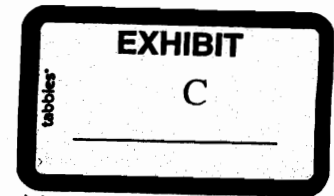
Defendants.



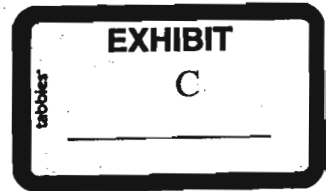
**Plaintiff Neil J. Gillespie's pro se Response to
Attorney Robert W. Bauer's Motion For Withdrawal of Counsel**

Plaintiff Neil J. Gillespie, pro se, states the following regarding attorney Robert W. Bauer's motion to withdrawal as counsel served October 13, 2008:

1. Attorney Robert W. Bauer was referred to plaintiff for this matter by The Florida Bar Lawyer Referral Service February 26, 2007 for the practice area of Libel and Slander. A copy of the LRS referral is attached as Exhibit A.
2. Lawyer Referral Rule 8-1.1, Statement of Policy and Purposes, states that "Every citizen of the state should have access to the legal system" ... and (a) "make legal services readily available to the general public through a referral method that considers the client's financial circumstances..." (Exhibit B)
3. The Florida Bar LRS application, Rules, IV, states: (relevant portion, Exhibit C)
D. A panel member, in filing an application as provided, agrees to:



- (2) charge for further services only as agreed upon with the client in keeping with the stated objectives of the Service and the client's ability to pay;
 - (3) carry, and continue to carry, professional liability insurance with limits not less than \$100,000;
 - (4) permit any dispute concerning fees arising from a referral to be submitted to binding arbitration if the client so petitions;
4. Attorney Bauer also agreed to remit to the LRS 12% of any attorneys' fees due for services performed in connection with any Regular Panel cases. Mr. Bauer has received \$19,212.44 in attorney's fees from plaintiff, but has not remitted any of the approximately \$2,305.49 he owes to the LRS with his monthly LRS reports.
5. Plaintiff retained Mr. Bauer on or about March 8, 2007. Prior to his notice of appearance in April, 2007, Mr. Bauer did a complete review of the case file and advised plaintiff on March 29, 2007 by telephone that the case was fairly strong, if we get in front of a jury, if we survive any summary judgments, we can do very well in front of a jury, if we can hold those punitive damages, Mr. Bauer said "If we can substantiate that that stuff was willful and if I can get, you know, the jury would love to punish a slimy attorney." Plaintiff responded: "You know, I want to get a good outcome with the case, I'm not interested in any personal ax to grind."
6. Mr. Bauer changed plaintiff his full hourly rate of \$250 per hour plus all expenses, including \$250 per hour for travel to Tampa, charges for associates, law clerks, legal assistants, and charges for filing, copying and mailing documents. Mr. Bauer told plaintiff the case may cost as much as \$18,000 total. Plaintiff has paid Mr. Bauer



\$19,212.44. Plaintiff does not have the ability to pay more and relies on disability income. Mr. Bauer has been churning fees at a rate that could reach six figures.

7. Mr. Bauer has been negligent in his representation of plaintiff, including:

a. Mr. Bauer has not submitted an amended complaint. This action is alive on plaintiff's pro se complaint submitted August 11, 2005. On several occasions the Court has asked Mr. Bauer about the complaint and he did not submit an amended one.

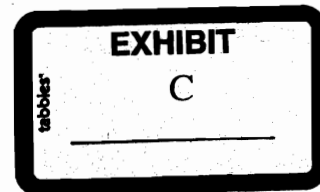
b. Mr. Bauer failed to obtain defendants' outstanding discovery, even while appearing before the court several times on plaintiff's outstanding discovery. Mr. Bauer should have simultaneously raised the issue of defendants outstanding discovery to mitigate sanctions. Plaintiff's motion to compel defendants discovery was submitted December 14, 2006. A second motion to compel was made February 1, 2007.

c. Mr. Bauer failed to timely stay the judgment pending the appeal to the 2DCA of the March 20, 2008 award to defendants of \$11,550 in attorneys fees. Instead plaintiff's bank account and attorney trust fund were garnished.

d. On July 1, 2008, Mr. Bauer misrepresented to the Court that plaintiff failed to complete a fact information sheet, resulting in a finding of contempt. Mr. Bauer later wrote to the Court about his error but the contempt stands.

e. Following the March 20, 2008 hearing and award of \$11,550 in attorneys fees, Mr. Bauer stopped providing plaintiff documents in the case. Plaintiff was forced to travel to Tampa to purchase documents from the clerk for \$1.00 per page.

f. While Mr. Bauer prevailed in the 2DCA on an interlocutory appeal to reinstate plaintiff's claims from the voluntary dismissal, he failed to move for attorney's fees.



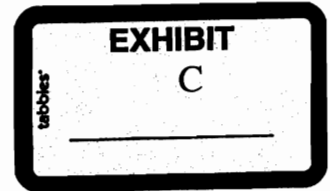
g. Mr. Bauer has been unable to maintain continuity of his office staff, and has very high employee turnover (perhaps reaching 500%) due to his narcissistic personality and unprofessional behavior. Some employees with little or no legal background were billed to plaintiff as legal assistants at \$100/hr. (KAM). When plaintiff inquired about the experience of people working on his case, Mr. Bauer became angry and accusatory.

h. Mr. Bauer has admittedly overbilled plaintiff, and continues to charge plaintiff for items not related to the case, such as his notice to the Court of his personal family vacation. There is also a question about billing for travel time at full hourly rate, and whether Mr. Bauer is conducting other business or pleasure during that time billed to plaintiff. The dates in question are July 3, 2007 (5hrs), August 15, 2007 (7.8hrs), October 30, 2007(7hrs), and March 20, 2008(3hrs), involving about \$5,700 in billed time.

i. Mr. Bauer has failed to zealously represent plaintiff. The above examples are illustrative and not exhaustive or all-inclusive as a courtesy to Mr. Bauer.

8. Mr. Bauer has grown tired of litigation that has proved difficult, and he wants to move on to easier and more profitable matters. On August 14, 2008 during an emergency hearing for a stay before Judge Crenshaw, Mr. Bauer complained to the Court that "Mr. Rodems has, you know, decided to take a full nuclear blast approach instead of trying to work this out in a professional manner. It is my mistake for sitting back and giving him the opportunity to take this full blast attack." (Exhibit D, pages 16-17)

9. On October 13, 2008, Mr. Bauer moved to withdrawal as counsel stating "[M]ovant is unable to communicate effectively with Plaintiff in a manner consistent with good attorney-client relations." Therefore plaintiff requested an accommodation under the Americans with Disabilities Act to restore effective communication with me in a



manner consistent with good attorney-client relations. (Exhibit E). At all times pertinent to this matter plaintiff was disabled. Plaintiff offered to retain co-counsel to assist with the case. Mr. Bauer did not respond to plaintiff's ADA request.

10. On May 14, 2009, plaintiff provided Mr. Bauer (at his request) a signed settlement agreement and a signed contingent fee contract, etc. Mr. Bauer did not respond.

11. Because of the forgoing, plaintiff has claims against Mr. Bauer for legal malpractice, fraud, breach of fiduciary duty, breach of contract, ADA violations, and other causes of actions, bar grievances, and IRS complaints. Mr. Bauer's interests are in conflict with plaintiff and Bauer can no longer represent plaintiff.

12. Plaintiff moves the Court for a 60 day stay to find replacement counsel.

13. Plaintiff moves the Court for leave to submit Plaintiff's First Amended Complaint.

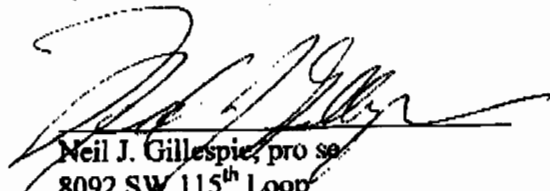
14. Plaintiff requests a stay the \$11,550 judgment for sanctions to defendants pending the outcome of this case.

I certify that on October 1, 2009, a true and correct copy of the foregoing was served by hand in court on Ryan Christopher Rodcms and by fax to Robert W. Bauer at:

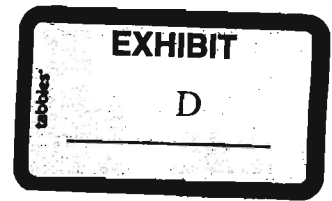
Ryan C. Rodcms, Esq.
400 N. Ashley Dr., Suite 2100
Tampa, Florida 33601

Robert W. Bauer, Esq.
2815 NW 13th Street, Suite 200L
Gainesville, FL 32609

RESPECTFULLY SUBMITTED October 1, 2009



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



AFFIDAVIT OF BEVERLY LOWE

BEFORE ME, the undersigned authority, personally appeared Beverly Lowe, who being duly sworn, declared as follows:

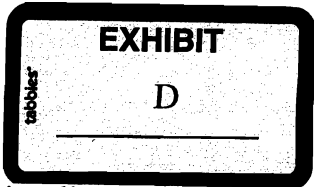
My name is Beverly Lowe.

During the relevant times hereto sworn, I was the Office Manager at The Law Office of Robert W. Bauer, P.A.

When I began at Mr. Bauer's Office, Mr. Gillespie was already a client with the firm. I was told that he suffered from some form of disability, possibly PTSD, and that we should take precautions when dealing with him. As such, I ensured that when I or others dealt with him, we were very courteous and accommodating to him. Despite these efforts, I witnessed Mr. Gillespie threaten to sue Mr. Bauer on more than one occasion if Mr. Bauer didn't do things the way that Mr. Gillespie wanted him to.

The worst incident I recall occurred on November 20, 2009. I was in my office when I heard our receptionist, Allison Beal, shouting, "You can't go back there!" While I can't remember what Mr. Gillespie said in response, I do remember him screaming back at the top of his lungs while continuing through reception and into our offices. Although I was on my way out of the office to pick up my daughter from school, I decided that I needed to stay and make sure our receptionist, Mrs. Beal, was safe. I waited in the reception area with Mrs. Beal, but could hear Mr. Gillespie screaming outside of Mr. Bauer's office.

Mr. Bauer had exited his office and came into the hallway between his office and reception where Mr. Gillespie confronted him. Mr. Gillespie put his face a few inches away from Mr. Bauer's face and screamed at the top of his lungs. I stood at Mrs. Beal's desk and told her to dial 9-1, but wait to press the last 1 until I told her. Mr. Gillespie's message did not resonate with me such that I can recall it today, but I do recall him screaming expletives over and over at Mr. Bauer. I heard Mr. Bauer tell Mr. Gillespie that he needed to leave or the police would be called. At that point, I told Mrs. Beal to press the last 1. Before she did, however, Mr. Gillespie stormed back into the reception area. I quickly moved out of the way so as not to be confronted. Despite my efforts, Mr. Gillespie stopped, turned on me and started screaming more expletives. I began to respond, but before I was able to finish, he again began screaming obscenities and stormed out of the office. I was very afraid



throughout the entire ordeal that he was going to hurt someone in the office. Additionally, I was afraid to go to my car and waited several minutes before leaving the building. After this incident, I felt the need to have a discussion with the employees on how to handle a client or previous employee that entered the office with a gun.

I declare under penalty of perjury that the foregoing is true and correct.

SIGNED on Aug 17th, 2010.

[Signature]
Beverly Lowe, Affiant

STATE OF FLORIDA
COUNTY OF Alachua

SUBSCRIBED AND SWORN TO BEFORE ME on 8/17/10,
by Beverly E. Lowe.



[Signature]
Notary Public, State of Florida

SUSAN D. REYNOLDS
(Print, Type, or Stamp Commissioned Name of Notary Public)

Personally Known X OR Produced Identification _____

Type of Identification Produced _____