

IN RE: Telephone Conversation
between Neil J. Gillespie
and Robert W. Bauer,
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RECEIVED AT: Home Office Business Telephone
Extension of Neil J. Gillespie

DATE & TIME: February 9, 2009
3:03 p.m.

TRANSCRIBED BY: Michael J. Borseth
Court Reporter
Notary Public

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2 (The following transcript was made from a voice
3 recording of the home office business extension
4 telephone of Neil J. Gillespie with attorney
5 Robert W. Bauer of Gainesville. Mr. Bauer
6 called Mr. Gillespie on February 9, 2009.
7 This call begins at 3:03 p.m.)

8 AUTOMATED ANSWERING MACHINE: This call is
9 being recorded for quality assurance purposes.

10 MR. GILLESPIE: Hello.

11 MR. BAUER: Mr. Gillespie, this is Robert
12 Bauer returning your calls.

13 MR. GILLESPIE: Yes. Thanks for getting back
14 to me.

15 MR. BAUER: No problem. How can I help you,
16 sir?

17 MR. GILLESPIE: The date that you have the
18 hearing scheduled is my birthday and I would rather
19 not do it on that day.

20 MR. BAUER: Sir, it is very hard to get any
21 court dates whatsoever.

22 MR. GILLESPIE: Also, the amount of time, 15
23 minutes, I don't think that's going to be
24 sufficient to go over the issues.

25 MR. BAUER: I think it's plenty sufficient and

1 that we are unable to communicate with each other
2 I'm unable to give you direction as to what I
3 believe is appropriate legal action to take. And
4 we can't come to agreement on things. There's not
5 a long discussion to go along with that.

6 MR. GILLESPIE: Well, actually there's quite a
7 few things to discuss. You don't have this problem
8 only with me, you have had it with about ten
9 employees that you have gone through. So it's not
10 just me, the problem is you, sir. But in addition
11 to that, there are outstanding 57.105 motions, they
12 have to be addressed.

13 MR. BAUER: Sir, if you would like to motion
14 the Court for more time -- I actually scheduled it
15 for thirty minutes originally --

16 MR. GILLESPIE: Uh-huh.

17 MR. BAUER: -- and the Court shortened to
18 fifteen of their own. I can't really argue with
19 the Court on that. Now, if you would like to
20 motion them for more time, that you believe that
21 there are additional issues to be brought up,
22 you're more than welcome, sir.

23 MR. GILLESPIE: Well, how do you intend to
24 address the outstanding 57.105 motions against you?
25 Are you going to pay Mr. Rodems for that?

1 MR. BAUER: That will be for Mr. Rodems to
2 assert whether he decides to or not. And
3 personally, I don't believe our motions for
4 rehearing are subject to a 57.105. I don't believe
5 they're frivolous in any shape or form. If -- if I
6 am released by the Court and Mr. Rodems still wants
7 to assert the 57.105's against me, I will defend
8 them against myself personally, which will in
9 effect also defend you. But if Mr. Rodems does not
10 raise that issue prior to me being dismissed, then
11 of course I would be released from responsibility
12 for those.

13 MR. GILLESPIE: All right. Let me just pull
14 up the file, because I think there were some other
15 issues I had.

16 MR. BAUER: I mean, Mr. Gillespie, I actually
17 believe in your case. And I believe in the motions
18 that we filed. And I don't think I have done
19 anything wrong with any of them and I wanted to
20 continue to represent you. However, you refuse to
21 accept my advice and my direction and my statements
22 of what I believe is appropriate to file and what's
23 not to file. Yes, I admit, this case has taken a
24 long time because there has been a lot of
25 distractions done by Mr. Rodems. You have some

1 limited resources. I have limited resources on
2 everything that I can do. I can't do a case that's
3 going to do every possible thing that could ever be
4 done that's going to bankrupt my firm in the
5 attempt to do it. I have to look at what the
6 resources are available, what possible claims are
7 available.

8 MR. GILLESPIE: In other words, you're putting
9 your interests ahead of mine.

10 MR. BAUER: No, I'm not putting your -- my
11 interests ahead of yours, sir.

12 MR. GILLESPIE: Well, I think that's what you
13 just said.

14 MR. BAUER: Let me try and rephrase what I was
15 trying to say.

16 MR. GILLESPIE: Well, here's the thing --

17 MR. BAUER: Is I have limited abilities to do
18 things. There are only so much that I can do. And
19 I have to logistically determine what is the best
20 way, what's most likely going to give you the best
21 results for those things. I believe the motions
22 for rehearing that we filed were appropriate. I
23 believe we had a complaint that has withstood
24 motions to dismiss. There is no point in amending
25 a complaint that is working.

1 MR. GILLESPIE: Well, first of all, let me
2 just stop you there because that -- even the Judge
3 said, if this complaint should be amended, and it
4 should be amended because there's a lot of stuff in
5 there and I certainly can't go through it all right
6 now with you, but I am amending the complaint.
7 There needs to be a count of breach of fiduciary
8 duty. The judge alluded to that. Another attorney
9 that's looked at this -- I have passed on his
10 comments to you. It could be amended under the
11 Rules of Civil Procedure for a relation back
12 theory.

13 MR. BAUER: Sir, what I don't understand is
14 every time you discuss things with me you tell me
15 that you have another attorney that's giving you
16 better advice than what I am giving you.

17 MR. GILLESPIE: No, I don't tell you that
18 every time I speak with you. I told you that in
19 relation to the count for breach of fiduciary duty.

20 MR. BAUER: Virtually every time I speak to
21 you, or lots of times, a substantial amount of
22 times, whatever description you want to use, I
23 speak with you, it's, you have spoken with another
24 attorney who has told you this. What I don't
25 understand --

1 MR. GILLESPIE: Sir, that's only applied to
2 the breach of fiduciary duty. I don't think it
3 applies to anything else. And part of the -- one
4 of the big problems was that after the judgment on
5 the 57.105, the Final Judgment for \$11,000, you
6 failed to timely stay that.

7 MR. BAUER: I tried to say that, sir. The
8 Judge denied the stay. I even did an emergency
9 hearing for the stay --

10 MR. GILLESPIE: Well --

11 MR. BAUER: -- and the Judge said, no.

12 MR. GILLESPIE: Yeah, but what the Judge says
13 is that you were late in filing the Motion to Stay.

14 MR. BAUER: No, I wasn't. The Judge didn't
15 say that.

16 MR. GILLESPIE: Well, it's on a transcript.
17 You better read it. Because the Judge points that
18 out to you. Do you have the transcript?

19 MR. BAUER: I don't have it right in front of
20 me and I don't know specifically what you're
21 talking about, sir. I don't know what --

22 MR. GILLESPIE: Judge Crenshaw say, what are
23 you talking about -- I'm paraphrasing. What are
24 you talking about, you filed a Motion to Stay in
25 June, this thing happened back in March, why didn't

1 you file it sooner? And then --

2 MR. BAUER: Why would I have filed it sooner,
3 no action was being taken?

4 MR. GILLESPIE: Because you have thirty days
5 to file it, that's why. It's a time issue. And
6 also, Mr. Rodems testified that you never spoke
7 with him about staying it. So you know, I'm not
8 going to go round and round here, you have made a
9 serious mistake and I consider it about a hundred
10 times worse than what Rodems did. And I'm going to
11 pursue it that way. And you have left me out here
12 with no recourse and it's not -- it doesn't work in
13 your interest, trust me.

14 MR. BAUER: I have left you with plenty of
15 recourses. I have attempted to try and move
16 forward with this and us have a resolution of this
17 so I can represent you in your actions. But you
18 don't want to come to any resolution.

19 MR. GILLESPIE: That's not true.

20 MR. BAUER: Well, can we work something out
21 then? How would you like to resolve this?

22 MR. GILLESPIE: Well, I think an Amended
23 Complaint has to be filed. You don't believe that.
24 The Judge has said it several times on the record.
25 So we disagree on that. You're on one side. The

1 Judge and I are on the other. That's one issue.
2 In fact, I sent a letter to you with four things
3 that I thought had to be done. The other is this
4 issue of Mr. Rodems perjury and filing an amended
5 motion to hold him in contempt. That needs to be
6 done. And by the way, I'm in communication with
7 attorneys at the Tampa Police Department. They're
8 waiting for evidence on that. So that needs to
9 move forward. Discovery needs to move forward.

10 MR. BAUER: I'm not a criminal attorney. I'm
11 not going to prosecute things like that. If
12 perjury is being committed, if there has been a
13 criminal offense of perjury, pursue that with the
14 proper authorities.

15 MR. GILLESPIE: That's fine. But I need the
16 Motion for Contempt. The Motion for Contempt is
17 not a criminal motion, it's a civil motion. And
18 the ultimate point of it is to show to the Court
19 that Mr. Rodems, because he has a conflict of
20 interest, will lie about anything in this case.
21 And that's why he needs to be disqualified. And I
22 think you have as much as acknowledged that already
23 that the problem you're having is litigating
24 against him and he will devote every resource he
25 has to this and you won't. That's the problem.

1 MR. BAUER: I can't -- do you expect me to go
2 bankrupt in representation of you, sir?

3 MR. GILLESPIE: First of all, that is a
4 fallacious statement.

5 MR. BAUER: Excuse me?

6 MR. GILLESPIE: That's a fallacious statement.

7 MR. BAUER: Why is it fallacious?

8 MR. GILLESPIE: Because there is no way this
9 case would bankrupt you. But it has to be
10 approached in an intelligent manner. And one of
11 the things that has to be done is to address
12 Mr. Rodems' behavior in this. And you I think
13 initially thought that wasn't going to be an issue,
14 but it's proved otherwise.

15 Anyway, I don't want spend a lot of time
16 arguing with you about this on the phone. I'm
17 trying to get this hammered out what I need to do
18 to represent myself in this hearing.

19 MR. BAUER: I suggest you appear for it or you
20 can file a motion to appear by telephone.

21 MR. GILLESPIE: Well, I'm going to file a
22 written response. And you know, I don't know what
23 else to tell you, but I do want to get a Amended
24 Complaint filed. Can we agree on that? If I make
25 a written amended complaint that it will be filed?

1 MR. BAUER: Well, sir, if you are filling one
2 pro se you can -- I mean, there's a hearing coming
3 up for me to be removed as counsel.

4 MR. GILLESPIE: Uh-huh.

5 MR. BAUER: If you want to do an Amended
6 Complaint, you can file a Motion for Leave to amend
7 and amend the complaint. And I strongly suggest
8 that you pursue, you know, the other motions that
9 are outstanding. I think they're warranted. And I
10 think they get the message out that we're fighting,
11 we're moving on things. I think it clearly puts
12 before the Court the mistake or perjury, whichever
13 the Court determines that they wish to interpret as
14 Mr. Rodems misleading the Court when he said that
15 certain things were present that weren't. If you
16 read those motions I clearly said that in there.

17 MR. GILLESPIE: Yes, you did. But --

18 MR. BAUER: It has been my experience that
19 attempts to go after other attorneys and get
20 contempt orders or citations against them is not
21 fruitful in any way. Attorney -- excuse me, judges
22 are very resistant to that and all it does is make
23 the judge -- especially when you're working in a
24 situation where you have a -- an attorney who is
25 working in their area, works -- has appeared in

1 front of the Judge often. If you call them into
2 question and you attack them and attempt to get
3 contempt orders against them, all you do is anger
4 the judge and lose places for you to be able to
5 move forward with them. That's why I'm not
6 interested in filing motions for contempt, because
7 I believe that it's strategically wrong to do that,
8 that it hurts you in the long run. That we're
9 better off pointing out his errors, saying, look,
10 this is what the mistake he made is. And I clearly
11 indicated in there that this may have been
12 mistake or it may have been intentional. I did it
13 in a manner that was obvious enough to not call
14 overly attention to it, but enough that a judge
15 hearing it is going to understand what I am saying.

16 MR. GILLESPIE: I would agree with that as a
17 general premise. This case is a little different
18 because the attorney is representing himself.

19 MR. BAUER: I understand that. However, I
20 still think that logic applies and that's why we
21 have to be careful. You have no note that when you
22 have appeared in front of the judges, while you
23 have made perfectly good arguments, reasonable,
24 well thought out arguments, the manner that you
25 have presented them has incited the judges to rule

1 against you.

2 When I come along and make almost the exact
3 same arguments, but I do it slightly different
4 because I am trying to look at the judge and I'm
5 trying to say, this is what's going to make the
6 judge listen to what I have to say as opposed to
7 provoke him and have him ignore me. That is what I
8 am trying to do and that's what I am trained to do.

9 MR. GILLESPIE: Uh-huh.

10 MR. BAUER: I am trying to get them to listen
11 to your arguments in a manner that allows them to
12 actually hear them and understand them and think
13 about them, as opposed to get angry. And one of
14 the easiest things you can do to anger a judge is
15 start talking about -- you can have the most
16 corrupt attorney in an area, everybody knows that
17 they're corrupt, but an outsider comes in and
18 starts accusing him in front of a judge that they
19 happen to have dinner with on Wednesday night at
20 some function and they had a good talk. You start
21 accusing them of things, that judge gets angry and
22 you get nowhere. Is it fair? Is it right? No.

23 MR. GILLESPIE: Listen, I agree with you. I'm
24 just going to share a little bit because how I feel
25 this case should go forward without you in it. I

1 am going to get a motion for the amended motion on
2 contempt filed and I'm going to get the Amended
3 Complaint filed. At that time I'm going to move to
4 put this in Federal Court. And the basis of
5 jurisdiction is in Ocala where certain things have
6 happened here that relate back to that.

7 MR. BAUER: What is -- there is specific ways
8 that you can get things into Federal Court.

9 MR. GILLESPIE: Well, let me just interrupt
10 for a minute because I don't think there is any --
11 any chances left in Hillsborough.

12 MR. BAUER: I understand that, sir, but I'm
13 trying to help you.

14 MR. GILLESPIE: Uh-huh.

15 MR. BAUER: I am wanting to know -- there are
16 specific reasons that you can get into Federal
17 court. Most things are actually state issues and
18 they're not allowed in Federal Court. The two
19 problems that I think you have to start with is the
20 amount in question. Off the top of my head, and
21 I'm not sure, I think the amount in question has to
22 be greater than 50,000 on the face of the
23 complaint.

24 MR. GILLESPIE: Well, there is going to be
25 civil rights issues.

1 MR. BAUER: Now, if you're claiming a Federal
2 civil rights statute, what is the civil rights
3 statute? Because you're going to have to have -- I
4 know you've already looked at American Disability
5 Acts and attempted to work with those things. I
6 will tell you that I would caution you about trying
7 to go into Federal court. Federal court while it
8 will give you the advantage of trying to get away
9 from Hillsborough County and maybe an arena that
10 you think that Mr. Rodems doesn't have an advantage
11 in. However, Federal Court is even fuller of
12 procedural land mines than State Court is. It's
13 even more difficult.

14 MR. GILLESPIE: Well, that may be true. I
15 have had more success personally in the Federal
16 court than State court. So that's what I am basing
17 it on.

18 MR. BAUER: I just, you know, want to make
19 sure that if you try and have it removed to Federal
20 court that you have -- you're going to have to have
21 a Federal question. And you're going to also
22 have to have -- because you don't have diversity.
23 You don't have one person in one state and another
24 person in another state. So that's not going to
25 get you a Federal hearing. You're going to have to

1 have the amount in question, which is -- it's
2 either 50 or 75,000. I think it's 50. I'm not
3 really sure.

4 MR. GILLESPIE: It's not going to be on money
5 basis.

6 MR. BAUER: I still believe you're going to
7 have to meet the money basis. It's not an either
8 or thing. There's going to need to be sufficient
9 damages to meet your amount in question. If I'm
10 not mistaken. And that is just trying to go from
11 memory on what your jurisdictional requirements
12 from Federal court are. So it's definitely
13 something to consider.

14 MR. GILLESPIE: Okay. Well, like I say, I've
15 sued in Federal Court before and when you're under
16 certain statutes or your under certain --

17 MR. BAUER: There are some.

18 MR. GILLESPIE: -- constitutional issues,
19 money is not an issue.

20 MR. BAUER: There is some. There is always
21 exceptions to the general rule. I will admit that.
22 But I just want you to be aware of that.

23 MR. GILLESPIE: But I don't know what this
24 communication problem is. I do think that there is
25 a communication problem or call it what you will,

1 you have got a problem holding people there. I
2 have never seen anything like that.

3 MR. BAUER: Sir, I'm sorry, but that's really
4 not your concern.

5 MR. GILLESPIE: Actually, it is my concern,
6 because without continuity of people working on my
7 case it adds to the cost and confusion and
8 everything else. And that has been a problem in
9 this case.

10 MR. BAUER: I have had numerous people leave
11 that left for very positive and good reasons.

12 MR. GILLESPIE: Uh-huh.

13 MR. BAUER: I have dismissed a few people.
14 But most of the people who have left have gone on
15 to law school, have gone on to military pursuits,
16 and other reasons of their own. They -- there was
17 another attorney here, but she got a position in a
18 much larger firm that she considered more lucrative
19 for her. You know, there is nothing that I can do
20 when people find -- use this as a launching pad for
21 them to go to better places. I have had many law
22 clerks, but law clerks is a transitional position,
23 it's expected to be that way.

24 MR. GILLESPIE: Well, that doesn't -- that's
25 fine if you're running a public service law firm,

1 but when you're serving clients continuity is a big
2 issue. Mr. Rodems has had the same people for ten
3 years. That serves him well. They know the
4 issues, they don't have to be looking --

5 MR. BAUER: Mr. Rodems has a lot bigger
6 payroll than I do.

7 MR. GILLESPIE: Well, I don't know about the
8 size of his payroll, and I'm just saying that
9 continuity of staff in any business is --

10 MR. BAUER: I would love to have people have
11 stayed with me from the very beginning and continue
12 on.

13 MR. GILLESPIE: Uh-huh. Well, it goes to your
14 hiring practices. I don't know what it is, but
15 there's something there that is not right. And I'm
16 just telling you that as a courtesy.

17 MR. BAUER: Well, I will do my best to look at
18 it and it is something that we have been looking at
19 and of course we always want to improve our hiring
20 practices. There's really not much that I can say
21 about that.

22 MR. GILLESPIE: Uh-huh. But the way you have
23 handled this case, you left me in a worse position
24 than I was before.

25 MR. BAUER: Sir, I revived your case. Your

1 case was dismissed. How could I have left you in a
2 worse position?

3 MR. GILLESPIE: Well, here's why. Because you
4 revived the case and then you went on to not make
5 any kind of settlement, other than the one that was
6 already on the table. And now --

7 MR. BAUER: There was no settlement offered.
8 There was no -- I can't force a settlement, sir.

9 MR. GILLESPIE: Listen, you didn't even make
10 an effort to make a settlement. But now I've got
11 in addition I have a lot of extra -- I have a Final
12 Judgment of \$11,550. I have --

13 MR. BAUER: Actually, those claims were still
14 in place. Even with your dismissed case those
15 counterclaims were still in place.

16 MR. GILLESPIE: They could have been -- he was
17 willing to settle those without reactivating the
18 case.

19 MR. BAUER: And I gave you the opportunity to
20 do that and you didn't want to. You wanted to
21 pursue this case.

22 MR. GILLESPIE: That was based on your
23 statements.

24 MR. BAUER: My statements that I still think
25 you could prevail in this case.

1 MR. GILLESPIE: Uh-huh. But you're asking me
2 how I'm worse off and I'm telling you. I'm worse
3 off because I have paid \$19,000 to you. I have
4 incurred an additional \$11,000. And now you're
5 walking out in the middle of the case.

6 Let me tell you what the judge is doing here.
7 This judge, he's dismissed Cook completely. So
8 Cook is out. Okay. And you're down to one charge.
9 This judge is whittling away. He's not being
10 blatant about his preference with the Rodems firm,
11 he's giving him a piece at a time.

12 MR. BAUER: And sir, I have been happy to
13 continue your case for you. I have offered to
14 continue your case for you. I just have to be able
15 to run it in the way that I feel that is prudent.

16 MR. GILLESPIE: Well, I haven't done anything
17 to stop that.

18 MR. BAUER: You have insisted and demanded
19 that I do things that I can't do that I don't feel
20 that are appropriate.

21 MR. GILLESPIE: Name one.

22 MR. BAUER: You have -- the sanctions you have
23 insisted on -- you have insisted that I appeal the
24 stay. You know, I can't do every -- appeal every
25 single position through everything.

1 MR. GILLESPIE: Okay. So you're saying that I
2 insisted you appeal the stay. You're talking about
3 on the Final Judgment.

4 MR. BAUER: Yes.

5 MR. GILLESPIE: Uh-huh.

6 MR. BAUER: And I told you I can't and you
7 started yelling at me.

8 MR. GILLESPIE: Okay. Because of that you
9 dropped the case?

10 MR. BAUER: No, that's not it.

11 MR. GILLESPIE: Okay. What else?

12 MR. BAUER: You have insisted that I file for
13 sanctions, for criminal sanctions against
14 Mr. Rodems. I can't do that.

15 MR. GILLESPIE: No, I haven't insisted on
16 that.

17 MR. BAUER: You were just talking about it
18 earlier that you insisted that I do --

19 MR. GILLESPIE: That's something -- no, that's
20 something I am pursuing. No, I understand that you
21 don't -- in fact, pursuing a criminal complaint in
22 conjunction with a civil lawsuit may even violate
23 rules of professional practice. No, I understand
24 that and I haven't asked you for that. I think
25 that his behavior needs -- that my initial motion

1 for sanction needs to be amended just to cover me,
2 really, with the legal research that I have done
3 subsequently. But I haven't insisted in that.
4 That's never been an issue before between us. I
5 don't see when.

6 I mean, quite frankly, what's happened in this
7 case is you took it and, in my opinion, you have
8 distractions of growing your firm and this has been
9 on the back burner. And any time you have an
10 hourly rate it tends to waste money. You went
11 through the initial money and then once the money
12 stopped and you weren't able to say what the case
13 was going to cost then you dropped it.

14 MR. BAUER: No, sir.

15 MR. GILLESPIE: Okay.

16 MR. BAUER: I think -- if you will just hold
17 one second for me, I want to look at something.
18 There is a current balance and I have not
19 insisted -- at the end when you were insisting that
20 I was doing additional appeals and other things
21 that I believe was well outside what I needed to
22 do, I begin telling you: Look, if you want me to
23 do all those other things you're going to need to
24 start making payments. But I have \$12,229 on the
25 books right now from additional work over what you

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1 have paid that I have continued to do. And I
2 haven't been insisting that you pay. I realize
3 that you have paid a substantial amount of this and
4 I had every interest in seeing this completely
5 through and want to actually see it through. I
6 would like to continue the case.

7 MR. GILLESPIE: Well --

8 MR. BAUER: But you and I have to come to an
9 understanding about how the case is going to be
10 run.

11 MR. GILLESPIE: Well, the hourly rate isn't
12 going to work anymore. And that's not just in this
13 case that's throughout the legal profession. That
14 has been in the New York Times, it's been on the
15 American Bar Association --

16 MR. BAUER: Sir, I understand -- okay, I
17 understand you don't like the hourly rate but --

18 MR. GILLESPIE: No, it's not that I don't like
19 it, it's the fact that it's wasting money.

20 MR. BAUER: And that's fine, sir. And --

21 MR. GILLESPIE: But there is other ways to
22 bill. And I'm in the process of putting something
23 together there. Let me remind you that you were a
24 referral under the Florida Bar Lawyer Referral
25 Service.

1 MR. BAUER: And the case is not completed yet
2 and therefore I cannot compute the amounts that I
3 have to pay the Florida Bar.

4 MR. GILLESPIE: Well, that's not what they
5 say. They say that it comes to -- each time you
6 get a payment you remit it. In fact, they have
7 given me the bylaws and I'm -- in fact, I have them
8 sitting right here. But that's not the issue.

9 MR. BAUER: They have not advised me at any
10 time when I signed up for it that I needed to do
11 that.

12 MR. GILLESPIE: Okay.

13 MR. BAUER: And that is a contractual
14 agreement between myself and the Florida Bar, it's
15 not an issue with you.

16 MR. GILLESPIE: Well, it's an issue with me
17 insofar as when you get a referral from the Bar and
18 again, I don't have that document right in front of
19 me, but you're supposed to approach the case with
20 an eye on the client's financial interests.

21 MR. BAUER: No, sir. That's no provision
22 within that within the Florida Bar.

23 MR. GILLESPIE: Well, then we disagree,
24 because that is in there. And I would be -- and
25 I'm going to be pointing it out to you, because the

1 Florida Bar is going to be named as a defendant in
2 the Federal suit for, you know, this referral.
3 Because they haven't -- well, I don't want to get
4 too far afield, but I am quite knowledgeable now
5 after the fact about what the lawyer referral
6 service does and does not, at least what they say
7 it is. In practice it may be something altogether
8 different. But that's an issue. But that's up to
9 you. I have to go but --

10 MR. BAUER: Do you want to work something out
11 so that I can continue this case?

12 MR. GILLESPIE: Yes. I have indicated to you
13 in three recent letters that I want you to
14 vigorously represent me. I don't know how you
15 would come to any other conclusion.

16 MR. BAUER: Do you want me to represent you in
17 a manner that I believe is appropriate?

18 MR. GILLESPIE: Yes. But that has to involve
19 a vigorous zealous --

20 MR. BAUER: I have no problem --

21 MR. GILLESPIE: -- pursuit of --

22 MR. BAUER: -- being vigorous and zealous.

23 There are just certain things -- I don't agree with
24 doing discovery for the purpose of doing discovery
25 to get other people to do stuff. I don't need the

1 information that you're insisting me on doing.

2 It's not necessary.

3 MR. GILLESPIE: No, but --

4 MR. BAUER: I don't need it.

5 MR. GILLESPIE: -- we have addressed this
6 before. That's not why you would do it and that
7 has passed already. To show the Judge the same
8 thing that they're trying to get sanctions for they
9 haven't complied with.

10 MR. BAUER: And that is irrelevant. I know
11 that doesn't make sense to you and I am so sorry.
12 And I'm sorry I can't get you to understand that.
13 But it doesn't matter. It's still the entitlement
14 that they have with that. And if I could have been
15 involved in this in the very beginning, because as
16 soon as I came on board I complied with the
17 discovery, I got it done. The entitlement arose
18 before I was even --

19 MR. GILLESPIE: No, I understand that. I'm
20 not questioning that. But I will say, even my
21 argument aside, without having their discovery you
22 don't know what they have. You don't know what
23 they plan to bring up. And that's a problem. It's
24 a problem. They haven't provided a single page of
25 discovery responsive to Request for Production.

1 And that's a problem. Because they could spring
2 anything at any time and say that you already had
3 it and you knew about it. And there is nothing you
4 can say against that.

5 MR. BAUER: If you would like --

6 MR. GILLESPIE: I mean --

7 MR. BAUER: If you would like I will draw up
8 an agreement on how I continue to represent you on
9 this case, the things that I will and the things
10 that I won't do. I will ask for reasonable
11 discovery. I'm not necessarily going to ask for
12 the carbon copy of what you had before.

13 MR. GILLESPIE: Well, like I say, I think a
14 lot of that has passed already, because we have
15 gone through the discovery, we have had the
16 discovery hearings. They could have been done in
17 tandem. When he was -- called a discovery hearing
18 and we were standing there it was just as easy to
19 schedule one for them. But all that has passed.

20 MR. BAUER: Then what do you want me to do?

21 MR. GILLESPIE: I don't know what you can do.
22 But I can tell you right now, if you think that
23 ignoring it is going to be the thing that saves
24 you, it's not, because I consider this very serious
25 and I will pursue it. And I have written to you.

1 I can't be any clearer the last three letters what
2 I expect.

3 MR. BAUER: I am more than happy to represent
4 you zealously, but I'm not going to do wasteful and
5 frivolous things that are done for nothing more
6 than harassment of the other side, even if they
7 have done similar things to us. Because that is
8 not the type of professional I am. And I do not
9 believe that that is part of being a zealous
10 advocate. I will -- more than happy to forward all
11 motions and all requests that are reasonable and
12 are specifically tailored to getting what I believe
13 to be discoverable evidence and having any
14 depositions or anything that's necessary. I'm more
15 than happy to do that.

16 MR. GILLESPIE: Uh-huh.

17 MR. BAUER: And if you want to discuss a
18 situation we can look again at your case and try to
19 determine what's a better fee schedule to suit you.
20 It may be a contingency fee, fine.

21 MR. GILLESPIE: Well, I'm willing to discuss
22 that. And I would suggest taking a couple days to
23 think it over on both sides, get a proposal
24 together.

25 MR. BAUER: All right. Thank you and have a

1 good day.

2 MR. GILLESPIE: You too.

3 MR. BAUER: Bye.

4 MR. GILLESPIE: Bye-bye.

5 (Whereupon, the above recording was
6 concluded.)

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

STATE OF FLORIDA

COUNTY OF HILLSBOROUGH

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

IN WITNESS WHEREOF, I have hereunto set my hand
in the City of Tampa, County of Hillsborough, State of
Florida, this 11 June 2009.

MICHAEL J. BORSETH, Court Reporter

Michael J. Borseth
