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

NEIL J. GILLESPIE,

Plaintiff and Counter-Defendant,

CASE NO.: 2005 CA-7205

vs.

BARKER, RODEMS & COOK, P.A., a Florida corporation,

DIVISION: G

WILLIAM J. COOK,

Defendants and Counter-Plaintiffs.
_____/

EMERGENCY MOTION TO DISQUALIFY DEFENDANTS' COUNSEL RYAN CHRISTOPHER RODEMS & BARKER, RODEMS & COOK, PA

Plaintiff and Counter-Defendant Neil J. Gillespie pro se submits this emergency motion to disqualify Ryan Christopher Rodems, and Barker, Rodems & Cook, P.A., as counsel for the Defendants and Counter-Plaintiffs, and states:

Background

1. The Defendants in this lawsuit, Barker, Rodems & Cook, PA, are attorneys, unlawfully representing themselves, against claims brought against them by a former client, Neil J. Gillespie, the Plaintiff pro se, for their former representation of Gillespie against AMSCOT Corporation, a matter which is the same or substantially related to the former representation. The Counter-Plaintiffs in this lawsuit are the same attorneys unlawfully representing themselves, who made an abuse of process libel counterclaim against their former client Gillespie, the Counter-Defendant pro se, about Gillespie's letter to AMSCOT Corporation, a matter which is the same or substantially related to the

former representation. Initially the law firm Alpert, Barker, Rodems, Ferrentino & Cook, P.A. formerly represented Gillespie in the same matter. Barker, Rodems & Cook, PA is a successor representation that formerly represented Gillespie.

2. Barker, Rodems & Cook, PA ("BRC") is a small, three partner law firm and Florida professional service corporation formed August 4, 2000 with the following corporate officers, partners and key employee:

a. Chris A. Barker, Florida Bar ID no. 885568, president of BRC. ("Barker")

b. Ryan Christopher Rodems, Florida Bar ID no. 947652, vice president of BRC. ("Rodems")

c. William J. Cook, Florida Bar ID no. 986194, secretary/treasurer of BRC. ("Cook")

d. Lynne Anne Spina, notary public and legal assistant. ("Spina")

Prior to BRC, Messrs. Barker, Rodems, Cook and Ms. Spina were employed by Alpert, Barker, Rodems, Ferrentino & Cook, P.A., a law firm led by Jonathan Alpert.

3. Alpert, Barker, Rodems, Ferrentino & Cook, P.A ("Alpert firm") was a law firm and Florida professional service corporation that ended on or about December 8, 2000. The Alpert firm had the following partners, associate, and key employee:

a. Jonathan Louis Alpert, Florida Bar ID no. 121970 (partner)

b. Chris A. Barker, Florida Bar ID no. 885568 (partner)

c. Ryan Christopher Rodems, Florida Bar ID no. 947652 (partner)

d. David Dominick Ferrentino, Florida Bar ID no. 908754 (partner)

c. William J. Cook, Florida Bar ID no. 986194 (partner)

d. Scott James Flint, Florida Bar ID no. 85073 (associate)

e. Lynne Anne Spina, notary public and legal assistant

The Alpert firm is not a party to this action. BRC and the Alpert firm coexisted for a period of four (4) months, August 4, 2000 through December 8, 2000.

4. Neil J. Gillespie ("Gillespie") is a private person and a non-lawyer. The Alpert firm formerly represented Gillespie as a client as described in paragraphs 8, 9, 10, 11. BRC formerly represented Gillespie as a client as described in paragraphs, 10 through 19. The Alpert firm and BRC both formerly represented Gillespie on the same or substantially related matters involving so-called "payday loans" as further described.

Lawsuit Commenced, Cause of Action Established

5. This lawsuit commenced August 11, 2005 as Neil J. Gillespie vs. Barker, Rodems & Cook, PA and William J. Cook, case no.: 05-CA-7205, Circuit Civil Court, Hillsborough County, Florida. Plaintiff pro se Gillespie established, by Order dated January 13, 2006, a cause of action for Fraud and Breach of Contract against his former lawyers BRC and Cook, for their former representation of him against AMSCOT Corporation ("AMSCOT"), a matter which is the same or substantially related to the former representation. On January 19, 2006, Gillespie's former lawyers BRC and Cook countersued Gillespie for libel over a letter Gillespie wrote to AMSCOT about Defendants' former representation of Gillespie in the lawsuit against AMSCOT, a matter which is the same or substantially related to the former representation of Gillespie.

Actual Conflict of Interest for Barker, Rodems & Cook, PA

6. Gillespie established, by Order dated January 13, 2006, a cause of action for Fraud and Breach of Contract against BRC and Cook. Partners engaged in the practice of law are each responsible for the fraud or negligence of another partner when the later acts within the scope of the ordinary business of an attorney. Smyrna Developers, Inc. v.

Bornstein, 177 So.2d 16 (Fla. Dist. Ct. App. 2d Dist. 1965). There is an actual conflict of interest in Messrs. Barker, Rodems, Cook, and Barker, Rodems & Cook, PA representing themselves in this action.

Plaintiff's First Amended Complaint Filed

7. Plaintiff's First Amended Complaint was filed May 5, 2010, and added Messrs. Barker and Rodems as named defendants with the following causes of action:

Count 1, Breach of Fiduciary Duty

Count 2, Breach of Implied in Law Contract, AMSCOT

Count 3, Breach of Implied in Fact Contract, AMSCOT

Count 4, Fraud, AMSCOT Release And Settlement

Count 5, Fraud, Closing Statement

Count 6, Negligence

Count 7, Negligent Misrepresentation

Count 8, Unjust Enrichment

Count 9, Civil Conspiracy

Count 10, Invasion of Privacy

Count 11, Abuse of Process

Count 12, Claim for Punitive Damages, §768.72 Florida Statutes

Former Representation of Client Neil J. Gillespie

8. The Alpert firm formerly represented Gillespie as a client. The attorney-client relationship began December 28, 1999 at 100 South Ashley Drive, Tampa, Florida. Gillespie met to discuss legal matters about so-called "payday loans" which are delayed deposit check cashing schemes that charge usurious rates of interest. Gillespie met with

Mr. Alpert, Cook and other lawyers at the firm and discussed Gillespie's "payday loans" with EZ Check Cashing of Clearwater, Check 'n Go, ACE Cash Express, Check Smart, Americash, National Cash Advance, and AMSCOT Corporation. Documentary evidence that the Alpert firm formerly represented Gillespie, for the purpose of disqualification:

a. March 21, 2000 contingent fee contract between the Alpert firm and Gillespie for his transactions with ACE Cash Express and Americash, signed by Mr. Cook and Gillespie. (Exhibit 1)

b. May 3, 2000 letter from the Alpert firm to Gillespie about his transactions with Americash, signed by Mr. Cook. (Exhibit 2)

c. August 10, 2000 letter from the Alpert firm to Gillespie about his transactions with Americash, signed by Mr. Cook. (Exhibit 3)

d. November 3, 2000 contingent fee contract between the Alpert firm and Gillespie for his transactions with AMSCOT, signed by Cook and Gillespie. (Exhibit 4)

9. The Alpert law firm sought Gillespie to serve as class-action representative in two separate lawsuits, one against ACE Cash Express and one against AMSCOT Corporation. The litigation involved so-called "payday loans" which are delayed deposit check cashing schemes that charge usurious rates of interest. The Alpert firm needed Gillespie to intervene and save the already-filed AMSCOT case from dismissal as its initial plaintiff Eugene Clement was unqualified. The Alpert firm ended on or about December 8, 2000. BRC was substituted as counsel after the Alpert firm ended.

Alpert Firm Formerly Represented Gillespie in the Following Lawsuits

10. The Alpert firm represented Gillespie in Neil Gillespie vs. ACE Cash Express, Inc., Circuit Civil Court, Hillsborough County, Consolidated Case No. 99-9730, Division

J (originally case no. 8:00-CV-723-T-23B, in United States District Court, Middle District of Florida, Tampa Division.) ("ACE" or "ACE Cash Express"). Gillespie and Cook signed a contingent fee agreement with the Alpert firm March 21, 2000. (Exhibit 1) The Alpert firm filed the class-action lawsuit April 14, 2000. BRC and Cook were substituted as counsel December 12, 2000 after the Alpert firm ended. When BRC and Cook assumed the case, they failed to execute a new contingent fee agreement. Seven months later in July 2001 BRC and Cook prepared but did not execute a contingent fee agreement. The Florida Attorney General Intervened February 5, 2001. BRC and Cook represented Gillespie on appeal, Neil Gillespie and Florida AG v. ACE Cash Express, Inc. Appeal No. 2001-5559, L.T. CASE NO. 99-09730, Second District Court of Appeal, April 24, 2002. Gillespie's involvement in the ACE lawsuit ended June 24, 2002.

11. The Alpert firm represented Gillespie in Eugene R. Clement v. AMSCOT Corporation, case no. 99-2795-CIV-T-26C, in United States District Court, Middle District of Florida, Tampa Division. ("AMSCOT"). Gillespie and Cook signed a contingent fee agreement with the Alpert firm November 3, 2000. (Exhibit 4). Gillespie moved to intervene in the lawsuit November 9, 2000. BRC and Cook were substituted as counsel December 12, 2000 after the Alpert firm ended. When BRC and Cook assumed the case, they failed to execute a new contingent fee agreement. Seven months later in July 2001 BRC and Cook prepared but did not execute a contingent fee agreement. BRC and Cook represented Gillespie on appeal, Eugene R. Clement. et al. v. AMSCOT Corporation, Case No. 01-14761-A, US Court of Appeals, For the Eleventh Circuit.

Barker, Rodems & Cook, PA Formed in Secret

12. BRC and the Alpert firm coexisted for a period of four months, from August 2000 through December 8, 2000 when the Alpert firm ended. On August 2, 2000 Mr. Barker executed articles of incorporation for Barker, Rodems & Cook, P.A, principal place of business at 300 W. Platt Street, Tampa, Florida. The triad of Messrs. Barker, Rodems and Cook formed their new law firm in secret from Jonathan Alpert. They rented office space and acquired things needed to open a new law office. They hired-away staff from the Alpert firm, including a receptionist and Lynne Ann Spina, a notary public and legal assistant. During that time Cook solicited Gillespie's business. The solicitation was made in secret from Mr. Alpert. Cook wanted to take Gillespie's lawsuits from the Alpert firm to the newly-formed but still-secret BRC. Cook asked Gillespie to keep the information secret from Alpert. This placed Gillespie in a position of conflict and divided loyalties with the lawyers and law firm representing him. Cook complained about Alpert, and pointed to his erratic behavior in running for state attorney for Hillsborough County[1] and thus the need for secrecy. Nonetheless, Cook failed to tell Gillespie that Mr. Alpert attacked opposing counsel Arnold Levine. A Tampa Police Department report dated June 5, 2000, case number 00-42020, alleges Mr. Alpert committed battery, Florida Statutes §784.03, upon attorney Arnold Levine by throwing hot coffee on him. At the time Levine was a 68 year-old senior citizen. The report states: "The victim and defendant are both attorneys and were representing their clients in a mediation hearing. The victim alleges that the defendant began yelling, and intentionally threw the contents of a 20 oz. cup of hot coffee which struck him in the chest staining his shirt. A request for prosecution was

[1] The vacancy was created by the suicide of State Attorney Harry Lee Coe who shot himself July 13, 2000 over gambling debts and related matters. Mr. Alpert was defeated and eliminated in the September 5, 2000 primary election.

issued for battery." Mr. Rodems is listed as a witness on the police report and failed to inform Gillespie that Mr. Alpert attacked attorney Arnold Levine.

13. The Alpert firm ended December 8, 2000. When Mr. Alpert learned about Messrs. Barker, Rodems and Cook's deception he was outraged. The Alpert firm dissolved under hostile circumstances. Messrs. Barker, Rodems and Cook already had a firm bearing their name, BRC. Mr. Alpert and Mr. Ferrentino formed Alpert & Ferrentino, PA. Upon information and belief Mr. Flint joined the office of the Florida Attorney General. Notary public and legal assistant Ms. Spina went with BRC.

BRC "Official" and "Unofficial" Attorney-Client Relationship with Gillespie

14. BRC established an "official" attorney-client relationship with Gillespie December 12, 2000 when it was substituted as counsel in the AMSCOT and ACE lawsuits. Gillespie believes there was an "unofficial" attorney-client relationship with BRC during the four month period when BRC and the Alpert firm coexisted, August 4, 2000 through December 8, 2000. This is important to the AMSCOT lawsuit because during this time Cook pressured Gillespie to intervene and save the litigation for the ultimate benefit of the still-secret BRC firm. Eugene Clement, the current AMSCOT plaintiff, faced disqualification. On August 31, 2000 AMSCOT's Response in Opposition to Clement's Motion for Class Certification and Memorandum of Law in Support claimed "It has become unquestionably clear, after taking Clement's deposition, that his complete lack of trustworthiness, honesty and credibility make Clement a wholly inadequate class representative." (p.4, ¶1). "First Clement lied under oath numerous time, including making misrepresentations about his criminal background." (p.4, ¶2). Clement had suffered both a conviction and pre-trial intervention for prostitution within the past

two years, the later just nine months prior. (p.4, ¶2). Clement's debt exceeded $450,000.00, and there was some question about Clement's sanity. (p.6, ¶1,2). United States District Judge Richard A. Lazzara agreed, and wrote the following in his Order of September 20, 2000: "Whether Mr. Clement used money obtained through deferred deposit transactions for the hiring of prostitutes is highly relevant to his ability to adequately serve as class representative." AMSCOT's Motion to Compel Clement to Respond to Certified Question and Related Questions and Memorandum of Law in Support Thereof alleged that Clement failed to disclose two Florida-based criminal proceedings relating to his hiring of prostitutes, including one dated October 29, 1999, just two months before the initiation of the AMSCOT lawsuit. In support of the allegations was a criminal report affidavit/notice to appear charging Clement with solicitation of prostitution against section 796.07, Florida Statutes, together with Clement's mug shot.

Gillespie Pressured to Intervene in the AMSCOT Lawsuit

15. During the period when the Alpert firm co-existed with still-secret BRC, Cook used his attorney-client relationship with Gillespie at the Alpert firm to pressure him to sue AMSCOT for the ultimate benefit of BRC. Once BRC was formed in August 2000, Cook knew he and Messrs. Barker and Rodems were leaving and taking AMSCOT if they could. Cook pressured Gillespie to sue AMSCOT and offered Gillespie incentives. Gillespie declined to sue AMSCOT a year earlier during his initial meeting with the Alpert firm December 28th, 1999. Gillespie did not owe AMSCOT money. Gillespie's debt to AMSCOT was paid in full, unlike the other five "payday loan" companies, whom he owed a total of at least $1,848.27. Gillespie wanted to concentrate his effort resolving

matters with the remaining five "payday loan" companies. Gillespie's exposure with AMSCOT was limited to transactions of $100.00 each, and the total fees and costs he paid AMSCOT amounted to just $148.47. Gillespie explained this Cook, but Cook continued to solicit Gillespie to sue AMSCOT. When Gillespie argued to Cook that his exposure with AMSCOT was limited, Cook responded that Gillespie's position was selfish. Cook pressured Gillespie to sue AMSCOT, based on Gillespie's political beliefs that "payday loan" companies were bad, detrimental to people and society, and charged usurious rates of interest disguised as fees and costs. Cook assured Gillespie that AMSCOT had, in fact, committed the violations plead in the class-action complaint. Cook's pressure on Gillespie to sue AMSCOT created a conflict with Gillespie because the Alpert firm already represented Gillespie in the ACE lawsuit. Gillespie wanted to keep Cook happy for the benefit of Gillespie's interest in the ACE lawsuit.

Gillespie Sues AMSCOT as Alpert Client for BRC Benefit

16. Gillespie finally relented to Cook's pressure and intervened in the AMSCOT lawsuit November 9, 2000. This occurred while Gillespie was a client of the Alpert firm, and a month before Messrs. Barker, Rodems and Cook told Mr. Alpert that they formed a new law firm and were taking his clients and lawsuits away from him.

a. In a letter to Gillespie a few months ago, March 8, 2010, Mr. Rodems wrote: "you did not have actual damages" in the AMSCOT case. (page 2, paragraph 8). This is further evidence that BRC used Gillespie solely for their own personal benefit and gain and why Rodems and BRC must be disqualified from representing themselves.

b. Moreover, the pressure on Gillespie and offer of incentives to sue AMSCOT was likely a crime under section 877.01(1), Florida Statutes, Instigation of litigation, and

an overt act in furtherance of their conspiracy against Gillespie, and another reason why Rodems and BRC must be disqualified from representing themselves.

No Signed Contingent Fee Agreements Between BRC and Gillespie

17. BRC represented Gillespie in the AMSCOT lawsuit without obtaining a signed contingent fee agreement, in violation of Florida Bar Rule 4-1.5(f)(2).

18. BRC represented Gillespie in the ACE lawsuit without obtaining a signed contingent fee agreement, in violation of Florida Bar Rule 4-1.5(f)(2).

Other Matters Where BRC Formerly Represented Gillespie

19. BRC formerly represented Gillespie in the following matters: EZ Check Cashing of Clearwater, National Cash Advance, State of Florida, Division of Vocational Rehabilitation and St. Petersburg Junior College. The "payday loan" matters with EZ Check Cashing of Clearwater and National Cash Advance began as Alpert firm matters. The matters with the State of Florida Div. of Vocational Rehabilitation and St. Petersburg Junior College were brought to the Alpert firm during the period of coexistence of the Alpert firm and BRC, but put on hold until BRC was in full operation. Documentary evidence that BRC formerly represented Gillespie, for the purpose of disqualification:

a. January 16, 2001 letter from BRC/Mr. Cook to Gillespie about his lawsuit EZ Check Cashing of Clearwater. (Exhibit 5)

b. March 27, 2001 letter from BRC/Mr. Cook to Gillespie about his matter with the Florida Div. of Vocational Rehabilitation. (Exhibit 6)

c. May 25, 2001 letter from BRC/Mr. Cook to Gillespie about his matter with St. Petersburg Junior College. (Exhibit 7)

d. May 30, 2001 letter from BRC/Mr. Cook to Kelly Peterson, branch manager of National Cash Advance, "This firm represents Neil Gillespie" (Exhibit 8)

Barker, Rodems & Cook, PA Retained Itself In This Action

20. Mr. Rodems and BRC first appeared in this action representing BRC and Cook when Rodems filed Defendants' Motion to Dismiss and Strike August 29, 2005.

Applicable Legal Authority

21. Applicable Legal Authority includes case law in the Table of Cases and the following:

a. Rules Regulating The Florida Bar, Rules of Professional Conduct:

Rule 4-1.2. Objectives and Scope of Representation

Rule 4-1.6. Confidentiality of Information

Rule 4-1.7. Conflict of Interest; Current Clients

Rule 4-1.9. Conflict of Interest; Former Client

Rule 4-1.10. Imputation of Conflicts of Interest; General Rule

Rule 4-3.2 Expediting Litigation

Rule 4-3.3. Candor Toward the Tribunal

Rule 4-3.4. Fairness to Opposing Party and Counsel

Rule 4-3.5 Impartiality and Decorum of the Tribunal

Rule 4-3.7 Lawyer as a Witness

Rule 4-4.1. Truthfulness in Statements to Others

Rule 4-4.4 Respect for the Rights of Third Persons

Rule 4-8.4. Misconduct

b. Florida Statutes:

Florida Statutes, section 784.048, Stalking

Florida Statutes, chapter 837, Perjury

c. Tort Law:

Abuse of Process Counterclaim

Invasion of Privacy

Intentional Infliction of Severe Emotional Distress

d. Civil Rights Law

e. Americans with Disabilities Act (ADA)

Former Representation Defined As Matter of Law

22. In determining whether attorney-client relationship existed, for purposes of disqualification of counsel from later representing opposing party, a long-term or complicated relationship is not required, and court must focus on subjective expectation of client that he is seeking legal advice.[3] McPartland v. ISI Inv. Services, Inc., 890 F.Supp. 1029. Under Florida law, attorney-client relationship that existed between counsel and former client need not have been long-term or complicated, in order to trigger obligation on part of counsel not to represent interest adverse to those of former client in the same or a substantially related matter.[2] In re Weinhold,, 380 B.R. 848. In order to establish that attorney-client relationship existed, thereby giving rise to irrefutable presumption that confidences were disclosed, the law does not require a long or complicated attorney/client relationship to fulfill the requirements for disqualification, and it is not necessary to prove that confidential communications were disclosed because once the relationship is established, an irrefutable presumption arises that confidences were revealed to the attorney.[3] The existence of the attorney/client privilege does not

depend upon whether the client actually hires the attorney; it is enough if the client consults the attorney with intentions of employing him or her professionally.[4] In considering whether the attorney/client privilege applies to disqualify an attorney from opposing a former client, the focus is on the perspective of the person seeking out the lawyer, not on what the lawyer does after the consultation.[5] Metcalf v. Metcalf, 785 So.2d 747.

Substantially Related Matter Defined As Matter of Law

23. Under Florida law for matters to be "substantially related," for purposes of determining whether attorney's prior representation of former client in one matter precludes its representation of opposing party in subsequent litigation, they need only be akin to present action in way reasonable persons would understand as important to issues involved.[9] In re Skyway Communications Holding Corp., 415 B.R. 859. For matters in prior representation to be "substantially related" to present representation for purposes of motion to disqualify counsel, matters need only be akin to present action in way reasonable persons would understand as important to the issues involved. McPartland v. ISI Inv. Services, Inc., 890 F.Supp. 1029.

Rule 4-1.2. Objectives and Scope of Representation

24. Under rule 4-1.2(d) a lawyer shall not counsel a client to engage, or assist a client, in conduct that the lawyer knows or reasonably should know is criminal or fraudulent. Subdivision (b) states a specific application of the principle set forth in rule 4-1.2(d) and addresses the situation where a client's crime or fraud takes the form of a lie or misrepresentation. Gillespie established a cause of action for fraud and breach of contract against BRC and Mr. Cook January 13, 2006. Certainly from that point forward Rodems

should have been disqualified due to his own liability. Partners engaged in the practice of law are each responsible for the fraud or negligence of another partner when the later acts within the scope of the ordinary business of an attorney. Smyrna Developers, Inc. v. Bornstein, 177 So.2d 16 (Fla. Dist. Ct. App. 2d Dist. 1965). There is an actual conflict of interest in Messrs. Barker, Rodems, Cook, and Barker, Rodems & Cook, PA representing themselves in this action. Ordinarily a lawyer can avoid assisting a client's crime or fraud by withdrawing from the representation. But because Mr. Rodems has a direct conflict of interest he will not withdrawal from the representation. **No other lawyer could ethically represent this firm. Rodems' representation is the perpetuation of a fraud with more deceit and misrepresentation.** Rodems' independent professional judgment is materially limited by the lawyer's own interest. Attorney violated rules prohibiting representation where a lawyer's independent professional judgment may be materially limited by the lawyer's own interest. The Florida Bar v Vining, 721 So.2d 1164.

Bar Rule 4-1.9, Conflict of Interest; Former Client

25. Rule 4-1.9 of the Rules Regulating the Florida Bar. A lawyer who has formerly represented a client in a matter shall not thereafter:

(a) represent another person in the same or a substantially related matter in which that person's interests are materially adverse to the interests of the former client unless the former client gives informed consent;

(b) use information relating to the representation to the disadvantage of the former client except as these rules would permit or require with respect to a client or when the information has become generally known; or

(c) reveal information relating to the representation except as these rules would permit or require with respect to a client.

26. The Alpert firm formerly represented Gillespie in "payday loan" matters involving EZ Check Cashing of Clearwater, Check 'n Go, ACE Cash Express, Check Smart, Americash, National Cash Advance, and AMSCOT Corporation, see paragraphs 8, 9, 10, 11. Mr. Alpert, Mr. Cook, Mr. Flint, and Ms. Spina were directly involved in Gillespie's "payday loan" matters, and Mr. Barker and Mr. Rodems were also working on "payday loan" matters involving Gillespie and other clients. Gillespie recalls Mr. Rodems walking around the Alpert firm office discussing information about the Truth In Lending Act (TILA). Gillespie recalls Mr. Alpert commenting on the significant time spent by Messrs. Barker, Rodems and Cook on "payday lending" matters. The Alpert firm had at least three "payday loan" class-action lawsuits underway, including AMSCOT, ACE and Payday Express. Much of Gillespie's effort on "payday lending" matters was done at the Alpert firm. Gillespie provided the Alpert firm all his "payday lending" information, canceled checks, documents and answered discovery. Gillespie signed two "payday lending" representation contracts with the Alpert firm, one for AMSCOT (Exhibit 4), and one for ACE and Americash. (Exhibit 1)

27. The attorney-client relationship between Gillespie and the lawyers at the Alpert firm involved "payday lending" matters[2] that are the same or substantially related to the "payday lending" matters where Gillespie was formerly and successively represented by BRC and Mr. Cook. Proscription against successive representation is triggered when

[2] EZ Check Cashing of Clearwater, Check 'n Go, ACE Cash Express, Check Smart, Americash, National Cash Advance, and AMSCOT Corporation.

representation of former and present client involve same or substantially related matter.[10] U.S. v. Culp, 934 F.Supp. 394.

28. The AMSCOT representation of Gillespie by the Alpert firm was the same or substantially related to the AMSCOT representation of Gillespie by BRC and Mr. Cook. The AMSCOT representation of Gillespie by BRC and Cook is the same or substantially related to the instant litigation, Gillespie v. Barker, Rodems & Cook, PA, et al., case no. 05-CA-7205. Matters are "substantially related" if they involve the same transaction or legal dispute, or if the current matter would involve the lawyer attacking work that the lawyer performed for the former client. A lawyer could not properly seek to rescind on behalf of a new client a contract drafted on behalf of the former client. When a lawyer has been directly involved in a specific transaction, subsequent representation of other clients with materially adverse interests clearly is prohibited. The underlying question is whether the lawyer was so involved in the matter that the subsequent representation can be justly regarded as a changing of sides in the matter in question. BRC and Mr. Cook have changed sides on Gillespie. BRC and Mr. Cook represented Gillespie in several specific transactions in the AMSCOT litigation, including fee contracts, a Release and Settlement with AMSCOT on October 30, 2000, and a closing statement with BRC November 1, 2000. Now Rodems and BRC are attacking work that Mr. Cook and BRC performed for Gillespie. The parties once were aligned but now have materially adverse interests to each other. For matters in prior representation to be "substantially related" to the present representation for purposes of motion to disqualify counsel, matters need only be akin to present action in way reasonable persons would understand as important to the issues involved.[5] McPartland v. ISI Inv. Services, Inc., 890 F.Supp. 1029. Proscription

against successive representation is triggered when representation of former and present client involve same or substantially related matter.[10] U.S. v. Culp, 934 F.Supp. 394.

29. Under Rule 4-1.9(a) the lawyers at BRC who represented Gillespie at the Alpert firm on "payday lending" matters[3] are prohibited from representing BRC and Cook in this lawsuit which is the same or a substantially related matter in which BRC and Cook's interests are materially adverse to the interests of the former client Gillespie. Those lawyers are Messrs. Cook, Barker, and Rodems. Under Rule 4-1.9(b) BRC cannot use information relating to the representation of Gillespie at the Alpert firm on "payday lending" matters not in controversy to the disadvantage of former client Gillespie. Under Rule 4-1.9(c) BRC cannot reveal information relating to the representation of Gillespie and "payday lending" matters not in controversy. Gillespie does not have a controversy with the Alpert firm, and the Alpert firm is not a party to this lawsuit.

30. Under Rule 4-1.9(a) the lawyers at BRC who represented Gillespie at BRC on "payday lending" matters are prohibited from representing BRC and Cook in this lawsuit which is the same or a substantially related matter in which BRC and Cook's interests are materially adverse to the interests of the former client Gillespie. Prohibition on representation of clients with interests adverse to those of former client without former client's consent applies without regard to whether prior representation entailed disclosure of confidential communications.[8] Blanket prohibition on representation of clients with interests adverse to those of former client without former client's consent promotes attorney's duty of loyalty to clients while furthering objectives of rules protecting confidential communications between attorney and client by obviating need for intrusive

[3] EZ Check Cashing of Clearwater, Check 'n Go, ACE Cash Express, Check Smart, Americash, National

judicial fact finding that would require disclosure of confidential communications.[9] Proscription against successive representation is triggered when representation of former and present client involve same or substantially related matter.[10] U.S. v. Culp, 934 F.Supp. 394.

Health Insurance Portability and Accountability Act (HIPAA) Information

31. The attorney-client relationship between BRC and Mr. Cook with Gillespie included matters of vocational rehabilitation and disability and the State of Florida, Division of Vocational Rehabilitation (FL-DVR). During this representation Gillespie disclosed the most personal and confidential client confidential and protected Health Insurance Portability and Accountability Act (HIPAA) information. Rodems later unlawfully used this information against Gillespie. The attorney-client relationship between BRC and Mr. Cook with Gillespie includes matters of employment and disability and St. Petersburg Junior College (SPJC). Gillespie brought both matters to the Alpert firm during the period of coexistence of the Alpert firm and BRC, but Mr. Cook put the matters on hold until BRC was in full operation.

32. On March 3, 2006 Mr. Rodems violated Bar Rule 4-1.9(b) and used information relating to the former representation of Gillespie to the disadvantage of the former client not permitted by the rules with respect to information not generally known. During a telephone call to Gillespie March 3, 2006 Rodems threatened to reveal Gillespie's confidential HIPAA information.

(a) Rodems used the HIPAA information as blackmail to threaten and intimidate Gillespie in the instant lawsuit.

Cash Advance, and AMSCOT Corporation.

(b) Rodems also used the HIPAA information to aggravate Gillespie's disability to intentionally inflict severe emotional distress. Rodems' conduct was the deliberate or reckless infliction of emotional suffering; Rodems' conduct was outrageous; Rodems' conduct caused the emotional distress; and the distress Gillespie suffered was severe.

33. On March 28, 2006 Rodems made the following improper and unlawful requests to Gillespie about his HIPAA information that was not relevant to this lawsuit about fraud and breach of contract in March 2006:

(a) Defendants' Request For Production, Number 13. Each and every document received from any of Plaintiffs doctors regarding medical treatment, diagnoses or conditions affecting Plaintiffs behavior, mood, or mental health.

(b) Defendants' Request For Production, Number 21. Each and every medical record for treatment with any psychiatrist or psychologist or mental health counselor in the past 10 years.

(c) Defendant Barker, Rodems & Cook, P.A.'s Notice of Service of First Interrogatories to Plaintiff, Number 9. List the names and business addresses of all other physicians, medical facilities, or other health care providers by whom or at which you have been examined or treated in the past 10years; and state as to each the dates of examination or treatment and the condition or injury for which you were examined or treated.

(d) When Gillespie (improperly) objected to providing his HIPAA protected information, Rodems sought and obtained sanctions and then judgment of $11,550 against Gillespie. Rodems has aggressively sought collect of the judgment with multiple writs of garnishment and other process.

Rule 4-1.6, Confidentiality of Information

34. Bar Rule 4-1.6. Confidentiality of Information.

(a) Consent Required to Reveal Information. A lawyer shall not reveal information relating to representation of a client except as stated in subdivisions (b), (c), and (d), unless the client gives informed consent.

(b) When Lawyer Must Reveal Information. A lawyer shall reveal such information to the extent the lawyer reasonably believes necessary:

(1) to prevent a client from committing a crime; or

(2) to prevent a death or substantial bodily harm to another.

(c) When Lawyer May Reveal Information. A lawyer may reveal such information to the extent the lawyer reasonably believes necessary:

(1) to serve the client's interest unless it is information the client specifically requires not to be disclosed;

(2) to establish a claim or defense on behalf of the lawyer in a controversy between the lawyer and client;

(3) to establish a defense to a criminal charge or civil claim against the lawyer based upon conduct in which the client was involved;

(4) to respond to allegations in any proceeding concerning the lawyer's representation of the client; or

(5) to comply with the Rules of Professional Conduct.

(d) Exhaustion of Appellate Remedies. When required by a tribunal to reveal such information, a lawyer may first exhaust all appellate remedies.

(e) Limitation on Amount of Disclosure. When disclosure is mandated or permitted, the lawyer shall disclose no more information than is required to meet the requirements or accomplish the purposes of this rule.

35. Bar Rule 4-1.6(c)(2) allows an attorney to reveal information relating to the representation to the extent the lawyer reasonably believes necessary to defend himself in a controversy between the lawyer and client. Rule 4-1.6(c)(4) similarly allows the lawyer to reveal such information to respond to allegations in any proceeding concerning the lawyer's representation of the client. Rule 4-1.6(e) places a limit on disclosure. When disclosure is mandated or permitted, the lawyer shall disclose no more information than is required to meet the requirements or accomplish the purposes of this rule. In matters of former representation not in controversy the client does not waive confidentiality and the lawyer must maintain client confidences. In suing an attorney for legal malpractice, the client's waiver of attorney-client privilege is limited to the malpractice action, and the attorney being sued may reveal confidential information relating to his or her representation only to the extent necessary to defend action.[5] Ferrari v. Vining, 744 So.2d 480. In suing attorney for legal malpractice, client's waiver of attorney-client privilege was limited solely to malpractice action, and attorney could only reveal confidential information relating to his representation to extent necessary to defend himself.[3] Adelman v. Adelman, 561 So.2d 671.

36. Gillespie has not waived confidentiality in the following matters where the Alpert firm formerly represented him. Gillespie has not waived confidentiality in the following matters where BRC and Cook formerly represented him that are not in controversy:

a. ACE Cash Express (Alpert firm and BRC)

b. Check ‘n Go (Alpert firm)

c. Check Smart (Alpert firm)

d. America$h (Alpert File No. 00.4814)

e. Apartment lease in St. Petersburg, Florida (Alpert firm)

f. EZ Check Cashing of Clearwater (Alpert firm and BRC)

g. State of Florida, Division of Vocational Rehabilitation (Brought to the Alpert firm for representation, but put on hold for BRC)

h. May 2001, National Cash Advance (Alpert firm and BRC)

i. St. Petersburg Junior College (Brought to the Alpert firm for representation, but put on hold for BRC)

37. Gillespie did not waive confidentiality regarding BRC and Cook’s former representation described in paragraph 31. Mr. Rodems violated Bar Rule 4-1.9(b) and used information relating to the former representation of Gillespie to the disadvantage of the former client not permitted by the rules with respect to information not generally known as described in paragraph 32. Rodems also improperly and unlawfully sought information about Gillespie’s HIPAA information described in paragraph 33, even though Gillespie’s initial Complaint for Breach of Contract and Fraud submitted August 11, 2005 concerns only contract issues related to excessive lawyer fees, not health matters.

38. Mr. Rodems’ actual conflict and personal liability under Smyrna Developers, Inc. v. Bornstein, 177 So.2d 16 (Fla. Dist. Ct. App. 2d Dist. 1965) makes it highly unlikely that he would comply with the requirements of Rule 4-1.6(b) When a Lawyer Must Reveal Information. A lawyer shall reveal such information to the extent the lawyer

reasonably believes necessary: (1) to prevent a client from committing a crime. Therefore Rodems must be disqualified. A lawyer may not counsel or assist a client in conduct that is criminal or fraudulent. See rule 4-1.2(d). Similarly, a lawyer has a duty under rule 4-3.3(a)(4) not to use false evidence. This duty is essentially a special instance of the duty prescribed in rule 4-1.2(d) to avoid assisting a client in criminal or fraudulent conduct. This rule becomes meaningless when the lawyer and firm accused of fraudulent acts can defend itself under the color of law with a fraudulent defense. Ordinarily a lawyer's exercise of discretion requires consideration of such factors as the nature of the lawyer's relationship with the client and with those who might be injured by the client. In this case Rodems is the client with an actual conflict that clouds his exercise of independent professional judgment. Rodems has no concern that Gillespie might be injured by his clients BRC and Cook. **That is the basis of the lawsuit**. Rodems' representation of BRC and Cook only perpetrates injury to former client Gillespie. Ordinarily if the lawyer found his services would be used by the client in materially furthering a course of criminal or fraudulent conduct, the lawyer must withdraw, as stated in rule 4-1.16(a)(1). Since Rodems is the client accused of furthering a course of fraudulent conduct, he cannot be expected to withdraw as stated in rule 4-1.16(a)(1) and must be disqualified.

39. Attorney's duty not to disclose client's confidential information continued even past termination of matter for which representation was sought.[2] Relationship between attorney and client is fiduciary relationship of very highest character.[3] Elkind v. Bennett, 958 So.2d 1088. Footnote [3]: The relationship between an attorney and his or her client is a fiduciary relationship of the very highest character. *Forgione v. Dennis Pirtle Agency, Inc.,* 701 So.2d 557, 560 (Fla.1997), *receded from on other grounds,*

Cowan Liebowitz &Latman, P.C. v. Kaplan, 902 So.2d 755 (Fla.2005); *In re Estate of Marks*, 83 So.2d 853, 854 (Fla.1955). ("An attorney and client relationship is one of the closest and most personal and fiduciary in character that exists."). Our supreme court has recognized that disclosure of confidential information from a fiduciary relationship may state a cause of action. *See Gracey v. Eaker*, 837 So.2d 348, 353 (Fla.2002) ("Florida courts have previously recognized a cause of action for breach of fiduciary duty in different contexts when a fiduciary has allegedly disclosed confidential information to a third party. *See Barnett Bank of Marion County, N.A. v. Shirey*,655 So.2d 1156 (Fla. 5th DCA 1995) (plaintiff entitled to damages for breach of fiduciary duty because bank employee disclosed sensitive financial information to a third party).").

Bar Rule 4-1.7. Conflict of Interest; Current Clients

40. Bar Rule 4-1.7. Conflict of Interest; Current Clients

(a) Representing Adverse Interests. Except as provided in subdivision (b), a lawyer shall not represent a client if:

(1) the representation of 1 client will be directly adverse to another client; or

(2) there is a substantial risk that the representation of 1 or more clients will be materially limited by the lawyer's responsibilities to another client, a former client or a third person or by a personal interest of the lawyer.

(b) Notwithstanding the existence of a conflict of interest under subdivision (a), a lawyer may represent a client if:

(1) the lawyer reasonably believes that the lawyer will be able to provide competent and diligent representation to each affected client;

(2) the representation is not prohibited by law;

(3) the representation does not involve the assertion of a position adverse to another client when the lawyer represents both clients in the same proceeding before a tribunal; and

(4) each affected client gives informed consent, confirmed in writing or clearly stated on the record at a hearing.

(c) Explanation to Clients. When representation of multiple clients in a single matter is undertaken, the consultation shall include explanation of the implications of the common representation and the advantages and risks involved.

(d) Lawyers Related by Blood or Marriage. A lawyer related to another lawyer as parent, child, sibling, or spouse shall not represent a client in a representation directly adverse to a person who the lawyer knows is represented by the other lawyer except upon consent by the client after consultation regarding the relationship.

(e) Representation of Insureds. Upon undertaking the representation of an insured client at the expense of the insurer, a lawyer has a duty to ascertain whether the lawyer will be representing both the insurer and the insured as clients, or only the insured, and to inform both the insured and the insurer regarding the scope of the representation. All other Rules Regulating The Florida Bar related to conflicts of interest apply to the representation as they would in any other situation.

41. Mr. Rodems and BRC is prohibited from representing BRC and Cook under Bar Rule 4-1.7(a)(2) because there is a substantial risk that the representation of 1 or more clients will be materially limited by the lawyer's responsibilities to another client (BRC), a former client (Gillespie) or a third person or by a personal interest of the lawyer (Rodems' actual conflict). The substantial risk is Rodems' responsibilities to BRC,

Gillespie, imputed disqualification, Bar Rule 4-1.10, and Rodems' actual conflict and personal liability under Smyrna Developers, Inc. v. Bornstein, 177 So.2d 16 (Fla. Dist. Ct. App. 2d Dist. 1965).

42. As to rule 4-1.7(b), the evidence is clear. Rule 4-1.7(b) prohibits representation where a lawyer's independent professional judgment may be materially limited by the lawyer's own interest. The Florida Bar v. Vining, 721 So.2d 1164. Because of his actual conflict, Mr. Rodems' exercise of independent professional judgment may be materially limited by the lawyer's own interest requiring disqualification. Evidence supported findings that attorney violated rules prohibiting representation where a lawyer's independent professional judgment may be materially limited by the lawyer's own interest. The Florida Bar v. Vining, 721 So.2d 1164. An attorney is first an officer of the court, bound to serve the ends of justice with openness, candor, and fairness to all; such duty must be served even when it appears in conflict with a client's interests. Ramey v. Thomas, 382 So.2d 78. Therefore Rodems must be disqualified; he is first an officer of the court, a point Rodems often makes when it serves his needs. Opposing counsel may seek counsel's disqualification where conflict of interest clearly calls into question fair or efficient administration of justice.[3] Zarco Supply Co. v. Bonnell, 658 So.2d 151.

Bar Rule 4-1.10. Imputation of Conflicts of Interest

43. Rule 4-1.10. Imputation of Conflicts of Interest; General Rule

(a) Imputed Disqualification of All Lawyers in Firm. While lawyers are associated in a firm, none of them shall knowingly represent a client when any 1 of them practicing alone would be prohibited from doing so by rule 4-1.7 or 4-1.9 except as provided elsewhere in this rule, or unless the prohibition is based on a personal interest of the

prohibited lawyer and does not present a significant risk of materially limiting the representation of the client by the remaining lawyers in the firm. (Relevant portion)

44. The Alpert firm formerly represented Gillespie in “payday loan” matters, see paragraphs 8, 9, 10 and 11. Mr. Cook is prohibited by Rule 1.9(a) from representing BRC in “payday loan” matters where he was formerly represented in the same or substantially related matters by the Alpert firm.

45. BRC and Mr. Cook formerly represented Gillespie in “payday loan” matters involving EZ Check Cashing of Clearwater, National Cash Advance, AMSCOT and ACE Cash Express Mr. Cook is prohibited by Rule 1.9(a) from representing BRC in “payday loan” matters which are the same or substantially related to the instant case.

46. Mr. Rodems and BRC must be disqualified under Rule 4-1.10(a) relative to Gillespie as a former client of the Alpert firm, and relative to Gillespie as a former client of BRC.

47. Former client Gillespie disclosed protected client confidential information to following law partners, associate lawyer and key employee of the Alpert firm, and they received from Gillespie protected client confidential information:

a. Jonathan Louis Alpert, Alpert firm partner

b. Chris A. Barker, Alpert firm partner

c. Ryan Christopher Rodems, Alpert firm partner

d. William J. Cook, Alpert firm partner

e. Scott Flint, Alpert firm associate lawyer

f. Lynne Anne Spina, notary public and legal assistant

The protected client confidential information Gillespie disclosed was material to the AMSCOT and ACE Cash Express lawsuits, and other matters including EZ Check Cashing of

Clearwater, Check ‘n Go, Check Smart, Americash, and National Cash Advance, and an apartment lease in St. Petersburg, Florida

48. BRC and the Alpert firm are private firms under Bar Rule 4-1.10. The individual lawyers involved are bound by bar rules, including rules 4-1.6, 4-1.7, and 4-1.9. The rule of imputed disqualification stated in Bar Rule 4-1.10(a) gives effect to the principle of loyalty to the client as it applies to lawyers who practice in a law firm. Such situations can be considered from the premise that a firm of lawyers is essentially 1 lawyer for purposes of the rules governing loyalty to the client or from the premise that each lawyer is bound by the obligation of loyalty owed by each lawyer with whom the lawyer is associated.

49. When lawyers have been associated in a firm end their association, the client previously represented must be reasonably assured that the principle of loyalty to the client is not compromised. Messrs. Barker, Rodems and Cook ended their association with the Alpert firm on or about December 12, 2000. Gillespie was a client of the Alpert firm for the previous year and was represented by Messrs. Alpert, Flint, Cook, and others on a number of matters, including class action lawsuits against AMSCOT and ACE Cash Express. Gillespie expects and demands that his client confidences to the Alpert firm be protected. Gillespie has no conflict with the Alpert firm.

50. Independent of the question of disqualification of a firm, a lawyer changing professional association has a continuing duty to preserve confidentiality of information about a client formerly represented. See rules 4-1.6 and 4-1.9. It has been held that a partner in a law firm is conclusively presumed to have access to all confidences concerning all clients of the firm. Under this analysis, if a lawyer has been a partner in

one law firm and then becomes a partner in another law firm, there is a presumption that all confidences known by a partner in the first firm are known to all partners in the second firm. This presumption is properly applied in this circumstance where the former client Gillespie was extensively represented by the Alpert firm. Gillespie disclosed substantial information to the lawyers of the Alpert firm. As a partner of the Alpert firm, Rodems had access to all Gillespie's client confidences and expects and demands that his confidences to the Alpert firm are protected. Gillespie has no conflict with Mr. Alpert, Mr. Flint, and the Alpert firm. For matters in prior representation to be "substantially related" to present representation for purposes of motion to disqualify counsel, matters need only be akin to present action in way reasonable persons would understand as important to the issues involved.[5] Substantial relationship between instant case in which law firm represented defendant and issues in which firm had previously represented plaintiffs created irrebuttable resumption under Florida law that confidential information was disclosed to firm, requiring disqualification.[7] Disqualification of even one attorney from law firm on basis of prior representation of opposing party necessitates disqualification of firm as a whole, under Florida law.[8] McPartland v. ISI Inv. Services, Inc., 890 F.Supp. 1029. Professional conduct rule requires disqualification of a law firm when any of its lawyers practicing alone would be disqualified.[2] Professional conduct rule requiring disqualification of a law firm based on prior representation of adverse party by attorney who has joined the firm extends to law firm of mediator who received confidential information about a party during the mediation process.[4] Matluck v. Matluck, 825 So.2d 1071.

51. Mr. Rodems and BRC first appeared in this action representing BRC and Cook when Rodems filed Defendants' Motion to Dismiss and Strike August 29, 2005.

52. Messrs. Barker, Rodems and Cook individually, and BRC, knew Mr. Cook could not represent himself and BRC against claims brought by former client Gillespie in a matter that was the same or substantially similar to the former representation. Rodems unlawfully assumed representing BRC and Mr. Cook against Gillespie.

53. Bar Rule 4-1.10(a) Imputation of Conflicts of Interest also prevents Rodems from representing BRC and Cook. Disqualification of even one attorney from law firm on basis of prior representation of opposing party necessitates disqualification of firm as a whole, under Florida law. McPartland v. ISI Inv. Services, Inc., 890 F.Supp.1029.

BRC and Mr. Cook's Libel Counterclaim Against Gillespie

54. BRC and Cook counter-sued Gillespie for libel January 19, 2006 over a letter Gillespie wrote to Ian Mackechnie, President of AMSCOT Corporation dated July 25, 2005. Gillespie's letter to Mackechnie included a second "enclosure letter" in the envelope. Gillespie's letter to Mackechnie discussed the lawsuit Clement v. Amscot Corporation, Case No. 8:99-ev-2795-T-26C where BRC and Cook formerly represented Gillespie. The second "enclosure letter" was a copy of Gillespie's letter to Cook dated August 16, 2001 instructing Cook to settle the AMSCOT lawsuit. BRC and Cook failed to obey Gillespie's instruction to settle. The letter (but not the "enclosure letter") was attached to the initial pro se complaint as Exhibit 8. The letter and the "enclosure letter" is attached to Plaintiff's First Amended Complaint as Exhibit 11.

55. Gillespie's July 25, 2005 letter and "enclosure letter" to AMSCOT is substantially related to the lawsuit Clement v. Amscot Corporation, Case No. 8:99-ev-2795-T-26C

where BRC and Cook formerly represented Gillespie. Therefore the BRC and Cook libel counter-claim about the letter is a matter substantially related to the Clement v. Amscot Corporation lawsuit, a matter where BRC and Cook formerly represented Gillespie.

56. Mr. Rodems and BRC cannot represent itself in its libel counterclaim against Gillespie. Bar Rule 4-1.9(a) "A lawyer who has formerly represented a client in a matter shall not thereafter: (a) represent another person in the same or a substantially related matter in which that person's interests are materially adverse to the interests of the former client unless the former client gives informed consent;" Gillespie does not consent. The libel action is a substantially related matter to the AMSCOT litigation where BRC and Cook represented Gillespie. In fact, it is the same matter. For matters in prior representation to be "substantially related" to present representation for purposes of motion to disqualify counsel, matters need only be akin to present action in way reasonable persons would understand as important to the issues involved.[5] Disqualification of even one attorney from law firm on basis of prior representation of opposing party necessitates disqualification of firm as a whole, under Florida law.[8] McPartland v. ISI Inv. Services, Inc., 890 F.Supp. 1029. Mr. Rodems and BRC cannot represent itself where the interests are materially adverse to the interest of the former client. Mr. Cook and BRC may or may not have a right to sue Gillespie for libel, but they are prohibited from representing themselves in the action. BRC and Cook must hire outside counsel to represent them in the counterclaim against former client Gillespie.

Previous Motion to Disqualify Mr. Rodems and BRC as Counsel

57. Gillespie first moved to disqualify Mr. Rodems and BRC as counsel September 25, 2005. Gillespie, appearing pro se, made a speaking motion to disqualify Rodems

during a telephonic hearing September 25, 2005 on Defendants Motion to Dismiss and Strike. Rodems was not returning Gillespie's calls, and Rodems scheduled a hearing without coordinating the time and date with Gillespie. The basis for the motion to disqualify was misplaced, that a corporation may appear in court only through an attorney; it cannot appear by an officer of the corporation. The motion was denied. An officer of a corporation who is a licensed attorney may represent the corporation. Rodems is an officer of the BRC professional service corporation and a licensed attorney.

58. Plaintiff's Motion to Disqualify Counsel was submitted February 2, 2006, twenty (20) days after Gillespie established a cause of action for Fraud and Breach of Contract against BRC and Cook, with Judge Nielsen's Order On Defendants' Motion to Dismiss and Strike January 13, 2006.

59. During the process of scheduling Plaintiff's Motion to Disqualify Counsel for hearing, Mr. Rodems telephoned Gillespie at home March 3, 2006 and an argument ensued. On March 6, 2006 Rodems made a sworn affidavit under the penalty of perjury falsely placing the name of the trial judge, the Honorable Richard A. Nielsen, in the affidavit and therefore into the controversy. The matter was recently referred to Kirby Rainsberger, Police Legal Advisor of the Tampa Police Department. Mr. Rainsberger notified Gillespie by letter dated February 22, 2010 that Rodems was not right and not accurate in representing to the court as an "exact quote" language that clearly was not an exact quote. Mr. Rainsberger wrote that the misrepresentation does not, in his judgment, rise to the level of criminal perjury. However Florida case law supports a finding of criminal perjury against Rodems, and Gillespie provided the information to Rainsberger

March 11, 2010, with a follow-up letter dated June 28, 2010. Gillespie is awaiting reply from Mr. Rainsberger.

60. A hearing on Plaintiff's Motion to Disqualify Counsel was held April 25, 2006. Mr. Rodems presented the following case law in support of his position. The cases are largely irrelevant to this matter and set of facts. Rodems failed to disclose to the court legal authority in the controlling jurisdiction known to the lawyer to be directly adverse to the position of the client and not disclosed by opposing counsel. The hearing was transcribed by Denise L. Bradley, RPR and Notary Public, of Berryhill & Associates, Inc., Court Reporters. The transcript of the hearing was filed with the clerk of the court. Mr. Rodems presented the following case law April 25, 2006:

a. Frank, Weinberg & Black vs. Effman, 916 So.2d 971

b. Bochese vs. Town of Ponce Inlet, 267 F. Supp. 2nd 1240

c. In Re: Jet One Center 310-BR, Bankruptcy Reporter, 649

d. Transmark USA v State Department of Insurance, 631 So.2d, 1112-1116

e. Cerillo vs. Highley, 797 So.2d 1288

f. Singer Island Limited vs. Budget Construction Company, 714 So.2d 651

61. Mr. Rodems violated FL Bar Rule 4-3.3(c) when he failed to disclose to the tribunal legal authority in the controlling jurisdiction known to the lawyer to be directly adverse to the position of the client and not disclosed by opposing counsel, in this instance Gillespie pro se. Rodems failed to disclose McPartland v. ISI Inv. Services, Inc., 890 F.Supp. 1029, or U.S. v. Culp, 934 F.Supp. 394, legal authority directly adverse to the position of his client. McPartland and Culp are just two of a number of cases Rodems failed to disclose, see this motion, and the Table of Cases that accompanies this motion.

Counsel has a responsibility to fully inform the court on applicable law whether favorable or adverse to position of client so that the court is better able to make a fair and accurate determination of the matter before it. Newberger v. Newberger, 311 So.2d 176. As evidenced by this motion, legal authority directly adverse to the position of Mr. Rodems and BRC was not disclosed to the court by Rodems.

62. The court denied the motion to disqualify, except as to the basis that counsel may be a witness. (Exhibit 9). Mr. Rodems has liability in this action and must be a witness. Partners engaged in the practice of law are each responsible for the fraud or negligence of another partner when the later acts within the scope of the ordinary business of an attorney. Smyrna Developers, Inc. v. Bornstein, 177 So.2d 16.

63. During a hearing January 25, 2010 Judge Barton said it was time for a renewed motion to disqualify. Gillespie pointed out to the court that Mr. Rodems' representation of BRC and Cook was little more that ongoing testimony about factual matters.

> THE COURT: All right. Well, I assume there will be a renewed motion to disqualify that will be filed and then again set for a hearing once we establish our procedure…
>
> (transcript, January 25, 2010, page 31, line 17)

64. Plaintiff's Amended Motion to Disqualify Counsel was filed March 24, 2010.

65. On March 29, 2010 Mr. Rodems submitted Defendants' Motion For Sanctions Pursuant to Section 57.105(1) and (3), Florida Statutes Regarding Plaintiff's Amended Motion to Disqualify Counsel. This was Mr. Rodems fifth motion for sanctions pursuant to section 57.105(1) and (3), Florida Statutes in this action.

66. Gillespie withdrew Plaintiff's Amended Motion to Disqualify Counsel by letter to Judge Barton April 28, 2010. The motion was withdrawn for Gillespie to amend and show recently discovered information that Rodems failed to disclose during a hearing on conflict of interest before Judge Isom. Mr. Rodems failed to disclose known conflict with his former law partner Jonathan Alpert, a former law partner with attorney A. Woodson "Woody" Isom, Jr., the husband of Judge Isom.

Bar Rule 4-3.3. Candor Toward the Tribunal

67. Bar Rule 4-3.3. Candor Toward the Tribunal.

(a) False Evidence; Duty to Disclose**.** A lawyer shall not knowingly:

(1) make a false statement of fact or law to a tribunal or fail to correct a false statement of material fact or law previously made to the tribunal by the lawyer;

(2) fail to disclose a material fact to a tribunal when disclosure is necessary to avoid assisting a criminal or fraudulent act by the client;

(3) fail to disclose to the tribunal legal authority in the controlling jurisdiction known to the lawyer to be directly adverse to the position of the client and not disclosed by opposing counsel; or

(4) offer evidence that the lawyer knows to be false. A lawyer may not offer testimony that the lawyer knows to be false in the form of a narrative unless so ordered by the tribunal. If a lawyer, the lawyer's client, or a witness called by the lawyer has offered material evidence and the lawyer comes to know of its falsity, the lawyer shall take reasonable remedial measures including, if necessary, disclosure to the tribunal. A lawyer may refuse to offer evidence that the lawyer reasonably believes is false.

(b) Criminal or Fraudulent Conduct. A lawyer who represents a client in an adjudicative proceeding and who knows that a person intends to engage, is engaging, or has engaged in criminal or fraudulent conduct related to the proceeding shall take reasonable remedial measures, including, if necessary, disclosure to the tribunal.

(c) Ex Parte Proceedings. In an ex parte proceeding a lawyer shall inform the tribunal of all material facts known to the lawyer that will enable the tribunal to make an informed decision, whether or not the facts are adverse.

(d) Extent of Lawyer's Duties. The duties stated in this rule continue beyond the conclusion of the proceeding and apply even if compliance requires disclosure of information otherwise protected by rule 4-1.6

Bar Rule 4-3.3. Violation, Rodems' False Statements About a Signed Fee Agreement

68. Mr. Rodems mislead the Court during hearings on October 30, 2007, and July 1, 2008 for the purpose of obtaining a dismissal of claims against BRC and Mr. Cook. Rodems misrepresented to Judge Barton that there was a signed written fee agreement between Plaintiff Neil Gillespie and Defendant Barker, Rodems & Cook, PA. In fact there is no signed written fee agreement between Gillespie and Barker, Rodems & Cook. No such agreement was signed, none exists, and Mr. Rodems has not produced one. The lack of a signed written fee agreement between the parties is also a violation of Bar Rule 4-1.5(f)(2). Because Mr. Rodems mislead the Court, Plaintiff's Motion For Rehearing was submitted July 16, 2008 by attorney Robert W. Bauer. (Exhibit 10). The motion has not been heard. Arguments wherein counsel expresses personal knowledge of the facts in issue or expresses personal opinion as to the justness of a cause should not be condoned even in absence of an objection. Schreier v. Parker, 415 So.2d 794, Fla.App. 3 Dist.,

1982. Throughout this lawsuit Mr. Rodems has expressed personal knowledge of facts, often falsely, and expressed personal opinion as to the justness of the cause, due to his liability and conflict of interest.

a. Representations by a lawyer**.** An advocate is responsible for pleadings and other documents prepared for litigation, but is usually not required to have personal knowledge of matters asserted therein, for litigation documents ordinarily present assertions by the client, or by someone on the client's behalf, and not assertions by the lawyer. Compare rule 4-3.1. However, an assertion purporting to be on the lawyer's own knowledge, as in an affidavit by the lawyer or in a statement in open court, may properly be made only when the lawyer knows the assertion is true or believes it to be true on the basis of a reasonably diligent inquiry. There are circumstances where failure to make a disclosure is the equivalent of an affirmative misrepresentation. The obligation prescribed in rule 4-1.2(d) not to counsel a client to commit or assist the client in committing a fraud applies in litigation. Regarding compliance with rule 4-1.2(d), see the comment to that rule. See also the comment to rule 4-8.4(b). (Comment, 4-3.3)

b. Misleading legal argument. Legal argument based on a knowingly false representation of law constitutes dishonesty toward the tribunal. A lawyer is not required to make a disinterested exposition of the law, but must recognize the existence of pertinent legal authorities. Furthermore, as stated in subdivision (a)(3), an advocate has a duty to disclose directly adverse authority in the controlling jurisdiction that has not been disclosed by the opposing party. The underlying concept is that legal argument is a discussion seeking to determine the legal premises properly applicable to the case. (Comment, 4-3.3)

c. False evidence. Subdivision (a)(4) requires that the lawyer refuse to offer evidence that the lawyer knows to be false, regardless of the client's wishes. This duty is premised on the lawyer's obligation as an officer of the court to prevent the trier of fact from being misled by false evidence. A lawyer does not violate this rule if the lawyer offers the evidence for the purpose of establishing its falsity. If a lawyer knows that the client intends to testify falsely or wants the lawyer to introduce false evidence, the lawyer should seek to persuade the client that the evidence should not be offered. If the persuasion is ineffective and the lawyer continues to represent the client, the lawyer must refuse to offer the false evidence. If only a portion of a witness's testimony will be false, the lawyer may call the witness to testify but may not elicit or otherwise permit the witness to present the testimony that the lawyer knows is false. The duties stated in this rule apply to all lawyers, including defense counsel in criminal cases. The prohibition against offering false evidence only applies if the lawyer knows that the evidence is false. A lawyer's reasonable belief that evidence is false does not preclude its presentation to the trier of fact. The rule generally recognized is that, if necessary to rectify the situation, an advocate must disclose the existence of the client's deception to the court. Such a disclosure can result in grave consequences to the client, including not only a sense of betrayal but also loss of the case and perhaps a prosecution for perjury. But the alternative is that the lawyer cooperate in deceiving the court, thereby subverting the truth-finding process that the adversary system is designed to implement. See rule 4-1.2(d). Furthermore, unless it is clearly understood that the lawyer will act upon the duty to disclose the existence of false evidence, the client can simply reject the lawyer's advice

to reveal the false evidence and insist that the lawyer keep silent. Thus, the client could in effect coerce the lawyer into being a party to fraud on the court. (Comment, 4-3.3)

d. Remedial measures**.** If perjured testimony or false evidence has been offered, the advocate's proper course ordinarily is to remonstrate with the client confidentially if circumstances permit. In any case, the advocate should ensure disclosure is made to the court. It is for the court then to determine what should be done--making a statement about the matter to the trier of fact, ordering a mistrial, or perhaps nothing. If the false testimony was that of the client, the client may controvert the lawyer's version of their communication when the lawyer discloses the situation to the court. If there is an issue whether the client has committed perjury, the lawyer cannot represent the client in resolution of the issue and a mistrial may be unavoidable. An unscrupulous client might in this way attempt to produce a series of mistrials and thus escape prosecution. However, a second such encounter could be construed as a deliberate abuse of the right to counsel and as such a waiver of the right to further representation. This commentary is not intended to address the situation where a client or prospective client seeks legal advice specifically about a defense to a charge of perjury where the lawyer did not represent the client at the time the client gave the testimony giving rise to the charge. (Comment, 4-3.3)

e. Refusing to offer proof believed to be false**.** Although subdivision (a)(4) only prohibits a lawyer from offering evidence the lawyer knows to be false, it permits the lawyer to refuse to offer testimony or other proof that the lawyer reasonably believes is false. Offering such proof may reflect adversely on the lawyer's ability to discriminate in the quality of evidence and thus impair the lawyer's effectiveness as an advocate.

(i) A lawyer may not assist the client or any witness in offering false testimony or other false evidence, nor may the lawyer permit the client or any other witness to testify falsely in the narrative form unless ordered to do so by the tribunal. If a lawyer knows that the client intends to commit perjury, the lawyer's first duty is to attempt to persuade the client to testify truthfully. If the client still insists on committing perjury, the lawyer must threaten to disclose the client's intent to commit perjury to the judge. If the threat of disclosure does not successfully persuade the client to testify truthfully, the lawyer must disclose the fact that the client intends to lie to the tribunal and, per 4-1.6, information sufficient to prevent the commission of the crime of perjury.

(ii) The lawyer's duty not to assist witnesses, including the lawyer's own client, in offering false evidence stems from the Rules of Professional Conduct, Florida statutes, and caselaw.

(iii) Rule 4-1.2(d) prohibits the lawyer from assisting a client in conduct that the lawyer knows or reasonably should know is criminal or fraudulent.

(iv) Rule 4-3.4(b) prohibits a lawyer from fabricating evidence or assisting a witness to testify falsely.

(v) Rule 4-8.4(a) prohibits the lawyer from violating the Rules of Professional Conduct or knowingly assisting another to do so.

(vi) Rule 4-8.4(b) prohibits a lawyer from committing a criminal act that reflects adversely on the lawyer's honesty, trustworthiness, or fitness as a lawyer.

(vii) Rule 4-8.4(c) prohibits a lawyer from engaging in conduct involving dishonesty, fraud, deceit, or misrepresentation.

(viii) Rule 4-8.4(d) prohibits a lawyer from engaging in conduct that is prejudicial to the administration of justice.

(ix) Rule 4-1.6(b) requires a lawyer to reveal information to the extent the lawyer reasonably believes necessary to prevent a client from committing a crime.

(x) This rule, 4-3.3(a)(2), requires a lawyer to reveal a material fact to the tribunal when disclosure is necessary to avoid assisting a criminal or fraudulent act by the client, and 4-3.3(a)(4) prohibits a lawyer from offering false evidence and requires the lawyer to take reasonable remedial measures when false material evidence has been offered.

(xi) Rule 4-1.16 prohibits a lawyer from representing a client if the representation will result in a violation of the Rules of Professional Conduct or law and permits the lawyer to withdraw from representation if the client persists in a course of action that the lawyer reasonably believes is criminal or fraudulent or repugnant or imprudent. Rule 4-1.16(c) recognizes that notwithstanding good cause for terminating representation of a client, a lawyer is obliged to continue representation if so ordered by a tribunal.

f. To permit or assist a client or other witness to testify falsely is prohibited by section 837.02, Florida Statutes (1991), which makes perjury in an official proceeding a felony, and by section 777.011, Florida Statutes (1991), which proscribes aiding, abetting, or counseling commission of a felony.

g. Florida caselaw prohibits lawyers from presenting false testimony or evidence. *Kneale v. Williams*, 30 So. 2d 284 (Fla. 1947), states that perpetration of a fraud is outside the scope of the professional duty of an attorney and no privilege attaches to communication between an attorney and a client with respect to transactions constituting the making of a false claim or the perpetration of a fraud. *Dodd v. The Florida Bar*, 118

So. 2d 17 (Fla. 1960), reminds us that “the courts are ... dependent on members of the bar to ...present the true facts of each cause ... to enable the judge or the jury to [decide the facts] to which the law may be applied. When an attorney ... allows false testimony ... [the attorney] ... makes it impossible for the scales [of justice] to balance. ” See *The Fla. Bar v. Agar*, 394 So. 2d 405 (Fla. 1981), and *The Fla. Bar v. Simons*, 391 So. 2d 684 (Fla. 1980).

Bar Rule 4-3.3. Violation, Rodems’ Fraud on the Court Setting a Hearing

69. Gillespie submitted Notice of Fraud on the Court by Ryan Christopher Rodems June 17, 2010 showing how Mr. Rodems perpetrated a Fraud on the Court concerning "multiple telephone calls to coordinate the hearing on June 9, 2010". (Exhibit 11). Rodems' fraud was intended to deceive the Court and Gillespie, for the purpose of disrupting the litigation and gain advantage by unlawfully setting a hearing on six days notice. Mr. Rodems placed the calls to a telephone number he knew or should have known was no longer valid or associated with this litigation. The telephone number (352) 502-8409 was associated several years ago with a cell phone used by Gillespie. The telephone number was disconnected in 2007. Calls to the telephone number are a dead end. There is no message or other indication that Gillespie could be contacted by calling the telephone number. Gillespie did not provide the telephone number to Rodems when he reassumed pro se representation in October 2009 following the withdrawal of attorney Robert W. Bauer. Nonetheless, for a period of two weeks Mr. Rodems deceived the Court and Gillespie as follows:

a. Mr. Rodems made a false statement of material fact when he wrote June 7, 2010, “I made multiple telephone calls to coordinate the hearing on June 9, 2010 with

you. I telephoned you twice on Thursday, May 27, 2010 and again on Tuesday, June 1, 2010, leaving voice mails each time, but you did not return my calls."

b. Mr. Rodems made a false statement of material fact when he wrote June 11, 2010 "Regardless of your accusations that I did not call you, I made multiple telephone calls, some in the presence of my staff, to coordinate hearings on June 9 and July 12, 2010, and I dialed the same telephone number that I have successfully used to call you in the past."

c. Mr. Rodems knew the representations in his letters of June 7, 2010 and June 11, 2010 were false because calling a bad telephone number is not a good-faith effort to contact Gillespie to coordinate hearings.

d. Mr. Rodems intended by making the representations in his letters of June 7,2010 and June 11,2010 that the Court would rely upon the representation to the injury of Gillespie and to disrupt the proceedings.

Bar Rule 4-3.3. Violation, Rodems' Void Affidavit to Obtain Writ of Garnishment

70. See Motion to Strike Affidavit if William J. Cook, Esquire, Motion to Quash Order Granting Defendants' Motion for Writ of Garnishment After Judgment, Motion to Quash Writ of Garnishment, submitted June 28, 2010. (Exhibit 12)

71. Mr. Rodems submitted the Affidavit of William J. Cook, Esquire with Defendants' Notice of Filing June 1, 2010. Mr. Rodems notarized or acknowledged the affidavit of Mr. Cook himself. Mr. Rodems and Mr. Cook are law partners in practice at Barker, Rodems & Cook, PA where they are shareholders.

72. The Affidavit of William J. Cook, Esquire was unlawfully notarized or acknowledged by Mr. Rodems and is void due to his financial or beneficial interest in the

proceedings. The affidavit was notarized by Mr. Rodems June 1, 2010 and submitted in a garnishment proceeding supplementary to execution to collect a judgment of $11,550 from Neil J. Gillespie, a judgment creditor of William J. Cook, Esquire and Barker, Rodems & Cook, PA. Mr. Rodems is a shareholder of Baker, Rodems & Cook, PA and has a financial or beneficial interest in the proceedings.

73. An officer or a person otherwise legally authorized to take acknowledgments is not qualified to act where he or she has a financial or beneficial interest in the proceedings or will acquire such interest under the instrument to be acknowledged. Summa Investing Corp. v. McClure, 569 So. 2d 500. Mr. Rodems' acknowledgment of Mr. Cook's affidavit for use in a garnishment proceeding supplementary to execution to collect a judgment of $11,550 from Neil J. Gillespie, a judgment creditor Barker, Rodems & Cook, PA where Mr. Rodems is a shareholder and has a financial or beneficial interest in the proceedings is void and therefore the affidavit was defectively acknowledged. An attempted oath administered by one who is not qualified to administer it is abortive and in effect no oath. Crockett v. Cassels, 95 Fla. 851.

74. Mr. Rodems improperly took the acknowledgment of Mr. Cook's affidavit to be used in the case in which he is an attorney. It is improper for a lawyer to take acknowledgments to affidavits, to be used in the case in which he is an attorney. Savage v. Parker, 53 Fla. 1002. Mr. Rodems used the affidavit with a motion to obtain an Order Granting Defendants' Motion For Writ of Garnishment After Judgment

FL Bar Rule 4-3.5. Impartiality and Decorum of the Tribunal

75. FL Bar Rule 4-3.5. Impartiality and decorum of the tribunal (relevant portion)

4-3.5(a) Influencing Decision Maker. A lawyer shall not seek to influence a judge, juror, prospective juror, or other decision maker except as permitted by law or the rules of court. (c) Disruption of Tribunal. A lawyer shall not engage in conduct intended to disrupt a tribunal. Comment: The advocate's function is to present evidence and argument so that the cause may be decided according to law. Refraining from abusive or obstreperous conduct is a corollary of the advocate's right to speak on behalf of litigants. Attorney's conduct of lying under oath in connection with ongoing legal disputes he had with his former paralegal and another attorney violated rules regulating the state bar, including making a false statement of material fact to a tribunal, and engaging in conduct intended to disrupt tribunal. The Florida Bar v. Germain, 957 So.2d 613

Mr. Rodems' Perjury and Disruption of the Tribunal

Violation FL Bar Rule 4-3.5., and Florida Statutes, Chapter 837, Perjury

76. Mr. Rodems intentionally disrupted the tribunal to gain advantage, but his plan backfired and caused the recusal of the Honorable Richard Nielsen November 22, 2006.

77. Gillespie initially had a good working relationship with Judge Nielsen and his judicial assistant Myra Gomez. Gillespie attended the first hearing telephonically September 26, 2005 and prevailed on Defendants' Motion to Dismiss and Strike. After Rodems' perjury of March 6, 2006 Judge Nielsen did not manage the case lawfully, favored Defendants in rulings, and responded to Gillespie sarcastically from the bench.

78. March 6, 2006 Mr. Rodems submitted Defendants' Verified Request For Bailiff And For Sanctions that falsely placed the name of the Honorable Richard Nielsen into an

"exact quote" attributed to Gillespie[4]. Mr. Kirby Rainsberger, Police Legal Advisor, Tampa Police Department, established by letter February 22, 2010 that Mr. Rodems was not right and not accurate in representing to the Court as an "exact quote" language that clearly was not an exact quote. The definition of "material matter" in Florida Statues section 837.011(3)(2009) means any subject, **regardless of its admissibility under the rules of evidence**, (emphasis added) which could affect the course or outcome of the proceeding. Whether a matter is material in a given factual situation is a question of law. Placing the name of Judge Nielsen into an "exact quote" attributed to Gillespie about a violent physical attack "could affect the course or outcome of the proceeding" because of the personal nature of one's name, especially the name of the presiding judge, and the fear it could cause. In this case Rodems' perjury has affected the proceedings; it caused the recusal of the trial judge and obstructed justice by prejudicing the court against Gillespie.

79. The following Florida case law supports a finding of perjury against Mr. Rodems because it meets the definition of "material matter" in section 837.011(3) Florida Statutes (2009). Materiality is not element of crime of perjury, but rather is a threshold issue that the court must determine prior to trial, as with any other preliminary matter.[2] State v. Ellis, 723 So.2d 187. Misrepresentations which tend to bolster the credibility of witness, whether they are successful or not, have that potential and are regarded as "material" for purposes of perjury conviction.[3] Representation is "material" under perjury statute if it

[4] The portion of Gillespie's "exact quote" in dispute is "like I did before" which refers to a September 25, 2005 telephonic hearing where he prevailed. It is a self-proving metaphor. Instead Rodems swore in an affidavit that Gillespie said "in Judge Nielsen's chambers" which is false. Rodems could have used Gillespie's exact quote but he did not. Rodems added the name of Judge Nielsen with malice aforethought and did so in a sworn statement under the penalty of perjury.

has mere potential to affect resolution of main or secondary issue before court.[2] Soller v. State, 666 So.2d 992.

80. The Florida Supreme Court held that an attorney's conduct of lying under oath in connection with ongoing legal disputes he had with his former paralegal and another attorney violated rules regulating the state bar, including making a false statement of material fact to a tribunal, and engaging in conduct intended to disrupt tribunal.[4] The Florida Bar v. Germainm, 957 So.2d 613. Misrepresenting material facts to court, submitting affidavit he knew was false and misleading Bar by misstatement in his initial response to Bar warranted attorney's suspension for ninety days.[1] The Florida Bar v. Corbin, 701 So.2d 334.

Rodems' Violation of Gillespie's Civil Rights, 42 U.S.C. § 1983 Color of Law Offense

81. This case was reassigned to the Honorable Claudia Isom November 22, 2006. Judge Isom's web page advised that the judge had a number of relatives practicing law and "If you feel there might be a conflict in your case based on the above information, please raise the issue so it can be resolved prior to me presiding over any matters concerning your case". One relative listed was husband A. Woodson "Woody" Isom, Jr.

82. Gillespie found a number of campaign contributions between Defendant Cook and witness Jonathan Alpert to both Judge Isom and Woody Isom. This lawsuit is about a fee dispute. The only signed fee contract is between Gillespie and the Alpert firm. Plaintiff's Amended Motion To Disclose Conflict was heard February 1, 2007. The hearing was reported and transcribed by Mary Elizabeth Blazer, Notary Public, of Berryhill and Associates, Inc. court reporters. The transcript of the proceedings was filed with the clerk of court. The transcript also shows that both Judge Isom and Mr. Rodems denied that the

campaign contributions were a reason for disqualification. Mr. Rodems presented MacKenzie v Super Kids Bargain Store, 565 So.2d 1332 and Nathanson v Korvick, 577 So.2d 943.

83. The transcript shows that Judge Isom failed to disclose that her husband Woody Isom is a former law partner of Jonathan Alpert. Mr. Rodems represented Defendants at the hearing and also failed to disclose the relationship[5].

> MR. GILLESPIE: Judge, what I wanted to know was about the defendant Mr. Cook's $150 payment to the Court's husband, and what other relationship he might have.
>
> THE COURT: We --we don't have any social, business or blood relationship with Mr. Cook.
>
> (Transcript, February 1, 2007, page 13, beginning line 4)
>
> THE COURT: But we don't have any business, social or family relationship with Mr. Cook.
>
> (Transcript, February 1, 2007, page 13, line 17)

84. The question whether disqualification of a judge is required focuses on those matters from which a litigant may reasonably question a judge's impartiality rather than the judge's perception of his ability to act fairly and impartially.[1] A judge has a duty to disclose information that the litigants or their counsel might consider pertinent to the issue of disqualification.[2] A judge's obligation to disclose relevant information is broader than the duty to disqualify.[3] Code of Jud.Conduct, Canon 3(E)(1) Stevens v. Americana Healthcare Corp. of Naples, 919 So.2d 713, Fla. App. 2 Dist., 2006. Recusal

[5] Gillespie only recently learned (March 2010) of the relationship in the course of researching accusations

is appropriate where one of the parties or their counsel had dealings with a relative of the court, or whenever a modicum of reason suggests that a judge's prejudice may bar a party from having his or her day in court.[1] McQueen v. Roye, 785 So.2d 512.

85. Judge Isom had a duty to disclose that her husband Woody Isom is a former law partner of Jonathan Alpert. Mr. Alpert formerly represented Gillespie at Alpert, Barker, Rodems, Ferrentino & Cook, P.A on a substantially related matter. This lawsuit is about a fee dispute. The only signed fee contract is between Gillespie and the Alpert firm. The fact that Woody Isom practiced law with Jonathan Alpert was highly relevant. Judge Isom failed to make the required disclosure. Judge Isom lied to Gillespie in order to keep jurisdiction over the case to make rulings favorable to Mr. Cook and BRC and against Gillespie contrary to the rule of law.

86. Mr. Rodems and Judge Isom engaged in a conspiracy of silence to suppress highly relevant information. Mr. Alpert is a key witness in this case. The fact that Alpert's former law partner Woody Isom is married to the trial judge is highly relevant. Mr. Alpert and the Isoms have a long relationship that included the practice of law as partners and multiple campaign contributions from Jonathan Alpert to both Woody Isom and Judge Isom.

87. Mr. Rodems violated FL Bar Rule 4-3.3(c) when he failed to disclose to the tribunal legal authority in the controlling jurisdiction known to the lawyer to be directly adverse to the position of the client and not disclosed by opposing counsel. Rodems had a duty to disclose to Judge Isom that she was required to disclose that Woody Isom and Jonathan Alpert are former law partners. Instead Rodems engaged in a in a conspiracy of silence to suppress highly relevant information to deny Gillespie his civil rights.

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contained an offensive letter recently sent by Mr. Rodems to Gillespie.

88. Subsequently Judge Isom did not manage the case lawfully. Judge Isom failed to follow her own law review on case management and discovery, Professionalism and Litigation Ethics, 28 STETSON L. REV. 323. (Exhibit 13). Judge Isom's law review shows that she provides intensive case management to lawyers rather than impose sanctions for discovery problems. Judge Isom was prejudiced against Gillespie, a pro se litigant suing lawyers with a former business relationship to her husband. As a result Judge Isom did not provide intensive case management to Gillespie but paved the way with her rulings to impose an extreme sanction of $11,550 against him. Judge Isom also knowingly denied Gillespie the benefits of the services, programs, or activities of the court, specifically mediation services:

> THE COURT: And you guys have already gone to mediation and tried to resolve this without litigation?
>
> MR. GILLESPIE: No, Your Honor.
>
> (Transcript, February 01, 2007, page 15, line 20)

89. After two weeks of biased treatment Gillespie moved to disqualify Judge Isom with Plaintiff's Motion To Disqualify Judge filed February 13, 2007. (Exhibit 14). Judge Isom denied the motion as but recused herself sua sponte the same day.

90. Mr. Rodems and Judge Isom acted under the color of law to deny Gillespie his Civil Rights in violation 42 U.S.C. § 1983 Civil Rights. Private parties conspiring with a state actor acting under color of law may be liable for damages even if the state actors involved are absolutely immune. Tower v. Glover, 467 U.S. 914; Scotto v. Almenas, 143 F.3d 105. Article 1, Section 21 of the Constitution of the State of Florida, Access to courts, states that the courts shall be open to every person for redress of any injury, and

justice shall be administered without sale, denial or delay. Judge Isom unlawfully failed to disclose conflict with husband Woody Isom. Judge Isom made rulings favorable to lawyers who formerly represented Gillespie in a substantially related matter and are former law partners of Woody Isom. Judge Isom failed to provide Gillespie the benefits of the services, programs, or activities of the court including mediation services. Judge Isom denied Gillespie his right to due process guaranteed under Article 1, Section 9 of the Constitution of the State of Florida. Judge Isom paved the way for excessive sanctions of $11,550 against Gillespie. Article 1, Section 17 of the Constitution of the State of Florida prohibits excessive punishments which includes excessive fines. The sanction was adjudged against Gillespie without the benefit of a jury, ordinarily guaranteed by Article 1, Section 22 of the Constitution of the State of Florida, Trial by Jury. Judge Isom violated Gillespie's rights under of the Florida Civil Rights Act and the American's with Disabilities Act as set forth in Gillespie's motion to disqualify the judge. Judge Isom denied Gillespie his right to due process under the Fifth and Fourteenth Amendments to the Constitution of the Untied States. In Haines v. Kerner, 404 U.S. 520, the United States Supreme Court found that pro se pleadings should be held to "less stringent standards" than those drafted by attorneys. Tannenbaum v. U.S., 148 F.3d 1262 holds that pro se pleadings are held to a less stringent standard than pleadings drafted by attorneys and will, therefore, be liberally construed; also Trawinski v. United Technologies, 313 F.3d 1295; and Albra v. Advan, Inc., 490 F.3d 826. Judge Isom failed to follow Haines v. Kerner et al and the resulting extreme sanction of $11,550 denied Gillespie his right to protection against cruel and unusual punishment under the Eight Amendment to the Constitution of the Untied States. Judge Isom's failure to afford

Gillespie intensive case management as provided “Harvey M” in her law review denied Gillespie his right to equal protection of the law under the Fourteenth Amendment to the Constitution of the Untied States.

FL Bar Rule 4-3.2 Expediting Litigation

91. Rule 4-3.2. Expediting litigation. A lawyer shall make reasonable efforts to expedite litigation consistent with the interests of the client. Comment: Dilatory practices bring the administration of justice into disrepute. Although there will be occasions when a lawyer may properly seek a postponement for personal reasons, it is not proper for a lawyer to routinely fail to expedite litigation solely for the convenience of the advocates. Nor will a failure to expedite be reasonable if done for the purpose of frustrating an opposing party's attempt to obtain rightful redress or repose. It is not a justification that similar conduct is often tolerated by the bench and bar. The question is whether a competent lawyer acting in good faith would regard the course of action as having some substantial purpose other than delay. Realizing financial or other benefit from otherwise improper delay in litigation is not a legitimate interest of the client.

92. Attorney Robert W. Bauer moved to withdrawal of Gillespie October 13, 2008. Mr. Rodems failed to expedite litigation and took no action for one year to move the case forward in violation of Fla.R.Jud.Admin, Rule 2.545(a) Purpose. Judges and lawyers have a professional obligation to conclude litigation as soon as it is reasonably and justly possible to do so. (Relevant portion). Mr. Rodems failed to appear October 1, 2009 for a hearing on Mr. Bauer’s motion to withdrawal. The Court granted the motion to withdrawal and ordered a sixty (60) day stay in the proceedings for Gillespie to obtain replacement counsel. Rodems violated the court-ordered stay on October 13, 2009 and

served Gillespie a notice of deposition scheduling his deposition on December 15, 2009. This was typical of Rodems' unprofessional behavior throughout this lawsuit.

93. Mr. Bauer previously complained on the record about Mr. Rodems' unprofessional tactics: "…Mr. Rodems has, you know, decided to take a full nuclear blast approach instead of us 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." (Transcript, August 14, 2008, Emergency Hearing/Judge Crenshaw, p. 16, line 24). (Exhibit 15)

94. The court unlawfully neglected its case management duties under Rule 2.545, Fla.R.Jud.Admin. Mr. Rodems is Board Certified by the Florida Bar in Civil Trial law since 2007 with 18 years experience as a lawyer. The lack of case management and other negligence by the court has allowed Rodems to exploit his expert knowledge of court rules and home town advantage to obtain extreme sanctions of $11,550 against Gillespie. The Court sanctioned Gillespie for discovery errors, while at the same time Rodems has failed to provided most of Defendants discovery in this lawsuit. The Court sanctioned Gillespie for a misplaced defense to a motion to dismiss and strike that was essentially the same document proffered by Defendants.

95. Gillespie submitted Plaintiff's Notice to Convene a Case Management Conference April 28, 2010. (Exhibit 16). The pleading shows the case has not been lawfully managed, and that on August 25, 2008 Gillespie wrote Christopher Nauman, Assistant Court Counsel asking why this lawsuit was not being properly managed by the Thirteenth Judicial Circuit. Nauman failed to respond. On February 5, 2009 Gillespie wrote to David Rowland, Court Counsel asking why this lawsuit was not being properly managed by the Thirteenth Judicial Circuit. Rowland failed to respond. On February 19,

2010 Gillespie submitted an Americans with Disabilities Act (ADA) accommodation request to Gonzalo Casares, ADA Coordinator for the Thirteenth Judicial Circuit. Gillespie requested the Court fulfill its case management duties imposed by Rule 2.545, Fla.R.Jud.Admin among other things. In an email to Gillespie dated April 14, 2010, Mr. Casares wrote, "Your request is not within our means to resolve and was referred to the Legal Department for the appropriate course of action." As of today the Legal Department has not responded.

95. Gillespie informed the court February 19, 2010 that there were at least 17 outstanding motions. On April 28, 2010 Gillespie informed the court that the lack of a case management conference has resulted in a backlog of motions requiring hearings. In response the Judge Barton's Order Scheduling Hearing of March 29, 2010 set twelve (12) items for hearing in a one hour period. This is just five (5) minutes per item which is insufficient for each side to present arguments, rebuttals and otherwise have a just hearing of the matters before the Court. In contrast Judge Barton allowed Mr. Rodems a one hour hearing March 20, 2008 on the single issue of granting sanctions against Gillespie.

96. To expedite litigation, a case management conference must be held early in the case. Rule 1.200(a) stipulates the matters to be considered shall be specified in the order or notice setting the conference. At such a conference the court may:

(1) schedule or reschedule the service of motions, pleadings, and other papers;

(2) set or reset the time of trials, subject to rule 1.440(c);

(3) coordinate the progress of the action if the complex litigation factors contained in rule 1.201(a)(2)(A)–(a)(2)(H) are present;

(4) limit, schedule, order, or expedite discovery;

(5) schedule disclosure of expert witnesses and the discovery of facts known and opinions held by such experts;

(6) schedule or hear motions in limine;

(7) pursue the possibilities of settlement;

(8) require filing of preliminary stipulations if issues can be narrowed;

(9) consider referring issues to a magistrate for findings of fact; and

(10) schedule other conferences or determine other matters that may aid in the disposition of the action.

97. On June 1, 2010 Rodems submitted Defendants Notice of Case Management Conference And Statement Of Case And Proceedings. (Exhibit 17). Pages 1 through 8 of the pleading, the "Statement of Case" portion, contains eight pages of self-serving diatribe that is redundant, immaterial, impertinent, or scandalous and must be stricken under Rule 1.140(f), Fla.R.Civ.P. On pages 9 and 10 of the pleading, “The Matters To Be Considered At The Case Management Conference”, Rodems demands “The scheduling of an evidentiary hearing to determine if Gillespie is a "qualified individual with a disability" under the Americans with Disabilities Act, and if so, whether the Court can provide "reasonable modifications" that will allow Gillespie to continue to represent himself.”

This is outrageous, even for Rodems, and is a violation of Rule 1.200(a), the ADA and the Title II Guidelines for the State Counts System of Florida. Gillespie responded June 14, 2010 with a motion to strike redundant, immaterial, impertinent, or scandalous material under Rule 1.140(f), Fla.R.Civ.P. Rodems pleading also fails to conform with

the stipulations of Rule 1.200(a) governing the matters to be considered described in paragraph 96.

Abuse of Process Counterclaim

98. On January 19, 2006, Rodems countersued Gillespie for libel over a letter Gillespie wrote to AMSCOT about Defendants' former representation of Gillespie in the lawsuit against AMSCOT, a matter which is the same or substantially related to the former representation of Gillespie. The lawsuit is frivolous and an abuse of process. Filing of frivolous lawsuits to punish counsel for representing clients opposing attorney in other action and to get leverage relative to a grievance and a lawsuit against attorney warrants probation and public reprimand.[2] The Florida Bar v. Thomas, 582 So.2d 1177. An inequitable balance of power may exist between an attorney who brings a defamation action and the client who must defend against it. Attorneys schooled in the law have the ability to pursue litigation through their own means and with minimal expense when compared with their former clients. Tobkin v. Jarboe, 710 So.2d 975.

99. The filing of a counterclaim may constitute issuance of process for the purpose of an abuse of process action.[2] Cause of action for abuse of process requires showing of willful and intentional misuse of process for some wrongful and unlawful object, or collateral purpose.[3] Abuse of process consists not in issuance of process, but rather in perversion of process after its issuance; writ or process must be used in manner or for purpose not intended by law.[4] Peckins v. Kaye, 443 So.2d 1025.

100. On September 7, 2006 attorney David M. Snyder representing Gillespie notified Mr. Rodems by letter that "Defendant's counterclaim for defamation, while it may have stated a cause of action at the outset, has little chance of ultimate success given the

limited distribution and privileged nature of the publication complained of. *See e.g. Nodar v. Galbreath*, 462 So. 2d 803 (Fla. 1984)." (Exhibit 18)

101. Upon information and belief, Rodems' counterclaim for libel against Gillespie is a willful and intentional misuse of process for the collateral purpose of making Gillespie drop his claims against Defendants and settle this lawsuit on terms dictated by Rodems. Rodems has perverted the process of law for a purpose for which it is not by law intended. **Rodems is using Defendants' counterclaim as a form of extortion**.

102. On at lease six (6) separate occasions Defendants, by and through their counsel Mr. Rodems has offered a "walk-away" settlement:

a. September 14, 2006, Mr. Rodems wrote Gillespie's lawyer Mr. Snyder that "We would agree, however, to a walk away. That is, each party dismisses all claims with prejudice, each party to bear his or its own attorneys' fees and costs."

b. October 5, 2006, Mr. Rodems wrote Gillespie's lawyer Mr. Snyder and stated: "To clarify, our offer to settle is as follows: (1) We will dismiss our claims with prejudice, Gillespie dismisses his with prejudice, and neither side will pay the other any money; and, (2) Gillespie agrees to sign a general release to be prepared by us; and, (3) Gillespie must agree to appear in court to announce the settlement and submit to questioning from me regarding the voluntariness of his settlement; and, (4) Gillespie must agree to hire and pay a court reporter to transcribe the settlement hearing. The offer is open until 5:00 p.m. on Friday, October 6, 2006 and must be accepted in writing received in this office before the deadline by facsimile or hand delivery with your or his signature."

c. February 7, 2007 Mr. Rodems contacted Gillespie directly by letter and wrote (in part): “If it is your desire to end this litigation, we are prepared to offer the following settlement terms: We mutually agree to dismiss all claims pending in this action, and to waive any other claims we or you may have, with each party to bear his or its own fees and costs. We will not seek any attorneys' fees or costs from you. A mutual release is enclosed. You are free to consult with an attorney regarding this offer, at your own expense. You are not obligated to accept this offer.”

d. At various time during 2007 and possibly 2008 Mr. Rodems made similar settlement offers to Gillespie’s former counsel Robert W. Bauer.

e. Some time in August or September 2009 Mr. Rodems made a similar settlement offer to attorney Seldon J. “Jeff” Childers on Gillespie’s behalf.

f. January 28, 2010 Mr. Rodems contacted Gillespie directly by letter with the following offer, a resubmission of a failed email from January 26, 2010:
“However, I would like to once again propose to you an opportunity to settle with Mr. Cook and Barker, Rodems & Cook, P.A. whereby you would pay them no money and they would pay you no money. The offer is as follows: Mr. Cook and Barker, Rodems & Cook, P.A. would dismiss the counterclaims for libel and would issue a satisfaction of judgment for the judgment against you in exchange for your dismissal of your pending claims.”

103. In a letter to Gillespie dated November 19, 2007, Chief Branch Disciplinary Counsel Susan V. Bloemendaal, The Florida Bar, responded to Gillespie’s allegation that Mr. Rodems improperly filed a counterclaim. Bloemendaal wrote (relevant portion):

"Concerning you allegation that the claim is frivolous, this is an issue for the trial court in the pending civil case."

104. On February 7, 2007 Gillespie gave notice of a voluntary dismissal of this action with prejudice pursuant to Rule 1.420(a). Also on February 7, 2007 Gillespie moved for an order of voluntary dismissal of this action with prejudice pursuant to Rule 1.420(a)(2). Had Mr. Rodems dropped his counterclaim at that time this lawsuit would have ended with prejudice in February 2007. But because Mr. Rodems' independent professional judgment is materially limited by the lawyer's own interest he failed to do so. When Gillespie retained attorney Robert W. Bauer, he encouraged Gillespie to pursue his claims against Rodems' firm and partner and said a "…jury would love to punish a slimy attorney" like Barker, Rodems & Cook, PA and Mr. Cook. Mr. Bauer successfully reinstated Gillespie's claims, but ultimately left the case because of Rodems' unprofessional behavior, which he noted on the record: "…Mr. Rodems has, you know, decided to take a full nuclear blast approach instead of us 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." (Transcript, August 14, 2008, Emergency Hearing/Judge Crenshaw, p. 16, line 24). (Exhibit 15)

105. Rodems must be disqualified for his extortionate abuse of process counterclaim, and because his independent exercise of professional judgment is materially limited by his own interest, conflicts and liability in this lawsuit.

FL Bar Rule 4-3.4. Fairness to Opposing Party and Counsel

106. Fl Bar Rule 4-3.4. Fairness to Opposing Party and Counsel

A lawyer shall not:

(a) unlawfully obstruct another party's access to evidence or otherwise unlawfully alter, destroy, or conceal a document or other material that the lawyer knows or reasonably should know is relevant to a pending or a reasonably foreseeable proceeding; nor counsel or assist another person to do any such act;

(b) fabricate evidence, counsel or assist a witness to testify falsely, or offer an inducement to a witness, except a lawyer may pay a witness reasonable expenses incurred by the witness in attending or testifying at proceedings; a reasonable, noncontingent fee for professional services of an expert witness; and reasonable compensation to reimburse a witness for the loss of compensation incurred by reason of preparing for, attending, or testifying at proceedings;

(c) knowingly disobey an obligation under the rules of a tribunal except for an open refusal based on an assertion that no valid obligation exists;

(d) in pretrial procedure, make a frivolous discovery request or intentionally fail to comply with a legally proper discovery request by an opposing party;

(e) in trial, state a personal opinion about the credibility of a witness unless the statement is authorized by current rule or case law, allude to any matter that the lawyer does not reasonably believe is relevant or that will not be supported by admissible evidence, assert personal knowledge of facts in issue except when testifying as a witness, or state a personal opinion as to the justness of a cause, the culpability of a civil litigant, or the guilt or innocence of an accused;

(f) request a person other than a client to refrain from voluntarily giving relevant information to another party unless the person is a relative or an employee or other agent

of a client, and it is reasonable to believe that the person's interests will not be adversely affected by refraining from giving such information;

(g) present, participate in presenting, or threaten to present criminal charges solely to obtain an advantage in a civil matter; or

(h) present, participate in presenting, or threaten to present disciplinary charges under these rules solely to obtain an advantage in a civil matter.

Rodems Violations of FL Bar Rule 4-3.4. Fairness to Opposing Party and Counsel

Rodems Fabricated Evidence and Accused Gillespie of Criminal Extortion

107. Contrary to Rule 4-3.4(g) Mr. Rodems has accused Gillespie of criminal felony extortion in his Answer, Affirmative Defenses and Counterclaim, paragraphs 57 and 67 solely to obtain advantage in a civil matter. In doing so Rodems violated Rule 4-3.4(b) and fabricated evidence about the so-called extortion. This is what Rodems wrote in his counterclaim, paragraphs 57 and 67:

> 57. Plaintiff has unclean hands. On June13, 18 and 22, 2003, Plaintiff wrote letters to Defendants and stated that if they did pay him money, then Plaintiff would file a complaint against Defendant Cook with the Florida Bar, sue Defendants and contact their former clients. Defendants advised Plaintiff by letters that they considered these threats to be extortion under section 836.05, Fla. Stat. (2000) and the holdings of Carricarte v. State, 384 So. 2d 1261 (Fla.1980); Cooper v. Austin, 750 So. 2d 711 (Fla. 5th DCA 2000); Gordon v. Gordon, 625 So. 2d 59 (Fla. 4th DCA 1993); Berger v. Berger, 466 So. 2d 1149 (Fla. 4th DCA 1985).

67. The false and defamatory statements were rendered with a malicious purpose. Plaintiff/Counterdefendant made these false statements and false allegations to discredit and ruin Defendants/Counterclaimants because they refused to give in to Plaintiff's extortionate demands: On June 13, 18 and 22, 2003, Plaintiff/Counterdefendant wrote letters to Defendant/Counterclaimants and stated that if they did pay him money, then Plaintiff/Counterdefendant would file a complaint against Defendant/Counterclaimant Cook with the Florida Bar, sue Defendants/Counterclaimants and contact their former clients. Defendants/Counterclaimants advised Plaintiff/Counterdefendant by letters that they considered these threats to be extortion under section 836.05, Fla. Stat. (2000) and the holdings of Carricarte v. State, 384 So. 2d 1261 (Fla. 1980); Cooper v. Austin, 750 So. 2d 711 (Fla. 5th DCA 2000); Gordon v. Gordon, 625 So. 2d 59 (Fla. 4th DCA 1993); Berger v. Berger, 466 So. 2d 1149 (Fla. 4th DCA 1985).

108. The “letters” Rodems’ claims Gillespie wrote, which Rodems misrepresented and fabricated into evidence against Gillespie, were actually part of an alternative dispute resolution program offered by The Florida Bar. Gillespie tried to resolve his dispute with the Defendants without litigation through The Florida Bar Attorney Consumer Assistance Program (ACAP). Gillespie spoke with Mr. Donald M. Spangler, Director of ACAP June 12, 2003. Mr. Spangler assigned reference #03-18867 to the matter. Mr. Spangler suggested to Gillespie that he contact Mr. Cook to try and settle the matter. The Florida Bar complaint form, Part Four, Attempted Resolution, states that “[Y]ou should attempt to resolve your matter by writing to the subject attorney, before contacting ACAP or

filing a complaint. Even if this is unsuccessful, it is important that you do so in order to have documentation of good-faith efforts to resolve your matter." On June 13, 2003 Gillespie made a good-faith effort and wrote to Mr. Cook to resolve the matter, noting ACAP reference #03-18867. Mr. Gillespie requested $4,523.93 to settle the matter and provided Mr. Cook an explanation for the request along with a financial spreadsheet supporting his claim. A few days later Gillespie received a letter from Mr. Cook's law partner, Christopher A. Barker, on behalf of Mr. Cook. In his letter Mr. Barker accused Gillespie of felony extortion pursuant to §836.05 Fla. Statutes and the holding of Carricarte v. State, 384 So.2d 1261 (Fla. 1980); Cooper v. Austin, 750 So.2d 711 (Fla. 5th DCA 2000); Gordon v. Gordon, 625 So.2d 59 (Fla. 4th DCA 1993); Berger v. Berger, 466 So.2d 1149 (Fla. 4th DCA 1985). A lawyer's obligation of zealous representation should not and cannot be transformed into a vehicle intent upon harassment and intimidation.[5] The Florida Bar v. Buckle, 771 So.2d 1131.

Rodems Violations of FL Bar Rule 4-3.4. Fairness to Opposing Party and Counsel

Discovery Abuse and Rodems as a "rules troll"

109. Rodems violated Fl Bar Rule 4-3.4, A lawyer shall not: (d) in pretrial procedure, make a frivolous discovery request or intentionally fail to comply with a legally proper discovery request by an opposing party. Mr. Rodems is Board Certified by the Florida Bar in Civil Trial law since 2007 with 18 years experience as a lawyer. Rodems is also a "rules troll" who has used the discovery process for a purpose for which it is not by law intended, to obtain extreme sanctions of $11,550. The rules of discovery are designed to eliminate as far as possible concealment and surprise in the trial of law suits to the end that judgments rest upon the real merits of causes and not upon the skill and maneuvering

of counsel.[2] Southern Mill Creek Products Co. v. Delta Chemical Co., 203 So.2d 53

110. Pretrial discovery was implemented to simplify the issues in a case, to encourage the settlement of cases, and to avoid costly litigation. Elkins v. Syken, 672 So.2d 517. In this case the parties know the issues from Defendants' prior representation on the same matter. The rules of discovery are designed to secure the just and speedy determination of every action (In re Estes' Estate, 158 So.2d 794), to promote the ascertainment of truth (Ulrich v. Coast Dental Services, Inc. 739 So.2d 142), and to ensure that judgments are rested on the real merits of causes (National Healthcorp Ltd. Partnership v. Close, 787 So.2d 22), and not upon the skill and maneuvering of counsel. Southern Mill Creek Products Co. v. Delta Chemical Co., 203 So.2d 53. However in this case the Court has issued a Final Judgment March 27, 2008 in the amount of $11,550 based on the skill and maneuvering of counsel, and Rodems' aggravation of Gillespie's disability.

111. Plaintiff's Motion to Compel Discovery filed December 14, 2006 shows:

a. Gillespie made a good faith effort to comply with Rodems' discovery requests

b. Rodems refused to cooperate with Gillespie, and wrote "We will not horse-trade on discovery" and those efforts are "rejected out of hand". (October 5, 2006)

c. Gillespie's discovery to Defendants was largely the same discovery served by them to Gillespie. In other words, Defendants refuse to answer their own discovery. Therefore, Defendants know that either their discovery to Gillespie was improper or frivolous, and/or that their responses were deficient, or both.

d. Rodems responded to Gillespie's motion to compel by letter dated December 19, 2006 and falsely wrote "The documents have already been produced, and I would hope to avoid you having to pay additional money or expending additional time on this

when you already have the documents." Rodems did not produce any document. Rodems made a false statement of material fact.

e. In pretrial discovery in this case, Rodems made frivolous discovery requests and intentionally failed to comply with a legally proper discovery request by an opposing party in violation of FL Bar Rule 4-3.4(d).

Rodems' Motions for Sanctions Pursuant to section 57.105(1) and (3), Florida Statutes

112. On March 29, 2010 Mr. Rodems submitted Defendants' Motion For Sanctions Pursuant to Section 57.105(1) and (3), Florida Statutes Regarding Plaintiff's Amended Motion to Disqualify Counsel. This was Mr. Rodems fifth motion for sanctions pursuant to section 57.105(1) and (3), Florida Statutes. Mr. Rodems testified at the March 20, 2008 hearing on the attorney's fees that "I am board-certified in civil trial law and I've been practicing law since 1992." (page 14, line 23). Mr. Rodems also testified that "I've been trying cases for the last 16 years." (page 15, line 4). On cross examination, Mr. Bauer asked: "How many 57.105 actions have you been involved in?" (page 15, line 18). Mr. Rodems testified: "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." (page 15, line 20).

113. Since the March 20, 2008 hearing, Mr. Rodems has filed two additional section 57.105 motions in this lawsuit. On July 31, 2008, Mr. Rodems submitted his third section 57.105 motion in this lawsuit, because Gillespie did not withdrawn his Complaint For Breach of Contract and Fraud. Mr. Rodems submitted his fourth section 57.105 motion in this case, also on July 31, 2008, because Gillespie did not withdrawal his motion for rehearing, which was necessitated when Rodems lied to Judge Barton October 31, 2007 during a hearing about the existence of a signed contingent fee agreement - there is no

signed contract with Barker, Rodems & Cook, PA and Mr. Rodems falsely told the court otherwise. Furthermore, Mr. Rodems threatened to file another section 57.105 motion against Mr. Bauer in April, 2007, and again in May, 2007, regarding Gillespie's reinstatement of his claims voluntarily dismissed, which the 2DCA upheld in 2D07-4530.

114. So far in this lawsuit Mr. Rodems has filed five (5) section 57.105 motions and threatened another - while in the balance of his sixteen (16) year career Mr. Rodems testified that he may have filed one or two other ones. Clearly this was unfair to opposing counsel Bauer and now Gillespie pro se.

Rodems Violation of FL Bar Rule 4-4.1. Truthfulness in statements to others

115. FL Bar Rule 4-4.1. Truthfulness in statements to others

In the course of representing a client a lawyer shall not knowingly:

(a) make a false statement of material fact or law to a third person; or

(b) fail to disclose a material fact to a third person when disclosure is necessary to avoid assisting a criminal or fraudulent act by a client, unless disclosure is prohibited by rule 4-1.6.

Comment: (Relevant portion) A misrepresentation can occur if the lawyer incorporates or affirms a statement of another person that the lawyer knows is false. Misrepresentations can also occur by partially true but misleading statements or omissions that are the equivalent of affirmative false statements. For dishonest conduct that does not amount to a false statement or for misrepresentations by a lawyer other than in the course of representing a client, see rule 4-8.4.

116. As described in this motion to disqualify, Mr. Rodems has made a number of false statements of material fact or law, and assisted his law firm in perpetuating its fraud against Gillespie. Attorney found to have violated disciplinary rules by assisting client in conduct

known to be fraudulent, failing to reveal fraud to affected person, accepting employment where his professional judgment will be affected by his own personal interest, and accepting employment when he is witness in pending litigation, will be suspended from practice of law for two years. The Florida Bar v. Feige, 596 So.2d 433.

Rodems' Disqualification Required Under Rule 4-3.7. Lawyer as Witness

117. FL Bar Rule 4-3.7. Lawyer as Witness

(a) When Lawyer May Testify. A lawyer shall not act as advocate at a trial in which the lawyer is likely to be a necessary witness on behalf of the client unless:

(1) the testimony relates to an uncontested issue;

(2) the testimony will relate solely to a matter of formality and there is no reason to believe that substantial evidence will be offered in opposition to the testimony;

(3) the testimony relates to the nature and value of legal services rendered in the case; or

(4) disqualification of the lawyer would work substantial hardship on the client.

(b) Other Members of Law Firm as Witnesses. A lawyer may act as advocate in a trial in which another lawyer in the lawyer's firm is likely to be called as a witness unless precluded from doing so by rule 4-1.7 or 4-1.9.

118. The Comment to Rule 4-3.7 states in part that combining the roles of advocate and witness can prejudice the tribunal and the opposing party and can also involve a conflict of interest between the lawyer and client. The trier of fact may be confused or misled by a lawyer serving as both advocate and witness. The combination of roles may prejudice another party's rights in the litigation. A witness is required to testify on the basis of personal knowledge, while an advocate is expected to explain and comment on

evidence given by others. It may not be clear whether a statement by an advocate-witness should be taken as proof or as an analysis of the proof.

119. Mr. Rodems was retained by his law firm and law partner to represent them in an action where the law partner will appear as a witness. Partners engaged in the practice of law are each responsible for the fraud or negligence of another partner when the later acts within the scope of the ordinary business of an attorney. Smyrna Developers, Inc. v. Bornstein, 177 So.2d 16. The question is not whether Rodems may be a witness, but whether he "ought" to be a witness. Proper test for disqualification of counsel is whether counsel ought to appear as a witness.[1] Matter of Doughty, 51 B.R. 36. Disqualification is required when counsel "ought" to appear as a witness.[3] Florida Realty Inc. v. General Development Corp., 459 F.Supp. 781. Because Rodems exercise of independent professional judgment is at issue, he must be disqualified. In connection with debtor's adversary action against attorney and clients for allegedly filing involuntary petition against debtor in bad faith and without legal cause or justification, attorney was disqualified from representing clients, where both attorney's conduct, as well as that of clients, would be at issue, which would require attorney to justify actions of his clients as well as his own behavior, and it was likely that attorney would be called as witness.[2] In re Captran Creditors Trust, 104 B.R. 442. The court ordered disqualification when the exercise of independent professional judgment in the representation of that client may be materially limited by the lawyer's responsibilities to another client or to a third person, or **by the lawyer's own interest**, at [2][3]:

> "As indicated earlier, the current canons of professional ethics of the American Bar Association are contained in the ABA Model Rules for Professional Conduct

> and have been adopted in substantially the same form by the Supreme Court of Florida. Rule 4-1.7 of the Florida Rules of Professional Conduct expressly prohibits an attorney to represent a client if the attorneys exercise some independent professional judgment in the representation of that client which may be materially limited by the lawyer's responsibilities to another client or to a third person, *or by the lawyer's own interest* (emphasis added). In the present instance, it is clear that Warren's own interests are directly in conflict with Mills and Smock who are also being sued. In this case, it is also clear that Warren's conduct, as well as that of Mills and Smock, will be at issue, which will require Warren to justify the actions of his clients in filing the involuntary Petition against the Debtor, as well as his own behavior and motivation with respect to the same. This Court is satisfied that Warren will be defending incompatible positions. Rules 4-3.7 and 4-1.7, Florida Rules of Professional Conduct, add further support to the Debtor's contention that Warren and his law firm should be disqualified. As mentioned earlier, those Rules provide in relevant part that a lawyer shall not act as an advocate at trial in which the lawyer is likely to be a necessary witness on behalf of his client."

In statement by defendant-attorneys, who had retained their partner to represent them in action, that they would appear as witnesses in action was sufficient to require that they retain new counsel, since they could not avoid prohibition of Canon requiring withdrawal of law firm if a lawyer in firm is to be called as a witness by simply labeling one partner as client and another as advocate.[1] If established, plaintiff's allegation that law firm representing defendants had previously represented plaintiff in purchase of property

which was subject of pending litigation mandated disqualification of such firm.[2] Omni Developments, Inc. v. Porter, 459 F.Supp. 930. (Declined to follow by Theobald v. Botein, Hays, 465 F.Supp. 609, 610, S.D.N.Y. but no negative history in Florida).

Mr. Rodems Disrespect For The Rights of Gillespie

120. FL Bar Rule 4-4.4. Respect for Rights of Third Persons

(a) In representing a client, a lawyer shall not use means that have no substantial purpose other than to embarrass, delay, or burden a third person or knowingly use methods of obtaining evidence that violate the legal rights of such a person.

(b) A lawyer who receives a document relating to the representation of the lawyer's client and knows or reasonably should know that the document was inadvertently sent shall promptly notify the sender.

Mr. Rodems Violation of Florida Statutes, Section 784.048, Stalking

Intentional Infliction of Severe Emotional Distress, Aggravation of Disability

121. Since March 3, 2006 Mr. Rodems has directed, with malice aforethought, a course of harassing conduct toward Mr. Gillespie that has aggravated his disability and caused severe emotional distress and serves no legitimate purpose. This is a violation of section 784.048, Florida Statutes. Mr. Rodems committed the following offenses:

(a) Mr. Rodems telephoned Mr. Gillespie and threatened to reveal client confidences from prior representation[6] and taunted him about his vehicle.

(b) Mr. Rodems submitted a verified pleading to the Court falsely naming Judge Nielsen in an “exact quote” attributed to Mr. Gillespie[7].

[6] March 3, 2006 telephone call, Mr. Rodems to Gillespie
[7] March 6, 2006, *Defendants’ Verified Request For Bailiff And For Sanctions*

(c) Mr. Rodems has engaged in name-calling by phone and by letter. Mr. Rodems has called Mr. Gillespie "cheap" and a "pro se litigant of dubious distinction"[8].

(d) Mr. Rodems wrote to Mr. Gillespie that "you are a bitter man who has apparently been victimized by your own poor choices in life" and "you are cheap and not willing to pay the required hourly rates for representation."[9]

(e) Mr. Rodems has set hearings without coordinating the date and time with Gillespie[10].

(f) On one occasion Mr. Rodems waited outside chambers to harass Mr. Gillespie following a hearing[11].

(g) Mr. Rodems has accused Gillespie of felony criminal extortion for trying to resolve this matter through the Florida Bar Attorney Consumer Assistance Program. (ACAP).

(h) Since October 2009 when Gillespie assumed representation pro se following the withdrawal of attorney Robert W. Bauer, Rodems has launched a new wave of harassment, including unwanted telephone calls and email, scheduling hearings without coordinating the date and time, sent a number of letters with harassing content, including several offense references to Gillespie's recently deceased Mother, and offensive references to Gillespie's disability in pleadings filed with the court.

(i) This list of Mr. Rodems' harassing behavior is representative but not exhaustive.

123. Public reprimand was warranted against criminal defense attorney who sent victim of crime an objectively humiliating and intimidating letter designed to cause her to abandon her criminal complaint.[2] Zealous advocacy cannot be translated to mean win at all costs, and although the line may be difficult to establish, standards of good taste and

[8] December 13, 2006 voice mail by Mr. Rodems to Gillespie
[9] December 13, 2006, letter by Mr. Rodems to Gillespie
[10] This practice began September 2005 and continues to a hearing set for July 12, 2010
[11] Following the hearing of April 25, 2006

professionalism must be maintained while the Supreme Court supports and defends the role of counsel in proper advocacy.[3] In corresponding with persons involved in legal proceedings, lawyers must be vigilant not to abuse the privilege afforded them as officers of the court.[4] A lawyer's obligation of zealous representation should not and cannot be transformed into a vehicle intent upon harassment and intimidation.[5] The Florida Bar v. Buckle, 771 So.2d 1131.

Invasion of Privacy, HIPPA, and the Americans with Disabilities Act (ADA)

123. BRC and Mr. Cook disregarded Gillespie's privacy regarding health and disability matters when he was a client, and Mr. Rodems has continued the misconduct in representing BRC and Mr. Cook against former client Gillespie.

124. BRC and Mr. Cook negligently published Gillespie's privileged HIPAA[12] medical information during the course of the AMSCOT lawsuit. BRC and Cook negligently published information about Gillespie's disability, treatment and rehabilitation. Gillespie's medical condition was not at issue in the AMSCOT lawsuit. The AMSCOT litigation concerned check cashing, the federal Truth In Lending Act (TILA), Florida state usury law, and the Florida Deceptive and Unfair Trade Practices Act.

125. BRC and Cook published Plaintiff's privileged medical information in response to AMSCOT's interrogatories to Gillespie. BRC and Cook failed to object to interrogatories about Gillespie's privileged HIPAA medical information.

126. BRC and Cook published Gillespie's privileged HIPPA medical information during a deposition with AMSCOT. Gillespie was deposed May 14, 2001 by John A. Anthony, attorney for AMSCOT Corporation. Approximately twenty pages of the 122

[12] Health Insurance Portability and Accountability Act (HIPAA)

page transcript concerned Gillespie's disability, treatment and rehabilitation. BRC and Cook failed to object to interrogatories about Gillespie's privileged medical information. BRC and Cook later published the information by ordering and distributing the transcript of the deposition. BRC and Cook allowed co-plaintiff Gay Ann Blomefield to attend Gillespie's deposition and hear Gillespie's privileged HIPAA medical information.

127. BRC and Cook published private facts about Gillespie that are offensive and are not of legitimate public concern. BRC and Cook permitted a wrongful intrusion into Gillespie's private activities, in such manner as to outrage or cause mental suffering, shame, or humiliation to a person of ordinary sensibilities.

128. The Florida Supreme Court has held that public disclosure of private facts—the dissemination of truthful private information which a reasonable person would find objectionable, is one of four types of wrongful conduct that can be remedied through an action for invasion of privacy. Agency for Health Care Admin. v. Associated Indus. of Fla., Inc., 678 So.2d 1239.

Americans with Disabilities Act (ADA)

129. BRC and Mr. Cook formerly represented Gillespie in matters concerning disability with State of Florida, Division of Vocational Rehabilitation (DVR) and St. Petersburg Junior College, see paragraphs 19 and 31.

130. In determining whether attorney-client relationship existed, for purposes of disqualification of counsel from later representing opposing party, see paragraph 22.

131. Under Florida law for matters to be “substantially related,” for purposes of determining whether attorney's prior representation of former client in one matter precludes its representation of opposing party in subsequent litigation, see paragraph 23.

132. Rodems cannot represent BRC and Mr. Cook in matters of health, disability, HIPAA medical information or the Americans with Disabilities Act (ADA) because Rule 4-1.9 conflict of interest with a former client prohibits such representation.

A lawyer who has formerly represented a client in a matter shall not thereafter:

(a) represent another person in the same or a substantially related matter in which that person's interests are materially adverse to the interests of the former client unless the former client gives informed consent;

(b) use information relating to the representation to the disadvantage of the former client except as these rules would permit or require with respect to a client or when the information has become generally known; or

(c) reveal information relating to the representation except as these rules would permit or require with respect to a client.

133. Contrary to Rule 4-1.9(a) Mr. Rodems is representing BRC and Cook in matters of Gillespie’s health and disability which is the same or a substantially related matter in which BRC and Cook’s interests are materially adverse to the interests of the former client Gillespie, who does not gives informed consent, see paragraphs 19 and 31.

134. Contrary to Rule 4-1.9(b) Mr. Rodems is using information relating to the former representation of Gillespie to his disadvantage, see paragraphs 32 and 33.

135. Contrary to Rule 4-1.9(c) Mr. Rodems revealed information relating to the former representation of Gillespie, see paragraphs 32 and 33.

136. Since March 3, 2006 Mr. Rodems has directed, with malice aforethought, a course of harassing conduct toward Mr. Gillespie that has aggravated his disability and caused severe emotional distress and serves no legitimate purpose, see paragraphs 121-123.

137. As a result of Rodems outrageous conduct Gillespie hired an ADA accommodations advocate and designer at his own expense and made a request for accommodation under the ADA February 19, 2010. (Exhibit 19).

a. Gillespie provided his ADA accommodation request (ADA Request), and his ADA Assessment and Report by Ms. Karin Huffer, MS, MFT, (ADA Report) to Mr. Gonzalo B. Casares, ADA Coordinator for the 13th Judicial Circuit, 800 E. Twiggs Street, Room 604, Tampa, Florida 33602, by hand delivery.

b. Gillespie provided a courtesy copy of his ADA accommodation request (ADA Request), and his ADA Assessment and Report by Ms. Karin Huffer, MS, MFT (ADA Report), to the Honorable James M. Barton, II, by hand delivery.

c. The ADA Request and ADA Report are to be kept under ADA Administrative confidential management except for use by the ADA Administrator revealing functional impairments and needed accommodations communicated to the Trier of Fact to implement administration of accommodations. This information is NOT to become part of the adversarial process. Revealing any part of this report may result in a violation of HIPAA and ADAAA Federal Law.

d. A copy of Gillespie's completed and signed ADA Request for Accommodations Form for the 13th Judicial Circuit is attached. The form notes on item 6.

Special requests or anticipated problems (specify): I am harassed by Mr. Rodems in violation of Fla. Stat. section 784.048.

138. Mr. Rodems has demanded that Gillespie's ADA request become part of the adversarial process contrary to law. Rodems has submitted the following pleadings that attempt to put Gillespie's ADA request in the adversarial process:

a. February 12, 2010 Rodems submitted Defendants' Motion For An Order Determining Plaintiff's Entitlement To Reasonable Modification Under Title II of The Americans With Disabilities Act. Gillespie responded February 19, 2010 with Plaintiff's Motion For An Order of Protection -ADA.

b. April 1, 2010 Rodems submitted Defendants' Motion to Strike Plaintiff's "Motion For Leave to Amend Americans With Disabilities Act (ADA) Accommodation of Neil J. Gillespie". When Gillespie received a copy of the pleading from Rodems, it had a creepy post-it note attached to the pleading in a further effort to harass Gillespie.

c. May 24, 2010 Rodems submitted Defendants' Response to Plaintiff's Motion to Disqualify Judge Barton. (Exhibit20). Rodems began his pleading with this outrageous statement about Gillespie's disability:

> "Many of the allegations in Gillespie's motion border on delusional. Gillespie has disclosed in several court filings that he suffers from mental illnesses, and he has stated on the record on several occasions that his mental illness affects his ability to represent himself. Clearly, the pending motion -- and the record in this case -- shows this to be an accurate statement."

The pleading is a diatribe that shows Mr. Rodems must be disqualified:

“Even before Judge Barton presided over this action, Gillespie has displayed hostile and paranoid behavior”

“During a telephone conversation, Gillespie threatened to "slam" me "against the wall;" as a result, I requested that a bailiff be present at all hearings. As a precaution, I also scheduled Mr. Gillespie's deposition in a building requiring visitors to pass through a metal detector.”

“In his motion to disqualify Judge Nielsen, Gillespie accused him of being "hostile" to pro se plaintiffs and having a "sadistic quality." In that same motion, Gillespie also accused me of aggravating his "existing disability," which required medical treatment "that reduced Plaintiff's intellectual ability to represent himself."

“In his motion to disqualify Judge Isom, Gillespie accused her of "forc[ing] Plaintiff to participate in a hearing ... without counsel." Judge Isom denied the motion as legally insufficient. More recently, Gillespie accused me and Judge Isom of conspiring against him by agreeing to not advise him that Judge Isom's husband was once a law partner of Jonathan L. Alpert's at my predecessor law firm. Not only was Mr. Isom never a law partner of my predecessor law firm, but also the only occasions in which I ever spoke to Judge Isom about anything in this action is when Gillespie was present.”

“In Gillespie's initial motion to recuse Judge Barton, he alleged under oath that "[a]s a proximate cause of Judge Barton's actions, plaintiff's mother, Penelope Gillespie, died September 16, 2009."

Apart from Rodems’ offensive personal comments, there is no basis in law for the pleading. Neither the Florida Rules of Civil Procedure nor the Florida Rules of Judicial Administration provide for opposing counsel to submit a response to a motion to

disqualify a judge. By law a judge cannot even consider Rodems response. A judge can only consider the legal sufficiency of the motion to disqualify. Mr. Michael Louis Schneider, General Counsel of the Judicial Qualifications Commission recently confirmed this to Gillespie during a telephone call. Perhaps more important, Rodems agreed with Gillespie that Judge Barton must be disqualified. Rodems response was little more than an unlawful platform to hurl more disability-related insults at Gillespie.

d. June 1, 2010 Rodems submitted Defendants Notice of Case Management Conference And Statement Of Case And Proceedings. (Exhibit 17). Pages 1 through 8 of the pleading, the "Statement of Case" portion, contains eight pages of self-serving diatribe that is redundant, immaterial, impertinent, or scandalous and must be stricken under Rule 1.140(f), Fla.R.Civ.P. On pages 9 and 10 of the pleading, “The Matters To Be Considered At The Case Management Conference”, Rodems demands “The scheduling of an evidentiary hearing to determine if Gillespie is a "qualified individual with a disability" under the Americans with Disabilities Act, and if so, whether the Court can provide "reasonable modifications" that will allow Gillespie to continue to represent himself.”

This is outrageous, even for Rodems, and is a violation of Rule 1.200(a), the ADA and the Title II Guidelines for the State Counts System of Florida. Gillespie responded June 14, 2010 with a motion to strike redundant, immaterial, impertinent, or scandalous material under Rule 1.140(f). Rodems pleading also fails to conform with the stipulations of Rule 1.200(a) governing the matters to be considered described in paragraph 96.

139. For the reasons set forth in paragraphs 120 through 138 Rodems must be disqualified as counsel.

Rodems Violation FL Bar Rule 4-8.4. Misconduct

140. As set forth in the motion to disqualify, Mr. Rodems has violated many Rules of Professional Conduct, including:

Rule 4-8.4. Misconduct. A lawyer shall not:

(a) violate or attempt to violate the Rules of Professional Conduct, knowingly assist or induce another to do so, or do so through the acts of another;

(b) commit a criminal act that reflects adversely on the lawyer's honesty, trustworthiness, or fitness as a lawyer in other respects;

(c) engage in conduct involving dishonesty, fraud, deceit, or misrepresentation, except that it shall not be professional misconduct for a lawyer for a criminal law enforcement agency or regulatory agency to advise others about or to supervise another in an undercover investigation, unless prohibited by law or rule, and it shall not be professional misconduct for a lawyer employed in a capacity other than as a lawyer by a criminal law enforcement agency or regulatory agency to participate in an undercover investigation, unless prohibited by law or rule;

(d) engage in conduct in connection with the practice of law that is prejudicial to the administration of justice, including to knowingly, or through callous indifference, disparage, humiliate, or discriminate against litigants, jurors, witnesses, court personnel, or other lawyers on any basis, including, but not limited to, on account of race, ethnicity, gender, religion, national origin, disability, marital status, sexual orientation, age, socioeconomic status, employment, or physical characteristic;

WHEREFORE, Plaintiff and Counter-Defendant moves for an order disqualifying Ryan Christopher Rodems, and Barker, Rodems & Cook, PA as counsel for the Defendants and Counter-Plaintiffs.

RESPECTFULLY SUBMITTED July 9, 2010.

The undersigned movant certifies that the motion and the movant's statements are made in good faith. Submitted and Sworn to this 9th day of July, 2010.

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

STATE OF FLORIDA
COUNTY OF Marion

BEFORE ME, the undersigned authority authorized to take oaths and acknowledgments in the State of Florida, personally appeared NEIL J. GILLESPIE, known to me, who, after having first been duly sworn, deposes and says that the above matters contained in this document are true and correct to the best of her knowledge and belief.

WITNESS my hand and official seal this 9th day of July 2010.

CECILIA ROSENBERGER
Commission DD 781620
Expires June 6, 2012
Bonded Thru Troy Fain Insurance 800-385-7019

Notary Public
State of Florida

Certificate of Service

I HEREBY CERTIFY that a true and correct copy of the foregoing has been furnished by mail July 9, 2010 to the office of Ryan Christopher Rodems, attorney for the Defendants, at Barker, Rodems & Cook, PA, 400 North Ashley Drive, Suite 2100, Tampa, Florida 33602.

Neil J. Gillespie

Table of Contents

Table of Cases

Table of Cases

CLASS REPRESENTATION CONTRACT

I. PURPOSE

I/We, Neil J. Gillespie,
do hereby retain and employ the law firm of Alpert, Barker, Rodems, Ferrentino & Cook, P.A., to investigate my potential claim resulting from My transactions with ACE and Americash
and, if advisable, to pursue necessary litigation on my behalf.

I/We understand that I/we may be one of several plaintiff(s) or part of a class of plaintiff(s) represented by Alpert, Barker, Rodems, Ferrentino & Cook, P.A.

II. COSTS AND EXPENSES

I/We hereby agree to pay for the costs and expenses of the investigation and preparation of my/our claims for damages. Should it be necessary to institute a lawsuit or arbitration proceeding, I/we agree to pay all costs and expenses associated with any Court or arbitration proceeding. If an appeal of any decision is filed, regardless of the person or party filing such appeal, I agree to pay the costs and expenses associated with initiating or responding to such appeal.

I/We authorize Alpert, Barker, Rodems, Ferrentino & Cook, P.A., to advance and pay any costs and expenses it deems appropriate to the handling of my case. I/We will pay Alpert, Barker, Rodems, Ferrentino & Cook, P.A., for the costs and expenses advanced out of the portion of any recovery remaining after attorneys' fees have been subtracted. I/We will then receive the portion of what remains, which is known as the "net recovery". Thus, the "total recovery" (all monies received or collected, including attorneys' fees, if awarded) less Alpert, Barker, Rodems, Ferrentino & Cook, P.A.'s attorneys' fees and any costs and expenses will equal the "net recovery".

I/We understand that my/our portion of the "net recovery" will be a prorated or per person share which will be proportional to that of all other class members. The amount of money I/we receive will be determined by dividing the "net recovery" (the amount of any recovery remaining after attorneys' fees and expenses have been subtracted) by the number of class members who are determined eligible to receive proceeds from any judgment or settlement. I/We understand that the Court or other tribunal may approve a different ratio or formula depending upon the circumstances.

If there is no recovery, or if the total recovery is not adequate to pay for all of the costs and expenses advanced, I/we understand that Alpert, Barker, Rodems, Ferrentino & Cook, P.A., will not seek payment from me for any expenses.

EXHIBIT
1

If I/we terminate this contract, then Alpert, Barker, Rodems, Ferrentino & Cook, P.A., may seek payment from me/us for any costs and expenses allowed by law.

III. ATTORNEYS' FEES

In almost all cases in America, each party to a lawsuit or arbitration proceeding pays its own attorneys' fees. In rare cases, the Defendant(s) may pay all or part of the attorneys' fees or the Court or arbitration panel may award attorneys' fees based upon a statute or otherwise.

I/We agree to pay Alpert, Barker, Rodems, Ferrentino & Cook, P.A., an attorneys' fee if it is successful in obtaining any monies or other benefit on my behalf. I/We understand that Alpert, Barker, Rodems, Ferrentino & Cook, P.A., will receive the attorneys' fees awarded by a Court or arbitration panel or will receive the applicable percentage of the "total recovery" (all monies received from the Defendant(s) including, but not limited to, money for actual damages, punitive damages, interest, penalties, attorneys' fees and expenses), whichever is higher. The applicable percentages shall be as follows:

A. 33.334% of the "total recovery" prior to the time that an answer is filed or a demand for appointment of arbitrator(s) is made; thereafter,

B. 40% of the "total recovery" from the time of the filing of an answer or the demand for appointment of arbitrator(s), through the entry of a judgment;

C. An additional 5% of the "total recovery" after a Notice of Appeal is filed by any person or party or if post-judgment relief or action is required for recovery on the judgment.

In the event that my/our claim is settled on terms of an agreement calling for payment in installments, whether monthly, annually or otherwise, in the future, my/our attorneys' contingent fee percentage shall be calculated on the costs of any structured settlement or, if the cost is unknown, on the present money value of the structured settlement. If both the damages and the attorneys' fees are to be paid out in future installments, this limitation shall not apply.

I/We understand that if there is no recovery, I/we will not be indebted to Alpert, Barker, Rodems, Ferrentino & Cook, P.A., for any attorneys' fees.

If I/we terminate this contract, then Alpert, Barker, Rodems, Ferrentino & Cook, P.A., may seek payment from me/us for any attorneys' fees allowed by law.

IV. ALPERT, BARKER, RODEMS, FERRENTINO & COOK, P.A. MAY WORK WITH OTHER LAWYERS ON MY CASE

I/We understand that Alpert, Barker, Rodems, Ferrentino & Cook, P.A., in its discretion, may work with other lawyers on my/our case if deemed necessary. If Alpert, Barker, Rodems, Ferrentino & Cook, P.A., agrees to work with other lawyers on my/our case, I/we understand that the attorneys' fees I/we will have to pay will not increase. Other law firms or lawyers hired by Alpert, Barker, Rodems, Ferrentino & Cook, P.A., will be paid out of the attorneys' fees agreed to in this contract and, if I/we so desire, I/we will be advised regarding how the attorneys' fees are divided.

V. WHAT THIS CONTRACT COVERS

A. Scope of Representation

At the time of signing this contract, I/we also signed a Statement of Client's Rights as well as an Acknowledgment regarding investigation of my claim. These three documents encompass the entire agreement between me/us and Alpert, Barker, Rodems, Ferrentino & Cook, P.A. These signed agreements take the place of any prior, oral or written agreements and may only be changed or modified by a separate, written agreement signed and dated by me/us and Alpert, Barker, Rodems, Ferrentino & Cook, P.A.

This contract is to be interpreted in accordance with Florida law.

I/We understand that Alpert, Barker, Rodems, Ferrentino & Cook, P.A., has no duty to represent me/us in any matters other than my/our potential claim resulting from ACE and Americash transactions.

I/We understand that if Alpert, Barker, Rodems, Ferrentino & Cook, P.A., determines, at some later date, that my claim should not or cannot be reasonably prosecuted by the Firm, the Firm may notify me in writing of this decision and withdraw as my attorneys. Under such circumstances, I shall be responsible to Alpert, Barker, Rodems, Ferrentino & Cook, P.A., only for any fees and costs permitted by law.

B. Documents and Information

I/we authorize the lawyers to utilize my/our documents and/or information in any regulatory, enforcement, or other proceedings of any kind as may be necessary in the lawyers' sole discretion.

APPROVAL OF THIS CONTRACT

The undersigned client(s) has/have, before signing this contract, received and read the Statement of Client's Rights and understands each of the rights set forth therein. The undersigned client(s) has/have signed the Statement and received a signed copy to refer to while being represented by the undersigned attorneys.

This contract may be cancelled by written notification to the attorneys at any time within three (3) business days of the date the contract was signed, as shown below, and if cancelled the client(s) shall not be obligated to pay any fees to the attorneys for the work performed during that time. If the attorneys have advanced funds to others in representation of the client(s), the attorneys are entitled to be reimbursed for such amounts as the attorneys have reasonably advanced on behalf of the client(s).

I/We have read this contract and any documents specifically referenced herein, and agree to all terms referenced within such documents.

DATED: March 21, 2000

DATED: March 21, 2000

of

Alpert, Barker, Rodems,
Ferrentino & Cook, P.A.
Post Office Box 3270
Tampa, Florida 33601-3270
813/223-4131

Client

Client

ALPERT, BARKER, RODEMS, FERRENTINO & COOK
PROFESSIONAL ASSOCIATION
ATTORNEYS AT LAW

FROM THE DESK OF:
WILLIAM J. COOK

100 SOUTH ASHLEY DRIVE, SUITE 2000
TAMPA, FLORIDA 33602

MAILING ADDRESS:
POST OFFICE BOX 3270
TAMPA, FL 33601-3270

TELEPHONE (813) 223-4131
FAX (813) 228-9612

May 3, 2000

Neil J. Gillespie
Apartment C-2
1121 Beach Drive NE
St. Petersburg, Florida 33701-1434

Re: *America$h*
Our File No. 00.4814

Dear Neil:

We have completed our investigation of America$h. It turns out that "America$h" is actually a trademark for a company called "Check Into Ca$h, Inc." Check Into Ca$h is a licensed check casher. Consequently, given that this company's purported lack of registration was the sole basis for any claim we might bring against it, we are not in a position to go forward, and we will not be representing you in a case against America$h or Check Into Ca$h.

Sincerely,

William J. Cook

WJC:SDW

EXHIBIT
2

ALPERT, BARKER, RODEMS, FERRENTINO & COOK
PROFESSIONAL ASSOCIATION
ATTORNEYS AT LAW

FROM THE DESK OF:
WILLIAM J. COOK

100 SOUTH ASHLEY DRIVE, SUITE 2000
TAMPA, FLORIDA 33602

MAILING ADDRESS:
POST OFFICE BOX 3270
TAMPA, FL 33601-3270

TELEPHONE (813) 223-4131
FAX (813) 228-9612

August 10, 2000

Neil J. Gillespie
Apartment C-2
1121 Beach Drive NE
St. Petersburg, Florida 33701-1434

Re: *Gillespie v. ACE America's Cash Express, Inc.*
U.S.D.C., Middle District, Florida, Case No. 8:00CV-723-T-23B
Our File No. 00.4813

Dear Neil:

I have and thank you for your August 3, 2000, letter concerning Americash. I am afraid that the additional information you provided does not change our position in terms of whether to represent you in a claim against Americash. The threat of criminal prosecution, however, does not appear to be legitimate, particularly if you presented a post-dated check.

I wish you the best of luck.

Sincerely,

William J. Cook

WJC:SDW

EXHIBIT
3

CLASS REPRESENTATION CONTRACT

I. PURPOSE

I/We, Neil Gillespie,
do hereby retain and employ the law firm of Alpert, Barker, Rodems, Ferrentino & Cook, P.A., to investigate my potential claim resulting from My transactions with AMSCOT
and, if advisable, to pursue necessary litigation on my behalf.

I/We understand that I/we may be one of several plaintiff(s) or part of a class of plaintiff(s) represented by Alpert, Barker, Rodems, Ferrentino & Cook, P.A.

II. COSTS AND EXPENSES

I/We hereby agree to pay for the costs and expenses of the investigation and preparation of my/our claims for damages. Should it be necessary to institute a lawsuit or arbitration proceeding, I/we agree to pay all costs and expenses associated with any Court or arbitration proceeding. If an appeal of any decision is filed, regardless of the person or party filing such appeal, I agree to pay the costs and expenses associated with initiating or responding to such appeal.

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EXHIBIT
4

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In the event that my/our claim is settled on terms of an agreement calling for payment in installments, whether monthly, annually or otherwise, in the future, my/our attorneys' contingent fee percentage shall be calculated on the costs of any structured settlement or, if the cost is unknown, on the present money value of the structured settlement. If both the damages and the attorneys' fees are to be paid out in future installments, this limitation shall not apply.

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I/We understand that if Alpert, Barker, Rodems, Ferrentino & Cook, P.A., determines, at some later date, that my claim should not or cannot be reasonably prosecuted by the Firm, the Firm may notify me in writing of this decision and withdraw as my attorneys. Under such circumstances, I shall be responsible to Alpert, Barker, Rodems, Ferrentino & Cook, P.A., only for any fees and costs permitted by law.

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I/We have read this contract and any documents specifically referenced herein, and agree to all terms referenced within such documents.

DATED: 11/3/2000

_____ of
Alpert, Barker, Rodems,
Ferrentino & Cook, P.A.
Post Office Box 3270
Tampa, Florida 33601-3270
813/223-4131

DATED: 11-3-2000

_____
Client

_____
Client

BARKER, RODEMS & COOK, P.A.
A PROFESSIONAL CORPORATION

300 WEST PLATT STREET, SUITE 150
TAMPA, FLORIDA 33606

CHRIS A. BARKER
RYAN CHRISTOPHER RODEMS
WILLIAM J. COOK

TEL: 813/489-1001
FAX: 813/489-1008

January 16, 2001

Neil J. Gillespie
1121 Beach Drive NE, Apt. C-2
St. Petersburg, Florida 33701-1434

Re: EZ Check Cashing of Clearwater, Inc. v. Gillespie

Dear Neil:

I wanted to follow up on my previous letter to you. This confirms that we are not going to represent you in connection with your lawsuit against EZ Check Cashing.

Thank you for your attention to this matter.

Sincerely,

William J. Cook

WJC/so

EXHIBIT
5

BARKER, RODEMS & COOK
PROFESSIONAL ASSOCIATION
ATTORNEYS AT LAW

CHRIS A. BARKER
RYAN CHRISTOPHER RODEMS
WILLIAM J. COOK

300 West Platt Street, Suite 150
Tampa, Florida 33606

Telephone 813/489-1001
Facsimile 813/489-1008

March 27, 2001

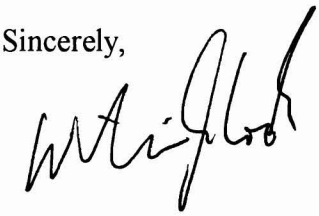
Neil J. Gillespie
Apartment C-2
1121 Beach Drive NE
St. Petersburg, Florida 33701-1434

Re: Vocational Rehabilitation

Dear Neil:

I am enclosing the material you provided to us. We have reviewed them and, unfortunately, we are not in a position to represent you for any claims you may have. Please understand that our decision does not mean that your claims lack merit, and another attorney might wish to represent you. If you wish to consult with another attorney, we recommend that you do so immediately as a statute of limitations will apply to any claims you may have. As you know, a statute of limitations is a legal deadline for filing a lawsuit. Thank you for the opportunity to review your materials.

Sincerely,



William J. Cook

WJC/mss

Enclosures

EXHIBIT
6

BARKER, RODEMS & COOK
PROFESSIONAL ASSOCIATION
ATTORNEYS AT LAW

CHRIS A. BARKER
RYAN CHRISTOPHER RODEMS
WILLIAM J. COOK

300 West Platt Street, Suite 150
Tampa, Florida 33606

Telephone 813/489-1001
Facsimile 813/489-1008

May 25, 2001

Neil J. Gillespie
Apartment C-2
1121 Beach Drive NE
St. Petersburg, Florida 33701-1434

Re: St. Petersburg Junior College

Dear Neil:

I have and thank you for your May 22, 2001 letter with enclosures. We have reviewed the materials that you provided, and while we do not disagree with your criticisms of the St. Petersburg Junior College, we are not in the position to pursue litigation. Of course, another attorney may have a different opinion. If you wish to consult with another attorney, you should do so immediately, as a statute of limitations will apply to any claims you may have. As you know, a statute of limitations is a legal deadline for filing a lawsuit.

Again, we appreciate the opportunity to review your potential claims.

Sincerely,

William J. Cook

WJC/so

EXHIBIT
7

COPY

BARKER, RODEMS & COOK
PROFESSIONAL ASSOCIATION
ATTORNEYS AT LAW

CHRIS A. BARKER
RYAN CHRISTOPHER RODEMS
WILLIAM J. COOK

300 West Platt Street, Suite 150
Tampa, Florida 33606

Telephone 813/489-1001
Facsimile 813/489-1008

May 30, 2001

Kelly Peterson
Branch Manager
National Cash Advance
2840 34th Street North
St. Petersburg, Florida 33713

Re: Neil Joseph Gillespie
Soc Sec No. : 160-52-5117
D.O.B : 3/19/56
Amount Due : $368.00

Dear Ms. Peterson:

This firm represents Neil Gillespie. Mr. Gillespie has provided us with a copy of your May 17, 2001 letter notifying him that he is in default because check number 1384 in the amount of $338.00 was dishonored. Your letter is inaccurate. I am enclosing copies of correspondence from Mr. Gillespie to National Cash Advance along with National Cash Advance's response. As these materials clearly indicate, Mr. Gillespie is not in default. In fact, National Cash Advance agreed to pay him $584.00 in exchange for Mr. Gillespie's agreement to release any claims he may have.

Your efforts to collect from Mr. Gillespie are therefore unlawful and in breach of the agreement Mr. Gillespie reached with National Cash Advance. Please cease your collection efforts immediately.

Thank you for your attention to this matter.

Sincerely,

William J. Cook

WJC/so
Enclosures
cc: Neil Gillespie ✓

EXHIBIT
8

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

NEIL J. GILLESPIE,

Plaintiff,

vs.

Case No.: 05CA7205
Division: F

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

Defendants.
_____/

ORDER DENYING PLAINTIFF'S MOTION TO DISQUALIFY COUNSEL

THIS CAUSE having come on to be heard on Tuesday, April 25, 2006, on Plaintiff's Motion to Disqualify Counsel, and the proceedings having been read and considered, and counsel and Mr. Gillespie having been heard, and the Court being otherwise fully advised in the premises, it is ORDERED:

The motion to disqualify is denied with prejudice, except as to the basis that counsel may be a witness, and on that basis, the motion is denied without prejudice.

DONE and ORDERED in Chambers, this ____ day of May, 2006.

ORIGINAL SIGNED
MAY 12 2006
RICHARD A. NIELSEN
CIRCUIT COURT JUDGE

Richard A. Nielsen
Circuit Judge

Copies to:

Neil J. Gillespie, pro se
Ryan Christopher Rodems, Esquire

EXHIBIT
9

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

NEIL J. GILLESPIE

Plaintiff,

v.

Case No.:05-CA-007205
Division: C

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

Defendant,

_____/

PLAINTIFF'S MOTION FOR REHEARING

Plaintiff, NEIL J. GILLESPIE, files this Motion for Rehearing in accordance with Rule 1.530 of the Florida Rules of Civil Procedure, and alleges the following:

1. This action was heard on October 30, 2007, and July 1, 2008, and the resulting judgment was entered on July 7, 2008. A copy of the judgment is attached as Exhibit A and made a part of this Motion for all purposes.

2. Plaintiff moves for rehearing on the grounds that the Court's judgment was based on the Defendants' representations that there was a signed attorney fee agreement between Barker, Rodems & Cook and the Plaintiff.

3. Defendants have not produced a signed copy of the attorney fee agreement between Barker, Rodems & Cook and the Plaintiff.

4. Defendants have only produced a signed copy of the attorney fee agreement between Alpert, Barker, Rodems, Ferrentino & Cook and the Plaintiff. A copy of the fee agreement is attached as Exhibit B and made a part of this Motion for all purposes.

5. Defendant Cook signed the attorney fee agreement between Alpert,

Barker, Rodems, Ferrentino & Cook and the Plaintiff.

6. Defendants breached the attorney fee agreement by disregarding the provisions of the agreement and taking an amount of attorneys' fees that far exceeded the amount enumerated in said agreement.

7. The total recovery in the class action lawsuit was $56,000.

8. Defendants took $50,000 under the false assertion that this was the amount of court-awarded attorneys' fees.

9. In the attorney fee agreement, the Defendants were entitled to receive either court-awarded attorneys' fees, 33.334% of total recovery prior to the time an answer is filed or a demand for appointment of arbitrators is made, or 40% of the total recovery from the time of the filing of an answer or the demand for appointment of arbitrators through the entry of judgment. The law firm was entitled 5% of the total recovery after a notice of appeal is filed by any party or if post judgment relief or action is required for recovery on the judgment.

10. Defendants were actually entitled to $31,325.46, which consists of the attorneys' fees, costs and expenses, and the expenses paid to the former law firm.

11. Defendants received $18,675.54 more than they were entitled to.

12. Each plaintiff in the class action suit was entitled to $8,224.78.

13. Plaintiff recovered only $2,000.00 from the class action suit.

14. Plaintiff was damaged by this breach of the fee agreement in the amount of $6,224.78.

15. Defendant Cook was the Plaintiff's lawyer individually.

16. The final judgment on Defendant Cook on the count of breach of contract is contrary to law because it was through Defendant Cook's actions in negotiating and representing the settlement, in which the law firm breached the attorney fee agreement.

17. The final judgment on the count of fraud is contrary to law in that the conduct of the Defendants in making false representations to the Plaintiff is not an act in performance of the fee agreement.

18. The final judgment on the count of fraud is contrary to law in that the Plaintiff's claim is not barred by the economic loss rule because the Defendants' fraudulent actions were independent of the Defendants' actions in breaching the contract.

19. Defendants breached the contract by receiving a greater percentage of the total recovery amount than they were entitled.

20. Defendants committed fraud outside of the scope of their legal representation and the attorney fee agreement by deceiving their client, the Plaintiff.

21. The scope of the Defendants' representation of the Plaintiff did not include deceiving their client with false representations about the terms of the settlement of the case.

22. The scope of the Defendants' representation of the Plaintiff did not include falsifying a closing statement to induce the Plaintiff to settle.

23. Plaintiff is entitled to a rehearing to decide the issues based on the signed

fee agreement that is to be produced by Defendants.

24. Plaintiff is entitled to a rehearing to decide the issues based on the conduct of making false representations to the Plaintiff.

25. Plaintiff is entitled to a rehearing to decide the issues based on the conduct of preparing a false closing statement.

WHEREFORE, Plaintiff, NEIL J. GILLESPIE, requests that the Court set aside the judgment entered on July 7, 2008, and grant a new hearing.

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a true and correct copy of the above PLAINTIFF'S MOTION FOR REHEARING has been sent by U.S. Mail to the following this 10th day of July, 2008.

Ryan C. Rodems, Esq.
400 North Ashley Drive, Suite 2100
Tampa, FL 33602

Law Office of Robert W. Bauer, P.A.

BY: Tanya M. Uhl
Robert W. Bauer, Esq.
Florida Bar No. 0011058
Tanya M. Uhl Esq.
Florida Bar No. 0052924
2815 NW 13th Street, Suite 200E
Gainesville, Florida
Telephone: (352) 375-5960
Fax: (352) 337-2518

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

NEIL J. GILLESPIE,

Plaintiff,

vs.

Case No.: 05CA7205
Division: C

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

Defendants.
_____/

FINAL JUDGMENT AS TO DEFENDANT COOK

THIS ACTION was heard on Defendants' Motion for Judgment on the Pleadings on Tuesday, October 30, 2007 and Tuesday, July 1, 2008, and

IT IS ADJUDGED that Plaintiff Neil J. Gillespie take nothing by this action against Defendant William J. Cook, whose address is 400 North Ashley Drive, Suite 2100, Tampa, Florida 33602, and that Defendant Cook go hence without day and recover costs from Plaintiff, the amount of which the Court shall retain jurisdiction to determine.

DONE AND ORDERED in Chambers this _____ day of July, 2008.

ORIGINAL SIGNED
JUL 7 2008
JAMES M. BARTON, II
CIRCUIT JUDGE

_____
James M. Barton, II
Circuit Judge

Copies to:

Robert W. Bauer, Esquire (Counsel for Plaintiff)
Ryan Christopher Rodems, Esquire (Counsel for Defendants)

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EXHIBIT
A
_____

CLASS REPRESENTATION CONTRACT

#6

I. PURPOSE

I/We, Neil Gillespie
do hereby retain and employ the law firm of Alpert, Barker, Rodems, Fe
P.A., to investigate my potential claim resulting from My transactio
AMSCOT
and, if advisable, to pursue necessary litigation on my behalf.

I/We understand that I/we may be one of several plaintiff(s) or part of a class of plaintiff(s) represented by Alpert, Barker, Rodems, Ferrentino & Cook, P.A.

II. COSTS AND EXPENSES

I/We hereby agree to pay for the costs and expenses of the investigation and preparation of my/our claims for damages. Should it be necessary to institute a lawsuit or arbitration proceeding, I/we agree to pay all costs and expenses associated with any Court or arbitration proceeding. If an appeal of any decision is filed, regardless of the person or party filing such appeal, I agree to pay the costs and expenses associated with initiating or responding to such appeal.

I/We authorize Alpert, Barker, Rodems, Ferrentino & Cook, P.A., to advance and pay any costs and expenses it deems appropriate to the handling of my case. I/We will pay Alpert, Barker, Rodems, Ferrentino & Cook, P.A., for the costs and expenses advanced out of the portion of any recovery remaining after attorneys' fees have been subtracted. I/We will then receive the portion of what remains, which is known as the "net recovery". Thus, the "total recovery" (all monies received or collected, including attorneys' fees, if awarded) less Alpert, Barker, Rodems, Ferrentino & Cook, P.A.'s attorneys' fees and any costs and expenses will equal the "net recovery".

I/We understand that my/our portion of the "net recovery" will be a prorated or per person share which will be proportional to that of all other class members. The amount of money I/we receive will be determined by dividing the "net recovery" (the amount of any recovery remaining after attorneys' fees and expenses have been subtracted) by the number of class members who are determined eligible to receive proceeds from any judgment or settlement. I/We understand that the Court or other tribunal may approve a different ratio or formula depending upon the circumstances.

If there is no recovery, or if the total recovery is not adequate to pay for all of the costs and expenses advanced, I/we understand that Alpert, Barker, Rodems, Ferrentino & Cook, P.A., will not seek payment from me for any expenses.

If I/we terminate this contract, then Alpert, Barker, Rodems, Ferrentino & Cook, P.A., may seek payment from me/us for any costs and expenses allowed by law.

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III. ATTORNEYS' FEES

In almost all cases in America, each party to a lawsuit or arbitration proceeding pays its own attorneys' fees. In rare cases, the Defendant(s) may pay all or part of the attorneys' fees or the Court or arbitration panel may award attorneys' fees based upon a statute or otherwise.

I/We agree to pay Alpert, Barker, Rodems, Ferrentino & Cook, P.A., an attorneys' fee if it is successful in obtaining any monies or other benefit on my behalf. I/We understand that Alpert, Barker, Rodems, Ferrentino & Cook, P.A., will receive the attorneys' fees awarded by a Court or arbitration panel or will receive the applicable percentage of the "total recovery" (all monies received from the Defendant(s) including, but not limited to, money for actual damages, punitive damages, interest, penalties, attorneys' fees and expenses), whichever is higher. The applicable percentages shall be as follows:

A. 33.334% of the "total recovery" prior to the time that an answer is filed or a demand for appointment of arbitrator(s) is made; thereafter,

B. 40% of the "total recovery" from the time of the filing of an answer or the demand for appointment of arbitrator(s), through the entry of a judgment;

C. An additional 5% of the "total recovery" after a Notice of Appeal is filed by any person or party or if post-judgment relief or action is required for recovery on the judgment.

In the event that my/our claim is settled on terms of an agreement calling for payment in installments, whether monthly, annually or otherwise, in the future, my/our attorneys' contingent fee percentage shall be calculated on the costs of any structured settlement or, if the cost is unknown, on the present money value of the structured settlement. If both the damages and the attorneys' fees are to be paid out in future installments, this limitation shall not apply.

I/We understand that if there is no recovery, I/we will not be indebted to Alpert, Barker, Rodems, Ferrentino & Cook, P.A., for any attorneys' fees.

If I/we terminate this contract, then Alpert, Barker, Rodems, Ferrentino & Cook, P.A., may seek payment from me/us for any attorneys' fees allowed by law.

IV. ALPERT, BARKER, RODEMS, FERRENTINO & COOK, P.A. MAY WORK WITH OTHER LAWYERS ON MY CASE

I/We understand that Alpert, Barker, Rodems, Ferrentino & Cook, P.A., in its discretion, may work with other lawyers on my/our case if deemed necessary. If Alpert, Barker, Rodems, Ferrentino & Cook, P.A., agrees to work with other lawyers on my/our case, I/we understand that the attorneys' fees I/we will have to pay will not increase. Other law firms or lawyers hired by Alpert, Barker, Rodems, Ferrentino & Cook, P.A., will be paid out of the attorneys' fees agreed to in this contract and, if I/we so desire, I/we will be advised regarding how the attorneys' fees are divided.

V. WHAT THIS CONTRACT COVERS

A. Scope of Representation

At the time of signing this contract, I/we also signed a Statement of Client's Rights as well as an Acknowledgment regarding investigation of my claim. These three documents encompass the entire agreement between me/us and Alpert, Barker, Rodems, Ferrentino & Cook, P.A. These signed agreements take the place of any prior, oral or written agreements and may only be changed or modified by a separate, written agreement signed and dated by me/us and Alpert, Barker, Rodems, Ferrentino & Cook, P.A.

This contract is to be interpreted in accordance with Florida law.

I/We understand that Alpert, Barker, Rodems, Ferrentino & Cook, P.A., has no duty to represent me/us in any matters other than my/our potential claim resulting from my transactions with AMSCOT.

I/We understand that if Alpert, Barker, Rodems, Ferrentino & Cook, P.A., determines, at some later date, that my claim should not or cannot be reasonably prosecuted by the Firm, the Firm may notify me in writing of this decision and withdraw as my attorneys. Under such circumstances, I shall be responsible to Alpert, Barker, Rodems, Ferrentino & Cook, P.A., only for any fees and costs permitted by law.

B. Documents and Information

I/we authorize the lawyers to utilize my/our documents and/or information in any regulatory, enforcement, or other proceedings of any kind as may be necessary in the lawyers' sole discretion.

APPROVAL OF THIS CONTRACT

The undersigned client(s) has/have, before signing this contract, received and read the Statement of Client's Rights and understands each of the rights set forth therein. The undersigned client(s) has/have signed the Statement and received a signed copy to refer to while being represented by the undersigned attorneys.

This contract may be cancelled by written notification to the attorneys at any time within three (3) business days of the date the contract was signed, as shown below, and if cancelled the client(s) shall not be obligated to pay any fees to the attorneys for the work performed during that time. If the attorneys have advanced funds to others in representation of the client(s), the attorneys are entitled to be reimbursed for such amounts as the attorneys have reasonably advanced on behalf of the client(s).

I/We have read this contract and any documents specifically referenced herein, and agree to all terms referenced within such documents.

DATED: 11/3/2000

DATED: 11-3-2000

of

Alpert, Barker, Rodems,
Ferrentino & Cook, P.A.
Post Office Box 3270
Tampa, Florida 33601-3270
813/223-4131

Client

Client

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

NEIL J. GILLESPIE,

Plaintiff,

vs.

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

Defendants.
_____/

CASE NO.: 05-CA-7205

DIVISION: G

NOTICE OF FRAUD ON THE COURT BY RYAN CHRISTOPHER RODEMS

Plaintiff and Counter-Defendant Neil J. Gillespie hereby gives Notice of Fraud on the Court by Ryan Christopher Rodems, counsel for Defendants and Counter-Plaintiffs, and in support thereof states:

1. Attorney Ryan Christopher Rodems perpetrated a Fraud on the Court concerning "multiple telephone calls to coordinate the hearing on June 9, 2010". Rodems' fraud was intended to deceive the Court and the Plaintiff and Counter-Defendant Gillespie, for the purpose of disrupting the litigation to Rodems' advantage and to injure Gillespie.

2. Upon information and belief, Mr. Rodems placed the calls to a number he knew or should have known was no longer valid or associated with this litigation. The number is (352) 502-8409 and was associated years ago with a cell phone used by Gillespie. The number was disconnected and reassigned in 2007.

3. On June 3, 2010 Plaintiff and Counter-Defendant Gillespie found a FedEx envelope sitting outside the front door. It contained a Notice of Hearing for June 9, 2010 at 9:00 AM and the following motions:

> Defendant's Motion for an Order compelling Plaintiff to Respond to the Defendant's Request for Production and Attend Deposition, December 15, 2009.
>
> Defendant's Motion for an Order Compelling Plaintiff to Respond to the Defendant's Interrogatories, January 8, 2010.
>
> Defendants' Motion for Examination Pursuant to Section 56.29(2), Florida Statutes, June 1, 2010.

The hearing was unilaterally set by Rodems without coordinating the time and date with Gillespie. Upon receipt of the FedEx envelope Gillespie did not carefully study the Recipient’s Copy of the FedEx US Airbill.

4. Last night Gillespie scanned the Airbill along with other documents. (Exhibit A) When the Airbill appeared on the computer screen, Gillespie saw a telephone number, (352) 502-8409, that he did not immediately recognize, displayed next to his name.

5. After some research Gillespie found that (352) 502-8409 was used as a contact number in 2006 and 2007. The number was disconnected and reassigned in 2007.

6. June 3, 2010 Plaintiff and Counter-Defendant Gillespie notified the trial judge, the Honorable Martha J. Cook, that Rodems unilaterally set hearings without coordinating the time and date with Gillespie and requested the Court cancel the hearings, among other things. A copy of the letter was provided to Rodems. (Exhibit B).

7. June 7, 2010 Plaintiff and Counter-Defendant Gillespie faxed notice to Rodems that his June 9, 2010 hearing was unlawfully set because he unilaterally set the hearing without coordinating the time and date with Gillespie, and the notice failed to meet the requirements of Rule 1.080(b), and requested Rodems cancel the hearing. (Exhibit C).

8. Mr. Rodems responded by letter of June 7, 2010 to Plaintiff and Counter-Defendant Gillespie, with a courtesy copy to Judge Cook, and wrote: “I made multiple telephone calls to coordinate the hearing on June 9, 2010 with you. I telephoned you twice on Thursday, May 27, 2010 and again on Tuesday, June 1, 2010, leaving voice mails each time, but you did not return my calls.” (Exhibit D). Mr. Rodems failed to disclose that he placed the calls to a number he knew or should have known was no longer valid or associated with this litigation. Rodems did not disclose the number called.

9. Plaintiff and Counter-Defendant Gillespie responded to Rodems “You did not make “multiple telephone calls to coordinate the hearing on June 9, 2010” with me. You did not leave any voice mails on Thursday, May 27, 2010 or on Tuesday, June 1, 2010. I did not refuse to respond to your calls because none were made and no messages left.” (relevant portion) (Exhibit E). This was a factual statement. Gillespie did not receive any calls or messages from Rodems to coordinate the hearings of June 9 or July 12, 2010.

10. Mr. Rodems responded by letter of June 11, 2010 to Plaintiff and Counter-Defendant Gillespie, with a courtesy copy to Judge Cook, and wrote: “Regardless of your accusations that I did not call you, I made multiple telephone calls, some in the presence of my staff, to coordinate hearings on June 9 and July 12, 2010, and I dialed the same telephone number that I have successfully used to call you in the past.” (Exhibit F). Mr. Rodems failed to disclose that he placed the calls to a number he knew or should have known was no longer valid or associated with this litigation. Mr. Rodems did not disclose the number he called. And Mr. Rodems was misleading when he wrote “I dialed the same telephone number that I have successfully used to call you in the past”. A more accurate statement would affirm Rodems’ last successful call to the number was in January 2007.

Mr. Rodems Fraud on the Court

11. Plaintiff and Counter-Defendant Gillespie's current phone number for this litigation, (352) 854-7807, has been included on his pleadings filed since October 2009 after attorney Robert W. Bauer left the case. Mr. Rodems did not call (352) 854-7807. Instead, Mr. Rodems placed his calls to (352) 502-8409, a number he knew was no longer valid or associated with this litigation. By calling a bad number, Mr. Rodems' intent was not to communicate with Gillespie to coordinate hearings, but was intended to deceive the Court and Gillespie, for the purpose of disrupting the litigation to Rodems' advantage and to injure Gillespie. Mr. Rodems committed Fraud on the Court because:

a. Mr. Rodems made a false statement of material fact when he wrote June 7, 2010, "I made multiple telephone calls to coordinate the hearing on June 9, 2010 with you. I telephoned you twice on Thursday, May 27, 2010 and again on Tuesday, June 1, 2010, leaving voice mails each time, but you did not return my calls."

b. Mr. Rodems made a false statement of material fact when he wrote June 11, 2010 "Regardless of your accusations that I did not call you, I made multiple telephone calls, some in the presence of my staff, to coordinate hearings on June 9 and July 12, 2010, and I dialed the same telephone number that I have successfully used to call you in the past."

c. Mr. Rodems knew the representations in his letters of June 7, 2010 and June 11, 2010 were false because calling a bad number is not a good-faith effort to contact Plaintiff and Counter-Defendant Gillespie to coordinate hearings.

d. Mr. Rodems intended by making the representations in his letters of June 7, 2010 and June 11, 2010 that the Court would rely upon the representation to the injury of Plaintiff and Counter-Defendant Gillespie.

RESPECTFULLY SUBMITTED June 17, 2010.

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

STATE OF FLORIDA
COUNTY OF MARION

BEFORE ME, the undersigned authority authorized to take oaths and acknowledgments in the State of Florida, personally appeared NEIL J. GILLESPIE, known to me, who, after having first been duly sworn, deposes and says that the above matters contained in this document are true and correct to the best of his knowledge and belief.

WITNESS my hand and official seal this 17th day of June 2010.

NOTARY PUBLIC
CAROLYN THOMPSON
Notary Public, State of Florida
My comm. expires Nov. 19, 2010
No. DD616058

Notary Public
State of Florida

Certificate of Service

I HEREBY CERTIFY that a true and correct copy of the foregoing has been furnished by mail June 17, 2010 to the office of Ryan Christopher Rodems, attorney for the Defendants, at Barker, Rodems & Cook, PA, 400 North Ashley Drive, Suite 2100, Tampa, Florida 33602.

Neil J. Gillespie

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FedEx Express US Airbill

FedEx Tracking Number 8712 8042 0905

SPH32

Form ID No. 0215

Recipient's Copy

RECIPIENT: PEEL HERE

fedex.com 1.800.GoFedEx 1.800.463.3339

1 From This portion can be removed for Recipient's records.

Date 6/1/10 FedEx Tracking Number 871280420905

Sender's Name Ryan C. Rodems, Esq. Phone 813 489-1001

Company BARKER, RODEMS, AND COX

Address 100 N ASHLEY DR STE 2100 Dept./Floor/Suite/Room

City TAMPA State FL ZIP 33602-4050

2 Your Internal Billing Reference 05 5422

3 To

Recipient's Name Mr. Neil Gillespie Phone 352 502-8409

Company

HOLD Weekday — Print FedEx location address below. NOT available for FedEx First Overnight.

HOLD Saturday — Print FedEx location address below. Available ONLY for FedEx Priority Overnight and FedEx 2Day to select locations.

Address 8092 SW 115th Loop

We cannot deliver to P.O. boxes or P.O. ZIP codes. Dept./Floor/Suite/Room

Address

Print FedEx location address here if HOLD option is selected.

City Ocala State FL ZIP 34481

0415092199

8712 8042 0905

4a Express Package Service * To most locations. *Packages up to 150 lbs.*

- [ ] FedEx Priority Overnight — Next business morning.* Friday shipments will be delivered on Monday unless SATURDAY Delivery is selected.
- [x] FedEx Standard Overnight — Next business afternoon.* Saturday Delivery NOT available.
- [ ] FedEx First Overnight — Earliest next business morning delivery to select locations.* Saturday Delivery NOT available.
- [ ] FedEx 2Day — Second business day.* Thursday shipments will be delivered on Monday unless SATURDAY Delivery is selected.
- [ ] FedEx Express Saver — Third business day.* Saturday Delivery NOT available.

4b Express Freight Service ** To most locations. *Packages over 150 lbs.*

- [ ] FedEx 1Day Freight — Next business day.** Friday shipments will be delivered on Monday unless SATURDAY Delivery is selected. FedEx 1Day Freight Booking No.
- [ ] FedEx 2Day Freight — Second business day.** Thursday shipments will be delivered on Monday unless SATURDAY Delivery is selected.
- [ ] FedEx 3Day Freight — Third business day.** Saturday Delivery NOT available.

5 Packaging * Declared value limit $500.

- [x] FedEx Envelope*
- [ ] FedEx Pak* — Includes FedEx Small Pak, FedEx Large Pak, and FedEx Sturdy Pak.
- [ ] FedEx Box
- [ ] FedEx Tube
- [ ] Other

6 Special Handling and Delivery Signature Options

- [ ] SATURDAY Delivery — NOT available for FedEx Standard Overnight, FedEx First Overnight, FedEx Express Saver, or FedEx 3Day Freight.
- [ ] No Signature Required — Package may be left without obtaining a signature for delivery.
- [ ] Direct Signature — Someone at recipient's address may sign for delivery. *Fee applies.*
- [ ] Indirect Signature — If no one is available at recipient's address, someone at a neighboring address may sign for delivery. For residential deliveries only. *Fee applies.*

Does this shipment contain dangerous goods? One box must be checked.

- [ ] No
- [ ] Yes — As per attached Shipper's Declaration.
- [ ] Yes — Shipper's Declaration not required.
- [ ] Dry Ice — Dry Ice, 9, UN 1845 ____ x ____ kg

Dangerous goods (including dry ice) cannot be shipped in FedEx packaging or placed in a FedEx Express Drop Box.

- [ ] Cargo Aircraft Only

7 Payment *Bill to:* Enter FedEx Acct. No. or Credit Card No. below. Obtain Recip. Acct. No. [ ]

- [x] Sender — Acct. No. in Section 1 will be billed.
- [ ] Recipient
- [ ] Third Party
- [ ] Credit Card
- [ ] Cash/Check

Total Packages ____ Total Weight ____ lbs. Credit Card Auth. ____

†Our liability is limited to $100 unless you declare a higher value. See the current FedEx Service Guide for details.

553

Rev. Date 2/08•Part #158279•©1994–2008 FedEx•PRINTED IN U.S.A.•SRS

EXHIBIT A

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

VIA HAND DELIVERY

June 3, 2010

The Honorable Martha J. Cook
Hillsborough Circuit Civil Court, Division G
Thirteenth Judicial Circuit
800 E. Twiggs St., Room 511
Tampa, Florida 33602

RE: Gillespie v. Barker, Rodems & Cook, P.A., case no.: 05-CA-7205, Division G

Dear Judge Cook:

This is a request to cancel Defendants' hearing unilaterally set for Wednesday, June 9, 2010 at 9:00 AM. This morning I found a FedEx envelope sitting outside the front door of our family's home sent by opposing counsel Ryan Christopher Rodems. Mr. Rodems unilaterally set, without coordinating the time and date with me, the following three motions for Wednesday, June 9, 2010 at 9:00 AM.

> Defendant's Motion for an Order compelling Plaintiff to Respond to the Defendant's Request for Production and Attend Deposition, December 15, 2009.
>
> Defendant's Motion for an Order Compelling Plaintiff to Respond to the Defendant's Interrogatories, January 8, 2010.
>
> Defendants' Motion for Examination Pursuant to Section 56.29(2), Florida Statutes, June 1, 2010.

I object to the hearing on the following basis:

1. The hearing was set without coordinating the time and date with me. I received notice of the hearing today, only six days prior to the hearing, not seven as required. Mr. Rodems has done this repeatedly throughout the case. To remedy this ongoing problem I submitted Plaintiff's Motion to Convene a Case Management Conference (April 28, 2010) to facilitate

EXHIBIT
B

an orderly progression of this lawsuit. Likewise, I submitted Plaintiff's Motion to Declare Complex Litigation (April 28, 2010). I believe this is a complex action because it is one that involves complicated legal and/or case management issues that require extensive judicial management to expedite the action, keep costs reasonable, or promote judicial efficiency.

I made similar case management requests under the American's With Disability Act (ADA) February 19, 2010 to which the court has not responded in writing or any meaningful way. Also I live in Ocala, Florida and must travel 100 miles to attend hearings. I ask that hearings be set in the afternoon, not 9:00 AM.

Prior courts have neglected their case management duties imposed by Rule 2.545, Fla.R.Jud.Admin. Judge Barton and Mr. Rodems allowed the case to languish for a year following the motion to withdrawal by Robert W. Bauer, my former counsel. One of the more egregious examples of neglect was Judge Isom's failure to follow her own law review on case management and discovery sanctions, see Professionalism and Litigation Ethics, 28 STETSON L. REV. 323, 324 (1998).

Please note that due to Mr. Rodems prior behavior, he is restricted to communication with me by letter. Judge Isom advised Mr. Rodems on the record February 5, 2007 not to call me on the telephone. Email was discontinued after Mr. Rodems abused that privilege.

2. I provided my ADA accommodation request (ADA Request), and ADA Assessment and Report by Ms. Karin Huffer, MS, MFT, (ADA Report) to Mr. Gonzalo B. Casares, ADA Coordinator for the 13th Judicial Circuit by hand delivery February 19, 2010. I also provided Mr. Casares a completed and signed ADA Request for Accommodations Form for the 13th Judicial Circuit. Courtesy copies of the documents were provided to Judge Barton. ADA is an administrative function. As such copies of the documents were not provided to Defendants, nor is this considered ex parte communication. Ms. Huffer noted the following about the ADA Report: "This report is to be kept under ADA Administrative confidential management except for use by the ADA Administrator revealing functional impairments and needed accommodations communicated to the Trier of Fact to implement administration of accommodations. This information is NOT to become part of the adversarial process. Revealing any part of this report may result in a violation of HIPAA and ADAAA Federal Law."

Mr. Casares notified me by email April 14, 2010 (relevant portion) "Your request is not within our means to resolve and was referred to the Legal Department for the appropriate course of action." In an email to Plaintiff May 4, 2010, Mr. Casares wrote (relevant portion) "The medical file was never within our department's means to help and was handed over to Legal." Plaintiff assumes the "medical file" is the ADA Assessment and Report by Ms. Karin Huffer, MS, MFT, (ADA Report). As of today the Legal Department, also identified as David Rowland, has not responded.

3. I object to Defendants' Motion for Examination Pursuant to Section 56.29(2), Florida Statutes, June 1, 2010 and will make a timely motion for protection.

4. Defendant's Motion for an Order compelling Plaintiff to Respond to the Defendant's Request for Production and Attend Deposition, I believe is subject to contempt, see Plaintiff's Motion to Hold Ryan Christopher Rodems in Civil Contempt of Court. The motion violated Judge Barton's Stay Order of October 1, 2009.

5. I will timely move to reconsider prior factual or legal rulings of Judge Barton pursuant to Rule 2.330(h), which states: Prior factual or legal rulings by a disqualified judge may be reconsidered and vacated or amended by a successor judge based upon a motion for reconsideration, which must be filed within 20 days of the order of disqualification, unless good cause is shown for a delay in moving for reconsideration or other grounds for reconsideration exist. Judge Barton was disqualified May 24, 2010 and notice mailed. A motion to reconsider is due 20 days later, plus 5 days for service by mail of the notice of disqualification, 25 days total, or June 17, 2010. All of Defendants' motions pertain to collection of an extreme $11,550 sanction imposed by Judge Barton.

6. A motion to disqualify Mr. Rodems is being prepared. This is at the suggestion of Judge Barton (and other law) during the January 25, 2010 hearing: (page 31, line 17)

> THE COURT: All right. Well, I assume there will be a renewed motion to disqualify that will be filed and then again set for a hearing once we establish our procedure...

A motion to disqualify Mr. Rodems was submitted but withdrawn to amend upon discovery that Rodems concealed information during a hearing to disclose conflict. The amended motion to disqualify will be submitted by June 17, 2010 with the motion to reconsider pursuant to Rule 2.330(h), Fla.R.Civ.P.

7. Plaintiff's motion to disqualify Judge Barton, paragraph 86, set forth the possibility of a judge ad litem pursuant to section 38.13 Florida Statutes, which also states nothing in this section shall prevent the parties from transferring the cause to another circuit or county court, as the case may be. Plaintiff has contracted Senior Justice (Retired) Ben F. Overton of the mediation firm Upchurch Watson White & Max to see if he can serve as judge ad litem, and is awaiting a response.

8. Plaintiff notes that Defendant William J. Cook has the same surname as the trial judge, and requests disclosure of consanguinity to the third degree that would serve as a basis to disqualify pursuant to Judicial Cannon 3(E), or any other known conflict.

I request the Court designate this lawsuit a complex action and proceed with case management pursuant to Rule 1.200(a), Rule 1.201, and Professionalism and Litigation Ethics, 28 STETSON L. REV. 323, 324 (1998). I request the Court prohibit either side from scheduling motions until case management is decided. The court's Technology Help Desk informed me today that pro-se non-lawyers cannot register or use JAWS. This and other factors have allowed Mr. Rodems to turn this lawsuit into mockery of justice to rack up

extreme sanctions instead of consider the substance of Plaintiff's First Amended Complaint. This is a violation of the public trust, reflects discredit upon the judicial system, and suggests partiality in the consideration of litigants.

I am still waiting for a determination of my ADA accommodation request.

Sincerely,

Neil J. Gillespie

cc: Ms. Karin Huffer, MS, MFT, ADA accommodations designer and advocate
cc: Ryan Christopher Rodems, Esq.

Please note, all calls on the home office business telephone extension (352) 854-7807 are recorded for quality assurance purposes pursuant to the business use exemption of Florida Statutes chapter 934, section 934.02(4)(a)(I), and the holding of *Royal Health Care Servs., Inc. v. Jefferson-Pilot Life Ins. Co.,* 924 F.2d 215 (11th Cir. 1991).

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

June 7, 2010

VIA FAX (813) 489-1008

Mr. Ryan Christopher Rodems, Attorney at Law
Barker Rodems & Cook, PA
400 North Ashley Drive, Suite 2100
Tampa, Florida 33602

NOTICE: Hearing Improperly Set, June 9, 2010, Request Cancellation

Dear Mr. Rodems:

Please be advised that your hearing June 9, 2010 at 9:00AM was unlawfully set because you unilaterally set the hearing without coordinating the time and date with me.

In addition, your notice is insufficient. Rule 1.080(b) requires (relevant portion) that service shall be made by leaving it at the person's usual place of abode with some person of his or her family above 15 years of age and informing such person of the contents. I was not home when FedEx delivered, and I did not find it until the next day. I did not receive the notice on the day delivered nor was I informed of its contents. Therefore you failed to provide the required minimum seven days notice. As such I request that you immediately cancel the hearing and reschedule it lawfully, if you choose.

Your ongoing practice of unilaterally setting hearings without coordinating the time and date with me is unprofessional and violates the Florida Rules of Civil Procedure as described herein. Your offensive behavior will be noted in my motion to disqualify you.

Please be advised that I am a person with a disability that needs accommodation and I made a request for such an accommodation February 19, 2010 to Gonzalo B. Casares, ADA Coordinator for the Thirteenth Judicial Circuit, 801 E. Twiggs Street, Tampa, Florida 33602. As of today the accommodations have not been provided. Please note that the ADA information on your notice of hearing is not correct. Your referral to the ADA Coordinator for the Clerk of Court is misplaced, therefore the notice is deficient.

Sincerely,

Neil J. Gillespie

cc: The Honorable Martha J. Cook, Circuit Court Judge, 13th Judicial Circuit

EXHIBIT
C

BARKER, RODEMS & COOK

PROFESSIONAL ASSOCIATION
ATTORNEYS AT LAW

CHRIS A. BARKER
RYAN CHRISTOPHER RODEMS
WILLIAM J. COOK

400 North Ashley Drive, Suite 2100
Tampa, Florida 33602

Telephone 813/489-1001
Facsimile 813/489-1008

June 7, 2010

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

Re: Neil J. Gillespie v. Barker, Rodems & Cook, P.A., a Florida Corporation; and William J. Cook
Case No.: 05-CA-7205; Division "F"

Dear Mr. Gillespie:

I have and thank you for your letter of even date, transmitted by facsimile. I made multiple telephone calls to coordinate the hearing on June 9, 2010 with you. I telephoned you twice on Thursday, May 27, 2010 and again on Tuesday, June 1, 2010, leaving voice mails each time, but you did not return my calls.

The motions to compel were filed late last year and earlier this year, respectively, because you refused to respond to interrogatories and requests for production relating to my clients' efforts to collect the final judgment they obtained against you, which was affirmed on appeal. Refusing to respond to my telephone calls to prevent me from scheduling hearings is in bad faith. Moreover, you do not state in your letter that you are unavailable on June 9, only that I "unilaterally" set it.

If you agree in writing to provide the answers to interrogatories and a response to the request for production -- both of which were served almost 21 months ago on September 2, 2008 -- within ten days and to attend the deposition I have also scheduled, then I will cancel the hearing. Otherwise, I must respectfully decline your request for cancellation.

I note that the hearing notice was served by Federal Express because you directed me not to communicate with you by e-mail or facsimile. As for your incorrect assertions of service and notice irregularities, I must respectfully disagree. First, you clearly received the notice, given you wrote to me about it. Second, it contained the proper notification for persons with disabilities, and since you have previously requested modifications from the ADA coordinator, you are obviously familiar with the procedure.

I thank you in advance for your cooperation, and in the event that you do not accept my offer to cancel the hearing in exchange for your promise to provide the discovery, then I look forward to seeing you on June 9.

Sincerely,

Ryan C. Rodems /cog

Ryan Christopher Rodems

RCR/so
cc: Honorable Martha J. Cook

EXHIBIT
D

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

June 11, 2010

VIA FAX (813) 489-1008

Mr. Ryan Christopher Rodems, Attorney at Law
Barker Rodems & Cook, PA
400 North Ashley Drive, Suite 2100
Tampa, Florida 33602

Dear Mr. Rodems:

This is in response to your letter of June 7, 2010. You did not make "multiple telephone calls to coordinate the hearing on June 9, 2010" with me. You did not leave any voice mails on Thursday, May 27, 2010 or on Tuesday, June 1, 2010. I did not refuse to respond to your calls because none were made and no messages left. Furthermore you are prohibited from calling me for any reason whatsoever since February 5, 2007.

On February 5, 2007 Judge Isom directed you not to call me. You agreed. This is what you said on the record: (Feb-05-10, page 75, beginning line 2)

> MR. RODEMS: I will not, Your Honor. No phone messages, no direct calls. I'll conduct all of my communications with Mr. Gillespie in writing.
>
> THE COURT: I think that would be advisable. That way we don't have to be concerned with whether or not there's any other improper statements or contact.

Enclosed are the pages from the transcript proscribing your behavior.

Mr. Rodems, you are a complete and utter liar and that is one reason you are prohibited from calling me. All communication from you must be in writing my mail. This is necessitated because you are a walking, talking lie machine. You have no qualms about lying to Judge Cook either, and did so by providing her a copy of your June 7, 2010 letter.

You failed to coordinate the hearing of July 12, 2010 with me. I am not available that day.

Sincerely,

Neil J. Gillespie

cc: The Honorable Martha J. Cook, Circuit Court Judge, 13th Judicial Circuit

EXHIBIT
E

BARKER, RODEMS & COOK

PROFESSIONAL ASSOCIATION
ATTORNEYS AT LAW

CHRIS A. BARKER
RYAN CHRISTOPHER RODEMS
WILLIAM J. COOK

400 North Ashley Drive, Suite 2100
Tampa, Florida 33602

Telephone 813/489-1001
Facsimile 813/489-1008

June 11, 2010

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

Re: Gillespie v. Barker, Rodems & Cook, P.A.,
Case No.: 05-CA-7205; Division "G"

Dear Mr. Gillespie:

I have and thank you for your letter of even date, transmitted by facsimile. Regardless of your accusations that I did not call you, I made multiple telephone calls, some in the presence of my staff, to coordinate hearings on June 9 and July 12, 2010, and I dialed the same telephone number that I have successfully used to call you in the past.

What is most troubling about your letter is that you claim a hearing transcript shows that I am prohibited from calling you, but you did not include the entirety of the transcript excerpt. Here is the pertinent language you omitted:

> THE COURT: And as my dear father always says, discretion being the better part of valor, I would request that you not engage in any telephonic communication with Mr. Gillespie between now and the next hearing.
>
> MR. RODEMS: I will not, Your Honor. No phone messages, no direct calls. I'll conduct all of my communications with Mr. Gillespie in writing.

Your omission of the entirety of the discussion creates a misperception; Judge Isom's request limited the request to "between now and the next hearing."

I made sincere efforts to coordinate the July 12, 2010 hearing date, but you have not reciprocated. Although I will not cancel it based on your claim to not be available, I will renew my offer made regarding the motions to compel when they were scheduled for June 9: If you agree to provide the discovery within ten days and attend the deposition, then I will cancel the hearing on the motions to compel (but not the Case Management Conference). The incentive for you to consider that may be the prospect of being held liable for my clients' attorneys' fees and costs, under Rule 1.380(a)(4).

I look forward to hearing from you.

Sincerely,

Ryan Christopher Rodems

RCR/so
cc: Honorable Martha J. Cook
Enclosure

EXHIBIT
F

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

NEIL J. GILLESPIE,

Plaintiff and Counter-Defendant, CASE NO.: 05-CA-7205

vs.

BARKER, RODEMS & COOK, P.A., a Florida corporation; WILLIAM J. COOK, DIVISION: G

Defendants and Counter-Plaintiffs.
_____/

MOTION TO STRIKE AFFIDAVIT OF WILLIAM J. COOK, ESQUIRE

MOTION TO QUASH ORDER GRANTING DEFENDANTS' MOTION FOR WRIT OF GARNISHMENT AFTER JUDGMENT

MOTION TO QUASH WRIT OF GARNISHMENT

Plaintiff and Counter-Defendant Neil J. Gillespie pro se moves to strike the Affidavit of William J. Cook, Esquire submitted by Ryan C. Rodems and states:

1. Mr. Rodems submitted the Affidavit of William J. Cook, Esquire with Defendants' Notice of Filing June 1, 2010. (Exhibit A). Mr. Rodems notarized or acknowledged the affidavit of Mr. Cook himself. Mr. Rodems and Mr. Cook are law partners in practice at Barker, Rodems & Cook, PA where they are shareholders.

2. The Affidavit of William J. Cook, Esquire was unlawfully notarized or acknowledged by Mr. Rodems and is void due to his financial or beneficial interest in the proceedings. The affidavit was notarized by Mr. Rodems June 1, 2010 and submitted in a garnishment proceeding supplementary to execution to collect a judgment of $11,550 from

EXHIBIT
12

Neil J. Gillespie, a judgment creditor of William J. Cook, Esquire and Barker, Rodems & Cook, PA. Mr. Rodems is a shareholder of Baker, Rodems & Cook, PA and has a financial or beneficial interest in the proceedings.

3. An officer or a person otherwise legally authorized to take acknowledgments is not qualified to act where he or she has a financial or beneficial interest in the proceedings or will acquire such interest under the instrument to be acknowledged. Summa Investing Corp. v. McClure, 569 So. 2d 500 (Fla. Dist. Ct. App. 3d Dist. 1990). Mr. Rodems' acknowledgment of Mr. Cook's affidavit for use in a garnishment proceeding supplementary to execution to collect a judgment of $11,550 from Neil J. Gillespie, a judgment creditor Barker, Rodems & Cook, PA where Mr. Rodems is a shareholder and has a financial or beneficial interest in the proceedings is void and therefore the affidavit was defectively acknowledged.

4. An attempted oath administered by one who is not qualified to administer it is abortive and in effect no oath. Crockett v. Cassels, 95 Fla. 851, 116 So. 865 (1928).

5. Mr. Rodems improperly took the acknowledgment of Mr. Cook's affidavit to be used in the case in which he is an attorney. It is improper for a lawyer to take acknowledgments to affidavits, to be used in the case in which he is an attorney. Savage v. Parker, 53 Fla. 1002, 43 So. 507 (1907).

6. Mr. Rodems used the affidavit with a motion to obtain an Order Granting Defendants' Motion For Writ of Garnishment After Judgment in another Fraud on the Court due to his conflict of interest in this matter. This is the second Fraud on the Court by Mr. Rodems this month. *See* Notice of Fraud On The Court By Ryan Christopher Rodems submitted June 17, 2010 that describes Rodems' false statement to the Court and Gillespie

concerning "multiple telephone calls to coordinate the hearing on June 9, 2010". Rodems placed calls to a number that was disconnected in 2007. Rodems knew his statement was false because calling a bad number is not a good-faith effort to coordinate hearings.

7. Defendants' Notice of Filing the Writ of Garnishment, Motions for Writ of Garnishment, and Notice to Defendant of a garnishment of PayPal, Inc., 2145 Hamilton Avenue, San Jose, California 95125 is attached as Exhibit B.

WHEREFORE, Plaintiff moves to strike the Affidavit of William J. Cook, Esquire as void, quash the Order Granting Defendants' Motion For Writ of Garnishment After Judgment obtained on a void affidavit, and quash the Writ of Garnishment for lack of lawful due process.

RESPECTFULLY SUBMITTED this 28th day of June, 2010.

Neil J. Gillespie, Plaintiff and
Counter-Defendant pro se
8092 SW 115th Loop
Ocala, Florida 34481
Telephone: (352) 854-7807

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a copy of the foregoing has been furnished by mail to Ryan Christopher Rodems, Attorney, Barker, Rodems & Cook, P.A., 400 North Ashley Drive, Suite 2100, Tampa, Florida 33602, this 28th day of June, 2010.

Neil J. Gillespie

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

NEIL J. GILLESPIE,

Plaintiff,

vs.

Case No.: 05CA7205
Division: G

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

Defendants.
_____/

DEFENDANTS' NOTICE OF FILING

Defendants, Barker, Rodems & Cook, P.A. and William J. Cook, hereby notice the filing of the Affidavit of William J. Cook, Esquire.

RESPECTFULLY SUBMITTED this 1st day of June, 2010.

RYAN CHRISTOPHER RODEMS, ESQUIRE
Florida Bar No. 947652
Barker, Rodems & Cook, P.A.
400 North Ashley Drive, Suite 2100
Tampa, Florida 33602
Telephone: 813/489-1001
Facsimile: 813/489-1008
Attorneys for Defendants,
Barker, Rodems & Cook, P.A. and William J. Cook

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a true and correct copy of the foregoing Defendants' Notice of Filing has been furnished via U.S. Mail to Neil J. Gillespie, 8092 SW 115th Loop, Ocala, Florida 34481, this 1st day of June, 2010.

RYAN CHRISTOPHER RODEMS, ESQUIRE

EXHIBIT
A

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

NEIL J. GILLESPIE,

Plaintiff,

vs.

Case No.: 05CA7205
Division: G

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

Defendants.
_____/

AFFIDAVIT OF WILLIAM J. COOK, ESQUIRE

William J. Cook, under oath, testifies as follows:

1. My name is William J. Cook, and I am above the age of eighteen years. This affidavit is given on personal knowledge unless otherwise expressly stated.

2. I am a judgment creditor of Neil J. Gillespie. I am a shareholder of Barker, Rodems & Cook, P.A., also a judgment creditor of Neil J. Gillespie. The judgment we hold is unsatisfied. The issuing court is the Thirteenth Judicial Circuit, the case number is 05CA7205, and the unsatisfied amount of the judgment or judgment lien is $11,500.00, excluding accrued costs and interest. The execution is valid and outstanding, and therefore we, as the judgment holder or judgment lienholder, are entitled to these proceedings supplementary to execution.

FURTHER AFFIANT SAYETH NAUGHT.

Dated this 1st day of June, 2010.

WILLIAM J. COOK

STATE OF FLORIDA
COUNTY OF HILLSBOROUGH

BEFORE ME, the undersigned authority authorized to take oaths and acknowledgments in the State of Florida, personally appeared WILLIAM J. COOK, known to me, who, after having first been duly sworn, deposes and says that the above matters contained in this Affidavit are true and correct to the best of her knowledge and belief.

WITNESS my hand and official seal this 1st day of June, 2010.

NOTARY PUBLIC-STATE OF FLORIDA
Ryan Christopher Rodems
Commission # DD953163
Expires: JAN. 18, 2014
BONDED THRU ATLANTIC BONDING CO., INC.

Notary Public,
State of Florida at Large

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

NEIL J. GILLESPIE,

Plaintiff,

vs.

Case No.: 05CA7205
Division: C

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

Defendants.
_____/

DEFENDANTS' NOTICE OF FILING

Defendants, Barker, Rodems & Cook, P.A. and William J. Cook, hereby notice the filing of the following:

1. Writ of Garnishment.

2. Motions for Writ of Garnishment.

3 Notice to Defendant.

DATED this 10 day of June, 2010.

RYAN CHRISTOPHER RODEMS, ESQUIRE
Florida Bar No. 947652
Barker, Rodems & Cook, P.A.
400 North Ashley Drive, Suite 2100
Tampa, Florida 33602
Telephone: 813/489-1001
Facsimile: 813/489-1008
Attorneys for Defendants,
Barker, Rodems & Cook, P.A. and William J. Cook

EXHIBIT
B

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a true and correct copy of the foregoing has been furnished via U.S. Mail to Mr. Neil J. Gillespie, 8092 SW 115th Loop, Ocala Florida 34481 this 10 day of June, 2010.

Ryan Christopher Rodems, Esquire

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

NEIL J. GILLESPIE,

Plaintiff,

COPY

vs.

Case No.: 05CA7205
Division: C

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

Defendants.
_____/

WRIT OF GARNISHMENT

THE STATE OF FLORIDA:
To Each Sheriff of the State:

YOU ARE COMMANDED to summon the Garnishee, PayPal, Inc., 2145 Hamilton Avenue, San Jose, California 95125, to serve an answer to this Writ on Ryan Christopher Rodems, Esquire, the Defendants' attorney, whose address is Barker, Rodems & Cook, P.A., 400 North Ashley Drive, Suite 2100, Tampa, Florida 33602, within twenty (20) days after service on the Garnishee, exclusive of the date of service, and to file the original with the Clerk of this Court either before service on the attorney or immediately thereafter, stating whether the Garnishee is indebted to the Plaintiff, NEIL J. GILLESPIE, at the time of the answer or was indebted at the time of the service of the Writ, or at any time between such times, and in what sum and what tangible and intangible personal property of the Plaintiff the Garnishee is in possession or control of at the time of the answer or had at the time of the service of this Writ, or at any time between such times, and whether the Garnishee knows of any other person indebted to the Plaintiff or who may be in possession or control of any of the property of the Plaintiff. The amount set in the Plaintiff's Motion is $11,550.00, Final Judgment entered March 28, 2008, bearing interest at 11% per year.

DATED this 4th day of June, 2010.

CIRCUIT COURT * CLERK HILLSBOROUGH COUNTY *

PAT FRANK,
CLERK OF THE COURT
BY: Nancy J. Hopson
Deputy Clerk

NOTICE TO DEFENDANT OF RIGHT AGAINST
GARNISHMENT OF WAGES, MONEY,
AND OTHER PROPERTY

The Writ of Garnishment delivered to you with this Notice means that wages, money, and other property belonging to you have been garnished to pay a court judgment against you. HOWEVER, YOU MAY BE ABLE TO KEEP OR RECOVER YOUR WAGES, MONEY, OR PROPERTY. READ THIS NOTICE CAREFULLY.

State and federal laws provide that certain wages, money, and property, even if deposited in a bank, savings and loan, or credit union, may not be taken to pay certain types of court judgments. Such wages, money, and property are exempt from garnishment. The major exemptions are listed below on the form for Claim of Exemption and Request for Hearing. This list does not include all possible exemptions. You should consult a lawyer for specific advice.

TO KEEP YOUR WAGES, MONEY, AND OTHER PROPERTY FROM BEING GARNISHED, OR TO GET BACK ANYTHING ALREADY TAKEN, YOU MUST COMPLETE A FORM FOR CLAIM OF EXEMPTION AND REQUEST FOR HEARING AS SET FORTH BELOW AND HAVE THE FORM NOTARIZED. YOU MUST FILE THE FORM WITH THE CLERK'S OFFICE WITHIN 20 DAYS AFTER THE DATE YOU RECEIVE THIS NOTICE OR YOU MAY LOSE IMPORTANT RIGHTS. YOU MUST ALSO MAIL OR DELIVER A COPY OF THIS FORM TO THE PLAINTIFF AND THE GARNISHEE AT THE ADDRESSES LISTED ON THE WRIT OF GARNISHMENT.

If you request a hearing, it will be held as soon as possible after your request is received by the court. The plaintiff must file any objection within 3 business days if you hand delivered to the plaintiff a copy of the form for Claim of Exemption and Request for Hearing or, alternatively, 8 business days if you mailed a copy of the form for claim and request to the plaintiff. If the plaintiff files an objection to your Claim of Exemption and Request for Hearing, the clerk will notify you and the other parties of the time and date of the hearing. You may attend the hearing with or without an attorney. If the plaintiff fails to file an objection, no hearing is required, the writ of garnishment will be dissolved and your wages, money, or property will be released.

YOU SHOULD FILE THE FORM FOR CLAIM OF EXEMPTION IMMEDIATELY TO KEEP YOUR WAGES, MONEY, OR PROPERTY FROM BEING APPLIED TO THE COURT JUDGMENT. THE CLERK CANNOT GIVE YOU LEGAL ADVICE. IF YOU NEED LEGAL ASSISTANCE YOU SHOULD SEE A LAWYER. IF YOU CANNOT AFFORD A PRIVATE LAWYER, LEGAL SERVICES MAY BE AVAILABLE. CONTACT YOUR LOCAL BAR ASSOCIATION OR ASK THE CLERK'S OFFICE ABOUT ANY LEGAL SERVICES PROGRAM IN YOUR AREA.

CLAIM OF EXEMPTION AND
REQUEST FOR HEARING

I claim exemptions from garnishment under the following categories as checked: _____

1. Head of family wages. (You must check a. or b. below.)

_____ a. I provide more than one-half of the support for a child or other dependent and have net earnings of $500 or less per week.

_____ b. I provide more than one-half of the support for a child or other dependent, have net earnings of more than $500 per week, but have not agreed in writing to have my wages

garnished.

_____ 2. Social Security benefits.

_____ 3. Supplemental Security Income benefits.

_____ 4. Public assistance (welfare).

_____ 5. Workers' Compensation.

_____ 6. Unemployment Compensation.

_____ 7. Veterans' benefits.

_____ 8. Retirement or profit-sharing benefits or pension money.

_____ 9. Life insurance benefits or cash surrender value of a life insurance policy or proceeds of annuity contract.

_____ 10. Disability income benefits.

_____ 11. Prepaid College Trust Fund or Medical Savings Account.

_____ 12. Other exemptions as provided by law.

_____ (explain)

I request a hearing to decide the validity of my claim. Notice of the hearing should be given to me at:

Address: _____

Telephone number:_____

The statements made in this request are true to the best of my knowledge and belief.

_____
Defendant's signature

Date_____

STATE OF FLORIDA
COUNTY OF _____

Sworn and subscribed to before me this _____ day of (month and year) , by (name of person making statement)

_____
Notary Public/Deputy Clerk

Personally Known _____OR Produced Identification_____

Type of Identification Produced_____

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

NEIL J. GILLESPIE,

Plaintiff,

COPY

vs.

Case No.: 05CA7205
Division: C

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

Defendants.
_____/

DEFENDANTS' MOTION FOR WRIT OF GARNISHMENT AFTER JUDGMENT

Defendants Barker, Rodems & Cook, P.A., and William J. Cook, move for a Writ of Garnishment pursuant to section 77.03, Florida Statutes, and respectfully show that:

1. The Defendants recovered a Final Judgment in this cause in this Court in the sum of $11,550.00, Final Judgment entered March 28, 2008, bearing interest at 11% per year from the date of entry. The entire balance is outstanding.

2. The Defendants do not believe that the Plaintiff has in his possession visible property on which a levy can be made sufficient to satisfy the Judgment.

3. The following corporation holds money or other personal property owed to or belonging to the Plaintiff:

PayPal, Inc.
2145 Hamilton Avenue
San Jose, California 95125

WHEREFORE the Defendants move for the issuance of Writ of Garnishment, commanding the Garnishee to appear and answer accordingly to law in such cases made and

provided.

DATED this 24 day of May, 2010.

RYAN CHRISTOPHER RODEMS, ESQUIRE
Florida Bar No. 947652
Barker, Rodems & Cook, P.A.
400 North Ashley Drive, Suite 2100
Tampa, Florida 33602
Telephone: 813/489-1001
Facsimile: 813/489-1008
Attorneys for Defendants,
Barker, Rodems & Cook, P.A. and William J. Cook

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

NEIL J. GILLESPIE,

Plaintiff,

vs.

Case No.: 05CA7205
Division: C

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

Defendants.
_____/

ORDER GRANTING DEFENDANTS' MOTION FOR WRIT OF GARNISHMENT AFTER JUDGMENT

THIS MATTER having come before the Court upon Defendants' Motion for Writ of Garnishment After Judgment, and having considered the contents thereof, it is hereby

ORDERED, ADJUDGED and DECREED that the Defendants' Motion is hereby GRANTED. The Clerk of the Court is hereby instructed to issue Writs of Garnishment forthwith.

DONE AND ORDERED in Chambers in Tampa, Hillsborough County, Florida, this ____ day of _____, 2010.

_____
Circuit Court Judge

Copy furnished to:

Ryan Christopher Rodems, Esquire

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

NEIL J. GILLESPIE,

Plaintiff,

vs.

Case No.: 05CA7205
Division: C

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

Defendants.
_____/

WRIT OF GARNISHMENT

THE STATE OF FLORIDA:
To Each Sheriff of the State:

YOU ARE COMMANDED to summon the Garnishee, PayPal, Inc., 2145 Hamilton Avenue, San Jose, California 95125, to serve an answer to this Writ on Ryan Christopher Rodems, Esquire, the Defendants' attorney, whose address is Barker, Rodems & Cook, P.A., 400 North Ashley Drive, Suite 2100, Tampa, Florida 33602, within twenty (20) days after service on the Garnishee, exclusive of the date of service, and to file the original with the Clerk of this Court either before service on the attorney or immediately thereafter, stating whether the Garnishee is indebted to the Plaintiff, **NEIL J. GILLESPIE,** at the time of the answer or was indebted at the time of the service of the Writ, or at any time between such times, and in what sum and what tangible and intangible personal property of the Plaintiff the Garnishee is in possession or control of at the time of the answer or had at the time of the service of this Writ, or at any time between such times, and whether the Garnishee knows of any other person indebted to the Plaintiff or who may be in possession or control of any of the property of the Plaintiff. The amount set in the Plaintiff's Motion is $11,550.00, Final Judgment entered March 28, 2008, bearing interest at 11% per year.

DATED this _____ day of _____, 2010.

PAT FRANK,
CLERK OF THE COURT
BY:_____
Deputy Clerk

28 STETLR 323
28 Stetson L. Rev. 323

Stetson Law Review
Fall, 1998

Essay

***323** PROFESSIONALISM AND LITIGATION ETHICS

Hon. Claudia Rickert Isom [FNa1]

My first assignment as a newly elected circuit judge was to the family law division. Although I considered myself to be an experienced trial attorney, I was somewhat naive about my role as a judge presiding over discovery issues. I assumed that the attorneys assigned to my division would know the rules of procedure and the local rules of courtesy. I also assumed that, being knowledgeable, they would comply in good faith with these provisions. I soon learned that attorneys who were entirely pleasant and sociable creatures when I was counted among their numbers, assumed a much different role when advocating for litigants.

For example, take Harvey M. (not his real name). Harvey and I had bantered for years, having many common interests. Perhaps this familiarity gave rise to, while not contempt, a certain lackadaisical attitude about complying with case management and pretrial orders. Harvey challenged me to establish my judicial prerogative and assist him in achieving goals not of his own making.

A common assumption regarding family law is that clients receive the quality of legal representation that they deserve. However, my time in the family law division has convinced me that this is not necessarily true. Often times, a case that has wallowed along, seemingly hung up in endless depositions and discovery problems, becomes instantly capable of resolution by bringing all parties together in the context of a pretrial conference. Apparently, some attorneys feel that “cutting up” is a large part of what their clients expect them to do. When this litigious attitude begins to restrict the trial court's ability to effectively bring cases to resolution, the judge must get involved to assist the process.

Recently, the Florida Conference of Circuit Court Judges conducted an educational seminar designed to guide circuit judges in appropriately responding to unprofessional and unethical behavior. [FN1] Various scenarios were presented on video, after which the ***324** judges voted on what they felt would be the appropriate court response. A surprising number of judges voted to impose sanctions or report unethical behavior to the Florida Bar Grievance Section. However, the most common response was to do nothing or to privately counsel the offending attorney.

A common theme at meetings of the Florida Bar Standing Committee on Professionalism is that, while attorneys can aspire to greater professionalism, the courts can be a bully pulpit to encourage professional behavior. Perhaps the perceived backlash of cracking down on unprofessional behavior is unrealistic for Florida's circuit judges who are elected officials. However, that perception shapes the judicial response, even when responding theoretically at a seminar.

EXHIBIT
13

The Joint Committee of the Trial Lawyers Section of the Florida Bar and the Conferences of Circuit and County Court Judges' 1998 Handbook on Discovery Practice admonishes trial judges to fully appreciate their broad powers to end discovery abuses and the 1998 Handbook reassuringly states that the appellate courts will sustain the trial court's authority if it is exercised in a procedurally correct manner. [FN2] Once again, this rallying cry ignores the reality of our situation.

As a new judge, the lessons urged by bar leadership have been a matter of trial and error (pun intended). Harvey quickly established his reputation, not as a fellow member of my legal community, but as a problematic litigator whose behavior had to be controlled and modified by court order for the legal process to smoothly progress. For example, hearing time was made available to address discovery issues, very specific orders were entered regarding who was to do what, when, and how, verbal commitments were elicited on the record about document production and interrogatory responses, in an attempt to avoid additional hearings. Cases involving Harvey were, by necessity, intensely case managed.

Resentment, of course, is a by-product of such intensive case management. Attorneys may perceive that the court is trying to prevent them from earning additional attorney fees by streamlining the process. However, clients rarely complain once they realize that the underlying purpose is to bring the case to timely resolution.

In Harvey's case, extreme tools--reporting Harvey to the Florida***325** Bar, striking responses, striking witnesses, imposing financial sanctions, and conducting contempt hearings-- were never implicated. What did happen was that Harvey trained me to be a better judge by showing me how, in a nonconfrontational manner, I could effectively case manage Harvey and similar counsel without having to take off the gloves.

Fortunately, not every litigator requires the case management skills of a Harvey situation. Most attorneys are well-intentioned, have a legitimate interest in pursuing discovery efficiently, and do not seek to unnecessarily delay the resolution of a case. What a relief it is to have a case with opposing counsel who are both of this school of thought.

New attorneys, or attorneys who are appearing in front of a judge for the first time, must remember that their reputation is primarily built on the judge's personal experiences with them. No bench book exists with a list of which attorneys are trustworthy professionals and which are not. Instead, the individual judge keeps a mental catalog of experiences. For example, does this attorney routinely generate complaints from opposing counsel in other cases about not clearing depositions with their office? Is this attorney often the subject of motions to compel? Can this attorney be trusted when he tells you that the responses to interrogatories are “in the mail”? Once a negative reputation has been established with the court, an attorney's job will be much more challenging in establishing credibility with the court. And certainly, with so many issues up to the court's discretion, an attorney's reputation as trustworthy and ethical is of utmost importance.

And, what about Harvey? Do his clients suffer? Of course they do. But, with effective case management and an experienced judiciary, the damage and delay caused by the Harveys of this world can be minimized while still allowing clients the freedom to choose their own counsel.

[FNa1]. Circuit Judge, Thirteenth Judicial Circuit, Tampa, Florida, 1991-Present; B.S.Ed., University of Iowa, 1972; J.D., Florida State University, 1975; Vice-Chair and member, Florida Bar Standing Committee on Professionalism; Assistant State Attorney, Thirteenth Judicial Circuit, 1979-1982; District VI Legal Counsel, Florida

Department of Health and Rehabilitative Services, 1984-1986; Shareholder, Isom, Pingel and Isom-Rickert, P.A., 1986-1990.

[FN1]. *See* ANNUAL BUSINESS MEETING OF FLORIDA CONFERENCE OF CIRCUIT JUDGES: PROFESSIONALISM PROBLEM SOLVING (1998).

[FN2]. *See* JOINT COMMITTEE OF THE TRIAL LAWYERS SECTION OF THE FLORIDA BAR AND CONFERENCE OF CIRCUIT AND COUNTY JUDGES 1998 HANDBOOK 8-9 (1998).
28 Stetson L. Rev. 323

END OF DOCUMENT

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

NEIL J. GILLESPIE,

Plaintiff,

vs.

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

Defendants.
_____/

CASE NO.: 05-CA-7205

DIVISION: H

PLAINTIFF'S MOTION TO DISQUALIFY JUDGE

Plaintiff pro se, Neil J. Gillespie, moves to disqualify the Honorable Claudia R. Isom as judge in this action pursuant to Rule 2.160(d)(1), Fla. R. Jud. Admin. Plaintiff fears that he will not receive a fair trial because of specifically described prejudice or bias of the judge. The specific grounds in support of this motion are: (Note: Transcripts of hearings on February 1, and February 5, 2007, have been ordered but not received, and this motion contains Plaintiff's recollection pending the transcripts).

1. Judge Isom heard Plaintiff's Amended Motion for Disclosure of Conflict on February 1, 2007. The Judge was prejudiced by some of the information presented. When Plaintiff asked if he could expect to receive a fair trial and hearings, Judge Isom was unable to answer in the affirmative, and only mentioned that this was a jury trial. Jury trial notwithstanding, Judge Isom must make many ruling in this matter, and Plaintiff believes he will not receive fair treatment.

2. Judge Isom has largely ignored Plaintiff's exercise of diligence to obtain counsel. Judge Isom forced Plaintiff to participate in a hearing on February 5, 2007 without counsel, to his great detriment. In fact, Judge Isom laughed at Plaintiff's dilemma in open court when he told the Court that prospective counsel said taking this case would likely amount to "involuntary servitude" because Defendants are lawyers who have the capacity to litigate at minimal expense, and the Court would not excuse counsel once Plaintiff could no longer afford to pay, because everyone has finite resources. Judge Isom also stated on the record that one of the attorneys referred to Plaintiff as counsel in this case, Pat Dekle, practices medical malpractice, not contract law, suggesting the Hillsborough County Bar Association is providing Plaintiff with the wrong referrals for this case. Judge Isom said Plaintiff should contact other lawyer referral services in St. Petersburg and Clearwater, but did not provide the time needed to do so.

3. Judge Isom also refused to provide Plaintiff with an Americans with Disability Act accommodation he needs to participate in the proceedings. That accommodation is the time Plaintiff needs to find counsel. The Court under Judge Nielsen initiated a plan relative to the exercise of diligence to obtain counsel, but Judge Isom has unilaterally abandoned that plan.

4. At the hearing of February 5, 2007, Plaintiff was unable to proceed by the time his motion to reconsider the discovery order was heard. The hearing had gone on for over two hours and Plaintiff's disability prevented him from proceeding any further. Judge Isom's solution was to simply proceed without Plaintiff, with predictable results - Judge Isom ruled against him.

The undersigned movant certifies that the motion and the movant's statements are made in good faith.

Neil J. Gillespie, Plaintiff pro se
8092 SW 115th Loop
Ocala, Florida 34481
Telephone: (352) 502-8409

Under penalties of perjury, I declare that I have read the foregoing motion and the facts stated in it are true.

Neil J. Gillespie

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

NEIL J. GILLESPIE,

Plaintiff,

vs.

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

Defendants.
_____/

CASE NO.: 05-CA-7205

DIVISION: H

PLAINTIFF'S MEMORANDUM OF LAW,
PLAINTIFF'S MOTION TO DISQUALIFY JUDGE

1. Litigant's right to impartial judge. The importance of the duty of rendering a righteous judgment is that of doing it in such a manner as would raise no suspicion of the fairness and integrity of the judge. State ex rel. Arnold v. Revels, 113 So.2d 218, Fla.App. 1 Dist.,1959. Every litigant is entitled to nothing less than the cold neutrality of an impartial judge, (Mathew v. State, 837 So.2d 1167, Fla.App. 4 Dist.,2003.) and the law intends that no judge will preside in a case in which he or she is not wholly free, disinterested, impartial, and independent. State v. Steele, 348 So.2d 398, Fla.App. 1977. When a judge enters into the proceedings and becomes a participant, a shadow is cast upon judicial neutrality so that his or her disqualification is required. Evans v. State, 831 So.2d 808, Fla.App. 4 Dist.,2002.

The conditions requiring the disqualification of the judge to act in that particular case are prescribed by statute. § 38.02 Fla. Stat. The basic tenet for the disqualification of

a judge is that a judge must satisfy the appearance of justice. Hewitt v. State, 839 So.2d 763, Fla.App. 4 Dist.,2003. The question of disqualification focuses on those matters from which a litigant may reasonably question a judge's impartiality rather than the judge's perception of his or her ability to act fairly and impartially. Wargo v. Wargo, 669 So.2d 1123, Fla.App. 4 Dist.,1996.

The term "recusal" is most often used to signify a voluntary action to remove oneself as a judge; however, the term "disqualification" refers to the process by which a litigant may seek to remove a judge from a particular case. Sume v. State, 773 So.2d 600, Fla.App. 1 Dist.,2000.

Question whether disqualification of a judge is required focuses on those matters from which a litigant may reasonably question a judge's impartiality rather than the judge's perception of his ability to act fairly and impartially. West's F.S.A. Code of Jud. Conduct, Canon 3(E)(1), Stevens v. Americana Healthcare Corp. of Naples, 919 So.2d 713 (Fla. Dist. Ct. App. 2d Dist. 2006). Question of disqualification of a trial judge focuses on those matters from which a litigant may reasonably question a judge's impartiality rather than the court's own perception of its ability to act fairly and impartially. West's F.S.A. § 38.10, Valdes-Fauli v. Valdes-Fauli, 903 So.2d 214, Fla.App. 3 Dist.,2005 reh'g denied, (Feb. 17, 2005).

2. Sufficiency of motion or affidavit of prejudice. A motion to disqualify must show that the party fears that he or she will not receive a fair trial or hearing because: (1) of a specifically described prejudice or bias of the judge; Fla. R. Jud. Admin., Rule 2.160 (d)(1). Generally, the critical determination in deciding the legal sufficiency of a motion to disqualify has been whether the facts alleged would prompt a reasonably prudent

person to fear he or she would not receive a fair trial, Barnhill v. State, 834 So.2d 836 Fla.,2002. If a motion to recuse is technically sufficient and the facts alleged therein also would prompt a reasonably prudent person to fear that he or she could not get a fair and impartial trial from the judge, the motion is legally sufficient and should be granted. Coleman v. State, 866 So.2d 209, Fla.App. 4 Dist.,2004. The motion to disqualify a judge should contain facts germane to the judge's undue bias, prejudice, or sympathy. Chamberlain v. State, 881 So.2d 1087, Fla.,2004.

Whether a motion to disqualify a judge is legally sufficient requires a determination as to whether the alleged facts would create in a reasonably prudent person a well-founded fear of not receiving a fair and impartial trial. Fla. R. Jud. Admin., Rule 2.160 (f), Rodriguez v. State, 919 So.2d 1252, Fla.,2005, as revised on denial of reh'g, (Jan. 19, 2006). The primary consideration in determining whether motion to disqualify trial judge should be granted is whether the facts alleged, if true, would place a reasonably prudent person in fear of not receiving a fair and impartial trial. Arbelaez v. State, 898 So.2d 25, Fla.,2005, reh'g denied, (Mar. 18, 2005). A motion for disqualification must be granted if the alleged facts would cause a reasonably prudent person to have a well-founded fear that he/she would not receive a fair and impartial trial. Jarp v. Jarp, 919 So.2d 614, Fla.App. 3 Dist.,2006. The test a trial court must use in determining whether a motion to disqualify a judge is legally sufficient is whether the facts alleged would place a reasonably prudent person in fear of not receiving a fair and impartial trial. Scott v. State, 909 So.2d 364, Fla.App. 5 Dist.,2005, reh'g denied, (Sept. 2, 2005). The motion to disqualify a judge must be well-founded and contain facts germane to the judge's undue

bias, prejudice, or sympathy. Scott v. State, 909 So.2d 364, Fla.App. 5 Dist.,2005, reh'g denied, (Sept. 2, 2005).

Disqualification is required when litigants demonstrate reasonable, well-grounded fear that they will not receive fair and impartial trial, or that judge has pre-judged case. Williams v. Balch, 897 So.2d 498, Fla.App. 4 Dist.,2005.

3. Time for filing motion; waiver of objection. A motion to disqualify shall be filed within a reasonable time not to exceed 10 days after discovery of the facts constituting the grounds for the motion and shall be promptly presented to the court for an immediate ruling. Fla. R. Jud. Admin., Rule 2.160(e). Although a petition to disqualify a judge is not timely filed, extraordinary circumstances may warrant the grant of an untimely motion to recuse. Klapper-Barrett v. Nurell, 742 So.2d 851, Fla.App. 5 Dist.,1999.

4. Judicial determination of initial motion. The judge against whom an initial motion to disqualify us directed shall determine only the legal sufficiency if the motion an shall not pass on the truth of the facts alleged. Fla. R. Judicial Admin. 2.160(f). No other reason for denial shall be stated, and an order of denial shall not tale issue with the motion. Fla. R. Judicial Admin. 2.160(f). Accordingly, a judge may not rule on the truth of the facts alleged or address the substantive issues raised by the motion but may only determine the legal sufficiency of the motion. Knarich v. State, 866 So.2d 165 (Fla. Dist. Ct. App. 2d Dist. 2004). In determining whether the allegations that movant will not receive a fair trial so as to disqualify a judge are sufficient, the facts alleged must be taken as true (Frengel v. Frengel, 880 So.2d 763, Fla.App. 2 Dist.,2004), and must be viewed from the movant's perspective. Siegel v. State, 861 So.2d 90, Fla.App. 4 Dist.,2003.

Case law forbids trial judges to refute facts set forth in a motion to disqualify, and their doing so will result in judicial disqualification irrespective of the facial sufficiency of the underlying claim. Brinson v. State, 789 So.2d 1125, Fla.App. 2 Dist.,2001. A trial judge's attempt to refute charges of partiality thus exceeds the scope of inquiry on a motion to disqualify and alone establishes grounds for disqualification. J & J Industries, Inc. v. Carpet Showcase of Tampa Bay, Inc., 723 So.2d 281, Fla.App. 2 Dist.,1998. Whether the motion is legally sufficient is a pure question of law; it follows that the proper standard of review is the de novo standard (Sume v. State, 773 So.2d 600 Fla.App. 1 Dist.,2000) and an order denying a motion to disqualify a trial judge is reviewed for abuse of discretion. King v. State, 840 So.2d 1047, Fla.,2003.
Once a motion for disqualification has been filed, no further action can be taken by the trial court, even if the trial court is not aware of the pending motion. Brown v. State 863 So.2d 1274, Fla.App. 1 Dist.,2004. A judge presented with a motion to disqualify him- or herself must rule upon the sufficiency of the motion immediately and may not consider other matters before considering the disqualification motion. Brown v. State 863 So.2d 1274, Fla.App. 1 Dist.,2004. The court is required to rule immediately on the motion to disqualify the judge, even though the movant does not request a hearing. Fuster-Escalona v. Wisotsky, 781 So.2d 1063, Fla.,2000. The rule places the burden on the judge to rule immediately, the movant is not required to nudge the judge nor petition for a writ of mandamus. G.C. v. Department of Children and Families, 804 So.2d 525 Fla.App. 5 Dist.,2002.

RESPECTFULLY SUBMITTED this 13th day of February, 2007.

Neil J. Gillespie, Plaintiff pro se
8092 SW 115th Loop
Ocala, Florida 34481
Telephone: (352) 502-8409

CERTIFICATE OF SERVICE

The undersigned certifies that a copy hereof has been furnished to Ryan Christopher Rodems, Barker, Rodems & Cook, P.A., Attorneys for Defendants, 400 North Ashley Drive, Suite 2100, Tampa, Florida 33602, by hand this 13th day of February, 2007.

Neil J. Gillespie

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

NEIL J. GILLESPIE,
Plaintiff,

-vs-

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

Case No. 05-CA-7205

Division: "F"

TRANSCRIPT OF EMERGENCY HEARING

BEFORE: HONORABLE MARVA CRENSHAW
Circuit Judge

TAKEN AT: Courtroom 502
George E. Edgecomb Courthouse
Tampa, Florida

DATE & TIME: 14 August 2008

TRANSCRIBED BY: Michael J. Borseth
Court Reporter
Notary Public

(ORIGINAL ✔)
(COPY)

APPEARANCES:

For the Plaintiff: (Via telephone)

ROBERT W. BAUER, ESQUIRE
Robert W. Bauer, P.A.
2815 NW 13th Street
Gainesville, Florida 32609
(352) 375-2518

NEIL J. GILLESPIE, PLAINTIFF (Via telephone)

For the Defendants:

RYAN C. RODEMS, ESQUIRE
Barker, Rodems & Cook, P.A.
400 North Ashley Drive
Suite 2100
Tampa, Florida 33602
(813) 489-1001

P R O C E E D I N G S

(This transcript was made from a voice recording of the home office business extension telephone of Neil J. Gillespie with attorney Robert W. Bauer of Gainesville. Mr. Bauer called Mr. Gillespie on August 14, 2008, at 3:51 p.m. to attend the hearing telephonically.)

THE COURT: All right. Counsel on the line, give us your name, please.

MR. BAUER: This is Robert Bauer, Your Honor. And I also have my client, Neil Gillespie, on the line.

THE COURT: You can have a seat.

All right. We're here on your Motion to Stay.

MR. BAUER: Yes, Your Honor.

THE COURT: Go forward on your Motion to Stay.

MR. BAUER: Your Honor, this is an action between the two parties for breach of contract. It arises out of a situation with a attorney/client relationship and a belief that there was not proper execution of that contract. It has survived motions to dismiss and issues and there are still count -- one count out that's staying against the law firm itself and it survived and is ready to move forward with discovery.

exempt from this. So it does still make sense to stay the underlying judgment and say, we need to stop at this point.

We are willing to take any other possible exceptions that the Court requires to make sure. If the Court wants to impose the requirement that Mr. Gillespie submit to a deposition for the financial purposes, yes. I think that's perfectly reasonable and goes along with the case law. We will do those things. If the Court wants to set a bond amount that is reasonable, we will happily comply with whatever the Court requires.

We're simply asking that relief from this point so that we can proceed forward with the case and honestly quit having these distractions from moving forward with the underlying case. There has been a lot of attempts -- there was problems with that when Mr. Gillespie was pro se and I have come on board and attempted to have a more focused approach. Me and Mr. Rodems did initially have that professional discourse and were able to do that. Unfortunately, there has been recently do to apparently some rulings that we have received, Mr. Rodems has, you know, decided to take a full nuclear blast approach instead of us 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.

I think it's appropriate for the Court to issue a stay, that any reasonable exceptions that the Court wants we will be happy to comply with and that's what we ask for.

THE COURT: What precludes your client from opposing a stay in accordance with the rule in the form of a supersedeas bond?

MR. BAUER: We don't have a problem with that, Your Honor. The biggest issue with this is that we were caught unaware in a situation where there wasn't the Court that we could go to dealing with this situation and we needed -- because of what was going on because of the money that he had and was being seized from the bank and everything was being closed up, we needed to take just as quick a return approach; call the Court, get their assistance, have this stopped. Whatever bond that the Court requires we will get posted.

THE COURT: My ruling is then that he post a supersedeas bond in accordance with the appellate rules.

MR. BAUER: In the --

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

NEIL J. GILLESPIE,

Plaintiff, CASE NO.: 05-CA-7205

vs.

BARKER, RODEMS & COOK, P.A., a Florida corporation; WILLIAM J. COOK, DIVISION: C

Defendants.
_____/

PLAINTIFF'S NOTICE TO CONVENE CASE MANAGEMENT CONFERENCE

Plaintiff pro se, Neil J. Gillespie, hereby serves notice on Defendants to convene a case management conference pursuant to Rule 1.200(a), Fla.R.Civ.P. and states:

1. Rule 1.200(a) states: At any time after responsive pleadings or motions are due, the court may order, or a party, by serving a notice, may convene, a case management conference. The matter to be considered shall be specified in the order or notice setting the conference. At such a conference the court may:

(1) schedule or reschedule the service of motions, pleadings, and other papers;

(2) set or reset the time of trials, subject to rule 1.440(c);

(3) coordinate the progress of the action if the complex litigation factors contained in rule 1.201(a)(2)(A)–(a)(2)(H) are present;

(4) limit, schedule, order, or expedite discovery;

(5) schedule disclosure of expert witnesses and the discovery of facts known and opinions held by such experts;

EXHIBIT
16

(6) schedule or hear motions in limine;

(7) pursue the possibilities of settlement;

(8) require filing of preliminary stipulations if issues can be narrowed;

(9) consider referring issues to a magistrate for findings of fact; and

(10) schedule other conferences or determine other matters that may aid in the disposition of the action.

2. On or about January 30, 2006, Plaintiff requested a case management conference from Mr. Rodems pursuant to Rule 1.200(a), see *Plaintiff's Verified Response to Defendants' Verified Request For Bailiff And For Sanctions, And To Mr. Rodems' Perjury, And Plaintiff's Motion For An Order Of Protection*, submitted March 14, 2006. A conference was not convened. Instead Mr. Rodems used his expert knowledge of court rules and home town advantage to obtain extreme sanctions of $11,550 against Plaintiff.

3. On August 25, 2008 Plaintiff wrote Mr. Nauman, Assistant Court Counsel asking why this lawsuit was not being properly managed by the Thirteenth Judicial Circuit. (Exhibit A). The Court has case management duties imposed by Rule 2.545, Fla.R.Jud.Admin. Nauman did not reply. At the time Plaintiff was represented by attorney Robert W. Bauer and could not convene case management conference himself.

4. On February 5, 2009 Plaintiff wrote Mr. Rowland, Court Counsel asking why this lawsuit was not being properly managed by the Thirteenth Judicial Circuit. (Exhibit B). The Court has case management duties imposed by Rule 2.545, Fla.R.Jud.Admin. Plaintiff provided Rowland a copy of his letter to Nauman and asked why Nauman did not respond, and asked when Plaintiff could expect a response. Mr. Rowland did not respond. Plaintiff followed up with a fax to Rowland May 20, 2009 reiterating the

forgoing to no avail. At the time Plaintiff was represented by attorney Robert W. Bauer and could not convene case management conference himself.

5. During a hearing January 26, 2010 the Court noted case management issues requiring extensive judicial management and the need to proceed on what the Court described as the "federal approach" which in 20 years was done on only one other occasion. (transcript, Jan-26-10, p. 4, beginning at line 10).

6. On February 19, 2010 Plaintiff submitted an Americans with Disabilities Act (ADA) accommodation request to Gonzalo Casares, ADA Coordinator for the Thirteenth Judicial Circuit. Plaintiff requested the Court fulfill its case management duties imposed by Rule 2.545, Fla.R.Jud.Admin and (among other things), "Pursuant to Rule 1.200(a), Fla.R.Civ.P, Mr. Gillespie requests the Court hold a case management conference. Mr. Gillespie requests the Court limit the number of motions to one per hearing unless otherwise stipulated. Mr. Gillespie requests the Court determine the motions that need a hearing. Some motions dating to 2006 have not been heard. Mr. Gillespie requests the Court set a schedule to hear the motions beginning with the oldest first, unless otherwise stipulated. A partial list of outstanding motions is attached as Exhibit 3."

7. In an email dated April 14, 2010, Mr. Casares wrote, "Your request is not within our means to resolve and was referred to the Legal Department for the appropriate course of action." As of today the Legal Department has not responded. (Exhibit C).

8. A case management conference is urgently needed in this case. Plaintiff attached a list of 17 outstanding motions to his ADA accommodation request. Some of the motions date to 2006 and 2007. For example:

a. December 14, 2006, *Plaintiff's Motion to Compel Defendants' Discovery*

b. January 18, 2007, *Plaintiff's Motion for Punitive Damages Pursuant to Section 768.72 Florida Statutes*

c. January 29, 2007, *Plaintiff's Motion With An Affidavit For An Order To Show Cause Why Ryan Christopher Rodems Should Not Be Held In Criminal Court And Incorporated Memorandum of Law*

d. February 1, 2007, *Plaintiff's Second Motion to Compel Defendants' Discovery*

e. March 5, 2007, *Plaintiff's Amended Accommodation Request Americans with Disabilities Act (ADA)*

8. The lack of a case management conference has allowed Mr. Rodems to exploit his expert knowledge of court rules and home town advantage to obtain extreme sanctions of $11,550 against Plaintiff. This is a lack of due process. The Court sanctioned Plaintiff for discovery errors, while at the same time Mr. Rodems has failed to provided most of Defendants discovery in this lawsuit. The Court sanctioned Plaintiff for a misplaced defense that was essentially the same document proffered by Defendants. So there is a double standard and a case management conference is needed to expedite the action, keep costs reasonable, and promote judicial efficiency.

9. The lack of a case management conference has resulted in a backlog of motions requiring hearings. In response the Court's Order Scheduling Hearing of March 29, 2010 set twelve (12) items for hearing in a one hour period. This is just five (5) minutes per item which is insufficient for each side to present arguments and rebuttals and otherwise have a just hearing of the matters before the Court. Furthermore, the Court's Order specifies filing or submission dates for some items, which aids in identification of the correct pleading, but others are not so identified and are ambiguous.

10. Plaintiff requests a limit of one motion per hearing unless otherwise stipulated. Plaintiff requests a determination of motions that need a hearing and a reasonable schedule set to hear the motions

beginning with the oldest first, unless otherwise stipulated. Plaintiff request the case management conference consider the items listed in paragraph one of this notice.

11. Plaintiff also request the Court implement procedure used in the Second District Court of Appeal, Notice to Attorneys and Parties, July 1, 2009, Rule 9, Supplemental Authority, that a lawyer must notify the opposing party of the full citation BEFORE oral argument and file with the court. This should be done, except in exceptional circumstances, early enough for opposing counsel to be prepared to respond to the supplemental authority at oral argument.

WHEREFORE Plaintiff serves notice to convene a case management conference at a mutually agreeable time set by the Court.

RESPECTFULLY SUBMITTED April 28, 2010.

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

Certificate of Service

I HEREBY CERTIFY that a true and correct copy of the foregoing has been furnished by mail on April 28, 2010 to the office of Ryan Christopher Rodems, attorney for the Defendants, at Barker, Rodems & Cook, PA, 400 North Ashley Drive, Suite 2100, Tampa, Florida 33602.

Neil J. Gillespie

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

Telephone: (352) 854-7807

VIA CERTIFIED MAIL, RETURN RECEIPT
Article No.: 7008 1140 0000 6016 9155

August 25, 2008

Mr. K. Christopher Nauman, Assistant Court Counsel
Administrative Offices Of The Courts
Thirteenth Judicial Circuit Of Florida
Legal Department
800 E. Twiggs Street, Suite 603
Tampa, Florida 33602

RE: Gillespie v. Barker, Rodems & Cook, P.A., and William J. Cook, case no.: 2005 CA 7205
Hillsborough County Circuit Civil Court, Thirteenth Judicial Circuit, Florida

Dear Mr. Nauman:

It has come to my attention that the above captioned lawsuit may not have been properly managed by the Thirteenth Judicial Circuit. I spoke with you two years ago about this case against my former lawyers. At that time I was seeking court appointed counsel under the Americans With Disabilities Act (ADA). I have subsequently retained counsel, Robert W. Bauer of Gainesville. Still, questions remain about the court's management of this lawsuit from when I appeared pro se. That is why I am writing you today.

To recap, this case has been ongoing for over three years now. The case has moved from Judge Nielsen to Judge Isom and is currently before Judge Barton. So far there have been three appeals before the Second District Court of Appeals (2DCA) in this case, with more likely. I have incurred over $40,000 in attorney's fees, expenses, and court costs. On March 20, 2008, Judge Barton ordered an $11,550 judgment for discovery and section 57.105 sanctions against me. This amount is currently on appeal to the 2DCA. Nonetheless, my former lawyers, by and through Mr. Rodems, served a Writ of Garnishment on my current lawyer earlier this month to take all the money out of my client trust fund, which in effect denies me legal representation. My former lawyers also

EXHIBIT
A

used a Writ of Garnishment to take all the money out of my bank account, even though this money was from Social Security disability payments and therefore exempt.

The original amount at issue in this case was $6,224.78, with a demand for punitive damages of $18,674.34. My former lawyers countersued me for libel over a bar complaint. By almost any objective standard, the Thirteenth Judicial Circuit has failed to provide an adequate forum to resolve this controversy.

It appears the following procedures were not followed by the Thirteenth Judicial Circuit:

1. Failure to refer to mediation. During a hearing on February 1, 2007, the Court (J. Isom) asked about mediation to resolve this lawsuit without litigation:

THE COURT: And you guys have already gone to mediation and tried to resolve this without litigation?

MR. GILLESPIE: No, Your Honor.
(Transcript, Feb-01-07, page 15, beginning at line 20)

2. Failure to follow Pretrial Procedure, Fla.R.Civ.P., Rule 1.200(a), failure to hold a *Case Management Conference*. This rule is especially important in this case, where a pro se litigant is suing his former lawyers. It may have prevented the abuse that occurred here, where Mr. Rodems, a skilled lawyer, used discovery rules to trap me and obtain $11,550 with the blessing of the court. This misuse of discovery is contrary to Florida case law. Pretrial discovery was implemented to simplify the issues in a case, to encourage the settlement of cases, and to avoid costly litigation. (Elkins v. Syken, 672 So.2d 517 (Fla. 1996). In this case the parties know the issues from Defendants' prior representation of me on the same matter. The rules of discovery are designed to secure the just and speedy determination of every action (In re Estes' Estate, 158 So.2d 794 (Fla. Dist. Ct. App. 3d Dist. 1963), to promote the ascertainment of truth (Ulrich v. Coast Dental Services, Inc. 739 So.2d 142 (Fla. Dist. Ct. App. 5th Dist. 1999), and to ensure that judgments are rested on the real merits of causes (National Healthcorp Ltd. Partnership v. Close, 787 So.2d 22 (Fla. Dist. Ct. App. 2d Dist. 2001), and not upon the skill and maneuvering of counsel. (Zuberbuhler v. Division of Administration, State Dept. of Transp. 344 So.2d 1304 (Fla. Dist. Ct. App. 2d Dist. 1977).

3. Failure to provide equal courthouse security. The Court (J. Nielsen) unilaterally established separate and unequal courthouse +security for pro se litigants on hearings done in chambers. This is discriminatory, and ironic given that my former lawyers are notorious for throwing coffee in the face of opposing counsel during a mediation.

THE COURT: I agree. And as for the request for bailiff, my procedure is on any case in which there is a pro se party, a bailiff is present. So just for future reference you do not have to submit a request. (Responding to Mr. Rodems)
(Transcript, April 25, 2006, beginning page 6, at line 24)

However, when I asked the court for protection from Mr. Rodems, who at a previous hearing waited outside chambers to provoke a fight, Judge Nielsen said the following:

MR. GILLESPIE: Thank you, Judge. And, Your Honor, would you ask that Mr. Rodems leave the area. The last time he left, he was taunting me in the hallway and I don't want that to happen today.

THE COURT: Well, you can stay next to my bailiff until he goes home and then you can decide what you want to do, sir.

(Transcript, June 28, 2006, beginning on page 21, at line 20)

In conclusion, Tobkin v. Jarboe, 710 So.2d 975, recognizes the inequitable balance of power that may exist between an attorney who brings a defamation action and the client who must defend against it; and attorneys schooled in the law who have the ability to pursue litigation through their own means and with minimal expense when compared with their former clients. That is what is happening to me in this lawsuit.

Had the Thirteenth Judicial Circuit ordered mediation, or required a Case Management Conference (as done in federal court) or provided equal courthouse security, this case may have been resolved by now.

Mr. Nauman, why has the Thirteenth Judicial Circuit failed to manage this lawsuit according to the above cited rules and procedures?

Sincerely,

Neil J. Gillespie

PS. At this time Mr. Bauer does not represent me on any issue I may have between me the Thirteenth Judicial Circuit, so you can respond to me directly.

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7008 1140 0000 6016 9155

SENDER: COMPLETE THIS SECTION

- Complete items 1, 2, and 3. Also complete item 4 if Restricted Delivery is desired.
- Print your name and address on the reverse so that we can return the card to you.
- Attach this card to the back of the mailpiece, or on the front if space permits.

1. Article Addressed to:
K. Christopher Nauman, Asst. Court Administrator
Thirteenth Judicial Circuit of Florida
Legal Department
800 E. Twiggs Street, Suite 603
Tampa, Florida 33602

COMPLETE THIS SECTION ON DELIVERY

A. Signature: X [signature] ☐ Agent ☐ Addressee

B. Received by (Printed Name): Wes Cain C. Date of Delivery: 8/27/08

D. Is delivery address different from item 1? ☐ Yes
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PS Form 3811, February 2004 Domestic Return Receipt 102595-02-M-1540

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

VIA FIRST CLASS MAIL

February 5, 2009

Mr. David A. Rowland, Court Counsel
Administrative Offices Of The Courts
Thirteenth Judicial Circuit Of Florida
Legal Department
800 E. Twiggs Street, Suite 603
Tampa, Florida 33602

Dear Mr. Rowland:

As per your letter of February 2, 2009, I contacted the clerk's office about the case files that may have been destroyed. A copy of my letter to Pat Frank, Clerk of Circuit Court, is enclosed. In the past Ms. Pride was non-responsive to my communication.

On or about August 25, 2008, I wrote K. Christopher Nauman, Assistant Court Counsel, about the fact that my lawsuit may not have been properly managed by the Thirteenth Judicial Circuit. (Copy enclosed). As of today Mr. Nauman has not responded. Perhaps you can respond on his behalf?

Mr. Rowland, when court personnel fail to respond to correspondence, it creates a credibility problem for the court. It gives the impression that the court is incompetent or indifferent to the administration of justice. Is that the message your office intends to relay? When can I expect a reply to my August 25, 2008 letter to Mr. Nauman?

Sincerely,

Neil J. Gillespie

enclosures

EXHIBIT
tabbies
B

Neil Gillespie

From: "Casares, Gonzalo" <CASAREGB@fljud13.org>
To: <neilgillespie@mfi.net>
Sent: Wednesday, April 14, 2010 8:35 AM
Subject: ADA

RE: CASE # 05-7205
GILLESPIE vs. BAKER, RODEMS, & COOK; PA

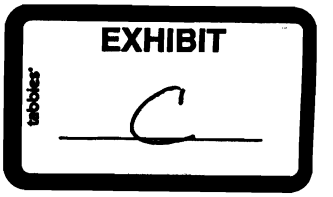
Dear Mr. Gillespie,

Thank you for your letter dated April 7th 2010.

Court Facilities Management is the point of contact for all facilities related issues such as repairs and/or maintenance work. As such, we can determine if an ADA function is at issue in our set of buildings and track requests for accommodations. Your request is not within our means to resolve and was referred to the Legal Department for the appropriate course of action.

Your difficulty-in-hearing was not known to me until your latest correspondence. On this matter, we can help you. We will provide the hand-help amplification device upon your request.

Sincerely,
Gonzalo B. Casares
ADA Coordinator
13th Judicial Circuit Court
Tampa, Fl. 33647
casaregb@fljud13.org
(813)272-6169



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

NEIL J. GILLESPIE,

COPY

Plaintiff,

vs.

Case No.: 05CA7205
Division: G

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

Defendants.
_____/

DEFENDANTS' NOTICE OF CASE MANAGEMENT CONFERENCE AND STATEMENT OF CASE AND PROCEEDINGS

Defendants Barker, Rodems & Cook, P.A., notice a case management conference, pursuant to Fla. R. Civ. P. 1.200(a) on **July 12, 2010 at 10:30 a.m. before Martha J. Cook, Circuit Court Judge, Thirteenth Judicial Circuit, 800 East Twiggs Street, Tampa, Florida 33602, in Courtroom #503.** Time Reserved: 15 minutes. The matters to be considered are identified below. If you are a person with a disability who needs any accommodation in order to participate in this proceeding, you are entitled, at no cost to you, to the provision of certain assistance. Please contact Court Administration, 800 E. Twiggs Street, Tampa, FL 33602, (813) 272-5894 within 2 working days of your receipt of this notice; if you are hearing or voice impaired, call 711.

STATEMENT OF CASE

1. On or about August 15, 2005, Plaintiff Neil J. Gillespie (Gillespie) filed his complaint, pro se, alleging that Defendants Barker, Rodems & Cook, P.A. (BRC) and William J. Cook, Esquire (Cook) had breached a contract and committed fraud in connection with their

EXHIBIT
17

representation of him several years earlier in a lawsuit filed in federal court under the Truth in Lending Act.[1] The case was assigned to Judge Richard Nielsen. Defendants served their Answer and Counterclaims for libel on January 19, 2006.

2. On February 4, 2006, Gillespie moved to disqualify the undersigned from representing Defendants, but Judge Nielsen denied the motion on April 25, 2006, with a written Order entered May 12, 2006.[2]

3. On February 8, 2006, Gillespie moved to dismiss Defendants' libel counterclaims, raising waiver, economic loss rule and other defenses that had no legal or factual basis. On February 28, 2006, Defendants served a section 57.105(1), Florida Statutes motion for sanctions on Gillespie, seeking an Order that Gillespie be required to obtain an attorney.

4. In response to the section 57.105, Florida Statutes motion for sanctions, on April 28, 2006, Gillespie filed a document entitled "Plaintiff's Qualifications to Proceed Pro Se." Yet, three days earlier, on April 25, 2006, Gillespie filed "Plaintiff's Motion for Appointment of

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[1] The Complaint contained two counts, against both Defendants. Count I alleged breach of contract; Count II alleged fraud. By Orders entered on November 28, 2007 and July 7, 2008, the Court granted Defendants' motion for judgment on the pleadings as to the fraud count in its entirety and the breach of contract count as to Defendant Cook. Thus, Gillespie's only count pending is against Defendant BRC for breach of contract, and a motion for summary judgment as to that claim is pending. Gillespie has moved for rehearing of the Orders granting judgment on the pleadings, and that motion also remains pending.

[2] Gillespie has also moved to disqualify every judge assigned to this case. He also filed bar grievances against Defendant Cook, Chris A. Barker, and the undersigned, all of which were determined to be unfounded. Gillespie then filed a grievance against the Florida Bar lawyers who handled his grievances against Barker, Rodems and Cook. Gillespie also filed a complaint against the undersigned with the Tampa Police Department, claiming the undersigned committed perjury in defending his clients in this action, but the Tampa Police Department, as did the Florida Bar, found that there were no perjurious statements made by the undersigned.

Counsel, Attorney's Fees, and Legal Retainer," requesting that the Court appoint an attorney for him and require Defendants to pay for his attorney.

5. On March 3, 2006, during a telephone conversation regarding the case, Gillespie threatened to "slam" the undersigned "against the wall;" as a result, I filed a verified request that a bailiff be present at all hearings. Subsequently, Judge Nielsen advised that a bailiff is present at all matters involving pro se litigants.

6. On March 28, 2006, Defendants served discovery on Gillespie. Gillespie did not fully or completely respond to it, so after consultation, Defendants filed a motion to compel on May 11, 2006. Judge Nielsen heard and granted the motion to compel on June 28, 2006 and awarded attorneys' fees and costs. The written Order was entered on July 24, 2006.

7. On August 14, 2006, Gillespie filed a notice of appeal of the July 24, 2006 Order on discovery with the Second District Court of Appeal. The undersigned advised him in writing that it was improper to appeal a discovery order, and that Gillespie was in violation of the July 24, 2006 Order because he did not provide the discovery responses ordered. Gillespie responded by telling the undersigned not to give him legal advice. On August 25, 2006, the Second District Court of Appeal entered the "Order Denying Petitioner's Notice of Appeal."

8. On August 22, 2006, Gillespie filed a petition for writ of certiorari with the Second District Court of Appeal. On September 8, 2006, the Second District Court of Appeal entered the "Order Dismissing Petitioner's Petition for Writ of Certiorari."

9. Because Gillespie did not comply with the July 24, 2006 Order on discovery, Defendants moved for an order to show cause on August 25, 2006. The hearing on this motion was scheduled on October 4, 2006. In filings with the Court before the hearing on October 4,

2006, Plaintiff represented to this Court that, because of his disabilities, he required that an attorney be appointed for him under the Americans with Disabilities Act (ADA), and he requested a continuance of the hearing on Defendants' motion for an order to show cause.

10. At the hearing on October 4, 2006, Judge Nielsen denied Gillespie's request for appointment by the Court of an attorney for him. Gillespie represented to the Court during this hearing that an insurer may provide counsel to defend him on Defendants' Counterclaims for libel, but if it did not, he intended to hire an attorney. Judge Nielsen decided to not make any other rulings to give Gillespie time to retain counsel, and he ordered Gillespie to advise the Court of his progress in retaining counsel by October 18, 2006. A written Order was entered on October 23, 2006.

11. After the October 4, 2006 hearing, Gillespie's insurer contacted the undersigned and offered to settle the Defendants' Counterclaims for libel, but upon learning of this, Gillespie advised his insurer not to do so, and he withdrew the claim. Of course, the insurer declined to provide him with counsel.

12. On November 3, 2006, Gillespie moved to disqualify Judge Nielsen. Gillespie accused him of being "hostile" to pro se plaintiffs and having a "sadistic quality." In that same motion, Gillespie also accused the undersigned of aggravating his "existing disability," which required medical treatment "that reduced Plaintiff's intellectual ability to represent himself." The motion to disqualify was untimely and legally insufficient, and Judge Nielsen denied it on November 20, 2006. Two days later, however, Judge Nielsen entered an Order of recusal.

13. On November 29, 2006, Judge Claudia Isom was assigned to the case. On December 15, 2006, Gillespie served "Plaintiff's Motion For Disclosure Of Conflict," which he

amended on January 5, 2007 and scheduled for hearing on February 1, 2007.

14. On January 11, 2007, Gillespie served a notice for hearing on February 5, 2007, and listed the following motions to be heard:

a. Plaintiff's Motion for Reconsideration - Disqualifying Counsel;

b. Plaintiff's Motion for Reconsideration - Discovery;

c. Plaintiff's Motion for Sanctions Pursuant to Section 57.105(1)and (3), Florida Statutes;

d. Plaintiff's Motion to Dismiss and Strike Counterclaim;

e. Plaintiff's Verified Response to Defendants' Verified Request for Bailiff and for Sanctions, and to Mr. Rodems' Perjury, and Plaintiff's Motion for an Order of Protection;

f. Defendants' Amended Motion for Sanctions Pursuant to Section 57.105(1), Florida Statutes;

g. Defendant's Motion for an Order to Show Cause Why Plaintiff Should Not Be Held In Contempt of Court; and

h. Plaintiff's Motion to Compel Defendants' Discovery.

15. On February 5, 2007, Judge Isom held a hearing, and after several rulings unfavorable to Gillespie, including the denial of his motion for rehearing on the July 24, 2006 Order on discovery, Gillespie stated "Judge, I'm going to ask that you disqualify yourself. I'm not getting a fair hearing here. I've asked to have an attorney present many times.[3] Everything I say

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[3] Of course, Gillespie, pro se, served the notice of hearing, thereby scheduling hearings on February 5, 2007. Moreover, he previously told Judge Nielsen, on October 4, 2006, that he intended to hire an attorney, and he never did so. No judge assigned to this case has ever denied Gillespie the opportunity to hire an attorney.

is not considered. I don't even know why I'm sitting here. And I'm very ill. I've expressed that to you. I can't even effectively assist myself. So I'm not going to participate in this charade anymore." (Transcript of hearing, February 5, 2007 at 72:12-19). Judge Isom terminated the proceedings to afford Gillespie an opportunity to file a written motion to disqualify her.

16. Before moving to disqualify Judge Isom, Gillespie filed "Plaintiff's Notice of Voluntary Dismissal," and "Plaintiff's Motion for an Order of Voluntary Dismissal" on February 7, 2007.

17. On February 13, 2007, Gillespie moved to disqualify Judge Isom.[4] That same day, Judge Isom entered the "Court Order Of Recusal And Directing Clerk To Reassign To New Division," finding the motion to disqualify her to be legally insufficient, but nevertheless recusing herself.

18. On February 15, 2007, Gillespie served his "Withdrawal Of Plaintiff's Motion For An Order Of Voluntary Dismissal" and "Withdrawal Of Plaintiff's Notice Of Voluntary Dismissal."

19. On April 2, 2007, an attorney appeared on behalf of Gillespie.

20. On July 3, 2007, the Court heard and granted "Defendants' Amended Motion for Sanctions Pursuant to Section 57.105(1), Florida Statutes," with the written Order entered on

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[4] In his motion to disqualify Judge Isom, Gillespie accused her of "forc[ing] Plaintiff to participate in a hearing . . . without counsel." Judge Isom denied the motion as legally insufficient. More recently, in open court, Gillespie accused me and Judge Isom of conspiring against him by agreeing to not advise him that Judge Isom's husband was once a law partner of Jonathan L. Alpert's at my predecessor law firm. Not only was Mr. Isom never a law partner of my predecessor law firm, but also the only occasions in which I ever spoke to Judge Isom about anything in this action is when Gillespie was present.

July 20, 2007. Gillespie was represented by counsel at this hearing.

21. On August 15, 2007, the Court heard and granted Gillespie's "Withdrawal Of Plaintiff's Motion For An Order Of Voluntary Dismissal" and "Withdrawal Of Plaintiff's Notice Of Voluntary Dismissal," with a written Order entered August 31, 2007. Defendants filed a petition for writ of certiorari with the Second District Court of Appeal on September 26, 2007, challenging the Order permitting Gillespie to withdraw his dismissal, but the petition was denied on February 8, 2008.

22. On March 27, 2008, Judge Barton determined after an evidentiary hearing that Gillespie must pay $11,500.00 in sanctions because of his discovery violations, which resulted in the July 24, 2006 Order entered by Judge Nielsen, and his pleading in violation of section 57.105, Florida Statutes, which resulted in Judge Barton entering the Order granting sanctions on July 20, 2007. Gillespie was represented by counsel at this hearing.

23. Because Gillespie did not comply with the Final Judgment on the sanctions by submitting a Fact Information Sheet, Gillespie was held in contempt of court, but he blamed his counsel.

24. Defendants then began collection proceedings, garnishing Gillespie's bank account on or about August 1, 2008. Gillespie has failed to completely respond to post-judgment discovery and failed to appear at a deposition. Motions to compel on these discovery matters are pending.

25. On October 13, 2008, Gillespie's attorney moved to withdraw, but apparently he and Gillespie resolved their issues. Several months later, Gillespie's attorney again moved to withdraw again, which was granted on or about October 1, 2009. The case was stayed to provide

Gillespie with 60 days within which to find replacement counsel.

26. Despite the stay, on October 5, 2009, Gillespie filed a pro se motion to disqualify Judge Barton, alleging under oath that "[a]s a proximate cause of Judge Barton's actions, plaintiff's mother, Penelope Gillespie, died September 16, 2009." That motion was denied as legally insufficient on October 9, 2009.

27. On December 16, 2009, Defendants noticed the post-judgment discovery motions to compel for hearing on January 19, 2010, but Gillespie, pro se, complained that the hearing dates were not cleared with him, and he demanded that several other motions be scheduled for hearing. Thus, Judge Barton scheduled all pending motions for hearing on January 26, 2010.

28. At that hearing on January 26, 2010, Gillespie claimed to be disabled and that he required accommodations. Judge Barton inquired as to what accommodations were required, and Gillespie requested an opportunity to file written support, which Judge Barton granted. No other action was taken during that hearing.

29. Thereafter, Gillespie apparently submitted a hearsay report from a purported expert ex parte to Judge Barton. Despite Defendants' objections to the ex parte communication, Gillespie has never filed the ex parte hearsay report or served a copy on Defendants.

30. As a result of the Court's caseload, the next hearing was not scheduled until May 5, 2010. At the May 5, 2010, Gillespie served a motion for leave to file an amended complaint, attaching an amended complaint. Defendants did not stipulate to its filing, and therefore the motion for leave to file the amended complaint remains pending.

31. Gillespie also filed a motion asking Judge Barton to disclose his relationship to certain people, which ultimately led to the second motion to disqualify Judge Barton. Judge

Barton granted that motion, and the case has now been assigned to Division G.

THE MATTERS TO BE CONSIDERED AT THE CASE MANAGEMENT CONFERENCE

32. The Defendants suggest the following matters be considered at the Case Management Conference:

a. The scheduling of an evidentiary hearing to determine if Gillespie is a "qualified individual with a disability" under the Americans with Disabilities Act, and if so, whether the Court can provide "reasonable modifications" that will allow Gillespie to continue to represent himself.

i. To be covered under Title II of the ADA, Plaintiff must be a "qualified individual with a disability." 42 U.S.C. § 12132.[5] A "qualified individual with a disability" is "an individual with a disability who, with or without reasonable modifications to rules, policies, or practices . . . or the provision of auxiliary aids and services, meets the essential eligibility requirements for the receipt of services or the participation in programs or activities provided by a public entity." 42 U.S.C. § 12131(2)(emphasis supplied). If Plaintiff's requested modifications are not reasonable -- meaning they fundamentally alter the "rules, policies, or practices" of the Court -- then he is not a "qualified individual with a disability," and is not

[5] Under Title II of the ADA, "[d]isability means, with respect to an individual, a physical or mental impairment that substantially limits one or more of the major life activities of such individual; a record of such an impairment; or being regarded as having such an impairment." 28 C.F.R. § 35.104. "The phrase physical or mental impairment" includes "[a]ny mental or psychological disorder such as mental retardation, organic brain syndrome, emotional or mental illness, and specific learning disabilities." 28 C.F.R. § 35.104. "The phrase major life activities means functions such as caring for one's self, performing manual tasks, walking, seeing, hearing, speaking, breathing, learning, and working." 28 C.F.R. § 35.104

covered by the ADA. See 42 U.S.C. § 12182(b)(2)(A)(ii); Olmstead v. L.C. ex rel. Zimring, 527 U.S. 581, 603 (1999)("The reasonable-modifications regulation speaks of 'reasonable modifications' to avoid discrimination, and allows States to resist modifications that entail a 'fundamenta[l] alter[ation]' of the States' services and programs. 28 CFR § 35.130(b)(7) (1998).").

ii. Gillespie must prove not only that he has a disability, but also that a "reasonable modification" is necessary to permit him to participate in court proceedings. To date, Gillespie has offered no evidence of a disability, other than his assertions and hearsay. As for "reasonable modifications," among other things, Gillespie has demanded that no more than two motions be set for hearing on a given day, that he not be required to confer with Defendants' counsel to schedule hearings, that he be provided court-appointed counsel, that hearings be scheduled only in the afternoon, and that he be provided real-time written transcripts of proceedings. These requests contradict his actions to date: Gillespie has represented himself in this action and in multiple other legal actions throughout the State of Florida. Moreover, Gillespie has, while acting pro se, scheduled more than two motions for one hearing date several times. Also, Gillespie has argued multiple hearings without a real-time written transcript, and he has demonstrated that he is capable of talking on the telephone.

b. The scheduling of Gillespie's motion for leave to file the amended complaint.

c. The scheduling of the trial in this matter. A Notice for Trial is on file, but no trial date has been scheduled.

FLORIDA RULE OF JUDICIAL ADMINISTRATION 2.330(g)

33. Because Judge Barton granted Gillespie's motion to disqualify, any subsequent motions for disqualification by Gillespie are governed by Florida Rule of Judicial Administration 2.330(g), which provides as follows: "If a judge has been previously disqualified on motion for alleged prejudice or partiality under subdivision (d)(1), a successor judge shall not be disqualified based on a successive motion by the same party unless the successor judge rules that he or she is in fact not fair or impartial in the case. Such a successor judge may rule on the truth of the facts alleged in support of the motion."

RESPECTFULLY SUBMITTED this 1st day of June, 2010.

RYAN CHRISTOPHER RODEMS, ESQUIRE
Florida Bar No. 947652
Barker, Rodems & Cook, P.A.
400 North Ashley Drive, Suite 2100
Tampa, Florida 33602
813/489-1001
813/489-1008 (facsimile)
Attorneys for the Defendant

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a true and correct copy of the foregoing has been furnished via U.S. Mail to Neil J. Gillespie, 8092 SW 115th Loop, Ocala, Florida 34481, this 1st day of June, 2010.

Ryan Christopher Rodems, Esquire

LAW OFFICE OF
DAVID M. SNYDER
PROFESSIONAL ASSOCIATION
ATTORNEY & COUNSELOR AT LAW

SUITE FOUR
1810 SOUTH MACDILL AVENUE
TAMPA, FLORIDA 33629-5960
TELEPHONE (813)258-4501
FACSIMILE (813)258-4402
E-MAIL: DMSNYDER@DMS-LAW.COM

ADMITTED IN FLORIDA AND NEW YORK
CERTIFIED MEDIATOR
U.S. DISTRICT COURT, M.D. FLA.
CIRCUIT AND COUNTY CIVIL
N.A.S.D. ARBITRATOR & MEDIATOR

September 7, 2006

Ryan C. Rodems
Barker, Rodems & Cook, P.A.
300 W Platt St, Suite 150
Tampa FL 33606

Re: Gillespie v. Barker, Rodems & Cook, P.A., etc., Case No. 05-7205
Circuit Court, Hillsborough County, Florida

Dear Mr. Rodems:

Neil Gillespie has engaged this firm to assist him with the above-styled action.

Mr. Gillespie's claim has survived a motion to dismiss. Defendant's counterclaim for defamation, while it may have stated a cause of action at the outset, has little chance of ultimate success given the limited distribution and privileged nature of the publication complained of. *See e.g. Nodar v. Galbreath*, 462 So. 2d 803 (Fla. 1984).

Mr. Gillespie has authorized me to propose settlement of all claims between him and Barker, Rodems & Cook, P.A., Mr. Cook, and the firm's officers, directors, employees, agents, successors and assigns, for payment to Mr. Gillespie of $6,224.78, exchange of mutual general releases, and dismissal with prejudice of the above-styled lawsuit, which each party to bear his/its own costs and attorneys' fees.

EXHIBIT
18

Please contact me at your convenience if you have questions or comments. Thank you for your prompt consideration of and response to this offer, which expires at 5 p.m., September 17, 2006.

Very truly yours,

/s/

David M. Snyder

DMS
Encl

cc: Neil Gillespie

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

NEIL J. GILLESPIE,

Plaintiff,

vs.

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

Defendants.
_____/

CASE NO.: 05CA7205

DIVISION: C

NOTICE OF AMERICANS WITH DISABILITY ACT (ADA) ACCOMMODATION REQUEST OF NEIL J. GILLESPIE

Plaintiff Neil J. Gillespie pro se gives notice of ADA accommodation request and states:

1. Mr. Gillespie provided his ADA accommodation request (ADA Request), and his ADA Assessment and Report by Ms. Karin Huffer, MS, MFT, (ADA Report) to Mr. Gonzalo B. Casares, ADA Coordinator for the 13th Judicial Circuit, 800 E. Twiggs Street, Room 604, Tampa, Florida 33602, by hand delivery.

2. Mr. Gillespie provided a courtesy copy of his ADA accommodation request (ADA Request), and his ADA Assessment and Report by Ms. Karin Huffer, MS, MFT (ADA Report), to the Honorable James M. Barton, II, by hand delivery.

3. The ADA Request and ADA Report are to be kept under ADA Administrative confidential management except for use by the ADA Administrator revealing functional impairments and needed accommodations communicated to the Trier of Fact to implement administration of accommodations. This information is NOT to

become part of the adversarial process. Revealing any part of this report may result in a violation of HIPAA and ADAAA Federal Law.

4. A copy of Mr. Gillespie's completed and signed ADA Request for Accommodations Form for the 13th Judicial Circuit is attached.

RESPECTFULLY SUBMITTED February 19, 2010.

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

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a true and correct copy of the foregoing has been furnished via US mail to Ryan Christopher Rodems, attorney, Barker, Rodems & Cook, P.A., Attorneys for Defendants, 400 North Ashley Drive, Suite 2100, Tampa, Florida 33602, this 19th day of February, 2010.

Neil J. Gillespie

REQUEST FOR ACCOMMODATIONS BY PERSONS WITH DISABILITIES AND ORDER

13 JUD

Administrative Office of the Courts

APPLICANT (name): Neil J. Gillespie
APPLICANT IS: ☐ Witness ☐ Juror ☐ Attorney ☑ Party ☐ Other
Person submitting request (name): Neil J. Gillespie
APPLICANT'S ADDRESS: 8092 SW 115th Loop, Ocala, FL 34481

TELEPHONE NO: (352) 854-7807
LOCATION:
STREET ADDRESS: 8092 SW 115th Loop, Ocala, FL 34481
MAILING ADDRESS: 8092 SW 115th Loop, Ocala, FL 34481
CITY AND ZIP CODE: Ocala, FL 34481
E-MAIL ADDRESS: neilgillespie@mfi.net

BRANCH NAME: Circuit Civil Court DIVISION: C
NAME OF JUDGE: Circuit Court Judge James M. Barton, II

CASE NAME: Gillespie v. Barker, Rodems & Cook, P.A., and William J. Cook, 05-CA-7205

NAME OF ATTORNEY (if applicable): none, pro se

FOR COURT USE ONLY

☐ Web (Date OPI received):

☐ Facsimile

☐ Written notice

Date ADA Coordinator received:

Case number:

Applicant requests accommodations under Florida Rules of Court, Rule 2.065, as follows:

1. Division of Court: ☐ Criminial ☑ Civil ☐ Juvenile
2. Type of proceeding to be covered (specify: hearing, trial):
   All meetings, procedures, hearings, discovery process, trials, appeals, and any other court-related activity.
3. Dates accommodations needed (specify):
   All dates and times from the commencement of this action until its final conclusion including any appeal.
4. Impairment necessitating accommodations (specifiy):
   Please see the ADA Assessment and Report prepared by Karin Huffer, MS, MFT
5. Type of accommodations (specify):
   Please see the ADA Accommodation Request of Neil J. Gillespie submitted February 19, 2010
6. Special requests or anticipated problems (specify): I am harassed by Mr. Rodems in violation of Fla. Stat. section 784.048
7. I request that my identity ☐ be kept CONFIDENTIAL ☑ NOT be kept CONFIDENTIAL

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

Date: February 18, 2010

Neil J. Gillespie
(TYPE OR PRINT NAME)

(SIGNATURE OF APPLICANT)

ADMINISTRATIVE OFFICE OF THE COURT USE ONLY

☐ request for accommodations is GRANTED because
☐ the applicant satisfies the requirements of the rule.
☐ it does not create an undue burden on the court.
☐ it does not fundamentally alter the nature of the service, program, or activity.
☐ alternate accommodations granted (*specify*):

☐ the request for accommodations is DENIED because
☐ the applicant does not satisfy the requirements of the rule.
☐ it creates an undue burden on the court.
☐ it fundamentally alters the nature of the service, program, or activity (*specify*):

ROUTE TO:
☐ Court Facilities ☐ Court Interpreter Center
Date:

ADA COORDINATOR

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

NEIL J. GILLESPIE,

Plaintiff,

vs.

Case No.: 05CA7205
Division: F

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

Defendants.
_____/

DEFENDANTS' RESPONSE TO PLAINTIFF'S MOTION TO DISQUALIFY JUDGE BARTON

On May 20, 2010, Plaintiff Neil J. Gillespie filed a second motion to disqualify Judge James M. Barton II.[1] Many of the allegations in Gillespie's motion border on delusional. Gillespie has disclosed in several court filings that he suffers from mental illnesses, and he has stated on the record on several occasions that his mental illness affects his ability to represent himself. Clearly, the pending motion -- and the record in this case -- shows this to be an accurate statement. Previously, Judge Barton sanctioned Gillespie $11,500.00 for filing frivolous pleadings and violating discovery rules. Judge Barton also held Gillespie in contempt for not complying with the Final Judgment entered on the sanctions motions. Even before Judge Barton presided over this action, Gillespie has displayed hostile and paranoid behavior. Among other

[1] On October 9, 2009, Judge Barton denied Gillespie's motion to disqualify him, served October 5, 2009, as legally insufficient. Previously, on November 3, 2006, Gillespie served a motion to disqualify Judge Nielsen. Even though Judge Nielsen denied the motion on November 20, 2006, he recused himself two days later. On February 13, 2007, Gillespie moved to disqualify Judge Isom. Judge Isom also recused herself, despite finding the motion to disqualify her legally insufficient.

EXHIBIT
20

things:

- During a telephone conversation, Gillespie threatened to "slam" me "against the wall;" as a result, I requested that a bailiff be present at all hearings. As a precaution, I also scheduled Mr. Gillespie's deposition in a building requiring visitors to pass through a metal detector.

- In his motion to disqualify Judge Nielsen, Gillespie accused him of being "hostile" to pro se plaintiffs and having a"sadistic quality." In that same motion, Gillespie also accused me of aggravating his "existing disability," which required medical treatment "that reduced Plaintiff's intellectual ability to represent himself."

- In his motion to disqualify Judge Isom, Gillespie accused her of "forc[ing] Plaintiff to participate in a hearing . . . without counsel." Judge Isom denied the motion as legally insufficient. More recently, Gillespie accused me and Judge Isom of conspiring against him by agreeing to not advise him that Judge Isom's husband was once a law partner of Jonathan L. Alpert's at my predecessor law firm. Not only was Mr. Isom never a law partner of my predecessor law firm, but also the only occasions in which I ever spoke to Judge Isom about anything in this action is when Gillespie was present.

- In Gillespie's initial motion to recuse Judge Barton, he alleged under oath that "[a]s a proximate cause of Judge Barton's actions, plaintiff's mother, Penelope Gillespie, died September 16, 2009."

Of course, "[i]n ruling on the motion, the judge cannot pass on the truth of the factual allegations set forth in the sworn motion or affidavit, but must take them to be true, deciding only the legal sufficiency of the motion." City of Hollywood v. Witt, 868 So.2d 1214, 1217 (Fla. 4th DCA 2004). Therefore, Defendants respond to only one point of Gillespie's second motion to disqualify Judge Barton: The matter of Regency Reporting Service, Inc.[2]

At the motion hearings scheduled on May 5, 2010, On May 5, 2010, Gillespie served his

[2] Defendants' determination that it is unnecessary to respond to each of Gillespie's specious arguments and unfounded allegations should not be interpreted by Gillespie that Defendants Gillespie's allegations are accurate or founded. They are not.

"Plaintiff's Motion to Disclose Conflict" moments before scheduled hearings, requesting Judge Barton to disclose his relationship to, among others, "Chere J. Barton, President of Regency Reporting Service, Inc. of Tampa." The motion also alleged that Chere J. Barton was the court reporter who took his deposition on May 14, 2001.

Upon commencement of the hearing, Gillespie provided a copy of the motion to Judge Barton. Judge Barton disclosed that Chere J. Barton is his wife, and he also disclosed that she owns or is the President of Regency Reporting Service, Inc. Judge Barton advised that he did not know of or have a relationship with any of the other persons or entities Gillespie identified.

During the hearing, Gillespie implied that because Judge Barton's wife is a court reporter and Barker, Rodems & Cook, P.A. may have made payments to her, there may be a basis to disqualify Judge Barton. Because of this statement, Judge Barton requested that I research my law firm's records to determine whether our law firm had made payments to his wife or her court reporting firm in connection with Gillespie's deposition or otherwise.

Thus, after the hearing, I personally conducted a review of the records of Barker, Rodems & Cook, P.A., which showed that five payments were made by Barker, Rodems & Cook, P.A. to Regency Reporting Service, Inc., each for copies of depositions. I subsequently filed an affidavit with the Court disclosing this information. The dates and amounts of the payments were as follows:

- February 27, 2001, $59.60
- June 11, 2001, $417.75
- March 31, 2009, $433.20
- March 31, 2009, $886.35
- March 31, 2009, $672.60

I subsequently wrote to Gillespie, and in pertinent part, stated the following:

Following yesterday's hearing, enclosed please find my affidavit and a proposed Order.

I also wish to follow up on an issue that arose during yesterday's hearing. In response to your suggestion that because our law firm may have paid Judge Barton's wife's for court reporting services, there may be a basis for Judge Barton's disqualification, I advised the Court that I did not believe it would support a motion to disqualify, analogizing it to campaign contributions by attorneys to a trial judge. Although I did not have the case law with me, I was familiar with the general holdings that an attorney's legal campaign contributions to a trial judge are not a legally sufficient ground for disqualification. See e.g., E.I. DuPont de Nemours and Co., Inc. v. Aquamar S.A., 24 So.3d 585, 585 (Fla. 4th DCA 2009).

I conducted additional legal research last evening and became aware of Aurigemma v. State, 964 So.2d 224 (Fla. 4th DCA 2007), involving a motion to disqualify a trial judge:

> The motion to disqualify is based on Aurigemma's allegation that his trial counsel has hired the trial judge's husband multiple times as an expert witness for his clients in criminal cases. Aurigemma alleges that the trial judge's husband has benefited [sic] financially from his relationship with Aurigemma's trial attorney, whose performance will be evaluated by the judge at the evidentiary hearing. This ongoing "business relationship" creates the requisite well-founded fear to support the motion to disqualify. Based on the foregoing, we grant the petition for writ of prohibition and direct the Chief Judge of the Fifteenth Judicial Circuit to have this case reassigned to a successor judge.

Id. at 224-25.

Although I do not believe that the fact that our law firm has made payments to Regency Reporting, Inc. should create a well-founded fear to support a motion to disqualify, I also believe that I have an obligation as an officer of the court to disclose this case to you.

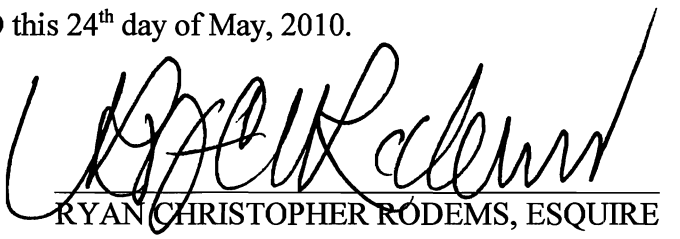
As proven by the thoughtful and well-reasoned decisions to sanction you and grant judgment on the pleadings for three of the four counts of your Complaint, Judge Barton is a diligent, hardworking, fair and honest trial judge, and it is not my intent by disclosing my legal research to imply anything to the contrary. In fact, I find the holdings of E.I. DuPont de Nemours and Co., Inc. v. Aquamar S.A., 24 So.3d 585, 585 (Fla. 4th DCA 2009) and Aurigemma v. State, 964 So.2d 224 (Fla. 4th DCA 2007) to be somewhat inconsistent.

(Exhibit "1").

Regrettably, the resolution of Gillespie's latest motion to disqualify will not involve a

determination of "the truth of the facts alleged." Fla. R. Jud. P. 2.330(f). It is also regrettable that the Court in Aurigemma v. State, 964 So.2d 224 (Fla. 4th DCA 2007) did not identify how many times the counsel at issue had hired the trial judge's husband or how much money was at issue. There appears to be little room to distinguish the facts of Aurigemma from the alleged facts of this case. Regrettably, the undersigned suggests that the facts and holding of Aurigemma require Gillespie's motion to disqualify to be granted to the extent that another Circuit Judge in the Thirteenth Judicial Circuit should be assigned to this action.

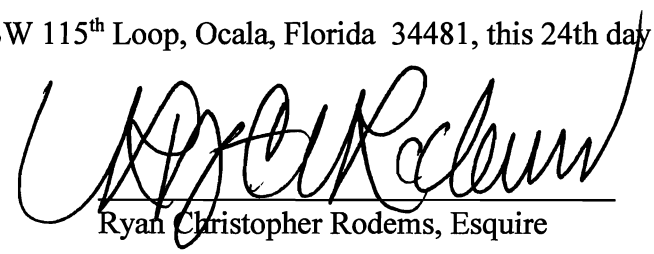
RESPECTFULLY SUBMITTED this 24th day of May, 2010.



RYAN CHRISTOPHER RODEMS, ESQUIRE
Florida Bar No. 947652
Barker, Rodems & Cook, P.A.
400 North Ashley Drive, Suite 2100
Tampa, Florida 33602
813/489-1001
813/489-1008 (facsimile)
Attorneys for the Defendant

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a true and correct copy of the foregoing has been furnished via U.S. Mail to Neil J. Gillespie, 8092 SW 115th Loop, Ocala, Florida 34481, this 24th day of May, 2010.



Ryan Christopher Rodems, Esquire

BARKER, RODEMS & COOK
PROFESSIONAL ASSOCIATION
ATTORNEYS AT LAW

CHRIS A. BARKER
RYAN CHRISTOPHER RODEMS
WILLIAM J. COOK

400 North Ashley Drive, Suite 2100
Tampa, Florida 33602

Telephone 813/489-1001
Facsimile 813/489-1008

May 6, 2010

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

Re: Neil J. Gillespie v. Barker, Rodems & Cook, P.A., a Florida Corporation; and William J. Cook
Case No.: 05-CA-7205; Division "F"

Dear Neil:

Following yesterday's hearing, enclosed please find my affidavit and a proposed Order.

I also wish to follow up on an issue that arose during yesterday's hearing. In response to your suggestion that because our law firm may have paid Judge Barton's wife's for court reporting services, there may be a basis for Judge Barton's disqualification, I advised the Court that I did not believe it would support a motion to disqualify, analogizing it to campaign contributions by attorneys to a trial judge. Although I did not have the case law with me, I was familiar with the general holdings that an attorney's legal campaign contributions to a trial judge are not a legally sufficient ground for disqualification. See e.g., E.I. DuPont de Nemours and Co., Inc. v. Aquamar S.A., 24 So.3d 585, 585 (Fla. 4th DCA 2009).

I conducted additional legal research last evening and became aware of Aurigemma v. State, 964 So.2d 224 (Fla. 4th DCA 2007), involving a motion to disqualify a trial judge:

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As proven by the thoughtful and well-reasoned decisions to sanction you and grant judgment on the pleadings for three of the four counts of your Complaint, Judge Barton is a diligent, hardworking, fair and honest trial judge, and it is not my intent by disclosing my legal research to imply anything to the contrary. In fact, I find the holdings of E.I. DuPont de Nemours and Co., Inc. v. Aquamar S.A., 24 So.3d 585, 585 (Fla. 4th DCA 2009) and Aurigemma v. State, 964 So.2d 224 (Fla. 4th DCA 2007) to be somewhat inconsistent.

Finally, my clients do not consent to the filing of the Amended Complaint.

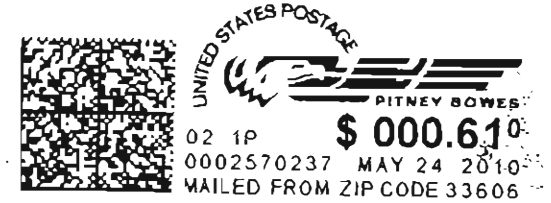
Sincerely,

Ryan Christopher Rodems

RCR/so
Enclosures

Barker, Rodems & Cook, P.A.
400 North Ashley Drive, Suite 2100
Tampa, Florida 33602

Gillespie - 05.5422



Mr. Neil J. Gillespie
8092 SW 115th Loop
Ocala Florida 34481

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