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2010 SEP 28 AM 7:47

UNITED STATES DISTRICT COURT
MIDDLE DISTRICT OF FLORIDA
OCALA DIVISION

CLERK, U.S. DISTRICT COURT
OCALA, FLORIDA

NEIL J. GILLESPIE,

CASE NO.: 5:10-CV-503-DC-10-DAB

Plaintiff,

vs.

DEMAND FOR JURY TRIAL

THIRTEENTH JUDICIAL CIRCUIT, FLORIDA,
GONZALO B. CASARES, ADA Coordinator, and individually,
DAVID A. ROWLAND, Court Counsel, and individually,
CLAUDIA RICKERT ISOM, Circuit Court Judge, and individually,
JAMES M. BARTON, II, Circuit Court Judge, and individually,
MARTHA J. COOK, Circuit Court Judge, and individually,

BARKER, RODEMS & COOK, P.A.,
RYAN CHRISTOPHER RODEMS,

THE LAW OFFICE OF ROBERT W. BAUER, P.A.,
ROBERT W. BAUER,

Defendants.

_____ /

COMPLAINT FOR VIOLATION OF THE AMERICANS WITH
DISABILITIES ACT (ADA), AND CIVIL RIGHTS VIOLATIONS

Plaintiff pro se NEIL J. GILLESPIE sues the Defendants and alleges as follows:

JURISDICTION AND VENUE

1. This lawsuit arises under the Americans With Disabilities Act ("ADA"), 42 U.S.C., Chapter 126, Equal Opportunities for Individuals with Disabilities, Subchapter II, Public Services, Part A, §§ 12131 - 12134, Subchapter III, Public Accommodations and Services Operated by Private Entities, §§ 12181 - 12189, Subchapter IV, §§ 12201 - 12213, including the ADA Amendments Act of 2008 (ADAAA) updates. Plaintiff also

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makes claims under 42 U.S.C. § 1983 Civil action for deprivation of rights, and the following amendments to the Constitution of the United States: The Fifth and Fourteenth Amendments as to Due Process; The Eight Amendment as to Cruel & Unusual Punishment; and the Fourteenth Amendment as to Equal Protection. This lawsuit also brings claims under Article 1, Section 21 of the Constitution of the State of Florida, Access to Courts; Article 1, Section 17 of the Constitution of the State of Florida, Excessive Punishments. This Court is vested with original jurisdiction under 28 U.S.C. §§ 1331, 1343, and supplemental jurisdiction over the state law claims pursuant to 28 U.S.C. § 1367.

2. Venue is proper in this Court, the Ocala Division, pursuant to 28 U.S.C. § 1391(b) and Rule 1.02, Local Rules of the United States District Court for the Middle District of Florida. Plaintiff resides in Ocala. Plaintiff received harassing phone calls in Ocala from attorney Ryan Christopher Rodems. The harassing phone calls were recorded in Ocala. Ocala is the central location of parties and witnesses widely dispersed in the State of Florida. One witness, United States District Judge James D. Whittemore, is currently a judge in the Tampa Division, making that venue improper.

PARTIES

3. Plaintiff pro se NEIL J. GILLESPIE ("Gillespie") resides at 8092 SW 115th Loop, Ocala, Marion County, Florida.

4. Defendant THIRTEENTH JUDICIAL CIRCUIT, FLORIDA ("13th Circuit") is a state court of original jurisdiction in and for Hillsborough County located in the George E. Edgecomb Courthouse, 800 E. Twiggs Street, Tampa, Florida. Gillespie is currently

Plaintiff and Counter-Defendant in Neil J. Gillespie v. Barker, Rodems & Cook, PA and William J. Cook, Case No. 05-CA-007205, Circuit Civil Court, 13th Circuit. The lawsuit commenced August 11, 2005. ("Action").

5. Defendant GONZALO B. CASARES is the Americans With Disabilities Act (ADA) Coordinator for the 13th Circuit, and a natural person. ("Casares"). Mr. Casares also has a position in the Facilities and Capital Projects department for the 13th Circuit.

6. Defendant DAVID A. ROWLAND is Court Counsel for the 13th Circuit, and a natural person. ("Rowland"). Mr. Rowland is also a member of the Judicial Administration and Evaluation Committee of The Florida Bar for Tampa.

7. Defendant CLAUDIA RICKERT ISOM is a Circuit Court Judge for the 13th Circuit and natural person. ("Judge Isom"). At all times material Judge Isom was married to attorney A. Woodson "Woody" Isom, Jr. ("Woody Isom"). Mr. Isom is a former law partner of Jonathan Alpert. Mr. Alpert formerly represented Gillespie. Mr. Alpert made judicial campaign contributions to both Judge Isom and Woody Isom. Defendant Cook made judicial campaign contribution(s) to Judge Isom. Judge Isom presided over the Action November 22, 2006 until recusal sua sponte February 13, 2007.

8. Defendant JAMES M. BARTON, II is a Circuit Court Judge for the 13th Circuit and a natural person. ("Judge Barton"). At all times pertinent Judge Barton was married to Chere J. Barton, President of Regency Reporting Service, Inc. ("Regency Reporting"). Regency Reporting has a business relationship with Defendant Barker, Rodems & Cook, P.A. and stores transcripts in a home office located in the home of Judge Barton. Judge Barton presided over the Action February 13, 2007 until disqualified May 24, 2010.

9. Defendant MARTHA J. COOK is a Circuit Court Judge for the 13th Circuit and as a natural person. ("Judge Cook"). Defendants Rodems and Cook made judicial campaign contributions to Judge Cook. Judge Cook has presided over the Action since May 24, 2010.

10. Defendant BARKER, RODEMS & COOK, P.A. is a Florida professional service corporation and law firm located at 400 North Ashley Drive, Suite 2100, Tampa, Hillsborough County, Florida 33602. ("BRC"). For the purpose of this complaint, BRC is a successor law firm to Alpert, Barker, Rodems, Ferrentino & Cook, P.A. ("Alpert firm"), the predecessor law firm. BRC formerly represented Gillespie in a number of matters and lawsuits. BRC is a Defendant and Counter-Plaintiff in the Action.

11. Defendant RYAN CHRISTOPHER RODEMS is an attorney, Florida Bar ID no. 947652, a corporate officer of BRC, and a natural person. ("Rodems"). Mr. Rodems was a partner of the predecessor firm Alpert, Barker, Rodems, Ferrentino & Cook, P.A. ("Alpert firm"). Mr. Rodems is a frequent applicant for judge to the 13th Circuit JNC. Mr. Rodems formerly represented Gillespie in a number of matters and lawsuits. Mr. Rodems is unlawfully representing BRC and Mr. Cook as Defendants and Counter-Plaintiffs in the Action.

12. Defendant THE LAW OFFICE OF ROBERT W. BAUER, P.A., is a Florida professional service corporation and law firm located at 2815 NW 13th Street, Suite 200E Gainesville, Alachua County, Florida 32609. ("Bauer Law"). Bauer Law formerly represented Gillespie as Plaintiff and Counter-Defendant in the Action.

13. Defendant ROBERT W. BAUER is an attorney, Florida Bar ID no. 11058, a corporate officer of Bauer Law, and a natural person. ("Bauer"). Mr. Bauer formerly represented Gillespie as Plaintiff and Counter-Defendant the Action. Mr. Bauer was a referral by The Florida Bar Lawyer Referral Service February 27, 2007. (Regular Panel).

Introduction

14. In August 2005 Gillespie sued his former lawyers for money the lawyers unlawfully took from a settlement. The Action is now in its fifth year. The lawyers are unlawfully representing themselves against a former client and intentionally disrupted the tribunal with a strategic maneuver to gain an unfair advantage in the Action. The 13th Circuit punished Gillespie with an extreme sanction of \$11,550 and retaliated against Gillespie by misusing and denying him judicial process. During the Action Gillespie learned of an unfair scheme of justice described in a law review by Judge Isom. 28 Stetson L. Rev 323, Professionalism and Litigation Ethics. Gillespie hired Robert Bauer to represent him, but after charging \$33,000 dropped the case when it became too difficult. The 13th Circuit and Mr. Bauer violated the ADA regarding Gillespie.

Another lawsuit Gillespie filed in August 2005 was efficiently resolved in 14 months, a credit card dispute in federal court, Gillespie v. HSBC Bank, et al, Case No. 5:05-cv-362-Oc-WTH-GRJ. US District Court, Middle District of Florida, Ocala Division. The case was a success for the federal courts and showed that the justice system can work for an ordinary person. As consumers of legal services, folks go to court to have a matter fairly adjudicated. But in Florida, the state court experience often has little to do with dispute resolution - it is a free-for-all between the judges and lawyers against

the people. The reason for the disparity in Florida state court is explained in Judge Isom's law review. The result of this disparity is a violation of the public trust, a discredit to the justice system, and damaged public confidence in government.

General Allegations

15. On August 11, 2005 Gillespie filed Neil J. Gillespie v. Barker, Rodems & Cook, PA and William J. Cook, case no. 05-CA-007205, Circuit Civil Court, 13th Circuit. (Exhibit 1). The Action is a fee dispute in "payday loan" litigation against AMSCOT Corporation. Gillespie and the proposed class were initially represented by Alpert, Barker, Rodems, Ferrentino & Cook, P.A. ("Alpert firm"). Barker, Rodems & Cook, P.A. ("BRC") assumed the representation of Gillespie and the proposed class after the Alpert firm closed. The events leading up to the closure of the Alpert firm include allegations that Mr. Alpert threw hot coffee on opposing counsel during a mediation, and Alpert's failed run for state attorney. Messrs. Barker, Rodems & Cook formed BRC in secret from Mr. Alpert and put their clients in a position of conflict with the lawyers representing them. BRC countersued Gillespie for libel January 19, 2006. (Exhibit 2). Plaintiff's First Amended Complaint was filed May 5, 2010 (Exhibit 3).

16. On September 26, 2005 a hearing was held on Defendants' Motion to Dismiss and Strike. By Order January 13, 2006 Gillespie established a cause of action for fraud and breach of contract against BRC and Mr. Cook. This was grounds to disqualify Rodems as counsel for his firm. Partners 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.

Gillespie submitted Plaintiff's Motion to Disqualify Counsel February 4, 2006. The motion was denied with prejudice, except as to the basis that counsel may be a witness, and on that basis, the motion is denied without prejudice. The question of disqualification on the counterclaim was not heard at all. Under Florida law, the question is not whether Mr. 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. Gillespie filed Emergency Motion to Disqualify Defendants' Counsel Ryan Christopher Rodems & Barker, Rodems & Cook, PA July 9, 2010. (Exhibit 4). The motion properly raises the witness issue. The motion properly considered de novo the question of disqualification on the counterclaim. The motion also shows misconduct by Mr. Rodems at the April 25, 2006 hearing sufficient to overturn the Order of May 12, 2006.

Mr. Rodems Strategic Maneuver To Intentionally Disrupt The Tribunal

17. On March 3, 2006 Mr. Rodems telephoned Gillespie at home about scheduling the motion to disqualify counsel and an argument ensued where Rodems threatened to reveal Gillespie's confidential client information. On March 6, 2006 Mr. Rodems intentionally disrupted the tribunal with a sworn affidavit under the penalty of perjury that falsely placed the name of the Judge Nielsen in Defendants' Verified Request For Bailiff And For Sanctions. Mr. Rodems falsely named Judge Nielsen in an "exact quote" attributed to Gillespie.

18. A voice recording of the call impeached Mr. Rodems' sworn affidavit. Kirby Rainsberger, Legal Advisor to the Tampa Police Department, reviewed the matter and wrote 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.

19. Initially Gillespie had a good working relationship with Judge Nielsen and his judicial assistant Myra Gomez. After Rodems' stunt Judge Nielsen did not manage the case lawfully, favored Defendants in rulings, and responded to Gillespie sarcastically. Following the hearing of April 25, 2006 Mr. Rodems waited outside Judge Nielsen's chambers to taunt Gillespie and provoke a fight. At the next hearing June 28, 2006 Gillespie requested protection from the Court to prevent a reoccurrence.

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)

It was clear that the Court was hostile and prejudiced against Gillespie, and after denying a motion to disqualify that was untimely, Judge Nielsen recused himself sua sponte.

Mr. Rodems' Bully Tactics

20. Beginning March 3, 2006 Mr. Rodems directed, with malice aforethought, a course of harassing conduct toward Gillespie that aggravated his disability, caused substantial emotional distress and served legitimate purpose, in violation of Florida

Statutes. §784.048¹. Mr. Rodems telephoned Gillespie and threatened to reveal client confidences learned from prior representation² and taunted him about his vehicle. Mr. Rodems submitted a pleading to the Court falsely naming Judge Nielsen in an “exact quote” attributed to Gillespie³. 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”⁴. Mr. Rodems has written 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.”⁵ Mr. Rodems has set hearings without coordinating the time and date with Gillespie. On one occasion Mr. Rodems waited outside chambers to harass Mr. Gillespie following a hearing⁶. Mr. Rodems has accused Mr. Gillespie of criminal extortion for trying to resolve this matter through the Florida Bar Attorney Consumer Assistance Program (ACAP). This list of Mr. Rodems’ harassing behavior is representative but not exhaustive. For more recent examples see [Emergency Motion to Disqualify Defendants’ Counsel Ryan Christopher Rodems & Barker, Rodems & Cook, PA](#) filed July 9, 2010. (Exhibit 4).

¹ As used in section 784.048(1)(a) “Harass” means to engage in a course of conduct directed at a specific person that causes substantial emotional distress in such person and serves no legitimate purpose. As used in section 784.048(1)(b) “Course of conduct” means a pattern of conduct composed of a series of acts over a period of time, however short, evidencing a continuity of purpose. (relevant portion). As used in section 784.048(2) Any person who willfully, maliciously, and repeatedly follows, harasses, or cyberstalks another person commits the offense of stalking, a misdemeanor of the first degree, punishable as provided in s. 775.082 or s. 775.083.

² March 3, 2006 telephone call, Mr. Rodems to Gillespie

³ March 6, 2006, *Defendants’ Verified Request For Bailiff And For Sanctions*

⁴ December 13, 2006 voice mail by Mr. Rodems to Gillespie

⁵ December 13, 2006, letter by Mr. Rodems to Gillespie

⁶ Following the hearing of April 25, 2006

21. Gillespie's former lawyers are notorious for bad behavior. United States District Judge James D. Whittemore repudiated the infamous coffee-throwing incident as speaker for the Florida Bar's Continuing Legal Education (CLE) program. Mr. Bauer planned use the information in defense of the libel counterclaim, and instructed Gillespie to get the CLE information. The Florida Bar provided Gillespie a surplus CLE CD and authorized Gillespie to transcribe the CD. Judge Whittemore discussed the erosion of professionalism with the following comments found on page 23 of the transcript:

6 If you think that's the only example of
7 wayward lawyer conduct during depositions just get
8 on the internet and search around. It's just
9 hilarious some of the things that go on. There
10 have been fist fights in Tampa. There has been
11 coffee thrown across the table by one lawyer
12 against another in a Federal deposition room in the
13 Federal courthouse. There have been lawyers
14 clipping their nails during depositions. That kind
15 of conduct is reprehensible.

22. A Tampa Police Department report 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 Mr. 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 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.

23. Mr. Levine previously sued Alpert, Barker & Rodems, PA, a \$5 million dollar claim for defamation, Buccaneers Limited Partnership v. Alpert, Barker & Rodems, PA, US District Court, Middle District of Florida, Tampa Division, case 99-2354-CIV-T-23C. The coffee-throwing incident made news headlines and brought disgrace upon the legal profession. After the incident Mr. Levine filed another lawsuit against Alpert. Levine v. Alpert. Case No. 00-CA-004187, Hillsborough Circuit Civil Court.

24. What happened next is Mr. Rodems’ *modus operandi*, accuse your opponent of criminal wrongdoing. Mr. Alpert and his partners accused Mr. Levine of criminal extortion for offering to settle. Sue Carlton of the St. Petersburg Times reported the matter June 10, 2000 in a story titled “Bucs accused of extortion”.

“...the meeting exploded almost as soon as it began, leaving a trail of allegations, recriminations and criminal complaints.”

“The latest: On Friday the lawyer for the fans announced in court that he had asked police to investigate "threats and/or extortion" by the Bucs' lawyer at Saturday's meeting. He said the fans were threatened with losing their seats if they did not agree to a settlement that day.”

“Tampa police detectives are reviewing the extortion complaint, which names Levine, Bucs general manager Rich McKay and Edward and Bryan Glazer.”

“The Hillsborough State Attorney's Office is deciding whether Alpert should be charged with battery, a misdemeanor, in the coffee incident. Levine also filed a civil suit seeking damages.”

25. A recent example of Mr. Rodems boorish and unprofessional behavior occurred when he served as plaintiff's counsel in *WrestleReunion, LLC v. Live Nation, Television Holdings, Inc.*, United States District Court, Middle District of Florida, Case No. 8:07-cv-2093-T-27, trial August 31-September 10, 2009. Mr. Rodems lost the jury trial then wrote a diatribe attacking the credibility of witness Eric Bischoff. (Exhibit 5). Mr. Rodems tirade is online at: <http://www.declarationofindependents.net/doi/pages/corrente910.html> The *WrestleReunion* lawsuit is listed on Mr. Rodems' application to the 13th Circuit JNC. An Order in *WrestleReunion* (Document 181 filed 10/06/09) shows the Defendant made an offer of judgment pursuant to §768.79 Florida Statutes. Mr. Rodems rejected the offer by email July 27, 2009 to opposing counsel Greg Herbert:

“Greg: As I promised, the \$75,000 offer you made is rejected, and we have sent our proposal for \$12,000,000.00. Tell your client, we can arrange for a wire transfer to our trust account for the \$12M. Heck, we'll even agree not to pursue contempt for Bischoff's arguable perjury.

Sincerely, Ryan Christopher Rodems, Barker, Rodems & Cook, P.A.”

After the jury found for the Defendant, Mr. Rodems tried to accept the offer of judgment he previously rejected, then tried to enforce the offer. The Court rejected Rodems antics.

Judge Isom and Mr. Rodems Engage In a Conspiracy of Silence

26. The Action was reassigned to Judge 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.

27. Gillespie found a number of campaign contributions from 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 transcribed by Mary Elizabeth Blazer of Berryhill and Associates, Inc. court reporters. The transcript of the hearing was filed with the Clerk of the Circuit Court.

28. The transcript shows that Judge Isom failed to disclose that husband Woody Isom is a former law partner of Jonathan Alpert who formerly represented Gillespie in this matter. Mr. Rodems also failed to disclose the relationship. Gillespie only learned of the relationship in March 2010 while researching accusations made in one of the many offensive letters sent by Mr. Rodems to Gillespie.

29. While presiding over the case Judge Isom failed to follow her own law review on case management and discovery, Professionalism and Litigation Ethics. 28 STETSON L. REV. 323. (Exhibit 6). Judge Isom's essay shows how she provided intensive case management to lawyers rather than impose sanctions. Judge Isom did not provide intensive case management to Gillespie but paved the way 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)

30. On February 5, 2007 Judge Isom determined that Gillespie was disabled and the record shows attempts by the Court to moderate Mr. Rodems' harassing behavior toward Gillespie. Judge Isom offered to grant a 3 month stay in the proceedings for Gillespie to find counsel but Mr. Rodems objected and the Court capitulated to Rodems disapproval.

31. Gillespie moved to disqualify Judge Isom February 13, 2007. Judge Isom denied the motion as legally insufficient but recused sua sponte the same day.

Case Reassigned to Judge Barton

32. February 13, 2007 the case was reassigned to Judge Barton.

33. February 20, 2007 Gillespie filed Plaintiff's Accommodation Request Americans with Disabilities Act (ADA). (Exhibit 7). The motion stated that Mr. Rodems was familiar with Gillespie's disability from prior representation and that Rodems was aggravating Gillespie's disability such that by reason of his disability. Gillespie was excluded from participation in or denied the benefits of the services, programs, or activities of the 13th Circuit and is subjected to discrimination by the 13th Circuit. Plaintiff's Amended Accommodation Request Americans with Disabilities Act (ADA) was filed March 5, 2007. (Exhibit 8).

34. February 27, 2007 the Florida Bar Lawyer Referral Service referred Mr. Bauer to Gillespie for the practice area of Libel and Slander. Early in February 2007 Gillespie voluntarily dismissed his action but then withdrew the dismissal. The case remained alive

on the counterclaim. An appellate court held the voluntary dismissal was not effective because of the counterclaim. Fla.R.Civ.P. 1.420(a)(2); Rogers v. Publix Super Markets, Inc., 575 So. 2d 214, 215-16 (Fla. 5th DCA 1991) (holding that when counterclaim is pending, plaintiff cannot unilaterally dismiss complaint without order of court).

35. April 2, 2007 Mr. Bauer filed a notice of appearance on behalf of Gillespie in the Action. After a review of the file Mr. Bauer told Gillespie March 29, 2007 that the pending sanctions against Gillespie were “entirely and wholly inappropriate” (p29. line17). Mr. Bauer said “If we can substantiate that that stuff was willful and if I can get, you know, the jury would love to punish a slimy attorney.” (p28. line 7). Gillespie’s final response to that and other of Mr. Bauer’s statements was “You know, I want to get a good outcome with the case. I’m not interested in any personal ax to grind.” (p33. line 5).

36. March 20, 2008 Judge Barton awarded Mr. Rodems \$11,550 in sanctions against Gillespie for a discovery error and a misplaced defense of economic loss to the counterclaim pursuant to section 57.105 Florida Statutes. Mr. Rodems sought aggressive collection and garnished Gillespie’s bank account and client account with Mr. Bauer.

37. July 7, 2008 Judge Barton found Gillespie in contempt for failing to submit a Fact Information Sheet. Fla.R.Civ.P Form 1.977. Mr. Bauer later admitted to the Court that the failure was his fault and not Gillespie’s noncompliance. (Exhibit 9).

38. Mr. Bauer was at a disadvantage litigating the Action without Gillespie’s presence and testimony in court. The record shows times when Judge Barton raised questions that could have easily been answered if Gillespie was present to testify, but Mr. Bauer refused to allow Gillespie to attend the hearings. This worked to the advantage of

Mr. Rodems who made a number of misrepresentations on the record. July 8, 2008 Mr. Bauer sent Gillespie an email stating why he did not want Gillespie to attend the hearings.

“No - I do not wish for you to attend hearings. I am concerned that you will not be able to properly deal with any of Mr. Rodems comments and you will enflame the situation. I am sure that he makes them for no better purpose than to anger you. I believe it is best to keep you away from him and not allow him to prod you. You have had a very adversarial relationship with him and it has made it much more difficult to deal with your case. I don't not wish to add to the problems if it can be avoided.”

The behavior Mr. Bauer attributed to Mr. Rodems, comments made "for no better purposes than to anger you", is unlawful harassment and a violation of section 784.048, Florida Statutes. See the affidavit of Neil J. Gillespie. (Exhibit 10).

39. August 14, 2008 Mr. Bauer himself complained on the record about Mr. Rodems' behavior. "...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 Marva Crenshaw. page 16, line 24).

40. October 13, 2008 Mr. Bauer moved to withdrawal as counsel, blaming Gillespie for an inability to communicate. Mr. Bauer's legal bill had reached \$33,000 and he had

not yet submitted an amended complaint⁷. October 1, 2009 Judge Barton granted Bauer's motion to withdrawal almost a year later.

Gillespie Hired Dr. Karin Huffer as ADA Advocate

41. After Mr. Bauer left the case Mr. Rodems resumed his course of harassing conduct toward Gillespie that aggravated his disability, caused substantial emotional distress and served legitimate purpose in violation of section 784.048 Florida Statutes.

42. January 26, 2010 Gillespie attended his first hearing before Judge Barton and raised the issue of accommodations under the Americans With Disabilities Act (ADA). Judge Barton stated on the record that he was unaware of Gillespie's ADA requests made February 20, 2007 and March 5, 2007, and Gillespie noted Mr. Bauer failed to raise the issue: (Transcript, January 26, 2010, page 8, beginning at line 11)

11 [THE COURT] I mean
12 if you are saying your disability, which is yet
13 unclear to me, hasn't been dealt with accordingly
14 -- I believe this is the first time we are hearing
15 about this.
16 MR. GILLESPIE: Actually it is not, Your
17 Honor. This information was presented to you when
18 you were a Judge way back on March 5th, 2007,
19 Plaintiff's Amended Accommodation Request under the
20 ADA. What had happened is shortly after that date,
21 Mr. Bauer took the case over and this motion wasn't

⁷ The case was still alive on Gillespie's original pro se complaint from August 11, 2005.

22 heard.

(Transcript, January 26, 2010, page 12, beginning at line 13)

13 THE COURT: Right. Well, because clearly if
14 folks have disabilities we could make
15 accommodations and again, you had filed it before
16 but, again, when you had an attorney and he was
17 representing you and could have pressed that
18 forward and apparently there were other matters to
19 address.

20 MR. GILLESPIE: I'm sorry that he didn't do
21 that. He was instructed to do that but for
22 whatever reason, Mr. Bauer failed to do that and he
23 failed to do a lot of other things.

43. February 19, 2010 Gillespie hand delivered the following to Gonzalo B. Casares.

ADA Coordinator for the 13th Circuit. with a copy to Judge Barton:

- a. ADA Assessment and Report, Karin Huffer. MS, MFT (ADA Report)
- b. ADA Accommodation Request of Neil J. Gillespie (ADA Request)
- c. ADA form provided by the 13th Judicial Circuit. Line 6. Special requests or anticipated problems (specify): "I am harassed by Mr. Rodems in violation of Fla. Stat. section 784.048."

d. Notice of ADA Accommodation Request of Neil J. Gillespie

e. Transcript, hearing before the Honorable Claudia Isom, February 5, 2007

Gillespie also filed February 19, 2010 Plaintiff's Motion For An Order of Protection -

ADA. This was in response to a motion from Mr. Rodems demanding to make Gillespie's

ADA request part of the adversarial litigation. Rodems filed "Defendants' Motion For An Order Determining Plaintiff's Entitlement to Reasonable Modifications Under Title II Of The Americans With Disabilities Act" February 12, 2010. Mr. Rodems also complained in a letter to Judge Barton March 11, 2010 that treating the ADA as an administrative function amounted to ex parte communications with the Court. Language on the envelope containing the ADA documents clearly indicated otherwise:

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.

44. The 13th Circuit failed to timely respond to Gillespie's ADA request. Thirty days passed without a response from Mr. Casares.
45. March 29, 2010 Gillespie filed Motion For Leave To Amend Americans With Disabilities Act (ADA) Accommodation of Neil J. Gillespie.
46. April 7, 2010 Gillespie wrote Mr. Casares asking him for a response to the ADA request made February 19, 2010. Gillespie informed Mr. Casares about the motion for leave to amend and a hearing disability. Gillespie notified Casares and provided a copy of an Order Scheduling Hearing from Judge Barton that set twelve (12) items for hearing in a one (1) hour time period on May 5, 2010. This Order was contrary to Gillespie's ADA request, which sought to limit the number of motions scheduled for one hearing.

47. April 14, 2010 Mr. Casares responded to Gillespie by email in substance:

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.

48. April 26, 2010 Gillespie responded to Mr. Casares that he had a hearing aid but believed his difficulty in hearing was due to Post Traumatic Stress Disorder (PTSD) and thought real-time transcription services may help.

49. April 28, 2010 Gillespie wrote to Judge Barton that the 13th Circuit had not yet responded to his ADA accommodation request, among other things. Time was of the essence since a hearing was scheduled for May 5, 2010.

50. April 28, 2010 Gillespie filed Plaintiff's Motion to Consider Prior ADA Accommodation Request, and moved the Court to consider his prior ADA accommodation requests, the provision of real-time transcription services, support for case management as provided by Rule 1.200(a), a case management conference, and Rule 1.201(a) designation of complex litigation, and consideration of relevant information about Mr. Rodems harassing behavior in violation section 784.048, Florida Statutes.

51. April 28, 2010 Gillespie filed separate case management motions unrelated to his ADA request; Rule 1.200(a) a case management conference; and Rule 1.201(a) designation of complex litigation.

52. May 3, 2010 and May 4, 2010 saw a number of emails between Mr. Casares and Gillespie on several topics. Mr. Casares either did not understand the difficulty-in-hearing issue Gillespie noted on the record before Judge Isom February 5, 2007 or he was being evasive. Gillespie noted Mr. Casares had not responded to his ADA request made February 19, 2010, other than to reply "Your request is not within our means to resolve and was referred to the Legal Department for the appropriate course of action." On May 4, 2010 Mr. Casares told Gillespie "The medical file was never within our department's means to help and was handed over to Legal."

53. May 4, 2010 Anita Ellababidy Circuit Court Reporters emailed Gillespie about Computer Aided Realtime Translation (CART). After learning how CART worked Gillespie said he did not think it would be very helpful.

ADA Retaliation by Judge Barton at the May 5, 2010 Hearing

54. Judge Barton announced at the hearing May 5, 2010 that he would not comply with ADA law that required the following determinations:

- a. Whether Gillespie had a "disability" as defined by Title II of the ADA
- b. If Gillespie had such a "disability," then what specific "modifications" Gillespie is requesting to the Court's "rules, policies, or practices ... for the receipt of services or the participation in programs or activities provided by" the Court.

c. Whether the requested "modifications would fundamentally alter the nature of the service, program, or activity." of the Court.

(Transcript, May 5, 2010, page 4, line 23)

23 MR. GILLESPIE: Judge, may I speak?

24 THE COURT: About what?

25 MR. GILLESPIE: Judge, as you know, I

(continued, Transcript, May 5, 2010, page 5, line 1)

1 submitted an ADA request. I have not received a
2 response to it yet. It's my understanding that the
3 ADA coordinator was unable to make a decision and
4 that he has sent the matter to the legal
5 department, and that Mr. Roland is the individual
6 that is to make the decision.

7 THE COURT: Well --

8 MR. GILLESPIE: I have not heard from him.

9 THE COURT: Well, his role is to facilitate
10 the request and to evaluate it. My thinking was
11 that compliance with the request is better than any
12 written or oral response.

55. Judge Barton did not comply with Gillespie's ADA accommodation request to set a reasonable number of motions for hearing at one time. The Order Scheduling Hearing listed 12 items for a one hour hearing beginning a 3:00 PM

(Transcript, May 5, 2010, page 4, line 12)

12 We do have an hour scheduled today, which may
13 or may not be sufficient to cover all of the
14 motions that we have. The Court's plan is to
15 proceed forward with the hearing, taking these
16 motions one at a time.

17 If we are finished by 4:00, fine; if we are
18 not, I have one motion scheduled at 4:00 o'clock in
19 my chambers in another case, which, if we haven't
20 taken a break before then, we will take a break and
21 then reconvene after that short hearing and finish
22 up.

(Transcript. May 5, 2010, page 18, line 15)

15 THE COURT: Well, I am going to give you -- as
16 I have indicated, I am going to give you -- we can
17 be here until 7:00 or 3:00 o'clock tonight.

18 MR. GILLESPIE: Well, that is nice of you,
19 Judge, but I can't be here that long. I have
20 diabetes.

Judge Barton's unilateral ADA plan was not an accommodation, but retaliation. Gillespie cannot tolerate a 4 or 5 hour hearing due to his disability. In addition, a 4 or 5 hour hearing that extends into the night would fundamentally alter the nature of court programs, services, or activities, and may impose an undue financial or administrative burden on the courts. This marathon hearing would also unnecessarily burden defense

counsel and the court reporter, who, like Gillespie, planned for a one hour hearing. A hearing lasting into the night would incur overtime costs for bailiffs and other personnel.

56. Judge Barton refused to provide Gillespie ordinary case management pursuant to the Fla.R.Civ.P. or provide case management accommodations. Judge Barton would not follow Judge Isom's law review on intensive case management. (Transcript, May-05-10, page 53, line 5). Judge Barton neglected case management duties under Rule 2.545, Fla.R.Jud.Admin. When Mr. Bauer moved to withdrawal in October, 2008, Judge Barton let the case sit for one year with no movement. Mr. Rodems also took no action during this year to move the case forward, undercutting complaints that the case is taking too long. Judge Barton favored Mr. Rodems with multiple hearings with plenty of time to establish, award, and garnish \$11,550 in sanctions against Gillespie:

- a. July 3, 2007, 45 minutes, D's motion, section 57.105 and discovery sanctions.
- b. August 15, 2007, 45 minutes, D's motion, voluntary dismissal.
- c. October 30, 2007, 45 minutes, D's motion for judgment on the pleadings.
- d. March 20, 2008, 60 minutes, D's motion on amount of attorney's fees.
- e. July 1, 2008, 30 minutes, D's judgment on the pleadings, fact information sheet

Ex Parte Communication, 13th Circuit JNC and Judge Barton

57. Defendants' attorney Ryan Christopher Rodems has been an applicant for every judicial opening in the 13th Circuit for the past two years. S. Cary Gaylord, an attorney on the 13th Circuit JNC, sent an email March 15, 2010 to Robert Wheeler, General Counsel to the Governor. Mr. Gaylord wrote "I have personally spoken with Mr. Gillespie, with judges presiding over various cases mentioned in his complaints and with

other lawyers who have been involved in litigation mentioned by Mr. Gillespie and involving Mr. Rodems.” Mr. Gaylord stated that he was “convinced that all of Mr. Gillespie's complaints against Mr. Rodems...are completely without merit.”

58. Plaintiff's Motion To Disclose Ex Parte Communication With JNC was filed May 5, 2010 and a courtesy copy handed to Judge Barton by the bailiff at the hearing. The motion asked Judge Barton to disclose ex parte communication with Mr. S. Cary Gaylord. As of today Judge Barton has not responded. Therefore it is reasonable to conclude that Mr. Gaylord spoke with Judge Barton and that Judge Barton had already reached a decision in this lawsuit favoring the Defendants.

59. Gillespie wrote and asked Mr. Gaylord if he spoke with Judge Barton presiding in this lawsuit, and if so what was the substance of the conversation. Mr. Gaylord responded by letter dated April 13, 2010 that “I recall that there were judges I talked to but I can't recall which ones” and that he has no notes to refresh his memory.

Plaintiff's Motion To Disqualify Judge Barton

60. Judge Barton was disqualified with cause May 24, 2010 for thousands of dollars paid by Barker, Rodems & Cook, P.A. to Judge Barton's wife, Chere J. Barton, President of Regency Reporting Service, Inc., and for other judicial misconduct described in Plaintiff's Motion To Disqualify Judge Barton, filed May 20, 2010.

Section 38.13 Florida Statutes Judge as litem.

61. Gillespie believes the 13 Circuit is unable to lawfully adjudicate this Action. Gillespie suggested section 38.13 Florida Statutes, Judge as litem, in paragraph 86 of Plaintiff's Motion To Disqualify Judge Barton

38.13 Judge ad litem; when may be selected in the circuit or county court.--When, from any cause, the judge of a circuit or county court is disqualified from presiding in any civil case, the parties may agree upon an attorney at law, which agreement shall be entered upon the record of said cause, who shall be judge ad litem and shall preside over the trial of, and make orders in, said case as if he or she were the judge of the court. Nothing in this section shall prevent the parties from transferring the cause to another circuit or county court, as the case may be.

Gillespie wrote "The operative part of this option is the last sentence: "Nothing in this section shall prevent the parties from transferring the cause to another circuit or county court, as the case may be." Plaintiff believes this lawsuit should be transferred to another court." (page 39). Gillespie sought a Judge ad litem through Upchurch Watson White & Max and had email discussion with Ben F. Overton, Esquire, Senior Justice (Retired). Judge Overton said he had other commitments. Gillespie also contacted Pedro F. Bajo, Chair of the 13th Circuit JNC to no avail.

Case Reassigned to Judge Martha J. Cook May 24, 2010

62. Judge Cook favored Mr. Rodems and BRC from the outset. Judge Cook's approach to many motions Gillespie filed was to deny the motions without a hearing. Judge Cook denied Gillespie's Motion For Reconsideration without a hearing, for rulings made by Judge Barton, including the \$11,550 sanction against Gillespie for a discovery error and misplaced defense of economic loss to the counterclaim: Order Adjudging Contempt caused by Mr. Bauer's misstatements to the Court; Order Granting And

Denying In Part Defendants' Motion For Judgment On The Pleadings, based upon Mr. Rodems misrepresentations to the court about a signed fee agreement - there is none.

63. Judge Cook collaborated with Mr. Rodems. Judge Cook kept court files about garnishment locked in her chambers so Gillespie could not have access. Judge Cook's judicial assistant Mary Fish would not cooperate in setting hearings or addressing misconduct by Mr. Rodems when he set hearings without coordinating the time and date with Gillespie. One time Mary Fish sent Gillespie an anonymous letter with misinformation about the ADA. Judge Cook was hostile to Gillespie's efforts with the ADA. In response Gillespie moved to disqualify Judge Cook twice, and she denied Gillespie's motion each time.

a. Plaintiff's Motion To Disqualify Circuit Judge Martha J. Cook, filed June 14, 2010; denied by Judge Cook June 16, 2010.

b. Plaintiff's Motion To Disqualify Judge Martha J. Cook, filed July 23, 2010; denied by Judge Cook July 27, 2010.

Court Counsel David A. Rowland Denied Gillespie's ADA Request

64. July 9, 2010 Court Counsel David Rowland responded to Gillespie's ADA request by mischaracterizing the request, calling it a request for case management. Mr. Rowland said those requests must be submitted by written motion to the presiding judge of the case. The presiding judge may consider your disability, along with other relevant factors, in ruling upon your motion. Mr. Rowland wrote that As ADA Coordinator. Mr. Casares can assist in providing necessary auxiliary aids and services and any necessary facility-related accommodations. But neither Mr. Casares, nor any

other court employee. can administratively grant, as an ADA accommodation. requests that relate to the internal management of a pending case. (Exhibit 11).

Judge Cook Falsified Record On Motion To Disqualify Mr. Rodems

65. July 22, 2010 Judge Cook issued "Order Denying Plaintiff's Emergency Motion to Disqualify Defendants' Counsel Ryan Christopher Rodems & Barker, Rodems & Cook, P.A." In the Order Judge Cook falsely asserts that Judge Nielsen's order of May 12, 2006 denied with prejudice the motion to disqualify. In fact the order states "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. Under Florida law the question is not whether Mr. 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. Judge Cook's falsification of the record likely violates chapter 839, Florida Statutes, section 839.13(1); chapter 838 Florida Statutes, section 838.022; and chapter 837 Florida Statutes, section 837.06 False official statements. See Affidavit of Neil J. Gillespie. (Exhibit 12).

Judge Cook Falsified Record On Gillespie's Panic Attack of July 12, 2010

66. Monday July 12, 2010 Gillespie attended a hearing at 10:30 AM before Judge Cook. While attending the hearing he suffered a panic attack. He informed Judge Cook that he was ill and needed medical attention. Judge Cook excused Him. Deputies of the Hillsborough County Sheriffs Office saw Gillespie was in distress and offered assistance.

Tampa Fire Rescue was called. Corporal Gibson was by his side and walked him to the lobby of courthouse where Gillespie waited for the paramedics. Tampa Fire Rescue arrived and treated Gillespie. A couple weeks later Gillespie obtained a report.

67. Judge Cook falsified the above account of Gillespie's panic attack in "Notice Of Case Management Status and Orders On Outstanding Res Judicata Motions" and "Notice Of Court-Ordered Hearing On Defendants' For Final Summary Judgment" dated July 29, 2010. Judge Cook wrote: "[t]he Plaintiff voluntarily left the hearing prior to its conclusion.. .loudly gasping and shouting he was ill and had to be excused." At footnote 2 Judge Cook wrote: "Mr. Gillespie refused medical care from emergency personnel when called by bailiffs and left the courthouse immediately after learning that the conference was completed." Upon information and belief, Judge Martha J. Cook knowingly and willfully, with malice aforethought, falsified a record in violation of chapter 839, Florida Statutes, § 839.13(1). See Affidavit of Neil J. Gillespie. (Exhibit 13)

68. Because the Court denied my ADA accommodation I appeared at the hearing without one and became ill and was excused by Judge Cook, who continued the hearing without me, thereby denying me by reason of my disability to be excluded from participation in or be denied the benefits of the services, programs, or activities of a public entity, or be subjected to discrimination by any such entity in violation of law.

69. July 12, 2010 Gillespie provided Judge Cook and the 13th Circuit Notice of Claim Against The Thirteenth Judicial Circuit Pursuant to Section 768.28(6)(8) Florida Statutes. Judge Cook denied this caused a conflict with her presiding over the Action and she did not disqualify as judge. (Exhibit 15).

Judge Cook's "Res Judicata Motions"

70. July 29, 2010 Judge Cook signed "Notice Of Case Management Status and Orders On Outstanding Res Judicata Motions" and "Notice Of Court-Ordered Hearing On Defendants' For Final Summary Judgment". Judge Cook's denial of Motion for Leave to Submit Plaintiff's First Amended Complaint filed May 5, 2010 is wrong:

"Moreover, excepting Count 1, Plaintiff's breach of contract claim against Defendant law firm, all of the Plaintiff's pleadings and answers have been disposed and amendment is thereby impossible."

Clearly this is not true. Pursuant to Rule 1.190(a), Fla.R.Civ.P. A party may amend a pleading once as a matter of course. Leave of court shall be given freely when justice so requires. Plaintiff's First Amended Complaint is a "new complaint that is largely re-written, which will re-set all case deadlines and permit more discovery, new motions to dismiss, motions for summary judgment, and a new answer with affirmative defenses and counter-claims, all of which will have to be dealt with just as they were the first time around." - Attorney Sheldon J. Childers, September 17, 2009.

A court should not dismiss a complaint without leave to amend unless the privilege of amendment has been abused or it is clear that the complaint cannot be amended to state a cause of action. Trotter v. Ford Motor Credit Corp. 868 So.2d 593. Procedural rule allowing amended pleadings to relate back to the date of the original pleading is to be construed liberally. Rule 1.190(c). Stirman v. Michael Graves 983 So.2d 626

71. For more discussion of Judge Cook's "Res Judicata Motions" see Exhibit 14.

COUNT I - ADA, Subchapter II, Public Services, Part A, §§ 12131 - 12134

Failure to Assess and Provide Accommodation

72. Defendant 13th Circuit is a public entity as defined under § 12131(1).

73. Upon submission of his ADA Request, ADA Report and ADA form, Defendant 13th Circuit failed to determine if Gillespie is a qualified individual with a disability under § 12131(2). The 13 Circuit failed to determine:

a. Whether Plaintiff has a "disability," as defined by Title II of the ADA;

b. If Plaintiff has such a "disability," then what specific "modifications" he is requesting to the Court's "rules, policies, or practices ... for the receipt of services or the participation in programs or activities provided by" the Court. 42 U.S.C. § 12131(2); and,

74. Defendant 13th Circuit failed to provide any accommodation. As such Gillespie suffered a panic attack July 12, 2010 at a hearing before Judge Cook. Judge Cook created a false record to cover up the incident.

75. As such, Gillespie was discriminated against by the 13th Circuit in violation of § 12132. No qualified individual with a disability shall, by reason of such disability, be excluded from participation in or be denied the benefits of the services, programs, or activities of a public entity, or be subjected to discrimination by any such entity.

76.. As a result of discrimination by the 13th Circuit, Gillespie suffered injury.

77. Defendant 13th Circuit is the proximate cause of Gillespie's injury.

78. WHEREFORE Gillespie demands all available relief and damages for his loss against Defendants, together with interest, costs, expenses, and attorney's fees.

COUNT II - ADA, Subchapter IV, §§12201 - 12213

79. Under § 12202. State immunity. A State shall not be immune under the eleventh amendment to the Constitution of the United States from an action in Federal or State court of competent jurisdiction for a violation of this chapter. In any action against a State for a violation of the requirements of this chapter, remedies (including remedies both at law and in equity) are available for such a violation to the same extent as such remedies are available for such a violation in an action against any public or private entity other than a State.

80. Under § 12203(a) Defendants are prohibition against retaliation. No person shall discriminate against any individual because such individual has opposed any act or practice made unlawful by this chapter or because such individual made a charge, testified, assisted, or participated in any manner in an investigation, proceeding, or hearing under this chapter.

82 Under § 12203(b) Defendants are prohibition against interference, coercion, or intimidation. It shall be unlawful to coerce, intimidate, threaten, or interfere with any individual in the exercise or enjoyment of, or on account of his or her having exercised or enjoyed, or on account of his or her having aided or encouraged any other individual in the exercise or enjoyment of, any right granted or protected by this chapter.

83. Defendant Judge Barton retaliated against Gillespie as shown in this complaint in violation of § 12203(a).

84. Defendant Judge Cook retaliated against Gillespie as shown in this complaint in violation of § 12203(a).

85. Defendant Rodems and BRC intimidated, threatened, and interfered with Gillespie in the exercise or enjoyment of, or on account of his having exercised or enjoyed, rights granted or protected by this chapter in violation of § 12203(b).

86. As a result of discrimination by the Defendants, Gillespie suffered injury.

87. Defendants are the proximate cause of Gillespie's injury.

88. WHEREFORE Gillespie demands all available relief and damages for his loss against Defendants, together with interest, costs, expenses, and attorney's fees.

COUNT III - ADA Subchapter III, Public Accommodations and Services Operated by

Private Entities, §§ 12181 - 12189

89. Defendants Bauer and Bauer Law are private entities under Part III, § 12181(6) .

90. Defendants Bauer and Bauer Law offer public accommodations as defined by under Part III, § 12181(7)(F).

91. Gillespie was a client of Defendants Bauer and Bauer Law from approximately March 1, 2007 through October 1, 2009.

92. While Gillespie was a client, Defendants Bauer and Bauer Law failed to inform Judge Barton of Gillespie's ADA requests made February 20, 2007 and March 5, 2007

93. While Gillespie was a client, Defendants Bauer and Bauer Law refused to allow Gillespie to attend hearings in the Action. Mr. Bauer was concerned about comments made by Mr. Rodems to Gillespie, comments made "for no better purposes than to anger you", unlawful harassment and a violation of section 784.048 Florida Statutes.

94. August 2010 it was learned through a response to a bar inquiry that Bauer Law bookkeeper Beverly Lowe stated "I was told that he suffered from some form of

disability, possibly PTSD, and that we should take precautions when dealing with him.”

Mr. Bauer claimed “I advised my staff that they were no longer to work on his case”.

Even so, a number of Bauer Law employees would not discriminate against Gillespie and worked on his case and communicated with him.

95. The foregoing are examples of discrimination under § 12182. No individual shall be discriminated against on the basis of disability in the full and equal enjoyment of the goods, services, facilities, privileges, advantages, or accommodations of any place of public accommodation by any person who owns, leases (or leases to), or operates a place of public accommodation.

96. As a result of discrimination by the Defendants, Gillespie suffered injury.

97. Defendants are the proximate cause of Gillespie’s injury.

98. WHEREFORE Gillespie demands all available relief and damages for his loss against Defendants, together with interest, costs, expenses, and attorney’s fees.

COUNT IV - 42 U.S.C. § 1983 Civil Rights

99. February 1, 2007 during a hearing to disclose conflict, Defendant Judge Isom unlawfully failed to disclose conflict with husband Woody Isom and Mr. Alpert. Judge Isom failed to provide Gillespie the benefits of the services, programs, or activities of the court including mediation services and case management described in her law review.

100. Defendants 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.

101. As a result of discrimination by the Defendants, Gillespie suffered injury.

102. Defendants are the proximate cause of Gillespie's injury.

WHEREFORE Gillespie demands all available relief and damages for his loss against Defendants, together with interest, costs, expenses, and attorney's fees.

Count V - Article 1, Section 21 of the Constitution of the State of Florida

103. 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 Barton denied Plaintiff and Counter-Defendant Gillespie access to court by imposing an excessive punishment of \$11,550 on him. 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. Recently obtained information from a law review by the Honorable Claudia Rickert Isom, Professionalism and Litigation Ethics, 28 STETSON L. REV. 323, shows Gillespie was not afforded case management in this highly contentious lawsuit, thus denying Gillespie his right to due.

104. As a result of discrimination by the Defendants, Gillespie suffered injury.

105. Defendants are the proximate cause of Gillespie's injury.

WHEREFORE Gillespie demands all available relief and damages for his loss against Defendants, together with interest, costs, expenses, and attorney's fees.

Case Management: Professionalism and Litigation Ethics, 28 STETSON L. REV. 323

Violation of the Constitution of the United States: The Fifth and Fourteenth Amendments

as to Due Process; The Eight Amendment as to Cruel & Unusual Punishment; and the

Fourteenth Amendment as to Equal Protection.

106. In the Action the first case management conference was held July 12, 2010, almost five years after the Action Commenced.

107. Judge Isom's law review, Professionalism and Litigation Ethics. 28 STETSON L. REV. 323. has implications beyond this case. Judge Isom describes a two-tier, arbitrary system of law in the state of Florida. The favored class of litigants include "Harvey M", the pseudonym for a lawyer Judge Isom has known a long time. The other class of litigants are folks like Gillespie, often ordinary people who bring a matter to court seeking justice and instead are heavily sanctioned for minor transgressions. Gillespie was sanctioned \$11,550. an extreme sanction which represents half his annual income.

This is from Judge Isom's law review:

"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."

"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.”

“In Harvey's case, extreme tools--reporting Harvey to the Florida 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.”

Judge Isom speculates in her law review that “Perhaps the perceived backlash of cracking down on unprofessional behavior is unrealistic for Florida's circuit judges who are elected officials.” Isom also notes that the Handbook on Discovery Practice “reassuringly states that the appellate courts will sustain the trial court's authority if it is exercised in a procedurally correct manner.” So this process is a rigged game from the start.

108. Judges have a duty under Rule 2.545, Fla.R.Jud.Admin to take charge of a case at an early stage in the litigation and control the progress of the case until the case is determined. In this case the court relinquished that role to Mr. Rodems who turned the

litigation into a “trip and trap” spectacle using discovery rule missteps and section 57.105 Florida Statutes sanctions to rack up \$11,550 in sanctions.

109. JAWS, the Judicial Automated Workflow System used by lawyers to set hearings is not available to pro se litigants. Before JAWS the prior system, the J Calendar, Judicial Scheduling and Resource Workflow Management System, did not allow pro se litigants to set hearing time either. Instead pro se litigants are dependent on judicial assistants to set hearings manually. This is unequal access to courts, especially when the judicial assistant obstructs the pro se litigant to favor another party, usually a lawyer.

130. The lack of an online Case Management/Electronic Case Files (CM/ECF) system like the federal PACER system is a further barrier to justice. For Gillespie it requires a 200 mile trip to obtain a document from the case file. Florida charges \$1.00 a page; PACER is 8 cents.

131. The two-tier system of justice described in Judge Isom’s law review violates Constitution of the United States: The Fifth and Fourteenth Amendments as to Due Process; The Eight Amendment as to Cruel & Unusual Punishment; and the Fourteenth Amendment as to Equal Protection.

132. As a result of discrimination by the Defendants, Gillespie suffered injury.

133. Defendants are the proximate cause of Gillespie’s injury.

WHEREFORE Gillespie demands all available relief and damages for his loss against Defendants, together with interest, costs, expenses, and attorney’s fees.

Damages

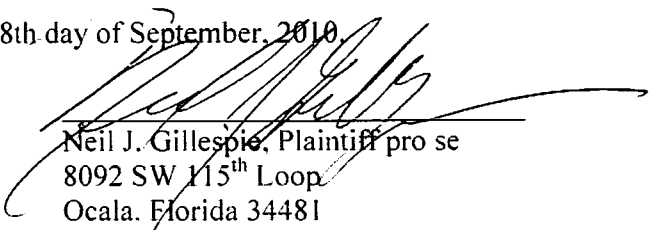
134. Gillespie's expenses in this lawsuit exceed \$75,000, including over \$37,000 in hourly attorney's fees. If not for the violation of his rights, Gillespie would have completed this litigation long ago and for a reasonable amount of time and money.

135. September 17, 2009 Attorney Seldon J. Childers calculated the Non-Pecuniary Cost of Litigation to Gillespie: "Plaintiff is likely suffering from physical and emotional ill effects resulting from the litigation, as described in Legal Abuse Syndrome, the book provided to me by Plaintiff. It is always difficult to put a dollar figure on the non-pecuniary costs of any case, and this case is no different. In attempting to evaluate the physical and emotional costs of going forward with the litigation, I considered both short and long-term effects, and the opportunity cost caused not just by direct time invested in the case but also by loss of energy related to physical and emotional side-effects. My estimate was \$100,000, but this figure is subjective and the Plaintiff may wish to adjust this figure upwards or downwards. There is 100% probability these costs will be incurred regardless of the outcome of the litigation."

WHEREFORE. Plaintiff seeks damages as provided by law, for actual damages, statutory damages, punitive damages, attorney's fees for attorneys representing or working on Plaintiff's behalf, costs, and such other or further relief as is appropriate.

Demand for Jury Trial Pursuant to Rule 38

RESPECTFULLY SUBMITTED this 28th day of September, 2010.



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