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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-OC-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

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 a 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 8:00 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

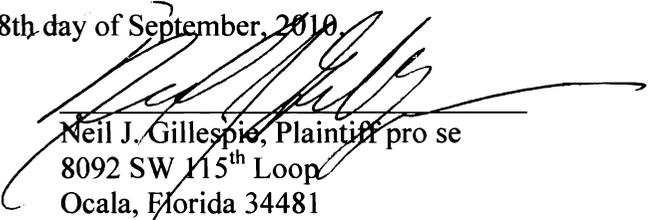
134. Gillespie's expenses in this lawsuit exceed \$75,000, including over \$37,000 in hourly attorney's fees. If not for the violation of his rights, Gillespie would have completed this litigation long ago and for a reasonable amount of time and money.

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.



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

RECEIPT OF FILING
8/11/05 G. Brandon
CLERK OF CIRCUIT COURT

1

**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. OSCA7205

DIVISION: F

DEMAND FOR TRIAL BY JURY

COMPLAINT FOR BREACH OF CONTRACT AND FRAUD

Plaintiff, NEIL J. GILLESPIE, sues defendants, BARKER, RODEMS, & COOK, P.A., a Florida professional service corporation, and WILLIAM J. COOK, a corporate officer and natural person, and alleges:

Parties

1. Plaintiff, NEIL J. GILLESPIE, resides in Ocala, Marion County, Florida. (Hereinafter called "GILLESPIE").
2. Defendant BARKER, RODEMS & COOK, P.A. is a Florida professional service corporation and law firm with offices located at 300 W. Platt Street, Suite 150, in the city of Tampa, Hillsborough County, Florida, 33606. (Hereinafter called the "LAW FIRM").
3. Defendant WILLIAM J. COOK is a lawyer, a member of the Florida Bar, a corporate officer of the LAW FIRM, and a natural person. (Hereinafter called "COOK").

EXHIBIT
1

Jurisdiction and Venue

4. This is an action for damages that exceed \$15,000.00.
5. The events complained of occurred in the city of Tampa, Hillsborough County, Florida, 33606. The LAW FIRM has offices located at 300 W. Platt Street, Suite 150, Tampa, Hillsborough County, Florida, 33606.

Background Information

6. GILLESPIE hired the LAW FIRM to represent him in litigation with Amscot Corporation. GILLESPIE and the LAW FIRM had a written Representation Contract. The litigation failed and Amscot settled for business reasons and to avoid an appeal. The LAW FIRM was not satisfied with its contractual entitlement to 45% of the Total Recovery for attorney's fees. The LAW FIRM wanted more money. In fact, the LAW FIRM took over 90% of the Total Recovery. In an effort to break the Representation Contract and legitimize taking 90% of the Total Recovery, COOK used deceit as described in this Complaint. Ultimately though, COOK lied to GILLESPIE about a Court ruling. COOK told GILLESPIE that the *United States Court of Appeals for the Eleventh Circuit* awarded the LAW FIRM \$50,000 in attorney's fees and costs, triggering a "whichever is higher clause" for Court awards. The LAW FIRM then created a false Closing Statement to effect the deception. In fact, GILLESPIE later discovered that the *United States Court of Appeals* never awarded \$50,000 to the LAW FIRM, but ruled that each party must bear their own costs and attorney's fees. The LAW FIRM's unjust enrichment was \$18,675.54.

COUNT I - BREACH OF CONTRACT

7. GILLESPIE realleges and incorporates by reference paragraphs 1 through 6, and alleges and incorporates by reference paragraphs 22 through 51.

8. GILLESPIE entered into a written Class Representation Contract with the LAW FIRM to perform legal services. (Hereinafter the “Representation Contract”). (Exhibit 1).
9. The legal service performed by the LAW FIRM was a contingency lawsuit, further identified as the matter styled Eugene R. Clement, et al. v. Amscot Corporation, Case No. 8:99-cv-2795-T-26C in the United States District Court, Middle District of Florida, Tampa Division; and on appeal Eugene R. Clement, et al. v. Amscot Corporation, Case No. 01-14761-A in the United States Court of Appeals, For the Eleventh Circuit. (Herein after called the “Action”). The subject matter was “payday loan” consumer litigation.
10. There were three plaintiffs in the Action: Eugene R. Clement, Gay Ann Blomefield, and Neil Gillespie.
11. The Action sought class action status but the LAW FIRM’s various motions for class action status were denied by the Court.
12. The Action settled in GILLESPIE’s favor on October 30, 2001. The Action settled for business reasons, and the LAW FIRM did not prevail on the merits or appeal.
13. The Total Recovery for the Action was \$56,000 (Exhibit 2).
14. The LAW FIRM refused to honor the terms of the Representation Contract with GILLESPIE when disbursing his share of the \$56,000 Total Recovery.
15. Under the terms and conditions of the Representation Contract, and Florida Bar Rule 4-1.5(f)(4)(B)(i), the LAW FIRM was entitled to \$31,325.46 calculated as follows:
 - a. Attorney’s fees of \$25,200 (45% of the Total Recovery); and
 - b. Cost and expenses, \$3,580.67; and
 - c. Expenses paid to a former law firm, \$2,544.79 (Jonathan L. Alpert).

16. Contrary to law and the Representation Contract, the LAW FIRM took \$50,000 from the Total Recovery under the guise of court-awarded attorney's fees and costs.

17. The LAW FIRM's unjust enrichment was \$18,675.54.

18. GILLESPIE's lawful share of the settlement is \$8,224.78. (Exhibit 3).

19. The LAW FIRM paid GILLESPIE \$2,000.00.

20. The LAW FIRM owes GILLESPIE \$6,224.78.

WHEREFORE plaintiff demands judgment for \$6,224.78 against defendants, together with interest, costs, expenses, and attorney's fees.

COUNT II - FRAUD

21. GILLESPIE realleges and incorporates by reference paragraphs 1 through 20.

22. On August 1, 2001, United States District Judge Richard Lazzara issued an order in the Action denying Class Certification as moot, dismissed Count I with prejudice, dismissed Counts II and III without prejudice to bring in state court, and closed the file.

23. Soon after the ruling described in paragraph 22, COOK told GILLESPIE that during a telephone conversation with lawyer John Anthony, the attorney for Amscot Corporation ("Amscot"), that John Anthony offered COOK a \$5,000 "consulting fee" or "non-refundable retainer" to refrain from appealing the ruling or filing state law claims. COOK described this payment as an "improper payoff attempt" and not an offer to settle. COOK said that "the Florida Bar likely would prohibit such an agreement." Nonetheless COOK did not report John Anthony's "improper payoff attempt" to the Florida Bar.

24. When COOK told GILLESPIE that "the Florida Bar would likely prohibit such an agreement", GILLESPIE believed that John Anthony did something unethical if not

unlawful. Because COOK did not report John Anthony's "improper payoff attempt" to the Florida Bar, GILLESPIE became suspect of COOK's motivation and alliances.

25. COOK told GILLESPIE that Amscot did not want to pay the plaintiffs anything because Amscot resented the plaintiffs for suing. COOK told GILLESPIE that this was a "sticking part" or barrier to a settlement. COOK told GILLESPIE that Amscot did not resent COOK or the LAW FIRM, and Amscot wanted to pay money to COOK and the LAW FIRM to settle the Action. COOK maintained that the "sticking part" was a \$1,000 payment to each of three plaintiffs, not a \$50,000 payment to the LAW FIRM. Because this argument was counterintuitive (and later proved false), GILLESPIE became further suspect of COOK's motivation and alliances.

26. COOK's "sticking part" argument was his segue into evading the Representation Contract with GILLESPIE. COOK deceitfully used the "sticking part" argument to frame the settlement in terms useful to the LAW FIRM and against the interests of his clients.

27. COOK falsely told GILLESPIE that the LAW FIRM incurred costs and expenses in the Action of about \$33,000. COOK used this amount as a basis to justify his \$50,000 demand from Amscot. GILLESPIE later learned that the actual costs and expenses were only \$3,580.67, plus \$2,544.79 paid a former law firm, for a total \$6,125.46.

28. On August 15, 2001, COOK wrote GILLESPIE that he would appeal the ruling described in Paragraph 22, but not file a State lawsuit, and demand \$1,000 each to settle the plaintiff's claims, and \$50,000 for the LAW FIRM's attorney's fees and costs from Amscot. COOK's offer was consistent with his "sticking part" ruse. COOK's separate negotiation with Amscot placed COOK in a position of conflict with his clients. (Ex. 4).

29. On August 16, 2001 GILLESPIE wrote COOK and specifically challenged his “sticking part” argument. (Exhibit 5). GILLESPIE wrote to COOK:

“I agree with you that the Defendant will probably not accept your settlement offer. I believe the sticking point is your request for \$50,000 in attorney’s fees and costs. I do not believe the \$1,000 request each for myself, Mr. Clement and Ms. Blomefield is a barrier to settlement. Therefore I suggest you ask for a lesser amount of attorney’s fees and costs. Given your lack of success in this matter thus far, I suggest you ask for \$10,000 in attorney’s fees and costs. I believe this is a more realistic amount. Given how poorly the case has gone up to now, I believe it is in our interest to settle quickly.”

GILLESPIE was concerned that the ultimate loss of the case would leave him indebted to Amscot for its costs and attorney’s fees. COOK’s separate negotiation with Amscot placed COOK in a position of conflict with GILLESPIE.

30. In a memo dated Monday, August 20, 2001, COOK wrote the following to memorialize his conversation with GILLESPIE: (Exhibit 6).

a. COOK: “I explained to him that I did not believe that the sticking part was created through the attorney’s fees, but rather it was the payment to the clients.”

b. COOK: “I told him of my conversation with John Anthony in which he offered to pay this firm \$5,000.00 but would not agree to pay our client’s anything.”

c. COOK: “I told him I rejected that offer. He asked me why I had not mentioned the settlement offer to him previously. I told him it was not a settlement offer. It was an improper payoff attempt.”

d. COOK: "I told him that the \$50,000.00 demand was not set in stone and we would consider the \$10,000.00 offer that he suggested.

31. Once COOK admitted to GILLESPIE that the LAW FIRM would accept \$10,000 for legal fees, anything more was lawfully part of the Total Recovery to which plaintiffs were entitled a percentage under the terms of the Representation Contract. The proposed settlement was economic in nature, for business reasons, and was not based on any legal victory, nor constrained by Truth In Lending Act (TILA) limitations or its fee-shifting provision. This settlement was market driven and COOK was rolling the dice, not collecting lawyer's fees. COOK's demand was speculative and the LAW FIRM had taken a proprietary interest in the action, under the guise of collecting lawyer's fees.

32. COOK submitted an offer to Amscot on August 20, 2001, asking for \$1,000 for each plaintiff, forgiveness of any outstanding loans (GILLESPIE did not have an outstanding loan), and \$50,000 payment to the LAW FIRM for attorney's fees and costs.

33. Amscot countered COOK's offer in the preceding paragraph with an offer to pay each plaintiff \$1,000, forgive any outstanding debts (GILLESPIE did not owe Amscot any money), and a \$10,000 payment to the LAW FIRM, in a letter dated August 24, 2001.

34. Unexpectedly Amscot offered and then paid the LAW FIRM \$50,000.

35. Likewise Amscot offered and then paid each plaintiff \$2,000.

36. The \$2,000 paid by Amscot to GILLESPIE was substantially less than \$10,000 COOK told GILLESPIE he might recover as a class-action representative. In fact the \$2,000 received was only 20%, or one-fifth, the recovery GILLESPIE expected.

37. The LAW FIRM never sent a bill to Amscot for legal services, nor provided Amscot any basis for the \$50,000 in attorney's fees and cost. Amscot unexpectedly

increased its offer to COOK by \$40,000, with little or no negotiation. COOK was happy that he did not report Mr. Anthony's prior "improper payoff attempt" to the Florida Bar.

38. Once Amscot agreed to pay the plaintiffs a monetary settlement, COOK's earlier "sticking part" argument failed as a strategy to evade the Representation Contract with GILLESPIE. Therefore COOK utilized a new ruse. COOK told GILLESPIE that the *United States Court of Appeals for the Eleventh Circuit* awarded \$50,000 in attorney's fees and costs to the LAW FIRM, and that this fact precluded recovery under the Representation Contract, citing a "whichever is higher" provision for court-awarded attorney's fees and costs.

39. The LAW FIRM prepared a phony Closing Statement dated October 31, 2001 falsely reflecting the \$50,000 court-awarded attorney's fees and costs. (Exhibit 7).

40. The Closing Statement prepared by the LAW FIRM did not list any costs and expenses. In fact the LAW FIRM incurred \$3,580.67 in costs and expenses, and paid a former law firm, Jonathan Alpert, \$2,544.79, for a total of \$6,125.46. COOK did not disclose this information to GILLESPIE until May 9, 2003, over nineteen months later. Also, the LAW FIRM did not disclose that approximately 600 hours of legal work was spent on the Amscot case for GILLESPIE's benefit until June 23, 2003, over twenty months later. Since much of this time was spent at the Jonathan Alpert law firm, and has already been paid by Mr. Alpert, this could represent double-billing by the LAW FIRM. However the details of this information remain secret and concealed at this time.

41. Informed Consent. GILLESPIE lacked the knowledge to make an informed choice when he signed the Closing Statement because of the deceptions used by COOK and the LAW FIRM described in paragraphs 27, 40, and elsewhere in this Complaint.

42. GILLESPIE relied upon COOK's false statements, and the LAW FIRM's false Closing Statement, specifically the fact that the *United States Court of Appeals for the Eleventh Circuit* awarded \$50,000 in attorney's fees and costs, and in reliance thereupon GILLESPIE approved the settlement.

43. The LAW FIRM took \$50,000 from the Total Recovery of the Action under the guise of court-awarded costs and attorney's fees on or about November 1, 2001, and paid GILLESPIE \$2,000. The LAW FIRM also paid \$2,000 each to Eugene R. Clement and Gay Ann Blomefield. This event occurred in the LAW FIRM office in the city of Tampa, Florida, Hillsborough County. (Exhibit 2).

44. On May 9, 2003 COOK disclosed to GILLESPIE the actual costs and expenses incurred by the LAW FIRM in the Action. Because of the significant discrepancy between the actual amount (\$6,125.46) and the false amount (\$33,000) that COOK said were incurred in paragraph 27, GILLESPIE further investigated the settlement.

45. GILLESPIE located the Appellate Court file and read that the *United States Court of Appeals for the Eleventh Circuit* granted a Motion for Dismissal with the parties bearing their own costs and attorney's fees. This proved the falsity of COOK's assertion that the Appellate Court awarded \$50,000 to the LAW FIRM. (Exhibit 7).

46. COOK and the LAW FIRM committed fraud because:

a. COOK's statement to GILLESPIE that the Appellate Court awarded the LAW FIRM \$50,000 in attorney's fees and costs was a material fact that was untrue, as was the LAW FIRM's Closing Statement to GILLESPIE listing court-awarded fees and costs of \$50,000. The Closing Statement's disclosure was a material fact that was untrue; and

b. The falsehood described above was known by COOK and the LAW FIRM to be untrue at the time it was made; and

c. The falsehood by COOK and the LAW FIRM was stated for the purpose of inducing GILLESPIE to approve a settlement; and

d. GILLESPIE relied upon the falsehood from COOK and the LAW FIRM as true and correct, and approved the settlement on October 30, 2001; and

e. By approving the settlement GILLESPIE suffered financial loss of \$6,224.78, by accepting the sum of \$2,000 instead of the sum of \$8,224.78 to which GILLESPIE was entitled under law and the Representation Contract.

47. GILLESPIE notified the LAW FIRM of its Breach of Contract and Fraud June 13, 2003. LAW FIRM partner Chris A. Barker responded but failed to satisfactorily explain the facts described in this complaint. Mr. Barker refused to account for the LAW FIRM's attorney's fees, and refused to honor the terms of the Representation Contract.

48. Mr. Barker wrote GILLESPIE on June 23, 2003 and terminated further discussion. Additionally Mr. Barker wrote that "Furthermore, approximately 600 hours of legal work was spent on the Amscot case for your benefit." But Mr. Barker refused to account for the hours, and it is possible that much of this time was spent at the Jonathan Alpert law firm and has already been paid by Mr. Alpert.

49. GILLESPIE wrote Mr. Barker on June 24, 2003, requesting a meeting for a explanation of the situation. Mr. Barker did not reply. GILLESPIE wrote, in part:

"Yesterday I spoke with Jonathan Alpert about this situation. He reviewed the enclosed documents, but was at a loss to explain

them. Mr. Alpert suggested that I meet with you and Bill for an explanation. I am willing to do this on neutral territory.”

50. GILLESPIE filed an ethics complaint against COOK on June 7, 2004 with the Florida Bar. The initial investigator, William L. Thompson, spent over six months on the complaint, then left employment with the Florida Bar. After changing investigators the Florida Bar wrote on February 9, 2005 that there was insufficient evidence of a violation of the Rules Regulating the Florida Bar to warrant further proceedings, and that its disposition had no effect on any further legal remedy GILLESPIE may choose. During its review, the Florida Bar used an “objective evidence” standard to reach its decision. When GILLESPIE questioned the findings, the Florida Bar could not support its decision. In essence the Florida Bar merely adopted COOK’s response, which itself was inaccurate and self-serving. Also, the Florida Bar’s inquiry was narrow, so narrow that when GILLESPIE asked if John Anthony’s “improper payoff attempt” was unethical, or if COOK was required to report the incident, the Florida Bar responded by saying that the issue was not considered and that a separate complaint must be filed. On June 7, 2005, Susan Bloemendaal, Chief Discipline Counsel wrote that GILLESPIE was “...free to pursue a lawsuit against Mr. Cook and/or his law firm should you so desire.” GILLESPIE chose a lawsuit rather than pursue another complaint or a fee grievance.

51. When GILLESPIE joined this Action as a plaintiff, he believed Amscot had violated consumer law as COOK advised. During the course

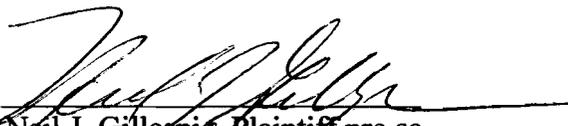
of litigation the Court ruled otherwise, and GILLESPIE accepted the fact that COOK was wrong and that Amscot acted lawfully. Also during the course of litigation it became clear to GILLESPIE that COOK was deceitful, and that the Breach of Contract and Fraud described in this Complaint were far worse than anything of which Amscot was accused. GILLESPIE recently apologized to Amscot's President, Ian Mackechnie. (Exhibit 8).

WHEREFORE plaintiff demands judgment for punitive damages in the amount of three times his loss of \$6,224.78, or \$18,674.34 for fraud against defendants, together with interest, costs, expenses, and attorney's fees.

Demand for Trial by Jury

Pursuant to Rule 1.430(b) of the Fla. R. Civ. P., plaintiff demands trial by jury.

RESPECTFULLY SUBMITTED this 11th day of August, 2005.


Neil J. Gillespie, Plaintiff pro se
8092 SW 115th Loop
Ocala, Florida 34481
Telephone: (813) 810-0151

Gillespie v. Barker, Rodems & Cook, PA, et al.

Exhibits

- | | |
|-----------|--|
| Exhibit 1 | Class Action Representation Contract |
| Exhibit 2 | Closing Statement, Barker, Rodems & Cook, PA |
| Exhibit 3 | Lawful Settlement of Action, spreadsheet |
| Exhibit 4 | August 15, 2001 letter, Cook to Gillespie |
| Exhibit 5 | August 16, 2001 letter, Gillespie to Cook |
| Exhibit 6 | August 20, 2001 Cook memorandum |
| Exhibit 7 | U.S. Court of Appeal for the Eleventh Circuit,
Motion to Dismiss with Prejudice (Granted) |
| Exhibit 8 | July 25, 2005 letter, Gillespie to Amscot |

CLASS REPRESENTATION CONTRACT

I. PURPOSE

I/We, Neil Gillespie, do hereby retain and employ the law firm of Barker, Rodems & Cook, P.A., to investigate my potential claim resulting from my payday loans with AMSCOT Corporation 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 Barker, Rodems & 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 Barker, Rodems & Cook, P.A., to advance and pay any costs and expenses it deems appropriate to the handling of my case. I/We will pay Barker, Rodems & 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 Barker, Rodems & 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 Barker, Rodems & Cook, P.A., will not seek payment from me for any expenses.



If I/we terminate this contract, then Barker, Rodems & 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 Barker, Rodems & Cook, P.A., an attorneys' fee if it is successful in obtaining any monies or other benefit on my behalf. I/We understand that Barker, Rodems & 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 Barker, Rodems & Cook, P.A., for any attorneys' fees.

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

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

I/We understand that Barker, Rodems & Cook, P.A., in its discretion, may work with other lawyers on my/our case if deemed necessary. If Barker, Rodems & 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 Barker, Rodems & 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 Barker, Rodems & 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 Barker, Rodems & Cook, P.A.

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

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

I/We understand that if Barker, Rodems & 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 Barker, Rodems & 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: _____

DATED: _____

_____ of
Barker, Rodems & Cook, P.A.
300 West Platt Street, Suite 150
Tampa, Florida 33606
813/489-1001

Client

Client

Lawful Settlement of Action

Style of Case: Eugene R. Clement, Gay Ann Blomefield, and Neil Gillespie v. AMSCOT Corporation

Total Recovery	\$ 56,000.00
Legal Fees (45%) - Barker, Rodems & Cook, P.A.	\$ 25,200.00
Costs and expenses - Barker, Rodems & Cook, P.A.	\$ 3,580.88
Costs paid to Alpert law firm	\$ 2,544.79
Total amount due Barker, Rodems, & Cook, P.A. Under the Contract and Bar Rule 4-1.5(f)(4)(B)(i)	\$ 31,325.67
Total amount due plaintiffs Under the Contract and Bar Rule 4-1.5(f)(4)(B)(i)	\$ 24,674.33
Individual amount due each of three plaintiffs	\$ 8,224.78
Amount already paid to each plaintiff by Barker, Rodems & Cook, P.A.	\$ 2,000.00
Amount owing to each plaintiff from Barker, Rodems & Cook, P.A.	\$ 6,224.78



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

August 15, 2001

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

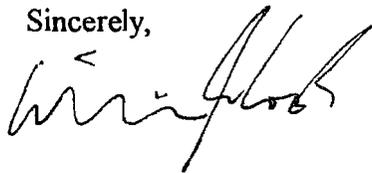
**Re: *Eugene R. Clement, individually and on behalf of others similarly situated,
AMSCOT Corporation***
Case No. : 99.2795-Civ-T-26C
Our File No. : 99-4766

Dear Neil:

This confirms that you authorized us to appeal the decision in the above-referenced case. We will not be filing a new lawsuit in State court. In addition, you authorized us to demand \$1,000.00 to settle your claim plus \$50,000.00 in attorneys' fees and costs.

Of course, we will keep you updated on the appeal and any settlement negotiations. As we discussed, however, we do not believe that the Defendant will accept our settlement offer.

Sincerely,



William J. Cook

WJC/mss



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

Telephone and Fax: (727) 823-2390

VIA FAX AND FIRST CLASS MAIL

August 16, 2001

William J. Cook, Attorney at Law
Barker, Rodems & Cook, PA
300 West Platt Street, Suite 150
Tampa, Florida 33606

**Re: Eugene R. Clement, individually and on behalf of others similarly situated,
AMSCOT Corporation**
Case No. : 99.2795-Civ-T-26C
Your File No. : 99-4766

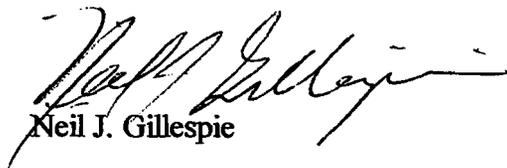
Dear Bill,

Thank you for your letter dated August 15, 2001 relative to the above captioned case. I agree with you that the Defendant will probably not accept your settlement offer. I believe the sticking point is your request for \$50,000 in attorney's fees and costs. I do not believe the \$1,000 request each for myself, Mr. Clement and Ms. Blomefield is a barrier to settlement. Therefore I suggest you ask for a lesser amount of attorney's fees and costs.

Given your lack of success in this matter thus far, I suggest you ask for \$10,000 in attorney's fees and costs. I believe this is a more realistic amount. Given how poorly the case has gone up to now, I believe it is in our interest to settle quickly.

Thank you for your kind consideration.

Sincerely,


Neil J. Gillespie

cc: Kindly provide a copy of this letter to Mr. Clement and Ms. Blomefield



MEMORANDUM

TO : File
FROM : WJC *WJC*
DATE : Monday, August 20, 2001
RE : Clement v. AMSCOT
: 99.4766

I spoke with Neil Gillespie on August 17, 2001. We had a fairly lengthy conversation about the pluses and minuses of going forward with the appeal and the settlement offer. I explained to him that I did not believe that the sticking part was created through the attorneys' fees, but rather it was the payment to the clients. I told him of my conversation with John Anthony in which he offered to pay this firm \$5,000.00 but would not agree to pay our clients anything. I told him that I rejected that offer. He asked me why I had not mentioned the settlement offer to him previously. I told him that it was not a settlement offer. It was an improper payoff attempt. At the end of the conversation, when I told him that I would wait until Monday before I sent the settlement offer, he told me that that was not necessary. He simply wanted to advise me that he was not necessarily happy with the \$50,000.00 settlement demand. I told him that the \$50,000.00 demand was not set in stone and we could consider the \$10,000.00 offer that he suggested. I told him that it was not likely that we would receive such an offer, however.

WJC

WJC/mss



IN THE UNITED STATES COURT OF APPEALS

FOR THE ELEVENTH CIRCUIT

FILED
U.S. COURT OF APPEALS
ELEVENTH CIRCUIT

No. 01-14761-AA

DEC 07 2001

EUGENE R. CLEMENT,
individually and on behalf of others similarly
situated,

THOMAS K. KAHN

CLERK
Plaintiff-Appellant,

GAY ANN BLOMEFIELD,
NEIL GILLESPIE,

8: CA-CV-2795-T-2C EHS

Plaintiffs-Intervenors-
Counter-Defendants-Appellants,

versus

AMSCOT CORPORATION,
A Florida Corporation,

Defendant-Intervenor-Counter
-Claimant-Appellee.

On Appeal from the United States District Court for the
Middle District of Florida

BEFORE: EDMONDSON and BARKETT, Circuit Judges.

BY THE COURT:

The parties joint stipulation for dismissal of this appeal
with prejudice, which is construed as a motion to dismiss this
appeal with prejudice, with the parties bearing their own costs
and attorney's fees, is GRANTED.

A TRUE COPY - ATTESTED:
CLERK U.S. COURT OF APPEALS
ELEVENTH CIRCUIT

BY: Joe Cannon
DEPUTY CLERK
ATLANTA, GEORGIA



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

Telephone: (813) 810-0151

July 25, 2005

Ian Mackechnie, President
Amscot Corporation
600 N. Westshore Blvd., 12th Floor
Tampa, Florida 33609

RE: Clement, et al. v. Amscot Corporation, Case No. 8:99-cv-2795-T-26C, US District Court, Middle District Florida, Tampa Division; on appeal, Case No. 01-14761-A US Court of Appeals, For the Eleventh Circuit

Dear Mr. Mackechnie,

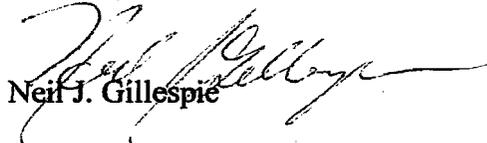
I was a plaintiff in the above captioned lawsuit. While this action is settled, I regret becoming involved, and was pressured into it by my lawyer, William Cook. I am sorry for the consequences you suffered. About two years ago I found discrepancies in the case file. This is part of my attempt to uncover the truth. As I see it, you paid \$43,000.00 too much to settle this case. Here's why.

Prior to my involvement in the above captioned lawsuit, Mr. Cook represented me in a lawsuit against ACE, America's Cash Express, for payday loan roll-over transactions. The lawsuit was joined by Florida Attorney General Robert Butterworth. I still believe the ACE litigation was justified. However, in my view Amscot was not as culpable as ACE, and I initially declined Mr. Cook's solicitation to join the lawsuit. But Mr. Cook said that I was selfish for not suing Amscot, and I relented.

During the course of litigation it became apparent to me that Mr. Cook and his associates were incompetent and not truthful. During the settlement negotiations I tried to settle this case for \$10,000.00 in legal fees and \$1,000.00 to each of the three plaintiffs (see copy of my letter, enclosed). You ultimately paid \$56,000.00 to settle, and I believe this was the result of our lawyers' collusion. This is my opinion, and I welcome any supporting evidence. In the alternative, perhaps your lawyer John Anthony was just a very poor negotiator, and you paid \$43,000.00 too much to settle the lawsuit.

I filed a complaint against William Cook with the Florida Bar (TFB No. 2004-11,734(13C) to no avail. I am available to discuss this further if you wish. Thank you.

Sincerely,


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: F

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

Defendants.

ANSWER, AFFIRMATIVE DEFENSES AND COUNTERCLAIM

Defendants, Barker, Rodems & Cook, P.A. and William J. Cook, answer Plaintiff's Complaint for Breach of Contract and Fraud (Complaint), demand trial by jury, and allege:

1. As to paragraph 1 of the Complaint, Defendants are without knowledge and therefore deny the allegations.
2. As to paragraph 2 of the Complaint, Defendants admit the allegations.
3. As to paragraph 3 of the Complaint, Defendants admit the allegations.
4. As to paragraph 4 of the Complaint, Defendants deny the allegation.
5. As to paragraph 5 of the Complaint, Defendants admit that Barker, Rodems & Cook, P.A. (BRC) has offices located as alleged; otherwise, Defendants deny the allegations.
6. As to paragraph 6 of the Complaint, Defendants admit that Plaintiff hired BRC to represent him; otherwise, denied.

EXHIBIT

2

BREACH OF CONTRACT

7. As to paragraph 7 of the Complaint, Defendants reallege their responses to paragraphs 1-6 and 22-51 of the Complaint.

8. As to paragraph 8 of the Complaint, Defendants admit that Plaintiff and Defendant BRC entered into a contract; otherwise denied. Denied that Exhibit "1" is a true and correct copy of the executed contract.

9. As to paragraph 9 of the Complaint, Defendants deny the allegations.

10. As to paragraph 10 of the Complaint, Defendants admit that it represented the three people named in the lawsuit against Amscot.

11. As to paragraph 11 of the Complaint, Defendants admit the allegations.

12. As to paragraph 12 of the Complaint, Defendants admit that Defendant BRC's lawsuit on behalf of the plaintiffs in that action was terminated before the appeal was completed or before there was a decision on the merits; otherwise denied.

13. As to paragraph 13 of the Complaint, Defendants deny the allegations.

14. As to paragraph 14 of the Complaint, Defendants deny the allegations.

15. As to paragraph 15 of the Complaint, Defendants deny the allegations.

16. As to paragraph 16 of the Complaint, Defendants deny the allegations.

17. As to paragraph 17 of the Complaint, Defendants deny the allegations.

18. As to paragraph 18 of the Complaint, Defendants deny the allegations.

19. As to paragraph 19 of the Complaint, Defendants deny the allegations.

20. As to paragraph 20 of the Complaint, Defendants deny the allegations.

FRAUD

21. As to paragraph 21 of the Complaint, Defendants reallege their responses to paragraphs 1-20.

22. As to paragraph 22 of the Complaint, Defendants admit the allegations.

23. As to paragraph 23 of the Complaint, Defendants admit that Defendant Cook spoke to Plaintiff about telephone conversations with Anthony; otherwise, denied.

24. As to paragraph 24 of the Complaint, Defendants are without knowledge as to Plaintiff's beliefs, and therefore deny the allegations.

25. As to paragraph 25 of the Complaint, Defendants admit that Defendant Cook spoke to Plaintiff about certain matters regarding negotiations or communications with Amscot; otherwise denied.

26. As to paragraph 26 of the Complaint, Defendants deny the allegations.

27. As to paragraph 27 of the Complaint, Defendants deny the allegations.

28. As to paragraph 28 of the Complaint, Defendants admit that Defendant Cook wrote to Gillespie; otherwise, denied.

29. As to paragraph 29 of the Complaint, Defendants admit that Plaintiff wrote to Defendant Cook; otherwise, denied.

30. As to paragraph 30 of the Complaint, Defendants admit that Defendant Cook wrote a memorandum and that Exhibit "6" is a true and correct copy; otherwise denied.

31. As to paragraph 31 of the Complaint, Defendants deny the allegations.

32. As to paragraph 32 of the Complaint, Defendants admit that an offer was submitted to Amscot stating "our clients are willing to accept \$1,000.00 each, representing the

amount of their individual TILA statutory damages. They would also want any outstanding loans forgiven. In addition, we would accept \$50,000.00 to settle this firm's outstanding attorneys' fees and costs."

33. As to paragraph 33 of the Complaint, Defendants admit the allegations.

34. As to paragraph 34 of the Complaint, Defendants deny the allegations.

35. As to paragraph 35 of the Complaint, Defendants admit that Amscot offered and then paid each plaintiff \$2,000.00; otherwise, denied.

36. As to paragraph 36 of the Complaint, Defendants deny the allegations.

37. As to paragraph 37 of the Complaint, Defendants deny the allegations.

38. As to paragraph 38 of the Complaint, Defendants deny the allegations.

39. As to paragraph 39 of the Complaint, Defendants deny the allegations.

40. As to paragraph 40 of the Complaint, Defendants deny the allegations.

41. As to paragraph 41 of the Complaint, Defendants deny the allegations.

42. As to paragraph 42 of the Complaint, Defendants deny the allegations.

43. As to paragraph 43 of the Complaint, Defendants deny the allegations.

44. As to paragraph 44 of the Complaint, Defendants deny the allegations.

45. As to paragraph 45 of the Complaint, Defendants are without knowledge as to whether Plaintiff did what he said he did, and therefore deny the allegations; otherwise, denied.

46. As to paragraph 46 of the Complaint, Defendants deny the allegations.

47. As to paragraphs 47-50, the Court struck those allegations in the Order on Defendants' motion to Dismiss and Strike entered January 13, 2006.

48. As to paragraph 51 of the Complaint, Defendants deny the allegations.

49. Any allegation of the Complaint not specifically admitted is hereby denied.

AFFIRMATIVE DEFENSES

50. Count I is barred on its face by the doctrines of waiver and estoppel.

51. Count II is barred by the economic loss rule. Count II is not a separate transaction from Count I, and under Florida law, a tort claim arising from an alleged breach of contract may be brought only when the tort is independent of the alleged breach of contract claim.

52. Both counts must be dismissed as to William J. Cook because Defendant Cook acted at all times within the course and scope of his employment with Defendant Barker, Rodems & Cook, P.A., did not act on his own behalf, and was not a party to the contract at issue.

53. As a matter of law, Plaintiff cannot recover attorney's fees because he is proceeding pro se.

54. Before commencement of this action Defendants discharged Plaintiff's claim and each item of it by payment.

55. On November 1, 2001, Defendant BRC delivered to Plaintiff and Plaintiff accepted from Defendant \$2,000.00 in full satisfaction of Plaintiff's claims.

56. On October 30, 2001 and November 1, 2001, and after Plaintiff's claim in this action accrued, Plaintiff released Defendants from it, a copy of the Closing Statement being attached as Exhibit "1".

57. Plaintiff has unclean hands. On June 13, 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).

58. On October 30, 2001 and November 1, 2001, Plaintiff agreed to new terms and conditions between Plaintiff and Defendant BRC, thereby constituting a novation.

59. Plaintiff made false statements or misrepresentations to Defendants, on which Defendants relied, regarding settlement of the underlying lawsuit, and therefore, as a matter of law, Plaintiff cannot recover against Defendants in this action.

60. Plaintiff is estopped from taking a contrary position in this matter, that he was entitled to more than \$2,000.00, from positions taken in other forums that Amscot overpaid by \$43,000.00 in settling the underlying claims.

WHEREFORE, Defendants Barker, Rodems & Cook, P.A. and William J. Cook demand judgment in their favor, costs of this action and such further and other relief as the Court deems appropriate.

COUNTERCLAIMS

Defendants BRC and William J. Cook counterclaim against Plaintiff Neil J. Gillespie and allege:

61. This is an action for damages exceeding \$15,000.00, exclusive of interest and costs.

62. On information and belief, Plaintiff/Counterdefendant is a resident of Ocala, Marion County, Florida.

63. Defendant/Counterclaimant BRC is a Florida corporation with principal

operations in Hillsborough County, Florida.

64. Defendant/Counterclaimant William J. Cook is a resident of Tampa, Hillsborough County, Florida.

65. On or about July 25, 2005, Plaintiff/Counterdefendant composed and published a letter, a copy being attached as Exhibit "2", in which among other things, the following false, scandalous and defamatory statements concerning Defendants/Counterclaimants were made: (a) Plaintiff/Counterdefendant was "pressured into" the lawsuit against Amscot; (b) Amscot paid "\$43,000 too much to settle this case"; (c) "Mr. Cook said I was selfish for not suing Amscot"; (d) "Mr. Cook and his associates were incompetent and not truthful"; and, (e) Amscot's and Plaintiff/Counterdefendant's attorneys engaged in "collusion" to cause Amscot to pay a higher settlement amount than Plaintiff/Counterdefendant wanted.

66. Each of the aforementioned statements in Plaintiff/Counterdefendant's July 25, 2005 letter was false, made by Plaintiff/Counterdefendant knowing they were false or deliberately misleading or both. Plaintiff/Counterdefendant's intent was to injure or maliciously malign and tarnish Defendants/Counterclaimants' professional reputations and stature in the community, or both.

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).

68. The false statements by Plaintiff/Counterdefendant have subjected or will subject Defendants/Counterclaimants to distrust, ridicule, contempt or disgrace, or injured them in their trade or profession.

COUNT I
LIBEL

69. This count is brought against Plaintiff/Counterdefendant by Defendant/CounterClaimant BRC.

70. Defendant/CounterClaimant BRC realleges paragraphs 61-68.

71. As a result of Plaintiff/Counterdefendant's false statements, Defendant/Counterclaimant BRC suffered damage to its good name and reputation; the losses and expenses are permanent and continuing and it will suffer the losses in the future.

WHEREFORE, Defendant/Counterclaimant BRC demands judgment for damages, interest, costs, and for all other relief, legal and equitable, that this Court deems appropriate, and a trial by jury of all issues so triable.

COUNT II
LIBEL

72. This count is brought against Plaintiff/Counterdefendant by

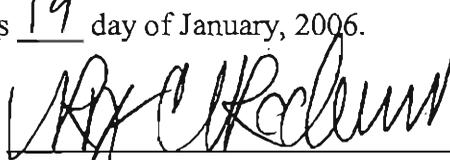
Defendant/CounterClaimant Cook.

73. Defendant/CounterClaimant BRC realleges paragraphs 61-68.

74. As a result of Plaintiff/Counterdefendant's false statements, Defendant/Counterclaimant Cook suffered humiliation and damage to his good name and reputation. The losses and expenses are permanent and continuing, and he will suffer the losses in the future.

WHEREFORE, Defendant/Counterclaimant Cook demands judgment for damages, interest, costs, and for all other relief, legal and equitable, that this Court deems appropriate, and a trial by jury of all issues so triable.

RESPECTFULLY SUBMITTED this 19 day of January, 2006.



RYAN CHRISTOPHER RODEMS, ESQUIRE

Florida Bar No. 947652

Barker, Rodems & Cook, P.A.

300 West Platt Street, Suite 150

Tampa, Florida 33606

Telephone: 813/489-1001

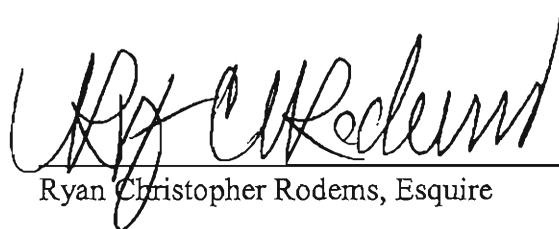
Facsimile: 813/489-1008

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 has been furnished via U.S. Mail to Neil J. Gillespie, 8092 SW 115th Loop, Ocala, Florida 34481, this 19 day of January, 2006.



Ryan Christopher Rodems, Esquire

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

Telephone: (813) 810-0151

July 25, 2005

Ian Mackechnie, President
Amscot Corporation
600 N. Westshore Blvd., 12th Floor
Tampa, Florida 33609

RE: Clement, et al. v. Amscot Corporation, Case No. 8:99-cv-2795-T-26C, US District Court, Middle District Florida, Tampa Division; on appeal, Case No. 01-14761-A US Court of Appeals, For the Eleventh Circuit

Dear Mr. Mackechnie,

I was a plaintiff in the above captioned lawsuit. While this action is settled, I regret becoming involved, and was pressured into it by my lawyer, William Cook. I am sorry for the consequences you suffered. About two years ago I found discrepancies in the case file. This is part of my attempt to uncover the truth. As I see it, you paid \$43,000.00 too much to settle this case. Here's why.

Prior to my involvement in the above captioned lawsuit, Mr. Cook represented me in a lawsuit against ACE, America's Cash Express, for payday loan roll-over transactions. The lawsuit was joined by Florida Attorney General Robert Butterworth. I still believe the ACE litigation was justified. However, in my view Amscot was not as culpable as ACE, and I initially declined Mr. Cook's solicitation to join the lawsuit. But Mr. Cook said that I was selfish for not suing Amscot, and I relented.

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I filed a complaint against William Cook with the Florida Bar (TFB No. 2004-11,734(13C) to no avail. I am available to discuss this further if you wish. Thank you.

Sincerely,


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 professional service corporation,

WILLIAM J. COOK,

Defendants.

CASE NO.: 05-CA-7205

RECEIVED

DIVISION: C

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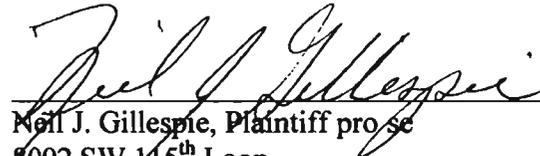
CLERK OF CIRCUIT COURT
HILLSBOROUGH COUNTY, FL

DEMAND FOR TRIAL BY JURY

MOTION FOR LEAVE TO SUBMIT
PLAINTIFF'S FIRST AMENDED COMPLAINT

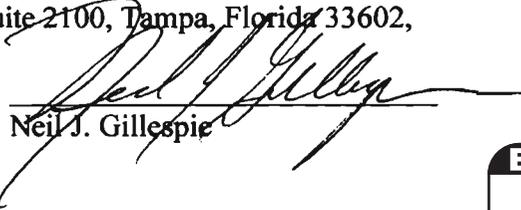
Plaintiff pro se Neil J. Gillespie moves for leave to submit Plaintiff's First Amended Complaint pursuant to Rule 1.190(a), Fla.R.Civ.P. A party may amend a pleading once as a matter of course. Leave of court shall be given freely when justice so requires. A copy of the amended pleading is attached to this motion.

RESPECTFULLY SUBMITTED this 5th day of May, 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 by hand to Ryan Christopher Rodems, attorney, Barker, Rodems & Cook, P.A., Attorneys for Defendants, 400 North Ashley Drive, Suite 2100, Tampa, Florida 33602, this 5th day of May, 2010.


Neil J. Gillespie

EXHIBIT

3

**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 professional service corporation,

DIVISION: C

WILLIAM J. COOK,

DEMAND FOR TRIAL BY JURY

RYAN CHRISTOPHER RODEMS,

CHRIS A. BARKER,

Defendants.

PLAINTIFF'S FIRST AMENDED COMPLAINT

Plaintiff, NEIL J. GILLESPIE, sues defendants, BARKER, RODEMS, & COOK, P.A., a Florida professional service corporation, and WILLIAM J. COOK, RYAN CHRISTOPHER RODEMS, and CHRIS A. BARKER, corporate officers and natural persons, and alleges:

Parties

1. Plaintiff, NEIL J. GILLESPIE, resides in Ocala, Marion County, Florida. ("Plaintiff").
2. Defendant BARKER, RODEMS & COOK, P.A. is a Florida professional service corporation and law firm with offices located at 400 North Ashley Drive, Suite 2100 in the city of 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.

3. Defendant CHRIS A. BARKER is licensed attorney, Florida Bar ID no. 885568, a corporate officer of BRC, and a natural person. (“Mr. Barker” or “Barker”). Mr. Barker is added to Plaintiff’s First Amended Complaint under the relation back doctrine, Fla.R.Civ.P., Rule 1.190(c). Mr. Barker was a partner of the predecessor Alpert firm.

4. Defendant RYAN CHRISTOPHER RODEMS is a licensed attorney, Florida Bar ID no. 947652, a corporate officer of BRC, and a natural person. (“Mr. Rodems” or “Rodems”). Rodems is added to Plaintiff’s First Amended Complaint under the relation back doctrine, Fla.R.Civ.P., Rule 1.190(c). Mr. Rodems was a partner of the predecessor Alpert firm.

5. Defendant WILLIAM J. COOK is a licensed attorney, Florida Bar ID no. 986194, a corporate officer of BRC, and a natural person. (“Mr. Cook” or “Cook”). Mr. Cook was a partner of the predecessor Alpert firm.

Jurisdiction and Venue

6. This is an action for damages that exceed \$15,000.00.

7. The events complained of occurred in Hillsborough County, Florida. BRC has offices located in Hillsborough County, Florida.

8. Mr. Barker, Mr. Rodems, and Mr. Cook reside in Hillsborough County, Florida.

Background

9. The Alpert law firm sought Plaintiff to serve as class-action representative in two separate lawsuits, one against ACE Cash Express and one against AMSCOT Corporation. The litigation was over so-called “payday loans” which are delayed deposit check cashing schemes that can result in usurious rates of interest for the consumer. The Alpert firm needed Plaintiff to intervene and save the AMSCOT case from dismissal as its initial plaintiff Eugene Clement was unqualified. Defendants assumed the case after the Alpert

firm imploded. Defendants later failed to prevail on the merits, and AMSCOT settled for business reasons. In settling AMSCOT, Defendants broke the contingent fee agreement with Plaintiff, lied about a claim to \$50,000 in “court-awarded fees and costs” and wrongfully took over 90% of the total recovery for themselves.

The Florida Attorney General intervened in the ACE class-action. Defendants did not prevail on the merits is ACE either. Defendants represented Plaintiff so poorly that he called opposing counsel for help and negotiated his own settlement. The Florida AG did better for its constituencies. The AG obtained \$250,000 for the Florida State University School of Law, and \$250,000 for the Department of Banking and Finance. The AG also obtained loan forgiveness for many consumers. Defendants finished poorly for their remaining client Eugene Clement, and later split their attorney’s fees with him.

During the course of representation, Mr. Barker, Mr. Rodems and Mr. Cook conspired to exploit their clients, broke bar rules, and breached their duty to clients. Defendants’ formed their firm in secret while working for the Alpert firm. The charade went on for months. Co-conspirators Barker, Rodems and Cook secretly arranged to take clients, cases, and employees away from Jonathan Alpert. Once Defendants controlled the AMSCOT case, they stopped representing the interest of Plaintiff. Defendants hijacked the case for their own benefit. They disobeyed Plaintiff’s instructions to settle. Plaintiff became a hostage in a case controlled by three bullies with law degrees.

After taking 90% of the AMSCOT settlement by fraud, Defendants relied upon the parol evidence rule to enforce their scam. When Plaintiff complained to the Florida Bar, Defendants accused him of extortion. When Plaintiff later alerted AMSCOT,

Defendants sued him for libel. It was all part of a corrupt business model that also involved other clients of Barker, Rodems & Cook, PA.

General Allegations

10. Plaintiff realleges and incorporates by reference paragraphs 1 through 9.

11. Barker, Rodems & Cook, PA (“BRC”) is a law firm and Florida professional service corporation formed August 4, 2000. The firm employs three lawyers, Mr. Barker, Mr. Rodems, and Mr. Cook, and various support staff.

12. Prior to the formation of BRC, individual Defendants Mr. Barker, Mr. Rodems, and Mr. Cook were employed at Alpert, Barker, Rodems, Ferrentino & Cook, P.A., a law firm led by Jonathan Louis Alpert, Florida Bar no. 121970. (“Alpert firm”).

13. BRC and the Alpert firm existed concurrently for a period of about four (4) months, August 4, 2000 through December 12, 2000. During that time Mr. Barker, Mr. Rodems, and Mr. Cook were engaged in a conflict of interest and divided loyalties with their clients, litigation, and law partners, especially Mr. Alpert.

14. In early December 1999 the Alpert firm commenced at least three separate class action lawsuits with plaintiff Eugene R. Clement. After the Alpert firm imploded all three cases were assumed by Defendants, who failed to prevail on the merits in any case.

a. On December 9, 1999 the Alpert firm filed a class action complaint in United States District Court, Middle District of Florida, Tampa Division, Eugene R. Clement v. AMSCOT Corporation, case no. 99-2795-CIV-T-26C. (“AMSCOT”). The action was based on “payday lending” and alleged violation of federal and state laws. Mr. Alpert signed the complaint as lead attorney in the lawsuit. Plaintiff was later sought to intervene to save this action from dismissal because Mr. Clement was unqualified.

b. On December 6, 1999 the Alpert firm and Mr. Clement commenced a class action complaint in United States District Court, Middle District of Florida, Tampa Division, Eugene R. Clement v. Payday Express, Inc., case no. 99-2768-CIV-T-23C. (“Payday Express”). The action was based on “payday lending” and alleged violation of federal and state laws. Mr. Alpert signed the complaint as lead attorney in the lawsuit. Plaintiff was not involved in this lawsuit, but the outcome of this case is pertinent to Plaintiff’s claim that Defendants were not entitled to “court-awarded fees and costs”.

c. On December 6, 1999 the Alpert firm and Mr. Clement commenced a lawsuit state court, Eugene R. Clement v. ACE Cash Express, Inc., case no. 99-09730, Circuit Court for the Thirteenth Judicial Circuit in Hillsborough County. (“ACE”). The action was based on “payday lending” and alleged a violation of the Florida Deceptive and Unfair Trade Practices, sections 501.201 to 501.23 of the Florida Statutes. Plaintiff’s lawsuit against ACE would later be consolidated with this case, and the Florida Attorney General would later intervene in this action.

15. The AMSCOT and Payday Express cases each pled three counts, one federal and two state. Count I alleged violation of the Federal Truth in Lending Act (TILA). Count II alleged violation of state usury laws pursuant to sections 687.02, 687.03, and 687.04 Florida Statutes. Count III alleged violation of the Florida Deceptive and Unfair Trade Practices Act, sections 501.201 to 501.23 Florida Statutes. A count was later added to the Payday Express case alleging violation of civil RICO under 18 U.S.C. § 1962(c) which was later dismissed.

16. The lead plaintiff in the AMSCOT case, Eugene R. Clement, was unqualified to serve as a class representative and doomed the case from the outset. AMSCOT’s lawyer,

John Anthony, challenged the ability of Mr. Clement to serve as class representative in AMSCOT's Response in Opposition to Clement's Motion for Class Certification and Memorandum of Law in Support. Mr. Anthony wrote: "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).

17. United States District Judge Richard A. Lazzara commented on Mr. Clement's inability to serve as class representative in an Order of September 20, 2000 compelling Clement's testimony: "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.

Plaintiff Referred to Defendants

18. Florida Department of Banking and Finance attorney Susan Sandler referred Plaintiff to the Alpert firm for “payday loans” he could no longer pay. Plaintiff owed a total principal balance of \$2,186.27 on six “payday loans” despite having paid \$4,081.08 in fees and costs on the loans over a two year period.

19. Plaintiff met Mr. Alpert at his law firm at 100 South Ashley Drive, Tampa, Florida, December 28, 1999. Mr. Cook was present and requested Plaintiff’s records of transactions with AMSCOT Corporation. At that time Plaintiff did not owe AMSCOT any money but did have five other outstanding “payday loans” to EZ Check Cashing, Check ‘n Go, ACE Cash Express, Check Smart, and America\$h. Plaintiff settled pro se with National Cash Advance on December 24, 1999.

<u>Company</u>	<u>Loan amount</u>	<u>Total interest paid</u>	<u>Current balance (NSF)</u>
EZ Check Cashing	\$450.00	\$917.50	\$500.00 (later settled pro se)
Check ‘n Go	\$300.00	\$876.25	\$338.00
ACE	\$300.00	\$1,108.20	\$336.94
AMSCOT	\$100.00	\$148.47	\$ ---
National Cash Advance	\$300.00	\$884.00	338.00 (settled pro se)
Check Smart	\$300.00	\$76.66	\$338.33
America\$h	\$300.00	\$70.00	\$335.00
<u>Total</u>	<u>\$2,050.00</u>	<u>\$4,081.08</u>	<u>\$2,186.27</u>

Plaintiff listened to what the lawyers said about “payday loans” and told them he would be in touch if he decided to proceed.

Plaintiff Becomes a Client of the Alpert Firm

20. Mach 20, 2000 Plaintiff met Mr. Cook who agreed to investigate his claims against ACE Cash Express and America\$h. Mr. Cook declined to represent Plaintiff’s

claims against EZ Check Cashing¹ or Check ‘n Go². Mr. Cook said Plaintiff may benefit from the AMSCOT case, which was already being litigated.

21. March 21, 2000 Plaintiff signed a Class Representation Contract with Alpert, Barker, Rodems, Ferrentino & Cook, P.A. to investigate potential claims from transactions with ACE Cash Express and America\$³. Mr. Cook signed the contingent fee agreement for the Alpert firm. (Exhibit 1).

22. April 12, 2000 Mr. Cook called Plaintiff to copy his transactions with ACE Cash Express. Plaintiff produced his ACE file the next day at the Alpert firm.

23. April 14, 2000 a class action complaint was filed, Neil Gillespie v. ACE Cash Express, Inc., case no. 8:00-CV-723-T-23B, in United States District Court, Middle District of Florida, Tampa Division. (“ACE”). (Exhibit 1). The ACE lawsuit pled three counts, one federal and two state. Count I alleged violation of the Federal Truth in Lending Act (TILA). Count II alleged violation of state usury laws pursuant to sections 687.02, 687.03, and 687.04 Florida Statutes. Count III alleged violation of the Florida Deceptive and Unfair Trade Practices Act, sections 501.201 to 501.23 Florida Statutes. Mr. Cook⁴ signed the complaint for Alpert, Barker, Rodems, Ferrentino & Cook, P.A. The lawsuit was based on “payday lending” alleged violation of federal and state laws. The Alpert firm represented Plaintiff on a contingent fee basis. Plaintiff believed the

¹ Gillespie later settled this matter pro se.

² Gillespie was part of a class that settled claims in Reuter v. Check ‘N Go of Florida, Inc., Fifteenth Judicial Circuit, Palm Beach County, Florida, case no.: 502001CA001164XXOCAI.

³ On May 3, 2000, Mr. Cook wrote Gillespie that he would not represent him in a claim against America\$.

⁴ On April 30, 2000, Gillespie wrote Mr. Cook about errors in the Complaint, that paragraphs 19 and 20 were incomplete, and that paragraphs 14 and 15 were repeated. Mr. Cook ignored the errors, and Gillespie again wrote Mr. Cook on May 7, 2000, citing his carelessness, lack of proofreading, and unprofessional attitude. All of this is more evidence of Defendants incompetence.

contract he signed with Mr. Cook March 21, 2000 was a contingent fee agreement regulated by The Florida Bar.

24. On or about May 19, 2000, the Florida Attorney General unilaterally served a subpoena duces tecum upon Ace Cash Express, Inc.

25. On August 1, 2000 Neil Gillespie v. ACE Cash Express, Inc., case no. 8:00-CV-723-T-23B was consolidated with Eugene R. Clement v. ACE Cash Express, Inc., which was removed to federal court March 27, 2000, case no. 8:00-CV-593-T-26C (former case no. 99-09730, Circuit Court for the Thirteenth Judicial Circuit in Hillsborough County).

Mr. Alpert Attacks Attorney Arnold Levine - Mr. Rodems a Witness

26. 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 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 Plaintiff that Mr. Alpert attacked attorney Arnold Levine.

27. 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.

Mr. Alpert Runs for State Attorney After Suicide of Harry Lee Coe

28. On or about July 20, 2000 Mr. Alpert became a candidate for state attorney for Hillsborough County⁵. 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. A report on the matter showed Mr. Coe had \$5,000 in bad check fees alone. The tragedy shows the serious societal problems created by excessive bank fees.

29. Defendants' deceived Plaintiff by their financial support of Mr. Alpert for state attorney, while concealing his recent criminal behavior. Each made a \$500.00 contribution to the Alpert campaign, the maximum allowed under Florida law. Records from the Florida Division of Elections show the following contributions:

- a. Chris Barker made a \$500.00 contribution on July 21, 2000
- b. Ryan Christopher Rodems made a \$500.00 contribution on July 21, 2000
- c. William J. Cook made a \$500.00 contribution on July 26, 2000.

Political Crusade Against Payday Loans Hurts Lawsuit

30. Mr. Alpert campaigned on his record with "payday loan companies". His political advertisements stated that Jonathan Alpert has spent his life standing up for working people and protecting consumers, and that "The Alpert Record" has "Protected working families by taking on payday loan companies". The paid political advertisement stated that "Now, he wants to take that experience and fight to protect us as our State Attorney. He will fight for us - and he knows how to get results!"

31. Plaintiff believed in fighting "payday loan companies" and supported Alpert's campaign with a \$25 contribution. Plaintiff mailed his \$25 check to Mr. Cook at the Alpert firm together with a letter dated August 23, 2000. Mr. Cook delivered Plaintiff's

⁵ Mr. Alpert was defeated and eliminated in the September 5, 2000 primary election.

check to the Alpert campaign. Plaintiff received a “thank you” letter from Mr. Alpert dated August 31, 2000.

32. Mr. Alpert’s political crusade against “payday loan companies” was detrimental to the AMSCOT lawsuit, according to AMSCOT’s Response in Opposition to Clement’s Motion for Class Certification and Memorandum of Law in Support. AMSCOT’s lawyer John Anthony wrote: “Finally, there are some serious questions as to whether Jonathan L. Alpert, Esquire will properly prosecute this class action for the benefit of the class. Specifically, Mr. Alpert is currently running for the position of state attorney and has made it clear that one of his primary platforms is that he will, if elected, pursue criminal action against the payday advance industry. AMSCOT is in the process of obtaining a copy of the transcript from a recent television show wherein Mr. Alpert made his intentions clear. Accordingly, it is likely that Mr. Alpert is running for elected office on this lawsuit, and that, accordingly, his motives in prosecuting the lawsuit may very likely be different than those of the class he is seeking to represent.”

Defendants Form Law Firm In Secret: Barker, Rodems & Cook, PA

33. 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. Defendants formed their new law firm in secret from Jonathan Alpert, rented office space, and acquired things needed to open a new law office. Defendants later hired-away staff from the Alpert firm, including a receptionist and a legal secretary. Defendants worked on their plans quietly, in secret, to the extent possible. Defendants did not publicly announce the formation of their new law firm until December 6, 2000. (Exhibit 3). Prior to that time, Mr. Cook told Plaintiff that he and Mr. Barker and Mr. Rodems

formed their own law firm, and asked Plaintiff to keep the information secret from Mr. Alpert. Defendants' double-dealing and deception against Mr. Alpert placed Plaintiff in a position of conflict and divided loyalties with the lawyers and law firm representing him.

Defendants Pressured Plaintiff to Intervene in the AMSCOT Lawsuit

34. Mr. Cook was under pressure to replace the unqualified Mr. Clement as lead plaintiff in the AMSCOT lawsuit to prevent its dismissal. Mr. Cook solicited Plaintiff to intervene in the AMSCOT lawsuit to save the litigation.

35. Plaintiff declined to sue AMSCOT a year earlier during his initial meeting with Mr. Cook on December 28th, 1999. Plaintiff did not owe AMSCOT money. Plaintiff'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. Plaintiff wanted to concentrate his effort resolving matters with the remaining five "payday loan" companies. Plaintiff'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.

36. Plaintiff explained the circumstances the preceding paragraph to Mr. Cook, but Cook continued to solicit Plaintiff to sue AMSCOT. When Plaintiff argued to Mr. Cook that his exposure with AMSCOT was limited, Cook responded that Plaintiff's position was selfish. Mr. Cook pressured Plaintiff to sue AMSCOT, based on Plaintiff'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. Mr. Cook assured Plaintiff that AMSCOT had, in fact, committed the violations plead in the class-action complaint.

37. Mr. Cook's pressure on Plaintiff to sue AMSCOT created a conflict with Plaintiff because Mr. Cook already represented Plaintiff in the ACE lawsuit. Plaintiff wanted to keep Mr. Cook happy for the benefit of Plaintiff's interest in the ACE lawsuit.

38. Mr. Cook provided Plaintiff pleadings from the AMSCOT lawsuit even though he was not yet a party. In a letter dated September 25, 2000, Mr. Cook provided Plaintiff an Order he received in the AMSCOT case. Plaintiff felt pressured that Cook provided him pleadings in the AMSCOT lawsuit where he was not a party together with information about the ACE lawsuit. Mr. Cook was linking Plaintiff, AMSCOT and ACE together.

Defendants Offer Plaintiff Incentives to Sue AMSCOT Corporation

39. Mr. Cook offered Plaintiff a number of incentives to sue AMSCOT, because recovery of \$148.47 Plaintiff paid in fees to AMSCOT was not compelling. Mr. Cook offered Plaintiff the following incentives to sue AMSCOT:

a. Mr. Cook told Plaintiff that he would receive a fee for serving as a class representative, and the amount awarded by the Court to compensate Plaintiff would likely be between \$5,000.00 and \$10,000.00. Mr. Cook said class representatives in the Tampa Bay Buccaneers lawsuit received \$5,000.00 each, and this case was worth more, he said.

NOTE: In Reuter v. Check 'N Go of Florida, Inc., Fifteenth Judicial Circuit, Palm Beach County, Florida, case no.: 502001CA001164XXOCAI, the Final Approval Order And Judgment of May 16, 2008 by Circuit Court Judge Edward A. Garrison approved \$25,000 to Donna Reuter as a fair and reasonable Class Representative Award.

b. Mr. Cook said Plaintiff would receive statutory damages in addition to the recovery of the \$148.47 Plaintiff paid in fees to AMSCOT. The statutory damages under TILA, the federal Truth In Lending Act, are \$1,000.00.

c. Mr. Cook said Plaintiff would likely receive punitive damages under the state law claim of Usury, section 687, Florida Statutes, and actual damages under the state law claim of Deceptive and Unfair Trade Practices Act, section 501 Florida Statutes.

d. Under the terms of the contingent fee agreement, the above awards and damages and any costs and attorney's fees awarded would become part of the Total Recovery and divided according to the percentages of the contingent fee agreement.

e. Mr. Cook said Plaintiff would get special attention as a favorite client of his newly formed law firm. The new firm would be anxious for business which Defendants hoped Plaintiff would provide. Cook said once Defendants were free from the control of Mr. Alpert they would be able to decide themselves what cases to accept and litigate.

40. Plaintiff finally relented to Mr. Cook's pressure and intervened in the AMSCOT lawsuit, see Motion For Intervention As Plaintiffs And Proposed Class Representatives, submitted November 9, 2000. This occurred while Plaintiff was a client of the Alpert firm a month before Defendants told Mr. Alpert that they formed a new law firm and were taking his clients and lawsuits away from him. Mr. Cook also convinced Ms. Gay Ann Blomefield to sue AMSCOT. Now Mr. Cook had two prospective class representatives to replace the unqualified Mr. Clement. If either Plaintiff or Ms. Blomefield were later disqualified as lead plaintiffs, the AMSCOT lawsuit could proceed with the remaining plaintiff. The US District Court granted the motion for intervention On March 20, 2001.

41. In a letter to Plaintiff dated 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 Defendants used Plaintiff solely for Defendants' own personal benefit and gain.

42. Defendants' pressure of Plaintiff 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 Plaintiff and the other co-plaintiffs.

43. Following the breakup of the Alpert firm, Plaintiff brought new potential claims to Defendants at BRC, which now represented Plaintiff in the AMSCOT lawsuit and the ACE lawsuit. In a March 22, 2001 letter to Mr. Cook, Plaintiff requested representation in his efforts with the Florida Department of Vocational Rehabilitation. (DVR). Mr. Cook responded March 27, 2001 that we are not in a position to represent you for any claims you may have with Vocational Rehabilitation.

44. In a May 22, 2001 letter to Mr. Cook, Plaintiff requested representation in his effort to obtain job placement services from St. Petersburg Junior College for students with disabilities. Mr. Cook responded May 25, 2001 we are not in the position to pursue litigation with St. Petersburg Junior College.

45. Mr. Cook's assurance to Plaintiff of assistance with other claims was a deception to induce Plaintiff to sue AMSCOT. Mr. Cook also led Plaintiff to believe that Defendants would assist him in finding employment. Plaintiff provided Defendants his resume, but Defendants did not assist Plaintiff with finding employment.

46. Mr. Cook and Plaintiff signed a Class Representation Contract to sue AMSCOT November 3, 2000. (Exhibit 2). The Alpert firm represented Plaintiff on a contingent fee basis. Plaintiff believed the contract was a contingent fee agreement regulated by The Florida Bar.

47. Mr. Cook signed the contract on behalf of Alpert, Barker, Rodems, Ferrentino & Cook, P.A. even though Mr. Cook knew that he and Mr. Barker and Mr. Rodems already

formed a new law firm in August, 2000. Defendants were partners in two law firms at the same time, one of which was secret. Mr. Alpert was the senior partner in the firm representing Plaintiff in two lawsuits, AMSCOT and ACE. This placed Plaintiff in a position of conflict and divided loyalties with the lawyers and law firm representing him.

48. Defendants' deceit and conflict of interest created by executing the Class Representation Contract to sue AMSCOT November 3, 2000, knowing they already formed another law firm and did not plan to honor the contract, was an overt act in furtherance of their conspiracy against Plaintiff, Ms. Blomefield and Mr. Clement.

49. Defendants announced the formation of their new law firm, Barker, Rodems & Cook, P.A., by letter to Plaintiff dated December 6, 2000. (Exhibit 3). This occurred four (4) months after Mr. Barker filed the Articles of Incorporation for the new law firm.

50. On December 12, 2000 a Joint Stipulation for Substitution of Counsel was submitted by Mr. Alpert and Mr. Cook, transferring the AMSCOT case from the Alpert firm to BRC as counsel of record.

51. On December 12, 2000 a Joint Stipulation for Substitution of Counsel was submitted by Mr. Alpert and Mr. Cook, transferring the ACE case from the Alpert firm to BRC as counsel of record.

52. Defendants began representing Plaintiff in the AMSCOT case on a contingent fee basis December 12, 2000. There is no signed contingent fee agreement between Defendant Barker, Rodems & Cook, PA and Plaintiff in the AMSCOT lawsuit. Defendants did not execute a contingent fee agreement with Plaintiff when it assumed the case December 12, 2000. Plaintiff asked Mr. Cook about the lack of a contingent fee agreement in July, 2001. Mr. Cook responded by letter dated July 23, 2001 (Exhibit 4)

and provided new attorneys' fees contracts for both the AMSCOT (Exhibit 5) and ACE lawsuits, but the parties did not sign either contract.

53. Defendants began representing Plaintiff in the ACE case on a contingent fee basis December 12, 2000. There is no signed contingent fee agreement between Defendant Barker, Rodems & Cook, PA and Plaintiff in the ACE lawsuit. Defendants did not execute a contingent fee agreement with Plaintiff when it assumed the case December 12, 2000. Plaintiff asked Mr. Cook about the lack of a contingent fee agreement in July, 2001. Mr. Cook responded by letter dated July 23, 2001 (Exhibit 4) and provided new attorneys' fees contracts for both the AMSCOT and ACE (Exhibit 6) lawsuits, but the parties did not sign either contract.

AMSCOT Counterclaim Against Plaintiff and Ms. Blomefield

54. On or about March 27, 2001, AMSCOT filed a counterclaim against Plaintiff and Ms. Blomefield. Defendants failed to advise Plaintiff he was subject to a counterclaim. There was no provision in the Alpert firm Class Representation Contract (Exhibit 2) for defending a counterclaim. At the time of the AMSCOT counterclaim there was no contingent fee agreement whatsoever between Defendants and Plaintiff.

TILA Claims Not Valid in ACE Lawsuit

55. On December 21, 2000 United States District Court Judge James S. Moody, Jr. issued an Order in the ACE lawsuit that dismissed with prejudice Count I, Plaintiff's TILA claims, and remanded the case to the Circuit Court of the Thirteenth Judicial Circuit for Count II, the alleged violation of state usury laws pursuant to sections 687.02, 687.03, and 687.04 Florida Statutes, and Count III alleged violation of the Florida Deceptive and Unfair Trade Practices Act, sections 501.201 to 501.23 Florida Statutes.

Judge Moody explained his decision to dismiss with prejudice the TILA claims on page 3, paragraph 3 of the Order. “On March 31, 2000, the Federal Reserve Board ("FRB") promulgated revisions to a regulation that interprets TILA as applying to check-cashing transactions. See 65 Fed. Reg. 17129, 30 (2000), to be codified at 12 C.F.R. pt. 226. The revision to the regulation states, however, that the effective date of the new rule is March 24,2000, but that compliance is "optional" until October 1, 2000. Id. The Court agrees with Defendant that the plain language of the regulation means that compliance was not mandated until October 1, 2000. The transactions at issue in this case occurred prior to the FRB's regulation. Since Plaintiffs' transactions occurred prior to October 1, 2000, TILA is not applicable and cannot form a basis for relief against Defendant. Accordingly, Plaintiffs' claims under TILA are dismissed.” (Exhibit 7).

TILA Claims Not Valid in Payday Express Lawsuit

56. On April 6, 2001, United States District Magistrate Judge Steven D. Merryday issued an Order in the Payday Express lawsuit that dismissed with prejudice the TILA and RICO claims, and dismissed without prejudice the remaining state law claims of usury and FDUTPA. Judge Merryday held that “Because TILA’s mandatory disclosures were not required of the defendants before October 1, 2000, TILA cannot form a basis for relief of the plaintiff’s claims.” (page 4, last paragraph).

TILA Claims Not Valid in AMSCOT Lawsuit

57. On August 1, 2001, United States District Judge Richard A. Lazzara issued an order in the AMSCOT lawsuit denying class certification as moot, dismissed Count I with prejudice, the alleged violation of the Federal Truth in Lending Act (TILA). The Order dismissed Counts II and III without prejudice to bring in state court, and closed the

file. Count II alleged violation of state usury laws pursuant to sections 687.02, 687.03, and 687.04 Florida Statutes. Count III alleged violation of the Florida Deceptive and Unfair Trade Practices Act, sections 501.201 to 501.23 Florida Statutes. (Exhibit 8).

58. Defendants knew ten (10) months before making the closing statement in the AMSCOT settlement that the AMSCOT lawsuit was not a fee-shifting TILA action. On August 1, 2001 the AMSCOT lawsuit ceased being a fee-shifting TILA action when the TILA claim was dismissed with prejudice. Defendants also knew from the decisions in ACE and Payday Express that TILA could not form a basis for relief in AMSCOT.

Florida Attorney General Motion to Intervene in ACE

59. On or about February 9, 2001 the Florida Attorney General moved to intervene in the ACE lawsuit citing Florida RICO jurisdiction. Roger B. Handberg, Senior Assistant Attorney General, Economic Crimes Division, appeared for the AG. An Order granted the intervention April 3, 2001. The AG filed its 82 page complaint April 12, 2001.

\$5,000 Improper Payoff Attempt

60. Soon after Judge Lazzara's Order dismissing AMSCOT, John Anthony offered Mr. Cook a \$5,000 "consulting fee" or "non-refundable retainer" to refrain from appealing the ruling or filing state law claims or suing AMSCOT in the future. This was in violation of Rule 4-5.6(a). Mr. Cook described this payment as an "improper payoff attempt" and not an offer to settle. Mr. Cook said that "the Florida Bar likely would prohibit such an agreement." Mr. Cook did not report Anthony's Rule 4-5.6(a) violation to the Florida Bar as required by Rule 4-8.3(a). Mr. Cook did not report Mr. Anthony's "improper payoff attempt" to the Florida Bar as required by Rule 4-8.3(a).

Breach of Fiduciary Duty

61. Defendants represented Plaintiff as his attorneys. Defendants owed Plaintiff a fiduciary duty. It is long established that the relationship between an attorney and his client is one of the most important, as well as the most sacred, known to the law. The responsibility of an attorney to place his client's interest ahead of his own in dealings with matters upon which the attorney is employed is at the foundation of our legal system. (Deal v. Migoski, 122 So. 2d 415). It is a fiduciary relationship involving the highest degree of truth and confidence, and an attorney is under a duty, at all times, to represent his client and handle his client's affairs with the utmost degree of honesty, forthrightness, loyalty, and fidelity. (Gerlach v. Donnelly, 98 So. 2d 493).

62. On August 15, 2001 Mr. Cook announced that Defendants would not honor the AMSCOT contingent fee agreement with Plaintiff. Cook said Plaintiff's damages were limited to \$1,000, the fee-shifting provision of TILA. This was false. Defendants did not prevail on any TILA claims. Defendants breached its fiduciary duty owed to Plaintiff, Ms. Blomefield and Mr. Clement by failing to put their clients' interest ahead of their own in dealings with matters upon which Defendants were employed.

63. Defendants refusal to honor the contingent fee agreement in the AMSCOT lawsuit was an overt act in furtherance of their conspiracy against Plaintiff, Ms. Blomefield and Mr. Clement.

Defendants Commit Fraud Against Their Own Clients

64. Defendants conspired to defraud Plaintiff, Ms. Blomefield and Mr. Clement in the AMSCOT lawsuit using a corrupt business model that relied upon a five part deception. Defendants' corrupt business model worked as follows:

- a. Defendants breached their fiduciary duty to Plaintiff and the other clients.

b. Defendants fraudulently procured a favorable agreement from Plaintiff and the other clients taking 90 percent of the AMSCOT settlement for their own benefit.

c. Defendants relied upon the parol evidence rule to enforce the settlement.

b. Defendants further argued that bar rules prohibit them from honoring a contingent fee agreement since that amounts to splitting attorney's fees with a nonlawyer.

65. Defendants fraudulently procured a favorable agreement from Plaintiff in the AMSCOT settlement with a five part deception:

a. Part 1: Defendants created a "sticking part" argument that blamed its clients for suing AMSCOT. Mr. Cook told Plaintiff that AMSCOT resented him and that was a "sticking part" to settling because AMSCOT did not want to pay Plaintiff any money.

b. Part 2: Mr. Cook told Plaintiff that AMSCOT did not resent Defendants and wanted to pay money to the Defendants to settle the lawsuit.

c. Part 3: Defendants falsely claimed entitlement to fee-shifting TILA damages to evade the contingent fee agreement with Plaintiff, Ms. Blomefield and Mr. Clement.

d. Part 4: Defendants used deceit to induce Plaintiff, Ms. Blomefield, and Clement to sign a "Release and Settlement Agreement" with AMSCOT October 30, 2001.

e. Part 5: Defendants used deceit to induce Plaintiff to sign a "closing statement" November 1, 2001 in order to receive \$2,000 promised in the "Release and Settlement Agreement" with AMSCOT on October 30, 2001.

66. During a meeting with Plaintiff August 15, 2001, Mr. Cook told Plaintiff that AMSCOT did not want to pay the plaintiffs anything because AMSCOT resented the plaintiffs for suing. Mr. Cook told Plaintiff this was a "sticking part" or barrier to a

settlement. Mr. Cook told Plaintiff that AMSCOT did not resent Defendants and wanted to pay money to Defendants to settle the lawsuit. Mr. Cook said that the “sticking part” was a \$1,000 payment to each of three plaintiffs, not a \$50,000 payment to Defendants.

67. Defendants “sticking part” argument was an overt act in furtherance of their conspiracy against Plaintiff, Ms. Blomefield and Mr. Clement.

68. Defendants false claim to court-awarded fees and costs was an overt act in furtherance of their conspiracy against Plaintiff, Ms. Blomefield and Mr. Clement.

69. During the August 15, 2001 meeting with Plaintiff, Mr. Cook falsely told Plaintiff that Defendants incurred costs and expenses of \$33,000 in the AMSCOT lawsuit. Cook used this amount as a basis to justify his \$50,000 demand from AMSCOT. Plaintiff later learned that the actual costs and expenses were only \$3,580.67, plus \$2,544.79 paid to Mr. Alpert, for total costs and expenses of \$6,125.46. These costs and expenses were not itemized on the closing statement as required by bar Rule 4-1.5(f)(5).

70. Defendants false claim that it incurred \$33,000 in costs and expenses was an overt act in furtherance of their conspiracy against Plaintiff, Ms. Blomefield and Mr. Clement.

71. Defendants creation of a deceptive closing statement, and failure to itemize costs and expenses of \$6,125.46 as required by bar Rule 4-1.5(f)(5), was an overt act in furtherance of their conspiracy against Plaintiff, Ms. Blomefield and Mr. Clement.

72. On August 15, 2001 Mr. Cook wrote that Plaintiff “authorized” Defendants to appeal the dismissal of TILA claims, but not file a new lawsuit in State court. Mr. Cook also wrote that Plaintiff “authorized” Defendants to demand \$1,000 to settle his claim plus \$50,000 in attorney’s fees and costs. (Exhibit 9). Plaintiff’s so-called ‘authorization’

was contrary to his interest, induced by false information Defendants provided him as described herein, and was therefore void.

73. Defendants' separate negotiation with AMSCOT for its attorneys' fees placed Defendants in a position of conflict with Plaintiff, Ms. Blomefield and Mr. Clement. Defendants' August 15, 2001 letter is prima facie evidence of breach of fiduciary duty.

74. Defendants separate negotiation with AMSCOT for its attorneys' fees, and Defendants' August 15, 2001 letter to Plaintiff were overt acts in furtherance of their conspiracy against Plaintiff, Ms. Blomefield and Mr. Clement.

Defendants Hijack The AMSCOT Lawsuit And Hold Plaintiff Hostage

75. On August 16, 2001 Plaintiff instructed Mr. Cook by letter to settle the AMSCOT lawsuit. (Exhibit 10). Plaintiff believed Defendants no longer represented his interest in the litigation. Plaintiff requested that Defendants provide copies of his settlement instruction letter to Ms. Blomefield and Mr. Clement. Plaintiff provided Defendants the following instructions to settle the AMSCOT litigation:

“I agree with you that the Defendant will probably not accept your settlement offer. I believe the sticking point is your request for \$50,000 in attorney's fees and costs. I do not believe the \$1,000 request each for myself, Mr. Clement and Ms. Blomefield is a barrier to settlement.

Therefore I suggest you ask for a lesser amount of attorney's fees and costs. Given your lack of success in this matter thus far, I suggest you ask for \$10,000 in attorney's fees and costs. I believe this is a more realistic amount. Given how poorly the case has gone up to now, I believe it is in our interest to settle quickly.”

Plaintiff was concerned that Defendants no longer represented his interest, and among other things he would be indebted to AMSCOT for its costs and attorney's fees since Defendants failed to prevail on the TILA claim.

76. Defendants did not obey Plaintiff's August 16, 2001 written instructions to settle the AMSCOT lawsuit.

77. Defendants did not obey Plaintiff's September 15, 2001 written instructions to settle his claims the AMSCOT lawsuit.

78. Defendants did not obey Plaintiff's September 21, 2001 instructions to settle his claims in the AMSCOT lawsuit.

79. Defendants hijacked the AMSCOT lawsuit for their own benefit and held Plaintiff hostage for Defendants' financial gain.

80. On or about July 25, 2005, Plaintiff sent a copy of his August 16, 2001 letter to Defendants instructing them to settle the lawsuit, to Ian Mackechnie, President of AMSCOT with a cover letter. (Exhibit 11). A month later John Anthony responded to Plaintiff and wrote (in part): "Amscot is disappointed that your lawyer apparently did not obey your instructions regarding discontinuing litigation you and he knew to be frivolous." (Exhibit 12).

81. Defendants failure to obey Plaintiff's instructions to settle the AMSCOT case, and hijack of the case for Defendants' own benefit, were overt acts in furtherance of their conspiracy against Plaintiff, Ms. Blomefield and Mr. Clement.

Defendants Written Evidence of Fraud Against Its Clients

82. In a memorandum dated Monday, August 20, 2001, Mr. Cook wrote the following to memorialize his conversation with Plaintiff about AMSCOT: (Exhibit 13).

a. "I explained to him that I did not believe that the sticking part was created through the attorney's fees, but rather it was the payment to the clients."

b. "I told him of my conversation with John Anthony in which he offered to pay this firm \$5,000.00 but would not agree to pay our client's anything. I told him I rejected that offer. He asked me why I had not mentioned the settlement offer to him previously. I told him it was not a settlement offer. It was an improper payoff attempt."

c. "I told him that the \$50,000.00 demand was not set in stone and we would consider the \$10,000.00 offer that he suggested."

83. Defendants submitted a written offer to AMSCOT August 20, 2001. Mr. Cook wrote (in part): "...our clients are willing to accept \$1,000.00 each, representing the amount of their individual TILA statutory damages. They would also want any outstanding loans forgiven. In addition, we would accept \$50,000.00 to settle this firm's outstanding attorneys' fees and costs." (page 1, paragraph 3) (Exhibit 14).

84. Defendants' August 20, 2001 written settlement offer to AMSCOT is prima facie evidence of Defendants' breach of fiduciary duty. Plaintiff was not restricted to TILA statutory damages in his recovery. TILA damages did not apply. The TILA claims were dismissed with prejudice. Defendants' separate demand for \$50,000 to settle the firm's outstanding attorneys' fees and costs was speculative, not supported by actual fees and expenses incurred, and put Defendants interests ahead of Plaintiff. It was evidence of Defendants' proprietary interest in the AMSCOT litigation.

85. Defendants negotiated with AMSCOT on behalf of Ms. Blomefield and Mr. Clement to have any outstanding loans forgiven. Plaintiff did not have outstanding debt or loans to AMSCOT. Defendants did not seek alternative compensation for Plaintiff.

Defendants further breached their fiduciary duty to Plaintiff by failing to obtain a settlement of equal value for him from AMSCOT.

86. AMSCOT made a counter offer and agreed to pay each plaintiff \$1,000, forgive any outstanding debts (Plaintiff did not have outstanding debts to AMSCOT), and a \$10,000 payment to the Defendants, in a letter dated August 24, 2001.

87. AMSCOT then offered to pay the Defendants the sum of \$50,000. AMSCOT offered to pay each plaintiff \$2,000. There is no documentation supporting AMSCOT's increased offer. Defendants did not provide a bill to AMSCOT for legal services, nor provided any basis for the \$50,000 in attorney's fees and cost.

88. Once AMSCOT agreed to pay Plaintiff and the other clients a monetary settlement, Defendants created a new deceit to evade the contingent fee agreement. Under the agreement, attorneys' fees became part of the Total Recovery. To evade that clause, Defendants represented to Plaintiff that the United States Court of Appeals for the Eleventh Circuit awarded \$50,000 in attorney's fees and costs to the Defendants, and this precluded recovery under the Representation Contract, citing a "whichever is higher" provision for court-awarded attorney's fees and costs. Defendants referred to the \$50,000 as a "claim against AMSCOT for court-awarded fees and costs".

United States Court of Appeals: No Fee-Shifting TILA Costs or Fees

89. Defendants' representation in the preceding paragraph was false. The United States Court of Appeals for the Eleventh Circuit did not award Defendants \$50,000 in attorney's fees and costs to the. Defendants did not have a claim to court-awarded fees and costs because Defendants did not prevail on a TILA claim.

90. Defendants false claim that the United States Court of Appeals for the Eleventh Circuit awarded them \$50,000 in attorney's fees and costs is an overt act in furtherance of their conspiracy against Plaintiff, Ms. Blomefield and Mr. Clement.

91. Defendants filed a notice of appeal in AMSCOT August 20, 2001 to the United States Court of Appeals, Eleventh Circuit, Case No. 01-14761-A. Defendants submitted Appellants Initial Brief October 2, 2001. AMSCOT did not submit a reply brief.

92. AMSCOT settled the lawsuit for business reasons October 30, 2001. Defendants did not prevail on a TILA claim. The AMSCOT settlement agreement had a "No Admission" clause. It was expressly understood that the Parties explicitly denied any wrongdoing, liability, or obligation whatsoever to the other party relating to the settlement.

93. Mr. Cook submitted a Joint Stipulation For Dismissal With Prejudice in the AMSCOT case November 6, 2001 with the US Court of Appeals for the Eleventh Circuit that the parties amicably resolved the matter and moved for dismissal with prejudice with each party bearing its own attorneys' fees and costs. (Exhibit 15). This is conclusive evidence that Defendants did not have an award of attorneys' fees and costs pursuant to a fee-shifting TILA statute. Likewise Defendants did not have a "claim against AMSCOT for court-awarded fees and costs."

94. On December 7, 2001 the US District Court of Appeals for the Eleventh Circuit ruled that the Joint Stipulation for Dismissal with Prejudice was construed as a motion to dismiss the appeal with prejudice, with the parties bearing their own costs and attorney's fees. (Exhibit 16). This is conclusive evidence that Defendants did not have an award of

attorneys' fees and costs pursuant to a fee-shifting TILA statute. Likewise Defendants did not have a "claim against AMSCOT for court-awarded fees and costs."

FRAUD IN THE INDUCEMENT, Release and Settlement Agreement with AMSCOT

95. On October 30, 2001 Defendants fraudulently induced Plaintiff, Ms. Blomefield and Mr. Clement to sign a Release and Settlement Agreement with AMSCOT Corporation. ("AMSCOT agreement"). (Exhibit 17). Paragraph 1 is Settlement with Plaintiffs for \$2,000 each. Paragraph 2 is Settlement with Firm, the Defendants, and reads: "Amscot shall pay the Firm the sum of Fifty Thousand Dollars and No/100 (\$50,000), in satisfaction of Plaintiffs' claims for attorneys' fees and costs, as more fully described herein, against Amscot as asserted in the Action." To induce Plaintiff to sign the AMSCOT agreement:

a. Defendants represented to Plaintiff, Ms. Blomefield and Mr. Clement that the \$50,000 sum was a claim for court-awarded fees and costs. The representation was a false statement concerning a material fact. The TILA claims were dismissed and there was no claim to court-awarded fees and costs.

b. Defendants made the statement knowing that the representation was false. Defendants knew the TILA claims were dismissed and there was no claim to court-awarded fees and costs.

c. Defendants intended the representation would induce Plaintiff to act upon it and signed the Release and Settlement Agreement with AMSCOT.

d. Plaintiff relied upon Defendants falsehood as true and signed the agreement October 30, 2001 in return for payment of \$2,000 from AMSCOT. Plaintiff suffered

financial loss of \$7,143.68 by accepting the sum of \$2,000 instead of the sum of \$9,143.68 to which Plaintiff was entitled under law and the Representation Contract.

96. Defendants fraud to induce Plaintiff to sign the AMSCOT agreement was an overt act in furtherance of their conspiracy against Plaintiff, Ms. Blomefield and Mr. Clement.

97. Plaintiff, Ms. Blomefield and Mr. Clement did not immediately receive the \$2,000 payment from AMSCOT described in paragraph 1 of the AMSCOT agreement. Payment was held for three days until Plaintiff, Ms. Blomefield and Mr. Clement signed Defendants closing statement on November 1, 2001.

FRAUD IN THE INDUCEMENT, Defendants' Closing Statement in AMSCOT

98. On November 1, 2001, Defendants fraudulently induced Plaintiff to sign a closing statement prepared by Defendants in the AMSCOT lawsuit. (Exhibit 18). Defendants also fraudulently induced Ms. Blomefield and Mr. Clement to sign similar closing statements. To induce Plaintiff to sign the closing statement:

a. Defendants represented to Plaintiff, Ms. Blomefield and Mr. Clement that "...AMSCOT Corporation separately paid my attorneys \$50,000.00 to compensate my attorneys for their claim against AMSCOT for court-awarded fees and costs." The representation was a false statement concerning a material fact. The TILA claims were dismissed and there was no claim to court-awarded fees and costs.

b. Defendants made the statement knowing that the representation was false. Defendants knew the TILA claims were dismissed and there was no claim to court-awarded fees and costs.

c. Defendants intended the representation would induce Plaintiff to act upon it and signed the closing statement made by Defendants in the AMSCOT lawsuit.

d. Plaintiff relied upon Defendants falsehood as true and signed the closing statement November 1, 2001 in return for payment of \$2,000 from AMSCOT. Plaintiff suffered financial loss of \$7,143.68 by accepting the sum of \$2,000 instead of the sum of \$9,143.68 to which Plaintiff was entitled under law and the Representation Contract.

99. Defendants fraud to induce Plaintiff to sign the closing statement was an overt act in furtherance of their conspiracy against Plaintiff, Ms. Blomefield and Mr. Clement.

Defendants AMSCOT Closing Statement Does Not Comply with Florida Bar Rules

100. Defendants' closing statement in the AMSCOT lawsuit (Exhibit 18) does not comply with Rule 4-1.5(f)(5), The Rules Regulating The Florida Bar. Defendants closing statement fails to:

(a) Reflect an itemization of all costs and expenses. Costs and expenses in the AMSCOT lawsuit of \$3,580.88 were not itemized as required.

(b) Show the amount of fee received by each participating lawyer or law firm. Payment to Jonathan Alpert for the AMSCOT lawsuit of \$2,544.79 was not shown.

(c) A copy of the closing statement was not executed by all participating lawyers. Jonathan Alpert received payment of \$2,544.79 from the AMSCOT settlement but did not execute the closing statement.

101. Defendants preparation and execution of a closing statement in the AMSCOT lawsuit that does not comply with Rule 4-1.5(f)(5) was an overt act in furtherance of their conspiracy against Plaintiff, Ms. Blomefield and Mr. Clement.

102. Defendants cannot avoid compliance with Rule 4-1.5(f)(5), The Rules Regulating The Florida Bar, by claiming AMSCOT paid its attorneys' fees and costs. The rule does not alleviate attorneys from compliance under this claimed contingency.

103. Defendants' closing statement in the AMSCOT lawsuit further violates Rule 4-1.5(f)(5), The Rules Regulating The Florida Bar, by falsely stating Defendants had a \$50,000 "claim against AMSCOT for court-awarded fees and costs" or that AMSCOT separately paid this "claim". Defendants did not have a claim against anyone in the AMSCOT lawsuit for \$50,000 in court-awarded fees and costs. Defendants did not prevail on a TILA claim. The fee-shifting TILA claims were dismissed with prejudice by the court. Defendants knew that three separate courts dismissed three separate lawsuits they brought, and each court held that TILA claims were not possible because the law was not retroactive. AMSCOT settled the lawsuit for business reasons October 30, 2001. The AMSCOT settlement agreement had a "No Admission" clause and it was expressly understood that the Parties explicitly denied any wrongdoing, liability, or obligation whatsoever to the other party in the settlement.

Conclusion of the ACE Lawsuit

104. Defendants failed to adequately represent Plaintiff in the ACE lawsuit.

105. On or about May 22, 2002 Plaintiff called opposing counsel, Mr. Paul D. Watson, was greeted by voice mail, and left a message that was substantially the following:

"This is Neil Gillespie, my number is 246-5186, I am calling about the ACE case, I had called Bush, Ross and was told you left and that you took the case with you. At this point I am interested in settling the case and am not real satisfied with the current counsel that I have and would like to speak with you more about that."

106. On June 12, 2002 a mediation was held in the ACE lawsuit. The mediator was Gasper Ficarrotta of Tampa. Opposing counsel Neil A. Sivyer was present and acknowledged Plaintiff's voice mail to Mr. Watson of May 22, 2002. Mr. Sivyer assured

Plaintiff he would settle his claims in the ACE lawsuit that day regardless of what Defendants did with their other client Mr. Clement. (Ms. Blomefield was not a party in the ACE lawsuit).

107. Roger B. Handberg, Senior Assistant Attorney General, was present and represented the AG June 12, 2002 at the mediation described in the preceding paragraph.

108. On June 12, 2002 a Stipulation Of The Parties settled the ACE lawsuit for Plaintiff and Mr. Clement. ACE paid Plaintiff and Clement \$5,000 each, with each party bearing their own fees and costs and shall share in the mediation fees. (Exhibit 19).

109. Plaintiff essentially negotiated for himself because Defendants failed to adequately represent him. Defendants were still Plaintiff's attorney of record.

110. Plaintiff obtained a \$2,000 net settlement negotiating on his own behalf. Defendants obtained a lesser net amount for Mr. Clement while negotiating for him.

111. Defendants prepared a closing statement in the ACE lawsuit dated June 24, 2002. The closing statement is contrived and shows Plaintiff received a \$500 payment from Mr. Clement's settlement. The statement also contains the following language: "I acknowledge receipt of \$500.00 from my Co-Plaintiff, Eugene R. Clement." (Exhibit 20).

112. Defendants' closing statement in the ACE lawsuit violates bar rules because there is no provision for Plaintiff, a non-lawyer, to receive settlement proceeds in a contingent fee case belonging to a co-plaintiff or non-lawyer client.

113. Defendants their split attorney's fees with Mr. Clement. Mr. Cook told Plaintiff that Defendants paid Mr. Clement an additional \$500 from Defendants attorneys' fees after the closing statement in the ACE lawsuit was executed to lessen the disparity in

Clement's settlement compared to Plaintiff's settlement. Mr. Cook said Defendants reduced its attorneys' fees and paid Mr. Clement the difference.

Florida Attorney General Settlement with ACE Cash Express

114. The Florida AG and ACE entered a Settlement Agreement December 30, 2002. (Exhibit 21). ACE paid a total of \$500,000 in settlement and for issuance by the Florida Department of Banking and Finance, Division of Securities and Finance ("DBF") of authorizations, licenses, or other approvals necessary for ACE to continue in business in Florida, and for releases and other stipulations. ACE paid \$250,000 to the DBF Regulatory Trust Fund in full satisfaction of all attorney's fees, costs, and other expenses incurred by the DBF in connection with this matter. ACE made a contribution of \$250,000 to the Florida State University College of Law in full satisfaction of all attorney's fees, costs and other expenses incurred by the Attorney General in connection with this matter. ACE also agreed to loan forgiveness by an affiliated company, Goleta National Bank for the "Goleta Loan Consumers" with an independent audit paid by ACE.

Plaintiff Discovers Defendants Fraud in the AMSCOT Settlement

115. On or about May 9, 2003 Defendants disclosed to Plaintiff the actual costs and expenses incurred in the AMSCOT lawsuit, \$6,125.46. (Exhibit 22). Because of the significant discrepancy between the actual amount and the amount that Mr. Cook said were incurred, \$33,000, Plaintiff further investigated the settlement.

116. Plaintiff located the Appellate Court file and read that the United States Court of Appeals for the Eleventh Circuit granted a Motion for Dismissal with the parties bearing their own costs and attorney's fees. This information and the other evidence provided in

this amended complaint proved the falsity of Defendants' assertion that it had a claim to \$50,000 in "court-awarded fees and costs" or an actual award of \$50,000 under TILA.

117. As a result of Defendants fraud, Plaintiff was not able to give his Informed Consent in the AMSCOT lawsuit or settlement.

ACAP - Attorney Consumer Assistance Program

118. After Plaintiff found evidence of fraud by Defendants in the AMSCOT lawsuit, he consulted counsel who in turn referred him to The Florida Bar. On June 12, 2003 Plaintiff spoke with Donald M. Spangler of the Attorney Consumer Assistance Program (ACAP). Mr. Spangler assigned reference no. 03-18867 to the matter. Upon a review of the facts as Plaintiff described, Mr. Spangler said Plaintiff could make a bar complaint. Mr. Spangler also said Plaintiff could contact Mr. Cook to try and settle the matter. The Florida Bar complaint form specifically states "...you 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."

119. Plaintiff wrote Mr. Cook June 13, 2003 in a good faith effort to resolve the matter. Plaintiff included a spreadsheet showing how he arrived at the proposed resolution.

120. Mr. Barker responded to Plaintiff by letter of June 19, 2003 on behalf of Mr. Cook and Defendants. Mr. Barker misquoted Plaintiff's good faith effort to resolve this matter through ACAP and accused Plaintiff of felony extortion. Barker wrote "First, you state that if our law firm does not pay you money, then you will file a complaint against Mr. Cook with the Florida Bar and contact our former clients. We consider this threat to

be extortionate. See § 836.05 Fla. Stat. (2000); 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).”

COUNT 1 – BREACH OF FIDUCIARY DUTY

- 121. Plaintiff realleges and incorporates by reference paragraphs 1 through 120.
- 122. Plaintiff adds this allegation of breach of fiduciary duty in the AMSCOT lawsuit to the amended complaint under the relation back doctrine, Fla.R.Civ.P., Rule 1.190(c).
- 123. At all times pertinent Defendants were in a fiduciary relationship with Plaintiff.
- 124. An attorney has a personal fiduciary obligation to a client independent of any employee relationship he may have with his law firm.
- 125. Defendants’ actions alleged above constituted a breach of that fiduciary obligation in that Defendants sought to advance its own interests over the interests of Plaintiff.
- 126. Plaintiff was damaged in that he did not receive the full value for his claims in the lawsuit forward by Defendants nor did he receive full value from Defendants’ services.
- 127. Defendants’ actions were the direct cause of Plaintiff’s damages.

WHEREFORE Plaintiff demands judgment in the amount of his loss of \$7,143.68 for beach of fiduciary duty, plus treble punitive damages of \$21,431.04, for judgment of \$28,574.72 against Defendants, with interest, costs, expenses, and attorney’s fees.

COUNT 2 - BREACH OF IMPLIED-IN-LAW CONTRACT, AMSCOT

- 128. Plaintiff realleges and incorporates by reference paragraphs 1 through 127.
- 129. At all times pertinent Defendants were in a fiduciary relationship with Plaintiff.

130. A representation contract must comply with The Rules Regulating The Florida Bar. A representation contract that does not comply with The Rules Regulating The Florida Bar is void and unenforceable.

131. Defendants represented Plaintiff in the AMSCOT lawsuit on a contingent fee basis beginning December 12, 2000.

132. From December 12, 2000 through July 22, 2001, there was no contingent fee contract whatsoever between Plaintiff and Defendants.

133. Defendants belatedly prepared a written contingent fee agreement in the AMSCOT lawsuit approximately seven (7) months later on or about July 23, 2001, in violation of Bar Rule 4-1.5(f)(2).

134. The belatedly prepared written contingent fee agreement in the AMSCOT lawsuit was not signed by Plaintiff or Defendants in violation of Bar Rule 4-1.5(f)(2). (Exhibit 5). The agreement remains unsigned today.

135. The Total Recovery in the AMSCOT lawsuit was \$56,000.

136. At the time AMSCOT settled there were three plaintiffs. Each plaintiff is entitled to a one-third share of the \$56,000 Total Recovery or \$18,666.66 each.

137. Defendants are prohibited from claiming any part of the \$56,000 Total Recovery in the AMSCOT lawsuit as attorneys' fees because an unsigned contingent fee agreement is a violation of Bar Rule 4-1.5(f)(2) and therefore void and unenforceable.

138. Defendants paid Plaintiff \$2,000 in the AMSCOT lawsuit.

139. Defendants owe Plaintiff \$16,666.66 in the AMSCOT lawsuit.

WHEREFORE Plaintiff demands judgment for \$16,666.66 against Defendants, together with punitive damages, interest, costs, expenses, and attorney's fees.

COUNT 3 - BREACH OF IMPLIED-IN-FACT CONTRACT, AMSCOT

140. Plaintiff realleges and incorporates by reference paragraphs 1 through 139.
141. Plaintiff alleges an alternative claim for relief under breach of contract in the AMSCOT lawsuit settlement pursuant to Rule 1.110(g), Fla.R.Civ.P.
142. At all times pertinent Defendants were in a fiduciary relationship with Plaintiff.
143. Defendants represented Plaintiff in the AMSCOT lawsuit on a contingent fee basis beginning December 12, 2000.
144. From December 12, 2000 through July 22, 2001, there was no contingent fee contract whatsoever between Plaintiff and Defendants.
145. Defendants belatedly prepared a written contingent fee agreement in the AMSCOT lawsuit approximately seven (7) months later on or about July 23, 2001, in violation of Bar Rule 4-1.5(f)(2).
146. The belatedly prepared written contingent fee agreement in the AMSCOT lawsuit was not signed by any of the parties in violation of Bar Rule 4-1.5(f)(2). (Exhibit 5). The agreement remains unsigned today.
147. The AMSCOT lawsuit settled on October 30, 2001 for business reasons. Defendants did not prevail on the merits or appeal in the AMSCOT lawsuit.
148. The Total Recovery in the AMSCOT lawsuit was \$56,000.
149. Defendants refused to honor the terms of the contingent fee agreement with Plaintiff in the settlement of the AMSCOT lawsuit when disbursing his share of the \$56,000 Total Recovery.
150. Under the terms of the contingent fee agreement in the AMSCOT lawsuit, and the Rules Regulating The Florida Bar, a lawful accounting is calculated as follows:

Total Recovery	\$56,000	\$56,000
- Costs and Expenses	- \$3,580.70	\$52,419.30
- Lien, Jonathan L. Alpert	- 2,544.70	\$49,874.60
- 45% Contingent Fee	- \$22,443.57	\$27,431.03
- 2/3 due to the 2 other clients	- \$18,287.35	\$9,143.68
- \$2,000 already paid	- \$2,000	\$7,143.68

151. Contrary to law and the contingent fee agreement, Defendants took \$50,000 from the Total Recovery under the guise of court-awarded attorney's fees and costs in the AMSCOT lawsuit.

152. Defendants unjust enrichment was \$21,431.03 in the AMSCOT lawsuit.

153. Plaintiff's lawful share of the settlement is \$9,143.68 in the AMSCOT lawsuit.

154. Defendants paid Plaintiff \$2,000.00 in the AMSCOT lawsuit.

155. Defendants owe Plaintiff \$7,143.68 in the AMSCOT lawsuit.

156. Defendants actions were the direct cause of the Plaintiffs damages.

WHEREFORE plaintiff demands judgment for \$7,143.68 against Defendants, together with punitive damages, interest, costs, expenses, and attorney's fees.

COUNT 4 - FRAUD, AMSCOT RELEASE AND SETTLEMENT

157. Plaintiff realleges and incorporates by reference paragraphs 1 through 156.

158. Plaintiff adds an allegation of Fraud in the Release and Settlement with AMSCOT to Plaintiff's First Amended Complaint under the relation back doctrine, Fla.R.Civ.P., Rule 1.190(c).

159. Under Florida law, 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).

160. At all times pertinent Defendants were in a fiduciary relationship with Plaintiff.

161. On October 30, 2001 Defendants fraudulently induced Plaintiff, Ms. Blomefield and Mr. Clement to sign a Release and Settlement Agreement with AMSCOT Corporation. (AMSCOT agreement). (Exhibit 17). Paragraph 1 is Settlement with Plaintiffs for \$2,000 each. Paragraph 2 is Settlement with Firm, the Defendants, and reads: "Amscot shall pay the Firm the sum of Fifty Thousand Dollars and No/100 (\$50,000), in satisfaction of Plaintiffs' claims for attorneys' fees and costs, as more fully described herein, against Amscot as asserted in the Action." To induce Plaintiff to sign the AMSCOT agreement:

a. Defendants represented to Plaintiff, Ms. Blomefield and Mr. Clement that the \$50,000 sum was a claim for court-awarded fees and costs. The representation was a false statement concerning a material fact. The TILA claims were dismissed and there was no claim to court-awarded fees and costs.

b. Defendants made the statement knowing that the representation was false. Defendants knew the TILA claims were dismissed and there was no claim to court-awarded fees and costs.

c. Defendants intended the representation would induce Plaintiff to act upon it and signed the Release and Settlement Agreement with AMSCOT.

d. Plaintiff relied upon Defendants falsehood as true and signed the agreement October 30, 2001 in return for payment of \$2,000 from AMSCOT. Plaintiff suffered

financial loss of \$7,143.68 by accepting the sum of \$2,000 instead of the sum of \$9,143.68 to which Plaintiff was entitled under law and the Representation Contract.

162. Defendants actions were the direct cause of the Plaintiffs damages.

WHEREFORE Plaintiff demands judgment in the amount of his loss of \$7,143.68 for fraud, plus treble punitive damages of \$21,431.04, for judgment of \$28,574.72 against Defendants, together with interest, costs, expenses, and attorney's fees.

COUNT 5 - FRAUD, CLOSING STATEMENT

163. Plaintiff realleges and incorporates by reference paragraphs 1 through 162.

164. Under Florida law, 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).

165. At all times pertinent Defendants were in a fiduciary relationship with Plaintiff.

166. On November 1, 2001, Defendants fraudulently induced Plaintiff to sign a closing statement prepared by Defendants in the AMSCOT lawsuit. (Exhibit 18). Defendants also fraudulently induced Ms. Blomefield and Mr. Clement to sign similar closing statements. To induce Plaintiff to sign the closing statement:

a. Defendants represented to Plaintiff, Ms. Blomefield and Mr. Clement that "...AMSCOT Corporation separately paid my attorneys \$50,000.00 to compensate my attorneys for their claim against AMSCOT for court-awarded fees and costs." The representation was a false statement concerning a material fact. The TILA claims were dismissed and there was no claim to court-awarded fees and costs.

b. Defendants made the statement knowing that the representation was false. Defendants knew the TILA claims were dismissed and there was no claim to court-awarded fees and costs.

c. Defendants intended the representation would induce Plaintiff to act upon it and signed the closing statement made by Defendants in the AMSCOT lawsuit.

d. Plaintiff relied upon Defendants falsehood as true and signed the closing statement November 1, 2001 in return for payment of \$2,000 from AMSCOT. Plaintiff suffered financial loss of \$7,143.68 by accepting the sum of \$2,000 instead of the sum of \$9,143.68 to which Plaintiff was entitled under law and the Representation Contract.

167. Defendants actions were the direct cause of the Plaintiffs damages.

WHEREFORE Plaintiff demands judgment in the amount of his loss of \$7,143.68 for fraud, plus treble punitive damages of \$21,431.04, for judgment of \$28,574.72 against Defendants, together with interest, costs, expenses, and attorney's fees.

COUNT 6 - NEGLIGENCE

168. Plaintiff realleges and incorporates by reference paragraphs 1 through 167.

169. Plaintiff adds this allegation of negligence in the AMSCOT lawsuit to Plaintiff's First Amended Complaint under the relation back doctrine, Fla.R.Civ.P., Rule 1.190(c).

170. Under Florida law, 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).

171. Defendants had a duty under law to conform to a certain standard of conduct for the protection of others, including the Plaintiff.

172. As set forth in Plaintiff's First Amended Complaint, Defendants failed to perform the duty owed Plaintiff.

173. Defendants were the proximate cause of Plaintiff's damages.

WHEREFORE Plaintiff demands judgment against Defendants in the amount of his loss and damages plus punitive damages, together with interest, costs, expenses, and attorney's fees.

COUNT 7 - NEGLIGENT MISREPRESENTATION

174. Plaintiff realleges and incorporates by reference paragraphs 1 through 173.

175. Plaintiff adds this allegation of negligent misrepresentation in the AMSCOT lawsuit to Plaintiff's First Amended Complaint under the relation back doctrine, Fla.R.Civ.P., Rule 1.190(c).

176. Under Florida law, 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).

177. Defendants misrepresented to Plaintiff that his damages in the AMSCOT lawsuit were limited to \$1,000 under a fee-shifting provision of the federal Truth In Lending Act (TILA). This was a misrepresentation of a material fact.

178. Defendants either knew of the misrepresentation, made the misrepresentation without knowledge of its truth or falsity, or should have known the representation was false.

179. Defendants intended to induce Plaintiff to act on the misrepresentation. Plaintiff lacked Informed Consent, the ability to make an informed choice when he signed the

Release and Settlement with AMSCOT and Closing Statement because of Defendants' deceptions set forth in Plaintiff's First Amended Complaint.

180. Plaintiff suffered financial loss of \$7,143.68 while acting in justifiable reliance upon the misrepresentation by accepting the sum of \$2,000 instead of the sum of \$9,143.68 to which Plaintiff was entitled under law and the Representation Contract.

WHEREFORE Plaintiff demands judgment in the amount of his loss of \$7,143.68 for fraud, plus treble punitive damages of \$21,431.04, for judgment of \$28,574.72 against Defendants, together with interest, costs, expenses, and attorney's fees.

COUNT 8 - UNJUST ENRICHMENT

181. Plaintiff realleges and incorporates by reference paragraphs 1 through 180.

182. Plaintiff adds this allegation of unjust enrichment in the AMSCOT lawsuit to Plaintiff's First Amended Complaint under the relation back doctrine, Fla.R.Civ.P., Rule 1.190(c).

183. Under Florida law, 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).

184. Plaintiff has conferred a benefit on Defendants, who have knowledge thereof, the overpayment of \$16,666.66 in Count 3, Breach of Implied-In-Law contract.

185. Plaintiff has conferred a benefit on Defendants, who have knowledge thereof, the overpayment of \$7,143.68 in Count 4, Breach of Implied-In-Fact contract.

186. Defendants voluntarily accepted and retained the benefit conferred.

187. The circumstances render Defendant's retention of the benefit inequitable unless the Defendant pays to Plaintiff the value of the benefit.

188. Defendant has been unjustly enriched at the expense of Plaintiff.

189. Plaintiff is entitled to damages as a result of Defendant's unjust enrichment, including the disgorgement of all monies unlawfully accepted by Defendant from Plaintiff.

WHEREFORE, Plaintiff demands judgment for monetary damages against Defendants for unjust enrichment and such other relief this Court deems just and proper, together with punitive damages, interest, costs, expenses, and attorney's fees.

COUNT 9 - CIVIL CONSPIRACY

190. Plaintiff realleges and incorporates by reference paragraphs 1 through 190.

191. Plaintiff adds this allegation of civil conspiracy in the AMSCOT lawsuit to Plaintiff's First Amended Complaint under the relation back doctrine, Fla.R.Civ.P., Rule 1.190(c).

192. Named Defendants Mr. Barker, Mr. Rodems and Mr. Cook are parties to a civil conspiracy.

193. Named Defendants Mr. Barker, Mr. Rodems and Mr. Cook conspired to do both lawful and unlawful acts by unlawful means.

194. Named Defendants Mr. Barker, Mr. Rodems and Mr. Cook conspired to do the things complained about in this lawsuit to harm Plaintiff, including Breach of Fiduciary Duty, Breach of Implied-In-Law Contract, Breach of Implied-In-Fact Contract, Fraud, Negligence, Negligent Misrepresentation, Unjust Enrichment, Invasion of Privacy and Abuse of Process.

195. Named Defendants Mr. Barker, Mr. Rodems and Mr. Cook owed a duty to Plaintiff as his attorneys to protect Plaintiff from harm resulting from Breach of Fiduciary Duty, Breach of Implied-In-Law Contract, Breach of Implied-In-Fact Contract, Fraud, Negligence, Negligent Misrepresentation, Unjust Enrichment, Invasion of Privacy, and Abuse of Process.

196. Upon information and belief, Defendants conspired against other clients. An application submitted by Mr. Rodems showed former clients Rita M. Pesci and Roslyn Vazquez made complaints they were overcharged in contingent fee agreements.

197. Defendants' pressure of Plaintiff 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 Plaintiff and the other co-plaintiffs.

198. Defendants' deceit and conflict of interest created by executing the Class Representation Contract to sue AMSCOT November 3, 2000, knowing they already formed another law firm and did not plan to honor the contract, was an overt act in furtherance of their conspiracy against Plaintiff, Ms. Blomefield and Mr. Clement.

199. Defendants refusal to honor the contingent fee agreement in the AMSCOT lawsuit was an overt act in furtherance of their conspiracy against Plaintiff, Ms. Blomefield and Mr. Clement.

200. Defendants "sticking part" argument was an overt act in furtherance of their conspiracy against Plaintiff, Ms. Blomefield and Mr. Clement.

201. Defendants false claim to court-awarded fees and costs was an overt act in furtherance of their conspiracy against Plaintiff, Ms. Blomefield and Mr. Clement.

202. Defendants false claim that it incurred \$33,000 in costs and expenses was an overt act in furtherance of their conspiracy against Plaintiff, Ms. Blomefield and Mr. Clement.

203. Defendants creation of a deceptive and misleading closing statement, and failure to itemize costs and expenses of \$6,125.46 required by bar Rule 4-1.5(f)(5), was an overt act in furtherance of their conspiracy against Plaintiff, Ms. Blomefield and Mr. Clement.

204. Defendants separate negotiation with AMSCOT for its attorneys' fees, and Defendants' August 15, 2001 letter to Plaintiff were overt acts in furtherance of their conspiracy against Plaintiff, Ms. Blomefield and Mr. Clement.

205. Defendants failure to obey Plaintiff's instructions to settle the AMSCOT case, and hijack of the case for Defendants' own benefit, were overt acts in furtherance of their conspiracy against Plaintiff, Ms. Blomefield and Mr. Clement.

206. Defendants false claim that the United States Court of Appeals for the Eleventh Circuit awarded them \$50,000 in attorney's fees and costs is an overt act in furtherance of their conspiracy against Plaintiff, Ms. Blomefield and Mr. Clement.

207. Defendants fraud to induce Plaintiff to sign the AMSCOT agreement was an overt act in furtherance of their conspiracy against Plaintiff, Ms. Blomefield and Mr. Clement.

208. Defendants fraud to induce Plaintiff to sign the closing statement was an overt act in furtherance of their conspiracy against Plaintiff, Ms. Blomefield and Mr. Clement.

209. Defendants accusation that Plaintiff committed felony extortion for his good-faith effort to settle this matter through the Attorney Consumer Assistance Program (ACAP) of The Florida Bar. Mr. Barker accused Plaintiff of criminal extortion for his effort to settle the matter was an overt act in furtherance of their conspiracy against Plaintiff.

210. Defendants' conspiracy and their overt acts caused Plaintiff to suffer damages.

WHEREFORE, Plaintiff demands judgment for damages against Defendants Mr. Barker, Mr. Rodems and Mr. Cook for civil conspiracy and such other relief this Court deems just and proper together with punitive damages, interest, costs, expenses, and attorney's fees.

COUNT 10 - INVASION OF PRIVACY

211. Plaintiff realleges and incorporates by reference paragraphs 1 through 210.
212. Plaintiff adds this allegation of invasion of privacy in the AMSCOT lawsuit to Plaintiff's First Amended Complaint under the relation back doctrine, Fla.R.Civ.P., Rule 1.190(c).
213. Defendants published Plaintiff's privileged medical information during the course of the AMSCOT lawsuit. Defendants published information about Plaintiff's disability, treatment and rehabilitation. Plaintiff'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.
214. Defendants published Plaintiff's privileged medical information in response to AMSCOT's interrogatories to Neil Gillespie. Defendants failed to object to interrogatories about Plaintiff's privileged medical information.
215. Defendants published Plaintiff's privileged medical information during a deposition with AMSCOT. Plaintiff was deposed May 14, 2001 by John A. Anthony, attorney for AMSCOT Corporation. Approximately twenty pages of the 122 page transcript concerned Plaintiff's disability, treatment and rehabilitation. Defendants failed to object to interrogatories about Plaintiff's privileged medical information. Defendants

later published the information by ordering and distributing the transcript of the deposition. Defendants allowed co-plaintiff Gay Ann Blomefield to attend Plaintiff's deposition and hear Plaintiff's privileged medical information.

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

217. 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. *See Agency for Health Care Admin. v. Associated Indus. of Fla., Inc.*, 678 So.2d 1239, 1252 n. 20 (Fla. 1996).

218. Defendants' actions were the direct cause of Plaintiff's damages.

WHEREFORE Plaintiff demands judgment against Defendants for Invasion of Privacy in an amount determined by a jury, together with punitive damages, interest, costs, expenses, and attorney's fees.

COUNT 11 - ABUSE OF PROCESS

219 Plaintiff realleges and incorporates by reference paragraphs 1 through 218.

220. Defendants BRC and Mr. Cook sued Plaintiff January 19, 2006 in a counterclaim for libel over a July 25, 2005 letter Plaintiff wrote to Ian Mackechnie, President of AMSCOT Corporation. In fact Plaintiff's letter to Mackechnie also included another enclosed letter. The letter to Mackechnie discussed the lawsuit Clement v. Amscot Corporation, Case No. 8:99-ev-2795-T-26C where Defendants represented Plaintiff. The

second enclosed letter was a copy of Plaintiff's letter to Mr. Cook dated August 16, 2001 written during the course of the AMSCOT lawsuit instructing Mr. Cook to settle the lawsuit. Defendants failed to obey Plaintiff's instruction to settle. The letter (but not enclosure) was attached to Plaintiff's initial complaint as Exhibit 8. The letter and attachment is attached to Plaintiff's First Amended Complaint as Exhibit 11.

221. The filing of a counterclaim may constitute issuance of process for the purpose of an abuse of process action. *Peckins v. Kaye*, 443 So.2d 1025, 1026 (Fla. 2d DCA 1983).

222. On September 7, 2006 attorney David M. Snyder representing Plaintiff 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)."

223. Upon information and belief, Defendants' counterclaim for libel against Plaintiff is a willful and intentional misuse of process for the collateral purpose of making Plaintiff drop his claims against Defendants and settle this lawsuit on terms dictated by them. Defendants have perverted the process of law for a purpose for which it is not by law intended. Defendants are using their counterclaim as a form of extortion.

234. On at least six (6) separate occasions Defendants, by and through their counsel Mr. Rodems, now a Defendant himself, have offered a "walk-away" settlement:

a. September 14, 2006, Mr. Rodems wrote Plaintiff'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 Plaintiff'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 Plaintiff 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 Plaintiff'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 Plaintiff's behalf.

f. January 28, 2010 Mr. Rodems contacted Plaintiff 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.”

235. In a letter to Plaintiff dated November 19, 2007, Chief Branch Disciplinary Counsel Susan V. Bloemendaal, The Florida Bar, responded to Plaintiff’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.”

236. Defendants’ actions were the direct cause of Plaintiff’s damages.

WHEREFORE Plaintiff demands judgment against Defendants the amount of his loss, his attorney’s fees and costs for defending the counterclaim, together with punitive damages, interest, costs, expenses, and attorney’s fees.

COUNT 12 - Claim for Punitive Damages Pursuant to §768.72 Florida Statutes

237. Plaintiff realleges and incorporates by reference paragraphs 1 through 236.

238. Pursuant to section 768.72(1), Florida Statutes, Plaintiff amends his complaint to assert a claim for punitive damages. The rules of civil procedure shall be liberally construed so as to allow the claimant discovery of evidence which appears reasonably calculated to lead to admissible evidence on the issue of punitive damages.

239. Pursuant to section 768.72(2) Florida Statutes, Plaintiff asserts a claim for punitive damages because Defendants were personally guilty of fraud, intentional misconduct or gross negligence.

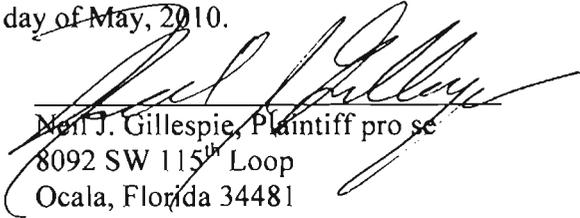
240. Pursuant to section 768.72(3) Florida Statutes, Plaintiff asserts a claim for punitive damages against Barker, Rodems & Cook, PA for the conduct of Mr. Barker, Mr. Rodems and Mr. Cook and states their conduct meets the criteria specified in subsection (2) and the corporation actively and knowingly participated in such conduct; The officers, directors, or managers of the corporation knowingly condoned, ratified, or consented to such conduct; and the corporation engaged in conduct that constituted gross negligence and that contributed to the loss, damages, or injury suffered by the Plaintiff.

WHEREFORE Plaintiff demands final judgment on all counts for compensatory and punitive damages against Defendants, together with interest, costs, expenses, and attorney's fees, and other remedy the Court deems just and proper.

Demand for Trial by Jury

Pursuant to Rule 1.430(b) of the Fla. R. Civ. P., plaintiff demands trial by jury.

RESPECTFULLY SUBMITTED this 5th day of May, 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 copy of the foregoing has been furnished by hand to Ryan C. Rodems, attorney for Barker, Rodems & Cook, P.A., 400 North Ashley Drive, Suite 2100, Tampa, Florida 33602, this 5th day of May, 2010.

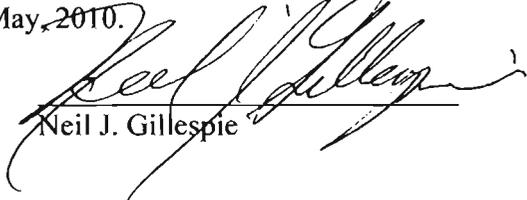

Neil J. Gillespie

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Exhibit 22	Letter from William J. Cook, May 9, 2003, itemized expenses in AMSCOT

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.

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- 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.

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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

CLASS REPRESENTATION CONTRACT

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AMSCOT
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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

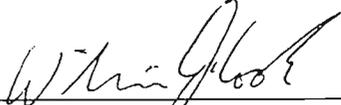
The undersigned client(s) has/have, before signing this contract, received and read the Statement of Client's Rights and understands each of the rights set forth therein. The undersigned client(s) has/have signed the Statement and received a signed copy to refer to while being represented by the undersigned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

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 12112
TAMPA, FL 33601-1211

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

December 6, 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, along with my partners, Chris Barker and Chris Rodems, are pleased to announce the formation of our own law firm. I will be happy to take your case with me if you would like; however, you have the option of deciding whether you wish to remain with our current firm or whether you wish to retain new attorneys to handle your case.

Should you wish for me to take your file, please execute the attached Client Consent form and return it to me as soon as possible.

Thank you for your time and attention to this matter and I look forward to hearing from you soon.

Sincerely,



William J. Cook

WJC/mss

Enclosures



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

July 23, 2001

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

Re: Eugene R. Clement, et al. v. AMSCOT Corporation
Case No. : 99.2795-Civ-T-26C
Our File No. : 99-4766

Re: Eugene R. Clement v. ACE Cash Express, Inc.
Circuit Court, Thirteenth Judicial Circuit
Consolidated Case No. 99-9730; Division J
Our File No.: 99.4764

Dear Neil:

I am enclosing new attorneys' fees contracts for each of the two cases in which we are representing you. The agreements are simply a formality to confirm that you have a contractual agreement with our new law firm.

Please review the agreements carefully and if they meet with your approval, please sign them and return them to me.

Thank you for your attention to this.

Sincerely,



William J. Cook

WJC/so
Enclosures



CLASS REPRESENTATION CONTRACT

I. PURPOSE

I/We, Neil Gillespie, do hereby retain and employ the law firm of Barker, Rodems & Cook, P.A., to investigate my potential claim resulting from my payday loans with AMSCOT Corporation 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 Barker, Rodems & Cook, P.A.

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I/We authorize Barker, Rodems & Cook, P.A., to advance and pay any costs and expenses it deems appropriate to the handling of my case. I/We will pay Barker, Rodems & 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 Barker, Rodems & Cook, P.A.'s attorneys' fees and any costs and expenses will equal the "net recovery".

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

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

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

I/We understand that Barker, Rodems & Cook, P.A., in its discretion, may work with other lawyers on my/our case if deemed necessary. If Barker, Rodems & 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 Barker, Rodems & 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 Barker, Rodems & 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 Barker, Rodems & Cook, P.A.

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

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

I/We understand that if Barker, Rodems & 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 Barker, Rodems & 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: _____

DATED: _____

_____ of
Barker, Rodems & Cook, P.A.
300 West Platt Street, Suite 150
Tampa, Florida 33606
813/489-1001

Client

Client

CLASS REPRESENTATION CONTRACT

I. PURPOSE

I/We, Neil Gillespie, do hereby retain and employ the law firm of Barker, Rodems & Cook, P.A., to investigate my potential claim resulting from my payday loans with ACE Cash Express, Inc. 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 Barker, Rodems & 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 Barker, Rodems & Cook, P.A., to advance and pay any costs and expenses it deems appropriate to the handling of my case. I/We will pay Barker, Rodems & 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 Barker, Rodems & 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 Barker, Rodems & Cook, P.A., will not seek payment from me for any expenses.

If I/we terminate this contract, then Barker, Rodems & 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 Barker, Rodems & Cook, P.A., an attorneys' fee if it is successful in obtaining any monies or other benefit on my behalf. I/We understand that Barker, Rodems & 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 Barker, Rodems & Cook, P.A., for any attorneys' fees.

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

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

I/We understand that Barker, Rodems & Cook, P.A., in its discretion, may work with other lawyers on my/our case if deemed necessary. If Barker, Rodems & 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 Barker, Rodems & 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.

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

I/We understand that Barker, Rodems & Cook, P.A., has no duty to represent me/us in any matters other than my/our potential claim resulting from my payday loans with ACE Cash Express, Inc..

I/We understand that if Barker, Rodems & 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 Barker, Rodems & Cook, P.A., only for any fees and costs permitted by law.

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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: _____

DATED: _____

_____ of
Barker, Rodems & Cook, P.A.
300 West Platt Street, Suite 150
Tampa, Florida 33606
813/489-1001

Client

Client

UNITED STATES DISTRICT COURT
MIDDLE DISTRICT OF FLORIDA
TAMPA DIVISION

FILED
CM
00 DEC 22 10:26
U.S. DISTRICT COURT
MIDDLE DISTRICT OF FLORIDA
TAMPA, FLORIDA

EUGENE R. CLEMENT,

Plaintiff,

v.

Case No. 8:00-cv-593-T-26C

ACE CASH EXPRESS, INC.,

Defendant.

CONSOLIDATED

NEIL GILLESPIE,

Plaintiff,

[REDACTED]

v.

(formerly case no. 8:00-cv-723-T-23B)

ACE CASH EXPRESS, INC.,

Defendant.

ORDER GRANTING DEFENDANTS' MOTION TO DISMISS

On December 6, 1999, Plaintiff, Clement, on behalf of himself and others purporting to be similarly situated, filed a class action lawsuit against Ace Cash Express, Inc. ("Defendant") in Florida state court alleging that Defendant's check-cashing services are violative of Florida's Deceptive and Unfair Trade Practices Act ("FDUTPA"), § 501.201 *et seq.*, Fla. Stat. Plaintiff later amended the complaint to add alleged violations of the Truth-In-Lending Act ("TILA"), 15 U.S.C. §1601, *et seq.* Defendant removed the case to federal court on March 27, 2000.¹

¹ Plaintiff Clement's lawsuit did not allege violations of Florida's usury statute.



On April 14, 2000, Plaintiff, Gillespie, on behalf of himself and others purporting to be similarly situated, filed a class action lawsuit against Defendant in this Court for alleged violations of TILA, FDUTPA, and Florida's usury statute, the Florida's Lending Practices Act, Ch. 687, Fla. Stat. Plaintiffs separately moved for consolidation of the cases and on August 1, 2000, the actions were consolidated. The consolidated action, in which this motion to dismiss arises, seeks declaratory and injunctive relief, damages, attorney's fees and costs for alleged violations of TILA, Florida's usury statute, and FDUPTA arising from Defendant's deferred deposit program and allegedly deceptive notices received by Plaintiffs regarding checks returned for insufficient funds.

Defendant moves to dismiss Plaintiffs' claims (Dkt. #43). In addition, the parties have filed various other motions regarding class certification. The Court has considered Defendant's motion to dismiss, the supporting and opposing memoranda (Dkt. #63), and finds that dismissal is appropriate for the reasons stated herein.

TRUTH-IN-LENDING ACT

TILA was enacted to promote informed borrowing by requiring lenders to fully disclose to borrowers the terms of credit being extended in credit transactions; that is, TILA governs only credit disclosures. See 15 U.S.C. §1601; Nussbaum v. Mortgage Service America Co., 913 F. Supp. 1548 (S.D. Fla. 1995). The disclosure requirements under TILA were meant to protect customers from becoming unknowingly obligated to pay hidden and unreasonable charges imposed by a lender and to permit them to meaningfully compare terms of credit extended by different lenders. Nussbaum, 913 F. Supp. at 1548. Plaintiffs allege that Defendant failed to comply with TILA by failing to properly disclose the "amount financed," the "annual percentage rate," and the "finance charge" on

alleged extensions of credit to Plaintiffs. (Consolidated Complaint, ¶47). Plaintiffs claim that Defendant's failure to provide the required disclosures violate TILA.

Defendant contends that TILA does not apply to the check-cashing transactions (deferred deposits or payday advances) at issue in this case and therefore dismissal is appropriate. In essence, Defendant claims that Florida state law controls and that Plaintiffs' transactions with Defendant were not "extensions of credit" for which "interest" was charged, instead the transactions were done in accordance with Florida's Money Transmitters' Code and all fees charged were authorized by statute. Defendant maintains that the State of Florida has identified the transactions at issue as check-cashing transactions, and identified the fees involved as service charges. The Court has reviewed the authority cited by the parties and agrees with Defendant that TILA does not require the disclosures sought by Plaintiffs.

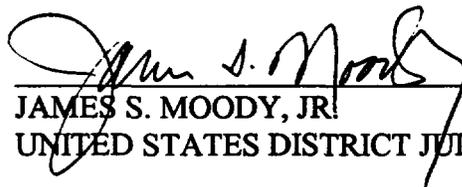
On March 31, 2000, the Federal Reserve Board ("FRB") promulgated revisions to a regulation that interprets TILA as applying to check-cashing transactions. See 65 Fed. Reg. 17129, 30 (2000), to be codified at 12 C.F.R. pt. 226. The revision to the regulation states, however, that the effective date of the new rule is March 24, 2000, but that compliance is "optional" until October 1, 2000. Id. The Court agrees with Defendant that the plain language of the regulation means that compliance was not mandated until October 1, 2000. The transactions at issue in this case occurred prior to the FRB's regulation. Since Plaintiffs' transactions occurred prior to October 1, 2000, TILA is not applicable and cannot form a basis for relief against Defendant. Accordingly, Plaintiffs' claims under TILA are dismissed.

PLAINTIFFS' REMAINING STATE LAW CLAIMS

Plaintiffs assert statutory causes of action under Florida's usury statute in Counts II, III, and IV, claiming that "interest" charged "far exceeds" the eighteen percent usury limit, and two separate claims under FDUPTA, stating that "in the guise of cashing checks," Defendant loaned money at "exorbitant rates," failed to make proper disclosures and sent "baseless and deceptive" notices to consumers who had checks returned for insufficient funds. The Court notes that the liability of a check cashing business under the circumstances present in this action is one of first impression under Florida law and one which is more properly heard in Florida's state courts. Plaintiffs' state law claims constitute the real body of this case. Without the TILA claim, the essence of Plaintiffs' claims is the alleged violations of Florida's usury law and the FDUPTA.

Accordingly, it is therefore **ORDERED AND ADJUDGED** that Defendants' Motion to Dismiss (Dkt. #43) is **GRANTED** with prejudice as to Plaintiffs' TILA claim. All other remaining claims arise under state law and this Court lacks jurisdiction to hear these claims. This case is therefore **remanded** to the Circuit Court for the Thirteenth Judicial Circuit in and for Hillsborough County, Florida. The Clerk is also directed to close the case and forward a certified copy of this Order to that Court.

DONE and ORDERED in Tampa, Florida on December 21, 2000.



JAMES S. MOODY, JR.
UNITED STATES DISTRICT JUDGE

Copies furnished to:
Counsel/Parties of Record

UNITED STATES DISTRICT COURT
MIDDLE DISTRICT OF FLORIDA
TAMPA DIVISION

EUGENE R. CLEMENT,
GAY ANN BLOMEFIELD, and
NEIL GILLESPIE, individually and
on behalf of others similarly situated,

Plaintiffs,

v.

CASE NO: 8:99-cv-2795-T-26BAJ

AMSCOT CORPORATION,

Defendant.

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FILED
MIDDLE DISTRICT OF FLORIDA
TAMPA, FLORIDA
BAJ

ORDER

Before the Court is Plaintiffs' Renewed Motion for Class Certification and supporting memorandum (Dkts. 89 and 92), Amscot's Response in Opposition (Dkt. 101), Plaintiffs' Notice of Supplemental Authority (Dkt. 93), Plaintiffs' Reply Memorandum (Dkt. 114), and all depositions, exhibits, declarations, affidavits, and materials on file. After careful consideration, the Court concludes that the motion should be denied as moot and this case should be dismissed.

This Lawsuit

Defendant Amscot Corporation is a Florida corporation doing business in Hillsborough County, Florida. Defendant operates a check cashing business licensed under Chapter 560 of the Florida Statutes. (Dkt. 14 at pg. 2).



Plaintiff Eugene R. Clement is a resident of Hillsborough County, Florida, and was a customer of Defendant at a Tampa branch. (Dkt. 14 at pgs. 1 and 4). In December 1997, Mr. Clement filled out an application which provided in part in upper case letters: "Chapter 832, Florida Statutes, makes it a crime for any person to knowingly issue a bad check." (Dkt. 14 at pg. 4 and Exh. A). Mr. Clement periodically engaged in "deferred deposit" transactions by providing Defendant one or more non-postdated checks or postdated checks in return for cash. (Dkt. 14 at pg. 4). Mr. Clement also engaged in rollover transactions with Defendant. (Dkt. 14 at pg. 5). Rollover transactions occur approximately two weeks after the initial transaction when persons may pay an additional 10% of the face amount of the check to extend the "deferral period" another two weeks. (Dkt. 14 at pg. 5).

Plaintiff Gay Ann Blomefield is a resident of Hillsborough County, Florida, and was a customer of Defendant at a Tampa branch. She periodically engaged in "deferred deposit" transactions by providing Defendant one or more non-postdated or postdated checks in return for cash. (Dkt. 86 at pg. 4). Ms. Blomefield also engaged in rollover transactions with Defendant. (Dkt. 86 at pg. 4). She engaged in a series of various transactions with Defendant for approximately two years before this lawsuit was filed. (Dkt. 86 at pg. 4).

Neil Gillespie is a resident of Pinellas County, Florida, and was a customer of Defendant at a St. Petersburg branch. (Dkt. 86 at pg. 5). Mr. Gillespie periodically engaged in "deferred deposit" transactions by providing Defendant one or more non-

postdated checks. (Dkt. 86 at pg. 5). He engaged in deferred deposit transactions on at least eleven occasions ending in November of 1999. (Dkt. 86 at pg. 5).

In two complaints the Plaintiffs and Intervenor Plaintiffs sued Defendant for various violations focusing on its failure to disclose certain information in the transactions and its charging usurious interest. Count I seeks relief under the Truth-in-Lending Act (the TILA). Counts II and III assert state law claims for usury and violations of Florida's Deceptive and Unfair Trade Practices Act (FDUTPA), respectively.

Procedural Background

On September 8, 2000, this Court denied the motion to dismiss the First Amended Class Action Complaint, ruling at that time that sufficient facts were alleged to avoid dismissal of the suit. (Dkt. 45).¹ Neither party directed this Court's attention to 65 Fed. Reg. 17129, in which the Board of Governors of the Federal Reserve System (Board) published revisions to the official staff commentary to Regulation Z promulgated pursuant to the TILA. The revisions, dated March 31, 2000, addressed short-term cash advances known as "payday loans." After considering the arguments made and all the authorities now before it, the Court finds that count I fails to allege a claim for relief

¹ On March 20, 2001, this Court permitted intervention of Plaintiffs Gay Ann Blomefield and Neil Gillespie and denied class certification without prejudice. (Dkt. 85). On March 23, 2001, Plaintiffs' counsel filed the Class Action Complaint-in - Intervention. (Dkt. 86).

under the TILA.² Moreover, any attempt at stating a claim under the TILA would be futile. Having reached this conclusion, the motion for class certification is now moot.

Count I: Truth-in-Lending Violations

The Board's Role

Congress delegated expansive authority to the Board to promulgate regulations to carry out the purpose of the TILA. See 15 U.S.C.A. § 1604(a); Ford Motor Credit Co. v. Milhollin, 444 U.S. 555, 560, 566 (1980). One of the purposes of the TILA is “to assure a meaningful disclosure of credit terms so that the consumer will be able to compare more readily the various credit terms available to him and avoid the uninformed use of credit.” See 15 U.S.C.A. § 1604(a). The Board created Regulation Z as a regulation necessary to effectuate the purposes of the TILA. See 12 C.F.R. § 226 (a) (“This regulation, known as Regulation Z, is issued by [the Board] to implement the [TILA], which is contained in Title I of the Consumer Credit Protection Act, as amended (15 U.S.C. 1601 et seq.).”).

Apart from the promulgation of regulations to implement the TILA, the Board may also rely on its staff to issue administrative interpretations in the form of an official staff commentary. See 15 U.S.C.A. § 1640(f). As stated by the Board in its March 31, 2000, issuance of a final rule addressing payday loans:

² As to the remaining two state-law claims for usury and violations of Florida’s Deceptive and Unfair Trade Practices Act (FDUTPA), the Court finds it inappropriate to exercise its pendent jurisdiction.

The Board's official staff commentary (12 C.F.R. part 226 (Supp. I)) interprets [Regulation Z], and provides guidance to creditors in applying the regulation to specific transactions. The commentary is a substitute for individual staff interpretations; it is updated periodically to address significant questions.

Congress has bestowed such great authoritative weight to the interpretations and applications by the staff of the Board, that "it is unrealistic to draw a radical distinction between opinions issued under the imprimatur of the Board and those submitted as official staff memoranda." See Ford Motor, 444 U.S. at 566 n.9.

The Court's Role

"[T]he legislative history evinces a decided preference for resolving interpretive issues by uniform administrative decision, rather than piecemeal through litigation." Ford Motor, 455 U.S. at 568. Thus, courts should not substitute their interpretations of the TILA for that of the Board, "so long as the latter's lawmaking is not irrational." See Ford Motor, 455 U.S. at 568. Where the Board and its staff have effectively clarified an area of the law, the courts must accept those opinions construing the TILA and the regulations and consider them dispositive absent "some obvious repugnance to the statute." See Anderson Bros. Ford v. Valencia, 452 U.S. 205, 219 (1981) (citing Ford Motor). Apart from determining whether the commentary is repugnant to the statute, however, the court's more difficult role, at least in this case, is deciding whether the commentary should be applied retroactively to transactions occurring before the effective date of the commentary. See, e.g., McPhillips v. Gold Key Lease, Inc., 38 F.Supp.2d 975

(M.D.Ala. 1999); Wiley v. Earl's Pawn & Jewelry, Inc., 950 F.Supp. 1108 (S.D.Ala. 1997).

"Payday Loan" as an Extension of Credit

This action involves "payday loans" which, as argued by Plaintiffs and many other plaintiffs in similar cases, requires an examination of the term "credit" as that term is defined by the TILA, Regulation Z, and any official staff commentaries. Credit is defined the same by the TILA and Regulation Z as "the right granted by a creditor to a debtor to defer payment of debt or to incur debt and defer its payment." See 15 U.S.C.A. § 1602(e); 12 C.F.R. § 226.2(a)(14). The official staff commentary now defines credit to specifically include payday loans:

2(a)(14) "Credit".

. . . .

2. Payday loans; deferred presentment. Credit includes a transaction in which a cash advance is made to a consumer in exchange for the consumer's personal check, or in exchange for the consumer's authorization to debit the consumer's deposit account, and where the parties agree either that the check will not be cashed or deposited, or that the consumer's deposit account will not be debited, until a designated future date. This type of transaction is often referred to as a "payday loan" or "payday advance" or "deferred presentment loan." A fee charged in connection with such a transaction may be a finance charge for purposes of § 226.4, regardless of how the fee is characterized under state law. Where the fee charged constitutes a finance charge under § 226.4 and the person advancing funds regularly extends consumer credit, that person is a creditor and is required to provide disclosures consistent with the requirements of Regulation Z. See §

226.2(a)(17).

12 C.F.R. Pt. 226 (Supp. I).

All of the transactions in this action occurred before the effective date of the official staff commentary, which is March 24, 2000. See 65 Fed. Reg. 17129. Generally, retroactive application of administrative rules is not favored. See Bowen v. Georgetown Univ. Hosp., 488 U.S. 204, 208 (1988). Some courts, however, have held that this general rule disfavoring retroactivity “does not necessarily apply to agency commentaries.” See McPhillips, 38 F.Supp.2d at 980 (citing Barlow v. Evans, 992 F.Supp. 1299, 1305 (M.D.Ala. 1997)). In any event, the court must give deference to the agency’s classification of the commentary as either a clarification or a change. See McPhillips, 38 F.Supp.2d at 980 (citing Wright v. Director, Federal Emergency Management Agency, 913 F.2d 1566, 1571 (11th Cir. 1990)). Nevertheless, “unfettered deference to an agency’s classification of its revision as a clarification would allow an agency to make substantive changes, with retroactive effect, merely by referring to the new interpretation as a clarification.” See McPhillips, 38 F.Supp.2d at 980 (citing Pope v. Shalala, 998 F.2d 473, 482 (7th Cir. 1993), overruled on other grounds, Johnson v. Apfel, 189 F.3d 561 (7th Cir. 1999)).

Clarification versus Amendment or Change

To determine whether the March 2000 official staff revision should have retroactive application to this case, the revision must be examined in view of the past

interpretations by the agency of the particular subject matter of the revision. See McPhillips v. Gold Key Lease, Inc., 38 F.Supp.2d 975, 980 (M.D.Ala. 1999) (“court should consider whether the revision is consistent with prior interpretations and views expressed by the agency”). In the event there are no prior interpretations of the particular transaction, this fact should also be considered.³ If a court finds that revisions to the official staff commentary amount to a substantive change, rather than simply a clarification of existing law, then the commentary is not applied retroactively. See McPhillips, 38 F.Supp.2d at 980 (court found that revisions amounted to substantive change in law even though Board interpreted its revision as a clarification).

First, the evolution of the official staff commentary adding payday loans and deferred presentments to the definition of credit must be examined. Beginning on November 5, 1999, the Board published for comment proposed revisions to the official staff commentary to Regulation Z with respect to short-term cash advances or “payday loans.” See 64 Fed. Reg. 60368. The November publication noted that the revisions to the commentary would be adopted in final form in March 2000 and “to the extent the revisions impose new requirements on creditors, compliance *would be optional until October 1, 2000, the effective date for mandatory compliance.*” (Emphasis added). This

³ Plaintiffs cite Barlow v. Evans, 992 F.Supp. 1299, 1305 (M.D.Ala. 1997), and Wiley v. Earl’s Pawn & Jewelry, 950 F.Supp. 1108, 1112 (S.D.Ala. 1997), as court opinions holding that the staff commentary subjecting pawnbrokers to the TILA applied to transactions that preceded the commentary’s effective date. These cases involved a different revision. Each new revision should be examined as a whole to determine its applicability to the individual case.

statement makes it clear that any new requirements placed on the creditors will not be enforced through mandatory compliance until six months after the effective date of the rule.

The Board addressed in particular the definition of credit in the November publication in pertinent part as follows:

The Board has been asked to *clarify* whether “payday loans”—also known as “cash advance loans,” “check advance loans,” and “post-dated check loans”—constitute credit for purposes of TILA. Typically in such transactions, a short-term cash advance is made to a customer in exchange for the consumer’s personal check in the amount of the advance, plus a fee; sometimes the advance is made in exchange for the consumer’s authorization to debit electronically the consumer’s checking account in the amount of the advance, plus a fee. The transaction occurs with knowledge by both parties that the amount advanced is not, or may not be, available from the consumer’s checking account at the time of the transaction. Thus, the parties agree that the consumer’s check will not be cashed or the account electronically debited until a designated future date. On that date, the consumer usually has the option to repay the obligation by allowing the party advancing the funds to cash the check or electronically debit the consumer’s checking account, or by providing cash or some other means of payment. The consumer may also have the option to defer repayment beyond the initial period by paying an additional fee.

Section 226.2(a)(14) defines credit as the right to defer the payment of debt or the right to incur debt and defer its payment. In the case of payday loans, this includes the agreement to defer cashing the check or debiting the consumer’s account. Comment 2(a)(14)-2 would be added to *clarify* that payday loan transactions constitute credit for purposes of TILA. Persons that regularly extend payday loans and impose a finance charge are required to provide TILA disclosures to consumers.

64 Fed. Reg. 60368 at *60368-60369 (emphasis added). The commentary employs the word “clarify” two times in the above-referenced section. The first time “clarify” is used in the sense that the commentary will be determining once and for all if (not when) payday loans fall within the definition of credit under the TILA and Regulation Z. The second time “clarify” appears in the above section, it merely states that the comment will be added to definitively make payday loans an example of something that constitutes credit.

Having received comments, thereafter on March 31, 2000, the Board published the final revisions to the official staff commentary to Regulation Z. The effective date of the revised commentary was March 24, 2000, with the proviso that “[c]ompliance is optional until October 1, 2000.” See 65 Fed. Reg. 17129. The background section of the revised commentary reveals the various comments made regarding the applicability of the TILA and Regulation Z to payday loans and provides in pertinent part:

In November 1999, the Board published proposed amendments to the commentary (64 FR 60368, November 5, 1999). The Board received more than 50 comment letters. Most of the comments were from financial institutions, other creditors, and their representatives. Comments were also received from state attorneys general, state regulatory agencies, and consumer advocates. The comment letters were focused on the proposed comment concerning payday loans. Most commenters supported the proposal. A few commenters, mostly payday lenders and their representatives, were opposed.

As discussed below, the commentary is being adopted substantially as proposed. Some revisions have been made for clarity in response to commenters’ suggestions. The

commentary revision concerning payday loans *clarifies* that when such transactions involve an agreement to defer payment of a debt, they are within the definition of credit in TILA and Regulation Z.

65 Fed. Reg. 17129 (emphasis added). The term “clarifies” found in this section appears to mean the same thing as it did in the November publication—that payday loans are now defined as credit.

Under “Commentary Revisions” of the March 2000 publication, the commentary expounded upon the comments submitted regarding payday loans as follows:

2(a)(14) Credit.

The Board proposed to add comment 2(a)(14)-2 to *clarify* that transactions commonly known as “payday loans” constitute credit for purposes of TILA. . . .

Most commenters supported the proposal because they believed that payday loans are credit transactions. A few commenters opposed the proposal. These commenters questioned whether payday loans should be covered under TILA when applicable state law does not treat such transactions as credit. They were concerned that Regulation Z would preempt state law where, for example, the transactions are regulated under check-cashing laws, and they also asserted that providing TILA disclosures would result in unnecessary compliance costs. These commenters also questioned whether disclosure of the APR in such transactions provides consumers with useful information. One commenter asserted that the proposed comment’s scope was unclear, and believed the comment might be interpreted too broadly, resulting in the application of Regulation Z to noncredit transactions. This commenter also suggested that payday lenders will be unable to determine whether transactions are consumer credit or for an exempt purpose, such as business credit.

For the reasons discussed below, comment 2(a)(14)-2 is adopted to *clarify* that payday loans, and similar transactions

where there is an agreement to defer payment of a debt, constitute credit for purposes of TILA. Some revisions have been made for clarity to address commenters' concerns.

(Emphasis added). Obviously, some issues existed with respect to a state law's effect on the TILA. The term "clarify" or "clarifies" in this section ultimately determines that payday loans fall within the definition of credit.

The March 2000 publication specifically addresses the interplay between state laws and the TILA and Regulation Z as follows:

TILA, as implemented by Regulation Z, reflects the intent of the Congress to provide consumers with uniform cost disclosures to promote the informed use of credit and assist consumers in comparison shopping. This purpose is furthered by applying the regulation to transactions, such as payday loans, that fall within the statutory definition of credit, regardless of how such transactions are treated or regulated under state law. The fact that some creditors may have to comply with state laws as well as with Regulation Z, and that creditors may bear compliance costs, is not a sufficient basis to disregard TILA's applicability to the covered transactions. Where a creditor is unable to determine if a transaction is primarily for an exempt purpose, such as business-purpose credit, the creditor is free to make disclosures under TILA, and the fact that disclosures are made would not be controlling on the question of whether the transaction was exempt. See Comment 3(a)-1.

A few commenters questioned the effect of the proposed comment on state laws that regulate payday loans and similar transactions. Section 226.28 of Regulation Z describes the effect of TILA on state laws. As a general matter, state laws are preempted if they are inconsistent with the act and regulation, and then only to the extent of the inconsistency. A state law is inconsistent if it requires or permits creditors to make disclosures or take actions that contradict the requirements of federal law. A state law may not be deemed

inconsistent if it is more protective of consumers.

TILA does not impair a state's authority to regulate or prohibit payday lending activities. Persons that regularly extend payday loans and otherwise meet the definition of creditor (§226.2(a)(17)) are required, however, to provide disclosures to consumers consistent with the requirements of Regulation Z. . . . The Board will review any issues brought to its attention regarding the effect of TILA and Regulation Z on particular state laws. . . .

The Board recognizes in this section that certain states have passed laws sheltering the fees charged for payday loans from characterization as finance charges or interest, such as Florida. The commentary places everyone on notice that the TILA and Regulation Z in essence trump state law characterizations of fees as something other than what the federal laws prescribe. In that vein, the March publication provides:

In describing payday loan transactions, the proposed comment referred to the fact that consumers typically must pay a fee. Some commenters questioned whether such fees are finance charges for purposes of Regulation Z. These commenters noted that under some state laws, the fees charged for payday loans and similar transactions are not considered interest or finance charges.

A fee charged in connection with a payday loan may be a finance charge for purposes of TILA pursuant to section 226.4 of Regulation Z, regardless of how the fee is characterized for state law purposes. Where the fee charged constitutes a finance charge under TILA, and the person advancing funds regularly extends consumer credit, that person is a creditor covered by Regulation Z. See §226.2(a)(17). Comment 2(a)(14)-2 has been revised to reflect this guidance.

(Emphasis added.) Thus, proponents of payday lenders in most instances can no longer rely on the argument that state law preempts the TILA and Regulation Z.

Finally, at the end of the revision, the staff attempts to classify the revision as a clarification rather than a change in the law with respect to payday loans:

Comment 2(a)(14)-2 has been added as an example of a specific type of transaction that involves an agreement to defer payment of a debt. Because such a transaction falls within the existing statutory and regulatory definition of "credit," the comment does not represent a change in the law. Generally, updates to the Board's staff commentary are effective upon publication. Consistent with the requirements of section 105(d) of TILA, however, the Board typically provides an implementation period of six months or longer. During that period, compliance with the published update is optional so that creditors may adjust their documents to accommodate TILA's disclosure requirements.

(Emphasis added). While the Board's staff has stated that the comment "does not represent a change in law," at the same time it provided creditors an implementation period "so that creditors may adjust their documents to accommodate TILA's disclosure requirements." This allowance seems to admit that the Board's staff was aware that this particular area had not been made a part of the law as it existed at the time of the notice for the proposed rule. Indeed, the Board entertained comments and took a position on how to handle the TILA with co-existing state laws for check cashing.

This Court is unaware of any prior interpretations by the staff definitively making payday loans part of credit as that term is defined by the TILA and Regulation Z. This case presents a situation in which no final commentary addressing payday loans existed prior to the final March 2000 revision which made payday loans part of credit under the TILA and Regulation Z. There is no question that in Florida the effect of the TILA and Regulation Z has been unclear with respect to those properly registered under Chapter

560 of the Florida Statutes. While some federal district court opinions outside of Florida have held that payday loans are extensions of credit under the TILA and Regulation Z,⁴ the decisions within Florida have not been uniform. See Gonzales v. Easy Money, Inc., No. 5:00-cv-2-Oc-10GRJ (Feb. 22, 2001); Clement v. Ace Cash Express, Inc., No. 8:00-cv-593-T-26C (M.D.Fla. Dec. 21, 2000); Betts v. McKenzie Check Advance of Florida, LLC, No. 8:99-cv-2828-T-30F (M.D.Fla. Dec. 20, 2000). Based on the comments solicited by the Board and the fact that no prior interpretations by the agency had been expressed, the Court finds that the March 2000 revision effects a substantive change in the law without retroactive application. Because the transactions at issue in this case occurred before compliance with the official staff commentary was either optional or mandatory, the official staff commentary should not be applied to them.

Based on the above reasons and absent any authority from the Eleventh Circuit or United States Supreme Court to the contrary, the Court finds that the official staff commentary at issue should not be given retroactive application in this case. Consequently, count I is dismissed with prejudice.

Counts II and III: Violations of Florida's Usury Law and FDUTPA

Because the Court has resolved Plaintiffs' federal claims against Defendant, only

⁴ See Hartke v. Illinois Payday Loans, Inc., 1999 U.S. Dist. LEXIS 14937, *6 (C.D.Ill. Sept. 13, 1999); Turner v. E-Z Check Cashing of Cookeville, TN, Inc., 35 F.Supp. 2d 1042, 1048 (M.D. Tenn. 1999); In re: Brigance, 219 B.R. 486, 492 (Bankr.W.D. Tenn. 1998); Hamilton v. York, 987 F.Supp. 953, 957-958 (E.D.Ky. 1997).

Plaintiffs' state law claims remain in this action. Title 28, Section 1367 of the United States Code provides that the district courts may decline to exercise supplemental jurisdiction over state claims where it has dismissed all the underlying federal claims. See 28 U.S.C. § 1367(c)(3). In making this determination, the court should consider factors such as "comity, judicial economy, convenience, fairness, and the like." See Crosby v. Paulk, 187 F.3d 1339, 1352 (11th Cir. 1999) (quoting Roche v. John Hancock Mut. Life Ins. Co. 81 F.3d 249, 257 (1st Cir. 1996)). Although this decision is discretionary, see Englehardt v. Paul Revere Life Ins. Co., 139 F.3d 1346, 1350 (11th Cir. 1998), the dismissal of state law claims is strongly encouraged where the federal claims are dismissed prior to trial. See Baggett v. First Nat'l Bank, 117 F.3d 1342, 1353 (11th Cir. 1997). Where the court declines to exercise supplemental jurisdiction over such claims, the claims should be dismissed without prejudice so they can be refiled in the appropriate state court. See Crosby, 187 F.3d at 1352. In the interest of judicial economy and convenience, the Court declines to exercise supplemental jurisdiction over the remaining state law claims in this action.

Accordingly, it is therefore ordered and adjudged as follows:

1. Plaintiffs' Renewed Motion for Class Certification (Dkt. 89) is **denied as moot.**
2. Count I is dismissed with prejudice.
3. Counts II and III are dismissed without prejudice to bringing them in state court.

4. The Clerk is directed to close this file.

DONE AND ORDERED at Tampa, Florida, on this 1 day of August, 2001.



RICHARD A. LAZZARA
UNITED STATES DISTRICT JUDGE

COPIES FURNISHED TO:
Counsel of Record

F I L E C O P Y

Date Printed: 08/02/2001

Notice sent to:

— John A. Anthony, Esq.
Gray, Harris, Robinson, Shackelford, Farrior
501 E. Kennedy Blvd., Suite 1400
P.O. Box 3324
Tampa, FL 33601

— William J. Cook, Esq.
Barker, Rodems & Cook, P.A.
300 W. Platt St., Suite 150
Tampa, FL 33606

— Peter J. Grilli
Peter J. Grilli, P.A.
100 S. Ashley Dr., Suite 1300
Tampa, FL 33602

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

August 15, 2001

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

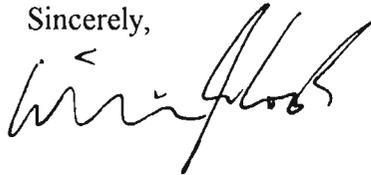
**Re: Eugene R. Clement, individually and on behalf of others similarly situated,
AMSCOT Corporation**
Case No. : 99.2795-Civ-T-26C
Our File No. : 99-4766

Dear Neil:

This confirms that you authorized us to appeal the decision in the above-referenced case. We will not be filing a new lawsuit in State court. In addition, you authorized us to demand \$1,000.00 to settle your claim plus \$50,000.00 in attorneys' fees and costs.

Of course, we will keep you updated on the appeal and any settlement negotiations. As we discussed, however, we do not believe that the Defendant will accept our settlement offer.

Sincerely,



William J. Cook

WJC/mss

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

Telephone and Fax: (727) 823-2390

VIA FAX AND FIRST CLASS MAIL

August 16, 2001

William J. Cook, Attorney at Law
Barker, Rodems & Cook, PA
300 West Platt Street, Suite 150
Tampa, Florida 33606

Re: *Eugene R. Clement, individually and on behalf of others similarly situated,*
AMSCOT Corporation
Case No. : 99.2795-Civ-T-26C
Your File No. : 99-4766

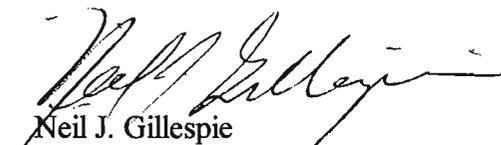
Dear Bill,

Thank you for your letter dated August 15, 2001 relative to the above captioned case. I agree with you that the Defendant will probably not accept your settlement offer. I believe the sticking point is your request for \$50,000 in attorney's fees and costs. I do not believe the \$1,000 request each for myself, Mr. Clement and Ms. Blomefield is a barrier to settlement. Therefore I suggest you ask for a lesser amount of attorney's fees and costs.

Given your lack of success in this matter thus far, I suggest you ask for \$10,000 in attorney's fees and costs. I believe this is a more realistic amount. Given how poorly the case has gone up to now, I believe it is in our interest to settle quickly.

Thank you for your kind consideration.

Sincerely,


Neil J. Gillespie

cc: Kindly provide a copy of this letter to Mr. Clement and Ms. Blomefield

Fax

From: Neil J. Gillespie
1121 Beach Drive NE, Apt C-2
St. Petersburg, FL 33701
Phone/Fax: (727) 823-2390

To: William Cook, Attorney at Law

Fax: 813-489-1008

Date: August 16, 2001

Pages: 2 including this page

Re: AMSCOT Corporation

Urgent **Please Reply** **For Your Review**

● **Comments:** See accompanying letter.

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

Telephone: (813) 810-0151

July 25, 2005

Ian Mackechnie, President
Amscot Corporation
600 N. Westshore Blvd., 12th Floor
Tampa, Florida 33609

RE: Clement, et al. v. Amscot Corporation, Case No. 8:99-cv-2795-T-26C, US District Court, Middle District Florida, Tampa Division; on appeal, Case No. 01-14761-A US Court of Appeals, For the Eleventh Circuit

Dear Mr. Mackechnie,

I was a plaintiff in the above captioned lawsuit. While this action is settled, I regret becoming involved, and was pressured into it by my lawyer, William Cook. I am sorry for the consequences you suffered. About two years ago I found discrepancies in the case file. This is part of my attempt to uncover the truth. As I see it, you paid \$43,000.00 too much to settle this case. Here's why.

Prior to my involvement in the above captioned lawsuit, Mr. Cook represented me in a lawsuit against ACE, America's Cash Express, for payday loan roll-over transactions. The lawsuit was joined by Florida Attorney General Robert Butterworth. I still believe the ACE litigation was justified. However, in my view Amscot was not as culpable as ACE, and I initially declined Mr. Cook's solicitation to join the lawsuit. But Mr. Cook said that I was selfish for not suing Amscot, and I relented.

During the course of litigation it became apparent to me that Mr. Cook and his associates were incompetent and not truthful. During the settlement negotiations I tried to settle this case for \$10,000.00 in legal fees and \$1,000.00 to each of the three plaintiffs (see copy of my letter, enclosed). You ultimately paid \$56,000.00 to settle, and I believe this was the result of our lawyers' collusion. This is my opinion, and I welcome any supporting evidence. In the alternative, perhaps your lawyer John Anthony was just a very poor negotiator, and you paid \$43,000.00 too much to settle the lawsuit.

I filed a complaint against William Cook with the Florida Bar (TFB No. 2004-11,734(13C) to no avail. I am available to discuss this further if you wish. Thank you.

Sincerely,


Neil J. Gillespie

EXHIBIT

11

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

Telephone and Fax: (727) 823-2390

VIA FAX AND FIRST CLASS MAIL

August 16, 2001

William J. Cook, Attorney at Law
Barker, Rodems & Cook, PA
300 West Platt Street, Suite 150
Tampa, Florida 33606

Re: *Eugene R. Clement, individually and on behalf of others similarly situated,*
AMSCOT Corporation
Case No. : 99.2795-Civ-T-26C
Your File No. : 99-4766

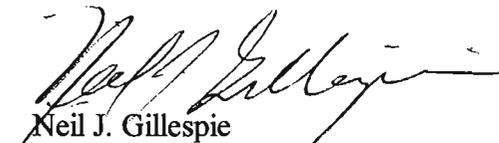
Dear Bill,

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Given your lack of success in this matter thus far, I suggest you ask for \$10,000 in attorney's fees and costs. I believe this is a more realistic amount. Given how poorly the case has gone up to now, I believe it is in our interest to settle quickly.

Thank you for your kind consideration.

Sincerely,


Neil J. Gillespie

cc: Kindly provide a copy of this letter to Mr. Clement and Ms. Blomefield

GRAY | ROBINSON
ATTORNEYS AT LAW

SUITE 2200
201 N. FRANKLIN STREET (33602)
POST OFFICE BOX 3324
TAMPA, FL 33601
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MELBOURNE
NAPLES
ORLANDO
TALLAHASSEE
TAMPA

813-273-5066

JANTHONY@GRAY-ROBINSON.COM

August 26, 2005

VIA FED EX

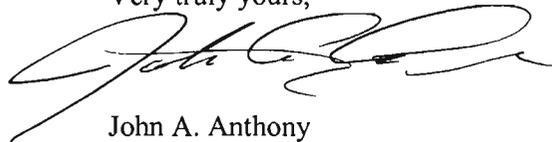
Neil J. Gillespie
8092 SW 115th Loop
Ocala, FL 34481

**Re: Eugene R. Clement, individually and on behalf of others
similarly situated, vs. Amscot Corporation, a Florida corporation
United States District Court, Case No. 99-2795-CIV-T-26C**

Dear Mr. Gillespie:

I have been asked to respond to your letter to Ian MacKechnie of July 25, 2005. Amscot is disappointed that your lawyer apparently did not obey your instructions regarding discontinuing litigation you and he knew to be frivolous. Amscot is disappointed that you did not admit that the litigation lacked merit when I deposed you. We regret that Amscot was required to expend time, money, and other resources defending frivolous litigation. I assure you that we did our best as lawyers to move the case to the correct conclusion, without making it more expensive for all involved. We are pleased that this matter has been concluded, and consider it to have been a closed controversy for some time now. We hope you will put it all behind you as well.

Very truly yours,



John A. Anthony

JAA/aw

cc: Ian MacKechnie

708746 v1

EXHIBIT

12

MEMORANDUM

TO : File
FROM : WJC *WJC*
DATE : Monday, August 20, 2001
RE : Clement v. AMSCOT
: 99.4766

I spoke with Neil Gillespie on August 17, 2001. We had a fairly lengthy conversation about the pluses and minuses of going forward with the appeal and the settlement offer. I explained to him that I did not believe that the sticking part was created through the attorneys' fees, but rather it was the payment to the clients. I told him of my conversation with John Anthony in which he offered to pay this firm \$5,000.00 but would not agree to pay our clients anything. I told him that I rejected that offer. He asked me why I had not mentioned the settlement offer to him previously. I told him that it was not a settlement offer. It was an improper payoff attempt. At the end of the conversation, when I told him that I would wait until Monday before I sent the settlement offer, he told me that that was not necessary. He simply wanted to advise me that he was not necessarily happy with the \$50,000.00 settlement demand. I told him that the \$50,000.00 demand was not set in stone and we could consider the \$10,000.00 offer that he suggested. I told him that it was not likely that we would receive such an offer, however.

WJC

WJC/mss

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

August 20, 2001

John A. Anthony, Esquire
Gray, Harris, Robinson, Shackelford, Farnior
Post Office Box 3324
Tampa, Florida 33601-3324

**Re: *Eugene R. Clement, individually and on behalf of others similarly situated,
AMSCOT Corporation***

Case No. : 99.2795-Civ-T-26C

Our File No. : 99-4766

Dear Mr. Anthony:

In our recent telephone conversation, you said that your client would be willing to pay this firm some kind of "consulting fee" or "non-refundable retainer" in the amount of \$5,000.00 if our clients were to refrain from appealing Judge Lazarra's recent ruling or refile their state law claims in state court. You did not offer any money to our clients. That offer is rejected.

We cannot and will not agree to resolve our clients' claims without any consideration going to our clients.

If your client truly wishes to resolve these claims, our clients are willing to accept \$1,000.00 each, representing the amount of their individual TILA statutory damages. They would also want any outstanding loans forgiven. In addition, we would accept \$50,000.00 to settle this firm's outstanding attorneys' fees and costs.

I am sure that you realize that our actual fees and costs are far in excess of this amount. If our clients were to prevail on appeal, the court undoubtedly would enter summary judgment against your client, thereby entitling us to an award of our fees and costs. Our motion for class certification likely would also be granted, in that your opposition to our class certification motions focused primarily on the merits of our clients' claims.

EXHIBIT

14

John A. Anthony, Esquire
August 20, 2001
Page 2

We view our chances of success on appeal as good, as at least one district court has already decided the same issue contrary to Judge Lazarra's ruling. Indeed, Judge Lazarra himself explicitly recognized in his order that the retroactivity issue was difficult.

This offer is being made on behalf of the individual plaintiffs only and not on behalf of any class. Consequently, our clients' agreement to settle on the above-described terms would not affect the claims of any other Amscot customers.

This offer shall remain open for thirty (30) days.

Thank you for your attention to this matter.

Sincerely,

A handwritten signature in black ink, appearing to read "W. J. Cook", written in a cursive style.

William J. Cook

WJC/so

IN THE UNITED STATES COURT OF APPEALS
FOR THE ELEVENTH CIRCUIT
CASE NO. 01-14761A

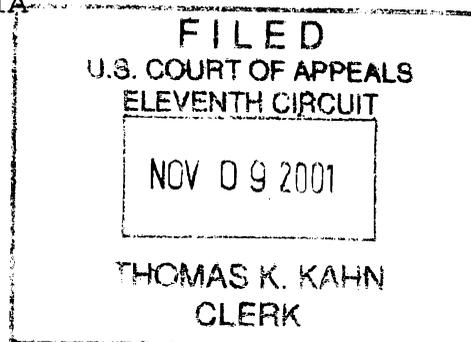
EUGENE R. CLEMENT,
GAY ANN BLOMEFIELD, and
NEIL GILLESPIE, individually and
on behalf of others similarly situated,

Appellants,

v.

AMSCOT CORPORATION,

Appellee.



JOINT STIPULATION FOR DISMISSAL WITH PREJUDICE

The Parties, by and through their undersigned counsel, having amicably resolved this matter, pursuant to Federal Rule of Appellate Procedure 42(b) move for dismissal with prejudice with each party bearing its own attorneys' fees and costs.

RESPECTFULLY SUBMITTED this 6th day of November, 2001.

BARKER, RODEMS & COOK, P.A.

A handwritten signature in cursive script, appearing to read "W. J. Cook".

WILLIAM J. COOK, ESQUIRE
Florida Bar No. 986194
300 West Platt Street
Suite 150
Tampa, Florida 33606
(813) 489-1001 (TEL)
(813) 489-1008 (FAX)
Attorneys for Appellants

Gray, Harris, Robinson,
Shackleford, Farrior

A handwritten signature in cursive script, appearing to read "Lara R. Fernandez".

LARA R. FERNANDEZ, ESQUIRE
Florida Bar No. 0088500
501 E. Kennedy Blvd
Suite 1400
Tampa, Florida 33602
(813) 273-5000 (TEL)
(813) 273-5145 (FAX)
Attorneys for Appellee

EXHIBIT

15

**CERTIFICATE OF INTERESTED PERSONS
AND CORPORATE DISCLOSURE STATEMENT**

Pursuant to Federal Rule of Appellate Procedure 26.1 and Eleventh Circuit Rule 26.1-1, counsel for the Appellants certify that the following persons and entities have an interest in the outcome of this case.

Alpert, Jonathan L., Esq.

Alpert & Ferrentino, P.A.

Amscot Corporation

Anthony, John A., Esq.

Barker, Rodems & Cook, P.A.

Barker, Chris A., Esq.

Blomefield, Gay Ann

Clement, Eugene R.

Cook, William J., Esq.

Gillespie, Neil

Gray, Harris, Robinson, Shackelford, Farrior, P.A.

Lazzara, The Honorable Richard A.

United States District Judge, Middle District of Florida

MacKechnie, Ian

Rodems, Ryan Christopher, Esq.

IN THE UNITED STATES COURT OF APPEALS

FOR THE ELEVENTH CIRCUIT

No. 01-14761-AA

FILED
U.S. COURT OF APPEALS
ELEVENTH CIRCUIT

DEC 07 2001

EUGENE R. CLEMENT,
individually and on behalf of others similarly
situated,

GAY ANN BLOMEFIELD,
NEIL GILLESPIE,

THOMAS K. KAHN

CLERK

Plaintiff-Appellant,

8: 99-CV-2795-T-2C EAS

Plaintiffs-Intervenors-
Counter-Defendants-Appellants,

versus

AMSCOT CORPORATION,
A Florida Corporation,

Defendant-Intervenor-Counter
-Claimant-Appellee.

FILED
12/10/01
OK

On Appeal from the United States District Court for the
Middle District of Florida

BEFORE: EDMONDSON and BARKETT, Circuit Judges.

BY THE COURT:

The parties joint stipulation for dismissal of this appeal
with prejudice, which is construed as a motion to dismiss this
appeal with prejudice, with the parties bearing their own costs
and attorney's fees, is GRANTED.

A TRUE COPY - ATTESTED:
CLERK U.S. COURT OF APPEALS
ELEVENTH CIRCUIT

BY: Joe Cannon
DEPUTY CLERK
ATLANTA, GEORGIA

EXHIBIT
16

RELEASE AND SETTLEMENT AGREEMENT

This Release And Settlement Agreement (this "Agreement") is made and entered into this 30 day of October, 2001, by and between Amscot Corporation ("Amscot"), Eugene R. Clement ("Clement"), Gay Ann Blomefield ("Blomefield"), and Neil Gillespie ("Gillespie"), individually and on behalf of others similarly situated (collectively, the "Plaintiffs"), and Barker, Rodems & Cook, P.A. (the "Firm") collectively referred to herein as the "Parties," who hereby execute this Agreement and state as follows:

1. **Settlement With Plaintiffs.** Amscot shall pay each of the Plaintiffs the sum of Two Thousand Dollars and No/100 (\$2,000), in satisfaction of their claims for damages, as more fully described herein, against Amscot as asserted in the matters styled (i) Eugene R. Clement, et al. v. Amscot Corporation, Case No. 8:99-cv-2795-T-26C, pending in the United States District Court, Middle District of Florida, Tampa Division and (ii) Eugene R. Clement, et al. v. Amscot Corporation, Case No. 01-14761-A, pending in the United States Court of Appeals, For the Eleventh Circuit (collectively, referred to as the "Action").

2. **Settlement With Firm.** Amscot shall pay the Firm the sum of Fifty Thousand Dollars and No/100 (\$50,000), in satisfaction of Plaintiffs' claims for attorneys' fees and costs, as more fully described herein, against Amscot as asserted in the Action.

3. **Age, Competence, and Authority.** To procure payment of said sum as referenced in paragraph number one, the Plaintiffs hereby declare that they are each more than eighteen (18) years of age, and are otherwise competent and fully authorized to execute this Agreement. To procure payment of said sum as referenced in paragraph number two, the Firm hereby represents and warrants that it is a corporation duly organized, validly existing and in good standing under the laws of the State of Florida. The Firm has the necessary corporate power, authority, and has obtained all

necessary consents required to execute, deliver and perform the obligations under the provisions of this Agreement.

4. **Unknown and Unanticipated Damages.** The Plaintiffs and the Firm hereby agree that, as a further consideration and inducement for this Agreement, this Agreement shall apply to all unknown and unanticipated damages resulting from the transactions and occurrences alleged or that could have been alleged in the complaint initiating this Action filed by the Plaintiffs.

5. **Amicable Civil Resolution.** Without in any way admitting guilt or liability in connection with the referenced events, by or on behalf of any of the Parties, the Parties have agreed to an amicable civil resolution of all causes of action arising out of the transactions and occurrences alleged or that could have been alleged in the complaint initiating this Action filed by the Plaintiffs.

6. **Mutual Releases.** Upon Plaintiffs' and the Firm's receipt of the consideration required pursuant to paragraph numbers one and two (1. and 2.) hereof, this Agreement shall operate as a general and mutual release by the Plaintiffs and the Firm against Amscot and by Amscot against the Plaintiffs and the Firm, and all of both Amscot's and the Firm's shareholders, directors, officers, employees, and agents of any kind, and all successors and assigns, from any and all liability relating to the transaction outlined generally in paragraph numbers one and two (1. and 2.) herein. This mutual release shall therefore discharge all claims, liens, debts, actions, demands, damages, costs, expenses, actions, and causes of actions, or assertions of any kind whatsoever, both at law and equity, whether known, unknown, alleged, direct, indirect, disputed, contingent, real, or imagined, that in any way relate to the Action or said transactions relating to the Action.

7. **Release of Liens:** The Plaintiffs and the Firm represent that there are no outstanding claims, liens or subrogation rights against the released parties resulting from or in any

way related to the damages claimed in the Action, and all occurrences thereafter other than those which will be satisfied by the Plaintiffs and the Firm.

8. **Indemnification/Hold Harmless:** Plaintiffs and the Firm agree to protect, defend, indemnify and hold Amscot harmless from and against any and all liabilities, damages, claims, demands, costs or expenses, including, without limitation, reasonable attorneys' fees as hereinafter set forth resulting from or relating to the Action, including specifically, any lien asserted by the former firm who represented the Plaintiffs, Alpert, Barker, Rodems, Ferrentino & Cook, P.A. n/k/a Alpert & Ferrentino, P.A.

9. **Confidentiality.** The consideration for Amscot acceding to the terms of this Agreement is favorable community relations and the maintenance of good will and favorable reputation of Amscot. The Parties agree that no disclosure shall be made to any third party regarding the transaction generally outlined in paragraph numbers one and two (1. and 2.) herein, except as required by existing State of Florida statutes, under the laws of the United States of America, or pursuant to a third party subpoena, or in connection with resolution of any outstanding third-party liens.

10. **No Admission.** It is expressly understood that the Parties explicitly deny any wrongdoing, liability, or obligation whatsoever to the other party relating to the transaction set forth in paragraph numbers one and two (1. and 2.) herein. Because this Agreement is a settlement document, it is agreed by the Parties that this Agreement shall not be filed, introduced into evidence, or otherwise used for any purpose in connection with the transaction set forth generally in paragraph numbers one and 2 (1. and 2.) herein. The provisions hereof are intended to be broader than the provisions of Florida Statutes § 90.408 and Federal Rule of Evidence 408.

11. **No Interpretation Against the Drafter.** The Parties acknowledge that this Agreement is voluntarily entered into by all of them. All having had the right to counsel in connection with the negotiation, execution, and drafting hereof, no portion of this Agreement shall be construed against any of the Parties on the grounds that its counsel may have been the primary drafter hereof.

12. **Modification.** The terms and conditions of this Agreement may not be modified except in writing signed by the Parties.

13. **Florida Contract/Hillsborough County Venue.** This Agreement is hereby deemed a Florida contract, executed and performed in Hillsborough County, Florida. This Agreement shall be construed according to the laws of the State of Florida, regardless of whether this Agreement is executed by certain of the parties hereto in other states or counties. The Parties consent to jurisdiction and venue in Hillsborough County, Florida.

14. **Waiver of Jury Trial.** The Parties hereby knowingly, voluntarily, and intentionally waive the right to a trial by jury in respect of any litigation based hereon, or arising out of, under or in connection with this Agreement, and any agreement contemplated to be executed in conjunction therewith, or in the course of conduct, course of dealing, statements (whether verbal or written), or actions of any of the Parties. The Parties acknowledge that this provision is a material inducement for this Agreement.

15. **Third Party Rights:** Nothing in this Agreement, whether express or implied, is intended or should be construed to confer upon, or to grant to, any person, except the Parties and their respective assignees and successors, any claim, right, or remedy under or because of either this Agreement or any provision of it. Conversely, none of the Parties are waiving, releasing, or

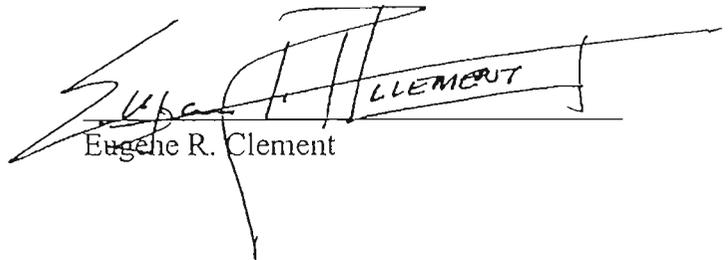
otherwise modifying their rights as against any third party except as expressly provided herein.

16. Execution in Counterparts. This Agreement is binding on, and inures to the benefit of, the respective successors, permitted assignees, and personal representatives of the Parties. The Parties may execute this Agreement in counterparts. Each executed counterpart will be considered an original, and both of them together will constitute the same agreement. This Agreement will become effective as of its stated effective date when each party has executed a counterpart and delivered it to the other party.

IN WITNESS WHEREOF, the Parties hereto have executed this Agreement on the day and year first above written.

AMSCOT CORPORATION

By: _____
Name: _____
Title: _____



Eugene R. Clement

Gay Ann Blomefield
Gay Ann Blomefield



Neil Gillespie

BARKER, RODEMS & COOK, P.A.

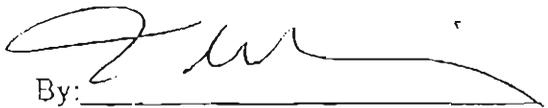
By: William J. Cook
Name: William J. Cook
Title: secretary/treasurer

#412987/ldw

16. Execution in Counterparts. This Agreement is binding on, and inures to the benefit of, the respective successors, permitted assignees, and personal representatives of the Parties. The Parties may execute this Agreement in counterparts. Each executed counterpart will be considered an original, and both of them together will constitute the same agreement. This Agreement will become effective as of its stated effective date when each party has executed a counterpart and delivered it to the other party.

IN WITNESS WHEREOF, the Parties hereto have executed this Agreement on the day and year first above written.

AMSCOT CORPORATION

By: 
Name: LAW WACKECHNE
Title: PRESIDENT

Eugene R. Clement

Gay Ann Blomefield

Neil Gillespie

BARKER, RODEMS & COOK, P.A.

By: _____
Name: _____
Title: _____

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

EUGENE R. CLEMENT, individually and
on behalf of others similarly situated,

Plaintiff,

v.

ACE CASH EXPRESS, INC., a Texas corporation
d/b/a ACE America's Cash Express,

Defendant.

Consolidated Case No. 99-9730
Division J
Class Representation
Jury Trial Demanded

NEIL GILLESPIE, individually and on behalf
of others similarly situated,

Plaintiff,

v.

ACE CASH EXPRESS, INC., a Texas corporation
d/b/a ACE America's Cash Express,

Defendant.

STIPULATION OF THE PARTIES

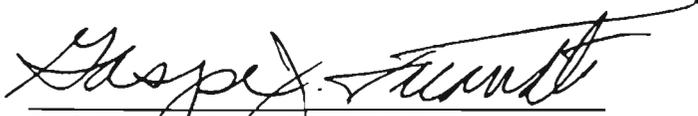
Pursuant to the Mediation Conference held the 12th day of June, 2002, the parties have agreed to abide by the following:

1. The Defendant, ACE CASH EXPRESS, INC., agrees to pay and the Plaintiffs, EUGENE R. CLEMENT and NEIL GILLESPIE, agree to accept the sum of \$5,000.00 each, in full and complete settlement of any and all claims against all defendants that have been brought or could have been brought in the above styled cause.
2. Clement and Gillespie shall execute releases of all defendants. ACE will release Clement and Gillespie.
3. The Defendant, ACE CASH EXPRESS, INC., shall forward said sum to the Plaintiff's attorney within thirty (30) days of the date of this Stipulation.
4. Each party shall bear their own fees and costs, and shall share in the mediation fees.

5. After receipt of the funds, the Plaintiffs will cause this action and the related appeal in the Second District Court of Appeal to be dismissed, with prejudice.

6/12/02

Date

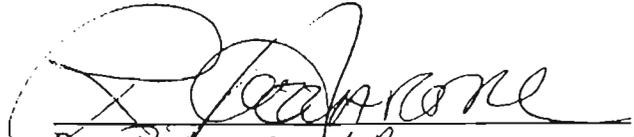


GASPER J. FICARROTTA, Mediator

ACE CASH EXPRESS, INC.



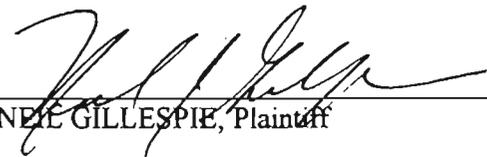
NEIL A. SIVYER, Attorney for Defendant
ACE CASH EXPRESS, INC.



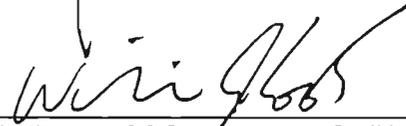
By: REGIONAL V.P.



EUGENE R. CLEMENT, Plaintiff



NEIL GILLESPIE, Plaintiff



WILLIAM J. COOK, Attorney for Plaintiffs

BARKER, RODEMS & COOK, P.A.

Closing Statement as of June 24, 2002

Style of Case: NEIL GILLESPIE, et al. v. ACE CASH EXPRESS, INC., a Texas corporation, d/b/a ACE America's Cash Express

Our File No.: 99-4764

CREDITS:

SETTLEMENT PROCEEDS \$ 5,000.00
PAYMENT FROM EUGENE R. CLEMENT'S SETTLEMENT \$ 500.00

DEBITS:

ATTORNEYS' FEE (per contract and agreement at mediation on 6/12/02) \$ 1,500.00
COSTS (see attached) \$ 2,000.00

NET TO CLIENT \$ 2,000.00

I acknowledge receipt of \$500.00 from my Co-Plaintiff, Eugene R. Clement. As an administrative convenience, I am receiving the amount directly from my attorneys' Trust Account as part of my settlement proceeds.

The above closing statement is hereby approved by the undersigned on the above date.

NEIL GILLESPIE

BARKER, RODEMS & COOK, P.A.



By: 

Expense Listing

Listing Order: Transaction Date, Client-Matter
 Client: CLEMENT, EUGENE
 Matter: Ace Cash Express
 Date Range: 12/01/2000 - 06/24/2002

Code: All Codes
 Person: All Persons
 Responsible: All Responsible
 Invoicing Status: Invoiced and Not Invoiced

Record	Date	Client-Matter	Seq	Description	Unit	Our Cost	Client Cost
229	01/08/2001	000049-994764	S	Postage		\$3.20	\$3.20
666	01/08/2001	000049-994764	S	Photocopies	4	\$1.00	\$1.00
481	01/10/2001	000049-994764	S	Photocopies	1	\$0.25	\$0.25
168	01/11/2001	000049-994764	S	Postage		\$0.34	\$0.34
493	01/11/2001	000049-994764	S	Photocopies	2	\$0.50	\$0.50
470	01/31/2001	000049-994764	S	Facsimiles		\$9.00	\$9.00
1198	01/31/2001	000049-994764	S	Legal Research		\$21.86	\$21.86
961	02/08/2001	000049-994764	S	Photocopies @ .25 per page	23	\$5.75	\$5.75
964	02/08/2001	000049-994764	S	Photocopies @ .25 per page	4	\$1.00	\$1.00
979	02/08/2001	000049-994764	S	Postage		\$0.68	\$0.68
1071	02/12/2001	000049-994764	S	Postage		\$1.31	\$1.31
1086	02/12/2001	000049-994764	S	Facsimiles		\$9.50	\$9.50
1148	02/12/2001	000049-994764	S	Photocopies @ .25 per page	87	\$21.75	\$21.75
1154	02/13/2001	000049-994764	S	Photocopies @ .25 per page	9	\$2.25	\$2.25
1167	02/13/2001	000049-994764	S	Postage		\$2.20	\$2.20
1235	02/13/2001	000049-994764	S	Photocopies @ .25 per page	64	\$16.00	\$16.00
1177	02/14/2001	000049-994764	S	Postage		\$0.76	\$0.76
1529	02/27/2001	000049-994764	S	Postage		\$0.76	\$0.76
1585	02/27/2001	000049-994764	S	Facsimiles		\$3.50	\$3.50
1589	02/27/2001	000049-994764	S	Facsimiles		\$13.50	\$13.50
1601	02/27/2001	000049-994764	S	Postage		\$1.39	\$1.39
1630	02/27/2001	000049-994764	S	Photocopies @ .25 per page	28	\$7.00	\$7.00
1639	02/27/2001	000049-994764	S	Photocopies @ .25 per page	2	\$0.50	\$0.50
1644	02/27/2001	000049-994764	S	Photocopies @ .25 per page	60	\$15.00	\$15.00
1647	02/27/2001	000049-994764	S	Photocopies @ .25 per page	2	\$0.50	\$0.50
1611	02/28/2001	000049-994764	S	Postage		\$2.36	\$2.36

Expense Listing

Listing Order: Transaction Date, Client-Matter
 Client: CLEMENT, EUGENE
 Matter: Ace Cash Express
 Date Range: 12/01/2000 - 06/24/2002

Code: All Codes
 Person: All Persons
 Responsible: All Responsible
 Invoicing Status: Invoiced and Not Invoiced

Receipt #	Date	Client-Matter	Stat	Description	Quantity	Unit Cost	Total Cost
1618	02/28/2001	000049-994764	S	Photocopies @ .25 per page	44	\$11.00	\$11.00
1685	03/02/2001	000049-994764	S	Photocopies @ .25 per page	124	\$31.00	\$31.00
1694	03/02/2001	000049-994764	S	Postage		\$1.65	\$1.65
1711	03/02/2001	000049-994764	S	Postage		\$0.34	\$0.34
1712	03/05/2001	000049-994764	S	Postage		\$4.38	\$4.38
1846	03/08/2001	000049-994764	S	Photocopies @ .25 per page	1	\$0.25	\$0.25
2019	03/15/2001	000049-994764	S	Legal Research		\$66.36	\$66.36
2135	03/19/2001	000049-994764	S	Photocopies @ .25 per page	10	\$2.50	\$2.50
2179	03/19/2001	000049-994764	S	Legal Research		\$1.80	\$1.80
2254	03/31/2001	000049-994764	S	Facsimiles 6 pages on 3/20 and 3/29		\$3.00	\$3.00
2292	03/31/2001	000049-994764	S	Photocopies @ .25 per page	98	\$24.50	\$24.50
2355	03/31/2001	000049-994764	S	Postage		\$5.66	\$5.66
2431	04/18/2001	000049-994764	S	Clerk of the Court, Middle District of Florida - Miscellaneous expenses		\$4.50	\$4.50
2535	04/28/2001	000049-994764	S	Facsimiles	4	\$2.00	\$2.00
2546	04/28/2001	000049-994764	S	Facsimiles	10	\$5.00	\$5.00
2560	04/28/2001	000049-994764	S	Facsimiles	4	\$2.00	\$2.00
2614	04/28/2001	000049-994764	S	Photocopies @ .25 per page	545	\$136.25	\$136.25
2665	04/28/2001	000049-994764	S	Photocopies @ .25 per page	4	\$1.00	\$1.00
2698	04/28/2001	000049-994764	S	Postage		\$1.57	\$1.57
2761	04/28/2001	000049-994764	S	Postage		\$1.78	\$1.78
2851	05/01/2001	000049-994764	S	Facsimiles	7	\$3.50	\$3.50
2853	05/01/2001	000049-994764	S	Facsimiles	11	\$5.50	\$5.50
2840	05/02/2001	000049-994764	S	Postage		\$2.78	\$2.78
2858	05/02/2001	000049-994764	S	Facsimiles	17	\$8.50	\$8.50
2872	05/02/2001	000049-994764	S	Photocopies @ .25 per page	37	\$9.25	\$9.25
3058	05/03/2001	000049-994764	S	Facsimiles	7	\$3.50	\$3.50

Expense Listing

Listing Order: Transaction Date, Client-Matter
 Client: CLEMENT, EUGENE
 Matter: Ace Cash Express
 Date Range: 12/01/2000 - 06/24/2002

Code: All Codes
 Person: All Persons
 Responsible: All Responsible
 Invoicing Status: Invoiced and Not Invoiced

Record	Date	Client/Matter	Ser	Description	Units	Unit Cost	Amount	Cost
2895	05/04/2001	000049-994764	S	Postage			\$0.34	\$0.34
3068	05/07/2001	000049-994764	S	Facsimiles	2	\$1.00	\$1.00	\$1.00
3030	05/08/2001	000049-994764	S	Photocopies @ .25 per page	163	\$40.75	\$40.75	\$40.75
3072	05/08/2001	000049-994764	S	Facsimiles	4	\$2.00	\$2.00	\$2.00
3088	05/08/2001	000049-994764	S	Postage			\$0.34	\$0.34
3105	05/08/2001	000049-994764	S	Postage			\$5.43	\$5.43
3064	05/09/2001	000049-994764	S	Clerk of the Court, Middle District of Florida - Copy Services			\$120.00	\$120.00
3112	05/09/2001	000049-994764	S	Postage			\$0.89	\$0.89
3121	05/09/2001	000049-994764	S	Postage			\$0.68	\$0.68
3166	05/09/2001	000049-994764	S	Photocopies @ .25 per page	3	\$0.75	\$0.75	\$0.75
3131	05/10/2001	000049-994764	S	Postage			\$5.91	\$5.91
3204	05/11/2001	000049-994764	S	Postage			\$1.86	\$1.86
3245	05/11/2001	000049-994764	S	Facsimiles	4	\$2.00	\$2.00	\$2.00
3302	05/11/2001	000049-994764	S	Photocopies @ .25 per page	48	\$12.00	\$12.00	\$12.00
3251	05/14/2001	000049-994764	S	Facsimiles	6	\$3.00	\$3.00	\$3.00
3181	05/15/2001	000049-994764	S	Legal Research			\$2.03	\$2.03
3184	05/15/2001	000049-994764	S	Legal Research			\$35.01	\$35.01
3197	05/15/2001	000049-994764	S	Legal Research			\$21.53	\$21.53
3217	05/15/2001	000049-994764	S	William J. Cook - Miscellaneous charges			\$22.12	\$22.12
3256	05/16/2001	000049-994764	S	Facsimiles	3	\$1.50	\$1.50	\$1.50
3260	05/16/2001	000049-994764	S	Facsimiles	2	\$1.00	\$1.00	\$1.00
3294	05/16/2001	000049-994764	S	Facsimiles	3	\$1.50	\$1.50	\$1.50
3298	05/16/2001	000049-994764	S	Facsimiles	2	\$1.00	\$1.00	\$1.00
3318	05/16/2001	000049-994764	S	Photocopies @ .25 per page	4	\$1.00	\$1.00	\$1.00
3322	05/16/2001	000049-994764	S	Postage			\$0.34	\$0.34
3409	05/16/2001	000049-994764	S	Facsimiles	4	\$2.00	\$2.00	\$2.00

Expense Listing

Listing Order: Transaction Date, Client-Matter
 Client: CLEMENT, EUGENE
 Matter: Ace Cash Express
 Date Range: 12/01/2000 - 06/24/2002

Code: All Codes
 Person: All Persons
 Responsible: All Responsible
 Invoicing Status: Invoiced and Not Invoiced

Transaction	Date	Client/Matter	Ref	Description	Page	Exp. Code	Client Exp.
3419	05/18/2001	000049-994764	S	Facsimiles	8		\$4.00
3424	05/21/2001	000049-994764	S	Facsimiles	1		\$0.50
3442	05/23/2001	000049-994764	S	Photocopies @ .25 per page	4		\$1.00
3466	05/23/2001	000049-994764	S	Postage			\$0.34
3527	05/23/2001	000049-994764	S	Facsimiles	2		\$1.00
3503	05/24/2001	000049-994764	S	Postage			\$1.02
3509	05/24/2001	000049-994764	S	Postage			\$0.34
3519	05/24/2001	000049-994764	S	Postage			\$0.68
3541	05/24/2001	000049-994764	S	Facsimiles	2		\$1.00
3558	05/24/2001	000049-994764	S	Photocopies @ .25 per page	8		\$2.00
3573	05/24/2001	000049-994764	S	Photocopies @ .25 per page	2		\$0.50
3590	05/24/2001	000049-994764	S	Facsimiles	2		\$1.00
3581	05/25/2001	000049-994764	S	Photocopies @ .25 per page	40		\$10.00
3629	05/25/2001	000049-994764	S	Postage			\$1.65
3606	05/29/2001	000049-994764	S	Facsimiles	2		\$1.00
4434	06/01/2001	000049-994764	S	Department of Banking and Finance - Copy Services			\$7.80
3751	06/04/2001	000049-994764	S	Photocopies @ .25 per page	32		\$8.00
3760	06/04/2001	000049-994764	S	Postage			\$3.12
3801	06/04/2001	000049-994764	S	Photocopies @ .25 per page	56		\$14.00
3844	06/04/2001	000049-994764	S	Facsimiles	15		\$7.50
3927	06/06/2001	000049-994764	S	Postage			\$0.68
3861	06/07/2001	000049-994764	S	Photocopies @ .25 per page	48		\$12.00
4057	06/08/2001	000049-994764	S	Photocopies @ .25 per page	219		\$54.75
12441	06/08/2001	000049-994764	S	Postage			\$0.68
4062	06/11/2001	000049-994764	S	Photocopies @ .25 per page	12		\$3.00
4005	06/12/2001	000049-994764	S	Legal Research			\$13.88

Expense Listing

Listing Order: Transaction Date, Client-Matter
Client: CLEMENT, EUGENE
Matter: Ace Cash Express
Date Range: 12/01/2000 - 06/24/2002

Code: All Codes
Person: All Persons
Responsible: All Responsible
Invoicing Status: Invoiced and Not Invoiced

Request	Date	Client/Matter	Spa.	Description	Units	Unit Price	Total Price
4087	06/12/2001	000049-994764	S	Facsimiles	2	\$1.00	\$1.00
4091	06/12/2001	000049-994764	S	Facsimiles	4	\$2.00	\$2.00
4106	06/12/2001	000049-994764	S	Postage		\$0.68	\$0.68
4141	06/12/2001	000049-994764	S	Facsimiles	4	\$2.00	\$2.00
4144	06/12/2001	000049-994764	S	Facsimiles	16	\$8.00	\$8.00
4162	06/12/2001	000049-994764	S	Postage		\$1.65	\$1.65
4184	06/12/2001	000049-994764	S	Photocopies @ .25 per page	9	\$2.25	\$2.25
4186	06/12/2001	000049-994764	S	Photocopies @ .25 per page	32	\$8.00	\$8.00
4124	06/13/2001	000049-994764	S	Long Distance Telephone Calls		\$0.33	\$0.33
4225	06/14/2001	000049-994764	S	Facsimiles	9	\$4.50	\$4.50
4216	06/15/2001	000049-994764	S	Photocopies @ .25 per page	2	\$0.50	\$0.50
4259	06/15/2001	000049-994764	S	Postage		\$0.34	\$0.34
4321	06/15/2001	000049-994764	S	Photocopies @ .25 per page	20	\$5.00	\$5.00
4340	06/15/2001	000049-994764	S	Postage		\$2.46	\$2.46
4405	06/15/2001	000049-994764	S	Facsimiles	44	\$22.00	\$22.00
4410	06/15/2001	000049-994764	S	Facsimiles	9	\$4.50	\$4.50
4414	06/18/2001	000049-994764	S	Facsimiles	2	\$1.00	\$1.00
4417	06/19/2001	000049-994764	S	Facsimiles	2	\$1.00	\$1.00
4422	06/19/2001	000049-994764	S	Facsimiles	1	\$0.50	\$0.50
4463	06/20/2001	000049-994764	S	Facsimiles	1	\$0.50	\$0.50
4294	06/21/2001	000049-994764	S	Office of the Comptroller - Copy Services		\$173.10	\$173.10
4384	06/21/2001	000049-994764	S	Postage		\$0.68	\$0.68
4386	06/21/2001	000049-994764	S	Postage		\$0.34	\$0.34
4465	06/21/2001	000049-994764	S	Facsimiles	5	\$2.50	\$2.50
4484	06/21/2001	000049-994764	S	Photocopies @ .25 per page	6	\$1.50	\$1.50
4500	06/21/2001	000049-994764	S	Photocopies @ .25 per page	1306	\$326.50	\$326.50

Expense Listing

Listing Order: Transaction Date, Client-Matter
 Client: CLEMENT, EUGENE
 Matter: Ace Cash Express
 Date Range: 12/01/2000 - 06/24/2002

Code: All Codes
 Person: All Persons
 Responsible: All Responsible
 Invoicing Status: Invoiced and Not Invoiced

Report	Date	Client-Matter	Seq	Description	QTY	Unit Cost	Client Cost
	4492	06/25/2001	000049-994764	S Photocopies @ .25 per page	76	\$19.00	\$19.00
	4514	06/25/2001	000049-994764	S Photocopies @ .25 per page	77	\$19.25	\$19.25
	4520	06/25/2001	000049-994764	S Postage		\$3.12	\$3.12
	4529	06/25/2001	000049-994764	S Postage		\$0.34	\$0.34
	4541	06/25/2001	000049-994764	S Facsimiles	15	\$7.50	\$7.50
	4546	06/25/2001	000049-994764	S Facsimiles	6	\$3.00	\$3.00
	4494	06/26/2001	000049-994764	S Photocopies @ .25 per page	98	\$24.50	\$24.50
	4733	06/26/2001	000049-994764	S Berryhill & Associates, Inc. - Deposition Fee		\$140.00	\$140.00
	4734	06/27/2001	000049-994764	S Berryhill & Associates, Inc. - Deposition Fee		\$50.00	\$50.00
	4745	07/02/2001	000049-994764	S Facsimiles	2	\$1.00	\$1.00
	4757	07/03/2001	000049-994764	S William J. Cook - Parking Expense		\$24.00	\$24.00
	5231	07/03/2001	000049-994764	S Postage		\$0.68	\$0.68
	5233	07/03/2001	000049-994764	S FedEx Shipping Charges		\$22.88	\$22.88
	4847	07/05/2001	000049-994764	S Facsimiles	4	\$2.00	\$2.00
	4836	07/06/2001	000049-994764	S Postage		\$0.68	\$0.68
	4854	07/06/2001	000049-994764	S Facsimiles	6	\$3.00	\$3.00
	4886	07/06/2001	000049-994764	S Photocopies @ .25 per page	2	\$0.50	\$0.50
	4861	07/09/2001	000049-994764	S Facsimiles	2	\$1.00	\$1.00
	4970	07/11/2001	000049-994764	S William J. Cook - Travel Expense- Hotel/Airline		\$601.10	\$601.10
	5043	07/11/2001	000049-994764	S Photocopies @ .25 per page	8	\$2.00	\$2.00
	5321	07/11/2001	000049-994764	S Comptroller, State of Florida - Copy Services		\$59.10	\$59.10
	5047	07/12/2001	000049-994764	S Photocopies @ .25 per page	3	\$0.75	\$0.75
	5113	07/12/2001	000049-994764	S Postage		\$0.68	\$0.68
	5259	07/12/2001	000049-994764	S Facsimiles	2	\$1.00	\$1.00
	5292	07/17/2001	000049-994764	S Photocopies @ .25 per page	17	\$4.25	\$4.25
	5304	07/17/2001	000049-994764	S Postage		\$1.14	\$1.14

Expense Listing

Listing Order: Transaction Date, Client-Matter
 Client: CLEMENT, EUGENE
 Matter: Ace Cash Express
 Date Range: 12/01/2000 - 06/24/2002

Code: All Codes
 Person: All Persons
 Responsible: All Responsible
 Involving Status: Invoiced and Not Invoiced

Receipt	Date	Client-Matter	Stat	Description	QTY	Unit Cost	Client Cost
5333	07/20/2001	000049-994764	S	Legal Research		\$2.25	\$2.25
5337	07/20/2001	000049-994764	S	Legal Research		\$128.28	\$128.28
5644	07/25/2001	000049-994764	S	Photocopies @ .25 per page	244	\$61.00	\$61.00
5620	07/26/2001	000049-994764	S	Facsimiles	10	\$5.00	\$5.00
5658	07/30/2001	000049-994764	S	Photocopies @ .25 per page	40	\$10.00	\$10.00
5692	07/30/2001	000049-994764	S	Department of Banking and Finance - Copy Services		\$9.45	\$9.45
5676	07/31/2001	000049-994764	S	Facsimiles	5	\$2.50	\$2.50
5719	08/01/2001	000049-994764	S	Facsimiles	7	\$3.50	\$3.50
5723	08/01/2001	000049-994764	S	Facsimiles	6	\$3.00	\$3.00
5706	08/02/2001	000049-994764	S	Postage		\$2.52	\$2.52
5786	08/02/2001	000049-994764	S	Photocopies @ .25 per page	110	\$27.50	\$27.50
5738	08/03/2001	000049-994764	S	Facsimiles	5	\$2.50	\$2.50
6023	08/14/2001	000049-994764	S	Long Distance Telephone Calls		\$0.86	\$0.86
6277	08/15/2001	000049-994764	S	Photocopies @ .25 per page	2	\$0.50	\$0.50
6516	08/31/2001	000049-994764	S	FedEx Shipping Charges		\$20.68	\$20.68
6739	09/13/2001	000049-994764	S	Long Distance Telephone Calls		\$0.12	\$0.12
6935	09/13/2001	000049-994764	S	Photocopies @ .25 per page	51	\$12.75	\$12.75
6851	09/21/2001	000049-994764	S	Legal Research		\$62.28	\$62.28
7142	09/27/2001	000049-994764	S	Photocopies @ .25 per page	35	\$8.75	\$8.75
7186	09/28/2001	000049-994764	S	Facsimiles	6	\$3.00	\$3.00
7266	10/01/2001	000049-994764	S	Facsimiles	3	\$1.50	\$1.50
7428	10/03/2001	000049-994764	S	Berryhill & Associates, Inc. - Miscellaneous charges		\$50.00	\$50.00
7507	10/03/2001	000049-994764	S	Photocopies @ .25 per page	1	\$0.25	\$0.25
7315	10/04/2001	000049-994764	S	Facsimiles	5	\$2.50	\$2.50
7611	10/11/2001	000049-994764	S	Postage		\$0.34	\$0.34
7578	10/15/2001	000049-994764	S	FedEx Shipping Charges		\$15.08	\$15.08

Expense Listing

Listing Order: Transaction Date, Client-Matter
Client: CLEMENT, EUGENE
Matter: Ace Cash Express
Date Range: 12/01/2000 - 06/24/2002

Code: All Codes
Person: All Persons
Responsible: All Responsible
Invoicing Status: Invoiced and Not Invoiced

Record	Date	Client/Matter	Stat	Description	Units	Our Cost	Client Cost
7747	10/16/2001	000049-994764	S	Facsimiles	2	\$1.00	\$1.00
7940	10/24/2001	000049-994764	S	Facsimiles	3	\$1.50	\$1.50
8399	11/09/2001	000049-994764	S	Postage		\$3.78	\$3.78
8408	11/09/2001	000049-994764	S	Facsimiles	3	\$1.50	\$1.50
8411	11/09/2001	000049-994764	S	Facsimiles	24	\$12.00	\$12.00
8439	11/09/2001	000049-994764	S	Photocopies @ .25 per page	90	\$22.50	\$22.50
8494	11/09/2001	000049-994764	S	Berryhill & Associates, Inc. - Deposition Fee		\$168.00	\$168.00
8427	11/13/2001	000049-994764	S	Clerk of Court , Second District Court of Appeal - Filing Fee		\$250.00	\$250.00
8428	11/13/2001	000049-994764	S	Clerk of the Circuit Court, Thirteenth Circuit - Filing Fee		\$156.00	\$156.00
8490	11/13/2001	000049-994764	S	Postage		\$1.14	\$1.14
8577	11/13/2001	000049-994764	S	Photocopies @ .25 per page	25	\$6.25	\$6.25
8468	11/14/2001	000049-994764	S	Legal Research		\$4.54	\$4.54
8609	11/20/2001	000049-994764	S	Facsimiles	1	\$0.50	\$0.50
8657	11/27/2001	000049-994764	S	Postage		\$0.34	\$0.34
8697	11/27/2001	000049-994764	S	Facsimiles	2	\$1.00	\$1.00
9196	12/12/2001	000049-994764	S	Facsimiles	2	\$1.00	\$1.00
9067	12/13/2001	000049-994764	S	Berryhill & Associates, Inc. - Deposition Fee		\$151.00	\$151.00
9199	12/14/2001	000049-994764	S	Berryhill & Associates, Inc. - Deposition Fee		\$126.50	\$126.50
9259	12/17/2001	000049-994764	S	Facsimiles	9	\$4.50	\$4.50
9260	12/17/2001	000049-994764	S	Facsimiles	27	\$13.50	\$13.50
9473	12/17/2001	000049-994764	S	Photocopies @ .25 per page	1233	\$308.25	\$308.25
9326	12/18/2001	000049-994764	S	Facsimiles	4	\$2.00	\$2.00
9389	12/18/2001	000049-994764	S	Postage		\$1.36	\$1.36
9439	12/18/2001	000049-994764	S	Photocopies @ .25 per page	12	\$3.00	\$3.00
9575	01/02/2002	000049-994764	S	Postage		\$2.39	\$2.39
9643	01/02/2002	000049-994764	S	Photocopies @ .25 per page	24	\$6.00	\$6.00

Expense Listing

Listing Order: Transaction Date, Client-Matter
Client: CLEMENT, EUGENE
Matter: Ace Cash Express
Date Range: 12/01/2000 - 06/24/2002

Code: All Codes
Person: All Persons
Responsible: All Responsible
Invoicing Status: Invoiced and Not Invoiced

Record	DATE	Client-Matter	Stat	Description	Units	Our Cost	Client Cost
9646	01/04/2002	000049-994764	S	Photocopies @ .25 per page	6	\$1.50	\$1.50
9703	01/04/2002	000049-994764	S	Facsimiles	2	\$1.00	\$1.00
9708	01/07/2002	000049-994764	S	Facsimiles	3	\$1.50	\$1.50
9773	01/10/2002	000049-994764	S	Postage		\$2.85	\$2.85
9893	01/10/2002	000049-994764	S	Facsimiles	7	\$3.50	\$3.50
9914	01/10/2002	000049-994764	S	Photocopies @ .25 per page	30	\$7.50	\$7.50
9810	01/15/2002	000049-994764	S	Facsimiles	3	\$1.50	\$1.50
9818	01/16/2002	000049-994764	S	Facsimiles	2	\$1.00	\$1.00
9828	01/17/2002	000049-994764	S	Facsimiles	2	\$1.00	\$1.00
9837	01/21/2002	000049-994764	S	Long Distance Telephone Calls		\$0.34	\$0.34
9993	01/22/2002	000049-994764	S	Postage		\$2.04	\$2.04
9995	01/22/2002	000049-994764	S	Postage		\$2.39	\$2.39
10279	01/23/2002	000049-994764	S	Photocopies @ .25 per page	36	\$9.00	\$9.00
10075	01/25/2002	000049-994764	S	Photocopies @ .25 per page	56	\$14.00	\$14.00
10126	01/25/2002	000049-994764	S	Facsimiles	40	\$20.00	\$20.00
10205	01/25/2002	000049-994764	S	Postage		\$2.85	\$2.85
10449	02/12/2002	000049-994764	S	Legal Research		\$5.59	\$5.59
10467	02/12/2002	000049-994764	S	Long Distance Telephone Calls		\$1.19	\$1.19
10800	02/28/2002	000049-994764	S	Facsimiles	7	\$3.50	\$3.50
10972	03/11/2002	000049-994764	S	Long Distance Telephone Calls		\$0.95	\$0.95
11016	03/11/2002	000049-994764	S	Postage		\$5.00	\$5.00
11042	03/11/2002	000049-994764	S	Photocopies @ .25 per page	29	\$7.25	\$7.25
11179	03/13/2002	000049-994764	S	Facsimiles	6	\$3.00	\$3.00
11341	03/24/2002	000049-994764	S	Postage		\$3.75	\$3.75
11357	03/24/2002	000049-994764	S	Facsimiles	18	\$9.00	\$9.00
11455	03/29/2002	000049-994764	S	Facsimiles	5	\$2.50	\$2.50

Expense Listing

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Client: CLEMENT, EUGENE
Matter: Ace Cash Express
Date Range: 12/01/2000 - 06/24/2002

Code: All Codes
Person: All Persons
Responsible: All Responsible
Invoicing Status: Invoiced and Not Invoiced

Record	Date	Client/Matter	Stat	Description	Units	Our Cost	Client Cost
11679	04/01/2002	000049-994764	S	Facsimiles	2	\$1.00	\$1.00
11985	04/15/2002	000049-994764	S	Postage		\$0.68	\$0.68
12024	04/15/2002	000049-994764	S	Facsimiles	3	\$1.50	\$1.50
12229	04/15/2002	000049-994764	S	Photocopies @ .25 per page	3	\$0.75	\$0.75
12090	04/17/2002	000049-994764	S	Facsimiles	3	\$1.50	\$1.50
12104	04/18/2002	000049-994764	S	Facsimiles	17	\$8.50	\$8.50
12114	04/22/2002	000049-994764	S	Facsimiles	9	\$4.50	\$4.50
12122	04/22/2002	000049-994764	S	Facsimiles	5	\$2.50	\$2.50
12125	04/23/2002	000049-994764	S	Facsimiles	5	\$2.50	\$2.50
12242	04/25/2002	000049-994764	S	Photocopies @ .25 per page	89	\$22.25	\$22.25
12259	04/25/2002	000049-994764	S	IKON Office Solutions - Copy Services		\$172.32	\$172.32
12282	04/25/2002	000049-994764	S	Postage		\$29.04	\$29.04
12287	04/26/2002	000049-994764	S	Postage		\$2.64	\$2.64
12313	04/26/2002	000049-994764	S	Photocopies @ .25 per page	2	\$0.50	\$0.50
12780	05/15/2002	000049-994764	S	Facsimiles	8	\$4.00	\$4.00
12790	05/16/2002	000049-994764	S	Facsimiles	2	\$1.00	\$1.00
12924	05/17/2002	000049-994764	S	Facsimiles	9	\$4.50	\$4.50
12925	05/20/2002	000049-994764	S	Facsimiles	9	\$4.50	\$4.50
13218	06/03/2002	000049-994764	S	Facsimiles	9	\$4.50	\$4.50
13225	06/04/2002	000049-994764	S	Facsimiles	5	\$2.50	\$2.50
13459	06/12/2002	000049-994764	S	Gaspar J. Ficarrota - Mediation Fee		\$344.00	\$344.00
13371	06/13/2002	000049-994764	S	Facsimiles	2	\$1.00	\$1.00
13479	06/17/2002	000049-994764	S	Facsimiles	4	\$2.00	\$2.00
Transaction Listing Total:						\$4,901.69	\$4,901.69

**STATE OF FLORIDA
DEPARTMENT OF BANKING AND FINANCE
AND
OFFICE OF THE ATTORNEY GENERAL**

IN RE:

**ACE CASH EXPRESS, INC. d/b/a
ACE AMERICA'S CASH EXPRESS,**

DBF CASE NO.: 9177-F-9/02

SETTLEMENT AGREEMENT

The Florida Department of Banking and Finance, Division of Securities and Finance ("DBF"), the Office of the Attorney General ("Attorney General") and ACE Cash Express, Inc. d/b/a ACE America's Cash Express ("Respondent" or "ACE") agree as follows:

1. **JURISDICTION.** DBF is charged with the administration of Chapter 516, 560, and 687, Florida Statutes, and the Attorney General is charged with the administration of Chapters 501, 559, 687, 895, and 896, Florida Statutes. This agreement applies to Florida transactions only.

2. **BACKGROUND.**

Attorney General

a. The Attorney General moved to intervene as plaintiff in two civil cases that were pending against ACE, contending that ACE had violated Chapters 501, 516, 559, 560, 687, 895, and 896, Florida Statutes, in connection with deferred deposit check cashing services provided by ACE in Florida prior to April 2000. Those cases are: *Eugene R. Clement and Neil Gillespie and State of Florida, Office of the Attorney General, Department of Legal Affairs vs. ACE Cash Express, Inc., Alternative Financial, Inc., JS of the Treasure Coast, Inc., Raymond C. Hemmig, Donald H. Neustadt, Kay D. Zilliox, Ronald J. Schmitt, and unknown*

entities and individuals, Consolidated Case No. 99 09730, in the Circuit Court for the Thirteenth Judicial District of Florida (the “Clement” case); and *Betts v. Ace Cash Express*, 927 So.2d 294 (Fla. 5th DCA 2002), (the “Betts” case). DBF was not a named party in either case.

b. ACE and the other defendants disagreed with the claims made by the Plaintiffs and the Attorney General in each of those cases.

c. The Attorney General’s motion to intervene in the Betts case was denied.

d. In the Clement case, the individual Plaintiffs’ claims were dismissed with prejudice, leaving the Attorney General as the sole Plaintiff. The Attorney General’s RICO claims were dismissed with prejudice and are subject of a pending appeal before the Second District Court of Appeal of Florida styled *State of Florida, Office of the Attorney General v. Zilliox*, Case No. 2002-2340 (consolidated with Case No. 2002-3113). All of the claims asserted by the Attorney General in the Clement case are to be settled pursuant to this Agreement, with the Attorney General voluntarily dismissing their claims.

e. ACE and the individual defendants have denied and continue to deny that they engaged in any wrongdoing, and this Agreement shall not constitute any admission of any wrongdoing or liability on the part of ACE or any of the individual defendants.

f. The Attorney General and ACE wish to avoid the time and expense involved in further litigation.

Department of Banking and Finance

g. Goleta National Bank, a national bank located in Goleta, California (“Goleta”), has offered loans to residents of Florida since April 2000. ACE has provided agency services to Goleta related to those loans in Florida. On October 25 and 28, 2002, ACE and Goleta entered into separate consent orders with the Office of the Comptroller of the Currency of the United States (“OCC”), pursuant to which Goleta agreed, among other things, to generally cease the origination, renewal and rollover of its loans in Florida and ACE agreed, among other things, to generally cease providing services to Goleta related to the origination, renewal and rollover of such Goleta loans, both by no later than December 31, 2002. Goleta, ACE and the OCC agreed that the loans provided by Goleta and serviced by ACE were made pursuant to 12 U.S.C. §85 and that the interest rate charged by Goleta was permissible under the laws of the United States for national banks located in the State of California. DBF was not a party to the agreement between Goleta, ACE, and the OCC.

h. ACE also offers a bill paying service through which it offers to accept or receive voluntary utility payments from its Florida customers and, for a fee, electronically transmit the payment to the utility. The DBF has informed ACE that to offer this service, ACE should be licensed as a Funds Transmitter under Part II, Chapter 560, Florida Statutes. ACE disagrees with the position taken by the DBF, but, to avoid the expense and uncertainty of litigation, ACE agreed to file, and has pending with DBF, an application to act as a Funds Transmitter

under Part II, Chapter 560, Florida Statutes. The DBF will issue that license, as well as the license authorizing ACE to act as a Deferred Presentment Provider under Part IV, Chapter 560, Florida Statutes, on or before the effective date of this Agreement. Ace agrees that future transactions involving the transmission of funds will be governed by the provisions of Part II, Chapter 560, Florida Statutes, and ACE will comply with those provisions in all future transactions.

i. ACE is licensed with DBF as a Check Casher under Part III, Chapter 560, Florida Statutes.

Purpose and Intent

j. The parties wish to resolve and to release any claims that were asserted, or could have been asserted, or could be asserted, because of or arising from the investigation, litigation, or regulatory review conducted by the DBF or the Attorney General.

k. The DBF agrees that ACE has fully cooperated with it in this matter.

l. It is the intent of the parties that this agreement be implemented promptly, and without injury or inconvenience to ACE customers.

m. It is the intent of the parties that DBF issue or renew any authorization or license necessary for ACE to continue to offer services in Florida, including deferred presentment transactions, check cashing, bill paying, debit card transactions, money orders, wire transfers and other products that are authorized under Florida law.

n. It is the intent of the parties that this agreement be implemented without causing competitive disadvantage to ACE.

3. **CONSIDERATION.** ACE, the DBF, and the Attorney General agree as follows:

- a. ACE will cease providing agent services to Goleta in connection with the origination, renewal, or rollover of any Goleta loans in the State of Florida by December 31, 2002. ACE may, however, continue to provide services to Goleta related to the servicing and collection of Goleta loans originated, renewed, or rolled over in the State of Florida before January 1, 2003, subject to paragraph 3(g) below.
- b. ACE has applied for, and DBF agrees to issue upon the issuance of the final order contemplated by this agreement, a license with an effective date of December 30, 2002, authorizing ACE to act as a Deferred Presentment Provider under Part IV, Chapter 560, Florida Statutes. ACE agrees not to enter into any deferred presentment transactions in Florida unless such deferred presentment transactions are completed in accordance with Part IV, Chapter 560, Florida Statutes. DBF agrees that ACE may act as a Deferred Presentment Provider under Part IV, Chapter 560, Florida Statutes, and as a Funds Transmitter under Part II, Chapter 560, Florida Statutes, between December 30, 2002 and the issuance of the final order, provided that all such funds transmission and deferred presentment transactions engaged in during this time period are otherwise completed in accordance with Part II, Chapter 560, Florida Statutes, and Part IV, Chapter 560, Florida Statutes. DBF agrees that this is consistent with the public interest and will not constitute a violation of this Agreement or any applicable law, including but not limited to, Chapters 501, 516, 559, 560, 687, 895 and 896, Florida Statutes, or an Rules related to those statutes.

c. ACE represents and warrants that it has obtained the consent of Goleta so that no Goleta loans entered into before the effective date of this Agreement will be extended (except for the customers' five-day extension options that are part of the terms of outstanding loans) or converted, without full payment by the Goleta loan customers, to any other type of transaction. Where applicable, ACE agrees that it will not offer deferred presentment services to a Goleta loan customer unless that customer's Goleta loan is repaid or cancelled in accordance with paragraph 3(g)-below. DBF agrees that the continued services provided under the Goleta loan program authorized by this subparagraph and by paragraph 3(a) above are consistent with the public interest and will not constitute a violation of this Agreement or any applicable law, including but not limited to, Chapters 501, 516, 559, 560, 687, 895 and 896, Florida Statutes, or any Rules related to those statutes.

d. DBF agrees to issue to ACE licenses pursuant to Part II, Chapter 560, Florida Statutes, and Part IV, Chapter 560, Florida Statutes, with an effective date of December 30, 2002 upon the issuance of the final order contemplated in this Agreement. ACE and the DBF agree that, until the issuance of the final order contemplated in this agreement, ACE will continue to offer its bill paying service in order to avoid injury to those customers who rely on that service. DBF and the Attorney General agree that continuing to offer that service is consistent with the public interest and will not constitute a violation of this Agreement or any applicable law, including but not limited to, Chapters 501, 516, 559, 560, 687, 895, and 896, Florida Statutes, or any Rules related to those statutes.

e. DBF acknowledges that no additional information is needed from ACE for it to issue the licenses contemplated by this Agreement.

f. ACE agrees to pay a total of \$500,000 in settlement and for issuance by DBF of authorizations, licenses, or other approvals necessary for ACE to continue in business in Florida, and for the releases in paragraphs 7 and 8 below. Of the \$500,000 total settlement, ACE has agreed to pay \$250,000 to the DBF Regulatory Trust Fund in full satisfaction of all attorney's fees, costs, and other expenses incurred by the DBF in connection with this matter and, ACE has agreed to deliver to the Attorney General, a contribution of \$250,000 to the Florida State University College of Law in full satisfaction of all attorney's fees, costs and other expenses incurred by the Attorney General in connection with this matter. These amounts will be paid by check, and will be delivered to the DBF or the Attorney General upon entry of the Final Order as provided for herein.

g. ACE represents and warrants that it has obtained the consent of Goleta so that loans that are delinquent as of October 1, 2002, and remain unpaid as of the effective date of this agreement, from customers who engaged in Goleta loan transactions commenced or originated before October 1, 2002 in Florida (collectively, the "Goleta Loan Customers") need not be repaid, and the debt owed to Goleta from Goleta Loan Customers will be cancelled.

h. If Goleta, either directly or through ACE, its agent, has notified a credit-reporting agency of a Goleta Loan Customer's delinquent debt to Goleta, then ACE represents and warrants that it has obtained the consent of Goleta for ACE to notify the credit agency that the delinquent amount has been cancelled.

i. In addition to the amount specified in paragraph 3(f) above, ACE will pay up to \$15,000 for an independent audit of the loan cancellations provided in paragraph 3(g) above, the credit reporting notifications provided in paragraph 3(h) above, and verification of compliance with the transition from the Goleta loan product to the state licensed product contemplated in paragraph 3(b) and 3(c) above. DBF will select the independent auditor, after consultation with ACE. The independent auditor selected will be required to report to the DBF within 90 days of the selection.

j. The entry of a Final Order by DBF in the form of the Attachment to this agreement.

k. Within 10 days after the entry of the final order contemplated herein, the Attorney General will dismiss with prejudice its lawsuit, *Eugene R. Clement and Neil Gillespie and State of Florida, Office of the Attorney General, Department of Legal Affairs vs. ACE Cash Express, Inc., Alternative Financial, Inc., JS of the Treasure Coast, Inc., Raymond C. Hemmig, Donald H. Neustadt, Kay D. Zilliox, Ronald J. Schmitt, and unknown entities and individuals, Consolidated Case No. 99 09730*, in the Circuit Court for the Thirteenth Judicial District of Florida, as to all defendants.

l. Within 10 days after the entry of the final order contemplated in 3(j) above, the Attorney General will dismiss with prejudice its appeal of any orders in the Clement case litigation, including *State of Florida, Office of the Attorney General v. Zilliox*, Case No. 2002-2240 and *State of Florida, Office of the Attorney General v. Alternative Financial, Inc.*, Case No. 2002-3113.

4. **CONSENT**. Without admitting or denying any wrongdoing, Respondent consents to the issuance by the DBF of a Final Order, in substantially the form of the attached Final Order, which incorporates the terms of this Agreement.

5. **FINAL ORDER**. The Final Order incorporating this Agreement is issued pursuant to Subsection 120.57(4), Florida Statutes, and upon its issuance shall be a final administrative order.

6. **WAIVERS**. Respondent knowingly and voluntarily waives:

- a. its right to an administrative hearing provided for by Chapter 120, Florida Statutes, to contest the specific agreements included in this Agreement;
- b. any requirement that the Final Order incorporating this Agreement contain separately stated Findings of Fact and Conclusions of Law or Notice of Rights;
- c. its right to the issuance of a Recommended Order by an administrative law judge from the Division of Administrative Hearings or from the DBF;
- d. any and all rights to object to or challenge in any judicial proceeding, including but not limited to, an appeal pursuant to Section 120.68, Florida Statutes, any aspect, provision or requirement concerning the content, issuance, procedure or timeliness of the Final Order incorporating this Agreement; and
- e. any causes of action in law or in equity, which Respondent may have arising out of the specific matters addressed in this agreement. DBF for itself and the DBF Released Parties, accepts this release and waiver by Respondent without in any way acknowledging or admitting that any such cause of action does or may exist, and DBF, for itself and the DBF Released Parties, expressly denies that any such right or cause of action does in fact exist.

7. **ATTORNEY GENERAL RELEASE.** The Attorney General, for himself and his predecessors, successors and assigns, hereby waives, releases and forever discharges ACE, its predecessors, successors, affiliates, subsidiaries and parent corporations, shareholders, directors, officers, attorneys, employees, agents, franchisees and assigns, and Goleta, and its predecessors, successors, affiliates, subsidiaries and parent corporations, shareholders, directors, officers, attorneys, employees, agents, franchisees and assigns (collectively, the "ACE Released Parties"), from any and all claims, demands, causes of action, suits, debts, dues, duties, sums of money, accounts, fees, penalties, damages, judgments, liabilities and obligations, both contingent and fixed, known and unknown, foreseen and unforeseen, anticipated and unanticipated, expected and unexpected, related to or arising out of Goleta's or ACE's operations in Florida prior to the effective date of this agreement. This release includes, but is not limited to, any claims related to any loans made, renewed, or rolled over, by Goleta in Florida and any services provided by ACE or its franchisees related thereto, any claims related to any violation of Chapters 501, 516, 559, 560, 687, 772, 895 and 896, *Florida Statutes*, any claims related to check cashing services provided prior to the effective date of Part IV, Chapter 560, *Florida Statutes*, and any claims related to any licensing requirements for the services provided by ACE to its customers in Florida prior to the effective date of this agreement. Without limiting the generality of the foregoing, this release also includes all claims asserted or that could have been or could be asserted against the parties named as defendants or that could have been named as defendants in *Eugene R. Clement and Neil Gillespie and State of Florida, Office of the Attorney General, Department of Legal Affairs vs. ACE Cash Express, Inc., Alternative Financial, Inc., JS of the Treasure Coast, Inc., Raymond C. Hemmig, Donald H. Neustadt, Kay D. Zilliox, Ronald J. Schmitt, and unknown entities and individuals, Consolidated Case No. 99 09730*. ACE, for itself

and on behalf of the ACE Released Parties, accepts this release and waiver by the Attorney General without in any way acknowledging or admitting that any such cause of action does or may exist, and ACE, for itself and on behalf of the ACE Released Parties, expressly denies that any such right or cause of action does in fact exist. Respondent hereby waives, releases and forever discharges the Attorney General and his respective employees, agents, and representatives (collectively, the "Attorney General Released Parties") from any causes of action in law or in equity, which Respondent may have arising out of the specific matters addressed in this agreement. The Attorney General, for themselves and the Attorney General Released Parties, accept this release and waiver by Respondent without in any way acknowledging or admitting that any such cause of action does or may exist, the Attorney General, for himself and the Attorney General Released Parties, expressly deny that any such right or cause of action does in fact exist.

8. **DEPARTMENT OF BANKING AND FINANCE RELEASE.** The DBF, for itself and its predecessors, successors and assigns, hereby waives, releases and forever discharges ACE and its predecessors, successors, subsidiaries and parent corporations, shareholders, directors, officers, attorneys, employees, agents, franchisees and assigns, and Goleta, and its predecessors, successors, affiliates, subsidiaries and parent corporations, shareholders, directors, officers, attorneys, employees, agents, franchisees and assigns (collectively, the "ACE Released Parties"), from any and all claims, demands, causes of action, suits, debts, dues, duties, sums of money, accounts, fees, penalties, damages, judgments, liabilities and obligations, both contingent and fixed, known and unknown, foreseen and unforeseen, anticipated and unanticipated, expected and unexpected, related to or arising out of the conduct of ACE and/or Goleta in connection with the offering of deferred presentment

services or loans in Florida, where such conduct occurred prior to the effective date of this Agreement.. This release includes, but is not limited to, any claims related to any loans made, renewed, or rolled over by Goleta in Florida and any services provided by ACE or its franchisees related thereto, any claims related to any violation of Chapters 501, 516, 559, 560,687, 772, 895 and 896, *Florida Statutes*, any claims related to check cashing services provided prior to the effective date of Part IV, Chapter 560, *Florida Statutes*, and any claims related to any licensing requirements for the services provided by ACE to its customers in Florida prior to the effective date of this Agreement. ACE, for itself and on behalf of the ACE Released Parties, accept this release and waiver by the Attorney General and the DBF without in any way acknowledging or admitting that any such cause of action does or may exist, and ACE, for itself and on behalf of the ACE Released Parties, expressly denies that any such right or cause of action does in fact exist.

9. **EXCLUSION.** This release does not include any claims under Chapter 560, Florida Statutes, against franchisees of ACE related to deferred presentment transactions engaged in after the effective date of Part IV, Chapter 560, Florida Statutes, unless such transactions were under the Goleta loan program.

10. **ATTORNEYS' FEES.** Each party to this Agreement shall be solely responsible for its separate costs and attorneys' fees incurred in the prosecution, defense or negotiation in this matter up to entry of the Final Order incorporating this Agreement and the dismissals by the Attorney General provided for in 3 (k) and 3 (l) above.

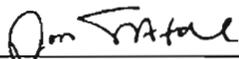
11. **EFFECTIVE DATE.** The effective date of this agreement is December 30, 2002.

12. **FAILURE TO COMPLY.** Nothing in this Agreement limits Respondent's right to contest any finding or determination made by DBF or the Attorney General concerning

Respondent's alleged failure to comply with any of the terms and provisions of this Agreement or of the Final Order incorporating this Agreement.

WHEREFORE, in consideration of the foregoing, DBF, the Attorney General, and ACE execute this Agreement on the dates indicated below.

DEPARTMENT OF BANKING AND FINANCE

By: 
DON SAXON
Division Director

Date: 12/30/02

OFFICE OF THE ATTORNEY GENERAL

By: 
RICHARD DORAN, Attorney General

Date: 12/30/02

**ACE CASH EXPRESS, INC., d/b/a
ACE AMERICA'S CASH EXPRESS**

By: _____
ERIC C. NORRINGTON
Vice President

Date: _____

STATE OF FLORIDA
COUNTY OF _____

BEFORE ME, the undersigned authority, personally appeared _____,
as _____ of ACE CASH EXPRESS, INC., d/b/a ACE AMERICA'S CASH
EXPRESS, who is personally known to me or who has produced
_____ as identification, and who, after being duly sworn, states that he
has read and understands the contents of this Agreement and voluntarily executed the same on
behalf of ACE CASH EXPRESS, INC., d/b/a ACE AMERICA'S CASH EXPRESS.

Respondent's alleged failure to comply with any of the terms and provisions of this Agreement or of the Final Order incorporating this Agreement.

WHEREFORE, in consideration of the foregoing, DBF, the Attorney General, and ACE execute this Agreement on the dates indicated below.

DEPARTMENT OF BANKING AND FINANCE

By: _____
DON SAXON
Division Director

Date: _____

OFFICE OF THE ATTORNEY GENERAL

By: _____
RICHARD DORAN, Attorney General

Date: 12/30/02

**ACE CASH EXPRESS, INC., d/b/a
ACE AMERICA'S CASH EXPRESS'**

By: _____
ERIC C. NORRINGTON
Vice President

Date: 12/30/02

STATE OF FLORIDA
COUNTY OF _____

BEFORE ME, the undersigned authority, personally appeared _____,
as _____ of ACE CASH EXPRESS, INC., d/b/a ACE AMERICA'S CASH
EXPRESS, who is personally known to me or who has produced
_____ as identification, and who, after being duly sworn, states that he
has read and understands the contents of this Agreement and voluntarily executed the same on
behalf of ACE CASH EXPRESS, INC., d/b/a ACE AMERICA'S CASH EXPRESS.

SWORN AND SUBSCRIBED before me this ____ day of _____, 2002.

NOTARY PUBLIC

State of Florida

Print Name:

My Commission No.:

My Commission Expires:

(SEAL)



ACE Cash Express, Inc.
 1231 Greenway Drive #600
 Irving, Texas 75038
 (972) 550-5000

INVOICE		COMMENT	GROSS	DEDUCTION	AMOUNT PAID
NUMBER	DATE				
12/23/02	12/23/02	Settlement	250,000.00		250,000.00

PAYMENT ADVICE



ACE Cash Express, Inc.
 1231 Greenway Drive #600
 Irving, Texas 75038
 (972) 550-5000

WELLS FARGO BANK

CHECK NUMBER

005132

DATE	AMOUNT
12/19/02	\$*****250,000.00

PAY Two Hundred Fifty Thousand 00/100 dollars*****

TO THE ORDER OF

Florida State University College of Law
 425 West Jefferson Street
 Tallahassee, FL 32306

Two Signatures Required Over \$5,000.00

[Signature] MP
[Signature] MP
 VOID AFTER 120 DAYS

⑈005132⑈ ⑆113017870⑆4759 630098⑈

BARKER, RODEMS & COOK

PROFESSIONAL ASSOCIATION
ATTORNEYS AT LAW

CHRIS A. BARKER
RYAN CHRISTOPHER RODEMS
WILLIAM J. COOK
JEFFREY W. GIBSON

300 West Platt Street, Suite 150
Tampa, Florida 33606

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

May 9, 2003

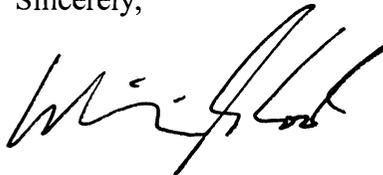
Mr. Neil J. Gillespie
301 West Platt Street, No. 155
Tampa, Florida 33606

Dear Neil:

Pursuant to your request, I am enclosing a copy of our expenses from the *Amscot* case. You did not receive one of these when you settled your case because you were not required to pay any expenses out of your settlement. As you know, the Defendant paid our fees and costs separately. Also, our former firm advised us that it incurred expenses of \$2,544.79.

I was good to hear from you. I hope everything is going well.

Sincerely,



William J. Cook

WJC:SDW
Enclosure

EXHIBIT

22

Expense Listing

Listing Order: Transaction Date, Client-Matter
Client: CLEMENT, EUGENE
Matter: Clement v. Amscot
Date Range: 12/01/2000 - 05/09/2003

Code: All Codes
Person: All Persons
Responsible: All Responsible
Invoicing Status: Invoiced and Not Invoiced

Record	Date	Client-Matter	Stat	Description	Units	Our Cost	Client Cost
223	01/08/2001	000049-994766	P	Postage		\$1.43	\$1.43
226	01/08/2001	000049-994766	P	Postage		\$1.43	\$1.43
659	01/08/2001	000049-994766	P	Photocopies	1	\$0.25	\$0.25
660	01/08/2001	000049-994766	P	Photocopies	1	\$0.25	\$0.25
663	01/08/2001	000049-994766	P	Photocopies	270	\$67.50	\$67.50
680	01/08/2001	000049-994766	P	Photocopies	8	\$2.00	\$2.00
84	01/10/2001	000049-994766	P	Facsimiles		\$0.50	\$0.50
231	01/10/2001	000049-994766	P	Postage		\$0.68	\$0.68
479	01/10/2001	000049-994766	P	Photocopies	4	\$1.00	\$1.00
1772	01/10/2001	000049-994766	P	Long Distance Telephone Calls		\$0.05	\$0.05
485	01/11/2001	000049-994766	P	Photocopies	2	\$0.50	\$0.50
172	01/11/2001	000049-994766	P	Postage		\$0.34	\$0.34
162	01/12/2001	000049-994766	P	Postage		\$0.34	\$0.34
530	01/12/2001	000049-994766	P	Photocopies	8	\$2.00	\$2.00
153	01/16/2001	000049-994766	P	Postage		\$0.68	\$0.68
511	01/16/2001	000049-994766	P	Photocopies	6	\$1.50	\$1.50
219	01/18/2001	000049-994766	P	Postage		\$0.34	\$0.34
597	01/18/2001	000049-994766	P	Photocopies	1	\$0.25	\$0.25
304	01/22/2001	000049-994766	P	Postage		\$0.34	\$0.34
312	01/22/2001	000049-994766	P	Postage		\$0.34	\$0.55
606	01/22/2001	000049-994766	P	Photocopies	33	\$8.25	\$8.25
609	01/22/2001	000049-994766	P	Photocopies	1	\$0.25	\$0.25
319	01/23/2001	000049-994766	P	Postage		\$0.34	\$0.34
558	01/23/2001	000049-994766	P	Photocopies	2	\$0.50	\$0.50
107	01/26/2001	000049-994766	P	Facsimiles		\$1.00	\$1.00
363	01/26/2001	000049-994766	P	Postage		\$0.34	\$0.34

Expense Listing

Listing Order: Transaction Date, Client-Matter
Client: CLEMENT, EUGENE
Matter: Clement v. Amscot
Date Range: 12/01/2000 - 05/09/2003

Code: All Codes
Person: All Persons
Responsible: All Responsible
Invoicing Status: Invoiced and Not Invoiced

Record	Date	Client-Matter	Stat	Description	Units	Our Cost	Client Cost
733	01/26/2001	000049-994766	P	Photocopies	162	\$40.50	\$40.50
448	01/30/2001	000049-994766	P	Postage		\$1.18	\$1.18
699	01/30/2001	000049-994766	P	Photocopies	42	\$10.50	\$10.50
1199	01/31/2001	000049-994766	P	Legal Research		\$15.72	\$15.72
1210	01/31/2001	000049-994766	P	Legal Research		\$7.50	\$7.50
1212	01/31/2001	000049-994766	P	Legal Research		\$26.21	\$26.21
657	02/01/2001	000049-994766	P	Postage		\$0.34	\$0.34
834	02/05/2001	000049-994766	P	Postage		\$0.89	\$0.89
849	02/05/2001	000049-994766	P	Postage		\$0.34	\$0.34
872	02/05/2001	000049-994766	P	Photocopies @ .25 per page	14	\$3.50	\$3.50
864	02/06/2001	000049-994766	P	Postage		\$1.39	\$1.39
899	02/06/2001	000049-994766	P	Facsimiles		\$15.50	\$15.50
1062	02/07/2001	000049-994766	P	Regency Reporting Service , Inc. - Deposition Fee		\$59.60	\$59.60
1004	02/08/2001	000049-994766	P	Facsimiles		\$1.00	\$1.00
1174	02/14/2001	000049-994766	P	Postage		\$1.81	\$1.81
1259	02/14/2001	000049-994766	P	Photocopies @ .25 per page	80	\$20.00	\$20.00
1267	02/15/2001	000049-994766	P	Photocopies @ .25 per page	2	\$0.50	\$0.50
1291	02/15/2001	000049-994766	P	Postage		\$0.34	\$0.34
1393	02/22/2001	000049-994766	P	Susan O'Dell - Copy Services		\$11.00	\$11.00
1464	02/22/2001	000049-994766	P	Photocopies @ .25 per page	8	\$2.00	\$2.00
1680	03/02/2001	000049-994766	P	Photocopies @ .25 per page	2	\$0.50	\$0.50
1699	03/02/2001	000049-994766	P	Postage		\$0.34	\$0.34
1945	03/07/2001	000049-994766	P	Facsimiles		\$1.00	\$1.00
1932	03/12/2001	000049-994766	P	Postage		\$0.76	\$0.76
2089	03/12/2001	000049-994766	P	Photocopies @ .25 per page	60	\$15.00	\$15.00
2091	03/12/2001	000049-994766	P	Photocopies @ .25 per page	6	\$1.50	\$1.50

Expense Listing

Listing Order: Transaction Date, Client-Matter
 Client: CLEMENT, EUGENE
 Matter: Clement v. Amscot
 Date Range: 12/01/2000 - 05/09/2003

Code: All Codes
 Person: All Persons
 Responsible: All Responsible
 Invoicing Status: Invoiced and Not Invoiced

Record	Date	Client-Matter	Stat	Description	Units	Our Cost	Client Cost
2180	03/19/2001	000049-994766	P	Legal Research		\$0.43	\$0.43
2247	03/31/2001	000049-994766	P	Facsimiles 10 pages on 3/19 and 3/26		\$5.00	\$5.00
2297	03/31/2001	000049-994766	P	Photocopies @ .25 per page	82	\$20.50	\$20.50
2335	03/31/2001	000049-994766	P	Postage		\$2.75	\$2.75
2248	04/04/2001	000049-994766	P	Facsimiles 2 pages on 4/01		\$1.00	\$1.00
2450	04/23/2001	000049-994766	P	Chris Barker - Miscellaneous charges		\$7.04	\$7.04
2455	04/23/2001	000049-994766	P	Legal Research Lexis		\$38.75	\$38.75
2474	04/24/2001	000049-994766	P	IKON Document Services - Copy Services		\$468.42	\$468.42
2778	04/27/2001	000049-994766	P	Facsimiles	2	\$1.00	\$1.00
2536	04/28/2001	000049-994766	P	Facsimiles	3	\$1.50	\$1.50
2595	04/28/2001	000049-994766	P	Photocopies @ .25 per page	11	\$2.75	\$2.75
2649	04/28/2001	000049-994766	P	Photocopies @ .25 per page	589	\$147.25	\$147.25
2686	04/28/2001	000049-994766	P	Postage		\$2.72	\$2.72
2755	04/28/2001	000049-994766	P	Postage		\$0.34	\$0.34
2826	05/03/2001	000049-994766	P	Postage		\$0.34	\$0.34
2827	05/03/2001	000049-994766	P	Miscellaneous expenses Lit. Copys and binders		\$468.42	\$468.42
3055	05/08/2001	000049-994766	P	Photocopies @ .25 per page	15	\$3.75	\$3.75
3087	05/08/2001	000049-994766	P	Postage		\$1.10	\$1.10
3155	05/10/2001	000049-994766	P	Facsimiles	6	\$3.00	\$3.00
3235	05/14/2001	000049-994766	P	Photocopies @ .25 per page	16	\$4.00	\$4.00
3349	05/14/2001	000049-994766	P	Postage		\$0.55	\$0.55
3182	05/15/2001	000049-994766	P	Legal Research		\$187.10	\$187.10
3185	05/15/2001	000049-994766	P	Legal Research		\$11.02	\$11.02
3439	05/22/2001	000049-994766	P	Photocopies @ .25 per page	24	\$6.00	\$6.00
3585	05/25/2001	000049-994766	P	Photocopies @ .25 per page	15	\$3.75	\$3.75
3630	05/25/2001	000049-994766	P	Postage		\$0.55	\$0.55

Expense Listing

Listing Order: Transaction Date, Client-Matter
 Client: CLEMENT, EUGENE
 Matter: Clement v. Amscot
 Date Range: 12/01/2000 - 05/09/2003

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 Responsible: All Responsible
 Involving Status: Invoiced and Not Invoiced

Record	Date	Client-Matter	Stat	Description	Units	Our Cost	Client Cost
3779	05/29/2001	000049-994766	P	Regency Reporting Service , Inc. - Deposition Fee		\$417.75	\$417.75
3676	05/31/2001	000049-994766	P	Photocopies @ .25 per page	45	\$11.25	\$11.25
3714	06/01/2001	000049-994766	P	Postage		\$0.97	\$0.97
3742	06/01/2001	000049-994766	P	Photocopies @ .25 per page	20	\$5.00	\$5.00
4023	06/12/2001	000049-994766	P	Postage		\$0.34	\$0.34
4236	06/14/2001	000049-994766	P	Richard Lee Reporting - Deposition Fee		\$524.30	\$524.30
4634	06/15/2001	000049-994766	P	Postage		\$0.34	\$0.34
4323	06/18/2001	000049-994766	P	Photocopies @ .25 per page	18	\$4.50	\$4.50
4342	06/18/2001	000049-994766	P	Postage		\$0.55	\$0.55
4512	06/25/2001	000049-994766	P	Photocopies @ .25 per page	2	\$0.50	\$0.50
4526	06/25/2001	000049-994766	P	Postage		\$0.34	\$0.34
4563	06/26/2001	000049-994766	P	Photocopies @ .25 per page	4	\$1.00	\$1.00
4652	06/26/2001	000049-994766	P	Facsimiles	1	\$0.50	\$0.50
4575	06/27/2001	000049-994766	P	Photocopies @ .25 per page	42	\$10.50	\$10.50
4655	06/27/2001	000049-994766	P	Facsimiles	5	\$2.50	\$2.50
4853	07/05/2001	000049-994766	P	Facsimiles	2	\$1.00	\$1.00
4835	07/06/2001	000049-994766	P	Postage		\$0.34	\$0.34
4857	07/06/2001	000049-994766	P	Facsimiles	2	\$1.00	\$1.00
4890	07/06/2001	000049-994766	P	Photocopies @ .25 per page	3	\$0.75	\$0.75
4859	07/09/2001	000049-994766	P	Facsimiles	4	\$2.00	\$2.00
4957	07/10/2001	000049-994766	P	Facsimiles	3	\$1.50	\$1.50
4984	07/10/2001	000049-994766	P	Photocopies @ .25 per page	159	\$39.75	\$39.75
5028	07/10/2001	000049-994766	P	Photocopies @ .25 per page	2	\$0.50	\$0.50
5065	07/10/2001	000049-994766	P	Postage		\$1.02	\$1.02
5087	07/10/2001	000049-994766	P	Postage		\$2.18	\$2.18
5090	07/10/2001	000049-994766	P	Postage		\$3.95	\$3.95

Expense Listing

Listing Order: Transaction Date, Client-Matter
 Client: CLEMENT, EUGENE
 Matter: Clement v. Amcot
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Code: All Codes
 Person: All Persons
 Responsible: All Responsible
 Invoicing Status: Invoiced and Not Invoiced

Record	Date	Client-Matter	Stat	Description	Units	Our Cost	Client Cost
5092	07/10/2001	000049-994766	P	Postage		\$0.34	\$0.34
5203	07/10/2001	000049-994766	P	Photocopies @ .25 per page	6	\$1.50	\$1.50
5319	07/12/2001	000049-994766	P	American Investigations Management Inc. - Deposition Fee		\$32.03	\$32.03
5596	07/19/2001	000049-994766	P	Postage		\$0.34	\$0.34
5338	07/20/2001	000049-994766	P	Legal Research		\$9.86	\$9.86
5392	07/23/2001	000049-994766	P	Photocopies @ .25 per page	2	\$0.50	\$0.50
5426	07/23/2001	000049-994766	P	Postage		\$0.34	\$0.34
5452	07/24/2001	000049-994766	P	Photocopies @ .25 per page	46	\$11.50	\$11.50
5502	07/24/2001	000049-994766	P	Postage		\$1.71	\$1.71
5672	07/31/2001	000049-994766	P	Photocopies @ .25 per page	4	\$1.00	\$1.00
5678	07/31/2001	000049-994766	P	Postage		\$0.80	\$0.80
5689	07/31/2001	000049-994766	P	Postage		\$0.57	\$0.57
5717	08/01/2001	000049-994766	P	Facsimiles	2	\$1.00	\$1.00
5856	08/06/2001	000049-994766	P	Photocopies @ .25 per page	68	\$17.00	\$17.00
5911	08/06/2001	000049-994766	P	Facsimiles	20	\$10.00	\$10.00
5894	08/08/2001	000049-994766	P	Photocopies @ .25 per page	5	\$1.25	\$1.25
5962	08/08/2001	000049-994766	P	Postage		\$5.04	\$5.04
6127	08/09/2001	000049-994766	P	Photocopies @ .25 per page	82	\$20.50	\$20.50
6057	08/10/2001	000049-994766	P	Postage		\$1.95	\$1.95
5941	08/13/2001	000049-994766	P	Division of Administrative Hearings - Copy Services		\$21.25	\$21.25
5998	08/14/2001	000049-994766	P	Legal Research		\$19.90	\$19.90
5999	08/14/2001	000049-994766	P	Legal Research		\$9.01	\$9.01
6087	08/14/2001	000049-994766	P	Postage		\$0.34	\$0.34
6191	08/14/2001	000049-994766	P	Photocopies @ .25 per page	6	\$1.50	\$1.50
6181	08/15/2001	000049-994766	P	Postage		\$0.34	\$0.34
6327	08/16/2001	000049-994766	P	Facsimiles	2	\$1.00	\$1.00

Expense Listing

Listing Order: Transaction Date, Client-Matter
 Client: CLEMENT, EUGENE
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 Responsible: All Responsible
 Invoicing Status: Invoiced and Not Invoiced

Record	Date	Client-Matter	Stat	Description	Units	Our Cost	Client Cost
6187	08/17/2001	000049-994766	P	Clerk of the Court, Middle District of Florida - Filing Fee		\$105.00	\$105.00
6234	08/17/2001	000049-994766	P	Postage		\$0.68	\$0.68
6289	08/17/2001	000049-994766	P	Photocopies @ .25 per page	4	\$1.00	\$1.00
6238	08/20/2001	000049-994766	P	Postage		\$0.68	\$0.68
6479	08/20/2001	000049-994766	P	Photocopies @ .25 per page	14	\$3.50	\$3.50
6254	08/21/2001	000049-994766	P	Postage		\$1.02	\$1.02
6482	08/21/2001	000049-994766	P	Photocopies @ .25 per page	6	\$1.50	\$1.50
6393	08/23/2001	000049-994766	P	Postage		\$1.03	\$1.03
6406	08/23/2001	000049-994766	P	Photocopies @ .25 per page	18	\$4.50	\$4.50
6370	08/24/2001	000049-994766	P	Facsimiles	3	\$1.50	\$1.50
6425	08/28/2001	000049-994766	P	Photocopies @ .25 per page	4	\$1.00	\$1.00
6431	08/28/2001	000049-994766	P	Photocopies @ .25 per page	2	\$0.50	\$0.50
6463	08/28/2001	000049-994766	P	Postage		\$0.68	\$0.68
6474	08/28/2001	000049-994766	P	Postage		\$0.34	\$0.34
6569	08/29/2001	000049-994766	P	Facsimiles	3	\$1.50	\$1.50
6531	08/31/2001	000049-994766	P	Photocopies @ .25 per page	96	\$24.00	\$24.00
6540	08/31/2001	000049-994766	P	Photocopies @ .25 per page	60	\$15.00	\$15.00
6552	08/31/2001	000049-994766	P	Postage		\$2.29	\$2.29
6852	09/21/2001	000049-994766	P	Legal Research		\$6.77	\$6.77
6989	09/21/2001	000049-994766	P	Facsimiles	2	\$1.00	\$1.00
7099	09/24/2001	000049-994766	P	Photocopies @ .25 per page	27	\$6.75	\$6.75
7103	09/25/2001	000049-994766	P	Photocopies @ .25 per page	1	\$0.25	\$0.25
7180	09/28/2001	000049-994766	P	Photocopies @ .25 per page	78	\$19.50	\$19.50
7204	10/02/2001	000049-994766	P	IKON Document Services - Copy Services		\$96.40	\$96.40
7309	10/02/2001	000049-994766	P	Postage		\$3.95	\$3.95
7573	10/02/2001	000049-994766	P	FedEx Shipping Charges		\$32.24	\$32.24

Expense Listing

Listing Order: Transaction Date, Client-Matter
 Client: CLEMENT, EUGENE
 Matter: Clement v. Amscot
 Date Range: 12/01/2000 - 05/09/2003

Code: All Codes
 Person: All Persons
 Responsible: All Responsible
 Involving Status: Invoiced and Not Invoiced

Record	Date	Client-Matter	Stat	Description	Units	Our Cost	Client Cost
7797	10/02/2001	000049-994766	P	IKON Document Services - Copy Services		\$55.51	\$55.51
7541	10/10/2001	000049-994766	P	Postage		\$1.02	\$1.02
7571	10/10/2001	000049-994766	P	Photocopies @ .25 per page	6	\$1.50	\$1.50
7522	10/15/2001	000049-994766	P	Legal Research		\$27.68	\$27.68
7536	10/15/2001	000049-994766	P	Legal Research		\$177.29	\$177.29
7837	10/23/2001	000049-994766	P	Postage		\$0.34	\$0.34
7931	10/23/2001	000049-994766	P	Photocopies @ .25 per page	2	\$0.50	\$0.50
7948	10/29/2001	000049-994766	P	Facsimiles	6	\$3.00	\$3.00
7976	10/29/2001	000049-994766	P	Facsimiles	7	\$3.50	\$3.50
7979	10/29/2001	000049-994766	P	Facsimiles	6	\$3.00	\$3.00
7946	10/30/2001	000049-994766	P	Facsimiles	6	\$3.00	\$3.00
7964	10/30/2001	000049-994766	P	Postage		\$0.57	\$0.57
7987	10/30/2001	000049-994766	P	Facsimiles	7	\$3.50	\$3.50
7992	10/30/2001	000049-994766	P	Photocopies @ .25 per page	14	\$3.50	\$3.50
7965	10/31/2001	000049-994766	P	Postage		\$0.34	\$0.34
7970	10/31/2001	000049-994766	P	Photocopies @ .25 per page	1	\$0.25	\$0.25
8021	10/31/2001	000049-994766	P	Photocopies @ .25 per page	6	\$1.50	\$1.50
8056	11/01/2001	000049-994766	P	Postage		\$0.34	\$0.34
8104	11/02/2001	000049-994766	P	Facsimiles	2	\$1.00	\$1.00
8116	11/02/2001	000049-994766	P	Postage		\$0.34	\$0.34
8340	11/06/2001	000049-994766	P	Postage		\$1.59	\$1.59
8195	11/07/2001	000049-994766	P	Photocopies @ .25 per page	18	\$4.50	\$4.50
8296	11/07/2001	000049-994766	P	Photocopies @ .25 per page	23	\$5.75	\$5.75
8351	11/08/2001	000049-994766	P	Postage		\$0.57	\$0.57
8453	11/14/2001	000049-994766	P	Legal Research		\$7.56	\$7.56
8517	11/15/2001	000049-994766	P	Facsimiles	1	\$0.50	\$0.50

Expense Listing

Listing Order: Transaction Date, Client-Matter

Client: CLEMENT, EUGENE

Matter: Clement v. Amscot

Date Range: 12/01/2000 - 05/09/2003

Code: All Codes

Person: All Persons

Responsible: All Responsible

Invoicing Status: Invoiced and Not Invoiced

Record	Date	Client-Matter	Stat	Description	Units	Our Cost	Client Cost
8731	11/21/2001	000049-994766	P	Postage		\$4.63	\$4.63
8804	11/21/2001	000049-994766	P	Photocopies @ .25 per page	40	\$10.00	\$10.00
9038	12/12/2001	000049-994766	P	Long Distance Telephone Calls		\$0.06	\$0.06
Transaction Listing Total:						\$3,580.67	\$3,580.88

**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.

FILED
CLERK CIRCUIT COURT
2010 JUL -9 PM 4:42
HILLSBOROUGH CO., FL.
CIRCUIT CIVIL

**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

EXHIBIT

4

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 County¹ 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” matters² 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” matters³ 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.

(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 presumption 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 than 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 of 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 Gillespie⁴. 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 Statutes 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 relationship⁵.

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.

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 United 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 United 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 United 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 Courts 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 least 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 your 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 June 13, 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 withdraw 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 representation⁶ 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. Gillespie⁷.

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 Gillespie¹⁰.

(f) On one occasion Mr. Rodems waited outside chambers to harass Mr. Gillespie following a hearing¹¹.

(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 HIPAA¹² 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 Courts 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:

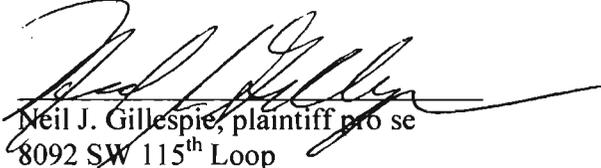
Rule 4-8.4. Misconduct. A lawyer shall not:

- (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.




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.

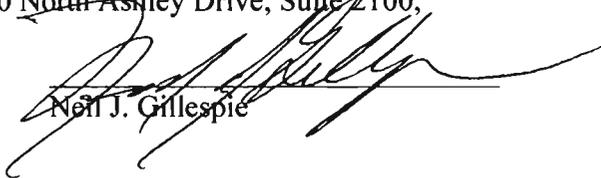

Neil J. Gillespie

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Exhibit 4	Class Representation Contract, AMSCOT (Alpert firm) November 6, 2000
Exhibit 5	January 16, 2001, Mr. Cook/BRC to Gillespie, EZ Check Cashing of Clearwater
Exhibit 6	March 27, 2001, Mr. Cook/BRC to Gillespie, Florida Division Vocational Rehabilitation
Exhibit 7	May 25, 2001, Mr. Cook/BRC to Gillespie, St. Petersburg Junior College
Exhibit 8	May 30, 2001, Mr. Cook/BRC to National Cash Advance, Re: Gillespie
Exhibit 9	May 12, 2006, Order Denying Plaintiff's Motion to Disqualify Counsel
Exhibit 10	July 16, 2008, Plaintiff's Motion For Rehearing, Judgment of the Pleadings
Exhibit 11	June 17, 2010, Notice of Rodems Fraud on the Court
Exhibit 12	June 28, 2010, Plaintiff's Notice Strike Affidavit William Cook, Etc.
Exhibit 13	28 Stetson Law Review 323, Professionalism and Litigation Ethics
Exhibit 14	February 13, 2007, Plaintiff's Motion To Disqualify Judge Isom
Exhibit 15	August 14, 2008, Robert W. Bauer before Judge Crenshaw
Exhibit 16	April 28, 2010, Plaintiff's Motion to Convene Case Management Conference
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Exhibit 18	September 7, 2006, David Snyder, Esq., to Mr. Rodems, settlement offer
Exhibit 19	February 19, 2010, Notice of ADA Filing for Gillespie
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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

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(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).”).

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).

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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

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



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



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.

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.

EXHIBIT

4

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

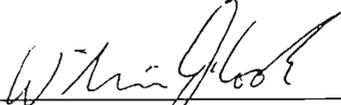
The undersigned client(s) has/have, before signing this contract, received and read the Statement of Client's Rights and understands each of the rights set forth therein. The undersigned client(s) has/have signed the Statement and received a signed copy to refer to while being represented by the undersigned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

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

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

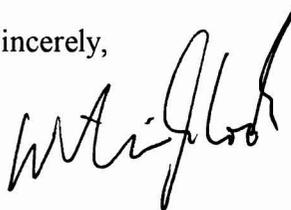
Neil J. Gillespie
Apartment C-2
1121 Beach Drive NE
St. Petersburg, Florida 33701-1434

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.

ORIGINAL SIGNED

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

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,

FILED
CLERK OF COURT
HILLSBOROUGH COUNTY
FLORIDA
JUL 1 12 11 13
AM

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 16th 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

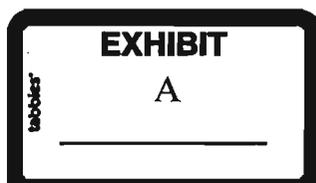
JUL 7 2008

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)



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 transacti
ANSCOT
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

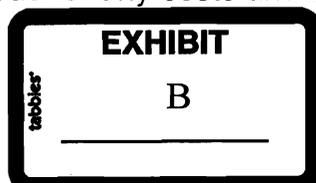
I/We hereby agree to pay for the costs and expenses of the investigation and preparation of my/our claims for damages. Should it be necessary to institute a lawsuit or arbitration proceeding, I/we agree to pay all costs and expenses associated with any Court or arbitration proceeding. If an appeal of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



000054

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.

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- 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.

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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

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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

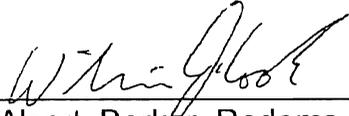
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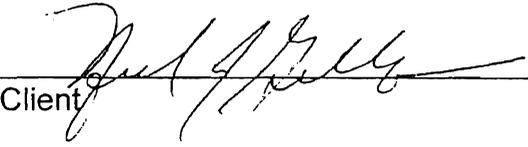
This contract may be cancelled by written notification to the attorneys at any time within three (3) business days of the date the contract was signed, as shown below, and if cancelled the client(s) shall not be obligated to pay any fees to the attorneys for the work performed during that time. If the 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,

CASE NO.: 05-CA-7205

vs.

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

DIVISION: G

Defendants.

RECEIVED
JUN 17 2010

CLERK OF CIRCUIT COURT
HILLSBOROUGH COUNTY, FL

**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:

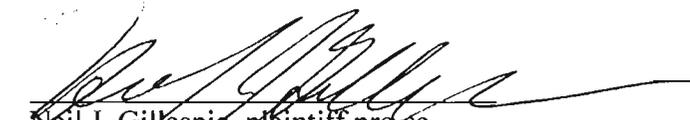
a. Mr. Rodems made a false statement of material fact when he wrote June 7, 2010, "I made multiple telephone calls to coordinate the hearing on June 9, 2010 with you. I telephoned you twice on Thursday, May 27, 2010 and again on Tuesday, June 1, 2010, leaving voice mails each time, but you did not return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

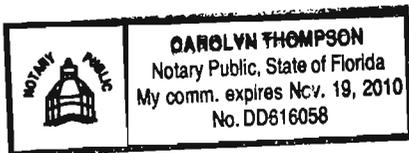
RESPECTFULLY SUBMITTED June 17, 2010.

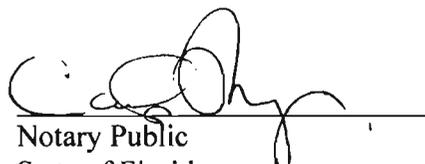

Neil J. Gillespie, plaintiff pro se
8092 SW 115th Loop
Ocala, Florida 34481
Telephone: (352) 854-7807

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
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

48

52

FedEx US Airbill
Express

FedEx
Tracking
Number

8712 8042 0905

Form
ID No.

0215

SPH32

Recipient's Copy

RECIPIENT: PEEL HERE

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 BANKER, RODEMS, AND COOK

Address 800 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 Dept./Floor/Suite/Room

Address _____
Print FedEx location address here if HOLD option is selected.

City Ocala State FL ZIP 34481

0418092195



8712 8042 0905

fedex.com 1.800.GoFedEx 1.800.463.3339

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.
- 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 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.

- 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?

- No
- Yes
As per attached Shipper's Declaration.
- Yes
Shipper's Declaration not required.
- Dry Ice
Dry ice, 9, UN 1845 _____ x _____ kg
- Cargo Aircraft Only

7 Payment Bill to:

- 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



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.

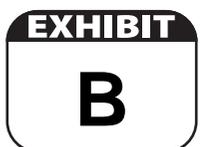
Defendant's Motion for an Order compelling Plaintiff to Respond to the
Defendant's Request for Production and Attend Deposition, December 15, 2009.

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



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

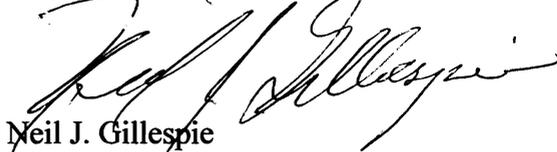
The Honorable Martha J. Cook
June 3, 2010

Page - 4

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



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 Christopher Rodems

RCR/so

cc: Honorable Martha J. Cook



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.

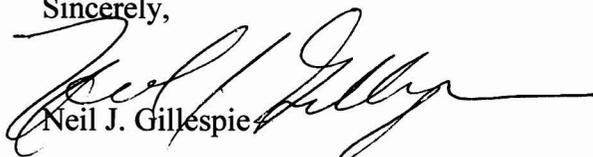
THE COURT: I think that would be advisable. That way we don't have to be concerned with whether or not there's any other improper statements or contact.

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



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.

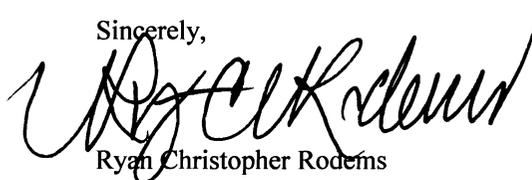
MR. RODEMS: I will not, Your Honor. No phone messages, no direct calls. I'll conduct all of my communications with Mr. Gillespie in writing.

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



**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

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).

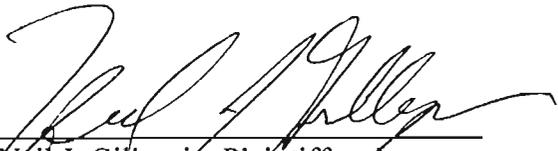
6. Mr. Rodems used the affidavit with a motion to obtain an Order Granting Defendants' Motion For Writ of Garnishment After Judgment in another Fraud on the Court due to his conflict of interest in this matter. This is the second Fraud on the Court by Mr. Rodems this month. See Notice of Fraud On The 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

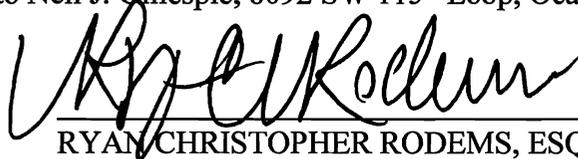
Facsimile: 813/489-1008

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.



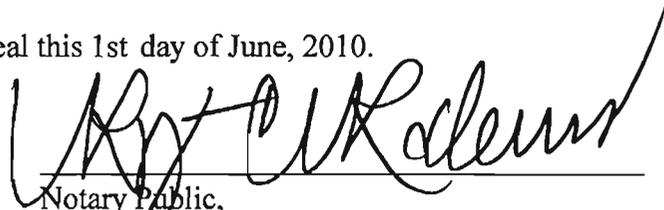
WILLIAM J. COOK

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



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,

vs.

Case No.: 05CA7205

Division: C

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

Defendants.

COPY

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.



PAT FRANK,
CLERK OF THE COURT
BY: Nancy J. Haysom
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,

vs.

Case No.: 05CA7205

Division: C

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

Defendants.

COPY

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

C

Stetson Law Review
Fall, 1998

Essay

***323 PROFESSIONALISM AND LITIGATION ETHICS**Hon. [Claudia Rickert Isom \[FN1\]](#)

Copyright (c) 1998 by Hon. Claudia Rickert Isom

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.

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.

[FN1]. 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

28 STETLR 323
28 Stetson L. Rev. 323

Page 3

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

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**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.

RECEIVED AND FILED

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

DIVISION: H

FEB 13 2007

Defendants.

CLERK OF CIRCUIT COURT
HILLSBOROUGH COUNTY, FL

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).

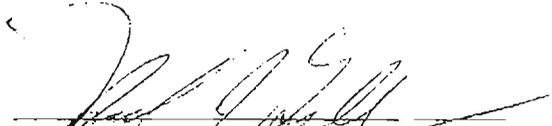
1. Judge Isom heard Plaintiff's Amended Motion for Disclosure of Conflict on February 1, 2007. The Judge was prejudiced by some of the information presented. When Plaintiff asked if he could expect to receive a fair trial and hearings, Judge Isom was unable to answer in the affirmative, and only mentioned 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.

EXHIBIT

14

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,

CASE NO.: 05-CA-7205

vs.

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

DIVISION: H

Defendants.

**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.

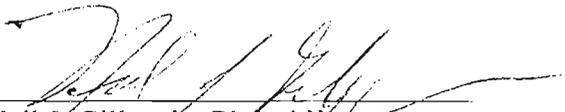
Williams v. Balch, 897 So.2d 498, Fla.App. 4 Dist.,2005.

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

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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,

Case No. 05-CA-7205

-vs-

Division: "F"

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

-----/

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)

Michael J. Borseth
Court Reporter/Legal Transcription
(813) 598-2703

EXHIBIT
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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

1
2 (This transcript was made from a voice
3 recording of the home office business extension
4 telephone of Neil J. Gillespie with attorney Robert
5 W. Bauer of Gainesville. Mr. Bauer called Mr.
6 Gillespie on August 14, 2008, at 3:51 p.m. to
7 attend the hearing telephonically.)

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

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

13 THE COURT: You can have a seat.

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

15 MR. BAUER: Yes, Your Honor.

16 THE COURT: Go forward on your Motion to Stay.

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

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

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

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

1 this out in a professional manner. It is my
2 mistake for sitting back and giving him the
3 opportunity to take this full blast attack.

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

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

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

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

25 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;

(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



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.

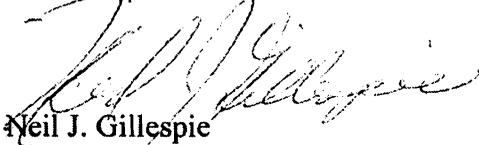
(Transcript, June 28, 2006, beginning on page 21, at line 20)

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

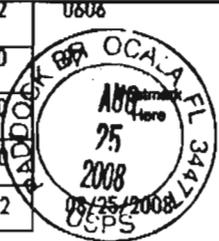
PS. At this time Mr. Bauer does not represent me on any issue I may have between me and the Thirteenth Judicial Circuit, so you can respond to me directly.

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 Street, Apt. No. or PO Box No. 800 E. Twiggs Street, Suite 603
 City, State, ZIP+4 TAMPA FL 33602

SENDER COMPLETE THIS SECTION ON DELIVERY

1. Article Addressed to:
 K. Christopher Nauman, Asst. Dist. Clerk
 13th Judicial Circuit Florida
 Legal Department
 800 E. Twiggs Street, Suite 603
 TAMPA, Fla. 33602

2. Article Number (Transfer from service label) 7008 1140 0000 6036 9155

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C. Date of Delivery 8/25/08

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?

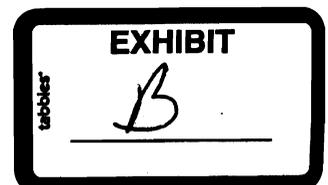
Mr. Rowland, when court personnel fail to respond to correspondence, it creates a credibility problem for the court. It gives the impression that the court is incompetent or indifferent to the administration of justice. Is that the message your office intends to relay? When can I expect a reply to my August 25, 2008 letter to Mr. Nauman?

Sincerely,



Neil J. Gillespie

enclosures



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

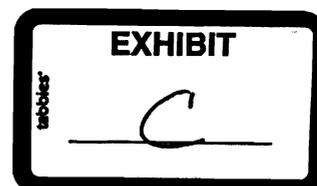
Dear Mr. Gillespie,

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,

Plaintiff,

vs.

Case No.: 05CA7205

Division: G

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

Defendants.

COPY

**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

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

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

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.

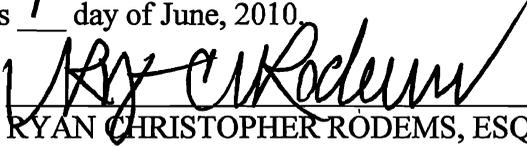
b. The scheduling of Gillespie’s motion for leave to file the amended complaint.

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.

Ryan C. Rodems
September 7, 2006, Page 2

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,

A handwritten signature in black ink, appearing to be 'DS' or similar initials, enclosed within a vertical line that forms a narrow, elongated shape.

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,

CASE NO.: 05CA7205

vs.

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

DIVISION: C

Defendants.

RECEIVED AND FILED
FEB 19 2010
CLERK OF CIRCUIT COURT
HILLSBOROUGH COUNTY, FL

**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.

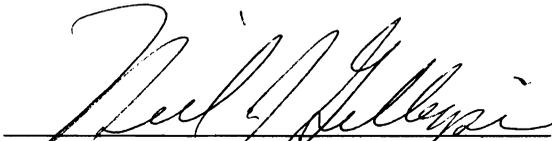
3. The ADA Request and ADA Report are to be kept under ADA Administrative confidential management except for use by the ADA Administrator revealing functional impairments and needed accommodations communicated to the Trier of Fact to implement administration of accommodations. This information is NOT 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

**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.

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.

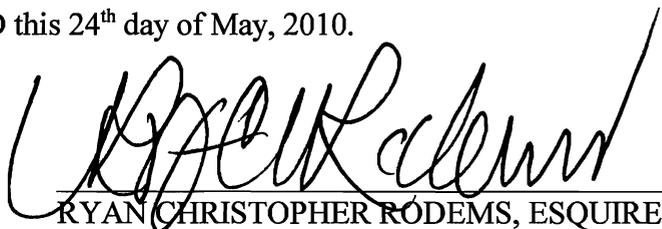
As proven by the thoughtful and well-reasoned decisions to sanction you and grant judgment on the pleadings for three of the four counts of your Complaint, Judge Barton is a diligent, hardworking, fair and honest trial judge, and it is not my intent by disclosing my legal research to imply anything to 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.

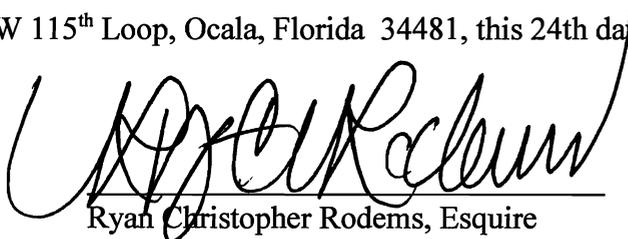
RESPECTFULLY SUBMITTED this 24th day of May, 2010.



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:

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.



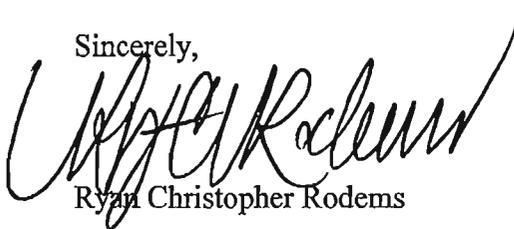
Mr. Neil J. Gillespie
May 6, 2010
Page 2

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.

Finally, my clients do not consent to the filing of the Amended Complaint.

Sincerely,

A handwritten signature in black ink, appearing to read "Ryan Christopher Rodems". The signature is written in a cursive, flowing style with a large initial "R".

Ryan Christopher Rodems

RCR/so
Enclosures

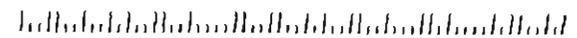
Barker, Rodems & Cook, P.A.
400 North Ashley Drive, Suite 2100
Tampa, Florida 33602

Gillespie - 05.5422



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

3448103567





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Sal Corrente of WrestleReunion had a lawsuit against Clear Channel/Live Nation because they reneged on a contract with him. The case went before a jury and Mr. Corrente lost the case, which many feel was unjust. But Eric Bischoff made a statement on wrestlezone.com, which is below, that caused Sal's lawyer to send his statement:

In my last post regarding the WrestleReunion/Live Nation lawsuit, I suggested that Bill Behrens and Eric Bischoff were expert witnesses for WrestleReunion. That was not the case as they were actually witnesses for the Clear Channel/Live Nation side. I just spoke with Eric Bischoff who said he agreed to be an expert witness after reading and taking interest in the case, however he was not called to the stand.

"The case was wrapped up quickly," Bischoff told Wrestlezone.com, "the jury didn't waste any time and came back with what I felt was the correct decision".

Eric was happy with the outcome, to say the least. **"Rob Russen and Sal Corente give the wrestling business a bad name," he stated, "so I'm glad justice prevailed and the bottom feeders didn't win one".**

Bischoff wanted to make sure that everyone knew his comments and opinions were solely his and did not reflect those of Clear Channel/Live Nation.

In regards to the above statement, we have a statement from Mr. Corrente's lawyer:

"It is odd that Eric Bischoff, whose well-documented incompetence caused the demise of WCW, should have any comment on the outcome of the WrestleReunion, LLC lawsuit. The expert report Bischoff submitted in this case bordered on illiteracy, and Bischoff was not even called to testify by Clear Channel/Live Nation because Bischoff perjured himself in a deposition in late-July 2009 before running out and refusing to answer any more questions regarding his serious problems with alcohol and sexual deviancy at the Gold Club while the head of WCW. To even sit in the room and question him was one of the most distasteful things I've ever had to do in 17 years of practicing law. In fact, we understand that Bischoff was afraid to even come to Tampa and testify because he would have to answer questions under oath for a third time about his embarrassing past.

The sad state of professional wrestling today is directly attributable to this snake oil salesman, whose previous career highlights include selling meat out of the back of a truck, before he filed bankruptcy and had his car repossessed. Today, after running WCW into the ground, Bischoff peddles schlock like "Girls Gone Wild" and reality shows featuring B-listers.

Sal Corrente, on the other hand, has always been an honorable man, and he delivered on every promise and paid every wrestler while staging the three WrestleReunion events. Unlike the cowardly Bischoff, Mr. Corrente took the stand in this case. Although his company did not prevail, Sal Corrente proved that he was man enough to fight to the finish -- something Bischoff could never understand."

Sincerely,

Ryan Christopher Rodems
Barker, Rodems & Cook, P.A.
400 North Ashley Drive, Suite 2100
Tampa, Florida 33602
813/489-1001
E-mail: rodems@barkerrodemsandcook.com

We just wanted to give Mr. Corrente's lawyer a chance to speak his mind.

Georgie GMakpoulos@aol.com

Since I have always had wrestlers autograph signings as a speciality for any website I worked for, I know for sure, Mr. Corrente is an honest promoter who has NEVER stiffed a wrestler working for his shows or conventions. I would have heard about it.

There are many promoters who do that in this business, which is very sad.

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C

Stetson Law Review
Fall, 1998

Essay

***323 PROFESSIONALISM AND LITIGATION ETHICS**Hon. [Claudia Rickert Isom \[FN1\]](#)

Copyright (c) 1998 by Hon. Claudia Rickert Isom

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.

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.

[FN1]. 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

28 STETLR 323
28 Stetson L. Rev. 323

Page 3

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

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**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: H

Defendants.

COPY

PLAINTIFF'S ACCOMODATION REQUEST
AMERICANS WITH DISABILITIES ACT (ADA)

Plaintiff requests an accommodation under the Americans With Disabilities Act (ADA) and states:

1. Plaintiff was determined totally disabled by Social Security in 1994.
2. Defendants are familiar with Plaintiff's disability from their prior representation of him. Defendants investigated his eligibility to receive services from the Florida Department of Vocational Rehabilitation (DVR). DVR determined that Plaintiff was too severely disabled to benefit from services. Defendants concurred, and notified Plaintiff of their decision in a letter to him dated March 27, 2001. (Exhibit A).
3. Plaintiff has the following medical conditions which are disabling and prevent him from effectively participating in court proceedings, including:
 - a. Depression and related mood disorder. This medical condition prevents Plaintiff from working, meeting deadlines, and concentrating. The inability to concentrate at times affects Plaintiff's ability to hear and comprehend.

b. Post Traumatic Stress Disorder (PTSD), makes Plaintiff susceptible to stress, such as the ongoing harassment by Defendants' lawyer, Mr. Rodems.

c. Velopharyngeal Incompetence (VPI) is a speech impairment that affects Plaintiff's ability to communicate.

d. The medical treatment for depression includes prescription medication that further disables Plaintiff's ability to do the work of this lawsuit, and further prevents him from effectively participating in the proceedings.

4. Prior to the onset of the most disabling aspects Plaintiff's medical condition(s), he was a productive member of society, a business owner for 12 years, and a graduate of both the University of Pennsylvania and The Evergreen State College.

5. On March 3, 2006, Ryan Christopher Rodems telephoned Plaintiff at his home and threatened to use information learned during Defendants prior representation against him in the instant lawsuit. Mr. Rodems' threats were twofold; to intimidate Plaintiff into dropping this lawsuit by threatening to disclose confidential client information, and to inflict emotional distress, to trigger Plaintiff's Post Traumatic Stress Disorder, and inflict injury upon Plaintiff for Defendants' advantage in this lawsuit.

6. On March 6, 2006, Mr. Rodems made a false verification the Court about the March 3, 2006 telephone call. Mr. Rodems submitted Defendants' Verified Request For Bailiff And For Sanctions, and told the Court under oath that Plaintiff threatened acts of violence in Judge Nielsen's chambers. It was a stunt that backfired when a tape recording of the phone call showed that Mr. Rodems lied. Plaintiff notified the Court about Mr. Rodems' perjury in Plaintiff's Motion With Affidavit To Show Cause Why Ryan Christopher Rodems Should not Be Held In Criminal Contempt Of Court and Incorporated Memorandum Of Law submitted January 29, 2007.

7. Mr. Rodems' harassing phone call to Plaintiff of March 3, 2006, was a tort, the *Intentional Infliction of Emotional Distress*. Mr. Rodems' tort injured Plaintiff by aggravating his existing medical condition. From the time of the call on March 3, 2006, Plaintiff suffered worsening depression for which he was treated by his doctors.

a. On May 1, 2006 Plaintiff's doctor prescribed Effexor XR, a serotonin-norepinephrine reuptake inhibitor (SNRI), to the maximum dosage.

b. Plaintiff's worsening depression, and the side affects of the medication, lessened Plaintiff's already diminished ability to represent himself in this lawsuit.

c. On October 4, 2006 Plaintiff began the process of discontinuing his medication so that he could improve is ability to represent himself in this lawsuit.

d. On or about November 18, 2006, Plaintiff discontinued the use of anti-depression medication, to improve his ability to represent himself in this lawsuit.

8. Mr. Rodems continued to harass Plaintiff during the course of this lawsuit in the following manner:

a. Mr. Rodems lay-in-wait for Plaintiff outside Judge Nielsen's chambers on April 25, 2006, following a hearing, to taunt him and provoke an altercation.

b. Mr. Rodems refused to address Plaintiff as "Mr. Gillespie" but used his first name, and disrespectful derivatives, against Plaintiff's expressed wishes.

c. Mr. Rodems left insulting, harassing comments on Plaintiff's voice mail during his ranting message of December 13, 2006.

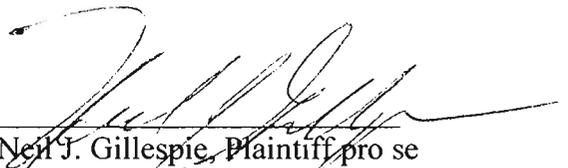
d. Mr. Rodems wrote Plaintiff a five-page diatribe of insults and ad hominem abusive attacks on December 13, 2006.

9. Plaintiff notified the Court of his inability to obtain counsel in *Plaintiff's Notice of Inability to obtain Counsel* submitted February 13, 2007.

10. Plaintiff acknowledges that this ADA accommodation request is unusual, but so are the circumstances. Defendants in this lawsuit are Plaintiff's former lawyers, who are using Plaintiff's client confidences against him, while contemporaneously inflicting new injuries upon their former client based on his disability.

WHEREFORE, Plaintiff requests additional time to obtain counsel, a stay in the proceedings for 90 days. Plaintiff also requests accommodation in the form of additional time to meet deadlines when needed due to his disability.

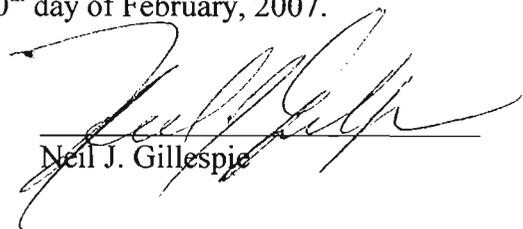
RESPECTFULLY SUBMITTED this 20th day of February, 2007.



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

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a true and correct copy of the foregoing has been furnished via US Mail to Ryan C. Rodems, attorney, Barker, Rodems & Cook, P.A., 400 N Ashley Dr., Suite 2100, Tampa, FL 33602, this 20th day of February, 2007.



Neil J. Gillespie

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

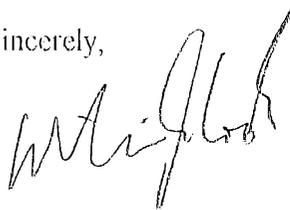
Neil J. Gillespie
Apartment C-2
1121 Beach Drive NE
St. Petersburg, Florida 33701-1434

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.

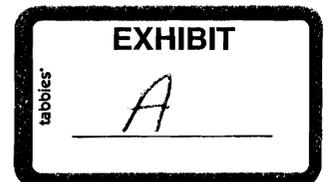
Sincerely,



William J. Cook

WJC/mss

Enclosures



**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 AMENDED ACCOMODATION REQUEST
AMERICANS WITH DISABILITIES ACT (ADA)

Plaintiff requests an accommodation under the Americans With Disabilities Act (ADA) and states:

1. Plaintiff was determined totally disabled by Social Security in 1994.
2. Defendants are familiar with Plaintiff's disability from their prior representation of him. Defendants investigated his eligibility to receive services from the Florida Department of Vocational Rehabilitation (DVR). DVR determined that Plaintiff was too severely disabled to benefit from services. Defendants concurred, and notified Plaintiff of their decision in a letter to him dated March 27, 2001. (Exhibit A). Defendants were also informed of Plaintiff's medication for depression by fax dated October 6, 2000, Effexor XR 150mg. (Exhibit B).

3. Plaintiff has the following medical conditions which are disabling and prevent him from effectively participating in court proceedings, including:

- a. Depression and related mood disorder. This medical condition prevents Plaintiff from working, meeting deadlines, and concentrating. The inability to



concentrate at times affects Plaintiff's ability to hear and comprehend. The medical treatment for depression includes prescription medication that further disables Plaintiff's ability to do the work of this lawsuit, and further prevents him from effectively participating in the proceedings.

b. Post Traumatic Stress Disorder (PTSD), makes Plaintiff susceptible to stress, such as the ongoing harassment by Defendants' lawyer, Mr. Rodems.

c. Velopharyngeal Incompetence (VPI) is a speech impairment that affects Plaintiff's ability to communicate.

d. Type 2 diabetes. This was diagnosed in 2006 after Defendants' representation.

4. Prior to the onset of the most disabling aspects Plaintiff's medical condition(s), he was a productive member of society, a business owner for 12 years, and a graduate of both the University of Pennsylvania and The Evergreen State College.

5. On March 3, 2006, Ryan Christopher Rodems telephoned Plaintiff at his home and threatened to use information learned during Defendants prior representation against him in the instant lawsuit. Mr. Rodems' threats were twofold; to intimidate Plaintiff into dropping this lawsuit by threatening to disclose confidential client information, and to inflict emotional distress, to trigger Plaintiff's Post Traumatic Stress Disorder, and inflict injury upon Plaintiff for Defendants' advantage in this lawsuit.

6. On March 6, 2006, Mr. Rodems made a false verification the Court about the March 3, 2006 telephone call. Mr. Rodems submitted Defendants' Verified Request For Bailiff And For Sanctions, and told the Court under oath that Plaintiff threatened acts of violence in Judge Nielsen's chambers. It was a stunt that backfired when a tape recording of the phone call showed that Mr. Rodems lied. Plaintiff notified the Court

about Mr. Rodems' perjury in Plaintiff's Motion With Affidavit To Show Cause Why Ryan Christopher Rodems Should not Be Held In Criminal Contempt Of Court and Incorporated Memorandum Of Law submitted January 29, 2007.

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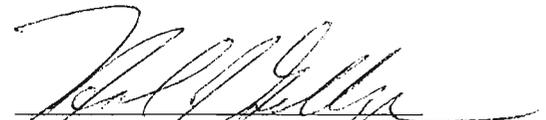
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10. Plaintiff acknowledges that this ADA accommodation request is unusual, but so are the circumstances. Defendants in this lawsuit are Plaintiff's former lawyers, who are using Plaintiff's client confidences against him, while contemporaneously inflicting new injuries upon their former client based on his disability.

WHEREFORE, Plaintiff requests additional time to obtain counsel, a stay in the proceedings for 90 days. Plaintiff also requests accommodation in the form of additional time to meet deadlines when needed due to his disability.

RESPECTFULLY SUBMITTED this 5th day of March, 2007.


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

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a true and correct copy of the foregoing has been furnished via US Mail to Ryan C. Rodems, attorney, Barker, Rodems & Cook, P.A., 400 N Ashley Dr., Suite 2100, Tampa, FL 33602, this 5th day of March, 2007.


Neil J. Gillespie

BARKER, RODEMS & COOK
PROFESSIONAL ASSOCIATION
ATTORNEYS AT LAW

CHRIS A. BARKER
RYAN CHRISTOPHER RODEMS
WILLIAM L. COOK

300 West Platt Street, Suite 150
Tampa, Florida 33606

Telephone 813/489-1001
Facsimile 813/489-1005

March 27, 2001

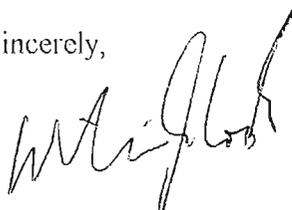
Neil J. Gillespie
Apartment C-2
1121 Beach Drive NE
St. Petersburg, Florida 33701-1434

Re: Vocational Rehabilitation

Dear Neil:

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Sincerely,



William J. Cook

WJC/mss

Enclosures



Fax

From: Neil J. Gillespie
1121 Beach Drive NE, Apt C-2
St. Petersburg, FL 33701
Phone/Fax: (727) 823-2390

To: William J. Cook, Attorney at Law

Fax: (813) 228-9612

Date: October 6, 2000

Pages: just this page

Re: ACE Check Cashing deposition

Urgent **Please Reply** **For Your Review**

● **Comments:**

RE: Current medications

Effexor XR 150 mg (depression)

Levoxyl 0.075 mg (hormone)



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

2815 NW 13th Street, Suite 200, Gainesville, FL 32609
www.bauerlegal.com

RECEIVED
JUL 29 2008
JAMES M. BARTON, II
CIRCUIT JUDGE

Robert W. Bauer, Esq.
Tanya M. Uhl, Esq.

Phone: (352)375.5960
Fax: (352)337.2518

July 24, 2008

The Honorable James M. Barton, II
800 E. Twiggs St., Room 512
Tampa, Florida 33602
Manner of delivery - U.S. Mail

Re: Gillespie v. Barker, Rodems, and Cooke

65-7205

FILED
CIRCUIT CIVIL

2008 JUL 29 AM 9:32



Dear Judge:

After speaking with my client, making a thorough review of our files and computer records I must regretfully inform the court and opposing counsel that I inadvertently made misrepresentations at our last hearing. In that hearing I stated that my office had forwarded the Information Fact Sheet to Mr. Gillespie. I also stated that my office had called him to tell him to fill it out. I now understand that was not correct. Because of my assertions the Court found Mr. Gillespie to be in contempt. I wish at this time set the record straight.

While I did truly believe that those things had happened at the time I advised the court of such, I now know that I was in error in not having personally confirmed such. I take full responsibility for the error and I wish to clarify this to insure that the court realizes that Mr. Gillespie did not ignore the courts directive.

I apologize both to the court, opposing counsel and Mr. Gillespie for my error.

Sincerely,



Robert W. Bauer, Esq.

cc: Ryan Rodems
Neil Gillespie

EXHIBIT
9

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,
vs.

CASE NO.: 05-CA-007205

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

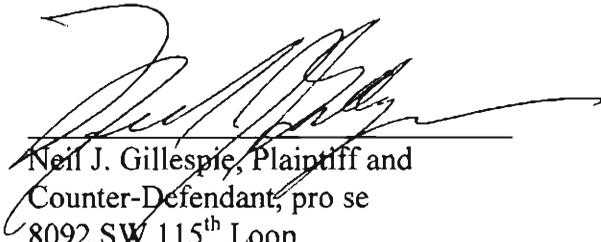
DIVISION: G

Defendants and Counter-Plaintiffs.

PLAINTIFF'S NOTICE OF FILING AFFIDAVIT OF NEIL J. GILLESPIE

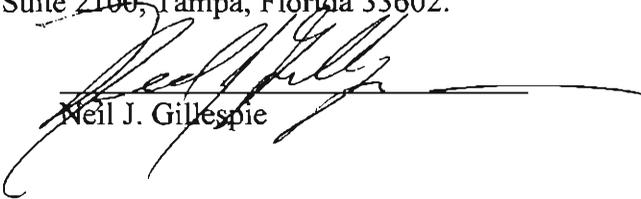
Plaintiff and Counter-Defendant pro se Gillespie hereby notice the filing of the
Affidavit of Neil J. Gillespie.

RESPECTFULLY SUBMITTED September 18, 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 copy of the foregoing was mailed September 18, 2010
to Mr. Ryan C. Rodems, attorney for the Defendants and Counter-Plaintiffs, at Barker,
Rodems & Cook, PA, 400 North Ashley Drive, Suite 2100, Tampa, Florida 33602.


Neil J. Gillespie

EXHIBIT

10

**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,
vs.

CASE NO.: 05-CA-7205

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

DIVISION: G

Defendants and Counter-Plaintiffs.

AFFIDAVIT OF NEIL J. GILLESPIE

Neil J. Gillespie, under oath, testifies as follows:

1. My name is Neil J. Gillespie, and I am over eighteen years of age. This affidavit is given on personal knowledge unless otherwise expressly stated.
2. Attorney Robert W. Bauer, Florida Bar ID No. 11058, formerly represented me in the above captioned lawsuit. While representing me, Mr. Bauer sent me an email on July 8, 2008, a paper copy of which is attached as Exhibit A.
3. In his email Mr. Bauer wrote he does not wish for me to attend hearings because he is concerned that Mr. Rodems' comments to me will enflame the situation. Mr. Bauer wrote the following about Mr. Rodems' comments: "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."
4. Upon information and belief, the behavior Mr. Bauer has attributed to Defendants counsel Mr. Rodems, comments made "for no better purposes than to anger

you”, is unlawful harassment and a violation of section 784.048, Florida Statutes. 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.

5. Since March 3, 2006, Mr. Rodems has directed, with malice aforethought, a course of harassing conduct toward me that has aggravated my disability, caused substantial emotional distress, and serves no legitimate purpose, as further described in the following pleadings and documents:

- a. Plaintiff's Accommodation Request Americans with Disabilities Act (ADA), February 20, 2007
- b. Plaintiff's Amended Accommodation Request Americans with Disabilities Act (ADA), March 5, 2007
- c. ADA Assessment and Report by Ms. Karin Huffer, MS, MFT, February 17, 2010.
- d. Americans With Disabilities Act (ADA) Accommodation Request of Neil J. Gillespie, February 19, 2010
- e. Notice of Americans with Disability Act (ADA) Accommodation Request of Neil J. Gillespie, February 19, 2010

f. Request For Accommodations By Persons With Disabilities And Order, 13th Judicial Circuit, February 18, 2010. Note item 6, Special requests or anticipated problems (specify): "I am harassed by Mr. Rodems in violation of Fla. Stat. section 784.048". Copy attached to this Affidavit as Exhibit B

g. Emergency Motion To Disqualify Defendants' Counsel Ryan Christopher Rodems & Barker, Rodems & Cook, PA July 9, 2010

h. Numerous other pleadings and documents, see the case file.

6. Mr. Rodems set a level of animosity in this lawsuit described by Mr. Bauer 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, the Honorable Marva Crenshaw, p. 16, line 24).

FURTHER AFFIANT SAYETH NAUGHT.

Dated this 17th day of September 2010.


NEIL J. GILLESPIE

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 Affidavit are true and correct to the best of his knowledge and belief.

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




Notary Public
State of Florida

Neil Gillespie

From: "Robert W. Bauer, Esq." <rwb@bauerlegal.com>**To:** "Neil Gillespie" <neilgillespie@mfi.net>**Sent:** Tuesday, July 08, 2008 6:05 PM**Subject:** RE: attached, Notice of Filing Fact Information Sheet

It was my understanding that my office did contact you. I have already apologized and have stated that I will correct the error with the court. I can do nothing more.

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.

I agree that there are personal exemptions – but as you may note I have already filled a stay which we are scheduling for hearing at this time.

Robert W. Bauer, Esq.
Law Office of Robert W. Bauer, P.A
2815 NW 13th St. Suite 200E
Gainesville, FL 32609
352.375.5960
352.337.2518 - Facsimile
Bauerlegal.com

From: Neil Gillespie [mailto:neilgillespie@mfi.net]**Sent:** Tuesday, July 08, 2008 1:20 PM**To:** Robert W. Bauer, Esq.**Subject:** attached, Notice of Filing Fact Information Sheet**Importance:** High

July 8, 2008

Mr. Bauer,

Attached is my Notice of Filing Fact Inforamtion Sheet, which includes the Fact Information Sheet and attachments. You know, it is pretty outrageous that you would attend the contempt hearing without calling me beforehand to find out why the Fact Information Sheet was not filed. I could have done it then and you could have presented it to the court, without risking my incarceration, posting a bond, or angering the judge. Should I attend future hearings, to be available for questions like this? Please contact me if you have any questions.

A local attorney I spoke with said there is a \$1,000.00 personal exemption that could act to protect my vehicle. He also advised me to consult with an asset protection specialist lawyer, because he warned Mr. Rodems will likely try and go after the assets in my family's trust. I wanted the opportunity to do that before filing the Fact Information Sheet, but there is no time.

Neil Gillespie



9/13/2010

No virus found in this incoming message.

Checked by AVG - <http://www.avg.com>

Version: 8.0.138 / Virus Database: 270.4.6/1540 - Release Date: 7/8/2008 6:33 AM

No virus found in this incoming message.

Checked by AVG - <http://www.avg.com>

Version: 8.0.138 / Virus Database: 270.4.6/1540 - Release Date: 7/8/2008 6:33 AM



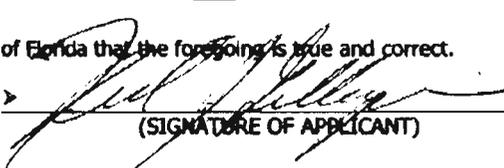
REQUEST FOR ACCOMMODATIONS BY PERSONS WITH DISABILITIES AND ORDER

Administrative Office of the Courts

APPLICANT (name): Neil J. Gillespie APPLICANT IS: <input type="checkbox"/> Witness <input type="checkbox"/> Juror <input type="checkbox"/> Attorney <input checked="" type="checkbox"/> Party <input type="checkbox"/> 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 <input type="checkbox"/> Web (Date OPI received): <input type="checkbox"/> Facsimile <input type="checkbox"/> 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: Criminal 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 (specify):
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

<input type="checkbox"/> request for accommodations is GRANTED because	<input type="checkbox"/> the request for accommodations is DENIED because
<input type="checkbox"/> the applicant satisfies the requirements of the rule.	<input type="checkbox"/> the applicant does not satisfy the requirements of the rule.
<input type="checkbox"/> it does not create an undue burden on the court.	<input type="checkbox"/> It creates an undue burden on the court.
<input type="checkbox"/> It does not fundamentally alter the nature of the service, program, or activity.	<input type="checkbox"/> it fundamentally alters the nature of the service, program, or activity (specify):
<input type="checkbox"/> alternate accommodations granted (specify):	

ROUTE TO:
 Court Facilities Court Interpreter Center
 Date: _____

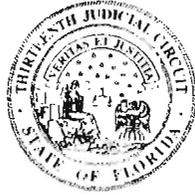
 ADA COORDINATOR

REQUEST FOR ACCOMMODATIONS BY PERSONS WITH DISABILITIES AND ORDER



COPY





ADMINISTRATIVE OFFICE OF THE COURTS
THIRTEENTH JUDICIAL CIRCUIT OF FLORIDA
LEGAL DEPARTMENT

DAVID A. ROWLAND

GENERAL COUNSEL

July 9, 2010

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

Via E-Mail: neilgillespie@mfi.net

Re: ADA Accommodation Request
Gillespie v. Barker, Rodems & Cook, Case No.: 05-CA-007205,
Thirteenth Judicial Circuit, General Civil Division

Dear Mr. Gillespie:

This is a response to your July 6, 2010 ADA request for accommodation directed to Gonzalo Casares, the Thirteenth Judicial Circuit ADA Coordinator. You request the same ADA accommodations previously submitted on February 19, 2010. Your February 19, 2010 ADA request was a request for the court to take the following case management actions:

1. Stop Mr. Rodems' behavior directed toward you that is aggravating your post traumatic stress syndrome.
2. Fulfill case management duties imposed by Florida Rule of Judicial Administration 2.545 and designate the above-referenced case as complex litigation under Florida Rule of Civil Procedure 1.201.
3. Offer services, programs, or activities described in Judge Isom's law review article – *Professionalism and Litigation Ethics*, 28 Stetson L. Rev. 323, 324 (1998) – so the court can “intensively” manage the case.

Neil J. Gillespie

July 9, 2010

Page 2

4. Enforce Judge Isom's directives imposed on February 5, 2007 which require both parties to only address each other by surname when communicating about this case and require parties to communicate in writing instead of telephone calls.
5. Allow a 180-day stay so you can scan thousands of documents in this case to PDF and find and hire replacement counsel.

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. All of your case management requests – that opposing counsel's behavior be modified, that the court fulfill its duties under Rule 2.545, that the above-referenced case be designated as complex, that your case be "intensively" managed as suggested by Judge Isom's law review article, that Judge Isom's previous directive regarding communication between parties be enforced, that your case be stayed – 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.

Sincerely,



David A. Rowland

cc: The Honorable Martha J. Cook
Ryan C. Rodems, Counsel for Defendant
Gonzalo Casares, ADA Coordinator for the Thirteenth Judicial Circuit

**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,
vs.

CASE NO.: 05-CA-7205

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

DIVISION: G

Defendants and Counter-Plaintiffs.

AFFIDAVIT OF NEIL J. GILLESPIE

Neil J. Gillespie, under oath, testifies as follows:

1. My name is Neil J. Gillespie, and I am over eighteen years of age. This affidavit is given on personal knowledge unless otherwise expressly stated.
2. Circuit Judge Martha J. Cook is presiding over this lawsuit.
3. I am suing my former lawyers in this lawsuit. On information and belief, Ryan Christopher Rodems is unlawfully representing Barker, Rodems & Cook, PA and William J. Cook against me.
4. Plaintiff's Motion To Disqualify Counsel was heard April 25, 2006 by Judge Nielsen. On May 12, 2006 Judge Nielsen signed Order Denying Plaintiff's Motion To Disqualify Counsel. The Order holds that "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." A certified copy of the Order is attached to this affidavit as "Exhibit A". There has been no Order on adjudication as to the basis that

counsel may be a witness. The question of disqualification on the counterclaim has not been heard at all.

5. 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. On information and belief Mr. Rodems ought to be a witness.

6. On July 9, 2010 I filed Emergency Motion to Disqualify Defendants’ Counsel Ryan Christopher Rodems & Barker, Rodems & Cook, PA. The motion properly raises the issue in paragraph 4. 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.

7. On July 22, 2010 Judge Cook issued “Order Denying Plaintiff’s Emergency Motion to Disqualify Defendants’ Counsel Ryan Christopher Rodems & Barker, Rodems & Cook, PA”. A certified copy of the Order is attached to this affidavit as “Exhibit B”. In her Order, Judge Cook wrote “This is the third time that the Plaintiff has motioned to disqualify Defendant’s counsel, despite having been informed in an order issued May 12, 2006 that this issue had been DENIED WITH PREJUDICE.” This statement by Judge Cook is false. The Order issued May 12, 2006 clearly states that “[e]xcept as to the basis that counsel may be a witness, and on that basis, the motion is denied without prejudice.”

8. Judge Cook also wrote, “The Clerk of Court is ORDERED to never accept another pleading from the Plaintiff that indicates an attempt to disqualify Defendants' counsel, as this matter has been DISMISSED WITH PREJUDICE.”

9. Upon information and belief, Judge Martha J. Cook knowingly and willfully, with malice aforethought, falsified a record in violation of chapter 839, Florida Statutes, section 839.13(1) if any judge shall falsify any record or any paper filed in any judicial proceeding in any court of this state, or conceal any issue, or falsify any document filed in any court the person so offending shall be guilty of a misdemeanor of the first degree, punishable as provided in s. 775.082 or s. 775.083.

10. Upon information and belief, Judge Martha J. Cook knowingly and willfully, with malice aforethought, engaged in official misconduct to harm Neil Gillespie and benefit Ryan Christopher Rodems and his clients, by falsifying an official record or official document as described in this affidavit, to deny Gillespie due process, in violation of the Misuse of Public Office statute, chapter 838 Florida Statutes, section 838.022 Official misconduct. (1) It is unlawful for a public servant, with corrupt intent to obtain a benefit for any person or to cause harm to another, to: (a) Falsify, or cause another person to falsify, any official record or official document; (3) Any person who violates this section commits a felony of the third degree, punishable as provided in s. 775.082, s. 775.083, or s. 775.084.

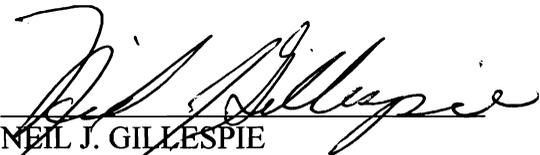
11. Upon information and belief, Judge Martha J. Cook knowingly and willfully, with malice aforethought, made a false statement in writing with the intent to mislead a public servant, Pat Frank, Clerk of the Circuit Court, in the performance of her official duty, in violation of the perjury statute, chapter 837 Florida Statutes, section

837.06 False official statements. Whoever knowingly makes a false statement in writing with the intent to mislead a public servant in the performance of his or her official duty shall be guilty of a misdemeanor of the second degree, punishable as provided in s.

775.082 or s. 775.083.

FURTHER AFFIANT SAYETH NAUGHT.

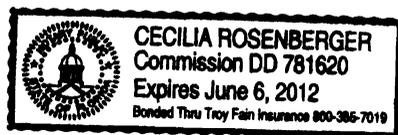
Dated this 27th day of September 2010.

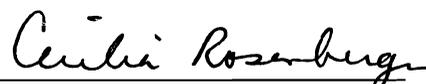

NEIL J. GILLESPIE

STATE OF FLORIDA
COUNTY OF MARION

BEFORE ME, the undersigned authority authorized to take oaths and acknowledgments in the State of Florida, appeared NEIL J. GILLESPIE, personally known to me, or produced identification, 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 his knowledge and belief.

WITNESS my hand and official seal this 27th day of September 2010.




Notary Public
State of Florida

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

HILLSBOROUGH COUNTY
CIRCUIT COURT
2006 MAY 15 PM 1:31
FILED
CLERK OF CIRCUIT COURT
Am

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 12TH day of May, 2006.

Richard A. Nielsen

Richard A. Nielsen
Circuit Judge

EXHIBIT
tabbles
A

Copies to:

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

STATE OF FLORIDA)
COUNTY OF HILLSBOROUGH)
THIS IS TO CERTIFY THAT THE FOREGOING IS A TRUE
AND CORRECT COPY OF THE DOCUMENT ON FILE IN
MY OFFICE. WITNESS MY HAND AND OFFICIAL SEAL
THIS 3rd DAY OF August 2010



PAT FRANK
CLERK OF CIRCUIT COURT
BY *Donna Healy* D.C.

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

NEIL J. GILLESPIE,
Plaintiff,

Case No: 05-CA-007205
Division: G

HILLSBOROUGH COUNTY, FL
CIRCUIT CIVIL
2010 JUL 22 PM 3:17
RECEIVED

and

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

am

ORDER DENYING PLAINTIFF'S EMERGENCY MOTION TO DISQUALIFY DEFENDANTS' COUNSEL RYAN CHRISTOPHER RODEMS & BARKER RODEMS & COOK, P.A.

THIS CAUSE came before the Court upon the Plaintiff's motion, filed July 9, 2010. This is the third time that the Plaintiff has motioned to disqualify Defendant's counsel, despite having been informed in an order issued May 12, 2006 that this issue had been **DENIED WITH PREJUDICE**. "With prejudice" that means that the motion in question is "finally disposed . . . and bars any future action on that claim."¹ Moreover, because of the doctrine of *res judicata*² this motion must be **DENIED**.

The Plaintiff is again noticed (as he has been in two previous Court orders) that repeat filings attempting to revisit the same issue can be found to rise to the level of a sanctionable offense.³

The Clerk of Court is **ORDERED** to never accept another pleading from the Plaintiff that indicates an attempt to disqualify Defendants' counsel, as this matter has been **DISMISSED WITH PREJUDICE**.

DONE and ORDERED in Chambers at Tampa, Hillsborough County, Florida, on July 22,

STATE OF FLORIDA)
2010 COUNTY OF HILLSBOROUGH)
THIS IS TO CERTIFY THAT THE FOREGOING IS A TRUE
AND CORRECT COPY OF THE DOCUMENT ON FILE IN
MY OFFICE. WITNESS MY HAND AND OFFICIAL SEAL
THIS 2nd DAY OF August 2010



PAT FRANK
CLERK OF CIRCUIT COURT
BY Donna Healy D.C.

Martha J. Cook
Martha J. Cook
CIRCUIT COURT JUDGE

¹ Black's Law Dictionary, 7th Edition.
² Matters that have been "definitively settled by judicial decision." Black's Law Dictionary, 7th Edition.
³ *Lanier v. State of Florida*, 982 So. 2d 626 (Fla. 2008).



Copies Furnished To:

Neil J. Gillespie, pro se (Plaintiff)
8092 SW 115th Loop
Ocala, FL 34481

Ryan Christopher Rodems, Esq. (for Defendants)
400 North Ashley Drive, Ste. 2100
Tampa, FL 33602

**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,
vs.

CASE NO.: 05-CA-7205

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

DIVISION: G

Defendants and Counter-Plaintiffs.
_____ /

AFFIDAVIT OF NEIL J. GILLESPIE

Neil J. Gillespie, under oath, testifies as follows:

1. My name is Neil J. Gillespie, and I am over eighteen years of age. This affidavit is given on personal knowledge unless otherwise expressly stated.
2. Circuit Judge Martha J. Cook is presiding over this lawsuit.
3. I made a request for accommodation to the Thirteenth Judicial Circuit under the Americans With Disabilities Act (ADA) to Gonzalo B. Casares, the (ADA) Coordinator. On Friday July 9, 2010 Court Counsel David A. Rowland sent me a letter by email that denied my ADA accommodation request. Mr. Rowland denied my request less than one business day prior to a hearing I was scheduled to attend.
4. On Monday July 12, 2010 I attended a hearing at 10:30 AM before Judge Cook in this lawsuit. While attending the hearing I suffered a panic attack. I informed Judge Cook that I was ill and needed medical attention. Judge Cook excused me. This is exactly what Judge Cook said:

6 THE COURT: All right. Mr. Gillespie, you're
7 excused. Thank you.

(Transcript, July 12, 2010, page 6, beginning at line 6)

5. Deputies of the Hillsborough County Sheriff's Office saw I was in distress and offered assistance. Tampa Fire Rescue was called. Corporal Gibson was by my side and walked me to the lobby of courthouse where I waited for the paramedics.

6. Tampa Fire Rescue arrived and I received medical attention at 10:42 AM by EMT Paramedic Robert Ladue and EMT Paramedic Dale Kelley. Later I obtained a report of the call, incident number 100035129. The narrative section states "found 54yom sitting in courthouse" with "tight throat secondary to stress from court appearance". The impressions section states "abdominal pain/problems". The nature of call at scene section states "Resp problem". A copy of the report is attached to this affidavit as "Exhibit A."

7. 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.

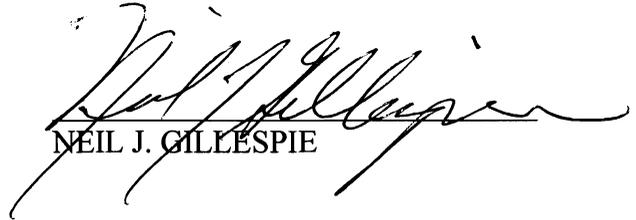
8. I received a document from Judge Cook dated July 29, 2010 "Notice Of Case Management Status and Orders On Outstanding Res Judicata Motions" and "Notice Of Court-Ordered Hearing On Defendants' For Final Summary Judgment". A certified copy of the document is attached to this affidavit as "Exhibit B". The document begins with a false account of my panic attack and medical treatment on July 12, 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.”

8. Upon information and belief, Judge Martha J. Cook knowingly and willfully, with malice aforethought, falsified a record in violation of chapter 839, Florida Statutes, section 839.13(1) if any judge shall falsify any record or any paper filed in any judicial proceeding in any court of this state, or conceal any issue, or falsify any document filed in any court or falsify any minutes or any proceedings whatever of or belonging to any public office within this state the person so offending shall be guilty of a misdemeanor of the first degree, punishable as provided in s. 775.082 or s. 775.083.

FURTHER AFFIANT SAYETH NAUGHT.

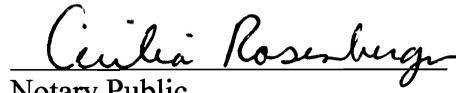
Dated this 27th day of September 2010.


NEIL J. GILLESPIE

STATE OF FLORIDA
COUNTY OF MARION

BEFORE ME, the undersigned authority authorized to take oaths and acknowledgments in the State of Florida, appeared NEIL J. GILLESPIE, personally known to me, or provided identification, 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 his knowledge and belief.

WITNESS my hand and official seal this 27th day of September 2010.


Notary Public
State of Florida



TAMPA FIRE RESCUE (EMSID: 2911; FDID: 03072)
808 Zack St.
Tampa, FL 33602-
(813) 274-7005 x

TAMPA FIRE RESCUE Incident Date: 07/12/2010
Incident Number: 100035129 Patient 1 of 1
RESCUE 1 Shift: B
GILLESPIE, NEIL 54 YEAR OLD, MALE

PAST MEDICAL HISTORY: Depression, Diabetic, Hypertension ;
ALLERGIES: None ;
MEDICATIONS: Unknown pt doesnt know names; ;

ASSESSMENT: 10:42
Patient Conscious.
No External Hemorrhage Noted; Mucous Membrane Normal
Central Body Color Normal
Extremities Normal
WITHIN NORMAL LIMITS (Airway, Breathing Quality, Accessory Muscle Use,
Chest Rise, Radial Pulse, Skin Temp, Skin Moisture, Skin Turgor, Cap
Refill, Pupil Size and Reaction)

ALS Assessment Done to rule out NOC at Dispatch.

SECONDARY ASSESSMENT - INJURY:
CHEST - No Injury: Left breath sounds are clear to auscultation.
Right breath sounds are clear to auscultation. Breath sounds are
equal. Heart sounds: Normal.

NARRATIVE:
R1 found 54yom sitting in courthouse. pt a&ox3, skin w&d, pt cc tight
throat secondary to stress from court appearance pt states, lungs
clear bi-lat, sao2 100%, pt blood sugar 179mg/dl, vitals as shown in
flow sheet section, monitor shows sinus rhythm w/ no ectopy noted, pt
denies being in any pn, secondary found no acute findings, advise pt
mult. times to be transported to hospital pt refuses transport and
states he would rather go to his Dr. pt signed refusal and advise to
call back if any issues occur w/ full understanding.

TREATMENT:
10:42 Pulse:120 Regular and Rapid Resp:16 Respiratory
Effort:Normal BP:148/96 Rhythm:NSR SaO2:100% (on Room Air)
Blood Sugar:179 Ectopy:No GCS:4 Spontaneous; 5 Oriented; 6 Obeys
= 15 Responsiveness:Alert PainSeverity:0
10:42 SaO2, successful, 1 attempt, LADUE, ROBERT EMT-Paramedic
(PMD514678) (Unchanged) (100 room air)
10:43 Blood Glucose, KELLEY, DALE EMT-Paramedic (PMD49960)
(Unchanged) (179mg/dl)
10:44 ECG 4 Lead, successful, 1 attempt, ENGINE 1 (Unchanged) (nsr
w/ no ectopy)
10:48 Pulse:110 Not Assessed Resp:16 Respiratory
Effort:Normal BP:153/86 Rhythm:NSR SaO2:100% (on Room Air)
Ectopy:No GCS:4 Spontaneous; 5 Oriented; 6 Obeys = 15
Responsiveness:Alert PainSeverity:0
No Venous Access
No Medications Done

IMPRESSION:
Primary Impression: Other Secondary Impression: Unknown Other
Impressions: Abdominal pain / problems

INCIDENT INFORMATION:
Incident location: 0000800 TWIGGS ST E Tampa, Hillsborough, FL 33602



TAMPA FIRE RESCUE (EMSID: 2911; FDID: 03072)
808 Zack St.
Tampa, FL 33602-
(813) 274-7005 x

Nature of call as dispatched: Chest Pain Nature of call at scene:
Resp Problem (Anatomic Location: Not Known) (Organ System: Not
Known) (Primary Symptom: None) (Other Symptom: Not Known)
(Condition Code: Other)

Disposition: Non-Transport Evaluation Only
Type of exposure on this run: None

07/12/2010 10:36:35 Call Received

07/12/2010 10:37:24 Dispatched
07/12/2010 10:38:50 Depart
07/12/2010 10:39:51 Arrive Location
07/12/2010 10:40:00 Patient Contact
07/12/2010 10:40:00 Assume Patient Care
07/12/2010 10:56:31 Available

Response to scene: Lights and sirens

Lead Crew Member: LADUE, ROBERT EMT-Paramedic (PMD514678)
Crew Member 2: KELLEY, DALE EMT-Paramedic (PMD49960)

ASSISTING:
ENGINE 1,

PATIENT:
GILLESPIE, NEIL DOB: 03/19/1956 54 YEARS OLD.

White, Male, 285 lbs
8092 SW 115th Loop
Ocala, FL 34481-

SSN#: 160-52-5117

BILLING INFORMATION:

Work Related: No
Next of Kin Name: , () Address: City: State: Zip: Phone:
SSN:

NFIRS:

Exposure #: 000 Incident Type: 321 EMS call, excluding vehicle
accident with injury Action Taken: 32 Provide basic life support
(BLS)

N None

Property Use: 599 Business office

RESPONDING UNITS:

Suppression [Apparatus:1 Personnel:4]

EMS [Apparatus:1 Personnel:2]

Other [Apparatus:0 Personnel:0]

Includes no mutual aid resources.

Human Factors Involved: N None

Other Factors Involved: N None

Impression: 00 Other Condition of Patient: 2 Remained Same

Census Tract:

TAMPA FIRE RESCUE (EMSID: 2911; FDID: 03072)
808 Zack St.
Tampa, FL 33602-
(813) 274-7005 x

SIGNATURES:

Signed By: LADUE, ROBERT EMT-Paramedic (PMD514678)
Last Modified By: MILLER, LILAH Admin Asst. (000) on 7/23/2010 1:46:04
PM

***** Addendum / Data Correction Added by: MILLER, LILAH Admin Asst.
(000) on 7/23/2010 1:46:07 PM *****

(-): 141000
124(+): Last Modified By: MILLER, LILAH Admin Asst. (000) on 7/23/2010
1:46:04
125(+): PM

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

NEIL J. GILLESPIE,
Plaintiff,

Case No: 05-CA-007205
Division: G

and

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

FILED
CLERK CIRCUIT COURT
2010 JUL 30 AM 11:26
HILLSBOROUGH COUNTY, FL
CIRCUIT CIVIL

NOTICE OF CASE MANAGEMENT STATUS and
ORDERS ON OUTSTANDING RES JUDICATA MOTIONS

THIS CAUSE came before the Court for case management on July 12, 2010. Both parties appeared for the hearing; however, the Plaintiff voluntarily left the hearing prior to its conclusion, stating his objection to the case management conference, demanding status of ADA claims already addressed by the court administration, objecting to the physical presence of opposing counsel, objecting to this Court presiding in this matter due to his “notice of filing” of a purported lawsuit against the 13th Judicial Circuit,¹ and finally loudly gasping and shouting he was ill and had to be excused.² Prior to the Plaintiff’s voluntary departure, the parties were asked by the Court for a status update on this case and to list for the Court those petitions and motions presently outstanding. Subsequent to the hearing, the Court reviewed the 11 volumes, paying specific attention to Court orders that substantively disposed issues. In so doing, it was clear that certain of Plaintiff’s re-filed motions are *res judicata* – matters that have been “definitively settled by judicial decision.”³ Having considered these re-filed motions, the Court hereby

ORDERS AND ADJUDGES:

¹Regarding the Plaintiff’s “noticed” lawsuit against the 13th Judicial Circuit, it is well-established law that the Plaintiff’s filing does not present legally sufficient grounds for this Court’s disqualification or recusal from this case. See *Dowdy v. Salfi*, 455 So.2d 604 (Fla. 5th DCA 1984), *5-H Corporation v. Padovana*, 708 So.2d 244 (Fla. 1997), *May v. South Florida Water Management*, 866 So.2d 205 (Fla. 4th DCA 2004) and *Bay Bank & Trust v. Lewis*, 634 So.2d 672 (Fla. 1st DCA 1994). This objection was addressed in the Court’s July 27, 2010 denial of disqualification.

² Mr. Gillespie refused medical care from emergency personnel when called by bailiffs and left the courthouse immediately after learning that the conference was completed.

³ Black’s Law Dictionary, 7th Edition.



1. **Plaintiff's "Motions to Strike CMC"** (6-14-10) were **DENIED** prior to the July 12, 2010 hearing.
2. **Plaintiff's Motion for Rehearing** (7-16-08) is **DENIED**. The judge to whom this rehearing motion was directed removed himself from the case and the subsequent judge has, in her discretion under Rule 2.330, denied reconsideration of the orders of proceeding judges (see order dated June 22, 2010).
3. **Plaintiff's "Amended Motion to Disqualify Counsel"** (no date provided in Judge Barton's order) and **"Emergency Motion to Disqualify Defendant's Counsel"** (7-9-10) are each **DENIED**. The Plaintiff's original attempt to disqualify Defendants' counsel was first denied, with prejudice, on May 12, 2006. When a Court dismisses a motion "with prejudice" that means that the motion in question is "finally disposed . . . and bars any future action on that claim."⁴ Additionally, pursuant to the doctrine of *res judicata*, these motions must be denied.
4. **Plaintiff's "Motion to Declare Complex Litigation"** (5-3-10) **"Motion to Disclose Conflict"** (5-5-10) and **"Motion to Disclose Ex Parte Communication"** (5-5-10) were each addressed and **DENIED** in the July 16, 2010 order denying disqualification of Judge Cook, the Plaintiff's motion for which referenced these matters.
5. **Plaintiff's "Motion for Leave to Amend,"** citing **ADA** (4-1-10), **"Motion for Leave to Amend"** (5-5-10), **"Motion to Consider Prior ADA Accommodation,"** (5-3-10), and **"Motion to Stay Pending ADA"** (6-14-10) are each **DENIED**. Even if ADA applied in the fashion which the Plaintiff sought to employ it, a stay would be unnecessary as that is the point of the protection – to allow a "person with a disability who needs an accommodation to access court facilities or participate in a court proceeding."⁵ Court administration has informed the Plaintiff that the nature of his ADA requests, thus far, involve "the internal management of pending cases"⁶ – in other

⁴ Black's Law Dictionary, 7th Edition.

⁵ 13th Judicial Circuit Website, accessed July 22, 2010:

<http://www.fljud13.org/dotnetnuke/BusinessOperations/CourtFacilitiesSecurity/ADAAccommodations.aspx>

⁶ See July 9, 2010 letter from administration, as copied to all parties.

words, Plaintiff's issues are the subject of "case management." 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. See **Order Granting Motion for Sanctions (7-20-07)**, **Order Granting In Part Defendants' Motion for Judgment on Pleadings (11-28-07)**, **Final Judgment (3-27-08)**, **Order Determining Amount of Sanctions (3-27-08)**, **Order Granting and Denying in Part Defendant's Motion for Judgment on Pleadings (7-7-08)**, **Final Judgment as to Defendant Cook (7-7-08)**, **Order Granting Defendant's Motion for Writ of Garnishment (7-24-08)**, and the **Order from Second District Court of Appeals (2D08-2224)**, opinion and mandate. See also Florida Rule of Civil Procedure 1.100(a).⁷

6. **Plaintiff's "Motions for Reconsideration"** (6-18-10 and 6-23-10) were duplicative and **DENIED** by this Court's discretion on June 23, 2010. **Plaintiff's "Motion for Reconsideration"** (6-28-10) filed after entry of that denial is **DENIED**, as it is duplicative of the prior two motions, and is disposed by *res judicata*.
7. **Plaintiff's "Motion Dissolve Writ"** (5-3-10) is **DENIED** as lacking legal basis. The Defendants are entitled to this Writ by a final judgment and a judgment granting motion for sanctions; moreover, the Second District Court of appeal has *affirmed* and issued a "mandate," which means this Court has no option but to enforce the judgment.
8. The **Plaintiff's "Motion for Order of Protection,"** (no date provided in Judge Barton's order) renewed in his **"Motion to Cancel Deposition"** (6-16-10) is **DENIED**. The Plaintiff has repeatedly been the subject of Motions to Compel by the Defendants during the course of these proceedings, and has ignored Court orders requiring his participation. The Court will not accept these or any further attempts by the Plaintiff to avoid the Defendant's right to discovery in this

⁷ "There shall be a complaint or . . . petition, and an answer to it; an answer to a counterclaim . . . an answer to a cross claim [if applicable]; a third party complaint [and answer, if applicable] . . . no other pleading shall be allowed."

case and to bring this matter to a close. Non-compliance with the Court's orders is grounds for dismissal of the Plaintiff's remaining count with prejudice.

9. Each of the Plaintiff's "Motions to Disqualify" against the undersigned have been **DENIED** by separate order of the Court, the most recent of which was entered July 27, 2010.

10. The Court **RESERVES JURISDICTION** to consider the following motions:

- a. Plaintiff's "Motions to Compel Discovery" (12-14-06, 2/1/07, 4-1-10, and 6-23-10)
- b. Plaintiff's "Claim for Exemption" (8-14-08 and 5-3-10)
- c. Plaintiff's "Motion for Contempt" (no date provided in Judge Barton's order)
- d. Plaintiff's "Motion for Order to Show Cause and Contempt" (no date provided in Judge Barton's order)
- e. Plaintiff's Motion for Sanction" (4-28-10)
- f. Defendant's "Motion for Proceedings Supplementary for Execution" (no date provided by Defendants)
- g. Defendant's "Motion for Examination Pursuant to Section 56.29(2)" (no date provided by Defendants)
- h. Defendants' "Motion for an Order to Show Cause as to Why Plaintiff Should Not Be Prohibited from Henceforth Appearing Pro Se," received July 27, 2010.

11. These motions shall not be set for hearing until the Court has first ruled on the Defendant's outstanding motion for Final Summary Judgment.

12. The Court **GRANTS** the Defendant's request to set a mandatory hearing upon their outstanding "Motion for Final Summary Judgment," served upon the Plaintiff January 23, 2007.⁸ Both the Defendants and the Plaintiff are **ORDERED TO APPEAR** on **September 28, 2010 at 11:00a.m.** The hearing shall be for no more than 30 minutes. The hearing will be held at 800 E. Twiggs Street, Hearing Room 511, Tampa, Florida, 33602. The Court **shall not grant any continuance, or any motion for reconsideration or rehearing of this order setting hearing.**

13. The Court will allow the Plaintiff to appear telephonically, but it is his responsibility to file a timely written motion no later than September 21, 2010 and for him to provide, at his own expense, for the services of a notary on his end of the phone, since it may be necessary to swear

⁸ Pursuant to Fla. R. Civ. Pro. 1.080, the question of whether or not a receiving party facilitates acceptance of papers (i.e. refuses to accept certified mail and/or federal express deliveries) is irrelevant; the question is the "good faith" of the party who is attempting to produce the document, which can be proven up by delivery receipts and/or any other evidence of legitimate attempt at service. In addition, "the certificate [of service] shall be taken as *prima facie* proof of such service in compliance with these rules." Fla. R. Civ. Pro. 1.080(f).

him in for testimony. Should the Plaintiff fail to arrange telephonic appearance, then his in person appearance is mandatory. Should the Plaintiff voluntarily forfeit his appearance by failing to attend, call in, or not participate in good faith (including failure to provide the required notary), then the hearing shall proceed in his absence and the Court may consider sanctions for his non-appearance.

14. At this mandatory hearing the parties must also be prepared to discuss the effect of the **“Order Adjudging Contempt”** entered by Judge Barton on July 7, 2008. This order found that the Plaintiff had ability to comply with the **“Final Judgment”** entered on March 27, 2008 and that the Plaintiff violated the terms of that order by failing to complete Form 1.977 Fact Information Sheet. The Plaintiff was ordered to complete the sheet and to serve a copy to the Defendant no later than July 11, 2008. If the Plaintiff did not timely submit Form 1.977, as ordered, then pursuant to the **“Order Adjudging Contempt,”** “the Court *shall* dismiss” with prejudice, the Plaintiff’s last remaining claim (i.e. Count 1, Plaintiff’s breach of contract claim against Defendant law firm). Because this dismissal sanction may render hearing on the Defendant’s **“Motion for Final Summary Judgment”** to be moot, the parties are **ORDERED** to provide proof to this Court that this prior contempt sanction has been addressed.
15. A separate notice of hearing on the motion for summary judgment accompanies this order. Copies will be sent to the parties at the address provided to the Clerk of Court.

DONE and ORDERED in Chambers at Tampa, Hillsborough County, Florida, on July 29, 2010.


Martha J. Cook
CIRCUIT COURT JUDGE

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

NEIL J. GILLESPIE,
Plaintiff,

Case No: 05-CA-007205
Division: G

and

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

FILED
CLERK CIRCUIT COURT
2010 JUL 30 AM 11:26
HILLSBOROUGH CNTY, FL
CIRCUIT CIVIL

**NOTICE OF COURT-ORDERED HEARING ON
DEFENDANTS' MOTION FOR FINAL SUMMARY JUDGMENT**

TO: Neil J. Gillespie, pro se (Plaintiff)
8092 SW 115th Loop
Ocala, FL 34481

Ryan Christopher Rodems, Esq. (for Defendants)
400 North Ashley Drive, Ste. 2100
Tampa, FL 33602

YOU ARE NOTIFIED that a hearing on the Defendants' Motion for Final Summary Judgment, filed and served upon the Plaintiff since January 23, 2007, has been **ORDERED** by the Court (see "Notice of Case Management Status and Orders on Outstanding Res Judicata Motions," entered July 29, 2010).

At this **mandatory** hearing the parties must be prepared to address the **ORDER ADJUDGING CONTEMPT** entered by Judge Barton on July 7, 2008, as instructed by this Court's prior order.

Both the Defendants and the Plaintiff are **ORDERED TO APPEAR** before:

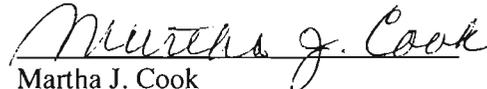
JUDGE: The Honorable Martha J. Cook
PLACE: 800 E. Twiggs Street, Hearing Room 511, Tampa, Florida, 33602.
TIME: 11:00a.m.
DURATION: 45 minutes
DATE: September 28, 2010

Should either party fail to attend or to participate in good faith as described in the "Notice of Case Management Status and Orders on Outstanding Res Judicata Motions," then the hearing shall proceed on the merits without that party. All parties will be required to abide by the Rules of Civil Procedure and follow appropriate courtroom decorum.

A copy of this notice has been furnished to the parties on the date of this NOTICE.

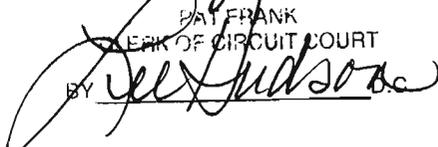
The parties are further advised that failure to appear or to comport with either the "Notice of Case Management Status and Orders on Outstanding Res Judicata Motions" or this "Notice of Court-Ordered Hearing on Defendants' Motion for Final Summary Judgment" may constitute contempt of court, which could result in the imposition of sanctions, including without limitation fine, incarceration or dismissal of the action **with prejudice**.

DONE and ORDERED in Chambers at Tampa, Hillsborough County, Florida, on July 29, 2010.


Martha J. Cook
CIRCUIT COURT JUDGE

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 the Administrative Office of the Courts, Attention: ADA Coordinator, 800 E. Twiggs Street, Tampa, FL 33602, Phone: 813-272-6513, Hearing Impaired: 1-800-955-8771, Voice impaired: 1-800-955-8770, e-mail: ADA@fljud13.org, at least seven (7) days before your scheduled court appearance. If you are hearing or voice impaired, call 711.

STATE OF FLORIDA)
COUNTY OF HILLSBOROUGH)
THIS IS TO CERTIFY THAT THE FOREGOING IS A TRUE
AND CORRECT COPY OF THE DOCUMENT ON FILE IN
MY OFFICE/ WITNESS MY HAND AND OFFICIAL SEAL
THIS 10 DAY OF August 2010

PAT FRANK
CLERK OF CIRCUIT COURT
BY 

Judge Cook's "Res Judicata Motions"

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". The document has a number of errors or falsifications, including:

4. Plaintiff's "Motion to Declare Complex Litigation" (5-3-10) "Motion to Disclose Conflict" (5-5-10). and "Motion to Disclose Ex Parte Communication" (5-5-10) were each addressed and DENIED in the July 16, 2010 order denying disqualification of Judge Cook, the Plaintiffs motion for which referenced these matters.

This is false, the July 16, 2010 order makes no mention of these documents.

5. Plaintiff's "Motion for Leave to Amend," citing ADA (4-1-10), "Motion for Leave to Amend" (5-5-10), "Motion to Consider Prior ADA Accommodation," (5-3-10), and "Motion to Stay Pending ADA" (6-14-10) are each DENIED. Even if ADA applied in the fashion which the Plaintiff sought to employ it, a stay would be unnecessary as that is the point of the protection - to allow a "person with a disability who needs an accommodation to access court facilities or participate in a court proceeding...5 Court administration has informed the Plaintiff that the nature of his ADA requests, thus far, involve "the internal management of pending cases

This assessment of the ADA by Judge Cook is not based on law. How can the Judge know before an ADA request is amended what request is at issue?

Judge Cook 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

Judge Cook made the following assertion:

6. Plaintiff's "Motions for Reconsideration" (6-18-10 and 6-23-10) were duplicative and DENIED by this Court's discretion on June 23, 2010. Plaintiff's "Motion for Reconsideration" (6-28-10) filed after entry of that denial is

DENIED, as it is duplicative of the prior two motions, and is disposed by *res judicata*.

Plaintiff had a Motion for Reconsideration June 18, 2010, but that was all. Defendants filed a Response and Motion To Strike June 23, 2010. There is no Motion For Reconsideration June 28, 2010.

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: G

Defendants.

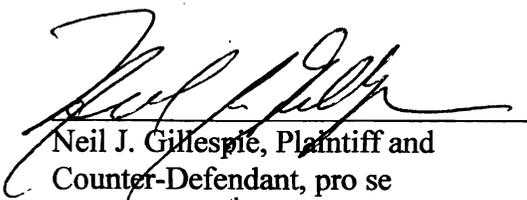
FILED
CLERK OF CIRCUIT COURT
2010 JUL 12 AM 9:58
HILLSBOROUGH CNTY, FL
CIRCUIT CIVIL

NOTICE OF FILING

NOTICE OF CLAIM AGAINST THE THIRTEENTH JUDICIAL CIRCUIT
PURSUANT TO SECTION 768.28(6)(a), FLORIDA STATUTES

Plaintiff and Counter-Defendant Neil J. Gillespie pro se submits Notice of Filing of his Notice of Claim against the Thirteenth Judicial Circuit in compliance with section 768.28(6)(a), Florida Statutes, which requires that prior to instituting any action on a tort claim against the state or one of its agencies or subdivisions, the claimant must present the claim in writing to the appropriate agency and the Department of Financial Services. The Notice of Claim is attached hereto.

RESPECTFULLY SUBMITTED July 12, 2010.

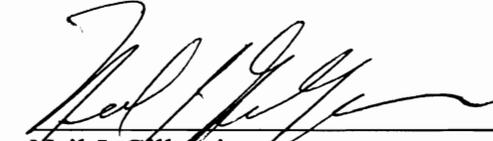

Neil J. Gillespie, Plaintiff and
Counter-Defendant, pro se
8092 SW 115th Loop
Ocala, Florida 34481
Telephone: (352) 854-7807

EXHIBIT

15

Certificate of Service

I HEREBY CERTIFY that a copy of the foregoing was mailed July 12, 2010 to Ryan Christopher Rodems, attorney for the Defendants and Counter-Plaintiffs, 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, FL 34481

Telephone: (352) 854-7807
neilgillespie@mfi.net

VIA HAND DELIVERY

July 12, 2010

The Honorable Manuel Menendez, Jr.
Chief Judge Thirteenth Judicial Circuit
800 E. Twggs Street, Room 602
Tampa, Florida 33602

Dear Chief Judge Menendez:

This is my notice in compliance with the requirements of section 768.28(6)(a), Florida Statutes, which requires that prior to instituting any action on a tort claim against the state or one of its agencies or subdivisions, the claimant must present the claim in writing to the appropriate agency and the Department of Financial Services.

1. Claimant:

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

2. Thirteenth Judicial Circuit parties:

Thirteenth Judicial Circuit (Hereinafter the "Court")
The Honorable Manuel Menendez, Jr., Chief Judge
Mr. David A. Rowland, Court Counsel
Mr. K. Christopher Nauman, Assistant Court Counsel
The Honorable Richard A. Nielsen, Circuit Court Judge
The Honorable Claudia Rickert Isom, Circuit Court Judge
The Honorable James M. Barton, II, Circuit Court Judge
The Honorable Martha J. Cook, Circuit Court Judge
Ms. Mary A. Fish, Judicial Assistant
Mr. Gonzalo B. Casares, ADA Coordinator
Mr. Ryan C. Rodems, Officer of the Court

3. Third persons:

Barker, Rodems & Cook, PA, (hereinafter “BRC”) a three attorney firm consisting of Messrs. Barker, Rodems and Cook and support staff. Formerly represented Gillespie.

4. Witnesses:

People mentioned in this notice and others to be determined.

5. Overview:

Claimant Gillespie sued his former lawyers in civil court for money the lawyers unlawfully took from Gillespie’s settlement. The Court ‘home-towned’ and retaliated against Gillespie for suing his former lawyers by misusing and denying him judicial process. Gillespie suffered injury. The Court was the proximate cause of the injury. During the litigation Gillespie uncovered that the Court has an unlawful scheme of justice further described in a law review by Judge Isom, 28 Stetson L. Rev 323, Professionalism and Litigation Ethics. The Court also violated the Americans with Disabilities Act (ADA) and the ADA Amendments Act of 2008 with regard to Gillespie.

6. Background:

The history of the Court shows ten years of scandal, including:

a. The Attorney General of Florida has an active public consumer-related investigation into Florida Default Law Group of Tampa for fabricating and/or presenting false and misleading documents in foreclosure cases. These documents have been presented in court before judges as actual assignments of mortgages and have later been shown to be legally inadequate and/or insufficient. (Exhibit 1). The Court’s judges have been negligent in accepting these bad document. Gillespie has the same problem with the judges in his case accepting false and misleading evidence from attorney Rodems.

b. Some judges of the Court appear to be working part-time while collecting full-time salary and benefits at a time when the Court is overwhelmed with foreclosure cases. Dramatic evidence of this was presented June 15, 2010 by Mr. Rodems during the 13th Circuit JNC interviews to fill the vacancy of Judge Black.

(i) Applicant Rodems described criticism he heard about judges leaving work early on Fridays, a situation so pervasive that one could "fire a bullet" in the courthouse it was so empty he said. It was a response to a question about what kind of hours he would keep.

(ii) Another applicant wants to work Fridays if appointed, said the courthouse is “desolate” on Friday, said some judges do not arrive for work until 10:00AM, and given the backlog of cases, judges leaving work at 5:00PM is “wrong”.

c. A number of the judges of the Court have engaged in various forms of misconduct as reported in the press, and as described June 15, 2010 during the 13th Circuit JNC interviews to fill the vacancy of Judge Black. A question by the JNC asked some applicants if they had seen any behavior from a judge in court that was unprofessional. The following responses were provided. I am keeping the names of the applicants confidential at this time to protect them from retaliation since some of the misconduct shows the sadistic qualities of the judge(s) involved.

(i) Applicant "A" responded that one judge said to a woman who was obviously pregnant and about to give birth, words to the effect "would you like this garbage can moved closer to you in case you have the baby?" The judge was referring to a trash can in the courtroom.

(ii) Applicant "B" noted an instance in traffic court where a pro se litigant was "destroyed" by clearly inadmissible evidence from law enforcement, and that a judge should step in for pro se litigants where appropriate.

(iii) Applicant "C" noted some judges willfully embarrass lawyers in open court, ask to see their bar card, or inquire where they went to law school.

(iv) Applicant "D" complained about angry judges "yelling" at participants during litigation.

d. Other scandals include an award of \$70,000 September 15, 2009 by the FL Supreme Court (Exhibit 2) to Circuit Judge Gregory Holder for expenses in defending charges of plagiarism. Holder attempted to recover \$1.77 million in legal fees according to Tom Brennan of the Tampa Tribune. (Exhibit 3).

e. A grand jury presentment of An Investigation Into Judicial Misconduct In Hillsborough County (Exhibit 4) showed how the unauthorized entry by Judge Robert Bonanno into the office of Judge Holder led to the revelation that Judge Gasper Ficarrota conducted an extramarital affair with Hillsborough County Bailiff Tara Pisano which lasted for more than a year, and that sexual relations occurred between them in the courthouse during normal business hours. This was reported in the St. Petersburg Times by Christopher Goffard and Jeff Testerman. (Exhibit 5). The grand jury found evidence of unlawful election campaigning, a secret Judicial Qualifications Commission investigation, and an illicit courthouse affair between Judge Bonanno and an employee of the clerk's office.

f. The suicide of State Attorney Harry Lee Coe over dog-track gambling debts and misconduct. Coe was a former judge of the Court. (Exhibit 6).

g. The Honorable Richard A. Nielsen was criticized in an editorial by the St. Petersburg Times and two news stories by Kathryn Wexler for misconduct by the judge toward a

minor in a restitution hearing who did not have an attorney and needed a Spanish translator. Judge Nielsen was later assigned to Gillespie's case.

(i) May 28, 2002, news story by Kathryn Wexler, published in the St. Petersburg Times about Judge Nielsen "Without an attorney, boy falters before judge" (Exhibit 7)

(ii) May 29, 2002, St. Petersburg Times editorial about Judge Nielsen, "Judge should have known better" (Exhibit 8)

(iii) May 31, 2002, news story by Kathryn Wexler published in the St. Petersburg Times about Judge Nielsen "Teen who defended self gets attorney" (Exhibit 9)

7. The Claim Against The Court:

Claimant Gillespie commenced a civil lawsuit against his former lawyers August 11, 2005, case style Neil J. Gillespie v Barker, Rodems & Cook, PA and William J. Cook, Circuit Civil Court case number 05-CA-007205, in the Thirteenth Judicial Circuit Hillsborough County, Florida. Gillespie originally sought 6,224.78 that his former lawyers stole from a settlement. (Exhibit 10). Plaintiff's First Amended Complaint was filed May 5, 2010. (Exhibit 11).

Mr. Rodems is unlawfully representing his firm against a former client on a matter that is the same or substantially related the former representation. An Emergency Motion To Disqualify Defendants' Counsel Ryan Christopher Rodems & Barker, Rodems & Cook, PA was filed July 9, 2010. (Exhibit 12). Rodems filed a frivolous libel counterclaim against Gillespie. (Exhibit 13).

Gillespie tried to resolve this dispute without litigation through The Florida Bar Attorney Consumer Assistance Program (ACAP), reference #03-18867. The Bar tells complainants to attempt to resolve their matter by writing to the subject attorney before contacting ACAP or filing a complaint. Even if this is unsuccessful, it is important to do so in order to have documentation of good-faith efforts to resolve the matter. Gillespie made a good-faith effort June 13, 2003, wrote to Mr. Cook, noted ACAP reference #03-18867, provided an explanation with spreadsheet, and offered to settle for \$4,523.93.

Mr. Barker responded and accused Gillespie of criminal 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). Rodems repeated the accusation in his counterclaim against Gillespie, paragraphs 57 and 67.

The lawsuit is entering its fifth year. The Court is misusing and denying Gillespie judicial process. The Court abandoned its case management duties under Rule 2.545, Florida Rules of Judicial Administration. Instead the Court turned that function over to Rodems

so he could rack up \$11,550 in sanctions against Gillespie. The Court has also allowed Rodems to harass Gillespie and aggravate his disability, know to Rodems from his firm's former representation.

From 2007 through 2009 Gillespie was represented by Gainesville attorney Robert W. Bauer. Mr. Bauer 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 14).

Gillespie's complaint shows two other clients were also defrauded by BRC, Eugene Clement and Gay Ann Blomefield. Earlier this year Gillespie learned of other clients of Rodems who made bar complaints against him, Rita M. Pesci and Roslyn Vazquez. The full extent of this firm's fraud is not known because Rodems has not provided most of the discovery due in this lawsuit and is being protected by the Court from doing so.

Gillespie hired Dr. Karin Huffer as his ADA advocate and accommodations designer. An ADA report and ADA accommodation request was submitted February 19, 2010. The notice of the ADA report and ADA request was filed the same day. (Exhibit 15).

Mr. Casares notified Gillespie 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." The Court responded July 9, 2010 by letter from Court Counsel David Rowland. (Exhibit 16). The response of Mr. Rowland was only a partial response and failed to address a number of issues. Rowland referred Gillespie to Judge Cook to make motions where she "may consider your disability, along with other relevant factors, in ruling upon your motion." Gillespie views the response of Mr. Rowland as a denial of his ADA accommodation request.

Gillespie commenced two lawsuits in August 2005, the instant case and one in federal court over a credit card dispute, Gillespie v. HSBC Bank, et al, case no. 5:05-cv-362-Oc-WTH-GRJ, US District Court, Middle District of FL, Ocala. The lawsuit was resolved 15 months later. This contrasts the competence of federal court to the 13th Judicial Circuit.

The Court has assigned four judges to this lawsuit.

a. The Honorable Richard A. Nielsen, Circuit Court Judge
August 11, 2005 through November 22, 2006.

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.

Mr. Rodems intentionally disrupted the tribunal with a strategic maneuver to gain an unfair advantage in the litigation. During the scheduling a hearing, Rodems telephoned Gillespie at home March 3, 2006 and an argument ensued. Rodems threatened to reveal Gillespie's confidential client information which inflicted severe emotional distress.

On March 6, 2006 Rodems made a sworn affidavit under the penalty of perjury falsely placing the name of the trial judge in the affidavit and therefore into the controversy. Rodems submitted Defendants' Verified Request For Bailiff And For Sanctions that falsely placed the name of the Judge Nielsen into an "exact quote" attributed to Gillespie¹ about a violent physical attack in Judge Nielsen's chambers.

Kirby Rainsberger, Police Legal Advisor, Tampa Police Department, reviewed the matter and 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. But it was too late. 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.

Rodems strategic maneuver inflicted severe emotional distress on Gillespie and he sought protection under the ADA but none was provided.

The Americans with Disabilities Act (ADA) and the ADA Amendments Act of 2008 are administrative functions not judicial acts with judicial immunity.

b. The Honorable Claudia Rickert Isom, Circuit Court Judge
November 22, 2006 through February 13, 2007

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.

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

¹ 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.

of court. The transcript also shows that both Judge Isom and Mr. Rodems denied that the campaign contributions were a reason for disqualification.

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. Mr. Rodems and Judge Isom engaged in a conspiracy of silence to suppress highly relevant information.

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 17). 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.

Judge Isom conducted an unlawful ADA assessment of Mr. Gillespie during the February 5, 2007 hearing with a complete lack of confidentiality.

(transcript, February 5, 2007, beginning page 45, line 6)

MR. GILLESPIE: Right now, Judge, my head is swimming to the point where I'm having a hard time even hearing you. But it sounded all right.

THE COURT: What's is the nature of your disability?

MR. GILLESPIE: It's depression and post-traumatic stress disorder.

THE COURT: Are you under the care of a doctor?

MR. GILLESPIE: Yes, Judge.

THE COURT: And do you have a disability rating with the Social Security Administration?

MR. GILLESPIE: Yes, Judge. In the early '90s, I'm going to say '93 or '94, I was judged disabled by Social Security. And I applied for vocational rehabilitation. And to make a long story short, I guess it was in about '98 or '99 I received a determination from vocational rehabilitation that my disability was so severe that I could not benefit from rehabilitation. I would say in the interim that they had prepared a rehabilitation plan for me and they didn't want to implement it. And that's the reason that they gave for not implementing it. I brought that cause of action to the Barker, Rodems and Cook law firm and they reviewed that. And apparently they were in agreement with it because they decided not to represent me on that claim. And a copy of their letter denying that is part of my motion for punitive damages. You can read that letter. I think I have it here.

(transcript, February 5, 2007, ending page 46, line 9)

After taking testimony about Mr. Gillespie's disability, Judge Isom offered to abate the matter for three months so Mr. Gillespie could find counsel, but Mr. Rodems objected. Mr. Gillespie retained attorney Robert W. Bauer a month later.

(transcript, February 5, 2007, beginning at page 46, line 10)

THE COURT: Okay. But in terms of direction today, do you want to just stop everything and abate this proceeding for three months so that you can go out and try to find substitute counsel or --you know, I realize there's a counterclaim.

MR. GILLESPIE: Yes, Judge.

THE COURT: But originally, at least, it was your lawsuit. So if you feel that you're at a disadvantage because of your lack of counsel, I guess I could abate it and give you additional time to try to find an attorney.

MR. RODEMS: Your Honor, we would oppose that. And let me tell you why.

(transcript, February 5, 2007, beginning at page 46, line 21)

Mr. Rodems continued with a self serving diatribe and accused Mr. Gillespie of criminal extortion for trying to resolve this matter through the Florida Bar ACAP Program, and other such. Then Mr. Rodems made this accusation in open court:

MR: RODEMS: In any event, at every stage of the proceedings when Mr. Gillespie is about to be held accountable for his actions he cries that he's got a disability or he complains about the fact that he can't get a lawyer. The reason he can't get a lawyer is because he's not willing to pay a lawyer by the hour for the services he wants. (transcript, February 5, 2007, page 49, line 12).

And Mr. Gillespie responded:

MR. GILLESPIE: I am willing to pay an attorney by the hour. I have sent a payment of \$350 an hour to an attorney with the promise of a retainer if they would take the case. So Mr. Rodems calling me cheap and all of this name-calling and not willing to pay, that's not true. In fact, I offered Rick Mitzel who said the cost would be \$200 an hour, I gladly offered to pay him \$200 an hour. He wouldn't take the case. These lawyers don't want to litigate against this firm because they're aware of what this firm does and what they're capable of. (transcript, February 5, 2007, page 50, line 14).

Unable to find counsel in the Tampa Bay area, Mr. Gillespie sought an out-of-town referral from The Florida Bar Lawyer Referral Service. (LRS). The LRS provided a referral to attorney Robert W. Bauer, 2815 NW 13th Street, Suite 200E, Gainesville, FL. Mr. Bauer entered his notice of appearance April 2, 2007 on behalf of Mr. Gillespie. This was just 56 days after Judge Isom considered allowing three months for Mr. Gillespie to obtain counsel, until Mr. Rodems objected and Judge Isom capitulated. Mr. Gillespie paid Mr. Bauer \$250 per hour for representation. Because of the need to hire an out-of-town attorney to litigate against Mr. Rodems, Mr. Gillespie incurred an additional cost for counsel to travel from Gainesville that added \$5,700 to the cost of representation.

The Americans with Disabilities Act (ADA) and the ADA Amendments Act of 2008 are administrative functions not judicial acts with judicial immunity.

c. The Honorable James M. Barton, II, Circuit Court Judge
February 14, 2007 through May 24, 2010

Judge Barton was pleased with Mr. Bauer, and stated so on the record:

THE COURT: "It is a good thing for Mr. Gillespie that he has retained counsel. The way in which Mr. Gillespie's side has been presented today with - with a high degree of professionalism and confidence reflects the wisdom of that decision." (transcript, hearing July 3, 2007, p. 21, line 6)

A year and a half later Mr. Bauer complained on the record, just like Gillespie before him. Attorney Robert W. Bauer 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, the Honorable Marva Crenshaw, p. 16, line 24).

On March 20, 2008 Judge Barton awarded Rodems \$11,550 in sanctions for discovery errors and a misplaced defense of economic loss to a motion to dismiss and strike.

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 23).

Mr. Bauer moved to withdrawal October 13, 2008. Judge Barton took no action and allowed the case to languish with no activity for almost one year. Judge Barton failed to fulfill his case management duties imposed by Rule 2.545, Fla.R.Jud.Admin.

Judge Barton failed to provide Gillespie the ADA and the ADA Amendments Act of 2008 accommodations requested.

On May 5, 2010 Gillespie arrived for the hearing set by Judge Barton. The Order Scheduling Hearing set the hearing for one hour, beginning a 3:00 PM, and listed 12 items. This is contrary to Gillespie's ADA request. Judge Barton sandbagged Gillespie at the hearing with a new "plan" that would extend the heating to 8:00 PM.

(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 8:00 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 "plan" was to set a hearing for one hour, beginning at 3:00 PM, and when Gillespie arrived, sandbag him and announce the hearing would continue until "7:00 to 8:00 o'clock tonight." This would amount to a 4 or 5 hour hearing, and is contrary to Gillespie's ADA request for hearings limited to 1 hour or so. On May 20, 2020 Gillespie filed Plaintiff's Motion to Disqualify Judge Barton (Exhibit 18) and the judge was disqualified May 24, 2010.

The Americans with Disabilities Act (ADA) and the ADA Amendments Act of 2008 are administrative functions not judicial acts with judicial immunity.

d. The Honorable Martha J. Cook, Circuit Court Judge
May 24, 2010 through July 12, 2010.

Soon after Judge Cook assumed the case defense counsel Ryan Christopher Rodems embarked on a course of unethical conduct to disrupt the proceedings. Rodems unilaterally scheduled hearings for June 9, 2010 at 9:00 AM, and July 12, 2010 at 10:30 AM, without coordinating the time and date with the Gillespie. Mr. Rodems knowingly scheduled the hearings at an inconvenient time for Gillespie who must travel 100 miles from Ocala to Tampa. Rodems contrived a phony story about making a good-faith effort to contact Gillespie, see Notice of Fraud on the Court by Ryan Christopher Rodems submitted June 17, 2010. (Exhibit 19). Gillespie called Judge Cook's judicial assistant Mary Fish about the matter and she refused to get involved. On other occasions she hung up the phone. There is an outstanding issue about recorded phone lines.

Gillespie submitted a Motion For Reconsideration (Exhibit 20) of Judge Barton's prior rulings and Judge Cook denied the motion without a hearing. One issue in the motion, a contempt ruling by Judge Barton, Mr. Bauer has admitted responsibility for error so it would be unjust to hold Gillespie responsible. Judge Cook's failure to even hear the matter shows bias against Gillespie.

Judge Cook kept case files in this matter locked in her office and denied Gillespie access to public records, specifically a motion for writ of garnishment May 24, 2010. Judge Cook responded to Gillespie's concern with a non sequitur about other matters. Judge Cook granted the motion ex parte on a void affidavit, see Motion To Strike Affidavit of William J. Cook, Esquire, Quash PayPal Garnishment, etc. submitted June 28, 2010. That is a denial of Gillespie's due process.

Gillespie submitted Plaintiff's Motion to Declare Complex Litigation April 28, 2010. (Exhibit 21). On June 16, 2010 Judge Cook mischaracterized the motion as wanting to "transfer" the case to a "complex" litigation section. The motion is clearly marked to "declare" not "transfer". In any event, Judge Cook essentially denied the motion and wrote "The instant cause of action between the Plaintiff and Defendants does not meet the definition of a complex business litigation matter as set forth under AO S-2008-105". There is a difference between complex business litigation as set forth under AO S-2008-105 and Rule 1.201(a) complex litigation (not business litigation).

The Court does not allow nonlawyer litigants to schedule hearings with JAWS, The Judicial Automated Workflow System. This puts Gillespie at a significant disadvantage.

On June 16, 2010 Judge Cook provided the following information concerning ADA:

"The ADA request made by the Plaintiff: Because the only hearing heretofore scheduled before the undersigned was canceled, the Court had no cause to review the Plaintiffs ADA request, which was rendered moot by the cancellation. Furthermore, the judge is not the person designated by Court Operations to review and implement said procedures; rather, that duty falls to the "ADA Coordinator" who thereafter makes any necessary planning known to the judge. The ADA policy of the Thirteenth Judicial Circuit is outlined at <http://www.fljud13.org/ada.htm>. and in AO S-29-93-08. In future, if the

Plaintiff is directed to make any request for ADA accommodations to Court Administration at least seven (7) days before the scheduled hearing, in keeping with the rules published on the court website. Per the AO and Courthouse guidelines, the Plaintiff must complete a Request for Accommodations Form and submit it to 800 E. Twiggs Street, Room 604, Tampa, FL 33602, in order for his request to be processed.”

The above ADA instructions are in conflict with the ADA, the letter of David Rowland of July 9, 2010 (Exhibit 16) and the Title II Guidelines for the State Court System of Florida. ADA requests are not “rendered moot” by the cancellation of a hearing, and the Request for Accommodations Form was submitted February 19, 2010.

The Americans with Disabilities Act (ADA) and the ADA Amendments Act of 2008 are administrative functions not judicial acts with judicial immunity.

8. Causes of Action

Fifth and Fourteenth Amendments to the Constitution of the United States, Due Process
Eight Amendment to the Constitution of the United States, Cruel & Unusual Punishment
Fourteenth Amendment to the Constitution of the United States, Equal Protection
42 U.S.C. § 1983 Civil Rights
Americans with Disabilities Act (ADA) and the ADA Amendments Act of 2008
Florida Civil Rights Act (FCRA)
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
Misusing and Denying Judicial Process
Misrepresentation and Non-Disclosure
Negligence
Breach of Contract
Intentional Infliction of Severe Emotional Distress
Breach of Fiduciary Duty
Civil Conspiracy
Fraud
Invasion of Privacy
Florida Deceptive and Unfair Trade Practice Act (FDUTPA)

9. Damages

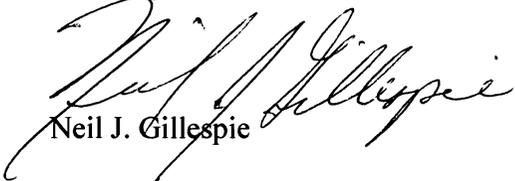
An review of this lawsuit by attorney Seldon J. Childers produced *An Economic Analysis Spreadsheet* draft dated September 17, 2009 that states the following:

“Non-Pecuniary Cost of Litigation. 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.” (p.4, ¶4).

Gillespie’s estimated expenses in this lawsuit exceed \$75,000, including about \$33,000 in hourly attorney’s fees.

Sincerely,



Neil J. Gillespie

cc: Mr. Mark Stemley, Division of Risk Management
Florida Department of Financial Services
200 East Gaines Street
Tallahassee, FL 32399-0336

cc: Mr. David A. Rowland, Court Counsel
Administrative Offices Of The Courts
Thirteenth Judicial Circuit, Florida
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Note: All enclosures are provided in PDF on accompanying CD