

VIA US Certified Mail, RRR
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April 12, 2011

Mr. Brian Kramer
Office of the State Attorney
120 W. University Avenue
Gainesville, FL 32601

RE: Request for criminal prosecution of attorney Robert W. Bauer
Chapter 825, Florida Statutes

Dear Mr. Kramer:

This is a request for prosecution of Robert W. Bauer under chapter 825, Florida Statutes, Abuse, Neglect, and Exploitation of Elderly Persons and Disabled Adults.

As you know I made a bar complaint against Mr. Bauer, Florida Bar File No. 2011-00,073(8B). You are familiar with this matter because you served as investigating member for the grievance committee. As you also know, the legal standards and procedures in a criminal prosecution are different than for a bar complaint. While the bar complaint and its outcome bear no direct relation to this request for criminal prosecution, the documents in my bar complaint provide evidence that may be considered. Therefore please find enclosed the following documents in PDF on the enclosed CD:

Bar complaint against Robert W. Bauer with exhibits, July 15, 2010 (100 pages)
Response of Mr. Bauer to the bar complaint, August 18, 2010
My rebuttal September 18, 2010 with all exhibits (96 pages)

1. Mr. Bauer and I had a business relationship as defined by section 825.101(1), Florida Statutes. The business relationship was reflected by a number of documents, including an Attorney Consultation and Fee Contract executed in April 2007 related to legal representation in a civil lawsuit, Neil J. Gillespie v. Barker, Rodems & Cook, PA and William J. Cook, case no. 05-CA-7205, Circuit Civil, Hillsborough County, Florida. (the "lawsuit").
2. Mr. Bauer had a business relationship with my Mother, Penelope M. Gillespie, as defined by section 825.101(1), Florida Statutes. Ms. Gillespie died September 16, 2009. Mr. Bauer represented Ms. Gillespie on several matters including investigation of medical malpractice, and wrongful termination of insurance. On November 19, 2008 I assigned and transferred to Penelope M. Gillespie, for her use and benefit, a security interest in all my rights to receive any proceeds in the lawsuit. This is the "Assignment of Unliquidated Lawsuit Proceeds" document prepared by attorney Jeff Shelquist.
3. I am a disabled adult as defined by section 825.101(4), Florida Statutes, and as further described in documents in the lawsuit and provided to Mr. Bauer.

4. Ms. Gillespie was an elderly person as defined by section 825.101(5) and 77 years-old at the start of representation. Ms. Gillespie was suffering from the infirmities of aging including Alzheimer's disease, aerial fibrillation, and other ailments.
5. Mr. Bauer had a position of trust and confidence with respect to me as defined by section 825.101(11)(c), Florida Statutes, a legal or fiduciary relationship as my attorney. The Florida Bar Lawyer Referral Service referred Mr. Bauer in February 2007. Mr. Bauer provided professional services as defined by section 825.101(13)(b), Florida Statutes.
6. Mr. Bauer had a position of trust and confidence with respect to Ms. Gillespie as defined by section 825.101(11)(c), Florida Statutes, a legal or fiduciary relationship as attorney. Mr. Bauer provided professional services as defined by section 825.101(13)(b), Florida Statutes.
7. Mr. Bauer engaged in deception with regard to my business relationship with him as defined by section 825.101(3), Florida Statutes, (a)(1) misrepresenting or concealing a material fact relating to services rendered intended to benefit a disabled adult; (a)(2) terms of a contract or agreement entered into with a disabled adult; and (b) using any misrepresentation, false pretense, or false promise in order to induce, encourage, or solicit a disabled adult to enter into a contract or agreement.
8. Mr. Bauer's deception deprived me and Ms. Gillespie of property as defined by section 825.101(12), Florida Statutes. The value of property lost through Mr. Bauer's deception is defined by section 825.101(14).
9. Mr. Bauer violated section 825.103(1)(a), Florida Statutes, exploitation of an elderly person or disabled adult, knowingly, by deception, obtaining an elderly person's or disabled adult's funds, assets, or property to benefit himself, a lawyer who stood in a position of trust and confidence with the elderly person or disabled adult and who had a business relationship with the elderly person or disabled adult.

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).

Under section 825.103(2)(b), Florida Statutes, Mr. Bauer committed a felony of the second degree because the funds, assets, or property involved in the exploitation of the elderly person or disabled adult is valued at \$20,000 or more, but less than \$100,000. The funds directly benefiting Mr. Bauer amount to \$19,212.44, with an additional \$12,650.13 owing him, plus thousands of dollars spent for filing fees, transcripts, etc.

Mr. Bauer assumed representation of my already-filed ongoing pro se lawsuit, Neil J. Gillespie v. Barker, Rodems & Cook, PA and William J. Cook, case no. 05-CA-7205, Circuit Civil, Hillsborough County, Florida. I filed the lawsuit pro se August 11, 2005 against my former lawyers ("BRC") who wrongfully took \$6,224.78 from a contingent fee case settlement. My initial pro se complaint survived a motion to dismiss and strike by Order of January 13, 2006, and established a cause of action for fraud and breach of contract. BRC counstersued me for libel on January 19, 2006. BRC obtained sanctions against me for discovery errors and a misplaced defense to the counterclaims on § 57.105 Fla. Stat. sanctions. I voluntarily dismissed my claims February 7, 2007. The Florida Bar LRS referred Mr. Bauer to me February 26, 2007. I retained Mr. Bauer and he reinstated my claims but failed to zealously represent me and dropped the case before completion. Mr. Bauer spent much of his time and my money securing sanctions for BRC of \$11,550 against me, and Mr. Bauer caused me to be held in contempt of court.

On March 29, 2007 Mr. Bauer called me after his initial review of this matter. Mr. Bauer said the pending sanctions against me were "entirely and wholly inappropriate" (Transcript, p29, line 17). I was later sanctioned in the amount of \$11,550. 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). My ultimate repose 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). The transcript is on the enclosed CD.

In his letter to me of April 5, 2007 Mr. Bauer wrote "I also reviewed the original complaint and determined that it appeared to contained (sic) two well plead causes of actions (sic) that could reasonably be pursued in a court action." From a legal standpoint this was false and deceptive. While my original complaint survived a motion to dismiss, it was legally deficient and required amendment. In July 2009 I hired attorney Seldon Childers to review this matter, and he concluded the following about my original complaint:

"Plaintiff has already paid twice the actual damages in attorneys fees to date in the case and there is still essentially no complaint filed. [at footnote 3] i.e. the current complaint is deficient and will have to be amended by 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." (Analysis of Case, Sep-17-09, page 3, ¶2.)

I retained attorney Seldon J. Childers to review the lawsuit. He prepared three documents dated September 17, 2009: (In PDF on the enclosed CD)

Analysis of Case and Recommendation
Economic Analysis Spreadsheet
Case Spreadsheet

Based upon Mr. Childers' review, Mr. Bauer should never have undertaken this representation on an hourly fee basis. Even under the best case scenario, this case would lose \$7,475.34. Under the worst case scenario the case would lose \$204,067.41. This litigation was never in my interest, only Mr. Bauer's interest, a clear breach of fiduciary duty and a violation of section 825.103(1)(a), Florida Statutes. Later Mr. Bauer agreed to a contingent fee agreement but never signed the agreement.

Mr. Bauer did little about the defamation claim for which I hired him. He instead pursued fraud and breach of contract claims that I had voluntarily dismissed against BRC. Mr. Bauer took this course of action with the belief that "...the jury would love to punish a slimy attorney."
(Transcript, March 29, 2007, page 28, line 9).

The Florida Bar Lawyer Referral Service (LRS) provided Mr. Bauer for the area of law of Libel and Slander. I retained Mr. Bauer for the libel counterclaims. He filed an amended answer to the counterclaim but nothing else. Mr. Bauer's amended answer to the counterclaim contained a "counter-counter complaint" that was rejected out of hand by the court because there is no provision under Rule 1.100(a), Fla.R.Civ.P., for this pleading. The counterclaim for libel against me is a willful and intentional misuse of process for the collateral purpose of making me drop my claims against BRC and settle this lawsuit on terms dictated by them. BRC perverted the process of law for a purpose for which it is not by law intended. BRC used their counterclaim as a form of extortion. 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.

Mr. Bauer admitted wrongdoing in open court. Mr. Bauer made the following statement August 14, 2008 during an Emergency Hearing on a garnishment before the Honorable Marva Crenshaw (Transcript page 16, line 24). A copy of the transcript is enclosed on the CD.

MR. BAUER: "...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."

10. Mr. Bauer violated section 825.102(1) Florida Statutes, abuse of a disabled adult, (b) an intentional act that could reasonably be expected to result in psychological injury to a disabled adult; and (c) active encouragement of Beverly E. Lowe by Mr. Bauer to commit an act that results or could reasonably be expected to result in psychological injury to me.

Mr. Bauer violated section 825.102(2) Florida Statutes, aggravated abuse of a disabled adult (c) by knowingly or willfully abusing a disabled adult, and in so doing caused permanent disability to the disabled adult. Dr. Karen Huffer determined that the abuse caused permanent disability and wrote "He [Gillespie] is left with permanent secondary wounds" October 28, 2010. (copy enclosed). Attorney Seldon Childers concurred and calculated the 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." (Sep-17-09, Economic Analysis Spreadsheet, copy enclosed)

Mr. Bauer encouraged me to pursue a lawsuit that would require me to testify in court, but prohibited me from testifying in my own case, instead allowing Mr. Rodems, an adversary with a history of fraud and abuse toward me, to appear in court and present false evidence against me that undermined the case, an intentional act that could reasonably be expected to result in psychological injury to me, a disabled adult.

Enclosed is my affidavit of September 17, 2010 showing Mr. Bauer refused to allow me to appear in court and testify. This is what Mr. Bauer wrote me in an email July 8, 2008:

"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." (relevant portion)

Mr. Bauer actively encouraged Beverly E. Lowe to make a false and misleading affidavit that could reasonably be expected to result in psychological injury to me, a disabled adult. In rebuttal I made an affidavit dated September 17, 2010. (copy enclosed). Ms. Lowe's affidavit recounts my attempt to pick up my case file. I made a separate affidavit about Mr. Bauer's refusal to return my case file dated September 18, 2010. (copy enclosed). As shown in the affidavit, Mr. Bauer's behavior provoked a response from me indicating psychological upset and injury when I told him the following: "I am tired of your bullshit and I want my fucking file". Mr. Rodems learned of this incident and reported it to the Florida Bar as an act of violence in his 13 page diatribe response to my bar complaint against Mr. Bauer. However, my acts were not violent or

unlawful, just protected First Amendment free speech. The First Amendment protects the use of profanities and offensive speech as held by the following Florida cases:

A.S.C. v. State, 14 So.3d 1118 (5 DCA 2009)

C.H.C. v. State, 988 So.2d 1145 (Fla. 2d DCA 2008)

C.N. v. Florida, 49 So.3d 831 (Fla. 2d DCA 2010)

Willie Fields v. State, No. 3D08-1414 (Fla. App. 12/9/2009)

Smith v. State, 967 So.2d 937 (2 DCA 2007)

W.L. v. State, 769 So.2d 1132 (3 DCA 2000)

Mr. Rodems presented false evidence and misled 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. Mr. Rodems misrepresented to Judge Barton that there was a signed written contingent fee agreement between Plaintiff Neil Gillespie and Defendant Barker, Rodems & Cook, PA when there was none. Mr. Bauer failed to present evidence that there was no signed contingent fee agreement, such as my testimony or my affidavit. Instead Mr. Bauer submitted Plaintiff's Motion For Rehearing July 16, 2008 but withdrew from the case before it was heard.

Mr. Bauer's failed to keep me informed of the proceedings contrary to Bar Rule 4-1.4(a) informing a client of the status of representation. Judge Barton found me guilty of contempt July 1, 2008. Order Adjudging Contempt was signed July 7, 2008.

How could Mr. Bauer attend a contempt hearing without speaking to his client? This is simply outrageous and beyond all excuse. What was Mr. Bauer thinking for the long, two hour ride from Gainesville to Tampa to attend the hearing? What was Mr. Bauer thinking he would tell Judge Barton? Why did Mr. Bauer fail to call me from his car on that long drive to Tampa, on his way to the contempt hearing?

In a letter to Judge Barton dated July 24, 2008, Mr. Bauer admitted he made misrepresentations that resulted in me being found guilty of contempt. (copy enclosed). Mr. Bauer wrote:

“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.” (RWB, paragraph 1)

“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.” (RWB, paragraph 2)

“I apologize both to the court, opposing counsel and Mr. Gillespie for my error.”
(RWB, paragraph 3)

Even though Mr. Bauer admitted his error, he did not move to correct the record and remove the contempt finding. The contempt finding still stands and carries potential consequences: “The Court retains jurisdiction to impose additional sanctions, as necessary, and to tax attorneys' fees and costs.”

Mr. Bauer filed Claim of Exemption and Request For Hearing Aug-14-08. (copy enclosed). Mr. Bauer failed to notarize the claim of exemption and Mr. Rodems objected. (copy enclosed). Mr. Bauer never corrected his error. The claim of exemption was for social security disability benefits, head of family wages, and providing more than one-half of the support for other dependent with net earnings of \$500 or less per week. (The dependent was my 78 year-old Mother).

Mr. Rodems made a bad-faith garnishment of my bank account and social security disability benefits in the amount of \$598.22. With malice aforethought Mr. Rodems timed his garnishment to coincide with my automatic deposit of Social Security disability benefits. Rodems knows the benefits are exempt under section 222.18 Florida Statutes. Rodems knows Plaintiff receives Social Security disability benefits from his firm's prior representation of me in a substantially related matter, from discovery in the lawsuit, and from the Fact Information Sheet.

In a letter dated December 21, 2010, Dale K. Bohner, Esq. Legal Counsel to the Clerk, informed me that the bank was still holding the \$598.22. (copy enclosed). Pursuant to section 77.07(5) Florida Statutes, after 6 months a writ is automatically dissolved and the garnishee is discharged from further liability. As such the bank had no current liability and returned my money. A copy of the check is enclosed.

Mr. Rodems began aggressive attempts to collect \$11,550 from me for court sanctions through discovery in aid of execution, and went after our family trust. Mr. Bauer failed to defend in any meaningful way, and failed to argue applicable case law. According to 13 Fla. Jur 2d, Creditors' Rights § 91, The creditors of the trustee are not entitled to an attachment to subject trust property held by the trustee to the payment of the trustee's debts. Tillman v. Taylor, 99 Fla. 1326, 128 So. 846, Fla. 1930. The remedy is not available even if the debt is chargeable to the trust itself. Johnston v. Smith, 76 Fla. 474, 80 So. 184, Fla. 1918. The equitable interest of a defendant as beneficiary of a trust is not subject to garnishment, at least in the absence of express statutory authorization. McLeod v. Cooper, 88 F.2d 194, C.A.5 1937.

Mr. Bauer stopped providing documents to me in the lawsuit. September 5, 2008 I made a 200 mile round-trip to Tampa to buy the documents from the clerk of court for \$1.00 per page. I spent \$75 for 75 pages of documents Mr. Bauer failed to provide. I brought my 78-year old Mother who suffered from Alzheimer's dementia along since I could not leave her alone.

October 27, 2008 I made a request to Mr. Bauer under the Americans with Disabilities Act (ADA) for accommodation to restore effective communication. (copy enclosed). Mr. Bauer did not respond. Jeffrey R. Shelquist is an attorney who I retained several times in the past, he agreed to serve as an intermediary with Mr. Bauer on the so-called failure to communicate.

At all times pertinent I was disabled under the Americans With Disabilities Act (ADA). The Social Security Administration determined me disabled in 1994. My source of income is Social Security disability. In addition, the Second District Court of Appeal of Florida found that I was insolvent on November 19, 2010 in case no. 2D10-5529, and again on November 22, 2010 in case no. 2D10-5529.

In 2005 I moved to the above address and became the primary caregiver to my Mother, Penelope Gillespie, who suffered from Alzheimer's dementia and other ailments. The above address was her home. More specifically, the home is in a family trust. My Mother was an unremarried widow. We were the only residents of this home and depended on Social Security income.

Mr. Bauer moved to withdrawal from representation October 13, 2008. At the same time my Mother's dementia worsened. In February 2009 my brother in Texas agreed to take in our Mother so I could attempt to get the case back on track and other such. Ms. Gillespie did not tolerate the move and died from complications of the move September 16, 2009.

Mr. Bauer's behavior described above was a deliberate attempt to get me to fire him once he extracted all the money he could from me, and could reasonably be expected to result in psychological injury to a disabled adult. Enclosed is Mr. Bauer's letter dated September 5, 2007. Mr. Bauer wrote: "I do not anticipate any problems from you in regard to the payment of your bills as you have been most courteous and prompt in your responses and payments to bills that have been forwarded." Six months into the representation Mr. Bauer wrote that I was "most courteous" as he churned legal fees for his benefit.

The lawsuit is currently on appeal. The clerk of the lower tribunal notified me of transcripts not filed by Mr. Bauer, transcripts that I gave him to file during the representation. When I contacted Bauer about the missing transcripts he did not respond, and this failure to communicate could reasonably be expected to result in psychological injury to a disabled adult.

Enclosed is an order dated April 8, 2011 from the 2dDCA granting my motion to file Appellant's Amended Initial Brief, which was necessitated by an incomplete Index and Record prepared by

the clerk. The amended initial brief will further show wrongdoing by Messrs. Bauer and Rodems.

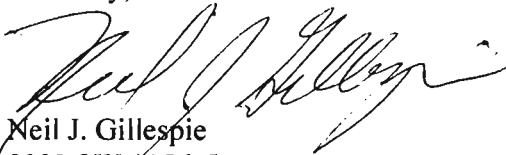
Nothing in this request for prosecution under Chapter 825, Florida Statutes should be construed to limit any criminal prosecution of Mr. Bauer. You may determine that he violated additional or alternative criminal statutes. For example, I believe Mr. Bauer's letter to the Gov. Crist is evidence of fraud, that he took my representation to churn fees without benefit and drop the case.

In a letter to Gov. Crist dated January 4, 2010 (copy enclosed) Mr. Bauer endorsed Mr. Rodems for judge and praised him as "honorable and professional". This is in contrast to Mr. Bauer's statement that Rodems misled Judge Barton. (Transcript, page 11, Feb-09-09, copy enclosed)

MR. BAUER:...[I] think it clearly puts
12 before the Court the mistake or perjury, whichever
13 the Court determines that they wish to interpret as
14 Mr. Rodems misleading the Court when he said that
15 certain things were present that weren't. If you
16 read those motions I clearly said that in there.

Mr. Bauer is referring to Rodems' false statement to the Court about a signed representation agreement. An attorney who mislead the Court is not "honorable and professional". Thank you.

Sincerely,



Neil J. Gillespie
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Telephone: (352) 854-7807

Enclosures in PDF on CD