

**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.

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RECEIVED
JUN 18 2010
CLERK OF CIRCUIT COURT
HILLSBOROUGH COUNTY, FL

MOTION FOR RECONSIDERATION

1. Plaintiff and Counter-Defendant Neil J. Gillespie pro se moves for reconsideration under Fla.R.Jud.Admin., Rule 2.330(h), Prior Rulings. 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.
2. Plaintiff's Motion to Disqualify Judge Barton was submitted May 20, 2010. Judge Barton found the motion legally sufficient and signed Order Granting Plaintiff's Motion to Disqualify Judge Barton May 24, 2010. The Order is attached as Exhibit A. Judge Barton failed to provide Plaintiff/Counter-Defendant Gillespie a copy of his Order. Notice of disqualification and reassignment to Judge Cook was provided by the Clerk of the Circuit Court by mail, adding five (5) days time to submit a motion for reconsideration, or 25 days from May 24, 2010, which is June 18, 2010. (Exhibit B).

Prior Factual or Legal Rulings for Reconsideration

3. The prior factual or legal rulings by Judge Barton for reconsideration are:
 - a. Order Determining Amount of Sanctions, signed by Judge Barton March 27, 2010, awarding \$11,550 in extreme sanctions for discovery errors and a misplaced defense of economic loss to Defendants counterclaim. (Exhibit C). The Order should be voided because of the extreme injustice it represents. The Defendants have not provided most of their discovery due Plaintiff, and the counterclaim is a malicious Abuse of Process libel action by lawyers against their former client, see Plaintiff's First Amended Complaint.
 - b. Final Judgment, signed by Judge Barton March 27, 2010, awarding \$11,550 in extreme sanctions for discovery errors and a misplaced defense of economic loss to Defendants counterclaim. (Exhibit D). The Order should be voided because of the extreme injustice it represents. The Defendants have not provided most of their discovery due Plaintiff, and the counterclaim is a malicious Abuse of Process libel action by lawyers against their former client, see Plaintiff's First Amended Complaint.
 - c. Order Adjudging Contempt, signed by Judge Barton July 7, 2008, for violating the Final Judgment of March 27, 2008. (Exhibit E). In fact Plaintiff's former counsel Robert W. Bauer admitted in a letter to Judge Barton that inadvertent misstatements to the Court by Mr. Bauer resulted in the finding of contempt because Bauer failed to keep his client informed. (Exhibit F).
 - d. Order Granting And Denying In Part Defendants' Motion For Judgment On The Pleadings, signed by Judge Barton July 7, 2008, a wrongful dismissal of claims against Mr. Cook about the existence of a signed fee contract when none exists, and the dismissal of fraud claims against Mr. Cook and Barker, Rodems & Cook, PA. (Exhibit G). Both

dismissals were due to misrepresentation of Mr. Rodems to the Court, as set forth in Plaintiff's Motion For Rehearing, filed July 16, 2008 by attorney Bauer. (Exhibit H).

e. A complete list of rulings and orders for reconsideration by date and topic is attached as Exhibit I.

RETALIATORY JUSTICE

4. On its face \$11,550 is an excessive sanction against a pro se litigant who was defrauded by his former lawyers on an original claim of \$6,224.78 or \$18,674.34 with punitive damages. The sanction is extreme and completely out of proportion to both the alleged offense and the amount in controversy. The \$11,550 sanction represents half of Gillespie's annual disability income. The sanction is retaliatory punishment by the court against a pro se litigant seeking justice from his former lawyers who are well-connected in the local legal community.

5. 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

process guaranteed under Article 1, Section 9 of the Constitution of the State of Florida. There is also evidence in Plaintiff's Motion to Disqualify Judge Barton that he was prejudiced against Plaintiff and Counter-Defendant based on Gillespie's disability, in violation of the Florida Civil Rights Act and the American's with Disabilities Act. The forgoing is an affront to Gillespie's rights, and a violation of the public trust, reflects discredit upon the justice system, and suggests partiality in the consideration of litigants.

In the District Court of Appeals for the Second District, Biermann v. Cook, 619 So.2d 1029 the Court noted that the majority of *pro se* litigants conduct themselves, if not always with the expertise of trained attorneys, respectfully, candidly, and with honest effort to abide by rules of procedure. The Court wrote that our power, and desire, to impose sanctions against *pro se* and/or indigent litigants is limited by the constitutional right of access to the courts, by the statutory ability of indigents to obtain court services at little or no cost, and by a well-recognized principle that non-lawyer litigants not be penalized for any inability to observe strict compliance with rules of procedure.

Judge Barton not only sanctioned Gillespie \$11,550, he turned the proceedings upside down and gave Ryan Christopher Rodems copious opportunities and hearing time to obtain sanctions and writs of garnishment. Rodems garnished Gillespie's client trust account with attorney Bauer. Rodems made a bad-faith garnishment of Gillespie's bank account and social security disability benefits. With malice aforethought Rodems timed garnishment to coincide with Gillespie's automatic deposit of Social Security disability benefits. Rodems knows the benefits are exempt under § 222.18 Florida Statutes. Rodems knows Gillespie receives Social Security disability benefits from his firm's prior representation of Gillespie in a substantially related matter, from discovery in this

lawsuit, and from the Fact Information Sheet. Gillespie moved the Court under section 77.07 Florida Statutes for dissolution of a writ of garnishment April 24, 2010 and the Court did not immediately set down the matter for immediate hearing as required.

6. On the federal level, Judge Barton's extreme sanction of \$11,550 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 (1971) the United States Supreme Court found that *pro se* pleadings should be held to "less stringent standards" than those drafted by attorneys. Judge Barton's 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 Barton's extreme sanction of \$11,550 denied Gillespie his right to equal protection of the law under the Fourteenth Amendment to the Constitution of the United States. Judge Barton's extreme sanction of \$11,550 denied Gillespie his rights under the color of law, making the offense especially egregious. Law abiding citizens like Gillespie deserve honest services from judges and the courts; when that does not happen, it is a violation of the public trust, reflects discredit upon the justice system, and suggests partiality in the consideration of litigants.

RECONSIDERATION OF \$11,550 FINAL JUDGMENT

7. Schlesinger v. Chemical Bank, 707 So.2d 868, Fla.App. 4 Dist.,1998. held that final judgment entered by a judge who was later disqualified is, like any other order, subject to being reconsidered by successor judge. The final judgment by Judge Barton was for an award of attorneys fees for discovery sanctions and under section 57.105 Florida Statutes. Sunrise Gift & Souvenir, Inc. v. Marcotte, 698 So.2d 345, Fla.App. 5 Dist.,1997, held that a successor judge acted properly in reconsidering predecessor

judge's order granting summary judgment for defendants, even though no factual or legal argument was asserted. Blackpool Associates, Ltd. v. SM-106, Ltd., 839 So.2d 837, Fla.App. 4 Dist.,2003, held a successor judge may reconsider any prior factual or legal rulings by a disqualified judge. Barber v. Mackenzie, 562 So.2d 755, Fla.App. 3 Dist.,1990. held a final judgment entered by a judge who was later disqualified is, like any other order, subject to being reconsidered by a successor judge. L.I. v. Department of Children and Family Services, 972 So.2d 221, Fla.App. 3 Dist.,2007 held a successor judge was within her discretion and authority to reconsider dismissal of Department of Children and Family Services' petition to terminate mother's parental rights by prior judge who was subsequently disqualified. West's F.S.A. R.Jud.Admin.Rule 2.330(h). After reconsideration, the successor judge concluded that a new trial was warranted

8. The award of attorney's fees for discovery sanctions is wrong in this case because the court failed its case management duties imposed by Rule 2.545, Fla.R.Jud.Admin. Every judge failed to manage this case lawfully, Judge Barton was only the most recent. Following the motion for withdrawal by Robert W. Bauer on October 13, 2008, Judge Barton allowed this case to languish for almost one year. Mr. Rodems also took no action during this year to move the case forward, undercutting his current complaints that the case is taking too long to adjudicate.

9. This case is extremely contentious, required intensive case management, and should have been designated complex litigation under Rule 1.201, Fla.R.Civ.P. when that became apparent. The first indication was January 19, 2006 when Mr. Rodems countersued Gillespie for libel, a claim that is a malicious Abuse of Process action by Defendants against their former client. The second indication of trouble was March 6,

2006 when Mr. Rodems submitted Defendants' Verified Request For Bailiff And For Sanctions. This stems from the following. On March 3, 2006, Mr. Rodems called Gillespie at home about setting a hearing on Plaintiff's Motion To Disqualify Counsel. During the call Mr. Rodems threatened to reveal client confidences learned during his firm's representation of Gillespie. An argument ensued. Mr. Rodems made a sworn affidavit under the penalty of perjury that falsely named the Honorable Richard A. Nielsen in an "exact quote" attributed to Gillespie, putting the trial judge into the controversy. The Tampa Police Department recently determined that the sworn affidavit submitted by Mr. Rodems to the court about an "exact quote" attributed to Gillespie was not right and not accurate. Initially Gillespie 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' stunt Judge Nielsen did not manage the case properly, favored Defendants in rulings, and responded to Gillespie sarcastically from the bench. Judge Nielsen later recused himself as trial judge following Plaintiff's motion to disqualify.

10. Judge Nielsen, currently leading the complex business litigation division, was uniquely qualified to preside over a complex case like this one. Rule 1.201(a), At any time after all defendants have been served, and an appearance has been entered in response to the complaint by each party or a default entered, any party, or the court on its own motion, may move to declare an action complex...The court shall convene a hearing to determine whether the action requires the use of complex litigation procedures and enter an order within 10 days of the conclusion of the hearing.

(1) A “complex action” is one that is likely to involve complicated legal or case management issues and that may require extensive judicial management to expedite the action, keep costs reasonable, or promote judicial efficiency.

Mr. Rodems killed the opportunity for Judge Nielsen to manage the case as complex litigation by fatally wounding the litigation with his stunt. He should not be rewarded with a \$11,550 sanction for his misconduct intended to disrupt this lawsuit.

11. This lawsuit was reassigned to Judge Isom effective November 22, 2006. A notice on Judge Isom’s official judicial web page advised that the judge had a number of relatives practicing law in the Tampa Bar area 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 of the relatives listed was husband Mr. A Woodson “Woody” Isom, Jr.

12. Plaintiff 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 Plaintiff and the law firm of Alpert, Barker, Rodems, Ferrentino & Cook, P.A. Plaintiff’s Motion To Disclose Conflict was submitted December 15, 2006 and heard February 1, 2007. Judge Isom failed to disclose that 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. Plaintiff only recently learned (March 2010) of the relationship in the course of researching accusations contained an offensive letter from Rodems to the Plaintiff.

13. Subsequently Judge Isom did not manage the case lawfully, ignored her own law review on discovery matters, favored the Defendants in rulings, and was prejudiced

against the Plaintiff. A motion to disqualify Judge Isom was submitted February 13, 2007. Judge Isom denied the motion as legally insufficient, but a Court Order Of Recusal And Directing Clerk To Reassign To New Division was prepared and signed by Judge Isom February 13, 2007.

14. Judge Isom failed to disclose conflict and this explains why she was prejudiced against Gillespie and failed to follow her own law review on sanctions and discovery problems, Professionalism and Litigation Ethics, 28 STETSON L. REV. 323. The law review is listed on Westlaw as good law with no negative citing references. (Exhibit J). Judge Isom begins with the naive realization that some lawyers behave badly in court. "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." (page 1, ¶1). Judge Isom also concedes the relationships between judges and lawyers. She uses the example of "Harvey M." a pseudonym for a lawyer she has known a long time. "Harvey challenged me to establish my judicial prerogative and assist him in achieving goals not of his own making" Judge Isom also pointed out the role of the trial judge: "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."

Judge Isom provided an example of the uneven responses to lawyers acting badly: "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. Various scenarios were presented on video, after which the

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." Judge Isom also noted the reason: Judges are elected officials and fear retribution from lawyers. "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."

This shows the level of control lawyers have over the courts and judges through campaign contributions, committees formed to support a judge for election, or organize opposition to a judge whom the lawyers view as a "problem". Lawyers also seek to control the JNC process. Florida judges are also subject to performance review by lawyers through the Confidential Judicial Feedback form which began in 1998 when this law review was written.

Judge Isom also noted how Florida's appellate process is compromised: "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."

In other words, if a judge sanctions a litigant for discovery matters, the appellate court will "sustain the trial court's authority" and the appeal becomes a forgone conclusion. The appeal process becomes a farce when cases are not considered on the

merits and are just rubber stamped trial court decisions. The 2DCA has about 6,000 appeals a year and most have no written opinion and are therefore not appealable to the state supreme court. With unfair decisions at the trial level, and a forgone conclusion on appeal, what's the point? Judge Barton and Gillespie discussed this very issue from Judge Isom's law review May 5, 2010 during a hearing. Judge Barton disclosed a conflict of interest with the Second District Court of Appeal that sustained the appeal in 2D08-2224: Judge Barton knows most of the appellate judges, sat on the 2DCA as an associate judge, clerked with the appellate court, and developed relationships with the appellate judges.

(Transcript, May 5, 2010, page 57, beginning line 5)

5 MR. GILLESPIE: And that is fine, Judge. But

6 Judge Isom's Law Review addressed the appellate

7 process. As she said that for the most part, the

8 appellate process will reaffirm the trial court's

9 authority; no mention of the merits.

10 And in the 2nd District Court of Appeal gets

11 over six thousand appeals on annual basis. Most of

12 them have no written opinion. "No written opinion"

13 means no appeal to the Supreme Court. For all of

14 those cases with no written opinion, it's

15 essentially a rubber stamp.

16 THE COURT: Well, you may legitimately feel

17 that way. But knowing the judges, most of them, on

18 the 2nd District Court of Appeal and having sat on

19 the 2nd District Court of Appeal as an associate
20 judge, I can tell you that what might appear to be
21 a rubber stamp involves countless hours of
22 reviewing transcripts and files and records to
23 determine whether a trial court opinion should be
24 per curium affirmed without any opinion, which
25 looks like it's three words, but it involves a lot
(continued, Transcript, May 5, 2010, page 58, beginning line 1)
1 of work and a lot of hours. And I know that is how
2 that court operates. You would not, because you
3 have never been on the inner workings of that
4 court. And so, I can understand how you might feel
5 way, but all I can do is say, you know, in my
6 experience being within the court, not only as an
7 associate judge but also having clerked with an
8 appellate court in the last millennium, there is a
9 lot that goes on in those cases that people just
10 never see, even where there is a very brief "per
11 curium affirmed".

Judge Isom wrote how she coddled Harvey rather than sanction him. This
disparate treatment and unfair to Plaintiff and Counter-Defendant Gillespie. "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...Cases involving Harvey were, by necessity, intensely case managed."

Judge Isom wrote that Harvey's misconduct made her a better judge: "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 did not afford Gillespie the consideration given to "Harvey". Judge Isom paved the way for Judge Barton to award \$11,550 in sanctions against Gillespie.

16. A Rule 1.200(a) case management conference was only recently scheduled at Gillespie's request. The conference has not yet been held. Had one been held at the outset of this litigation it would have prevented Mr. Rodems from turning this lawsuit into a circus. Mr. Rodems is Board Certified by the Florida Bar in Civil Trial law with 18 years experience as a lawyer. He has been allowed, with the blessing of every judge in this lawsuit, to turn the proceedings upside down into cash-cow for sanctions. This is contrary to Florida 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 Plaintiff on the same matter. But because Defendants are lawyers they can freely litigate this case almost indefinitely. The rules of discovery are designed to secure the just and speedy determination 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).

17. Most of the Defendants and Counter-Plaintiff's discovery is still outstanding in this lawsuit, much of it dating to 2006. The following motions seeking discovery require hearing because Mr. Rodems refused to provide discovery:

- a. December 14, 2006, Plaintiff's Motion to Compel Defendants' Discovery
- b. February 1, 2007, Plaintiff's Second Motion to Compel Defendants' Discovery
- c. March 30, 2010, Plaintiff's Third Motion to Compel Discovery.

It is unjust to sanction Gillespie \$11,550 when Barker, Rodems & Cook, PA has not provided its discovery and is guilty of the same offense.

18. The Final Judgment of \$11,550 also awarded attorney's fees for a misplaced defense of economic loss to the libel counterclaim. First, the counterclaim is a malicious Abuse of Process libel action by lawyers against their former client, see Plaintiff's First Amended Complaint. Second, Gillespie withdrew the defense of economic loss to the libel counterclaim before the hearing, although after 21 days required by section 57.105 FS. Third, Gillespie's motion to dismiss and strike Barker, Rodems & Cook's malicious Abuse of Process libel action, was a carbon copy of a motion filed by the opposing counsel. In confusion about the proper format of this kind of motion, Gillespie pro se used opposing counsel's motion as an example. He believed that following the example of practiced attorneys would ensure that his motion would be properly styled. As a pro se

litigant, Gillespie should not be held to the standard of a licensed attorney and should instead be granted leniency by the court.

RECONSIDERATION OF ORDER ADJUDGING CONTEMPT

19. Schlesinger v. Chemical Bank, 707 So.2d 868, Fla.App. 4 Dist.,1998. held that final judgment entered by a judge who was later disqualified is, like any other order, subject to being reconsidered by successor judge. The final judgment by Judge Barton was for an award of attorneys fees for discovery sanctions and under section 57.105 Florida Statutes. Sunrise Gift & Souvenir, Inc. v. Marcotte, 698 So.2d 345, Fla.App. 5 Dist.,1997, held that a successor judge acted properly in reconsidering predecessor judge's order granting summary judgment for defendants, even though no factual or legal argument was asserted. Blackpool Associates, Ltd. v. SM-106, Ltd., 839 So.2d 837, Fla.App. 4 Dist.,2003, held a successor judge may reconsider any prior factual or legal rulings by a disqualified judge. Barber v. Mackenzie, 562 So.2d 755, Fla.App. 3 Dist.,1990. held a final judgment entered by a judge who was later disqualified is, like any other order, subject to being reconsidered by a successor judge. L.I. v. Department of Children and Family Services, 972 So.2d 221, Fla.App. 3 Dist.,2007 held a successor judge was within her discretion and authority to reconsider dismissal of Department of Children and Family Services' petition to terminate mother's parental rights by prior judge who was subsequently disqualified. West's F.S.A. R.Jud.Admin.Rule 2.330(h). After reconsideration, the successor judge concluded that a new trial was warranted

20. The Order Adjudging Contempt, was signed by Judge Barton July 7, 2008, for violating the Final Judgment of March 27, 2008. (Exhibit E). In fact Plaintiff's former counsel Robert W. Bauer admitted in a letter to Judge Barton that inadvertent

misstatements to the Court by Mr. Bauer resulted in the finding of contempt because Bauer failed to keep his client informed. (Exhibit F). Gillespie did not attend any of the hearings in this matter when he was represented by attorney Robert W. Bauer. Because Gillespie did not attend the hearings, he relied upon Mr. Bauer to keep him informed of what was required to comply with the Court's Order. Bauer admitted in writing to Judge Barton that he failed to keep Gillespie informed and Bauer made inadvertent misrepresentations to the Court that resulted in Gillespie being held in contempt. Clearly this is an injustice that must be reversed.

RECONSIDERATION OF ORDER GRANTING AND DENYING IN PART
DEFENDANTS' MOTION FOR JUDGMENT ON THE PLEADINGS

21. Schlesinger v. Chemical Bank, 707 So.2d 868, Fla.App. 4 Dist.,1998. held that final judgment entered by a judge who was later disqualified is, like any other order, subject to being reconsidered by successor judge. The final judgment by Judge Barton was for an award of attorneys fees for discovery sanctions and under section 57.105 Florida Statutes. Sunrise Gift & Souvenir, Inc. v. Marcotte, 698 So.2d 345, Fla.App. 5 Dist.,1997, held that a successor judge acted properly in reconsidering predecessor judge's order granting summary judgment for defendants, even though no factual or legal argument was asserted. Blackpool Associates, Ltd. v. SM-106, Ltd., 839 So.2d 837, Fla.App. 4 Dist.,2003, held a successor judge may reconsider any prior factual or legal rulings by a disqualified judge. Barber v. Mackenzie, 562 So.2d 755, Fla.App. 3 Dist.,1990. held a final judgment entered by a judge who was later disqualified is, like any other order, subject to being reconsidered by a successor judge. L.I. v. Department of

Children and Family Services, 972 So.2d 221, Fla.App. 3 Dist.,2007 held a successor judge was within her discretion and authority to reconsider dismissal of Department of Children and Family Services' petition to terminate mother's parental rights by prior judge who was subsequently disqualified. West's F.S.A. R.Jud.Admin.Rule 2.330(h). After reconsideration, the successor judge concluded that a new trial was warranted

22. The Order Granting And Denying In Part Defendants' Motion For Judgment On The Pleadings, signed by Judge Barton July 7, 2008, wrongfully dismissed claims against Mr. Cook about the existence of a signed fee contract when none exists, and wrongfully dismissed fraud claims against Mr. Cook and Barker, Rodems & Cook, PA. (Exhibit G). Both dismissals were due to misrepresentation of Mr. Rodems to the Court, as set forth in Plaintiff's Motion For Rehearing, filed July 16, 2008 by attorney Bauer. (Exhibit H).

23. Mr. Rodems has an actual conflict representing his firm in this lawsuit. On January 13, 2006 the Court found Gillespie established a cause of action for Fraud and Breach of Contract against Barker, Rodems & Cook, PA and William J. Cook. It is long-standing law in the Second District Court of Appeal that 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). 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. This is seen in

the transcripts where Mr. Rodems becomes confused about whether he is testifying or representing, but in fact his representation is ongoing testimony about factual matters, and that testimony is tainted by his actual conflict of interest.

THE PROBLEM IS RYAN CHRISTOPHER RODEMS

24. This case was reassigned to Judge Barton February 14, 2007. Plaintiff retained attorney Robert W. Bauer of Gainesville to represent him. Plaintiff could not find an attorney in the Tampa Bay area to litigate against Barker, Rodems & Cook, PA because of their bad reputation and the general professional courtesy not to sue another lawyer. 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)

25. Mr. Rodems and associates have a history of violence and defamation against other participants in contentious litigation. This lawsuit is especially contentious, a former client suing his lawyer for fraud, breach of duty, etc., etc.

a. Mr. Rodems and his former law partners were named in a \$5 million dollar defamation lawsuit brought by attorney Arnold Levine, Buccaneers Limited Partnership v. Alpert, Barker & Rodems, PA, US District Court, Middle District of Florida, Tampa Division, case 99-2354-CIV-T-23C. In retaliation, 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. A copy of the police report is attached as Exhibit K.

b. Another example of Mr. Rodems’ bizarre behavior against participants in litigation are his defamatory comments about Eric Bischoff, a witnesses 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 and his client failed to prevail at trial. The comments may be found online at: <http://www.declarationofindependents.net/doi/pages/corrente910.html>, and include, “ 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.” and “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.” A copy of Rodems’ comments are attached as Exhibit L.

26. Attorney Bauer complained about Mr. Rodems 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).

27. 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...

This motion for reconsideration should be considered with the one to disqualify Rodems.

PLAINTIFF’S MOTION TO DISQUALIFY JUDGE BARTON

28. Plaintiff’s Motion to Disqualify Judge Barton was submitted May 20, 2010. The motion set forth 12 counts for disqualification and Judge Barton ruled it legally sufficient. The following counts of are interest to this motion for reconsideration.

Count 1, the wife of Judge Barton received thousands of dollars from Barker, Rodems & Cook, PA last year, and other money dating back almost ten years.

a, The transcript shows Judge Barton could not remember the correct name of Regency Reporting Service, Inc., even though his wife has owned the company for 13 years and maintains a home office. During another part of the hearing, Judge Barton became confused over the presence of an ordinary court reporter hired to transcribe the proceedings, and a CART (Computer Aided Realtime Translation) court reporter. It calls into questions Judge Barton’s mental fitness to act as a circuit court judge.

Count 2, concerns access by Judge Baron to a transcript prepared by Ms. Barton of his deposition May 14, 2001 is stored in the home office and available to Judge Barton to read

at his leisure. This would prejudice Plaintiff if Judge Barton read about matters and underlying facts in the instant lawsuit outside the framework of the litigation process.

a. Judge Barton responded inappropriately for a trial judge to this information, suggesting that “we would have to be living in a fifty-room mansion” to store information that could be kept on ordinary computer hardware. It calls into questions Judge Barton’s mental fitness to act as a circuit court judge.

Count 4, Gillespie filed a Motion For Dissolution Of Writ Of Garnishment April 28, 2010 and provide a copy to Judge Barton. The court is holding \$598.22 belonging to Gillespie. Section 77.07(1) Florida Statutes states that “The court shall set down such motion for an immediate hearing.” Judge Barton failed to set the motion down for an immediate hearing. Because Judge Barton failed to set the motion down for an immediate hearing, Gillespie believes there is a legitimate questions of discrimination against him by Judge Barton.

Count 5, On January 26, 2010 Judge Barton set forth one plan to proceed under the “federal approach”. On May 5, 2010 Judge Barton set forth a different plan, calling into question either his mental fitness to act as a circuit court judge or legitimate questions of discrimination by Judge Barton against Gillespie.

Counts 6, 8 and 9 Gillespie provided his 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. Plaintiff 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, but he failed to follow the Florida State Courts

ADA process or otherwise lawfully respond. As such, Gillespie believes there is a legitimate questions of discrimination against him by Judge Barton.

Count 7, On May 5, 2010 Gillespie arrived for the hearing set by Judge Barton. The Order setting the hearing for one hour, beginning a 3:00pm, and listed 12 items. This is contrary to Plaintiff's ADA request. Then Judge Barton sandbagged Gillespie and the other litigants said the hearing would last as late as 8:00 PM. This calls into question either his mental fitness to act as a circuit court judge or legitimate questions of discrimination by Judge Barton against Gillespie.

Count 10, Judge Barton announced on the record he is not sure he would follow Judge Isom's law review, even though he admires Judge Isom and also her law review. As such, Gillespie believes there is a question of discrimination against him by Judge Barton.

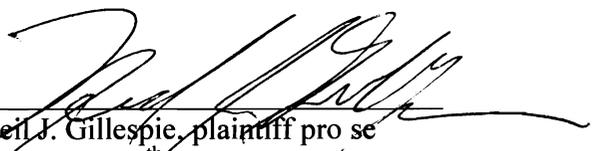
Count 11, Judge Barton failed to provide Gillespie equal hearing time in this matter, or to conduct hearings in the matter he afforded the Defendants. Judge Barton failed to perform case management duties imposed on him under Rule 2.545, Fla.R.Jud.Admin. Among other things, it has come to Gillespie's attention that Judge Barton's order of January 26, 2010 for "all pending motions" violated Administrative Order S-2008-145, paragraph 18, a notice indicating that the hearing will be on "all pending motions" is not sufficient , rather the matter to be heard must be set out with particularity. As such, Gillespie believes there is a question of discrimination against him by Judge Barton. (Exhibit M).

Count 12 discussed Gillespie being "home-towned", the Grand Jury presentment December 8, 2000 investigation into judicial misconduct in Hillsborough County, the targeting of Judge Holder, who has a reputation as a forthright man who is willing to speak his mind and takes a dim view of misbehavior, and recent award of \$70,000 to

Judge Holder by the Florida Supreme Court, and Gillespie's contact with Court Counsel David Rowland about case management and other issues, and Chief Judge Manuel Menendez, Jr. about issues in this lawsuit, but neither responded. When court officials fail to respond to correspondence it creates a credibility problem for the court. It is a violation of the public trust, reflects discredit upon the administration of justice, and suggests partiality in the consideration of litigants.

WHEREFORE, Plaintiff and Counter-Defendant Neil J. Gillespie pro se moves for reconsideration under Fla.R.Jud.Admin., Rule 2.330(h), Prior Rulings.

RESPECTFULLY SUBMITTED June 18, 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 June 18, 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

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

Neil J. Gillespie
Plaintiff

Case No.: 05-CA-007205

v.

Division: C

Barker, Rodems & Cook, P.A.,
a Florida corporation; William
J. Cook,
Defendants.

FILED
CLERK OF CIRCUIT COURT
2010 MAY 24 PM 2:02
HILLSBOROUGH COUNTY
FLORIDA
CIRCUIT CIVIL

**ORDER GRANTING PLAINTIFF'S
MOTION TO DISQUALIFY JUDGE BARTON**

This matter is before the court on Plaintiff's Motion to Disqualify Judge Barton and Defendants' Response to Plaintiff's Motion to Disqualify Judge Barton. Based on the motion and response, the court finds the motion to be legally sufficient. The undersigned judge enters this order of disqualification as to any further proceedings in the above-captioned case. The clerk is directed to randomly reassign this case pursuant to the established administrative procedures and certify below the division to which this case is reassigned.

It is ORDERED in Tampa, Hillsborough County, Florida this 24th day of May, 2010.

James M. Barton, II, Circuit Judge

Certification of Reassignment

Pursuant to the established administrative procedures, I certify that the above-captioned case has been randomly reassigned to Division G.

PAT FRANK
CLERK OF THE CIRCUIT COURT

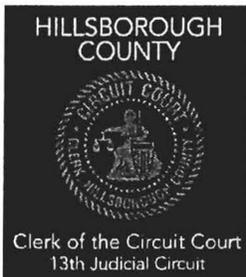
Sarah A. Brown, Deputy Clerk
(Signature)

5-24-10
Date

Sarah A. Brown
(Print Name of Deputy Clerk)

Copies to Counsel of Record or Parties





HILLSBOROUGH COUNTY
CLERKS OFFICE-CIRCUIT CIVIL
800 E. TWIGGS ST. 5th FL.
TAMPA, FL. 33602

May 24, 2010

CASE NO: 05-CA-007205

DIVISION: C

Dear Counsel:

You are hereby notified that we have been ordered to Re-assigned the above styled cause to another Division of this Court.

This action has been assigned to: The Honorable: Martha J. Cook

Division: G
Effective Date: May 24, 2010

Yours very truly,

PAT FRANK
CLERK OF THE CIRCUIT COURT

A handwritten signature in cursive script that reads "Sarah A. Brown".

Deputy Clerk / Sarah Brown

Sarah A. Brown



CC: Neil Gillespie
Ryan Christopher Rodems, Esq.

Pat Frank Clerk of Circuit Court Circuit Civil Division P.O. Box 989 Tampa, FL. 33601-0989



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

NEIL J. GILLESPIE,

Plaintiff,

vs.

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

Defendants.

COPY

**No Action
Necessary**

Case No.: 05CA7205

Division: C

FYI Only

ORDER DETERMINING AMOUNT OF SANCTIONS

THIS CAUSE came on to be heard on Thursday, March 20, 2008, on the issue of the amount of attorneys' fees Plaintiff Neil J. Gillespie shall pay to Defendants as a result of the Orders entered July 24, 2006, granting Defendants' motion to compel discovery, and July 20, 2007, granting Defendants' Amended Motion for Sanctions Pursuant to Section 57.105(1), Florida Statutes, both of which ordered Plaintiff¹ to pay Defendants' reasonable attorneys' fees and taxable costs as a sanction for his conduct, as detailed in the respective Orders.

The Court, having read and considered the proceedings, considered the testimony presented at the hearing, and after hearing from counsel, and being otherwise fully advised in the premises, finds as follows:

1. The reasonable rate for the time expended by Ryan Christopher Rodems, Esquire, who is Board Certified by the Florida Bar in the area of Civil Trial law, is \$350.00 per hour. The

¹ Plaintiff's counsel, Robert W. Bauer, Esquire, entered his Notice of Appearance after the occurrence of Plaintiff's conduct which subjected Plaintiff to sanctions under section 57.105(1), Florida Statutes, and therefore, the Court ruled in the July 20, 2007 Order, Mr. Bauer is not subject to sanctions under section 57.105(1), Florida Statutes.



reasonable number of hours expended by Mr. Rodems on this matter is thirty (30).

2. The reasonable rate for the time expended by John W. Gardner, Esquire, is \$300.00 per hour. The reasonable number of hours expended by Mr. Gardner on this matter is three and one-half (3.5).

Based on the foregoing, it is ORDERED and ADJUDGED that Plaintiff shall pay Defendants a total of \$11,550.00 for attorneys' fees and taxable costs.

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

ORIGINAL SIGNED

MAR 27 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)

**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

This action was heard following the Court's Orders of July 24, 2006 and July 20, 2007 granting sanctions against Plaintiff and

IT IS ADJUDGED that Defendants Barker, Rodems & Cook, P.A. and William J. Cook, whose addresses are 400 North Ashley Drive, Suite 2100, Tampa, Florida 33602, recover from Plaintiff Neil J. Gillespie, whose address is 8092 SW 115th Loop, Ocala, Florida 34481, the sum of \$11,550.00, that shall bear interest at the rate of 11.00% per annum for which let execution issue forthwith.

It is further ordered and adjudged that the judgment debtor(s) shall complete under oath Florida Rule of Civil Procedure Form 1.977 (Fact Information Sheet), including all required attachments, and serve it on the judgment creditor's attorney, or the judgment creditor if the judgment creditor is not represented by an attorney, within 45 days from the date of this final judgment, unless the final judgment is satisfied or post-judgment discovery is stayed.

Jurisdiction of this case is retained to enter further orders that are proper to compel the judgment



debtor(s) to complete form 1.977, including all required attachments, and serve it on the judgment creditor's attorney, or the judgment creditor if the judgment creditor is not represented by an attorney.

DONE AND ORDERED in Chambers, at Tampa, Hillsborough County, Florida, this ___ day of _____, 2008.

James M. Barton, II
Circuit Judge

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

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 ADJUDGING CONTEMPT

THIS CAUSE came before the Court on Tuesday, July 1, 2008, on Defendants' Motion for an Order Finding Plaintiff in Contempt of Court, and the proceedings having been read and considered and counsel having been heard, and the Court being otherwise fully advised in the premises, the Court finds and concludes that Plaintiff Neil J. Gillespie had the ability to comply with the Final Judgment entered March 27, 2008, and that Plaintiff violated and continues to violate the terms of the order by failing to complete under oath Florida Rule of Civil Procedure Form 1.977 (Fact Information Sheet).

IT IS ORDERED AND ADJUDGED that the Plaintiff Neil J. Gillespie is guilty of contempt of this Court for violating the Final Judgment of March 27, 2008 and will continue to be guilty of contempt unless and until the Plaintiff fully complies with the terms of the Final Judgment no later than July 11, 2008.

Defendant may comply with the Final Judgment of March 27, 2008 by completing the Fact Information Sheet under oath and serving a copy on counsel for the Defendants, providing



notice of service of the completed Fact Information Sheet with the clerk of court.

If Defendant does not comply by July 11, 2008, then the Court shall dismiss with prejudice Plaintiff's pending claims. The Court retains jurisdiction to impose additional sanctions, as necessary, and to tax attorneys' fees and costs.

DONE AND ORDERED in Chambers, at Tampa, Hillsborough County, Florida, this
7th day of July, 2008.



James M. Barton, II
Circuit Judge

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

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

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CIRCUIT CIVIL

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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
F

**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 AND DENYING IN PART DEFENDANTS' MOTION
FOR JUDGMENT ON THE PLEADINGS**

THIS ACTION was heard on Defendants' Motion for Judgment on the Pleadings on Tuesday, October 30, 2007 and Tuesday, July 1, 2008. During the October 30, 2007 hearing, the Court granted Defendant Cook's motion for judgment on the pleadings as to Count I, alleging breach of contract, with a written Order entered on November 28, 2008. The Court withheld ruling on the on the remainder of Defendants' motion for judgment on the pleadings pending resolution of Defendants' Petition for Writ of Certiorari filed with the Second District Court of Appeal regarding this Court's Order Granting Plaintiff's Motion to Withdraw Plaintiff's Notice of Voluntary Dismissal entered August 31, 2007. Subsequently, the Second District Court of Appeal denied the Defendant's petition, and the hearing on Defendants' Motion for Judgment on the Pleadings was concluded on July 1, 2008. Having read and considered the proceedings, and after hearing from counsel and otherwise being fully advised in the premises,

It is ORDERED:

1. the motion for judgment on the pleadings is DENIED as to Count I, alleging breach of contract, against Defendant Barker, Rodems & Cook, P.A. and,

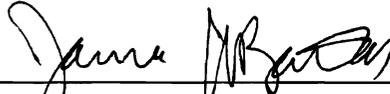
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HILLSBOROUGH COUNTY, FLORIDA



2. the motion for judgment on the pleadings is GRANTED as to Count II, alleging fraud, against Defendant Barker, Rodems & Cook, P.A. and Defendant Cook.

3. in lieu of an amended complaint, all factual allegations contained in Count II are incorporated in Count I.

DONE AND ORDERED in Chambers this 7th day of July, 2008.



James M. Barton, II
Circuit Judge

Copies to:

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

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,

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FLORIDA
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JAMES C. COOK, JR.
CLERK OF COURT

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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

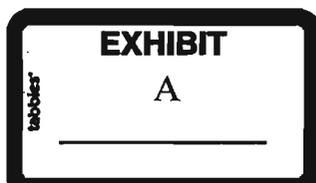
JUL 7 2008

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, Ferrentino & Cook, P.A., to investigate my potential claim resulting from My transaction
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

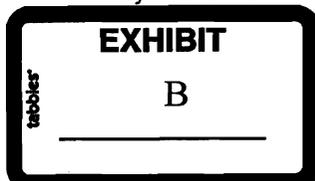
I/We hereby agree to pay for the costs and expenses of the investigation and preparation of my/our claims for damages. Should it be necessary to institute a lawsuit or arbitration proceeding, I/we agree to pay all costs and expenses associated with any Court or arbitration proceeding. If an appeal of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

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.

Rulings and Orders for Reconsideration

Plaintiff moves for reconsideration of the following rulings and orders by Judge Barton:

1. July 3, 2007 ruling granting "Defendants' Amended Motion for Sanctions Pursuant to Section 57.105(1), Florida Statutes".
2. July 20, 2007, Order Granting Defendants' Amended Motion For Sanctions Pursuant to Section 57.105(1), Florida Statutes.
3. October 30, 2007 ruling granting Defendants' Motion for Judgment on Pleadings as to Defendant Cook on Plaintiffs breach of contract claim.
4. November 28, 2007 Order Granting In Part Defendants' Motion For Judgment On Pleadings And Reserving Ruling.
5. March 20, 2008 ruling on the issue of the amount of attorneys' fees Plaintiff Neil J. Gillespie shall pay to Defendants as a result of the Orders entered July 24, 2006, granting Defendants' motion to compel discovery, and July 20, 2007, granting Defendants' Amended Motion for Sanctions Pursuant to Section 57.105(1), Florida Statutes, both of which ordered Plaintiff! to pay Defendants' reasonable attorneys' fees and taxable costs as a sanction for his conduct, as detailed in the respective Orders of \$11,550.
6. March 27, 2008 Order Determining Amount of Sanctions of \$11,550.
7. March 27, 2008 Final Judgment for \$11,550.
8. July 1, 2008 ruling granting Defendants' Motion for Judgment on Pleadings as to Defendant Cook on Plaintiffs breach of contract claim.
9. July 7, 2008 Final Judgment As To Defendant Cook
10. July 1, 2008 ruling finding Neil Gillespie in contempt by failing to complete under oath Florida Rule of Civil Procedure form 1.977 (Fact Information Sheet).



11. July 7, 2008 Order Adjudging Contempt against Neil Gillespie

12. July 7, 2008 Order Granting and Denying In Part Defendants' Motion For Judgment on the Pleadings, the motion for judgment on the pleadings is GRANTED as to Count II, alleging fraud, against Defendant Barker, Rodems & Cook, P.A. and Defendant Cook.

C

Stetson Law Review
Fall, 1998

Essay

***323 PROFESSIONALISM AND LITIGATION ETHICS**Hon. [Claudia Rickert Isom \[FN1\]](#)

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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

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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

END OF DOCUMENT

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INCIDENT REPORT - TAMPA POLICE DEPARTMENT

Page 1 of 3

Event	1	Offense/Incident BATTERY	State Statute 284.03	Location 100 S. ASHLEY ST. #1600	Grid 19 01
	2	Offense/Incident	State Statute	Location	Grid

Date Occurred 6 JUN 00	Time Occurred 1230	Day of Week <input type="checkbox"/> Mon <input type="checkbox"/> Tue <input type="checkbox"/> Wed <input type="checkbox"/> Thu <input checked="" type="checkbox"/> Fri <input type="checkbox"/> Sat <input type="checkbox"/> Sun	Date Reported 5 JUN 00	Time Reported 0943	Grid 19 01
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3 1 Name: Last LEVINE, ARNOLD	First	Middle	Race W	Sex M	DOB 12-2-31 68	Age 00 00	5 7	8 9	9 01
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Home Address 100 S ASHLEY ST. #1600	City TAMPA	County HILLS	State FL	Zip 33602	Home Phone 0800-1700
---	----------------------	------------------------	--------------------	---------------------	--------------------------------

3 4 Name: Last LEVINE, ARNOLD	First	Middle	Race W	Sex M	DOB 12-2-31 68	Age 00 00	5 7	8 9	9 01
---	-------	--------	------------------	-----------------	--------------------------	---------------------	---------------	---------------	----------------

Codes: WU=Weapon/Instrument Used S=Stolen R=Recovered L=Lost F=Found K=Safekeeping RJ=Recovered for Other Jurisdiction
Property Receipt No.

Code	Item	Description/Serial Number/Identification No., etc.	Value	Rec. Val.
WU	HOT COFFEE			

Codes: SL=Stolen/Leased Z=Seized E=Evidence SV=Suspect Vehicle VA=Vehicle Attacked	Evidence No.
Code Type YR Make Model/Style Color Tag/State/Year VIN No. Value	
Further Description	Impound/Payo Check <input type="checkbox"/> Yes <input type="checkbox"/> No
9 Rec. Value Finance and Insurance Co.	PU With/Tire <input type="checkbox"/> Yes <input type="checkbox"/> No

Name: Last LEVINE, ARNOLD	First	Middle	Race W	Sex M	DOB 12-2-31 68	Age 00 00	OERS No.
-------------------------------------	-------	--------	------------------	-----------------	--------------------------	---------------------	----------

Home Address 100 S ASHLEY ST. #1600	City TAMPA	County HILLS	State FL	10 Influence Drugs/Alcohol <input type="checkbox"/> Yes <input type="checkbox"/> No <input type="checkbox"/> Unk
---	----------------------	------------------------	--------------------	---

Charges	11 State Statute	CTS State Statute	CTS
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Name: Last LEVINE, ARNOLD	First	Middle	Race W	Sex M	DOB 12-2-31 68	Age 00 00	OERS No.
-------------------------------------	-------	--------	------------------	-----------------	--------------------------	---------------------	----------

Home Address 100 S ASHLEY ST. #1600	City TAMPA	County HILLS	State FL	10 Influence Drugs/Alcohol <input type="checkbox"/> Yes <input type="checkbox"/> No <input type="checkbox"/> Unk
---	----------------------	------------------------	--------------------	---

Charges	11 State Statute	CTS State Statute	CTS
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RECONSTRUCTION: THE VICTIM & 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 STRIKING HIS SHIRT. A REQUEST FOR PROSECUTION WAS ISSUED FOR BATTERY.

Detective Notified	Supervisor Notified	Crime Scene Tech Assigned
--------------------	---------------------	---------------------------

Reporting Officer DW MILLION 2367 278	Div./Sgt.	Second Officer	Div./Sgt.	Retained Reports
---	-----------	----------------	-----------	------------------

Retained To	By	Inactive/Admin	Arrest	Adult
Exceptionally Cleared	To: Jun	Unfounded	Notice to Appear	Juv.
Edited By JEFF STOOB	By	Prosecution Declined	Extraction Declined	Victim Signed Complaint Withdrawal
Records Section - Only Copies to	To: Jun	Death of Offender	Juv. No Custody	Arrested Prior Offense



Report No. 42020

Restricted Persons

Code	3	Name: Last	ALPERT	First	JOHNATHAN L.	Middle		Race	W	Sex	M	DOB/Age	8-4-45	56	150	Hair	BW	ST	BW	Build	ALEA	Armed	<input type="checkbox"/> Yes <input type="checkbox"/> No
Home Address	903 ANCHORAGE RD							City	TAMPA	County	HILLS	State	FL	Zip	33602	Phone	223-1757						
Business/School Address	100 S. ASHLEY ST. #2000							City	TAMPA	County	HILLS	State	FL	Zip	33602	Phone	223-4131						
Occupation	ATTORNEY							Work Hours	0800-1700		Can ID P/U	<input checked="" type="checkbox"/>	With/Time		Foul Play	<input type="checkbox"/>	Miss Prev	<input type="checkbox"/>					
Additional Description/Juvenile Charges	NINE																					12	

Code	3	Name: Last	BRENNAN	First	EDWARD M.	Middle		Race	W	Sex	M	DOB/Age	9-5-62			Hair		ST		Build		Armed	<input type="checkbox"/> Yes <input type="checkbox"/> No
Home Address	14907 DEVINSHIRE WOODS R							City	TAMPA	County	HILLS	State	FL	Zip	33624	Phone	941-2656						
Business/School Address	100 S. ASHLEY ST. #1600							City	TAMPA	County	HILLS	State	FL	Zip	33602	Phone	229-6585						
Occupation	ATTORNEY							Work Hours	0800-1700		Can ID P/U	<input checked="" type="checkbox"/>	With/Time		Foul Play	<input type="checkbox"/>	Miss Prev	<input type="checkbox"/>					
Additional Description/Juvenile Charges																						12	

Evidence

Item #	Description

Dusted	Prints Attached	Photos	Evidence No	How Marked	Prop Clerk	Date	Time
<input type="checkbox"/> Yes <input checked="" type="checkbox"/> No	<input type="checkbox"/> Yes <input checked="" type="checkbox"/> No	<input type="checkbox"/> Yes <input checked="" type="checkbox"/> No					

If an officer is assaulted or killed, consult the CIS Code Sheet and enter the appropriate codes in the blocks. The incident must be fully explained in the Narrative Section.

Officer's Name:

13	14	15	16	17	18	19	20	21	22	23	24	25
----	----	----	----	----	----	----	----	----	----	----	----	----

Narrative
INTERVIEW: THE COMPLAINANT IS AN ATTORNEY. ON SATURDAY 3 JUNIOO AT 1230 HRS HE WAS WITH HIS CLIENTS IN A MEDIATION HEARING ON THE 13 TH FLOOR. THE DEFENDANT IS ALSO AN ATTORNEY AND HAD HIS CLIENTS IN THE MEETING. DURING THE HEARING, NEGOTIATIONS WENT BAD AND THE DEFENDANT BEGAN RANTING AND RAVING. ALL THE CLIENTS LEFT THE ROOM LEAVING HIMSELF, THE DEFENDANT, EDUARDO BRENNAN, PETER GRILLI, RICK MCKEAY, RYAN ODENS IN THE ROOM. THE DEFENDANT WALKED AROUND THE TABLE AND WAS ABOUT 6 FEET AWAY FROM HIM. THE DEFENDANT TOSSED THE CONTENTS OF A 20 OZ CUP OF HOT COFFEE WHICH STRUCK HIM IN THE CHEST STAINING HIS SUIRT AND CAUSING HIM MUCH EMBARRASSMENT.
 THE COMPLAINANT SAVED THE COFFEE STAINED SHIRT FOR EVIDENCE. THE FIRST OF THE SUIRT WAS COMPLETELY STAINED.
INTERVIEW: EDUARDO BRENNAN WAS IN THE MEETING AND WITNESSED THE FIRST OF THE SUIRT BEING STAINED.

TAMPA POLICE DEPARTMENT CONTINUATION/LETTER

Page 3 of 3

Offense/Incident

BATTERY

Location

100 S. ASHLEY ST.

Date

5 JAN 00

Victim/Firm

LEVINE, ARNOLD

Address

100 S. ASHLEY ST.

INVESTIGATION:

I RESPONDED TO THE VICTIM'S OFFICE AND INTERVIEWED HIM AND THE WITNESS. I THEN WENT TO SUITE #2000 AND MET WITH THE SUSPECT. HE IDENTIFIED HIMSELF BUT ELECTED TO NOT MAKE ANY STATEMENTS ABOUT THE INCIDENT WITHOUT HIS ATTORNEY PRESENT.

I COMPLETED A REQUEST FOR PROSECUTION FOR BATTERY ON THE DEFENDANT AND GAVE THE ORIGINAL COPY TO THE VICTIM.

Report No. 00-71020

Reporting Officer

Div/Sqd

Second Officer

Div/Sqd

Edited By

Date

Records Section Only Copies to

Routed By

Data Entry

Pick Up

REQUEST FOR PROSECUTION BY COMPLAINANT

IF YOU WISH THIS CASE TO BE CONSIDERED FOR PROSECUTION MAIL THIS FORM TO THE STATE ATTORNEY'S OFFICE: 800 E. TWIGGS ST., TAMPA, FL 33602, ATTENTION: INTAKE AFTER 3 DAYS BUT NO LATER THAN 14 DAYS.

TO BE FILLED IN BY OFFICER:
(FOR USE IN MISDEMEANOR CASES ONLY)

UCR		AGENCY		CASE NO.	
02902		TPO		00-42020	
DEFENDANT'S LAST NAME			FIRST	MIDDLE	AKA
ALPERT			JOHNATHON	L.	
ADDRESS OR PLACE DEFENDANT CAN BE LOCATED (NOT A P.O. BOX)				CITY	ZIP
100 S. ASHLEY SUITE # 2000				TAMPA	33602
DOB	SEX	RACE	HT.	WT	PHONE
8-4-45	M	W	5-6	150	223-4131
CO-DEFENDANT(S) COMPLETE SEPARATE COMPLAINT FOR EACH				CROSS COMPLAINT ISSUED?	
NONE				<input type="checkbox"/> YES <input checked="" type="checkbox"/> NO	
CIRCLE ONE <input checked="" type="checkbox"/> WITHIN CITY OF TAMPA			PLANT CITY-TEMPLE TERRACE		IF UNINCORPORATED AREA
LOCATION OF OFFENSE: 100 S. ASHLEY 13 TH FL 200A			CHECK ONE () W. OF 301 () E. OF 301		
OFFENSE			DATE OF OFFENSE	STATUTE	
BATTERY			3JUN00	784.03	
COMPLAINANT'S LAST NAME		FIRST NAME	MIDDLE NAME	RACE/SEX	D.O.B.
LEVINE		ARNOLD	D.	W/M	12-12-31
ADDRESS	CITY	ZIP	HOME PHONE	BUSINESS PHONE	WORK HOURS
100 S. ASHLEY ST. #1600	TAMPA	33602	[REDACTED]	229-6585	0800-1700
RELATIONSHIP TO DEFENDANT CIRCLE ONE					
SPOUSE/RELATIVE () NEIGHBOR CO-WORKER ACQUAINTANCE <input checked="" type="checkbox"/> NONE					
WITNESS LAST	FIRST	MIDDLE	D.O.B.	ADDRESS	PHONE
BRENNAN	EDWARD	M.	9-5-62	100 S. ASHLEY #1600	229-6585
WITNESS LAST	FIRST	MIDDLE	D.O.B.	ADDRESS	PHONE
RYAN	C.	R.		100 S. ASHLEY #2000	223-4131

STATE FACTS TO ESTABLISH THAT A CRIME WAS COMMITTED: THE VICTIM AND DEFENDANT ARE BOTH ATTORNEYS AND WERE REPRESENTING THEIR CLIENTS IN A MEDIATION HEARING. DURING THE MEETING THE DEFENDANT BECAME ENRAGED AND BEGAN YELLING. THE DEFENDANT TOSSED THE CONTENTS OF A 20 OZ. CUP OF HOT COFFEE AT THE VICTIM STRIKING HIM IN THE CHEST AND STAINING HIS SHIRT. THE VICTIM AND WITNESS #1 STATED IT WAS AN INTENTIONAL ACT.

STATE FACTS TO ESTABLISH THAT DEFENDANT COMMITTED CRIME: THE VICTIM AND WITNESSES IDENTIFIED THE DEFENDANT BY NAME AND KNEW HIS OFFICE ADDRESS. THE DEFENDANT IDENTIFIED HIMSELF TO THE AFFIANT BUT DID NOT WISH TO MAKE A STATEMENT WITHOUT HIS ATTORNEY PRESENT. WITNESS #2 WOULD NOT MAKE A STATEMENT.

D. MILLER	660	50	80	[Signature]	5JUN00
LAW ENFORCEMENT OFFICER	BADGE NO.	DISTRICT	SQUAD	SIGNATURE	DATE

TO BE FILLED OUT BY COMPLAINANT: I desire prosecution in this case and request the State Attorney's Office to review it for prosecution.

Write a brief statement about what happened and list any additional witnesses not listed above, and their address (use additional paper if necessary).

ADDRESS OR PLACE DEFENDANT CAN BE LOCATED (NOT A P.O. BOX) 100 S. ASHLEY SUITE # 2000					CITY TAMPA	ZIP 33602
DOB 8-4-45	SEX M	RACE W	HT 5-6	WT 150	PHONE 223-4131	
CO-DEFENDANT (S) COMPLETE SEPARATE COMPLAINT FOR EACH NONE					CROSS COMPLAINT ISSUED? <input type="checkbox"/> YES <input checked="" type="checkbox"/> NO	
CIRCLE ONE <u>WITHIN CITY OF TAMPA</u> PLANT CITY-TEMPLE TERRACE			IF UNINCORPORATED AREA CHECK ONE () W. OF 301 () E. OF 301			
LOCATION OF OFFENSE: 100 S. ASHLEY 13TH FLOOR						
OFFENSE BATTERY			DATE OF OFFENSE 3 JUN 00		STATUTE 784.03	
COMPLAINANT'S LAST NAME LEVINE		FIRST NAME ARNOLD		MIDDLE NAME D.	RACE/SEX W/M	D.O.B. 12-12-31
ADDRESS 100 S. ASHLEY ST. #1600		CITY TAMPA	ZIP 33602	HOME PHONE [REDACTED]	BUSINESS PHONE 229-6585	WORK HOURS 0800-1700
RELATIONSHIP TO DEFENDANT CIRCLE ONE SPOUSE/RELATIVE () NEIGHBOR CO-WORKER ACQUAINTANCE <u>NONE</u>						
WITNESS LAST BRENNAN	FIRST EDWARD	MIDDLE M.	D.O.B. 9-5-62	ADDRESS 100 S. ASHLEY #1600		PHONE 229-6585
WITNESS LAST RYAN C. R.	FIRST RODEMS	MIDDLE	D.O.B.	ADDRESS 100 S. ASHLEY #2000		PHONE 223-4131

STATE FACTS TO ESTABLISH THAT A CRIME WAS COMMITTED: THE VICTIM AND DEFENDANT ARE BOTH ATTORNEYS AND WERE REPRESENTING THEIR CLIENTS IN A MEDIATION HEARING. DURING THE MEETING THE DEFENDANT BECAME ENRAGED AND BEGAN YELLING. THE DEFENDANT TOSSED THE CONTENTS OF A 2.0 OZ. CUP OF HOT COFFEE AT THE VICTIM STRIKING HIM IN THE CHEST AND STAINING HIS SHIRT. THE VICTIM AND WITNESS #1 STATED IT WAS AN INTENTIONAL ACT.

STATE FACTS TO ESTABLISH THAT DEFENDANT COMMITTED CRIME: THE VICTIM AND WITNESSES IDENTIFIED THE DEFENDANT BY NAME AND KNEW HIS OFFICE ADDRESS. THE DEFENDANT IDENTIFIED HIMSELF TO THE AFFIANT BUT DID NOT WISH TO MAKE A STATEMENT WITHOUT HIS ATTORNEY PRESENT. WITNESS #2 WISHED TO MAKE A STATEMENT.

D.W. MILLER **660** **D-5** **50** **D.W. Miller** **5 JUN 00**
LAW ENFORCEMENT OFFICER BADGE NO. DISTRICT SQUAD SIGNATURE DATE

TO BE FILLED OUT BY COMPLAINANT: I desire prosecution in this case and request the State Attorney's Office to review it for prosecution.

Write a brief statement about what happened and list any additional witnesses not listed above, and their address (use additional paper if necessary).

I affirm these facts are true

00-42020



DOIVIDEO.COM
INDY WRESTLING DVD'S

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:

DOIVIDEO.COM
INDY WRESTLING DVD'S

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

NEIL J. GILLESPIE,
Plaintiff,

vs.

BARKER, RODEMS & COOK, P.A.,
et al.,
Defendants.

CASE NO. 05-7205

DIVISION C

ORDER CANCELLING AND RESCHEDULING HEARINGS

THIS CAUSE coming before the Court, it is hereby ORDERED AND ADJUDGED:

1. Defendant's Motion for An Order Compelling Plaintiff to Respond to the Defendant's Request for Production and Attend Deposition scheduled for Tuesday, January 19, 2010 at 4:00 p.m. is **CANCELLED**.

2. A hearing is scheduled before the undersigned on **Tuesday, January 26th, 2010** at **3:00 p.m.** for ALL PENDING MOTIONS. Time Reserved – One hour.

DONE AND ORDERED this 30th day of December, 2009.

ORIGINAL SIGNED

DEC 30 2009

**JAMES M. BARTON, II
CIRCUIT JUDGE**

HON. JAMES M. BARTON, II
CIRCUIT JUDGE

copies to:

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

Ryan Christopher Rodems, Esq.
400 North Ashley Drive, Suite 2100
Tampa, Florida 33602

EXHIBIT

M

**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

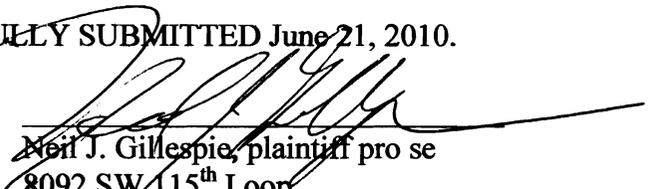
Defendants.

MOTION TO CORRECT CLERICAL ERROR
MOTION FOR RECONSIDERATION

1. Plaintiff and Counter-Defendant Neil J. Gillespie pro se moves under Fla.R.Civ.P, Rule 1.190(e) to amend Motion for Reconsideration filed June 18, 2010 to correct two typographical errors, one in paragraph 3(a) and one in paragraph 3(b). Paragraph 3(a) gives the date of the Order Determining Amount of Sanctions, signed by Judge Barton as March 27, 2010. The actual date is March 27, 2008, as shown on Exhibit C of the motion. Paragraph 3(b) gives the date of the Final Judgment, signed by Judge Barton as March 27, 2010. The actual date is March 27, 2008 as shown on Exhibit D of the motion.

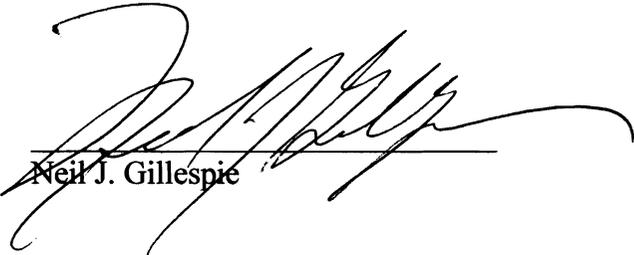
WHEREFORE, Plaintiff and Counter-Defendant Neil J. Gillespie pro se moves to amend to correct two typographical errors described herein.

RESPECTFULLY SUBMITTED June 21, 2010.


Neil J. Gillespie, plaintiff pro se
8092 SW 115th Loop
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Certificate of Service

I HEREBY CERTIFY that a true and correct copy of the foregoing has been furnished by fax and mail June 21, 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