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

NEIL J. GILLESPIE,

Plaintiff,

vs.

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

Defendants.
_____/

CASE NO.: 05-CA-7205

DIVISION: H

PLAINTIFF'S MOTION FOR PUNITIVE DAMAGES PURSUANT TO SECTION 768.72 FLORIDA STATUTES

Plaintiff pro se, Neil J. Gillespie, (Hereinafter "GILLESPIE") moves for punitive damages pursuant section 768.72 Florida Statutes, and states:

1. Punitive damages are appropriate under Florida law when defendant's conduct is fraudulent, deliberately violent or oppressive, malicious, or committed with such gross negligence as to indicate wanton disregard for rights of others. (Domke v. McNeil-P.P.C., Inc., M.D.Fla.1996, 939 F.Supp. 849.) On January 13, 2006, the Court found GILLESPIE stated a cause of action against Defendants for fraud and breach of contract, thereby establishing a basis for punitive damages.

2. In addition to fraud as a basis for punitive damages, Defendants' breach of duty to GILLESPIE as his lawyers was oppressive, malicious, or committed with such gross negligence as to indicate wanton disregard for GILLESPIE's rights. It is long established that the relationship between an attorney and his client is one of the most important, as well as the most sacred, known to the law. The responsibility of an attorney

to place his client's interest ahead of his own in dealings with matters upon which the attorney is employed is at the foundation of our legal system. (Deal v. Migoski, 122 So. 2d 415). It is a fiduciary relationship involving the highest degree of truth and confidence, and an attorney is under a duty, at all times, to represent his client and handle his client's affairs with the utmost degree of honesty, forthrightness, loyalty, and fidelity. (Gerlach v. Donnelly, 98 So. 2d 493). In the AMSCOT lawsuit and settlement thereof, Defendants breached their fiduciary duty to GILLESPIE when they put their own interests ahead of GILLESPIE's interest. GILLESPIE asserts the following evidence in support of punitive damages.

Background Information

3. Defendants' lawsuit against AMSCOT Corporation was little more than their own failed "get-rich-quick" scheme. A year after the lawsuit commenced, Defendants' pressured GILLESPIE to intervene, to save the lawsuit from dismissal over their own incompetence in selecting the wholly unqualified Eugene Clement for plaintiff and class representative. Defendants breached their duty as lawyers to GILLESPIE throughout their attorney-client relationship by putting their own financial interests ahead of GILLESPIE's in an oppressive, malicious manner, with gross negligence and a wanton disregard for GILLESPIE's rights. Defendants used GILLESPIE as a pawn in their ill-conceived, incompetent class action lawsuit against AMSCOT Corporation, through which Defendants hoped to extract a small fortune in attorneys' fees from AMSCOT. In addition to their incompetence as lawyers, Defendants were dishonest and unethical in dealing with GILLESPIE throughout the attorney-client relationship. Mr. Cook failed to report a $5,000.00 "improper payoff attempt" by defense lawyer John Anthony to the

Florida Bar because Mr. Cook was compromised by a conflict of interest, namely a third party paying Defendants' attorneys' fees. Instead of reporting Mr. Anthony's ethics violation, Defendants made him a counteroffer. Defendants betrayed GILLESPIE and committed fraud to take most of the settlement dollars for themselves under a phony claim of "court-awarded attorneys' fees" that did not exist. When GILLESPIE complained to the Florida Bar, Defendants wrote him a letter accusing him of criminal extortion. When GILLESPIE sued Defendants, they retaliated with a libel counterclaim, threatened to reveal client confidences, and told GILLESPIE that "you will pay" for writing to Ian MacKechnie, president of AMSCOT. When GILLESPIE sought his day in court, Defendants' lawyer, Ryan Christopher Rodems, lied by invoking the name of GILLESPIE and The Honorable Richard A. Nielsen in a threat of violence, which later proved false and led to the Judge's recusal. The Defendants' fraud and breach of contract, and Mr. Rodems' subsequent perjury, have caused GILLESPIE emotional distress, and have given him reason to question the of the rule of law in civil society.

Defendants' Incompetence in Initiating the AMSCOT Lawsuit

4. Defendants were incompetent in bringing a class action lawsuit against AMSCOT Corporation. On or about December 9, 1999 (prior to GILLESPIE ever meeting Defendants), the law firm Alpert, Barker, Rodems, Ferrentino & Cook, P.A. filed a class action complaint in United States District Court, Middle District of Florida, Tampa Division, Eugene R. Clement v. AMSCOT Corporation, case no. 99-2795-CIV-T-26C. The action was based on "payday lending" and alleged violation of the Federal Truth in Lending Act (TILA), Usury, and Deceptive and Unfair Trade Practices. About a year later Defendants pressured GILLESPIE to intervene and save the lawsuit from

dismissal because Eugene R. Clement was unqualified to serve as a class representative for the following reasons:

a. Mr. Clement was a convicted criminal with a recent arrest;

b. Mr. Clement was over $450,000.00 in debt;

c. Mr. Clement's sanity was in question.

Nonetheless, Defendants pursued this litigation with a wholly unqualified plaintiff/class representative because of avarice and their desire to extract enormous amounts of money in attorneys' fees from AMSCOT Corporation.

5. AMSCOT's lawyer, John Anthony, challenged the ability of Mr. Clement to serve as class representative in AMSCOT's Response in Opposition to Clement's Motion for Class Certification and Memorandum of Law in Support. (Exhibit 1). Mr. Anthony wrote: "It has become unquestionably clear, after taking Clement's deposition, that his complete lack of trustworthiness, honesty and credibility make Clement a wholly inadequate class representative." (p.4, ¶1). "First Clement lied under oath numerous time, including making misrepresentations about his criminal background." (p.4, ¶2). Clement had suffered both a conviction and pre-trial intervention for prostitution within the past two years, the later just nine months prior. (p.4, ¶2). Clement's debt exceeded $450,000.00, and there was some question about Clement's sanity. (p.6, ¶1,2).

6. United States District Judge Lazzara also commented on Mr. Clement's inability to serve as class representative in his September 20, 2000, Order compelling Clement's testimony: "Whether Mr. Clement used money obtained through deferred deposit transactions for the hiring of prostitutes is highly relevant to his ability to

adequately serve as class representative."[1] (Exhibit 2). Judge Lazzara went on to criticize[2] Mr. Cook's representation of Clement, notably, that no objections relating to any privilege or constitutional right were asserted at the deposition and that Mr. Cook's objection that the questions were of a harassing nature were not well taken given the obvious relevancy of the questions with respect to the appropriateness of Mr. Clement serving as a class representative. AMSCOT's Motion to Compel Clement to Respond to Certified Question and Related Questions and Memorandum of Law in Support Thereof alleged that Clement failed to disclose two Florida-based criminal proceedings relating to his hiring of prostitutes, including one dated October 29, 1999, just two months before the initiation to the AMSCOT lawsuit. (Exhibit 3). Attached to the motion in support of the allegations is Exhibit A, a criminal report affidavit/notice to appear charging Clement with solicitation of prostitution against section 796.07, Florida Statutes, together with Clement's mug shot.

GILLESPIE Referred to Alpert, Barker, Rodems, Ferrentino & Cook, P.A.

7. GILLESPIE was referred to attorney Jonathan Alpert, of Alpert, Barker, Rodems, Ferrentino & Cook, P.A., by Susan Sandler, a lawyer with the Florida Department of Banking and Finance, for "payday loans" he could no longer pay. GILLESPIE owed a total principal balance of $2,186.27 on six "payday loans" despite having paid $4,081.08 in fees and costs on the loans over a two year period. Mr. Alpert had a national reputation in banking law and appeared stable and competent. But just seven moths later Mr. Alpert assaulted another lawyer at a mediation, and he was jailed in October, 2003, for failing to pay alimony.

[1] Evidence that Defendants were incompetent in commencing the lawsuit with Mr. Clement as plaintiff.

8. GILLESPIE met Mr. Alpert at his law firm at 100 South Ashley Drive, Tampa, Florida, on December 28, 1999. Mr. Cook, a lawyer with the firm, was present and requested GILLESPIE's records of transactions with AMSCOT Corporation. At that time GILLESPIE did not owe AMSCOT any money but did have five other outstanding "payday loans". GILLESPIE owed money to:

a. EZ Check Cashing

b. Check 'n Go

c. ACE Cash Express

d. Check Smart

e. America$h.

GILLESPIE settled with National Cash Advance, pro se, on December 24, 1999, four days before the meeting. GILLESPIE listened to what the lawyers said about "payday loans" and told them he would be in touch if he decided to proceed.

9. On Mach 20, 2000, GILLESPIE met Mr. Cook, who agreed to investigate GILLESPIE's claims against ACE Cash Express and America$h. Mr. Cook declined to represent Plaintiff's claims against EZ Check Cashing[3] or Check 'n Go. Mr. Cook said GILLESPIE may benefit from the AMSCOT case, which was already being litigated.

10. March 21, 2000, GILLESPIE signed a contingent fee agreement with Alpert, Barker, Rodems, Ferrentino & Cook, P.A. to investigate potential claims from transactions with ACE Cash Express and America$h[4]. Mr. Cook signed the contingent

[2] Evidence that Mr. Cook was incompetent in representing Mr. Clement.
[3] Gillespie later settled this matter pro se.
[4] On May 3, 2000, Mr. Cook wrote Gillespie that he would not represent him in a claim against America$h.

fee agreement for the law firm. Mr. Cook provided, but failed to sign, a Statement of Client's Rights document. (The relevance of this failure is explained in paragraph 29).

11. April 12, 2000, Mr. Cook called GILLESPIE to copy his transactions with ACE Cash Express. GILLESPIE produced his ACE file the next day at Cook's office.

12. April 14, 2000, a class action complaint was filed, Neil Gillespie v. ACE Cash Express, Inc., case no. 8:00-CV-723-T-23B, in United States District Court, Middle District of Florida, Tampa Division. Mr. Cook[5] signed the Complaint for Alpert, Barker, Rodems, Ferrentino & Cook, P.A. The lawsuit was based on "payday lending", and alleged violation of the Federal Truth in Lending Act (TILA), Usury, and Deceptive and Unfair Trade Practices.

13. On or about June 6, 2000, the St. Petersburg Times reported that Jonathan Alpert threw a 20 ounce cup of coffee in the face of attorney Arnold Levine during a mediation in a season ticket holder dispute. Alpert, Barker, Rodems, Ferrentino & Cook, P.A., represented the fans, and Arnold Levine represented the Tampa Bay Buccaneers. According to stories published in the St. Petersburg Times, Mr. Alpert was ranting and raving when he threw a 20 ounce cup of coffee in the face of Levine, who then sued Alpert for civil damages and filed a battery complaint with Tampa Police. (Exhibit 4).

14. On or about June 10, 2000, the St. Petersburg Times reports that Jonathan Alpert announced in court that he had asked police to investigate "threats and/or extortion" by the Bucs' lawyer Arnold Levine. Tampa police detectives reviewed the

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

extortion complaint, which named Levine, Bucs general manager Rich McKay and Edward and Bryan Glazer. (Exhibit 5).

15. On or about June 22, 2000, the St. Petersburg Times reported the Bucs lawsuit settled, and the Bucs agreed to pay [Alpert, Barker, Rodems, Ferrentino & Cook, P.A] $180,000 in attorneys fees and $30,000 in costs. Both sides agreed to drop pending criminal battery and extortion complaints. (Exhibit 6).

16. One, if not all the current Defendants[6], were present or witnessed the coffee-throwing incident, yet Defendants did not disclose this fact to GILLESPIE, a duty they had under the attorney-client relationship, as officers of the Court, and Bar Rule 4-8.3(a). Instead Defendants engaged in deception, by omission, to hide the fact that their law partner (who represented GILLESPIE) had engaged in criminal behavior.

17. What followed next was truly stunning: On or about July 20, 2000, Jonathan Alpert became a candidate for state attorney for Hillsborough County[7]. Barely a month earlier Mr. Alpert committed the crime of battery upon attorney Arnold Levine by throwing a cup of coffee in Mr. Levine's face. Contemporaneously Jonathan Alpert's law firm was representing GILLESPIE in the ACE Cash Express lawsuit. Still, none of the Defendants informed GILLESPIE that their law partner had committed a crime against another lawyer. Again, Defendants deceived GILLESPIE about the true nature of the lawyers representing him, a deception by omission and silence.

18. Defendants' further deceived GILLESPIE by their financial support of Mr. Alpert for state attorney, while concealing his recent criminal behavior. Each made a

[6] Christopher A. Barker, Ryan Christopher Rodems, and William J. Cook.
[7] Mr. Alpert was defeated and eliminated in the September 5, 2000 primary election.

$500.00 contribution to the Alpert campaign, the maximum allowed under Florida law. This is what the records show from the Florida Division of Elections:

a. Chris Barker made a $500.00 contribution on July 21, 2000

b. Ryan Christopher Rodems made a $500.00 contribution on July 21, 2000

c. William J. Cook made a $500.00 contribution on July 26, 2000.

19. Mr. Alpert's own campaign literature features his record with "payday loan companies". Mr. Alpert's campaign literature stated that Jonathan Alpert has spent his life standing up for working people and protecting consumers, and that "The Alpert Record" has "Protected working families by taking on payday loan companies". Mr. Alpert's paid political advertisement stated that "Now, he wants to take that experience and fight to protect us as our State Attorney. He will fight for us - and he knows how to get results!" (Exhibit 7).

20. GILLESPIE also believed in the political aspect of fighting "payday loan companies", and supported Mr. Alpert's campaign by making a $25.00 donation. GILLESPIE mailed the $25.00 check to Mr. Cook at the Alpert law firm together with a letter dated August 23, 2000. (Exhibit 8). Mr. Cook delivered GILLESPIE's check to the Alpert campaign, and GILLESPIE received a "thank you" letter from Mr. Alpert dated August 31, 2000. (Exhibit 9).

21. Mr. Alpert's political crusade against "payday loan companies" was detrimental to the AMSCOT lawsuit, according to AMSCOT's Response in Opposition to Clement's Motion for Class Certification and Memorandum of Law in Support. This is what AMSCOT's lawyer John Anthony wrote: "Finally, there are some serious questions as to whether Jonathan L. Alpert, Esquire will properly prosecute this class

action for the benefit of the class. Specifically, Mr. Alpert is currently running for the position of state attorney and has made it clear that one of his primary platforms is that he will, if elected, pursue criminal action against the payday advance industry. Amscot is in the process of obtaining a copy of the transcript from a recent television show wherein Mr. Alpert made his intentions clear. Accordingly, it is likely that Mr. Alpert is running for elected office on this lawsuit, and that, accordingly, his motives in prosecuting the lawsuit may very likely be different than those of the class he is seeking to represent." (Exhibit 1, pages 6-7).

22. On August 2, 2000[8], Chris A. Barker executed Articles of Incorporation for Barker, Rodems & Cook, P.A., the Defendants in this lawsuit. (Exhibit 10). The Articles state that Defendants' principal place of business was 300 W. Platt Street, Tampa, Florida 33606. Defendants formed their new law firm in secret from Jonathan Alpert, rented office space and acquired other things needed to open a new law office. Defendants later hired-away staff from the Alpert law firm, including a receptionist and a legal secretary. Defendants worked on their plans quietly, in secret, to the extent possible. Defendants did not officially announce the formation of their new law firm until December, 2000. Prior to that time, Mr. Cook told GILLESPIE that he and Mr. Barker and Mr. Rodems were forming their own law firm, and asked GILLESPIE to keep the information secret, especially from Mr. Alpert, to engage in a deception. Defendants' double-dealing and deceptive behavior against Mr. Alpert placed GILLESPIE in a position of conflict and divided loyalties with the lawyers and law firm representing him.

[8] Just 12 days after Defendants gave $1,500.00 to Mr. Alpert's campaign for state attorney.

Defendants Pressured Plaintiff to Intervene in the AMSCOT Lawsuit

23. Mr. Cook was under pressure to replace the wholly unqualified Mr. Clement as plaintiff/class representative to prevent the AMSCOT lawsuit from being dismissed. Mr. Cook solicited GILLESPIE to intervene in the lawsuit, to save the litigation. GILLESPIE had declined to sue AMSCOT since his initial meeting with Mr. Cook on December 28th, 1999, almost a year earlier. GILLESPIE did not want to sue AMSCOT because of the following reasons:

a. GILLESPIE did not owe AMSCOT any money, unlike the other five "payday loan" companies, whom he owed a total of at least $1,848.27.

b. GILLESPIE's debt to AMSCOT was paid in full. GILLESPIE preferred to concentrate his energies, and legal effort, against resolving his problems with the remaining five "payday loan" companies.

c. GILLESPIE's exposure with AMSCOT was limited to transactions of $100.00 each, and the total fees and costs he paid AMSCOT amounted to just $148.47.

d. AMSCOT was relatively honest and above-board when compared to the other "payday loan" companies to whom GILLESPIE owed money.

GILLESPIE explained all this to Mr. Cook; but Mr. Cook continued to solicit GILLESPIE to sue AMSCOT. When it was apparent that the Court would disqualify Mr. Clement as a class representative, Mr. Cook increased the pressure on GILLESPIE to sue AMSCOT. GILLESPIE also initially declined Mr. Cook's latest solicitation. When GILLESPIE argued to Mr. Cook that his exposure with AMSCOT was limited, Mr. Cook responded that GILLESPIE's position was selfish. Mr. Cook pressured GILLESPIE to sue AMSCOT, based on GILLESPIE's political beliefs that "payday loan" companies

were bad, detrimental to people and society, and in effect charged usurious rates of interest disguised as fees and costs. Mr. Cook assured GILLESPIE that AMSCOT had, in fact, committed the violations plead in the class-action complaint.[9]

24. The following illustrates the disparate debt exposure between AMSCOT and GILLESPIE's other "payday loan" companies. This suggests that AMSCOT actually acted somewhat responsibly in its transactions with GILLESPIE:

Transaction Summary

Neil J. Gillespie
1121 Beach Drive NE, Apt. C-2
St. Petersburg, Florida 33701
Telephone and fax: (727) 823-2390

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

By contrast, GILLESPIE's exposure with the other "payday loan" companies typically involved transactions of $300.00 each, and in one instance, $450.00; AMSCOT refused to loan GILLESPIE more than $100.00. By further example of contrast with AMSCOT, the amount of fees and costs GILLESPIE paid some of the other "payday loan" companies was significant. AMSCOT only charged GILLESPIE a total of $148.47; but in contrast, GILLESPIE paid the following fees and costs on his "payday loans":

[9] Gillespie also wanted to keep Mr. Cook happy, as they had already sued ACE Cash Express, and this placed Gillespie in a position of conflict with Mr. Cook.

$917.50 to EZ Check Cashing (loan amount $450.00)
$876.25 to Check 'n Go (loan amount $300.00)
$1,108.20 to ACE Cash Express (loan amount $300.00)

This further demonstrates that it was not in GILLESPIE's interest to sue AMSCOT, given the fact of his limited exposure with AMSCOT, and AMSCOT's relatively responsible behavior toward GILLESPIE.

25. Mr. Cook provided GILLESPIE pleadings from the AMSCOT lawsuit even though he was not yet a party. In a letter dated September 25, 2000, Mr. Cook provided GILLESPIE a copy of an Order he received in the AMSCOT case. (Exhibit 11). GILLESPIE felt pressured by the fact that Mr. Cook provided him an Order in the AMSCOT lawsuit (to which he was not yet a party) together with communication about the ACE lawsuit. Mr. Cook was linking GILLESPIE, AMSCOT and ACE together.

26. GILLESPIE finally relented to Mr. Cook's pressure and intervened in the AMSCOT lawsuit, see Motion For Intervention As Plaintiffs And Proposed Class Representatives[10], submitted November 9, 2000. (Exhibit 12). This occurred while GILLESPIE was a client of Alpert, Barker, Rodems, Ferrentino & Cook, P.A., a month before Defendants' told Mr. Alpert that they formed a new law firm and were taking his clients and lawsuits away from him. Mr. Cook also convinced Gay Ann Blomefield to sue AMSCOT. Now Mr. Cook had two prospective class representatives to replace the unqualified Mr. Clement. If either GILLESPIE or Gay Ann Blomefield were later disqualified as class representatives, the AMSCOT lawsuit could proceed with the remaining plaintiff as class representative. The US District Court granted the motion for intervention On March 20, 2001. (Exhibit 13).

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

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

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

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

d. Mr. Cook promised GILLESPIE special attention as a favorite client of his newly formed law firm. Mr. Cook told GILLESPIE that he, Mr. Barker and Mr. Rodems had already formed a new law firm, Barker, Rodems & Cook, P.A., but that it was being kept a secret from Mr. Alpert until the timing was right. Once Defendants calculated the right time, they would move to take the AMSCOT lawsuit and clients away from Mr. Alpert[11]. Then GILLESPIE would be in on the ground floor, as it were, a favorite client of Barker, Rodems & Cook, P.A., and entitled to special consideration.

---

[10] The Incorporated Memorandum of Law is not included.

For example, on or about August 30, 2000, Mr. Cook reviewed an apartment lease for GILLESPIE at no charge. And on May 30, 2001 Mr. Cook wrote Kelly Peterson of National Cash Advance on GILLESPIE's behalf without charge. GILLESPIE later learned that financial assistance in the form of free legal services was an inducement likely prohibited by Bar Rule 4-1.8(e).

e. As a favorite client of the newly formed (but still secret) law firm of Barker, Rodems & Cook, P.A., Mr. Cook told GILLESPIE that the new law firm would be anxious for new business, and that Defendants were hoping GILLESPIE would provide new business to them. In particular, Mr. Cook told GILLESPIE that once Defendants were free from the control of Mr. Alpert, they would be able to operate more freely in deciding what cases to accept and litigate. Defendants were three young men, all in their 30's, aggressive, and ready to take on the world, once free from Jonathan Alpert.

f. Encouraged by Mr. Cook's promise of assistance, GILLESPIE brought potential claims to Defendants. However, Defendants declined to represent GILLESPIE, and notified him by letters dated March 27, 2001 (Exhibit 14) and May 25, 2001 (Exhibit 15). GILLESPIE now believes that Mr. Cook's promise of assistance on other claims was just another deception to induce GILLESPIE to sue AMSCOT. Mr. Cook also led GILLESPIE to believe that Defendants could assist him in finding employment. GILLESPIE provided Mr. Cook with his resume, but Defendants did not assist him with finding employment. GILLESPIE later learned that Defendants' inducements to sue AMSCOT were likely prohibited by ethics rules.

[11] Defendants also planned to take the ACE Cash Express lawsuit and clients away from Mr. Alpert.

28. GILLESPIE and Mr. Cook signed a class action representation contract to sue AMSCOT on November 3, 2000. (Exhibit 16). Mr. Cook signed the contract on behalf of Alpert, Barker, Rodems, Ferrentino & Cook, P.A., even though Mr. Cook knew that he and Mr. Barker and Mr. Rodems already formed a new law firm in August, 2000. In fact, Mr. Cook again asked GILLESPIE to keep that firm a secret from Mr. Alpert until the timing was right. In effect, Defendants were partners in two law firms at the same time, one of which was secret. Once again Mr. Cook required GILLESPIE to engage in a deception against Mr. Alpert, the senior partner in the firm representing him in two lawsuits, AMSCOT and ACE. This again placed GILLESPIE in a position of conflict and divided loyalties with the lawyers and law firm representing him. All this deception occurred in Mr. Alpert's law office at 100 South Ashley Drive, Tampa, Florida. Mr. Alpert was present in the office when Mr. Cook asked GILLESPIE to engage in a deception against him. GILLESPIE had to look Mr. Alpert in the face one minute, and then listen to the secret plans of Mr. Cook and his law partners, Mr. Barker and Mr. Rodems, the next.

29. While Mr. Cook signed the class action representation contract with GILLESPIE on November 3, 2000, Mr. Cook did not sign a Statement of Client's Rights, although Mr. Cook provided GILLESPIE an unsigned copy. GILLESPIE later learned that Mr. Cook's failure to sign the Statement of Client's Rights was part of Defendants deceptive modus operandi. This is how the con worked:

a. Mr. Cook provided GILLESPIE a Statement of Client's Rights, but he did not sign it, and thus could not be held to account for its breach. In fact, Defendants did not honor much of the statement. Relative to paragraph 8, Defendants still refuse to

provide "...a precise statement of your Lawyer's fee." Defendants even refuse to answer this question in GILLESPIE's discovery to them in the instant lawsuit.

b. Mr. Cook did sign a contingent fee contract, which contains language that the client has already received a signed Statement of Client's Rights. Here Mr. Cook relied upon the parol evidence rule, that the written contract represents the final and exclusive agreement of the parties. In reliance upon parol evidence, Mr. Cook avoided signing the statement of client's rights. So long as he had an acknowledgment that it was signed, he covered himself. But as a factual matter, Mr. Cook did not sign a statement of client's rights, and none exists.

c. In his answer to the Florida Bar about this lapse, Mr. Cook wrote:

> "First, Rule 4-1.5(f)(4) did not apply to Mr. Gillespie's claims, and therefore I was under no obligation to provide him with a statement of client's rights. Rule 4-1.5(f)(4) contains the requirements for contingent fee contracts "in an action or claim for personal injury or for property damage or for the death or loss of services resulting from personal injuries based upon the tortious conduct of another, including products liabilities claims." R. Regulating the Fla. Bar 4-1.5(f)(4). Mr. Gillespie's claims arose out of his involvement with so-called "payday loans" and were not based on any personal injuries or property damages. Consequently, the strict terms of Rule 4-1.5(f)(4), including subsection (C), did not apply. (William J. Cook, letter to Florida Bar, July 19, 2006).

d. Defendants purpose in providing GILLESPIE an unsigned, unnecessary Statement of Client's Rights was to deceive GILLESPIE and create a false sense of security. In fact, Defendants did not honor the statement, and apparently not required to.

30. Defendants announced the formation of their new law firm, Barker, Rodems & Cook, P.A., by letter to GILLESPIE dated December 6, 2000. (Exhibit 17). This occurred four (4) months after Mr. Barker filed the Articles of Incorporation for the new law firm. (Exhibit 10). During the four month interim, Defendants urged GILLESPIE to keep this a secret from Jonathan Alpert, to engage in deception against the senior partner of the law firm representing him. Defendants placed GILLESPIE in a position of conflict with the lawyers and law firm representing him.

31. On December 12, 2000, a Joint Stipulation for Substitution of Counsel was submitted by Mr. Alpert and Mr. Cook, transferring responsibility for the case from the Alpert firm to Barker, Rodems & Cook, P.A. (Exhibit 18). Once Jonathan Alpert learned of Defendants' deception against him, the firm Alpert, Barker, Rodems, Ferrentino & Cook, P.A. ceased to exist.

32. Mr. Cook never bothered to execute a new class representation contract with GILLESPIE and the new law firm, as required by the Rules Regulating the Florida Bar. When GILLESPIE raised this issue with Mr. Cook in July, 2001, he responded by letter dated July 23, 2001. (Exhibit 19). Mr. Cook provided new attorneys' fees contracts for both the AMSCOT and ACE lawsuits, but Mr. Cook did not sign either.

33. On or about March 27, 2001, AMSCOT filed a counterclaim against GILLESPIE and Ms. Blomefield. (Docket 87). Defendants were incompetent by failing to advise GILLESPIE that he was subject to a counterclaim, and there was no provision in the representation contract for defending a counterclaim, to GILLESPIE's detriment.

34. On August 1, 2001, United States District Judge Richard Lazzara issued an order in the AMSCOT lawsuit denying class certification as moot, dismissed Count I

with prejudice, dismissed Counts II and III without prejudice to bring in state court, and closed the file. (Exhibit 20).

35. Soon after the ruling described in paragraph 34, AMSCOT's lawyer, John Anthony, offered Defendants a $5,000.00 cash payment to refrain from appealing the ruling, filing state law claims, or suing AMSCOT in the future. The payment did not include any amount for GILLESPIE, Mr. Clement, or Ms. Blomefield. Mr. Cook did not immediately relay this offer to GILLESPIE, but kept it secret until August 17, 2001.

36. Mr. Cook advised GILLESPIE that the AMSCOT case was dismissed, by letter dated August 8, 2001. (Exhibit 21). Mr. Cook wrote the following about filing an appeal: "Our initial inclination is to appeal but not refile the state law claims. Once we have made a final recommendation, we will let you know." (Exhibit 21, ¶2).

37. On or about August 15, 2001, Mr. Cook and GILLESPIE met at Defendants' office to discuss the AMSCOT lawsuit. Mr. Cook began discussed various settlement scenarios, whereby AMSCOT would pay Defendants attorneys' fees, and make a separate, nominal payment to GILLESPIE, Mr. Clement, and Ms. Blomefield. This was contrary to the class representation contract and GILLESPIE objected.

38. Under the contract (Exhibit 16), Defendants were entitled to attorneys' fees calculated as follows, whichever was higher: (Exhibit 16, p2, ¶2)

a. Defendants would receive the attorneys' fees awarded by a Court or arbitration panel; OR

b. Defendants would 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. Therefore Defendants were entitled to the applicable percentage of the "total recovery" because that was higher; there was no award by a Court or arbitration panel. The contract states that the applicable percentages shall be as follows: (Exhibit 16, p2).

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 a 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.

39. Mr. Cook told GILLESPIE during the meeting that Defendants would not honor the contingent fee contract because of AMSCOT's position that it did not want to pay the three co-plaintiffs anything because it resented them for suing, and this was a "sticking part" or barrier to settlement. Mr. Cook told GILLESPIE that AMSCOT did not resent Defendants and wanted to pay them money to settle. In fact, Mr. Cook was laying the foundation of a false premise to defraud his clients.

40. During the meeting GILLESPIE became alarmed and shocked by Mr. Cook's statements because:

a. Mr. Cook announced that he would not honor the contingent fee contract;

b. GILLESPIE was skeptical of the "sticking part" argument, and thought Mr. Cook was lying to him to evade the terms of the contingent fee contract.

41. This meeting between Mr. Cook and GILLESPIE was pivotal, because it marked the point when GILLESPIE believed Defendants placed their own interests ahead of their clients in dealings with matters upon which Defendants were employed. GILLESPIE believed Mr. Cook was lying about the "sticking part" argument to evade the

terms of the contingent fee contract. This meeting marked the point where Defendants, who had a fiduciary relationship with GILLESPIE involving the highest degree of truth and confidence, breached their duty to represent GILLESPIE and handle his affairs with the utmost degree of honesty, forthrightness, loyalty, and fidelity. Instead, Defendants were out for themselves first, and GILLESPIE was a distant second, at best.

42. During the meeting Mr. Cook told GILLESPIE that he was limited to a settlement of $1,000.00, because that was the statutory limit on a TILA case. This was part of Mr. Cook's false premise to defraud his clients. As for their attorneys' fees, there was no upward limit Cook said, and Defendants wanted as much as they could get AMSCOT to pay. And this is a key point: Defendants did not present AMSCOT with a bill or other accounting for its attorneys' fees, they just picked a number from thin air. Defendants wanted as much money for themselves as AMSCOT would pay, with no regard to the actual hours spent on the case or the actual costs incurred.

a. In effect, Defendants had acquired a proprietary interest in the AMSCOT lawsuit, which is prohibited by Rule 4-1.8(i).

b. Defendants also violated Rule 4-1.8(f), the conflict of interest prohibition on third party compensation. Specifically, Amscot's third party payment of Defendants' attorneys' fees interfered with Defendants' independence of professional judgment and with the client-lawyer relationship, contrary to the rule. The mere fact that Mr. Cook told GILLESPIE that his settlement with AMSCOT was limited to $1,000.00 is prima facie evidence thereof. Likewise with Cook's failure to secure payment for GILLESPIE's service as a class representative, a participation that saved the litigation from dismissal. In fact, there was no statutory limit to GILLESPIE's recovery because the statute did not

apply - the case had been dismissed. With the case dismissed, AMSCOT's basis to settle the case was a business decision.

43. Following the meeting Mr. Cook sent GILLESPIE a letter dated August 15, 2001 confirming the following four points:

a. Defendants would appeal the decision in the AMSCOT case;

b. Defendants would not be filing a new lawsuit in State court;

c. Defendants would demand $1,000.00 to settle GILLESPIE's claim; and

d. Defendants would demand $50,000.00 in attorneys' fees and costs.

Mr. Cook ended the letter by writing: As we discussed, however, we do not believe that the Defendant [AMSCOT] will accept our settlement offer. (Exhibit 22).

44. GILLESPIE received Mr. Cook's letter, described above, the following day. Upon reading the letter, GILLESPIE was incredulous, and believed Mr. Cook was lying and no longer represented GILLESPIE's best interest. It made no sense that GILLESPIE's settlement was limited to $1,000.00 while Defendants attorneys' fees were unlimited with no accounting for the actual time or costs spent on the lawsuit. Plaintiff found Mr. Cook's "sticking part" argument not credible - Cook's assertion that AMSCOT held a grudge against the co-plaintiffs that was a barrier to settlement, but AMSCOT wanted to pay the attorneys' fees without any accounting whatsoever for the amount. In fact, when Cook refused to honor the representation contract, this meant that GILLESPIE and Defendants were no longer part of the same team, and they had divided interests.

45. GILLESPIE rejected Mr. Cook's proposal by letter and fax dated August 16, 2001. (Exhibit 23). GILLESPIE was disgusted with Defendants handling of the lawsuit and wanted to end the litigation. GILLESPIE wrote the following to Mr. Cook:

a. GILLESPIE rejected Mr. Cook's "sticking part argument". This is what GILLESPIE wrote to Mr. Cook: "I agree with you that the Defendant [AMSCOT] will probably not accept your settlement offer. I believe the sticking point is your request for $50,000.00 in attorneys' fees and costs. I do not believe the $1,000.00 request each for myself, Mr. Clement and Ms. Blomefield is a barrier to settlement. Therefore I suggest you ask for a lesser amount of attorney's fees and costs." (Exhibit 23, ¶1).

b. GILLESPIE wrote the following about Defendants' attorneys' fees: "Given your lack of success in this matter thus far, I suggest you ask for $10,000 in attorney's fees and costs. I believe this is a more realistic amount." (Exhibit 23, ¶2).

c. GILLESPIE also told Mr. Cook to end the lawsuit: "Given how poorly the case has gone up to now, I believe it is in our interest to settle quickly." (Exhibit 23, ¶3).

d. GILLESPIE also asked that Mr. Cook provide a copy of his letter to Mr. Clement and Ms. Blomefield. This is what GILLESPIE wrote: "Kindly provide a copy of this letter to Mr. Clement and Ms. Blomefield." (Exhibit 23, "cc" bottom of page).

e. Mr. Cook provided GILLESPIE's letter to Mr. Clement and Ms. Blomefield, according to his cover letter to them dated August 21, 2001. (Exhibit 24).

46. At all times, GILLESPIE was aware that Defendants contemporaneously represented him in a lawsuit against ACE Cash Express. As such GILLESPIE had to consider how his relationship with Defendants in this lawsuit would affect the ACE lawsuit. In hindsight, once Mr. Cook did not obey GILLESPIE's instructions to discontinue litigation, GILLESPIE should have immediately contacted AMSCOT's lawyer, John Anthony, and the Florida Bar. (In fact, GILLESPIE learned from this

experience; when Mr. Cook began obfuscating in the ACE lawsuit, GILLESPIE called defense lawyer Paul D. Watson of Bush Ross, P.A. to settle his claim in the lawsuit).

47. Mr. Cook read GILLESPIE's August 16, 2001 letter but still refused to obey GILLESPIE's instructions to discontinue litigation. Later Mr. Cook would spin GILLESPIE's instructions to discontinue litigation into a whole new meaning. This is what Mr. Cook wrote to the Florida Bar:

> "At his request, we pursued settlement with Amscot after the case had been dismissed and was on appeal. Mr. Gillespie even made settlement suggestions which formed the framework of our negotiations." (Mr. Cook, July 12, 2004 letter to the Florida Bar).

Apparently Mr. Cook did not understand GILLESPIE's instructions to discontinue litigation, but Amscot's lawyer did. John Anthony read GILLESPIE's August 16, 2001 letter to Mr. Cook and wrote the following: "Amscot is disappointed that your lawyer apparently did not obey your instructions regarding discontinuing litigation...". (Exhibit 25, ¶1). Therefore, Mr. Cook was either not able to understand that GILLESPIE instructed him to discontinue litigation, or he simply refused to obey the instruction. Both scenarios are evidence that Amscot's third party payment of Defendants' attorneys' fees interfered with Defendants' independence of professional judgment and with the client-lawyer relationship, contrary to Rule 4-1.8(f), Rules Regulating the Florida Bar.

48. Mr. Cook's Memorandum dated Monday, August 20, 2001, documented his conversation with GILLESPIE of August 17, 2001. (Shortly after Mr. Cook read GILLESPIE's August 16, 2001 letter): (Exhibit 26)

a. Mr. Cook: "I spoke with Neil Gillespie on August 17, 2001. We had a fairly lengthy conversation about the pluses and minuses of going forward with the appeal and settlement offer."

b. Mr. Cook: "I explained to him that I did not believe that the sticking part was created through the attorneys' fees, but rather it was the payment to the clients.

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

d. Mr. Cook: "At the end of the conversation, when I told him that I would wait until Monday before I sent the settlement offer, he told me that that was not necessary. He simply wanted to advise me that he was not necessarily happy with the $50,000.00 settlement demand. I told him that the $50,000.00 demand was not set in stone and we could consider the $10,000.00 offer that he suggested. I told him that it was not likely that we would receive such an offer, however.

49. Mr. Cook's Memorandum of August 20, 2001 established the following relative to the $5,000.00 cash payment that John Anthony offered him:

a. Mr. Cook did not promptly disclose the offer to GILLESPIE. Mr. Cook only told GILLESPIE about the $5,000.00 cash payment to support his "sticking part" argument, their ruse that because Amscot held a grudge, it did not want to pay the co-plaintiffs anything, but instead wanted to pay money to Defendants to settle the lawsuit.

b. Mr. Cook told GILLESPIE that the $5,000.00 payment was not a settlement offer, but it was an improper payoff attempt. This characterization is important: Mr. Cook knew that the $5,000.00 cash payment was not a settlement offer. Mr. Cook also knew, by his own description, that the $5,000.00 was an "improper payment attempt". This is an exact quote from his memorandum dated August 20, 2001: "I told him that it was not a settlement offer. It was an improper payoff attempt."

50. Mr. Cook referenced the $5,000.00 cash payment in his letter to John Anthony dated August 20, 2001. This is what Mr. Cook wrote: "In our recent telephone conversation, you said that your client would be willing to pay this firm some kind of "consulting fee" or "non-refundable retainer" in the amount of $5,000.00 if our clients were to refrain from appealing Judge Lazarra's recent ruling or refile their state law claims in state court." (Exhibit 27, ¶1).

51. Mr. Cook referenced the "retainer" again in his letter to GILLESPIE dated September 18, 2001. This is what Mr. Cook wrote about John Anthony's $5,000.00 cash payment: "His client also wanted to pay our firm a "retainer" so that we could not sue Amscot in the future." (Exhibit 32, ¶2). The Mr. Cook wrote: "As we discussed, I told Mr. Anthony that, while we wished to resolve this case, we could not agree to these terms for a number of reasons, including that the Florida Bar likely would prohibit such an agreement." (Exhibit 32, ¶3).

52. Mr. Cook was correct when he wrote that the Florida Bar likely would prohibit such an agreement. Rule 4-5.6(b) states a lawyer shall not participate in offering or making an agreement in which a restriction on the lawyer's right to practice is part of the settlement of a controversy between private parties. The $5,000.00 retainer offered by

John Anthony was intended to operate as an agreement to restrict Defendants right to practice generally, and to assure that Defendants did not represent any persons who may have interests adverse to Amscot regardless of the events and issues involved.

53. John Anthony's attempt to hire Defendants was also contrary to Rule 4-1.7, conflict of interest. Rule 4-1.7(a) prohibits representing adverse interests. A lawyer shall not represent a client if the representation of that client will be directly adverse to the interest of another client. Defendants represented GILLESPIE in August, 2001 in a lawsuit against Amscot asserting violations of TILA and related "payday loan" violations. Amscot attempted to hire Defendants in August, 2001, during the course of the same lawsuit, but taking a position opposite to GILLESPIE, that its "payday loan" transactions were lawful. It is an absolute conflict of interest.

54. Mr. Cook had a duty to report misconduct of another lawyer pursuant to Rule 4-8.3(a): A lawyer who knows that another lawyer has committed a violation of the Rules of Professional Conduct that raises a substantial question as to that lawyer's honesty, trustworthiness, or fitness as a lawyer in other respects shall inform the appropriate professional authority.

a. Mr. Cook knew that John Anthony's offer to pay Defendants a $5,000.00 "retainer" so Defendants could not sue Amscot in the future was an agreement that would likely be prohibited by the Florida Bar. This is an exact quote from Mr. Cook's letter of September 18, 2001: "As we discussed, I told Mr. Anthony that, while we wished to resolve this case, we could not agree to these terms for a number of reasons, including that the Florida Bar likely would prohibit such an agreement." (Exhibit 32, ¶3). Mr.

Cook also described the $5,000.00 cash payment as an "improper payoff attempt" and not a settlement offer in his memorandum dated August 20, 2001. (Exhibit 26).

b. Mr. Anthony's attempt to hire Defendants while they were actively representing GILLESPIE was misconduct, against the prohibition of representing adverse interests, set forth in paragraph 53, for violation of Rule 4-1.7(a). However, Mr. Cook did not report Mr. Anthony's misconduct, contrary to Rule 4-8.3(a).

c. Mr. Cook's failure to report John Anthony's misconduct was because of the conflict of interest created by third party compensation. Rule 4-1.8(f), prohibits compensation by a third party when it interferes with the lawyer's independence of professional judgment or with the client-lawyer relationship. Specifically, Amscot's third party payment of Defendants' attorneys' fees interfered with Mr. Cook's independence of professional judgment when he failed to report Mr. Anthony's misconduct. Mr. Cook admitted this to the Florida Bar in his letter of March 27, 2006. This is what Mr. Cook wrote, this is his exact quote:

> "If I had reported Mr. Anthony to the Bar, it undoubtedly would have adversely impacted the ongoing settlement negotiations, and Mr. Gillespie was very anxious to have his case resolved." (William J. Cook, letter to the Florida Bar March 27, 2006, p2, ¶2).

Here Mr. Cook admits that a Bar complaint would have adversely affected ongoing settlement negotiations, but the wrongly ties the adverse impact to GILLESPIE's desire to settle. **The complete opposite was true**. GILLESPIE wanted to settle on terms acceptable to Mr. Anthony, but Defendants refused to communicate this to Amscot. Defendants refused to obey GILLESPIE's instructions to settle the case on several

occasions, because of the third party payment. **Defendants were prolonging the litigation for their own benefit, to take as much money from Amscot for themselves as they could**. This interfered with the client-lawyer relationship contrary to Rule 4-1.8(f)(2). Once Mr. Cook told GILLESPIE that he was limited to a $1,000.00 recovery, there was no reason for GILLESPIE to continue the litigation. Defendants were required by Rule 4-1.2(a) to abide by the client's decision, to obey GILLESPIE's instructions to settle immediately, even if it meant settling only GILLESPIE's claim, and not the claims of the other two co-plaintiffs, Mr. Clement and Ms. Blomefield. Defendants' could have settled GILLESPIE's claim on or about August 16, 2001, and then continued the lawsuit with the other two co-plaintiffs to whatever final conclusion they agreed upon. But Defendants did not abide by GILLESPIE's decision, because they were salivating for a $50,000.00 payday. AMSCOT's third party compensation interfered with Defendants' independence of professional judgment and with the client-lawyer relationship. In effect, Defendants kept GILLESPIE in a state of involuntary servitude until they got their way.

55. On August 20, 2001, Mr. Cook sent a letter to AMSCOT's lawyer John Anthony to resolve the claims. This is what Mr. Cook wrote: (Exhibit 27)

a. "If your client truly wishes to resolve these claims, our clients are willing to accept $1,000.00 each, representing the amount of their individual TILA statutory damages. They would also want any outstanding loans forgiven." (Exhibit 27, ¶3). GILLESPIE did not have any outstanding loans with AMSCOT, so this demand was of no benefit to him.

b. "In addition, we would accept $50,000.00 to settle this firm's outstanding attorneys' fees and costs." (Exhibit 27, ¶3). NOTE: Defendants demand was

for $50,000.00 to settle the firm's attorneys' fees and costs, not to settle a claim to those fees as Defendants later stated on the Closing Statement. On the Closing Statement Defendants represented the $50,000.00 amount as compensation for their claim against AMSCOT for court-awarded attorneys' fees and costs. (Exhibit 37).

56. AMSCOT sent Defendants a counteroffer by letter dated August 24, 2001. (Exhibit 28). This counteroffer was acceptable to GILLESPIE, but Defendants refused to settle his claims, and instead prolonged the litigation for their own propriety benefit. The following is the financial portion of the counteroffer:

a. AMSCOT will pay each named plaintiff the sum of $1,000.00, together with forgiveness of their outstanding debts owed to AMSCOT.

b. AMSCOT will pay Defendants the sum of $10,000.00. NOTE: Mr. Anthony does not refer to this amount as payment for actual attorneys' fees and costs or a claim to court-awarded attorneys' fees and costs; he simply calls it "the sum of $10,000.00".

57. Defendants asked for a clarification of AMSCOT's counteroffer by letter dated August 28, 2001. (Exhibit 29). Mr. Cook did not understand the settlement language that AMSCOT requested, but would consider the offer once clarified. This is what Mr. Cook wrote: We do not understand what you mean when you state that your client's offer is made "with the express condition that your firm affirmatively find that AMSCOT has done no wrongdoing with respect to the transactions involving the three plaintiffs or any other customers of AMSCOT." (Exhibit 29, ¶1, relevant portion).

58. Mr. Anthony responded by letter dated August 29, 2001. (Exhibit 30). Mr. Anthony's letter was very compelling about the futility of continuing the lawsuit. This is what Mr. Anthony wrote:

"I am in receipt of your letter of yesterday requesting a clarification of Amscot Corporation's counteroffer with respect to the resolution of the above-referenced action that now has been adjudicated in Amscot's favor and is on appeal. I am uncertain of the basis for your concern, but assume that language can be agreed upon if both your constituencies and Amscot agree that all pending disputes can and will be completely adjudicated by the payment of the referenced sums. Amscot believes that it is pragmatic to pay the sums offered for finality, and strongly contends that it must maintain its position that it has done no wrong whatsoever and that this be agreed. If you would like to discuss your concerns with me, I will be in our offices today and ready to work toward a mutually acceptable solution.

Bill, I hope that you will appreciate that the chances of you prevailing on appeal are very slim at best. The law has all been developing against the interests of your constituencies as this case has progressed. Even in the off-chance that Amscot did not successfully defend its judgment on appeal, your constituency would be back to square one at the trial court level. There, we would meet you with a summary judgment motion and supporting affidavits that we were attempting to finish before we received the dismissal order. These materials would show that there have been no roll-overs, and would show that Amscot affirmatively relied upon the guidelines established by the State of Florida in handling all of the transactions it has handled during the relevant time periods. At this point, I am sharing this information with you so that you will appreciate the futility of going forward and further see that the pending appeal is in fact frivolous. The consequences of pursing a frivolous appeal could be more serious than just losing at the trial level.

Amscot is readying it motion to task costs and its initial appellate materials. I sincerely hope that you will accept Amscot's counteroffer so that further waste of time and money can be avoided." (Exhibit 30, ¶¶ 1-3).

59. Each time GILLESPIE asked to settle his claim with AMSCOT, Mr. Cook refused to obey his request. GILLESPIE was concerned with the consequences of pursing a frivolous appeal that Mr. Anthony articulated in his letter of August 29, 2001.

a. On August 16, 2001, GILLESPIE instructed Mr. Cook to settle his claim for $1,000.00 and $10,000.00 in attorneys' fees. (Exhibit 23). Mr. Cook did not abide by GILLESPIE's decision, but instead prolonged the litigation for Defendants' own gain by demanding a $50,000.00 third party payment from AMSCOT.

b. On September 15, 2001, GILLESPIE again instructed Mr. Cook to settle his claim for $1,000.00. (Exhibit 31). GILLESPIE also told Mr. Cook the following:

(i) He needed the money for housing and medication, and was acting under duress. The 9/11/01 Terrorist Attack occurred just four days earlier, and GILLESPIE's part-time employment in the hospitality industry was a casualty;

(ii) He regretted becoming involved with the AMSCOT lawsuit, because he did not owe AMSCOT any money, and his usury experience with AMSCOT was minimal;

(iii) He regretted being pressured into the AMSCOT lawsuit by Mr. Cook, and wrote that "Even under the best scenario, I feel the compensation is not worth the trauma of my unrestrained deposition by Mr. Anthony". GILLESPIE was referring to the fact that during his May 14, 2001 deposition, Mr. Cook failed to object to questions that were not valid or not well taken. For example, Mr. Cook

sat by and let John Anthony ask questions such as: "Do you realize it's the day after Mother's Day?" (Transcript, p. 43, line 5). Even Judge Lazzara noted Mr. Cook's incompetence while representing Mr. Clement during a deposition. In his Order of September 20, 2000, Judge Lazzara criticized Mr. Cook's incompetence on the record. (Exhibit 2, p. 2, ¶1).

c. On September 20, 2001, GILLESPIE, **for the third time**, expressed disappointment to Mr. Cook that an agreement was not reached. (Exhibit 33, ¶1). GILLESPIE also wrote the following to Mr. Cook. This is an exact quote: "The following is not personal, but I am beginning to lose confidence in your representation because of the missed settlement opportunity." (Exhibit 33, ¶2). In fact, GILLESPIE was being understated, because he still had to consider his relationship with Defendants in the ACE lawsuit.

d. The above three letters represent GILLESPIE's written instructions to settle the lawsuit. GILLESPIE also made a number or oral requests to settle the lawsuit that Mr. Cook refused to obey.

60. Mr. Cook apologized for pressuring GILLESPIE to participate in the AMSCOT lawsuit, in his letter dated September 18, 2001. (Exhibit 32, ¶1). Concerning settling GILLESPIE's claims, Mr. Cook wrote the following: "We will honor your request and contact Mr. Anthony to see if we can at least resolve your claims in this lawsuit, if not the entire lawsuit. We will advise as to Amscot's response." (Exhibit 32, ¶4). GILLESPIE has no record of Amscot's response. Mr. Cook failed to resolve GILLESPIE's claims individually, and GILLESPIE has no evidence that Mr. Cook even tried to settle his claims individually.

61. Mr. Cook wrote in his memorandum of September 24, 2001, that the class action had been dismissed so there was no impediment to an individual settlement. (Exhibit 34). Therefore, Mr. Cook knew that an individual settlement was a viable option for GILLESPIE, but he chose not to pursue this option. Instead, Defendants wanted to prolong the litigation for their own benefit. Defendants wanted the chance to take $50,000.00 from AMSCOT instead of the $10,000.00 offered. Defendants offered nothing to GILLESPIE for his added exposure to the consequences of pursing a frivolous appeal that Mr. Anthony articulated in his letter of August 29, 2001.

a. Although Defendants did ultimately secure another $1,000.00 for GILLESPIE and the other co-plaintiffs, this was minimal given the risk, and very late in arriving.

b. The additional $1,000.00 appeared without any apparent negotiation by Mr. Cook, which suggests this additional payment was a form of "hush money" to protect Defendants' $50,000.00 windfall from AMSCOT.

c. Because Mr. Cook only asked for $1,000.00 initially for each co-plaintiff, the subsequent payment of $2,000.00 by AMSCOT runs counter to every instinct and conventional wisdom - it makes no sense.

d. Likewise with AMSCOT's payment of $50,000.00 to Defendants, up from its initial offer of $10,000.00. The $40,000.00 leap was made in a single bound, with little or no apparent negotiation, and with no demand for an accounting of the attorneys' fees for which it supposedly compensated.

62. On October 9, 2001, Mr. Cook notified GILLESPIE by letter that the AMSCOT appeal had been selected for mediation. (Exhibit 35). The mediation was

scheduled for November 13, 2001. Now Defendants had an incentive to settle the case, apart from GILLESPIE's instructions, which they did not obey.

63. As far back as a year earlier Mr. Cook knew that governing bodies were passing legislation regulating payday lenders. This legislation was designed correct the loophole in chapter 560, Florida Statutes, that led to the rise of payday lenders, and negate the need for private lawsuits. On September 14, 2000, Mr. Cook wrote to GILLESPIE enclosing a copy of the proposed Broward County ordinance regulating payday lenders. (Exhibit 36). On May 4, 2001, the State of Florida passed the Deferred Presentation Act (2001 FL S.B. 892) which took effect October 1, 2001, regulating payday lenders. Chapter 560, Florida Statutes, Part IV Deferred Presentment, put in place strict new guidelines for businesses offering payday loans. The courts were obviously aware of this development and, as John Anthony wrote to Mr. Cook on September 29, 2001, "The law has all been developing against the interests of your constituencies as this case has progressed." Simply put, the courts were not going to step in where the legislature had already acted to correct the problem with the excesses of the payday lending industry. GILLESPIE tried to explain this to Mr. Cook, but he did not understand, presumably because Amscot's third party payment of Defendants' attorneys' fees interfered with his independence of professional judgment and with the client-lawyer relationship, contrary to Rule 4-1.8(f), Rules Regulating the Florida Bar.

Defendants' Fraud on GILLESPIE

64. The Closing Statement provided by Defendants is actually a **sham document**, and is the key to understanding their fraud against GILLESPIE. (Exhibit 37). Specifically, the following wording was designed to mislead GILLESPIE: "In signing this

closing statement, I acknowledge that AMSCOT Corporation separately paid my attorneys $50,000.00 to compensate my attorneys for their claim against AMSCOT for court-awarded fees and costs." (underline added). The operative word is "claim". Defendants told GILLESPIE they had a "claim" to court-awarded fees and costs, which led him to believe that the Court had, in fact, awarded Defendants $50,000.00. But the truth is that Mr. Rodems reluctantly admitted this to GILLESPIE, **for the first time**, in his pleading Defendants' Reply to Plaintiff's Rebuttal to Defendants' Motion to Dismiss and Strike, submitted October 10, 2005, **four years after** Defendants provided the Closing Statement. Defendants now argued that the $50,000.00 was for a claim for court-awarded fees, and not an actual fee award. This begs the question - without an actual court-awarded fee, there is no claim for a court-awarded fee. Because Defendants did not prevail in court, they cannot rely on a statutory claim for court-awarded fees, because there is none. This is how Defendants created the impression that the Appellate Court awarded fees, when in fact it mandated that the parties bear their own costs and attorney's fees. (Exhibit 40). This was Defendants fraud on GILLESPIE.

65. Notwithstanding that the Closing Statement is a sham, the statement did not reflect an itemization of all costs and expenses, together with the amount of the fee received by each participating lawyer or law firm. In the past Defendants responded to this by saying it was not required because AMSCOT paid them separately, but nothing in the Rules Regulating the Florida Bar creates an exemption to Rule 4-1.5(f)(5). To the contrary, the rule states, in the event there is a recovery, upon the conclusion of the representation, the lawyer must prepare a closing statement reflecting an itemization of all costs and expenses, together with the amount of the fee received by each participating

lawyer or law firm. A copy of the closing statement must be executed by all participating lawyers, as well as the client, and each must receive a copy. (Rule 4-1.5(f)(5)). Mr. Cook did not provide GILLESPIE with an itemization of costs on the Closing Statement, and has never accounted for a single hour of attorneys' fees, no time sheets, no hours worked or hourly rate, nothing, no method of determining the $50,000.00 in attorneys' fees. In fact, Mr. Alpert already incurred much of the legal costs in AMSCOT because the Alpert firm commenced the lawsuit and litigated the case longer than Defendants. So it appears that Defendants' demand for $50,000.00 in attorneys' fees was likely plucked from thin air, and is likely the reason Defendants have refused to answer any discovery questions accounting for the attorneys' fees - because they cannot.

66. Taken together, Defendants' behavior deprived GILLESPIE of the knowledge and information required to make an informed choice when he signed the closing statement. The present case involves the following two separate contracts:

(i) The Representation Contract (contingent fee), Exhibit 1 to the Complaint; and

(ii) The Settlement Agreement of October 30, 2001 between AMSCOT Corporation, Neil Gillespie, Barker, Rodems & Cook, P.A., and the other two plaintiffs to the action, Eugene R. Clement and Gay Ann Blomefield.

Defendants induced GILLESPIE to enter into the second contract, the Settlement Agreement of October 30, 2001, under false pretenses. Mr. Cook told Plaintiff that the United States Court of Appeals for the Eleventh Circuit awarded Defendants $50,000.00 in attorneys' fees and costs, when in fact the Appellate Court ruled that each party must pay its own costs and attorney's fees. Defendants wanted GILLESPIE to believe that the Appellate Court awarded it $50,000.00 so that Defendants could collect the money and

avoid the terms of the contingent fee contract. GILLESPIE plead the essential elements of fraud in the Complaint, paragraph 46:

"46. COOK and the LAW FIRM committed fraud because:

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

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

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

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

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

An independent lawyer who considered this stated it another way: GILLESPIE was overcharged by Defendants, and GILLESPIE paid too much for the attorneys' fees, according to the terms of the contract. Defendants behavior was a breach of fiduciary duty showing that Defendants acted with malice, moral turpitude, gross negligence,

reckless indifference to the rights of others, wantonness, oppression, outrageous aggravation and fraud. GILLESPIE sustained independent damages, the debt forgiveness other Amscot plaintiffs enjoyed created an inequity in his settlement, because GILLESPIE did not have any outstanding debt with Amscot.

67. Defendants' fraud upon GILLESPIE is Fraud in the Inducement. If fraud occurs in connection with misrepresentations, statements or omissions which cause a party to enter into a transaction, then such fraud is fraud in the inducement and survives as an independent tort. (Susan Fixel, Inc. v Rosenthal & Rosenthal, Inc., 842 So. 2d 204). Defendants induced GILLESPIE to enter into a settlement agreement with AMSCOT under false pretenses, and that contract was separate and distinct from the contingent fee contract between Defendants and GILLESPIE.

68. Defendants Closing Statement falsely reflecting a claim to $50,000.00 in court-awarded attorneys' fees and costs is the wanton, unconscionable and self-serving behavior described in Paragraphs 38 and 39 of the Complaint:

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

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

69. If an attorney is guilty of oppressive conduct showing a great indifference to the person and property of his client, malice may be imputed and punitive damages awarded, even in an action based on breach of contract. (Singleton v. Foreman, 435 F.2d 962). Punitive damages are awardable when the offending party acted with malice, moral turpitude, gross negligence, reckless indifference to the rights of others, wantonness, oppression, outrageous aggravation and fraud. (Stintson v. Feminist Woman's Health Center, Inc., 416 So. 2d 1183). GILLESPIE has established that Defendants acted with malice, moral turpitude, gross negligence, reckless indifference to his rights, wantonness, oppression, outrageous aggravation and fraud. In Stintson the lawyers obfuscated, manipulated and deceived their clients in a tortious attempt to take all of the settlement money. In the present case Defendants took most of the settlement money, about ninety percent. Therefore punitive damages are appropriate. When fraudulent misrepresentation and negligent misrepresentation in the formation of a contract are alleged, the economic loss rule does not bar tort action based on such misrepresentations, even absent a tort independent of breach of contract. (Wassall v. W.H. Payne, 682 So. 2d 678).

70. Defendant William J. Cook is personally liable in this lawsuit "Because an attorney has a fiduciary responsibility to the client, that attorney may be personally responsible for breaching that duty." (4 Fla. Jur. 2d, § 478, p. 544). Also, the Florida Supreme Court has specifically rejected a defendant attorney's attempt to use the professional association as a shield to prevent personal liability. (Krehling v. Baron, 900

F. Supp. 1574). Ryan Christopher Rodems and Chris A. Barker have vicarious liability for the acts of a partner, if not directly for their own acts. A law firm's liability may be based on its duty to supervise the activities of a partner of that firm. (Bar Rule 4-5.1(a)).

GILLESPIE Finds Evidence of Defendants' Fraud and Breach of Contract

71. On or about April 30, 2003, GILLESPIE noticed irregularities while preparing the AMSCOT case file for long-term storage, specifically the lack of an expense listing. GILLESPIE wrote Mr. Cook requesting one. (Exhibit 38).

72. Mr. Cook responded by letter dated May 9, 2003, and enclosed a copy of the expenses from the AMSCOT case. (Exhibit 39).

73. The expenses Mr. Cook provided for AMSCOT were significantly less than he led GILLESPIE to believe in August, 2001. At that time Mr. Cook represented that Defendants incurred about $33,000.00 in costs and expenses. In his letter of May 9, 2003, Mr. Cook disclosed costs and expenses of just $3,580.67, plus $2,544.70 paid to Mr. Alpert. This led GILLESPIE to investigate further, and to the discovery of the mandate of the US Court of Appeals of December 7, 2001. By the Court: "The parties joint stipulation for dismissal of this appeal with prejudice, which is construed as a motion to dismiss this appeal with prejudice, with the parties bearing their own costs and attorney's fees, is GRANTED." (Exhibit 40).

73. On June 8th, 2003, GILLESPIE wrote to Mr. Cook asking for a precise statement of his attorney's fees, or bill for legal services in the Amscot case. (Exhibit 41). Mr. Cook did not respond to GILLESPIE's request.

74. Because Mr. Cook failed to provide a precise statement of his attorney's fees, GILLESPIE called the Florida Bar on June 12, 2003. GILLESPIE spoke with Don

Spangler, an attorney with the Florida Bar's *Attorney Consumer Assistance Program* (ACAP) and described the problem with his lawyers. Mr. Spangler assigned reference number 03-18867 to the inquiry. Mr. Spangler said GILLESPIE could file an ethics complaint, and that GILLESPIE could also contact the lawyers and try to settle the matter. This information is also printed on the Florida Bar complaint form, Part Four, Attempted Resolution. The Florida Bar specifically states that "...you should attempt to resolve your matter by writing to the subject attorney, before contacting ACAP or filing a complaint. Even if this is unsuccessful, it is important that you do so in order to have documentation of good-faith efforts to resolve your matter."

75. Plaintiff contacted Mr. Cook as suggested by the Florida Bar. In a letter to Mr. Cook dated June 13, 2003, Plaintiff made a good-faith effort to resolve the matter: "Dear Bill,

I have legal and ethical concerns about the settlement in the Amscot case. I sought an opinion about this matter from a Tampa law firm. After reviewing the facts they suggested that I contact the *Ethics and Grievance Office* of The Florida Bar.

The *Attorney Consumer Assistance Program* (ACAP) of The Florida Bar considered this matter yesterday. As a matter of procedure ACAP noted your name and address, and assigned reference number 03-18867 to this matter. Upon review of the facts, ACAP suggested that I file a complaint with The Florida Bar.

As a courtesy to you I would like to settle this matter prior to filing a complaint. ACAP also suggested this alternative. This is my view of the problem.

The $50,000 paid to your firm by Amscot was a thinly veiled bribe to settle the case, and a conflict of interest with your clients. Also, the *United States Court of Appeals for the Eleventh Circuit* dismissed your appeal saying that the parties will bear their own costs and attorney's fees.

Under the terms of our representation contract, I believe the $50,000 claimed as legal fees is actually part of the "total recovery" along with the $2,000 received by each of the three plaintiffs, for a total recovery of $56,000. Similarly, in the America's Cash Express (ACE) case, the $10,000 total recovery should have been dispersed according to

our contract in that matter. Accompanying this letter is an addendum, my computation of the settlement under our contract.

As indicated on the addendum, your firm owes me $4,523.93. Payment of that sum by June 20, 2003, will satisfy my claim and avert a complaint to The Florida Bar.

Concerning the other plaintiffs, Eugene Clement and Gay Blomefield, I have not contacted them, nor do I intend to contact them. Law, ethics, and your conscience should guide your duty to your former clients.

Thank you for your attention to this matter.

Sincerely,

Neil J. Gillespie

Enclosure"

A copy of the letter and addendum is attached as Exhibit 42.

76. On June 18, 2003, GILLESPIE faxed Defendants a corrected amount due to the inclusion of interest. GILLESPIE also said his earlier assertion not to contact the other plaintiffs, Eugene Clement and Gay Blomefield would expire Friday, June 20, 2003, along with the settlement offer. (Exhibit 43). GILLESPIE wanted to discuss the apparent fraud and breach of contract, and see if they wanted to join him in pursuing the claim.

77. Attorney Chris A. Barker of the firm Barker, Rodems & Cook, P.A. responded on behalf of Mr. Cook by letter dated June 19, 2003. (Exhibit 44). Mr. Barker accused Plaintiff of felony criminal extortion, and made a series of self-serving statements, four of which are described here, in addition to the extortion accusation:

a. Mr. Barker wrote the following accusing GILLESPIE of the felony criminal extortion for his good-faith effort to resolve the matter suggested by the Florida Bar: "We consider this threat to be extortionate. See § 836.05, Fla. Stat. (2000); Carricarte v. State, 384 So.2d 1261 (Fla. 1980); Cooper v. Austin, 750 So.2d 711 (Fla. 5th DCA 2000);

Gordon v. Gordon, 625 So.2d 59 (Fla. 4th DCA 1993); Berger v. Berger, 466 So.2d 1149 (Fla. 4th DCA 1985)." (Exhibit 44, ¶2, second sentence).

b. When GILLESPIE wanted to settle with AMSCOT, because he believed Mr. Cook was lying (the "sticking part" ruse), Mr. Barker wrote: "During the appeal, you initially insisted that we attempt to negotiate a settlement with the Defendant on unfavorable terms, even though we advised that your chances of prevailing on appeal were strong." (Exhibit 44, p.1, ¶4). Here Mr. Barker admits Defendants did not obey GILLESPIE's instructions regarding discontinuing litigation pursuant to Rule 4-1.2(a) which states that a lawyer shall abide by a client's decisions concerning the objectives of representation and shall abide by a client's decision whether to settle a matter. (And ignoring that fact that GILLESPIE's claim could have been settled separately).

c. When GILLESPIE asked Defendants to honor the representation contract and pay him his lawful share of the $56,000.00 "total recovery", Mr. Barker wrote it was unlawful to split fees with clients. This is what Mr. Barker wrote: "Moreover, because you demand that we pay you a portion of the attorneys' fees and costs, we must decline because the Rules Regulating the Florida Bar ethically prohibit us from splitting fees with clients." (Exhibit 44, p2, ¶3). Mr. Barker's beguiled argument fails because GILLESPIE only requested what was due him under the contract, and never asked for any part of Defendants' attorneys' fees, which are 45% of the "total recovery". Mr. Barker's position is further impeached by the fact that Defendants had in fact paid a portion of their attorneys' fees to a client in another lawsuit, Eugene R. Clement, in the ACE Cash Express case. To accomplish this, Defendants simply reduced their attorneys' fees, and paid the remaining amount of the "total recovery" to Mr. Clement.

d. Mr. Barker even attempted to misrepresent GILLESPIE's settlement in the Amscot case by writing the following: "And, in spite of many adverse legal rulings in these types of cases throughout the state, he was able to recover all of your statutory damages from Amscot as well as a forgiveness of you then-outstanding loans." (Exhibit 44, p3, ¶2). GILLESPIE did not have an outstanding loan with Amscot to forgive, effectively resulting in a less valuable settlement than Defendants' obtained for the other co-plaintiffs, who had outstanding loans that were forgiven. Defendants were incompetent for failing to obtain an equal settlement for GILLESPIE, and this failure is another example of negligence indicating a disregard for GILLESPIE's rights.

e. Mr. Barker correctly wrote that GILLESPIE, in the ACE Cash Express case, was forced to directly contact opposing counsel due to Defendants incompetence. This is what Mr. Barker wrote: "You may recall telling opposing counsel via voice mail that, "at this point I am interested in settling the case and am not real satisfied with the current counsel that I have and would like to speak with you more about that." (Exhibit 44, p2, ¶6). GILLESPIE was forced to contact opposing counsel (Mr. Paul Watson/Bush Ross) because he learned from the AMSCOT lawsuit that Defendants would not obey his instructions to discontinue litigation. So when Mr. Cook began obfuscating in the ACE lawsuit, GILLESPIE proceeded on that basis.

78. GILLESPIE thanked Mr. Barker for his letter, and asked for the following in order to be able to respond to his comments: (Exhibit 45).

a. A detailed itemization of the 600 hours of legal work they claimed were spent on the Amscot case;

b. A detailed itemization of the legal work spent on the ACE case;

c. A copy of the bill for legal services your firm presented to Amscot.

GILLESPIE noted that he made this request to Mr. Cook in a letter dated June 8, 2003, but he did not respond.

As a courtesy, GILLESPIE gave Defendants 48 hours to respond before proceeding with a Bar complaint. In fact, GILLESPIE waited a year before filing an ethics complaint, allowing Defendants every opportunity to explain, but they did not.

79. Mr. Barker's final letter of June 23, 2003, stated that no bill for legal service was ever sent to Amscot, and that this was his final communication. (Exhibit 46).

80. In response to Defendants ongoing accusation that GILLESPIE committed felony criminal extortion, GILLESPIE offered to surrender to the state attorney. On March 7, 2006, GILLESPIE wrote to Mark Ober, State Attorney for the Thirteenth Judicial Circuit, but Mr. Ober did not respond to Plaintiff's offer. (Exhibit 47). GILLESPIE provided supplemental information by letter to Mr. Ober on March 16, 2006, and March 24, 2006, but still the State Attorney did not respond. GILLESPIE takes that to mean that he did not commit the crime that Defendants claimed. An essential element of criminal law is intent. GILLESPIE's good-faith effort to resolve the matter by writing Defendants, a course of action suggested by the Florida Bar, is evidence of compliance with law, not criminal activity.

81. The Florida Bar does not agree with Defendants' accusation that GILLESPIE committed felony criminal extortion. GILLESPIE wrote to the Florida Bar for what is in essence an advisory opinion. In reply, the Director of Lawyer Regulation, Mr. Kenneth Lawrence Marvin, responded to GILLESPIE on July 12, 2006, that "Those

questions involve a legal conclusion of criminal law and I am not in a position to answer them." (Exhibit 48). Mr. Marvin also provided GILLESPIE with case law to Tobkin v. Jarboe, 710 So.2d 975. The court held that an individual who files a complaint against an attorney and makes no public announcement of the complaint, thereby allowing the grievance procedure to run its natural course, is afforded absolute immunity from a defamation action by the complained-against attorney. (Exhibit 48).

82. Defendants countersued GILLESPIE for libel over a letter he wrote to AMSCOT about a Bar complaint. Defendants defamation claim against GILLESPIE is retaliatory and frivolous because:

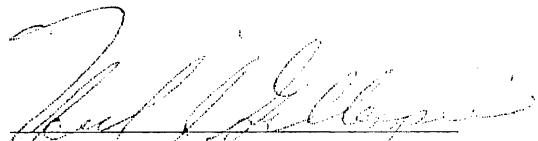
a. GILLESPIE's letter to AMSCOT is dated July 25, 2005. (Exhibit 49). The letter is afforded absolute immunity from a defamation action by the complained-against attorney because it was written after the grievance procedure ran its natural course. On May 4, 2005, Susan V. Bloemendaal, Chief Branch Disciplinary Counsel, wrote (in part): "This file will therefore remain closed and is scheduled for destruction on February 9, 2006." (Exhibit 50). Mr. Cook's file was a public record pursuant to chapter 119 Florida Statutes from February 9, 2005 through February 9, 2006. As such, the timing of GILLESPIE's letter to AMSCOT was lawful, and is afforded absolute immunity from a defamation action by the complained-against attorney. (Tobkin v. Jarboe, 710 So.2d 975).

b. Truth is an absolute defense to a defamation action, and this motion establishes the truth of GILLESPIE's letter to AMSCOT.

WHEREFORE Plaintiff pro se has demonstrated that Defendants acted fraudulently toward GILLESPIE in their position of trust as his attorneys. Defendants

were deliberately oppressive, malicious, and acted with gross negligence as to indicate a wanton disregard for GILLESPIE's rights, and therefore he demands judgment for punitive damages against Defendants, together with interest, costs, expenses, and attorneys' fees.

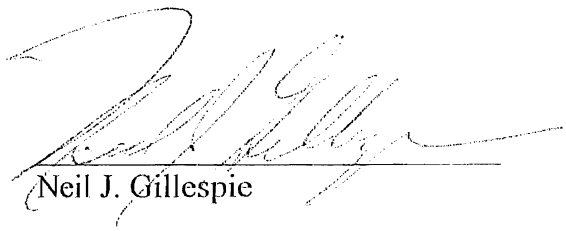
RESPECTFULLY SUBMITTED this 18th day of January, 2007.



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

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a true and correct copy of the foregoing has been furnished by US mail to Ryan Christopher Rodems, Attorney, Barker, Rodems & Cook, P.A., Attorneys for Defendants, 400 North Ashley Drive, Suite 2100, Tampa, Florida 33602, this 18th day of January, 2007.



Neil J. Gillespie