

IN THE DISTRICT COURT OF APPEAL OF THE STATE OF FLORIDA  
SECOND DISTRICT

NEIL J. GILLESPIE

Appellant,

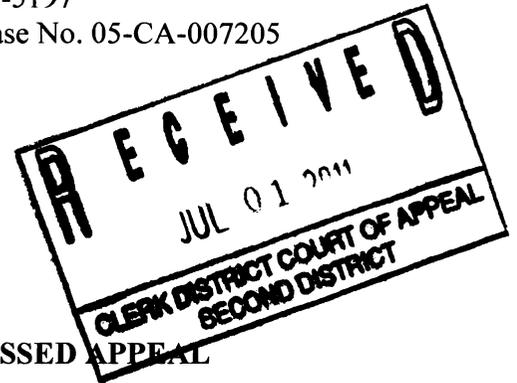
Case No.: 2D10-5197

Lower Court Case No. 05-CA-007205

vs.

BARKER, RODEMS & COOK, PA, a Florida  
Corporation; and WILLIAM J. COOK,

Appellees.



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**APPELLANT'S MOTION TO REINSTATE DISMISSED APPEAL**

Appellant pro se, Neil J. Gillespie ("Gillespie"), moves to reinstate the dismissed appeal, and states:

1. Gillespie moves to reinstate this appeal, no. 2D10-5197, dismissed by order of this Court dated June 24, 2011 pursuant to the notice of voluntary dismissal served by Appellees counsel Ryan Christopher Rodems. The notice of voluntary dismissal was unlawfully obtained from Gillespie by Mr. Rodems as part of an unlawful settlement agreement made by Gillespie while in custody of the Hillsborough County Sheriff's Office (HCSO) on civil contempt at the Edgecomb Courthouse in Tampa. The settlement agreement must be set aside, and is void or voidable, for fraud, duress, mistake, undue influence, adhesion, lack of informed consent, disability or incapacity, sleep deprivation, malpractice or negligence by jailers, threats, intimidation, yelling, and other improper conduct by opposing counsel Ryan Christopher Rodems, and breach of duty by Gillespie's former counsel, Eugene P. Castagliuolo.
2. The notice of voluntary dismissal served by Mr. Rodems that this Court relied upon must be struck or set aside as there was no manifestation of mutual assent, a "meeting of the minds",

or agreement to the terms of the settlement. Rather, Gillespie was impaired by disability and sleep deprivation and threatened while in custody of the HSCO and agreed to act to get out of custody. Gillespie's former counsel, Mr. Castagliuolo, breached his professional duty to Gillespie. The settlement agreement, prepared in advance by Mr. Rodems, is a mirror of Rodems' manifestation of mutual assent, not the manifestation of assent by Gillespie who was forced or induced to assent to the terms of the contract while disabled, in custody of the HSCO, and counsel who breached his duty. Therefore, the mutual meeting of the minds "in truth" does not exist. Since there is no mutual meeting of the minds there can be no settlement, and the settlement is void or voidable.

**Mr. Rodems' Fraud To Settle Federal ADA/Civil Rights Lawsuit**

3. Gillespie became aware of the scope of Mr. Rodems' fraud in obtaining the settlement agreement, and the Notice Of Dismissal With Prejudice served on this Court by Mr. Rodems, when Gillespie read the docket in his federal ADA and Civil Rights lawsuit, Neil J. Gillespie vs. Thirteenth Judicial Circuit, Florida, et al., Case No. 5:10-cv-00503, US District Court, MD Florida, Ocala Division, by chance late in the evening Thursday, June 29, 2011, and found Mr. Rodems' Notice of Assignment of Claims and Motion For Dismissal of Action With Prejudice, submitted June 21, 2011, copy attached as Exhibit A. Rodems did not serve a copy on Gillespie.

4. Prior to Thursday, June 29, 2011 Gillespie believed the Notice Of Dismissal With Prejudice in 2D10-5197 served on this Court by Mr. Rodems was unlawfully obtained, but the full picture of Rodems' fraud was not yet clear. Nonetheless, on June 22, 2011 Gillespie notified Mr. Rodems and Mr. Castagliuolo that Gillespie of his intent to challenge the settlement agreement, see Exhibit B, a "Draft Copy" of Gillespie's Motion To Set Aside: Settlement Agreement, Notice of Dismissal With Prejudice, 2d DCA, and Joint Stipulation For Dismissal

With Prejudice 13th Circuit - Gillespie Under Duress And In Custody Of HCSO, faxed to Mr. Rodems November 22, 2011 and emailed to Mr. Castagliuolo November 22, 2011.

**Mr. Rodems and Barker, Rodems & Cook, Acting As**

**Counsel For The Thirteenth Judicial Circuit**

5. Mr. Rodems' notice and motion in federal court show he and Barker, Rodems & Cook, P.A. are essentially acting as counsel for the parties to the federal lawsuit, including the Thirteenth Judicial Circuit, various judges and court personal, and Gillespie's former counsel Robert W. Bauer and his firm. This shows one more conflict of interest with the lower tribunal case being tried in the Thirteenth Circuit. At one time Mr. Rodems and Barker, Rodems & Cook, P.A. were a parties to the lawsuit, but Gillespie voluntarily dismissed the claims without prejudice, see the Order of US District Judge William Terrell Hodges, November 22, 2010, Exhibit C. Judgment was entered dismissing all claims against Defendant's Ryan Christopher Rodems and Baker, Rodems & Cook, P.A. without prejudice November 23, 2010, Exhibit D.

**Gillespie's Motion and Notice in Federal Court, Case No. 5:10-cv-00503**

6. Gillespie moved to strike or set aside the Notice of Assignment of Claims And Motion For Dismissal of Action With Prejudice filed by Mr. Rodems June 21, 2011. (Exhibit E) Gillespie also moved to strike or set aside the Settlement Agreement And General Mutual Release ("settlement"), Exhibit 1 to the notice and motion, and allegedly agreed to by Gillespie June 21, 2011 while he was in the custody of the Hillsborough County Sheriff (HCSO) on a writ of bodily attachment. (Exhibit E).

7. Gillespie filed a notice regarding attorney Eugene P. Castagliuolo who represented Gillespie at the deposition while he was in custody. The notice sets forth the following:

- a. Gillespie recently met Mr. Castagliuolo through an ad on Craigslist.

- b. Terminated Mr. Castagliuolo's representation of Gillespie.
- c. Mr. Castagliuolo breached his professional duty to Gillespie
- d. Mr. Castagliuolo failed to abide by Gillespie's written instructions not to accept a "walk-away" Settlement Agreement And General Mutual Release offered by Mr. Rodems.
- e. Mr. Castagliuolo failed to prepare Gillespie for the deposition as agreed
- f. Mr. Castagliuolo failed to explain the agreement Gillespie was later compelled to sign while in custody.
- g. Mr. Castagliuolo stopped representing Gillespie's interest at some point during the deposition, if not sooner.

A copy of the notice is attached as Exhibit F.

#### **Writ of Bodily Attachment Against Gillespie**

8. On June 1, 2011 Mr. Rodems caused a warrant for Gillespie's arrest to be issued on a writ of bodily attachment for civil contempt for allegedly failing to appear for a deposition. This follows the Order Adjudging Plaintiff Neil J. Gillespie In Contempt by Judge Martha Cook September 30, 2010. The hearing was held ex-parte and Gillespie was not present and did not have representation. Gillespie appealed the contempt order to the 2dDCA in case 2D10-5197 along with the Final Summary Judgment As To Count I. Rodems acknowledged the appeal by letter to Gillespie October 26, 2010. (Exhibit 1-A). Gillespie replied by letter November 8, 2010 that he agreed to attend a deposition as long as he was represented by counsel. (Exhibit 1-B). Gillespie cannot have unmoderated contact with Mr. Rodems on the medical advice of Dr. Karin Huffer, Gillespie's disability advocate. Dr. Huffer also advised Gillespie not to attend a deposition without ADA accommodations in place. Mr. Rodems has a history of harassing behavior toward Gillespie, as well as a practice of creating a false record of events about

Gillespie. In the alternative Gillespie offered to be deposed at a law enforcement office<sup>1</sup>. Rodems did not respond and instead sought to have Gillespie arrested on a writ of bodily attachment.

9. Mr. Rodems obtained the writ of bodily attachment for improper purposes, to intentionally disrupt the appellant process in appeal 2D10-5197, and/or to force settlement of this lawsuit on terms favorable to the Defendants. Mr. Rodems obtained the writ of bodily attachment through a series of ex-parte hearings where Gillespie was not present and not represented by counsel as set forth in Exhibit 2.

10. Judge James D. Arnold issued an Order to Show Cause May 4, 2011 to appear in chambers on Wednesday, June 1, 2011 at 11:00 a.m. in Room 514 of the Hillsborough County Courthouse, located at 800 E. Twiggs Street, Tampa, FL. 33602 to show cause why he should not be held in contempt of court for failure to appear for a deposition.

11. Gillespie took the following action responsive to the Order To Show Cause set for hearing June 1, 2011 before Judge James D. Arnold:

a. May 24, 2011 Gillespie filed *Plaintiff's Motion For Appointment of Counsel, ADA Accommodation Request, and Memorandum of Law*.

b. May 27, 2011 Gillespie applied for the services of the Public Defender and was found indigent<sup>2</sup> by Allison Raistrick of the Clerk's Indigent Screening Unit pursuant to section 27.52 Florida Statutes to appoint the public defender.

c. May 27, 2011 Gillespie filed *Verified Notice of Filing Disability Information of Neil J. Gillespie*.

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<sup>1</sup> Not while in custody.

<sup>2</sup> Gillespie was declared insolvent within the meaning of chapter 57, Florida Statutes, by The Second District Court of Appeal, Florida, and the 2d DCA waived fees in three cases: 2D10-5197, 2D10-5529, and 2D11-2127. The Florida Supreme Court waived Gillespie's fees in case SC11-858.

d. May 27, 2011 Gillespie hand delivered a letter<sup>3</sup> to Judge Arnold at the Edgecomb Courthouse with copies of the documents described above in paragraphs 6a and 6c. (Exhibit 1). Gillespie's letter informed Judge Arnold that Gillespie could not appear<sup>4</sup> for a contempt hearing without counsel, Rodems misled the Court during the last hearing, and about Gillespie's disability. Gillespie stated he may file an emergency stay with the US Supreme Court, and is considering chapter 7 bankruptcy to dispose of defendants' [\$11,550] judgment [for sanctions].

e. May 31, 2011 Gillespie served a Rule 22 Application upon United States Supreme Court Justice Clarence Thomas for Emergency Petition For Stay or Injunction, from the Order Of The Florida Supreme Court in Case No. SC11-858<sup>5</sup>.

**Judge Arnold Issued Warrant To Arrest Gillespie June 1, 2011**

12. Mike Peacock, Administrative Counsel of the Public Defender for the Thirteenth Judicial Circuit, appeared and submitted *Office Of The Public Defender's Motion For Clarification* (Exhibit 3) arguing Gillespie is not entitled to representation on civil contempt. The Court agreed and relieved the Public Defender by Order (Exhibit 4), holding that "there is no

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<sup>3</sup> Judge Arnold's JA, Judy D. Williams, would not speak with Gillespie and hung up on a pretext that the phone call was recorded. All calls on Gillespie's home office telephone extension are recorded for quality assurance purposes pursuant to the business use exemption of Florida Statutes chapter 934, section 934.02(4)(a)(1) and the holding of *Royal Health Care Servs., Inc. v. Jefferson-Pilot Life Ins. Co.*, 924 F.2d 215 (11th Cir. 1991), See Plaintiff's Notice of Telephone Hearing filed December 30, 2009. This is a disability accommodation.

<sup>4</sup> Judge Arnold does not permit pro se litigants to appear telephonically. Gillespie lives 100 miles from the court.

<sup>5</sup> The Petition was returned to Gillespie by Danny Bickell, Staff Attorney, with a letter dated June 2, 2011 citing several deficiencies. Gillespie corrected the deficiencies and June 11, 2011 served another Rule 22 Application upon Justice Thomas, and Emergency Petition for Writ of Prohibition, from the Order of The Florida Supreme Court in Case No. SC11-858. The Petition was returned to Gillespie by Clayton R. Higgins, Jr., Case Analyst, with a letter dated June 15, 2011 that cited different deficiencies from the earlier Petition.

lawful basis for the appointment of the Office of the Public Defender to represent the plaintiff in the cause currently before the Court.” The transcript of the proceedings shows as follows:

Transcript, June 1, 2011, page 6:

1 THE COURT: Take care.  
2 All right. Let the record reflect that  
3 Mr. Gillespie was personally served with my order  
4 ordering him to appear this morning to show cause why  
5 he should not be held in civil contempt of court for  
6 his failure to give a deposition, appear at a  
7 deposition, give a deposition and produce documents  
8 requested pursuant to a subpoena duces tecum. Is that  
9 correct, counselor?  
10 MR. RODEMS: As a party of notice of deposition  
11 duces tecum, Your Honor.  
12 THE COURT: Therefore, I'm going to issue a  
13 warrant for his arrest and order that he be picked up  
14 and brought before the Court to show cause why I  
15 shouldn't hold him in civil contempt of court. The  
16 order is immediate arrest.

A copy of the Writ of Bodily Attachment is attached as Exhibit 5. (As received by Gillespie June 23, 2011 at 2:20 PM by email from Major James P. Livingston, Commander, Court Operations).

**Copy of Writ Of Bodily Attachment Not Provided or Available**

13. The Court failed to provide Gillespie a copy of the writ of bodily attachment. The Clerk of the Court failed to provide Gillespie's representative, Affordable Courier Solutions, a copy of the writ June 10, 2011. The Clerk told Affordable Courier Solutions that the file in this case was not available. Gillespie retained Eugene Castagliuolo June 3, 2011. Mr. Castagliuolo was unable to obtain a copy of the writ. Without a copy of the writ, Gillespie was denied due process in his efforts to purge the writ. A copy of the writ was only provided to Gillespie June 23, 2011 by Maj. Livingston after Gillespie voluntarily appeared at the courthouse.

14. Beginning June 1, 2011 Florida law enforcement was actively trying to arrest Gillespie on the writ of bodily attachment which terrorized him, caused him to suffer fear and anxiety<sup>6</sup>, aggravated his disabilities, and prevented him from working on the appeal in 2D10-5197.

**Gillespie Found Counsel Through Craigslist June 3, 2011**

15. Gillespie retained attorney Eugene P. Castagliuolo June 3, 2011 through a Craigslist posting as follows:

“I will pay \$1,000 cash to a Florida licensed attorney in good standing to represent me at a deposition duces tecum in Tampa ASAP. This is civil litigation. \$1,000 represents more than half my monthly income. (I will pay more if you accept terms for the balance). I need prep time too.

This is urgent, I'm facing a writ of bodily attachment otherwise. Thank you.”

Prior to June 3, 2011 Gillespie did not have funds to retain counsel. Gillespie is indigent and insolvent as determined by the courts. Gillespie relies upon a monthly Social Security disability payment that arrives in the third of the month as his income. On June 1, 2011 Gillespie lacked the funds to retain counsel for the Evidentiary Hearing that led to a warrant for his arrest on a writ of bodily attachment.

**Motion To Quash Writ of Bodily Attachment, Rescind Arrest Warrant**

16. Mr. Castagliuolo filed Plaintiff's Motion To Quash Writ Of Bodily Attachment And To Rescind Warrant For Plaintiff's Arrest on June 16, 2011. A hearing on the motion was held June 16, 2011 at 10:30AM before Judge Arnold. A copy of the motion is attached as Exhibit 6 and sets forth the following:

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<sup>6</sup> Gillespie was also concerned about the care and feeding of his pet bunny Ginger. If Gillespie were incarcerated for any length of time, Ginger would likely starve and die. Gillespie had no one to care for Ginger, and Gillespie's nearest relative lives over 1,000 miles away.

(1) The last attorney representing Mr. Gillespie in this case was permitted to withdraw on October 1, 2009.

(2) In the 21 months or so which have transpired since October of 2009, Mr. Gillespie has been without legal counsel, and has represented himself for these past 21 months.

(3) Not only has Mr. Gillespie not had the benefit of any legal training, but he also labors under the strain of some serious health issues which have been with him since this litigation began.

(4) Notwithstanding the foregoing, Mr. Gillespie has made considerable effort to comply with Mr. Rodems' fairly comprehensive and exhaustive discovery requests, as demonstrated by the June 25, 2010 letter and attachments which Mr. Gillespie sent to Mr. Rodems.

(7) Marion County Deputy Carl Dunlap advised undersigned counsel via telephone that, were they to ultimately arrest Mr. Gillespie, it would be likely that Mr. Gillespie would sit in the Marion County Jail for weeks until he could be transferred to the Hillsborough County Jail.

(8) Justice will not be served if Mr. Gillespie is jailed.

(9) Furthermore, given his health status, he will most definitely *not* "hold the keys" to his jail cell, as his ability to respond to discovery will then be virtually lost.

(10) Perhaps most importantly to this Honorable Court, this case will not advance any faster nor will the issues be resolved any quicker if Mr. Gillespie is jailed.

(11) The only possible interest served by jailing Mr. Gillespie would perhaps be that Mr. Rodems will enjoy some degree of retribution against Mr. Gillespie, although undersigned counsel finds it hard to believe that Mr. Rodems would be so motivated<sup>7</sup>.

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<sup>7</sup> Gillespie believes retribution, not justice, is part of Mr. Rodems' motivation, and to disrupt the appellate process in 2D10-5197, and to force a settlement on terms favorable to Defendants.

17. The Court denied the motion<sup>8</sup>, but offered the parties use of a hearing room Tuesday June 21, 2011 at 10:30AM to conduct a deposition duces tecum. Once the deposition duces tecum was complete the Court would withdraw the arrest order. Transcript, June 16, 2011, page 15:

THE COURT: And, I -- at this point in time,  
14 his coming here is on a voluntary basis. If he  
15 comes in on a voluntary basis on Tuesday, he brings  
16 the documents, including the trust documents, which  
17 I'll review in camera -- okay -- and willing to sit  
18 for a deposition under oath, a full deposition  
19 under oath, then I'll take that all into  
20 consideration; and, and as far as I'm concerned, if  
21 he does produce the documents, he does sit for  
22 deposition, at that point in time, I'd be inclined  
23 to withdraw any pick-up order.

A copy of the transcript of the hearing June 16, 2011 is attached as Exhibit M.

18. Gillespie agreed to the foregoing in an effort to resolve the deposition. Gillespie has always agreed to attend a deposition so long as he is represented by counsel. Gillespie cannot have unmoderated contact with Mr. Rodems on the medical advice of Dr. Karin Huffer, Gillespie's disability advocate. Rodems has a history of harassing and unprofessional behavior with regard to Gillespie, and has a practice of creating a false record of events about Gillespie.

**Mr. Rodems' Threatening Email to Mr. Castagliuolo June 20, 2011**

19. On the eve of the deposition, Mr. Rodems sent a threatening email to Gillespie's counsel Mr. Castagliuolo, Monday, June 20, 2011, 1:22 PM, attached as Exhibit 7.

a. Mr. Rodems announced a "walk-away" settlement, followed by a number of threats if Gillespie did not agree to a settlement agreement attached to the email in PDF.

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<sup>8</sup> Judge Arnold is relatively new to this case, and the Court appears uninformed that Gillespie was always willing to attend a deposition provided he was represented by counsel. The Court also appears uninformed that Gillespie's disability prevents him from appearing at hearings without counsel, or that Gillespie cannot have unmoderated contact with Mr. Rodems. See Plaintiff's Motion For Appointment of Counsel, ADA Request, and Memorandum of Law, May 24, 2011.

“Please advise Gillespie of the following:

We will offer a walk-away once again, and for the final time. Gillespie can avoid the deposition and have the writ of bodily attachment dissolved if he settles his case with us. We offer a “walk-away,” with a release in the form attached. What this means is Gillespie pays us nothing and all of our claims, potential claims, and disputes occurring before tomorrow are fully and finally resolved. You can tell him that If he rejects it, it will never be offered again.”

b. Mr. Rodems threatened the following if Gillespie did not agree to a settlement:

“And, if he rejects it, here is what tomorrow will look like: Once Gillespie arrives at the courthouse, he will be taken into custody by the HCSO deputies and brought before Judge Arnold. He should make no mistake, from the moment he walks in, Gillespie will be in custody. The writ of bodily attachment is in effect, and must be executed the moment any law enforcement office identifies him.”

“I expect Judge Arnold will advise Gillespie that until the deposition is complete, the writ of bodily attachment will remain in full force and effect. What that would mean is that Gillespie will remain in custody until such time as Judge Arnold announces that the writ is dissolved – which will not occur until the deposition is complete.”

“The deputies will be either inside the room or right outside during the deposition. If Gillespie does not bring the documents or he refuses to answer questions, or behaves like he has in past hearings, I will stop the deposition, and advise the deputies that we need to see Judge Arnold. Obviously, Judge Arnold is extremely busy, and he is not going to stop his docket or hearings to rule immediately, and so the HCSO deputies will hold Gillespie in custody until we can find time on the Judge’s calendar to resolve the issues.”

“Gillespie needs to understand that I will not accept any refusals by him to answer my questions, and I will not tolerate any intemperate behavior. He will not threaten to “slam me against the wall,”<sup>9</sup> like he did in the past, he will not yell<sup>10</sup> at me or interrupt me, like he has done in the past. The first time he goes “off the reservation,” like he did when Judge Isom ruled against him<sup>11</sup>, and like he did at the summary judgment hearing before Judge Cook<sup>12</sup>, and like he did when he

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<sup>9</sup> This is typical of Mr. Rodems’ false and disparaging remarks he has made against Gillespie throughout this litigation. The Tampa Police Department investigated Mr. Rodems’ accusation, made in a sworn affidavit dated March 6, 2006. Kibry Rainesberger of the TPD concluded that Mr. Rodems was not right and not accurate in representing to the Court a quote Rodems attributed to Gillespie.

<sup>10</sup> Gillespie did not yell at Mr. Rodems

<sup>11</sup> The transcript of the hearing does not reflect Mr. Rodems’ accusation.

<sup>12</sup> The transcript of the hearing does not reflect Mr. Rodems’ accusation.

threatened me on the telephone<sup>13</sup>, I will suspend the deposition, ask the deputies to take him into custody, and contact Judge Arnold.”

“Also, because this is a deposition under oath, I will need to be assured, through questions and answers, that Gillespie is not under the influence of any substances, legal or otherwise, that affect his memory. I want to be certain that if Gillespie gives me an answer that later proves to be false, he cannot claim physical or mental impairment<sup>14</sup>.”

“This will not be a short deposition. I have no choice but to be as thorough as possible because I will likely not have another opportunity to depose him. He has been spending a lot of money on filing fees<sup>15</sup>, service of process<sup>16</sup>, certified letters<sup>17</sup>, court reporters<sup>18</sup>, his website<sup>19</sup>, etc., so I need to find out where this money is coming from<sup>20</sup>.”

“If Gillespie finds the deposition process exhausting, as he has claimed in the past, and cannot complete it tomorrow, we can go as many days as he requires, but he needs to understand that he will remain in the custody of the HCSO until it is complete<sup>21</sup>.”

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<sup>13</sup> Gillespie did not threaten Mr. Rodems on the telephone.

<sup>14</sup> Gillespie has disabilities that affect his memory. See *Verified Notice of Filing Disability Information of Neil J. Gillespie*, May 27, 2011.

<sup>15</sup> This is a false statement by Rodems. The Courts have waived Gillespie’s last four filing fees.

<sup>16</sup> This is a false statement by Rodems. The last service of process fees Gillespie paid were \$20 each (\$40 total) in 2005 to serve Barker, Rodems & Cook, PA, and Mr. Cook with this lawsuit. Gillespie was unable to pay \$160 in fees to serve four (4) subpoenas for the hearing June 1, 2011.

<sup>17</sup> The cost of certified mail is \$2.85 per letter and is paid from Gillespie’s monthly Social Security disability payment of \$1,741.

<sup>18</sup> Court reporters have made payment arrangements, such as allowing Gillespie to postpone payment until arrival of his monthly Social Security disability payment of \$1,741.

<sup>19</sup> Gillespie’s website is billed quarterly at \$59.97 or about \$20 per month, and is paid from his monthly Social Security disability payment of \$1,741. On one occasion when Gillespie could not pay the bill, court reporter Susan DeMichelle paid the quarterly website bill of \$59.97.

<sup>20</sup> Mr. Rodems knows Gillespie’s financial background from his firm’s prior representation of Gillespie, from depositions in the AMSCOT and ACE Cash Express lawsuits.

<sup>21</sup> This threat to incarcerate Gillespie on an ongoing basis is designed to intimidate him to agree to a settlement.

"The settlement offer is open until 5:00 p.m. today. If he accepts<sup>22</sup>, then you can communicate it by telephone before 5:00 p.m. He can sign the attached tomorrow, but it must be hand-delivered before 10:30 a.m. If it is hand-delivered before 10:30 a.m., I will advise the Judge of the settlement, you and he can probably appear by telephone."

c. Mr. Castagliuolo responded by email (Exhibit 8) Monday, June 20, 2011 at 1:59 PM to the threats made by Mr. Rodems against Gillespie:

"Again, I understand the acrimony that permeates this case, but your e-mail is way too heavy handed...."

"Here's my take on this: I think you should be conducting tomorrow's depo like any other depo in aid of execution in any other case. "Forget" what's happened in the past, at least temporarily for the purposes of ascertaining answers to your 45-46 requests for information. The writ and arrest warrant are not swords of Damacles to be held over my client's head. The writ and arrest warrant are in place to compel his attendance at and good faith participation in your discovery in aid of execution. If after an hour or so of questioning it becomes readily apparent that Mr. Gillespie is without funds to pay your judgment, then an aggressive, lengthy, harassing deposition will have me rather than you calling Judge Arnold."

"The writ and arrest warrant are not your license to verbally punch my client in the face for 3 or 4 hours. As I stated last week before Judge Arnold, my client is a likely candidate for a Chapter 7 BK, and if he goes that route, an exhaustive deposition is a waste of everyone's time, most of all yours, because I can tell just by the way you carry and present yourself that you have far bigger fish to fry."

"I want to get along with you, Chris, lawyer to lawyer. I want to get some satisfaction for all concerned tomorrow, and hopefully, everyone will walk away from the table tomorrow with some degree of relief. But I cannot do so while throwing my client under the proverbial bus, and I will never throw any of my clients under that bus."

"I respectfully suggest that you not place a deadline on the "walk away" offer. Allow me to do my job, to wit: educating my client as to the possible benefits of walking away. But for tomorrow, let's just have a good old-fashioned depo in aid of execution."

"Thank you Chris.....Gene"

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<sup>22</sup> Gillespie responded to, and rejected the offer in writing by email, through Mr. Castagliuolo Monday, June 20, 2011 at 2:53 PM.

### **Gillespie Rejected Mr. Rodems' Settlement Agreement June 20, 2011**

20. Gillespie did not accept Mr. Rodems' "walk-away" settlement offer by the 5:00 PM deadline June 20, 2011. Gillespie rejected the offer by email to Mr. Castagliuolo Monday, June 20, 2011 2:53 PM. A copy of Gillespie's email is attached as Exhibit 9.

This is the text from Gillespie's email to Mr. Castagliuolo:

"Eugene,

Thanks for Rodems' email. Now you know why I could not appear unrepresented with him at a deposition. Rodems' email is a MILD example of how he has conducted himself in this case.

So long as you are by my side I feel confident attending the deposition and getting it behind me.

From what I read in the transcript of the June 16th hearing, Judge Arnold is reasonable, even if he doesn't read much about the case beforehand. If problems develop with Mr. Rodems I think Judge Arnold will be able to resolve the issues, so long as you are present to represent me.

I'm not interested in his walk-away offer. His last walk-away offer was presented in equally dramatic fashion. As I noted before, Mr. Rodems has repeatedly offered a walk-away settlement because if he loses the appeal in 2D10-5197 that could jeopardize his legal career, and that of his partners', who stand accused of fraud and breach of contract against a former client.

Today I was in contact with James Birkhold, Clerk of the 2d DCA about a motion to extend the time for my amended initial brief. After Mr. Birkhold explained the procedure, I drafted another motion to extend the time for 14 days, with the brief due July 6th, see attached.

Mr. Rodems' walk-away agreement mentions the federal lawsuit, Gillespie v. Thirteenth Judicial Circuit, Florida, et al., 5:10-cv-00503-WTH-DAB, pending in the United States District Court, Middle District of Florida, Ocala Division. While I voluntarily dismissed him from the case due to some unbelievable antics, the rest of the case is active, and on June 1, 2011 in response to another matter in the case, I noted that Mr. Rodems previously misled this Court in violation of Rule 11 (b) in pleadings he submitted, and in turn the Court relied upon Mr. Rodems' pleadings as correct and incorporated false or untrue statements in the Court's orders. I sought leave to move for sanctions against Mr. Rodems under Rule 11(C)(2) for making false or untrue statements to this Court in his pleadings. I'm waiting on a response.

Thirdly, Mr. Rodems may have some concern with action by the Florida Bar, where he assisted Mr. Bauer regarding my bar complaint against Bauer. The grievance committee found no probable cause on a 5-0 vote. That decision was so inappropriate that Jim Watson, Chief Branch Discipline Counsel of the Tallahassee Branch, forwarded my concerns to Carl Schwait, the Designated Reviewer. Attached is the email about that, and I'm still waiting for a reply.

So Mr. Rodems may be feeling some heat. If you are a good negotiator and see my point, you might offer a settlement where Rodems pays me. On a contingent basis you would be entitled to whatever the going percentage is; it may be 45% since this is on appeal.

I'm as cool as can be under the circumstances. Nothing Rodems has said today is a surprise to me.

Thanks again.

Neil Gillespie.

#### **Gillespie voluntarily arrived for the deposition June 21, 2011**

21. In a good-faith effort to complete the deposition, Gillespie voluntarily arrived at 9:45 AM June 21, 2011 at the Edgcomb Courthouse, E. 800 Twiggs Street, Tampa. Gillespie met counsel Mr. Castagliuolo at the courthouse on the fifth floor at the door to Judge Arnold's chambers.

#### **Gillespie Fatigued and Sleep Deprived At The Deposition**

22. Gillespie had not slept the night before the deposition, and spent time preparing, and making copies of documents, until about 4:26 AM June 21, 2011. Gillespie left home to drive to the courthouse about 4:26AM shortly after sending Mr. Castagliuolo an email announcing same. Gillespie arrived in Tampa at the Twiggs Street Garage at 6:47 AM. At this time Gillespie had not slept for over 24 hours. Gillespie was exhausted, and mentally fatigued from living in seclusion for the past 21 days to avoid arrest on a writ of bodily attachment.

#### **No ADA Disability Accommodation Provided Gillespie During Deposition**

23. Gillespie was under disability during the deposition, see Verified Notice of Filing Disability Information of Neil J. Gillespie, filed May 27, 2011. Gillespie submitted his ADA

accommodation request (ADA Request), and the ADA Assessment and Report by Dr. Karin Huffer, (ADA Report) to Gonzalo Casares, ADA Coordinator for the Thirteenth Judicial Circuit, February 19, 2010. The ADA Request includes two prior requests dating to 2007. In a letter to Gillespie dated July 9, 2010, David A. Rowland, Counsel to the Thirteenth Judicial Circuit, denied Gillespie's ADA request. Mr. Rowland is a lawyer, not a medical doctor, and therefore unqualified to review the medical report by Dr. Huffer, or grant ADA accommodations based upon the medical report. Dr. Huffer wrote a follow-up letter October 28, 2010 about the lack of ADA accommodations for this deposition. (Exhibit 10). Dr. Huffer wrote in part:

a. "It is against my medical advice for Neil Gillespie to continue the traditional legal path without properly being accommodated. It would be like sending a vulnerable human being into a field of bullies to sort out a legal problem." (p.2, ¶1)

b. Dr. Huffer wrote Gillespie is denied access to the court in violation of Title II:

"As the litigation has proceeded, Mr. Gillespie is routinely denied participatory and testimonial access to the court. He is discriminated against in the most brutal ways possible. He is ridiculed by the opposition, accused of malingering by the Judge and now, with no accommodations approved or in place, Mr. Gillespie is threatened with arrest if he does not succumb to a deposition. This is like threatening to arrest a paraplegic if he does not show up at a deposition leaving his wheelchair behind. This is precedent setting in my experience. I intend to ask for DOJ guidance on this matter." (p. 1, ¶2). (An ADA DOJ complaint was filed by Gillespie April 21, 2011, Exhibit 43)

c. Dr. Huffer noted the abuse power differential in this case:

"Power differential becomes an abusive and oppressive issue between a person with disabilities and the opposition and/or court personnel. The litigant with disabilities progressively cannot overcome the stigma and bureaucratic barriers. Decisions are made by medically unqualified personnel causing them to be reckless in the endangering of the health and well being of the client. This creates a severe justice gap that prevents the ADA from being effectively applied. In our adversarial system, the situation can devolve into a war of attrition. For an unrepresented litigant with a disability to have a team of lawyers as adversaries, the demand of litigation exceeds the unrepresented, disabled litigant's ability to maintain health while pursuing justice in our courts." (p.1, ¶4)

d. Dr. Huffer wrote Gillespie's life and health is at risk:

“Additionally, Neil Gillespie faces risk to his life and health and exhaustion of the ability to continue to pursue justice with the failure of the ADA Administrative Offices to respond effectively to the request for accommodations per Federal and Florida mandates.” (p.2, ¶1)

e. Dr. Huffer determined that Gillespie has sustained permanent injury:

“At this juncture the harm to Neil Gillespie’s health, economic situation, and general diminishment of him in terms of his legal case cannot be overestimated and this bell cannot be unring. He is left with permanent secondary wounds.” (p.1-2).

24. During a hearing May 3, 2011 the record shows Judge Arnold was uniformed about Gillespie’s disability. (Transcript, p7, line 7). Judge Arnold held the hearing ex parte. Gillespie was not present at the hearing and he was not represented by counsel. Mr. Rodems<sup>23</sup> mislead the court about Gillespie’s disability. In order to stop the ignorance and misrepresentation and about Gillespie’s disability, he decided to make this information public.

25. Mr. Rodems often states in pleadings that Gillespie is disabled. For example, Mr. Rodems wrote as following in *Defendants’ Response To Plaintiff’s Motion To Disqualify Judge Barton*<sup>24</sup>: “On May 20, 2010, Plaintiff Neil J. Gillespie filed a second motion to disqualify Judge James M. Barton. Many of the allegations in Gillespie's motion border on delusional. Gillespie has disclosed in several court filings that he suffers from mental illnesses, and he has stated on the record on several occasions that his mental illness affects his ability to represent himself. Clearly, the pending motion -- and the record in this case -- shows this to be an accurate statement.” There is no rule in the Florida Rules of Civil Procedure for opposing counsel to

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<sup>23</sup> Since March 3, 2006, Mr. Rodems has directed, with malice aforethought, a course of harassing conduct toward Gillespie that has aggravated his disability, caused substantial emotional distress, and serves no legitimate purpose.

<sup>24</sup> Per Florida law, Judge Barton was disqualified May 24, 2010 over thousands of dollars paid by Barker, Rodems & Cook, PA to the court reporting company owned by the wife of Judge Barton.

respond to a motion to disqualify a judge. Mr. Rodems' purpose in doing so is to slander Gillespie, and to build a record of hours to obtain attorney's fees in the form of sanctions against Gillespie. This is how Rodems obtained a final judgment against Gillespie for \$11,550 in 2008 that led to this deposition.

#### **Gillespie In Custody of HCSO Over 4 Hours During Deposition**

26. The court reporting company informed Gillespie that the deposition ran 4 hours and 24 minutes, from 10:38 AM to 3:02 PM.. Gillespie was taken into custody by the Hillsborough County Sheriff's Office (HCSO) as described in Mr. Rodems' email. Gillespie met and spoke with Major James Livingston, Commander of the Court Operations Division, HCSO. Gillespie provided Major Livingston a copy of Mr. Rodems' email of June 20, 2011 and Livingston read it immediately. Gillespie was flanked on both sides by HCSO Deputies Larry Berg and Deputy Olding at all times during the deposition, even when he took a bathroom break. The deputies also heard Gillespie's confidential attorney-client communication with Mr. Castagliuolo.

#### **Gillespie Testified He Was Under Disability During Deposition**

27. Mr. Rodems began the deposition as stated in his email to Mr. Castagliuolo sent 1:22 PM June 20th (Exhibit K) by questioning Gillespie if he was under the influence of any substances, legal or otherwise, that affect his memory. Gillespie responded that he is disabled and that one disability, depression is a disability that affects his memory. Gillespie testified that he recently consulted his doctor about memory lapses and declining memory. Gillespie referred Mr. Rodems to his Verified Notice Of Filing Disability Information of Neil J. Gillespie filed May 27, 2011.

#### **Mr. Rodems Verbally Punched Gillespie In Face For Over Four Hours**

28. Mr. Rodems was angry and abusive in questioning Gillespie. Rodems yelled at Gillespie on a number of occasions. Rodems had a personal vendetta against Gillespie. At one point

Rodems complained that his photo and that of his partners appeared on Gillespie's website. This behavior was consistent with threats Mr. Rodems made in his email sent to Mr. Castagliuolo at 1:22 PM June 20th. Prior to the deposition Castagliuolo responded to Rodems in part, "The writ and arrest warrant are not your license to verbally punch my client in the face for 3 or 4 hours." But that happened. Gillespie was forced to answering improper, harassing, and irrelevant questions by Mr. Rodems, and Gillespie could not object, or Rodems would suspend the deposition, as per his email:

"Gillespie needs to understand that I will not accept any refusals by him to answer my questions,...The first time he goes "off the reservation",...I will suspend the deposition, ask the deputies to take him into custody, and contact Judge Arnold." (Exhibit 7)

Mr. Rodems' tactics included questions and references about the death of Gillespie's pet bunny Fluffy, and the death of Gillespie's Mother<sup>25</sup>, which were improper to a deposition in aid of execution, and had nothing to do with the case where Mr. Rodems and his partners stole \$7,143 from Gillespie in the settlement of a prior case. Mr. Rodems was using a form of torture against Gillespie, psychologically coercive techniques against a disabled person to either break Gillespie or reduce him to a state where he could not proceed, at which point Rodems would offer a Settlement Agreement on terms favorable to Rodems and the Defendants.

### **Gillespie Unable To Continue Deposition**

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<sup>25</sup> Gillespie contends that Judge Barton was negligent in the management of this case contrary to Rule 2.545, and caused this case to substantially exceed the time limits of Rule 2.250(a)(1)(B), thereby disrupting the care of Ms. Gillespie. Judge Barton was also negligent in his failure to conduct a hearing on a "Claim Of Exemption And Request For Hearing" served August 14, 2008 by Gillespie's attorney Robert Bauer, there by denying support for Ms. Gillespie. Gillespie however bears ultimate responsibility, and is reminded of this fact each time the issue is raised by Mr. Rodems, which is about once a month in his pleadings and other writings.

29. Gillespie continued his good-faith effort to respond to questions from Rodems, but comments by Mr. Castagliuolo show Gillespie was struggling with disability. Mr. Castagliuolo told Gillespie “you are thinking too much” in responding to questions. ‘Thinking too much’ - or hypervigilance, is a symptom of Post Traumatic Stress Disorder (PTSD) which Gillespie suffers. As the deposition progressed Gillespie became inarticulate, disoriented, and began guessing or speculating at answers to questions. For example, Mr. Castagliuolo had to clarify on behalf of Gillespie that emails to Gillespie’s brother only forwarded mortgage foreclosure letters from the bank, and any reference to the trust-owned home was in that context, and not, as Mr. Rodems maintains, evidence that Gillespie receives income from a trust.

#### **More Threats From Mr. Rodems**

30. Mr. Rodems demanded to see every email from Gillespie to his brother described in the preceding paragraph. Since Gillespie did not have immediate access to the emails, Rodems announced plans to keep the deposition open until the documents were provided. Gillespie realized that it was a mistake to voluntarily appear for a deposition at the courthouse, because in doing so Mr. Rodems held the keys to Gillespie’s release, transforming Gillespie from a civil contemnor to a defacto incarcerated inmate, as per Rodems’ email:

“If Gillespie finds the deposition process exhausting, as he has claimed in the past, and cannot complete it tomorrow, we can go as many days as he requires, but he needs to understand that he will remain in the custody of the HCSO until it is complete.” (Exhibit 7)

Mr. Rodems also launched a new round of threats against Gillespie. Mr. Rodems stated that he had accumulated 130 hours of attorneys fees responding to Gillespie’s pleadings that Rodems considered inappropriate. Rodems said he would seek sanctions against Gillespie for 130 hours of attorneys fees. In the past the Court awarded Mr. Rodems \$11,550 in sanctions at \$350 per hour in attorney’s fees for Gillespie’s discovery errors and a misplaced defense of economic loss

to Rodems' libel counterclaim<sup>26</sup>. Based upon Rodems' threat, 130 hours of sanctions would amount to \$45,500. Mr. Rodems also threatened something about bringing the Marion County Sheriff to Gillespie's home in his effort to collect a judgment for attorney's fees. And Rodems made reference to Gillespie wearing "orange pajamas" issued by the HCSO. The details of the threats were not clear to Gillespie because he was disoriented and Rodems was yelling at a fast pace.

### **Gillespie Signed Papers to Gain Release From Custody, Escape Rodems' Abuse**

31. Because of the forgoing, Gillespie was under extreme stress, duress, undue influence, disability or incapacity, sleep deprivation, lack of informed consent, and otherwise not free to form or give his consent to the settlement. Gillespie mistakenly signed papers, a contract of adhesion, to gain release from custody, and to escape the abusive and threatening behavior of Mr. Rodems. Gillespie was also worried about his pet bunny Ginger at home in Ocala, 100 miles away, if he were incarcerated for any length of time in Tampa. Gillespie lives alone and his nearest relative lives over one thousand (1,000) miles away. Ginger would likely die of starvation.

### **Deposition Fraud By Mr. Rodems**

32. This deposition was not for a legitimate purpose, aid in execution, but instead was used by Mr. Rodems to force Gillespie to settle this lawsuit on terms dictated by Rodems. This was Mr. Rodems' fraud on Gillespie and fraud the Court. Gillespie appeared in a good faith effort to resolve the deposition and Rodems acted in bad faith.

### **Settlement Fraud By Mr. Rodems**

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<sup>26</sup> The libel counterclaim was an abuse of process, which Rodems later dismissed.

33. The Settlement Agreement and General Mutual Release prepared by Mr. Rodems is void or voidable as **Fraud**. The document is a fraud on Gillespie. Gillespie does not completely understand the agreement, and his attorney Eugene Castagliuolo did not explain it to him, but it appears that Mr. Rodems is attempting to settle claims against third parties that are not part of the dispute in Neil J. Gillespie v. Barker, Rodems & Cook, PA, and William J. Cook, Case No. 05-CA-007205, Hillsborough County, Florida. Assignment of third party claims WAS NEVER DISCUSSED OR AGREED UPON.

34. Gillespie never knowingly agreed to assign any claims in Gillespie v. Thirteenth Judicial Circuit, Florida, et al., Case No. 5:10-cv-00503, US District Court, MD Florida, Ocala Division. Mr. Castagliuolo did not discuss or explain what the assignment meant. Gillespie only learned about the assignment late Wednesday night, June 29, 2011 while looking at the case docket on PACER. Mr. Rodems never served a copy of the Notice of Assignment Of Claims And Motion For Dismissal Of Action With Prejudice as required.

35. The foregoing notwithstanding, settlement agreement is missing a number of items discussed prior to Gillespie signing. Gillespie was concerned that Rodems would sue him for libel over Gillespie's website. Rodems promised that he would allow Gillespie seven days to remove any defamatory information about Rodems or the Defendants. That language is not found in the settlement. Furthermore, Gillespie does not plan to speculate over what Rodems may consider defamatory. Gillespie contends there is nothing libelous about Rodems or the Defendants on the website. Before Gillespie could agree to any settlement, it must specify exactly what Mr. Rodems believes is defamatory. This agreement makes no mention whatsoever about Gillespie's website, and therefore does not reflect the agreement between the parties.

**Negligence of The Hillsborough County Sheriff's Office (HCSO)**

Section 950.09, Florida Statutes (2010) Malpractice by jailers.—If any jailer shall, by too great duress of imprisonment or otherwise, make or induce a prisoner to disclose and give evidence against some other person, or be guilty of willful inhumanity and oppression to any prisoner under his or her care and custody, the jailer shall be punished by removal from office and shall be guilty of a misdemeanor of the second degree, punishable as provided in s. 775.082 or s. 775.083.

36. Major James Livingston serves as the Commander of the Court Operations Division of the Hillsborough County Sheriff's Office (HCSO). The Division is responsible for all aspects of security at the Courthouse Complex, which includes the Edgecomb Courthouse. The Division also includes the Civil Process Section which serves approximately 150,000 court-related documents each year.

37. According to the HCSO website, Major Livingston previously worked for the Federal Bureau of Investigation (FBI) where he retired as a Supervisory Special Agent after a 22-year career. Major Livingston also earned a Law Degree in 1983 and a Bachelor's Degree in Criminal Justice in 1977, both from the University of Memphis.

38. Gillespie first contacted Major Livingston November 13, 2010 by certified mail about Circuit Judge Martha Cook who knowingly and willfully falsified<sup>27</sup> records in this case, including falsification of the Order Adjudging Plaintiff Neil J. Gillespie Contempt, September 30, 2010, the order that forms the basis for the warrant to arrest Gillespie on a writ of bodily attachment. Judge Cook falsely wrote in the contempt order that Gillespie voluntarily left the

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<sup>27</sup> Gillespie accused Judge Cook of a violation chapter 839, Florida Statutes, section 839.13(1) if any judge shall falsify any record or any paper filed in any judicial proceeding in any court of this state, or conceal any issue, or falsify any document filed in any court or falsify any minutes or any proceedings whatever of or belonging to any public office within this state the person so offending shall be guilty of a misdemeanor of the first degree, punishable as provided in s. 775.082 or s. 775.083.

hearing when in fact Judge Cook ordered Gillespie removed by HCSO Deputy C.E. Brown after Cook learned Gillespie filed a federal lawsuit against her and the Thirteenth Judicial Circuit<sup>28</sup>.

39. Gillespie originally brought the problem of Judge Cook's falsification of records to the attention of Colonel James Previterra<sup>29</sup>, Commander of the Department of Detention Services, and supervisor of Major Livingston. Previterra did not respond. Gillespie spoke by telephone with Major Livingston November 23, 2010 about Judge Cook's falsification of the Order Adjudging Plaintiff Neil J. Gillespie Contempt, and Major Livingston agreed to investigate the matter.

40. Major Livingston emailed Gillespie January 12, 2011 and provided a letter that stating he made contact with Deputy Christopher E. Brown and Brown advised that Judge Cook ordered Gillespie to leave the courtroom. (Exhibit 11). This impeached Judge Cook's order where she wrote Gillespie voluntarily left the hearing. Major Livingston also wrote the following:

“As we discussed on the telephone today, you expressed some concern over your personal safety while in the courthouse due to a disability and due to a potential threat from opposing counsel<sup>30</sup>. Please let me know the date and time of your next visit to the courthouse and we will take action to help ensure a safe and orderly visit. Please feel free to contact me with any additional questions or concerns.”

41. Gillespie made an affidavit April 25, 2011 attesting to the fact that Major Livingston provided a letter that impeached Judge Cook's Order Adjudging Plaintiff Neil J. Gillespie In Contempt. (Exhibit 12).

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<sup>28</sup> Gillespie v Thirteenth Judicial Circuit, et al, Case No. 5:10-cv-00503, US District Court, MD Florida, Ocala.

<sup>29</sup> Gillespie initially provided Col. Previterra on September 27, 2010 his affidavit showing Judge Cook falsified a record about Gillespie's panic attack during a hearing July 12, 2010. Gillespie followed up with a fax letter to Col. Previterra October 7, 2010 with a new accusation that Judge Cook falsified the Order Adjudging Plaintiff Neil J. Gillespie Contempt, September 30, 2010.

<sup>30</sup> Ryan Christopher Rodems, Florida Bar ID No. 947652.

42. Gillespie requested by letter April 20, 2011 to Major Livingston a criminal investigation of Judge Martha J. Cook and Attorney Ryan Christopher Rodems under chapter 825, Florida Statutes, Abuse, Neglect, and Exploitation of Elderly Persons and Disabled Adults. A copy of the letter is attached as Exhibit 14. Livingston responded by email May 2, 2011 in part:

“You are under a misunderstanding concerning my official role at the Courthouse—my primary responsibility is to ensure the safety and security of the Courthouse Complex facilities, its occupants, and members of the public who are visiting or conducting business here. Any investigation of Judge Cook will have to be done by another investigative entity.”

Major Livingston did not respond to Gillespie’s question about what investigative entity would consider the complaint.

43. Because Major Livingston provided a letter impeaching Judge Cook’s Order Adjudging Plaintiff Neil J. Gillespie Contempt, Gillespie obtained the following subpoenas for the June 1, 2011 Evidentiary Hearing before Judge Arnold on the Order Adjudging Plaintiff Neil J. Gillespie Contempt. The following subpoenas were issued by the Clerk of the Court after Gillespie paid the \$2.00 fee each, and copies along with the cash receipt are attached as Exhibit 15:

a. Subpoena Duces Tecum, Major James P. Livingston, to bring his letter of January 12, 2011 to the hearing and testify; to impeach Judge Cook’s Order Adjudging Plaintiff Neil J. Gillespie Contempt.

b. Subpoena Duces Tecum, Ryan Rodems, to bring Gillespie’s letter of November 8, 2010 agreeing to appear for a deposition, and to testify; to impeach Rodems’ prior testimony that Gillespie refused to appear for a deposition unless arrested on writ of bodily attachment.

c. Subpoena, Deputy Christopher E. Brown, to appear and testify that that he removed Gillespie from the hearing before Judge Cook; to impeach Judge Cook’s Order Adjudging Plaintiff Neil J. Gillespie Contempt.

d. Subpoena, Donna Healy, Associate Courts Director, to appear and testify that Judge Cook instructed Healy to docket and file Gillespie's confidential ADA disability information in the public court file.

44. Gillespie was not able to serve the subpoenas in the preceding paragraph because he is indigent. Gillespie could not afford to pay \$40 each (\$160 total) to serve the four subpoenas. Gillespie applied to the Clerk of the Court for relief under section 57.082 Florida Statutes. The Clerk denied the request contrary to the statute, which requires a determination of civil indigent status using an application form developed by the Florida Clerks of Court Operations Corporation with final approval by the Supreme Court. The Clerk refused to provide Gillespie the form. The Clerk referred Gillespie to Judge Arnold to appeal its denial. The Clerk denied Gillespie contrary to section 57.082(d), the duty of the clerk in determining whether an applicant is indigent is limited to receiving the application and comparing the information provided in the application to the criteria prescribed in this subsection. The determination of indigent status is a ministerial act of the clerk and may not be based on further investigation or the exercise of independent judgment by the clerk. The email exchange between the Clerk and Gillespie showing the preceding events is attached as Exhibit 16.

45. Because of the forgoing, Major Livingston knew or had reason to believe that the Order Adjudging Plaintiff Neil J. Gillespie In Contempt was not accurate and should not be relied upon to cause the arrest of Gillespie on a writ of bodily attachment. Major Livingston was also provided emailed copies of the following:

a. Petition for Writ of Prohibition, Motion for Change of Venue, 2dDCA, to remove J. Arnold and the Thirteenth Judicial Circuit, May 2, 2011, Case No. 2D11-2127

b. Petition for Writ of Prohibition and Habeas Corpus, Florida Supreme Court, to remove J. Arnold and the Thirteenth Judicial Circuit, May 3, 2011, Case No. SC11-858.

46. Major Livingston is sworn to support, protect, and defend the Constitution and Government of the United States and of the State of Florida. Major Livingston attended law school and earned a law degree, and knows or should know, that Judge Cook falsified records and denied Gillespie due process, and that the Court misused or denied Gillespie judicial process under the color of law in an effort to incarcerate him. Because of the foregoing Major Livingston had an affirmative duty to act to prevent the wrongful issuance of an arrest warrant for Gillespie on a writ of bodily attachment. Major Livingston failed to act and is negligent.

47. Major Livingston was present June 21, 2011 at the Edgecomb Courthouse and personally met Gillespie, who voluntarily appeared for the deposition. Gillespie provided Major Livingston a copy of Mr. Rodems' email sent Monday 1:22 PM June 20, 2011 (Exhibit 7) which Livingston immediately read. Mr. Rodems' email showed that he intended to misuse the deposition to force Gillespie to settle the lawsuit on terms favorable to Rodems and the Defendants.

48. Following the deposition Gillespie emailed Major Livingston June 22, 2011 and provided a draft copy of a motion to set aside the settlement, raised policy concerns, and asked "...how far the HCSO will go to deny the rights of a civil litigant being held in custody at the whim of an angry lawyer to force a settlement and dismissal with a former client under a disability." Major Livingston responded in relevant part "As I explained to you yesterday, Judge Arnold is in charge of this case, not the HCSO or Mr. Rodems. The HCSO was complying with the specific orders and instructions of Judge Arnold." Major Livingston would not describe what "specific orders and instructions of Judge Arnold" were provided, nor what information was provided to

the Marion County Sheriff where Gillespie resides. Instead Major Livingston referred Gillespie to the various record sections of the HCSO, the Clerk and the Court.

49. Because of the foregoing, there is reason to believe Major Livingston and/or the HCSO violated Section 950.09, Florida Statutes (2010) Malpractice by jailers: “If any jailer shall, by too great duress of imprisonment or otherwise...be guilty of willful inhumanity and oppression to any prisoner under his or her care and custody, the jailer shall be punished by removal from office and shall be guilty of a misdemeanor of the second degree, punishable as provided in s. 775.082 or s. 775.083.”

### **The Thirteenth Judicial Circuit Has A Conflict With Gillespie**

50. The Thirteenth Judicial Circuit has a conflict hearing the lawsuit #05-CA-007205 with Gillespie, as the Thirteenth Circuit is a defendant in Gillespie v. Thirteenth Judicial Circuit, Florida, et al, Case No. 5:10-cv-00503, US District Court, MD Florida, Ocala. The fact that Mr. Rodems committed fraud<sup>31</sup> on Gillespie to obtain a settlement, while in essence serving as counsel for the Thirteenth Circuit, is just one more conflict of interest.

### **Conclusion**

51. Gillespie commenced two pro se lawsuits in August 2005 because he could not find or afford counsel to represent him. One lawsuit in This Federal District Court, Ocala, involved a credit card dispute, Gillespie v. HSBC Bank, et al, Case No. 5:05-cv-362-Oc-WTH-GRJ, US District Court, Middle District of Florida, Ocala Division. The HSBC lawsuit was resolved a year later with a good result for the parties. Gillespie was able to work amicably with the counsel for HSBC Bank, Traci H. Rollins and David J. D’Agata, counsel with Squire, Sanders & Dempsey, LLP and the entire case was concluded in 15 months. The other case Gillespie

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<sup>31</sup> See paragraphs 33, 34, and 35 of this motion.

commenced in August 2005 is Neil J. Gillespie v. Barker, Rodems & Cook, PA, and William J. Cook, Case No. 05-CA-007205, Circuit Civil Division, Thirteenth Judicial Circuit. The only relevant difference in the two cases is Ryan Christopher Rodems. Mr. Rodems' exercise of independent professional judgment is materially limited by his personal conflict and interest in this lawsuit by a former client to recover \$7,143 stolen by Barker, Rodems & Cook, PA and William J. Cook from Gillespie during prior representation on a matter that is the same or substantially similar as the prior representation.

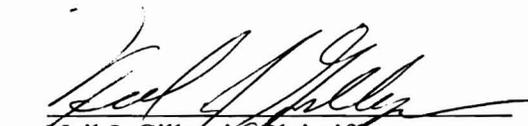
52. Our legal system depends upon the integrity of individual members of the bar and bench to follow the rules and codes of the legal profession and the judiciary. That integrity has broken down in this case making it impossible to fairly resolve in the Thirteenth Judicial Circuit. The practice of law is a profession the purpose of which is to supply disinterested counsel and service to others using independent professional judgment. In this case opposing counsel's independent professional judgment is materially limited by his own interest and conflict. Deference to the judgments and rulings of courts depends upon confidence in the integrity and independence of judges. In this case Judge Cook abandoned her integrity and independence by acting in the interest of opposing counsel. Both Mr. Rodems and Mr. Cook paid money to Judge Cook's judicial election campaign. Judge Cook returned the favor by falsifying court records to protect Mr. Rodems and Mr. Cook from paying Gillespie \$7,143 stolen from him. In the grand scheme of things, \$7,143 is relatively insignificant. The integrity of our courts however is paramount.

53. The Settlement Agreement And General Mutual Release, June 21, 2011, the Notice Of Dismissal With Prejudice in 2D10-5197, and Joint Stipulation For Dismissal With Prejudice, Case No. 05-CA-007205 Hillsborough County, Florida, made by Gillespie while in custody of the Hillsborough County Sheriff's Office (HCSO) on civil contempt must be set aside, and is

void or voidable, as set forth in this motion. There was no manifestation of mutual assent, a "meeting of the minds", or agreement to the terms of the settlement. Rather, Gillespie was impaired by disability and sleep deprivation and threatened while in custody of the HSCO and agreed to act to get out of custody. Gillespie's former counsel, Mr. Castagliuolo, breached his professional duty to Gillespie. The settlement agreement, prepared in advance by Mr. Rodems, is a fraud, and a mirror of Rodems' manifestation of mutual assent, not the manifestation of assent by Gillespie who was forced or induced to assent to the terms of the contract while disabled, exhausted, and in custody of the HSCO. Therefore the mutual meeting of the minds "in truth" does not exist. Since there is no mutual meeting of the minds there can be no settlement, and the settlement is void or voidable.

WHEREFORE, Appellant pro se Gillespie moves to reinstate the dismissed appeal.

RESPECTFULLY SUBMITTED July 1, 2011.

  
Neil J. Gillespie, Plaintiff pro se  
8092 SW 115<sup>th</sup> Loop  
Ocala, Florida 34481  
(352) 854-7807

Certificate of Service

I HEREBY CERTIFY that a copy of the foregoing was mailed July 1, 2011 to Ryan C. Rodems, 400 North Ashley Drive, Suite 2100, Tampa, Florida 33602.

  
Neil J. Gillespie