

IN THE CIRCUIT COURT FOR THE ELEVENTH JUDICIAL CIRCUIT
IN AND FOR MIAMI-DADE COUNTY, FLORIDA
GENERAL JURISDICTION DIVISION

MICHAEL V. LAURATO,

Plaintiff,

CASE NO. 11-09972CA21

vs.

DEMAND FOR JURY TRIAL

SUSAN DeMICHELLE,

Defendant.

ANSWER AND AFFIRMATIVE DEFENSES

Defendant Susan DeMichelle, a pro se, nonlawyer, California Court Reporter
answers the Plaintiff's Complaint, demands trial by jury, and alleges:

1. As to paragraph 1 of the Complaint, Defendant denies the allegations.
2. As to paragraph 2 of the Complaint, Defendant denies the allegations.
3. As to paragraph 3 of the Complaint, Defendant denies the allegations.
4. As to paragraph 4 of the Complaint, Defendant denies the allegations.
5. As to paragraph 5 of the Complaint, Defendant denies the allegations.
6. As to paragraph 6 of the Complaint, Defendant denies the allegations.

COUNT I

(DEFAMATION/LIBEL PER SE)

7. As to paragraph 7 of the Complaint, Defendant denies the allegations.
8. As to paragraph 8 of the Complaint, Defendant denies the allegations.
9. As to paragraph 9 of the Complaint, Defendant admits Plaintiff is an attorney; otherwise Defendant denies the allegations.

10. As to paragraph 10 of the Complaint, Defendant denies the allegations.
11. As to paragraph 11 of the Complaint, Defendant denies the allegations.
12. As to paragraph 12 of the Complaint, Defendant denies the allegations.
13. As to paragraph 13 of the Complaint, Defendant denies the allegations.
14. As to paragraph 14 of the Complaint, Defendant denies the allegations.
15. As to paragraph 15 of the Complaint, Defendant denies the allegations.
16. As to paragraph 16 of the Complaint, Defendant denies the allegations.
17. As to paragraph 17 of the Complaint, Defendant denies the allegations.
18. As to paragraph 18 of the Complaint, Defendant denies the allegations.

COUNT II

(DEFAMATION/LIBEL PER QUOD)

19. As to paragraph 19 of the Complaint, Defendant denies the allegations.
20. As to paragraph 20 of the Complaint, Defendant denies the allegations.
21. As to paragraph 21 of the Complaint, Defendant denies the allegations.

COUNT III

(INVASION OF PRIVACY/FALSE LIGHT/RIGHT OF PUBLICITY)

22. As to paragraph 22 of the Complaint, Defendant denies the allegations.
23. As to paragraph 23 of the Complaint, Defendant denies the allegations.
24. As to paragraph 24 of the Complaint, Defendant denies the allegations.
25. As to paragraph 25 and subparts a-d of the Complaint, Defendant denies the allegations.
26. As to paragraph 26 of the Complaint, Defendant denies the allegations.
27. As to paragraph 27 of the Complaint, Defendant denies the allegations.
28. As to paragraph 28 of the Complaint, Defendant denies the allegations.

COUNT IV

(INJUNCTIVE RELIEF)

- 29. As to paragraph 29 of the Complaint, Defendant denies the allegations.
- 30. As to paragraph 30 of the Complaint, Defendant denies the allegations.
- 31. As to paragraph 31 of the Complaint, Defendant denies the allegations.
- 32. As to paragraph 32 of the Complaint, Defendant denies the allegations.
- 33. As to paragraph 33 of the Complaint, Defendant denies the allegations.
- 34. As to paragraph 34 of the Complaint, Defendant denies the allegations.

AFFIRMATIVE DEFENSES

- 35. Truth is an absolute defense to defamation in Florida and in the United States. In Haines v. Kerner, 404 U.S. 520 (1971) the United States Supreme Court found that pro se pleadings should be held to "less stringent standards" than those drafted by attorneys.
- 36. Defendant's website blog is constitutionally protected speech under the First Amendment of the Constitution of the United States. Defendant's website blog is constitutionally protected speech under the Constitution of the State of Florida, Article 1, Section 4:

SECTION 4. Freedom of speech and press.—Every person may speak, write and publish sentiments on all subjects but shall be responsible for the abuse of that right. No law shall be passed to restrain or abridge the liberty of speech or of the press. In all criminal prosecutions and civil actions for defamation the truth may be given in evidence. If the matter charged as defamatory is true and was published with good motives, the party shall be acquitted or exonerated.

Defendant Susan DeMichelle is a court reporter and lacks the necessary financial resources to obtain cross-country representation, or even appear for the scheduled hearing. She uses this website blog to exercise her right to free speech. It contains statements of fact supported by documentation, where possible. Should one peruse it, one will find that her posts do little

more than give Plaintiff Laurato a dose of his own medicine, which is chronicled in detail in an October, 2010 St. Petersburg Times article titled "Brash Tampa lawyer attracts attention, both good and bad". In the story, Plaintiff Laurato actually bragged about being expelled from school as a youth for throwing a paper ball at a nun. Despite his claims, this recent article highlights the fact that Plaintiff Laurato revels in being locally infamous for the type of behavior described on the website. Defendant believes that this is one of the reasons he filed the claim in Miami rather than Hillsborough County, as his reputation would have preceded him in any Tampa courtroom.

As published at various outlets, Mr. Laurato has substantial "issues" that were made publicly known by him through his own activities. This website merely summarizes details that were publicly known prior to Defendant's posts. Any damages Mr. Laurato has incurred are the results of his own actions, which include a recent arrest, multiple Florida Bar investigations and/or complaints, and a June 7, 2011 findings of attorney misconduct by the Florida Supreme Court (Case No. SC09-1953). Mr. Laurato has not been damaged by this website any more than he was damaged by the same information being published in postings to the Hillsborough County Sheriff website, local newspapers, the Florida Supreme Court's opinions pages, or the Florida Bar's various methods of public reprimand.

Defendant does not believe that her website defames Mr. Laurato in any way, nor does she think he has provided sufficient citations of defamation. Defendant hopes that the Court will agree and dismiss this case. In the alternative, Defendant believes the case should be dismissed on jurisdictional grounds as set forth in paragraph 40 below.

Plaintiff's Complaint Failed To State A Cause of Action

37. Plaintiff's Complaint failed to state a cause of action. A plaintiff who wishes to sue an individual or entity for libel or slander has the burden of proving four claims to a court: First, the

plaintiff must show that the Defendant communicated a defamatory statement. Second, the plaintiff must show that the statement was published or communicated to at least one other person besides the plaintiff. Third, the plaintiff must show that the communication was about the plaintiff and that another party receiving the communication could identify the plaintiff as the subject of the defamatory message. Fourth, the plaintiff must show that the communication injured the plaintiff's reputation.

38. Argument: Plaintiff Michael Laurato has a bad reputation in the state of Florida. According to the Formal Complaint in The Florida Bar v. Michael Vincent Laurato, TFB NO. 2007-11,274 (13D), Plaintiff Laurato was charged by The Florida Bar with violating the following Rules of Professional Conduct:

Rule 4-8.4(c), conduct involving dishonesty, fraud, deceit, and misrepresentation; and, Rule 4-8.4(d), conduct prejudicial to the administration of justice.

Plaintiff Laurato was convicted of professional misconduct and found guilty by the Florida Supreme Court in Case No.: SC09-1953. Plaintiff Laurato received a Public Reprimand June 7, 2011 and was ordered to pay costs of \$4,002.22. Plaintiff Laurato's directory listing with The Florida Bar shows he has a discipline history within the last ten years, that he received a public reprimand, that the action date was June 7, 2011, and that the reference number is 200711274. A copy of Plaintiff Laurato's directory listing with The Florida Bar is attached as Exhibit 1. A copy of the Formal Complaint in The Florida Bar v. Michael Vincent Laurato, TFB NO. 2007-11,274 (13D) is accessible from Plaintiff Laurato's directory listing with The Florida Bar, and is attached as Exhibit 2. Because the Florida Bar and the Florida Supreme Court found that Plaintiff Laurato engaged in conduct involving dishonesty, fraud, deceit, and misrepresentation, and the conduct was prejudicial to the administration of justice, Plaintiff has been adjudged a bad actor, and he

has a bad reputation. Defendant did not communicate a defamatory statement about Plaintiff, or make such statement to a third party, or make a statement that injured the Plaintiff's reputation. Plaintiff has been adjudged a bad actor by the Florida Bar and the Florida Supreme Court.

False Light Not Viable Cause of Action in Florida

39. False light is not a viable cause of action in Florida. The Florida Supreme Court held in Rapp v. Jews for Jesus, Inc., 944 So. 2d 460 (Fla. 4th DCA 2006) (Fla. Case No. SC06-2491) that false light was not a viable cause of action in this state. Florida does not recognize the tort of false light "because the benefit of recognizing the tort, which only offers a distinct remedy in relatively few unique situations, is outweighed by the danger in unreasonably impeding constitutionally protected speech." The Florida Supreme Court reaffirmed Rapp in Gannett Co. v. Anderson, 947 So. 2d 1 (Fla. 1st DCA 2006), (Fla. Case No. SC06-2174).

Improper Jurisdiction

40. Improper jurisdiction. This action should be dismissed on the grounds that it has not been filed in the appropriate jurisdiction. Defendant is a California resident, and Plaintiff Laurato is a resident of Hillsborough County. Filing in Miami-Dade County is, at the very least, arbitrary and inconvenient to both parties, but also restricts Defendant's ability to defend herself. The merits of this case, if any, should be considered by the California court that has proper personal jurisdiction over such matters. Plaintiff's reliance on Internet Solutions Corp. v. Marshall, 39 So.3d 1201 (Fla. 2010) for jurisdiction is misplaced because that is a federal lawsuit that pled diversity of citizenship, and this is a state lawsuit. Furthermore, in the interest of judicial economy, Plaintiff's lawsuit, if it can be brought in a Florida state court, should be brought in Hillsborough County, the same jurisdiction where Plaintiff and Defendant are currently litigating the issues that give rise to Defendant's blog and the issues in this case.

Plaintiff Laurato Is A Bad Actor And Has A Bad Reputation

41. Plaintiff Michael V. Laurato was convicted June 7, 2011 of violating the following Rules of Professional Conduct, Rules Regulating The Florida Bar:

Rule 4-8.4(c), Conduct involving dishonesty, fraud, deceit, and misrepresentation; and, Rule 4-8.4(d), conduct prejudicial to the administration of justice.

Plaintiff Laurato was a defendant in a civil action styled Celebrity Carpets and Interiors, Inc., d/b/a Naffco v. Michael V. Laurato, Case Number 05-CA-2728 in the Circuit Court of the Thirteenth Judicial Circuit, Hillsborough County. This matter forms the basis of a Florida Bar Formal Complaint against Mr. Laurato in case TFB No.: 2007-11,274 (13D). (Exhibit 2). Count I of the Formal Complaint alleged that Plaintiff Laurato lied to a process server to obstruct justice. Count II of the Formal Complaint alleged that Plaintiff Laurato lied under oath at a deposition in the civil action to obstruct justice. The Bar's Report of Referee (Exhibit 3) found cause on Count II of the Formal Complaint, that Plaintiff Laurato lied under oath at a deposition in the civil action to obstruct justice. The Referee wrote as follows:

“B. As to Count II: Having reviewed the file and having heard all of the evidence, I recommend that Respondent be found guilty of violating Rule 4-8.4(c) and (d), Rules Regulating the Florida Bar. The Florida Bar did meet their burden of proof of clear and convincing evidence that respondent's testimony under oath at a deposition in a civil action was false, in violation of Florida Rules Regulating the Florida Bar, Rule 4-8 (c) and (d). Florida Bar v. Rood, 622 So. 2d 974, 977 (Fla. 1993). The evidence at trial established that Respondent's misconduct in this case was knowing and deliberate. Fla. Bar v. Fredericks, 731 So. 2d 1249, 1252 (Fla. 1999). Respondent's deposition has few direct answers; and most answers were contradictory even within the same answer. Some answers were sarcastic, flippant, argumentative and nonresponsive. Responses were often irrelevant, illogical and nonsensical and even included name calling. Specifically, with regard to the question posed at deposition as to whether or not respondent had ever been sued for breach of contract, I find Respondent's statement to be unresponsive and puffery. In the deposition Respondent cites to construction case examples and then does not respond to the question. Instead, Respondent provided a long narrative of unresponsive answers. Furthermore, Respondent testified at trial that he still does not believe that he

has ever been sued for breach of contract (prior to his 2006 deposition). In light of all of the evidence, I find that the Bar has met its burden of clear and convincing evidence as to Count II. In re Davey, 645 So. 2d 398, 404 (Fla. 1994).”

The Florida Bar filed an Initial Brief in the Florida Supreme Court, Case No.: SC09-1953, attached as Exhibit 4 and states:

“The Referee found Respondent guilty of violating Rule 4-8.4(c) and Rule 4-8.4(d) for his testimony during the deposition. In addition to that specific false statement, the Referee found that Respondent’s testimony was “sarcastic, flippant, argumentative and nonresponsive” and also that Respondent’s answers during the deposition “were often irrelevant, illogical and nonsensical and even included name calling.” Report, p.6.

In “Summary of the Argument”, Bar Counsel Troy Matthew Lovell wrote:

“Respondent’s conduct of giving false testimony under oath in a legal proceeding is serious misconduct which requires suspension. The relevant authority does not support the Referee’s recommendation of a public reprimand; the Referee mistakenly relied on settlements which do not constitute relevant precedent and on older cases which do not reflect this Court’s current approach to attorney discipline.”

In the “Argument” section, Mr. Lovell wrote:

“This Court has long considered dishonesty under oath by an attorney to be an extremely serious offense. “No breach of professional ethics, or of the law, is more harmful to the administration of justice or more hurtful to the public appraisal of the legal profession than the knowledgeable use by an attorney of false testimony in the judicial process.” Dodd v. Florida Bar, 118 So.2d 17 (Fla. 1960). In this proceeding, Respondent actually provided the false testimony as a witness in a civil proceeding. The Florida Bar contends that this misconduct requires a suspension.” (Relevant portion)

The Florida Supreme Court ruled June 7, 2011, Case No. SC09-1953 and disciplined Plaintiff Laurato with a public reprimand and taxed cost of \$4,002.44. A copy of the Supreme Court docket is attached as Exhibit 5.

Plaintiff Laurato Lost Bench Trial With Defendant October 25, 2010

42. Defendant is a California Certified Shorthand Reporter and the owner for 36 years of DeMichelle Deposition Reporters of Northern CA, a Fairfield California company. From time to time clients of Defendant’s company do not pay their invoice for transcripts, and she sues them

in Small Claims Court to receive payment. Plaintiff Michael Laurato is one such client who did not pay his bill.

In August 2007 Plaintiff Laurato hired a court reporter from DeMichelle Deposition Reporters to report the deposition of Scott Garfield. Plaintiff Laurato, Noticing Attorney, ordered on the record a copy of the transcript, Original and One Certified Copy but later refused to pay a \$481 invoice. After unsuccessful attempts to resolve the matter Defendant obtained a judgment against Plaintiff Laurato in California court. In 2008 Defendant sought to enforce the judgment in Hillsborough County Small Claims Court, Case No. 09-CC-006533. Plaintiff Laurato commenced a declaratory judgment action against Defendant August 13, 2009. The case went to bench trial October 25, 2010 before The Honorable Eric Myers, who ruled in favor of Defendant. Tampa attorney Ardyn Cuchel represented Plaintiff Laurato and his firm Austin & Laurato, P.A. Ms. Cuchel is a friend and colleague of Plaintiff Laurato. To defend the declaratory judgment action before Judge Myers, Defendant hired attorney Brian Stayton on an hourly basis. Defendant traveled over 3,000 miles to attend the hearing, and incurred expenses which exceed \$10,000. Plaintiff Laurato appealed Judge Myers ruling December 27, 2010, Appellate Case No. 10-CA-024210, Hillsborough Circuit Civil Court. Ms. Cuchel is representing Mr. Laurato and his firm Austin & Laurato, P.A. and filed a 32 page initial brief April 26, 2011.

St. Petersburg Times Reports “Brash Tampa lawyer attracts attention, good and bad”

43. Plaintiff Michael Laurato is an unsavory character, according to a story in the St. Petersburg Times, “Brash Tampa lawyer attracts attention, good and bad”, by Colleen Jenkins, October 3, 2010. The Times reported the following about the Plaintiff:

"Some people like to come in under the radar," said his [Plaintiff Laurato's] law partner, Robert Austin. "He's a B-52. He's bombs away."

"I'm not really intimidated by the odds, by power, by position," he [Plaintiff Laurato] said. "I could care less about popularity contests."

"He goes to a baseball game and hears a stranger sneer his [Plaintiff Laurato's] name."

"One of his adversaries joked that he [Plaintiff Laurato] would sue his own mother if he had the chance."

"He [Plaintiff Laurato] has sued veterinarians who treat his thoroughbreds at racetracks and the insurance provider that wouldn't pay for a rental car when his burglarized Bentley needed repair."

"He [Plaintiff Laurato] sued Montblanc for trying to charge him to fix a leaking, limited-edition fountain pen."

"And he [Plaintiff Laurato] sued Columbia Restaurant president Richard Gonzmart, his former father-in-law, for calling him a loser at the courthouse."

"He's a real jerk," said Tim Baker, president of Naffco in Tampa, a company that fought Laurato in court after he refused to pay for shutters installed in his home. "His attitude is, 'I'm not going to pay you. If you don't like it, screw it, sue me.' "

"Laurato wanted the wooden shutters installed in time for a spectacular holiday bash. "I had plans," he said in a deposition. "I envisioned beautiful white shutters intertwined with Christmas lights surrounded by holly. I envisioned, during Christmas, a beautiful woman walking under my French doors with a piece of mistletoe hanging there."

"When the shutters didn't arrive, he called off the party. He tried to cancel the contract. When the shutters got installed anyway, he refused to pay the \$3,600 balance. The company sued. Laurato sued back. He wound up paying for both the shutters and, by one account, \$40,000 of his opponent's attorney's fees."

"The fight didn't stop there. The Florida Bar took issue with the lawyer testifying during his deposition that he had never been sued for breach of contract when, in fact, he had. Laurato said he didn't do anything wrong. A judge was assigned to referee the dispute. After hearing all the evidence, he wrote a report to the Florida Supreme Court. These are some of the words he used to describe Laurato's answers. Sarcastic. Flippant. Argumentative. Nonsensical."

The Times also reported on Defendant's lawsuit with Plaintiff Laurato:

"Three years after billing Laurato's firm \$481 for a transcript, the owner of a California court reporting service remains tied up in small claims litigation with the lawyer. She started a blog to vent her frustration. "If people sue him for services and goods, he turns around and sues them," said the owner, Susan DeMichelle. "He needs to be stopped.""

“Laurato says he butted heads with authority from an early age, getting kicked out of Corpus Christi Catholic School in Temple Terrace for throwing a paper ball at a nun.”

Plaintiff’s attorney Howard Levine is quoted in the story: "If people don't upset him, he's generous with everybody."

The Times also reported in Plaintiff Laurato’s misconduct before Circuit Judge Martha Cook:

“In April, Circuit Judge Martha Cook ruled that Laurato and a couple he represented had committed "fraud upon the court" by submitting a false affidavit. He went head-to-head with the judge in a court filing, accusing her of wrongly disparaging him.”

It is clear from reading the 178 comments to the online Times story that Plaintiff Laurato has brought discredit to the practice of law. As an Officer of the Court Plaintiff Laurato’s misconduct is a violation of the public trust, and reflects discredit upon the judicial system. This is a link to the online Times story: <http://www.tampabay.com/news/courts/brash-tampa-lawyer-attracts-attention-both-good-and-bad/1125394>

A copy of the story with photo is attached as Exhibit 6, and a copy of the story in print format is attached as Exhibit 7.

Absolute Immunity for Bar Complainant

44. Defendant has an active complaint against Plaintiff with The Florida Bar and therefore has absolute immunity from this lawsuit. The timing of Plaintiff’s lawsuit against Defendant shows it is in retaliation for this Bar complaint. This lawsuit was commenced on the same day, March 31, 2011, that The Florida Bar reopened Defendant’s Bar complaint (RAF No. 10-21696) against Plaintiff Michael Laurato. The Florida Bar assigned File No. 2011-11,020 (13D) to the inquiry. A copy of the correspondence from Theodore P. Littlewood Jr., Bar Counsel, is attached as Exhibit 8. The Florida Supreme Court held in Tobkin v. Jarboe, 710 So.2d 975 (1998) that a bar complainant has absolute immunity from the complained-about attorney:

“We also recognize the inequitable balance of power that may exist between an attorney who brings a defamation action and the client who must defend against it, which in turn creates the potential for attorney intimidation of Bar complainants. Attorneys schooled in the law have the ability to pursue defamation litigation through their own means and with minimal expense when compared with the Bar complainants. Conversely, the cost of litigation coupled with the risk of liability in defending against such an action could be enough to discourage an individual from bringing a meritorious complaint. The mere possibility of chilling valid complaints would undermine public confidence in this Court's ability to regulate and discipline unethical members of The Florida Bar.”

“Recognizing an absolute immunity for a complainant who follows The Florida Bar grievance procedures when filing a complaint will prevent any chilling effect on Bar complaints while at the same time adequately protect attorneys. If an individual files a complaint against an attorney and the Bar Grievance Committee finds probable cause to believe the attorney is guilty of misconduct justifying disciplinary action, then the attorney is clearly in no position to complain about the absolute immunity afforded the complainant. However, if a baseless Bar complaint is filed against an attorney and the Bar Grievance Committee returns a finding of no probable cause, then public exoneration is a suitable remedy for any negative effects created by the public awareness that a complaint has been made against that attorney. Granting a complainant absolute immunity when filing a complaint against a member of this state's integrated Bar is essential in order for the legal profession, and this Court, to adequately police its members and discipline those who violate the ethical standards of the legal profession. The net result will benefit both the legal profession and the public.”

Plaintiff Laurato Arrested For Disorderly Conduct

45. Plaintiff Laurato was arrested for Disorderly Conduct by the Seminole Tribe Police at the Seminole Hard Rock Casino February 13, 2011 at 4:57 AM. Booking # 11007481. The Tribe does not have a court system and Plaintiff Laurato was incarcerated by the Hillsborough County Sheriff's Office (HCSO). Plaintiff Laurato's mug shot and booking information is attached as Exhibit 9. Attorney Ardyn Cuchel successfully defended Plaintiff Laurato in the misdemeanor case, no. 11-CM-003078 Hillsborough County, Florida. According to court records, the state was not able to make a case against Plaintiff Laurato for disorderly conduct resulting from an alleged incident in the "Green Room" restaurant located in the Seminole Hard Rock Casino. Court records show that Plaintiff Laurato was asked to leave the Green Room, he refused, he engaged

in profane language, and he was arrested by the Seminole Police Department. In defending her client, Ms. Cuchel successfully argued Plaintiff Laurato's speech was protected by the First Amendment and Florida law. A notice of termination of prosecution was furnished to the court February 25, 2011 by State Attorney Mark A. Ober. The court records are attached as Exhibit 10.

St. Petersburg Times Reports Plaintiff Laurato is Attorney For Tampa Pain Clinic

Owners Facing Drug Trafficking, Racketeering Charges

46. The St. Petersburg Times reported June 4, 2011 in a story by Jodie Tillman "Tampa pain clinic owners facing drug trafficking, racketeering charges" that Plaintiff Laurato represents two of the defendants charged with 82 counts, including drug trafficking, conspiracy and racketeering against the 1st Medical Group married co-owners Michele Gonzalez and Jorge Gonzalez-Betancourt and a doctor, Kimberly Daffern. The Times did not report that Plaintiff Laurato is the half brother to Jorge Gonzalez-Betancourt (same mother) and the brother in-law to Michele Gonzalez. This story is relevant to Plaintiff Laurato's bad character because he is related to, and freely associates with, two of the defendants in this crime, in addition to representing them as counsel. A copy of the Times' story is attached as Exhibit 11. The Times' online story is at <http://www.tampabay.com/news/publicsafety/tampa-pain-clinic-owners-facing-drug-trafficking-racketeering-charges/1173503>

Abuse of Process and/or Malicious Prosecution

47. Plaintiff Laurato's lawsuit against Defendant is an Abuse of Process and/or Malicious Prosecution to force her to drop her civil case and bar complaint against him. Plaintiff Laurato is infamous for misusing his Florida Bar license to harass people with vindictive lawsuits, and to avoid paying legitimate expenses. In the civil case with Defendant in Hillsborough County (see paragraph 42), Plaintiff Laurato has used the practice of law, and his friends and colleagues

attorney Howard Levine and attorney Ardyn Cuchel, to avoid paying a legitimate expense related to his practice of law, namely a transcript ordered by Plaintiff Laurato from DeMichelle Deposition Reporters, a company owned by the Defendant. Plaintiff Laurato has perverted the rule of law for a dishonest purpose, to avoid paying Defendant legitimate expenses incurred in the practice of law, and to carry on vindictive lawsuits against Defendant. This latest Complaint in Miami-Dade County is just a continuation of Plaintiff Laurato's personal vendetta against Defendant. Defendant has been harmed by Plaintiff Laurato's actions, including his Intentional Infliction of Emotional Distress on the Defendant, her payment of attorney's fees to Brian Stayton and the other costs of the litigation, all exceeding \$10,000 to collect on a \$481 invoice. The extent of Defendant's injuries and damages are described in detail in her letter to the Florida Bar dated March 23, 2011 to Theodore P. Littlewood Jr., Bar Counsel, attached as Exhibit 12.

Florida case law holds that a cause of action for abuse of process requires:

- a. an illegal, improper, or perverted use of process by the defendant;
- b. an ulterior motive or purpose in exercising the illegal, improper, or perverted process; and
- c. damage to the plaintiff as a result of the defendant's action.

See Valdes v. GAB Robins North America, Inc., 924 So. 2d 862, 867 n.2 (Fla. 3d DCA 2006), and additional cases in Chapter 11, Procedural Torts, from Florida Causes of Action by Arthur L. Berger, attached as Exhibit 14.

48. 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 with regard to Plaintiff Laurato. 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 Plaintiff Laurato's exercise of independent professional judgment is materially limited by his own interest and conflict. The fact that Mr. Laurato has enlisted two friends and colleagues, attorney Howard Levine and attorney Ardyn Cuchel, to litigate against the Defendant does not change the underlying fact that the litigation was initiated by Plaintiff Laurato against Defendant in connection, a personal vendetta.

Conclusion

49. Defendant believes the Complaint should be dismissed with prejudice. Given the foregoing, Plaintiff Laurato should be referred to Florida Lawyers Assistance, Inc., a program created by the Florida Supreme Court to help attorneys impaired because of drugs, alcohol, or psychological concerns. Plaintiff Laurato appears to have psychological issues that are harming people, and causing havoc in the courts throughout the state of Florida as well as the state of Illinois.

Defendant demands trial by jury.

RESPECTFULLY SUBMITTED this 6th day of July, 2011.

SUSAN DeMICHELLE, Defendant pro se
700 Webster Street
Fairfield, CA 94533
707-425-6000

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a true and correct copy of the foregoing was provided by UPS to Howard J. Levine, Esq., 1560 Lenox Ave., Suite 307, Miami Beach, FL 33139, this 6th day of July, 2011.

SUSAN DeMICHELLE

IN THE CIRCUIT COURT FOR THE ELEVENTH JUDICIAL CIRCUIT
IN AND FOR MIAMI-DADE COUNTY, FLORIDA
GENERAL JURISDICTION DIVISION

MICHAEL V. LAURATO,

Plaintiff,

vs.

SUSAN DeMICHELLE,

Defendant.

CASE NO. 11-09972CA21

JURY TRIAL DEMANDED

DEFENDANT'S APPENDIX TO ANSWER AND AFFIRMATIVE DEFENSES

List of Exhibits

- | | |
|------------|--|
| Exhibit 1 | Michael Vincent Laurato, Florida Bar Directory Listing (online) |
| Exhibit 2 | Formal Complaint, <u>The Florida Bar v Michael Laurato</u> , 2007-11,274 (13D) |
| Exhibit 3 | Report of Referee, <u>The Florida Bar v Michael Laurato</u> , 2007-11,274 (13D) |
| Exhibit 4 | Initial Brief, <u>The Florida Bar v Michael Laurato</u> , 2007-11,274 (13D) |
| Exhibit 5 | Florida Supreme Court Docket, Case No. SC09-1953, <u>TFB v Michael Laurato</u> |
| Exhibit 6 | “Brash Tampa lawyer attracts attention, both good and bad” St. Pete Times (w photo) |
| Exhibit 7 | “Brash Tampa lawyer attracts attention, both good and bad” St. Pete Times (w/o photo) |
| Exhibit 8 | Florida Bar, reopened DeMichelle’s complaint against Mr. Laurato, Mar-31-11 |
| Exhibit 9 | HCSO arrest record, disorderly conduct, Michael Laurato, February 13, 2011 |
| Exhibit 10 | Court records, <u>Florida v Laurato</u> , Misdemeanor Case No. 2011-CM-003078 |
| Exhibit 11 | “Tampa pain clinic owners facing drug trafficking, racketeering charges”, St. Pete Times |
| Exhibit 12 | DeMichelle letter to Theodore P. Littlewood Jr., Bar Counsel, March 23, 2011 |
| Exhibit 14 | Chapter 11, Procedural Torts, from Florida Causes of Action by Arthur L. Berger |

SEARCH 

Monday, July 4, 2011

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Michael Vincent Laurato

Member in Good Standing**Eligible to practice in Florida**

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County: Hillsborough
 Circuit: 13
 Admitted: 09/29/1999
 Sections: Trial Lawyers
 10-Year Discipline History **Yes**

	Action Date	Reference
Public Reprimand	06-07-2011	200711274

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[Revised: 05-13-2011]

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IN THE SUPREME COURT OF FLORIDA
(Before a Referee)

THE FLORIDA BAR,

Complainant,

v.

MICHAEL VINCENT LAURATO,

Respondent.

CASE NO.

TFB NO. 2007-11,274 (13D)

COMPLAINT

Complainant, The Florida Bar, files this Complaint against Respondent, Michael Vincent Laurato, pursuant to Rule 3-3.2(b), Rules Regulating The Florida Bar, and alleges:

GENERAL ALLEGATIONS

1. Respondent is, and at all times material hereto was, a member of The Florida Bar, subject to the jurisdiction of the Supreme Court of Florida.
2. Respondent was a defendant in the civil action styled *Celebrity Carpets and Interiors, Inc., d/b/a Naffco v. Michael V. Laurato*, Case number 05-2728 F, in the Circuit Court of the Thirteenth Judicial Circuit in and for Hillsborough County, Florida (the "Civil Action").

EXHIBIT

2

COUNT I

3. The Florida Bar realleges and incorporates the allegations of paragraphs 1 and 2, above, as if fully set forth herein.

4. On or about January 16, 2007, a process server attempted to serve a Subpoena for Deposition on Karina Elizabeth Jauregui a/k/a Karina Laurato (the "Witness") in connection with the Civil Action.

5. The Witness was married to Respondent at the time the process server attempted to serve the Subpoena for Deposition.

6. The process server attempted to serve the Witness at 3710 W. Leona Street, Tampa, Florida 33629 (the "Residence").

7. At the time, Respondent lived at the Residence.

8. The process server encountered Respondent at the Residence when attempting to serve the Subpoena for Deposition.

9. Respondent told the process server that the Witness was not living at the Residence.

10. On or about January 16, 2007, the Witness was living at the Residence.

11. On or about January 16, 2007, Respondent knew that the Witness was living at the Residence.

12. Respondent's statement to the process server was false.

13. Respondent knew his statement to the process server was false at the time he made it.

14. As a result of the foregoing, Respondent has violated the following Rules Regulating The Florida Bar:

- a. Rule 4-8.4(c) (conduct involving dishonesty, fraud, deceit, and misrepresentation); and,
- b. Rule 4-8.4(d) (conduct prejudicial to the administration of justice).

WHEREFORE, The Florida Bar respectfully requests that Respondent be appropriately disciplined.

COUNT II

15. The Florida Bar realleges and incorporates the allegations of paragraphs 1 and 2, above, as if fully set forth herein.

16. On or about October 19, 2006, Respondent testified under oath at a deposition in the Civil Action.

17. During the deposition, Respondent testified that he had, "[n]ever been sued once for breach of contract."

18. At the time of the deposition, Respondent had been sued more than once for breach of contract.


19. At the time of the deposition, Respondent knew that he had been sued more than once for breach of contract.

20. Respondent's testimony under oath at his deposition was false.

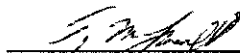
21. As a result of the foregoing, Respondent has violated the following Rules Regulating The Florida Bar:

- a. Rule 4-8.4(c) (conduct involving dishonesty, fraud, deceit, and misrepresentation); and,
- b. Rule 4-8.4(d) (conduct prejudicial to the administration of justice).

WHEREFORE, The Florida Bar respectfully requests that Respondent be appropriately disciplined.



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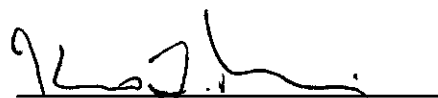


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CERTIFICATE OF SERVICE

I HEREBY CERTIFY that the original of this Complaint has been

furnished by regular U. S. mail to The Honorable Thomas D. Hall, Clerk, the Supreme Court of Florida, 500 South Duval Street, Tallahassee, Florida 32399-1925; a true and correct copy by U.S. certified mail No. 7008 2810 0001 4648 5024, Return Receipt Requested, and by regular U.S. mail to Michael Vincent Laurato, Respondent, c/o of Scott K. Tozian, 109 North Brush Street, Suite 200, Tampa, Florida 33602; a copy to Troy Matthew Lovell, Assistant Staff Counsel, The Florida Bar, 5521 W. Spruce Street, Suite C-49, Tampa, Florida 33607-5958; and a copy to William J. Schifino, Jr., Designated Reviewer, at P.O. Box 380, Tampa, Florida 33601-0380; this 16th day of October, 2009.


Kenneth Lawrence Marvin
Staff Counsel

NOTICE OF TRIAL COUNSEL

PLEASE TAKE NOTICE that the trial counsel in this matter is Troy Matthew Lovell, Assistant Staff Counsel, whose address is The Florida Bar, 5521 W. Spruce Street, Suite C-49, Tampa, Florida 33607-5958. Respondent need not address pleadings, correspondence, etc. in this matter to anyone other than trial counsel and to Staff Counsel, The Florida Bar, 651 E. Jefferson Street, Tallahassee, Florida 32399-2300.

IN THE CIRCUIT COURT OF THE SIXTH JUDICIAL CIRCUIT
IN AND FOR PASCO COUNTY, FLORIDA

THE FLORIDA BAR,
Complainant,

Case Nos.: SC09-1953
TFB NOL: 2007-11,274(13D)

v.

MICHAEL VINCENT LAURATO,
Respondent.

_____ /

I. Summary of Proceedings: The Florida Bar filed a complaint against
Michael

Vincent Laurato alleging that he engaged in conduct involving dishonesty, fraud, deceit, and misrepresentation and engaged in conduct prejudicial to the administration of justice in violation of Rule 408.(c) and (d), Rules Regulating the Florida Bar. Pursuant to the undersigned being duly appointed as referee to conduct the disciplinary proceedings herein according to the Rules Regulating The Florida Bar, a final hearing was held on March 16, 2010. Any pleadings, notices, motions, orders, transcripts, and exhibits are forwarded to The Supreme court of Florida with this report and constitute the record in this case.

The following attorney's appeared as counsel for the parties:

For The Florida Bar: Troy Matthew Lovell

For The Respondent: Scott K. Tozian

II: Findings of Fact

A. Jurisdictional Statement: Respondent is, and at all times mentioned during this investigation was, a member of The Florida Bar, subject to the jurisdiction and Disciplinary Rules of the Supreme Court of Florida

B. Narrative Summary; Evidence Considered Regarding Guilt

COUNT I:

Respondent was a defendant in the civil action styled Celebrity Carpets and Interiors, Inc., d/b/a Naffco v. Michael V. Laurato, Case Number 05-2728 F, in the Circuit Court of the Thirteenth Judicial Circuit in and for Hillsborough County, Florida. Gary Sprague, a process server, testified that he attempted to serve process on respondent's wife, Karina Laurato, at the home address, 3710 West Leona, Tampa, at approximately 9:50 p.m., on the evening of January 11, 2007 and approximately 6:35 a.m. on the morning of January 12, 2007. T After the second failed attempt on the morning of the 12,th Sprague parked across the street facing the residence. While waiting in his car he observed a gentleman pull up in front of the home and approached the man with the papers in his hand. He asked the gentleman if Karina Laurato was t home and the gentleman told him that she was

living in Miami. He then identified the man as respondent. Sprague advised his client that he was unable to serve the witness and the client then provided him with special instructions to serve the witness while she picked her daughter up at school. On January 16, 2007, Sprague went to the school, announced himself to security, and waited for the witness to arrive. He observed a black Range Rover pull up and identified it as the same vehicle with the same license plate as the one he observed when he attempted service on Leona Street January 11 and 12. He was told by school security that the driver was Karina Laurato and he served the witness at that time. Sprague admitted that he did not have an independent recollection of the events and he no longer had his field notes from that event. He relied solely on his wife's notes typed on the subpoena return.

Respondent's testimony was that he was not at home on the evening of January 11 or the morning of January 12. However, his wife, Karina Jauregui Laurato, her daughter Maria Ariztizabal, and his mother Elina Betencourt, were all at the home on the evening of January 11 and all testified that no one knocked on the door that night. Karina and Maria testified that they were both in the home on the morning of the 12th and no one knocked on the door that morning either.

Both respondent and his brother, Jorge Gonzalez, testified that Jorge picked respondent up at his office at approximately 7:30 p.m. on January 11th and they spent the night at Jorge's house. The next morning Jorge drove respondent to a

spin class and Jorge continued on to Calta's gym. After the spin class respondent ran to Calta's Gym to meet his brother, arriving at the gym at approximately 7:00 a.m. Jorge and respondent then continued with their workout, running through a Tampa neighborhood. Ardyn Cuchel, an associate of respondent, testified that she also ran with respondent on that morning. Both Jorge and respondent testified that after returning home and showering, they headed out for a road trip to Lake Worth somewhere between 9:00 or 10:00 am. The two never made it to Lake Worth because respondent's wife called and he had to return home. It was mid morning by the time his brother dropped him off at his office for him to pick up his car and drive home. Respondent testified that he had never seen Sprague before the day of trial.

COUNT II:

Respondent testified under oath at a deposition in Celebrity Carpets and Interiors, Inc., d/b/a Naffco v. Michael V. Laurato, Case Number 05-2728 F, in the Circuit Court of the Thirteenth Judicial Circuit, Hillsborough County, Florida. During respondent's deposition he testified that he had "[n]ever been sued once for breach of contract." At the time, however, respondent had in fact been sued more than once for breach of contract. Respondent does not dispute that he denied ever having been sued in contract, however, he asserts that the Bar cannot prove that he intended to make a false statement when he testified, and further argues that his

statement was not responsive to any question but was rather offered in a narrative fashion toward the end of a lengthy deposition.

At trial, respondent was asked “[p]rior to giving your deposition in this case, had you ever been sued for breach of contract?” and he replied “[w]ith the documents you have here, the answer to that question is no.” He was then asked “[w]hat is the factual answer to that question” and he replied “[w]ith the documents that I have before me, the answer is no.” Finally, he was asked “[t]o the best of your recollection, had you ever been sued for breach of contract ...[p]rior to October of 2006” and he replied “[b]ased on the documents again that you have there, the answer to that question is no.” The attorney for the Bar then clarified that he was not asking him to interpret the documents but asking him to give his best answer based on his recollection as he sat there that day, whether or not he had been sued for breach of contract prior to 2006. Respondent testified “. . . [i]f I had been sued for breach of contract, which I do not believe that I have outside of the documents which you have presented here . . . I don’t believe that I have . . . and to my recollection, the answer to that question is no.”

Respondent’s attorney asked him if he recalled the deposition testimony where he said that he had never been sued in a breach of contract action. With regard to that question, respondent testified that during deposition he said that he had “never been sued for breach of contract” because he believed he was being

asked only whether or not he had ever been sued for breach of contract regarding construction lien matters. At trial, respondent stated that opposing counsel in that case never confronted him or referenced four lawsuits that were subsequently the basis of the motion for sanctions in the instant case. Respondent testified that those cases were not referenced and "[t]hat was clearly not the context of this entire discussion." Respondent's counsel then named each of the four cases which are the subject of this claim and asked respondent what the basis was for each. For two of the cases, Acys and Arrow Imaging¹, respondent claimed they were both "open accounts." For All Languages by Mentani, Inc.², he claimed it was an account stated. For the final case, Laurato v. ZOM Residential Services, Inc.³, he claimed that was an action that he brought against the owner of his rental home for breach of contract in an attempt to "get out of the lease because they refused to fix the roof." He then acknowledged that there was a counterclaim filed against him in that action. However, he testified that he was not "thinking about any of these lawsuits" during the deposition because he "was intending to refer to construction disputes and other issues in the case . . . ". The Bar entered exhibits 4 through 11

¹ ¹ Acsys Inc., v. Laurato d/b/a Law Office of Michael Laurato, No: 2001-19714-SC; Bar's Exhibits 7-9. Arrow Imaging Solutions, Inc., v. Austin and Laurato, 2001-12784-SC, Bar's Exhibit 10.

² All Languages by Mentani, Inc., No: 2003-2533-SC, Bar's Exhibits 4-6.

³ Laurato v. Zom Residential Services, Inc., No: 2003-SP3165, Bar's Exhibit 11.

into evidence, all of which contained pleadings regarding the prior breach of contract cases which are the subject of this claim.

III. RECOMMENDATION AS TO GUILT

A. As to Count I: Having reviewed the file and having heard all of the evidence I recommend that Respondent be found not guilty of violating Rule 4-8.4© and (d), Rules Regulating the Florida Bar. I find that the Florida Bar did not meet their burden of proof of clear and convincing evidence that respondent misled the process server as to whether or not his wife was at home on the morning of January 12, 2007. *Florida Bar v. Rood*, 622 So. 2d 974, 977 (Fla. 1993). Specifically, there were various witnesses who testified that respondent was not at the residence on the morning of January 12, when the events leading up to this charge allegedly took place. Moreover, there exists some deficiency in Gary Sprague's testimony. Namely, his entire testimony at both deposition as well as trial depended entirely upon notations transcribed on the subpoena return. These notations are not his notes but his wife's transcriptions of field notes which no longer exist.

B. As to Count II: Having reviewed the file and having heard all of the evidence, I recommend that Respondent be found guilty of violating Rule 4-8.4(c) and (d), Rules Regulating the Florida Bar. The Florida Bar did meet their burden of proof of clear and convincing evidence that respondent's testimony under oath at a deposition in a civil action was false, in violation of Florida Rules Regulating the

Florida Bar, Rule 4-8 (c) and (d). *Florida Bar v. Rood*, 622 So. 2d 974, 977 (Fla. 1993). The evidence at trial established that Respondent's misconduct in this case was knowing and deliberate. *Fla. Bar v. Fredericks*, 731 So. 2d 1249, 1252 (Fla. 1999). Respondent's deposition has few direct answers; and most answers were contradictory even within the same answer. Some answers were sarcastic, flippant, argumentative and nonresponsive. Responses were often irrelevant, illogical and nonsensical and even included name calling. Specifically, with regard to the question posed at deposition as to whether or not respondent had ever been sued for breach of contract, I find Respondent's statement to be unresponsive and puffery. In the deposition Respondent cites to construction case examples and then does not respond to the question. Instead, Respondent provided a long narrative of unresponsive answers. Furthermore, Respondent testified at trial that he still does not believe that he has ever been sued for breach of contract (prior to his 2006 deposition). In light of all of the evidence, I find that the Bar has met its burden of clear and convincing evidence as to Count II. *In re Davey*, 645 So. 2d 398, 404 (Fla. 1994).

IV. RECOMMENDATION AS TO DISCIPLINARY MEASURES TO BE APPLIED:

Prior to trial the parties agreed that if the undersigned were to recommend a finding of guilt as to any of the counts, a separate evidentiary hearing would be held for the sole purpose of addressing sanctions. Since I do recommend Respondent be found guilty as to Count II, an evidentiary hearing will be held pursuant to the parties' agreement. The Florida Bar has requested a sixty (60) day extension for the purposes of the hearing and A Recommendation as to Disciplinary Measures To Be Applied will be forthcoming pursuant to the Order Extending Time.

Dated this __30__ day of __June__, 2010.

/s

William R. Webb, Referee

Copies: Troy Matthew Lovell, Assistant Staff Counsel, The Florida Bar, 5521 W. Spruce Stree, Suite C-49, Tampa, Florida 33607-5958

Smith, Tozian & Hinkle, P.A., 109 North Brush Street, Suite 200, Tampa, Florida 33602

IN THE SUPREME COURT OF FLORIDA

THE FLORIDA BAR,

Complainant,

v.

MICHAEL VINCENT LAURATO,

Respondent.

CASE NO.: SC09-1953

TFB NO.: 2007-11,274 (13D)

INITIAL BRIEF OF THE FLORIDA BAR

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Florida Bar No. 946036

EXHIBIT

4

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SYMBOLS AND REFERENCES

In this Brief, The Florida Bar, will be referred to as “The Florida Bar” or the “Bar.” The Respondent, Michael Vincent Laurato, will be referred to as “Respondent.”

The Report of Referee dated April 30, 2010, will be referred to as the “Report.” The Supplemental Report of Referee dated June 30, 2010, will be referred to as the “Supplemental Report.”

“Rule” or “Rules” will refer to the Rules Regulating The Florida Bar. “Standard” or “Standards” will refer to the Florida Standards for Imposing Lawyer Sanctions.

STATEMENT OF THE FACTS AND OF THE CASE

Respondent was a defendant in a civil proceeding, *Celebrity Carpets and Interiors, Inc. d/b/a Naffco v. Laurato*, in the Circuit Court of the Thirteenth Judicial Circuit in Hillsborough County, Florida. Report, p. 2. As part of that proceeding, opposing counsel took the deposition of Respondent. Report, p. 3. During that deposition, Respondent testified that he had, “[n]ever been sued once for breach of contract.” Report, p. 3. In fact, Respondent had been sued on multiple occasions for breach of contract prior to that deposition. Report, p. 4.

The Florida Bar brought a two-count complaint against Respondent in this proceeding.¹ The Referee found Respondent guilty of violating Rule 4-8.4(c) and Rule 4-8.4(d) for his testimony during the deposition. In addition to that specific false statement, the Referee found that Respondent’s testimony was “sarcastic, flippant, argumentative and nonresponsive” and also that Respondent’s answers during the deposition, “were often irrelevant, illogical and nonsensical and even included name calling.” Report, p.6.

¹ Count I alleged that Respondent had made a false statement to a process server in the course of the same civil proceeding. The Referee found that the Bar did not meet its burden of proof as to this count; The Florida Bar did not petition for review of that finding.

After making the recommended finding of guilt, the Referee conducted a sanctions hearing on May 24, 2010. After considering the presented evidence, the Referee found two mitigating factors – lack of prior discipline and good character or reputation. Supplemental Report, pp. 2-3. The Referee recommended that Respondent receive a public reprimand, to be administered by the Referee. The Florida Bar petitioned for review of that recommendation and seeks imposition of a 60-day suspension with the additional requirement that Respondent be required to complete The Florida Bar's Ethics School and Professionalism Workshop.

Respondent has cross-petitioned, seeking review of the recommended findings of guilt, the recommended sanction, and the recommended award of costs.

SUMMARY OF THE ARGUMENT

Respondent's conduct of giving false testimony under oath in a legal proceeding is serious misconduct which requires suspension. The relevant authority does not support the Referee's recommendation of a public reprimand; the Referee mistakenly relied on settlements which do not constitute relevant precedent and on older cases which do not reflect this Court's current approach to attorney discipline.

STANDARD OF REVIEW

A referee's recommended sanction in an attorney disciplinary proceeding is persuasive, but this Court has the ultimate responsibility to determine the appropriate sanction. *Florida Bar v. Kossow*, 912 So.2d 544, 546 (Fla. 2005). Generally speaking, this Court will not second-guess a referee's recommended discipline as long as that discipline has a reasonable basis in existing caselaw or in the Florida Standards for Imposing Lawyer Sanctions. *Id.*

ARGUMENT

This Court has long considered dishonesty under oath by an attorney to be an extremely serious offense. “No breach of professional ethics, or of the law, is more harmful to the administration of justice or more hurtful to the public appraisal of the legal profession than the knowledgeable use by an attorney of false testimony in the judicial process.” *Dodd v. Florida Bar*, 118 So.2d 17 (Fla. 1960). In this proceeding, Respondent actually provided the false testimony as a witness in a civil proceeding. The Florida Bar contends that this misconduct requires a suspension.

Review of the Standards demonstrates that a suspension is an appropriate sanction for Respondent’s misconduct. Standard 6.12 provides that “[s]uspension is appropriate when a lawyer knows that false statements or documents are being submitted to the court ... and takes no remedial action.” In this instance, Respondent was well aware that a false statement was being presented because he was the one who knowingly and deliberately made a false statement to the court. Report, p. 6. Standard 6.22 provides additional guidance for this situation, providing that “[s]uspension is appropriate when a lawyer knowingly violates a court order or rule, and ... causes interference or potential interference with a legal

proceeding.” Respondent in this instance did not violate a mere rule or order, but disregarded his own oath in testifying falsely. Furthermore, as the Referee found, Respondent’s false testimony was disruptive to the underlying legal proceeding. Therefore, the relevant standards support imposition of a suspension, not a mere reprimand, in this proceeding.

Consideration of similar cases also supports the imposition of a suspension in this proceeding. In *Florida Bar v. Cibula*, 725 So.2d 360 (Fla. 1999), the Court imposed a 91-day suspension on an attorney who testified falsely during his dissolution of marriage proceeding. The attorney claimed his income to be about \$3,000 per month, though he had already received \$35,200 during the calendar year by the time of his August testimony and had received \$44,200 during the calendar year prior to his November testimony. *Id.* at 362. In response to that false testimony, the Court rejected the Referee’s recommendation of a 60-day suspension and imposed a 91-day suspension.

The Court also imposed a 91-day suspension in *Florida Bar v. Baker*, 810 So.2d 876 (Fla. 2002). In that case, the attorney forged his wife’s name and caused those false signatures to be notarized on legal documents in connection with the sale of real property. *Id.* at 878. At the time, the attorney and his wife

were having marital problems and were separated. *Id.* The Court imposed a rehabilitative suspension despite the finding that the execution of sale documents was done by the attorney in an effort to avoid foreclosure and that the proceeds were used to pay marital debts; therefore, the attorney did not forge the documents in an attempt for personal gain. *Id.* at 882.

Other cases have resulted in even more severe discipline. In *Florida Bar v. Germain*, 957 So.2d 613 (Fla. 2007), this Court suspended an attorney for one year for a pattern of misrepresentations to a court during a dispute with a business partner. In that case, the Court noted that a three-year suspension would have been justified, but for the mental health issues of the attorney, and instead imposed the one-year suspension. *Id.* at 624.

In this proceeding, the more severe suspension of *Germain* is not warranted because Respondent's conduct was not as repeated and extended as that in *Germain*. The Bar acknowledges that Respondent is entitled to consideration for the two mitigating factors found by the Referee. Supplemental Report, pp.2-3. Nevertheless, while not warranting a rehabilitative suspension, Respondent's misconduct does warrant a short suspension. Examination of the authority on which the Referee relied demonstrates that his recommended sanction should not

be upheld.

First, the Referee relied on cases between the Bar and other attorneys which settled by agreement, specifically, *Florida Bar v. Dsouza*, SC07-675, and *Florida Bar v. Young*, SC07-1153. Settlements between attorneys and the Bar may be agreed for a variety of reasons and such settlements do not constitute authority for referees. Such proceedings simply do not provide the full factual and evidentiary information necessary for a meaningful analysis of the proceeding to serve as any guidance. This Court has stated that it will uphold a referee's sanction if it is supported by the Standards and caselaw. *Dsouza* and *Young* are neither. The Referee also relied on *Florida Bar v. Lifsey*, SC 07-747, which, while contested, did not result in an opinion from this Court, and, therefore, cannot serve as precedent on which a Referee may properly rely.

In addition, the Referee's recommendation relies on case law which is outdated. Of the three reported cases cited by the Referee, two are from 1988 and one is from 1993. This Court has noted that in recent years it has moved toward stronger sanctions for attorney misconduct. *Florida Bar v. Rotstein*, 835 So.2d 241, 246 (Fla. 2003). In *Rotstein*, this Court rejected precedent which was then 17 and 24 years old as inapplicable because they did not reflect this Court's current

views. *Id.* at 246. Similarly, the Referee's reliance on precedent from 17 and 22 years ago to support his recommendation is misplaced. This Court should reject that recommendation and impose a 60-day suspension, plus require attendance at The Florida Bar's Ethics School and Professionalism Workshop.

At the sanctions hearing, Respondent argued for a lenient sanction by de-emphasizing the dishonesty aspects of his misconduct and focusing solely on the disruptive and unprofessional nature of his misconduct. Even with this focus, however, a stronger sanction is warranted. Although not yet final, the Court's recent opinion in *Florida Bar v. Ratiner*, ___ So.3d ___, 2010 WL 2517995 (Fla. 2010), demonstrates the seriousness with which this Court is currently treating breaches of professionalism which disrupt the judicial process. In that case, the attorney behaved in a threatening manner toward opposing counsel in a deposition, touching opposing counsel's hand, crumpling up an exhibit sticker, and coming around the table toward opposing counsel. *Id.* at 6. The deponent and the court reporter were each distressed by his behavior. *Id.* at 2. For that misconduct, the attorney was suspended for 60 days, publicly reprimanded, and placed on probation. *Id.* at 6. In other cases, breaches of professionalism have even resulted in the imposition of rehabilitative suspensions. *Florida Bar v. Tobkin*, 944 So.2d

219 (Fla. 2006); *Florida Bar v. Morgan*, 938 So.2d 496 (Fla. 2006). *Tobkin* and *Morgan* both involved more extended and serious misconduct than that at issue in *Ratiner* or this proceeding and each attorney had received prior discipline.

Nevertheless, even if this Court were to adopt Respondent's suggestion and ignore the dishonesty and focus only on the disruptive aspects of his misconduct, the Referee's recommendation of a public reprimand should be rejected in favor of the the 60-day suspension sought by the Bar.

CONCLUSION

The Court should reject the Referee's recommended sanction of a public reprimand and impose a 60-day suspension, with the additional requirement that Respondent complete The Florida Bar's Ethics School and Professionalism Workshop.

Respectfully submitted,

Troy Matthew Lovell
Bar Counsel
The Florida Bar

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Florida Bar No. 946036

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that the original and seven (7) copies of this brief have been provided by Overnight Delivery to The Honorable Thomas D. Hall, Clerk, The Supreme Court of Florida, 500 South Duval Street, Tallahassee, Florida 32399-1925; true and correct copies by regular U.S. Mail to Michael Vincent Laurato, Austin & Laurato, 1902 West Cass Street, Tampa, Florida 33606; Scott K. Tozian, 109 North Brush Street, Suite 200, Tampa, Florida 33602; and Kenneth Lawrence Marvin, Staff Counsel, The Florida Bar, 651 E. Jefferson Street, Tallahassee, Florida 32399-2300, this 25th day of August, 2010.

Troy Matthew Lovell
Bar Counsel

CERTIFICATION OF FONT SIZE AND STYLE

Undersigned counsel does hereby certify that this brief is submitted in 14 point proportionally spaced Times New Roman font.

Troy Matthew Lovell
Bar Counsel

Florida Supreme Court Case Docket

Case Number: SC09-1953 - Closed

THE FLORIDA BAR vs. MICHAEL VINCENT LAURATO

Lower Tribunal Case(s): 2007-11,274(13D)

06/13/2011 10:10

Date Docketed	Description	Filed By	Notes
10/19/2009	COMPLAINT	CO The Florida Bar FB BY: CO Troy Matthew Lovell 946036	(O&I)
10/22/2009	No Fee Required		
10/22/2009	ORDER-REFEREE APPOINTMENT (DISCIPLINARY)		HON. J. THOMAS MCGRADY, C.J., 6TH JUDICIAL CIRCUIT
11/05/2009	REFEREE APPOINTED		DATED 11/02/09, HON. WILLIAM R. WEBB, 6TH JUDICIAL CIRCUIT
05/03/2010	MOTION-EXT OF TIME (REFEREE'S REPORT)	CO The Florida Bar FB BY: CO Troy Matthew Lovell 946036	
05/05/2010	ORDER-EXT OF TIME GR (REFEREE'S REPORT)		
07/06/2010	REFEREES REPORT		W/SUPPLEMENTAL REPORT, MISC. PLEADINGS, EXHIBITS, TRANSCRIPTS (1 BOX) & E-MAIL - Hon. William Robert Webb, Judge 140342
07/06/2010	AFFIDAVIT/STATEMENT OF COSTS		CO The Florida Bar FB BY: CO Troy Matthew Lovell 946036
07/27/2010	PETITION-REVIEW	CO The Florida Bar FB BY: CO Troy Matthew Lovell 946036	
07/27/2010	LETTER-FLA BAR (WILL PETITION FOR REVIEW)	Kenneth Lawrence Marvin 200999 BY: Kenneth Lawrence Marvin 200999	
08/12/2010	PETITION-REVIEW (CROSS)	PE Michael Vincent Laurato 181447 BY: PE Michael Vincent Laurato	

EXHIBIT

5

		181447	
08/26/2010	INITIAL BRIEF-MERITS	CO The Florida Bar FB BY: CO Troy Matthew Lovell 946036	O&7 & E-MAIL
08/26/2010	NOTICE-FILING	CO The Florida Bar FB BY: CO Troy Matthew Lovell 946036	TRANSCRIPT OF SANCTIONS HEARING
08/26/2010	RECORD/TRANSCRIPT	CO The Florida Bar FB BY: CO Troy Matthew Lovell 946036	1 VOLUME (SANCTIONS HEARING - 05/24/2010)
09/02/2010	MOTION-COUNS WITHDRAWAL	PE Michael Vincent Laurato 181447 BY: WE Scott Kevork Tozian 253510	
09/07/2010	ANSWER/CROSS INITIAL BRIEF-MERITS	PE Michael Vincent Laurato 181447 BY: PE Michael Vincent Laurato 181447	O&7 & E-MAIL
09/07/2010	REQUEST-ORAL ARGUMENT	PE Michael Vincent Laurato 181447 BY: PE Michael Vincent Laurato 181447	
09/07/2010	NOTICE-FILING	PE Michael Vincent Laurato 181447 BY: PE Michael Vincent Laurato 181447	TRANSCRIPT OF PROCEEDINGS
09/07/2010	RECORD/TRANSCRIPT	PE Michael Vincent Laurato 181447 BY: PE Michael Vincent Laurato 181447	1 VOLUME (PROCEEDINGS - 03/16/2010)
09/07/2010	MOTION-RECORD SUPPLEMENTATION	PE Michael Vincent Laurato 181447 BY: PE Michael Vincent Laurato 181447	FILED AS NOTICE OF FILING AND MOTION TO SUPPLEMENT THE RECORD W/ATTACHMENTS
09/13/2010	RESPONSE	CO The Florida Bar FB BY: CO Troy Matthew Lovell 946036	IN OPPOSITION TO MOTION TO SUPPLEMENT THE RECORD
09/16/2010	ORDER-COUNS WITHDRAWAL GR		The motion to withdraw as attorney of record for Michael Vincent Laurato is granted and Scott Kevork Tozian is hereby allowed to withdraw as counsel for respondent.
09/16/2010	ORDER-RECORD SUPPLEMENTATION GR (MISC)		Respondent's motion to supplement the record is granted as to attachments 1a, 1b and 1c, and denied as to attachment 1d. As such, attachment 1d is hereby stricken.
09/28/2010	REPLY/CROSS ANSWER BRIEF-MERITS	CO The Florida Bar FB BY: CO Troy Matthew Lovell 946036	O&7 & E-MAIL
10/04/2010	MOTION-STRIKE	PE Michael Vincent Laurato 181447 BY: PE Michael Vincent Laurato 181447	BAR'S REPLY/CROSS ANSWER BRIEF
10/06/2010	MOTION-ACCEPTANCE AS TIMELY FILED (BRIEF)	CO The Florida Bar FB BY: CO Troy Matthew Lovell 946036	FILED AS RESPONSE TO MOTION TO STRIKE BAR'S REPLY BRIEF OR, ALTERNATIVELY, MOTION TO ACCEPT BRIEF AS TIMELY FILED
10/14/2010	MOTION-OTHER SUBSTANTIVE	PE Michael Vincent Laurato 181447 BY: PE Michael Vincent Laurato 181447	FILED AS MOTION REQUESTING LEAVE TO FILE CROSS-REPLY BRIEF W/ATTACHMENTS
11/05/2010	ORDER-STRIKE DY		Respondent's Motion to Strike Bar's Reply Brief is hereby denied.
11/05/2010	ORDER-ACCEPTANCE AS TIMELY FILED DY (BRIEF)		Upon consideration of The Florida Bar's Response to Respondent's Motion to Strike Bar's Reply Brief or, alternatively, Motion to Accept Brief as Timely Filed, it is ordered that the motion to accept is hereby denied as moot.

11/05/2010	ORDER-OTHER SUBSTANTIVE GR		Respondent's Motion Requesting Leave to File Cross-Reply Brief is hereby granted and respondent is allowed to and including November 22, 2010, in which to serve the cross-reply brief on the merits. Per this Court's Administrative Order In Re: Mandatory Submission of Electronic Copies of Documents, AOSC04-84, dated September 13, 2004, counsel are directed to transmit a copy of all briefs in an electronic format as required by the provisions of that order.
11/12/2010	MOTION-OTHER SUBSTANTIVE	PE Michael Vincent Laurato 181447 BY: PE Michael Vincent Laurato 181447	FILED AS MOTION FOR SANCTIONS PURSUANT TO 57.105, FLA. STAT., AND FLA. R. APP. P. 9.410 W/ATTACHMENTS
11/18/2010	MOTION-STRIKE	CO The Florida Bar FB BY: CO Troy Matthew Lovell 946036	FILED AS "MOTION TO STRIKE RESPONDENT'S MOTION FOR SANCTIONS"
11/22/2010	CROSS REPLY BRIEF- MERITS	PE Michael Vincent Laurato 181447 BY: PE Michael Vincent Laurato 181447	O&7 & E-MAIL
11/23/2010	RESPONSE	PE Michael Vincent Laurato 181447 BY: PE Michael Vincent Laurato 181447	TO MOTION TO STRIKE RESPONDENT'S MOTION FOR SANCTIONS
12/06/2010	SUGGESTION- MOOTNESS	PE Michael Vincent Laurato 181447 BY: PE Michael Vincent Laurato 181447	
01/07/2011	ORDER-NO REQ SCHED (MISC)		The above case has been submitted to the Court without oral argument along with all pending motions.
06/07/2011	DISP-PUBLIC REPRIMAND (BD GOV)		& COSTS IN THE AMOUNT OF \$4,002.44
06/07/2011	ORDER-OTHER SUBSTANTIVE DY		Respondent's Motion for Sanctions and The Florida Bar's Motion to Strike Respondent's Motion for Sanctions are hereby denied.

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Former Hillsborough Commissioner Kevin White pleads not guilty to corruption charges, gets free attorney
Two men plead not guilty in deaths of south Tampa teenagers

Brash Tampa lawyer attracts attention, both good and bad

By [Colleen Jenkins](#), Times Staff Writer
In Print: Sunday, October 3, 2010



[EDMUND D. FOUNTAIN | Times]

Civil trial lawyer Michael Laurato is bold and unapologetic about his tactics, but he has drawn the ire of the Florida Bar.

TAMPA

Michael Laurato hasn't grabbed many headlines during his 11-year legal career.

But once you notice him, you wonder how he ever escaped your attention.

"Some people like to come in under the radar," said his law partner, Robert Austin. "He's a B-52. He's bombs away."

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He talks about winning and losing extravagant sums racing thoroughbreds. In September, his horse, Severe Weather, finished last in the Pennsylvania Derby, dashing hopes for a \$1 million purse.

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EXHIBIT**6**

"I'm not really intimidated by the odds, by power, by position," he said. "I could care less about popularity contests."

That's fortunate, because he wouldn't often win one.

He goes to a baseball game and hears a stranger sneer his name. The critic could be anyone. "Who knows, I may have sued them or I may have cross-examined them," he says. His tactics have drawn rebuke from judges, a court reporter and the Florida Bar. "But I have my fans, too."

Laurato is unapologetic. He refuses to back down. And when he thinks he's right but isn't getting his way, he does for himself what he does for clients.

He sues.

It might sound redundant to say Laurato is a civil trial lawyer who sues. Part of the job description, right?

He battles insurance companies that turn down claims for sinkholes and stolen cars. His client list includes ousted Hillsborough County Commissioner Kevin White, who insists the county's insurance policy should cover his legal bill for his sexual harassment trial.

But Laurato doesn't stop there.

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One of his adversaries joked that he would sue his own mother if he had the chance.

"Maybe," Laurato said. "If you do me wrong, I'm gonna come getcha."

He wins some cases, loses others, and makes enemies along the way.

Three years after billing Laurato's firm \$481 for a transcript, the owner of a California court reporting service remains tied up in small claims litigation with the lawyer. She started a blog to vent her frustration.

"If people sue him for services and goods, he turns around and sues them," said the owner, Susan DeMichelle. "He needs to be stopped."

"He's a real jerk," said Tim Baker, president of Naffco in Tampa, a company that fought Laurato in court after he refused to pay for shutters installed in his home. "His attitude is, 'I'm not going to pay you. If you don't like it, screw it, sue me.'"

Laurato doesn't consider himself litigious. He prefers amicable resolutions, but says things just seem to turn ugly and personal. And he can't very well mediate disputes with a tussle in the park like he did during his high school days at Jesuit in Tampa.

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It was through his mother, a manicurist from Cuba, that he was introduced to the law.

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One friend calls him the ultimate advocate — he isn't afraid to speak his mind and usually has the law to back him up.

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• • •

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"I had plans," he said in a deposition. "I envisioned beautiful white shutters intertwined with Christmas lights surrounded by holly. I envisioned, during Christmas, a beautiful woman walking under my French doors with a piece of mistletoe hanging there."

When the shutters didn't arrive, he called off the party. He tried to cancel the contract. When the shutters got installed anyway, he refused to pay the \$3,600 balance.

The company sued. Laurato sued back.

He wound up paying for both the shutters and, by one account, \$40,000 of his opponent's attorney's fees.

The fight didn't stop there.

The Florida Bar took issue with the lawyer testifying during his deposition that he had never been sued for breach of contract when, in fact, he had. Laurato said he didn't do anything wrong.

A judge was assigned to referee the dispute. After hearing all the evidence, he wrote a report to the Florida Supreme Court.

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Some lawyers might take their licks and move on. Not Laurato. He filed what amounts to an 80-page objection.

If he gets suspended, he said, "I need a break."

He may not get one either way. The Bar is also looking into his actions surrounding a client's sinkhole claim.

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He went head-to-head with the judge in a court filing, accusing her of wrongly disparaging him.

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"You must be completely bored," he told a reporter. "I guess I can't stop you."

If he doesn't like it, will he sue?

He smiled.

"You better get it right."

Colleen Jenkins can be reached at cjenkins@sptimes.com or (813) 226-3337.

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October 1, 2010

Brash Tampa lawyer attracts attention, both good and bad

By Colleen Jenkins, Times Staff Writer

To some, this lawyer is a principled man; to others, he's a litigious jerk.

TAMPA

Michael Laurato hasn't grabbed many headlines during his 11-year legal career.

But once you notice him, you wonder how he ever escaped your attention.

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St. Petersburg Times



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THE FLORIDA BAR

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JOHN F. HARKNESS, JR.
EXECUTIVE DIRECTOR

850/561-5600
WWW.FLORIDABAR.ORG

March 31, 2011

Ms. Susan Demichelle
700 Webster St.
Fairfield, CA 94533

Re: Michael Vincent Laurato; RFA No. 10-21696

Dear Ms. Demichelle:

This matter, previously closed by our letter dated May 12, 2010 has been reopened.

You will receive separate correspondence regarding the investigative process with a new file number.

Sincerely,

Theodore P. Littlewood Jr., Bar Counsel
Attorney Consumer Assistance Program
ACAP Hotline 866-352-0707

EXHIBIT

8



THE FLORIDA BAR

651 EAST JEFFERSON STREET
TALLAHASSEE, FL 32399-2300

JOHN F. HARKNESS, JR.
EXECUTIVE DIRECTOR

850/561-5600
WWW.FLORIDABAR.ORG

March 31, 2011

Ms. Susan Demichelle
700 Webster St.
Fairfield, CA 94533

Re: Michael Vincent Laurato; The Florida Bar File No. 2011-11,020 (13D)

Dear Ms. Demichelle:

Enclosed is a copy of our letter to Mr. Laurato which requires a response to your complaint.

Once you receive Mr. Laurato's response, you have 10 days to file a rebuttal if you so desire. If you decide to file a rebuttal, please send a copy to Mr. Laurato. Rebuttals should not exceed 25 pages and may refer to any additional documents or exhibits that are available on request. Please address any and all correspondence to me. Please note that any correspondence must be sent through the U.S. mail; we cannot accept faxed material.

Please be advised that as an arm of the Supreme Court of Florida, The Florida Bar can investigate allegations of misconduct against attorneys, and where appropriate, request that the attorney be disciplined. The Florida Bar cannot render legal advice nor can The Florida Bar represent individuals or intervene on their behalf in any civil or criminal matter.

Please review the enclosed Notice on mailing instructions for information on submitting your rebuttal.

Sincerely,

Theodore P. Littlewood Jr., Bar Counsel
Attorney Consumer Assistance Program
ACAP Hotline 866-352-0707

Enclosures (Notice of Grievance Procedures, Copy of Letter to Mr. Laurato; Notice - Mailing Instructions)

cc: Mr. Michael Vincent Laurato



THE FLORIDA BAR

651 EAST JEFFERSON STREET
TALLAHASSEE, FL 32399-2300

JOHN F. HARKNESS, JR.
EXECUTIVE DIRECTOR

850/561-5600
WWW.FLORIDABAR.ORG

March 31, 2011

Mr. Michael Vincent Laurato
Austin & Laurato P A
1902 W Cass St
Tampa, FL 33606-1232

Re: Susan Demichelle; The Florida Bar File No. 2011-11,020 (13D)

Dear Mr. Laurato:

Enclosed is a copy of an inquiry/complaint and any supporting documents submitted by the above referenced complainant(s). Your response to this complaint is required under the provisions of Rule 4-8.4(g), Rules of Professional Conduct of the Rules Regulating The Florida Bar, and is due in our office by **April 14, 2011**. Responses should not exceed 25 pages and may refer to any additional documents or exhibits that are available on request. Failure to provide a written response to this complaint is in itself a violation of Rule 4-8.4(g). You are **further requested to furnish the complainant with a complete copy of your written response, including any documents submitted therewith.**

Please note that pursuant to Rule 3-7.1(b), Rules of Discipline, any reports, correspondence, papers, recordings and/or transcripts of hearings received from either you or the complainant(s) shall become a part of the public record in this matter and thus accessible to the public upon a disposition of this file. It should be noted that The Florida Bar is required to acknowledge the status of proceedings during the pendency of an investigation, if a specific inquiry is made and the matter is deemed to be in the public domain. Pursuant to Rule 3-7.1(f), Rules of Discipline, you are further required to complete and return the enclosed Certificate of Disclosure form.

Finally, the filing of this complaint does not preclude communication between the attorney and the complainant(s). Please review the enclosed Notice for information on submitting your response.

Sincerely,

Theodore P. Littlewood Jr., Bar Counsel
Attorney Consumer Assistance Program
ACAP Hotline 866-352-0707

Enclosures (Certificate of Disclosure, Notice of Grievance Procedures, Copy of Complaint, Notice - Mailing Instructions)

cc: Susan Demichelle

NOTICE OF GRIEVANCE PROCEDURES

1. The enclosed letter is an informal inquiry. Your response is required under the provisions of The Rules Regulating The Florida Bar 4 8.4(g), Rules of Professional Conduct. Failure to provide a written response to this complaint is in itself a violation of Rule 4 8.4(g). If you do not respond, the matter will be forwarded to the grievance committee for disposition in accordance with Rule 3-7.3 of the Rules of Discipline.
2. Many complaints considered first by staff counsel are not forwarded to a grievance committee, as they do not involve violations of the Rules of Professional Conduct justifying disciplinary action.
3. “Pursuant to Rule 3-7.1(a), Rules of Discipline, any response by you in these proceedings shall become part of the public record of this matter and thereby become accessible to the public upon the closure of the case by Bar counsel or upon a finding of no probable cause, probable cause, minor misconduct, or recommendation of diversion. Disclosure during the pendency of an investigation may be made only as to status if a specific inquiry concerning this case is made and if this matter is generally known to be in the public domain.”
4. The grievance committee is the Bar’s “grand jury.” Its function and procedure are set forth in Rule 3-7.4. Proceedings before the grievance committee, for the most part, are non-adversarial in nature. However, you should carefully review Chapter 3 of the Rules Regulating The Florida Bar.
5. If the grievance committee finds probable cause, formal adversarial proceedings, which ordinarily lead to disposition by the Supreme Court of Florida, will be commenced under 3-7.6, unless a plea is submitted under Rule 3-7.

NOTICE Mailing Instructions

The Florida Bar is in the process of converting its disciplinary files to electronic media.

All submissions are being scanned into an electronic record and hard copies are discarded.

Please limit your submission to no more than 25 pages including exhibits.

If you have additional documents available, please make reference to them in your written submission as available upon request. Should Bar counsel need to obtain copies of any such documents, a subsequent request will be sent to you. Please do not bind, or index your documents. You may underline but do not highlight documents under any circumstances. We scan documents for use in our disciplinary files and when scanned, your document highlighting will either not be picked up or may obscure any underlying text.

** Materials received that do not meet these guidelines may be returned. **

Please refrain from attaching media such as audio tapes or CD's, oversized documents, or photographs.

We cannot process any media that cannot be scanned into the electronic record.

Please do not submit your original documents.

All documents will be discarded after scanning.

Please do not submit confidential or privileged information.

If information of this nature is important to your submission, please describe the nature of the information and indicate that it is available upon request. Bar counsel will contact you to make appropriate arrangements for the protection of any such information that is required as part of the investigation of the complaint.

Thank you for your consideration in this respect.

Important Notice:

The data on this site provides only arrest and booking information and should not be relied upon to determine an individual's actual criminal record. This data may not reflect charging decisions made by the State Attorney's Office or the outcome of criminal trials. An acquittal or dismissal of a criminal charge does not necessarily negate the validity of an arrest. To obtain the final disposition of any criminal charges, contact the [Clerk of the Circuit Court](#).

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Name: LAURATO, MICHAEL VINCENT
 DOB: 01/30/1973
 Booking #: 11007481
 Arrest Date: 02/13/2011
 Race: W
 Sex: M
 Ethnicity: N

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Personal Information

Last Name			First Name			Middle Name		Suffix	Booking No.	
LAURATO			MICHAEL			VINCENT			11007481	
Eyes	Hair	Build	Current Age	Height	Weight	SOID		SOID Name		
						00691721		LAURATO,MICHAEL VINCENT		
Race		Sex	Ethn		POB		DOB	Arrest Age	SSN	
W		M	N		FL		01/30/1973		38	###-##-####

Address

Street Address	City	State	Zip
3710 W LEONA ST	TAMPA	FL	33629

Aliases

Aliases	Date OF Birth	Social Security Number
LAURATO,MICHAEL VINCENT	01/30/1973	###-##-####

Arrest Information

Arrest Agency	Arrest Date	Arrest Time	Book Date	Book Time
SIRP	02/13/2011	04:57	02/13/2011	07:37
Arrest Location				Jurisdiction
5223 ORIENT RD				HC

Release Information**Release Data**

DOES NOT OCCUPY A CELL - RELEASED ON: 02/13/2011 AT 10:55 - REL: CASH BOND

Additional Information

OBTS	Caution Ind.	Caution Remarks
2902150384		
Attorney	Address	Phone
REFUSED		
Next of Kin	Address	Relationship
#####	#####	#####
Employer	Occupation	Address
SELF	BUINESSOWNER	

Charges**EXHIBIT****9**

No.	Charge Description	Class	Court	DISP	Bond	BP	Fine	Custody Days	Charge Count	Charge Type
1	DISORDERLY CONDUCT	M2	41E	CASH BOND	\$250.00	B		0	1	PROBABLE CAUSE
Report #	CT-Case #	Date	Agency	OBTS Number	Charge Code	CRA Number				
11000713	1103078	02/13/2011	SIRP	2902150384	MISC0124	1662844				
Remark										

Information provided should not be relied upon for any type of legal action.
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IN THE COUNTY COURT OF THE THIRTEENTH JUDICIAL CIRCUIT
OF THE STATE OF FLORIDA IN AND FOR HILLSBOROUGH COUNTY
CRIMINAL JUSTICE DIVISION

STATE OF FLORIDA

VS

CASE NO: 2011-CM-003078

DIVISION: E

MICHAEL VINCENT LAURATO

NOTICE OF TERMINATION OF PROSECUTION

TO THE CLERK OF THE COURT:

Having reviewed the charge(s) contained in the Criminal Report Affidavit and/or Notice to Appear, the State Attorney's Office informs you that the charges contained therein is dismissed and prosecution is terminated as of this date and that the defendant need not appear for any further proceedings in this matter.

This notice is also your authority to inform the Sheriff's Department to release the bond if bond has been posted.

I HEREBY CERTIFY that a copy of the foregoing Notice of Termination of Prosecution has been furnished to the Clerk of the Court, this 25th day of Feb., 20 11.

RESPECTFULLY SUBMITTED,

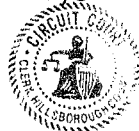
MARK A. OBER
STATE ATTORNEY


ASSISTANT STATE ATTORNEY
FLORIDA BAR# 72196

HDG

*Released
2/13/11*

STATE OF FLORIDA
COUNTY OF HILLSBOROUGH
THIS IS TO CERTIFY THAT THE FOREGOING IS A TRUE
AND CORRECT COPY OF THE DOCUMENT ON FILE IN
MY OFFICE. WITNESSED BY MY HAND AND OFFICIAL SEAL
THIS 28th day of March, 20 11



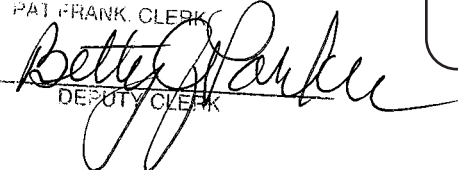

PAT FRANK, CLERK
BY 
DEPUTY CLERK

EXHIBIT
10

① 

IN THE COUNTY COURT OF THE 13TH JUDICIAL CIRCUIT
IN AND FOR HILLSBOROUGH COUNTY, FLORIDA
CRIMINAL DIVISION

STATE OF FLORIDA,

Plaintiff,

v.

Case No.: 11-CM-003078
Division: E

MICHAEL VINCENT LAURATO,

Defendant.

FILED
CLERK OF COUNTY COURT
HILLSBOROUGH COUNTY, FLA
COUNTY CRIMINAL

FILED
JUL 28 AM 10:23

MOTION TO DISMISS

COMES NOW, the Defendant, MICHAEL VINCENT LAURATO, by and through his undersigned counsel, and pursuant to Florida Rule of Criminal Procedure 3.190(c)(4), and moves to dismiss the charges filed against him for Disorderly Conduct. The State cannot make out a prima facie case against the Defendant for Disorderly Conduct for the following reasons:

1. The State has charged the Defendant with Breach of the Peace; Disorderly Conduct, pursuant to Florida Statute 877.03, resulting from an alleged incident that occurred on February 13, 2011.

2. Florida Statute 877.03 Breach of the Peace; Disorderly Conduct provides that: "Whoever commits such acts as are of a nature to corrupt the public morals, or

outrage the sense of public decency, or affect the peace and quiet of persons who may witness them, or engages in brawling or fighting, or engages in such conduct as to constitute a breach of the peace or disorderly conduct, shall be guilty of a misdemeanor of the second degree."

3. However, even assuming all allegations of the police officers and witnesses to be true, the State cannot establish a prima facie case of breach of the peace or disorderly conduct, against this Defendant.

4. The State alleges that on February 13, 2011, at approximately 4:48 am, within the "Green Room" restaurant located within the Seminole Hard Rock Casino, the Defendant was asked to leave the restaurant by the manager, the Defendant refused to leave, and the Defendant yelled loudly across the restaurant which was filled with customers, "You stupid mother fucker get me your boss I'm not leaving".

5. The witness alleges that customers began to stop eating and turn to watch the Defendant, and alleges that casino security trespassed the Defendant from the property and told Defendant he had to leave.

6. The witnesses allege that Defendant continued to sit at the table and when SPD asked him where he was parked, to escort him to his vehicle, Defendant yelled "I don't have to answer any of your questions" and continued

to stand in the restaurant which caused customers to stop again and look at Defendant due to his actions.

7. Defendant denies these allegations, and asserts that the casino's videotape surveillance will clearly evidence the falsity of the allegations; however, even assuming all of the witnesses' allegations to be true, the Defendant's alleged statements and conduct do not constitute disorderly conduct and/or breach of peace, and thus the State cannot establish the elements of the offense, as a matter of law.

8. Based on the allegations set forth in the arrest affidavit, the State cannot make out a prima facie case of Breach of the Peace; Disorderly Conduct.

WHEREFORE, the Defendant respectfully requests that this Honorable Court dismiss the charge filed against him for Breach of the Peace; Disorderly Conduct, for the reasons set forth herein.

MEMORANDUM OF LAW IN SUPPPORT OF MOTION TO DISMISS

The Second DCA ruled on a nearly identical fact pattern in the case of Smith v. State, 967 So.2d 937 (2 DCA 2007) and held that disorderly conduct is not made out as a matter of law under the facts alleged in this case. This decision is controlling on this court and requires dismissal.

In Smith, the Defendant visited a bank to secure a loan and was informed by the assistant manager that he did not qualify for the loan. Id. In response, Smith used profanity directed at the bank and at the assistant manager, and accused the assistant manager of stealing his pen. Id. The assistant manager told Smith she would have to stop cursing or he would have to leave the bank, and Smith requested that the assistant manager call the police. Id. While waiting for the police to arrive, Smith continued to curse loudly and the assistant manager stood between Smith and the customers standing in line to see the bank's tellers. Id. The bank was relatively busy, and the customers could hear Smith's verbal abuse of the assistant manager. Id. The assistant manager testified that "there were a lot of comments made afterwards on the language that was used." Id. When the police arrived, Smith continued to curse and directed his comments at the police officer. According to the officer, Smith was "very loud and very obnoxious." Id. The officer testified that she gave Smith the options either to leave the area or to be arrested. Id. According to her report he responded in very vulgar and threatening terms, and refused to leave the area. Id. The Court found that the evidence did not support the conviction for disorderly conduct for Smith's actions and

words inside or outside the bank. Id. There was no evidence that witnesses responded to defendant's words in any particular manner or that anyone in the area was actually incited to engage in an immediate breach of the peace, but were merely either curious or annoyed. Id.

Our case is nearly identical to Smith. There is no evidence that any of the restaurant patrons reacted in any particular manner or were incited to engage in an immediate breach of the peace. The Courts have consistently held that "unenanced speech alone will not support a conviction for disorderly conduct." A.S.C. v. State, 14 So.3d 1118 (5 DCA 2009). A conviction for disorderly conduct, based upon a defendant speaking loudly and profanely, cannot be upheld in absence of evidence that a defendant was trying to incite a crowd or that a crowd gathered and presented a safety risk. Id. The First Amendment protects the use of profanities and offensive speech; a defendant cannot be punished simply for asserting his right to free speech. W.L. v. State, 769 So.2d 1132 (3 DCA 2000).

In our case, even taking all of the State's allegations to be true, the Defendant was simply exercising his right of free speech, which is protected by the First Amendment. There is no evidence that witnesses responded to Defendant's words or conduct in any particular manner or

that anyone in the area was actually incited to engage in an immediate breach of the peace, but were merely either curious or annoyed. Therefore, the State cannot make out a prima facie case of Breach of the Peace; Disorderly Conduct.

The Second District has been particularly circumspect about charges arising under this particular statute. In C.N. v. Florida, 49 So.3d 831 (Fla. 2d DCA 2010), the Second District Court of Appeal dismissed a charge of disorderly conduct, again, on facts very similar to the facts alleged, here. The defendant, in that case, was in a crowd of teenagers that spilled into the streets after a dance. Id. The police had received a number of complaints about the crowd, involving noise, property damage, and fighting in the area. Id. Officers were dispatched to break up the crowd. Id. The defendant was observed shouting and using foul language and the police feared that the defendant's actions might incite fights. Id. The officers instructed the defendant to leave the scene, but the defendant failed to leave and instead sarcastically "rolled her eyes," ignoring the officers instructions to leave or face arrest. Id. The defendant did not move and was taken into custody for disorderly conduct. Id. The Second District found that the state could not prove the

case for disorderly conduct under these facts and dismissed the charge. *Id.* If the facts of that case are legally insufficient to make out a charge of disorderly conduct, the facts of this case are, *a fortiori*, legally insufficient and dismissal is required.

Again, in C.H.C. v. State, 988 So.2d 1145 (Fla. 2d DCA 2008), the Second District refused to extend the reach of the disorderly conduct statute to cases similar to the defendant's here. There, the officers encountered a defendant surrounded by a large group of people, walking in a circle clinching his fists and yelling profanities. *Id.* The defendant then began screaming and yelling at the deputies on the scene. *Id.* The deputy then ordered the defendant to "come over here," at which point the defendant ran from the scene and continued to flee even though the deputy yelled "Police, stop." *Id.* The Second District held that these facts did not constitute disorderly conduct under the statute. *Id.*

Throughout the state's appellate districts, Florida courts have consistently and uniformly held that situations identical to the alleged circumstances of this case, are legally insufficient to make out a *prima facie* case of disorderly conduct in violation of the applicable statute. For example, in A.S.C. v. State, 14 So.3d 1118 (Fla. 5th

DCA), the Fifth District dismissed a disorderly conduct charge, where a defendant used loud, profane, and offensive language in a public setting.

Similarly, in W.L. v. State, 769 SO.2d 1132 (Fla. 3d DCA), the Third District dismissed a disorderly conduct charge, where a defendant, who was in a crowd of 15 to 20 people, yelled out a series of profanities to officers conducting a narcotics investigation. Noting that no member of the crowd threatened the officers and no safety concern arose, the court held the disorderly conduct charge conduct not stand. Id.

A similar result was reached by the Third District in Fields v. State, 24 So.3d 636, (Fla. 3d DCA 2009). In that case, the defendant was yelling profanities in a bank doorway, even though people coming out of the bank overheard the defendant and stopped to watch the defendant. The court held that the mere fact that the crowd gathered out of curiosity or annoyance to observe the defendant's behavior was legally insufficient to prove disorderly conduct. Id.

In this case, the best evidence—although disputed—is that the defendant used loud profanity in a public place and initially refused to leave and that the people already present took momentary notice of the Defendant.

AFFIDAVIT

I, MICHAEL VINCENT LAURATO, hereby swear and affirm
that the above facts are true.

X

(Michael Vincent Laurato)

Sworn to this 24th day of February, 2011.

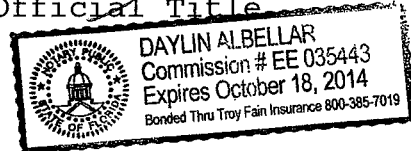
SEALED AND DELIVERED IN THE PRESENCE OF

Witness _____ Address _____

State of FLORIDA County of HILLSBOROUGH

On this 24th day of February, 2011, before me personally
came and appeared MICHAEL V. LAURATO the person
described herein, who _____ produced _____
identification/ ✓ is personally known to me, and who
executed the foregoing instrument, and he (or she)
acknowledged to me that he (or she) executed the same.

Daylin Albellar
Official Title



CERTIFICATE OF SERVICE

I HEREBY CERTIFY THAT a true and correct copy of the
foregoing has been provided via U.S. mail to: The State
Attorney's Office, Misdemeanor Division, 419 N. Pierce
Street, Tampa, Florida 33602, on this 24th day of February,
2011.

Ardyn V. Cuchel

ARDYN V. CUCHEL, ESQ.
Florida Bar No.: 0713759
The Law Office of
Ardyn V. Cuchel, P.A.
1902 W. Cass Street
Tampa, Florida 33606
(813)253-3051 Phone
(813)258-4625 Fax
Attorneys for Defendant

IN THE COUNTY COURT OF THE 13TH JUDICIAL CIRCUIT
IN AND FOR HILLSBOROUGH COUNTY, FLORIDA
CRIMINAL DIVISION

STATE OF FLORIDA,

Plaintiff,

v.

Case No.: 11-CM-003078

Division: E

MICHAEL VINCENT LAURATO,

Defendant.

_____ /

NOTICE OF HEARING

COMES NOW, the Defendant, MICHAEL VINCENT LAURATO, by and through his undersigned counsel, and hereby gives notice that on **March 16, 2011, at 9:00am** or as soon thereafter as possible, the undersigned will call for hearing upon **Defendant's MOTION TO DISMISS**, in the above styled cause before the Honorable Lawrence Lefler at the Edgecomb Courthouse, 801 East Twiggs Street, Annex, Courtroom 21, Tampa, Florida.

Please be governed accordingly.

CERTIFICATE OF SERVICE

I HEREBY CERTIFY THAT a true and correct copy of the foregoing has been provided via U.S. mail to: The State Attorney's Office, Misdemeanor Division, 419 N. Pierce

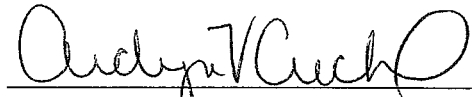
CLERK OF COUNTY COURT
HILLSBOROUGH COUNTY, FL
COUNTY CRIMINAL

FEB 28 AM 10:23

FILED

12

Street, Tampa, Florida 33602, on this 24th day of February,
2011.



ARDYN V. CUCHEL, ESQ.
Florida Bar No.: 0713759
The Law Office of
Ardyn V. Cuchel, P.A.
1902 W. Cass Street
Tampa, Florida 33606
(813)253-3051 Phone
(813)258-4625 Fax
Attorneys for Defendant

1662844

COURT CASE/ 11-3078 SAO # 296 : 50384
J.F. ID # _____

AGENCY REPORT # 2011-00713 AGENCY NAME SEMINOLE PD ORI # 0063400

LOCATION OF OFFENSE 5223 ORIENT RD, TAMPA, FL 33610 DATE OF OFFENSE 02/13/2011 TIME OF OFFENSE 04:48

WITHIN: TAMPA ☐ PLANT CITY ☐ TEMPLE TERRACE ☐ UNINCORPORATED AREA ☒ SUPPLEMENTAL CRA ATTACHED ☐

COURT:
TAMPA COURT ☒ PLANT CITY CT ☐

LOCATION OF ARREST	<u>5223 ORIENT RD. TAMPA, FLORIDA 33610</u>	DATE OF ARREST	<u>02/13/2011</u>	TIME OF ARREST	<u>04:57</u>
--------------------	---	----------------	-------------------	----------------	--------------

BOOKING # 11007481 SOID # 641721 WEAPON TYPE _____ WEAPON SEIZED Yes ☐ No ☒

ARREST

<input checked="" type="checkbox"/> Probable Cause	<input checked="" type="checkbox"/> Adult
<input checked="" type="checkbox"/> Complaint	<input type="checkbox"/> Juvenile
<input type="checkbox"/> Fugitive Warrant	<input type="checkbox"/> Delinquency
<input type="checkbox"/> VOP/VOCC	<input type="checkbox"/> Dependency
<input type="checkbox"/> Warrant	<input type="checkbox"/> Felony
<input type="checkbox"/> Juvenile Pickup	<input checked="" type="checkbox"/> Misdemeanor

REQUEST FOR:

<input type="checkbox"/> Direct File/SAO	<input type="checkbox"/> Traffic MISD
<input type="checkbox"/> Review	<input type="checkbox"/> Traffic FEL
<input type="checkbox"/> Warrant	<input type="checkbox"/> Ordinance
<input type="checkbox"/> Summons	<input type="checkbox"/> Pickup
<input type="checkbox"/> Juvenile Pickup	<input type="checkbox"/> Other

NOTICE TO APPEAR:

<input type="checkbox"/> Arresting officer
<input type="checkbox"/> Booking supervising officer

NAME LAURATO MICHAEL VINCENT ALIAS _____
Last First Middle
 RACE: W-White I-American Indian/Alaskan Native HW-Hispanic White HB-Hispanic Black B-Black O-Oriental/Asian
 Race W SEX M D.O.B. 01/30/1973 38
MO / DAY / YEAR APPROXIMATE AGE

COMPLEXION MED BUILD UP
HEIGHT 5'10 WEIGHT 270
COLOR: EYES BROW HAIR BRO

LOCAL ADDRESS (Street, Apt. #, City, State, Zip) _____ Ph #: _____

Permanent Address (Street, Apt. #, City, State, Zip) **3710 W LEONA ST, TAMPA, FL 33629** Ph #: **(000) 000-0000**

Business Address (Street, Apt. #, City, State, Zip) **REFUSED, REFUSED** Ph #: **(000) 000-0000**

Driver's License No. **L630558730300** State **FL** SS # **594-14-6261** PLACE OF BIRTH **UNKNOWN** DOC # _____

Gang Member: Yes ☐ No ☒ **Gang Name** _____

SCARS, MARKS, TATTOOS,
UNIQUE FEATURES (Loc., Type, Desc) unknown

IF JUVENILE:

School Name _____

Mother/Guardian N/A Address 002 Phone 002

Father/Guardian Mr. [Signature] Address [Address] Ph # [Phone Number]

Released To: JAC ☐ Parent ☐ Guardian ☐ Other Relationship ☐ Other ☒

Co-Defendant (Last, First, Middle) _____ Sex: _____ Race: _____ DOB: _____

Arrested ☐ At Large ☐ , 1 Capias Warrant Requested ☐ Felony ☐ Misdemeanor ☐ Juvenile ☐

Co-Defendant (Last, First, Middle) N/A

CO-Defendant (Last, First, Middle) _____ Sex: _____ Race: A DOB: 12

Arrested ☐ At Large ☐ Capias/Warrant Requested ☐ Felony ☐ Misdemeanor ☐ Juvenile ☐

STATUTE (subsec.) / ORD #	DV	CP	CHARGE STATUS	BOND SET	CHARGE	TRAFFIC CITATION #	DRUG ACT/TYPE
877.03	N	N	M	N	DISORDERLY CONDUCT, BREACH OF PEACE (2ND DEG. MISD)		

CHARGE STATUS: F-Felony M-Misdemeanor T-Traffic O-Ordinance FT-Felony Traffic DV-Domestic Violence CP-Child Present

ACTIVITY: N-N/A P-Possess S-Sell B-Buy T-Traffic R-Smuggle D-Deliver E-Use K-Dispense/Distribute M-Manufacture/Produce/Cultivate Z-Other
Type: N-N/A A-Amphetamine B-Barbiturate C-Cocaine E-Heroin H-Hallucinogen M-Marijuana O-Opium/Deriv. P-Paraphernalia/Equipment S-Synthetic U-Unknown Z-Other

A LIST OF TANGIBLE EVIDENCE (If none, write "None") (Evidence List must be provided for all NOTICES TO APPEAR)

DESCRIPTION/AMOUNT PER UNIT	RECOVERED BY	GIVEN TO	PRESENT LOCATION

Mandatory Appearance in Court ☐

You need not appear in Court, but must comply with instructions on Reverse Side. ☒

COURT INFORMATION: You must appear in County Court at the:

COURTHOUSE TOWER ANNEX, 801 E. TWIGGS STREET □
(Corner of Jefferson & Twiggs Street), TAMPA, FLORIDA 33602

COUNTY OFFICE BUILDING, MICHIGAN & REYNOLDS STREET □
PLANT CITY, FLORIDA 33566

Division _____ COURTROOM # _____ ON _____, 20____, AT _____ a.m. ☐ p.m. ☐

I agree to appear at the time and place designated above to answer for the offense(s) charged or to pay the fine subscribed. I understand that if I willfully fail to appear before the Court as required by the Notice to Appear, I may be held in contempt of Court and a warrant for my arrest shall be issued. You may also be charged with the crime of Failure to Appear, F.S. 843.15. I certify that my address as listed above is correct and I further understand that I have a continuing duty to advise the Court of any changes in my address as set forth above.

Sgt. PW #3883

Signature of Defendant/Juvenile

Parent or Guardian (if Juvenile)

CLERK OF COURT COPY

CLERK OF COURT COPY

CLERK OF COURT COPY

AGENCY REPORT # 2011-00713

AGENCY ME SEMINOLE PD

State facts to establish probable cause that a crime was committed by the defendant or that the child is dependant

On February 13, 2011, at approximately 4:48 A.M. within the "Green Room" restaurant located within the Seminole Hard Rock Casino located at 5223 Orient Road Tampa, Florida, within Hillsborough County, the defendant, Michael Laurato, was asked to leave the restaurant by the manager, Meredith Rhoades, the defendant refused to leave and as Rhoades began to walk away to contact her boss and casino security the defendant yelled loudly across the restaurant which was filled with customers, "You stupid mother fucker get me your boss I'm not leaving." Rhoades advised customers began to stop eating and turning to watch the defendant. Casino security trespassed the defendant from the casino property and SPD told the defendant he had to leave. The defendant continued to sit at the table and when SPD asked the defendant where he parked to escort the defendant to his vehicle the defendant yelled, "I don't have to answer any of your questions" and continued to stand in the restaurant which caused customers to stop again to look at the defendant due to his actions.

The defendant was identified by his Florida Driver's License.

PROBABLE
CAUSE
STATEMENT

Judgement requested against defendant for agency investigative cost per Florida Statute 938.27: \$

OFFICER Jo Mackles
I.D. # 091 Dist. & Squad Tampa patrol
(Please Print The Above Information)

SWORN TO AND SUBSCRIBED BEFORE ME THIS
13 DAY OF Feb, 2011
gty
NAME/Title of Person Authorized to Administer Oath

POLICE REPORT WRITTEN: Yes ☒ No ☐
OFFICER C Cooper I.D. # 254 Dist. & Squad Patrol

I SWEAR THAT THE ABOVE STATEMENTS ARE CORRECT TO THE BEST OF MY KNOWLEDGE. FOR NOTICES TO APPEAR, I ALSO CERTIFY THAT A COMPLETE LIST OF WITNESSES AND EVIDENCE KNOWN TO ME IS ATTACHED.

AFFIANT, Signature Officer C Cooper
AFFIANT, Print/Type Name Officer C Cooper Sgt. # 3886

\$178.00

(15)

NOTIFICATION
VICTIM

NOTE: The WHITE COPY of VICTIM'S/WITNESSES goes to the Clerk's Office ONLY on Notices To Appear. In all other cases, it should be removed. The Jail or JAC personnel will determine this for all defendants turned over to them. In all Notices To Appear issued by the Arresting Officer, the Arresting Officer should leave the WHITE copy of VICTIM'S/WITNESSES attached.

IN THE COUNTY COURT OF THE 13TH JUDICIAL CIRCUIT
IN AND FOR HILLSBOROUGH COUNTY, FLORIDA
CRIMINAL DIVISION

STATE OF FLORIDA,

Plaintiff,

v.

Case No.: 11-CM-003078

Division: E

MICHAEL VINCENT LAURATO,

Defendant.

FILED
2011 FEB 25 AM 9:02

NOTICE OF APPEARANCE, WRITTEN PLEA OF NOT GUILTY, WAIVER OF
ARRAIGNMENT AND REQUEST FOR DISPOSITION DATE

NOTICE IS HEREBY GIVEN to this Honorable Court and all parties hereto, that the undersigned will be counsel for and on behalf of MICHAEL VINCENT LAURATO, the Defendant in the above-styled cause, and requests that copies of all pleadings, notices, correspondence, etc. be furnished to her in accordance therewith. All defenses regarding jurisdictional issues are reserved and preserved.

The Defendant, MICHAEL VINCENT LAURATO, by and through his undersigned counsel, and pursuant to Fla. R. Crim. P. 3.160 and 3.170(a), hereby waives arraignment and enters his Written Plea of Not Guilty to all charges herein.

The Defendant further requests that a disposition date be set in this case.

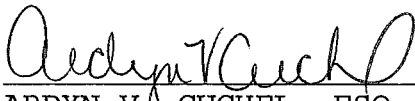
3/15
3/16
NOTP
8:3

(17)

Raf

CERTIFICATE OF SERVICE

I HEREBY CERTIFY THAT a true and correct copy of the foregoing has been provided via U.S. mail to: The State Attorney's Office, Misdemeanor Division, 419 N. Pierce Street, Tampa, Florida 33602, on this 23rd day of February, 2011.


ARDYN V. CUCHEL, ESQ.
Florida Bar No.: 0713759
The Law Office of
Ardyn V. Cuchel, P.A.
1902 W. Cass Street
Tampa, Florida 33606
(813)253-3051 Phone
(813)258-4625 Fax
Attorneys for Defendant

IN THE COUNTY COURT OF THE 13TH JUDICIAL CIRCUIT
IN AND FOR HILLSBOROUGH COUNTY, FLORIDA
CRIMINAL DIVISION

STATE OF FLORIDA,

Plaintiff,

v.

Case No.: 11-CM-003078

Division: E

MICHAEL VINCENT LAURATO,

Defendant.

_____ /

NOTICE OF DISCOVERY

Defendant, pursuant to Fla. R. Crim. P. 3.220, files this written demand for discovery and the State Attorney shall disclose within fifteen (15) days from demand hereof to defense counsel and permit him to inspect, copy, test or photograph the following information within the State's possession or control, or which may be reduced to such possession or control:

1. The names and addresses of all persons known to the State Attorney, or any investigator of the State Attorney, to have information which may be relevant to the offense charged and to any defense with respect thereto.

2. The statements of any person whose names are furnished in compliance with the proceeding paragraph, to include police reports and investigator reports or notes

FILED

2011 FEB 25 AM 9:02

pertaining to any such statements of interview of such persons, and including written statements made by said persons and signed or otherwise adopted or approved by said persons, or on stenograph, mechanical, electrical, or other recording, or a transcript thereof, or which is substantially a verbatim recital of an oral statement made by said persons to an officer or agent of the State and recorded contemporaneously with the making of such oral statement.

3. Any written or recorded statements and the substance of any oral statements made by the Defendant and known to the prosecutor, or which should be known to the prosecutor, together with the name and address of each witness to the statement.

4. Any written or recorded statement and the substance of any oral statements made by any co-defendant or alleged accomplice of the trial if to be a joint one.

5. Those portions of recorded grand jury minutes that contain testimony of the accused or relate to testimony or statements of the accused.

6. Any tangible papers or objects, which were obtained or belonged to the Defendant.

7. Whether the State or any investigator for the State Attorney or any Federal Agency has any material or

information, which has been provided by a confidential informer.

8. Whether there has been any electronic surveillance, including wiretapping, by State or Federal authorities of the premises of the accused, or of conversations to which the Defendant was a party, and any documents relating thereto.

9. Whether there has been any search and seizure and any documents relating thereto.

10. Reports of statements of experts made in connection with the case or the Defendant, including results of physical or mental examinations and of scientific tests, experiments, or comparisons.

11. Any tangible papers or objects which the prosecutor intends to use, or which the prosecutor has examined in connection with the case, whether or not the prosecutor intends to use the latter in connection with any hearing or the trial and which were not obtained from or belongings of the Defendant.

12. Any material information within the State's possession or control or which to the knowledge of the State may be reduced to such possession or control, which tends to negate the guilt of the Defendant as to the offense charged or which might mitigate; Defendant requests

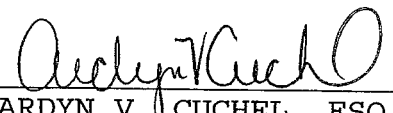
and moves for the provision of exculpatory evidence as provided by the decisions in Brady v. Maryland, 88 S. Ct. 1194 and Williams v. Dutton, 400 F.2d 797 (5th Cir.1968), cert. den'd 21, L.Ed 2d 799.

13. The arrest and conviction records of those persons whose names are provided in accordance with paragraph (1), along with the arrest and conviction record of the Defendant, if any. Also, such criminal history records of those names in response to paragraph (1) above as are now in possession of the State of Florida or its agents. State v. Coney, 294 So.2d 82 (Fla.1974).

WHEREFORE, the Defendant moves that the Court grant such requests above to be not otherwise provided as a matter of course by the Florida Rules of Criminal Procedure.

CERTIFICATE OF SERVICE

I HEREBY CERTIFY THAT a true and correct copy of the foregoing has been provided via U.S. mail to: The State Attorney's Office, Misdemeanor Division, 419 N. Pierce Street, Tampa, Florida 33602, on this 23rd day of February, 2011.


ARDYN V. CUCHEL, ESQ.
Florida Bar No.: 0713759
The Law Office of

Ardyn V. Cuchel, P.A.
1902 W. Cass Street
Tampa, Florida 33606
(813)253-3051 Phone
(813)258-4625 Fax
Attorneys for Defendant

IN THE COUNTY COURT OF THE 13TH JUDICIAL CIRCUIT
IN AND FOR HILLSBOROUGH COUNTY, FLORIDA
CRIMINAL DIVISION

STATE OF FLORIDA,

Plaintiff,

v.

Case No.: 11-CM-003078

Division: E

MICHAEL VINCENT LAURATO,

Defendant.

_____ /

NOTICE OF HEARING

COMES NOW, the Defendant, MICHAEL VINCENT LAURATO, by and through his undersigned counsel, and hereby gives notice that on **March 16, 2011, at 9:00am** or as soon thereafter as possible, the undersigned will call for hearing upon **Defendant's MOTION TO PRESERVE AND COMPEL PRODUCTION OF EXCULPATORY EVIDENCE**, in the above styled cause before the Honorable Lawrence Lefler at the Edgecomb Courthouse, 801 East Twiggs Street, Annex, Courtroom 21, Tampa, Florida.

Please be governed accordingly.

CERTIFICATE OF SERVICE

I HEREBY CERTIFY THAT a true and correct copy of the foregoing has been provided via U.S. mail to: The State Attorney's Office, Misdemeanor Division, 419 N. Pierce

FILED

2011 FEB 25 AM 9:02

24

9

Street, Tampa, Florida 33602, on this 23rd day of February,
2011.


ARDYN V. CUCHEL, ESQ.

Florida Bar No.: 0713759

The Law Office of

Ardyn V. Cuchel, P.A.

1902 W. Cass Street

Tampa, Florida 33606

(813)253-3051 Phone

(813)258-4625 Fax

Attorneys for Defendant

IN THE COUNTY COURT OF THE 13TH JUDICIAL CIRCUIT
IN AND FOR HILLSBOROUGH COUNTY, FLORIDA
CRIMINAL DIVISION

STATE OF FLORIDA,

Plaintiff,

v.

Case No.: 11-CM-003078

Division: E

MICHAEL VINCENT LAURATO,

Defendant.

MOTION TO PRESERVE AND COMPEL PRODUCTION
OF EXCULPATORY EVIDENCE

COMES NOW, the Defendant, MICHAEL VINCENT LAURATO, by and through his undersigned counsel, and moves this Court to enter an Order requiring the State to preserve and disclose to the Defendant the videotape of the events leading up to the Defendant's arrest and the arrest itself which is within both the possession and knowledge of the state. This motion is brought under the provisions of the Fourteenth Amendment to the United States Constitution, as interpreted by the United States Supreme Court in *Brady v. Maryland*, 83 S. Ct. 1194 (1963), and subsequent decisions, and Fla. R. Crim. P. 3.220(b)(4).

This motion requests that the State disclose to the Defendant all exculpatory evidence that is in its

possession or within in its knowledge. Specifically, this motion requests that the State disclose and provide a copy of the following specific favorable information and material:

1. The videotape (audio and visual) of events leading up to the arrest and the actual arrest of the Defendant on February 13, 2011 in the Green Room Restaurant at the Seminole Hard Rock Casino, which is in the present possession of the Seminole Tribe Police Department.

The area and conduct of all parties leading up to the Defendant's arrest have been captured on video surveillance. The contents of the videotape are completely exculpatory and demonstrate that the Defendant was neither loud, nor disorderly and completely contradict the allegations of criminal report affidavit.

Pursuant to F.S. 285.16, the State of Florida has assumed jurisdiction over all criminal offenses between Indians and other persons that arise within Indian Reservation and officers of the Seminole Tribe Police Department is considered a law enforcement agency for purposes of Florida law. Accordingly, the exculpatory videotape of the incident and arrest is properly considered to be within the constructive possession of the State and

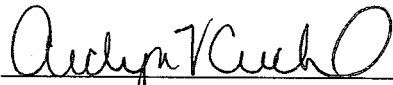
subject to immediate disclosure under Brady and its progeny.

The State, through its law enforcement agencies, has the initial, and immediate opportunity to investigate crime and secure any physical evidence relevant to its commission. The State in this case has a videotape of the actual events that transpired. The evidence is completely exculpatory and the Defendant has had no similar opportunity to obtain the evidence. Failing to secure, preserve, and disclose this exculpatory evidence restricts the Defendant's right to a fair trial.

WHEREFORE, the Defendant prays that this Court will enter its order requiring the state to secure, preserve, and disclose the videotape of the events leading up to the arrest and the arrest itself to the Defendant.

CERTIFICATE OF SERVICE

I HEREBY CERTIFY THAT a true and correct copy of the foregoing has been provided via U.S. mail to: The State Attorney's Office, Misdemeanor Division, 419 N. Pierce Street, Tampa, Florida 33602, on this 23rd day of February, 2011.


ARDYN V. CUCHEL, ESQ.
Florida Bar No.: 0713759
The Law Office of

Ardyn V. Cuchel, P.A.
1902 W. Cass Street
Tampa, Florida 33606
(813)253-3051 Phone
(813)258-4625 Fax
Attorneys for Defendant

IN THE COUNTY CRIMINAL COURT IN AND FOR
HILLSBOROUGH COUNTY, STATE OF FLORIDA
NOTICE OF HEARING

DIVISION: E
CASE NUMBER: **11-CM-003078**
HEARING TYPE: MOTION/PENDING CASE

*** F I L I N G C O P Y ***

YOU ARE HEREBY NOTIFIED THAT THE DEFENDANT (see party list at bottom) IS NOTICED TO APPEAR IN PERSON BEFORE THE HONORABLE LAWRENCE LEFLER JUDGE OF THE COUNTY CRIMINAL COURT OF HILLSBOROUGH COUNTY, FLORIDA. IN COURTROOM 21 2ND FLOOR, COURTHOUSE ANNEX 401 N JEFFERSON ST TAMPA, FL ON **MARCH 16, 2011** AT **9:00 AM**.

DEFENDANT: FAILURE TO APPEAR FOR THE ABOVE COURT DATE WILL RESULT IN AN ARREST WARRANT BEING ISSUED BY ORDER OF THE COURT.

BONDSMAN: ANY BONDS POSTED IN THIS MATTER WILL BE SUBJECT TO FORFEITURE.

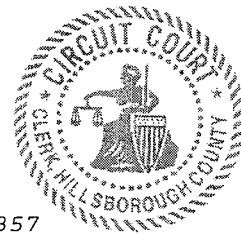
CERTIFICATE OF MAILING

AS DEPUTY CLERK OF THE CIRCUIT COURT I DO HEREBY CERTIFY THAT ON FEBRUARY 25, 2011, I MAILED A TRUE AND CORRECT COPY OF THIS NOTICE OF HEARING TO (see party list at bottom).

PAT FRANK
CLERK OF THE CIRCUIT AND COUNTY COURT

Deborah Martinez

DEBORAH MARTINEZ, DEPUTY CLERK
TAMPA (813) 276-8100 FELONY EXT.4307 MISDEMEANOR EXT.4357
PLANT CITY (813) 757-3918 OR 276-8100 EXT.4515



PARTY PARTY NAME, ADDRESS NOTICE WAS SENT TO -----*
D001 MICHAEL VINCENT LAURATO, 3710 W LEONA ST TAMPA FL 33629

(NAGLEJ)

30

IN THE COUNTY CRIMINAL COURT IN AND FOR
HILLSBOROUGH COUNTY, STATE OF FLORIDA
NOTICE OF HEARING

DIVISION: E
CASE NUMBER: **11-CM-003078**
HEARING TYPE: ARRAIGNMENT

*** F I L I N G C O P Y ***

YOU ARE HEREBY NOTIFIED THAT THE DEFENDANT (see party list at bottom) IS NOTICED TO APPEAR IN PERSON BEFORE THE HONORABLE LAWRENCE LEFLER JUDGE OF THE COUNTY CRIMINAL COURT OF HILLSBOROUGH COUNTY, FLORIDA. IN COURTROOM 21 2ND FLOOR, COURTHOUSE ANNEX 401 N JEFFERSON ST TAMPA, FL ON **MARCH 10, 2011** AT **8:30 AM**.

DEFENDANT: FAILURE TO APPEAR FOR THE ABOVE COURT DATE WILL RESULT IN AN ARREST WARRANT BEING ISSUED BY ORDER OF THE COURT.

BONDSMAN: ANY BONDS POSTED IN THIS MATTER WILL BE SUBJECT TO FORFEITURE.

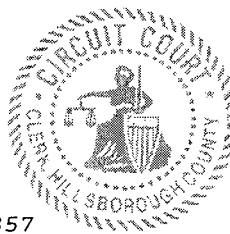
CERTIFICATE OF MAILING

AS DEPUTY CLERK OF THE CIRCUIT COURT I DO HEREBY CERTIFY THAT ON FEBRUARY 16, 2011, I MAILED A TRUE AND CORRECT COPY OF THIS NOTICE OF HEARING TO (see party list at bottom).

PAT FRANK
CLERK OF THE CIRCUIT AND COUNTY COURT

Deborah Martinez
DEBORAH MARTINEZ, DEPUTY CLERK

TAMPA (813) 276-8100 FELONY EXT.4307 MISDEMEANOR EXT.4357
PLANT CITY (813) 757-3918 OR 276-8100 EXT.4515



PARTY PARTY NAME, ADDRESS NOTICE WAS SENT TO -----* (COURTNEYJI)
D001 MICHAEL VINCENT LAURATO, 3710 W LEONA ST TAMPA FL 33629

(31)

BOND RELEASE NOTICE

☐ Circuit Criminal

☒ County Criminal

☐ Traffic

Date: 1 March 2011

To: SHERIFF OF HILLSBOROUGH COUNTY

PLEASE RELEASE THE BOND POSTED IN THE CASE OF THE STATE OF FLORIDA
vs Michael Vincent Laurato

Charged with Disorderly Contact
#B1100796 #250.00

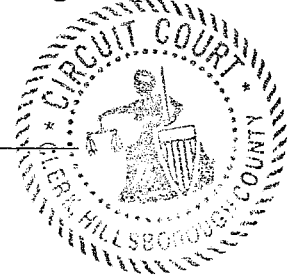
Case No./Citation No. 11-CM-003078

The above-referenced matter has been disposed of by the Court and the bond is no longer required.

PAT FRANK
Clerk of Circuit and County Courts

By: OC Damon
Deputy Clerk

COCR0006(Rev. 01-13-05)



Docketed 3-1-11 DD

Hillsborough County Sheriff's Office
CASH APPEARANCE BOND

Bond # B1100794

Defendant (LAST, FIRST, MIDDLE) MICHAEL VINCENT
Race (M) Sex (M) D.O.B. (01/30/73)

Booking # C110074311

Date (02/13/11)

Court Case # C1103078

In the State of Florida, County of Hillsborough

I, LAURATO, MICHAEL VINCENT, Depositor,


have deposited with the Sheriff of Hillsborough County, the sum of 250.00 as a security for the appearance of
LAURATO, MICHAEL VINCENT, Defendant. The Defendant is charged with DISORDERLY CONDUCT (1).

FVA 87705 12 for which he/she was arrested by Officer COOPER, # 25404 SENTINALE IND RES P
This arrest occurred at 5275 ORIENT A.

THE CLERK OF THE COURT WILL NOTIFY THE DEFENDANT OF THE SCHEDULED COURT DATE AND LOCATION.
County Criminal Court, 419 Pierce St., Room 190F, Tampa

1. THE DEFENDANT SHALL APPEAR FOR COURT TO ANSWER THE ABOVE CHARGE.
2. UPON ORDER OF THE COURT, THE MONIES SO DEPOSITED SHALL BE RETURNED TO THE DEPOSITOR ONLY.
3. INSTRUCTIONS FOR REFUND ARE PRINTED ON REVERSE SIDE OF DEPOSITOR'S COPY.
4. UPON THE DEFENDANT'S NON-APPEARANCE, THE MONIES WILL BE FORFEITED BY ORDER OF THE COURT.

This bond taken and approved by:
DAVID LEE, SHERIFF
HILLSBOROUGH COUNTY, FLORIDA


Deputy Sheriff's Signature
Name HILTON, RONALD

ADNH

7002

903.266, F.S.; requiring that all cash bond forms prominently display a notice explaining
that cash bonds are subject to forfeiture and withholding by the Clerk of the Court for the
payment of court fees, court cost, and criminal penalties on behalf of the criminal
defendant regardless of who posted the funds.

Defendant's Full Signature

Address: 3710 W LEONA ST TAMPA

FL 33629

Depositor's Full Signature

Name: LAURATO, MICHAEL VINCENT

Dob: 01/30/73 Address: 3710 W LEONA ST

TAMPA

FL 33629

Amount deposited: 250.00

Total Cash Amt: 100 Total Check Amt: 250.00 Check #: 439078

Same

For Fiscal Use only:

Amount Released	Ck #	Received by	on
Amount Released	Ck #	Received by	on
Amount Released	Ck #	Received by	on

White - Fiscal

Pink - Court

Green - Jail

Yellow - Depositor

33

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CLERK OF COURT
HILLSBOROUGH COUNTY, FLA
COUNTY CRIMINAL

3-10
E



June 3, 2011

Tampa pain clinic owners facing drug trafficking, racketeering charges

By Jodie Tillman, Times Staff Writer

TAMPA - In July, police raided and shut down a Dale Mabry Highway pain clinic they suspected of being a pill mill. Six months later, officers arrested the co-owners and a physician.

But Hillsborough prosecutors did not follow up by actually filing charges until this week - and the case looks like a big one: 82 counts, including drug trafficking, conspiracy and racketeering against the 1st Medical Group married co-owners Michele Gonzalez and Jorge Gonzalez-Betancourt and a doctor, Kimberly Daffern.

Office manager Maureen Altman and clinic employee William Pernas, face 11 and nine conspiracy charges respectively.

But Michael Laurato, an attorney for two of the defendants, called the 178-page charging document a ploy by prosecutors:

The charges were filed Wednesday - the day before an appeals court heard arguments on whether Tampa police must turn over the more than \$220,000 that was seized from the clinic and Gonzalez-Betancourt's car and home.

A Hillsborough Circuit Court judge said in August that there was no evidence that the money was related to any criminal activity or that the clinic was operating illegally.

The city appealed that decision to the 2nd District Court of Appeal in Lakeland.

Laurato said authorities are trying to use the newly filed criminal charges to gain leverage in that forfeiture case.

"It's an entirely vindictive presentation," said Laurato, who represents the clinic and Michele Gonzalez. "It's complete and total abuse of power by the Hillsborough State Attorney's Office."

Hillsborough State Attorney's Office spokesman Mark Cox declined to comment on the case.

Police have said 1st Medical Group gave free prescriptions and office visits to recruiters who brought in out-of-state clients and homeless people.

Authorities allege that at least five people died of overdoses from pills obtained with prescriptions from 1st Medical, accused of prescribing 2.4 million pain pills in the first seven months of 2010.

The new documents filed by prosecutors this week do not contain much new information about the case.



Laurato said authorities just beat a 175-day deadline from the arrest date to file charges. The clinic, which had been located at 2314 N Dale Mabry Highway, has not operated since July, and Laurato said authorities still have its equipment.

He said he would file a motion to dismiss the case before the defendants are arraigned.

St. Petersburg Times



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*DeMichelle Deposition Reporters
of Northern CA*

Fairfield/Napa Valley
700 Webster Street, Fairfield, CA 94533
707-425-6000 707-425-6019 Fax
Email: susan@demichelle.com

The Florida Bar
651 East Jefferson Street
Tallahassee, Florida 32399-2300

March 23, 2011

Attn: Theodore P. Littlewood Jr., Bar Counsel

Re: Mr. Michael Vincent Laurato; RFA# 10-21696
Update for file.

Dear Mr. Littlewood Jr.,

On March 14, 2011 at 12:40 pm I received an email from Michael Musetta from Michael Musetta & Associates, Court Reporters in Tampa. Please see the attached email transactions. Mr. Laurato continues to harass me filing motion after motion and appeal Judge Myers decision on October 25, 2010 in favor of DeMichelle Deposition Reporters.

As you can see, Mr. Laurato paid \$515 to Musetta & Associates to have the October 25th hearing transcribed and is appealing Judge Myers decision, but is obsessed with not paying my firm the Judgment that was ordered by the Court here in California. This is pure harassment on the part of Mr. Laurato and has been since 2007.

I've talked with other people who have sued Mr. Laurato and they all say the same thing....that Mr. Laurato will continue to file motion after motion and appeal after appeal because Mr. Laurato's favorite quote is "Michael does not pay" and then tries to collect on attorney fees.

I flew 3,000 miles, paid for airfare, hotel, meals, car rental and attorney fees to be at the hearing in Tampa that Mr. Laurato requested for October 25, 2010 yet Mr. Laurato didn't even show his face in court. His two "employees" lied on the witness stand to protect Mr. Laurato and Judge Myers saw right through the testimony.

You can view Judge Myers' ruling on my blog, part 1 and part 2.
<http://demichelledepositionreporters.blogspot.com>

I know I will never, ever get paid by Mr. Laurato. I tried to end this I believe two years ago but he wouldn't let it go. He wanted me to pay him \$1,500. I said, "Absolutely not!"

If Mr. Laurato's intent was to ruin me and drag me down, he has succeeded in doing so, all over a \$481.00 invoice in 2007. I have not been able to function running my business and devoting my time to the business the way it should have been over the past four years due to Mr. Laurato's harassment dragging this on for years.

EXHIBIT

12

My business is on the verge of closing. I'm delinquent on office rent and my mortgage. I am about to lose my home, and my attorney fees to Brian Stayton, Esq. to fight Mr. Laurato are over \$10,000. Mr. Laurato has drained me of my finances and has ruined me financially with my business.

I'm asking.....no, I'm begging you to please, please end all this. I'm also asking in my Complaint that you award me all attorney fees with Brian Stayton, Esq. and all expenses to attend the Tampa court hearing on October 25, 2010 and that Mr. Laurato pay this in full within 30 days. He started and caused all of this turmoil, attorney fees and expenses.

Mr. Laurato has caused such extreme damage to my financial condition. He is not a model attorney representing your Bar Association. He was not only arrested for disorderly conduct in Tampa recently, he was also arrested years ago in Chicago at a ball game for disorderly conduct.

He is an unsavory character, abuses his Bar License with many, many citizens who have sued him. He drags cases on for years hoping the person suing him will crumble and be crushed causing them to spend thousands of dollars on attorney fees.

Mr. Laurato needs to have a psychiatric examination and needs to have his Bar License revoked due to such extreme harassment.

Thank you for updating my Complaint, hopefully reopening my case and most importantly, I respectfully request and hope you see through all this, the damage Mr. Laurato has caused so many people and that you suspend Mr. Laurato's Bar License or better yet, revoke his Bar License.

Please end all this so I can get back on track and hopefully save my business and my home.

Sincerely,

Susan DeMichelle, CSR #3095
dba DeMichelle Deposition Reporters

*** Attachments

CHAPTER 11

Procedural Torts

§11:10 ABUSE OF PROCESS

- §11:10.1 Elements of Cause of Action - Florida Supreme Court
 - §11:10.1.1 Elements of Cause of Action - 1st DCA
 - §11:10.1.2 Elements of Cause of Action - 2nd DCA
 - §11:10.1.3 Elements of Cause of Action - 3rd DCA
 - §11:10.1.4 Elements of Cause of Action - 4th DCA
 - §11:10.1.5 Elements of Cause of Action - 5th DCA
- §11:10.2 Statute of Limitations
- §11:10.3 References
- §11:10.4 Defenses
- §11:10.5 Related Matters

§11:20 MALICIOUS PROSECUTION

- §11:20.1 Elements of Cause of Action - Florida Supreme Court
 - §11:20.1.1 Elements of Cause of Action - 1st DCA
 - §11:20.1.2 Elements of Cause of Action - 2nd DCA
 - §11:20.1.3 Elements of Cause of Action - 3rd DCA
 - §11:20.1.4 Elements of Cause of Action - 4th DCA
 - §11:20.1.5 Elements of Cause of Action - 5th DCA
- §11:20.2 Statute of Limitations
- §11:20.3 References
- §11:20.4 Defenses
- §11:20.5 Related Matters

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§11:10 ABUSE OF PROCESS

§11:10.1 Elements of Cause of Action - Florida Supreme Court

[No citation for this edition.]

§11:10.1.1 Elements of Cause of Action - 1st DCA

Abuse of process consists rather of a willful and intentional misuse of process for some wrongful and unlawful object or collateral purpose.

SOURCE

Gause v. First Bank of Marianna, 457 So.2d 582, 584 (Fla. 1st DCA 1984).

SEE ALSO

1. *Bradley v. Peaden*, 347 So.2d 455, 456 (Fla. 1st DCA 1977).
2. *Strickland v. Commerce Loan Company of Jacksonville*, 158 So.2d 814 (Fla. 1st DCA 1963) (discussing an action for wrongful garnishment).

§11:10.1.2 Elements of Cause of Action - 2nd DCA

A cause of action for abuse of process requires a showing of a willful and intentional misuse of process for some wrongful and unlawful object, or collateral purpose. . . . The abuse consists not in the issuance of process, but rather in the perversion of the process after its issuance. The writ or process must be used in a manner, or for a purpose for which it is not by law intended.

SOURCE

Peckins v. Kaye, 443 So.2d 1025, 1026 (Fla. 2d DCA 1983).

§11:10.1.3 Elements of Cause of Action - 3rd DCA

A cause of action for abuse of process requires:

1. an illegal, improper, or perverted use of process by the defendant;
2. an ulterior motive or purpose in exercising the illegal, improper, or perverted process; and

3. damage to the plaintiff as a result of the defendant's action.

SOURCE

Valdes v. GAB Robins North America, Inc., 924 So. 2d 862, 867 n.2 (Fla. 3d DCA 2006).

SEE ALSO

1. *Blue v. Weinstein*, 381 So. 2d 308, 310 (Fla. 3d DCA 1980) ("In an action for abuse of process, it is not essential to show a termination of the proceeding in favor of the person against whom the process was issued and used, or to show want of probable cause or malice.").
2. *Thomson McKinnon Securities, Inc. v. Light*, 534 So.2d 757 (Fla. 3d DCA 1988).
3. *Bothmann v. Harrington*, 458 So.2d 1163, 1169 (Fla. 3d DCA 1984) ("Abuse of process involves the use of criminal or civil legal process against another primarily to accomplish a purpose for which it was not designed.").
4. *Baya v. Revitz*, 345 So.2d 340 (Fla. 3d DCA 1977), *cert. discharged*, 355 So.2d 1170 (Fla. 1977). With regard to the common law elements of abuse of process, this case makes reference to the following two cases: (1) *Cline v. Flagler Sales Corp.*, 207 So.2d 709, 711 (Fla. 3d DCA 1968), and (2) *Concord Shopping Center, Inc. v. Litowitz*, 183 So.2d 562 (Fla. 3d DCA 1966).
5. *Cline v. Flagler Sales Corp.*, 207 So.2d 709, 711 (Fla. 3d DCA 1968).

§11:10.1.4 Elements of Cause of Action - 4th DCA

For a plaintiff to establish a cause of action for abuse of process, it must be proved that the defendant made an illegal, improper or perverted use of process; that the defendant had ulterior motives or purposes in exercising such illegal, improper, or perverted use of process; and that as a result of such action of the part of the defendant, the plaintiff suffered damage.

SOURCE

Della-Donna v. Nova University, Inc. 512 So.2d 1051 (Fla. 4th DCA 1987).

SEE ALSO

1. *P.T.S. Trading Corp. v Habie*, 673 So.2d 498, 500 (Fla. 4th DCA 1996), *rev. dismissed*, 678 So.2d 339 (Fla. 1996), *mandamus denied*, 686 So.2d 580 (Fla. 1996) ("Abuse of process is the use of process in an illegal, improper or perverted manner, with an ulterior purpose.").
2. *McMurray v. U-Haul Company, Inc.*, 425 So.2d 1208 (Fla. 4th DCA 1983) ("In order to sustain an action for abuse of process two elements are essential, (1) the existence of an ulterior motive, and (2) an act in the use of process other than such as would be proper in the regular prosecution of the charge.").

§11:10.1.5 Elements of Cause of Action - 5th DCA

A cause of action for abuse of process requires proof that:

1. the defendant made an illegal, improper, or perverted use of process;
2. the defendant had an ulterior motive or purpose in exercising the illegal, improper or perverted process;
3. the plaintiff was injured as a result of defendant's action.

SOURCE

Hardick v. Homol, 795 So.2d 1107, 1111 (Fla. 5th DCA 2001).

SEE ALSO

1. *Cazares v. Church of Scientology of California, Inc.*, 444 So.2d 442, 444 (Fla. 5th DCA 1984) ("[A]buse of process requires an act constituting the misuse of process after it issues. The maliciousness or lack of foundation of the asserted cause of action itself is actually irrelevant to the tort of abuse of process.").

§11:10.2 Statute of Limitations

Four Years. Fla. Stat. §95.11(3)(o); *Blue v. Weinstein*, 381 So. 2d 308, 311 (Fla. 3rd DCA 1980).

§11:10.3 References

1. 41A Fla. Jur. 2d *Process* §6 (2004).
2. 1 Am. Jur. 2d *Abuse of Process* §§5-10, 22-25 (2005).

3. 72 C.J.S. *Process* §§106, 107 (1987).
4. Fla. Stat. ch. 48 (2005) (Process and Service of Process).
5. 14 A.L.R.2d 322 (1950).
6. Restatement (Second) of Torts §682 (1977).
7. See dissent in *Baya v. Revitz*, 345 So.2d 340 (Fla. 3d DCA 1977), *cert. denied*, 355 So.2d 1170 (Fla. 1977).

§11:10.4 Defenses

1. **Absolute Immunity:** Absolute immunity must be afforded to any act occurring during the course of a judicial proceeding, regardless of whether the act involves a defamatory statement or other tortious behavior so long as the act has some relation to the proceeding. Prior to *Levin, Middlebrooks, Mabie, Thomas, Mayes & Mitchell, P.A. v. United States Fire Insurance Co.*, 639 So.2d 606 (Fla. 1994), the supreme court had already decided that statements amounting to perjury, libel, slander, and defamation were not actionable. *American National Title & Escrow of Florida, Inc. v. Guarantee Title & Trust Co.*, 748 So.2d 1054, 1055 (Fla. 4th DCA 2000), *rev. denied*, 767 So.2d 453 (Fla. 2000).
2. **Act after Process Issues:** Abuse of process requires an act constituting the misuse of process after it issues. The maliciousness or lack of foundation of the asserted cause of action itself is actually irrelevant. *Cazares v. Church of Scientology of California, Inc.*, 444 So.2d 442, 444 (Fla. 5th DCA 1984). See also *Marty v. Gresh*, 501 So.2d 87, 90 (Fla. 1st DCA 1987); *Della-Donna v. Nova University, Inc.*, 512 So.2d 1051, 1056 (Fla. 4th DCA 1987).
3. **Intended Purpose:** For the cause of action to exist there must be a use of the process for an *immediate purpose* other than that for which it was designed. There is no abuse of process, however, when the process is used to accomplish the result for which it was created, regardless of an incidental or concurrent motive of spite or ulterior purpose. In other words, the usual case of abuse of process involves some form of extortion. *Bothmann v. Harrington*, 458 So.2d 1163, 1169 (Fla. 3d DCA 1984).

§11:10.5 Related Matters

1. **Counterclaim:** The filing of a counterclaim may constitute issuance of process for the purpose of an abuse of process action. *Peckins v. Kaye*, 443 So.2d 1025, 1026 (Fla. 2d DCA 1983). An abuse of process claim may henceforth be brought as a counterclaim when directed against process served in the pending main action because, in accord with *Cline*, abuse of process does not require as one of its essential elements a termination of the action in favor of the person against which process was issued. *Blue v. Weinstein*, 381 So.2d 308, 310 (Fla. 3d DCA 1980).
2. **Maintenance and Champerty:** The causes of action for maintenance and champerty have been supplanted by causes of action for malicious prosecution and abuse of process, frivolous litigation statutes, and rules of professional conduct for attorneys. "It has been specifically held that the doctrine of champerty remains viable only as a defense in contract actions, [and] that damages resulting from a champertous agreement can be recovered only by means of an action under one of the aforementioned theories of recovery." 14 Am.Jur. *Champerty, Maintenance, and Barratry* §4 (2000) (citing *McCullar v. Credit Bureau Systems, Inc.*, 832 S.W.2d 886 (Ky. 1992)). We concur with this reasoning and adopt it as our own. *Hardick v. Homol*, 795 So.2d 1107, 1111 (Fla. 5th DCA 2001).

3. the termination of the original proceeding constituted a bona fide termination of that proceeding in favor of the present plaintiff;
4. there was an absence of probable cause for the original proceeding;
5. there was malice on the part of the present defendant; and
6. the plaintiff suffered damage as a result of the original proceeding.

SOURCE

Alamo Rent-A-Car, Inc. v. Mancusi, 632 So.2d 1352, 1355 (Fla. 1994).

SEE ALSO

1. *Burns v. GCC Beverages, Inc.*, 502 So.2d 1217, 1218 (Fla. 1986).
2. *Buchanan v. Miami Herald Publishing Co.*, 230 So.2d 9, 11 (Fla. 1969).
3. *Duval Jewelry Co. v. Smith*, 136 So. 878, 880 (Fla. 1931).

§11:20.1 Elements of Cause of Action - 1st DCA

To prevail in an action for malicious prosecution, a plaintiff must show:

1. that an original criminal or civil judicial proceeding was commenced or continued;
2. that the defendant was the legal cause of the judicial proceeding;
3. that the judicial proceeding was terminated in the plaintiff's favor;
4. that probable cause for the proceeding was absent;
5. that malice was present; and
6. that the plaintiff suffered resulting damage.

SOURCE

McCraney v. Barberi, 677 So.2d 355, 356 (Fla. 1st DCA 1996).

SEE ALSO

1. *Jones v. State Farm Mutual Automobile Insurance Co.*, 578 So.2d 783, 785 (Fla. 1st DCA 1991).
2. *Cox v. Klein*, 546 So.2d 120, 122 (Fla. 1st DCA 1989).
3. *Harris v. Boone*, 519 So.2d 1065 (Fla. 1st DCA 1988).

§11:20 MALICIOUS PROSECUTION

§11:20.1 Elements of Cause of Action - Florida Supreme Court

In order to prevail in a malicious prosecution action, a plaintiff must establish that:

1. an original criminal or civil judicial proceeding against the present plaintiff was commenced or continued;
2. the present defendant was the legal cause of the original proceeding against the present plaintiff as the defendant in the original proceeding;

§11:20.1.2 Elements of Cause of Action - 2nd DCA

In order to prevail in a malicious prosecution action, the plaintiff must establish each of six elements:

1. an original judicial proceeding against the present plaintiff was commenced or continued;
2. the present defendant was the legal cause of the original proceeding;
3. the termination of the original proceeding constituted a bona fide termination of that proceeding in favor of the present plaintiff;
4. there was an absence of probable cause for the original proceeding;
5. there was malice on the part of the present defendant; and
6. the plaintiff suffered damages as a result of the original proceeding.

SOURCE

Olson v. Johnson, 961 So. 2d 356, 359 (Fla. 2d DCA 2007).

SEE ALSO

1. *Durkin v. Davis*, 814 So. 2d 1246, 1248 (Fla. 2d DCA 2002).
2. *Cuccia v. Westberry*, 506 So.2d 1059, 1061 (Fla. 2d DCA 1987).
3. *Maybin v. Thompson*, 606 So.2d 1240, 1241 (Fla. 2d DCA 1992).
4. *Lindeman v. C.J. Stoll, Inc.*, 490 So.2d 101, 102 (Fla. 2d DCA 1986), *rev. denied*, 500 So.2d 543 (Fla. 1986).
5. *Central Florida Machinery Co., Inc. v. Williams*, 424 So.2d 201, 202 (Fla. 2d DCA 1983), *rev. denied*, 434 So.2d 886 (Fla. 1983).

§11:20.1.3 Elements of Cause of Action - 3rd DCA

The elements of a malicious prosecution claim are:

1. an original criminal or civil judicial proceeding against the present plaintiff was commenced or continued;
2. the present defendant was the legal cause of the original proceeding against the present plaintiff as the defendant in the original proceeding;
3. the termination of the original proceeding constituted a bona fide termination of that proceeding in favor of the present plaintiff;

4. there was an absence of probable cause for the original proceeding;
5. there was malice on the part of the present defendant; and
6. the plaintiff suffered damage as a result of the original proceeding.

SOURCE

Valdes v. GAB Robins North America, Inc., 924 So. 2d 862, 866 n.1 (Fla. 3rd DCA 2006).

SEE ALSO

1. *Scozari v. Barone*, 546 So. 2d 750, 751 (Fla. 3d DCA 1989).
2. *Union Oil of California, Amsco Division v. Watson*, 468 So.2d 349, 353 (Fla. 3d DCA 1985), *rev. denied*, 479 So.2d 119 (Fla. 1985).
3. *Wagner v. Nottingham Associates*, 464 So.2d 166 (Fla. 3d DCA 1985), *rev. denied*, 475 So.2d 696 (Fla. 1985).
4. *Guthrie v. Florida Power and Light Co.*, 460 So.2d 1032, 1033 (Fla. 3d DCA 1985).

§11:20.1.4 Elements of Cause of Action - 4th DCA

The elements of a malicious prosecution claim are:

1. an original criminal or civil judicial proceeding against the present plaintiff was commenced or continued;
2. the present defendant was the legal cause of the original proceeding against the present plaintiff as the defendant in the original proceeding;
3. the termination of the original proceeding constituted a bona fide termination of that proceeding in favor of the present plaintiff;
4. there was an absence of probable cause for the original proceeding;
5. there was malice on the part of the present defendant; and
6. the plaintiff suffered damage as a result of the original proceeding.

SOURCE

Fernander v. Bonis, 947 So. 2d 584, 589 (Fla. 4th DCA 2007).

SEE ALSO

1. *Jackson v. Navarro*, 665 So.2d 340, 341 (Fla. 4th DCA 1995).

2. *Rowen v. Holiday Pines Property Owner's Association, Inc.*, 759 So.2d 13, 15 (Fla. 4th DCA 2000), *rev. denied*, 790 So.2d 1104 (Fla. 2001), *rev. denied*, 790 So.2d 1107 (Fla. 2001).
3. *Beizer v. Judge*, 743 So.2d 134, 136 (Fla. 4th DCA 1999).
4. *Rushing v. Bosse*, 652 So.2d 869 (Fla. 4th DCA 1995).
5. *Alamo Rent-A-Car, Inc. v. Mancusi*, 599 So.2d 1010, 1012 (Fla. 4th DCA 1992), *approved in part, quashed in part*, 632 So.2d 1352 (Fla. 1994).
6. *Dorf v. Usher*, 514 So.2d 68, 69 (Fla. 4th DCA 1987).

§11:20.1.5 Elements of Cause of Action - 5th DCA

The elements of the cause of action for malicious prosecution are:

1. The prior commencement or continuation of an original civil or criminal judicial proceeding;
2. Its legal causation by the present defendant against the plaintiff who was defendant in the original proceeding;
3. Its bona fide termination in favor of the present plaintiff;
4. The absence of probable cause for prosecution of such proceeding;
5. The presence of malice in instituting the proceeding; and
6. Damages conforming to legal standards resulting to the plaintiff.

SOURCE

Pellegrini v. Winter, 552 So.2d 213, 214 (Fla. 5th DCA 1989).

SEE ALSO

1. *Hardick v. Homol*, 795 So.2d 1107, 1111 (Fla. 5th DCA 2001).
2. *Pellegrini v. Winter*, 476 So.2d 1363, 1365 (Fla. 5th DCA 1985).
3. *Orr v. Belk Lindsey Stores, Inc.*, 462 So.2d 112, 113 (Fla. 5th DCA 1985), *appeal after remand*, 501 So.2d 714 (Fla. 5th DCA 1987).
4. *Cazares v. Church of Scientology of California, Inc.*, 444 So.2d 442, 444 (Fla. 5th DCA 1983).

§11:20.2 Statute of Limitations

Four Years. Fla. Stat. §95.11(3)(o); *Levine v. Hunt*, 932 So.2d 1292 (Fla. 2nd DCA 2006).

§11:20.3 References

1. 24A Fla. Jur. 2d *False Imprisonment and Malicious Prosecution* §§20–38 (2003).
2. 52 Am. Jur. 2d *Malicious Prosecution* §§8, 9 (2000).
3. 54 C.J.S. *Malicious Prosecution or Wrongful Litigation* §§4, 5, 48–55 (2005).
4. Restatement (Second) of Torts §§653–673 (1977).

§11:20.4 Defenses

1. **Absolute Immunity:** State prosecutors are entitled to absolute immunity when they perform their quasi-judicial functions of initiating prosecution and presenting the state's case. *Hansen v. State of Florida*, 503 So.2d 1324, 1326 (Fla. 1st DCA 1987).
2. **Advice of counsel:** *See, Burchell v. Bechert*, 356 So.2d 377, 378 (Fla. 4th DCA 1978), *cert. denied*, 367 So.2d 1122 (Fla. 1978). However, reliance on advice of counsel is not an absolute defense in a malicious prosecution case. Advice of counsel is a defense to an action predicated upon malicious prosecution only in the event there has been a full and complete disclosure made to the attorney before his advice is given and followed. *Wright v. Yurko*, 446 So.2d 1162, 1167 (Fla. 5th DCA 1984).
3. **Dismissal on grounds not inconsistent with the guilt of the accused:** Where dismissal is on technical grounds, for procedural reasons, or any other reason not inconsistent with the guilt of the accused, it does not constitute a favorable termination. The converse of that rule is that a favorable termination exists where a dismissal is of such a nature as to indicate the innocence of the accused. *Della-Donna v. Nova University, Inc.*, 512 So.2d 1051 (Fla. 4th DCA 1987). *See also Union Oil of California, Amsco Division v. Watson*, 468 So.2d 349 (Fla. 3d DCA 1985), *rev. denied*, 479 So.2d 119 (Fla. 1985); *Jones v. State Farm Mutual Automobile Insurance Co.*, 578

So.2d 783, 785 (Fla. 1st DCA 1991); *C.A. Hansen Corp. v. Wicker, Smith, Blomqvist, Tutan, O'Hara, McCoy, Graham & Lane, P.A.*, 565 So.2d 812, 813 (Fla. 3d DCA 1990), *rev. denied*, 576 So.2d 294 (Fla. 1991).

4. **Settlement:** Where the matter was settled, it will not support a claim for malicious prosecution. *Cline v. Flagler Sales Corp.*, 207 So.2d 709, 710 (Fla. 3d DCA 1968).

§11:20.5 Related Matters

1. **Attorneys, Standard for:** An action for malicious prosecution is a serious matter and this is especially so when such an action is filed against the losing attorney in the earlier case supposedly giving rise to the action. Such actions could conceivably prohibit attorneys from pursuing and establishing new causes of action and could hinder the development of new legal theories. We commend the language of the California Court of Appeals in *Norton v. Hines*, 49 Cal.App.3d 917, 123 Cal.Rptr. 237 (1975), as descriptive of the standard that should obtain here: *Central Florida Machinery Co., Inc. v. Williams*, 424 So.2d 201, 203 (Fla. 2d DCA 1983), *rev. denied*, 434 So.2d 886 (Fla. 1983).
2. **Bargaining or Negotiating:** Bargaining or negotiating, in and of itself, does not always negate the bona fide nature of the termination. *Alamo Rent-A-Car, Inc. v. Mancusi*, 632 So.2d 1352, 1356 (Fla. 1994). *Compare Union Oil of California, Amsco Division v. Watson*, 468 So.2d 349, 354 (Fla. 3d DCA 1985), *rev. denied*, 479 So.2d 119 (Fla. 1985).
3. **Bona Fide Termination:** The element that there be a bona fide termination of the underlying civil suit is satisfied by either a favorable decision on the merits or a bona fide termination of that lawsuit. Two policies underlie the rule that a favorable or bona fide termination of an earlier lawsuit is a necessary element of malicious prosecution. First, fairness requires that a defendant in a malicious prosecution action "have his day in court in the locus where he began the controversy." A "day in court" means that the defendant has had the chance to litigate the merits as the plaintiff in the original action. Second, judicial economy favors making a plaintiff "await the outcome of the first" case before commencing a malicious prosecution action, in order to save the time and expense of litigants and courts. *Rowen v. Holiday Pines Property Owner's Association, Inc.*, 759 So.2d 13, 15 (Fla. 4th DCA 2000), *rev. denied*, 790 So.2d 1104 (Fla. 2001), *rev. denied*, 790 So.2d 1107 (Fla. 2001). *See also* Restatement (Second) of Torts §674, Comment j (1977).
4. **Counterclaim:** A counterclaim for malicious prosecution cannot be maintained in a pending action since the pending suit cannot be said to have terminated in favor of the counter-defendant. *Bieley v. duPont, Glore, Forgan, Inc.*, 316 So.2d 66, 67 (Fla. 3d DCA 1975). *See also Blue v. Weinstein*, 381 So.2d 308 (Fla. 3d DCA 1980).
5. **Malice:** Malice may be either (a) actual or subjective malice, sometimes called "malice in fact," which results in intentional wrong; or (b) "legal malice," which may be inferred from circumstances such as the want of probable cause, even though no actual malevolence or corrupt design is shown. *Morgan International Realty, Inc. v. Dade Underwriters Insurance Agency*, 617 So.2d 455, 458 (Fla. 3d DCA 1993). *See also Durkin v. Davis*, 814 So.2d 1246, 1248 (Fla. 2d DCA 2002).
6. **Nolle Prosequi or Declination to Prosecute:** The essential element of a bona fide termination in a plaintiff's favor is satisfied where the prosecutor in good faith enters a nolle prosequi or declination to prosecute in the prior proceedings. *Lindeman v. C.J. Stoll, Inc.*, 490 So.2d 101, 103 (Fla. 2d DCA 1986), *rev. denied*, 500 So.2d 543 (Fla. 1986).
7. **Probable Cause:** Where the facts are undisputed, probable cause is a pure question of law for the court; however, where the facts are disputed, the question must be submitted to the jury. *Johnson v. City of Pompano Beach*, 406 So.2d 1257, 1259 (Fla. 4th DCA 1981). Probable cause to have instituted the prior judicial proceeding is defined as a reasonable ground of suspicion, supported by circumstances sufficiently strong in themselves to warrant a cautious man in the belief that the person accused is guilty of the offense charged. *Bell v. Anderson*, 414 So.2d 550, 551 (Fla. 1st DCA 1982), *pet. for rev. denied*, 424 So.2d 760 (Fla. 1982).