

IN THE SUPREME COURT OF THE
STATE OF FLORIDA

NEIL J. GILLESPIE

Petitioner,

Case No.: SC11-1622
Lower Tribunal No(s): 2D10-5197,
05-CA-7205

vs.

BARKER, RODEMS & COOK, ET AL.

Respondents.

**PETITIONER'S MOTION FOR LEAVE TO FILE A PROPER
MOTION FOR RECONSIDERATION ON SINGLE ISSUE**

1. Petitioner Gillespie moves for leave to file a proper motion for reconsideration of this Court's Order of March 12, 2012 on a single issue, to rescind the walk-away settlement agreement attached hereto, further described as "Settlement Agreement And General Mutual Release" dated June 21, 2011. (Exhibit 1). In support Petitioner states:
2. Defense counsel Ryan Christopher Rodems has unlawfully represented his firm and law partner in this action, and should have been disqualified as counsel April 25, 2006 during a motion to disqualify counsel before Judge Richard Nielsen, pursuant to the holding of McPartland v. ISI Inv. Services, Inc., 890 F.Supp. 1029, M.D.Fla., 1995. McPartland has been a mandatory authority on disqualification in Tampa since entered June 30, 1995 by Judge Kovachevich. I raised this issue (among others) in Emergency Motion To Disqualify Defendants' Counsel Ryan Christopher Rodems & Barker, Rodems & Cook, P.A., provided to this Court in the Appendix. (A.9)
3. McPartland v. ISI Investment Services, Inc., 890 F.Supp. 1029, (US District Court, MD of Florida, Tampa Division) held as follows:

[1] Under Florida law, attorneys must avoid appearance of professional impropriety, and any doubt is to be resolved in favor of disqualification. [2] To prevail on motion to disqualify counsel, movant must show existence of prior attorney-client relationship and that the matters in pending suit are substantially related to the previous matter or cause of action. [3] In determining whether attorney-client relationship existed, for purposes of disqualification of counsel from later representing opposing party, a long-term or complicated relationship is not required, and court must focus on subjective expectation of client that he is seeking legal advice. [5] For matters in prior representation to be “substantially related” to present representation for purposes of motion to disqualify counsel, matters need only be akin to present action in way reasonable persons would understand as important to the issues involved. [7] Substantial relationship between instant case in which law firm represented defendant and issues in which firm had previously represented plaintiffs created irrebuttable presumption under Florida law that confidential information was disclosed to firm, requiring disqualification. [8] Disqualification of even one attorney from law firm on basis of prior representation of opposing party necessitates disqualification of firm as a whole, under Florida law.

4. McPartland relied on a Supreme Court of Florida case, State Farm Mut. Auto. Co. v. K.A.W., 75 So.2d 630, 633 (Fla.1991). Petitioner cited to McPartland seven times in his Emergency Motion To Disqualify Defendants’ Counsel Ryan Christopher Rodems & Barker, Rodems & Cook, P.A. (A.9) as follows:

McPartland, paragraph 22, page 13
McPartland, paragraph 23, page 14
McPartland, paragraph 28, page 17
McPartland, paragraph 50, page 29-30
McPartland, paragraph 53, page 31
McPartland, paragraph 56, page 32
McPartland, paragraph 61, page 34

5. Petitioner established, by Order dated January 13, 2006 (A.11.9), a cause of action for Fraud and Breach of Contract against Barker, Rodems & Cook, P.A. and William J. Cook. (Petition, beginning at paragraph 51). Partners engaged in the practice of law are each responsible for the fraud or negligence of another partner when the later acts within the scope of the ordinary business of an attorney. Smyrna Developers, Inc. v. Bornstein,

177 So.2d 16 (Fla. Dist. Ct. App. 2d Dist. 1965). There is an actual conflict of interest in Mr. Rodems and Barker, Rodems & Cook, PA representing themselves in this case.

6. The lawsuit Gillespie v. Barker, Rodems & Cook, PA, et al, 05-CA-007205 Hillsborough County, FL is “substantially related” to the earlier representation, the Amscot lawsuit, as held in McPartland:

“[5] For matters in prior representation to be “substantially related” to present representation for purposes of motion to disqualify counsel, matters need only be akin to present action in way reasonable persons would understand as important to the issues involved.”

Counsel for Amscot, Charles L. Stutts of Holland & Knight, provided Petitioner a letter to this effect February 13, 2007. Mr. Stutts wrote: (Exhibit 2)

“The U.S. District Court for the Middle District of Florida in 2001 dismissed all claims brought by you, Eugene R. Clement and Gay Ann Blomefield, individually and on behalf of others, against Amscot in connection with its deferred deposit transactions. This former action is, of course, at the heart of your pending action against Barker, Rodems & Cook, P.A.”

7. The following is from Petitioner’s Emergency Motion To Disqualify Defendants’ Counsel Ryan Christopher Rodems & Barker, Rodems & Cook, P.A. (A.9).

“60. A hearing on Plaintiff’s Motion to Disqualify Counsel was held April 25, 2006. Mr. Rodems presented the following case law in support of his position. The cases are largely irrelevant to this matter and set of facts. Rodems failed to disclose to the court legal authority in the controlling jurisdiction known to the lawyer to be directly adverse to the position of the client and not disclosed by opposing counsel. The hearing was transcribed by Denise L. Bradley, RPR and Notary Public, of Berryhill & Associates, Inc., Court Reporters. The transcript of the hearing was filed with the clerk of the court. Mr. Rodems presented the following case law April 25, 2006:

- a. Frank, Weinberg & Black vs. Effman, 916 So.2d 971
- b. Bochese vs. Town of Ponce Inlet, 267 F. Supp. 2nd 1240
- c. In Re: Jet One Center 310-BR, Bankruptcy Reporter, 649
- d. Transmark USA v State Department of Insurance, 631 So.2d, 1112-1116
- e. Cerillo vs. Highley, 797 So.2d 1288
- f. Singer Island Limited vs. Budget Construction Company, 714 So.2d 651”

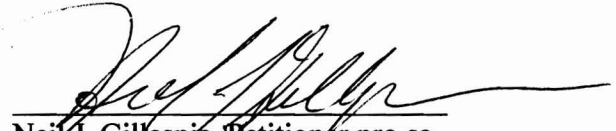
“61. Mr. Rodems violated FL Bar Rule 4-3.3(c) when he failed to disclose to the tribunal legal authority in the controlling jurisdiction known to the lawyer to be directly adverse to the position of the client and not disclosed by opposing counsel, in this instance Gillespie pro se. Rodems failed to disclose McPartland v. ISI Inv. Services, Inc., 890 F.Supp. 1029, or U.S. v. Culp, 934 F.Supp. 394, legal authority directly adverse to the position of his client. McPartland and Culp are just two of a number of cases Rodems failed to disclose, see this motion, and the Table of Cases that accompanies this motion. Counsel has a responsibility to fully inform the court on applicable law whether favorable or adverse to position of client so that the court is better able to make a fair and accurate determination of the matter before it. Newberger v. Newberger, 311 So.2d 176. As evidenced by this motion, legal authority directly adverse to the position of Mr. Rodems and BRC was not disclosed to the court by Rodems.”

8. Because of the foregoing, Mr. Rodems and Barker, Rodems & Cook, PA should have been disqualified April 25, 2006. Petitioner had a clear legal right to have his case lawfully adjudicated. In turn the circuit court had an indisputable legal duty to lawfully adjudicate the case. Had the circuit court disqualified Mr. Rodems as required by McPartland this case would have been resolved years ago. But the circuit court did not disqualify Mr. Rodems as required by McPartland. Instead Mr. Rodems prevented the lawful adjudication of this case, made numerous false statements of material fact to the court, failed to cooperate with opposing counsel, and disrupted the tribunal for strategic advantage. As set forth in the Petition, Mr. Rodems made false representations to the court to have an arrest warrant issued for the Petitioner for the purpose of forcing a walk-away settlement agreement in the case, and to force a walk-away settlement agreement in Petitioner’s federal civil rights and ADA disability lawsuit.

WHEREFORE, Petitioner moves for leave to file a proper motion for reconsideration of this Court’s Order of March 12, 2012 on a single issue, to rescind the walk-away settlement agreement attached hereto, further described as “Settlement Agreement And General Mutual Release” dated June 21, 2011. (Exhibit 1). In the

alternative Petitioner moves the Court to rescind the "Settlement Agreement And General Mutual Release" sua sponte as set forth in the Petition, paragraphs 68, 69 and 70, and grant such other and further relief as it deems just and equitable.

RESPECTFULLY SUBMITTED March 19, 2012.


Neil J. Gillespie, Petitioner pro se
8092 SW 115th Loop
Ocala, Florida 34481
Telephone: (352) 854-7807

Certificate of Service

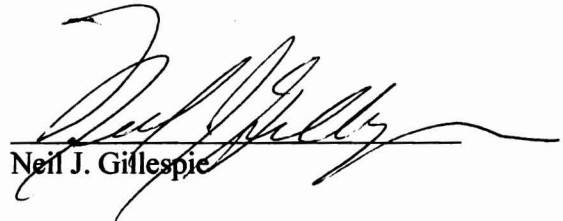
I HEREBY CERTIFY that a copy of the foregoing was mailed by U.S. Postal

Service first class mail March 19, 2012 to the following:

Robert E. O'Neill, US Attorney
US Attorney's Office
400 N. Tampa St., Suite 3200
Tampa, FL 33602-4798

Robert W. Bauer, Esquire
Law Office of Robert W. Bauer, P.A.
2815 NW 13th Street, Suite 200E
Gainesville, FL 32609-2865

Ryan C. Rodems, Esquire
400 North Ashley Drive, Suite 2100
Tampa, Florida 33602


Neil J. Gillespie

SETTLEMENT AGREEMENT AND GENERAL MUTUAL RELEASE

This settlement agreement and general mutual release, executed on June 21, 2011, by and between Neil J. Gillespie, hereinafter "Party A" and Barker, Rodems & Cook, P.A., its agents and employees, and Chris A. Barker, and William J. Cook, and Ryan Christopher Rodems, hereinafter "Party B".

WHEREAS disputes and differences have arisen between the parties, as detailed in the pleadings and records filed in the case styled Neil J. Gillespie v. Barker, Rodems & Cook, P.A., and William J. Cook, Esquire, Case No. 05CA7205, pending in the Circuit Court of the Thirteenth Judicial Circuit in and for Hillsborough County, Florida and Gillespie v. Thirteenth Judicial Circuit, Florida, et al., 5:10-cv-00503-WTH-DAB, pending in the United States District Court, Middle District of Florida, Ocala Division; WHEREAS, the parties wish to fully and finally resolve all differences between them from the beginning of time through June 21, 2011; WHEREAS, the parties represent that none of the claims released herein have been assigned to a third-party;

NOW THEREFORE, in consideration of the assignment to Party "B" of all claims pending or which could have been brought, based on the allegations of Party "A", against any person or entity, without limitation, in Gillespie v. Thirteenth Judicial Circuit, Florida, et al., 5:10-cv-00503-WTH-DAB and dismissal with prejudice of their claims in the case styled Neil J. Gillespie v. Barker, Rodems & Cook, P.A., and William J. Cook, Esquire, Case No. 05CA7205, and dismissal of the appeal, Case No. 2D10-5197, pending in the Second District Court of Appeal, with the parties to bear their own attorneys' fees and costs, and the agreement of Party "B" to record a Satisfaction of Judgment regarding the Final Judgment entered on March 27, 2008, in Neil J. Gillespie v. Barker, Rodems & Cook, P.A., and William J. Cook, Esquire, Case No. 05CA7205:

Each party (the releasing party) hereby releases, without limitation, the other party (the released party) from any and all actions, suits, claims, debts, accounts, bills, bonds, attorneys' fees or costs, judgments, or any claims, without limitation, whether in law or equity, and whether known or unknown, which the releasing party now has or ever had resulting from any actions or omissions by the released party from the beginning of time through June 21, 2011.

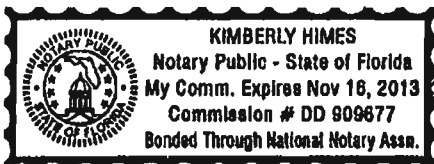
This mutual release shall be acknowledged before a notary public and may be signed in counterpart.

PARTY A

Neil J. Gillespie
NEIL J. GILLESPIE

Neil J. Gillespie
Provided Florida Drivers License
Class E # G 421.630.56.099.0

Signed this 21st day of June, 2011
in Hillsborough County, Florida



Kimberly Himes

PARTY B

Chris A. Barker
CHRIS A. BARKER, individually
and as an officer of and on behalf of
Barker, Rodems & Cook, P.A.

Ryan Christopher Rodems
RYAN CHRISTOPHER RODEMS

individually and as an officer
of and on behalf of Barker, Rodems & Cook, P.A.

William J. Cook
WILLIAM J. COOK
individually and as an
officer and on behalf
of Barker, Rodems & Cook, P.A.

RCR

RCR

Rodems & Cook, P.A.

EXHIBIT 1

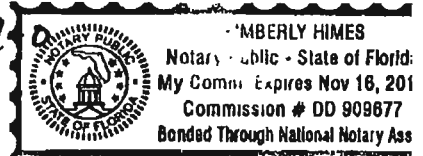
STATE OF FLORIDA
COUNTY OF Hillsborough

The foregoing instrument was acknowledged before me this 21st day of June, 2011, by
NEIL J. GILLESPIE.

Kimberly Himes
Notary Public - State of Florida

Personally Known _____ OR Produced Identification
Type of Identification Produced Florida Driver's License

#: G 421-630-56-099

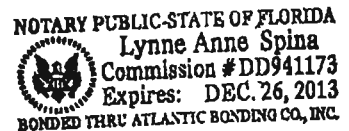


STATE OF FLORIDA
COUNTY OF Hillsborough

The foregoing instrument was acknowledged before me this 21st day of June, 2011, by
WILLIAM J. COOK.

Lynne Anne Spina
Notary Public - State of Florida

Personally Known OR Produced Identification _____
Type of Identification Produced _____



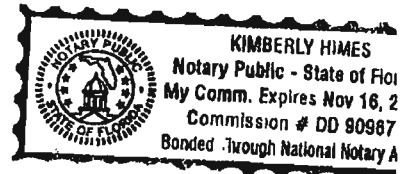
STATE OF FLORIDA
COUNTY OF Hillsborough

The foregoing instrument was acknowledged before me this 21st day of June, 2011, by
RYAN CHRISTOPHER RODEMS.

Kimberly Himes
Notary Public - State of Florida

Personally Known _____ OR Produced Identification
Type of Identification Produced Florida Driver's License

#: R 352-723-66-444-D

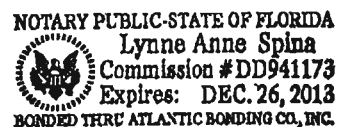


STATE OF FLORIDA
COUNTY OF Hillsborough

The foregoing instrument was acknowledged before me this 21st day of June, 2011,
by CHRIS A. BARKER, individually and as officer for BARKER, RODEMS & COOK, P.A.

Lynne Anne Spina
Notary Public - State of Florida

Personally Known OR Produced Identification _____
Type of Identification Produced _____



Charles L. Stutts
813 227 6466
charles.stutts@hklaw.com

February 13, 2007

VIA FEDEX

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

Re: Gillespie v. Barker, Rodems & Cook, P.A., et al.; Case No. 05-CA-7205

Dear Mr. Gillespie:

Amscot Corporation has asked me to respond to your letter of February 10, 2007 in which you request that Mr. Ian MacKechnie, President of Amscot, agree to his deposition in the above-referenced matter.

The U.S. District Court for the Middle District of Florida in 2001 dismissed all claims brought by you, Eugene R. Clement and Gay Ann Blomefield, individually and on behalf of others, against Amscot in connection with its deferred deposit transactions. This former action is, of course, at the heart of your pending action against Barker, Rodems & Cook, P.A.

Mr. MacKechnie views the prior litigation as closed, and neither he nor others at Amscot have any interest in voluntarily submitting to deposition or otherwise participating in the pending matter. Accordingly, Mr. MacKechnie must decline your request.

Please contact me if you have questions or care to discuss the matter.

Sincerely yours,

HOLLAND & KNIGHT LLP



Charles L. Stutts

cc: Ian MacKechnie