

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

NEIL J. GILLESPIE,

Plaintiff,

CASE NO.: 2005 CA-7205

vs.

BARKER, RODEMS & COOK, P.A.,
a Florida corporation,

DIVISION: F

WILLIAM J. COOK,

Defendants.

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PLAINTIFF'S MOTION TO DISQUALIFY COUNSEL

Plaintiff moves to disqualify Ryan Christopher Rodems, and Barker, Rodems & Cook, P.A. (BRC), as counsel and law firm representing the Defendants, because:

1. William J. Cook and BRC previously represented Plaintiff on a matter that is the same or substantially similar to the matter in the present controversy. Now the interests of Mr. Cook and BRC are materially adverse to the interests of their former client, Neil J. Gillespie, the Plaintiff in this lawsuit, creating a conflict of interest. A conflict of interest that applies to an attorney associated with a law firm is imputed to other partners and associates working in that firm. Therefore, Ryan Christopher Rodems and BRC must be disqualified as counsel for the Defendants.

2. William J. Cook and BRC previously represented Plaintiff on a matter that is the same or substantially similar to the matter in the present controversy. While Mr. Cook was the lead attorney during that representation, his partners, Ryan Christopher Rodems and Christopher A. Barker also participated in the representation of Neil J. Gillespie.

Now the interests of Mr. Rodems and Mr. Barker are materially adverse to the interest of their former client, Neil J. Gillespie, the Plaintiff in this lawsuit, creating a conflict of interest. Therefore Ryan Christopher Rodems must be disqualified as counsel. Likewise, Christopher A. Barker must also be disqualified as counsel, at this time preemptively.

3. Ryan Christopher Rodems, Christopher A. Barker, and William J. Cook are essential witnesses in this lawsuit. A lawyer who is a material witness may be disqualified as counsel for a party.

4. Ryan Christopher Rodems had displayed a lack candor toward the Court, and unfairness to the Plaintiff. In Defendants Affirmative Defense, paragraph 57, and Defendants Counterclaim, paragraph 67, Mr. Rodems alleges that Plaintiff committed the crime of felony criminal extortion against Defendants, citing section 836.05, Fla. Stat. (2000), and the holdings of Carricarte v. State, 384 So.2d 1261 (Fla. 1980); Cooper v. Austin, 750 So.2d 711 (Fla. 5th DCA 2000); Gordon v. Gordon, 625 So.2d 59 (Fla. 4th DCA 1993); and Berger v. Berger, 466 So.2d 1149 (Fla. 4th DCA 1985).

To advance Defendants' claim that Plaintiff committed felony criminal extortion, Mr. Rodems made a false statement of material fact to the Court, and then applied statutory and case law to the false fact to support his erroneous conclusion. Specifically, Mr. Rodems made the following false fact about Plaintiff: "[P]laintiff wrote letters to Defendants and stated that if they did [not] pay him money, then plaintiff would file a complaint against Defendant Cook with the Florida Bar..." (relevant portion) (Note: In drafting paragraphs 57 and 67, Mr. Rodems left out the word "not", which materially changes the meaning. Previously Defendants' used similar wording in letters to Plaintiff and the Florida Bar. On those occasions the word "not" was included).

In fact, the so-called “extortion” was actually a directive of the Florida Bar, who advised Plaintiff to contact Defendants prior to filing a formal complaint. Don Spangler, a lawyer with the Attorney Consumer Assistance Program (ACAP) of The Florida Bar, listened to Plaintiff’s complaint against Defendants and advised him to file an ethics complaint. Mr. Spangler assigned a reference number to Plaintiff’s inquiry, no. 03-18867. Mr. Spangler also told Plaintiff that he could try to settle the matter and contact Defendants prior to filing an ethics complaint. Specifically, Plaintiff wrote the following to Defendants on June 13, 2003: (relevant portion)

“Dear Bill, I have legal and ethical concerns about the settlement in the Amscot case. I sought an opinion about this matter from a Tampa law firm. After reviewing the facts they suggested that I contact the *Ethics and Grievance Office* of The Florida Bar. The *Attorney Consumer Assistance Program* (ACAP) of The Florida Bar considered this matter yesterday. As a matter of procedure ACAP noted your name and address, and assigned reference number 03-18867 to this matter. Upon review of the facts, ACAP suggested that I file a complaint with The Florida Bar. As a courtesy to you I would like to settle this matter prior to filing a complaint. ACAP also suggested this alternative. ...”

The letter continues, citing the representation contract, Plaintiff’s believe that the \$50,000 claimed as legal fees is actually part of the “total recovery”, and a calculation of the amount owed by BRC. Plaintiff was merely following the directive of the Florida Bar

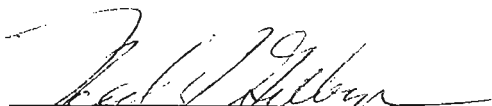
when he wrote to Defendants. Plaintiff had already contacted the Florida Bar prior to offering Defendants the courtesy to settle. Mr. Rodems' charge of extortion is false.

If Mr. Rodems actually believes that Plaintiff committed felony criminal extortion as defined by section 836.05, Fla. Stat. (2000), then Mr. Rodems may have a duty to refer Plaintiff's crime to law enforcement. And if he believes that Plaintiff committed extortion, then Mr. Rodems may also have a duty to refer the Florida Bar to law enforcement for its role in soliciting Plaintiff's "extortion". But at this time Plaintiff has no evidence that the "extortion" was reported to law enforcement. Rather, Defendants are making this false criminal charge to intimidate and defame Plaintiff. Mr. Rodems, as counsel for Defendants, has knowingly presented, and participated in presenting, criminal charges against the Plaintiff to this Court solely to obtain an advantage in a civil matter. This is unfair to Plaintiff, especially when the charges are false.

Counsel has a duty to not knowingly make a false statement of material fact or law to a tribunal. The Defendants' veracity is at issue in this lawsuit. This presents a conflict of interest when Counsel and the Defendants are same entity, the same law firm, and Counsel has an imputed and actual conflict. Mr. Rodems must be disqualified.

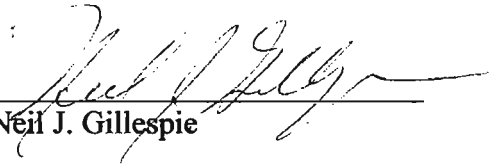
WHEREFORE, Plaintiff moves for an order disqualifying Ryan Christopher Rodems, Christopher A. Barker (preemptively), and BRC as counsel for the Defendants.

RESPECTFULLY SUBMITTED this 4th day of February, 2006.


Neil J. Gillespie, Plaintiff pro se
8092 SW 115th Loop
Ocala, Florida 34481
Telephone: (813) 810-0151

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a true and correct copy of the foregoing has been furnished via first class US mail, postage prepaid, to Ryan Christopher Rodems, Attorney at Law, Barker, Rodems & Cook, P.A., Attorneys for Defendants, 300 West Platt Street, Suite 150, Tampa, Florida 33606, this 4th day of February, 2006.


Neil J. Gillespie