

UNITED STATES COURT OF APPEALS
FOR THE ELEVENTH CIRCUIT

NEIL J. GILLESPIE,
ESTATE OF PENELOPE GILLESPIE,

CASE NO.: 12-11028-B

Appellants/Plaintiffs,

vs.

CASE NO.: 12-11213-C

THIRTEENTH JUDICIAL CIRCUIT,
FLORIDA, et al.

Respondents/Defendants.

**CONSOLIDATED MOTION FOR ACCOMMODATION UNDER THE
AMERICANS WITH DISABILITIES ACT - WAIVER OF CONFIDENTIALITY**

MOTION TO TOLL TIME

1. Appellant/Plaintiff Neil J. Gillespie (“Gillespie”), personally, and as personal representative of the Estate of Penelope Gillespie, hereby moves for reasonable accommodation under the ADA, the Americans With Disabilities Act, 42 U.S.C., Chapter 126, Equal Opportunities for Individuals with Disabilities, §§ 12101 - 12213. This is a consolidated motion in the above captioned appeals. Gillespie also moves the Court to toll time during the pending motion, and any implementation thereof.

STATEMENT OF THE FACTS AND THE CASE

2. This seven (7) year lawsuit is to recover \$7,143 stolen by Defendant/Appellee Barker, Rodems & Cook, P.A. (“BRC”) from Plaintiff/Appellant Gillespie in the Amscot lawsuit. As set forth in Gillespie’s *Motion To Consolidate Related Appeals* docketed in this Court March 14, 2012, the above related District Court cases involve an issue in an

earlier case in this Appellate Court, Eugene R. Clement, Gay Ann Blomefield, and Neil Gillespie v. AMSCOT Corporation, Case No. 01-14761-AA. During the settlement of Amscot, BRC misrepresented that this Appellate Court awarded \$50,000 to BRC in “court-awarded fees and costs”. The misrepresentation to a claim of \$50,000 in “court-awarded fees and costs” is the basis for the state court action at the heart of both District Court cases, and now this Appeal. Compounding the difficulty of this matter is the representation by Ryan Christopher Rodems, a partner of BRC who is unethically representing his firm and merely continuing the misrepresentations that are the heart of this case. Mr. Rodems has prevented the lawful adjudication of this case because of his own conflict with Gillespie, a former client of the small, three-partner BRC firm.

GILLESPIE’S ADA DISABILITY FILE

3. On September 28, 2010 Gillespie filed in the District Court in case no. 5:10-cv-00503-WTH-TBS a comprehensive disability file for consideration under the ADA. The District Court appears to have disregarded the medical information, much like the state court disregarded the medical information in Neil J. Gillespie v. Barker, Rodems & Cook, P.A. and William J. Cook, Case No. 05-CA-7205, Hillsborough County, Florida. (“state court action”). Gillespie later waived confidentiality and filed the information publicly in the state court action, see “Verified Notice of Filing Disability Information of Neil J. Gillespie” filed May 27, 2011. (“Disability Notice”). (Exhibit 36). Gillespie again waived confidentiality filed the same Disability Notice in the District Court July 7, 2011. (Doc. 36). (Exhibit 36). A copy of Gillespie’s Disability Notice accompanies this ADA

request. (Exhibit 36). It is marked Exhibit 36 in keeping with docket number 36 in the District Court case no. 5:10-cv-00503-WTH-TBS.

4. Gillespie's Disability Notice (Exhibit 36) contains a seven (7) page statement of Gillespie's disability issues, and four (4) exhibits:

Exhibit 1 is Gillespie's ADA Medical Report by Dr. Karin Huffer.

Exhibit 2 is Gillespie's ADA Accommodation Request to the Court.

Exhibit 3 is a letter of July 9, 2010 from court counsel David Rowland of the Thirteenth Judicial Circuit denying Gillespie's ADA Accommodation Request, with instructions to submit the request by written motion to the presiding judge, the Hon. Martha J. Cook, a defendant in the District Court case no. 5:10-cv-00503- WTH-TBS.

Exhibit 4 is the deposition transcript of Gillespie in the Amscot lawsuit ("Amscot") where Gillespie was represented by Defendant/Appellee BRC. Amscot is at the heart of the state court action. In turn the failure of the state court to lawfully adjudicate the action over Amscot is at the heart of both District Court actions in this appeal. Amscot was before this Appellate Court in 2001 when Gillespie was represented by Defendant/Appellee BRC in 01-14761-AA. This transcript shows Defendant/Appellee BRC represented Gillespie in Amscot and knew about Gillespie's disabilities.

GILLESPIE'S ADA ACCOMODATION REQUEST

5. Gillespie requests the following disability accommodations:

- a. Permission to file electronically (e-filing);
- b. Intensive case management;
- c. Appointment of counsel;

d. A general request for further relief as this Court deems just and equitable.

PERMISSION TO FILE ELECTRONICALLY

6. Gillespie seeks permission to file electronically (e-file) on disability grounds, and because he is indigent. Gillespie has a PACER account in good standing since 1999.

Gillespie meets the following e-file technical requirements:

a. A computer, the internet, and email on a daily basis to e-file documents and receive notifications from the Court

b. A scanner to scan documents that are only in paper format (like exhibits).

c. A printer/copier for documents needed in hard copy.

d. A word-processing program to create documents.

e. Adobe Acrobat program to convert word processing documents to PDF.

Gillespie's Disability Report (Exhibit 36) at Exhibit 2 (p17) states:

“ADA Request No.6: Mr. Gillespie requests time to scan thousands of pages of documents in this case to electronic PDF format. This case and underlying cause of action covers a ten year period and the files have become unmanageable and confusing relative to Gillespie's disability. Mr. Gillespie is not able to concentrate when handling a large amount of physical files and documents. He is better able to manage the files and documents when they are organized and viewable on his computer. Mr. Gillespie will bear the cost of converting files and documents to PDF.”

Gillespie will provide further information to the Court in support of e-filing at the request of the Court in the event that the Court cannot grant Gillespie permission to e-file based on the foregoing information, and medical information contained in Gillespie's Disability Report (Exhibit 36).

INTENSIVE CASE MANAGEMENT

7. Gillespie is mentally ill and has other disabilities like type 2 adult onset diabetes, high blood pressure, and communication disorders. Gillespie requests intensive case management because he does not want to miss a deadline due to confusion related to mental illness or other disability. Gillespie is totally disabled and not able to work. Social Security determined that Gillespie is disabled and cannot work¹. Gillespie sustained a traumatic brain injury and has not held substantial employment since. Gillespie is not a lawyer and did not attend law school. Gillespie does not want any inadvertent miscommunication with the Court to cause dismissal of his appeal because of mental illness or disability.

APPOINTMENT OF COUNSEL

8. When a litigant's health is at risk, appointment of counsel is appropriate. In an opinion decided March 27, 2012 by Judge Richard Posner of the 7th U.S. Circuit Court of Appeals in a civil rights suit brought under 42 U.S.C. § 1983, the Court suggested appointment of counsel because withholding nutritious food would violate the Eighth Amendment. (Prude v. Clarke, No. 11-2811; Appeal from the U.S. District Court for the Eastern District of Wisconsin. No. 2:10-cv-00167-JPS—J.P. Stadtmueller, Judge.). This is what happened in Gillespie's state court action June 21, 2011, *see* District Court case no. 5:10-cv-00503-WTH-TBS Doc. 33, Doc. 39, Doc. 47, Doc. 61, Doc. 62. In the related case 5:11-cv-00539, *see* First Amended Complaint, Doc. 15, paragraph 16:

¹ Prior to the onset of the most disabling aspects Gillespie's medical conditions, he was a productive member of society, and a business owner for 12 years. As such Gillespie paid both the employee and employer payroll tax contribution to the Social Security program.

“16. Gillespie is an individual with mental illness as defined by 42 U.S.C. Chapter 114 The Protection and Advocacy for Individuals with Mental Illness Act, § 10802(4)(A) and (B)(i)(III). Gillespie was involuntarily confined in a municipal detention facility for reasons other than serving a sentence resulting from conviction for a criminal offense. Gillespie’s involuntary confinement was in the George E. Edgecomb Courthouse, 800 E. Twiggs Street, Tampa, Florida. On June 1, 2011 Judge Arnold issued a politically motivated warrant to arrest Gillespie for the purpose of harming Gillespie by abuse as defined § 10802(1) and neglect as defined by § 10802(5) to force a walk-away settlement agreement in the state action, and to force a walk-away settlement agreement in the federal action, Gillespie’s civil rights and ADA lawsuit against the Thirteenth Judicial Circuit, Florida, et al., for the misuse and denial of judicial process under the color of law, and denial of disability accommodation. Gillespie was involuntary confined by two (2) fully armed deputies of the Hillsborough County Sheriff’s Office, and involuntarily held during an improper full deposition, post final summary judgment, an open-ended deposition without time limit, with no lunch break, and no meals usually given to an inmate, until Gillespie suffered injury and agreed to sign a walk-away settlement agreement. Gillespie was so impaired when he signed the agreement that the record shows he was unable to make the settlement decision himself.”

A copy of the opinion decided March 27, 2012 by Judge Richard Posner of the 7th U.S. Circuit Court of Appeals accompanies my letter to Sheryl L. Loesch, Clerk of the District Court. (Exhibit CLERK; Exhibit 3 to the letter dated April 5, 2012). The American Bar Association Journal Law News Now reported this story March 28, 2012. (Exhibit 4 to the letter dated April 5, 2012 to Ms. Loesch, and at the URL below).

http://www.abajournal.com/news/article/for_one_prisoner_nutriloaf_diet_may_violate_eighth_amendment_posner_opinion

GENERAL REQUEST FOR FURTHER RELIEF AS THIS COURT

DEEMS JUST AND EQUITABLE.

9. Gillespie makes a general request for further relief as this Court deems just and equitable and submits the following documents for consideration:

a. Case No. SC11-1622, Supreme Court of Florida, Petition (Active Case). This petition shows that Mr. Rodems misled the state court and obtained a warrant to arrest Gillespie for allegedly failing to appear for a deposition in aid of execution. (Rodems

obtained sanctions of \$11,550 against Gillespie in a vexatious counterclaim that was later voluntarily dismissed by Rodems). Rodems obtained a warrant to arrest Gillespie on a writ of bodily attachment AFTER the case was closed and on appeal in 2D10-5197 Second District Court of Appeals, Florida. After being hunted down by law enforcement for three (3) weeks on the arrest warrant, Gillespie voluntarily appeared and surrendered at Hillsborough Courthouse for the deposition, but that turned out to be a trap to force a “walk-away” settlement agreement. By then the deposition had changed to a full deposition, open-ended, with no time limit. Gillespie was taken into custody and involuntarily confined by two Hillsborough County Sheriff’s Deputies, Deputy Randy Olding and Deputy Larry Berg. Gillespie was denied accommodation under the ADA, and the Federal Protection and Advocacy for Mentally Ill Individuals Act, 42 U.S.C. 10801 et seq. After being held in custody during the deposition for over four (4) hours without a lunch break, or the usual mid-day meal provided to a prisoner, Gillespie became confused and disoriented. The record shows that Gillespie was so impaired that he could not make a decision to sign the agreement. Gillespie’s counsel Eugene Castagliuolo, whom he hired from Craigslist a couple weeks earlier, made the decision to settle because “judges have mud on their shoes”. Gillespie signed the agreement while confused and in a diminished state. Castagliuolo disobeyed Gillespie’s prior written and verbal instructions not to accept a walk-away settlement agreement. Once Gillespie was released from custody and had a meal, he realized the settlement was a mistake and promptly disaffirmed the agreement by written notice to Mr. Rodems, Mr. Castagliuolo and Major James Livingston of the Hillsborough County Sheriff’s Office.

The initial Petition was denied/dismissed March 12, 2012 as shown in the Order, Exhibit SC-1, and the case was closed. However the case was reopened upon Gillespie's motion for reconsideration as set forth in Exhibits SC-2 and SC-3, to reconsider Rodems' misconduct during a hearing on disqualification of counsel April 25, 2006 where 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, such as McPartland v. ISI Inv. Services, Inc., 890 F.Supp. 1029, or U.S. v. Culp, 934 F.Supp. 394. The Court may also reconsider Mr. Rodems' vexatious litigation against Gillespie, a libel counterclaim commenced by Rodems and pursued vexatiously by Rodems from January 19, 2006 through September 28, 2010, whereupon Rodems voluntarily dismissed the counterclaim without prejudice. Gillespie retained counsel to defend the vexatious litigation brought by Mr. Rodems on behalf of Mr. Cook and Barker, Rodems & Cook, P.A. and Gillespie incurred over \$30,000 in legal fees by attorney Robert W. Bauer, a referral from the Florida Bar Lawyer Referral Service for libel. Mr. Bauer then encourage Petitioner to reinstate dismissed claims in the litigation.

Exhibit 62, Petition for Writ of Mandamus, SC11-1622 (with CD ROM)

Exhibit 61, Affidavit of Neil J. Gillespie, Re: Eugene P. Castagliuolo, Esq.

Exhibit SC-1, Order denied/dismissed Petition, March 12, 2012

Exhibit SC-2, Motion for Reconsideration, Single Issue, March 19, 2012

Exhibit SC-3, Addendum, Motion for Reconsideration, March 22, 2012

Exhibit SC-4, Case Docket, the case is active as of 7.26AM April 7, 2012

b. Case No. 5:10-cv-00503-Oc-WTH-DAB (later 5:10-cv-00503-Oc-WTH-TBS)

Exhibit 1, Complaint, Civil Rights 42 USC § 1983 and ADA violations, for the misuse and denial of judicial process under the color of law for the benefit of Ryan Christopher Rodems in the state court action.

Exhibit 22, Plaintiff's Voluntary Dismissal, allegation of Torture.

Exhibit 36, Verified Notice of Filing Disability Information of Neil J Gillespie

Exhibit 49, Notice of Filing Transcript of Krista J Sterken, Foley & Lardner.

Ms. Sterken offered to represent Gillespie pro bono, but that offer was withdrawn without explanation. See Gillespie's letter to Sheryl L. Loesch, Clerk of the District Court below, there is reason to conclude that Magistrate Judge Baker may have had some role in the decision by Foley & Lardner not to represent Gillespie pro bono.

Exhibit 58, Plaintiff's Response to Order to Show cause, with exhibits. This shows why the case should have been designated Track Three Complex Litigation.

Exhibit 60, Unopposed Motion for Leave to Submit Addendum to Doc. 58

Exhibit 68, Motion to Amend the Judgment, letter to Chief Judge Anne Conway

c. Case No. 5:11-cv-00539-Oc-WTH-TBS

Exhibit Estate-15, First Amended Complaint, Civil Rights 42 USC § 1983 and ADA violations, restraint of trade, fair services, wrongful death, Federal Protection, Advocacy for Mentally Ill Individuals Act, etc. This amended complaint shows beginning at paragraph 51 that Robert W. Bauer, former counsel who charged Gillespie over \$33,000 for representation then dropped the case, has a pattern of disregard toward clients who are disabled and/or elderly. There is also a question beginning at paragraph 47 as to Mr. Bauer's literacy, if Bauer's literacy is sufficient to practice law. Mr. Bauer is a fireman who became a lawyer at age 35. More than

one client has complained that Mr. Bauer submits pro se client pleadings, and the work of law students, to the court as his own work, and then charges the client for the work as his own. Even Mr. Rodems complained that Bauer submitted Gillespie's pro se pleadings as his own, ¶ 49.

Exhibit Estate-17, Notice of Hunger Strike.

d. Letter to Sheryl L. Loesch, Clerk of the U.S. District Court, Middle District of Florida

Exhibit CLERK, Letter to Ms. Loesch dated April 5, 2012. Gillespie's letter to Ms. Loesch of April 5, 2012 sets forth failures by the Clerk and the Court regarding the disqualification of counsel Mr. Rodems and BRC, case management issues, no ADA accommodation, failure to put documents on the CM/ECF and PACER systems, and reason to conclude that Magistrate Judge Baker may have had some role in the decision by Foley & Lardner not to represent Gillespie pro bono.

WAIVER OF ALL CONFIDENTIALITY

10. Gillespie hereby waives all confidentiality and request that his ADA request be placed in the public record. A person's disability information is ordinarily confidential and protected from public disclosure like any other private medical information. Gillespie finds the public disclosure of his mental illness and other private medical information contained in Dr. Huffer's report and his ADA request objectionable just as any reasonable person would find it objectionable. In Gillespie's view this is a wrongful intrusion into his private life, in such manner as to outrage or cause mental suffering, shame, or humiliation to a person of ordinary sensibilities. Gillespie makes the information public to expose wrongdoing to the light of day, as well as for the benefit of others who are either in a similar situation, or may encounter one in the future. Gillespie

would like to see the abuses in this case, the torture of a mentally ill person, and the denial and misuse of judicial process under the color of law, reported in the press.

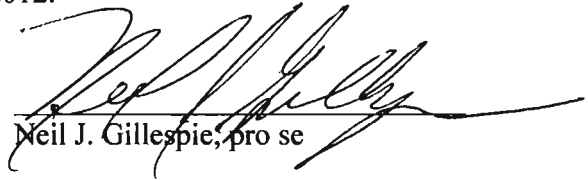
ISSUES FOR APPEAL

11. The District Court erred in failing to designate this action as Tract Three Complex Litigation under Local Rule 3.05 (Exhibit 58). The District Court erred when it failed to disqualify counsel Mr. Rodems/BRC on Gillespie's motion (Doc. 8) pursuant to the holding of McPartland v. ISI Inv. Services, Inc., 890 F.Supp. 1029, M.D.Fla., 1995. (Doc. 20). McPartland has been a mandatory authority on disqualification in the Middle District of Florida since entered June 30, 1995 by Judge Kovachevich. (Exhibit 58) The District Court erred when it failed to provide Gillespie accommodation under the ADA. (Exhibit CLERK). The District Court erred when it failed to allow Gillespie to consolidate the two actions, 5:10-cv-00503-Oc-WTH-TBS and 5:11-cv-00539-Oc-WTH-TBS, and subsequently file an amended complaint. The amended complaint would add allegations of substantial wrongdoing that have occurred since the original complaint was filed September 28, 2010 by incorporating many of the facts and allegations already set forth in Exhibit 61 and Exhibit 62, the Supreme Court of Florida petition, case no. SC11-1622, and allegations contained in Exhibit 58, Plaintiff's Response to Order to Show cause, Exhibit 60, Unopposed Motion for Leave to Submit Addendum to Doc. 58, Exhibit 68, Motion to Amend the Judgment, letter to Chief Judge Anne Conway, and Exhibit CLERK, Gillespie's letter to Sheryl L. Loesch, Clerk of the District Court. The District Court erred in its reliance on Heck v. Humphrey, 512 U.S. 477, 114 S.Ct. 2364 (1994) in the Order of Dismissal (Doc. 64). Heck has significant negative history, and

does not address the ADA or other facts in this case. The opinion decided March 27, 2012 by Judge Richard Posner of the 7th U.S. Circuit Court of Appeals in a civil rights suit brought under 42 U.S.C. § 1983 is more in line with the facts in this action.

WHEREFORE, Gillespie moves for disability accommodation and appointment of counsel as set forth herein, and makes a general request for further relief as this Court deems just and equitable.

RESPECTFULLY SUBMITTED April 7, 2012.


Neil J. Gillespie, pro se

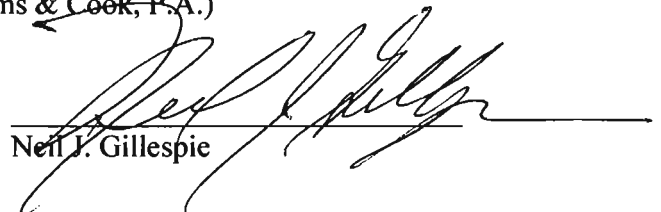
Certificate of Service

I HEREBY CERTIFY that a copy of the foregoing was mailed by U.S. Postal Service first class mail April 7, 2012 or as indicated below. Only this document was served in paper format; the exhibits were served in PDF on CD ROM.

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