Neil Gillespie

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Sent: Wednesday, May 25, 2011 10:45 AM
Attach: 2011, 05-24-11, P's Motion For Appointment of Counsel, w Memo Law.pdf
Subject: Turner v. Rogers, Docket 10-10, US Supreme Court

Mr. Seth P. Waxman for Petitioner
Mr. Stephanos Bibas for Respondent
Counsel for Amicus Curiae and Parties at Interest

RE: Turner v. Rogers, Docket 10-10, US Supreme Court

Dear Counsel:

Thank you, each counsel who has participated in Turner v. Rogers. Because your work is accessible through the Supreme Court website and the SCOTUS Blog, it is available to ordinary people like me, an indigent civil contemnor facing incarceration. Attached you will find my motion for appointment of counsel, based on legal arguments in Turner, that was filed yesterday.

The facts in my case are different, and in some ways more compelling than Turner. Last week the Florida Supreme Court denied my petition of writ of habeas corpus and petition for writ of prohibition. (Case No. SC11-858). Yesterday I spoke with Clayton Higgins, case analyst at the US Supreme Court, who said I have 90 days from the denial to file a petition for writ of certiorari; but I may need quicker relief like a stay. Other documents in this matter are posted on my Justice Network website, http://YouSue.org/ and Scribd.

If anyone can offer assistance, I would appreciate that, or a referral. Time is of the essence.

Sincerely,

Neil J. Gillespie, pro se, nonlawyer
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cc: Dr. Karin Huffer

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

NEIL J. GILLESPIE,

Plaintiff,

vs.

BARKER, RODEMS & COOK, P.A., a Florida corporation; WILLIAM J. COOK,

Defendants.
_____/

CASE NO.: 05-CA-7205

DIVISION: J

PLAINTIFF'S MOTION FOR APPOINTMENT OF COUNSEL, ADA ACCOMODATION REQUEST, and MEMORANDUM OF LAW

Plaintiff pro se ("Gillespie") moves for appointment of counsel on Order to Show Cause on writ of bodily attachment set for June 1, 2011 at 11:00AM (Exhibit 1) and states:

I. Opening Statement

1. Indigent litigants have a right to court-appointed counsel when faced with incarceration for violating a state court order. Gillespie is indigent and disabled. This six year-long lawsuit is to recover $7,143 stolen by Gillespie's former lawyers, Barker, Rodems & Cook, PA. Mr. Rodems is unethically representing his firm against a former client, and his independent professional judgment is materially limited by his own interest and conflict. Gillespie was previously represented by attorney Robert W. Bauer, who dropped the case and complained on the record that Mr. Rodems "...decided to take a full nuclear blast approach instead of us trying to work this out in a professional manner...". Mr. Rodems' "full nuclear blast approach" has aggravated Gillespie's disability to the point where Gillespie can no longer represent himself at hearings.

Gillespie becomes easily distracted and confused, and can no longer speak coherently enough during a hearing to represent himself. The Court summoned Gillespie to appear June 1, 2011 at 11:00AM for a contempt hearing on a writ of bodily attachment for allegedly failing to appear at a court-ordered deposition. (Exhibit 1). It is an effort claimed by Barker, Rodems & Cook, PA to collect a judgment of $11,550 from Gillespie for sanctions resulting from the "full nuclear blast approach" taken by Mr. Rodems in this case. But this alleged collection effort is suspect. In August 2008 Rodems garnished $598.22[1] from Gillespie's bank accounts, but Rodems did not attempted to collect the garnished funds, and all the money was returned to Gillespie December 28, 2010. Gillespie believes the effort to incarcerate him is illegitimate, and in retribution for Gillespie's refusal to drop this case, his lawsuit against the Court, and his website critical of the Court.

Gillespie is willing to appear at a deposition so long as he is represented by counsel. Dr. Karin Huffer, Gillespie's ADA advocate, wrote October 28, 2010 "It is against my medical advice for Neil Gillespie to continue the traditional legal path without properly being accommodated. It would be like sending a vulnerable human being into a field of bullies to sort out a legal problem." Gillespie cannot have unmoderated contact with Mr. Rodems, his partners, or employees. This is due to Mr. Rodems' practice of creating a false record of events to gain advantage. Gillespie fears that if he appeared at a deposition without representation, Mr. Rodems would later create a false affidavit alleging Gillespie's wrongdoing. If Gillespie cannot retain counsel, he has offered, by letter dated November 8, 2010 to Mr. Rodems, to attend a deposition at a local law

[1] All the money taken was exempt from garnishment, including Social Security disability income.

enforcement office, but Rodems did not respond. In addition, the Court itself has a conflict hearing this case because it is a defendant in Gillespie v. The Thirteenth Judicial Circuit, Florida, et al., Case No.: 5:10-cv-503-oc, US District Court, Middle District of Florida, Ocala, for the misuse and denial of judicial process under the color of law, and violation of Title II of the ADA. Even if Gillespie was not indigent he still requires appointment of counsel. Because of the animosity created by Mr. Rodems' "full nuclear blast approach" Gillespie has become *persona non grata* and not able to obtain representation. In a letter to Gillespie November 4, 2010, Bradford Kimbro, Executive Partner of Holland & Knight, Tampa, declined to represent Gillespie at a court-ordered deposition, even at full hourly rates charged by Holland & Knight in civil litigation.

II. The Issues

2. a. Does Gillespie, an indigent, have a right to court-appointed counsel when faced with incarceration for violating a state court order?

b. Does Gillespie, a person with physical and cognitive disabilities, have a right to court-appointed counsel when faced with incarceration for violating a state court order?

c. Gillespie cannot legally represent himself pro se. On November 15, 2010, Judge Cook entered an *Order Prohibiting Plaintiff from Appearing Pro Se*. (Exhibit 8).

d. Gillespie is prohibited from setting motion with JAWS, the online *Judicial Automated Workflow System* used by lawyers to calendar motions. Pro se litigants must telephone the judicial assistant and manually set motions for hearing, and coordinate the available times with the availability of opposing counsel. This is impossible when opposing counsel or the JA is not cooperative, as in this case with Gillespie.

e. Gillespie cannot obtain subpoenas from the Clerk needed to compel witnesses and documents to defend against civil contempt.

f. The Thirteenth Judicial Circuit, Florida, et al. is a defendant in a federal ADA and Civil Rights lawsuit with Gillespie, Gillespie v. Thirteenth Judicial Circuit, Florida, et al, Case No. 5:10-cv-00503-oc, US District Court, Middle District of Florida, Ocala Division, for the misuse and denial of judicial process under the color of law. This Court has a conflict of interest with Gillespie hearing this case, which should be moved to another circuit or venue.

III. Right to Counsel In Civil Contempt Hearing Facing Incarceration

3. Gillespie has a right to court-appointed counsel when faced with incarceration for violating a state court order. On September 30, 2010 Judge Martha Cook rendered *Order Adjudging Plaintiff Neil J. Gillespie In Contempt*[2] with threat of incarceration on a writ of bodily attachment for allegedly failing to attend a deposition. (Exhibit 2). The September 28, 2010 hearing on the *Order* was held ex parte. Gillespie was not present and he was not represented by counsel. Immediately prior to the contempt hearing there was a hearing on *Final Summary Judgment As To Count 1* where Gillespie was removed from the courthouse and had no representation. Judge Cook's contempt Order states that Gillespie left the hearing voluntarily. Gillespie asserts that he was forcibly removed from the hearing, a claim supported by the bailiff who removed him, Deputy Christopher E. Brown of the Hillsborough County Sheriff's Office (HCSO). Major James P. Livingston, Commander of the Court Operations Division, HCSO, provided Gillespie a letter dated January 12, 2011 stating that Judge Cook ordered Gillespie removed from the hearing,

[2] The Order is on appeal in case no. 2D10-5197, Second District Court of Appeal.

thereby impeaching Judge Cook's Order. See *Affidavit of Neil J. Gillespie, April 25, 2011*. (Exhibit 3). Judge Cook denied Gillespie his due process rights on the contempt hearing (And the hearing on Final Summary Judgment), and then lied about it in her *Order*. See Affidavit of Neil J. Gillespie, November 1, 2010, *Judge Martha J. Cook ordered Gillespie removed from the hearing on Defendants' Motion for an Order of Contempt and Writ of Bodily Attachment, then falsified the Order stating Gillespie voluntarily left the hearing and did not return.* (Exhibit 4). Also, see Affidavit of Neil J. Gillespie, November 1, 2010, *Judge Martha J. Cook ordered Gillespie removed from the hearing on Defendants' Final Summary Judgment Count I, proceeded without Gillespie, granted SJ for Defendants on TILA fees previously denied with prejudice and by three different federal courts.* (Exhibit 5).

4. The United States Supreme Court heard argument in Turner v. Rogers, Docket 10-10, on March 23, 2011 according to SCOTUS Blog http://www.scotusblog.com/case-files/cases/turner-v-price/. The issue is (1) Whether an indigent defendant has a constitutional right to appointed counsel at a civil contempt proceeding that results in his incarceration; and (2) whether the Court has jurisdiction to review the decision of the South Carolina Supreme Court. Tom Goldstein, Publisher of SCOTUS Blog, emailed Gillespie May 16, 2011 that "It [Turner v. Rogers] very likely will be decided in June."

5. Gillespie was determined indigent by the Second District Court of Appeal in case numbers 2D10-5197, 2D10-5529, and 2D11-2127. Gillespie was determined indigent by the Florida Supreme Court in case number SC11-858. Gillespie moved this Court to proceed in forma pauperis May 16, 2011, See *Verified Motion With Affidavit To Proceed in Forma Pauperis*. (Exhibit 6).

6. This case may be more compelling than Turner v. Rogers. Gillespie is disabled and cannot appear in court without counsel. Gillespie's cognitive disability has worsened to the point where he can no longer represent himself at hearings. Gillespie becomes easily distracted and confused, and can no longer speak coherently enough during a hearing to represent himself. During a hearing May 3, 2011 the record shows Judge Arnold is uniformed about Gillespie's disability. (Transcript, p7, line 7). Judge Arnold held the hearing ex parte. Gillespie was not present at the hearing and he was not represented by counsel. Opposing counsel Mr. Rodems mislead the court about Gillespie's disability[3]. Mr. Rodems is the problem in this case due to his conflict of interest with a former client. Gillespie sued to recover $7,143 stolen by Rodems' firm, Barker, Rodems & Cook, PA, from a settlement in prior representation. Mr. Rodems countersued Gillespie for libel, and has taken a "full nuclear blast approach". Rodems' independent professional judgment is materially limited by his own interest and conflict. See *Plaintiff's First Amended Complaint* filed May 5, 2010. Also See *Emergency Motion to Disqualify Defendants' Counsel Ryan Christopher Rodems & Barker, Rodems & Cook, PA* filed July 9, 2010.

IV. Memorandum of Law - Right To Counsel In Civil Contempt

7. The Petitioner's Brief in Turner v. Rogers, Docket 10-10, The United States Supreme Court, sets forth two relevant constitutional provisions (Brief, p. 2), the Sixth and Fourteenth Amendments supporting a right to counsel in civil contempt proceedings:

(a) The Sixth Amendment provides in relevant part: In all criminal prosecutions, the accused shall enjoy the right … to have the Assistance of Counsel for his defense.

[3] Mr. Rodems has personal knowledge of Plaintiff's disability from his firm's prior representation of him

U.S. Const. amend. VI. The Petitioner further argues (Brief, p. 27) "In *Powell* v. *Alabama*, 287 U.S. 45 (1932), this Court recognized that "[t]he right to be heard would be, in many cases, of little avail if it did not comprehend the right to be heard by counsel." *Id.* at 68-69. In a range of proceedings, both criminal and civil, this Court has accordingly held that an indigent defendant facing incarceration is entitled to be advised of his right to counsel and, if he cannot afford an attorney, to have counsel appointed to assist in his defense. In the criminal context, the right to appointed counsel stems in part from the Sixth Amendment's textual guarantee of "the Assistance of Counsel" in "all criminal prosecutions." U.S. Const. amend. VI. The Court has construed this provision to confer a right to appointed counsel in any proceeding that "may end up in the actual deprivation of a person's liberty." *Alabama* v. *Shelton*, 535 U.S. 654, 658 (2002) (internal quotation marks omitted). This understanding of the Sixth Amendment right to counsel reflects "the obvious truth that the average defendant does not have the professional legal skill to protect himself when brought before a tribunal with power to take his life or liberty." *Johnson* v. *Zerbst*, 304 U.S. 458, 462-463 (1938). Thus, absent a valid waiver, "no person may be imprisoned for any offense, whether classified as petty, misdemeanor, or felony, unless he was represented by counsel at his trial." *Argersinger* v. *Hamlin*, 407 U.S. 25, 37 (1972). Rather, "*any* amount of actual jail time has Sixth Amendment significance." *Glover* v. *United States*, 531 U.S. 198, 203 (2001) (emphasis added); *see also Scott* v. *Illinois*, 440 U.S. 367, 373 (1979)."

(b) The Fourteenth Amendment provides in relevant part: [N]or shall any State deprive any person of life, liberty, or property, without due process of law. U.S. Const.

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on disability matters.

amend. XIV, §1. The Petitioner further argues (Brief, p. 28) "This Court has recognized, however, that the right to the assistance of counsel for persons facing incarceration arises not only from the Sixth Amendment, but also from the requirement of fundamental fairness under the Due Process Clause of the Fourteenth Amendment. Thus, in *Gideon* v. *Wainwright*, 372 U.S. 335 (1963), the Court extended the Sixth Amendment right to counsel to all criminal prosecutions in state courts in which the defendant faced a loss of liberty through the Due Process Clause, holding that the right to counsel is a "fundamental safeguard[] of liberty" that is "essential to a fair trial." *Id*. at 339-345. As the Court had recognized in *Powell*, without the "guiding hand of counsel," even a defendant who is not guilty "faces the danger of conviction because he does not know how to establish his innocence." 287 U.S. at 69. "That which is simple, orderly and necessary to the lawyer, to the untrained layman may appear intricate, complex and mysterious." *Johnson*, 304 U.S. at 463. Indeed, the assistance of counsel "is often a requisite to the very existence of a fair trial," *Argersinger*, 407 U.S. at 31, and, accordingly, no defendant should "face[] incarceration on a conviction that has never been subjected to the crucible of meaningful adversarial testing," *Shelton*, 535 U.S. at 667 (internal quotation marks omitted)."

8. Oral argument in Turner v. Rogers came before the Supreme Court of the United States March 23, 2011. The opening volley between Mr. Waxman for Petitioner and Justice Scalia frame the issue relative to Gillespie's case.

(SCOTUS Transcript, p. 3, beginning at line 6)

MR. WAXMAN: Mr. Chief Justice, and may it please the Court:

> Due process requires the assistance of counsel before an alleged civil contemner can be incarcerated. That categorical rule flows from the imposition by a court in a formal adversary proceeding of what this Court has termed, quote, "the awesome prospect of incarceration." Certainly - -
>
> JUSTICE SCALIA: It's -- it's a formal adversary proceeding in a very limited sense and not in the sense that caused us to require counsel to be provided in criminal proceedings where the other side is armed with the legal knowledge that the poor defendant does not have. Many of these proceedings do not involve counsel on the other side, do they?

In Gillespie's case the "other side" is Barker, Rodems & Cook, PA, ("BRC") Gillespie's former lawyers who defrauded him of $7,143 from a settlement in prior representation. Mr. Rodems countersued Gillespie for libel, and is unlawfully representing his law firm against a former client in a matter that is the same or substantially the same as the prior representation. Mr. Rodems' independent professional judgment is materially limited by his own interest and conflict. See *Plaintiff's First Amended Complaint* filed May 5, 2010. Also See *Emergency Motion to Disqualify Defendants' Counsel Ryan Christopher Rodems & Barker, Rodems & Cook, PA* filed July 9, 2010.

9. Mr. Waxman, in his rebuttal argument before the US Supreme Court, points out that the "Inability to comply [with a state court order] is a legal defense, not a factual excuse." (SCOTUS Transcript, p. 60, line 20). In Turner there is an admission of drug use. Mr. Waxman argues "Does or does that not constitute an inability to pay? That is a legal question. It is not a factual question." (SCOTUS Transcript, p. 60, line 17). In the instant case Gillespie is disabled. Mr. Rodems knows of Gillespie's disability from his

firm's prior representation of Gillespie. Since March 3, 2006, Mr. Rodems has directed, with malice aforethought, a course of harassing conduct toward Gillespie that has aggravated his disability, caused substantial emotional distress and serves no legitimate purpose. This is a violation of § 784.048, Florida Statutes (Stalking), and chapter 825 et seq., Florida Statutes (Abuse, Neglect, and Exploitation or Elderly Persons and Disabled Adults). The question of Gillespie's alleged noncompliance with Judge Cook's order is a legal one that requires assistance of counsel.

10. Additional Memorandum of Law from four Amicus Curiae briefs filed in support of Petitioner accompanies this motion. The Amicus Curiae briefs were submitted by the following:

a. Amicus Curiae The American Bar Association

b. Amici Curiae The National Association of Criminal Defense Lawyers, et al.

c. Amici Curiae The Legal Aid Society of the District of Columbia, et al.

d. Amicus Curiae The Constitution Project

V. Judge James D. Arnold Denied Motion To Stay May 3, 2011 Contempt Hearing

11. Gillespie moved April 23, 2011 for a stay of the of the *Order Adjudging Plaintiff Neil J. Gillespie In Contempt*, and writ of bodily attachment, pursuant to Rule 9.310 of the Florida Rules of Appellate Procedure. (Exhibit 7). Mr. Rodems filed *Defendants' Motion To Strike Pro Se Filings By Plaintiff*. (Exhibit 9). Rodems' motion relies on Judge Cook's *Order Prohibiting Plaintiff From Appearing Pro Se* (Exhibit 8) that prohibits Gillespie from filing anything with the Clerk that is not signed by a member of The Florida Bar in good standing. On its face the order is a sham; Judge Cook signed the order without a hearing, and nine days prior to the time expired for Gillespie to respond.

12. Judge Arnold denied Gillespie's motion to stay pending appeal (Exhibit 10). In doing so Judge Arnold disregarded Rule 9.600(b), Fla. R. App. P., that holds:

> **(b**) **Further Proceedings.** If the jurisdiction of the lower tribunal has been divested by an appeal from a final order, the court by order may permit the lower tribunal to proceed with specifically stated matters during the pendency of the appeal.

The appeal in 2D10-5197 is an appeal of a final order. Judge Arnold denied Gillespie's motion to stay without prejudice and wrote "Plaintiff may refile the motion and calendar it for hearing, and the Court will consider it upon proper notice." This belies the fact that Gillespie is prohibited from appearing pro se. Also, Gillespie does not have access to JAWS, the *Judicial Automated Workflow System* used to calendar a motion for hearing. Only attorneys can use JAWS; pro se litigants must telephone the judicial assistant and manually set motions for hearing, and coordinate with the JA the available times with the availability of opposing counsel. This procedure is unworkable because Mr. Rodems will not cooperate, and neither will Judy Williams, the judicial assistant. Ms. Williams would not speak with Gillespie, see *Plaintiff's Motion to Disqualify Judge Arnold*. (Exhibit 11).

13. Because of the foregoing Gillespie sought relief in the 2dDCA April 25, 2011 in 2D10-5197 with a *Appellant's Verified Emergency Motion To Stay Pending Appeal*, *Motion For Order of Protection*, and *Motion For Extension of Time*. The Court denied the motion to stay, and denied an order of protection, May 2, 2011.

14. Because of the forgoing Gillespie sought relief in the 2dDCA May 2, 2011 with a *Verified Emergency Petition For Writ of Prohibition, and a Motion For Change Of Venue*, to remove Judge Arnold as trial judge, and to change venue to another circuit. The petition was docketed as 2D11-2127. The Court denied the petition May 6, 2011.

15. Because of the forgoing Gillespie sought relief in the Florida Supreme Court May 3, 2011, with *Emergency Petition For Writ Of Habeas Corpus*, and *Emergency Petition For Writ Of Prohibition*, case number is SC11-858. The Florida Supreme Court denied the petitions May 18, 2011.

VI. Judge Arnold Conducted Ex-Parte Hearing May 3, 2011

16. Judge Arnold conducted an ex parte hearing May 3, 2011. (Exhibit 12). Gillespie was not present or represented. Mr. Rodems told the Court why he was present:

(Transcript, May 3, 2011, page 4)

MR. RODEMS: Good morning, Your Honor. My name is Ryan Christopher Rodems, and I am here on behalf of Barker, Rodems & Cook, P.A. and William J. Cook. And this is our motion. It's a verified motion for an order to show cause why the plaintiff should not be held in contempt of court and a writ of bodily attachment should not be issued.

Mr. Rodems described the verified motion for an order to show cause as "our motion". Mr. Rodems often confuses his role as advocate and party at interest. Mr. Rodems is unlawfully representing his law firm against a former client in a matter that is the same or substantially the same as the prior representation. Mr. Rodems' independent professional judgment is materially limited by his own interest and conflict.

VII. Mr. Rodems Mislead The Court May 3, 2011

17. Mr. Rodems mislead the Court May 3, 2011 on the following issues:

a. Mr. Rodems told the Court that Gillespie would not appear for a deposition unless certain conditions were met. (p. 6, line 13). The Court asked "What were his conditions?" (p. 6, line 19). Rodems responded as follows:

(Transcript, May 3, 2011, p. 6, beginning line 23)

MR. RODEMS: Actually, on September 3rd of

> 24 2010, he wrote a letter that said that he will not
> 25 be attending the deposition that was scheduled on
>
> (Transcript, May 3, 2011, p. 7, beginning line 1)
>
> 1 that date, September 3rd, 2010, which I believe was
> 2 ordered by Judge Cook in a prior order dated July
> 3 28th. But he said that he would not attend the
> 4 deposition today because the Court has not
> 5 responded to nor provided accommodations requested
> 6 under the Americans with Disabilities Act.

Mr. Rodems statement to the Court is a material misrepresentation. Gillespie provided a letter to Mr. Rodems responsive to this question dated November 8, 2010, not September 3, 2010 as Rodems told the Court. Gillespie filed the letter with the Court November 8, 2010 along with Mr. Rodems' letter dated October 26, 2010. (Exhibit 13). Gillespie informed Mr. Rodems of the following:

(1) "Dr. Karin Huffer has advised me not to attend a deposition with you unrepresented and without ADA accommodation." Gillespie cannot have unmoderated contact with Mr. Rodems, his law partners, or employees. This is due to Mr. Rodems' practice of creating a false record of events to gain tactical advantage. For example, Mr. Rodems created a false record with his letter of January 13, 2010:

> "Recently, you came to our office, apparently to deliver something. My receptionist advised that you violently slung open the door, rushed at her, and slapped a document on the counter. She was very frightened and feared that you were going to attack her.
>
> Please be advised that due to your previous threats of violence and your recent conduct, you are no longer permitted to enter the premises at 400 North Ashley Drive, Suite 2100, Tampa, Florida 33602 for any reason whatsoever. If you do so, you will be considered trespassing, in violation of section 810.08, Florida Statutes."

This is a long-standing issue with Mr. Rodems, beginning March 6, 2006 when he filed a false affidavit that Gillespie planned to attack him in Judge Nielsen's chambers. A

recording of the conversation later impeached Rodems' affidavit. A review of the matter was done by Kirby Rainsberger, Legal Advisor, Tampa Police Dept., who responded by letter February 22, 2010 that Mr. Rodems was not right and not accurate in representing to the Court as an "exact quote" language that clearly was not an exact quote.

(2) "I am actively seeking counsel for the court-ordered deposition and have provided you copies of correspondence thereto." Gillespie contacted a number of lawyers to represent him at the court-ordered deposition, but none would do so. See *Affidavit of Neil J. Gillespie* November 8, 2010 for representation with attorney Brian Stayton. (Exhibit 14). Mr. Stayton declined representation. On November 3, 2010 Gillespie contacted Bradford Kimbro Executive Partner of Holland & Knight LLP, Tampa for representation at a court-ordered deposition. (Exhibit 15). Mr. Kimbro responded the next day and declined representation without reading Gillespie's letter. (Exhibit 16). On November 14, 2010 Gillespie joined the Legal Services Plan and was referred to Tampa attorney Edward Friscia. Mr. Friscia declined to represent Gillespie at a deposition, see the email dated November 18, 2010. (Exhibit 17).

(3) "You did not provide any details about the deposition. Who will conduct the deposition? After five years of your lies and harassment toward me I cannot be in your presence, you make me ill. Previously I provided you my tax returns and other documents so that is done. Since you did not specify the amount of time needed I assume one hour is enough." Mr. Rodems did not respond to Gillespie's questions. Instead Rodems submitted a Notice for Evidentiary Hearing, with a Verified Motion to Show Cause, and stated "Plaintiff also stated he would only allow one hour for his deposition." (Exhibit 18, p. 5, ¶2). Clearly Mr. Rodems lied to the Court and should be sanctioned.

(4) “I am available for deposition at the following dates and times provided that I am represented by counsel, have ADA accommodations in place, and the deposition is conducted by a third party:

Wednesday November 10, 2010 noon to 1:00 PM

Thursday November 11, 2010 noon to 1:00 PM

Friday November 12, 2010 noon to 1:00 PM”

Mr. Rodems did not respond to any of the above dates.

(5) “I reiterate my offer to submit to a deposition in Ocala at the law office of Robert Stermer subject to the conditions described above. Another option is a telephonic deposition.”

Mr. Rodems did not respond to either offer.

Gillespie Offered To Appear At A Law Enforcement Office For A Deposition

(6) “Please be advised that I will likely request a stay of Judge Cook's order under Florida Rule of Appellate Procedure 9.310(a) and will advise you thereupon. In any event I don't see the need for a writ of bodily attachment. If it comes to that point I would voluntarily appear at the appropriate law enforcement office and submit to a deposition under duress. At least then I would have some protection from your stunts, like throwing coffee on a deponent, or your wont of making false affidavits that you were threatened. (underline added).

Mr. Rodems did not respond to Gillespie’s offer to appear at a law enforcement office for a deposition.

VIII. Mr. Rodems’ Abuse of Process

18. Mr. Rodems is misusing the court in an abuse of process, as defined in *Peckins v. Kaye*, 443 So.2d 1025, 1026 (Fla. 2d DCA 1983):

> 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.

19. Mr. Rodems mislead Judge Arnold during the hearing May 3, 2011 about his clients' " final judgment[4] that has not been satisfied" (p6, line 4). Mr. Rodems also stated to the Court: (Transcript, May 3, 2011, p10, line 2)

> 2 We are effectively being denied the
> 3 opportunity to enforce our judgment, which has been
> 4 in effect, and which was affirmed on appeal. It's
> 5 been in effect since March 27th of 2008. That's
> 6 over three years. So, we really need to depose
> 7 Mr. Gillespie to find out what assets he has, and
> 8 where the assets that he did have gone, and what
> 9 are the sources of revenue that he receives.

The evidence shows Mr. Rodems is not interested in "enforcing our[5] judgment" but is improperly wasting valuable court resources to harass Gillespie, aggravate his disability, and interfere with the appellate process in 2D10-5197[6]. Mr. Rodems improperly garnished $598.22 from Gillespie's bank accounts in 2008. Gillespie's counsel at the time Robert W. Bauer filed a "Claim Of Exemption And Request For Hearing" August 14, 2008. (Exhibit 19). The court failed to hold a hearing. Mr. Rodems has made no attempt to collect the garnished funds. Gillespie sought to reclaim the wrongfully garnished funds on several occasions but the Court refused to hold legally-mandated

[4] The final judgment is the result of sanctions and not on the merits.
[5] Mr. Rodems often confuses his role as advocate and party at interest.

hearings. The Court refused to hold a hearing to determine the validity of the claimed exemptions as required by section 77.041(3) Florida Statutes. The Court refused to hold a hearing pursuant to section 77.07 Florida Statutes for dissolution of a writ of garnishment. In a letter dated December 21, 2010 Dale Bohner, legal counsel to the Clerk, informed Gillespie that "the referenced funds were never received into the registry of the court" and were still held by Park Avenue Bank. (Exhibit 20). Pursuant to section 77.07(5) Florida Statutes, after 6 months a writ is automatically dissolved and the garnishee is discharged from further liability. Since the writ was issued 29 months prior the bank had no current liability and no authority to hold the garnished funds. Park Avenue Bank returned Gillespie's funds of $598.22 by check dated December 28, 2010. (Exhibit 21). Park Avenue Bank failed April 29, 2011 and was assumed by Bank of the Ozarks.

20. Gillespie has no income or property subject to attachment, garnishment, or other legal process. See the following:

a. *Notice And Filing Affidavit Of Personal Property Of Neil J. Gillespie And Designated Exemptions*, May 16, 2011 (Exhibit 6; 1)

b. *Verified Motion With Affidavit To Proceed In Forma Pauperis*, May 16, 2011 (Exhibit 6)

c. *Motion For Dissolution Of Writ Of Garnishment*, April 28, 2010

21 Gillespie was found indigent by the Florida Supreme Court in case no. SC11-858. Gillespie was found indigent by the Second District Court of Appeal (2dDCA) in three cases, nos. 2D10-5197, 2D10-5529, and 2D11-2127. The 2dDCA provided Mr. Rodems

[6] This matter is on appeal in 2D10-5197 with Appellant's Initial Brief due May 23, 2011. Rodems is

20 days to rebut the Court's finding and he did not do so. Therefore Mr. Rodems knows Gillespie is indigent, he took no action to rebut the Court's finding, but continues to consume valuable resources of all concerned parties in an effort to harass Gillespie and disrupt the appellate process in case no. 2D10-5197, 2dDCA.

XI. Additional Examples of Mr. Rodems' Misrepresentations To The Court

22. Mr. Rodems scheduled a deposition October 13, 2009 in violation of a court order mandating a sixty (60) day stay. Rodems now claims Gillespie's failure to attend this is unlawfully-set hearing is evidence supporting the contempt order. The *Motion to Hold Ryan Christopher Rodems in Civil Contempt of Court*, December 15, 2009, is for Rodems' violation of a sixty (60) day stay order by Judge James Barton. (Exhibit 22).

23. Mr. Rodems scheduled a deposition June 18, 2010 without coordinating the date and time with Gillespie. The ADA accommodation not provided either. Gillespie cannot have unmoderated contact with Mr. Rodems, his law partners, or staff because of Rodems' practice of creating a false record of events to use against Gillespie and gain tactical advantage. See *Plaintiff's Motion To Cancel Deposition Duces Tecum June 18, 2010 And For An Order Of Protection*, June 14, 2010. (Exhibit 23). The motion shows that Mr. Rodems and his former partner Jonathan Alpert attended a mediation where the former partner physically attacked opposing counsel. A Tampa Police Department report dated June 5, 2000, case number 00-42020, alleges Mr. Alpert committed battery, Florida Statutes §784.03, upon attorney Arnold Levine by throwing hot coffee on him. At the time Mr. Levine was a 68 year-old senior citizen. The report states: "The victim and defendant are both attorneys and were representing their clients in a mediation hearing.

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engaged in dilatory tactics designed to impede Gillespie's work on the brief.

The victim alleges that the defendant began yelling, and intentionally threw the contents of a 20 oz. cup of hot coffee which struck him in the chest staining his shirt. A request for prosecution was issued for battery." Mr. Rodems is listed as a witness on the report.

24. Mr. Rodems lied to Judge Cook about discovery matters in his letter dated July 12, 2010. See *Notice of Fraud On The Court By Ryan Christopher Rodems - Discovery*, July 27, 2010. The Notice shows Mr. Rodems lied to the Court about discovery issues, and that Gillespie responded to each and every duces tecum request. (Exhibit 24)

X. Judge Arnold Is Uninformed About Gillespie's Disability

25. According to the transcript of the hearing May 3, 2011 before Judge Arnold, the Court was uninformed about Gillespie's ADA request and/or disability. (p.7, line 7). Mr. Rodems mislead Judge Arnold about Gillespie's disability. Mr. Rodems also misled the Court to believe that Rodems is entitled to the confidential ADA information, creating more misinformation and further damage to Gillespie's position.

26. Gillespie filed *Notice of Americans With Disabilities Act (ADA) Accommodation Request of Neil J. Gillespie* February 19, 2010. (Exhibit 25). The Notice shows Gillespie provided his ADA Request, and ADA Report by Karin Huffer to Gonzalo Casares, ADA Coordinator for the 13th Circuit, with a copy to Judge Barton. The Notice states:

> "The ADA Request and ADA Report are to be kept under ADA Administrative confidential management except for use by the ADA Administrator revealing functional impairments and needed accommodations communicated to the Trier of Fact to implement administration of accommodations. This information is NOT to become part of the adversarial process. Revealing any part of this report may result in a violation of HIPAA and ADAAA Federal Law."

Mr. Rodems claims he is entitled to have Gillespie's confidential medical information, and Rodems also claims that state and federal confidentiality law does not apply to him or Barker, Rodems & Cook, PA.

27. On February 12, 2010 Mr. Rodems filed *Defendants' Motion For An Order Determining Plaintiff's Entitlement To Reasonable Modifications Under Title II Of The Americans' With Disabilities Act*. (Exhibit 26). The motion was completely inappropriate, and shows Mr. Rodems' independent professional judgment is materially limited by his own interest and conflict. Mr. Rodems attached to his motion Gillespie's letter to Judge Barton dated January 26, 2010. The letter showed how Mr. Rodems' behavior is the problem in this lawsuit, and his problems with other clients and adversaries. Mr. Rodems faced Florida Bar complaints by other former clients who claimed he cheated them in contingency lawsuits. The former clients include Rita Pesci and Roslyn Vazquez. Gillespie could not locate Ms. Vazquez, but spoke with Ms. Pesci by phone January 7, 2010. Ms. Pesci told Gillespie about her experience with Mr. Rodems' representation:

> "...I found him to be a complete liar. He only did it for the money that he could get. He didn't want to defend me in my case at all. He had never intended to. And because there was a chance that he might lose, so rather than be aggressive and fight the case he dropped me and filed a claim against my retirement fund...He took a little over half of my retirement money...he placed a lien against what he said was his bill...And my understanding was that he had taken this case and that he would be paid if he won. But according to what he said, he didn't say that...Yeah, this is this is how they get you...You know, I never had a thing against lawyers until I actually dealt with one... when he started fighting me over the fee, he would send things that were two and 300 pages long...And I remember

at one point telling him, I didn't care how much paper he sent them, that he had defrauded me and he knew it..." (Rita Pesci, former client of Mr. Rodems)

This is another example of how Mr. Rodems continued to file spurious pleadings, each of which must be reviewed and evaluated by members of the court staff, and Gillespie. In response to Rodems' motion Gillespie filed *Plaintiff's Motion For An Order Of Protection - ADA*, February 19, 2010. (Exhibit 27).

XI. Gillespie Is No Longer Medically Able To Represent Himself In Court

28. Gillespie commenced two pro se lawsuits in August 2005 (one being the instant case) because he could not find or afford counsel to represent him. One lawsuit in federal court involved a credit card dispute, Gillespie v. HSBC Bank, et al, case no. 5:05-cv-362-Oc-WTH-GRJ, US District Court, Middle District of Florida, Ocala Division. The HSBC lawsuit was resolved in fifteen (15) months with a good result for the parties. Gillespie was able to work amicably with the counsel for HSBC Bank, Traci H. Rollins and David J. D'Agata, counsel with Squire, Sanders & Dempsey, LLP.

29. The problems in this lawsuit are due to Mr. Rodems' unethical representation of his law partner and law firm against claims by a former client on a matter that is the same or substantially similar to the prior representation. Mr. Rodems' independent professional judgment is materially limited by his own interest and conflict.

30. Gillespie's completed and signed ADA form for the 13th Circuit is attached to his *Notice Of Americans With Disability Act (ADA) Accommodation Request Of Neil J. Gillespie*. (Exhibit 25). The ADA form specifies that Mr. Rodems is the problem relative to Gillespie's disability, see item 6, Special requests or anticipated problems (specify): "I am harassed by Mr. Rodems in violation of Fla. Stat. section 784.048." Mr. Rodems withheld this information from Judge Arnold during the ex parte hearing May 3, 2011.

31. Mr. Rodems has set a level of animosity in this lawsuit best described by Gillespie's former attorney Robert W. Bauer August 14, 2008 during an Emergency Hearing on garnishment before Judge Marva Crenshaw (p16, line 24):

> 24 Mr. Rodems has, you know, decided to take a full
> 25 nuclear blast approach instead of us trying to work
> 1 this out in a professional manner. It is my
> 2 mistake for sitting back and giving him the
> 3 opportunity to take this full blast attack.

32. Since March 3, 2006, Mr. Rodems has directed, with malice aforethought, a course of harassing conduct toward Gillespie that has aggravated his disability, caused substantial emotional distress and serves no legitimate purpose. This is a violation of Florida Statutes, §784.048, and chapter 825 et seq. Florida Statutes.

33. Gillespie's former lawyer Robert W. Bauer believed Mr. Rodems so volatile that Bauer prohibited Gillespie from appearing as a witness in his own case. Mr. Bauer sent Gillespie an email July 8, 2008 at 6.05PM stating in part:

> "No - I do not wish for you to attend hearings. I am concerned that you will not be able to properly deal with any of Mr. Rodems comments and you will enflame the situation. I am sure that he makes them for no better purpose than to anger you. I believe it is best to keep you away from him and not allow him to prod you. You have had a very adversarial relationship with him and it has made it much more difficult to deal with your case. I don't not wish to add to the problems if it can be avoided.:

See the attached *Plaintiff's Notice of Filing Affidavit of Neil J. Gillespie* (Exhibit 28) filed September 18, 2010.

34. Mr. Rodems has knowledge of Gillespie's disability from his firm's prior representation of Gillespie on a number of matters, including representation on disability matters. As set forth in *Plaintiff's First Amended Complaint*, Count 10, Invasion of Privacy, Barker, Rodems & Cook, P.A. (BRC) published Gillespie's privileged medical

information during the course of representation in the AMSCOT lawsuit. BRC published information about Gillespie's disability, treatment and rehabilitation. Gillespie's medical condition was not at issue in the AMSCOT lawsuit. The AMSCOT litigation concerned check cashing, the federal Truth In Lending Act (TILA), Florida state usury law, and the Florida Deceptive and Unfair Trade Practices Act.

a. BRC published Gillespie's privileged medical information in response to AMSCOT's interrogatories to Neil Gillespie. BRC failed to object to interrogatories about Gillespie's privileged medical information.

b. BRC published Gillespie's privileged medical information during a deposition with AMSCOT. Gillespie was deposed May 14, 2001 by John A. Anthony, attorney for AMSCOT Corporation. Approximately twenty pages of the 122 page transcript concerned Gillespie's disability, treatment and rehabilitation. BRC failed to object to interrogatories about Gillespie's privileged medical information.

c. BRC published private facts about Gillespie that are offensive and are not of legitimate public concern. BRC permitted a wrongful intrusion into Gillespie's private activities, in such manner as to outrage or cause mental suffering, shame, or humiliation to a person of ordinary sensibilities.

d. The Florida Supreme Court has held that public disclosure of private facts—the dissemination of truthful private information which a reasonable person would find objectionable, is one of four types of wrongful conduct that can be remedied through an action for invasion of privacy. *See Agency for Health Care Admin. v. Associated Indus. of Fla., Inc.*, 678 So.2d 1239, 1252 n. 20 (Fla. 1996).

35. Gillespie inadvertently filed two ADA requests improperly with the Clerk of the Court rather than the ADA coordinator in 2007 thereby making the information public.

February 20, 2007, *Plaintiff's Accommodation Request Americans with Disabilities Act (ADA)* (Exhibit 29) and

March 5, 2007, *Plaintiff's Amended Accommodation Request Americans with Disabilities Act (ADA)* (Exhibit 30).

36. Gillespie's ADA accommodation request of March 5, 2007 showed the following:

a. Paragraph 1: "Plaintiff was determined totally disabled by Social Security in 1994."

b. Paragraph 2: "Defendants are familiar with Plaintiff's disability from their prior representation of him. Defendants investigated his eligibility to receive services from the Florida Department of Vocational Rehabilitation (DVR). DVR determined that Plaintiff was too severely disabled to benefit from services. Defendants concurred, and notified Plaintiff of their decision in a letter to him dated March 27, 2001. (Exhibit A). Defendants were also informed of Plaintiff's medication for depression by fax dated October 6, 2000, Effexor XR 150mg. (Exhibit B)."

c. Paragraph 3: "Plaintiff has the following medical conditions which are disabling and prevent him from effectively participating in court proceedings, including:

a. Depression and related mood disorder. This medical condition prevents Plaintiff from working, meeting deadlines, and concentrating. The inability to concentrate at times affects Plaintiff's ability to hear and comprehend. The medical treatment for depression includes prescription medication that further disables Plaintiff's ability to do the work of this lawsuit, and further prevents him from effectively participating in the proceedings.

b. Post Traumatic Stress Disorder (PTSD), makes Plaintiff susceptible to stress, such as the ongoing harassment by Defendants' lawyer, Mr. Rodems.

c. Velopharyngeal Incompetence (VPI) is a speech impairment that affects Plaintiff's ability to communicate.

d. Type 2 diabetes. This was diagnosed in 2006 after Defendants' representation."

d. Paragraph 4: "Prior to the onset of the most disabling aspects Plaintiff's medical condition(s), he was a productive member of society, a business owner[7] for 12 years, and a graduate of both the University of Pennsylvania and The Evergreen State College[8]."

e. Paragraph 5: "On March 3, 2006, Ryan Christopher Rodems telephoned Plaintiff at his home and threatened to use information learned during Defendants prior representation against him in the instant lawsuit. Mr. Rodems' threats were twofold; to intimidate Plaintiff into dropping this lawsuit by threatening to disclose confidential client information, and to inflict emotional distress, to trigger Plaintiff's Post Traumatic Stress Disorder, and inflict injury upon Plaintiff for Defendants' advantage in this lawsuit."

[7] The business allowed Gillespie flex ability to manage his disability, along with the fact that many of Gillespie's employees were WWII combat veterans who also suffered PTSD.

[8] Note: A number of Gillespie's disabilities are congenital. Medical treatment of the congenital disabilities was not completed until Gillespie was age forty (40). This delayed his education. Gillespie graduated from the University of Pennsylvania, Wharton School, Evening Division, with an Associate of Business Administration degree, cum laude, on May 21, 1989, when he was thirty-three (33) years old. Gillespie graduated from The Evergreen State College (Olympia, WA) December 16, 1995 with a Bachelor of Arts degree when he was almost forty (40) years old. Gillespie relocated to the West Coast to continue habilitation efforts for Velopharyngeal Incompetence (VPI), initially with Dr. Robert Blakeley, University of Oregon Health Sciences University, and later at the University of Washington in Seattle.

f. Paragraph 6: "On March 6, 2006, Mr. Rodems made a false verification the Court about the March 3, 2006 telephone call. Mr. Rodems submitted Defendants' Verified Request For Bailiff And For Sanctions, and told the Court under oath that Plaintiff threatened acts of violence in Judge Nielsen's chambers. It was a stunt that backfired when a tape recording of the phone call showed that Mr. Rodems lied[9]. Plaintiff notified the Court about Mr. Rodems' perjury in Plaintiff's Motion With Affidavit To Show Cause Why Ryan Christopher Rodems Should not Be Held In Criminal Contempt Of Court and Incorporated Memorandum Of Law submitted January 29, 2007."

g. Paragraph 7: "Mr. Rodems' harassing phone call to Plaintiff of March 3, 2006, was a tort, the *Intentional Infliction of Emotional Distress*. Mr. Rodems' tort injured Plaintiff by aggravating his existing medical condition. From the time of the call on March 3, 2006, Plaintiff suffered worsening depression for which he was treated by his doctors.

a. On May 1, 2006 Plaintiff's doctor prescribed Effexor XR, a serotonin-norepinephrine reuptake inhibitor (SNRI), to the maximum dosage.

b. Plaintiff's worsening depression, and the side affects of the medication, lessened Plaintiff's already diminished ability to represent himself in this lawsuit.

c. On October 4, 2006 Plaintiff began the process of discontinuing his medication so that he could improve is ability to represent himself in this lawsuit.

[9] A review of the matter was done by Kirby Rainsberger, Legal Advisor, Tampa Police Dept. He responded by letter February 22, 2010 that Mr. Rodems was not right and not accurate in representing to the Court as an "exact quote" language that clearly was not an exact quote.

d. On or about November 18, 2006, Plaintiff discontinued the use of anti-depression medication, to improve his ability to represent himself in this lawsuit."

h. Paragraph 8: "Mr. Rodems continued to harass Plaintiff during the course of this lawsuit in the following manner:

a. Mr. Rodems lay-in-wait for Plaintiff outside Judge Nielsen's chambers on April 25, 2006, following a hearing, to taunt him and provoke an altercation.

b. Mr. Rodems refused to address Plaintiff as "Mr. Gillespie" but used his first name, and disrespectful derivatives, against Plaintiff's expressed wishes.

c. Mr. Rodems left insulting, harassing comments on Plaintiff's voice mail during his ranting message of December 13, 2006.

d. Mr. Rodems wrote Plaintiff a five-page diatribe of insults and ad hominem abusive attacks on December 13, 2006."

i. Paragraph 9: "Plaintiff notified the Court of his inability to obtain counsel in *Plaintiff's Notice of Inability to obtain Counsel* submitted February 13, 2007."

j. Paragraph 10: "Plaintiff acknowledges that this ADA accommodation request is unusual, but so are the circumstances. Defendants in this lawsuit are Plaintiff's former lawyers, who are using Plaintiff's client confidences against him, while contemporaneously inflicting new injuries upon their former client based on his disability."

k. “WHEREFORE, Plaintiff requests additional time to obtain counsel[10], a stay in the proceedings for 90 days. Plaintiff also requests accommodation in the form of additional time to meet deadlines when needed due to his disability.”

XII. The Court Accused Gillespie of Feigning Disability

37. Court counsel David Rowland seized control of Gillespie’s ADA accommodation request from Gonzalo B. Casares, the Court's ADA Coordinator, and issued his own letter denying the request Friday July 9, 2010, less than one business day prior to a hearing Monday July 12, 2010. (Exhibit 31). Gillespie suffered a panic attack at the July 12th hearing and was treated by Tampa Fire Rescue in the courthouse. Judge Cook later issued a false account of Gillespie’s panic attack an order dated July 29, 2010 "Notice Of Case Management Status and Orders On Outstanding Res Judicata Motions" and "Notice Of Court-Ordered Hearing On Defendants' For Final Summary Judgment". See Affidavit of Neil J. Gillespie, *Judge Martha J. Cook ,falsified record of Gillespie's panic attack; ADA*, October 28, 2010. (Exhibit 32).

38. At a hearing September 28, 2010 on *Final Summary Judgment As To Count 1* and *Order Adjudging Plaintiff Neil J. Gillespie Contempt*, Judge Cook accused Gillespie in open court of feigning disability. When Gillespie responded to the accusation, Judge Cook ordered him removed from the courthouse. The hearing continued ex parte and Gillespie had no representation. Judge Cook ruled against Gillespie. Judge Cook later made a false account of the incident in the *Final Summary Judgment As To Count 1* and *Order Adjudging Plaintiff Neil J. Gillespie Contempt*, stating that Gillespie left the hearings voluntarily. (Exhibit 5). Also see Paragraph 3 of this pleading. Gillespie

[10] Gillespie obtained counsel; Robert W. Bauer entered his appearance April 2, 2007, less than 30 days

appealed the rulings to the Second District Court of Appeal, case no. 2D10-5197. (Exhibit 33). Among other things, Final Summary Judgment was completely inappropriate because there are genuine issues as to a number of material facts, as set forth in the following pleadings:

a. *Plaintiff's Rebuttal To Defendants' Motion To Dismiss and Strike*, October 7, 2005. (Plaintiff prevailed, see *Order On Defendants' Motion To Dismiss And Strike*, January 13, 2006)

b. *Plaintiff's Second Rebuttal Defendants' Motion To Dismiss and Strike*, October 31, 2005. (Plaintiff prevailed, see *Order On Defendants' Motion To Dismiss And Strike*, January 13, 2006)

c. *Plaintiff's Motion For Summary Judgment*, April 25, 2006, with affidavit, (Set for hearing August 1, 2006, notice served May 5, 2006; hearing canceled, motion not heard; denied hearing by Judge Cook)

d. *Plaintiff's Motion For Punitive Damages Pursuant To Section 768.72 Florida Statutes*, January18, 2007.

e. *Plaintiff's First Amended Complaint*, May 5, 2010.

XIII. Mr. Rodems accused Gillespie of Feigning Disability

39. Throughout the litigation Mr. Rodems has accused Gillespie of feigning disability and/or illness. Mr. Rodems has ridiculed Gillespie's disability to discredit him, and has aggravated Gillespie's disability for tactical advantage. Mr. Rodems is not a medical doctor or mental health professional, and he has no medical training. There is no medical basis for Mr. Rodems' comments. Mr. Rodems' comments show that his independent

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after this request for stay.

professional judgment is materially limited by his own interest and conflict. Mr. Rodems, with malice aforethought, has aggravated Gillespie's disability to the point where Gillespie can no longer represent himself at hearings.

40. According to an application Mr. Rodems submitted November 17, 2009 to the 13th Circuit JNC, Mr. Rodems holds two college degrees; a Bachelor of Science in Business Administration from the University of Florida (1989), and a law degree from Florida State University (1992). In response to question number 19, "Non-Legal Employment", Mr. Rodems answered "none" to the question "List all previous full-time non-legal jobs or positions held since 21 in chronological order and briefly describe them." Other than very brief service in the US Navy (a year or two), all of Mr. Rodems' employment has been law-related; law clerk, law intern, law associate, and law partner. In addition, Mr. Rodems is board certified by the Florida Bar in civil trial law with twenty (20) years experience; his misconduct cannot be explained by lack of experience, but because his independent professional judgment is materially limited by his own interest and conflict.

41. Mr. Rodems represented Wrestle Reunion, a professional wrestling and fan convention, in a federal lawsuit, *WrestleReunion, LLC v. Live Nation, Television Holdings, Inc.,* US District Court, MD of Fla., Case No. 8:07-cv-2093-T-27. Mr. Rodems lost the jury trial in September 2009. Thereupon Mr. Rodems authored a defamatory attack on the credibility of Eric Bischoff, a witnesses in the litigation. This is another example showing that Mr. Rodems is unable to conduct himself in a professional manner.

Mr. Rodems is unable to provide disinterested counsel and service to others. Rodems' attack of Eric Bischoff is attached as Exhibit 34, and posted on the website of DOI Wrestling.com http://www.declarationofindependents.net/doi/pages/corrente910.html

42. Mr. Rodems has ridiculed Gillespie's disability, or accused Gillespie of feigning disability and/or illness many times, both within and outside this lawsuit. The following examples are representative but not exhaustive of Mr. Rodems' unprofessional behavior:

a. May 24, 2010, *Defendants' Response To Plaintiff's Motion To Disqualify Judge Barton*[11], Rodems wrote: (opening) "On May 20,2010, Plaintiff Neil J. Gillespie filed a second motion to disqualify Judge James M. Barton. Many of the allegations in Gillespie's motion border on delusional[12]. Gillespie has disclosed in several court filings that he suffers from mental illnesses, and he has stated on the record on several occasions that his mental illness affects his ability to represent himself. Clearly, the pending motion -- and the record in this case -- shows this to be an accurate statement."

b. July 26, 2010, *Motion For An Order To Show Cause As To Why Plaintiff Should Not Be Prohibited From Henceforth Appearing Pro Se*

(i) Paragraph 5a. (page 3): "Plaintiff has demonstrated a lack of understanding of the Florida Rules of Civil Procedure, substantive law...and has on two occasions displayed symptoms of illness during court proceedings, whether feigned or actual... (footnote 1) On July 12, 2010, Mr. Gillespie stated to the Court during a hearing that he required medical attention, and he asked to be excused. As of 3:36 p.m. on July 12, 2010, Mr. Gillespie was well enough to send

[11] The motion was granted due to a business relationship between Barker, Rodems & Cook and the wife of the judge.
[12] Mr. Rodems is not licensed to make a medical diagnosis.

e-mails. On February 5, 2007, during a hearing before Judge Isom in this matter, Mr. Gillespie" announced ...And I'm very ill. I've expressed that to you. I can't even effectively assist myself...Whether Mr. Gillespie was actually ill in either hearing has not been established."

(ii) Paragraph 5b. "In Court filings, Mr. Gillespie claims to suffer from "[d]epression and mood disorder," for which he is taking prescription medications. He has, at times, declared his qualifications to represent himself, but also filed motions seeking the appointment of counsel by the Court, proclaiming his mental and intellectual limitations."

(iii) Paragraph 6v. "At that hearing on January 26, 2010, Gillespie claimed to be disabled and that he required accommodations. Judge Barton inquired as to what accommodations were required, and Gillespie requested an opportunity to file written support, which Judge Barton granted. No other action was taken during that hearing."

(iv) Paragraph 6x. "Thereafter, Gillespie apparently submitted a hearsay report from a purported expert *ex parte* to Judge Barton. Despite Defendants' objections to the *ex parte* communication, Gillespie has never filed the *ex parte* hearsay report or served a copy on Defendants."

(v) Paragraph 6bb. "On July 23, 2010, Gillespie filed a third motion to disqualify Judge Cook, tins time in writing, and under oath.... This motion to disqualify is beyond a desperate act; it draws into question Gillespie's motives and mental and intellectual ability to adequately participate in these proceedings."

c. November 3, 2010, *Response To Plaintiff's "Emergency Motion To Disqualify Judge Martha J. Cook" and Amended Motion For An Order To Show Cause As To Why Plaintiff Should Not Be Prohibited From Henceforth Appearing Pro Se*[13]

(i) Page 4: "Also, there is ample evidence that Gillespie has feigned illness at several hearings to try to stop the proceedings when he felt that rulings may be issued against him. On February 5, 2007, Judge Isom held a hearing, and after several rulings unfavorable to Gillespie, including the denial of his motion for rehearing on the July 24, 2006 Order on discovery, Gillespie stated "Judge, I'm going to ask that you disqualify yourself. I'm not getting a fair hearing here. I've asked to have an attorney present many times. Everything I say is not considered. I don't even know why I'm sitting here. And I'm very ill. I've expressed that to you. I can't even effectively assist myself. So I'm not going to participate in this charade anymore." (Transcript of hearing, February 5, 2007 at 72:12-19). At the hearing on July 12, 2010, Gillespie claimed he was ill, but only after his failed effort to stop the proceedings by advising the judge that he had "served the notice this morning that I'm suing you, so it would be inappropriate for you to proceed further." (Transcript, July 12, 2010, p. 3). He then orally announced a motion to disqualify, which also failed to stop the proceedings, ibid at 6, and then concocted the illness:

MR. GILLESPIE: I have to step outside. I feel like I'm going to vomit.

THE COURT: What is your medical condition, sir?

MR. GILLESPIE: I'm not answering medical questions in -- in the open.

[13] 17 pages of falsehoods, half-truths, misleading statements, and repetitions.

THE COURT: All right. Mr. Gillespie, you're excused. Thank you.

Id. at 6-7. Plaintiff did leave the hearing room, and sat on a bench in the courthouse, where paramedics did observe him. When the court reporter passed by him while he sat on a bench, Plaintiff asked, "is the hearing over?" Upon learning it was over, Plaintiff stated "then I don't need any medical treatment" or words to that effect, and sprung up and left the courthouse and drove to Ocala, Florida, where he was apparently well enough to send e-mails from his home computer to various people in the Tampa area."

(ii) Page 6, ¶1 Rodems accused Gillespie of "feigning illness to attempt to avoid adverse rulings".

(iii) Page 7, ¶3 "Plaintiff has demonstrated a lack of understanding of the Florida Rules of Civil Procedure, substantive law, professional decorum, and has on two occasions displayed symptoms of illness during court proceedings, whether feigned or actual, following Gillespie's failed requests to stop proceedings when the Court was presiding in a manner that Plaintiff found unfavorable to him. In Court filings, Mr. Gillespie claims to suffer from "[d]epression and mood disorder," for which he is taking prescription medications. He has, at times, declared his qualifications to represent himself, but also filed motions seeking the appointment of counsel by the Court, proclaiming his mental and intellectual limitations. (footnote 4) On July 12, 2010, Mr. Gillespie stated to the Court during a hearing that he required medical attention, and he asked to be excused. When he learned the hearing was over, Gillespie refused additional medical observation, sprung up and apparently drove himself to

Ocala, Florida. As of 3:36 p.m. on July 12, 2010, Mr. Gillespie was well enough to send e-mails. On February 5, 2007, during a hearing before Judge Isom in this matter, Mr. Gillespie announced after several unfavorable rulings, "I don't even know why I'm sitting here. And I'm very ill. I've expressed that to you. I can't even effectively assist myself. So I'm not going to participate in this charade anymore." Whether Mr. Gillespie was actually ill in either hearing has not been established.

(iv) Page 14, ¶27. Thereafter, Gillespie apparently submitted a hearsay report from a purported expert *ex parte* to Judge Barton. Despite Defendants' objections to the *ex parte* communication, Gillespie has never filed the *ex parte* hearsay report or served a copy on Defendants.

d. August 13, 2010. Mr. Rodems wrote a letter to the Florida Bar asserting many of the same false, misleading and defamatory statements about Gillespie.

e. December 28, 2009. Mr. Rodems wrote a letter to Mr. Pedro Bajo, Chair of the 13th Circuit JNC, asserting false, misleading and defamatory statements about Gillespie. Mr. Rodems also provided Mr. Bajo a copy of *Plaintiff's Accommodation Request Americans with Disabilities Act (ADA)* February 20, 2007, (Exhibit 29).

XIV. Evidence that Gillespie Suffered Actual Panic Attack

43. According to the Diagnostic And Statistical Manual Of Mental Disorders (DSM), a panic attack is defined as follows:

> "A Panic Attack is a discreet period in which there is the sudden onset of intense apprehension, fearfulness, or terror, often associated with feelings of impending doom. During these attacks, symptoms such as shortness of breath, palpitations,

chest pain or discomfort, choking or smothering sensations, and fear of "going crazy" or losing control are present."

DSM-IV, Fourth Edition, American Psychiatric Association, page 393.

44. Gillespie suffered a panic attack July 12, 2010 during a hearing. The Court excused Gillespie from the hearing. Deputies of the Hillsborough County Sheriffs Office saw Gillespie was in distress and offered assistance. Tampa Fire Rescue was called. Corporal Gibson was by Gillespie's side and walked him to the lobby of courthouse where he waited for the paramedics. Tampa Fire Rescue arrived and Gillespie received medical attention at 10:42 AM by EMT Paramedic Robert Ladue and EMT Paramedic Dale Kelley. Later Gillespie obtained a report of the call, incident number 100035129. (Exhibit 35). The narrative section states "found 54yom sitting in courthouse" with 'tight throat secondary to stress from court appearance". The impressions section states "abdominal pain/problems". The nature of call at scene section states "Resp problem". See Affidavit of Neil J. Gillespie, *Judge Martha J. Cook ,falsified record of Gillespie's panic attack; ADA*, October 28, 2010. (Exhibit 32).

45. The hearing July 12, 2010 was transcribed by Penny M. Appelton, a court reporter for Dempster Berryhill & Associates Court Reporters. According to a statement provided to Gillespie by her employer, Larry Murray, President of Dempster Berryhill & Associates Court Reporters, Ms. Appelton recalls Gillespie "...sitting on a bench in the hallway surrounded by paramedics when she left. To her recollection she did not discuss the issue with Mr. Rodems at all...". A copy of the statement is Exhibit 36.

46. After Gillespie was treated by Tampa Fire Rescue, he left the courthouse and returned home. At 3:03PM Gillespie received a phone call from Dr. Karin Huffer, his

ADA advocate. Dr. Huffer was unaware that Gillespie had a panic attack. Gillespie described the panic attack to Dr. Huffer:

Transcript, July 12, 2010, page 4

18 Anyway, when that happened I just started
19 choking. I had some kind of a visceral reaction.
20 And my neck was getting tight and I was choking. I
21 asked them for water. They brought water. And
22 that helped a little bit. But you know, it was
23 just a ten minute hearing, so it was over in no
24 time anyway.

Transcript, July 12, 2010, page 4

1 But you know, I asked for -- about the ADA
2 accommodation and, you know, it's the same old
3 thing: Well, what is wrong with you again, and all
4 this crap. It's just ridiculous.
5 DR. HUFFER: Yeah.
6 MR. GILLESPIE: It's ridiculous. You know,
7 I'm just -- I was going to call you but I thought,
8 well, there is nothing you can do, right? And you
9 probably have these people like me calling you up
10 all the time.
11 DR. HUFFER: I do. And we all just keep
12 trying, you know.

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23 MR. GILLESPIE: Right. It's just ridiculous.

24 Anyway, so, you know, that was this morning and I'm

25 just kind of recovering from that. So, you know,

Transcript, July 12, 2010, page 6

1 it wasn't good, it wasn't good.

---

22 ...I just feel like a scatterbrain, you

23 know.

Transcript, July 12, 2010, page 7

5 ...And I'm not real good at that

6 sometimes if I'm not prepared and have a lot of

7 notes because I can't remember things. I mean, I

8 can remember them in a general sense but not with

9 all the details.

A transcript of the phone call is Exhibit 37.

47. Motivated by Dr. Huffer's phone call, Gillespie sent an email to Pedro Bajo, at pedro.bajo@bajocuva.com. The email was a follow-up to Gillespie's request for representation in the lawsuit with Mr. Rodems, or in the alternative, an evaluation of the Gillespie's motion to disqualify Mr. Rodems as counsel in the lawsuit. This is what Gillespie wrote at 3.36PM July 12, 2010:

> "Mr. Bajo,
> Would you consider just evaluating my motion to disqualify Mr. Rodems, with no representation? Thank you.
> Neil Gillespie"

The email consisted of just twenty (20) words. (Exhibit 38). Mr. Bajo is the former Chair of the 13th Circuit JNC and partner at the law firm Bajo Cuva in Tampa. A month earlier Mr. Bajo allowed Gillespie's volunteer, non-paid associates to film JNC exit interviews held at the law firm Bajo Cuva[14]. The exit interview video is posted on YouTube at http://www.youtube.com/watch?v=KtswMgV0lkE and also on the Justice Network[15].

48. The objective facts presented in paragraphs 43 through 47 show that Gillespie suffered a panic attack July 12, 2010, and that Mr. Rodems presented false, misleading and defamatory information to the Court about the matter, in violation of the Rules Regulating The Florida Bar.

49. Mr. Rodems also accused Gillespie of feigning illness during a hearing before Judge Isom February 5, 2007. Gillespie knew Judge Isom was misusing and denying him judicial process under the color of law. This caused Gillespie to suffer a panic attack. It was not until some years later that Gillespie understood the matter more fully. During a hearing on conflict February 1, 2007, Judge Isom failed to disclose that her husband Woody Isom was a former law partner of Jonathan Alpert, who formerly represented Gillespie in the matter before Judge Isom. And Judge Isom failed to adhere to her own recommendations for intensive case management in lieu of discovery sanctions, as described in her law review, Professionalism and Litigation Ethics, 28 STETSON L. REV. 323, 324 (1998). (Exhibit 40, in Westlaw and Stetson format). Judge Isom had a conflict

[14] Gillespie attended the actual interviews, and heard Mr. Rodems disparage every judge in the 13th Judicial Circuit. The JNC was concerned about judicial workloads and applicants were specifically asked what hours they planned to keep if appointed. Mr. Rodems described criticism he heard about judges leaving court early on Fridays, a situation so pervasive that one could "fire a bullet" in the Hillsborough courthouse it was so empty. Gillespie was stunned that Mr. Rodems would make such an accusation about judges in the 13th Judicial Circuit based on rumors heard on the street, and use such a violent metaphor as "fire a bullet". Gillespie confirmed by email July 5, 2010 with Mr. Bajo the above statement by Mr. Rodems. (Exhibit 33).

with Gillespie and failed to provide him intensive case management because of her bias. Judge Isom paved the way for sanctions of $11,550 against Gillespie for discovery errors instead of intensive case management offered to attorneys. The information about Judge Isom's dishonesty during the hearing on conflict came to Gillespie's attention in 2010 from to harassing letters he received from Rodems. Because Mr. Rodems' independent professional judgment is materially limited by his own interest and conflict, he made inadvertent disclosures that led Gillespie to the revelation.

XV. The Clerk of the Court Disclosed Gillespie's Confidential ADA Report

50. While preparing the Index and Record in appeal no. 2D10-5197 Gillespie found that his confidential ADA information was docketed on the Clerk's civil on demand case docket by Donna Healy, Associate Courts Director, Clerk of the Court, June 21, 2010. The docket showed the following entry:

06/21/2010 ***** ONLY ATTACHED TO CASE ********* HEALY C603 ENVELOPE FILED W/DOCUMENTS - CONFIDENTIAL ENVELOPE ADDRESSED TO JUDGE BARTON WI

51. Gillespie emailed Ms. Healy about the disclosure of his confidential ADA information April 4, 2011, and provided a copy of the docket page showing the entry she made June 21, 2010. Gillespie wrote the following (relevant portion):

> "Dear Ms. Healy:
>
> Attached you will find a page of the Clerk's civil on demand case docket showing the following entry you made June 21, 2010:
>
> 06/21/2010 ***** ONLY ATTACHED TO CASE ********* HEALY C603 ENVELOPE FILED W/DOCUMENTS - CONFIDENTIAL ENVELOPE ADDRESSED TO JUDGE BARTON WI

[15] The Justice Network website is http://YouSue.org/

> Kindly describe how you came in possession of this confidential information addressed to Judge Barton. Please identify the person who provided this file to you. Also, what does "only attach to case" mean? Thank you.
>
> Sincerely,
>
> Neil J. Gillespie"

A read-receipt showed Ms. Healy received Gillespie's email April 5, 2011 at 8:26AM. Ms. Healy did not respond to Gillespie's email. (Exhibit 41)

52. Gillespie sent Mr. Healy a follow-up email April 8, 2011. Gillespie wrote the following (relevant portion):

> "Dear Ms. Healy:
>
> On April 5, 2011 I sent you the email forwarded below. A read-receipt shows you received the email. The read-receipt state: "Your message was read on Tuesday, April 05, 2011 8:26:50 AM (GMT-05:00) Eastern Time (US & Canada)."
>
> As of the time and date of this communication you have not responded to my email. Therefore I take that to mean that you docketed and filed "ENVELOPE FILED W/DOCUMENTS - CONFIDENTIAL ENVELOPE ADDRESSED TO JUDGE BARTON WI" at the direction of the presiding judge in the case on June 21, 2010, Martha J. Cook, or her designee. I will proceed on that basis. Thank you.
>
> Sincerely,
>
> Neil J. Gillespie"

A read-receipt showed Ms. Healy received Gillespie's email April 11, 2011 at 8:35AM. (Exhibit 41). Ms. Healy did not respond to Gillespie's email. Therefore Gillespie concludes Ms. Healy docket and filed Gillespie's confidential ADA information at the direction of Judge Cook or her designee.

53. Because of the foregoing in paragraphs 50-52 Gillespie believes it is likely that Mr. Rodems and Barker, Rodems & Cook, PA, already have Gillespie's confidential ADA information. Judge Cook directed Ms. Healy to put Gillespie's confidential ADA

information on the docket and in the case file. Mr. Rodems may have been notified ex parte. Mr. Rodems and his partner are long-time campaign contributors to Judge Cook.

XVI. Title II Americans With Disabilities Act (ADA) Accommodation Request

54. Dr. Karin Huffer is Gillespie's ADA advocate. In a letter dated October 28, 2010, Dr. Huffer wrote the following about Gillespie's ongoing lack of ADA accommodation under Title II by the Thirteenth Judicial Circuit: (Exhibit 42)

a. Dr. Huffer wrote it was against her medical advice for Neil Gillespie to appear unrepresented in this matter:

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

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

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

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

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

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

> "Additionally, Neil Gillespie faces risk to his life and health and exhaustion of the ability to continue to pursue justice with the failure of the ADA Administrative Offices to respond effectively to the request for accommodations per Federal and Florida mandates." (p.2, ¶1)
>
> e. Dr. Huffer determined that Gillespie has sustained permanent injury:
>
> "At this juncture the harm to Neil Gillespie's health, economic situation, and general diminishment of him in terms of his legal case cannot be overestimated and this bell cannot be unrung. He is left with permanent secondary wounds." (p.1-2).

55. Gillespie completed the ADA Title II accommodation request form and provided the form to Gonzalo B. Casares, ADA Coordinator for the Thirteenth Judicial Circuit (Exhibit 44). He requests the same accommodations requested February 19, 2010. In addition, Gillespie's disability has worsened to the point where he can no longer represent himself at hearings. Gillespie becomes easily distracted and confused, and can no longer speak coherently enough during a hearing to represent himself.

XVII. Conclusion

56. Gillespie is entitled to court-appointed counsel when faced with incarceration for violating a state court order. Gillespie is indigent and cannot afford to hire counsel. Even if Gillespie was not indigent, this lawsuit crossed the line from litigation to an undeclared war against Gillespie by Mr. Rodems and the Thirteenth Judicial Circuit thereby preventing Gillespie from hiring counsel even at full hourly rates.

57. Gillespie's disability has worsened to the point where he can no longer represent himself at hearings. Gillespie becomes easily distracted and confused, and can no longer speak coherently enough during a hearing to represent himself.

58. Gillespie is prohibited from appearing pro se by Judge Cook's *Order Prohibiting Plaintiff From Appearing Pro Se* signed November 15, 2010.

59. Gillespie cannot access JAWS, the Judicial Automated Workflow System used to calendar hearings.

60. The Clerk has failed to provide Gillespie subpoenas needed for the contempt hearing June 1, 2011. Gillespie emailed Mr. Dale Bohner, Counsel to the Clerk, May 19, 2011 about four (4) subpoenas needed for the hearing. (Exhibit 45). Mr. Bohner did not reply. Gillespie also contacted Mark Ware, an attorney with the Clerk's office, and a contact at "CIRCCIV@hillsclerk.com" about the subpoenas to no avail.

WHEREFORE, Plaintiff respectfully moves the Court for appointment of counsel for the hearing June 1, 2011 at 11:00AM, a civil contempt proceeding seeking Gillespie's incarceration on a writ of bodily attachment.

RESPECTULLY SUBMITTED May 24, 2011.

Neil J. Gillespie, Plaintiff 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 provided May 24, 2011 as follows: Hand delivery to the security desk for Ryan C. Rodems, Barker, Rodems & Cook, PA, 400 North Ashley Drive, Suite 2100 Tampa, Florida 33602. By hand delivery to The Law Offices of Julianne M. Holt, Public Defender of the 13th Judicial Circuit, 700 East Twiggs Street, 5th Floor, PO Box 172910, Tampa, Florida 33602.

Neil J. Gillespie

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

NEIL J. GILLESPIE,

Plaintiff,

vs.

BARKER, RODEMS & COOK, P.A., a Florida corporation; WILLIAM J. COOK,

Defendants.
_____/

CASE NO.: 05-CA-7205

DIVISION: J

PLAINTIFF'S MOTION FOR APPOINTMENT OF COUNSEL, ADA ACCOMODATION REQUEST, and MEMORANDUM OF LAW

Additional Memorandum of Law As Argued In:

Right to Counsel In Civil Contempt Hearing Facing Incarceration

Turner v. Rogers, Docket 10-10, The United States Supreme Court

ABA Amicus Brief in Support of Petitioner Turner

1. The American Bar Association (ABA) filed an amicus brief supporting the Petitioner is Turner v. Rogers. The ABA asked the Court to hold that the potential deprivation of a defendant's liberty interest requires the appointment of counsel for an indigent defendant who faces potential incarceration at a civil contempt hearing. (p1). The ABA wrote that "Our history reflects an unwavering commitment to the principle that society must provide equal access to justice, including meaningful access to legal representation for low income individuals, in adversarial proceedings." (p2). The ABA brief cited to the ABA STANDARDS FOR CRIMINAL JUSTICE: PROVIDING DEFENSES

SERVICES (3d ed. 1992), and specifically, the revisions made to Standards 5-5.1 and 5-5.2 and their commentaries. (p3).

(a) Standard 5-5.1 (footnote 7) “Counsel should be provided in all proceedings for offenses punishable by death or incarceration, regardless of their denomination as felonies, misdemeanors, or otherwise. An offense is also deemed to be punishable by incarceration if the fact of conviction may be established in a subsequent proceeding, thereby subjecting the defendant to incarceration.”

(b) Standard 5-5.2 (footnote 8) “Counsel should be provided in all proceedings arising from or connected with the initiation of a criminal action against the accused, including but not limited to extradition, mental competency, postconviction relief, and probation and parole revocation, regardless of the designation of the tribunal in which they occur or classification of the proceedings as civil in nature.”

In its Argument (p.6) “The ABA submits that, where an indigent defendant faces incarceration for contempt of court, the potential deprivation of the defendant’s liberty interest warrants the appointment of counsel - regardless of whether the proceeding is labeled “civil” or “criminal” - to ensure the fair and efficient administration of justice.”

In arguing for the appointment of counsel (p.6, I. ¶2) “The ABA called for counsel in all proceedings for offenses punishable by incarceration, “regardless of their denomination as felonies, misdemeanors, or otherwise.” Standard 5-5.1. In support, the ABA noted a civil contempt case involving noncompliance with a child support order. Commentary to Standard. 5-5.1, at 62 n.7 (citing Ridgway v. Baker, 720 F.2d 1409 (5th Cir. 1983)). Like the ABA, the Ridgway court recognized that “the line between civil and

criminal contempt is rarely as clear as the state would have us believe." Ridgway, 720 F.2d at 1414. Rejecting the state's argument that a defendant at a civil contempt proceeding holds "the keys of his prison in his own pocket," the court stated that this old saying ignores two salient facts: "that the keys are available only to one who has enough money to pay the delinquent child support and that, meanwhile, the defendant, whatever the label on his cell, is confined." Id. at 1413-14." "The Ridgway court also observed that an error in a contempt finding is more likely to occur if the defendant is denied counsel. Id. at 1414." (p.7, ¶2). The Ridgway court also stated "The right to counsel turns on whether deprivation of liberty may result from a proceeding, not upon its characterization as 'criminal' or civil.'" 720 F.2d at 1413. (p8, ¶2).

The ABA argued (p8, II) that "Where an Indigent Defendant Faces Incarceration for Contempt, the Appointment of Counsel Promotes the Fair and Efficient Administration of Justice." "While recognizing the concerns that right to counsel issues raise over increased administrative and financial burdens, the ABA concluded that, where a person's liberty interest is at stake, the provision of counsel is essential to both the fair and the efficient administration of justice." (p8, ¶3). "Moreover, appointment of counsel in these circumstances promotes the public's interest in obtaining the correct outcome. As one federal district court judge has stated, "As every trial judge knows, the task of determining the correct legal outcome is rendered almost impossible without effective counsel." Robert W. Sweet, Civil Gideon and Confidence in a Just Society, 17 Yale L. & Pol'y Rev. 503, 505 (1998)." (p.9, ¶3). "In short, "Lawyers matter in two main ways: 'by increasing the accuracy of legal decision-making and by conferring advantage on represented parties.'" Brief of Retired Alaska Judges as Amici Curiae in Support of

Appellee Jonsson at 14, *Office of Pub. Advocacy v. Alaska Court Sys.* (Alaska 2008) (No. S-12999), 2008 WL 5585566 ("*Jonsson* Amicus Brief") (citation omitted). Unrepresented defendants, for example, "routinely bring in letters with out-of-court statements and are perplexed when these testimonials are excluded, sometimes ending the case." *Id.* at 11-12. "'It is simply unrealistic to expect lay litigants to understand and abide by the formal rules of evidence.'" *Id.* at 11 (quoting Jona Goldschmidt, *The Pro Se Litigant's Struggle for Access to Justice*, 40 Fam. Ct. Rev. 36, 52 (2002)" (p10-11). At footnote 11: "Indeed, it has long been the ABA's position that "[s]killed counsel is needed to execute basic advocacy functions: to delineate the issues, investigate and conduct discovery, present factual contentions in an orderly manner, cross-examine witnesses, make objections and preserve a record for appeal. . . .[*P*]*ro se* litigants cannot adequately perform any of these tasks." Brief of ABA Amicus Curiae at 9, *Lassiter v. Dep't of Soc. Servs. of Durham Cnty.*, 452 U.S. 18 (1981) (No. 79-6423), 1980 WL 340036" (p.11, footnote 11).

The ABA argued (p.11, ¶1) that "Appointment of counsel in these circumstances also promotes the efficient administration of justice. As an amicus brief filed by a group of judges noted, when cases are presented pro se, judges have to spend "an inordinate amount of time deciphering pleadings[,] and hearings, when properly scheduled, are slow and onerous." At footnote 12: "Brief *Amicus Curiae* of Eleven County Judges in Support of Petition Requesting Supreme Court Take Jurisdiction of Original Action, *Kelly v. Warpinski*, No. 04-2999-OA, at 6 (Wis. 2004), *available at* http://www.povertylaw.org/poverty-lawlibrary/case/55800/55816/55816C1.pdf."

The ABA further argued (p.11-12) “Finally, as this Court has noted, court proceedings must not only be fair, but also must “‘appear fair.’” *Indiana v. Edwards*, 554 U.S. 164, 177 (2008) (quoting *Wheat v. United States*, 486 U.S. 153, 160 (1988)). While those imprisoned for civil contempt do not carry all of the trappings of one convicted of a crime (s*ee* Opp. at 27-28), most lay persons aware of the incarceration undoubtedly would fail to comprehend the subtle difference between being jailed for civil contempt versus for a criminal conviction.”...and...(p.12, ¶3) “In 2010, the ABA adopted the MODEL ACCESS ACT, having concluded that “[p]roviding legal representation to low-income persons at public expense will result in greater judicial efficiency by avoiding repeated appearances and delays caused by incomplete paperwork or unprepared litigants, will produce fairer outcomes, and will promote public confidence in the systems of justice.” See ABA MODEL ACCESS ACT § 1.F (adopted August 2010).”

Brief Amici Curiae Of The National Association Of Criminal Defense Lawyers, The Brennan Center For Justice, The National Legal Aid & Defender Association, The Southern Center For Human Rights, And The American Civil Liberties Union In Support Of Petitioner

2. The amici brief of The National Association of Criminal Defense Lawyers, et al., argues that “Civil contemnors are entitled to counsel when facing the threat of incarceration.” (p.3). The brief further argues (p.5, I.) “No indigent person should be unrepresented when his or her freedom is at stake. In the criminal context, this Court has recognized that indigent defendants facing the potential loss of liberty need lawyers because of “the obvious truth that the average defendant does not have the professional

legal skills to protect himself." Johnson v. Zerbst, 304 U.S. 458, 462-63 (1938). Thus, "any person haled into court, who is too poor to hire a lawyer, cannot be assured a fair trial unless counsel is provided for him." Gideon v. Wainwright, 372 U.S. 335, 344 (1963). The contempt context is no different. In this case, this Court should reassert what its precedents already acknowledge: our legal system's commitment to fairness and equal justice requires that indigent individuals have a right to appointed counsel at any hearing at which they face loss of their liberty." The brief further argues (p.6, I.A.) "Most individuals do not have the skills to represent themselves successfully in a court of law. As this Court recognized long ago, "[t]he right to be heard would be, in many cases, of little avail if it did not comprehend the right to be heard by counsel. Even the intelligent and educated layman has small and sometimes no skill in the science of law." Powell v. Alabama, 287 U.S. 45, 68-69 (1932); see also Johnson, 304 U.S. at 462-63 (noting "a realistic recognition of the obvious truth that the average defendant does not have the professional legal skill to protect himself . . . . That which is simple, orderly and necessary to the lawyer – to the untrained layman – may appear intricate, complex, and mysterious.").

Brief Of The Legal Aid Society Of The District of Columbia; Children's Law Center; DC Appleseed Center For Law And Justice; And The National Law Center On Homelessness & Poverty As Amici Curiae In Support Of Petitioner

3. The amici brief of The Legal Aid Society of the District of Columbia, et al., argues points specifically relevant to Gillespie and his disability.

a. “As a practical matter... Chronic physical ailments and low-level mental illness are also frequently factors that infect these proceedings... But without counsel, there is a high risk of error...”(p.5)

b. “But possessing helpful facts is not enough; the defendant must also identify, document, and marshal those facts to present a convincing argument. *Gideon* v. *Wainwright*, 372 U.S. 335 (1963), long ago observed the “obvious truth” that “any person haled into court, who is too poor to hire a lawyer, cannot be assured a fair trial unless counsel is provided for him.” *Id.* at 344. For an indigent child support debtor, who may lack even the basic skills necessary to hold a job, let alone mount a legal defense, the obstacles may be insurmountable.” (p.14-15)

c. “Civil contempt proceedings can be extremely complex and often require skills and expertise beyond the capacity of those too poor to retain counsel. “Even the simplest inability to pay argument requires articulating the defense, gathering and presenting documentary and other evidence, and responding to legally significant questions from the bench—tasks which are probably awesome and perhaps insuperable undertakings to the uninitiated layperson.” Patterson, *supra*, at 117 (internal quotation marks omitted). (p.15)

d. “*Third*, appointing counsel in civil contempt proceedings alleviates the burden on courts to handle tasks that defense counsel otherwise would be expected to perform. In a *pro se* contempt proceeding, the risk is significant that the defendant “lacks both the skill and knowledge adequately to prepare his defense, even though he had a perfect one.” *Powell* v. *Alabama*, 287 U.S. 45, 69 (1932). See also *supra* 14-18 (describing common obstacles to presenting a strong defense in civil contempt proceedings). When confronted with an alleged contemnor who is both unskilled and unrepresented, a court

considering incarceration must either assume the burden of guiding the defendant through the process—which might involve exploring possible defenses and reviewing undigested financial documents presented in the first instance—or else risk ordering the defendant's incarceration without legal justification. Counsel are well equipped to focus the arguments on the relevant issues." (p.23, ¶2).

e. "*Fourth*, in addition to helping defendants present arguments that they are unable to pay, counsel also can help negotiate alternatives to incarceration that may ultimately provide more workable solutions for everyone involved."…. "Likewise, it may be more helpful to require addiction or other mental health treatment rather than relying upon the prison system to address issues for which it is often poorly equipped. An unrepresented defendant may not know to seek such alternatives, or how to do so effectively."... "Appointed counsel can play an important role in providing the court the arguments and evidence necessary to make a fair assessment of the alternatives.) (p.24).

f. "And, if a lawyer determines that the client would benefit from seeking the help of a professional in another field, such as social work or mental health, "the lawyer should make such a recommendation." *Id.* cmt. 3. In some instances, advice of this nature may be the most effective form of intervention that counsel can provide." (p.25)

Brief of Amicus Curiae The Constitution Project in Support of Petitioner

4. The following are selected passages from the amicus brief of The Constitution Project relevant to the instant case with Gillespie.

a. The Constitution Project is an independent, not-for-profit think tank that promotes and defends constitutional safeguards and seeks consensus solutions to difficult

legal and constitutional issues. The Constitution Project achieves this goal through constructive dialogue across ideological and partisan lines, and through scholarship, activism, and public education efforts. It has earned wide-ranging respect for its expertise and reports, including practical material designed to make constitutional issues a part of ordinary political debate. The Constitution Project frequently appears as amicus curiae before the United States Supreme Court, the federal courts of appeal, and the highest state courts, in support of the protection of constitutional rights. (p.1)

The Constitution Project's National Right to Counsel Committee is a bipartisan committee of independent experts representing all segments of America's justice system. (p.2) Established in 2004, the Right to Counsel Committee's mission was to (p.3) examine, across the country, whether criminal defendants and juveniles charged with delinquency who are unable to retain their own lawyers receive adequate legal representation, consistent with the United States Constitution, decisions of the United States Supreme Court, and rules of the legal profession, and to develop consensus recommendations for achieving lasting reforms. (p.4)

The Right to Counsel Committee spent several years examining the ability of state courts to provide adequate counsel to individuals charged in criminal and juvenile delinquency cases who are unable to afford lawyers. In 2009, the Committee issued its seminal report, JUSTICE DENIED: AMERICA'S CONTINUING NEGLECT OF OUR CONSTITUTIONAL RIGHT TO COUNSEL, which included the Committee's findings on the right to counsel nationwide, and based on those findings, made 22 substantive recommendations for reform. The Committee's recommendations urged States to provide sufficient funding and oversight to comply with constitutional requirements and endorsed

litigation seeking prospective relief on behalf of a class of indigent defendants when States fail to comply with those requirements. (p.4)

The Committee also made recommendations for the federal government, criminal justice agencies, bar associations, judges, prosecutors, and defense lawyers to address the indigent defense crisis facing the nation. JUSTICE DENIED has been cited in a wide variety of national news outlets, state newspapers, and state court opinions, and publicly praised by a wide array of public figures including U.S. Attorney General Eric Holder. (p.4-5)

In 2010, due to concern over the imprisonment of indigent individuals as a result of non-criminal proceedings, the Right to Counsel Committee reconvened to issue a new recommendation to add to the existing recommendations in JUSTICE DENIED. Recognizing that a handful of States have created "de facto 'debtor's prisons' in which individuals too poor to pay their fines or court-ordered obligations are incarcerated based on their inability to pay, without being afforded the opportunity to be represented by counsel," the Right to Counsel Committee added the following recommendation to its seminal work:

> Except in direct summary contempt proceedings, States should ensure that, in the absence of a valid waiver of counsel, quality representation is provided to all persons unable to afford counsel in proceedings that result in a loss of liberty regardless of whether the proceeding is denominated civil or criminal in nature.

Report of Right to Counsel Committee, The Constitution Project, JUSTICE DENIED: AMERICA'S CONTINUING NEGLECT OF OUR CONSTITUTIONAL

RIGHT TO COUNSEL, Recommendation 23 (June 28, 2010), http://www.constitutionproject.org/manage/file/416.pdf.

b. Summary of Argument (p.6)

> [T]he Court's precedents speak with one voice about what "fundamental fairness" has meant when the Court has considered the right to appointed counsel, and we thus draw from them the presumption that an indigent litigant has a right to appointed counsel only when, if he loses, he may be deprived of his physical liberty. It is against this presumption that all the other elements in the due process decision must be measured.
>
> Lassiter v. Dep't of Social Servs.,
> 452 U.S. 18, 26-27 (U.S. 1981)

This case calls for a narrow decision that will further elucidate the Court's prior pronouncements that in any proceeding resulting in the defendant's loss of liberty, the defendant is constitutionally entitled to be advised of the right to counsel and, if indigent, to have counsel appointed. A defendant should never be prevented from enjoying this fundamental constitutional protection simply because a proceeding is denominated as "civil." Indeed, the vast majority of States recognize the overarching principle that it is the loss of liberty that triggers the right to counsel, not the nature of the proceedings. Nevertheless, at least three States, including South Carolina, Georgia, and Florida, do not recognize such a right despite the Court's pronouncements to the contrary. A handful of other States, including New Hampshire, New Mexico, and Nevada, permit courts to decide the need for counsel on a case-by-case basis. It is time to draw all of these States under the constitutional umbrella. (p.7)

The Court should not be concerned that an express recognition of a defendant's right to counsel when his liberty interest is invoked will create a waterfall effect requiring

counsel to be appointed to indigent defendants in every civil proceeding. Rather, this case raises a discrete question that most States already recognize as a settled point of law: indigent defendants to a civil contempt charge must be appointed counsel when their liberty interest is jeopardized; to do otherwise, risks a defendant being jailed without due process.

c. ARGUMENT (p.9)

I. The Court Has Already Recognized That Indigent Defendants In A Civil Action Have A Right To Appointed Counsel When Loss Of Liberty Is At Stake; Resolving This Case In Favor Of Mr. Turner's Position Will Clarify The Standard To The Minority States

No more is needed here than a narrow decision clarifying to the States that the standard for a constitutional right to counsel is based not on whether the hearing is designated as "civil" or "criminal," but rather on whether the defendant's physical liberty interest is jeopardized.

The Court already recognized this standard in Lassiter v. Department of Social Services, where it set forth that it is "the defendant's interest in personal freedom, and not simply the special Sixth and Fourteenth Amendment right to counsel in criminal cases, which triggers the right to appointed counsel." 452 U.S. 18, 26 (1981) (establishing that "as a litigant's interest in personal liberty diminishes, so does his right to appointed counsel") (emphasis added). More recently, the Court emphasized that "no person may be imprisoned for any offense . . . unless he was represented by counsel at his trial." Alabama v. Shelton, 535 U.S. 654, 664-65 (2002) (emphasis in original) (citing Argersinger v. Hamlin, 407 U.S. 25, 37 (1972)); see also Glover v. United States, 531 U.S. 198, 203 (2001) (recognizing that "any amount of actual jail time has Sixth Amendment significance"). (p.9)

A. “Fundamental Fairness” Requires Counsel To Be Made Available Absent The Defendant’s Specific Waiver Of The Right In Any Proceeding That Results In Loss Of Liberty (p.10)

A long line of cases leads us to this moment. As the Court itself has stated, its precedents “speak with one voice about what ‘fundamental fairness’ has meant when the Court has considered the right to appointed counsel,” which is “the presumption that an indigent litigant has a right to appointed counsel only when, if he loses, he may be deprived of his physical liberty.” Lassiter, 452 U.S. at 26-27. (p.10).

The Sixth Amendment to the United States Constitution states that “[i]n all criminal prosecutions the accused shall enjoy the right to . . .have the Assistance of Counsel for his defence.” This right to counsel is recognized as a fundamental right of life and liberty extended to the States by the Due Process Clause of the Fourteenth Amendment (“nor shall any State deprive any person of life, liberty, or property without due process of law”). Gideon v. Wainwright, 372 U.S. 335, 343 (1963) (citing Grosjean v. Am. Press Co., 297 U.S. 233, 243-44 (1936)); see also Johnson v. Zerbst, 304 U.S. 458, 462 (1938)). Under that standard, no indigent defendant whose liberty is at stake can be “assured a fair trial unless counsel is provided for him.” Gideon, 372 U.S. at 344. See also Shelton, 535 U.S. at 664-65 (recognizing the right to counsel before a suspended sentence may be imposed); Scott v. Illinois, 440 U.S. 367, 373-74 (1979) (recognizing the right to counsel if the trial leads to actual imprisonment); Argersinger, 407 U.S. at 37 (recognizing the right to counsel in any criminal prosecution “whether classified as petty, misdemeanor or felony” that actually leads to imprisonment, even if only briefly). Cf. Gagnon v. Scarpelli, 411 U.S. 778, 787-89 (1973) (denying a right to appointed counsel in revocation of probation proceedings). (p.10-11)

These and other Sixth Amendment cases have helped to inform the Court's decisions applying the right to counsel in civil matters as a fundamental due process right when a defendant's liberty interest is at stake. Indeed, the Court has said that it would be "extraordinary if our Constitution did not require the procedural regularity and the exercise of care implied in the phrase 'due process'" in cases invoking a defendant's liberty interest. In re Gault, 387 U.S. 1, 27-28 (1967) (recognizing a right to counsel for juveniles in delinquency proceedings); see also Vitek v. Jones, 445 U.S. 480, 493-94 (1980) (plurality) (recognizing a prisoner as having a due process right to counsel before he can be involuntarily sent to a psychiatric institution). In sum, the Court's decisions reveal that whether an individual case is decided under the Sixth Amendment for criminal matters (e.g., Shelton) or the Due Process Clause for civil matters (e.g., Gault), it is the defendant's liberty interest that is the universal standard for determining when a defendant has a constitutional right to counsel. (p.12)

Like South Carolina, Georgia and Florida are in direct conflict with this Court's decisions requiring counsel to be provided when a defendant's liberty interest is at stake. They ignore the warning abided by the vast majority of States that have decided this issue that no matter how a contempt case is denominated, if the defendant's liberty is at stake, he is owed a right to counsel for one reason. (p.16)

> If the court errs in its determination that the defendant has the means to comply with the court's order, the confinement may be indefinite. Such an error is more likely to occur if the defendant is denied counsel. Viewed in this light, a civil contempt proceeding may pose an even greater threat to liberty than a proceeding labeled "criminal," with a correspondingly greater need for counsel.

Ridgway v. Baker, 720 F.2d 1409, 1414 (5th Cir. 1983) ("the line between civil and criminal contempt is rarely as clear as the state would have us believe"). (p.16)

Minority States place a double burden on a civil defendant charged with violating a court order to pay a debt or to pay child support. Not only does the burden shift to the defendant to prove his own inability to pay, a civil defendant must (a) comprehend that he bears that burden, (b) prepare his defense, (c) navigate the court's procedural rules and customs, and (d) put on an evidentiary hearing, usually without any legal education or related experience whatsoever. As the Court acknowledged almost 80 years ago, indigent defendants are unlikely to have the ready skills available to mount such a defense without the benefit of counsel: (p.19-20)

> The right to be heard would be, in many cases, of little avail if it did not comprehend the right to be heard by counsel. Even the intelligent and educated layman has small and sometimes no skill in the science of law. . . . He lacks both the skill and knowledge adequately to prepare his defense, even though he had a perfect one. He requires the guiding hand of counsel at every step in the proceedings against him.

Powell v. Alabama, 287 U.S. 45, 68-69 (1932).

It would be inherently unfair to an alleged civil contemnor to make the right to counsel subject to the vagaries of judicial discretion when the defendant's liberty interest is at stake and when the defendant bears the burden to establish his defense. (p.20)

All courts of the United States must universally recognize the constitutional standard that an indigent defendant is always entitled to counsel in a civil contempt proceeding when his liberty interest is at stake. Due process should not depend upon the

State in which a defendant resides. By any measure, that is constitutionally deficient and fundamentally unfair. (p.21)

C. It Is Illogical For The Minority States To Require Counsel For Defendants Charged With Misdemeanors Per Argersinger But To Not Abide By Lassiter When Defendants Are Charged With Civil Contempt And Subject To Incarceration (p.21)

States that follow the minority view, including South Carolina, have acknowledged this Court's instruction in Argersinger regarding the Sixth Amendment right to counsel in cases where the defendant is charged with a misdemeanor. See, e.g., State v. Rau, 3465 S.E.2d 370 (S.C. Ct. App. 1995) (discussing Argersinger and describing "[o]ne of the most valued rights that a defendant can have" as "his Sixth Amendment right to assistance of counsel"); Florida v. Singletary, 549 So. 2d 996, 997 (Fla. 1989) ("Any defendant who faces the possibility of incarceration must be provided the services of a lawyer if he cannot afford one. It is axiomatic that these services are deemed essential because of the lawyer's training and expertise."); Jones v. Wharton, 316 S.E.2d 749 (Ga. 1984) ("When an accused is placed on trial for any offense, whether felony or misdemeanor, for which he faces imprisonment, the constitutional guarantee of right to counsel attaches."). Yet, they fail to recognize an equivalent concern for defendants in civil contempt cases. See e.g., Turner, 691 S.E.2d at 472 n.2 ("We recognize that in holding a civil contemnor is not entitled to appointment of counsel before being incarcerated we are adopting the minority position."); Adkins v. Adkins, 248 S.E.2d 646 (Ga. 1978) ("A contempt for failure to pay child support is a civil proceeding. Its primary purpose is to provide a remedy for the collection of child support by coercing compliance with such an order. Argersinger relates to criminal prosecutions

and is not applicable."). It is illogical that these States decline to provide counsel to indigent defendants in civil contempt proceedings where incarceration is involved. (p.22)

There is a fine line between whether an act is civil or criminal and "in many circumstances, a civil contempt may have more serious consequences than a criminal contempt." Pamela R. v. James N., 884 N.Y.S.2d 323, 328 (Fam. Ct. 2009). A criminal contemnor, however, is provided a full panoply of protections, including the right to counsel, while a civil contemnor in the minority States stands alone. Furthermore, as discussed more fully above, mounting a defense in civil contempt case can be particularly difficult. Unlike criminal contempt cases where the government bears the burden of proof, the moving party in a civil contempt proceeding need only make a simple prima facie case and has no obligation to prove the defendant is actually capable of paying. The defendant must then prove his defense, which can be quite difficult, particularly for someone without legal training. (p.22)

South Carolina and other minority States have acknowledged the constitutional right of counsel for criminal defendants even when incarceration may only be for a brief period. At the same time, these same States refuse to protect indigent defendants charged with civil contempt facing indefinite incarceration if they are too poor to pay and are unable to put on an adequate defense without counsel. That is fundamentally unfair. (p.23)

II. The Minority States Wrongly Assume That Indigent Civil Contemnors "Hold The Key To The Cell Door," Precluding Any Need For Counsel (p.23)

It has become a common turn of phrase that incarceration for civil contempt is merely coercive - and thus not requiring due process in the minority States - rather than punitive, because civil contemnors "hold the key to the cell door," in that they can purge

their contempt at any time. Turner, 691 S.E.2d at 472; see also Gompers v. Buck's Stove & Range Co., 221 U.S. 418, 442 (1911) (he "carries the keys of his prison in his own pocket") (quoting In re Nevitt, 117 F. 448, 461 (8th Cir. 1902)); Pamela R., 884 N.Y.S.2d at 328 ("the best rule of thumb for distinguishing between criminal and civil contempts is that if the respondent 'holds the keys to the jail cell in his hands,' then it is a civil contempt"). Nothing could be further from the truth.

A civil contemnor who does not have the present ability to pay "does not have the 'keys to his jail'; what is nominally a civil contempt proceeding is in fact a criminal proceeding—the defendant is not being coerced, but punished." Mead v. Batchlor, 460 N.W.2d 493, 496 (Mich. 1990) (citation omitted); see also Int'l Union, United Mine Workers of Am. v. Bagwell, 512 U.S. 821, 831 (1994) (acknowledging that "[t]o the extent that such [civil] contempts take on a punitive character . . . criminal procedural protections may be in order"); Walker v. McLain, 768 F.2d 1181, 1184 (10th Cir. 1985) (noting that if a contemnor is truly indigent, "his liberty interest is no more conditional than if he were serving a criminal sentence"); McBride v. McBride, 431 S.E.2d 14, 19 (N.C. 1993) ("the facts of the present case illustrate that trial courts do not always make such a determination [of the present ability to pay] prior to ordering the incarceration of a civil contemnor"). Despite indigence being a complete defense to a civil contempt charge, a defendant bears virtually the entire evidentiary burden without the skills or knowledge to master it. Ridgway, 720 F.2d at 1414 ("The indigent who appears without a lawyer can be charged neither with knowledge that he has such a burden nor with an understanding of how to satisfy it."). See also Argersinger, 407 U.S. 25 at 30 ("'He is unfamiliar with the rules of evidence. Left without the aid of counsel he may be . . .

convicted upon incompetent evidence, or evidence irrelevant to the issue or otherwise inadmissible.'") (quoting Powell, 287 U.S. at 68-69). (p.24)

As Mr. Turner's case exemplifies, indigent defendants in the minority States have no right to appointed counsel, have no means of understanding how to put on a defense, and are vulnerable to making admissions against their own interests in court. Moreover, the proceedings are so streamlined that no true evidentiary hearing takes place to determine indigence. (p.26)

Civil contemnors only hold the keys to their cell doors when they have the present ability to purge their contempt. In many cases, indigent contemnors have neither resources to purge their contempt nor knowledge of the judicial system to prove their indigence. (p.27)

RESPECTULLY SUBMITTED May 24, 2011.

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Certificate of Service

I HEREBY CERTIFY that a copy of the foregoing was provided May 24, 2011 as follows: Hand delivery to the security desk for Ryan C. Rodems, Barker, Rodems & Cook, PA, 400 North Ashley Drive, Suite 2100 Tampa, Florida 33602. By hand delivery to The Law Offices of Julianne M. Holt, Public Defender of the 13th Judicial Circuit, 700 East Twiggs Street, 5th Floor, PO Box 172910, Tampa, Florida 33602.

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