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CLERK, US DISTRICT COURT
MIDDLE DISTRICT OF FL
OCALA FLORIDA

UNITED STATES DISTRICT COURT
MIDDLE DISTRICT OF FLORIDA
OCALA DIVISION

ESTATE OF PENELOPE GILLESPIE,
NEIL J. GILLESPIE,

CASE NO.: 5:11-cv-539-oc-10TBS

Plaintiffs,

vs.

JURY TRIAL DEMANDED

THIRTEENTH JUDICIAL CIRCUIT, FLORIDA,
JAMES M. BARTON, II, Circuit Court Judge, and individually,
THE LAW OFFICE OF ROBERT W. BAUER, P.A.,
ROBERT W. BAUER,

Defendants.

_____ /

FIRST AMENDED COMPLAINT

Pursuant to Rule 15(a)(1) FRCP, a party may amend its pleading once as a matter of course within 21 days after serving. The Complaint in this action was not served. Therefore Plaintiff Gillespie amends the Complaint, sues the Defendants, and alleges:

JURISDICTION AND VENUE

1. This Court has jurisdiction under 28 U.S.C. § 1331 and 42 U.S.C. § 1983 Civil action for deprivation of rights that was the proximate cause of the wrongful death of Penelope Gillespie, for Defendants' violation the Plaintiffs' rights guaranteed under the Constitution and Laws of the United States including the Fifth and Fourteenth Amendments to the U.S. Constitution as to Due Process; The Eight Amendment to the U.S. Constitution as to Cruel & Unusual Punishment; and the Fourteenth Amendment to the U.S. Constitution as to Equal Protection; The Americans With Disabilities Act

(“ADA”), 42 U.S.C., Chapter 126, §§ 12101 et seq., Subchapter II, Public Services, Part A, §§ 12131 - 12134, Subchapter III, Public Accommodations and Services Operated by Private Entities, §§ 12181 - 12189, Subchapter IV, §§12201 - 12213, including the ADA Amendments Act of 2008 (ADAAA) updates; 42 U.S.C. § 1981. Equal rights under the law to make and enforce contracts, to sue, be parties, give evidence, and to the full and equal benefit of all laws and proceedings; 42 U.S.C. § 1982. Property rights of citizens to inherit, hold, and convey personal property; 42 U.S.C. § 1985. Conspiracy to interfere with civil rights (2) Obstructing justice; intimidating party, witness; 42 U.S.C. § 1986. Action for neglect to prevent the wrongs conspired to be done, and mentioned in section 1985; 42 U.S.C. § 1988. Proceedings in vindication of civil rights (b) for attorney’s fees; the Federal Protection and Advocacy for Mentally Ill Individuals Act, 42 U.S.C. 10801 et seq.; 18 USC 1346 (fraud and honest services); 18 USC 1951 (interference with commerce), Title 15 of the United States Code pertaining to restraint of trade and monopolies (anti-trust law); These violations of law are pervasive and ongoing in nature.

This Court has supplemental jurisdiction under 28 U.S.C. § 1367 for Article 1, Section 2, of the Constitution of Florida, Basic rights that do not include protection of persons with mental disabilities, in conflict with federal law. Penelope Gillespie had a mental disability, Alzheimer’s Disease. Neil Gillespie has mental illness as set forth herein; and for violations of the Constitution of the State of Florida; Article 1, Section 21, Access to Courts; Article 1, Section 17, Excessive Punishments, excessive fines; Article 1, Section 9, Due Process; for claims under The Florida Wrongful Death Act, §§ 768.16 to 768.26, Florida Statutes. The wrongful death claim is brought by the Decedent’s

Personal Representative, to recover for the benefit of the Decedent's Survivors and Estate, all damages, as specified in this act, caused by the injury resulting in death. (§ 768.20 Fla. Stat.).

2. Venue is proper in this Court, the Ocala Division, pursuant to Rule 1.02(c), Local Rules. The Decedent resided in Ocala, and Ocala has greatest nexus with the cause.

NOTICE OF PENDENCY OF RELATED ACTIONS, LOCAL RULE 1.04(d)

3. In compliance with Local Rule 1.04(d), Gillespie gives notice of the following related actions:

Neil J. Gillespie v. Thirteenth Judicial Circuit, Florida, et. al, case no. 5:10-cv-00503-oc, US District Court, MD Florida, Ocala Division, a federal civil rights lawsuit for the misuse and denial of judicial process under the color of law, and disability claims under the Americans with Disabilities Act (ADA). ("federal action")

Petition For Writ Of Mandamus, Supreme Court of Florida, case no. SC11-1622, Neil J. Gillespie v. Barker, Rodems & Cook, PA, et al, lower tribunal nos.: 2D10-5197, 05-CA-7205, to rescind a "walk-away" settlement agreement of June 21, 2011 and other relief. ("Petition")

PARTIES

4. Plaintiff, the Estate of Penelope Gillespie. ("Estate"). The Decedent Penelope Gillespie died September 16, 2009. Ms. Gillespie was an unremarried widow who resided at 8092 SW 115th Loop, Ocala, Florida. On November 19, 2008 Neil J. Gillespie assigned and transferred to Penelope Gillespie for her use and benefit a security interest in all rights of Gillespie to receive any proceeds in the case of Gillespie v. Barker,

Rodems & Cook, P.A., et. al, case no. 05-CA-7205, Hillsborough County Circuit Court, Florida. The security interest became part of the Estate upon the death of Ms. Gillespie. The estate has not been settled. A copy of the assignment is at Appendix 1, Exhibit 1.

5. Plaintiff NEIL J. GILLESPIE is the Personal Representative of the Estate, the son of the Decedent, and a survivor as defined by § 768.18, Fla. Stat., and resides at 8092 SW 115th Loop, Ocala, Florida, 34481. (“Gillespie”). Under to Rule 20(a)(1), FRCP, Gillespie, individually, has a right to relief jointly, severally, or in the alternative with respect to or arising out of the same transaction, occurrence, or series of transactions or occurrences, and has question of law or fact common to all plaintiffs in this action.

Gillespie is the Plaintiff in the federal action, and the Petitioner in the Petition.

6. Former plaintiff Mark J. Gillespie is removed from this first amended complaint.

7. Former plaintiff Elizabeth Bauerle is removed from this first amended complaint.

8. Defendant THIRTEENTH JUDICIAL CIRCUIT, FLORIDA (“13th Circuit”) is a state court of original jurisdiction in and for Hillsborough County located in the George E. Edgecomb Courthouse, 800 E. Twiggs Street, Tampa, Florida. Gillespie was Plaintiff and Counter-Defendant in Neil J. Gillespie v. Barker, Rodems & Cook, PA and William J. Cook, Case No. 05-CA-7205, Circuit Civil Court, 13th Circuit. The lawsuit commenced August 11, 2005 and ended June 21, 2011. (“state action”). January 9, 2012 Gillespie filed the Petition upon leave of the Supreme Court of Florida to rescind a “walk-away” settlement agreement of June 21, 2011 and other relief.

9. Defendant JAMES M. BARTON, II is a Circuit Court Judge for the 13th Circuit and a natural person. (“Judge Barton”). At all times pertinent Judge Barton was married

to Chere J. Barton, President of Regency Reporting Service, Inc. ("Regency Reporting"). Judge Barton presided over the state action from February 13, 2007 to May 24, 2010, and was disqualified for cause, a business relationship involving thousands of dollars paid by Barker, Rodems & Cook, P.A. to Regency Reporting owned by the wife of Judge Barton. Ms. Barton also transcribed Gillespie's deposition of May 14, 2001 in the underlying litigation, Gillespie v. Amscot Corporation, case no: 8:00-CV2795-T-26EAJ. ("Amscot). The transcript was stored in a home office of Judge Barton and contained substantial information about Gillespie's disabilities. The transcript is Exhibit 4 of Gillespie's disability notice, Verified Notice of Filing Disability Information of Neil J. Gillespie, May 27, 2011 in the state action. (Appendix 2). Judge Barton failed to provide Gillespie accommodation under the Americans with Disabilities Act (ADA), and sanctioned Gillespie \$11,550 for discovery errors, for "discovery" already in the possession of Barker, Rodems & Cook, PA, from their earlier representation of Gillespie. Part of the sanction under section 57.105, Florida Statutes, was for Gillespie's misplaced defense of economic loss to a libel counterclaim, an *Abuse of Process* brought by Mr. Rodems on behalf of Barker, Rodems & Cook, PA and William J. Cook. The libel counterclaim was vexatious litigation and voluntarily dismissed by Mr. Rodems September 28, 2010.

10. Defendant THE LAW OFFICE OF ROBERT W. BAUER, P.A., is a Florida professional service corporation and law firm located at 2815 NW 13th Street, Suite 200E Gainesville, Alachua County, Florida 32609. ("Bauer Law"). Bauer Law formerly represented Gillespie as Plaintiff and Counter-Defendant in the state action, and in two related interlocutory appeals, 2D07-4530 and 2D08-2224. Bauer Law formerly

represented Penelope Gillespie in medical malpractice, and insurance matters, through a power of attorney with Gillespie as attorney-in-fact.

11. Defendant ROBERT W. BAUER is an attorney, Florida Bar ID No. 11058, a corporate officer of Bauer Law, and a natural person. ("Mr. Bauer or Bauer"). Mr. Bauer formerly represented Gillespie as Plaintiff and Counter-Defendant in the state action, and in two related interlocutory appeals, 2D07-4530 and 2D08-2224. Bauer Law formerly represented Penelope Gillespie in medical malpractice, and insurance matters, through a power of attorney with Gillespie as attorney-in-fact. Mr. Bauer was a referral by The Florida Bar Lawyer Referral Service February 27, 2007 for the libel counterclaim in the state action.

CONDITIONS PRECEDENT

12. Gillespie served July 12, 2010 notice in compliance with § 768.28(6)(a), Florida Statutes, which requires that prior to instituting any action on a tort claim against the state or one of its agencies or subdivisions, the claimant must present the claim in writing to the appropriate agency and the Department of Financial Services.

GENERAL ALLEGATIONS

13. My name is Neil Gillespie and I am the pro se Plaintiff in this action appearing as the Personal Representative of the Estate; the former caregiver of Penelope Gillespie, my Mother; the former attorney-in-fact for Penelope Gillespie; and individually as a party in interest. Penelope Gillespie was disabled as defined by the Americans with Disabilities Act (ADA), and Chapter 825 Florida Statutes, with mental illness, Alzheimer's Disease, and other disabilities. I am disabled as defined by the Americans with Disabilities Act

(ADA), the Federal Protection and Advocacy for Mentally Ill Individuals Act, and Chapter 825 Florida Statutes. A disability report prepared by Dr. Karin Huffer for the court shows I have the following mental illness: Depression 296/3, and Post Traumatic Stress Disorder, 309.81 with chronic and acute symptoms anxiety, and other disabilities like type 2 adult onset diabetes and communication disorders. (Appendix 2).

As set forth in the state action, in August 2005 I sued my former lawyers Barker, Rodems & Cook, PA for fraud and breach of contract for stealing \$7,143 during their prior representation of me in the Amscot case, a case at the heart of the present case. Ryan Christopher Rodems unlawfully represented his firm and partner against me, a former client, in the same matter as the prior representation. I prevailed on a motion to dismiss and established a cause of action. Judge Nielsen denied Mr. Rodems' claim of entitlement to \$50,000 in "court-awarded" fees and costs under the Truth In Lending Act (TILA), by Order January 13, 2006, as did three federal judges before him. The doctrine of res judicata bars future action on matters that have been "definitively settled by judicial decision". Having lost on the facts and the law, Mr. Rodems intentionally disrupted the tribunal March 6, 2006 by filing a false affidavit that I planned a violent attack in Judge Nielsen's chambers, a claim later disproved by investigation of the Tampa Police Department. This resulted in Judge Nielsen's recusal, and began a chain where each successor judge acted with retaliation against me. However Judge Nielsen's sua sponte recusal November 22, 2006 was improper because a judge has a duty to remain on a case assigned to him or her unless he or she is legally disqualified. State ex rel. Palmer v. Atkinson, 116 Fla. 366, 156 So. 726, 96 AL.R. 539 (1934); Micale v.

Polen, 487 So. 2d 1126 (Fla. Dist. Ct. App. 4th Dist. 1986). Judge Nielsen denied a motion to disqualify him as legally insufficient November 20, 2006. Rodems also filed a vexatious libel counterclaim, which he later voluntarily dismissed, as a vehicle to obtain excessive sanctions. Rodems demanded and obtained excessive sanctions for my discovery errors, for “discovery” already in Rodems’ possession from his firm’s prior representation of me. Judge Barton awarded Mr. Rodems \$11,550 in excessive sanctions against me, then authorized the garnishment of my bank accounts. Judge Barton failed to hold a hearing on claims of exemption from the garnished funds, and failed to lawfully manage the case. Judge Barton failed to provide me disability accommodation under the ADA. Judge Barton also allowed Mr. Rodems to re-litigate dismissed claims, to present false testimony in doing so, and dismiss some of the claims based on Rodems’ false testimony. I hired attorney Robert Bauer to represent me, but he allowed Mr. Rodems to re-litigate the dismissed claims too, and prevented me from appearing in court to testify in my own case. After churning \$33,000 in legal fees, without even filing an amended complaint, Bauer dropped the case, and joined with Rodems in the effort to obstruct justice under the color of law. For example, Mr. Bauer lied to the Bar during an inquiry, and denied filing Plaintiff’s Motion for Rehearing, served July 16, 2007, to hold Rodems accountable for lying to Judge Barton about having a signed representation contract with me. There is no signed contract because I did not sign one. Judge Barton was disqualified for cause over a business relationship between a court reporting service owned by his wife Chere Barton and Mr. Rodems’ law firm. In addition, the Chere Barton took my deposition in the Amscot case and stored the transcript in a home office in the home of

Judge Barton. The transcript contained testimony about my disabilities and the Amscot case, the case at the heart of the current case. Successor Judge Cook conspired with Mr. Rodems to misuse and deny me judicial process under the color of law as set forth in the federal action and the Petition. Successor Judge Arnold conspired with Mr. Rodems to issue a politically-motivated warrant for my arrest to force a “walk-away” settlement in the state and federal actions, as set forth in the Petition. Dr. Huffer assessed the foregoing in a letter dated October 28, 2010. Dr. Huffer wrote in part:

“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.” (p1, ¶2). “He [Gillespie] is left with permanent secondary wounds” (p2, top). “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.” (p2, ¶1). “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.” (Appendix 1, Exhibit 6).

These violations of law are pervasive and ongoing in nature.

In the federal action Mr. Rodems appeared for his firm and himself and engaged in new wrongdoing. (Doc. 48, Doc. 60). I notified this Court in the federal action as early as June 1, 2011 (Doc. 31) as follows:

3. Mr. Rodems is unethically representing his firm against Gillespie, a former client in a matter that is the same or substantially similar to the prior representation, and Mr. Rodems' independent professional judgment is materially limited by his interest and conflict. Mr. Rodems has previously misled this Court in violation of Rule 11 (b) in pleadings he submitted. In turn this Court relied

upon Mr. Rodems' pleadings as correct and incorporated false or untrue statements in this Court's orders.

4. Gillespie seeks leave to move for sanctions against Mr. Rodems under Rule 11(C)(2) for making false or untrue statements to this Court in his pleadings.

Because of the foregoing, Defendants violations of law are pervasive and ongoing in nature and in violation of 42 U.S.C. § 1983 Civil action for deprivation of rights that was the proximate cause of the wrongful death of Penelope Gillespie for Defendants' violation the Plaintiff's rights guaranteed under the Constitution and Laws of the United States including the Fifth and Fourteenth Amendments to the U.S. Constitution as to Due Process; The Eight Amendment to the U.S. Constitution as to Cruel & Unusual Punishment; and the Fourteenth Amendment to the U.S. Constitution as to Equal Protection; The Americans With Disabilities Act ("ADA"), 42 U.S.C. § 12101 et seq.,; 42 U.S.C. § 1981. Equal rights under the law to make and enforce contracts, to sue, be parties, give evidence, and to the full and equal benefit of all laws and proceedings; 42 U.S.C. § 1982. Property rights of citizens to inherit, hold, and convey personal property; 42 U.S.C. § 1985. Conspiracy to interfere with civil rights (2) Obstructing justice; intimidating party, witness; 42 U.S.C. § 1986. Action for neglect to prevent the wrongs conspired to be done, and mentioned in section 1985; the Federal Protection and Advocacy for Mentally Ill Individuals Act, 42 U.S.C. 10801 et seq.; 18 USC 1346 (fraud and honest services); 18 USC 1951 (interference with commerce), Title 15 of the United States Code pertaining to restraint of trade and monopolies (anti-trust law); Article 1, Section 2, of the Constitution of Florida, Basic rights that do not include protection of persons with mental disabilities, in conflict with federal law; violations of the

Constitution of the State of Florida; Article 1, Section 21, Access to Courts; Article 1, Section 17, Excessive Punishments, excessive fines; Article 1, Section 9, Due Process; and claims under The Florida Wrongful Death Act, §§ 768.16 to 768.26, Florida Statutes.

AMERICANS WITH DISABILITIES ACT (ADA)

14. Penelope Gillespie was disabled as defined by the Americans with Disabilities Act (ADA), 42 U.S.C. § 12102. As such she was entitled to protection for mental and physical disabilities under 42 U.S.C., Chapter 126, §§ 12101 et seq., Subchapter II, Public Services, Part A, §§ 12131 - 12134, Subchapter III, Public Accommodations and Services Operated by Private Entities, §§ 12181 - 12189, Subchapter IV, §§ 12201 - 12213, including the ADA Amendments Act of 2008 (ADAAA) updates.

15. Neil Gillespie is disabled as defined by the Americans with Disabilities Act (ADA), 42 U.S.C. § 12102. As such he is entitled to protection for mental and physical disabilities under 42 U.S.C., Chapter 126, §§ 12101 et seq., Subchapter II, Public Services, Part A, §§ 12131 - 12134, Subchapter III, Public Accommodations and Services Operated by Private Entities, §§ 12181 - 12189, Subchapter IV, §§ 12201 - 12213, including the ADA Amendments Act of 2008 (ADAAA) updates.

THE FEDERAL PROTECTION AND ADVOCACY FOR
MENTALLY ILL INDIVIDUALS ACT

16. Gillespie is an individual with mental illness as defined by 42 U.S.C. Chapter 114 The Protection and Advocacy for Individuals with Mental Illness Act, § 10802(4)(A) and (B)(i)(III). Gillespie was involuntarily confined in a municipal detention facility for reasons other than serving a sentence resulting from conviction for a criminal offense.

Gillespie's involuntary confinement was in the George E. Edgecomb Courthouse, 800 E. Twiggs Street, Tampa, Florida. On June 1, 2011 Judge Arnold issued a politically-motivated warrant to arrest Gillespie for the purpose of harming Gillespie by abuse as defined § 10802(1) and neglect as defined by § 10802(5) to force a walk-away settlement agreement in the state action, and to force a walk-away settlement agreement in the federal action, Gillespie's civil rights and ADA lawsuit against the Thirteenth Judicial Circuit, Florida, et al., for the misuse and denial of judicial process under the color of law, and denial of disability accommodation. Gillespie was involuntarily confined by two (2) fully armed deputies of the Hillsborough County Sheriff's Office, and involuntarily held during an improper full deposition, post final summary judgment, an open-ended deposition without time limit, with no lunch break, and no meals usually given to an inmate, until Gillespie suffered injury and agreed to sign a walk-away settlement agreement. Gillespie was so impaired when he signed the agreement that the record shows he was unable to make the settlement decision himself.

CHAPTER 825, FLORIDA STATUTES

Abuse, Neglect, and Exploitation of Elderly Persons and Disabled Adults

17. Penelope Gillespie was an elderly person as defined by section 825.101(5) and 78 years-old. Ms. Gillespie was suffering from the infirmities of aging including Alzheimer's disease, aerial fibrillation, and other ailments. Neurologist William Gaya, M.D, of the Ocala Neurodiagnostic Center, treated Ms. Gillespie for Alzheimer's disease. On October 23, 2008 Dr. Gaya examined Ms. Gillespie, said she scored 20 on the Mini Mental Exam (MME), and said it would be another five years before she was bedridden in the final

stage of Alzheimer's disease. Also on October 23, 2008 Dr. Gaya certified that Ms. Gillespie was competent to cast a vote for general elections.

18. Gillespie is a disabled adult as defined by section 825.101(4), Florida Statutes, and as further described in ADA documents in the state action, including the "Verified Notice of Filing Disability Information of Neil J. Gillespie". (Appendix 2).

19. Gillespie was caregiver to Penelope Gillespie as defined under § 825.101(2),

Florida Statutes:

(2) "Caregiver" means a person who has been entrusted with or has assumed responsibility for the care or the property of an elderly person or disabled adult. "Caregiver" includes, but is not limited to, relatives, court-appointed or voluntary guardians, adult household members, neighbors, health care providers, and employees and volunteers of facilities as defined in subsection (7).

Gillespie was appointed "Designated Health Care Surrogate" by Penelope Gillespie under Florida law February 21, 2006.

Gillespie was designated proxy by Penelope Gillespie under her "Advance Medical Directive" or living will May 4, 2006 under Florida law.

Gillespie was appointed attorney-in-fact several times by Penelope Gillespie under Florida law through power of attorney

FLORIDA WRONGFUL DEATH ACT

20. Sections 768.16-768.26 Florida Statutes may be cited as the "Florida Wrongful Death Act." Section 768.17 Florida Statutes, Legislative intent. It is the public policy of the state to shift the losses resulting when wrongful death occurs from the survivors of the decedent to the wrongdoer. Sections 768.16-768.26 are remedial and shall be **liberally construed**. (underline and bold emphasis added)

a. Section 768.18 Florida Statutes, Definitions. As used in ss. 768.16-768.26:

(1) "Survivors" means the decedent's spouse, children...(3) "Support" includes contributions in kind as well as money. (5) "Net accumulations" means the part of the decedent's expected net business or salary income, including pension benefits, that the decedent probably would have retained as savings and left as part of her or his estate if the decedent had lived her or his normal life expectancy.

b. Section 768.19 Florida Statutes, Right of action. When the death of a person is caused by the wrongful act, negligence, default, or breach of contract or warranty of any person...and the event would have entitled the person injured to maintain an action and recover damages if death had not ensued, the person....that would have been liable in damages if death had not ensued shall be liable for damages as specified in this act...

c. Section 768.20 Florida Statutes, Parties. The action shall be brought by the decedent's personal representative, who shall recover for the benefit of the decedent's survivors and estate all damages, as specified in this act, caused by the injury resulting in death...

d. Section 768.21 Florida Statutes, Damages. All potential beneficiaries of a recovery for wrongful death, including the decedent's estate, shall be identified in the complaint, and their relationships to the decedent shall be alleged. Damages may be awarded as follows:

(1) Each survivor may recover the value of lost support and services from the date of the decedent's injury to her or his death, with interest, and future loss of support and services from the date of death and reduced to present value...

(3) Minor children of the decedent, and all children of the decedent if there is no surviving spouse, may also recover for lost parental companionship, instruction, and guidance and for mental pain and suffering from the date of injury.

(5) Medical or funeral expenses due to the decedent's injury or death may be recovered by a survivor who has paid them.

(6) The decedent's personal representative may recover for the decedent's estate the following:

(a) Loss of earnings of the deceased from the date of injury to the date of death, less lost support of survivors excluding contributions in kind, with interest. Loss of the prospective net accumulations of an estate, which might reasonably have been expected but for the wrongful death, reduced to present money value, may also be recovered...

(b) Medical or funeral expenses due to the decedent's injury or death that have become a charge against her or his estate or that were paid by or on behalf of decedent, excluding amounts recoverable under subsection (5).

Death of Ms. Gillespie September 16, 2009

21. Penelope Gillespie died September 16, 2009 at the Odyssey House Hospice in Forth Worth, Texas. Dementia is the cause of death reported on the Certificate of Death. Ms. Gillespie was a Florida resident since 1993 and had lived continuously at 8092 SW 115th Loop, Ocala, Florida until February 2009 in the Oak Run retirement community.

22. Since February, 2005 Gillespie was the primary caregiver to his then 75-year-old mother, an unremarried widow. Ms. Gillespie needed full-time care due to Alzheimer's

dementia and other ailments. This put additional stress on Gillespie's existing disabilities. Attorney Bauer improperly moved to withdrawal from the state action October 13, 2008. In February 2009 Gillespie's brother in Texas agreed to take in their Mother so he could have respite, and attend to Mr. Bauer's breach of duty, and the Court's breach of duty. Ms. Gillespie sustained injuries from leaving home and died from those injuries September 16, 2009.

23. On October 23, 2008 Dr. Gaya examined Ms. Gillespie and said it would be another five years before she was bedridden in the final stage of Alzheimer's disease, or October 2013. Upon information and belief, Ms. Gillespie's life was cut short by four (4) years and one (1) month.

24. The Defendants owed the Plaintiffs a duty as set forth herein. The Defendants breached their duty to the Plaintiffs. As a proximate cause of that breach of duty to the Plaintiffs, Ms. Gillespie sustained injury that resulted in her death September 16, 2009.

COUNT 1 - DEFENDANTS 13TH CIRCUIT AND JUDGE BARTON

25. Plaintiffs incorporate the foregoing paragraphs and reassert them here.

26. Defendant Judge Barton and the 13th Circuit presided over Neil J. Gillespie v. Barker, Rodems & Cook, PA and William J. Cook, Case No. 05-CA-007205, Circuit Civil Court, 13th Circuit. ("state action"). Judge Barton presided over the action February 13, 2007 until disqualified for cause May 24, 2010.

27. Gillespie was a plaintiff and counter-defendant in the state action.

28. Robert W. Bauer and The Law Offices of Robert W. Bauer, P.A. represented Gillespie in the state action from March 2007 through October 1, 2009. Mr. Bauer and

his firm represented the Decedent in matters related, and not related, to the state action.

29. Ms. Gillespie paid money to Mr. Bauer and Bauer Law for his fees in the state action. Ms. Gillespie had a security interest in this action from the time Mr. Bauer entered appearance in 2007. Ms. Gillespie's interest in this action is memorialized by an Assignment of Unliquidated Lawsuit Proceeds dated November 19, 2008, prepared by attorney Jeffrey Shelquist, and filed by Gillespie with the Clerk of Court, Marion County, March 31, 2009. (Appendix 1, Exhibit 1).

30. As a proximate cause of Judge Barton's negligence, the Decedent, Penelope Gillespie, died September 16, 2009. Judge Barton negligently managed the state action, and failed to timely conclude the litigation. Judge Barton negligently exceeded the time to conclude this litigation by many years, and thereby denied Gillespie time that would otherwise have been devoted to the care of Ms. Gillespie. Judge Barton negligently failed to hold a hearing on a claim of exemption of garnished wages used to support Ms. Gillespie. By failing to hold a hearing as required by law, Judge Barton negligently denied funds needed to support Ms. Gillespie. Judge Barton failed to rule for one year on a motion by Mr. Bauer to withdrawal from the case. During the interim and thereafter, Mr. Bauer abandoned his clients. Gillespie's brother in Texas agreed to take in their Mother, to allow Gillespie time for respite, and to address Defendants' breach of duty, but Ms. Gillespie sustained injuries as a result of leaving her home and died.

31. Specifically, the 13th Circuit and Judge Barton were negligent as follows:

a. Judge Barton was negligent as to the Florida Rules of Judicial Administration:

(i). Pursuant to Rule 2.250(a)(1)(B), the time standard for a civil trial case is 18 months from filing to final disposition.

(ii). Pursuant to Rule 2.545 Case Management (a) Purpose. Judges and lawyers have a professional obligation to conclude litigation as soon as it is reasonably and justly possible to do so. Pursuant to Rule 2.545(b) Case Control. The trial judge shall take charge of all cases at an early stage in the litigation and shall control the progress of the case thereafter until the case is determined. The trial judge shall take specific steps to monitor and control the pace of litigation.

(iii). This civil jury case was filed August 11, 2005. Under Rule 2.250(a)(1)(B) the case should have concluded 18 months later, on or about February 11, 2007. Judge Barton assumed control of the case February 13, 2007 and negligently managed the case contrary to Rule 2.545. Judge Barton did not engage in case management. Judge Barton negligently allowed Mr. Rodems to re-litigate matters already decided by the Order of Judge Nielsen entered January 13, 2006. Judge Barton accepted as true false testimony by Mr. Rodems in the re-litigation of the Order of Judge Nielsen entered January 13, 2006. Judge Barton negligently allowed this case to languish and failed to perform case management duties imposed by Rule 2.545 for a period of one year following the motion to withdrawal by Gillespie's lawyer Robert W. Bauer on October 13, 2008¹. Three years

¹ In contrast, the Second District Court of Appeal denied Mr. Bauer's motion to withdrawal in case no. 2D08-2224, also filed October 13, 2008. The 2dDCA denied the motion in a timely manner, October 30, 2008.

and three months after assuming the case, Judge Barton was still presiding when he was disqualified for cause May 24, 2010².

b. Judge Barton was negligent in his failure to conduct a hearing on a Claim Of Exemption And Request For Hearing served August 14, 2008 by Gillespie's attorney Robert W. Bauer. (Appendix 1, Exhibit 2). Judge Barton entered Order Granting Defendants' Motion For Writ of Garnishment After Judgment³ July 24, 2008. On July 29, 2008 Mr. Rodems obtained Writs of Garnishment against Gillespie's bank accounts, and

² Judge Barton was disqualified for cause May 24, 2010 pursuant to the holding of Aurigemma v. State, 964 So.2d 224 (Fla. 4th DCA 2007), for an ongoing business relationship between Mr. Rodems' law firm and Regency Reporting Service, Inc. owned by Chere Barton, the wife of Judge Barton. On March 31, 2009 alone Barker, Rodems & Cook, PA paid \$1,992.15 to Regency Reporting Service, Inc., creating the requisite well-founded fear to support a motion to disqualify.

³ Judge Barton awarded judgment of \$11,550 in favor of Mr. Rodems' law firm and partner, for attorneys fees as sanctions, punishment against Gillespie under section 57.105 for a misplaced defense of economic loss to a libel counterclaim brought by Rodems. The counterclaim was an abuse of process as set forth in Plaintiff's First Amended Complaint, Count 11. Rodems voluntarily dismissed the counterclaim September 28, 2010. Judge Barton also sanctioned Gillespie for discovery errors, which is ironic since Mr. Rodems failed to provide most of the discovery due in this case. Because of the forgoing Gillespie retained attorney Robert Bauer to represent him, a move that pleased Judge Barton. Nonetheless, Judge Barton slammed Gillespie with sanctions of \$11,550 contrary to Article 1, Section 17 of the Constitution of the State of Florida excessive punishments and fines, without the benefit of a jury, ordinarily guaranteed by Article 1, Section 22 of the Constitution of the State of Florida. On the federal level, Judge Barton's extreme sanction of \$11,550 denied Gillespie his right to due process under the Fifth and Fourteenth Amendments to the Constitution of the United States. In *Haines v. Kerner*, 404 U.S. 520 (1971) the United States Supreme Court found that *pro se* pleadings should be held to "less stringent standards" than those drafted by attorneys. Judge Barton's extreme sanction of \$11,550 denied Gillespie his right to protection against cruel and unusual punishment under the Eight Amendment to the Constitution of the United States. Judge Barton's extreme sanction of \$11,550 denied Gillespie his right to equal protection of the law under the Fourteenth Amendment to the Constitution of the United States.

client account with Mr. Bauer. Mr. Rodems successfully garnished \$598.22 from Gillespie's bank accounts. The Claim of Exemption stated in relevant part:

"The following exemptions from garnishment apply to the Plaintiff, Neil Gillespie, herein as stated:

1. Head of Family Wages
 - a. Plaintiff provides more than one-half of the support for a child or other dependent and have net earnings of \$500 or less per week.
 2. Social Security benefits.
 3. Disability income benefits."

c. Social Security Disability benefits are exempt from garnishment under section 222.18 Florida Statutes. Head of Family Wages are exempt from garnishment under section 222.11(1)(c) Florida Statutes. A claim of exemption was filed by Gillespie's attorney Mr. Bauer. (Exhibit 2). Judge Barton negligently failed to conduct a hearing on the claim of exemption required under section 222.12 Florida Statutes⁴.

⁴ Both Judge Barton, and later Judge Martha Cook, refused to hold a hearing to determine the validity of the claimed exemptions as required by section 77.041(3) Florida Statutes. The Court also refused to hold a hearing pursuant to section 77.07 Florida Statutes for dissolution of a writ of garnishment. Mr. Rodems never attempted to collect the garnished funds. 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. All the garnished funds were returned to Gillespie December 28, 2010. 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. Park Avenue Bank failed April 29, 2011 and was assumed by Bank of the Ozarks. This is especially problematic for Judge Cook, who ruled July 29, 2010 "Plaintiff's "Motion Dissolve Writ" (5-3-10) is DENIED as lacking legal basis. The Defendants are entitled to this Writ by a final judgment and a judgment granting motion for sanctions; moreover, the Second District Court of appeal has *affirmed* and issued a "mandate," which means this Court has no option but to enforce the judgment."

32. Under the Florida Wrongful Death Act, the basis for an action for wrongful death is a death caused by a “wrongful act, negligence, default or breach of contract or warranty”. (§768.19, Fla. Stat.). There must be evidence of a breach of duty owed by the defendant to the plaintiff’s decedent, or an underlying tort. In the case of negligence, to establish a cause of action in a wrongful death action, the plaintiff must allege and prove:

- (1) the existence of a legal duty owed to the decedent;
- (2) the breach of that duty;
- (3) legal or proximate cause of death was that breach; and
- (4) consequential damages.

In connection with the requirement in wrongful death actions of an underlying tort or breach of duty, proof of the defendant’s violation of a statute or regulatory provision that either is designed to protect a particular class of persons from their inability to protect themselves or establishes a duty to take precautions to guard a certain class of persons from a specific type of injury, establishes negligence per se. Florida Freight Terminals, Inc. v. Cabanas, 354 So. 2d 1222 (Fla. Dist. Ct. App., 3d Dist. 1978).

33. The wrongful act, negligence, default or breach of contract or warranty of the 13th Circuit and Judge Barton established negligence per se.

34. Gillespie is a disabled adult as defined by section 825.101(4), Florida Statutes, and as further described in documents in the lawsuit and provided to Mr. Bauer.

35. Ms. Gillespie was an elderly person as defined by section 825.101(5) and 77 years-old at the start of representation. Ms. Gillespie was suffering from the infirmities of aging including Alzheimer’s disease, aerial fibrillation, and other ailments.

36. Judge Barton, a representative of the Court, had a business relationship with Gillespie as defined by section 825.101(1) a relationship between two or more individuals or entities where there exists an....agreement for...[court] services. Judge Barton engaged in deception as defined by section 825.101(3)(a) misrepresenting or concealing a material fact relating to (1) services rendered, disposition of property, or use of property, when such services or property are intended to benefit an elderly person or disabled adult. Judge Barton obtained or used as defined by section 825.101(10) any manner of (a) taking or exercising control over property; or (b) making any use, disposition, or transfer of property. Judge Barton had a position of trust and confidence with respect to Gillespie as defined by section 825.101(11)(e), Florida Statutes, "any other person who has been entrusted with or has assumed responsibility for the use or management of the elderly person's or disabled adult's funds, assets, or property". Judge Barton entered the order granting writs of garnishment to Mr. Rodems who knowingly garnished exempt social security benefits belonging to Gillespie. After Gillespie's exempt funds were taken by Rodems, Mr. Bauer filed a claim of exemption, but Judge Barton, by deception or intimidation, failed to conduct a hearing on the claim required by section 222.12 Florida Statutes, to the detriment of Gillespie and his mother, and for the benefit of Mr. Rodems.

37. Judge Barton violated section 825.103, Florida Statutes, exploitation of an elderly person or disabled adult (1)(a) knowingly, by deception or intimidation, obtaining or using, or endeavoring to obtain or use, an elderly person's or disabled adult's funds, assets, or property with the intent to temporarily or permanently deprive the elderly

person or disabled adult of the use, benefit, or possession of the funds, assets, or property, or to benefit someone other than the elderly person or disabled adult, by a person who:

1. Stands in a position of trust and confidence with the elderly person or disabled adult;
- or 2. Has a business relationship with the elderly person or disabled adult.

ADMISSION OF WRONGDOING BY JUDGE BARTON

38. Plaintiff's Motion To Disqualify Judge was served October 5, 2009. (Appendix 1, Exhibit 3). Paragraph 8 states: "As a proximate cause of Judge Barton's actions, plaintiff's mother, Penelope Gillespie, died September 16, 2009." Since that time opposing counsel Ryan Christopher Rodems has been very vocal in his criticism of paragraph 8 of the motion as described in Appendix 1, Exhibit 4.

39. Judge Barton denied Plaintiff's Motion To Disqualify Judge without a hearing, and entered "Order Denying Plaintiff's Motion To Disqualify Judge" October 9, 2009. (Appendix 1, Exhibit 5). In paragraph 2, Judge Barton wrote: "The instant motion is legally insufficient and therefore DENIED."

40. Under Florida law, a judge making a determination of whether a motion to disqualify is legally sufficient must accept all accusations and facts plead in the motion as true. Paragraph 8 of the motion to disqualify, states: "As a proximate cause of Judge Barton's actions, plaintiff's mother, Penelope Gillespie, died September 16, 2009."

41. Under Florida law, in denying the motion to disqualify, Judge Barton accepted as true paragraph 8 of the motion to disqualify that states: "As a proximate cause of Judge Barton's actions, plaintiff's mother, Penelope Gillespie, died September 16, 2009." This amounts to an admission of wrongdoing by Defendant Judge Barton.

42. The 13th Circuit denied property rights of the Plaintiffs to inherit, hold, and convey personal property, the rights contained in Assignment of Unliquidated Lawsuit Proceeds dated November 19, 2008, when, as set forth further in the Petition, the 13th Circuit issued a politically-motivated warrant to arrest Gillespie and involuntarily detain him to force a “walk-away” settlement agreement in the state action and federal action.

WHEREFORE, Plaintiffs seeks damages as provided by law, for actual damages, statutory damages, punitive damages, attorney’s fees for attorneys representing or working on Plaintiffs’ behalf as provided by 42 U.S.C. § 1988. Proceedings in vindication of civil rights (b) for attorney’s fees; costs, and a general request that the Court grant such other and further relief as it deems just and equitable.

COUNT 2 - DEFENDANTS BAUER LAW AND MR. BAUER

43. Plaintiffs incorporate the foregoing paragraphs and reassert them here.

44. Robert W. Bauer (bar #11058) is an attorney who operates the Law Office of Robert W. Bauer, PA, located at 2815 NW 13th Street, Suite 200E, Gainesville, FL 32609.

45. Mr. Bauer was a referral from The Florida Bar Lawyer Referral Service, February 26, 2007 for the area of Libel and Slander. (Appendix 3). Mr. Bauer appears to have little or no experience in the area of Libel and Slander and he was not competent to practice in that area of law. Apart from the requirements of the LRS, lawyers are bound by the Rules Regulating the Florida Bar:

Rule 4-7.2, communications concerning a lawyer’s services
(b) Prohibited Statements and Information
(5) Advertising areas of practice - a lawyer or law firm shall not advertise for legal employment in an area of practice in which the advertising lawyer or law firm does not currently practice law

Mr. Bauer violated Lawyer Referral Rule 8-1.1, Statement of Policy and Purposes, states that “Every citizen of the state should have access to the legal system” ... and (a) “make legal services readily available to the general public through a referral method that considers the client’s financial circumstances...” Mr. Bauer failed to consider Gillespie’s financial circumstances and maintains he is not obligated to do so. (Transcript, February 9, 2009 phone call). Mr. Bauer violated LRS application, Rules, IV, states:

D. A panel member, in filing an application as provided, agrees to:
(2) charge for further services only as agreed upon with the client in keeping with the stated objectives of the Service and the client’s ability to pay;

Mr. Bauer never considered Gillespie’s ability to pay, he simply took this case to churn fees, deplete Gillespie’s funds, and drop the case, leaving Gillespie in a worse position.

Mr. Bauer failed to execute a contingent fee agreement as promised.

46. Mr. Bauer failed to remit to the LRS 12% of any attorneys’ fees due for services performed in connection with any Regular Panel cases. Mr. Bauer has received \$19,212.44 in attorney’s fees from Gillespie but has not remitted any of the approximately \$2,305.49 he owes to the LRS according to Ms. Karen Kelly, Director of the Florida Bar’s Public Service Programs Department.

47. Mr. Bauer was incompetent and appears to have little legal knowledge. Law is a second career for him. Mr. Bauer graduated law school in 2005 at the age of 35, just two years prior to this representation. Previously Mr. Bauer worked for Alachua County Fire Rescue as a paramedic and later a fireman.

48. Mr. Bauer does not appear to possess sufficient literacy to practice law. His writing contains numerous spelling and other errors. Mr. Bauer compensates for his insufficient literacy by hiring law students and recent law school graduates to work for him and do the legal work that he himself is not capable of producing. Mr. Bauer also uses the text from the pro se pleadings of his clients as his own work product, then charges the client for the work as his own, and submits the work to the court as his own. This is set forth in the Bar complaint, Gillespie v. Robert W. Bauer, The Florida Bar File No. 2011-073(8B). (Appendix 3).

49. Opposing counsel Mr. Rodems complained about Mr. Bauer using Gillespie's pro se pleadings as his own. Rodems email to Bauer April 26, 2007 at 9:56 a.m. states in part, "I am surprised you would rely on any portions of the pleadings Gillespie filed."

50. Mr. Bauer submitted a "counter-counter complaint" in April 2007. The pleading was essentially a "cut and paste" of Gillespie's initial pro se complaint where Bauer added claims for breach of fiduciary duty to Gillespie's claims of fraud and breach of contract. The pleading was rejected out of hand by the court because there is no provision under Rule 1.100(a) Fla.R.Civ.P., for a counter-counter complaint.

51. Mr. Bauer has had a number of bar complaints, and other complaints, by former clients. A large number of the complaining clients are disabled and/or elderly, suggesting a pattern disregard by Mr. Bauer toward elderly and disabled clients. Some of his clients have contacted Gillespie. This list is some of Mr. Bauer's unhappy clients:

a. Anna Hodges contacted Gillespie July 8, 2011 by email "help advise! I hired and fired bauer..nightmare". Hodges hired and later fired Robert Bauer as counsel in a

libel case, Susan Hodges Helvenston v. Anna White Hodges, Case No. 38-2010-CA-1423, Eight Judicial Circuit, in and for Levy County. Hodges has new counsel now, and believes Mr. Bauer should be brought to justice for mishandling her case, stating "I plan to raise the ROOF off this mess!" (Appendix I, Exhibit 11).

b. Angela V. Woodhull, Ph.D. states Robert Bauer filed a number of improper "Attorney Charging Liens" in cases involving Dr. Woodhull's mother, including the Guardianship of Louise A. Falvo, Case No. 2008-CP-000741, and the Estate of Louise A. Falvo, Case No: 01-2008-CP-1083, Eight Judicial Circuit, Alachua County; and other cases, including in the Fifth District Court of Appeal. Dr. Woodhull provided Gillespie January 4, 2012 a certified copy of her pro se pleading in the estate case, the docket entry of December 18, 2009, "Response To And Motion To Strike Or In The Alternative Motion To Dismiss Attorney Bauer's Motions For Attorney's Charging Lien And Motion For Sanctions Against Attorney Robert Bauer". (Appendix I, Exhibit 10). Dr. Woodhull's pleading complains about a number of the same issues as Gillespie, that Bauer uses law students and unlicensed law school graduates to draft his pleadings, as well as using his client's pro se pleadings and submitting them to the court as his own work.

c. Phillip Strauss, who is 90 years old, called Gillespie January 4, 2012 to discuss his Bar complaint against Robert Bauer, Phillip Strauss v. Robert W. Bauer. TFB File No.: 2012-00,146 (8B), August 24, 2011. Mr. Strauss was dissatisfied with Mr. Bauer's representation in a small claims action involving his homeowners insurance company.

d. James and Betty DeCoursey v. Robert W. Bauer, TFB File No. 2012-

00,054(8b), July 8, 2011. The complaint alleges that the DeCourseys are disabled and elderly, and that Mr. Bauer failed to properly represent them in a foreclosure matter.

35. Mr. Bauer and Gillespie had a business relationship as defined by section 825.101(1), Florida Statutes. The business relationship was reflected by a number of documents, including an Attorney Consultation and Fee Contract executed in April 2007 (Exhibit 6) related to the action.

52. Mr. Bauer had a business relationship with the Penelope Gillespie, as defined by section 825.101(1), Florida Statutes. Mr. Bauer represented Ms. Gillespie on several matters including investigation of medical malpractice, and wrongful termination of insurance related to the state court action, a result of Mr. Rodems' claim for libel and demand for \$10,000 against the homeowners policy of Ms. Gillespie.

53. Ms. Gillespie paid money to Mr. Bauer for his fees in the action. Ms. Gillespie had a security interest in this action from the time Mr. Bauer entered appearance in 2007. Ms. Gillespie interest in this action is memorialized by an Assignment of Unliquidated Lawsuit Proceeds dated November 19, 2008, prepared by attorney Jeffrey Shelquist, and filed by Gillespie with the Clerk of Court, Marion County, March 31, 2009. (Appendix 1, Exhibit 1).

54. Gillespie is a disabled adult as defined by section 825.101(4), Florida Statutes, and as further described in documents in the lawsuit and provided to Mr. Bauer.

55. Ms. Gillespie was an elderly person as defined by section 825.101(5) and 77 years-old at the start of representation. Ms. Gillespie was suffering from the infirmities of aging including Alzheimer's disease, aerial fibrillation, and other ailments.

56. Mr. Bauer had a position of trust and confidence with respect to Gillespie as defined by section 825.101(11)(c), Florida Statutes, a legal or fiduciary relationship his my attorney. The Florida Bar Lawyer Referral Service referred Mr. Bauer in February 2007. Mr. Bauer provided professional services as defined by section 825.101(13)(b), Florida Statutes.

57. Mr. Bauer had a position of trust and confidence with respect to Ms. Gillespie as defined by section 825.101(11)(c), Florida Statutes, a legal or fiduciary relationship as attorney. Mr. Bauer provided professional services as defined by section 825.101(13)(b), Florida Statutes.

58. Mr. Bauer engaged in deception with regard to the business relationship as defined by section 825.101(3), Florida Statutes, (a)(1) misrepresenting or concealing a material fact relating to services rendered intended to benefit a disabled adult; (a)(2) terms of a contract or agreement entered into with a disabled adult; and (b) using any misrepresentation, false pretense, or false promise in order to induce, encourage, or solicit a disabled adult to enter into a contract or agreement.

59. Mr. Bauer's deception deprived Gillespie and Ms. Gillespie of property as defined by section 825.101(12), Florida Statutes. Mr. Bauer took from Gillespie and Ms. Gillespie over \$19,000 in fees and has asserted a charging lien that exceeds \$12,000.

60. Mr. Bauer violated section 825.103(1)(a), Florida Statutes, exploitation of an elderly person or disabled adult, knowingly, by deception, obtaining an elderly person's or disabled adult's funds, assets, or property to benefit himself, a lawyer who stood in a position of trust and confidence with the elderly person or disabled adult and who had a business relationship with the elderly person or disabled adult.

It is long established that the relationship between an attorney and his client is one of the most important, as well as the most sacred, known to the law. The responsibility of an attorney to place his client's interest ahead of his own in dealings with matters upon which the attorney is employed is at the foundation of our legal system. (*Deal v. Migoski*, 122 So. 2d 415). It is a fiduciary relationship involving the highest degree of truth and confidence, and an attorney is under a duty, at all times, to represent his client and handle his client's affairs with the utmost degree of honesty, forthrightness, loyalty, and fidelity. (*Gerlach v. Donnelly*, 98 So. 2d 493).

61. Under section 825.103(2)(b), Florida Statutes, Mr. Bauer committed a felony of the second degree because the funds, assets, or property involved in the exploitation of the elderly person or disabled adult is valued at \$20,000 or more, but less than \$100,000. The funds directly benefiting Mr. Bauer amount to \$19,212.44, with an additional \$12,650.13 owing him, plus thousands of dollars spent for filing fees, transcripts, etc.

62. Mr. Bauer assumed representation of an already-filed ongoing pro se lawsuit, Neil J. Gillespie v. Barker, Rodems & Cook, PA and William J. Cook, case no. 05-CA-7205, Circuit Civil, Hillsborough County, Florida. Gillespie filed the lawsuit pro se August 11, 2005 against his former lawyers Barker, Rodems & Cook, P.A. ("BRC") who wrongfully took \$6,224.78 (later determined \$7,143.68) from a contingent fee case settlement. Gillespie's initial pro se complaint survived a motion to dismiss and strike by Order of

January 13, 2006, and established a cause of action for fraud and breach of contract. BRC countersued Gillespie for libel on January 19, 2006. BRC obtained sanctions against Gillespie for discovery errors and a misplaced defense to the counterclaims on § 57.105 Fla. Stat. sanction. Gillespie voluntarily dismissed his claims February 7, 2007. The Florida Bar LRS referred Mr. Bauer to Gillespie February 26, 2007. Gillespie retained Mr. Bauer and he reinstated the dismissed-claims but failed to zealously represent Gillespie and dropped the case before completion. Mr. Bauer spent much time and money securing sanctions of \$11,550 for the benefit BRC, and Mr. Bauer caused Gillespie to be held in contempt of court, as set forth in Gillespie v. Robert W. Bauer, The Florida Bar File No. 2011-073(8B)(Appendix 3), the federal action, and the Petition.

63. On March 29, 2007 Mr. Bauer called Gillespie after his initial review of this matter. Mr. Bauer said the pending sanctions against Gillespie were “entirely and wholly inappropriate” (Transcript, p29, line 17). Mr. Bauer said “If we can substantiate that that stuff was willful and if I can get, you know, the jury would love to punish a slimy attorney.” (p28, line 7). Gillespie’s ultimate repose to that and other of Mr. Bauer’s statements was “You know, I want to get a good outcome with the case, I’m not interested in any personal ax to grind.” (p33, line 5).

64. In his letter to Gillespie of April 5, 2007 Mr. Bauer wrote “I also reviewed the original complaint and determined that it appeared to contained (sic) two well plead causes of actions (sic) that could reasonably be pursued in a court action.” From a legal standpoint this was false and deceptive. While Gillespie’s original complaint survived a motion to dismiss, it was legally deficient and required amendment.

65. In July 2009 Gillespie hired attorney Seldon Childers to review this matter, and he concluded the following about the original complaint: (Appendix 1, Exhibit 7).

“Plaintiff has already paid twice the actual damages in attorneys fees to date in the case and there is still essentially no complaint filed. [at footnote 3] i.e. the current complaint is deficient and will have to be amended by a new complaint that is largely re-written, which will re-set all case deadlines and permit more discovery, new motions to dismiss, motions for summary judgment, and a new answer with affirmative defenses and counter-claims, all of which will have to be dealt with just as they were the first time around.” (Analysis of Case, Sep-17-09, page 3, ¶2.)

66. Attorney Childers prepared three documents dated September 17, 2009:

Analysis of Case and Recommendation (Appendix 1, Exhibit 7)
Economic Analysis Spreadsheet (Appendix 1, Exhibit 8)
Case Spreadsheet (Appendix 1, Exhibit 9)

67. Based upon Mr. Childers’ review, Mr. Bauer should never have undertaken this representation on an hourly fee basis. Even under the best case scenario, this case would loose \$7,475.34. Under the worst case scenario the case would loose \$204,067.41. This litigation was never in Gillespie’s interest, only Mr. Bauer’s interest, a clear breach of fiduciary duty and a violation of section 825.103(1)(a), Florida Statutes.

68. In April 2009 Mr. Bauer agreed to a contingent fee agreement but never signed the agreement. (Appendix 3, Exhibit 1)

69. Mr. Bauer engaged in wrongdoing as set forth in Gillespie’s complaint to The Florida Bar June 15, 2010. (Appendix 3, Exhibit 1).

70. In a letter to Florida Gov. Charlie Crist dated January 4, 2010 Mr. Bauer endorsed Mr. Rodems for judge and praised him as “honorable and professional”. (Appendix 3,

Exhibit 11) This is in contrast to Mr. Bauer's statement that Rodems misled Judge Barton. (Transcript, page 11, Feb-09-09)

MR. BAUER:...[I] think it clearly puts
12 before the Court the mistake or perjury, whichever
13 the Court determines that they wish to interpret as
14 Mr. Rodems misleading the Court when he said that
15 certain things were present that weren't. If you
16 read those motions I clearly said that in there.

Mr. Bauer is referring to Rodems' false statement to the Court about a signed representation agreement. An attorney who mislead the Court is not "honorable and professional". This letter was little more than a quid pro quo in exchange for Rodems' support in Gillespie's Florida Bar complaint against Mr. Bauer. (Appendix 3).

71. Under the Florida Wrongful Death Act, the basis for an action for wrongful death is a death caused by a "wrongful act, negligence, default or breach of contract or warranty". (§768.19, Fla. Stat.). There must be evidence of a breach of duty owed by the defendant to the plaintiff's decedent, or an underlying tort. In the case of negligence, to establish a cause of action in a wrongful death action, the plaintiff must allege and prove:

- (1) the existence of a legal duty owed to the decedent;
- (2) the breach of that duty;
- (3) legal or proximate cause of death was that breach; and
- (4) consequential damages.

In connection with the requirement in wrongful death actions of an underlying tort or breach of duty, proof of the defendant's violation of a statute or regulatory provision that either is designed to protect a particular class of persons from their inability to protect themselves or establishes a duty to take precautions to guard a certain class of persons

from a specific type of injury, establishes negligence per se. Florida Freight Terminals, Inc. v. Cabanas, 354 So. 2d 1222 (Fla. Dist. Ct. App., 3d Dist. 1978).

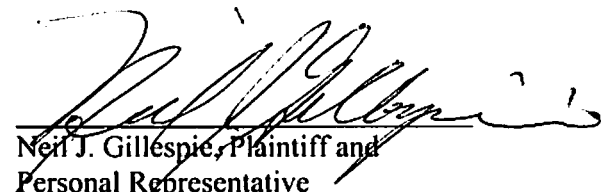
72. The wrongful act, negligence, default or breach of contract or warranty of Mr. Bauer and Bauer Law established negligence per se.

73. Defendants Mr. Bauer and Bauer Law owed the Plaintiffs a duty as set forth herein. The Defendants breached their duty to the Plaintiffs. As a proximate cause of that breach of duty to the Plaintiffs, Ms. Gillespie sustained injury that resulted in her death September 16, 2009.

WHEREFORE, Plaintiff seeks damages as provided by law, for actual damages, statutory damages, punitive damages, attorney's fees for attorneys representing or working on Plaintiff's behalf as provided by 42 U.S.C. § 1988. Proceedings in vindication of civil rights (b) for attorney's fees; costs, and a general request that the Court grant such other and further relief as it deems just and equitable.

Demand for Jury Trial Pursuant to Rule 38

RESPECTFULLY SUBMITTED January 17, 2012.


Neil J. Gillespie, Plaintiff and
Personal Representative
8092 SW 115th Loop
Ocala, Florida 34481
(352) 854-7807

~~FILED~~
~~RECEIVED~~

2012 JAN 17 PH 3:41

UNITED STATES DISTRICT COURT
MIDDLE DISTRICT OF FLORIDA
OCALA DIVISION

CLERK, US DISTRICT COURT
MIDDLE DISTRICT OF FL
OCALA, FLORIDA

ESTATE OF PENELOPE GILLESPIE,
NEIL J. GILLESPIE,

CASE NO.: 5:11-cv-539-oc-10TBS

Plaintiffs,

vs.

JURY TRIAL DEMANDED

THIRTEENTH JUDICIAL CIRCUIT, FLORIDA,
JAMES M. BARTON, II, Circuit Court Judge, and individually,
THE LAW OFFICE OF ROBERT W. BAUER, P.A.,
ROBERT W. BAUER,

Defendants.

_____ /

APPENDIX 1

1. Assignment of unliquidated lawsuit proceeds, recorded
2. Plaintiff's Claim of Exemption and Request for Hearing
3. Plaintiff's Motion to Disqualify Judge
4. Ongoing Criticism and Harassment of Ryan Christopher Rodems
5. Order Denying Plaintiff's Motion to Disqualify Judge
6. Letter of Dr. Karin Huffer, October 28, 2010
7. Seldon Childers, Analysis of Case and Recommendation
8. Seldon Childers, Economic Analysis Spreadsheet
9. Seldon Childers, Economic Spreadsheet
10. Dr. Woodhull, Response-Motion Strike RWB Charging Lien, Sanctions
11. Email, Anna Hodges, Bauer nightmare, July 08, 2011

~~FILED~~
~~RECEIVED~~

UNITED STATES DISTRICT COURT
MIDDLE DISTRICT OF FLORIDA
OCALA DIVISION

2012 JAN 17 PM 3:41

CLERK, US DISTRICT COURT
MIDDLE DISTRICT OF FL
OCALA FLORIDA

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THIRTEENTH JUDICIAL CIRCUIT, FLORIDA,
JAMES M. BARTON, II, Circuit Court Judge, and individually,
THE LAW OFFICE OF ROBERT W. BAUER, P.A.,
ROBERT W. BAUER,

Defendants.

_____ /

APPENDIX 2

Verified Notice of Filing Disability Information of Neil J. Gillespie,

May 27, 2011, 13th Circuit, Florida.

FILED
RECEIVED

UNITED STATES DISTRICT COURT
MIDDLE DISTRICT OF FLORIDA
OCALA DIVISION

2012 JAN 17 PM 3:41

CLERK, US DISTRICT COURT
MIDDLE DISTRICT OF FL
OCALA FLORIDA

ESTATE OF PENELOPE GILLESPIE,
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JAMES M. BARTON, II, Circuit Court Judge, and individually,
THE LAW OFFICE OF ROBERT W. BAUER, P.A.,
ROBERT W. BAUER,

Defendants.

_____ /

APPENDIX 3

Gillespie v. Robert W. Bauer, The Florida Bar File No. 2011-073(8B)

- Exhibit 1 Complaint of misconduct against Robert W. Bauer, July 15, 2010
- Exhibit 2 Mr. Rodems letter to the Bar in support of Bauer, August 13, 2010
- Exhibit 3 Response of Robert Bauer to the Florida Bar, August 18, 2010
- Exhibit 4 Rebuttal of Neil Gillespie to the Florida Bar, September 18, 2010
- Exhibit 5 Exhibits 1-19, Gillespie rebuttal of Mr. Bauer, exceeded 25 page limit
- Exhibit 6 Rebuttal of Gillespie to Mr. Rodems to the Florida Bar, Sep-20, 2010
- Exhibit 7 Letter of No Probable Cause, James Watson, Florida Bar, Mar-18-2011
- Exhibit 8 Gillespie email to James Watson, The Florida Bar, April 11, 2011
- Exhibit 9 Letter of Carl Schwait, Designated Reviewer, June 27, 2011
- Exhibit 10 Gillespie letter to Carl Schwait, Designated Reviewer, July 31, 2011
- Exhibit 11 Robert Bauer letter in support of Ryan Rodems for judge, January 4, 2010