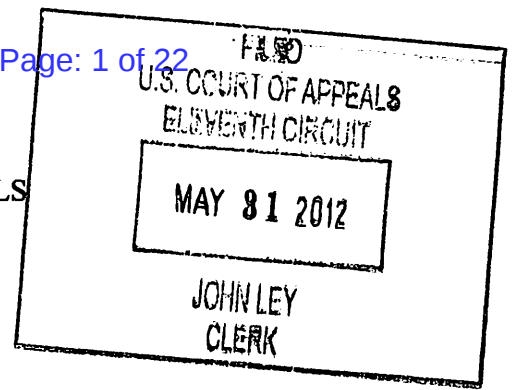


UNITED STATES COURT OF APPEALS
FOR THE ELEVENTH CIRCUIT



ESTATE OF PENELOPE GILLESPIE,
NEIL J. GILLESPIE,

Plaintiffs/Appellants,

vs.

CASE NO.: 12-11028-B

THIRTEENTH JUDICIAL CIRCUIT,
FLORIDA, et al.

Defendants/Appellees.

MOTION TO RECONSIDER, VACATE OR MODIFY ORDER

MOTION TO TOLL TIME

Appellants, Neil J. Gillespie ("Gillespie") and Estate of Penelope Gillespie, hereby move to reconsider, vacate or modify this Court's Order of May 7, 2012, and in support thereof state:

Motion to Reconsider: The Appeal is Not Frivolous

1. This appeal is not frivolous. The District Court has jurisdiction under RICO, the Racketeer Influenced and Corrupt Organizations Act. The First Amended Complaint filed January 17, 2012 (Doc. 15) is actually an incomplete RICO lawsuit based in part on a federal RICO lawsuit against The Florida Bar filed by attorney Mary Alice Gwynn on April 21, 2008, Lanson v. The Florida Bar, case no. 9:08-cv-80422-WJZ, U.S. District Court, S.D. of Florida. (Exhibit 1). The Complaint in Lanson alleges the following in "The Facts" section, page 3:

The Florida Supreme Court has delegated to The Florida Bar the function of "disciplining" its members in this integrated state bar system. The Supreme Court and The Bar have a fiduciary duty to the public as well as to members of The Bar to exercise that disciplining function through "honest services," afforded all involved in this disciplinary process - both the members of the public allegedly harmed by the unethical practice of law and lawyers who may be targeted for discipline - due process of law, equal protection, and all other constitutionally-guaranteed rights. The Florida Bar

unfortunately is being operated, and demonstrably so, in a fashion as to protect itself rather than the public and honest lawyers. It is presently violating federal laws in pursuit of illicit ends, just as the United States Supreme Court predicted would eventually become the case with integrated state bars such as Florida's.

Attorney misconduct, ratified by the courts, is the essence of Gillespie's lawsuits too. Gillespie plead verbatim the following from the Lanson jurisdiction section in his jurisdiction section:

"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)"

Like Lanson, Gillespie has filed meritorious Bar complaints with The Florida Bar against lawyers guilty of multiple breaches of The Florida Bar's Rules regarding ethics, which complaints The Bar has failed to properly adjudicate. Gillespie in his First Amended Complaint (Doc. 15) includes Appendix 3, Exhibits 1 through 11, which relate to Gillespie's Bar complaint against Mr. Bauer, Gillespie v. Robert W. Bauer, The Florida Bar File No. 2011-073(8B).

2. As set forth in the First Amended Complaint (Doc. 15), Gillespie alleged facts and partial jurisdiction for RICO claims although not identified as such. Gillespie was unable to compete the RICO complaint in a timely manner due to disability, time constraints, and lack of legal training. Gillespie believed the First Amended Complaint (Doc. 15) had to be filed and served by January 17, 2012 in compliance with Rule 4(m), FRCP, which requires service on the defendants within 120 days after the complaint is filed. January 17, 2012 was exactly 120 days after the Complaint (Doc. 1) was filed September 16, 2011. Gillespie planned to amend the complaint again after it was served to include the RICO claims, if necessary. In addition, Gillespie filed January 9, 2012 his Petition for Writ of Mandamus in the Florida Supreme Court, case no. SC11-1622, and was mentally exhausted from that effort. Gillespie was hopeful that the Florida Supreme Court would remedy the gross injustice in the Florida state court case, Gillespie v. Barker, Rodems & Cook, P.A., et al, 05-CA-7205, Hillsborough County, Florida. If the Florida

Supreme Court honestly considered his petition, Gillespie believed he could avoid RICO litigation.

3. Gillespie's First Amended Complaint (Doc. 15) alleged facts showing a "pattern of racketeering activity" by the Defendants, although not specifically cited under 18 USC § 1961 et seq., the RICO statute. RICO allows private civil action under 18 USC § 1964(c) Any person injured in his business or property by reason of a violation of section 1962 may sue therefor in any appropriate United States district court and shall recover threefold the damages he sustains and the cost of the suit, including a reasonable attorney's fee. **Gillespie, and the Estate of Penelope Gillespie, have been injured as to property, the right to their claims.** The Defendants are an enterprise under RICO, and their racketeering activity includes the following:

a. Gillespie established a cause of action for fraud, etc., in the state court action 05-CA-7205, against Barker, Rodems & Cook, P.A. for stealing \$7,143 during their prior representation of Gillespie in the Amscot case. (Appeal no. 01-14761-AA, C.A.11) (Doc. 15, ¶13). (Violation, 18 USC § 1341, Frauds and swindles; 18 USC § 1343 - Fraud by wire).

b. Ryan Christopher Rodems unlawfully represented his firm and partner against Gillespie, a former client, in the same matter as the prior representation. (Doc. 15, ¶13) (violation of Bar rules, and holding of McPartland v. ISI Inv. Services, Inc., 890 F.Supp. 1029, M.D.Fla., 1995.) During the course of the litigation Mr. Rodems harassed and intimidated Gillespie well beyond the scope of zealous advocacy, and prevented the lawful adjudication of this case. Rodems made numerous false statements of material fact to the court, failed to cooperate with opposing counsel, and disrupted the tribunal for strategic advantage. Mr. Rodems made false representations to the court to have an arrest warrant issued for Gillespie for the purpose of forcing a walk-away settlement agreement in the case, and to force a walk-away settlement

agreement in Gillespie's federal civil rights and ADA disability lawsuit. Mr. Rodems intentionally inflicted emotional distress on Gillespie, who is mentally ill. As such, Mr. Rodems violated the following:

- 18 USC § 1512 - Tampering with a witness, victim, or an informant
- 18 USC § 1513 - Retaliating against a witness, victim, or an informant
- 18 USC § 1951 - Interference with commerce by threats or violence

c. Mr. Rodems pursued vexatious litigation against Gillespie in the form of a libel counterclaim from January 19, 2006 through September 28, 2010, whereupon Rodems voluntarily dismissed the counterclaim without prejudice. (Doc. 15, ¶13). The vexatious counterclaim was to extort a settlement. Under the Hobbs Act, 18 U.S.C. § 1951, 'extortion' means the obtaining of property from another...under color of official right.”

d. Judge Claudia Isom, the second trial judge in the state court action, authored an essay, Professionalism and Litigation Ethics, 28 STETSON L. REV. 323 (Exhibit 10), that describes a racket or scheme where the Court favors intensive case management for lawyers to avoid costly sanctions, because judges are elected and need the support of lawyers. The essay acknowledges that lawyers behave badly in court, and this behavior is intended to churn more fees for themselves. In Gillespie's case the Thirteenth Judicial Circuit refused to provide him the same kind of intensive case management, but instead held Gillespie to impossible standards to slam him with \$11,550 in sanction, which in turn were used to extort a settlement. The \$11,550 award under section 57.105 is contrary to the law on discovery:

Pretrial discovery was implemented to simplify the issues in a case, to encourage the settlement of cases, and to avoid costly litigation. Elkins v. Syken, 672 So.2d 517 (Fla. 1996). The rules of discovery are designed to secure the just and speedy determination every action (In re Estes' Estate, 158 So.2d 794 (Fla. Dist. Ct. App. 3d Dist. 1963), to promote the ascertainment of truth (Ulrich v. Coast Dental Services, Inc. 739 So.2d 142 (Fla. Dist. Ct. App. 5th Dist. 1999), and to ensure that judgments are rested on the real merits of causes (National Healthcorp Ltd. Partnership v. Close, 787 So.2d 22 (Fla. Dist. Ct. App. 2d Dist. 2001), and not upon the skill and maneuvering of counsel. (Zuberbuhler

v. Division of Administration, State Dept. of Transp. 344 So.2d 1304 (Fla. Dist. Ct. App. 2d Dist. 1977).

Judge Isom also failed to disclose during a conflict hearing February 1, 2007 a conflict with husband Woody Isom who practiced law with Jonathan Alpert, who represented Gillespie in the Amscot case. Rodems, present at the hearing, failed to make the disclosure too, a conspiracy of silence to the detriment of Gillespie. Mr. Rodems and law partner Mr. Cook have given money contributions to Judge Isom's judicial campaign. In return Judge Isom acted with unlawful favor toward Rodems and his law firm. This racketeering activity is in violation of the following:

- 18 USC § 1341 - Frauds and swindles (mail fraud)
- 18 USC § 1343 - Fraud by wire
- 18 USC § 1346 - (fraud and honest services)
- 18 USC § 1512 - Tampering with a witness, victim, or an informant
- 18 USC § 1513 - Retaliating against a witness, victim, or an informant
- 18 USC § 1951 - (interference with commerce)

e. 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, in violation of the Florida Rules of Judicial Administration: (Doc. 15, ¶31)

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

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.

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.

Judge Barton negligently allowed Mr. Rodems to re-litigate matters already decided by the Order of Judge Nielsen entered January 13, 2006. (Res judicata). Judge Barton accepted as true false testimony by Mr. Rodems in the improper re-litigation of the Order of Judge Nielsen entered January 13, 2006. Judge Barton negligently allowed this case to languish for a period of one year

following the motion to withdrawal by Gillespie's lawyer Robert W. Bauer on October 13, 2008.

This racketeering activity is in violation of the following:

- 18 USC § 1341 - Frauds and swindles (mail fraud)
- 18 USC § 1343 - Fraud by wire
- 18 USC § 1346 - (fraud and honest services)
- 18 USC § 1512 - Tampering with a witness, victim, or an informant
- 18 USC § 1513 - Retaliating against a witness, victim, or an informant
- 18 USC § 1951 - (interference with commerce)

f. Judge Barton continued the pattern of racketeering activity in awarding \$11,550 in sanctions to Mr. Rodems. (Doc. 15, ¶13b). 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. Judge Barton entered Order Granting Defendants' Motion For Writ of Garnishment After Judgment July 24, 2008. On July 29, 2008 Mr. Rodems obtained Writs of Garnishment against Gillespie's bank accounts, and client account with Mr. Bauer. Rodems garnished \$598.22 from Gillespie's bank accounts with Park Avenue Bank, a Georgia bank, affecting interstate commerce. (Doc. 15, ¶13b). Mr. Rodems garnished Gillespie's Social Security Disability benefits, exempt from garnishment under section 222.18 Florida Statutes. Judge Barton failed to provide Gillespie accommodation under the ADA. Barker, Rodems & Cook, P.A. paid money to Regency Reporting Service, owned by Chere Barton, wife of Judge Barton, who acted with unlawful favor toward Mr. Rodems and his firm. This racketeering activity is in violation of the following:

- 18 USC § 1341 - Frauds and swindles (mail fraud)
- 18 USC § 1343 - Fraud by wire
- 18 USC § 1344 - Bank fraud
- 18 USC § 1346 - (fraud and honest services)
- 18 USC § 1512 - Tampering with a witness, victim, or an informant
- 18 USC § 1513 - Retaliating against a witness, victim, or an informant
- 18 USC § 1951 - (interference with commerce)

g. Gillespie retained Robert W. Bauer to defend Rodems' vexatious libel counterclaim.

Bauer was a referral from The Florida Bar. (Doc. 15, Count 2). Mr. Bauer was incompetent, see paragraph 48, below. Also see paragraphs 49 and 50 of the First Amended Complaint. (Doc. 15).

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).

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 of disregard by Mr. Bauer toward elderly and disabled clients. (Doc. 15, ¶51a-d). Mr. Bauer prevented Gillespie from testifying in his own case. (Doc. 15, page 8). Mr. Bauer charged Gillespie \$33,000 for representation then dropped the case. (Doc. 15, page 8). Mr. Bauer refused to sign a contingent fee agreement. In July 2009 Gillespie hired attorney Seldon Childers to review this matter, and he concluded the following about the original complaint. (Doc. 15, ¶65, 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.)

Based upon Mr. Childers' review, Mr. Bauer should not have undertaken this representation on an hourly fee basis. Even under the best scenario, this case would lose \$7,475.34. Under the worst scenario the case would lose \$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), Fla. Stat. (Doc. 15, ¶67) This racketeering activity is in violation of the following:

- 18 USC § 1341 - Frauds and swindles (mail fraud)
- 18 USC § 1343 - Fraud by wire
- 18 USC § 1344 - Bank fraud
- 18 USC § 1346 - (fraud and honest services)
- 18 USC § 1512 - Tampering with a witness, victim, or an informant
- 18 USC § 1513 - Retaliating against a witness, victim, or an informant
- 18 USC § 1951 - (interference with commerce)

h. Successor Judge Martha Cook conspired with Mr. Rodems to misuse and deny Gillespie judicial process under the color of law as set forth in the related federal action (5:10-cv-503). (Doc. 15, page 9). Judge Cook's pattern of racketeering activity is set forth in numerous pleadings and affidavits, including:

(A) The Complaint (Doc. 1) in the related case 5:10-cv-503, and accompanying exhibits.

(i) Exhibit 12 is Gillespie's affidavit of September 27, 2010 that shows Judge Cook refused to hear Gillespie's Emergency Motion to Disqualify Defendants' Counsel Ryan Christopher Rodems & Barker, Rodems & Cook, PA. Gillespie's affidavit shows Judge Cook falsified a record in violation of section 839.13(1) Fla. Stat., committed official misconduct in violation of section 838.022, Fla. Stat., and made a false statement in writing to mislead a public servant (the Clerk) in the performance of her official duty in violation of section 837.06, Fla. Stat., False official statements.

(ii) Exhibit 13 is Gillespie's affidavit of September 27, 2010 that shows Judge Cook falsified an description of Gillespie's panic attack July 12, 2010 in her Order dated July 29, 2010, in violation of section 839.13(1), Florida Statutes.

(B) Plaintiff's Verified Emergency Motion for Order of Protection and Removal. (Doc. 5) shows that Judge Cook accused Gillespie of feigning disability, ordered Gillespie removed

from a hearing September 28, 2010, then proceeded with the hearing ex parte to grant Mr. Rodems final summary judgment, and held Gillespie in contempt.

(C) Plaintiff's Voluntary Notice of Dismissal (Doc. 22) Extraordinary Circumstances, paragraphs 12, 13 and 14:

12. Judge Cook is knowingly and willfully harming Gillespie through a confusion technique. Judge Cook is doing this to help Mr. Rodems and Barker, Rodems & Cook prevail over Gillespie in the lawsuit over which she presides. Judge Cook knowingly introduced false information into the court record and other such as a coercive technique used to induce psychological confusion and regression in Gillespie by bringing a superior outside force to bear on his will to resist or to provoke a reaction in Gillespie. The CIA a manual on torture techniques, the KUBARK manual, calls this the Alice in Wonderland or confusion technique.

13. Dr. Huffer says misinformation by the court triggers symptoms of Legal Abuse Syndrome. The psychic injury is a barrier to due process because your body may be present in court but your mind is not, and that is a violation of civil rights and the ADA.

14. A letter from Dr. Huffer in support of Gillespie is attached to this notice. (Exhibit A). The letter shows that Gillespie has been subjected to ongoing denial of his accommodations and exploitation of his disabilities. Dr. Huffer wrote: "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." (Dr. Huffer, October 28, 2010, paragraph 2)

(D) Plaintiff's Notice of Filing Affidavits of Extraordinary Circumstances (Doc. 23) shows Judge Cook denied Gillespie civil rights, ADA rights, and acted with malice aforethought in harming Gillespie through the Intentional Infliction of Severe Emotional Distress. The notice filed the following five (5) affidavits of Neil J. Gillespie:

1. Affidavit of Neil J. Gillespie, October 28, 2010, *Judge Martha J. Cook, falsified record of Gillespie's panic attack; ADA*
2. Affidavit of Neil J. Gillespie, October 28, 2010, *Judge Martha J. Cook falsified an*

official court record, and unlawfully denied Gillespie due process on the disqualification of Ryan Christopher Rodems as counsel

3. Affidavit of Neil J. Gillespie, October 28, 2010, *Judge Martha J. Cook ordered Gillespie removed from the hearing of September 28, 2010, and accused Gillespie in open court of feigning illness; ADA*

4. Affidavit of Neil J. Gillespie, October 29, 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*

5. Affidavit of Neil J. Gillespie, October 29, 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*

Judge Cook failed to provide Gillespie accommodation under the ADA. Mr. Rodems and law partner Mr. Cook have given money contributions to Judge Cook's judicial campaign. In return Judge Cook acted with unlawful favor toward Mr. Rodems and his law firm. This racketeering activity is in violation of the following:

- 18 USC § 1341 - Frauds and swindles (mail fraud)
- 18 USC § 1343 - Fraud by wire
- 18 USC § 1344 - Bank fraud
- 18 USC § 1346 - (fraud and honest services)
- 18 USC § 1512 - Tampering with a witness, victim, or an informant
- 18 USC § 1513 - Retaliating against a witness, victim, or an informant
- 18 USC § 1951 - (interference with commerce)

i. On June 1, 2011 Judge James Arnold, in cooperation with Rodems, issued a politically-motivated warrant to arrest Gillespie to force a "walk-away" settlement in the state and federal actions. (Doc. 15, ¶13, page 9). As set forth in the First Amended Complaint, paragraph 16:

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.

This racketeering activity is in violation of the following:

- 18 USC § 1341 - Frauds and swindles (mail fraud)
- 18 USC § 1343 - Fraud by wire
- 18 USC § 1344 - Bank fraud
- 18 USC § 1346 - (fraud and honest services)
- 18 USC § 1512 - Tampering with a witness, victim, or an informant
- 18 USC § 1513 - Retaliating against a witness, victim, or an informant
- 18 USC § 1951 - (interference with commerce)
- 42 U.S.C. Chapter 114, Protection and Advocacy for Individuals with Mental Illness Act
- 42 U.S.C., Chapter 126, §§ 12101 et seq., Americans with Disabilities Act

j. For additional examples of Defendants' racketeering activity see:

- Plaintiff's Response to Order to Show cause, with exhibits. (Doc. 58)
- Unopposed Motion for Leave to Submit Addendum to Doc. 58 (Doc. 60)

3. On March 12, 2012 The Florida Supreme Court in SC11-1622 denied in part the petition as directed towards the district court; a writ of mandamus cannot be issued to direct the manner in which a court shall act in the lawful exercise of its jurisdiction. The Florida Supreme Court did not honestly consider the petition beyond that narrow question, and held "To the extent the petitioner seeks any additional relief, the petition is dismissed as facially insufficient."

4. In response to the dismissal as "facially insufficient", Gillespie moved March 19, 2012 for leave to file a motion for reconsideration on a single issue, to rescind the walk-away settlement agreement of June 21, 2011. Gillespie articulated to the Florida Supreme Court the misconduct of Ryan Christopher Rodems, misconduct that is the central issue in this seven-year

lawsuit. The motion showed that Mr. Rodems has unlawfully represented his firm and law partner in this action, and should have been disqualified as counsel April 25, 2006 during a motion to disqualify before Judge Richard Nielsen, pursuant to the holding of McPartland v. ISI Inv. Services, Inc., 890 F.Supp. 1029, M.D.Fla., 1995. McPartland has been a mandatory authority on disqualification in Tampa since entered June 30, 1995 by Judge Kovachevich.

McPartland v. ISI Investment Services, Inc., 890 F.Supp. 1029, (US District Court, MD of Florida, Tampa Division), June 30, 1995, District Judge Elizabeth Kovachevich:

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

A hearing on Plaintiff's Motion to Disqualify Counsel was held April 25, 2006. Mr. Rodems violated FL Bar Rule 4-3.3(c) when he failed to disclose to the tribunal legal authority in the controlling jurisdiction known to the lawyer to be directly adverse to the position of the client and not disclosed by opposing counsel, in this instance Gillespie pro se. Rodems failed to disclose McPartland v. ISI Inv. Services, Inc., 890 F.Supp. 1029, or U.S. v. Culp, 934 F.Supp. 394, legal authority directly adverse to the position of his client. Counsel had a responsibility to

fully inform the court on applicable law whether favorable or adverse to position of client so that the court is better able to make a fair and accurate determination of the matter before it.

Newberger v. Newberger, 311 So.2d 176.

5. Due to exhaustion, mental disability, and indigent, pro se status, Gillespie neglected to include in his motion information about Mr. Rodems' vexatious litigation, so Gillespie filed an addendum March 22, 2012. As described in paragraph 3, Rodems pursued vexatious litigation against Gillespie in the form of a libel counterclaim from January 19, 2006 through September 28, 2010, whereupon Rodems voluntarily dismissed the counterclaim without prejudice.

Gillespie retained attorney Robert W. Bauer, a referral from the Florida Bar Lawyer Referral Service, to defend against libel counterclaim. Mr. Bauer encourage Gillespie to reinstate his dismissed claims, charged Gillespie \$33,000 in legal fees, but later dropped the case.

U.S. Court of Appeals Case 01-14761-AA - Evidence of Mr. Rodems' Conflict

6. This U.S. Court of Appeals for the Eleventh Circuit has first-hand evidence in appeal no. 01-14761-AA of the facts underlying this case, and of Mr. Rodems' conflict with Gillespie. Rodems' law partner William J. Cook of Barker, Rodems & Cook, P.A. submitted to this Court in appeal no. 01-14761-AA a Joint Stipulation For Dismissal With Prejudice ("Stipulation") November 6, 2001 on Gillespie's behalf. (Exhibit 2). Clerk Thomas K. Kahn filed the Stipulation November 9, 2001 in this Court. The Stipulation shows Neil Gillespie as one of the Appellants. The accompanying Certificate of Interested Persons and Corporate Disclosure Statement in appeal no. 01-14761-AA certified the following persons and entities had an interest in the outcome of this 2001 case. (Relevant portion)

Albert, Jonathan L, Esq.
Amscot Corporation
Barker, Rodems & Cook, P.A.
Barker, Chris A., Esq.

Cook, William J., Esq.
Gillespie, Neil
Rodems, Ryan Christopher, Esq.

In 2001 Barker, Rodems & Cook, P.A., and Messrs. Barker, Rodems and Cook, represented Gillespie and others against Amscot Corporation. ("Amscot" litigation). Barker, Rodems & Cook, P.A. and Mr. Rodems later represent themselves against Gillespie in the state court case 05-CA-7205 related to the former Amscot litigation where Barker, Rodems & Cook, P.A. defrauded Gillespie in the settlement of the Amscot. This stipulation was not provided to Gillespie by Barker, Rodems & Cook, P.A. in conjunction with its representation of Gillespie in the Amscot case. Gillespie obtained a copy of this stipulation directly from this Court in 2006 through a public records request. (Exhibit 3). An Order filed December 7, 2001 in this Court shows Circuit Judges Edmondson and Barkett granted dismissal of appeal no. 01-14761-AA with prejudice, with the parties bearing their own costs and attorney's fees. (Exhibit 4). This Order and stipulation impeach the taking by Mr. Rodems and Barker, Rodems & Cook, P.A. of \$50,000 in "court-awarded fees and costs" on the settlement sheet dated "as of: October 31, 2001". (Exhibit 5). A copy of the docket in appeal no. 01-14761-AA is Exhibit 6.

7. Gillespie had a clear legal right, as set forth in his motion to the Florida Supreme Court to have his case lawfully adjudicated. In turn the circuit court had an indisputable legal duty to lawfully adjudicate the case. Had the circuit court disqualified Mr. Rodems as required by McPartland this case would have been resolved years ago. But the circuit court did not disqualify Mr. Rodems as required by McPartland. Instead Mr. Rodems prevented the lawful adjudication of this case, made numerous false statements of material fact to the court, failed to cooperate with opposing counsel, and disrupted the tribunal for strategic advantage. As set forth in the Petition SC11-1622, Rodems made false representations to the court to have an arrest warrant

issued for Gillespie for the purpose of forcing a walk-away settlement agreement in the case, and to force a walk-away settlement in Gillespie's federal civil rights and ADA disability lawsuit.

8. The Florida Supreme Court denied without comment Gillespie's motion for reconsideration on May 22, 2012. (Exhibit 7). The Florida Supreme Court, now without question, was fully advised of the central issue in this case - Rodems' misconduct - but refused to follow long-settled case law on disqualification, and the Rules Regulating the Florida Bar. Therefore it is clear that the Florida courts never had any intention of lawfully adjudicating Gillespie v. Barker, Rodems & Cook, P.A.. The walk-away settlement agreement of June 21, 2011 is a nullity because the result in this matter was a foregone conclusion, determined in advance by the courts: Gillespie must not prevail. Had Gillespie not signed the agreement, he would have remained in coercive custody indefinitely, and would have been further injured, or killed on some pretext.

Lawyers, Judges, Courts, and Government Units - "Enterprises" Under RICO

9. Governmental units, such as the New York City Civil Court, may be "enterprises" within the meaning of RICO. United States v. Angelilli, 660 F. 2d 23 (C.A.2 1981). A court may be an enterprise within the meaning of RICO. United States v. Bachelier, 611 F.2d 443, 450 (3d Cir.1979) (Philadelphia Traffic Court). Judges and lawyers may be "enterprises" within the meaning of RICO. U.S. v. Limas, 1:11-cr-00296, U.S. District Court, Southern District of Texas, Brownsville (Indictment of Judge Abel C. Limas March 29, 2011). In this matter, Mr. Rodems, Barker, Rodems & Cool, PA, Mr. Bauer and his law office, are "enterprises" within the meaning of RICO. The Thirteenth Judicial Circuit, The Florida Bar, the Hillsborough County Clerk, the Hillsborough County Sheriff, even the Florida Supreme Court, are "enterprises" within the meaning of RICO, to which judicial immunity or other immunity does not attach.

Scott W. Rothstein - A RICO Enterprise Within A Larger RICO Enterprise - The Florida Bar

10. Scott W. Rothstein operated a \$1.2 billion ponzi scheme from his Florida law firm. Rothstein operated his criminal enterprise as member of the Florida Bar, as member of a Florida Bar grievance committee, and as a member of the Fourth District Court of Appeal Judicial Nominating Commission. Rothstein had the confidence of Gov. Crist, and many other Florida officials. Rothstein's criminal enterprise collapsed in 2009. Rothstein surrendered to authorities December 1, 2009 and was arrested on RICO charges. Rothstein cooperated with the authorities and plead guilty to five federal crimes on January 27, 2010. Rothstein was sentenced to 50 years in prison. See U.S. v. Rothstein, 09-cr-60331, U.S. District Court, Southern District of Fla. Rothstein used his law firm as a racketeering enterprise with the tacit approval of The Florida Bar. As reported on Law.com by John Pacenti December 7, 2009, "Plenty of smoke surrounded attorney Scott Rothstein and his well-heeled Fort Lauderdale, Fla., law firm. But nobody called the fire department until it was too late." (Exhibit 8, Why Suspicious About Fla. Firm's Alleged Ponzi Scheme Weren't Voiced). Florida Bar president Jesse Diner is quoted in the story:

The worst-kept secret in the South Florida legal community this fall was that the firm Rothstein Rosenfeldt Adler spent more money on payroll than it had coming in the door. The firm spent three times more on advertising than the three biggest firms combined in South Florida.

"Obviously, that business model didn't work," said Florida Bar president Jesse Diner, a Fort Lauderdale attorney with Atkinson Diner Stone Mankuta & Ploucha. "A lot of it didn't make sense."

Nonlawyer Chuck Malkus saw what the Florida Bar choose to ignore:

Chuck Malkus, who runs Malkus Communications Group in Fort Lauderdale, served on the board of the charity Neighbors 4 Neighbors, which refused to accept a Rothstein donation. "This was building up for over a year, and many of us believe this is just the tip of the iceberg," Malkus said. "I wish I picked up the phone and called the FBI."

Attorney Ed Davis quantified the number of rogue Florida attorneys at 850, to which the public is more than vulnerable:

Ed Davis, a founding shareholder in Miami's Astigarraga Davis, said Rothstein's alleged actions didn't help the breach of trust issues the public always has with attorneys, "but you can't judge the entire profession by the acts of a few." Still, if there is only 1 percent of bad lawyers in a state with 85,000 attorneys, the public could be more than vulnerable, Jarvis said. "That is 850 rogue attorneys. That is a lot of rogues," Jarvis said.

David J. Stern - A RICO Enterprise Within A Larger RICO Enterprise - The Florida Bar

11. Attorney David J. Stern improperly abandoned 100,000 Florida foreclosure cases without consequence of court sanction or Bar reprimand. Stern's Plantation-based foreclosure practice was one of eight under investigation by the Florida attorney general for allegations of fabricating documents, slipshod paperwork and questionable fees - until it was determined that the Florida attorney general did not have jurisdiction. Only the Florida Bar can investigate lawyers, and no one can investigate law firms. Stern abandoned 10,000 foreclosure cases in Hillsborough County but was not sanctioned. This is outrageous when juxtaposed to the \$11,550 Gillespie was sanctioned in Hillsborough County for actions deliberately precipitated by Mr. Rodems. The reason for this disparity is clear: Mr. Stern is a member in good standing of the RICO "enterprise" known as The Florida Bar, and Gillespie is not.

12. Gillespie is a law abiding citizen and deserves honest services from judges and the courts. Gillespie is a college graduate, a former business owner, with no record of arrest, and no record of criminal conviction. When judges and the courts deny honest services to law abiding citizens, it is a violation of the public trust, reflects discredit upon the justice system, and suggests partiality in the consideration of litigants.

District Court Order Dated February 27, 2012 (Doc. 22)

13. District Judge Wm. Terrell Hodges denied by Order entered February 27, 2012 (Doc. 22) Gillespie's motion for leave to proceed on appeal in forma pauperis on the basis that the appeal was not taken in good faith. (Exhibit 13). The Order states "Prior to dismissing the case, the

Court provided the pro se Plaintiff multiple opportunities to demonstrate how the Court had subject-matter jurisdiction over what was, in essence, a Florida wrongful death action against nondiverse parties. (See Docs. 8-9, 11, 14-15). However the record does not support the District Court's claim that Gillespie was provided multiple opportunities, but instead shows conduct by the District Court inconsistent with the effective and expeditious administration of the business of the courts, and conduct prejudicial to the administration of justice.

14. For a period of sixty-one (61) days after Gillespie filed the Complaint, the District Court took no action under F.R.C.P. 12(h)(3) to dismiss the case because the parties were non-diverse. For a period of fifty-seven (57) days after Gillespie filed his notarized affidavit of indigency, the District Court took no action under 28 U.S.C. § 1915(e)(2) to dismiss the case. Therefore on November 16, 2011 Gillespie filed a motion to determine indigency, combined with a motion to change the designation to Track Three under Local Rule 3.05. (Doc. 6 & 7). (Exhibit 9).

15. November 17, 2011, the day after Gillespie moved for a determination of indigency, the Magistrate Judge issued a Report and Recommendation. (Doc. 8) The Court held "Under these circumstances it would be futile to grant Mr. Gillespie leave to amend and therefore, it is appropriate to dismiss this case without prejudice." Therefore Gillespie filed the First Amended Complaint (Doc. 15) January 17, 2012 as a civil rights complaint, with shadow RICO claims.

Right of Estate - 42 U.S.C. § 1982. Property rights to inherit, hold, convey personal property

16. At issue in this appeal is the right of the estate to inherit a security interest in the state court action, Gillespie v. Barker, Rodems & Cook, P.A., case no. 05-CA-7205. On November 19, 2008 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 state court action. The

assignment was prepared by attorney Jeffery Shelquist. The security interest became part of the Estate upon the death of Ms. Gillespie. The Estate has not been settled. (Doc. 15, pages 3-4).

Amendment of Pleadings

17. Florida case law permits amendment a complaint four times. A court should not dismiss a complaint without leave to amend unless the privilege of amendment has been abused or it is clear that the complaint cannot be amended to state a cause of action. Trotter v. Ford Motor Credit Corp. 868 So.2d 593. Procedural rule allowing amended pleadings to relate back to the date of the original pleading is to be construed liberally. Rule 1.190(c). Stirman v. Michael Graves Design 983 So.2d 626.

FRCP Rule 8(e) Construing Pleadings. Pleadings must be construed so as to do justice

18. The Federal Rules of Civil Procedure, Rule 8(e) Construing Pleadings, states “Pleadings must be construed as to do justice.” It could also be argued that to dismiss a civil rights action or other lawsuit in which a serious factual pattern or allegation of a cause of action has been made would itself be violative of procedural due process as it would deprive a pro-se litigant of equal protection of the law vis a vis a party who is represented by counsel. Pro se pleadings are held to a less stringent standard than pleadings drafted by attorneys and will, therefore, be liberally construed. Tannenbaum v. U.S., 148 F.3d 1262, C.A.11.Fla.,1998. When interpreting pro se papers, court should use common sense to determine what relief party desires. S.E.C. v. Elliott, 953 F.2d 1560, C.A.11.Fla.,1992. The Court of Appeals is to give liberal construction to the pleadings of pro se litigants. Albra v. Advan, Inc., 490 F.3d 826, C.A.11.Fla., 2007. Pro se pleadings are held to a less stringent standard than pleadings drafted by attorneys and will, therefore, be liberally construed. Miller v. Donald, 541 F.3d 1091, C.A.11.Fla.,2008. Pro se

pleadings are held to "less stringent standards" than those drafted by attorneys. Haines v. Kerner, 404 U.S. 519, 520 (1972) (per curiam).

ADA - Americans With Disabilities Act

19. Gillespie moved for accommodation under the Americans With Disabilities Act (ADA) in this Court of Appeals April 7, 2012. Gillespie is confused as to whether this Court's Order of May 7, 2012 responds to his ADA accommodation request. In any event, on April 10, 2012 Chris Wolpert, Chief Deputy of Operations, U.S. District Court for the Northern District of California, informed Gillespie by email that "My understanding is that the Americans With Disabilities Act does not apply to the Federal Judiciary." Gillespie determined that Mr. Wolpert is correct, the ADA does not apply to the federal judiciary, so it appears Gillespie should be given leave to amend his disability request under the appropriate law.

Motion to Suspend Rules Pursuant to Rule 2, Federal Rules of Appellate Procedure

20. Gillespie moves pursuant to FRAP Rule 2 to suspend for good cause any rule that would prevent this Circuit Court from considering this Motion to Reconsider, Vacate or Modify. In support thereof Gillespie states his mental ability has declined due to "permanent secondary wounds" described in the October 28, 2010 letter of Dr. Huffer, injuries which resulted from the intentional infliction of emotional distress, or torture, by private attorneys, judges and people acting on the part of the state.

21. Gillespie moves to toll time.

RESPECTFULLY SUBMITTED May 30, 2012.



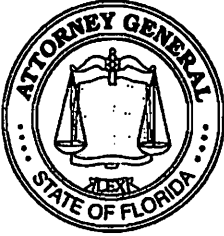
Neil J. Gillespie, pro se
8092 SW 115th Loop
Ocala, Florida 34481
(352) 854-7807

Certificate of Service

I HEREBY CERTIFY that a copy of the foregoing was provided May 30, 2012 by email only to Catherine Barbara Chapman (catherine@guildaylaw.com), Guilday, Tucker, Schwartz & Simpson, P.A. 1983 Centre Pointe Boulevard, Suite 200. Tallahassee, FL 32308-7823, counsel for Robert W. Bauer, et al.

NOTE: Pam Bondi, Attorney General, was not served on behalf of the Thirteenth Judicial Circuit, Florida, et al, pursuant to a response by Diana R. Esposito, Assistant Attorney General. Ms. Esposito clarified in a letter dated May 18, 2012 that "Our office has not filed an appearance on behalf of any of the defendants in this matter.", and based on the order of dismissal, "[T]he Attorney General's Office would not become involved at this stage of the proceedings in any case." A copy of the letter is attached.


Neil J. Gillespie



PAM BONDI
ATTORNEY GENERAL
STATE OF FLORIDA

Case: 12-11028 Date Filed: 05/11/2012 Page 12 of 22
OFFICE OF THE ATTORNEY GENERAL
General Civil Litigation – Tampa Bureau
Diana R. Esposito
Chief-Assistant Attorney General
501 East Kennedy Blvd., Suite 1100
Tampa, FL 33602
Phone (813) 233-2880 Fax (813) 233-2886
<http://www.myfloridalegal.com>

May 18, 2012

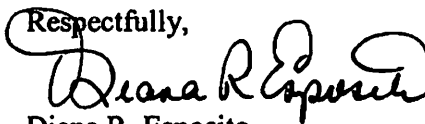
Mr. Neil J. Gillespie
8092 SW 115th Loop
Ocala, Florida 34481

Re: Neil Gillespie v. Thirteenth Judicial Circuit et al.
Appeal #12-11028-B
Your letter dated May 3, 2012

Dear Mr. Gillespie:

Thank you for your letter of May 3, 2012 addressed to Attorney General Bondi. You have asked the question of whether or not the Florida Attorney General represents the Thirteenth Circuit in your appeal bearing docket number 12-11028-B. Our office has not filed an appearance on behalf of any of the defendants in this matter.

I can see by looking at the docket in the U.S.D.C. – Middle District of Florida, your initial complaint was dismissed for, among other reasons, failure to make service of process on any of the defendants. Since that is the Order of the Court the Attorney General's Office would not become involved at this stage of the proceedings in any case. I hope this answers your question.

Respectfully,

Diana R. Esposito
Assistant Attorney General

DRE

UNITED STATES COURT OF APPEALS
FOR THE ELEVENTH CIRCUIT

ESTATE OF PENELOPE GILLESPIE,
NEIL J. GILLESPIE,

Plaintiffs/Appellants,

vs.

CASE NO.: 12-11028-B

THIRTEENTH JUDICIAL CIRCUIT,
FLORIDA, et al.

Defendants/Appellees.

APPENDIX - MOTION TO RECONSIDER, VACATE OR MODIFY ORDER

- | | |
|--------------------------|---|
| <u>Exhibit 1</u> | <u>Lanson v. The Florida Bar</u>, 08-80422-Civ-ZlochSnow, Apr-21-2008 |
| <u>Exhibit 2</u> | C.A.11, Case No. 01-14761-AA, Joint Stipulation for Dismissal with Prejudice |
| <u>Exhibit 3</u> | Gillespie's records request to the US Court of Appeals, April 2006 |
| <u>Exhibit 4</u> | C.A.11, Case No. 01-14761-AA, Order of December 7, 2001 |
| <u>Exhibit 5</u> | Barker, Rodems & Cook, P.A., Amscot Closing Statement |
| <u>Exhibit 6</u> | C.A.11, Case No. 01-14761-AA, Docket |
| <u>Exhibit 7</u> | Florida Supreme Court, Denied reconsideration, SC11-1622 |
| <u>Exhibit 8</u> | Law.com, Scott Rothstein story by John Pacenti, December 7, 2009 |
| <u>Exhibit 9</u> | Plaintiff's Motion to Determine Indigency, District Court Doc. 9 |
| <u>Exhibit 10</u> | PROFESSIONALISM AND LITIGATION ETHICS, 28 Stetson L. Rev. 323 |

FILED ELECTRONIC	APR 21 2008 STEVEN M. LARIMORE CLERK U.S. DIST. CT. S.D. OF FLA. - MIAMI
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**IN THE UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF FLORIDA**

CASE NO.: _____

MERYL LANSON, individually,
MARY ALICE GWYNN, individually,
And MARY ALICE GWYNN, P.A.,
A professional association,

08-80422-Civ-ZLOCH/SNOW

Plaintiffs,

v.

THE FLORIDA BAR, JOHN HARKNESS,
JOHN BERRY, KEN MARVIN,
RAMON ABADIN, JULIET ROULHAC,
FLORIDA LAWYERS MUTUAL INSURANCE
COMPANY,

Defendants.

**COMPLAINT FOR CAUSES OF ACTION ARISING UNDER
FEDERAL RICO AND ANTI-TRUST LAWS, AND CLASS ACTION**

COMES NOW the Plaintiffs, MERYL LANSON, MARY ALICE GWYNN and
MARY ALICE GWYNN, P.A., and state as follows:

THE PARTIES

Plaintiff, Meryl Lanson (Lanson) is a citizen of the United States, a resident of Palm Beach County, Florida, and more than eighteen years of age. She has filed meritorious Bar complaints with The Florida Bar against lawyers guilty of multiple breaches of The Florida Bar's Rules regarding ethics, which complaints The Bar has improperly refused to process fully.

Plaintiff, Mary Alice Gwynn (Gwynn) is a citizen of the United States, a resident of Palm Beach County, Florida, more than eighteen years of age, and a Florida lawyer

practicing in Palm Beach County, Florida, and a member in continuous good standing with The Bar since she commenced her practice in 1991.

Plaintiff, Mary Alice Gwynn, P.A. is a licensed. professional association doing business in Palm Beach County, Florida since 1993.

Defendant, The Florida Bar, claims to be the state's "official arm" of the Florida Supreme Court, headquartered in Tallahassee, Leon County, Florida, operating through its Board of fifty-two Governors, designated by the Supreme Court as its "disciplinary" agency.

Defendant, John Harkness (Harkness), is a citizen of the United States, a resident of Florida, the long-time Executive Director of The Florida Bar, and as such he is the chief executive officer of The Bar, working in Tallahassee, Leon County, Florida. He also serves on the Board of Directors of Defendant Florida Lawyers Mutual Insurance Company (FLMIC).

Defendant, John Berry (Berry), is a citizen of the United States, a resident of Florida, the Legal Division Director of The Florida Bar who reports to Harkness, and working in Tallahassee, Leon County, Florida. He also helped author the American Bar Association's McKay Commission Report regarding state disciplinary processes, whose key recommendations The Bar, now under Berry's guidance, is violating.

Defendant, Ken Marvin (Marvin), is a citizen of the United States, a resident of Florida, Director of Lawyer Regulation of The Bar who reports directly to Berry, and supervises all "discipline" of Florida lawyers.

Defendant, Ramon Abadin (Abadin), is a citizen of the United States, a resident of Miami-Dade County, Florida, a member lawyer of The Florida Bar, a Bar Governor, and a Director on the Board of defendant FLMIC.

Defendant, Juliet Roulhac (Roulhac), is a citizen of the United States, a resident of Miami-Dade County, Florida, a lawyer member of The Florida Bar, a Bar Governor, and a Director on the Board of defendant FLMIC.

Defendant, FLMIC, is a mutual insurance company incorporated in the State of Florida, headquartered in Orlando, Florida, and created by The Florida Bar in 1989, purportedly to provide malpractice insurance policies to Florida lawyers.

JURISDICTION

This court has subject matter jurisdiction pursuant to 18 USC 1961 (RICO), 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), and Rule 23, Federal Rules of Civil Procedure (class action).

VENUE

This court affords the proper venue for this action, given the locations of the various parties, noted above, and in light of the fact that these various causes of action have arisen in the federal courts' Southern District of Florida because of acts in this geographic area.

THE FACTS

The Florida Supreme Court has delegated to The Florida Bar the function of "disciplining" its members in this integrated state bar system. The Supreme Court and The Bar have a fiduciary duty to the public as well as to members of The Bar to exercise that disciplinary function through "honest services," afforded all involved in this disciplinary process—both the members of the public allegedly harmed by the unethical practice of law and lawyers who may be targeted for discipline—due process of law, equal protection, and all other constitutionally-guaranteed rights. The Florida Bar unfortunately is being operated,

and demonstrably so, in a fashion as to protect itself rather than the public and honest lawyers. It is presently violating federal laws in pursuit of illicit ends, just as the United States Supreme Court predicted would eventually become the case with integrated state bars such as Florida's.

When Miami lawyer Miles McGrane, was President of the Bar in 2003, The Bar commissioned a poll/survey to assess what Bar members thought of the job The Bar was doing with its discipline. A significant number of members surveyed opined that discipline was not being meted out even-handedly based upon what respondent or potential respondent had done, but rather based upon who the respondents were and how well they were connected within The Bar's leadership hierarchy. The Bar was perceived by its own members to be looking the other way if a lawyer enjoyed advantageous relationships with those making or influencing disciplinary decisions.

The following comments from lawyers are related because they indicate not only the concern about a lack of fair treatment and a lack of equal protection in The Bar's disciplinary process, but also the fact that The Bar was, and has been, fully aware of the problem. This from the *Palm Beach Post* on March 5, 2004:

Broward County Assistant State Attorney Craig Dyer called the grievance process "irrational," "knee-jerk" and "heavy-handed."

Gabe Kaimowitz, a Gainesville lawyer and longtime Bar critic, wrote that the association isn't capable of investigating itself. "If it wants the truth, I'm afraid the organization can't handle it," Kaimowitz wrote. "My own personal hypothesis is that the system favors the 'white, Christian good-old-boys.' "

Roshani Gunewardene of Altamonte Springs wrote that, if anything, the Bar may be too zealous in pursuing obvious vendettas from losing or opposing parties in cases. "The grievance system should not be used to harass and humiliate any member of the Bar," Gunewardene's e-mail said.

In 2000, state Rep. Fred Brummer, R-Apopka, proposed a constitutional amendment to take regulation of lawyers away from the Bar and the Florida

Supreme Court. The proposal fizzled, but Brummer feels it got the Bar's attention.

"It's not just the fox guarding the hen house, it's the fox deciding when the hens can come and go," Brummer said. "I think it's important that the appearance of cronyism or the good-old-boy network present in the system is removed."

Brummer's favorite example is the case of a former legislative colleague, Steven Effman. The former Broward County lawmaker and mayor of Sunrise was suspended for 91 days last April after he was accused of having sex with three divorce clients, including one woman who alleged she was billed for their intimate time together.

Brummer said Effman got off easy because he had a close relationship with the Bar and because of his position in the legislature.

Bar President McGrane and The Bar created a Special Commission on Lawyer Regulation ostensibly to suggest improvements to The Bar's disciplinary system. A Jacksonville lawyer and Bar Governor, Hank Cox, was the chair of this Special Commission, and one of the problems to be addressed was disparate discipline based upon who Bar respondents were rather than what they had allegedly done.

The Commission issued its report in 2006 as Hank Cox became President of The Bar, and it failed to address this disparate discipline problem.

More than a decade earlier, in February 1992, the American Bar Association's McKay Commission issued a report entitled *Lawyer Regulation for A New Century: Report of the Commission on Evaluation of Disciplinary Enforcement*. One of the nine members of the McKay Commission that issued this Report to the ABA was John Berry, a defendant herein, who was at the time overseeing discipline for The Florida Bar.

The McKay Report addresses the chronic shortcomings of disciplinary mechanisms and methods of integrated state bars, and it made twenty-one recommendations for improvements in state bar disciplinary systems. Four of the twenty-one recommendations

by the ABA McKay Commission unequivocally state that any involvement of any kind by a Bar and by its officials and Governors in the disciplinary process vitiates the entire process and renders it suspect. **Discipline, according to the ABA McKay Commission, must be the sole domain of the judiciary and delegated in no fashion whatsoever to a Bar.**

Again, Defendant, John Berry, then of the Florida Bar and now of the Florida Bar, along with eight other individuals, authored the aforementioned McKay Commission Report. John Berry now oversees Defendant, Ken Marvin, who is the Director of Lawyer Regulations and is ultimately in charge of overseeing all disciplinary matters. For example, sitting on every single grievance committee is a Bar Governor acting as a "designated reviewer." This is the most important position in the entire grievance process. This Bar Governor has a direct line of communication to the entire Board of Governors and to Bar officials such as Harkness, Berry, and Marvin. This flies directly in the face of the core recommendation of the ABA McKay Commission that there must be a "Chinese wall" between The Bar's operatives and discipline. It must be solely the domain of the judiciary.

Another of the twenty-one formal recommendations (Recommendation #3) of the ABA's McKay Report is that "lawyer discipline" must *protect the public* and not lawyers collectively or individually, as is often, correctly, perceived to be the case.

The Florida Bar, despite the ABA's McKay Report, since its issuance in 1992, has continued to violate these core recommendations, so much so that The Florida Bar is now arguably the most prominent of all state bars in its flouting of the ABA's McKay Report.

Two years prior to the issuance of the ABA McKay Report, the United States Supreme Court unanimously held in *Keller v. State Bar of California*, 496 US 1 (1990), adopting in effect the prescient minority Justices' dissents in *Lathrop v. Donohue*, 367 US

820 (1961), that integrated state bars must not venture into political and ideological waters but stick with the narrow, legitimate functions of integrated state bars. To do otherwise these bars would become, as Justice Douglas pointed out in *Lathrop*, “goose-stepping brigades” that serve neither the public nor the profession.

The Supreme Court has warned all integrated state bars, then, that those that do not stick with their narrow functions will be treated as if they were “guilds,” and they would suffer the same historical fate of guilds—abolition. Guilds have gone the way of the dodo because they were correctly identified as restricting trade, harming the public, protecting professional wrongdoers from accountability, and denying certain professionals the right to earn a living unimpeded by interference from the guild.

In 1989, The Bar created the Florida Lawyers Mutual Insurance Company, herein called FLMIC, to provide, purportedly, malpractice insurance to Florida lawyers. Indeed, if one goes to the current Internet web site for FLMIC, one finds a remarkable “Welcome” from defendant Harkness explaining the long-standing relationship between The Bar and FLMIC. Harkness does this despite the fact that the FLMIC is supposed to be a private corporation with no ties to The Bar. The FLMIC web site found at <http://www.flmic.com> makes it clear to anyone viewing it that there is a cozy, ongoing relationship between it and The Bar. The site even links to certain Florida Bar sites.

Indeed, at a recent mediation presided over by former Miami-Dade Chief Judge Gerald Wetherington, a claims adjustor for FLMIC was greeted by the Judge with the words, “I know you. You’re from The Bar.”

Serving on FLMIC’s Board of Directors is not only Harkness, but also Defendant Abadin and Defendant Roulhac, both Bar Governors. Serving also on the FLMIC Board is

Alan Bookman, Bar President immediately before the tenure of the aforementioned Hank Cox.

Harkness, Abadin, and Roulhac have a fiduciary duty to The Bar, to its members, and to the public in the discharge of their "Bar" duties, particularly regarding "discipline." Yet, they also have a fiduciary duty to FLMIC and its mutual policyholders. These two sets of fiduciary duties are in clear conflict with one another, not only conceptually but in fact.

Florida Bar members who are FLMIC policy holders are shielded from discipline by The Bar. By buying FLMIC policies they purchase, in effect, discipline protection, avoiding it altogether or securing more lenient discipline.

One Bar respondent stated, "I was told by The Bar that if I purchased FLMIC insurance my 'disciplinary problems would go away.'"

Plaintiffs are aware of specific instances in which certain Florida lawyers, clearly guilty of egregious ethics breaches in violation of Florida Bar Rules, have been protected by The Bar from discipline because of their holding FLMIC policies. The result of this protection of FLMIC policyholders is to deny members of the public, who have formally complained to The Bar, a disciplinary remedy.

Further, lawyers who have no malpractice insurance or who have malpractice insurance coverage with other carriers, do not enjoy this "discipline protection" from The Bar, and they are more likely to be disciplined and disciplined more severely. Thus, the Defendants are ensnared in a commercial relationship with an insurer that is bearing rotten fruit in a regulatory setting. The guilty are being exonerated and the innocent are being unfairly targeted.

The twentieth century saw the rise of a deadly ideology known as "fascism," one aspect of which was the melding of the state with commercial interests, which is the facet of fascism known as "corporatism." See <http://en.wikipedia.org/wiki/Corporatism>. What the Defendants have done is fall into this fascist trap by blurring the lines between government and commerce in such a way as to increase the power of both, and at the expense of individual liberties.

The illicit *reason* for the wedding of this governmental state function—the disciplining of lawyers—to what is supposed to be a solely private sector commercial activity—the sale and purchase of malpractice insurance—is that blocking the discipline of a lawyer, who is an FLMIC policyholder, serves to help insulate him/her from a malpractice action. A member of the public, told by The Bar that it will not discipline a lawyer guilty of ethics breaches, serves as a powerful disincentive to that complaining citizen to take the next step and bring a malpractice action. If The Bar itself will not proceed, with all of its resources, why should a single citizen do so, the victim reasons. Further, FLMIC and its Directors, including the three defendant Bar Governors Harkness, Abadin, and Roulhac, use their influence to prevent adverse ethics findings by The Bar, and thus such would-be findings be used as collateral proof of malpractice against that lawyer in any civil litigation.

Thus fiduciaries, who have a duty to pursue discipline fairly and equitably, with no respect whatsoever as to who the respondent is, have a powerful commercial disincentive to do so. What they do have is a fiduciary duty to protect FLMIC and its policyholders. The aphorism that a "man cannot serve two masters" undergirds the very concept, in our system of law, as to what a fiduciary is. All of the Defendants have breached this duty to serve only one master by virtue of their improper relationship between FLMIC and The Bar. No lawyer

or any other person who understands "conflict of interest" could possibly think that Bar operatives should be sitting on the Board of FLMIC.

Often conspiracies are proven and then unravel, because documents called "smoking guns" are discovered and disgorged from hidden sources, that has now become evident in this scandal pertaining to The Bar's and FLMIC's racket. Plaintiffs have a smoking gun that has appeared in the light of day by the hand of the Defendants themselves. Attached hereto as Exhibit A, and made a part hereof, is a large color advertisement that has been regularly and recently gracing the pages of The Bar's own in-house publication, *The Florida Bar News*. It is an ad for Defendant, FLMIC. Its message proves the Plaintiffs' case is noteworthy and harmful to the Plaintiffs and the public at large, for the following reasons patent in the ad itself, to-wit:

The advertisement shares with all Florida Bar members its slogan, at the lower left-hand corner of the ad: "We've built our reputation on vigorously defending yours." The related bullet point down the right-hand side reads "Aggressive defense of your reputation." FLMIC is thus using The Florida Bar's publication to send the message that it can be counted upon to "vigorously" mount an "aggressive defense" of any claim brought by any client who asserts that he has been harmed by the malpractice of a lawyer. By contrast, other state bars are increasingly moving toward mandatory lawyer malpractice insurance as a measure to protect the public by compensating them by these means. Oregon has mandatory lawyer malpractice insurance—not to protect Oregon lawyers and their "reputations", but rather to compensate victims of it.

This message and this mindset—FLMIC will do what is necessary to defeat a client's claim—is bad enough. But here is the proof of the insurance and discipline racket in which

all the Defendants are involved. The FLMIC ad proclaims in its last bullet point as to why Florida Bar members should purchase their liability coverage product rather than that provided by dozens of other insurers:

• Defense for disciplinary proceedings

FLMIC is thus making one of the services it provides under the policy full defense for any lawyer charged with a disciplinary breach by a client. This is significant in at least two regards: 1) it is an acknowledgment of the linkage between malpractice and discipline and the keen interest of FLMIC in defeating any grievance brought because of its impact upon any finding of liability for malpractice, and 2) it is a promise that FLMIC, which the first bullet point notes was "Created by The Florida Bar for your benefit", will do what it can to defeat any grievance brought by the public to The Bar's attention! Why in the world should a company created by The Bar be involved in thwarting what is supposed to be The Bar's regulatory function intended to protect the public?

This remarkable ad, then, proves the Plaintiffs' point: FLMIC has been created by The Florida Bar to defeat grievances brought by the public. It could not be clearer. It says precisely this on the pages of *The Florida Bar News*. Any lawyer not understanding this message—that to buy this Bar-created insurance product buys one "discipline protection"—has missed the unmissable.

Plaintiff, Gwynn, has been wrongly singled out for "discipline" by The Bar, with the collaborative efforts of all of the Defendants, in large part because she is not an FLMIC policyholder. Subsequently, Gwynn and Gwynn, P.A. have suffered damages. Plaintiff, Lanson, a Bar complainant, has been denied "honest services" in the processing of her formal

Bar complaints by a conspiracy of all of the Defendants in that certain Florida lawyers who acted in their professional capacities unethically were protected from discipline by The Bar by virtue of the fact that they were FLMIC insureds.

More specifically, Plaintiff, Meryl Lanson, beginning in 1998 filed bar complaints against Florida attorneys for a litany of egregious ethical violations, including but not limited to, perjury and fraud. The Bar thwarted the disciplinary process by labeling the grievance a "fee dispute." It was not.

The complained of ethics violations, according to The Bar's own Rules, were very serious and, according to Bar guidelines, were deserving of severe punishment. Nevertheless, the complaint never made it past a perfunctory intake process.

Here is a listing of the ethics breaches by Lanson's attorneys, which The Bar refused even to investigate:

Rule 4-1.1	Competence
Rule 4-1.3	Diligence
Rule 4-1.4	Communication
Rule 4-1.5	Fees for Legal Services
Rule 4-1.7	Conflict of Interest; General Rule

Duty to Avoid Limitation on Independent Professional Judgment.

Explanation to Clients

Loyalty to a Client – Loyalty to a Client is also impaired when a lawyer cannot consider, recommend, or carry out an appropriate course of action for the client because of the lawyer's other responsibilities or interests. The conflict in effect forecloses alternatives that would otherwise be available to the client.

Lawyer's Interests – The lawyer's own interests should not be permitted to have adverse effect on representation of a client.

Conflicts in Litigation – Subdivision (a) prohibits representation of opposing parties in litigation. Simultaneous representation of parties whose interests in litigation may conflict, such as co-Plaintiffs or co-Defendants, is governed by subdivisions (b) and (c). An impermissible conflict may exist by reason of substantial discrepancy in the parties' testimony, incompatibility in positions in relation to an opposing party, or the fact that there are substantially different possibilities of settlement of the claims or liabilities in question.

Rule 4-1.8 Conflict of Interest: Prohibited and other Transactions.

Settlement of Claims for Multiple Clients.

Rule 4-1.16 Declining or Terminating Representation.

In 1999, when the plaintiff and her husband, Norman Lanson, filed their malpractice action against these attorneys they learned that the attorneys were insured by FLMIC and that one of the attorneys was a defense attorney employed by FLMIC. It became obvious as to why The Bar's judgment and its failure to discharge its fiduciary duty as to discipline, was compromised by its commercial relationship with FLMIC. There is a clear disincentive for The Bar to punish attorneys insured by the Bar's created carrier, as such punishment could be additional support and collateral proof for a claim arising out of legal malpractice. The paper trail of communications between Lanson, The Florida Bar, its Board of Governors, The Supreme Court of Florida, and Florida Lawyers Mutual Insurance Company outlines the devastating affect this improper relationship among The Bar, FLMIC, and the other Defendants has on the unsuspecting public. Lanson has discovered evidence that theirs was not an isolated incident, but in fact, there is a class of individuals similarly harmed.

Plaintiff, Mary Alice Gwynn, is another victim of the illicit relationship among the Defendants, although the harm emanating therefrom has taken a different, albeit related, form. In 2004, Bar complaints were filed against Gwynn by a Florida attorney who enjoyed a relationship with The Bar's outside investigator assigned to the case. This attorney had threatened Gwynn with a Bar complaint, and then filed it. The lawyer complainant's threat to file a Bar complaint was, of course, an act in violation of Florida Bar Rule 4-3.4(h), as he made that threat solely to gain advantage in a civil proceeding.

The Bar complaint resulted in a finding of "probable cause" against Gwynn because of a) the relationship between the complainant and The Bar prosecutor, b) Gwynn's status of

not being an FLMIC policyholder, and c) The Bar's becoming aware of her relationship with the plaintiff herein, Lanson.

More recently, the same lawyer complainant has written Gwynn and told her that if she seeks certain relief in litigation in which he and Gwynn are involved, he will file a new Bar complaint. Such a threat, of course, is a criminal act—extortion—by this Bar complainant. Despite this use of a criminal threat, The Bar has decided to proceed nevertheless against the victim of it, Ms. Gwynn.

Plaintiff, Mary Alice Gwynn, P.A. has suffered financial losses as a result of the Defendants' actions against Gwynn.

COUNT I: RACKETEERING

Plaintiffs adopt and incorporate the foregoing facts into this count.

18 USC 1961, *et sequitur*, affords certain civil remedies to persons harmed by racketeering activities. The Plaintiffs seek all forms of relief afforded them under the Federal "RICO Act."

The multiple "predicate acts" of racketeering engaged in by Defendants include, but are not necessarily limited to: bribery, extortion, mail fraud, obstruction of justice, interference with commerce, fraud, including but not limited to violations of 18 USC 1951, as well as deprivation by fraud of honest services, as set forth in 18 USC 1346.

More specifically, both The Bar and FLMIC are engaged, one with the other and in conspiracy with the individuals who are Defendants herein, in a pattern of racketeering activity whereby lawyers are prosecuted by The Bar for "disciplinary" reasons if they are not FLMIC insured. The offering and purchase of an FLMIC malpractice insurance policy constitutes extortion.

FLMIC directors' fees are paid by FLMIC to Defendants Harkness, Rabadin, and Roulhac, who have control, along with other Bar operatives, over The Bar's disciplinary machinery, in order to assure that discipline is not meted out by The Bar against Florida lawyers who are FLMIC insured.

In thwarting proper discipline of FLMIC insured, there is an obstruction of justice, within the clear meaning of the RICO statute, by all of the Defendants.

Further, all of the Defendants have conspired to interfere with commerce, as a distinct commercial advantage by FLMIC over other legal malpractice carriers, by this racketeering activity that benefits FLMIC and its insured, at the expense of the public and of unfairly targeted Florida lawyers.

The use by all Defendants of the United States Postal Service, as well as by other means of communication, in furtherance of this pattern of racketeering activity constitutes mail fraud. More generally, the Defendants have engaged in fraud by presenting themselves as if they were fiduciaries providing services and products; when in fact, they have been collaborating and conspiring to enrich themselves and their racketeering enterprises. See 18 USC 1951.

Finally, but perhaps not exhaustively, the Defendants have deprived both the public and non-FLMIC insured "honest services," in violation of 18 USC 1346 by pretending to exercise legitimate regulatory functions, under color of state law, when in fact they have been actively harming the public by protecting wrongdoers and punishing innocent lawyers, all for commercial gain.

WHEREFORE, Plaintiffs seek all appropriate relief available to them against all Defendants, such relief being set forth in 18 USC 1961, *et sequitur*, for all of the aforementioned racketeering activities set forth.

COUNT II. ANTI-TRUST

Plaintiffs adopt and incorporate the foregoing facts into this count.

Section 15 of Chapter One of Title 15 of the United States Code affords individuals harmed by violations of federal anti-trust laws certain remedies which the Plaintiffs herein seek against the Defendants herein.

The Defendants have all conspired to restrain trade or commerce in pursuit of a monopoly in violation of Section 1, Chapter One, Title 14, United States Code.

More specifically, the Defendants, in establishing FLMIC and in operating it in such a fashion as to improperly wed a governmental function under color of state law, to their commercial interests, have sought and secured a competitive advantage over other legal malpractice insurers in the state by virtue of providing "discipline protection" to their insured, which these other insurers cannot and would not provide.

Further, the Defendants, have restrained trade with and through FLMIC to deny lawyers their right to earn a living as lawyers in the legal profession, on an equal footing with other lawyers in the state.

The effect of this conspiracy, in this regard, is to harm not only other insurers and certain lawyers, but also to deprive the legal services-consuming public of the representation of such lawyers whom they would otherwise hire.

All of the Plaintiffs, then, by virtue of being either lawyers or clients have been harmed by the Defendants' restraint of trade and monopolistic practices involving FLMIC.

WHEREFORE, all Plaintiffs seek, to the extent allowable under Section 15, Chapter One, Title 15 all damages and all other relief allowable thereunder.

CERTIFICATION OF CLASS

Under Rule 23, Federal Rules of Civil Procedure, the three named Plaintiffs herein are typical representatives of a class of individuals yet unknown, who are either members of the public, such as Lanson, who have been harmed by lawyers by means of breaches of The Florida Bar's Rules of Professional Responsibility and whom the Defendants have conspired to protect, at the expense of the public, or who are, like Gwynn, lawyers who have done no wrong and yet who have been targeted improperly for discipline because of the insinuation of commercial concerns and other improper influences upon the disciplinary process.

Other members of this class, then, would include non-lawyers as well as lawyers who have been victimized by the Defendants who are masquerading as public servants, when in fact they have been tyrants acting under color and under cover of state law.

WHEREFORE, the Plaintiffs seek certification by the court that this action should be and is a class action.

DEMAND FOR TRIAL BY JURY

Plaintiffs demand a trial by jury of all issues so triable.

Date: 4-21-08

Mary Alice Gwynn, Esq.
Pro Se and as attorney for
Mary Alice Gwynn, P.A.
805 George Bush Boulevard
Delray Beach, FL 33483
Telephone: 561-330-0633
Facsimile: 561-330-8778
E-mail: mgwynnlaw@aol.com

By: 

Mary Alice Gwynn, Esq.
Florida Bar No.: 879584

Meryl M. Lanson
Pro Se
18652 Ocean Mist Drive
Boca Raton, Florida 33498
Telephone: 561-488-2740
Facsimile: 561-488-2861
E-mail: mlanson@bellsouth.net

By: 

Meryl M. Lanson

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one

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Exhibit A

EXHIBIT

A

JS 44 (Rev. 11/05)

CIVIL COVER SHEET

The JS 44 civil cover sheet and the information contained herein neither replace nor supplement the filing and service of pleadings or other papers as required by local rules of court. This form, approved by the Judicial Conference of the United States in September 1974, is required for the use of the Clerk of the civil docket sheet. (SEE INSTRUCTIONS ON THE REVERSE OF THE FORM.)

NOTICE: Attorneys MUST Indicate All Re-filed Cases

APR. 21, 2008

STEVEN M. LARIMORE
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S.D. OF FLA. - MIAMI

I. (a) PLAINTIFFS

MERYL LANSON, individually, MARY ALICE GWYNN,
individually and MARY ALICE GWYNN, P.A., a Professional

(b) County of Residence of First Listed Plaintiff Palm Beach
(EXCEPT IN U.S. PLAINTIFF CASES)

(c) Attorney's (Firm Name, Address, and Telephone Number)

Mary Alice Gwynn, Esq., Pro Se and as attorney for Mary Alice
Gwynn, P.A., 805 George Bush Blvd., Delray Beach, FL 33483
561-330-0633

DEFENDANTS

THE FLORIDA BAR, JOHN HARKNES
MARVIN, RAMON ABADIN, JULIET KOULHAC,

County of Residence of First Listed Defendant
(IN U.S. PLAINTIFF CASES ONLY)

NOTE: IN LAND CONDEMNATION CASES, USE THE LOCATION OF THE TRACT
LAND INVOLVED.

Attorneys (If Known)

(d) Check County Where Action Arose: ☐ MIAMI-DADE ☐ MONROE ☐ BROWARD ☒ PALM BEACH ☐ MARTIN ☐ ST. LUCIE ☐ INDIAN RIVER ☐ OKEECHOBEE
HIGHLANDS

II. BASIS OF JURISDICTION

(Place an "X" in One Box Only)

- ☐ 1 U.S. Government Plaintiff
☒ 3 Federal Question (U.S. Government Not a Party)
☐ 2 U.S. Government Defendant
☐ 4 Diversity (Indicate Citizenship of Parties in Item III)

III. CITIZENSHIP OF PRINCIPAL PARTIES

(For Diversity Cases Only)

(Place an "X" in One Box for Plaintiff and One Box for Defendant)

- | | | | | | |
|---|----------------------------|----------------------------|---|----------------------------|----------------------------|
| Citizen of This State | <input type="checkbox"/> 1 | <input type="checkbox"/> 1 | Incorporated or Principal Place of Business In This State | <input type="checkbox"/> 4 | <input type="checkbox"/> 4 |
| Citizen of Another State | <input type="checkbox"/> 2 | <input type="checkbox"/> 2 | Incorporated and Principal Place of Business In Another State | <input type="checkbox"/> 5 | <input type="checkbox"/> 5 |
| Citizen or Subject of a Foreign Country | <input type="checkbox"/> 3 | <input type="checkbox"/> 3 | Foreign Nation | <input type="checkbox"/> 6 | <input type="checkbox"/> 6 |

IV. NATURE OF SUIT

(Place an "X" in One Box Only)

CONTRACT	TORTS	FORFEITURE/PENALTY	BANKRUPTCY	OTHER STATUTES
<input type="checkbox"/> 110 Insurance <input type="checkbox"/> 120 Marine <input type="checkbox"/> 130 Miller Act <input type="checkbox"/> 140 Negotiable Instrument <input type="checkbox"/> 150 Recovery of Overpayment & Enforcement of Judgment <input type="checkbox"/> 151 Medicare Act <input type="checkbox"/> 152 Recovery of Defaulted Student Loans (Excl. Veterans) <input type="checkbox"/> 153 Recovery of Overpayment of Veteran's Benefits <input type="checkbox"/> 160 Stockholders' Suits <input type="checkbox"/> 190 Other Contract <input type="checkbox"/> 195 Contract Product Liability <input type="checkbox"/> 196 Franchise	PERSONAL INJURY <input type="checkbox"/> 310 Airplane <input type="checkbox"/> 315 Airplane Product Liability <input type="checkbox"/> 320 Assault, Libel & Slander <input type="checkbox"/> 330 Federal Employers' Liability <input type="checkbox"/> 340 Marine <input type="checkbox"/> 345 Marine Product Liability <input type="checkbox"/> 350 Motor Vehicle <input type="checkbox"/> 355 Motor Vehicle Product Liability <input type="checkbox"/> 360 Other Personal Injury PERSONAL INJURY <input type="checkbox"/> 362 Personal Injury - Med. Malpractice <input type="checkbox"/> 365 Personal Injury - Product Liability <input type="checkbox"/> 368 Asbestos Personal Injury Product Liability PERSONAL PROPERTY <input type="checkbox"/> 370 Other Fraud <input type="checkbox"/> 371 Truth in Lending <input type="checkbox"/> 380 Other Personal Property Damage <input type="checkbox"/> 385 Property Damage Product Liability	<input type="checkbox"/> 610 Agriculture <input type="checkbox"/> 620 Other Food & Drug <input type="checkbox"/> 625 Drug Related Seizure of Property 21 USC 881 <input type="checkbox"/> 630 Liquor Laws <input type="checkbox"/> 640 R.R. & Truck <input type="checkbox"/> 650 Airline Regs. <input type="checkbox"/> 660 Occupational Safety/Health <input type="checkbox"/> 690 Other LABOR <input type="checkbox"/> 710 Fair Labor Standards Act <input type="checkbox"/> 720 Labor/Mgmt. Relations <input type="checkbox"/> 730 Labor/Mgmt. Reporting & Disclosure Act <input type="checkbox"/> 740 Railway Labor Act <input type="checkbox"/> 790 Other Labor Litigation <input type="checkbox"/> 791 Empl. Ret. Inc. Security Act	<input type="checkbox"/> 422 Appeal 28 USC 158 <input type="checkbox"/> 423 Withdrawal 28 USC 157 PROPERTY RIGHTS <input type="checkbox"/> 820 Copyrights <input type="checkbox"/> 830 Patent <input type="checkbox"/> 840 Trademark SOCIAL SECURITY <input type="checkbox"/> 861 HIA (1395ff) <input type="checkbox"/> 862 Black Lung (923) <input type="checkbox"/> 863 DIWC/DIWW (405(g)) <input type="checkbox"/> 864 SSID Title XVI <input type="checkbox"/> 865 RSI (405(g)) FEDERAL TAX SUITS <input type="checkbox"/> 870 Taxes (U.S. Plaintiff or Defendant) <input type="checkbox"/> 871 IRS—Third Party 26 USC 7609	<input type="checkbox"/> 400 State Kidnapping <input type="checkbox"/> 410 Antitrust <input type="checkbox"/> 430 Banks and Banking <input type="checkbox"/> 450 Commerce <input type="checkbox"/> 460 Deposition <input type="checkbox"/> 470 Racketeer Influenced and Corrupt Organizations <input type="checkbox"/> 480 Consumer Credit <input type="checkbox"/> 490 Cable Sat. TV <input type="checkbox"/> 510 Selective Service <input type="checkbox"/> 550 Securities/Commodities/Exchange <input type="checkbox"/> 575 Customer Challenge 12 USC 3410 <input type="checkbox"/> 590 Other Statutory Actions <input type="checkbox"/> 591 Agricultural Acts <input type="checkbox"/> 592 Economic Stabilization Act <input type="checkbox"/> 593 Environmental Matters <input type="checkbox"/> 594 Energy Allocation Act <input type="checkbox"/> 595 Freedom of Information Act <input type="checkbox"/> 900 Appeal of Fee Determination Under Equal Access to Justice <input type="checkbox"/> 950 Constitutionality of State Statutes
REAL PROPERTY <input type="checkbox"/> 210 Land Condemnation <input type="checkbox"/> 220 Foreclosure <input type="checkbox"/> 230 Rent Lease & Ejectment <input type="checkbox"/> 240 Torts to Land <input type="checkbox"/> 245 Tort Product Liability <input type="checkbox"/> 290 All Other Real Property	CIVIL RIGHTS <input type="checkbox"/> 441 Voting <input type="checkbox"/> 442 Employment <input type="checkbox"/> 443 Housing/Accommodations <input type="checkbox"/> 444 Welfare <input type="checkbox"/> 445 Amer. w/Disabilities - Employment <input type="checkbox"/> 446 Amer. w/Disabilities - Other <input type="checkbox"/> 440 Other Civil Rights	PRISONER PETITIONS <input type="checkbox"/> 510 Motions to Vacate Sentence Habeas Corpus: <input type="checkbox"/> 530 General <input type="checkbox"/> 535 Death Penalty <input type="checkbox"/> 540 Mandamus & Other <input type="checkbox"/> 550 Civil Rights <input type="checkbox"/> 555 Prison Condition		

V. ORIGIN

(Place an "X" in One Box Only)

- ☒ 1 Original Proceeding
☐ 2 Removed from State Court
☐ 3 Re-filed (see VI below)
☐ 4 Reinstated or Reopened
☐ 5 Transferred from another district (specify)
☐ 6 Multidistrict Litigation
☐ 7 Appeal to District Judge from Magistrate Judgment

VI. RELATED/RE-FILED CASE(S).

(See instructions second page):

a) Re-filed Case ☐ YES ☐ NOb) Related Cases ☐ YES ☐ NO

JUDGE

DOCKET NUMBER

VII. CAUSE OF ACTION

Cite the U.S. Civil Statute under which you are filing and Write a Brief Statement of Cause (Do not cite jurisdictional statutes unless diversity):

This court has subject matter jurisdiction pursuant to 18 USC 1961 (RICO), 18 USC 1346 (fraud and honest services), 18 USC 1951 (interference with commerce). Title 15 of the United States Code pertaining to restraint
 LENGTH OF TRIAL via 5 days estimated (for both sides to try entire case)

VIII. REQUESTED IN COMPLAINT:

☒ CHECK IF THIS IS A CLASS ACTION UNDER F.R.C.P. 23

DEMAND \$

CHECK YES only if demanded in complaint:

JURY DEMAND: ☒ Yes ☐ No

ABOVE INFORMATION IS TRUE & CORRECT TO THE BEST OF MY KNOWLEDGE

SIGNATURE OF ATTORNEY OF RECORD

DATE

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IN THE UNITED STATES COURT OF APPEALS
FOR THE ELEVENTH CIRCUIT
CASE NO. 01-14761A

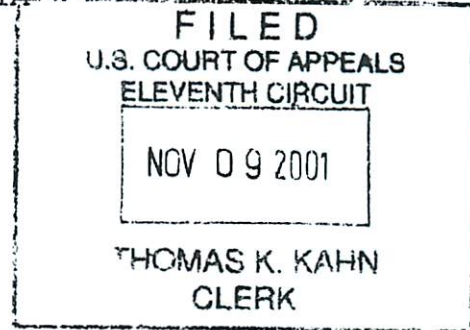
EUGENE R. CLEMENT,
GAY ANN BLOMEFIELD, and
NEIL GILLESPIE, individually and
on behalf of others similarly situated,

Appellants,

v.

AMSCOT CORPORATION,

Appellee.



JOINT STIPULATION FOR DISMISSAL WITH PREJUDICE

The Parties, by and through their undersigned counsel, having amicably resolved this matter, pursuant to Federal Rule of Appellate Procedure 42(b) move for dismissal with prejudice with each party bearing its own attorneys' fees and costs.

RESPECTFULLY SUBMITTED this 6th day of November, 2001.

BARKER, RODEMS & COOK, P.A.

WILLIAM J. COOK, ESQUIRE
Florida Bar No. 986194
300 West Platt Street
Suite 150
Tampa, Florida 33606
(813) 489-1001 (TEL)
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Attorneys for Appellants

Gray, Harris, Robinson,
Shackleford, Farrior

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501 E. Kennedy Blvd
Suite 1400
Tampa, Florida 33602
(813) 273-5000 (TEL)
(813) 273-5145 (FAX)
Attorneys for Appellee

EXHIBIT

2

**CERTIFICATE OF INTERESTED PERSONS
AND CORPORATE DISCLOSURE STATEMENT**

Pursuant to Federal Rule of Appellate Procedure 26.1 and Eleventh Circuit Rule 26.1-1, counsel for the Appellants certify that the following persons and entities have an interest in the outcome of this case.

Alpert, Jonathan L., Esq.

Alpert & Ferrentino, P.A.

Amscot Corporation

Anthony, John A., Esq.

Barker, Rodems & Cook, P.A.

Barker, Chris A., Esq.

Blomefield, Gay Ann

Clement, Eugene R.

Cook, William J., Esq.

Gillespie, Neil

Gray, Harris, Robinson, Shackelford, Farrior, P.A.

Lazzara, The Honorable Richard A.

United States District Judge, Middle District of Florida

MacKechnie, Ian

Rodems, Ryan Christopher, Esq.



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

Telephone: (352) 854-7807

March 30, 2006

Daniel Richardson, Deputy Clerk
United States Court of Appeals
for the Eleventh Circuit
56 Forsyth Street, NW
Atlanta, GA 30303-2289

Telephone: (404) 335-6100

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Sincerely,


Neil J. Gillespie

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*Dismsent
4-18-06*

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01-14761	

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IN THE UNITED STATES COURT OF APPEALS

FOR THE ELEVENTH CIRCUIT

No. 01-14761-AA

FILED
U.S. COURT OF APPEALS
ELEVENTH CIRCUIT

DEC 07 2001

EUGENE R. CLEMENT,
individually and on behalf of others similarly
situated,

THOMAS K. KAHN

CLERK

Plaintiff-Appellant,

GAY ANN BLOMEFIELD,
NEIL GILLESPIE,

8: 99-CV-2795-T-2G EAS

Plaintiffs-Intervenors-
Counter-Defendants-Appellants,

versus

AMSCOT CORPORATION,
A Florida Corporation,

Defendant-Intervenor-Counter
-Claimant-Appellee.

On Appeal from the United States District Court for the
Middle District of Florida

BEFORE: EDMONDSON and BARKETT, Circuit Judges.

BY THE COURT:

The parties joint stipulation for dismissal of this appeal
with prejudice, which is construed as a motion to dismiss this
appeal with prejudice, with the parties bearing their own costs
and attorney's fees, is GRANTED.

A TRUE COPY - ATTESTED:
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ELEVENTH CIRCUIT

BY:

Joe Sauer
DEPUTY CLERK
ATLANTA, GEORGIA

EXHIBIT

4

121

BARKER, RODEMS & COOK, P.A.
CLOSING STATEMENT

Style of Case: Eugene R. Clement, Gay Ann Blomefield, and
Neil Gillespie v. AMSCOT Corporation.

As of: October 31, 2001

Our File No.: 99.4766

ATTORNEYS' FEES \$ 50,000.00
& COSTS

PAYMENTS TO CLIENTS

EUGENE R. CLEMENT	\$ 2,000.00
GAY ANN BLOMEFIELD	2,000.00
NEIL GILLESPIE	2,000.00

TOTAL \$ 56,000.00

In signing this closing statement, I acknowledge that AMSCOT Corporation separately paid my attorneys \$50,000.00 to compensate my attorneys for their claim against AMSCOT for court-awarded fees and costs. I also acknowledge that I have received a copy of the fully executed Release and Settlement Agreement dated October 30, 2001.


Neil Gillespie 11-1-01
(Date)

BARKER, RODEMS & COOK, P.A.

By: 
WILLIAM J. COOK, ESQUIRE

EXHIBIT

5

Case: 12-11028 Date Filed: 05/11/2012 Page: 29 of 42

**United States Court of Appeals
for the Eleventh Circuit**56 Forsyth Street, N.W.
Atlanta, GA 30303-2289
(404) 335-6100**01-14761-AA****Eugene R. Clement v. Amscot Corporation**

Closed

Docket #: 01-14761-AA

Short Style: Eugene R. Clement v. Amscot Corporation

Docket Date: 08/23/2001

Lead Case:

Agency:

Nature of Suit: Other: Statutory Actions

Misc. Type:

Clerk: Dixon, Eleanor

Clerk Phone: (404) 335-6172

District Information

Docket #: 99-02795-CV-T-26 Judge: Richard A. Lazzara

Dkt Date: 12/08/1999 District: Florida-Middle

NOA Date: 08/20/2001 Office: MFL-Tampa

Secondary Case Information

Docket #: Judge:

Dkt Date: //

Case Relationships

Docket #	Short Style	Relation	Status
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Pending Motions

No Pending Motions

EXHIBIT**6**

4/5/2012 2:12 PM

Case: 12-11028 Date Filed: 05/11/2012 Page: 30 of 42



**United States Court of Appeals
for the Eleventh Circuit**

56 Forsyth Street, N.W.
Atlanta, GA 30303-2289
(404) 335-6100

01-14761-AA

Eugene R. Clement v. Amscot Corporation

EUGENE R. CLEMENT,

individually and on behalf of others similarly

situated,

Plaintiff-Appellant,

GAY ANN BLOMEFIELD,

NEIL GILLESPIE,

Plaintiffs-Intervenors

Counter-Defendants

Appellants,

versus

AMSCOT CORPORATION,

A Florida Corporation,

Case: 12-11028 Date Filed: 05/11/2012 Page: 31 of 42
 Defendant-Intervenor

Counter-Claimant

Appellee.



**United States Court OF Appeals
FOR the Eleventh Circuit**

56 Forsyth Street, N.W.
Atlanta, GA 30303-2289
(404) 335-6100

01-14761-AA

Eugene R. Clement v. Amscot Corporation

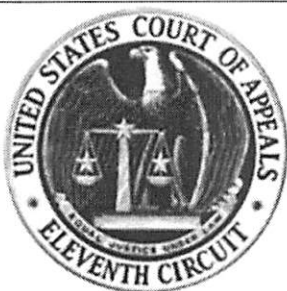
Appellant	Appellant Attorney
Eugene R. Clement Address Not On File <i>Record Excerpts filed on 10/03/2001</i> <i>Fees: Paid on 08/20/2001</i>	William John Cook Barker, Rodems & Cook P.A. 400 N ASHLEY DR STE 2100 TAMPA, FL 33602-4350 (813) 489-1001 Fax: (813) 489-1008 wcook@barkerrodemsandcook.com <i>No Briefing Information Found.</i>
Gay Ann Blomefield Address Not On File <i>No Briefing Information Found.</i> <i>Fees: Paid on 08/20/2001</i>	William John Cook Barker, Rodems & Cook P.A. 400 N ASHLEY DR STE 2100 TAMPA, FL 33602-4350 (813) 489-1001 Fax: (813) 489-1008 wcook@barkerrodemsandcook.com <i>No Briefing Information Found.</i>
Neil Gillespie Address Not On File <i>Appellant Brief Filed filed on 10/03/2001</i> <i>Fees: Paid on 08/20/2001</i>	William John Cook Barker, Rodems & Cook P.A. 400 N ASHLEY DR STE 2100 TAMPA, FL 33602-4350 (813) 489-1001 Fax: (813) 489-1008 wcook@barkerrodemsandcook.com <i>No Briefing Information Found.</i>
Appellee	Appellee Attorney
Amscot Corporation Address Not On File	Person Not Found <i>No Briefing Information Found.</i>

Case: 12-11028 Date Filed: 05/31/2012 Page: 32 of 42

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**United States Court of Appeals
 for the Eleventh Circuit**

56 Forsyth Street, N.W.
 Atlanta, GA 30303-2289
 (404) 335-6100

01-14761-AA**Eugene R. Clement v. Amscot Corporation**

File Date	Entry	Party	Pending
08/20/2001	Fee Status: Paid (08/20/01) for Eugene R. Clement	Eugene R. Clement	No
08/20/2001	Fee Status: Paid (08/20/01) for Gay Ann Blomefield	Gay Ann Blomefield	No
08/20/2001	Fee Status: Paid (08/20/01) for Neil Gillespie	Neil Gillespie	No
08/24/2001	DKT7CIV (Docketing 7) issued. cc: Loesch, Sheryl L. cc: Cook, William J. cc: Anthony, John A.		No
08/24/2001	Briefing Notice Issued		No
09/04/2001	Appearance Form Submitted: William J. Cook	William John Cook	No
09/04/2001	Transcript Order Form: Appellants- No transcript required		No
09/04/2001	Civil Appeal Statement Form- Appellants		No
09/05/2001	Probable Jurisdiction Noted		No

Case: 12-11028 Date Filed: 05/01/2012 Page: 33 of 42

09/07/2001	Appearance Form Submitted: John A. Anthony	John A. Anthony	No
09/28/2001	Certificate of Readiness		No
10/03/2001	Appellant's Brief Filed: Appellants-Clement, Eugene R., Blomefield, Gay Ann, and Gillespie, Neil (Atty: William J. Cook)	Neil Gillespie	No
10/03/2001	Record Excerpts: Appellant-Clement, Eugene R. (Atty: William J. Cook)	Eugene R. Clement	No
11/09/2001	Joint Stipulation to Dismiss Appeal with Prejudice		No
12/07/2001	The parties joint stipulation for dismissal of this appeal with prejudice, which is construed as a motion to dismiss this appeal with prejudice, with the parties bearing their own costs and attorney fees, is GRANTED(JLE/RB).j		No
12/07/2001	DIS-4 (Dismissal 4 Letter) issued. cc: Cook, William J. cc: Anthony, John A. To: Loesch, Sheryl L.		No
12/07/2001	CASE CLOSED		No

PACER Service Center			
Transaction Receipt			
04/05/2012 14:12:01			
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Supreme Court of Florida

TUESDAY, MAY 22, 2012

CASE NO.: SC11-1622

Lower Tribunal No(s): 2D10-5197, 05-CA-7205

NEIL J. GILLESPIE

vs. BARKER, RODEMS & COOK,
ET AL.

Petitioner(s)

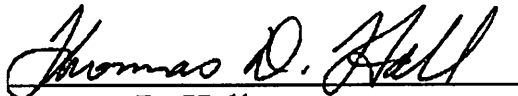
Respondent(s)

Petitioner's "Motion for Leave to File a Proper Motion for Reconsideration on Single Issue" has been treated as a Motion for Extension of Time to file a Motion for Rehearing, and said motion is hereby denied.

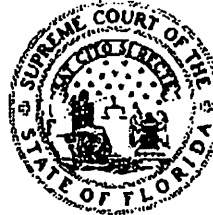
Petitioner's Addendum, Request to Toll Time, Amended Certificate of Service" has been treated as a Motion to Toll Time, and said motion is denied.

A True Copy

Test:



Thomas D. Hall
Clerk, Supreme Court



ab

Served:

NEIL J. GILLESPIE
RYAN CHRISTOPHER RODEMS
HON. PAT FRANK, CLERK
HON. JAMES BIRKHOOD, CLERK

EXHIBIT

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Why Suspicions About Fla. Firm's Alleged Ponzi Scheme Weren't Voiced

John Pacenti

12-07-2009

Plenty of smoke surrounded attorney Scott Rothstein and his well-heeled Fort Lauderdale, Fla., law firm. But nobody called the fire department until it was too late.

The worst-kept secret in the South Florida legal community this fall was that the firm Rothstein Rosenfeldt Adler spent more money on payroll than it had coming in the door. The firm spent three times more on advertising than the three biggest firms combined in South Florida.

"Obviously, that business model didn't work," said Florida Bar president Jesse Diner, a Fort Lauderdale attorney with Atkinson Diner Stone Mankuta & Ploucha. "A lot of it didn't make sense."

Chuck Malkus, who runs Malkus Communications Group in Fort Lauderdale, served on the board of the charity Neighbors 4 Neighbors, which refused to accept a Rothstein donation.

"This was building up for over a year, and many of us believe this is just the tip of the iceberg," Malkus said. "I wish I picked up the phone and called the FBI."

The highly secretive Rothstein made sure nobody within or outside the firm had the smoking gun needed to go to authorities or to The Bar.

"It was very surprising that a lawyer nobody ever heard of a few years ago is suddenly throwing around money in a recession," said Robert Jarvis, a law professor at Nova Southeastern University's Shepard Broad Law Center.

"Of course it raised lots and lots of eyebrows, but that is not enough."

According to the U.S. Attorney's office, there were no legitimate complaints about Rothstein to federal agencies. And The Bar never launched a serious investigation until Rothstein returned from Morocco early last month to face his accusers and voluntarily surrendered his law license.

The man who hobnobbed with sports figures, celebrities and top-tier politicians allegedly burned through \$1.2 billion in an alleged Ponzi scheme related to bogus investments in lawsuit settlements, targeting friends and clients of RRA.

He spent millions of dollars on himself, buying sports cars, yachts, mansions and expensive jewelry.

Now he sits in a federal detention center facing a litany of fraud charges. As a result, the South Florida legal profession collectively is nursing a black eye.

Attorneys worry how the Fort Lauderdale powerbroker's spectacular downfall might affect the public trust in the profession, which is implicitly relied upon as an honest broker in business and policy matters in both the public and private sector.

"Here we have an attorney, an officer of the court, whose core values should be honesty and integrity, and instead he is unlawfully enriching himself at the expense of his clients," said Daniel Auer, the special agent in charge of the Internal Revenue Service for the Miami field office for criminal investigation.

When asked about Rothstein, local lawyers put on their best face. Rothstein is the cliché "one bad apple," said some, pointing to the many attorneys who do unsung pro bono work for clients who can't afford legal services. They said



Rothstein may have been an attorney, but he was a conman first and foremost.

"I don't think he made us all look bad. I think he made lawyers wearing \$5,000 suits and driving \$500,000 cars look bad," said David Markus, a Miami criminal defense attorney.

Ed Davis, a founding shareholder in Miami's Astigarraga Davis, said Rothstein's alleged actions didn't help the breach of trust issues the public always has with attorneys, "but you can't judge the entire profession by the acts of a few."

Still, if there is only 1 percent of bad lawyers in a state with 85,000 attorneys, the public could be more than vulnerable, Jarvis said.

"That is 850 rogue attorneys. That is a lot of rogues," Jarvis said. "So is the glass half full? There are a lot of bad lawyers out there, just like there are a lot of bad doctors, bad car salesmen and bad journalists."

Still, the rumors that Rothstein and his firm were far from legitimate were a main topic of conversation in early October among attorneys lunching along Fort Lauderdale's Las Olas Boulevard, where RRA had its offices.

Within weeks, Rothstein had flown to Morocco in possession of millions, only to have a change of heart and return to face charges of racketeering, fraud and money laundering.

Attorneys said they had confronted some RRA attorneys, who pointed to full-page advertisements glorifying the firm's legitimacy.

And there were some who were wary of Rothstein and his piles of cash from the start. "The question always was: Where is the money coming from? We don't see him in court. The rumor was they were behind some deals," Malkus said.

There were no deals. Just bogus and forged paperwork, prosecutors said in a criminal information filed last week after federal agents arrested Rothstein.

RRA was, in essence, a front for illegal activity, bringing in \$8 million in business a year with \$18 million in payroll.

Federal investigators want to know who in the firm averted their eyes to apparent crimes -- or, worse, were complicit with Rothstein.

"There is deliberate ignorance, which is not an excuse," acting U.S. Attorney Jeff Sloman said.

Diner, The Florida Bar president, said there was not a lot the organization that regulates attorneys could do without a legitimate complaint about Rothstein's business practices.

"It's a very interesting question if The Bar can be preemptive," Diner said. "The Bar is not in the position of just going out willy-nilly and auditing people."

Diner said that in the future The Bar should take a more proactive role when there are such questions about an attorney's practices.

No doubt, any Bar investigator would have had his hands full with the blustery Rothstein, who protected his empire with threats of litigation against anyone who questioned it.

Diner said The Bar is concerned with other RRA attorneys who may have been complicit in making political donations in return for bonuses or expense reimbursements. He said attorneys also may have violated ethics standards by not reporting Rothstein's questionable business practices and promoting themselves as partners of the firm when they were not fulfilling their fiduciary duties by keeping track of trust funds.

RRA partner Stuart Rosenfeldt has said Rothstein refused to show him the firm's financial books.

"There are certainly ethical concerns, and it doesn't stop with the disbarment of Scott Rothstein," Diner said. "The law firm is going to have to be looked at closely."

But can one really blame attorneys who accepted good salaries during a recession, or charities that didn't want to reject generous gifts from a man they believed was a respected attorney?

Yes, says Jay Cohen, a Fort Lauderdale attorney and member of The Florida Bar's Board of Governors.

"I don't think that's a hard decision," he said. "If there is any potential wrongdoing, if there is any question as to either the source of the funds or with the manner in which the funds are distributed, I don't think that's a hard question."

For law enforcement's part, Sloman said that without a complaint from a member of the public, there is little federal authorities can do. The FBI can't operate on mere rumor.

Jarvis said there is little anyone can do to stop such white-collar crimes. Ponzi schemes run on greed, and there is always an abundance of that vice.

"We've learned nothing from Scott Rothstein. We've learned nothing from Bernie Madoff," he said.

FILED

**UNITED STATES DISTRICT COURT
MIDDLE DISTRICT OF FLORIDA
OCALA DIVISION**

**2011 NOV 16 PM 2: 09
CLERK, US DISTRICT COURT
MIDDLE DISTRICT OF FL
OCALA FLORIDA**

**ESTATE OF PENELOPE GILLESPIE,
NEIL J. GILLESPIE (Personal Representative, Survivor)
MARK J. GILLESPIE (Survivor)
ELIZABETH BAUERLE (Survivor)**

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

Plaintiffs,

vs.

**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.

MOTION TO DETERMINE INDEGENCY

MOTION TO CHANGE DESIGNATION TO TRACK THREE UNDER RULE 3.05

Personal Representative Neil J. Gillespie pro se (Gillespie) moves as follows:

- 1. September 20, 2011 Gillespie filed a completed, signed, and notarized "Affidavit of Indigency". [DKT 3]. As of today the Court has not made a determination of indigency for the prepayment of fees and costs. Gillespie moves the Court to make a determination of indigency. In the alternative, Gillespie moves the Court to arrange a payment schedule to allow him to pay the filing fee and service of process costs in affordable installments.**
- 2. September 23, 2011 the Clerk in accordance with Local Rule 3.05 designated this action as a Track Two Case. Upon information, Gillespie believes this action is a Track Three Case in accordance with Local Rule 3.05, because the Defendants include the Thirteenth Judicial Circuit, Florida, Judge James M. Barton, II, and Gillespie's former**

EXHIBIT

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attorney. See Plaintiff's Response To Order To Show Cause, docket no. 58 in the related case Gillespie v. Thirteenth Judicial Circuit, Florida, et al., case no. 5:10-cv-00503, United States District Court, Middle District of Florida, Ocala Division. [DKT 2].

WHEREFORE, Gillespie moves the Court to make a determination of indigency. In the alternative, Gillespie moves the Court to arrange a payment schedule to allow him to pay the filing fee and service of process costs in affordable installments. Gillespie moves the Court to re-designate this action a Track Three Case under Local Rule 3.05.

RESPECTFULLY SUBMITTED November 16, 2011.



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Westlaw

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C

Stetson Law Review
Fall, 1998

Essay

***323 PROFESSIONALISM AND LITIGATION ETHICS**

Hon. Claudia Rickert Isom [FN1]

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My first assignment as a newly elected circuit judge was to the family law division. Although I considered myself to be an experienced trial attorney, I was somewhat naive about my role as a judge presiding over discovery issues. I assumed that the attorneys assigned to my division would know the rules of procedure and the local rules of courtesy. I also assumed that, being knowledgeable, they would comply in good faith with these provisions. I soon learned that attorneys who were entirely pleasant and sociable creatures when I was counted among their numbers, assumed a much different role when advocating for litigants.

For example, take Harvey M. (not his real name). Harvey and I had bantered for years, having many common interests. Perhaps this familiarity gave rise to, while not contempt, a certain lackadaisical attitude about complying with case management and pretrial orders. Harvey challenged me to establish my judicial prerogative and assist him in achieving goals not of his own making.

A common assumption regarding family law is that clients receive the quality of legal representation that they deserve. However, my time in the family law division has convinced me that this is not necessarily true. Often times, a case that has wallowed along, seemingly hung up in endless depositions and discovery problems, becomes instantly capable of resolution by bringing all parties together in the context of a pretrial conference. Apparently, some attorneys feel that "cutting up" is a large part of what their clients expect them to do. When this litigious attitude begins to restrict the trial court's ability to effectively bring cases to resolution, the judge must get involved to assist the process.

Recently, the Florida Conference of Circuit Court Judges conducted an educational seminar designed to guide circuit judges in appropriately responding to unprofessional and unethical behavior. [FN1] Various scenarios were presented on video, after which the *324 judges voted on what they felt would be the appropriate court response. A surprising number of judges voted to impose sanctions or report unethical behavior to the Florida Bar Grievance Section. However, the most common response was to do nothing or to privately counsel the offending attorney.

A common theme at meetings of the Florida Bar Standing Committee on Professionalism is that, while attorneys can aspire to greater professionalism, the courts can be a bully pulpit to encourage professional behavior. Perhaps the perceived backlash of cracking down on unprofessional behavior is unrealistic for Florida's circuit judges who are elected officials. However, that perception shapes the judicial response, even when responding theoretically at a seminar.

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The Joint Committee of the Trial Lawyers Section of the Florida Bar and the Conferences of Circuit and County Court Judges' 1998 Handbook on Discovery Practice admonishes trial judges to fully appreciate their broad powers to end discovery abuses and the 1998 Handbook reassuringly states that the appellate courts will sustain the trial court's authority if it is exercised in a procedurally correct manner. [FN2] Once again, this rallying cry ignores the reality of our situation.

As a new judge, the lessons urged by bar leadership have been a matter of trial and error (pun intended). Harvey quickly established his reputation, not as a fellow member of my legal community, but as a problematic litigator whose behavior had to be controlled and modified by court order for the legal process to smoothly progress. For example, hearing time was made available to address discovery issues, very specific orders were entered regarding who was to do what, when, and how, verbal commitments were elicited on the record about document production and interrogatory responses, in an attempt to avoid additional hearings. Cases involving Harvey were, by necessity, intensely case managed.

Resentment, of course, is a by-product of such intensive case management. Attorneys may perceive that the court is trying to prevent them from earning additional attorney fees by streamlining the process. However, clients rarely complain once they realize that the underlying purpose is to bring the case to timely resolution.

In Harvey's case, extreme tools--reporting Harvey to the Florida*325 Bar, striking responses, striking witnesses, imposing financial sanctions, and conducting contempt hearings-- were never implicated. What did happen was that Harvey trained me to be a better judge by showing me how, in a nonconfrontational manner, I could effectively case manage Harvey and similar counsel without having to take off the gloves.

Fortunately, not every litigator requires the case management skills of a Harvey situation. Most attorneys are well-intentioned, have a legitimate interest in pursuing discovery efficiently, and do not seek to unnecessarily delay the resolution of a case. What a relief it is to have a case with opposing counsel who are both of this school of thought.

New attorneys, or attorneys who are appearing in front of a judge for the first time, must remember that their reputation is primarily built on the judge's personal experiences with them. No bench book exists with a list of which attorneys are trustworthy professionals and which are not. Instead, the individual judge keeps a mental catalog of experiences. For example, does this attorney routinely generate complaints from opposing counsel in other cases about not clearing depositions with their office? Is this attorney often the subject of motions to compel? Can this attorney be trusted when he tells you that the responses to interrogatories are "in the mail"? Once a negative reputation has been established with the court, an attorney's job will be much more challenging in establishing credibility with the court. And certainly, with so many issues up to the court's discretion, an attorney's reputation as trustworthy and ethical is of utmost importance.

And, what about Harvey? Do his clients suffer? Of course they do. But, with effective case management and an experienced judiciary, the damage and delay caused by the Harveys of this world can be minimized while still allowing clients the freedom to choose their own counsel.

[FN1]. Circuit Judge, Thirteenth Judicial Circuit, Tampa, Florida, 1991-Present; B.S.Ed., University of Iowa, 1972; J.D., Florida State University, 1975; Vice-Chair and member, Florida Bar Standing Committee on Professionalism; Assistant State Attorney, Thirteenth Judicial Circuit, 1979-1982; District VI Legal Counsel, Florida

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Department of Health and Rehabilitative Services, 1984-1986; Shareholder, Isom, Pingel and Isom-Rickert, P.A., 1986-1990.

[FN1]. *See* ANNUAL BUSINESS MEETING OF FLORIDA CONFERENCE OF CIRCUIT JUDGES: PROFESSIONALISM PROBLEM SOLVING (1998).

[FN2]. *See* JOINT COMMITTEE OF THE TRIAL LAWYERS SECTION OF THE FLORIDA BAR AND CONFERENCE OF CIRCUIT AND COUNTY JUDGES 1998 HANDBOOK 8-9 (1998).
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