

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

NEIL J. GILLESPIE,

Plaintiff,

CASE NO: 05-CA-007205

vs.

DIVISION: "C"

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

Defendants.

===== /

TRANSCRIPT OF PROCEEDINGS

BEFORE: HONORABLE JAMES M. BARTON
Circuit Judge

TAKEN AT: Hillsborough County Courthouse
Tampa, Florida

DATE: March 20, 2008

TIME: 1:30 p.m.

REPORTED BY: BEVERLY ANN HUNTER
Notary Public
State of Florida at Large

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THE COURT: How's everybody doing?

MR. RODEMS: Good, Judge.

MR. BAUER: Fine, sir.

THE COURT: Good. All right. We're here this afternoon in Gillespie versus Barker, Rodems and Cook.

MR. RODEMS: Yes, sir. Originally, we were scheduled on the hearing on the attorney's fees and then Mr. Bauer filed a motion to continue and we were told yesterday that we would take that up this morning, or this afternoon first, and see where things went from there.

THE COURT: Yeah, I mean, it's been continued several times before. And when did the notice go out on this?

MR. BAUER: It's only been continued once, Your Honor.

THE COURT: Huh?

MR. BAUER: It's only been continued once.

THE COURT: Right, but the notice went out, for this hearing, January the 30th.

MY BAUER: Yes, sir.

THE COURT: And the motion was filed when?

MR. RODEMS: The notice, or the affidavit of

1 attorney's fees and the notice of hearing for the
2 original hearing were both filed in November.

3 THE COURT: Last year?

4 MR. RODEMS: Or November of 2007.

5 THE COURT: So, I mean, we're way down the
6 line here. It's been continued once and if we
7 continue it again, for what, a couple of years?
8 Would that be enough time?

9 MR. BAUER: No, sir. No, sir. All I need is
10 two weeks at most, or even a week, just enough
11 time I -- we have been searching for an expert
12 that -- in this area that was willing to do a
13 review of the hours and make a determination of
14 it. We have spent approximately 30 hours in our
15 office since December, since before the original
16 hearing was scheduled. We've been unsuccessful.
17 We have been contacting family friends of some of
18 our secretaries to try and get somebody and only
19 -- not yesterday but the day before, late in the
20 afternoon, finally got a Frank H. Gassler to agree
21 to be able to review these but he needs to come up
22 and look through all of our files and look at all
23 the -- find all the different issues as far as the
24 letters --

25 THE COURT: Okay. Was he told when the

1 hearing was?

2 MY BAUER: Yes, sir, but, I mean, that's --
3 it was -- he's down here in Tampa --

4 THE COURT: Did you tell him the motion had
5 been filed last year and had been continued once
6 and that it might not be continued again, so
7 please come and look at the files and --

8 MR. BAUER: I don't think he was -- wasn't
9 available to be able to come that quick. It's
10 only one day, Your Honor, that we had from Tuesday
11 afternoon. I think, you know, it's appropriate to
12 give our expert a sufficient amount of time to
13 come and look at these things and for us to be
14 able to discuss with him so that we can have a
15 good opinion of the different issues and be able
16 to forward our position for our client.

17 I mean, I do understand, you know, the
18 Court's comments on the time period.
19 Unfortunately, part of the problem with this case
20 is it's just been the type of case that it is when
21 it's a pro se litigant originally was suing an
22 attorney. Um, most attorneys don't want to have
23 anything to do with that and the client --

24 THE COURT: Oh, I hear the same problem when
25 a doctor is getting sued -- oh, we don't -- but

1 somehow people find a way to get witnesses and,
2 you know, it can take a while but, you know, at
3 some point the clock's got to stop ticking.

4 Well, what says the defendant?

5 MR. RODEMS: Well, Judge, we did file a
6 response in writing but, you know, back in
7 November when we served our affidavit and set this
8 hearing and we were asked to move it from
9 January 4th to January 11th, and then from January
10 11th to March 20th, nobody ever said to me that
11 there was a problem with obtaining an expert.

12 THE COURT: Well, until now.

13 MR. RODEMS: Until now, right. But, clearly,
14 you know, this thing has been going on since
15 November of 2007, in terms of setting this for a
16 hearing on the fees and I've prepared Mr. Gardner
17 twice now and, you know, I'm ready to go forward
18 and I'd like to get this portion of the case taken
19 care of so that we can move on with the rest of
20 the case.

21 You know, I really -- I really think that at
22 this point he's been the beneficiary of one
23 continuance, Mr. Bauer has, by agreement and
24 another one moving it from the 4th to the 11th of
25 January, and I have Mr. Gardner here, I'm ready to

1 go and, you know, I was only contacted, I think it
2 was two days ago, about trying to continue this
3 one.

4 When I was asked to continue the hearing from
5 January 11th, 2008, it was because Mr. Bauer had
6 an opportunity to meet with a client in a new
7 matter of some level. I believe it involved a
8 serious catastrophic injury of some sort and I
9 certainly would not have wanted Mr. Bauer to miss
10 out on an opportunity to take that case, so I
11 agreed to continue this hearing with the
12 understanding that we would get it rescheduled and
13 we couldn't get it rescheduled until March 20th.
14 And now here we are and two days ago he wants to
15 reschedule it again. This time not because of his
16 own schedule but because of the fact that he was
17 unable to find an expert and, quite honestly,
18 Judge, the notion that he couldn't find an expert
19 because of the nature of the case I find to be
20 hard to believe simply because the issue in this
21 case is about attorney's fees owed for his
22 client's violation of this Court's orders and for
23 filing frivolous pleadings. It's not a situation
24 where somebody came in and said, my time was not
25 worthwhile, or whatever, that it would create, you

1 know, animosity or something like that.

2 So, I mean, just to be honest, Judge, we're
3 here, we're ready to go and we think we should
4 move forward.

5 MY BAUER: If I could respond, Your Honor.

6 THE COURT: Sure.

7 MR. BAUER: As far as it being hard to
8 believe, I've never been anything but open and
9 frank and honest with this Court and opposing
10 counsel, so.

11 We have discussed with many individuals and,
12 you know, it's been a look of, well, we want to
13 keep an ongoing, good relationship in this town.
14 We don't want to be going up against local
15 attorneys.

16 There's also been the issue is people not
17 wanting to be qualified on the issue because of
18 there's the appellate issue as to whether or not
19 they're going forward with appellates. Many of
20 the attorneys that we contacted felt that they
21 didn't have experience in all of the different
22 areas as far as malpractice and appellate issues
23 and they felt that they couldn't come before the
24 Court and qualify them as experts.

25 Whether -- that is the road blocks we ran up

1 against. Yes, we have -- we have run up against
2 some many people unwilling. We, for the longest
3 time, felt that, well, we're trying the best that
4 we can to get experts. We just can't get an
5 expert, so we'll have to go forward with the
6 hearing.

7 Two days ago -- we've continued the whole
8 time to try and get experts, and finally we found
9 one and now that we have I've also found --
10 there's case law, Carpenter v. Carpenter, First
11 Appellate, 1984, 451 So.2nd 914. The Court found
12 that it was abuse of discretion for the Court not
13 to grant a continuance when a party found an
14 expert witness one day before a trial, that they
15 would have been able to testify on various issues
16 as far as damages.

17 I think it's appropriate in this situation
18 that -- I appreciate that this has, you know, been
19 continued before. We have been honestly and in
20 good faith attempting to try to get an expert and
21 only recently have gotten one.

22 THE COURT: And I agree with the statement of
23 law applied here by the First District Court of
24 Appeal back in 1984, that special circumstances
25 may require a continuance where there has been --

1 there has not been sufficient time to complete
2 discovery -- unlike here where there has -- and
3 properly prepare for trial -- unlike here where
4 there has been -- and where a continuance causes
5 no substantial prejudice or injustice to the
6 opposing party, which, again, it's been delayed
7 for -- at least once for a couple of three months
8 and now has somebody that if they haven't paid
9 them, they're obligated to pay them.

10 So I'm going to deny the motion for a
11 continuance. So, counsel, you may proceed.

12 MR. RODEMS: Thank you, Your Honor. I would
13 like to first testify about my fees.

14 THE COURT: Do you both swear or affirm to
15 tell the truth, the whole truth, and nothing but
16 the truth?

17 MR. RODEMS: Yes, sir, I do.

18 MR. GARDNER: I do.

19 Thereupon,

20 **RYAN CHRISTOPHER RODEMS,**

21 A witness, being first duly sworn to tell the truth, the
22 whole truth and nothing but the truth, was examined and
23 testified as follows:

24 MR. RODEMS: Judge, again, I'm Ryan
25 Christopher Rodems. I'm the attorney that's

1 representing the defendants in this action. This
2 action was filed back in 2005, at a time when
3 Mr. Gillespie was pro se.

4 During the course of the litigation before
5 Mr. Bauer became involved, we served discovery on
6 Mr. Gillespie. He did not comply with it timely.
7 We had to file a motion to compel which was
8 granted by the Judge Nielsen.

9 Subsequently, Judge Nielsen faced a motion to
10 disqualify by Mr. Gillespie which was determined
11 by Judge Nielsen to be legally insufficient;
12 however, on his own volition, Judge Nielsen recused
13 himself from the case. At that point,
14 Mr. Gillespie immediately filed a motion for
15 rehearing on the July 24th, 2006 discovery order,
16 and the case was assigned to Judge Isom.

17 We had a hearing in front of Judge Isom and
18 she declined to change Judge Nielsen's rulings on
19 the discovery order, and before that hearing was
20 even concluded then before Judge Isom, Mr.
21 Gillespie announced the intent to disqualify Judge
22 Isom. She stopped the hearing at that point,
23 requested that he put his motion in writing, which
24 Mr. Gillespie then did. Judge Isom reviewed it,
25 found the motion to be legally insufficient, but

1 as did Judge Nielsen, several days later recused
2 herself of her own volition.

3 At that point, we came before Your Honor by
4 -- along the way Mr. Gillespie apparently decided
5 to withdraw his defenses to our counterclaim, to
6 our client's counterclaim. We had previously
7 before that filed a motion for sanctions under
8 57.105. There were several occasions when I wrote
9 to Mr. Gillespie, pro se at the time, and
10 explained to him that the defenses that he was
11 alleging to our counterclaim for defamation had no
12 basis in law or fact. He had pled things such as
13 the Economic Loss Rule. Ultimately, Mr. Gillespie
14 disclosed that the reason he pled the defenses he
15 pled is because he read our answer to his
16 complaint which sounded in tort and contract and
17 just repeated our defenses.

18 In any event, we had to go through one
19 hearing on a motion -- on his motion to dismiss
20 during which Judge Nielsen began denying the
21 various attacks that Mr. Gillespie had filed.
22 Shortly before Mr. Bauer took over, or possibly
23 even right after Mr. Bauer took over,
24 Mr. Gillespie withdrew the remainder of the
25 offending defences. So we set a hearing before

1 Your Honor on the motion for sanctions pursuant to
2 57.105 and Your Honor granted that motion and
3 determined that sanctions would be awarded against
4 Mr. Gillespie.

5 I have prepared and filed with the Court an
6 affidavit of the time that I have spent in this
7 case on these two issues; the July 24th, 2006
8 order granting the motion to compel, and the issue
9 relating to Mr. Gillespie's counter-defense --
10 defenses to our counterclaim and the total amount
11 of time that I have incurred is 35 hours.

12 The -- my affidavit does contain a detailed
13 listing of the time that I spent. The time that I
14 spent was recorded contemporaneously. These are
15 the hours that I would have billed to any client
16 who would have hired our law firm, and I have
17 reviewed all of the entries and I believe that all
18 of these entries do relate to the tasks that were
19 necessitated by Mr. Gillespie's failure to provide
20 discovery leading to the July 24th, 2006 order,
21 and by Mr. Gillespie's filing of the defenses
22 which had no legal or factual basis.

23 I am board-certified in civil trial law and
24 I've been practicing law since 1992. I'm also AV
25 rated by Martindale-Hubbell. I am -- I have been

1 a member of the William Terrell Hodges Inns of
2 Court for several years and I have published or
3 co-authored two books. I've also taught business
4 law at Hillsborough County College. I've been
5 trying cases for the last 16 years. I think those
6 qualifications are sufficient to be awarded an
7 attorney's fee of in excess of \$300 per hour but I
8 do have Mr. Gardner to testify about attorney's
9 fees from that standpoint. And I believe that
10 awarding attorney's fees of 35 hours in this case
11 is appropriate given the work that was required by
12 Mr. Gillespie's actions.

13 That would be the sum of my testimony, Your
14 Honor.

15 THE COURT: Okay. Cross?

16 **CROSS EXAMINATION**

17 **BY MY BAUER:**

18 Q. How many 57.105 actions have you been involved
19 in?

20 A. I filed I believe two in this case and I may have
21 filed one or two other ones in my career but I couldn't
22 be sure exactly.

23 Q. So you were familiar with the procedures prior
24 to this case?

25 A. I'm familiar with the procedures.

1 Q. For filing a 57.105?

2 A. Yes, sir.

3 Q. I noted quite a few indications on your hourly
4 write-up; it has you personally preparing notices, you
5 personally preparing letters for filing. Is it
6 customary in our practice for the attorneys to do -- to
7 do that?

8 A. To do -- certainly. I dictate the letters and
9 then I review them when they've been transcribed.
10 Occasionally, if the letter is short enough, I'll go
11 ahead and do my own typing. As far as notices, I do
12 dictate what needs to be in the notice and then I do
13 review those after they've been transcribed and, you
14 know, when necessary, make the editing changes, yes,
15 sir.

16 Q. And you believe it's reasonable that it takes you
17 12 minutes, probably up to 15, depending on how you
18 round with your .2 numbers, to do a very simple notice
19 of hearing?

20 A. Which one are you referring to? Is there a
21 specific entry?

22 Q. It would be -- one of those is referenced on
23 9/12/2006, prepared a notice of hearing regarding motion
24 for order to show cause.

25 A. Yes, in that case that was definitely the

1 situation because we -- we had a situation where we had
2 the July 24th, 2006 order, multiple letters by me to Mr.
3 Gillespie, or contacts between me and Mr. Gillespie, and
4 I needed to review the file. I mean, Mr. Bauer, as
5 you're now aware, this file has been going on since 2005
6 sometime and Mr. Gardner brought my file with him today
7 and it now takes up three boxes. So there is quite a
8 bit to review and in preparing that notice, I did need
9 to familiarize myself with what went on in the case.

10 So between dictating it, reviewing it and
11 reviewing the file, I think 12 minutes is probably
12 fairly conservative.

13 Q. But none of those other comments that you have
14 are actually contained in your statement here; is that
15 correct?

16 A. Correct.

17 Q. Okay. The only issue that you have here is 12
18 minutes for preparing a notice of hearing and notice of
19 hearings are most often prepared by secretarial staff,
20 correct?

21 A. Yes. I would not have billed for the secretary's
22 time to prepare it.

23 Q. And you have a letter to Judge Nielsen regarding
24 hearing on motion for order to show cause. Do you --
25 that's almost 30 minutes on a letter. Do you know what

1 the size of that letter was?

2 A. Can you give me the date.

3 Q. 10/3/2006. It's on the first page.

4 A. Yes, I see that. I could retrieve that letter if
5 you'd like.

6 Q. Please.

7 A. Okay. I do have it here. It's a two-page
8 letter.

9 Q. Did you type that yourself?

10 A. According to the letter, there's initials down at
11 the bottom SCR/SM. That usually indicates that my
12 assistant did the actual typing.

13 Q. So you would've dictated that?

14 A. Yes, although I may have -- it's possible that I
15 may have typed part of it but I don't know but dictation
16 probably makes since.

17 Q. Would it normally take you almost half an hour to
18 dictate what is -- you say it's a full two pages?

19 A. Yes.

20 Q. The lettering -- the -- there's only -- well,
21 let's see, one, two, three, four, five full paragraphs,
22 correct?

23 A. Right, but if you'll note that in the letter one
24 of the issues that we're addressing is Mr. Gillespie's
25 request that the court appoint him an attorney under the

1 Americans With Disabilities Act and I actually quote
2 from the 28 Code of Federal Regulations, Section
3 35.135 --

4 THE REPORTER: I'm sorry?

5 MR. RODEMS: I'm sorry. I apologize. Code
6 of Federal Regulations, Section 35.135, and I can
7 tell you from looking at this letter, I had to
8 reference also three letters that Mr. Gillespie
9 wrote; September 25th, 2006, September 27th, and
10 October 2nd, 2006. Mr. Gillespie wrote many
11 letters. Some of them were longer than others but
12 reviewing those three letters, composing this
13 letter to Judge Nielsen, opening up Lexis and
14 getting this exact quote of this Code of Federal
15 Regulations and the edits, a .4 or 24 minutes for
16 this letter I think is kind of reasonable.

17 **BY MR. BAUER:**

18 Q. You don't have any of the research that you
19 conducted noted in your hourly summation notes; is that
20 correct?

21 A. No. To be honest, the way I would bill a letter
22 like this normally would be to calculate the amount of
23 time and then note that the letter, you know, was done.
24 I don't -- I don't put everything that was in the letter
25 and I didn't put in here that in order to compose the

1 letter I had to review the file and open up Lexis to get
2 the proper quote for this provision of the Code of the
3 Federal Regulations.

4 Q. Going up to February 24, 2006?

5 A. Yes.

6 Q. Did you -- it's got 1.2 hours writing a 57.105
7 motion?

8 A. February 24th, of 2006, yes. If you'll note, it
9 was to prepare the motion and also review 57.105 and
10 recent cases.

11 Q. I'm just trying to understand exactly what -- I
12 mean, because from everything that you've said and
13 everything that I've reviewed about you, you do seem to
14 have a significant level of experience. I'm not sure
15 why someone with so much experience would require -- and
16 that experience goes into the hourly rate that we're
17 going to be charging -- why it's going to take 1.2 hours
18 to write what is in my limited experience a fairly
19 simple motion?

20 A. Well, let me get the motion, and if it's okay
21 I'll keep talking while I'm doing that. The --
22 regardless of how experienced you are, my practice as an
23 attorney has always been that when I sign a document and
24 submit it to the Court, I can't really go from my
25 knowledge or understanding of the law even with the most

1 basic things. I always consult the statutes and always
2 review things. In fact, I got a call from an
3 out-of-town attorney today who asked me something about
4 the statute of limitations, and even though I knew off
5 the top of my head it was four years, I opened up the
6 statutes and reviewed it with him while he was on the
7 phone because I don't want to make a mistake.

8 THE COURT: Now, is there a separate entry
9 for the memorandum that was submitted in support
10 of the motion or not?

11 MR. RODEMS: I don't believe so but I would
12 have considered that part of this. And, again,
13 that was on February 24th.

14 THE COURT: Because there was a memo, a
15 separate memo filed about a month later, so.

16 MR. RODEMS: Let's get to that motion. Okay.
17 I do have it.

18 THE COURT: It's broken.

19 MR. RODEMS: The actual service date was
20 February 28th. I would have entered the time for
21 when the work was done on it and I'm not sure what
22 editing took place over the next few days but it
23 was a three-page motion.

24 **BY MR. BAUER:**

25 Q. And you have none of that editing noted in your

1 particular breakdown; is that correct?

2 A. What? Editing this?

3 Q. Yes.

4 A. No. But it's a three-page motion and it does
5 track those parts of Mr. Gillespie's filing that were
6 without sufficient factual or legal basis. It does
7 quote directly from the -- from the complaint that -- or
8 the pleading that Mr. Gillespie filed and, you know,
9 obviously, I had to review the complaint and prepare an
10 appropriate motion for it, you know, so I thought that
11 the hour and 12 minutes that I have for it was
12 appropriate.

13 Q. In reviewing -- I'm actually reviewing the
14 defendant's amended motion for sanctions which required
15 an additional -- I thought it was .5 but I can't find it
16 right now.

17 A. May 25th, 2006, is that what you're referring to?

18 Q. It was .3. Thank you. In reviewing this
19 document, this appears to be a lot of language that
20 comes up on the standard motions. The standard language
21 of defendants coming forward pursuant to a statute that
22 you had filed 21 days prior, a very brief excerpt of
23 what the facts are that give rise to this. There's
24 little or no case law cited or a supporting memorandum
25 of law citing it. It's not heavily loaded with

1 different statutes and only has one exhibit attached.

2 Would you agree this is not an advanced or a
3 difficult motion?

4 A. I don't know what you mean by advanced or
5 difficult but I put down that it took me 18 minutes to
6 do the amended motion and to prepare the notice of
7 filing.

8 Q. And what was the change between the original
9 motion and the amendment?

10 A. If I recall correctly, and I'd have to look at
11 the two of them, I think in one instance we were asking
12 the Court to require Mr. Gillespie to retain counsel to
13 go forward because of some of the things that he was
14 doing. But I think in the second one, we were seeking
15 just attorney's fees.

16 Q. Okay. So the first one is substantively very
17 similar to the amended complaint -- or excuse me -- the
18 amended motion absent what you just --

19 A. Yes, sir, I would agree with that, yes, sir.

20 Q. -- stated? So, again, it's very short, very
21 brief, succinct, not a lot of case law citations or
22 anything like that?

23 A. If that's your characterization of it, I wouldn't
24 have any reason to disagree with that.

25 Q. And you testified that it was -- the cause of Mr.

1 Gillespie filing some of these was that he looked over
2 your defenses to the filing of his complaint and he just
3 copied those over into his motion; is that correct?

4 A. Yes, sir, and I'm trying to remember if he told
5 me that or you told me that but I definitely recall
6 hearing that from you or him.

7 Q. And those similar defenses, when you forwarded
8 them, did you prevail on them?

9 A. Well, my defenses were listed in response to his
10 claim that we had breached a contract and that we -- and
11 I say "we" I mean my clients -- had committed some sort
12 of fraud against him and the defenses we filed were
13 appropriate for a breach of contract action and a fraud
14 action whereas we had countersued Mr. Gillespie for
15 defamation --

16 Q. If I could, just did you prevail on them?

17 A. They haven't all been decided yet. The case is
18 still at issue.

19 Q. The defenses, actually, all of them were denied
20 and his complaint continued on. There was only -- the
21 only granting from your motions that he parroted was a
22 removal of about four sentences from his complaint in
23 regards to professional conduct; do you recall that?

24 A. No, I don't. I'm sorry. As far as it goes
25 though because our defenses were affirmative defenses,

1 those would continue on until they're resolved by the
2 Court and some of them have not been addressed before
3 the Court. You were here for the last hearing on the
4 motion for judgment on the pleadings, so, I mean, you
5 know some of these issues have already come up and are
6 under consideration by the Court.

7 Q. I'm looking at a 10/18/2006, receipt and review
8 of October 18, 2006 filing by Gillespie and preparing
9 response and motion to strike.

10 Can you explain to us and the Court why this one
11 singular response took you 2.2 hours to be able to
12 respond to?

13 A. Yes. The October 18th, 2006 letter by Mr.
14 Gillespie was in response, if I recall correctly, to the
15 Court's direction to Mr. Gillespie when Judge Nielsen
16 was presiding that Mr. Gillespie identify to the Court
17 his intentions about proceeding, and what had happened
18 was when Mr. Gillespie didn't respond to the discovery,
19 we had filed a motion for an order to show cause.
20 Shortly before that, Mr. Gillespie had requested a
21 continuance and also a court-appointed attorney under
22 the Americans With Disabilities Act and then he also
23 advised Judge Nielsen that his mother's homeowner's
24 insurance company was contemplating providing him a
25 defense based on our counterclaim for defamation. After

1 that, the judge -- Judge Nielsen declined to go forward
2 with the order to show cause on that date because of
3 these issues and asked Mr. Gillespie to file a response,
4 which I believe was Mr. Gillespie's October 18th letter.
5 That letter was many pages long, single spaced, and it
6 went far beyond what Judge Nielsen directed him to do.
7 It contained attacks, if I recall correctly, on Judge
8 Nielsen for matters that had nothing to do with this
9 case. It had attacks on me. It had attacks on my
10 former partner, Jonathan Alpert, and it was about the
11 most inflammatory piece of writing I've seen filed in a
12 court file in quite some time. I don't know if I've
13 ever seen a more inflammatory one. So in response to
14 that lengthy letter, I filed a lengthy motion to strike
15 and the combined time of reading his letter, evaluating
16 it in light of the facts of this case and preparing a
17 response and a motion to strike took me 2.2 hours.

18 Q. Many of those issues that you would have
19 addressed in that, you've already said that you
20 researched in the 10/3/2006 letter to Judge Nielsen,
21 also researching on your 2/24/2006, 57.105, preparing
22 for those issues. All those are very similar issues and
23 you would have used that previous knowledge to go into
24 that motion; isn't that correct?

25 A. No. The motion to strike dealt specifically with

1 Mr. Gillespie's October 18th, 2006 letter and those
2 things that he said in there that should have not ever
3 been filed in the court file and, quite frankly, as an
4 officer of the court, the things that Mr. Gillespie said
5 about Judge Nielsen were quite inappropriate and I felt
6 as it would be appropriate to move to strike these
7 things because, you know, regardless of the fact that
8 Mr. Gillespie is not an attorney, there's still a
9 minimal expected level of decorum in court filings.

10 Q. Is it your responsibility to ensure court decorum
11 or is it the judge's?

12 A. Well, it is my responsibility to make sure that
13 the documents that are filed in the court file are
14 appropriate and Mr. Gillespie had far exceeded with his
15 acidic letter what Judge Nielsen had requested that he
16 do in compliance to the order to show cause hearing
17 being delayed at Mr. Gillespie's request. And I would
18 point out that all of this, all of this, the 2.2 hours,
19 the motion to strike his letter, all this flowed from
20 Mr. Gillespie coming in when he should have been
21 responding to why he had not filed the discovery that
22 Judge Nielsen had ordered back in July 24th, of 2006,
23 and Mr. Gillespie's actions in requesting an attorney
24 under the ADA, asking the Court to delay proceedings
25 because he had an insurance company that might defend

1 his counterclaim, and those things all resulted from
2 that motion for an order to show cause. And then, of
3 course, Mr. Gillespie, as you know and as he reported to
4 Judge Nielsen, directed the insurance company to not
5 provide him a defense even though it was willing to do
6 so because Mr. Gillespie --

7 MR. BAUER: Objection, that's hearsay.

8 THE COURT: Any exception?

9 MR. RODEMS: Well, Mr. Gillespie is a party
10 so it's an admission and Mr. Gillespie already
11 disclosed this to the Court.

12 THE COURT: Exception to the hearsay rule
13 admission? All right. I'll overrule the
14 objection.

15 THE WITNESS: As I was saying -- if it's
16 overruled, as I was saying, Mr. Gillespie advised
17 the insurance company not to provide him a defense
18 because he found out that the insurance company
19 was interested in resolving the counterclaim and
20 so Mr. Gillespie instructed the insurance company
21 not to defend him and not to settle the
22 counterclaim.

23 **BY MR. BAUER:**

24 Q. And it was -- he instructed the insurance company
25 not to enter an admission of guilt or anything that

1 appeared to be an admission of guilt on his behalf;
2 isn't that correct?

3 A. I don't know if he had that topic of discussion
4 with them or not but we certainly would not have
5 requested an admission of guilt. Most settlements that
6 I've ever experienced involved no admission of liability
7 on either side. We thought it was a good opportunity to
8 resolve our counterclaim in a fair manner but
9 Mr. Gillespie intervened in that and told the insurance
10 company that he didn't want the defense and he
11 disclaimed coverage under the policy which was his
12 right.

13 Q. And that would have required him resolving his
14 claim as well, correct?

15 A. No. The insurance company made it plain to me
16 when they were talking to me that they had no authority
17 to act on Mr. Gillespie's behalf on his claims against
18 our law firm and that any settlement with us would only
19 involve the counterclaim and we were perfectly fine with
20 that.

21 Q. And as far as all the issues of inappropriateness
22 towards Judge Nielsen, is the judge empowered and able
23 to handle those issues himself?

24 A. Yes, sir, of course, and that was the basis of
25 the motion to strike to have a vehicle for this issue to

1 be brought up and for the judge to rule on it.

2 Q. So without that, that judge sua sponte couldn't
3 have addressed those issues and handled the decorum of
4 the court on his own?

5 A. Oh, I'm sure he could have, yes, sir.

6 Q. So your motion to strike, going after the
7 inappropriate things addressed to the Court actually was
8 superfluous, it was completely unnecessary because the
9 Court, if they had been insulted by them, could have
10 handled it itself?

11 A. Well, the statements against Judge Nielsen were
12 only a small part of it. A large part of it was
13 directed at me and for whatever reason I don't
14 understand directed at my former partner from more than
15 seven years ago, Jonathan Alpert, but you know, a lot of
16 the things that were in that letter were completely
17 unrelated to this case and should have been stricken
18 from the record. I believe they're still part of the
19 record. I don't know that the motion to strike ever
20 actually was heard by the way.

21 Q. And beyond the ones that we've pointed out,
22 there's several entries in here where you provide what
23 could be described as secretarial services; preparing
24 notices, preparing letters, preparing them for filings;
25 is that correct?

1 A. I wouldn't describe some of those things as
2 secretarial services. If you're talking about pure
3 typing, that's -- I think that could be described as a
4 secretarial service but my practice also is that when I
5 am sending something to the court or specifically
6 directly to the judge, I do have to review everything
7 and make sure that if my secretary has assisted me in
8 pulling those documents, that they're the correct
9 documents. I mean, I'm sure that you have the same
10 practice of, you know, if you send a letter out under
11 your signature and somebody opens it up and it contains
12 the wrong things, that a reflection of you as the
13 attorney. So I try to -- I try to always go through
14 whatever is going out of the office. In fact, my
15 secretary demands it.

16 Q. But it only takes a minute or two to review a
17 secretary-prepared notice of hearing, confirm it's the
18 right date, confirm the certificate of service is
19 correct, that the style is correct. It doesn't take two
20 -- it doesn't take 12 minutes; it takes one or two?

21 A. Well, it might because sometimes what happens,
22 and I don't know if this is the case, but if the wrong
23 thing is attached, I'll go to the file and clip it and
24 that way she knows exactly what to attach and I just
25 don't know what it was but, you know, the way I do

1 things is that I, you know, I have -- if you go to my
2 office, I've got a clock on the wall, I've got a clock
3 on my shelf, I've got a clock on my computer, I've got a
4 wrist watch. I'm a time person. I love clocks. I keep
5 clocks. I take care of the docks. A predominant
6 majority of my clients do require detailed hourly
7 billings and they want to be billed for real time and
8 that's what I do, I bill in increments of .1 to actual
9 time.

10 MR. BAUER: Okay. That's all I have.

11 THE COURT: All right. Any redirect?

12 MR. RODEMS: No. I'd like to call Mr.
13 Gardner if I could, Your Honor.

14 THE COURT: Sure.

15 Thereupon,

16 **JOHN WILLIAM GARDNER,**

17 A witness, being first duly sworn to tell the truth, the
18 whole truth and nothing but the truth, was examined and
19 testified as follows:

20 **DIRECT EXAMINATION**

21 **BY MR. RODEMS:**

22 Q. Mr. Gardner, for the record, would you give us
23 your name, your address and your occupation?

24 A. Well, I should point out again that I've been
25 sworn. My name is John William Gardner. My

1 professional address is 221 East Robertson Street,
2 Brandon, Florida, 33511. I'm an attorney licensed to
3 practice in the state of Florida. I have been so
4 licensed since April 21st, 1988. I am also admitted to
5 the Middle District of Florida. I'm also a certified --
6 a Florida Supreme Court certified family law mediator,
7 and I've been so for approximately six months.

8 Q. Mr. Gardner, what areas of practice are you
9 involved in currently?

10 A. The broad label is general civil practice.
11 Within that, I practice personal injury and worker's
12 compensation. I also do a pretty broad collections
13 practice and then I have what I would call other cases.
14 Things, frankly, such as this one are very interesting
15 to me. That's the sort of things that I get involved
16 with. General civil litigation, I think, is the best
17 description for that.

18 Q. Have you testified as an expert before any other
19 judges?

20 A. Yes, sir, I believe that I have. I was trying to
21 review that for this hearing and I do not recall when
22 but I believe that you have called me in a previous case
23 to testify.

24 Q. Okay.

25 A. I just couldn't remember when and I couldn't

1 remember the case or the circumstances.

2 Q. All right. Has your opinion as an expert ever
3 been disqualified?

4 A. No, sir, it hasn't.

5 Q. Okay. Your Honor, I would -- oh, let me ask you
6 this. Mr. Gardner, are you familiar with the rates that
7 attorneys charge in this community?

8 A. Yes, I am.

9 Q. And how are you familiar with that?

10 A. I've practiced in Hillsborough County for -- next
11 month will be 20 years. I do this on a daily basis.
12 This is the way I support my wife and family.

13 Q. Have you ever pursued court-awarded attorney's
14 fees for work on your cases?

15 A. Yes, I have.

16 Q. Have you had experts testify on your behalf?

17 A. Yes, I have.

18 Q. Okay. And have you consulted with other
19 attorneys in the area to find out what people are
20 charging in this marketplace?

21 A. Yes, sir.

22 MR. RODEMS: Okay. Your Honor, I would
23 tender Mr. Gardner as an expert on the matter of
24 hourly rates for attorneys and the sufficiency of
25 the hours in this case.

1 THE COURT: Any --

2 MR. BAUER: Just a few questions, Your Honor.

3 THE COURT: Sure.

4 VOIR DIRE EXAMINATION

5 BY MR. BAUER:

6 Q. In your practice, have you had any experience
7 with 57.105?

8 A. Yes.

9 Q. How many have you filed?

10 A. I have two presently pending and -- or excuse me
11 -- actually, I have two separate cases with 57.105's in
12 them. In one case I have two 57.105's; one against one
13 party and one against two parties within the same case.
14 Aside from that, I have probably filed three others. I
15 have not kept track of them but I do have those
16 presently pending.

17 Q. So I'm sorry about -- how many total is that
18 approximately?

19 A. About five.

20 Q. About five. And how many hours of research have
21 you conducted on 57.105's?

22 A. Well, I filed the most recent -- excuse me -- the
23 second to the most recent 57.105's that I filed was in
24 approximately January 2008, and I realized that there
25 had been some changes to that. In preparing that

1 January 57.105 motion, I called another attorney, Mike
2 Edenfield, and I had him go through the details with me
3 and from that I went and looked at the statute and then
4 I did run a West Law check of it and I would think that
5 I probably spent about three hours doing that one.

6 Now, when I did the second one in the separate
7 case about -- about seven -- about seven weeks later, I
8 did not go back and redo that research because I figured
9 that things had not changed much in seven months. So
10 the second one I didn't research at all because I had
11 just done it.

12 Q. So I'm sorry there were a couple of numbers
13 there. If I can make sure. Was it -- so you have a
14 total of three hours of research on 57.105's?

15 A. Three hours in January, 2008, and no research in
16 -- it was about February, late February, when I filed
17 the second -- filed the 57.105 in the second case.

18 Q. And have you -- have you written any articles on
19 57.105's?

20 A. No, sir.

21 Q. Have you participated in any board discussions on
22 57.105's?

23 A. Well, aside from Mike Edenfield and I talking
24 about it and, of course, Rodems and I talking about it,
25 I don't know if that qualifies as a board but I feel

1 like I've pretty well talked around the issue and I feel
2 like I'm pretty familiar with it.

3 Q. But are you --

4 A. I do not hold myself out to be an expert on that
5 particular issue. I have not done any particular study
6 that would qualify me as an expert on 57.105. I'm not
7 sure that there is such a thing. I think that as a
8 general civil litigator that I do have sufficient
9 knowledge and understanding of 57.105 to comment on
10 Mr. Rodems' use of that in this case or application of
11 that in this case.

12 Q. But you wouldn't specifically be an expert on how
13 much time it would take, what the complexity of a 57.105
14 or any of the parallel motions that were filed with it?

15 A. If we might address the 57.105, I think that,
16 yes, I do have a sufficient understanding that I feel
17 that I am competent to charge people to represent them
18 in front of judges on 57.105 motions and I have done
19 that in these two cases that I've --

20 Q. But are you an expert on that?

21 A. Am I an expert? Well, I'm kind of getting there.
22 I think that I am qualified and does that make me an
23 expert that I would charge people money and that they
24 would pay me money to represent them in court on that?
25 I would think that, yes, that would qualify me as an

1 expert. Will I tell you I'm an expert? No, I'm not
2 going to claim to be an expert but I do believe that
3 when I go into court and I have somebody's case on the
4 line and when they're paying me money to do that, I
5 believe that I better know what I'm doing.

6 MR. BAUER: That's all. Your Honor, I would
7 object to the witness being qualified as an expert
8 specifically on the issues of 57.105, how much
9 time it takes, was it an appropriate amount of
10 time. I think he's clearly qualified to, to offer
11 his opinion though as to the specific hourly rate
12 as experienced in all of those issues but I think
13 he's clearly articulated himself that he can't
14 provide anything to the Court that the Court in
15 its own experience, and really any attorney's
16 experience as to what 57.105's are and how much
17 research they take and what different issues are,
18 I don't think this witness has anything to add in
19 those particular areas.

20 THE COURT: All right. We're not talking
21 about an expert in the substantive 57.105 field
22 but simply time and effort, research required for
23 an otherwise competent lawyer to research and get
24 up to speed on a 57.105 motion. So I think he's
25 got enough qualifications to comment on those

1 areas as he would on any other area that he's
2 familiar with and by experience he's filed enough
3 57.105 motions to give those kind of opinions. So
4 I'm going to overrule your objection.

5 MR. BAUER: Yes, Your Honor.

6 THE COURT: You may continue.

7 **BY MR. RODEMS:**

8 Q. Thank you. Mr. Gardner, are you familiar with me
9 as an attorney?

10 A. Yes, sir. You and I have practiced together. I
11 did go back and look at those cases. We were together
12 on a federal case in 2003. We co-counseled the case and
13 then in 1994, you and I had a case against each other
14 that went to the First District Court of Appeal, and I
15 was successful by the way.

16 Q. All right.

17 THE COURT: So there.

18 MR. RODEMS: I will --

19 THE WITNESS: I'm not sure you want that on
20 the record but anyway.

21 MR. RODEMS: I would duly note that and put
22 the flames out on my -- seat of my pants right
23 after the hearing.

24 **BY MR. RODEMS:**

25 Q. Well, having known me since -- by the way, after

1 -- that case was Karzonowski versus Turner Tree and
2 Landscape (phonetic)?

3 A. An employer/carrier.

4 Q. Okay.

5 A. It was definitely Karzonowski.

6 Q. Okay. After 1994, and up until 1993, when we
7 co-counseled on a case together, did you have occasions
8 to observe me as an attorney?

9 A. Yes, sir.

10 Q. Okay. And what is your opinion of me as a
11 practitioner, or how would you describe my
12 qualifications to the Court?

13 A. I have the highest opinion of your
14 qualifications, your ethics, your representations of
15 people. I call you periodically, at least once every
16 other month, when I want to kick something around and
17 you're always very helpful to me. You always have an
18 answer or you always have some sort of direction. I
19 believe that you are one of the most skilled litigators
20 in this county.

21 Q. Well, by the way, what was it about the case in
22 2003 that you called me to co-counsel with you?

23 A. The matter was a federal case and I am --
24 although I am admitted to the Middle District, I do not
25 -- I don't regularly practice in federal court and that

1 particular case was an automobile crash where our client
2 ran into the back of a parked moving van that had parked
3 in the middle of the street to unload some equipment.
4 The gentleman hurt himself pretty badly.

5 Q. All right. Have you, in this case that we're
6 here on today, have you reviewed my affidavit of time?

7 A. Yes, sir. More specifically I reviewed the
8 affidavit bearing certificate of service date of
9 November 6, 2007, I also reviewed a pleadings index and
10 I did look through several pleadings that I've
11 specifically noted here. I have not reviewed the other
12 two boxes but I did go through your pleadings box.

13 Q. Okay.

14 A. And that is an 8 1/2 by 11 standard storage box
15 and there are three boxes full for this case.

16 Q. Okay. And do you have an understanding of what
17 the events were that led to the Court entering two
18 orders entitling me as the defendant's counsel to be
19 paid an attorney's fee?

20 A. Yes, sir, I do.

21 Q. Okay. And briefly, what is your understanding?

22 A. The first matter was a discovery issue with
23 regard to interrogatories and requests to produce that
24 were propounded on March 28th, 2006. There was a motion
25 to compel, a response to those. Subsequently, there was

1 a -- I believe there were two show cause orders. There
2 also was a certiorari application for appeal with regard
3 to the discovery. There was a reconsideration motion.
4 I was not aware of the disqualification motions. I
5 didn't see those in your affidavit and I didn't review
6 those but apparently there were at least two issues with
7 regard to recusing the judge and that was all that I had
8 noted with regard to those.

9 There was a second matter with regard to the
10 57.105 motion. You filed a motion to dismiss or a
11 motion to strike on February the 8th, 2006. There was
12 an amended motion that was filed 21 days later as is
13 appropriate. There was also a motion to reconsider
14 that. You had filed a memorandum of law. The plaintiff
15 responded a couple of times. There was a request that
16 the bailiffs show up for all proceedings in this case.
17 I did review the pleadings that were filed by the
18 plaintiff that you had moved to strike and I found them
19 to be nonsensical, I believe, is the most appropriate
20 way to describe them. They weren't appropriate
21 responses to your requests.

22 Q. Did you review the specific tasks in the itemized
23 sheet that was attached to my affidavit for the hours
24 that I'm seeking compensation for?

25 A. I did. I went through the -- I read both of the

1 orders that are attached to your affidavit and I
2 reviewed every single time entry and then on a couple of
3 occasions I did go and compare them to the pleadings
4 index. I did not then go back to the pleading to see
5 that it was eight pages or 12 pages but I did review
6 those two in conjunction with each other.

7 Q. Based on your review of the file and your
8 experience as a lawyer, are the tasks that I'm seeking
9 to be compensated for reasonable tasks to be performed
10 in connection with these two matters?

11 A. I do believe that the tasks are reasonable and I
12 do believe that the amount of time that you spent to
13 perform those tasks are reasonable as well.

14 Q. Okay. Do you -- based on my experience and
15 qualifications as you know them to be and as I've
16 testified to here today, do you have an opinion on what
17 the appropriate hourly rate is for a person such as me?

18 A. Yes, I do have an opinion.

19 Q. Okay. And what is that opinion?

20 A. I note that you have requested -- this is
21 Paragraph 3 of your affidavit -- you're requesting \$350
22 per hour. I do believe that \$350 an hour is
23 appropriate. I know of two other attorneys, both of
24 them practice in my specific area in Brandon who are
25 charging \$400 per hour. One is predominately a family

1 law attorney. The other is a condominium land use
2 attorney and both of those are charging \$400. I believe
3 that your skills far exceed those attorneys. I am very
4 familiar with both of those attorneys and their skills
5 having been employed for five years by one of them.

6 I also mentioned Mike Edenfield. I've talked
7 with him about his hourly rate and his is \$325 an hour.
8 I believe that you and Mike have similar experience and
9 similar qualifications but I do note that you practice
10 in Tampa. I do recognize that expenses in Tampa -- for
11 parking, we don't pay for parking out in Brandon. So I
12 do believe that your hourly rate should be the \$350.

13 Q. And what is your knowledge of what other
14 attorneys are charging in the area?

15 A. It's -- can you be more specific, I mean, I can
16 tell you who -- Mike McDermott is the one that's at \$400
17 an hour and Cliff Curry is the other one that's at \$400
18 an hour, Edenfield is at \$325, I'm at \$300.

19 Q. And what of these attorneys are board certified
20 or AV rated?

21 A. Cliff Curry may be board certified in family law.
22 I'm honestly not sure of that. I do believe that
23 McDermott or Edenfield are certified in any category. I
24 do note that you are trial practice certified, I
25 believe, yes, sir.

1 Q. In your experience or in your opinion, should the
2 hourly rate for attorneys who are board certified be
3 higher than for attorneys who are not board certified?

4 A. No question. You went to the trouble to acquire
5 the skills necessary, to have the number of trials that
6 are necessary, and you also took the test and you
7 studied for the test and I think that you should be
8 compensated at a rate higher than attorneys who have not
9 done that.

10 Q. And Mr. Gardner, are you expecting to be paid for
11 your expert testimony here today?

12 A. I am, sir.

13 Q. And what is your hourly rate?

14 A. My hourly rate is \$300 per hour.

15 Q. And how many hours have you expended up to the
16 time of this hearing, not including the time of this
17 hearing?

18 A. I started this morning at -- well, you and I have
19 had a couple of telephone conversations. I've not
20 included those but I did start working on the file this
21 morning at 10:30. I knocked off at 12:30, I ate lunch
22 and then at about ten minutes to 1:00 I got in my car
23 and headed over here and the hour now is 2:26 p.m. So
24 I've now been at it about two hours this morning and
25 then another hour-and-a-half this afternoon.

1 Q. So a total of three-and-a-half hours?

2 A. Yes, sir.

3 Q. Okay. Now, when we were scheduled for hearing
4 back in January, did I send you documents by e-mail and
5 other things to review?

6 A. You did and I -- honestly, I only gave them a
7 cursory review because you had given me the alert that
8 this was probably going to be continued. You -- I do
9 not believe you brought your file but you did send me
10 the affidavits and the other things and I knew they were
11 there. I just didn't put a lot of time into it but I
12 did review but didn't know what was going on.

13 Q. Whatever your review may have been earlier on or
14 as this case has progressed, you have not included that
15 in your three-and-a-half hours that you're seeking
16 today?

17 A. No, sir.

18 MR. RODEMS: Okay. That's all I have, Your
19 Honor.

20 THE COURT: How much cross do you have?

21 MY BAUER: Five minutes.

22 THE COURT: Okay.

23 **CROSS EXAMINATION**

24 **BY MY BAUER:**

25 Q. You testified previously that you went through

1 each time stamp and determined that they were
2 appropriate?

3 A. The times -- the time records that are attached
4 to the affidavit bearing certificate of service date of
5 November 6, 2007, that is correct.

6 Q. Did -- how did you make a determination that
7 preparing a motion for 57.105 fees would take an
8 hour-and-a-half? Did you make any attempts to look at
9 the statute, determine the research, what would be
10 entailed with that or did you just look at it and go,
11 yeah, that looks right?

12 A. Well, what I did, as we discussed a moment ago,
13 was I did one in January and I recollected that it took
14 me about three hours to do it and I believe that Mr.
15 Rodems' skills are superior to my own in legal research
16 and so he spent about half as much as I did, so I
17 figured that that was reasonable, and I did review the
18 -- I did read the motion and he has several very
19 detailed entries that are in there. So, you know, I
20 thought it was a pretty good motion and 1.2 seemed like
21 a very reasonable amount of time for him to have spent
22 on that.

23 Q. What about the motion did you feel was very
24 detailed?

25 A. It was where -- may I specifically review the

1 motion. What he talks about is the -- fails to state a
2 cause of action in order to determine whether or not --
3 it's a motion to dismiss. I'm looking at the wrong one.
4 Motion for sanctions at 17.

5 Q. You have -- oh, I'm sorry.

6 A. I have Volume One and you have Volume Two.

7 MR. RODEMS: Well, the motion to dismiss is
8 in that first volume.

9 THE WITNESS: Yeah, but I think you were
10 asking about the 57.105.

11 MY BAUER: Yes, I was asking about the
12 57.105.

13 THE WITNESS: See, what he did was that he
14 has numbered paragraphs and this -- I'm looking at
15 defendant's motion for sanctions pursuant to
16 57.105 Florida Statutes bearing a certificate of
17 service date of February 28, 2006. And what he
18 did was that he went through and first of all
19 recited Paragraph Number 1, the 21 days that the
20 copy was provided --

21 BY MR. BAUER:

22 Q. Which is standard language out of the statute,
23 correct?

24 A. That's out of the statute.

25 Q. So he would have had that in seconds? I mean,

1 you just go to West Law, you type in FLST 57.105, the
2 statute's in front of you, there's the language, you cut
3 and paste it?

4 A. I tell you how I got it was when I did my motion
5 in January, I got the book out and I read it but 57 has
6 -- 57.105 has several subparts and so I had to, you
7 know, identify the subpart and then read it very closely
8 so as not to make a mistake in sending it to the Court
9 and blow the procedure, frankly.

10 The next thing he did in the motion was that he
11 recited the motion to dismiss the counterclaim that the
12 plaintiff had served and then he goes through their
13 allegations under subparagraph -- identified with small
14 alphabet letters. And then under Paragraph D, he
15 specifically goes through and identifies what
16 allegations the plaintiff has made and then recites how
17 it is improper and I believe that that required some
18 effort. And I don't mean "some effort," I mean some
19 above-the-ordinary effort in order to go through and
20 specifically recite that. So when I saw that it was 1.2
21 hours, to me, that seems reasonable just for the motion
22 on -- in and of itself, not necessarily coupled with any
23 research and then if he did the research and drafted the
24 motion in 1.2, then he is a good lawyer.

25 Q. Comparatively to other statutes, 57.105 has eight

1 subparts in it, is that correct?

2 A. I think it's seven.

3 Q. Seven; that's really not a long statute, is it?

4 A. I think it's seven.

5 Q. They're very much short, brief little quick
6 paragraphs?

7 A. Yeah, but they deal with a bunch of stuff.
8 Number Seven deals with reciprocal attorney's fees. I
9 believe that this is Number Six, isn't it?

10 Q. That's a real short sentence.

11 A. Well --

12 Q. I mean, it's really not -- as statutes go, it's
13 not a complicated statute?

14 A. I've practiced worker's comp for 17-18 years and
15 nothing is more complicated that worker's comp. So when
16 you compare 57.105 to worker's comp, 57.105 pales
17 compared to the worker's comp section, okay.

18 Q. Okay.

19 A. But to call it a simple statute, I don't think
20 so. I would not necessarily agree.

21 Q. And did you go through -- you said when you
22 looked at the letters and determined -- did you go back
23 -- strike that. When you reviewed each entry for the
24 different letters, did you go back and read the letters?

25 A. No, sir, I didn't read any of the letters.

1 Q. And did you look at any -- what did you look at
2 to give you the indication that 2.2 hours would be
3 reasonable for the entry on 10-18-2006?

4 A. It isn't so much as what I reviewed as the
5 explanation that I heard from Mr. Rodems on cross
6 examination this afternoon where he explained all of the
7 steps that he had to go through in order to --

8 Q. So other than his testimony, you have no personal
9 -- you've made no examination of that document to come
10 up with it? You've just looked over this, said 2.2,
11 yeah, that looks good?

12 A. No. What I did was that I took the 2.2 on 10/18,
13 and then I looked at this -- what do you call this? A
14 pleadings index -- and I realized what was done in
15 addition. I believe it's number -- let's see, the date
16 is -- the entry for -- the entry in Mr. Rodems' pleading
17 index indicates the following: Defendant's motion to
18 strike plaintiff's October 18, 2006 letter, and
19 plaintiff's October 18 letter and plaintiff's motion to
20 stay proceedings until the determination is made
21 concerning representation.

22 So when I looked at that in conjunction with the
23 letter, the motion to stay, I realized that there was
24 more than just, you know --

25 Q. So you just looked at -- you looked at the

1 pleading index and you looked at the names of the
2 pleadings?

3 A. And then I heard Mr. Rodems explanation this
4 afternoon where he talked about how the letter was
5 inappropriate. It was -- I think he said it was
6 either --

7 Q. But you have -- but you have no personal -- you
8 have no personal knowledge about that looking at it
9 yourself?

10 A. I did not look at the letter.

11 Q. Okay.

12 A. And I did not look at that specific pleading. I
13 did look at his time entry in the index.

14 MR. BAUER: That's all I have, Your Honor.

15 THE COURT: Okay.

16 MR. RODEMS: I have no redirect.

17 THE COURT: All right. Argument? Brief.

18 MR. RODEMS: Well, I would like to add one
19 more piece of testimony, Your Honor, just about my
20 efforts in this.

21 THE COURT: Well, we're already past the
22 time.

23 MR. RODEMS: I just -- briefly, I just want
24 to say that in preparing for this hearing today I
25 spent approximately two hours getting ready and --

1 THE COURT: Do you get that?

2 MR. RODEMS: Well, that's the point I was
3 going to make in my closing. I don't know if he
4 had any question about that but --

5 THE COURT: I don't think you do, do you?

6 MR. RODEMS: Well, yes, sir, I do have some
7 case law that says in a -- in a case where you're
8 seeking sanctions as opposed to statutory
9 attorney's fees that the Court can award the time
10 expended for proving the amount of the attorney's
11 fee. And that would be the case of Condren vs.
12 Bell. I've got a 2003 Fla.App. Lexis 13988 cite.
13 And also Bates vs. Islamorada, and that's 939
14 So.2nd 171. And here's the two cases, Your Honor,
15 and I've highlighted the pertinent portions. Let
16 me just get you a copy here.

17 In the Bates case, the appellants argue that
18 fees may not be awarded for pursuing the amount of
19 attorney's fees that the trial court awards. And
20 then the Third District says that they agree with
21 the Court in Condren vs. Bell, which is a 4th DCA,
22 which holds that: "Because the fees awarded for
23 litigating the issue of fees was a sanction and
24 supported by substantial competent evidence, the
25 award does not run afoul of State Farm Fire and

1 Casualty vs. Palma, 629 So.2nd 830.

2 THE COURT: Okay. All right.

3 MR. RODEMS: And then --

4 THE COURT: And that wasn't -- well.

5 MR. RODEMS: And then the only other case --

6 THE COURT: Well, any cross on the additional
7 testimony?

8 MY BAUER: In preparing for this hearing,
9 what exactly -- you'd already drafted motions,
10 you'd already drafted your memorandums, you'd
11 already done those. What, in addition to that,
12 did it require you to do?

13 MR. RODEMS: I had to look at every component
14 related to these two issues, review again all of
15 the documents affiliated with it and brief my
16 expert, you know, by telephone and in person, and
17 I would suggest that that took about two hours of
18 time. And then, of course, this hearing has been
19 going for about an hour-and-a-half.

20 MR. BAUER: If I may just have one moment to
21 review this case.

22 THE COURT: Well, that will be for anyway.

23 MR. BAUER: I have nothing else on cross.

24 THE COURT: Okay.

25 MR. RODEMS: All right. Your Honor --

1 THE COURT: Well, we're kind of over the time
2 so I don't know, you know.

3 MR. RODEMS: Well, the only other case I
4 would cite to the Court then would be -- and I
5 don't know if you need this but there is a 2nd DCA
6 law that says if an attorney is testifying as an
7 expert and expects to be paid, then it's presumed
8 that he'll be compensated for his time and that
9 may be common law to everybody but I brought two
10 cases.

11 THE COURT: Yeah, I've done that.

12 MR. BAUER: I agree with that.

13 MR. RODEMS: Okay. Then --

14 THE COURT: Okay. So on this, how do you
15 want to present your argument? I mean, I don't
16 think that you need an extra hearing on that. Are
17 you willing to stand on the testimony or you want
18 to -- I mean, what can you say on the movant's
19 side?

20 MR. RODEMS: No, I would stand on the
21 testimony. If you need to hear something else
22 from me, I'll be happy to do whatever the Court
23 pleases.

24 THE COURT: All right.

25 MY BAUER: Your Honor, I -- very briefly, two

1 minutes possibly. It's just I think clearly that
2 the Court has already awarded that they're
3 entitled to sanctions; however, I think given that
4 the movant in this issue is asking for amounts in
5 even excess of what their own expert charges. I
6 think the amount of \$350 is excessive specially
7 when it's going up against a pro se litigant.

8 There is -- I briefly raised the defense
9 previously at this hearing that there should be a
10 different standard and I will just give quickly
11 for the Court's review Hanes v. Kerner, 404 US
12 515. Even the United States Supreme Court rules
13 that when it comes to pleadings there is a
14 different standard that's to be held with pro se
15 litigants and I believe it's, at the very least,
16 it's not appropriate to consider whether the
17 award; it's to award -- how many -- how much
18 sanctions should be applied and I do not think
19 that this Court should give the heaviest hand it
20 possibly can against a pro se litigant in this
21 case when he was, and has presented to the Court,
22 vehemently tried to find counsel, presented
23 affidavit after affidavit showing how many times
24 he tried to get counsel and wasn't able to.

25 Regardless of what the testimony has been

1 here, 57.105 is a very very simple statute. A
2 beginning attorney can figure it out very quickly.
3 1.25 hours is, I think, excessive for hearings. I
4 don't think it's appropriate to award time for
5 what is otherwise secretarial costs. If they're
6 charging secretarial rate or something different
7 but I certainly don't think those hours should be
8 at \$305 an hour and I think certainly 2.2 hours in
9 attempting to find relief for the Court when the
10 Court was quite capable of finding it's own
11 relief, I think that's certainly excessive.

12 I think probably more appropriate award is
13 approximately somewhere between ten and 15 hours
14 to do this type of work. It's not difficult, it's
15 not complicated, it was fairly straightforward. I
16 think that would be a more appropriate award.

17 THE COURT: Relatively speaking, the language
18 of 57.105 is concise, but as we in Louisiana would
19 say, there's boo coo cases involving issues of
20 interpretation and application of the different
21 sections and subsections of 57.105, and they still
22 keep coming out along with the occasional
23 amendment to the statute by the legislature.

24 That being said, I would find that the hourly
25 rate of \$350 an hour is reasonable. And, again,

1 this is a sanction. The amount of time is a
2 factor but I haven't looked at a sanction award of
3 fees as the same way I do as a statute based on
4 fees, based on a contractual provision or a
5 statute, a prevailing party statute, for example.
6 It is designed to punish and I think the case law
7 even allows sometimes the sanction to be more than
8 that the actual attorney time if the conduct, the
9 underlying conduct involved, is sufficiently
10 egregious. But on the other hand, I think that
11 can be taken into account in awarding less than
12 the actual attorney time, and while I think the
13 overall time of the -- looks like it's about
14 38-and-a-half hours is overall reasonable, I'm
15 inclined to award 30 hours under the facts of this
16 case, but I am going to award Mr. Gardner \$300 an
17 hour plus three-and-a-half hours for his time.
18 Okay. So if you'll prepare an order.

19 MR. RODEMS: I will, Your Honor.

20 THE COURT: Run it by the other side.

21 MR. RODEMS: Thank you.

22 THE COURT: We'll be in recess.

23 (Whereupon, the proceedings concluded.)
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C E R T I F I C A T E

STATE OF FLORIDA
COUNTY OF HILLSBOROUGH:

I, BEVERLY ANN HUNTER, Associate Reporter,
Berryhill & Associates, for the Circuit Court of the
Thirteenth Judicial Circuit of the State of Florida,
in and for Hillsborough County,

DO HEREBY CERTIFY THAT I was authorized to
and did report in shorthand the proceedings and
evidence in the above-styled cause, as stated in the
caption hereto, and that the foregoing pages,
numbered 1 through 59, inclusive, constitute a true
and correct transcription of my shorthand report of
said proceedings and evidence.

IN WITNESS WHEREOF, I have hereunto set my
hand in the City of Tampa, County of Hillsborough,
State of Florida, April 11, 2008.

BERRYHILL & ASSOCIATES

By: _____
BEVERLY ANN HUNTER
Associate Reporter
Notary Public
State of Florida At Large

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