SUPREME COURT OF THE UNITED STATES

No. 12-7747
Title: Neil J. Gillespie, Petitioner
v.
Thirteenth Judicial Circuit of Florida, et al.
Docketed: December 14, 2012
Linked with 12A215
Lower Ct: United States Court of Appeals for the Eleventh Circuit
Case Nos.: (12-11028-B)
Decision Date: July 13, 2012
Rule 12.4

~~Date~~~	~~~~~~~Proceedings and Orders~~~~~~~~~~~~~~~~~~~~~
Aug 13 2012	Application (12A215) to extend the time to file a petition for a writ of certiorari from October 11, 2012 to December 10, 2012, submitted to Justice Thomas.
Sep 13 2012	Application (12A215) granted by Justice Thomas extending the time to file until December 10, 2012.
Dec 10 2012	Petition for a writ of certiorari and motion for leave to proceed in forma pauperis filed. (Response due January 14, 2013)
Dec 20 2012	Waiver of right of respondents Rayan Christopher Rodems; and Barker, Rodems & Cook, P.A. to respond filed.
Jan 24 2013	DISTRIBUTED for Conference of February 15, 2013.
Feb 13 2013	Supplemental brief of petitioner Neil J. Gillespie filed. (Distributed)
Feb 19 2013	Petition DENIED.
Mar 18 2013	Petition for Rehearing filed.
Mar 27 2013	DISTRIBUTED for Conference of April 12, 2013.
Apr 15 2013	Rehearing DENIED.

~~Name~~~~~~~~~~~~~~~~~~~~~	~~~~~~~Address~~~~~~~~~~~~~~~~~~	~~Phone~~~
Attorneys for Petitioner:		
Neil J. Gillespie	8092 SW 115th Loop Ocala, FL 34481 neilgillespie@mfi.net	(352) 854-7807
Party name: Neil J. Gillespie		
Attorneys for Respondents:		
Ryan Christopher Rodems	Barker, Rodems & Cook, P.A.	(813)-489-1001

Counsel of Record 501 East Kennedy Blvd., Suite 790
Tampa, FL 33602
Party name: Rayan Christopher Rodems; and Barker, Rodems & Cook, P.A.

Supreme Court of the United States
Office of the Clerk
Washington, DC 20543-0001

William K. Suter
Clerk of the Court
(202) 479-3011

April 15, 2013

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

Re: Neil J. Gillespie
v. Thirteenth Judicial Circuit of Florida, et al.
No. 12-7747

Dear Mr. Gillespie:

The Court today entered the following order in the above-entitled case:

The petition for rehearing is denied.

Sincerely,

William K. Suter

William K. Suter, Clerk

No: 12-7747

IN THE

SUPREME COURT OF THE UNITED STATES

NEIL J. GILLESPIE - PETITIONER

vs.

THIRTEENTH JUDICIAL CIRCUIT, FLORIDA, ET AL, - RESPONDENTS

RULE 44.2 PETITION FOR REHEARING OF AN ORDER DENYING

PETITION NO. 12-7747 FOR WRIT OF CERTIORARI

Submitted March 18, 2013

by

Neil J. Gillespie, pro se

8092 SW 115th Loop
Ocala, Florida 34481
Telephone: (352) 854-7807
Email: neilgillespie@mfi.net

LIST OF PARTIES

All parties do not appear in the caption of the case on the cover page. A list of all parties to the proceeding in the court whose judgment is the subject of this petition is as follows:

U.S. Court of Appeals for the Eleventh Circuit, no. 12-11213
District Court no: 5:10-cv-00503-WTH-TBS

Civil rights and disability law.
Misuse and denial of justice under the color of law.

Plaintiff: (1)
Neil J. Gillespie

Defendants: (10 + 5 individually)
Thirteenth Judicial Circuit, Florida
Claudia Rickert Isom, Circuit Judge, and individually (Fla. Bar ID 200042)
James M. Barton, II, Circuit Judge, and individually (Fla. Bar ID 189239)
Martha J. Cook, Circuit Judge, and individually (Fla. Bar ID 242640)
David A. Rowland, Court Counsel, and individually (Fla. Bar ID 861987)
Gonzalo B. Casares, ADA Coordinator, and individually
*Barker, Rodems & Cook, P.A.
**Ryan Christopher Rodems, Attorney at Law (Fla. Bar ID: 947652)
The Law Office of Robert W. Bauer, P.A.
Robert W. Bauer, Attorney at Law (Fla. Bar ID: 11058)

* ** NO PARTY INTEREST, *see* Petitioner's Rule 12.6 Notice to the Clerk of the Court, submitted January 22, 2013 (Nominal parties)

U.S. Court of Appeals for the Eleventh Circuit, no. 12-11028
District Court no: 5:11-cv-00539-WTH-TBS

Civil rights and disability law, civil RICO, antitrust, commerce, estate claims.
Misuse and denial of justice under the color of law.

Plaintiffs: (2)
Neil J. Gillespie
Estate of Penelope Gillespie (deceased)

Defendants: (4 + 1 individually)
Thirteenth Judicial Circuit, Florida
James M. Barton, II, Circuit Court Judge, and individually (Fla. Bar ID 189239)
The Law Office of Robert W. Bauer, P.A.
Robert W. Bauer, Attorney at Law (Fla. Bar ID: 11058)

JURISDICTION

This Court denied certiorari in Petition No. 12-7747 by order entered February 19, 2013. Notice of the order from the Clerk follows this page.

Any petition for the rehearing of an order denying a petition for a writ of certiorari shall be filed within 25 days after the date of the order of denial (Rule 44.2). That date fell on Saturday March 16, 2013. Therefore in the computation of time, the 25 day period shall extend until Monday March 18, 2013. (Rule 30.1).

The jurisdiction of this Court is invoked under Rule 44.2 and 28 U.S.C. § 1254(1).

Supreme Court of the United States
Office of the Clerk
Washington, DC 20543-0001

William K. Suter
Clerk of the Court
(202) 479-3011

February 19, 2013

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

Re: Neil J. Gillespie
v. Thirteenth Judicial Circuit of Florida, et al.
No. 12-7747

Dear Mr. Gillespie:

The Court today entered the following order in the above-entitled case:

The petition for a writ of certiorari is denied.

Sincerely,

William K. Suter

William K. Suter, Clerk

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IN THE

SUPREME COURT OF THE UNITED STATES

PETITION FOR REHEARING OF AN ORDER DENYING A
PETITION FOR WRIT OF CERTIORARI

Respectfully appearing pro se, petitioner Neil J. Gillespie, henceforth in the first person, presents intervening circumstances of a substantial or controlling effect and other substantial grounds not previously presented.

Invitation to the American Bar Association (ABA)

A letter on behalf of ABA President Laurel Bellows appears at Appendix 1 as provided February 19, 2013, the same day this Court denied the petition. The response by Jeanne P. Gray[1], Director of the ABA Center for Professional Responsibility concerned the program of discipline system consultations or audits administered by the American Bar Association Standing Committee on Professional Discipline. Ms. Gray wrote, "Without a direct invitation from the Florida Supreme Court, the Standing Committee is not able nor authorized to provide lawyer discipline system consultation services."

In lieu of a direct invitation from the Florida Supreme Court for the ABA Standing Committee to review its discipline system, I asked Ms. Bellows to please accept my invitation to review the fifteen (15) complaints I submitted to The Florida Bar. Two other people I know also want the ABA to review their matters involving The Florida Bar. The ABA should also consider a letter from U.S. Congressman Elijah E. Cummings to the FHFA requesting an investigation of foreclosure mills, many of which are located in Florida. My letter appears in a separate volume appendix designated Invitation to Laurel G. Bellows, President, American Bar Association.

[1] Ms. Gray is also Associate Executive Director, ABA Public Services Group.

This review could complement the ABA's first comprehensive review of disciplinary enforcement rules in 20 years, the one lead by Myles V. Lynk, Chair of the ABA Standing Committee on Professional Discipline. The last such review was the Commission on Evaluation of Disciplinary Enforcement (1989-1992) and the resulting 1992 McKay Commission Report.

Mr. Lynk says[2] the committee will rely heavily on input from individuals and groups working in the ethics and discipline field. What about an opportunity to review a variety of actual discipline matters that The Florida Bar has not, and cannot, fairly or honestly resolve because its fatally flawed discipline system is catastrophically broken?

In addition, I asked Ms. Bellows to please accept my invitation to review, through the ABA Commission on Disability Rights (CDR), my disability accommodation requests that were denied or ignored by the courts.

Finally, the ABA should consider Legal Abuse Syndrome and its cost to the justice system, in terms of depression, suicide and preventable death affecting the profession, the accused, and consumers of legal services, from Internet activist Aaron Swartz to attorney Mark P. Hummels. A copy of the book Legal Abuse Syndrome is provided.

My invitation is in keeping with the American Bar Association's Mission: To serve equally our members, our profession and the public by defending liberty and delivering justice as the national representative of the legal profession.

[2] ABA Journal Law News Now, November 2, 2012, A New Look: ABA Plans First Comprehensive Review of Disciplinary Enforcement Rules in 20 Years, by James Podgers.

ABA Model Rules "Maintaining the Integrity of the Profession"

According to the ABA's website, the ABA Model Rules of Professional Conduct were adopted by the State of Florida July 17, 1986. Rule 8.1 through Rule 8.5 are in the category "Maintaining the Integrity of the Profession".

Does the ABA have a duty to act when it is clear from the Florida Bar's Hawkins Report of May 2012, a.k.a. the Hawkins Commission on Review of the Discipline System, that the lawyer discipline system in this state is fatally flawed, according to findings published in the ABA's McKay Report, fatal defects such as "local discipline components" that foster cronyism and prejudice toward unpopular respondents?

Rule 8.3 Reporting Professional Misconduct

> (a) A lawyer who knows that another lawyer has committed a violation of the Rules of Professional Conduct that raises a substantial question as to that lawyer's honesty, trustworthiness or fitness as a lawyer in other respects, shall inform the appropriate professional authority.

Below is a message by John B. Thompson, J.D. to all members of the Florida legislature.

John B. Thompson, J.D.
5721 Riviera Drive
Coral Gables, Florida 33146
305-666-4366
amendmentone@comcast.net

February 18, 2012

All Members of the Florida Legislature Via Emails to Each Senator and Representative
Tallahassee, Florida

Dear Florida Senators and Florida Representatives:

The lawyer discipline system in this state is catastrophically broken. Its very regulatory structure is fatally flawed according to a landmark finding of the American Bar Association's McKay Commission. The ABA offered the State of Florida an impartial audit of its bar discipline system, and both the Florida Supreme Court and Bar refuse the audit because they know how damning the Florida-specific audit would be.

The Bar itself has just conducted a survey of state judges who have filed bar complaints against lawyers. I had to pry the results of this survey out of The Bar via a public records request, as The Bar is hiding this survey from the public. No wonder; therein is contained the most stunning statistical proof of governmental ineptitude I have ever seen:

"Nearly three-fifths (58%) of judge respondents say they are dissatisfied" with the disciplinary job The Bar has done. A staggering 82% of all county, circuit, and appellate judges in the most populous District (the Third DCA) are "dissatisfied" with the job The Bar is doing! Yet The Bar has now officially decided not to fix the ABA-identified fatal structural flaw in certain state bars that explains this catastrophic Florida Bar failure.

And this indictment of The Florida Bar is from *judges* who filed complaints. You would think The Bar would at least do a good job in Bar complaint cases filed by judges. Can you imagine what the general *public's* experience and level of dissatisfaction with Bar discipline is? In Broward County, for instance, the level of judicial dissatisfaction is a whopping 65%. This is the county in which Scott Rothstein embedded himself in The Bar's grievance system and funneled huge amounts of money to The Bar in order to buy protection from it.

Did you know that The Bar founded and helps run a malpractice insurer that protects its insured lawyers from discipline? The Bar has become, literally, a protection racket. Just ask Scott Rothstein and his Ponzi scheme victims.

I have spoken at length, face-to-face with one of you Senators from South Florida, who agrees with me that any judicial branch budget coming out of this session *must* contain a mandate that the Florida Supreme Court and Bar submit to the aforementioned ABA audit of its broken lawyer discipline system. The Supreme Court is supposed to oversee this mess, and it is not doing so. Even Chief Justice Canady and Justice Polston have found, "The Florida Supreme Court has abdicated its duty to supervise The Florida Bar."

You need to make the judiciary's receipt of our tax dollars contingent upon the Supreme Court's getting its lawyer discipline system in order. There are dozens of Scott Rothsteins out there.

Please contact me for more information on this scandalous emergency. I will meet with any and all of you to explain how bad this is and what must be done.

We are tired of open season declared by The Florida Bar on Floridians. You must, before this Session ends, tell the Supreme Court that its funding is tied to getting its corrupt house in order.

Regards, Jack Thompson

Copy: Media

Letter of U.S. Congressman Elijah E. Cummings to Federal Housing Finance Agency
Request for Investigation of Foreclosure Mills

U.S. Congressman Elijah E. Cummings wrote February 25, 2011 to Inspector General Steve A. Linick of Federal Housing Finance Agency (FHFA) asking that he initiate an investigation into widespread allegations of abuse by private attorneys and law firms hired to process foreclosures as part of the "Retained Attorney Network" established by Fannie Mae." Rep. Cummings' six-page letter appears at Exhibit 3 to my invitation to the ABA.

The Congressman is a Ranking Member Committee on Oversight and Government Reform. Unfortunately most of the law firms cited by Rep. Cummings are Florida law firms, including:

> The Law Offices of David J. Stern
> The Law Offices of Marshall C. Watson, P.A.
> Shapiro & Fishman, L.L.P.
> McCalla Raymer, L.L.C. (now with offices in Orlando)
> Lender Processing Services, Inc. and LPS Default Solutions, L.L.C.

Rep. Cummings' letter cites the Florida AG's investigation of foreclosure mills that was later abandoned:

> For example, on August 10, 2010, the Florida State Attorney General announced an investigation into unfair and deceptive practices by the Law Offices of David J. Stern, P. A., the Law Offices of Marshall C. Watson, P.A., and Shapiro & Fishman, L.L.P. The allegations against the firms include creating and filing with Florida courts improper documentation to speed foreclosures and establishing affiliated companies outside the United States to prepare false documents. In announcing this investigation, the Attorney General stated:
>
> > On numerous occasions, allegedly fabricated documents have been presented to the courts in foreclosure actions to obtain final judgments against homeowners. Thousands of final judgments of foreclosure against Florida homeowners may have been the result of allegedly improper actions of the law firms under investigation.

In the Shapiro case, The Florida Bar claims it cannot regulate law firms, according to an affidavit of Kenneth Marvin, Director of Lawyer Regulation, cited by Attorney General

McCollum in State, Office of Att'y Gen. v. Shapiro & Fishman, LLP, 59 So. 3d 353, 355 (Fla. 4th DCA 2011). The affidavit appears at Exhibit 4 to my invitation to the ABA.

In December 2012 the Law Offices of Marshall C. Watson, P.A. entered into a conditional guilty plead for consent judgment with The Florida Bar, Exhibit 5, invitation to the ABA. On information and belief, the firm simply changed its name to Choice Legal, headed by Marshall Watson's brother, John Watson, where they will likely get back to business as usual.

McCalla Raymer, LLC is another firm Rep. Cummings mentioned by name:

> "Another firm in the Retained Attorney Network, McCalla Raymer, L.L.C., is a defendant in a federal lawsuit in which the plaintiffs allege that it engaged in fraud, racketeering, and the manufacture of fraudulent foreclosure documents. Reportedly, this firm established operations in Florida under the name Stone, McGehee & Silver and hired ten former Stern law firm employees. The firm Stone, McGehee and Silver, LLC, dba McCalla Raymer currently appears as a "Designated Counsel/Trustee" in Florida for Freddie Mac."

Unfortunately McCalla Raymer, LLC is now doing business in Florida under its own name in Orlando Florida. I have personal knowledge of this firm's misconduct in my own disputed foreclosure on a Home Equity Conversion Mortgage, or HECM "reverse" mortgage.

In addition, The state of Florida is also plagued by the following:

- Florida is notorious for the "rocket docket", a court that is noted for its speedy disposition of home mortgage foreclosure cases. Wikipedia reports Lee County Court, Florida (Fort Myers) on some days hears up to 1,000 cases per day which equates to less than 30 seconds per case, assuming an 8-hour day. http://en.wikipedia.org/wiki/Rocket_docket

- Florida is notorious for "Robo-signing", a term to describe the robotic process of the mass production of false and forged execution of mortgage assignments, satisfactions, affidavits, and other legal documents related to mortgage foreclosures and legal matters being created by persons without knowledge of the facts being attested to. It also includes accusations of notary fraud wherein the notaries pre- and/or post-notarize the affidavits and signatures of so-called robo-signers. http://en.wikipedia.org/wiki/Robo-signing#Robo-signing_controversy

- Florida has the highest mortgage fraud rate in the country. The Miami Herald series "Borrowers Betrayed" showed that more than 10,000 people with criminal records were permitted to work in Florida's mortgage industry during the housing boom between 2000 and 2007. Of those, 4,065 cleared background checks despite having committed crimes that state

law requires regulators to screen, including bank robbery, racketeering and extortion. http://www.miamiherald.com/static/multimedia/news/mortgage/sink.html

The Constitution states only one command twice. The Fifth Amendment says to the federal government that no one shall be "deprived of life, liberty or property without due process of law." The Fourteenth Amendment, ratified in 1868, uses the same eleven words, called the Due Process Clause, to describe a legal obligation of all states. These words have as their central promise an assurance that all levels of American government must operate within the law ("legality") and provide fair procedures. http://www.law.cornell.edu/wex/due_process

A property right can be created only by state law. Once a property right is established, the determination of what process is due before that right can be deprived is a question answered by the federal Constitution. Kingsford v. Salt Lake City Sch. Dist., 247 F.3d 1123 (10th Cir. 2001).

Disability Review by the ABA - Commission on Disability Rights

I invited the ABA Commission on Disability Rights (CDR) to review my disability accommodation requests that were either denied or ignored by the courts. A message by CDR Chair Katherine H. O'Neil November 4, 2011 states in part:

> Dear Friends and Colleagues: We are proud to announce that the American Bar Association Commission on Mental and Physical Disability Law has changed its name to the Commission on Disability Rights (CDR).
>
> CDR is one of the oldest and storied entities within the Association...From 1973 up until 1991, the Commission on the Mentally Disabled responded to the advocacy needs of persons with mental disabilities. Adapting to social and political change, the CDR changed its name in 1991 to the Commission on Mental and Physical Disability Law after the passage of the Americans with Disabilities Act. It no longer focused exclusively on individuals with mental health impairments, recognizing that the civil rights movement, as it applied to those with disabilities, encompassed people with sensory and physical impairments.
>
> The Commission advocates for the legal rights of persons with disabilities, seeking to eliminate the obstacles created by stigma and prejudice based on stereotypes and to ensure their equal participation and meaningful inclusion in society.

http://www.americanbar.org/groups/disabilityrights/about_us.html

In the past Dr. Karin Huffer served as my ADA advocate. Dr. Huffer will cooperate with the ABA's review of disability in my case. Dr. Huffer provided a letter October 28, 2010 about the lack of accommodation in my case, see Exhibit 11 invitation to the ABA. 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. (p.1,¶2)
>
> Unfortunately, there are cases that, due to the newness of the ADAAA, lack of training of judicial personnel, and entrenched patterns of litigating without being mandated to accommodate the disabled, that persons with disabilities become underserved and are too often ignored or summarily dismissed. Power differential becomes an abusive and oppressive issue between a person with disabilities and the opposition and/or court personnel. The litigant with disabilities progressively cannot overcome the stigma and bureaucratic barriers. Decisions are made by medically unqualified personnel causing them to be reckless in the endangering of the health and well being of the client. This creates a severe justice gap that prevents the ADAAA from being effectively applied. In our adversarial system, the situation can devolve into a war of attrition. For an unrepresented litigant with a disability to have a team of lawyers as adversaries, the demand of litigation exceeds the unrepresented, disabled litigant's ability to maintain health while pursuing justice in our courts. Neil Gillespie's case is one of those. At this juncture the harm to Neil Gillespie's health, economic situation, and general diminishment of him in terms of his legal case cannot be overestimated and this bell cannot be unrung. He is left with permanent secondary wounds. (pp.1-2)

Legal Abuse Syndrome

Enclosed you will find accompanying this invitation the book "Legal Abuse Syndrome". On November 10, 2009 I wrote to Carolyn B. Lamm, who was then President of the American Bar Association. My letter to Ms. Lamm began with this paragraph:

> Enclosed for you is a copy of "Legal Abuse Syndrome" by Karin Huffer. The book's cover proclaims "Warning: Protracted litigation can be hazardous to your health". Has the ABA addressed this serious, debilitating aspect of litigation?

Unfortunately the ABA returned the book the next day, along with a letter from Beverly Curd,

Communications Coordinator, Office of the President, who wrote in part:

> Addressing issues such as the one you describe is not generally within the purview of the Association's work. The Association does not address specific complaints or cases because it has no power to investigate or intervene in such matters.

However within several months, the online ABA Journal Law News Now published a story,

"Law Practice Can Trigger Stress Disorder, Says Attorney Who Now Works as Therapist" by

Martha Neil, March 17, 2010. Ms. Neil wrote, in part:

> For him personally, writes Will Meyerhofer, a former BigLaw associate who now works as a psychotherapist, "it got to the point for me, at Sullivan & Cromwell, that I felt my entire body clench in preparation for attack just walking through the doors of 125 Broad Street and stepping into that elevator." His post, however, indicates that law practice, in general, rather than any particular law firm, is the cause of such stress.
>
> Such feelings of constant anxiety, he says in a People's Therapist post, can rise to the level of a diagnosable case of post-traumatic stress disorder, which is characterized by a state of hyper-vigilance to potential attack, a deadening of emotions and flashbacks or nightmares concerning stressful situations.

http://www.abajournal.com/weekly/article/law_practice_can_trigger_stress_disorder_says_attorney_who_now_works_as_the

Florida attorney Jeff Childers prepared an *Economic Analysis Spreadsheet* for this matter

September 17, 2009, and assigned a $100,000 cost to "Legal Abuse Syndrome" on page 4:

> Non-Pecuniary Cost of Litigation. Plaintiff is likely suffering from physical and emotional ill effects resulting from the litigation, as described in Legal Abuse Syndrome, the book provided to me by Plaintiff. It is always difficult to put a dollar figure on the non-pecuniary costs of any case, and this case is no different. In attempting to evaluate the physical and emotional costs of going forward with the litigation, I considered both short and long-term effects, and the opportunity cost caused not just by direct time invested in the case but also by loss of energy related to physical and emotional side-effects. My estimate was $100,000, but this figure is subjective and the Plaintiff may wish to adjust this figure upwards or downwards. There is 100% probability these costs will be incurred regardless of the outcome of the litigation.

Mr. Childers also prepared an *Analysis of Case and Recommendation*. Exhibit 12 is a composite of the 12 pages of documents for the *Economic Analysis Spreadsheet* and *Analysis of Case and Recommendation*. Note this $100,000 estimate was made in 2009, and this case has continued for several more years, adding to the non-pecuniary cost of this litigation.

Recent stories on the ABA Journal Law News Now, and the Legal Times, show matters that may involve Legal Abuse Syndrome. What is the ethical response of the profession?

- Internet activist's suicide spurs criticism of US Attorney, January 14, 2013 http://www.abajournal.com/news/article/did_hactivist_deserve_potential_decades-long_sentence_his_suicide_spurs_cri/

- 3 dead, 2 wounded in Delaware courthouse shooting, February 11, 2013 http://www.abajournal.com/news/article/3_dead_2_wounded_in_courthouse_shooting/

- Georgia bar readies suicide prevention initiative as PD takes his life, February 28, 2013 http://www.abajournal.com/news/article/georgia_bar_readies_suicide_prevention_initiative_as_pd_takes_his_life/

- Prosecutor gunned down while walking from parking lot to work at courthouse, January 31, 2013 http://www.abajournal.com/news/article/prosecutor_slain_while_walking_from_parking_lot_to_work_at_courthouse_suspe/

- Fatal shooting after mediation leaves lawyer and client dead, January 31, 2013 http://www.abajournal.com/news/article/lawyer_shot_client_executive_killed_after_mediation_session_with_suspected_/

- US Attorney bullying? This time charge is lobbed by budget motel owner who fought to keep property, January 30, 2013 http://www.abajournal.com/news/article/us_attorney_bullying_this_time_charge_is_lobbed_by_budget_motel_owner_who_f/

- Lawyer Produces Documentary Addressing Depression Among Lawyers, November 24, 2010 http://www.abajournal.com/news/article/lawyer_produces_documentary_addressing_depression_among_lawyers

- Congress Weighs in on DOJ's Handling of Swartz Prosecution, January 29, 2013 (Legal Times) http://legaltimes.typepad.com/blt/2013/01/congress-weighs-in-on-dojs-handling-of-swartz-prosecution.html

Myth of the Attorney - Client Relationship

The old adage is, "He who represents himself has a fool for a client."
The reality has become, "He who is represented is usually taken for a fool."

As a consumer of legal services, I was owned a fiduciary duty by my lawyers:

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

On Saturday March 15, 2013 I received a letter from Bar Counsel Annemarie Craft stating it appeared that Mr. Bauer did not provide me a copy of his response to my complaint.

> Enclosed you will find Mr. Robert W. Bauer's response to your complaint. The response sent by Mr. Bauer indicated that a copy was being mailed to you. However based on your recent email to The Florida bar it appears that you did not receive you copy of Mr. Bauer's response.

That was correct, and the single remarkable item provided was "Exhibit A", a copy of an email from Kim Pruett-Barry, a client of Mr. Bauer, who unfortunately has been contacting me for several months to complaint about him. Ms. Pruett wrote:

> Mr. Neil Gillespie is using my name WITHOUT my permission in a complaint against Robert Bauer, Atty, with the Florida State Bar.
>
> Please be advised that I am satisfied with Mr. Bauer's representation of our case and in no way want to be associated with Mr. Gillespie and this complaint.

Attached as composite Appendix 6 are a number of emails Ms. Pruett sent me, that suggest she was to satisfied with him.

Ms. Pruett telephoned me, unsolicited, October 3, 2012 at 12:31 PM, which was her initial contact complaining about Mr. Bauer. Fortunately the call was recorded, and Ms. Pruett's performance memorialized for the record.

Conclusion

The petition should be granted if the ABA can review this matter as to ethics, disability accommodation, and Legal Abuse Syndrome. Mr. Thompson has presented a number of arguments to Myles V. Lynk, Chair, ABA Standing Committee on Professional Discipline. Mr. Thompson's letters come to me by email on a distribution list, and I believe most, if not all, are already known to The Florida Bar.

Appendix 3 Letter of Jack Thompson, JD, to Myles V. Lynk, Chair, ABA Standing Committee on Professional Discipline, February 23, 2013

Appendix 4 Letter of Jack Thompson, JD, to Myles V. Lynk, Chair, ABA Standing Committee on Professional Discipline, February 24, 2013

Appendix 5 Letter of Jack Thompson, JD, to Myles V. Lynk, Chair, ABA Standing Committee on Professional Discipline, March 4, 2013

I apologize to the Court for this inadequate pleading. I am quite ill, and this is the best I can do now. Please look past this deficient pleading, to the millions of consumers of legal and court services affecting interstate commerce, well beyond the borders of the State of Florida.

I hope the ABA decides to accept my invitation described in my letter to Ms. Bellows.

Respectfully Submitted March 18, 2013.

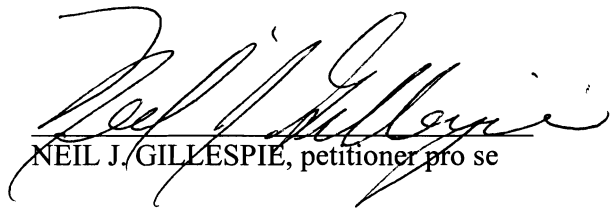
Neil J. Gillespie, petitioner pro se

CERTIFICATE OF GOOD FAITH

I, NEIL J. GILLESPIE appearing pro se, CERTIFY in accordance with Rule 44.2 that this petition for the rehearing of an order denying a petition for a writ of certiorari is limited to intervening circumstances of a substantial or controlling effect or to other substantial grounds not previously presented, and that it is presented in good faith and not for delay.

I solemnly swear, under penalty of perjury, that the foregoing facts, upon information and belief, are true, correct, and complete, so help me God.

Respectfully submitted March 18, 2013.



NEIL J. GILLESPIE, petitioner pro se

No: 12-7747

IN THE

SUPREME COURT OF THE UNITED STATES

NEIL J. GILLESPIE - PETITIONER

VS.

THIRTEENTH JUDICIAL CIRCUIT, FLORIDA, ET AL. - RESPONDENTS

PROOF OF SERVICE

I, Neil J Gillespie, do swear or declare that on this date, March 18, 2013, as required by Supreme Court Rule 29 I have served the enclosed PETITION FOR THE REHEARING OF AN ORDER DENYING A PETITION FOR A WRIT OF CERTIORARI on each party to the above proceeding or that party's counsel, and on every other person required to be served, by delivery to a third-party commercial carrier for delivery within 3 calendar days. Separate Volume Appendices are provided in PDF on CD due to Gillespie's indigence and disability.

The names and addresses of those served are as follows:

David A. Rowland, Court Counsel
Thirteenth Judicial Circuit Of Florida
Legal Department
800 E. Twiggs Street, Suite 603
Tampa, Florida 33602
Telephone: (813) 272-6843

Robert W. Bauer, Attorney at Law
Law Office of Robert W. Bauer, P.A.
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Gainesville, Florida 32609
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Laurel G. Bellows, President
American Bar Association
321 North Clark Street
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Telephone: (312) 988-5000

* ** NO PARTY INTEREST, *see* Petitioner's Rule 12.6 Notice to the Clerk of the Court, submitted January 22, 2013 (Nominal parties)

I declare under penalty of perjury that the foregoing is true and correct.

Executed on March 18, 2013.

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

No: 12-7747

IN THE

SUPREME COURT OF THE UNITED STATES

NEIL J. GILLESPIE - PETITIONER

vs.

THIRTEENTH JUDICIAL CIRCUIT, FLORIDA, ET AL, - RESPONDENTS

PETITION FOR REHEARING AN ORDER DENYING

PETITION NO. 12-7747 FOR WRIT OF CERTIORARI

SEPARATE VOLUME APPENDIX

INVITATION TO

Laurel G. Bellows, President

AMERICAN BAR ASSOCIATION - 321 NORTH CLARK STREET
CHICAGO, IL 60654-7598

And the American Bar Association
Standing Committee on Professional Discipline

FOR REVIEW OF INDIVIDUAL DISCIPLINE MATTERS AND THE FLORIDA BAR IN KEEPING WITH THE AMERICAN BAR ASSOCIATION'S MISSION:

To serve equally our members, our profession and the public by defending liberty and delivering justice as the national representative of the legal profession

Laurel G. Bellows, President
American Bar Association (ABA)
321 North Clark Street
Chicago, IL 60654-7598

March 18, 2013

Dear ABA President Bellows:

Thank you and Jeanne P. Gray[1], Director of the ABA Center for Professional Responsibility for the ABA's letter of February 19, 2013 on the program of discipline system consultations or audits administered by the American Bar Association Standing Committee on Professional Discipline. The letter appears at Exhibit 1.

Ms. Gray wrote, "Without a direct invitation from the Florida Supreme Court, the Standing Committee is not able nor authorized to provide lawyer discipline system consultation services."

In lieu of a direct invitation from the Florida Supreme Court for the ABA Standing Committee to review its discipline system, please accept my invitation to review the fifteen (15) complaints I submitted to The Florida Bar. A list of my complaints appears at Exhibit 2. Two other people I know also want the ABA to review their matters involving The Florida Bar. The ABA should also consider a letter from U.S. Congressman Elijah E. Cummings to the FHFA requesting an investigation of foreclosure mills, many of which are located in Florida.

This review could complement the ABA's first comprehensive review of disciplinary enforcement rules in 20 years, the one lead by Myles V. Lynk, who chairs the ABA Standing Committee on Professional Discipline. The last such review was the Commission on Evaluation of Disciplinary Enforcement (1989-1992) and the resulting 1992 McKay Commission Report.

Mr. Lynk says[2] the committee will rely heavily on input from individuals and groups working in the ethics and discipline field. What about an opportunity to review a variety of actual discipline matters that The Florida Bar has not, and cannot, fairly or honestly resolve because its fatally flawed discipline system is catastrophically broken?

In addition, please accept my invitation to review, through the ABA Commission on Disability Rights (CDR), my disability accommodation requests that were denied or ignored by the courts.

Finally, the ABA should consider Legal Abuse Syndrome and its cost to the justice system, in terms of depression, suicide and preventable death affecting the profession, the accused, and consumers of legal services, from Internet activist Aaron Swartz to attorney Mark P. Hummels.

My invitation is in keeping with the American Bar Association's Mission: To serve equally our members, our profession and the public by defending liberty and delivering justice as the national representative of the legal profession.

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[1] Ms. Gray is also Associate Executive Director, ABA Public Services Group.
[2] ABA Journal Law News Now, November 2, 2012, A New Look: ABA Plans First Comprehensive Review of Disciplinary Enforcement Rules in 20 Years, by James Podgers.

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The American Bar Association's Mission:

To serve equally our members, our profession and the public by defending liberty and delivering justice as the national representative of the legal profession.

http://www.americanbar.org/utility/about_the_aba/aba-mission-goals.html

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ABA Commission on Disability Rights (CDR)

The Commission advocates for the legal rights of persons with disabilities, seeking to eliminate the obstacles created by stigma and prejudice based on stereotypes and to ensure their equal participation and meaningful inclusion in society.

http://www.americanbar.org/groups/disabilityrights/about_us.html

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Florida Bar Matter Affecting Interstate Commerce

Letter of U.S. Congressman Elijah E. Cummings to Federal Housing Finance Agency
Request for Investigation of Foreclosure Mills

U.S. Congressman Elijah E. Cummings wrote February 25, 2011 to Inspector General Steve A. Linick of Federal Housing Finance Agency (FHFA) asking that he initiate an investigation into widespread allegations of abuse by private attorneys and law firms hired to process foreclosures as part of the "Retained Attorney Network" established by Fannie Mae." Rep. Cummings' six-page letter appears at Exhibit 3.

The Congressman is a Ranking Member Committee on Oversight and Government Reform. Unfortunately most of the law firms cited by Rep. Cummings are Florida law firms, including:

> The Law Offices of David J. Stern
> The Law Offices of Marshall C. Watson, P.A.
> Shapiro & Fishman, L.L.P.
> McCalla Raymer, L.L.C. (now with offices in Orlando)
> Lender Processing Services, Inc. and LPS Default Solutions, L.L.C.

Rep. Cummings' letter cites the Florida AG's investigation of foreclosure mills that was later abandoned:

> For example, on August 10, 2010, the Florida State Attorney General announced an investigation into unfair and deceptive practices by the Law Offices of David J. Stern, P. A., the Law Offices of Marshall C. Watson, P.A., and Shapiro & Fishman, L.L.P. The allegations against the firms include creating and filing with Florida courts improper documentation to speed foreclosures and establishing affiliated companies outside the United States to prepare false documents. In announcing this investigation, the Attorney General stated:
>
> > On numerous occasions, allegedly fabricated documents have been presented to the courts in foreclosure actions to obtain final judgments against homeowners. Thousands of final judgments of foreclosure against Florida homeowners may have been the result of allegedly improper actions of the law firms under investigation.

In the Shapiro case, The Florida Bar claims it cannot regulate law firms, according to an affidavit of Kenneth Marvin, Director of Lawyer Regulation, cited by Attorney General McCollum in State, Office of Att'y Gen. v. Shapiro & Fishman, LLP, 59 So. 3d 353, 355 (Fla. 4th DCA 2011). The affidavit appears at Exhibit 4.

In December 2012 the Law Offices of Marshall C. Watson, P.A. entered into a conditional guilty plead for consent judgment with The Florida Bar, Exhibit 5. On information and belief, the firm simply changed its name to Choice Legal, headed by Marshall Watson's brother, John Watson, where they will likely get back to business as usual.

McCalla Raymer, LLC is another firm Rep. Cummings mentioned by name:

> "Another firm in the Retained Attorney Network, McCalla Raymer, L.L.C., is a defendant in a federal lawsuit in which the plaintiffs allege that it engaged in fraud, racketeering, and the manufacture of fraudulent foreclosure documents. Reportedly, this firm established operations in Florida under the name Stone, McGehee & Silver and hired ten former Stern law firm employees. The firm Stone, McGehee and Silver, LLC, dba McCalla Raymer currently appears as a "Designated Counsel/Trustee" in Florida for Freddie Mac."

Unfortunately McCalla Raymer, LLC is now doing business in Florida under its own name in Orlando Florida. I have personal knowledge of this firm's misconduct in my own disputed foreclosure on a Home Equity Conversion Mortgage, or HECM "reverse" mortgage.

In addition, The state of Florida is also plagued by the following:

- Florida is notorious for the "rocket docket", a court that is noted for its speedy disposition of home mortgage foreclosure cases. Wikipedia reports Lee County Court, Florida (Fort Myers) on some days hears up to 1,000 cases per day which equates to less than 30 seconds per case, assuming an 8-hour day. http://en.wikipedia.org/wiki/Rocket_docket

- Florida is notorious for "Robo-signing", a term to describe the robotic process of the mass production of false and forged execution of mortgage assignments, satisfactions, affidavits, and other legal documents related to mortgage foreclosures and legal matters being created by persons without knowledge of the facts being attested to. It also includes accusations of notary fraud wherein the notaries pre- and/or post-notarize the affidavits and signatures of so-called robo-signers. http://en.wikipedia.org/wiki/Robo-signing#Robo-signing_controversy

- Florida has the highest mortgage fraud rate in the country. The Miami Herald series "Borrowers Betrayed" showed that more than 10,000 people with criminal records were permitted to work in Florida's mortgage industry during the housing boom between 2000 and 2007. Of those, 4,065 cleared background checks despite having committed crimes that state law requires regulators to screen, including bank robbery, racketeering and extortion. http://www.miamiherald.com/static/multimedia/news/mortgage/sink.html

The Constitution states only one command twice. The Fifth Amendment says to the federal government that no one shall be "deprived of life, liberty or property without due process of law." The Fourteenth Amendment, ratified in 1868, uses the same eleven words, called the Due Process Clause, to describe a legal obligation of all states. These words have as their central promise an assurance that all levels of American government must operate within the law ("legality") and provide fair procedures. http://www.law.cornell.edu/wex/due_process

A property right can be created only by state law. Once a property right is established, the determination of what process is due before that right can be deprived is a question answered by the federal Constitution. Kingsford v. Salt Lake City Sch. Dist., 247 F.3d 1123 (10th Cir. 2001).

Florida Bar Matter Affecting Interstate Commerce

Grand Theft by Florida Attorney Dennis Dale Correa - $909,810.77
$391,000 Stolen from the Trembley Trust

Charles H. Dent, Jr. and family have spent twenty (20) years trying to recover $391,000 stolen by Florida attorney Dennis Dale Correa from the Trembley Trust. Mr. Correa admitted to the theft, and four others, totaling $909,810.77, but was allowed to resign in lieu of discipline, with leave to reapply in 5 years. Mr. Correa got probation from the court, no jail time, and was ordered to make restitution, but Correa has only repaid a small amount.

This matter was profiled in the St. Petersburg Times (now called the Tampa Bay Times) on September 11, 1994 as part of its *Final Indignities* series by Jeffrey Good, a Pulitzer Prize winning journalist. The Times' story appears at Exhibit 6. This matter is also profiled on my website, which activity is part of my therapy as a survivor of legal injustice. This is the URL to the specific page http://www.nosue.org/dennis-dale-correa/

The Felony Information in State v. Dennis D. Correa filed November 8, 1993 charged the following offenses, by case number and count, by R.M. Lewis, Assistant State Attorney for the Sixth Judicial Circuit for the State of Florida: (Exhibit 7)

- CRC 93-07005-CFANO, Count 1, Grand Theft, First Degree Felony, from the Myrtle D. Trembley Trust, theft value $100,000 or more.
- CRC 93-07006-CFANO, Count 2, Grand Theft, First Degree Felony, from the Denton and Elizabeth Turner Trust, theft value $100,000 or more.
- CRC 93-07007-CFANO, Count 3, Grand Theft, First Degree Felony, from the Isaac H. Whittaker Trust and the Isabelle Newman Trust and the Furman Thompkins Trust, theft value $100,000 or more.
- CRC 93-07008-CFANO, Count 4, Grand Theft, Second Degree Felony, from the Estate of Mildred Bauer, theft value $20,000 or more.
- CRC 93-07009-CFANO, Count 5, Grand Theft, Second Degree Felony, from the Gladys Hoffman Trust, theft value $20,000 or more.

The Trembley Trust folks live in Pennsylvania, and it appears they were not informed about the Florida Bar's Client Security Fund. Now the time has expired to make a claim, according to Lori Holcomb of the Florida Bar. Although there were five different victims, Florida Bar records only show payment to four, according to Jenny Jolinski, records management: (December 15, 2011)

> Claimant records related to the Client Security Fund are confidential pursuant to Rule 7-5.1 of the Rules Regulating The Florida Bar....However, according to the Client Security Fund Department, the bar can disclose that the 4 cases referred to above closed on the following dates 5/17/96, 9/8/95, 9/8/95 and 8/9/96. Three claimants received $50,000 and one received $39,750.31, based on the rules in place at the time.

I spoke with Mr. Dent last month, and he forwarded this email response from Florida Attorney General Pam Bondi's office, which appears at Exhibit 8 and states:

Hello Mr. Dent,

Florida Attorney General Pam Bondi received your inquiry asking for help in recovering restitution from attorney Dennis Correa. Attorney General Bondi asked that I respond.

We appreciate that you have considered our office as a source of assistance, and I am truly sorry for your family's financial losses and difficulties. I reviewed your correspondence for any jurisdiction by our office. Our office is not at liberty to give legal opinions or advice to private individuals; however, I hope the following information proves helpful.

In regard to the criminal case and outcome, including court-ordered restitution, the appropriate authority to address would be the State Attorney's Office that handled the criminal case. In Florida, the elected state attorneys in each of the twenty judicial circuits operate independently and are not a part of the Attorney General's Office. Please follow up with the Sixth Judicial Circuit State Attorney's Office for any assistance or information available:

State Attorney's Office
Sixth Judicial Circuit
Post Office Box 5028
Clearwater, Florida 33758
Telephone: (727) 464-6221
Fax number: (727) 464-8105
Website: http://www.sao6.org/

You may also wish to contact the court to ensure the judiciary is aware of your ongoing concerns about any noncompliance with court-ordered restitution. As a part of the executive branch, the Attorney General's Office does not have legal authorities over the decisions of a judge.

Since Mr. Correa was a lawyer, you should also communicate with The Florida Bar in regard to any questions or concerns about the Clients' Security Fund.....

Michael Wise, Office of Citizen Services

The executor of Ms. Trembly's estate, Harold Dent, expended considerable effort and expense trying to recover money Mr. Correa stole, but was unable to accomplish much before he died. Now his nephew, Charles H. Dent, Jr., has asked my assistance as an advocate. I believe the family has unsuccessfully pursued the actions suggested by

Charles Dent drives a truck for Walmart. He could use the inheritance to buy coal to heat his home in Mifflinville, Pennsylvania that he shares with his wife. Mr. Dent would like the ABA to review his case as part of its comprehensive review of disciplinary enforcement rules.

Florida Bar Matter Affecting Interstate Commerce

DeMichelle Deposition Reporters of California

Susan DeMichelle got burned on a bill by Tampa lawyer Michael Laurato in connection with his practice of law. Susan DeMichelle is a California Certified Shorthand Reporter, and the owner for 38 years of DeMichelle Deposition Reporters, a Fairfield California company. In 2007 Mr. Laurato hired DeMichelle Deposition Reporters to make a transcript but later refused to pay a $481 invoice. After unsuccessful attempts to resolve the matter Ms. DeMichelle obtained a judgment against Mr. Laurato in a California court. In 2008 Ms. DeMichelle sought to enforce the judgment in Hillsborough County, Florida, small claims court, Case No. 09-CC-006533.

Mr. Laurato commenced a declaratory judgment action against Ms. DeMichelle August 13, 2009. The case went to bench trial October 25, 2010 before the Hon. Eric Myers, who ruled in favor of Ms. DeMichelle. Tampa attorney Ardyn Cuchel represented Mr. Laurato and his firm Austin & Laurato, P.A. Ms. Cuchel is a friend and colleague of Mr. Laurato.

To defend the declaratory judgment action before Judge Myers, Ms. DeMichelle hired attorney Brian Stayton on an hourly basis. Ms. DeMichelle traveled 3,000 miles to attend the hearing, and her expenses exceed $10,000. Mr. Laurato appealed Judge Myers ruling, appellate case no. 10-CA-024210, Hillsborough Circuit Civil Court. Ms. Cuchel again represented Mr. Laurato and his firm. The appeal was decided in favor of Ms. DeMichelle November 7, 2011. Unfortunately she never collected payment.

Susan DeMichelle made a complaint to the Florida Bar about this matter, TFB No. 2011-11,020 (13D). The Letter Report of No Probable Cause shows the grievance committee excused dishonesty of Respondent Michael Laurato in his response to the Bar: "While Respondent's statement appears to be clearly false, in order to prosecute Respondent, The Florida Bar would need to prove that Respondent intentionally made a false statement."

In retaliation, Miami Beach attorney Howard Levine commenced a vexatious defamation lawsuit against Ms. DeMichelle in Miami-Dade County, Florida over her blog about this matter. Howard Levine is also friend and colleague of Mr. Laurato. Vexatious litigation by certain lawyers is a problem in Florida. Kenneth L. Marvin, Director, Lawyer Regulation, responded to my letter about vexatious lawyer lawsuits, which appears at Exhibit 9. Mr. Marvin wrote in part,

> "The Bar has no authority to prohibit anyone, including lawyers, from filing a law suit...If the lawsuit has merit then the plaintiff will prevail, if not then the defendant will prevail...If the lawyer files a lawsuit against someone who has filed a complaint against that lawyer, the complainant has the immunity provided for in Tobkin v. Jarboe, 710 So. 2d 975 (Fla. 1998). If the Judge hearing the case makes a finding that the lawyer filed a frivolous pleading, then that lawyer would have violated the below rule. In the case of The Florida Bar v. Kelly, 813 So. 2d 85 (Fla. 2002), Mr. Kelly was suspended for 91 days for filing a frivolous lawsuit against his former client who had filed a grievance against him.

The response by Mr. Marvin is incredulous. Anyone familiar with litigation knows a vexatious lawsuit can be very costly in terms of money and mental abuse. And courts rarely hold attorneys accountable. That is the job of the Florida Bar, and Mr. Marvin, Director of Lawyer Regulation.

Ms. DeMichelle defended the libel suit pro se. The case was dismissed FWOP December 17, 2012, whereupon Mr. Lauarto through counsel Howard Levine filed a temporary restraining order, to which Ms. DeMichelle filed a response.

Mr. Laurato was profiled in a story by Colleen Jenkins published October 3, 2010 in the Tampa Bay Times, "Brash Tampa lawyer attracts attention, good and bad." The story appears online at http://www.tampabay.com/news/courts/brash-tampa-lawyer-attracts-attention-both-good-and-bad/1125394 and at Exhibit 10. It appears from the 171 comments to the online Times story that Mr. Laurato has brought discredit to the practice of law.

On February 13, 2011 Mr. Laurato was arrested for disorderly conduct by the Seminole Tribe Police at the Seminole Hard Rock Casino near Tampa. Ms. Cuchel successfully defended Mr. Laurato in the criminal misdemeanor case, no. 11-CM-003078. Hillsborough County, Florida. Court records show that Mr. Laurato was asked to leave the Green Room Restaurant, refused, engaged in profane language, and was arrested. In her defense, Ms. Cuchel successfully argued that Mr. Laurato's profane language was protected by the First Amendment and Florida law.

In another matter, the Florida Supreme Court issued a public reprimand and taxed costs of $4,002.44 against Mr. Laurato in bar complaint 2007-11,274(13D). Mr. Laurato was found guilty of giving false testimony in a civil lawsuit with the Naffco company in Tampa, a violation of Bar Rules 4-8.4(c), Florida Supreme Court case number SC09-1953.

Ms. DeMichelle has suffered greatly from this matter with Mr. Laurato. She lost focus on her business, became depressed, and now works at a supermarket. She lost her home in foreclosure.

Ms. DeMichelle would like the ABA to review her case as part of its comprehensive review of disciplinary enforcement rules.

Disability Review by the ABA - Commission on Disability Rights

I invite the ABA Commission on Disability Rights (CDR) to review my disability accommodation requests that were either denied or ignored by the courts. A message by CDR Chair Katherine H. O'Neil November 4, 2011 states in part:

> Dear Friends and Colleagues: We are proud to announce that the American Bar Association Commission on Mental and Physical Disability Law has changed its name to the Commission on Disability Rights (CDR).
>
> CDR is one of the oldest and storied entities within the Association...From 1973 up until 1991, the Commission on the Mentally Disabled responded to the advocacy needs of persons with mental disabilities. Adapting to social and political change, the CDR changed its name in 1991 to the Commission on Mental and Physical Disability Law after the passage of the Americans with Disabilities Act. It no longer focused exclusively on individuals with mental health impairments, recognizing that the civil rights movement, as it applied to those with disabilities, encompassed people with sensory and physical impairments.
>
> The Commission advocates for the legal rights of persons with disabilities, seeking to eliminate the obstacles created by stigma and prejudice based on stereotypes and to ensure their equal participation and meaningful inclusion in society.
>
> http://www.americanbar.org/groups/disabilityrights/about_us.html

In the past Dr. Karin Huffer served as my ADA advocate. Dr. Huffer will cooperate with the ABA's review of disability in my case. Dr. Huffer provided a letter October 28, 2010 about the lack of accommodation in my case, see Exhibit 11. Dr. Huffer wrote in part:

> As the litigation has proceeded, Mr. Gillespie is routinely denied participatory and testimonial access to the court. He is discriminated against in the most brutal ways possible. He is ridiculed by the opposition, accused of malingering by the Judge and now, with no accommodations approved or in place, Mr. Gillespie is threatened with arrest if he does not succumb to a deposition. This is like threatening to arrest a paraplegic if he does not show up at a deposition leaving his wheelchair behind. (p.1,¶2)
>
> Unfortunately, there are cases that, due to the newness of the ADAAA, lack of training of judicial personnel, and entrenched patterns of litigating without being mandated to accommodate the disabled, that persons with disabilities become underserved and are too often ignored or summarily dismissed. Power differential becomes an abusive and oppressive issue between a person with disabilities and the opposition and/or court personnel. The litigant with disabilities progressively cannot overcome the stigma and bureaucratic barriers. Decisions are made by medically unqualified personnel causing them to be reckless in the endangering of the health and well being of the client. This creates a severe justice gap that prevents the ADAAA from being effectively applied. In our adversarial system, the situation can devolve into a war of attrition. For an

> unrepresented litigant with a disability to have a team of lawyers as adversaries, the demand of litigation exceeds the unrepresented, disabled litigant's ability to maintain health while pursuing justice in our courts. Neil Gillespie's case is one of those. At this juncture the harm to Neil Gillespie's health, economic situation, and general diminishment of him in terms of his legal case cannot be overestimated and this bell cannot be unrung. He is left with permanent secondary wounds. (pp.1-2)

On May 27, 2011 I made public Dr. Huffer's report of my disability in state court, see *Verified Notice of Filing Disability Information of Neil J. Gillespie* in 05-CA-7205. Dr. Huffer's report is found at Exhibit 1 to that document. The document is cross-filed in the U.S. District Court on PACER, see Case 5:10-cv-00503-WTH-TBS Document 36 Filed 07/07/11.

On August 6, 2012 with leave of the U.S. Court of Appeals, I submitted Amended Motion for Disability Accommodation. This shows disqualification of Mr. Rodems was required under the ADA. The Motion and Appendixes 1-3 are posted on Scribd, 251 pages, *http://www.scribd.com/doc/l*02585752/Amended-Disability-Motion-12-11213-C-C-A-l1.

I am an indigent fifty-six (56) year-old single man, law-abiding, college educated, and a former business owner, disabled with physical and mental impairments that substantially limit my life activities. The Florida Division of Vocational Rehabilitation (DRV) determined that my disability was too severe for rehabilitation services to result in employment. In March 2001 I consulted with Mr. Rodems' firm on disability and DVR in DLES case no: 98-066-DVR.

Social Security determined I was totally disabled in 1994. I have a record of impairment since birth. I am also regarded by others as being impaired. The record shows I suffer from depression, post traumatic stress disorder (PTSD), diabetes type II adult onset, traumatic brain injury (TBI), velopharyngeal incompetence (VPI), craniofacial disorder, and impaired hearing.

Mr. Rodems' strategy has been, since 2006, to inflict severe emotional distress on me who he knows to be especially vulnerable, through an abuse of power in a position of dominance, in an effort to deny me due process of law, while simultaneously engaged in misconduct, conflict of interest, dishonesty, fraud, deceit, misrepresentation on the court, and conduct prejudicial to the administration of justice.

Mr. Rodems' unprofessional conduct is apparent in his letter to me dated December 13, 2006, available on request. For example:

> "I recognize that you are a bitter man who apparently has been victimized by your own poor choices in life. You also claim to have mental or psychological problems, of which I have never seen documentation. However, your behavior in this case has been so abnormal that I would not disagree with your assertions of mental problems." (P1, ¶3)

> "So, in addition to your case's lack of merit, you are cheap and not willing to pay the required hourly rates for representation." (P3, ¶2).

Mr. Rodems' written statements are in conflict with the Commission on Disability Rights.

Legal Abuse Syndrome

Enclosed you will find accompanying this invitation the book “Legal Abuse Syndrome”.

On November 10, 2009 I wrote to Carolyn B. Lamm, who was then President of the American Bar Association. My letter to Ms. Lamm began with this paragraph:

> Enclosed for you is a copy of “Legal Abuse Syndrome” by Karin Huffer. The book’s cover proclaims “Warning: Protracted litigation can be hazardous to your health”. Has the ABA addressed this serious, debilitating aspect of litigation?

Unfortunately the ABA returned the book the next day, along with a letter from Beverly Curd, Communications Coordinator, Office of the President, who wrote in part:

> Addressing issues such as the one you describe is not generally within the purview of the Association's work. The Association does not address specific complaints or cases because it has no power to investigate or intervene in such matters.

However within several months, the online ABA Journal Law News Now published a story, “Law Practice Can Trigger Stress Disorder, Says Attorney Who Now Works as Therapist” by Martha Neil, March 17, 2010. Ms. Neil wrote, in part:

> For him personally, writes Will Meyerhofer, a former BigLaw associate who now works as a psychotherapist, "it got to the point for me, at Sullivan & Cromwell, that I felt my entire body clench in preparation for attack just walking through the doors of 125 Broad Street and stepping into that elevator." His post, however, indicates that law practice, in general, rather than any particular law firm, is the cause of such stress.
>
> Such feelings of constant anxiety, he says in a People's Therapist post, can rise to the level of a diagnosable case of post-traumatic stress disorder, which is characterized by a state of hyper-vigilance to potential attack, a deadening of emotions and flashbacks or nightmares concerning stressful situations.

http://www.abajournal.com/weekly/article/law_practice_can_trigger_stress_disorder_says_attorney_who_now_works_as_the

Florida attorney Jeff Childers prepared an *Economic Analysis Spreadsheet* for this matter September 17, 2009, and assigned a $100,000 cost to “Legal Abuse Syndrome” on page 4:

> Non-Pecuniary Cost of Litigation. Plaintiff is likely suffering from physical and emotional ill effects resulting from the litigation, as described in Legal Abuse Syndrome, the book provided to me by Plaintiff. It is always difficult to put a dollar figure on the non-pecuniary costs of any case, and this case is no different. In attempting to evaluate the physical and emotional costs of going forward with the litigation, I considered both short and long-term effects, and the opportunity cost caused not just by direct time invested in the case but also by loss of energy related to physical and emotional side-

effects. My estimate was $100,000, but this figure is subjective and the Plaintiff may wish to adjust this figure upwards or downwards. There is 100% probability these costs will be incurred regardless of the outcome of the litigation.

Mr. Childers also prepared an *Analysis of Case and Recommendation*. Exhibit 12 is a composite of the 12 pages of documents for the *Economic Analysis Spreadsheet* and *Analysis of Case and Recommendation*. Note this $100,000 estimate was made in 2009, and this case has continued for several more years, adding to the non-pecuniary cost of this litigation.

Recent stories on the ABA Journal Law News Now, and the Legal Times, show matters that may involve Legal Abuse Syndrome. What is your opinion, Ms. Bellows?

- Internet activist's suicide spurs criticism of US Attorney, January 14, 2013 http://www.abajournal.com/news/article/did_hactivist_deserve_potential_decades-long_sentence_his_suicide_spurs_cri/

- 3 dead, 2 wounded in Delaware courthouse shooting, February 11, 2013 http://www.abajournal.com/news/article/3_dead_2_wounded_in_courthouse_shooting/

- Georgia bar readies suicide prevention initiative as PD takes his life, February 28, 2013 http://www.abajournal.com/news/article/georgia_bar_readies_suicide_prevention_initiative_as_pd_takes_his_life/

- Prosecutor gunned down while walking from parking lot to work at courthouse, January 31, 2013 http://www.abajournal.com/news/article/prosecutor_slain_while_walking_from_parking_lot_to_work_at_courthouse_suspe/

- Fatal shooting after mediation leaves lawyer and client dead, January 31, 2013 http://www.abajournal.com/news/article/lawyer_shot_client_executive_killed_after_mediation_session_with_suspected_/

- US Attorney bullying? This time charge is lobbed by budget motel owner who fought to keep property, January 30, 2013 http://www.abajournal.com/news/article/us_attorney_bullying_this_time_charge_is_lobbed_by_budget_motel_owner_who_f/

- Lawyer Produces Documentary Addressing Depression Among Lawyers, November 24, 2010 http://www.abajournal.com/news/article/lawyer_produces_documentary_addressing_depression_among_lawyers

- Congress Weighs in on DOJ's Handling of Swartz Prosecution, January 29, 2013 (Legal Times) http://legaltimes.typepad.com/blt/2013/01/congress-weighs-in-on-dojs-handling-of-swartz-prosecution.html

ABA Model Rules "Maintaining the Integrity of the Profession"

According to the ABA's website, the ABA Model Rules of Professional Conduct were adopted by the State of Florida July 17, 1986. Rule 8.1 through Rule 8.5 are in the category "Maintaining the Integrity of the Profession".

Does the ABA have a duty to act when it is clear from the Florida Bar's Hawkins Report of May 2012, a.k.a. the Hawkins Commission on Review of the Discipline System, that the lawyer discipline system in this state is fatally flawed, according to findings published in the ABA's McKay Report, fatal defects such as "local discipline components" that foster cronyism and prejudice toward unpopular respondents? Is that in itself evidence of professional misconduct?

> Rule 8.3 Reporting Professional Misconduct
>
> (a) A lawyer who knows that another lawyer has committed a violation of the Rules of Professional Conduct that raises a substantial question as to that lawyer's honesty, trustworthiness or fitness as a lawyer in other respects, shall inform the appropriate professional authority.

Ms. Bellows, what duty, if any, do you have as a member in good standing of The Florida Bar yourself, to accept this invitation, pursuant to ABA Model Rule 8.3, or any other Rule? Below is a message by John B. Thompson, J.D. to all members of the Florida legislature.

John B. Thompson, J.D.
5721 Riviera Drive
Coral Gables, Florida 33146
305-666-4366
amendmentone@comcast.net

February 18, 2012

All Members of the Florida Legislature Via Emails to Each Senator and Representative
Tallahassee, Florida

Dear Florida Senators and Florida Representatives:

The lawyer discipline system in this state is catastrophically broken. Its very regulatory structure is fatally flawed according to a landmark finding of the American Bar Association's McKay Commission. The ABA offered the State of Florida an impartial audit of its bar discipline system, and both the Florida Supreme Court and Bar refuse the audit because they know how damning the Florida-specific audit would be.

The Bar itself has just conducted a survey of state judges who have filed bar complaints against lawyers. I had to pry the results of this survey out of The Bar via a public records request, as The Bar is hiding this survey from the public. No wonder; therein is contained the most stunning statistical proof of governmental ineptitude I have ever seen:

"Nearly three-fifths (58%) of judge respondents say they are dissatisfied" with the disciplinary job The Bar has done. A staggering 82% of all county, circuit, and appellate judges in the most populous District (the Third DCA) are "dissatisfied" with the job The Bar is doing! Yet The Bar has now officially decided not to fix the ABA-identified fatal structural flaw in certain state bars that explains this catastrophic Florida Bar failure.

And this indictment of The Florida Bar is from *judges* who filed complaints. You would think The Bar would at least do a good job in Bar complaint cases filed by judges. Can you imagine what the general *public's* experience and level of dissatisfaction with Bar discipline is? In Broward County, for instance, the level of judicial dissatisfaction is a whopping 65%. This is the county in which Scott Rothstein embedded himself in The Bar's grievance system and funneled huge amounts of money to The Bar in order to buy protection from it.

Did you know that The Bar founded and helps run a malpractice insurer that protects its insured lawyers from discipline? The Bar has become, literally, a protection racket. Just ask Scott Rothstein and his Ponzi scheme victims.

I have spoken at length, face-to-face with one of you Senators from South Florida, who agrees with me that any judicial branch budget coming out of this session *must* contain a mandate that the Florida Supreme Court and Bar submit to the aforementioned ABA audit of its broken lawyer discipline system. The Supreme Court is supposed to oversee this mess, and it is not doing so. Even Chief Justice Canady and Justice Polston have found, "The Florida Supreme Court has abdicated its duty to supervise The Florida Bar."

You need to make the judiciary's receipt of our tax dollars contingent upon the Supreme Court's getting its lawyer discipline system in order. There are dozens of Scott Rothsteins out there.

Please contact me for more information on this scandalous emergency. I will meet with any and all of you to explain how bad this is and what must be done.

We are tired of open season declared by The Florida Bar on Floridians. You must, before this Session ends, tell the Supreme Court that its funding is tied to getting its corrupt house in order.

Regards, Jack Thompson

Copy: Media

Conclusion

Thank you Ms. Bellows for considering my invitation to review the fifteen (15) complaints I submitted to The Florida Bar.

My invitation is in keeping with the American Bar Association's Mission: To serve equally our members, our profession and the public by defending liberty and delivering justice as the national representative of the legal profession.

Please accept my invitation to review, through the ABA Commission on Disability Rights (CDR), my disability accommodation requests that were denied or ignored by the courts.

My invitation is in keeping with the CDR's goals: The Commission advocates for the legal rights of persons with disabilities, seeking to eliminate the obstacles created by stigma and prejudice based on stereotypes and to ensure their equal participation and meaningful inclusion in society.

This review could complement the ABA's first comprehensive review of disciplinary enforcement rules in 20 years, the one lead by Myles V. Lynk, who chairs the ABA Standing Committee on Professional Discipline.

I am submitting this invitation to the Supreme Court of the United States, in a petition for the rehearing of an order denying a petition for a writ of certiorari, Petition No. 12-7747.

Sincerely,

Neil J. Gillespie
8092 SW 115th Loop
Ocala, Florida 34481
Telephone: (352) 854-7807
Email: neilgillespie@mfi.net

Appendix of Exhibits

Exhibit 1	ABA letter February 19, 2013, Jeanne P. Gray to Neil Gillespie
Exhibit 2	List of complaints to The Florida Bar by Neil Gillespie
Exhibit 3	Letter of U.S. Congressman Elijah E. Cummings to the FHFA
Exhibit 4	Affidavit of Kenneth L. Marvin, October 7, 2010
Exhibit 5	Conditional Guilty Plea for Consent Judgment, Marshall C. Watson
Exhibit 6	Final Indignities, by Jeffrey Good, St. Petersburg Times, Re: Dennis Dale Correa
Exhibit 7	Felony Information, Dennis Dale Correa, November 8, 1993
Exhibit 8	Email and response by Florida AG Pam Bondi to Charles H. Dent
Exhibit 9	Letter of Kenneth L. Marvin, the Florida Bar, Re: Vexatious Lawyer Lawsuits
Exhibit 10	Brash Tampa lawyer attracts attention, both good and bad, Tampa Bay Times
Exhibit 11	Letter of Dr. Karin Huffer, ADA advocate for Neil Gillespie, October 28, 2010.

AMERICAN BAR ASSOCIATION

Center for Professional Responsibility
321 N. Clark Street
Chicago, IL 60654
Phone: (312) 988-5325
Fax: (312) 988-5491
Email: cpr@americanbar.org
Website: www.americanbar.org/

February 19, 2013

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

Dear Mr. Gillespie:

Your letter of February 18, 2013 addressed to ABA President Laurel G. Bellows was referred to me for response. Your inquiry relates to the program of discipline system consultations administered by the American Bar Association Standing Committee on Professional Discipline, which is designed to assist the judiciary in developing and strengthening professional disciplinary enforcement. The Standing Committee has developed lawyer discipline consultation criteria adapted from the *ABA Model Rules for Lawyer Disciplinary Enforcement* and from the 1992 McKay Commission Report, which was referenced in your letter.

The principal component of this process is that it must be initiated by invitation of a jurisdiction's highest court requesting the ABA Standing Committee on Professional Discipline to conduct an on-site review of the entire lawyer discipline system by a team of national experts. The team conducts extensive interviews with disciplinary staff, discipline system adjudicators, bar officials, complainants, respondents, respondents' counsel, members of the judiciary and others who have had contact with or a role in the state's discipline system, and reviews court rules, reports and statistics. Thereafter, the Standing Committee provides its report and recommendations to the jurisdiction's highest court on a confidential basis. The report is designed to assist the court to improve its system by providing constructive recommendations based upon the team's investigation, its collective knowledge and experience, and consideration of the consultation criteria.

Without a direct invitation from the Florida Supreme Court, the Standing Committee is not able nor authorized to provide lawyer discipline system consultation services. Since the program is designed to assist the judicial branch of government in the execution of its regulatory function, the jurisdiction's highest court must affirmatively extend the invitation to the American Bar Association.

Thank you for your interest in our consultation program.
I hope this letter is responsive to your inquiry.

Sincerely,

Jeanne P. Gray
Associate Executive Director, ABA Public Services Group
Director, ABA Center for Professional Responsibility

EXHIBIT
1

Florida Bar ethics complaints substantially related to Ryan Christopher Rodems*

*Partners engaged in the practice of law are each responsible for the fraud or negligence of another partner when the later acts within the scope of the ordinary business of an attorney. Smyrna Developers, Inc. v. Bornstein, 177 So.2d 16 (2dDCA, 1965).

1. William J. Cook RFA No. 03-18867 June 12, 2003 (ACAP Central)
2. William J. Cook TFB No. 2004-11,734(13C) June 7, 2004 (Tampa Branch)
3. William J. Cook TFB No. 2006-11,194 (13D) March 6, 2006 (Tampa Branch)
4. William J. Cook TFB No. 2007-10,004 (13D) June 27, 2006 (Tampa Branch)
5. Ryan Christopher Rodems TFB No. 2007-11,162(13D) February 20, 2007 (Tampa Branch)
6. Chris A. Barker TFB No. 2007-11,792(13A) June 18, 2007 (Tampa Branch)
7. Ryan Christopher Rodems File not opened/no number June 20, 2007 (Tampa Branch)
8. Troy Matthew Lovell File not opened/no number June 20, 2007 (Tampa Branch)
9. Robert W. Bauer TFB No. 2011-00,073 (8B) July 15, 2010 (ACAP Central)
10. Seldon J. Childers RFA No. 11-4718 August 25, 2010 (ACAP Central)
11. Eugene P. Castagliuolo TFB No. 2013-10,162 (6D) August 17, 2012 (ACAP Central)
12. Ryan Christopher Rodems TFB No. 2013-10,271 (13E) Sep-13, 2012 (ACAP Central)
13. Robert W. Bauer RFA No. 13-7675 October 31, 2012 (ACAP Central); denied Nov-09-12; submitted in SCOTUS Petition no. 12-7747. Reconsidered Jan-07-13, No. 2013-00,540 (8B).
14. Ryan Christopher Rodems, complaint submitted January 4, 2013. Current status unknown.
15. Catherine Barbara Chapman, complaint submitted January 18, 2013. Current status unknown.

McPartland v. ISI Inv. Services, Inc., 890 F.Supp. 1029, M.D.Fla., 1995 has been a mandatory authority on disqualification in Tampa since entered June 30, 1995 by Judge 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.

EXHIBIT
2

ONE HUNDRED TWELFTH CONGRESS

Congress of the United States

House of Representatives

COMMITTEE ON OVERSIGHT AND GOVERNMENT REFORM

2157 RAYBURN HOUSE OFFICE BUILDING

WASHINGTON, DC 20515–6143

MAJORITY (202) 225-5074
FACSIMILE (202) 225-3974
MINORITY (202) 225-5051

http://oversight.house.gov

February 25, 2011

The Honorable Steve A. Linick
Inspector General
Federal Housing Finance Agency
1625 Eye Street, NW
Washington, DC 20006

Dear Mr. Inspector General:

I am writing to request that you initiate an investigation into widespread allegations of abuse by private attorneys and law firms hired to process foreclosures as part of the "Retained Attorney Network" established by Fannie Mae. I also request that you examine allegations of abusive behavior on the part of default management firms engaged by both mortgage servicers managing Fannie Mae-backed loans and attorneys and firms that are part of the Retained Attorney Network. Finally, I request that you examine efforts by Fannie Mae and the Federal Housing Finance Agency (FHFA) to investigate these allegations and implement corrective action.

Allegations of Abuse in the Retained Attorney Network

In August 2008, Fannie Mae created "a new mandatory network of retained attorneys to handle all foreclosure and bankruptcy matters" relating to Fannie Mae mortgage loans, whether held in portfolio or mortgage-backed securities. Fannie Mae required that only these retained attorneys represent Fannie Mae mortgage servicers, and it established the maximum allowable reimbursable fees for foreclosure-related work.[1] In December 2010, Fannie Mae Executive Vice President Terence Edwards announced that the Retained Attorney Network would be expanded from 31 to 50 states.[2]

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[1] Fannie Mae, *New Foreclosure and Bankruptcy Attorney Network and Attorney's Fees and Costs* (Announcement 08-19) (Aug. 6, 2008) (online at https://www.efanniemae.com /sf/guides/ssg/annltrs/pdf/2008/0819.pdf) (requiring also that "requests for approval of excess fees by Fannie Mae must be submitted via email").

[2] Testimony of Terence Edwards, Executive Vice President, Credit Portfolio Management, Fannie Mae, before the U.S. Senate Committee on Banking, Housing and Urban Affairs (Dec. 1, 2010) (online at www.fanniemae.com/media/pdf/Edwards_ SenateBankingCommittee_12-1-10.pdf).

EXHIBIT
3

Recent reports indicate that many of the private attorneys, law firms, and other entities participating in the Retained Attorney Network have been accused of practices that are fraught with flaws, errors, conflicts of interest, and fraud, and these allegations have prompted numerous state and federal investigations.

For example, on August 10, 2010, the Florida State Attorney General announced an investigation into unfair and deceptive practices by the Law Offices of David J. Stern, P.A., the Law Offices of Marshall C. Watson, P.A., and Shapiro & Fishman, L.L.P. The allegations against the firms include creating and filing with Florida courts improper documentation to speed foreclosures and establishing affiliated companies outside the United States to prepare false documents.[3] In announcing this investigation, the Attorney General stated:

> On numerous occasions, allegedly fabricated documents have been presented to the courts in foreclosure actions to obtain final judgments against homeowners. Thousands of final judgments of foreclosure against Florida homeowners may have been the result of allegedly improper actions of the law firms under investigation.[4]

Former employees of the Stern law firm also reportedly alleged that the firm engaged in "robo-signing," a practice in which employees signed hundreds of foreclosure affidavits each day, falsely swearing to have personal knowledge of the underlying documents. One employee testified that the firm's chief operating officer "signed as many as 1,000 foreclosure affidavits a day without reading a single word."[5] The employees also reported that the firm backdated and altered documents, and that it took steps to cover its misconduct by changing the dates on hundreds of documents.[6]

Last November, Fannie Mae issued a public notice stating that it had "terminated its relationship with the Law Offices of David J. Stern" and informing servicers that they "may not refer any future Fannie Mae matters to the Stern firm."[7]

Separately, the U.S. Trustee Program (USTP) of the Department of Justice is investigating another firm in the Retained Attorney Network, the firm of Steven J. Baum, P.C. of Amherst, New York, for filing foreclosure documents that appear to be false or misleading;

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[3] Attorney General of Florida, *Press Release: Florida Law Firms Subpoenaed Over Foreclosure Filing Practices* (Aug. 10, 2010) (online at www.myfloridalegal.com/newsrel.nsf/newsreleases/2BAC1AF2A61BBA398525777B0051BB30).

[4] *Id.*

[5] *The Rise and Fall of a Foreclosure King,* Associated Press (Feb. 6, 2011).

[6] *Questions Rising Over Fannie and Freddie's Oversight of Foreclosures,* New York Times (Oct. 19, 2010); *The Foreclosure Machine*, New York Times (Mar. 20, 2008).

[7] Fannie Mae, *Servicing Notice: Termination of Relationship with the Stern Law Firm* (Nov. 10, 2010) (online at www.efanniemae.com/sf/guides/ssg/annltrs/pdf/2010/ntce111010.pdf).

attempting to foreclose on borrowers after rejecting their attempts to make on-time payments; and failing to prove ownership of mortgages as it seized homes. The firm has also been accused of illegally charging for foreclosure-settlement conferences, overcharging on foreclosure fees, and racketeering.[8]

Another firm in the Retained Attorney Network, McCalla Raymer, L.L.C., is a defendant in a federal lawsuit in which the plaintiffs allege that it engaged in fraud, racketeering, and the manufacture of fraudulent foreclosure documents. Reportedly, this firm established operations in Florida under the name Stone, McGehee & Silver and hired ten former Stern law firm employees.[9] The firm Stone, McGehee and Silver, LLC, dba McCalla Raymer currently appears as a "Designated Counsel/Trustee" in Florida for Freddie Mac.[10]

Lender Processing Services, Inc. (LPS), a $2.8 billion company headquartered in Jacksonville, Florida—and the largest provider of default loan services in the nation—is also under investigation by the Florida Attorney General for producing apparently forged or fabricated documents in foreclosure actions.[11] LPS is also a defendant in a federal suit alleging an illegal fee-sharing scheme. Filed in federal bankruptcy court in Mississippi, the suit alleges that LPS and another company, Prommis Solutions Holding Company, illegally required attorneys in their networks to turn over a portion of their fees for foreclosure services, and that another large law firm, Johnson & Freedman, L.L.C., joined in this scheme. The Chapter 13 Trustee for the Northern District of Mississippi, a unit of the Department of Justice, has joined as a plaintiff.[12]

A special investigation by *Reuters* last December reported that LPS and its affiliated companies also allegedly deployed low-skilled, non-lawyers to prepare foreclosure documents, created invalid mortgage assignments to facilitate foreclosures, and rewarded attorneys for speed rather than accuracy in filing court pleadings. *Reuters* reported:

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[8] *See* Federal Home Loan Mortgage Corp. v. Raia, SP 002253/10, District Court of Nassau County, New York (Hempstead); Campbell v. Baum, 10-cv-3800, U.S. District Court, Eastern District of New York (Brooklyn); Menashe v. Steven J. Baum P.C., 10-cv-5155, U.S. District Court, Eastern District of New York (Central Islip); and Baum v. Lask, 2010- 012048, New York Supreme Court, Erie County (Buffalo).

[9] *Novice Florida Lawyers Draw Suspicion in Foreclosure Mess,* Palm Beach Post (Jan. 13, 2011) (online at www.palmbeachpost.com/money/real-estate/novice-florida-lawyers-draw-suspicion-in-foreclosure-mess-1146402.html).

[10] Freddie Mac, *Guide Exhibit 79: Designated Counsel/Trustee* (Florida) (revised 2/8/11) (online at www.freddiemac.com/service/msp/exh79_fl.html).

[11] Office of the Attorney General of Florida, Case Number L10-3-1094 (online at http://myfloridalegal.com/__85256309005085AB.nsf/0/9B099A9DD32030BE8525771300426A68?Open&Highlight=0,lps).

[12] Thorne v. Prommis Solutions Holding Corp. et al., Second Amended Class Action Complaint, 10-01172 (BR N.D.M.S., Oct. 10, 2010).

> The law firms are on a stopwatch. [An LPS spokesman] confirmed that the LPS Desktop system automatically times how long each firm takes to complete a task. It assigns firms that turn out work the fastest a "green" rating; slower ones "yellow" and "red" for those that take the longest. Court records show that green ratings go to firms that jump on offered assignments from their LPS computer screens and almost instantly turn out ready-to-file court pleadings, often using teams of low-skilled clerical workers with little oversight from the lawyers.[13]

Although Fannie Mae terminated its relationship with the Stern law firm last November, it does not appear to have terminated its relationships with any of the other firms described above.[14]

Request for Investigation

These are serious allegations that may have affected thousands of homeowners. For these reasons, I request that your office initiate a comprehensive investigation into allegations of abuse by attorneys and law firms participating in the Retained Attorney Network, as well as servicers and default loan service providers alleged to have participated in these abuses.

It is my understanding that the mission of your office is to "promote the economy, efficiency, and effectiveness of the FHFA's programs; to assist FHFA in the performance of its mission; to prevent and detect fraud, waste, and abuse in FHFA's programs; and to seek sanctions and prosecutions against those who are responsible for such fraud, waste, and abuse."[15] In 2008, FHFA replaced the Office of Federal Housing Enterprise Oversight and became the regulator and conservator for Fannie Mae. As such, the agency's duties include overseeing the "prudential operations" of Fannie Mae and its contractors and ensuring that their activities and operations "are consistent with the public interest."[16]

With this background, I request that you address the following issues with respect to attorneys and law firms participating in the Retained Attorney Network program and with respect to other entities engaged by both mortgage servicers managing Fannie Mae-backed loans and attorneys and firms that are part of the Retained Attorney Network:

1. To what extent have homeowners lost their homes to improper, illegal, or otherwise invalid foreclosures as a result of the types of abuses described above?

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[13] *Id.*

[14] Fannie Mae, *Retained Attorney List* (effective February 10, 2011) (online at https://www.efanniemae.com/sf/technology/servinvreport/amn/pdf/retainedattorneylist.pdf).

[15] Website of the Federal Housing Finance Administration Office of Inspector General (accessed on Feb. 3, 2011) (online at www.fhfaoig.gov/).

[16] Section 1313(a)(1)(A)-(B), Housing and Economic Recovery Act of 2008 (P.L. 110-289).

2. To what extent have homeowners been charged improper, illegal, or otherwise invalid fees during the foreclosure process?

3. To what extent are attorneys, law firms, and other entities engaged in fee-splitting, kickbacks, or other similar schemes?

4. What is the total amount in "excess fees" that has been requested from Fannie Mae by attorneys and law firms? Of this amount, how much has been reimbursed, and how much has been determined to be inappropriate or unwarranted?

5. Have FHFA or Fannie Mae conducted investigations into allegations of abuse by attorneys, law firms, or other entities, and if so, what are the results? Were these allegations considered before the recent expansion of the Retained Attorney Network to all 50 states?

6. What specific information has been collected regarding allegations against the following firms and their affiliates?

    a. Law Offices of David J. Stern, P.A.
    b. Law Offices of Marshall C. Watson, P.A.
    c. Shapiro & Fishman, L.L.P.
    d. Steven J. Baum, P.C.
    e. McCalla Raymer, L.L.C.
    f. Johnson & Freedman, L.L.C.
    g. Prommis Solutions Holding Company
    h. Lender Processing Services, Inc. and LPS Default Solutions, L.L.C.

7. Have there been claims alleging that other attorneys or law firms participating in the Retained Attorney Network program or any default management firms managing the foreclosure of Fannie Mae-backed loans have engaged in similar conduct that violates the rights of borrowers or investors, federal or state foreclosure mitigation program guidelines, federal or state law, federal or state judicial requirements, state bar ethics requirements, or other regulations, rules, guidelines, or laws?

8. To what extent have the alleged abuses described above undermined loss and foreclosure mitigation efforts and outcomes? What responsibilities do loan servicers have in monitoring and overseeing the activities of attorneys and other third party companies? What are the levels of cure rate and loss mitigation activities among retained attorneys?

If you have any questions about this request, please have a member of your staff contact Lucinda Lessley of the committee staff at 202-225-4290.

Thank you for your consideration, and please feel free to contact me or my staff with any questions.

Sincerely,

Elijah E. Cummings
Ranking Member

cc: The Honorable Darrell E. Issa, Chairman

AFFIDAVIT OF KENNETH L. MARVIN

BEFORE ME, this day personally appeared KENNETH L. MARVIN, who upon oath deposes upon personal knowledge and states:

1. I am over the age of eighteen and am competent to testify as to the facts and matters set forth herein;

2. I make this affidavit upon personal knowledge of the matters set forth herein;

3. I am presently employed as the Director of Lawyer Regulation for the Florida Bar;

4. I am familiar with the provision of the Florida Constitution, Article V, Section 15, which provides,

> **Attorneys; admission and discipline.**---The supreme court shall have exclusive jurisdiction to regulate the admission of persons to the practice of law and the discipline of persons admitted.

5. The Florida Bar has no control over attorney admissions to the Florida Bar, which is handled by the Florida Board of Bar Examiners, a Florida Supreme Court agency. Admission to The Florida Bar is only finally accomplished by action of the Florida Supreme Court.

6. The Florida Bar also conducts inquiries into whether members have failed to meet the minimum standards of conduct set forth in the Rules of Professional Conduct, adopted by the Florida Supreme Court.

7. Florida Bar inquiries regarding issues of alleged misconduct of Florida attorneys are conducted only as to individual attorneys, not as to law firms or other business entities composed of attorneys.

EXHIBIT
4

8. The Florida Bar does not regulate, conduct inquiries into, or have any authority over law firms, corporations, professional service corporations, limited liability companies or other business entities composed of attorneys.

FURTHER AFFIANT SAYETH NOT,

Kenneth L. Marvin, Florida Bar
Director of Lawyer Regulation

STATE OF FLORIDA)
COUNTY OF Leon)

The foregoing instrument was acknowledged before me, this 7th day of October, 2010, by Kenneth L. Marvin, who is personally known to me or who has produced _____ as identification and states that he is the person who made this affidavit and that its contents are truthful to the best of his knowledge.

(SEAL)

MONICA A. BURKES
Commission # DD 928851
Expires November 6, 2013
Bonded Thru Troy Fain Insurance 800-385-7019

NOTARY PUBLIC

Monica A. Burkes
Print Name of Notary Public

My Commission Expires: November 6, 2013

IN THE SUPREME COURT OF FLORIDA

THE FLORIDA BAR,

Complainant,

v.

MARSHALL CRAIG WATSON,

Respondent.

_____/

Supreme Court Case
No. SC-

The Florida Bar File Nos.
2011-51,042(17I); 2011-50,500(17I);
2011-50,734(17I); 2011-50,737(17I);
2011-51,143(17I); 2011-51,312(17I);
2011-51,783(17I); 2012-50,148(17I);
2012-51,090(17I); 2012-51,662(17I);
2012-51,774(17I); 2013-50,511(17I).

CONDITIONAL GUILTY PLEA FOR CONSENT JUDGMENT

COMES NOW, the undersigned respondent, Marshall Craig Watson, and files this Conditional Guilty Plea pursuant to R. Regulating Fla. Bar 3-7.9(a).

1. Respondent is, and at all times mentioned herein was, a member of The Florida Bar, subject to the jurisdiction of the Supreme Court of Florida.

2. The respondent is currently the subject of Florida Bar disciplinary matters which have been assigned The Florida Bar File Nos.: 2011-51,042(17I); 2011-50,500(17I); 2011-50,734(17I); 2011-50,737(17I); 2011-51,143(17I); 2011-51,312(17I); 2011-51,783(17I); 2012-50,148(17I); and 2012-51,090(17I).

3. As to the cases listed above in paragraph 2, there has been a finding of probable cause by the Seventeenth Judicial Circuit Grievance Committee "I". The following cases are pending at staff level: The Florida Bar File Nos.:

MCW

EXHIBIT 5

DAW JCA

2012-51,662(17I); 2012-51,774(17I); and 2013-50,511(17I). Respondent waives his right to consideration by a grievance committee as provided for by Rule 3-7.4, Rules of Discipline, and hereby stipulates that probable cause for further disciplinary proceedings exists as to these matters based on prior determinations in other cases.

4. The respondent is acting freely and voluntarily in this matter, and tenders this Plea without fear or threat of coercion. Respondent is represented in this matter and his counsels have also signed this Conditional Guilty Plea for Consent Judgment.

5. The disciplinary measures to be imposed upon the respondent are as follows:

A. As discipline, the respondent consents to the following: a 91-day suspension from the practice of law and payment of the Bar's costs with the following conditions:

Respondent has scheduled an office procedures and record-keeping analysis by and under the direction of the Law Office Management Assistance Service (hereinafter referred to as LOMAS) of The Florida Bar for January 14, 2013 through January 18, 2013. Respondent shall cooperate

MCW DAW JCA

with LOMAS and agrees that any contract to sell his law office contains the condition that the new law firm will comply with all recommendations of LOMAS. LOMAS may require such additional interviews as it may, in its sole discretion, deem necessary or advisable. LOMAS has determined that its fee for this review will be $30,000 and respondent has agreed to pay that fee prior to the suspension contemplated in this consent judgment taking effect. LOMAS shall provide the Lawyer Regulation Department of The Florida Bar and respondent, through his counsels, with status reports as to its analysis.

6. The following allegations and rules provide the basis for respondent's guilty plea and for the discipline to be imposed in this matter:

A. Between at least 2006 and at least 2011, respondent, as the sole owner, managing partner and shareholder of "The Law Offices of Marshall Watson, P.A." failed to take reasonable steps to supervise and train his employees. He also failed to develop, institute and maintain acceptable policies and operating practices for his law firm to ensure he was complying with the Rules Regulating The Florida Bar. His firm handled thousands of foreclosure cases on behalf of various banks, lenders and financial

institutions during this period of time. Respondent's firm grew dramatically during the height of the national foreclosure crisis and at the end of 2009 his firm was handling over 66,000 cases with 71 lawyers and 597 support staff. While not from clients, The Bar received numerous complaints against respondent and his associates from four members of the judiciary as well as defendants in foreclosure actions alleging violations of the Rules Regulating the Florida Bar.

Respondent's firm employed an attorney as an independent contractor in the role of an expert concerning the assessment of a reasonable, acceptable, and appropriate attorney's fees in the mortgage foreclosure actions that were being prosecuted by respondent's firm. This attorney was hired by a managing attorney/employee of the firm who is no longer employed by the firm. This attorney signed about 150,000 Affidavits of Reasonable Fees (hereinafter AOR), which purported to attest, under oath, to the truth and accuracy of the data and information set forth therein. An undetermined number of those AORs were signed by that attorney outside the presence of a notary public and then were later notarized by respondent's support staff. Further, in numerous instances, that attorney was given only the second (last) page of the AORs to sign. Those second (last) pages were signed in bulk by that attorney outside the presence of a notary and later

MCW DAW JCA

matched by respondent's employees with corresponding first pages. These AORs were filed in various judicial circuits through the State of Florida as a standard and customary practice. For a period of time between 1999 and 2010, respondent's firm paid this attorney $1.00 per AOR that he signed for the firm and for a period of time he was not compensated. It is undisputed that the fee amounts in the AORs were reasonable and The Florida Bar has no evidence that the fees set forth in the fee affidavits were not reasonable; the AORs for non-contested cases included only the contractual fees set by the clients (lenders) and the AORs for contested cases were sent to the expert with relevant parts of each file. Exemplar files of clients (lenders) on non-contested cases also had been reviewed by the expert. Respondent violated the Rules Regulating the Florida Bar for failing to have procedures in place to ensure the integrity of the execution of the AOR.

As a result of respondent's failure to develop, institute and maintain acceptable policies and operating practices for his law firm, between 2009 and 2011, attorneys employed by his law firm missed approximately 22 case management conferences and failed to timely cancel foreclosure sales and/or failed to pay clerks fees in approximately five cases.

MCW DAW JCA

Prior to 2010, respondent's law firm had a practice of filing unverified foreclosure complaints alleging in the alternative that the note was lost without confirming that its clients had in fact lost the note, which would have been confirmed prior to judgment.

Respondent's firm failed to take reasonable steps to notify the court and opposing counsel when an associate left his employ. Several former employees advised the Bar that they specifically continued to request that respondent remove their names as attorney of record on its client's case, but their names were initially not promptly removed due to required upgrades in the computer systems which were subsequently implemented.

B. Rules Regulating The Florida Bar 3-4.2 [Violation of the Rules of Professional Conduct as adopted by the rules governing The Florida Bar is a cause for discipline.]; 3-4.3 [The commission by a lawyer of any act that is unlawful or contrary to honesty and justice, whether the act is committed in the course of the attorney's relations as an attorney or otherwise, whether committed within or outside the state of Florida, and whether or not the act is a felony or misdemeanor, may constitute a cause for discipline.]; 4-1.1 [A lawyer shall provide competent representation to a client. Competent representation requires the legal knowledge, skill, thoroughness, and preparation reasonably necessary for the representation.]; 4-1.3 [A lawyer

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shall act with reasonable diligence and promptness in representing a client.]; 4-3.2 [A lawyer shall make reasonable efforts to expedite litigation consistent with the interests of the client.]; 4-3.3(d) [The duties stated in this rule continue beyond the conclusion of the proceeding and apply even if compliance requires disclosure of information otherwise protected by rule 4-1.6.]; 4-5.1(a) [A partner in a law firm, and a lawyer who individually or together with other lawyers possesses comparable managerial authority in a law firm, shall make reasonable efforts to ensure that the firm has in effect measures giving reasonable assurance that all lawyers therein conform to the Rules of Professional Conduct.]; 4-5.1(b) [Any lawyer having direct supervisory authority over another lawyer shall make reasonable efforts to ensure that the other lawyer conforms to the Rules of Professional Conduct.]; 4-5.1(c) [A lawyer shall be responsible for another lawyer's violation of the Rules of Professional Conduct if: (1) the lawyer orders the specific conduct or, with knowledge thereof, ratifies the conduct involved; or (2) the lawyer is a partner or has comparable managerial authority in the law firm in which the other lawyer practices or has direct supervisory authority over the other lawyer, and knows of the conduct at a time when its consequences can be avoided or mitigated but fails to take reasonable remedial action.]; 4-5.3(b) [With respect to a nonlawyer employed or retained by or associated with a lawyer or an authorized business entity as defined elsewhere in these Rules Regulating The Florida Bar: (1) a partner, and a lawyer who individually or together with other lawyers possesses comparable managerial authority in a law firm, shall make reasonable efforts

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to ensure that the firm has in effect measures giving reasonable assurance that the person's conduct is compatible with the professional obligations of the lawyer; (2) a lawyer having direct supervisory authority over the nonlawyer shall make reasonable efforts to ensure that the person's conduct is compatible with the professional obligations of the lawyer; and (3) a lawyer shall be responsible for conduct of such a person that would be a violation of the Rules of Professional Conduct if engaged in by a lawyer if: (A) the lawyer orders or, with the knowledge of the specific conduct, ratifies the conduct involved; or (B) the lawyer is a partner or has comparable managerial authority in the law firm in which the person is employed, or has direct supervisory authority over the person, and knows of the conduct at a time when its consequences can be avoided or mitigated but fails to take reasonable remedial action.]; 4-5.3(c) [Although paralegals or legal assistants may perform the duties delegated to them by the lawyer without the presence or active involvement of the lawyer, the lawyer shall review and be responsible for the work product of the paralegals or legal assistants.]; 4-8.4(a) [A lawyer shall not violate or attempt to violate the Rules of Professional Conduct, knowingly assist or induce another to do so, or do so through the acts of another.]; and 4-8.4(d) [A lawyer shall not engage in conduct in connection with the practice of law that is prejudicial to the administration of justice.].

7. The following factors have also been considered by The Florida Bar and provide further basis for the discipline to be imposed in this matter:

A. Respondent, since the height of the foreclosure crisis in 2009, has taken reasonable steps to improve the policies and operating practices of his law firm including: the creation of written procedures for the notarization of affidavits including the creation of one-page Affidavits of Reasonable Fees (AOR); the restructuring of departments under experienced new managing attorneys; increasing the number of attorneys to over 100 and significantly reduce the firm's case load; implemented and enhanced computer program to timely reflect the assignment of new staff attorneys to cases including generating Notices of Appearance; and corrected the internal processes of distribution of mail and the scheduling of hearings.

B. The respondent has no disciplinary history, self-reported and has fully cooperated with The Florida Bar's investigation; further, respondent's laws firm is the only foreclosure law firm to date in the State of Florida that entered into an Assurance of Voluntary Compliance (AVC) for best foreclosure practices with the Attorney General of Florida, has been operating under said agreement since March 24, 2011, and has fully complied with the terms and conditions of same.

8. The Florida Bar has approved this proposed plea in the manner required by Rule 3-7.9.

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9. If this plea is not finally approved by the referee and the Supreme Court of Florida, then it shall be of no effect and may not be used by the parties in any way.

10. Respondent understands that if this plea is approved by this Court, pursuant to Rule 4-8.6(e) and (f) he will have to close down The Law Office of Marshall Watson, P.A.

11. If this plea is approved, then the respondent agrees to pay all reasonable costs associated with this case pursuant to R. Regulating Fla. Bar 3-7.6(q) in the amount of $5,931.18. These costs are due within 30 days of the court order. Respondent agrees that if the costs are not paid within 30 days of this Court's order becoming final, the respondent shall pay interest on any unpaid costs at the statutory rate. Respondent further agrees not to attempt to discharge the obligation for payment of the Bar's costs in any future proceedings, including but not limited to, a petition for bankruptcy. Respondent shall be deemed delinquent and ineligible to practice law pursuant to R. Regulating Fla. Bar 1-3.6 if the cost judgment is not satisfied within 30 days of the final court order, unless deferred by the Board of Governors of The Florida Bar.

12. The respondent acknowledges the obligation to pay the costs of this proceeding and that payment is evidence of strict compliance with the conditions of any disciplinary order or agreement, and is also evidence of good faith and fiscal responsibility. Respondent understands that failure to pay the costs of this proceeding or restitution will reflect adversely on any reinstatement proceedings or any other Bar disciplinary matter in which the respondent is involved. Subject to

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compliance with paragraphs 5(A) and 11, nothing in this consent judgment shall preclude respondent from filing for reinstatement pursuant to rule 3-7.10.

13. This Conditional Guilty Plea for Consent Judgment fully complies with all requirements of The Rules Regulating The Florida Bar.

Dated this 7 day of December, 2012.

Marshall Craig Watson
Respondent
1800 N.W. 49th Street, Suite 120
Fort Lauderdale, FL 33309-3092
(954) 453-0365
Florida Bar ID No.: 365505
mwatson@marshallwatson.com

Dated this 07th day of December, 2012.

Donald A. Wich, Jr.
Co-Counsel for Respondent
Donald A. Wich, Jr., P.A.
2036 N.E. 36th Street
Lighthouse Point, FL 33064-7596
(954) 785-3181
Florida Bar ID No.: 149718
wich3@msn.com

Dated this 7th day of December, 2012.

Juan Carlos Arias
Co-Counsel for Respondent
Law Offices of Carlos A. Velasquez, P.A.
101 North Pine Island Road, Suite 201
Fort Lauderdale, FL 33324-1843
(954) 382-0533
Florida Bar ID No.: 76414
juan@velasquez-law.com

Dated this 13th day of December, 2012.

Sheila Marie Tuma
Bar Counsel
The Florida Bar
Ft. Lauderdale Branch Office
Lake Shore Plaza II
1300 Concord Terrace, Suite 130
Sunrise, Florida 33323
(954) 835-0233
Florida Bar ID No. 196223
stuma@flabar.org

Final Indignities

AN EDITORIAL INVESTIGATION

By JEFFREY GOOD, Times staff writer

Third of four parts

How long must Karen Wanich wait?

Ms. Wanich is a 50-year-old woman with cerebral palsy who uses a wheelchair. When her Aunt Myrtle died, she waited for the inheritance that would help her face old age with more than a government disability check.

The money never came.

When St. Petersburg lawyer Dennis D. Correa was convicted of stealing $900,000 from seven estates and punished only with probation, Ms. Wanich and other beneficiaries waited for Correa to make good on his promise of speedy repayment.

They're still waiting.

Twice trusting, twice betrayed: After seeing lawyers plunder their inheritances, victims of estate rip-offs suffer again when the legal system leaves them empty-handed.

A judge set Correa free to make restitution, but officials have collected only a pittance. The Florida Bar promises justice through a victim's repayment fund, but fails to deliver. State law provides for insurance policies to compensate the victims of looted estates, but judges routinely skimp on this important protection.

It's bad enough that Florida law provides so many opportunities for dishonesty in probate estates and living trusts. It's doubly outrageous that when money is taken, officials forget the victims.

After scraping for decades on a secretary's wage, Myrtle Trembley turned to lawyer Dennis D. Correa for help in leaving a final gift to her niece and other loved ones. She trusted Correa completely, said Mrs. Trembley's sister-in-law, Rosemary Dent. "He was like a god to her."

Correa returned that faith by stealing $391,000 from Mrs. Trembley's savings, and more than $500,000 from six other estates. On Nov. 8, he stood before Pinellas Circuit Judge Claire Luten to admit his guilt and plead for mercy.

Correa didn't come to court alone. An impressive parade of supporters filled the courtroom with talk of remorse and restitution.

Correa's therapist said the lawyer felt deep sorrow and had "worked really hard in therapy." A financial planner talked of giving Correa a job with a potential "six-figure income" that could help quickly repay victims. Banking scion Hubert Rutland III pledged "my personal financial support."

Finally, there was Correa himself. He declared, "I will repay these people."

Judge Luten has slapped other rip-off artists with long prison terms. In this case, she went easy.

State sentencing guidelines allowed a 7-year prison term, and even Correa's lawyer hoped for no better than two and a half years. But Luten decided instead to release Correa on probation. She cited his "strong support group," his "sincere remorse," and his "desire to pay restitution."

That was ten months ago. By now, the restitution should be cascading in, right?

Wrong. Correa has paid less than 1 percent of his $910,000 debt. Karen Wanich's share so far totals only $272.

Although Correa technically stole from his deceased clients, it is their beneficiaries who suffer. Take Ms. Wanich. She is forced to rely on her father to make up the difference between a modest government disability check and her needs for shelter, food and heat in the hard Pennsylvania winter. Bill Wanich does his best, but he worries about what will happen when he's gone.

"I'm 74 years old," he says. "Who's going to take care of her?"

In stealing Aunt Myrtle's gift, Correa stole Karen Wanich's financial security and her father's peace of mind. Wanich is outraged that the legal system set Correa free without demanding that he make good on the promise of rapid repayment.

"As I see it, there's no penalty," Wanich said. "It's a joke on the whole legal system."

Correa has his excuses. His lawyer, Shawn Burklin, said Correa can't begin his "six-figure" job until a higher court rules on prosecutors' appeal of Luten's probation sentence. Correa's prospective employer doesn't want to train him for a job if he might go to prison, Burklin said.

But what of Correa's other resources? Property records show that he and his wife sold their home for $327,000 shortly before Correa's arrest; what happened to the money from that sale? Burklin promised to answer that question, but never called the Times back. Correa also owned a pleasure boat, which was sold last year for $3,000. Once again, Burklin did not explain where that money went.

Correa did not answer questions from the Times, but his lawyer said, "He has a great desire to make full restitution."

Correa's desire won't buy Karen Wanich one loaf of bread. Meanwhile, officials are doing little to hold Correa to his promises.

The Department of Corrections, which oversees Correa's probation, has established a "suggested schedule" of restitution that would have Correa paying $3,198 a month. Although Correa has paid just over one month's worth of that sum, DOC spokeswoman Laura Levings said officials are satisfied: "The guy is making an effort."

The lesson of Correa's case is clear. A lawyer who robs nearly $1-million from vulnerable clients can walk away without a prison term or significant financial penalty. All he has to do is show up in court with some fancy promises, and then stroll out the courthouse door.

As Correa enjoys his freedom, Karen Wanich waits for justice.

A fair share for lawyers

Many thieving lawyers are like Correa. They can't, or won't, repay stolen money. To help these people and

improve the legal community's image, Florida lawyers have created a victim's reimbursement fund.

The Florida Bar Clients' Security Fund is one of the oldest in the nation. It is far from the best.

Teresa Hile is one of the victims who went to the fund looking for a measure of justice. Hile had trusted St. Petersburg lawyer Jay M. Thorpe to handle her mother's estate; instead, the lawyer stole $172,000.

Hile was devastated. At a hearing in May, Hile testified that the theft forced her to file bankruptcy, lose her car, and forgo important care and medication for her learning-disabled son. Rather than being able to benefit from her mother's life savings, she had to take a $5.50-an-hour job, even as she struggles to overcome breast and bone cancer.

"Before all this happened, I could borrow $30,000 on my signature and I did," the 47-year-old testified. "Now that's not possible, probably never will be in my lifetime. At a time when I should be retiring or be able to be at home to take care of my health, I have to work in order to try to keep some insurance."

Thorpe was convicted of grand theft, ordered to repay the money, and sent to jail. So far, he has made no restitution. In hopes of speeding reimbursement, Hile filed a claim with the Clients' Security Fund late last year.

She shouldn't hold her breath.

According to a 1993 study by the American Bar Association, Florida's fund was the second-slowest in the nation in paying claims. When and if the Bar gets around to paying Hile, it will likely reimburse only a fraction of what her lawyer stole.

To appreciate how badly Florida's legal community treats its victims, consider a similar program in New Jersey. While Florida takes a year to 18 months to pay most claims, New Jersey takes six months. While Florida pays a maximum of $50,000 per claim (and often much less), New Jersey pays up to $200,000.

The key to New Jersey's success -- and Florida's failure -- is money. And not a lot of money.

In New Jersey, most lawyers contribute $50 a year to the victims' fund. In Florida, by contrast, each lawyer chips in only $11. Starved for cash, the Florida fund relies on a hard-working but tiny staff and the lawyers who serve as volunteer investigators.

Although on paper the fund pays up to $50,000 on large claims, it is so short on money that last year's maximum payment was $35,000 -- in a state where lawyers have stolen ten times that much.

The Florida Bar clearly wants to use the Clients' Security Fund to improve its public image. It's time lawyers put their money where their PR is.

The solution is simple: a modest increase in the fees lawyers pay to the victims fund. Increasing each lawyer's yearly contribution by $40 would generate an extra $2-million for the fund, enough to elevate it toward New Jersey's level of consumer service.

Forty dollars. That's how much an average estate lawyer would charge for fifteen minutes of his time. But ask lawyers about that modest contribution, and listen to them howl.

We're honest professionals, the refrain goes. Why should we pay for the crimes of the bad apples?

Because decency demands it. Citizens trust lawyers to uphold the law that provides them with a handsome living. When one lawyer violates that trust, every lawyer is diminished. The victims are waiting for Florida

lawyers to recognize that fact, and make amends.

Skimping on bond coverage

When all else fails, the law provides for an insurance policy to cover theft of estate funds. But all too often, judges blithely eliminate this important safeguard -- and beneficiaries are left empty-handed.

The family of Inez Michelsen-Hoyer learned this lesson the hard way. When Ms. Michelsen-Hoyer died, the family and judge saw no need to require a bond of the lawyer serving as executor of her estate. After all, Michael L. Nikolas was the family lawyer, a man they trusted absolutely.

Nikolas returned that trust by stealing $414,000. According to court records, he used the money to pay office expenses, make mortgage payments on his parents' home, and help run a place called Lou's Restaurant.

Nikolas pleaded guilty to grand theft last year, was sentenced to a year in jail and ordered to repay the money. So far, he has paid about 1 percent of his debt. A bond could have repaid the entire amount, but the judge presiding over the case said he generally waives that insurance policy for lawyers handling estates.

"I rarely require lawyers to post bonds," said Palm Beach Circuit Judge Gary Vonhof.

Such decisions are all-too-common. Judges routinely waive the bond, or require a bond too low to cover assets vulnerable to theft. In Pinellas County, judges deserve credit for consistently requiring some bond, but the bonds are often low. Pinellas court guidelines call for $100,000 estates to carry $25,000 bonds, for instance, and $1-million estates to carry $100,000 protection.

Judges cite several reasons for skimping on bond coverage: They trust their lawyer colleagues. Some people waive the bond in their wills (often at their lawyer's suggestion). But the most important reason, say judges and lawyers, is to save estates the cost of a bond premium.

How absurd. Would these same judges insure a $100,000 home for one-quarter its value? Of course not. Yet, that's exactly what they are doing with other people's property.

Here's the real irony: Estate bonds cost only a fraction of what they could save.

To guard against attorney Nikolas' $414,000 theft, the beneficiaries would have spent $1,395 on a yearly bond premium. In the case of St. Petersburg lawyer Lauren Sill, who stole $270,000 from an estate, each of the 32 beneficiaries could have had bond protection for $30 a year. (The expense would not come out of pocket; bond premiums are simply subtracted from the inheritance.)

Surely, many beneficiaries would be willing to sacrifice a fraction of their inheritance to guard against losing it all. If some wanted to go without a bond, they should be allowed to -- as long as they understand they are giving up important protection.

Beneficiaries are waiting for judges to give them that choice -- before it's too late.

Lawyers occupy a special position of trust in our legal system. As officers of the court, they enjoy great freedom and power. When lawyers abuse that power to plunder an inheritance, the system must help make things right.

Too often, Florida courts and lawyers have forgotten that duty.

Recall the case study that began this series. Joe Thomas was an 86-year-old man who died believing that the courts would distribute his life savings to 32 beloved grandnieces and grandnephews. Instead, attorney

Lauren Sill stole $270,000 -- nearly all the money.

Thomas' heirs are working folks who planned to use Uncle Joe's gift to pay off medical bills, send their kids to school, or invest in a safer home. Instead, for years, they have waited.

Sill pleaded guilty to grand theft this year and was ordered to make restitution, but she has paid nothing. Judges ordered an estate bond, but it only replaced $25,000 (some of which will cover legal expenses). A claim is pending with the Bar's victim fund, but the heirs can only hope to collect a small slice of their inheritance.

The money is lost. So is their faith in the Florida courts.

"They keep writing and telling us, 'Soon.' Why do they keep telling us that?" said one heir, Margaret Jendrejzak. "It's just wrong. . . And nobody tried to make it right."

Like the other victims, Uncle Joe's family is waiting . . . to be remembered.

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FELONY INFORMATION

IN THE CIRCUIT COURT FOR THE SIXTH JUDICIAL CIRCUIT OF FLORIDA, IN AND FOR PINELLAS COUNTY

SPRING TERM, in the year of our Lord one thousand nine hundred ninety-three

CRC 93-7005 CFANO

STATE OF FLORIDA

VS.

AMENDED INFORMATION FOR

DENNIS D. CORREA
SPN 01073379
W/M; DOB: 03/26/47
SS#: 472-52-0657

1. GRAND THEFT, 1°F
2. GRAND THEFT, 1°F
3. GRAND THEFT, 1°F
4. GRAND THEFT, 2°F
5. GRAND THEFT, 2°F

IN THE NAME AND BY THE AUTHORITY FOR THE STATE OF FLORIDA:

BERNIE McCABE, State Attorney for the Sixth Judicial Circuit of Florida, in and for Pinellas County, prosecuting for the State of Florida, in the said County, under oath, Information makes that

DENNIS D. CORREA

in the County of Pinellas and State of Florida, beginning on or about the 1st day of June, 1988 and continuing thereafter up to and including the 31st day of July, in the year of our Lord, one thousand nine hundred eighty-eight, in the County and State aforesaid did knowingly and unlawfully obtain or use, or endeavor to obtain or to use, the property of another, to-wit: U.S. currency, of the value of $100,0000.00 or more, with intent to deprive the Myrtle D. Trembly Trust of a right to the property or benefit therefrom, or with intent to appropriate the property to his own use or to the use of any person not entitled thereto; contrary to Chapter 812.014, Florida Statutes, and against the peace and dignity of the State of Florida. [I1]

COUNT TWO

And the State Attorney aforesaid, under oath as aforesaid, further information makes that DENNIS D. CORREA, in the County of Pinellas, State of Florida, beginning on or about the 1st day of March, 1992 and continuing thereafter up to and including the 31st day of August, in the year of our Lord, one thousand nine hundred ninety-two, in the County and State aforesaid, did knowingly and unlawfully obtain or use, or endeavor to obtain or to use, the property of another, to-wit: U.S. currency, of the value of $100,000.00 or more, with intent to deprive the Denton and Elizabeth Turner Trust of a right to the property or benefit therefrom, or with intent to appropriate the property to his own use or to the use of any person not entitled thereto; contrary to Chapter 812.014, Florida Statutes, and against the peace and dignity of the State of Florida. [I1]

11-8-93 ARRAigned-guilty

EXHIBIT 7

COUNT THREE

And the State Attorney aforesaid, under oath as aforesaid, further information makes that DENNIS D. CORREA, in the County of Pinellas, State of Florida, beginning on or about the 26th day of October, 1986 and continuing thereafter up to and including the 27th day of October, in the year of our Lord, one thousand nine hundred ninety-two, in the County and State aforesaid, did knowingly and unlawfully obtain or use, or endeavor to obtain or to use, the property of another, to-wit: U.S. currency, of the value of $100,000.00 or more, with intent to deprive the Isaac H. Whittaker Trust and the Isabelle Newman Trust and the Furman Thompkins Trust of a right to the property or benefit therefrom, or with intent to appropriate the property to his own use or to the use of any person not entitled thereto; contrary to Chapter 812.014, Florida Statutes, and against the peace and dignity of the State of Florida. [I1]

COUNT FOUR

And the State Attorney aforesaid, under oath as aforesaid, further information makes that DENNIS D. CORREA, in the County of Pinellas, State of Florida, beginning on or about the 1st day of June, 1988 and continuing thereafter up to and including the 31st day of July, in the year of our Lord, one thousand nine hundred eighty-eight, in the County and State aforesaid, did knowingly and unlawfully obtain or use, or endeavor to obtain or to use, the property of another, to-wit: U.S. currency, of the value of $20,000.00 or more, with intent to deprive the Estate of Mildred Bauer of a right to the property or benefit therefrom, or with intent to appropriate the property to his own use or to the use of any person not entitled thereto; contrary to Chapter 812.014, Florida Statutes, and against the peace and dignity of the State of Florida. [I1]

COUNT FIVE

And the State Attorney aforesaid, under oath as aforesaid, further information makes that DENNIS D. CORREA, in the County of Pinellas, State of Florida, beginning on or about the 9th day of March, 1992 and continuing thereafter up to and including the 1st day of May, in the year of our Lord, one thousand nine hundred ninety-two, in the County and State aforesaid, did knowingly and unlawfully obtain or use, or endeavor to obtain or to use, the property of another, to-wit: U.S. currency, of the value of $20,000.00 or more, with intent to deprive the Gladys Hoffman Trust of a right to the property or benefit therefrom, or with intent to appropriate the property to his own use or to the use of any person not entitled thereto; contrary to Chapter 812.014, Florida Statutes, and against the peace and dignity of the State of Florida. [I1]

STATE OF FLORIDA
PINELLAS COUNTY

Personally appeared before me BERNIE McCABE, the undersigned State Attorney for the Sixth Judicial Circuit of Florida, in and for Pinellas County, or his duly designated Assistant State Attorney, who being first duly sworn, says that the allegations as set forth in the foregoing information are based upon facts that have been sworn to as true, and which if true, would constitute the offense therein charged; hence this information is filed in good faith in instituting this prosecution, and that he has received testimony under oath from the material witness or witnesses for the offense.

Assistant State Attorney for the Sixth Judicial Circuit of the State of Florida, Prosecuting for said State

The foregoing instrument was acknowledged before me this 8 day of NOV. 1993
by R. M. Lewis
who is personally known to me and who did take an oath.

Karen A. Kratzer
NOTARY PUBLIC
KAREN A. KRATZER
MY COMMISSION # CC268290 EXPIRES
February 9, 1997
BONDED THRU TROY FAIN INSURANCE, INC.

SPEC-BL/1104KH4

Neil Gillespie

From: "Charles Dent" <redshorts802@yahoo.com>
To: <neilgillespie@mfi.net>
Sent: Friday, February 22, 2013 3:47 PM
Subject: Fw: From Attorney General Pam Bondi

----- Forwarded Message -----
From: "Ag@myfloridalegal.com" <Ag@myfloridalegal.com>
To: redshorts802@yahoo.com
Sent: Friday, May 11, 2012 12:10 PM
Subject: From Attorney General Pam Bondi

Hello Mr. Dent,

Florida Attorney General Pam Bondi received your inquiry asking for help in recovering restitution from attorney Dennis Correa. Attorney General Bondi asked that I respond.

We appreciate that you have considered our office as a source of assistance, and I am truly sorry for your family's financial losses and difficulties. I reviewed your correspondence for any jurisdiction by our office. Our office is not at liberty to give legal opinions or advice to private individuals; however, I hope the following information proves helpful.

In regard to the criminal case and outcome, including court-ordered restitution, the appropriate authority to address would be the State Attorney's Office that handled the criminal case. In Florida, the elected state attorneys in each of the twenty judicial circuits operate independently and are not a part of the Attorney General's Office. Please follow up with the Sixth Judicial Circuit State Attorney's Office for any assistance or information available:

State Attorney's Office
Sixth Judicial Circuit
Post Office Box 5028
Clearwater, Florida 33758
Telephone: (727) 464-6221
Fax number: (727) 464-8105
Website: http://www.sao6.org/

You may also wish to contact the court to ensure the judiciary is aware of your ongoing concerns about any noncompliance with court-ordered restitution. As a part of the executive branch, the Attorney General's Office does not have legal authorities over the decisions of a judge.

Since Mr. Correa was a lawyer, you should also communicate with The Florida Bar in regard to any questions or concerns about the Clients' Security Fund (please see http://www.floridabar.org/tfb/TFBConsum.nsf/48E76203493B82AD852567090070C9B9/1850D OpenDocument

EXHIBIT
8

). According to The Bar's website, "The Clients' Security Fund was created by The Florida Bar to help compensate persons who have suffered a loss of money or property due to misappropriation or embezzlement by an attorney." The Florida Bar's decisions about the Fund are not within the Attorney General's purview. Please contact The Florida Bar directly at:

The Florida Bar
651 East Jefferson Street
Tallahassee, Florida 32399-2300
Telephone: (850) 561-5600
Fax: (850) 561-5827
Website: http://www.floridabar.org/

Please continue to seek private legal counsel if you need any legal assistance to ensure that your best interests are represented. An attorney can provide the legal advice which our office is precluded by law from giving to private individuals. The Florida Bar also offers a Lawyer Referral Service at the above address. The toll-free telephone number is (800)342-8060.

Thank you for contacting Attorney General Bondi's Office. I hope this proves helpful.

Sincerely,

Michael Wise
Office of Citizen Services
Florida Attorney General's Office
PL-01, The Capitol
Tallahassee, Florida 32399-1050
Telephone: (850) 414-3990
Toll-free: (866) 966-7226
Website: http://www.myfloridalegal.com/

PLEASE DO NOT REPLY TO THIS E-MAIL. THIS ADDRESS IS FOR PROCESSING ONLY.

To contact this office please visit the Attorney General's website at www.myfloridalegal.com and complete the on-line contact form. Again, thank you for contacting the Office of the Florida Attorney General.

INTERNET MESSAGE RECEIVED BY THE ATTORNEY GENERAL'S OFFICE ON 04/27/2012

Charles Dent
802 John St.
Mifflinville, PA 18631
Email: redshorts802@yahoo.com

RE: Trembley Trust

Subject: Lawyer that stole money from out trust

Years ago Attorney Dennis Correa Bar ID# 146321 stole $ 391,000. from the

Trembley Trust. I want to know why Dennis Correa never went to jail and he had
his restitution dropped from $ 3000. per mo. to 300. per mo. Since my uncle
Harold Dent died, all communications have stopped and Mr. Correa has only paid
several hundred dollars as ordered. Could someone please help me recover the
money owed to our family? Maybe this will help. Circuit Civil No. 93-1423-13.
Pinellas County.

THE FLORIDA BAR

651 EAST JEFFERSON STREET
TALLAHASSEE, FL 32399-2300

JOHN F. HARKNESS, JR.
EXECUTIVE DIRECTOR

850/561-5600
WWW.FLORIDABAR.ORG

December 7, 2011

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

Dear Mr. Gillespie:

Paul Hill asked me to respond to your email since it relates to discipline, wherein you state: "Over the past year or so a number of people have contacted me through my website about attorney misconduct and dissatisfaction with the Bar's discipline of these attorneys. The following are some of the attorneys complained about, and all are profiled on my website:

Michael Vincent Laurato, Bar ID # 181447
Ryan Christopher Rodems, Bar ID # 947652
Allen Howard Libow, Bar ID # 899135
Robert W. Bauer, Bar ID #11058

Bar complaints have been made against all of the above, and the only one disciplined has been Mr. Laurato. In addition, all of the above have been sued by clients or vendors. In every case the amount of court resources consumed by these lawsuits is out of proportion to the initial dispute because the lawyers are able to litigate at little expense. Each of the above attorneys have been involved in multiple disputes with clients or other parties. These disputes are often public and bring discredit to the practice of law.

It seems a small percentage of Florida's lawyers are responsible for the bulk of the alleged misconduct. This undermines the profession and respect for the courts. Why is the Bar reluctant to stop the practice of this small number of lawyers who misuse their law license in a manner of revenge against people with legitimate disputes?"

The Bar is not reluctant to enforce the rules that all lawyers must follow. The Bar has no authority to prohibit anyone, including lawyers, from filing a law suit. The Constitution requires each individual have access to the Courts. If the lawsuit has merit then the plaintiff will prevail, if not then the defendant will prevail and the Bar has no authority to intervene in a civil lawsuit on either side.

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If the lawyer files a lawsuit against someone who has filed a complaint against that lawyer, the complainant has the immunity provided for in Tobkin v. Jarboe, 710 So. 2d 975 (Fla. 1998). If the Judge hearing the case makes a finding that the lawyer filed a frivolous pleading, then that lawyer would have violated the below rule. In the case of The Florida Bar v. Kelly, 813 So. 2d 85 (Fla. 2002), Mr. Kelly was suspended for 91 days for filing a frivolous lawsuit against his former client who had filed a grievance against him.

RULE 4-3.1 MERITORIOUS CLAIMS AND CONTENTIONS

A lawyer shall not bring or defend a proceeding, or assert or controvert an issue therein, unless there is a basis in law and fact for doing so that is not frivolous, which includes a good faith argument for an extension, modification, or reversal of existing law. A lawyer for the defendant in a criminal proceeding, or the respondent in a proceeding that could result in incarceration, may nevertheless so defend the proceeding as to require that every element of the case be established.

Comment: The advocate has a duty to use legal procedure for the fullest benefit of the client's cause, but also a duty not to abuse legal procedure. The law, both procedural and substantive, establishes the limits within which an advocate may proceed. However, the law is not always clear and never is static. Accordingly, in determining the proper scope of advocacy, account must be taken of the law's ambiguities and potential for change.

The filing of an action or defense or similar action taken for a client is not frivolous merely because the facts have not first been fully substantiated or because the lawyer expects to develop vital evidence only by discovery. What is required of lawyers, however, is that they inform themselves about the facts of their clients' cases and the applicable law and determine that they can make good faith arguments in support of their clients' positions. Such action is not frivolous even though the lawyer believes that the client's position ultimately will not prevail. The action is frivolous, however, if the lawyer is unable either to make a good faith argument on the merits of the action taken or to support the action taken by a good faith argument for an extension, modification, or reversal of existing law.

The lawyer's obligations under this rule are subordinate to federal or state constitutional law that entitles a defendant in a criminal matter to the assistance of counsel in presenting a claim or contention that otherwise would be prohibited by this rule.

Sincerely,

Kenneth Lawrence Marvin
Staff Counsel
Director, Lawyer Regulation

St. Petersburg Times
tampabay.com

October 1, 2010

Brash Tampa lawyer attracts attention, both good and bad

By Colleen Jenkins, Times Staff Writer

To some, this lawyer is a principled man; to others, he's a litigious jerk.

TAMPA

Michael Laurato hasn't grabbed many headlines during his 11-year legal career.

But once you notice him, you wonder how he ever escaped your attention.

"Some people like to come in under the radar," said his law partner, Robert Austin. "He's a B-52. He's bombs away."

Laurato, 37, walks into his office wearing a tailor-made pinstripe suit, a chunky cigar jutting from his lips. His hair is wavy, like the manes of the four lion statues flanking his desk.

He talks about winning and losing extravagant sums racing thoroughbreds. In September, his horse, Severe Weather, finished last in the Pennsylvania Derby, dashing hopes for a $1 million purse.

A certificate on Laurato's wall shows he has won at least that much for a single client in civil litigation, an arena where he's known to dig into opponents with a smile on his face. In an early victory, he collected $491,720 in attorney's fees on a $30,000 stolen Ferrari claim.

"I'm not really intimidated by the odds, by power, by position," he said. "I could care less about popularity contests."

That's fortunate, because he wouldn't often win one.

He goes to a baseball game and hears a stranger sneer his name. The critic could be anyone. "Who knows, I may have sued them or I may have cross-examined them," he says. His tactics have drawn rebuke from judges, a court reporter and the Florida Bar. "But I have my fans, too."

Laurato is unapologetic. He refuses to back down. And when he thinks he's right but isn't getting his way, he does for himself what he does for clients.

He sues.

It might sound redundant to say Laurato is a civil trial lawyer who sues. Part of the job description, right?

He battles insurance companies that turn down claims for sinkholes and stolen cars. His client list includes ousted Hillsborough County Commissioner Kevin White, who insists the county's insurance policy should cover his legal bill for his sexual harassment trial.

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But Laurato doesn't stop there.

He has sued veterinarians who treat his thoroughbreds at racetracks and the insurance provider that wouldn't pay for a rental car when his burglarized Bentley needed repair.

He sued Montblanc for trying to charge him to fix a leaking, limited-edition fountain pen.

And he sued Columbia Restaurant president Richard Gonzmart, his former father-in-law, for calling him a loser at the courthouse.

One of his adversaries joked that he would sue his own mother if he had the chance.

"Maybe," Laurato said. "If you do me wrong, I'm gonna come getcha."

He wins some cases, loses others, and makes enemies along the way.

Three years after billing Laurato's firm $481 for a transcript, the owner of a California court reporting service remains tied up in small claims litigation with the lawyer. She started a blog to vent her frustration.

"If people sue him for services and goods, he turns around and sues them," said the owner, Susan DeMichelle. "He needs to be stopped."

"He's a real jerk," said Tim Baker, president of Naffco in Tampa, a company that fought Laurato in court after he refused to pay for shutters installed in his home. "His attitude is, 'I'm not going to pay you. If you don't like it, screw it, sue me.' "

Laurato doesn't consider himself litigious. He prefers amicable resolutions, but says things just seem to turn ugly and personal. And he can't very well mediate disputes with a tussle in the park like he did during his high school days at Jesuit in Tampa.

"I can pay," he said, pulling a thick wad of cash from his pocket. "That's not the problem. But I'm not going to pay something that I'm rightfully owed. It's just not right."

He figures he got some of his fighting spirit from his father, an Italian from New York who taught his son the art of handicapping horses. Laurato says he butted heads with authority from an early age, getting kicked out of Corpus Christi Catholic School in Temple Terrace for throwing a paper ball at a nun.

It was through his mother, a manicurist from Cuba, that he was introduced to the law.

He sometimes tagged along when she did Frank De La Grana's nails, and he remembers being impressed by the criminal defense lawyer's style. He later came to admire the work ethic of Barry Cohen and the tenaciousness of Arnold Levine - Tampa lawyers who don't get pushed around.

Laurato earned a law degree from George Washington University, then returned home.

One friend calls him the ultimate advocate - he isn't afraid to speak his mind and usually has the law to back him up.

"He acts out of principle," said Howard Levine, a Miami Beach lawyer. "If people don't upset him, he's generous with everybody."

. . .

Laurato wanted the wooden shutters installed in time for a spectacular holiday bash.

"I had plans," he said in a deposition. "I envisioned beautiful white shutters intertwined with Christmas lights surrounded by holly. I envisioned, during Christmas, a beautiful woman walking under my French doors with a piece of mistletoe hanging there."

When the shutters didn't arrive, he called off the party. He tried to cancel the contract. When the shutters got installed anyway, he refused to pay the $3,600 balance.

The company sued. Laurato sued back.

He wound up paying for both the shutters and, by one account, $40,000 of his opponent's attorney's fees.

The fight didn't stop there.

The Florida Bar took issue with the lawyer testifying during his deposition that he had never been sued for breach of contract when, in fact, he had. Laurato said he didn't do anything wrong.

A judge was assigned to referee the dispute. After hearing all the evidence, he wrote a report to the Florida Supreme Court.

These are some of the words he used to describe Laurato's answers.

Sarcastic.

Flippant.

Argumentative.

Nonsensical.

Laurato has not been previously disciplined. But the judge recommended he be found guilty of misconduct, and the Bar wants to yank his license for 60 days.

Some lawyers might take their licks and move on. Not Laurato. He filed what amounts to an 80-page objection.

If he gets suspended, he said, "I need a break."

He may not get one either way. The Bar is also looking into his actions surrounding a client's sinkhole claim.

In April, Circuit Judge Martha Cook ruled that Laurato and a couple he represented had committed "fraud upon the court" by submitting a false affidavit.

He went head-to-head with the judge in a court filing, accusing her of wrongly disparaging him.

Those recent cases prompted this story. Laurato wasn't keen about it being written.

"You must be completely bored," he told a reporter. "I guess I can't stop you."

If he doesn't like it, will he sue?

He smiled.

"You better get it right."

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DR. KARIN HUFFER

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October 28, 2010

To Whom It May Concern:

I created the first request for reasonable ADA Accommodations for Neil Gillespie. The document was properly and timely filed. As his ADA advocate, it appeared that his right to accommodations offsetting his functional impairments were in tact and he was being afforded full and equal access to the Court. Ever since this time, Mr. Gillespie has been subjected to ongoing denial of his accommodations and exploitation of his disabilities

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.

While my work is as a disinterested third party in terms of the legal particulars of a case, I am charged with assuring that the client has equal access to the court physically, psychologically, and emotionally. Critical to each case is that the disabled litigant is able to communicate and concentrate on equal footing to present and participate in their cases and protect themselves.

Unfortunately, there are cases that, due to the newness of the ADAAA, lack of training of judicial personnel, and entrenched patterns of litigating without being mandated to accommodate the disabled, that persons with disabilities become underserved and are too often ignored or summarily dismissed. Power differential becomes an abusive and oppressive issue between a person with disabilities and the opposition and/or court personnel. The litigant with disabilities progressively cannot overcome the stigma and bureaucratic barriers. Decisions are made by medically unqualified personnel causing them to be reckless in the endangering of the health and well being of the client. This creates a severe justice gap that prevents the ADAAA from being effectively applied. In our adversarial system, the situation can devolve into a war of attrition. For an unrepresented litigant with a disability to have a team of lawyers as adversaries, the demand of litigation exceeds the unrepresented, disabled litigantís ability to maintain health while pursuing justice in our courts. Neil Gillespieís case is one of those. At this juncture the harm to Neil Gillespieís health, economic situation, and general diminishment of him in terms of his legal case cannot be overestimated and this bell

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cannot be unrung. He is left with permanent secondary wounds.

Additionally, Neil Gillespie faces risk to his life and health and exhaustion of the ability to continue to pursue justice with the failure of the ADA Administrative Offices to respond effectively to the request for accommodations per Federal and Florida mandates. It seems that the ADA Administrative offices that I have appealed to ignore his requests for reasonable accommodations, including a response in writing. It is against my medical advice for Neil Gillespie to continue the traditional legal path without properly being accommodated. It would be like sending a vulnerable human being into a field of bullies to sort out a legal problem.

I am accustomed to working nationally with courts of law as a public service. I agree that our courts must adhere to strict rules. However, they must be flexible when it comes to ADAAA Accommodations preserving the mandates of this federal law Under Title II of the ADA. While ìpublic entities are not required to create new programs that provide heretofore unprovided services to assist disabled persons.î (*Townsend v. Quasim* (9th Cir. 2003) 328 F.3d 511, 518) they are bound under ADAAA as a ministerial/administrative duty to approve any reasonable accommodation even in cases merely ìregardedî as having a disability with no formal diagnosis.

The United States Department of Justice Technical Assistance Manual adopted by Florida also provides instructive guidance: "The ADA provides for equality of opportunity, but does not guarantee equality of results. The foundation of many of the specific requirements in the Department's regulations is the principle that individuals with disabilities must be provided an equally effective opportunity to participate in or benefit from a public entity's aids, benefits, and services.î (U.S. Dept. of Justice, Title II, *Technical Assistance Manual* (1993) ß II-3.3000.) A successful ADA claim does not require ìexcruciating details as to how the plaintiff's capabilities have been affected by the impairment,î even at the summary judgment stage. *Gillen v. Fallon Ambulance Serv., Inc.*, 283 F.3d. My organization follows these guidelines maintaining a firm, focused and limited stance for equality of participatory and testimonial access. That is what has been denied Neil Gillespie.

The record of his ADAAA accommodations requests clearly shows that his well-documented disabilities are now becoming more stress-related and marked by depression and other serious symptoms that affect what he can do and how he can do it ñ particularly under stress. Purposeful exacerbation of his symptoms and the resulting harm is, without a doubt, a strategy of attrition mixed with incompetence at the ADA Administrative level of these courts. I am prepared to stand by that statement as an observer for more than two years.

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Attorney at Law

Jeff Childers
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Thursday, September 17, 2009

Neil Gillespie
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Ocala, Florida 34481

RE: Analysis of Case and Recommendation

Dear Neil,

My thinking on how to recommend that you should proceed has matured as I have reviewed the extensive materials you provided as well as carefully considered the matter. I have spoken with both Mr. Bauer as well as Mr. Rodeems at this point. I have also performed an economic analysis of the case, which is represented by a spreadsheet and an attached letter explaining the spreadsheet's figures and assumptions. **Please review the economic analysis materials before proceeding to read this letter.**

Merits of the Case

There are two challenges facing this case. The first is the diminished probability of success on the merits from this point forward in the case. The second challenge is the small total or economic projected recovery, compared to the high investment which would be required to achieve a successful verdict.

The case at this point is not a clear winner. The basic facts of the case make the case appear strong such that *if it were to get in front of a jury*, prospects for success on the merits are similarly strong because of the egregious disparity in the split between the attorneys and the plaintiffs in the AMSCOT case, which appears facially unreasonable (as you put it, 90% of the recovery was paid to the attorneys). But there are problems with the case that both may preclude it surviving until trial and also may serve to diminish any potential recovery even if it is litigated to a successful verdict.

The first substantive problem with the case is the fundamental confusion as to whether there is a contract (which is not entirely clear because the copy attached to the complaint is not executed), or whether there is no contract and the claim lies purely in tort (i.e., fraud). The economic loss rule, as properly alleged by the Defendants, precludes a suit for fraud in a breach

of contract case on the same transaction. Of the two possible claims (contract or tort), the contractual claim is probably stronger because it will be more difficult to prove actual damages in tort (i.e. if there was no fee splitting agreement by contract, Defendants will argue that the Defendant's split was proper even if wrongfully documented). The contractual claim is also easier to prove than a claim founded in fraud. The problem with the contract claim is that punitive damages are generally precluded in breach of contract.[1]

Many of the actions of the Defendants appear to have been reprehensible. As one example, it appears that the Plaintiff's name was forged onto the bottom of the "Closing Statement." However, the legal significance of this act is limited to defeating the affirmative defense of waiver (i.e. the Plaintiff never "accepted" the closing statement because it is not really his signature). Forgery is a crime and this forgery may give rise to some criminal liability, but it is not a basis for additional damages. Further, this issue will have to be litigated along with the other alleged defenses, adding to the cost of the litigation.

Even if the issue of liability were found in Plaintiff's favor, the Defendants have yet more arguments about the amount of damages. They may be able to show by *quantum meruit* that they are entitled to a portion larger than the 40% allowed by the Bar's rules.[2] It is not difficult to imagine that more than $50,000 in attorneys fees and costs may have been expended in the case, as it apparently was litigated through appeal. The court may give weight to an equitable *quantum meruit* argument, given that Plaintiff is relying on equity to such an extent and because of the potential unclean hands defense.

Next, the Defendants have some defenses which are not trivial, both legal defenses as well as equitable appeals which may be made to a jury. First, the letter written by Plaintiff advising the AMSCOT defendant that the settlement he agreed to was too large might be successfully characterized by the Defendants as an admission by Plaintiff that the damages are smaller than Plaintiff claims. Next, because Plaintiff inartfully worded a communication regarding his intention to file bar grievances against the Defendants in the same communication wherein a settlement was discussed, the possibility exists that Defendants may be able to successfully characterize this as an extortive and improper attempt to force a settlement where none was otherwise merited. This particular defense might be used by a skillful advocate to turn a jury against the Plaintiff and make the Plaintiff out to be a "professional litigator" instead of a deserving victim. Finally, pre-settlement documents exist suggesting that the Plaintiff admits he would have been satisfied with a $1,000 settlement amount, which will be used by

[1] . Farnsworth, *Contracts*, § 12.3, at 157 (3d ed. 1999) ("Punitive damages should not be awarded for breach of contract because they will encourage performance when breach would be socially more desirable.").

[2] In cases where there is no contract or a breached contract, the court will frequently set aside the language of the contract and look to the actual value of the services provided as a guide to how much an attorney should be paid. This doctrine is known as *quantum meruit*, a Latin phrase meaning "as much as he has deserved".

Defendants to imply that Plaintiff, who actually received twice that amount, is improperly trying to "grab" a share of an award that was larger than he expected. Furthermore, it appears from these documents that Plaintiff had prior knowledge of the amount he might receive in settlement and did not object at that time. The Defendants will use this fact to question why Plaintiff only objected after the fact.

The issue of the projected recovery looms large and advocates strongly against continuing the litigation. Even if the Plaintiff could prove he was entitled to a 55% share of the cost-adjusted recovery, that share must be reduced by two-thirds (because it would have had to have been shared with the other two plaintiffs in that case), making the actual damages relatively small. This affects the potential recovery for punitive damages, as three times the relatively small actual damages is still small. To put these figures in context, it appears that the Plaintiff has already paid twice the actual damages in attorneys fees to date in the case and there is still essentially no complaint filed.[3] I have seen nothing in the pleadings filed to date which would provide a legal basis for the Plaintiff to recover his fees and costs, which will be governed by the American Rule.[4] Therefore, setting aside the fees expended to date as a sunk cost, the economic analysis looks only at the costs of going forward, which do not justify the investment to recover either the projected economic recovery amount or even the full potential recovery amount.

Finally, my opinion is just that – an opinion. Another attorney might have a different take or discover another cause of action that would provide a larger potential recovery justifying the investment. For example, Mr. Bauer is more optimistic about success on the merits than I am. You may wish to consider getting another opinion. But, it appears from my analysis that the only substantive result of continuing to litigate would be an expensive "scorched earth" endgame or potlatch.[5]

Recommendations

[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.

[4] The American rule provides that each party is responsible to pay its own attorney's fees unless specific authority granted by statute or contract allows the assessment of those fees against the other party. Under the American rule every party — even the party prevailing — must pay its own attorneys' fees. The American rule contrasts with the English rule, under which the losing party pays the prevailing party's attorneys' fees. Contrast this case with TILA or FDCPA claims, where both statutes provide for attorneys fees. Here, the claims are common-law and not statutory, and no basis has yet been proposed for payment of attorneys fees.

[5] An American-Indian ceremony whereby valuable possessions are destroyed in the sight of allies or enemies in order to demonstrate the strength or wealth of the destroying party.

Neil, I recommend that you negotiate and execute a three-way mutual release of all claims against the Defendants and Mr. Bauer. Given the economics of the case, the complexity of the current issues including those which have arisen since the inception of the case, and the physical, psychic and emotional toll it is taking on you personally, it seems to me that it is time to exercise mature discretion and abandon this project in favor of more productive activities.

In no way should you interpret my recommendation as a critique of your entitlement to the damages. I believe you win the abstract argument. The problem is that enormous cost is required in order to prove in a court of law that you are right. Furthermore, the issues have been clouded by the subsequent (understandable) actions of yourself and those of others.

I have spoken with both parties and I believe that some minor outstanding issues could be successfully negotiated. I think such an agreement is not only possible but likely if you concur with this course of action. Such a release should require no parties to pay any other party any amount. For example, Mr. Bauer told me that he would be willing to waive his outstanding attorneys fees to achieve the settlement and release from all current and future claims. The Defendants would waive any entitlement to their counter-claims. You would waive your claims against the Defendants and against Mr. Bauer for any potential professional malpractice or negligence.

Thus, by settling via a "walk away" agreement, you would relieved of liability for and thus to the good in the amount of almost $25,000 ($11,550 plus $12,517).

There is an outstanding issue of the disposition of approximately $600 in cash which has been garnished but not yet turned over. I believe it may be possible to require the other parties to allow you to keep this amount as part of the settlement, but this is not certain and the $600[6] should be considered a negotiating asset.

Neil, you may wish to work with Mr. Bauer to put this settlement together. Or, if you prefer to have independent counsel, I would be happy to represent you in drafting the settlement and causing it to be executed. My estimate for this service would be two hours (1.5 hours to draft an agreement satisfactory to all parties, and .5 hours for negotiating via phone and email).

I hope that you have found this analysis to be helpful.

Very best regards,

Jeff Childers

[6] Or whatever the actual amount is.

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Thursday, September 17, 2009

Neil Gillespie
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RE: Economic Analysis Spreadsheet

Dear Neil,

In this letter, I will explain my thoughts and assumptions relative to the economic analysis of your case, as represented by the spreadsheet which you should have received contemporaneously with this letter.

The spreadsheet concludes that the case's return on investment is *negative*.

There are four columns. The "Item" column represents either a potential recovery, which *increases* the net value of the case, or a projected cost, which *decreases* the net value of the case. Costs can be either "hard" costs such as attorneys fees and court costs, or "soft" costs such as the cost of litigation-related illnesses and emotional harms. The "Amount" column represents the best estimate of the actual recovery or cost for the category. The "Prob%" column represents the probability of achieving the recovery or incurring the cost. The "Eco Value" column represents the economic value of the item, i.e. the projected amount times the probability the amount will actually be recovered or incurred.

Next I will discuss each individual item.

Actual Damages.[1] I calculated actual damages as follows. The award of $56,000 was reduced by 45%, the amount a jury would likely allow the Defendants for their contingent fee. This figure is based on the unexecuted contract attached to the Complaint. Furthermore, the Bar allows that attorneys may pay actual costs *before* application of the contingent fee. Accepting the costs as recited in the Complaint, the award is reduced by $6,125.46. Next, the amount is

[1] The Complaint calculates actual damages a little differently. I went with my figures because they are more favorable (and I believe, correct).

Sixth Street Executive Center
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Gainesville, FL 32601

37 North Orange Ave., Suite 500
Orlando, FL 32801

divided by three to obtain the amount that should have been paid to the Plaintiff, and further reduced by the $2,000 that was already paid to Plaintiff. I.e.:

Actual Award	$56,000	$56,000
-Costs	-$6,125.46	$49,874
- 45% Contingent Fee	-$22,443	$27,431
- 2/3 due to the 2 other clients	-$18,286	$9,143
- $2,000 already paid	-$2,000	$7,143
	==========	
Total Actual Damages	$7,143.00[2]	

Thus, as you can see, the maximum recoverable actual damages in this case are likely to be $7,143. Next, the spreadsheet adjusts the maximum actual damage figure by the probability of prevailing, which I calculated as 51%, or just more likely than not. Of course, these estimates are largely subjective. I would have calculated the chance of prevailing on the merits as 75% at the outset of the case, but given the case's history and the events which have transpired since inception, I am forced to reduce the probability of succeeding on the merits to 51%. Thus, the economic value of the actual damages in this case is $3,643.00.

Punitive Damages. As you know, punitive damages are more difficult to obtain. There are both legal and factual barriers to pleading and proving punitive damages.[3] The Defendants may convince the court that punitive damages were not plead properly or are not available in this case, in which event the jury is not permitted to consider punitive damages. Also, punitive damages are granted *up to* three times actual damages, and there is no guarantee that a jury would award the full treble damage amount. Still, I used treble damages, which is a maximum recoverable amount of $21,431. Furthermore, any punitive damages award can be overruled by the judge, and appealed separately. Therefore, the probability of succeeding with punitive damages is accounted for as half of the probability of succeeding with actual damages, or 25%. Therefore, the economic value of the punitive damages at this point in the case is only $5,357.00.

[2] As you can see, I did an independent calculation of damages, which amount was very close to your own figures.

[3] In fact, on January 13, 2006, the court ordered the demands for punitive damages to be stricken from the Complaint, so, actually, no current demand for punitive damages exists (presumably it might be re-plead in an amended complaint). Also, to the extent that the suit succeeds on a breach of contract and not tort claim, punitive damages are excluded. Farnsworth, *Contracts*, § 12.3, at 157 (3d ed. 1999) ("Punitive damages should not be awarded for breach of contract because they will encourage performance when breach would be socially more desirable.").

Award of Attorney's Fees. Under the American Rule, each party must pay its own attorneys fees and costs. Unless an exception is granted by agreement between the parties or by statute, there is no provision for the prevailing party to recover its fees and costs. The un-executed representation contract attached to the Complaint contains no provision for attorneys fees. I am aware of no other such agreement or statute that would apply in this case, beyond a bare equitable appeal to the court. The spreadsheet therefore allows for no recovery from the Defendants of fees and costs.

Subtotal, Forecast Recovery. Thus, the maximum recovery at 100%, i.e. full certainty of succeeding in the litigation as to both actual and punitive damages, is $28,574. However, adjusted for the probability of succeeding on the merits *at this point in the case*, the maximum economic recovery is only $9,001.

Bauer's Outstanding Fees. Mr. Bauer has a claim to his fees of $12,517.41, at least as of the most current invoice that I was provided. On the one hand, he may have difficulty proving his entitlement to the fees, due to some evidence that an attempt was made to renegotiate the contract to a contingency basis. However, since that evidence is not conclusive and represents a triable issue of fact, the probability of incurring additional costs to litigate the fees issues offsets the reduction in probability that Mr. Bauer can recover them. Furthermore, generally speaking, most ethical attorneys would require the Plaintiff to resolve the fees issue with predecessor counsel before agreeing to take the case (as I would). Thus, there will be pressure to pay the fees or come to an amicable settlement. Accepting Bauer's figures, the economic cost of the outstanding fees to Mr. Bauer at this point in the case is $12,517.41.

New Attorney's Fees. A new attorney would be required to litigate the case through trial. Given the extensive history of the case, some non-trivial cost would be incurred in reviewing and understanding the almost four-year history of this litigation (8 hrs). Then, amendment of the complaint (4 hrs), response to various outstanding motions and issues including the garnishment and counter-claims (26 hrs), preparation for trial on the substantive issues and defenses (30 hrs), and the trial itself (30 hrs) will require substantial attorney time. At an estimated $250 per hour, for 98 estimated attorney hours (loosely including paralegal time, costs etc as part of the hours estimate), the fee for completing the case would be $24,500. Note that any new attorney would have to consider the highly aggressive and acrimonious nature of this particular litigation. This cost to complete the case is certain to be incurred, accounted therefore at 100% probability. The economic value of this cost is $24,500.[4]

[4] It is unlikely a new attorney will offer a discounted, flat-rate, or contingency fee to take this case. The Defendants have shown there is NO likelihood of a positive-cash settlement. Thus, there is no possible reward offsetting the risks posed by this case. The only conceivable basis for a new attorney to proceed would be on a strict time and materials basis with a substantial up-front retainer.

Cost to Litigate Appeal. Based on their litigious behavior to date, the Defendants in this case are almost certain to appeal any favorable ruling. Thus the spreadsheet reflects a probability of 99% that any favorable verdict would be appealed. An average state-court appeal is typically valued at $25,000, making the economic cost of this item $24,750.

Unpaid Judgment to Rodeems. Defendants are entitled to collect on their judgment for sanctions in the amount of $11,550. As I understand the present status, some $400-$600 were garnished by the bank and are awaiting an order of the court for release. If Plaintiff prevails at trial, it is likely any award will be setoff by this amount if it is not already paid. Thus, 100% probability the entire cost will be incurred, economic value $11,550.

Subtotal, Projected Costs. The total projected costs, which will likely be incurred whether or not Plaintiff prevails, are $73,317.41. *This amount should be considered the direct costs avoided by ceasing litigation at this point*. I note that the smallest cost in this category, the Unpaid Judgment, eliminates almost entirely the projected recovery.

Non-Pecuniary Cost of Litigation. Plaintiff is likely suffering from physical and emotional ill effects resulting from the litigation, as described in Legal Abuse Syndrome, the book provided to me by Plaintiff. It is always difficult to put a dollar figure on the non-pecuniary costs of any case, and this case is no different. In attempting to evaluate the physical and emotional costs of going forward with the litigation, I considered both short and long-term effects, and the opportunity cost caused not just by direct time invested in the case but also by loss of energy related to physical and emotional side-effects. My estimate was $100,000, but this figure is subjective and the Plaintiff may wish to adjust this figure upwards or downwards. There is 100% probability these costs will be incurred regardless of the outcome of the litigation.

Net Value of Case. The net value of the case is calculated on the spreadsheet by netting all the projected costs of litigation from the projected economic recovery. In this case, the spreadsheet calculates that the net value of the case is *negative* $164,316.

In summary, even if the figures are manipulated in the most favorable way, such as by raising the probability of succeeding with actual and punitive damages to 100%, erasing Mr. Bauer's attorney's fees, forecasting that no appeal would be filed, and waiving the emotional and physical costs to Plaintiff, the case still would still be in the red by over $7,000 ((7,143+21,431)-24,500-11,550). The assumptions that the costs would be limited in this way are, obviously, unrealistically optimistic.

The issue to my mind, therefore, is how to exit the case with the lowest possible cost. Please see my letter regarding a recommended course of action for my suggestions in this regard.

Respectfully,

Jeff Childers

Gillespie, Economic Analysis of Litigation

Item		Amount	Prob%	Eco. Value
Actual Damages = ($56,000 - 6125.46 - (($56,000-6125.46) x 45%)) / 3 - $2,000	$	7,143.67	100%	7,143.67
Punitive Damages (*up to* 3x actual damages)	$	21,431.00	100%	21,431.00
Award of Attorney's Fees		$0	0%	0.00
Subtotal, Projected Recovery				**28,574.66**
Bauer's Outstanding Fees	$	(12,517.41)	0%	0.00
New Attorney fees: review and litigate case through trial	$	(24,500.00)	100%	(24,500.00)
Cost to Litigate Appeal	$	(25,000.00)	0%	0.00
Unpaid Judgment to Rodeems (sanctions)	$	(11,550.00)	100%	(11,550.00)
Subtotal, Projected Costs				**(36,050.00)**
Non-pecuniary cost of litigation-provoked illness and emotional costs	$	(100,000.00)	0%	0.00
Subtotal, Non-Pecuniary Costs				**0.00**
NET VALUE OF CASE (RETURN ON INVESTMENT)				**(7,475.34)**

Gillespie, Economic Analysis of Litigation

Item		Amount	Prob%	Eco. Value
Actual Damages = ($56,000 - 6125.46 - (($56,000-6125.46) x 45%)) / 3 - $2,000	$	7,143.67	51%	3,643.27
Punitive Damages (*up to* 3x actual damages)	$	21,431.00	25%	5,357.75
Award of Attorney's Fees		$0	0%	0.00
Subtotal, Projected Recovery				**9,001.02**
Bauer's Outstanding Fees	$	(12,517.41)	100%	(12,517.41)
New Attorney fees: review and litigate case through trial	$	(24,500.00)	100%	(24,500.00)
Cost to Litigate Appeal	$	(25,000.00)	99%	(24,750.00)
Unpaid Judgment to Rodeems (sanctions)	$	(11,550.00)	100%	(11,550.00)
Subtotal, Projected Costs				**(73,317.41)**
Non-pecuniary cost of litigation-provoked illness and emotional costs	$	(100,000.00)	100%	(100,000.00)
Subtotal, Non-Pecuniary Costs				**(100,000.00)**
NET VALUE OF CASE (RETURN ON INVESTMENT)				**(164,316.39)**

Gillespie, Economic Analysis of Litigation

Item		Amount	Prob%	Eco. Value
Actual Damages = ($56,000 - 6125.46 - (($56,000-6125.46) x 45%)) / 3 - $2,000	$	7,143.67	0%	0.00
Punitive Damages (*up to* 3x actual damages)	$	21,431.00	0%	0.00
Award of Attorney's Fees		$0	0%	0.00
Subtotal, Projected Recovery				**0.00**
Bauer's Outstanding Fees	$	(12,517.41)	100%	(12,517.41)
New Attorney fees: review and litigate case through trial	$	(30,000.00)	100%	(30,000.00)
Cost to Litigate Appeal	$	(50,000.00)	100%	(50,000.00)
Unpaid Judgment to Rodeems (sanctions)	$	(11,550.00)	100%	(11,550.00)
Subtotal, Projected Costs				**(104,067.41)**
Non-pecuniary cost of litigation-provoked illness and emotional costs	$	(100,000.00)	100%	(100,000.00)
Subtotal, Non-Pecuniary Costs				**(100,000.00)**
NET VALUE OF CASE (RETURN ON INVESTMENT)				**(204,067.41)**

No: 12-7747

IN THE

SUPREME COURT OF THE UNITED STATES

NEIL J. GILLESPIE - PETITIONER

vs.

THIRTEENTH JUDICIAL CIRCUIT, FLORIDA, ET AL, - RESPONDENTS

PETITION FOR REHEARING AN ORDER DENYING

PETITION NO. 12-7747 FOR WRIT OF CERTIORARI

SEPARATE VOLUME APPENDIX

AMERICAN BAR ASSOCIATION

Center for Professional Responsibility
321 N. Clark Street
Chicago, IL 60654
Phone: (312) 988-5325
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Website: www.americanbar.org/

February 19, 2013

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

Dear Mr. Gillespie:

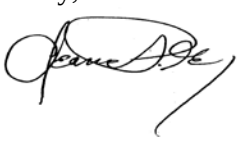
Your letter of February 18, 2013 addressed to ABA President Laurel G. Bellows was referred to me for response. Your inquiry relates to the program of discipline system consultations administered by the American Bar Association Standing Committee on Professional Discipline, which is designed to assist the judiciary in developing and strengthening professional disciplinary enforcement. The Standing Committee has developed lawyer discipline consultation criteria adapted from the *ABA Model Rules for Lawyer Disciplinary Enforcement* and from the 1992 McKay Commission Report, which was referenced in your letter.

The principal component of this process is that it must be initiated by invitation of a jurisdiction's highest court requesting the ABA Standing Committee on Professional Discipline to conduct an on-site review of the entire lawyer discipline system by a team of national experts. The team conducts extensive interviews with disciplinary staff, discipline system adjudicators, bar officials, complainants, respondents, respondents' counsel, members of the judiciary and others who have had contact with or a role in the state's discipline system, and reviews court rules, reports and statistics. Thereafter, the Standing Committee provides its report and recommendations to the jurisdiction's highest court on a confidential basis. The report is designed to assist the court to improve its system by providing constructive recommendations based upon the team's investigation, its collective knowledge and experience, and consideration of the consultation criteria.

Without a direct invitation from the Florida Supreme Court, the Standing Committee is not able nor authorized to provide lawyer discipline system consultation services. Since the program is designed to assist the judicial branch of government in the execution of its regulatory function, the jurisdiction's highest court must affirmatively extend the invitation to the American Bar Association.

Thank you for your interest in our consultation program.
I hope this letter is responsive to your inquiry.

Sincerely,



Jeanne P. Gray
Associate Executive Director, ABA Public Services Group
Director, ABA Center for Professional Responsibility

EXHIBIT
Appendix 1

John B. Thompson, J.D.
5721 Riviera Drive
Coral Gables, Florida 33146
305-666-4366
amendmentone@comcast.net

February 18, 2012

All Members of the Florida Legislature Via Emails to Each Senator and Representative
Tallahassee, Florida

Dear Florida Senators and Florida Representatives:

The lawyer discipline system in this state is catastrophically broken. Its very regulatory structure is fatally flawed according to a landmark finding of the American Bar Association's McKay Commission. The ABA offered the State of Florida an impartial audit of its bar discipline system, and both the Florida Supreme Court and Bar refuse the audit because they know how damning the Florida-specific audit would be.

The Bar itself has just conducted a survey of state judges who have filed bar complaints against lawyers. I had to pry the results of this survey out of The Bar via a public records request, as The Bar is hiding this survey from the public. No wonder; therein is contained the most stunning statistical proof of governmental ineptitude I have ever seen:

"Nearly three-fifths (58%) of judge respondents say they are dissatisfied" with the disciplinary job The Bar has done. A staggering 82% of all county, circuit, and appellate judges in the most populous District (the Third DCA) are "dissatisfied" with the job The Bar is doing! Yet The Bar has now officially decided not to fix the ABA-identified fatal structural flaw in certain state bars that explains this catastrophic Florida Bar failure.

And this indictment of The Florida Bar is from *judges* who filed complaints. You would think The Bar would at least do a good job in Bar complaint cases filed by judges. Can you imagine what the general *public's* experience and level of dissatisfaction with Bar discipline is? In Broward County, for instance, the level of judicial dissatisfaction is a whopping 65%. This is the county in which Scott Rothstein embedded himself in The Bar's grievance system and funneled huge amounts of money to The Bar in order to buy protection from it.

Did you know that The Bar founded and helps run a malpractice insurer that protects its insured lawyers from discipline? The Bar has become, literally, a protection racket. Just ask Scott Rothstein and his Ponzi scheme victims.

I have spoken at length, face-to-face with one of you Senators from South Florida, who agrees with me that any judicial branch budget coming out of this session *must* contain a

EXHIBIT
Appendix 2

mandate that the Florida Supreme Court and Bar submit to the aforementioned ABA audit of its broken lawyer discipline system. The Supreme Court is supposed to oversee this mess, and it is not doing so. Even Chief Justice Canady and Justice Polston have found, "The Florida Supreme Court has abdicated its duty to supervise The Florida Bar."

You need to make the judiciary's receipt of our tax dollars contingent upon the Supreme Court's getting its lawyer discipline system in order. There are dozens of Scott Rothsteins out there.

Please contact me for more information on this scandalous emergency. I will meet with any and all of you to explain how bad this is and what must be done.

We are tired of open season declared by The Florida Bar on Floridians. You must, before this Session ends, tell the Supreme Court that its funding is tied to getting its corrupt house in order.

Regards, Jack Thompson

Copy: Media

John B. Thompson, J.D., M.A.
Member of the American Bar Association
5721 Riviera Drive
Coral Gables, Florida 33146
305-666-4366
amendmentone@comcast.net

February 23, 2013

Myles V. Lynk, Chair
ABA Standing Committee on Professional Discipline
Arizona State University College of Law
Tempe, AZ 85287-7906 Via e-mail to myles.lynk@asu.edu

Re: Written Proffer of Live Testimony at ABA National Conference on Professional Responsibility, May 30-31, in San Antonio, Texas

Dear Chairman Lynk:

I appreciate very much your taking my call this past week regarding the above. I should like hereby to give you and the Committee a glimpse of my anticipated testimony at the above-noted event as the ABA, through your Committee, undertakes what has become its review, every twenty years or so, of state bar disciplinary structures and methods. I am swearing an oath, at the end of this letter, attesting that the assertions herein are all true.

The ABA Needs to Hear from Lawyers Who Have Been Disciplined

You on the Committee know better than I who has and who has not provided information to your preceding counterparts on the Clark and McKay Commissions, but I would suspect that lawyers who have horror stories to tell about their disciplinary experiences have not been heard enough. Just as criminal law procedures and safeguards have rightly emanated from prosecutorial shortcomings in specific cases (*Miranda*, *Gideon*, *Faretta*), so too state bars and the ABA can and should learn from instances of over-zealous, unconstitutional bar prosecutions, not only because the rights of the lawyer can be infringed upon but also because the clients who want bar-targeted lawyers to represent them might thereby can be denied, wrongly, their lawyers of choice. We don't just need an independent judiciary in this country; we also need independent lawyers who can champion unpopular causes, no matter what entrenched minorities those causes inconvenience.

Indeed, the McKay Report, which informs your deliberations, says this in this regard:

"It is easy to forget how fragile our liberties are. Beyond our borders are myriad examples of the need for an independent legal profession. Around the world, suppression of the legal profession is a basic tool of authoritarian governments. Amnesty

EXHIBIT
Appendix 3

International and the Lawyers Committee for Human Rights have units that specialize in monitoring political arrests of lawyers." As you will see below, here in Florida our Bar could not survive an investigation by Amnesty International.

An historical example of note: One of the first things Adolf Hitler did in consolidating his power in the Reich was disbar all Jewish lawyers, as he knew that in doing so he could silence certain voices and causes in German courts of law.

Similarly US Supreme Court Justice William O. Douglas presciently opined in *Lathrop v. Donohue* that eventually integrated state bars would become "goose-stepping brigades" enforcing uniformity of thought and speech. Those brigades are marching here out of Tallahassee.

The McKay Commission Report, then, is wonderfully mindful and expressive of the fact that lawyers have rights, rising to the level of constitutionally guaranteed rights, and that they do not surrender those rights upon becoming lawyers. Expressive of that important fact I submit to your Committee this letter, and request the opportunity to present live testimony, as we discussed the other day, in order to prove, irrefutably, that The Florida Bar, operating in the fourth most populous state in the Union, is pretending the ABA, in these regards and on these important issues, simply does not exist.

The Florida Bar's Structure Violates the Recommendations of the McKay Report

Eight individuals served on the ABA McKay Commission. One of the eight was John T. Berry. Mr. Berry put his name to the McKay Report, and thus he presumably subscribes to its findings. There has been no public disavowal by Mr. Berry of the Report and its recommendations.

Mr. Berry was at the time of the 1992 issuance of the McKay Report an official with The Florida Bar. That is why he served on the Commission. Mr. Berry is now the second most powerful full-time official of The Florida Bar, serving as the Director of its Law Division.

I do not need to tell you, Chairman Lynk, or the other members on your Committee, that the McKay Report's "Recommendation 1" is that each state should have "Judicial regulation of the profession and direct and exclusive judicial control of lawyer discipline…" This *sine qua non* of the reform of state bar discipline is fully spelled out in the McKay's Report's crystal clear Introduction:

"The Need for Direct and Exclusive Judicial Control of Lawyer Discipline

To strengthen judicial regulation of the profession, it must be distinguished from self-regulation. Control of the lawyer discipline system by elected officials of bar associations is self-regulation. It creates an appearance of conflicts of interest and of impropriety. In many states, bar officials still investigate, prosecute, and adjudicate disciplinary cases.

The state high court should control the disciplinary process exclusively. It should appoint disciplinary officials who are independent of the organized bar."

Recommendation 5 spells out what "direct and exclusive judicial control" means:

"Recommendation 5: Independence of Disciplinary Officials

All jurisdictions should structure their lawyer disciplinary systems so that disciplinary officials are appointed by the highest court of the jurisdiction or by other disciplinary officials who are appointed by the Court. Disciplinary officials should possess sufficient independent authority to conduct the lawyer discipline function impartially:

5.1 Elected bar officials, their appointees and employees should provide ***only*** administrative and other services for the disciplinary system that support the operation of the system without impairing the independence of disciplinary officials.

5.2 Elected bar officials, their appointees and employees should have ***no*** investigative, prosecutorial, or adjudicative functions in the disciplinary process." (emphases added)

The McKay Report's Recommendation 6 explains further the "Chinese Wall" that must be erected between elected bar officials and the lawyer discipline function, reserving that function solely to the highest court in any state:

"Recommendation 6: Independence of Disciplinary Counsel

6.1 The Court alone should appoint and remove disciplinary counsel and should provide sufficient authority for prosecutorial independence and discretion."

In the Comments section of Recommendation 6 are found these words: "Disciplinary counsel should be insulated from political pressure from the public, ***members of the bar***, and adjudicative officials of the disciplinary agency including members of the Court in order to provide effective and fair enforcement of the rules of professional conduct." (emphases added)

The disharmony between what John T. Berry, sitting on the McKay Commission, recommended and what The Florida Bar now does by virtue of its disciplinary structure, could not be more stark:

The Florida Bar has more than fifty Bar Governors, each elected by the lawyers in our respective twenty judicial circuits. The Florida Bar's By-Laws accurately state that these Governors oversee the entire lawyer disciplinary process. Sitting on every single Bar Grievance Committee is a Bar Governor, serving as its most powerful member, as his/her title thereon suggests—"Designated Reviewer." The Designated Reviewer is tasked with guaranteeing the "fairness" of the disciplinary process. He or she control the process. See proof of all of this extreme insinuation of and control by Governors as Designated Reviewers from the very start of the disciplinary process at

http://www.floridabar.org/DIVEXE/BD/CMStanding.nsf/4fc96bb91076af6085256eec005ae6a7/7a320b4a6b5c0ef885256ea700540625!OpenDocument.

Also, in contrast with what the McKay Report advises as to staff prosecutors, these are hired and fired by the Bar Governors. If they do not toe the line in any regard, they will be dismissed. They are not answerable to the Supreme Court but rather to the politicos on the Board of Governors.

In addition to this violation by The Florida Bar of the McKay Report's Recommendations 1, 5, and 6, a clear and consequential state law is being violated by these Grievance Committees, to-wit: It is a violation of Florida law for any resident to serve in more than one branch of government. Despite this law, dozens of Florida Bar Grievance Committees have on them political office holders and officials from the executive branch of state government, most notably prosecutors from the twenty judicial circuits in their respective State Attorney offices and even Assistant U.S. attorneys.

In Florida, State Attorneys are among the powerful and influential politicians in the state. This is yet another insinuation and infection of "political influence," in addition to that of Bar Governors, in the bar discipline process here in Florida. It was just this type of influence that prompted the McKay Commission to author Recommendations 1, 5, and 6.

The Florida Supreme Court and Bar Have Refused an ABA Audit Of Our State's Lawyer Discipline System

Florida remains one of the small number of states which has refused to allow an impartial audit and assessment by the American Bar Association of its lawyer disciplinary system offered by the ABA in the wake of the McKay Commission Report. Why? Because Florida knows it would flunk the ABA test.

This is all the more remarkable in light of Mr. Berry's aforementioned service on the McKay Commission, and in The Florida Bar then and now. Indeed, Mr. Berry served on the ABA Lawyer Discipline Audit Committee that officially reviewed the California State Bar, at that state's request. Not surprisingly, the California ABA Audit by Mr. Berry and his fellow analysts listed as their first and *most important recommendation* in their Report, the need to get all state bar officials totally out of the disciplinary process! See http://www.calbar.ca.gov/LinkClick.aspx?fileticket=PCgwZ3vcePM%3D&tabid=224&mid=1534 ***Physician, heal thyself.***

Having briefly touched on the structural defects within The Florida Bar which the American Bar Association's McKay Commission identified (with the McKay Report's recommendations then having been adopted by the House of Delegates), I turn briefly to a truncated account of my "discipline" at the hands of The Florida Bar, horribly flawed in large part by virtue of the wholesale refusal of The Florida Bar to comply with the McKay Report. My horror story is just one of many in The Sunshine State:

The Florida Bar's Twenty-Six-Year Vendetta against Jack Thompson

In the interest of brevity and so as not to overburden you on the Committee, I herewith provide a truncated version of events, about which I am delighted to provide more details and corroboration, if they are requested, by way of live sworn testimony to your Committee in Texas in May.

Tyndale House, headquartered in Chicago, Illinois, one of the largest Christian publishers in the world, published my autobiography, *Out of Harm's Way*, in November 2005. It is an account of a) my efforts, as a lawyer, against the illegal and harmful distribution of adult-rated entertainment to minors, and b) the entertainment industry's and The Florida Bar's collaborative use of fraudulent bar discipline to destroy my legal career.

I mention the Tyndale House book because that reputable publishing house vetted everything in the book and found it to be true, including the actions of The Florida Bar.

In 1987, I filed formal complaints with the Federal Communications Commission asserting that broadcast decency standards passed by Congress were being violated by a Miami-area "shock radio jock" who "was soliciting teenaged boys for sex on the public airwaves." The words quoted in the previous sentence were penned by and sent to the FCC by the Executive Director of the well-known Adam Walsh Foundation in support of my FCC filing.

The attorneys for the offending radio station filed bar complaints against me asserting I was fabricating my charges. These lawyers persuaded a local judge, who had been Chair of the Florida Chapter of the ACLU, and who personally led the successful effort to persuade the national ACLU to change its policy position to decriminalize the possession of child pornography, to ask The Florida Bar to have "Jack Thompson declared mentally incapacitated by virtue of his obsession with [against] pornography, which obsession renders him unfit to practice law by virtue of that mental disability."

At that time, Jack Harkness and the aforementioned John T. Berry were top Bar officials. The Bar, *ex parte*, went before the Florida Supreme Court and persuaded it to enter an order compelling me to submit to immediate psychiatric and psychological testing by experts *chosen by The Bar* to determine if I was mentally incapacitated by virtue of my concerns about harm done to kids by pornography distributed to them. Failure to agree to such testing would result in my immediate suspension from the practice of law.

I was examined, and both experts found that I was perfectly sane and simply acting out my Christian faith in the public square. They gave me an utterly clean bill of health. This was revealed as a transparent and utterly desperate effort to hijack The Florida Bar's disciplinary processes, in corroboration of the McKay Commission's concerns, in order to pathologize my Christian faith.

Despite that ultimately exonerating Bar finding by The Bar's own experts, chosen by The Bar, I was subjected to tremendous public ridicule with headlines such as "Is This

Lawyer Too Crazy to Practice Law." When exonerated and declared in effect, the only officially certified sane lawyer in the state of Florida, there were no similar headlines vindicating me. The impact on my practice of law was devastating. But by God's grace, my practice was eventually restored.

On the way to that restoration, the Federal Communications Commission then levied its first decency fines ever, pursuant to the FCC complaint against the aforementioned shock radio station I had filed.

The Bar Integration Order of 1949 by which the Florida Supreme Court made compulsory lawyers' membership in The Florida Bar had thus been proven wise. In that Order, the High Court promised that bar discipline would not be allowed to be used by one lawyer against another. The Florida Bar's Preamble to its own Bar Rules prohibits the use of ethics complaints by one lawyer against another as a means of collateral attack. I never had a client complain about my conduct. I had opponents using The Bar to defeat me when they could not beat me in the public square or in a court of law. This is precisely the hijacking of the bar disciplinary process that so obviously concerned the McKay Commission and should continue to concern the ABA.

In 1992, after pleading guilty to the offence of contacting an opposing party because that party's on-air personality was threatening my and my wife's lives, and receiving a public reprimand for this clearly legal and ethical conduct, I contacted The Florida Bar's insurance carrier to alert it to what The Florida Bar had done to me and how it had illegally done it. The carrier's claims representative stated, "This the worst thing I have ever seen any insured ever do to anyone." That carrier then paid me money damages for the improper use of lawyer discipline by The Florida Bar. It is the only such payment by any bar or its insurer that I or anyone else has ever been able to find.

I pause to note that this fact alone is compelling evidence that The Florida Bar has been out of control, for one would think that The Florida Bar, having been tagged by its own insurer in the very year that the McKay Commission Report was issued, would have learned its lesson, as to both how to treat Jack Thompson and more importantly how to impart discipline in line with ABA recommendations with structures insulated from such political hijacking. Such was not the case. Having provided this background, I relate what was more recently done to me by a state bar that has no regard for the ABA's perspective on lawyer discipline:

Fast forward to 2004, when I filed FCC decency complaints against the *Howard Stern Show*. Stern was airing in the Miami market and around the nation pornographic segments, for example, with female amputees who were describing placing their lubricated "stumps" in the anuses of men. Now that's entertainment, and at 8am with children in the audience. He was also airing racist comments clearly prohibited by the FCC, such as:

"What do nigger chicks smell like? Watermelons?" I and others who had begun our public lives in the civil rights movement did not do so in order to grant to Howard Stern

the "right" on the public airwaves, to violate federal laws governing through the air broadcasts passed by Congress.

The lawyers for the local *Stern* broadcasters, one of whom was one of the lawyers who had used The Bar to pursue Thompson a decade earlier, filed Bar complaints against me asserting I was making all this up as to the content of the programming.

Then, in March 2005, I appeared on CBS' *60 Minutes* for the second time, this time to explain, at the request of Ed Bradley, that an African American teen had trained on the cop-killing simulator, the *Grand Theft Auto* video game, to kill three cops whose surviving family members I was representing in a wrongful death action I had filed, *pro hac vice*, in Alabama. The teen had been illegally sold the adult-rated game as a minor by Wal-Mart.

Mr. Ed Bradley had interviewed me in a similar story six years earlier because of the Columbine school massacre. I had predicted on NBC's *Today* the Columbine massacre a week before it happened, predicting that the same video game that trained the Paducah High School murderer, who killed the three daughters of my clients in December 1997, would train "other boys in other American high schools to kill." Klebold and Harris had in fact done so.

Because of this second *60 Minutes* appearance, a) I worked with three state legislatures to pass laws I drafted prohibiting the sale of adult-rated video games to minors, b) I prepared then Senator Hillary Clinton for a press conference that led to a Resolution passed by Congress condemning the makers of the *Grand Theft Auto* video games, and c) *Readers' Digest* published an original article ballyhooing my legal work against violent video games and the MRI-based brain science supporting it. I note that the Sandy Hook school killer trained on these very video games.

This was too much for the law firm of Blank Rome, which represented the makers of the *Grand Theft Auto* video games, to bear. Blank Rome filed a motion to revoke my *pro hac vice* admission in the Alabama cop-killing/video game/wrongful death action. The trial judge was more than happy to grant the motion as he was the white judge who presided over the all-white jury that put the black teen on death row. He wanted to deal a fatal blow to our wrongful death action by removing from it the lawyer who brought it. This white judge thus protected the verdict and the sentence in the criminal case in which he, the judge, had denied any semblance of a video game defense, even by way of mitigation. If we had prevailed in the civil case, the criminal case result would have been sullied.

The Florida Bar took that *pro hac vice* revocation as the basis for its own complaint against me for, among other things, allegedly appearing on *60 Minutes* for the sole purpose of "improperly influencing an adjudicative proceeding." This complaint was brought despite the fact that both Alabama and Florida Bar rules allow the appearance of a lawyer in the mass media to discuss their case within its four corners as filed,

particularly if a matter of public safety is involved.. There was not gag order, nor could there be. The Alabama judge said so.

Nevertheless, The Florida Bar combined my alleged conduct in Alabama with the *Howard Stern Show* complaint and proceeded against me in Florida with both complaints. There was a third complaint brought by a Florida judge against me because I had dared repeat what our Third District Court of Appeal had said about his improper conduct.

It is important to note, parenthetically, that it was wholly improper for The Florida Bar to proceed against me in Florida for what I had allegedly done in Alabama in two regards: The Florida Bar has a Rule as to Choice of Law that mirrors the ABA's Model Rule 8.5. A lawyer is to conform his conduct with the rules of the host state, which in this case was Alabama. Further, The Florida Bar's own rules mandate that the Alabama State Bar had to proceed against me first, with The Florida Bar only enforcing reciprocal discipline for what I had allegedly done in that state.

The Florida Bar violated both Rules. In fact, the Alabama State Bar dropped its proceedings against Thompson. In the charging document brought by The Florida Bar against me, I was charged with violations of Florida Bar Rules and Alabama Bar Rules, and the findings of the referee are totally silent as to the latter, which were the only Rules I could have violated and been tried for! Be that as it may, it gets worse:

1. The bar referee selected for me, Dava J. Tunis, had had no training to serve as a bar referee, which training is mandated by The Florida Bar.
2. She was serving on the Circuit Court by virtue of a forged state-and federally-mandated loyalty oath.
3. When my wife, also a lawyer, was diagnosed with potentially fatal ovarian cancer, which necessitated surgery and arduous chemotherapy, this referee denied me a continuance, despite the fact that I was her and our son's primary care provider.
4. After Tunis was assigned my bar disciplinary case, ***she received campaign contribution checks from the Bar Governor assigned as Designated Reviewer to my case and from the Miami bar prosecutor assigned to my case, in the same amount and dated the same day.*** Clearly this violates the US Supreme Court's ruling in *Caperton v. Massey,* as it raises the specter of improper influence upon an elected judge by the appearance of orchestrated, influence-buying campaign contributions.
5. This Designated Reviewer, Ben Kuehne, had been very active politically on some of the very issues, including radical gay rights, in which I had been involved. He had every right to do so, but he could not fairly serve as Bar Governor/Designated Reviewer in my case involving some of those same political/ideological/moral issues.
6. When Kuehne had to remove himself from Bar Governor duties because he was under investigation by the Justice Department for allegedly laundering money for the Medellin cocaine cartel, he was replaced as my Designated Reviewer by Bar

gay marriage (I had and have, very publicly) ***should be prohibited from the practice of law***. I had gone from the Kuehne frying pan into the Chaykin fire.

7. Proof of The Bar's politicization of my disciplinary process because of Chaykin (note again the ABA McKay Report's stern warning that elected bar officials should have nothing to do with lawyer discipline for this very real possibility that politics rather than guilt might decide cases), I and The Bar, upon my insistence, engaged in negotiations to try to resolve this entire matter. A ninety-day suspension with automatic reinstatement was on the table. I entered mediation ready, willing, and able to take the deal. However, The Bar added to it, out of the blue, a requirement that I had to submit to a battery of subjective psychiatric and psychological tests that would not be objective, as before in 1992, in nature. There was, as before, absolutely no basis whatsoever for such testing. One of The Bar's own respected clinical psychologists, recognized as such by The Bar, told me this was a trap to make sure I never practiced again. He said that the only proof of my insanity would be to agree to such nonsense. He examined me at my behest and informed The Bar I was perfectly sane. The Bar would not relent. It said *Submit to our subjective tests by our experts or we shall have you disbarred.* No ninety days suspension was now possible. Get on our subjective couch or be disbarred. Once again, The Bar was attempting to pathologize my Christian faith and activism.
8. We had a nine-day bar trial before Judge/Referee Dava Tunis. She refused to rule, and never has ruled, on any of my constitutional and legal defenses. She is absolutely required by Florida Bar Rules to issue findings of law. She refused to do so. She ordered me to remain silent at my sentencing/sanctions hearing after the guilt phase.
9. The Florida Supreme Court treated as "uncontested" the Bar referee's report recommending my disbarment, because the High Court entered an order prohibiting me from representing myself in clear violation of the Sixth Amendment, the US Supreme Court's ruling in *Faretta*, and a Florida statute and a constitutional provision expressly guaranteeing, absolutely, the right of any Florida resident to represent himself in any proceeding of any kind before any tribunal in Florida.
10. The Supreme Court had entered such an order because I had proven nettlesome in filing with the High Court writs of prohibition trying to alert them to ongoing denials of procedural and substantive due process in the bar proceedings below. When I retained three separate attorneys to represent me in these Bar proceedings, The Bar threatened all three should they continue to represent me. Thus, I was stripped of my right to represent myself and of my ability to hire anyone to represent me. I was rendered mute. Not since England's notorious Star Chamber has a person been denied, in our jurisprudential system, the right of self-representation. However, this is a recurring trick of The Florida Supreme Court and The Florida Bar, as they deny the right of self-representation to lawyers who prove too "nettlesome" in their bar proceedings. And yet there was no formal rule to do so until after The Bar and the High Court did this to me, as my name is mentioned in the comments section of the new *ex post facto*, bill of attainder Rule! So the Supreme Court passed a Rule after the fact and before they even

passed that Rule with my name in it, they applied it to me. Maybe there is a new category of prohibited rule-making: super *ex post facto*.

11. I found that the costs affidavit of The Florida Bar was perjured, as it contains improper charges for witness vacations and luxury hotel rooms. I was denied an opportunity even to be heard at the trial level and by the Supreme Court, with the result that I had to pay $42,000 in falsified costs for the privilege of being disbarred.
12. One of the findings of fact relied upon by the Florida Supreme Court in my disbarment order is the "fact" that I had lied about the pornographic, indecent nature of the *Howard Stern Show*. Three weeks after my permanent disbarment order was entered (permanent disbarment does not even exist in Florida in such an instance), the Federal Communications Commission entered into a formal Consent Decree with the lawyers for the *Howard Stern Show* broadcasters. These were the lawyers who had brought the Bar complaint against me alleging I had made all this about *Stern* up. The FCC Consent Decree mandates the payment by the *Stern* broadcasters of forfeiture monies into the US Treasury because of "FCC decency complaints filed and brought by Miami attorney Jack Thompson." This brought to $4.5 million the amount of FCC fines levied against broadcasters of the *Howard Stern Show* in large part because of complaints brought by me. Thus we have, three weeks after my permanent disbarment, a formal federal government action that vindicates me and what I had written and said about *Stern* and his lawyers, and the Florida Supreme Court will not allow me even to place before it a petition to modify its disbarment order. Thompson was hallucinating and so is the United States government.
13. Finally, this last event in The Bar's "discipline" of me in effect sums up what it was all about. After my Bar referee entered her Report of Referee, which failed to rule on any and all legal and constitutional issues raised, and after she recommended a sanction that under Florida law does not even exist, she journeyed to the Annual Florida Bar Convention in Orlando, Florida. There she was presented with the highest award that can be bestowed by The Bar: The Bar President's Award of Merit. *She was given this Award, she was publicly told, because of her performance in my Bar disciplinary matter.* This was bribery in the light of day.

The Florida Bar's Corruption Has Now Corrupted the Florida Supreme Court

In Florida's last general election, three of our Supreme Court's Justices were faced with a retention election. No judge at any level in Florida had ever failed to win retention. However, these three Justices were concerned about the fact that certain Iowa Supreme Court Justices were defeated in retention battles in 2010.

Two of these Florida Supreme Court Justices appeared in January 2012 before The Florida Bar's Board of Governors in their retention elections asking for The Bar's help in their retention fights. They got it. The Bar Governors illegally approved the expenditure of $300,000 from Bar members' dues to fund a "voter retention education" effort, the sole purpose of which was to assure that these three Justices would be retained. It is not

even debatable that The Bar's use of bar members' dues for illegal electioneering violates the U. S. Supreme Court's unanimous ruling in *Keller v. State Bar of California*. By the way, one of the lawyers on the losing side in *Keller* was Barry Richard of Greenberg Traurig, who is The Florida Bar's outside general counsel. Mr. Richard and his wife raised and bundled money for the retention of these three Justices, which is wholly improper in light of his repeated appearances before the Supreme Court (see, again, *Caperton v. Massey*). Mr. Richard's wife, not surprisingly, is the Chair of the Florida Democratic Party. The entire Florida Bar was hijacked to keep three Democrat-appointed Justices on the Court. This is "judicial independence?" This is the Bar tail wagging the Supreme Court dog.

Is it any wonder that Republican-appointed Florida Supreme Court Justices Canady and Polston have opined that, "The Florida Supreme Court has abdicated its duty to supervise The Florida Bar." The Supreme Court has failed to do so because it is The Bar that is running the Court and not the other way around. This is precisely the evil that the McKay Commission identified and warned against: That state bars would politicize, not just through discipline but through other means, the judicial branch of government in the states. And the unhappy result is that the public rightly questions the independence and impartiality of the judiciary, especially when it comes to lawyer discipline.

Indeed, a fairly recent poll of Florida lawyers revealed that many think they are disciplined not because of what they do but because of whom they do not know in The Bar hierarchy. A more recent poll of Florida judges found that a huge majority of these judges believe that The Bar protects even the lawyers that they, the judges, report to The Bar for unethical acts. So lawyers and judges believe The Florida Bar is bought and paid for. Can one imagine what the public in this McKay Report-Free Zone think of The Bar?

The Florida Bar brays continuously about the need for "judicial independence." What The Florida Bar means by that is that it wants the judiciary dependent upon it and independent of any salutary democratic impulse.

Recommendations for the ABA Committee on Professional Discipline

I would strongly recommend that your Committee do whatever it can to cajole, possibly by a Resolution placed before the ABA House of Delegates, that states must or at least should submit to an audit by the ABA of their lawyer discipline systems. It is outrageous that The Florida Bar's John Berry could sit on the McKay Commission, and learn what he learned, even to the point of officially criticizing the California State Bar, as already noted, for its failure to institute McKay Commission reforms, while at the same time drawing a paycheck from a state bar that is even less compliant with McKay than was California.

Secondly, I would strongly recommend that the Committee establish a mediation service or function that would enable a lawyer such as the undersigned, when he is being run over by a rogue state bar disciplinary system, to go to the ABA and say, "Would you being willing to offer a paid mediator to sit down with both parties to try to get the

disciplinary process back on track before it is concluded?" What is the worst that could happen? The lawyer is told he is wrong? Or the Bar is told it is wrong? What would be the harm in that? What would be avoided is a horror story such as mine that prompts me to tell the world, truthfully, that The Florida Bar is out of sync with the ABA.

Finally, I urge the Committee to urge The Florida Bar, by whatever means are available, to take a hard look at the McKay Report's Recommendations 1, 5, and 6 toward the end, finally, of complying with them. It is likely too late for me to have any vestige of my legal career restored. This is not about me. This is about others in Florida, and elsewhere, who will come after me and who will be targeted similarly if the McKay Commission reforms are not implemented.

I would put this to you: Who in his right mind, after going through what I did, would not want to urge the American Bar Association, to do what it can, through its good offices, to make sure that there not be other such victims of The Florida Bar and other state bars? If that prophylactic benefit occurs, then my travail shall not have been for naught.

For what The Florida Bar did was turn the truthfulness I had to utter about predatory commercial practices by the entertainment industry into the functional equivalent of a criminal libel action. My truthful speech was criminalized. I was stripped of the ability to practice law by means of gross substantive and procedural due process violations. It was the functional equivalent of finding Paul Revere guilty of disturbing the peace with his Midnight Ride.

I was warning the nation that Columbines and Sandy Hooks were on the way. They are now here. The commercial entertainment enterprises that sell adult-rated mayhem and pornography to our children happened to found in The Florida Bar a commonality of purpose in destroying the man who not only exposed this mental molestation of minors for money but also the tyrannical practices of The Florida Bar in my Tyndale House-published biography.

Justice Douglas, as pointed out, predicted that state bars would eventually become "goose-stepping brigades." In Florida, they're on the march and have been since 1987. I submit that it is up to the ABA to help stop them. The Florida Bar and the Florida Supreme Court should not be allowed to continue to thwart both an ABA audit and the spirit of the ABA's McKay Commission.

I thank God that your Committee has been given the charge to do this work. I shall pray that your work and His will be done.

If more things come to mind prior to my anticipated testimony in May before the Committee, I shall pass them on.

Respectfully, Jack Thompson

I solemnly swear, under penalty of perjury, that the foregoing facts are true, correct, and complete, so help me God. Signed, John B. Thompson

PS: All Committee Members

John B. Thompson, J.D., M.A.
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amendmentone@comcast.net

February 24, 2013

Myles V. Lynk, Chair
ABA Standing Committee on Professional Discipline
Arizona State University College of Law
Tempe, AZ 85287-7906 Via e-mail to myles.lynk@asu.edu

Re: Addendum to Written Proffer of Live Testimony at ABA National Conference on Professional Responsibility, May 30-31, in San Antonio, Texas

Dear Chairman Lynk:

I find in reflecting upon what I sent you and the rest of the Committee yesterday, I failed to mention two other facts that show how thoroughly corrupted and out of step The Florida Bar is with the state disciplinary system paradigms set forth in the ABA's McKay Report, adopted by the House of Delegates, to-wit:

The Florida Bar Has Set Up a Lawyers Malpractice Insurance Company One of Whose Stated Purposes Is to Thwart Bar Discipline of Its Insureds

In 1987, given the increase in lawyers' malpractice insurance premiums in Florida, The Florida Bar created the Florida Lawyers Mutual Insurance Company, FLMIC.

FLMIC promotes as one of its services to its insureds the representation of any insured in any Bar disciplinary proceeding brought against him/her. In other words, FLMIC has publicly stated, repeatedly, that part of the coverage paid for by insurance premiums is to provide attorneys to defeat any bar grievance brought against an FLMIC insured. Why? Because successful bar discipline could be used to underscore and even prove the validity of a malpractice claim arising out of the same factual and legal setting. In other words, FLMIC has a vested financial interest in defeating a bar grievance because doing will help protect, obviously, the financial assets of this mutual insurance company. And a claim not paid a plaintiff keeps insurance premiums lower. FLMIC says just that.

Now, having simply stated what FLMIC itself says as to the nexus between bar complaints and malpractice claims, take a look at who is on the FLMIC board of directors: Ramon A. Abadin, Florida Bar Governor, and Juliet Roulhac, Florida Bar Governor. The Chairman of FLMIC's Board is a former Florida Bar President, and another former Florida Bar President serves on the Board with the aforementioned three.

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In Florida, as you know, Bar Governors are responsible for overseeing the disciplinary processes of The Florida Bar. Indeed, unfortunately, Governors Abadin and Roulhac also serve on specific Grievance Committees as Designated Reviewers and as such are fully in control of anything those Committees do. They can stop any ethics grievances dead in its tracks.

Query: How in the world can a Bar Governor faithfully and impartially discharge his/her duties to administer lawyer discipline and participate also at its initiating level when he/she also serves on the board of directors of an insurance company whose publicly stated purpose is to defeat lawyer discipline for its insureds?

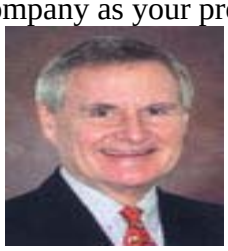
Answer: He and she cannot, because each of them is being pulled in opposite directions by competing fiduciary duties. Why is it that Bar Governors and Bar Presidents don't know what a classic conflict of interest looks like?

Why should a permanently disbarred lawyer, of all people, have to point this out? Bar Governors should, of all people, understand the appearance of impropriety here, summed up fairly by suggesting that FLMIC is in effect, at least in part, an ethics protection racket for lawyers, since the pitch to potential insureds is this: Buy our malpractice insurance and our board of directors, comprised in part of Florida Bar Governors and former Bar Presidents, will do our best to make sure The Bar does not discipline you. Make yourself, in effect, an untouchable. We have proof that an "untouchable" ethics system status is conferred upon FLMIC insureds.

And then here is the cherry on top of this rancid sundae: Until recently John F. "Jack" Harkness, the Executive Director of The Florida Bar since the time of Moses, who still fills that post, was serving for many years on the Board of Directors of FLMIC! The executive head of The Bar, which now says its primary function is to discipline lawyers, was on the board of an entity committed to trying to defeat the disciplinary functions of The Bar. What's next? Is Manuel Noriega going to head up DrugFree.org?

Even now, disturbingly but shamelessly, Jack Harkness is still associated with FLMIC in that he publicly, at the FLMIC web site, currently encourages Florida Bar members to choose FLMIC as their malpractice carrier:

"Florida Lawyers is one of the many ***benefits*** available to you as a member; and in this regard, ***I strongly urge*** your consideration of Florida Lawyers Mutual Insurance Company as your professional liability carrier." John F. Harkness [emphases added]



[This picture of Jack, along with above quotation, provided at FLMIC endorsement page]

In sum, then, The Florida Bar created FLMIC to provide not only malpractice insurance but also included in that insurance package free (already paid for by premiums) bar discipline protection. Jack Harkness calls this insurance a "benefit" of being a Bar member. This is the functional equivalent of Florida drivers being able to purchase traffic ticket insurance from the Fraternal Order of Police.

Lawyer self-regulation has demonstrably sullied judicial independence. The Bar has provided insurance that buys insulation from discipline.

The Florida Supreme Court Does Not Review All Bar Disciplinary Actions

In 1949, the Florida Supreme Court "integrated" the bar, thereby making membership of any lawyer in The Florida Bar mandatory for anyone desiring to practice law.

In that integration order, the High Court appropriately addressed a number of concerns many lawyers had about the creation of a compulsory Florida Bar, one concern being that The Bar would in effect wrest *actual* disciplinary functions from the judiciary. Of course, the ABA's McKay Commission Report, issued in 1992, makes the point that in any state, like Florida, in which bar officials elected not by the people generally but by lawyers who actually participate in and direct lawyer discipline, then that is a state whose lawyers are self-regulated. This is why the ABA, 43 years after the 1949 Florida Supreme Court's Bar Integration Order, raised the very same concerns, first raised by the Florida Supreme Court itself in its McKay Report.

And now we have yet a further proof as to how wise both the earlier Florida Supreme Court and the McKay Commission were: Court documents, readily available in the public domain, prove irrefutably that the Florida Supreme Court DOES NOT, as it promised in 1949 and as is mandated by the Florida Constitution, review all disciplinary decisions of The Florida Bar.

Disbarments of lawyers requested by The Bar are rubberstamped by the Court with no review by the Court of the proceedings below. In other instances, within hours or a few days of the receipt of Referee Reports by the Supreme Court, the Supreme Court approves them without review, without opinions issued, without any judicial oversight whatsoever.

Further, one of the ways in which the Florida Supreme Court thinks it can cover the Justices' nonfeasance in this regard is by having simply the Clerk of the Court, Tom Hall, sign disciplinary orders, even disbarment orders. In fact, the Supreme Court, in clear violation of Florida's Government in the Sunshine Laws (public records laws), refuses to produce purely clerical records that would prove disciplinary case files have not been routed to any of the Justices. A Justice cannot review what he/she is not given, which is why the Court refuses to produce public records which prove a total lack of judicial oversight.

Finally, irrefutable proof that the Florida Supreme Court does not review The Bar's disciplinary decisions is the sheer number of those decisions and the hours in a day and days in a year. It is a pure math problem. We have nearly 100,000 lawyers in this state. There are so many disciplinary actions by The Bar that the Supreme Court literally does not have enough time, given the Supreme Courts other duties, to afford those decisions judicial oversight.

Be that as it may, the lack of time and money resources to discharge the Court's duty under the Bar Integration Order and the Florida Constitution ***is its problem***. It cannot, until it solves that problem, pretend that it is actually engaged fully in overseeing the discipline of lawyers. So what does the Supreme Court do? It rubberstamps what The Bar gives it, pretends to review some of the most visible cases (and not even does so in all of those), and calls that "full judicial oversight of the discipline of lawyers." It is a lie.

It is an irony that then Chief Justice Charles Canady opined in the *Liberty Counsel* case that "the Florida Supreme Court has abdicated its duty to supervise The Florida Bar." He is correct. It is Charles Canady that put his name on my disbarment order without ever reviewing the Referee's Report or any of the disciplinary record below. He ended a lawyer's career without giving it a glance or a thought.

This recklessness, this nonfeasance, this denial of basic due process and fairness by the Florida Supreme Court is shocking.

Why does our state's highest court refuse then an ABA McKay Commission audit of its lawyer disciplinary system? Because the Florida Supreme Court and Florida Bar would flunk such an audit. Such an audit would prove that our state's disciplinary system is in a shambles, sullied with a politicized regulatory structure that is a relic of the 19th century.

The Florida Bar is nothing but a guild which protects lawyers who buy the right insurance and targets lawyers who blow the whistle on commercial pornographers represented, in my instance, by a vide game industry law firm who has a partner on the Board of Governors of The Florida Bar.

Your Committee, sadly, has work to do. Florida doesn't "get" the McKay Report. Heck, even John Berry doesn't get it, and he helped write it.

Anything I and others can do to help, let us know. Identifying rascals can be fun.

I solemnly swear, under penalty of perjury, that the foregoing facts are true, correct, and complete, so help me God. Signed, John B. Thompson

PS: All Committee Members

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March 4, 2013

Myles V. Lynk, Chair
ABA Standing Committee on Professional Discipline
Arizona State University College of Law
Tempe, AZ 85287-7906 Via e-mail to myles.lynk@asu.edu

Re: Addendum to Written Proffer of Live Testimony at ABA National Conference on Professional Responsibility, May 30-31, in San Antonio, Texas

Dear Chairman Lynk:

Since writing you, The Florida Bar has decided to target, with a threatened bar complaint *on its own behalf*, a public-spirited lawyer who owns and operates a blog in the state that has been wonderfully successful in identifying corrupt judicial officials, including judges. It's not even debatable that this lawyer has served the public weal. The judges are the ones, behind the scene, who are egging on The Florida Bar to do this.

In fact, The Florida Bar fairly recently whacked with a suspension a lawyer who posted truthful comments at this particular blog about a corrupt judge. The lawyer was vindicated fully as to the truthfulness of his comments, yet The Bar disciplined him nevertheless.

This particular blogging lawyer is politically liberal. I am a conservative. When it comes whistleblowers who identify judicial corruption, then, as both this lawyer and I have, The Florida Bar is an equal opportunity anti-First Amendment tyrant.

The Bar can get away with this politicization of its guild-like enforcement of speech codes through "discipline" for the very reasons that I have pointed out in my prior letters to you: The Florida Bar's disciplinary structure is run by political "Bar Governors" elected solely by their well-connected peers with no democratic impulse whatsoever.

This is precisely the corrupting structural flaw that the ABA's McKay Commission Report identified in 1992. The Florida Bar's guilt as to same is why the Florida Bar and Supreme Court refuse an audit by the ABA of its corrupted disciplinary structure.

So, here we have yet another example—now a stark and disturbing one when it comes to this public-spirited Florida lawyer blogger—that unconstitutional criminal libel is alive

EXHIBIT
Appendix 5

and well in Florida. The Florida Bar, as to this fellow and as to me, chose to use speech codes, at the behest of corrupt judges and criminal commercial entities, to intimidate and silence lawyers, even though Florida Bar Rules and our 1949 Bar Integration Order prohibit this practice.

Lawyer discipline, in my instance, was invoked not by the public, not by a wronged client, but rather by political and commercial interests with political and commercial ties to influential Bar Governors.

The consequence of this politicization and corruption of bar discipline in Florida is that when whistle blowers such as the undersigned and now this blogger are harmed, the public is harmed because it can no longer benefit from their whistle blowing.

I was disbarred for appearing on *60 Minutes*. The same Bar that did that now wants to pull the ticket of a lawyer who has just been too effective at exposing corrupt and corrupting judges protected by The Bar.

It is not a coincidence that The Florida Bar's current President, Gwynne Young, is most highly political Florida Bar President in its history. She is the one who led the effort to commandeer $300,000 in Bar members' dues to make an improper campaign contribution to three Florida Supreme Court Justices. Wait until you hear what the Florida Supreme Court has done to cover that up.

I look forward to my testimony before your Committee in May, as what I have sent you already is just a prelude to the shocking information you will then receive.

I solemnly swear, under penalty of perjury, that the foregoing facts are true, correct, and complete, so help me God.

Signed, John B. Thompson

Copies: All Committee Members

PS: Other state bars are similarly politicizing bar "discipline," which makes your Committees hearings all the more important. In that regard as to other states, see http://michellemalkin.com/2012/06/09/bloggers-under-fire-arizona-conservative-lawyeractivist-targeted-by-left-wing-arizona-state-bar/

THE FLORIDA BAR

651 EAST JEFFERSON STREET
TALLAHASSEE, FLORIDA 32399-2300

JOHN F. HARKNESS, JR.
EXECUTIVE DIRECTOR

850/561-5600
WWW.FLORIDABAR.ORG

March 14, 2013

Mr. Neil J. Gillespie
8092 S.W. 115Th Loop
Ocala, FL 34481

Re: Complaint by Neil J. Gillespie against Robert W. Bauer
The Florida Bar File No. 2013-00,540 (8B)

Dear Mr. Gillespie:

Enclosed you will find Mr. Robert W. Bauer's response to your complaint. The response sent by Mr. Bauer indicated that a copy was being mailed to you. However based on your recent email to The Florida bar it appears that you did not receive you copy of Mr. Bauer's response.

If you wish to file a rebuttal to the response, please do so in writing by **April 1, 2013**. Additionally, you must send a copy to Mr. Bauer.

Sincerely,

Annemarie Craft, Bar Counsel
Attorney Consumer Assistance Program
ACAP Hotline 866-352-0707

Enclosure

cc: Mr. Robert W. Bauer

EXHIBIT
Appendix 6

Gmail

Per Complaint of Neil Gillespie

kim <kimberlypruett@earthlink.net> Mon, Jan 28, 2013 at 8:36 AM
Reply-To: kim <kimberlypruett@earthlink.net>
To: "rwb@bauerlegal.com" <rwb@bauerlegal.com>

Dear Sirs/Madam,

Mr. Neil Gillespie is using my name WITHOUT my permission in a complaint against Robert Bauer, Atty, with the Florida State Bar.

Please be advised that I am satisfied with Mr. Bauer's representation of our case and in no way want to be associated with Mr. Gillespie and this complaint.

I will also be discussing this matter with MaryAnn Crawford.

Thank you,
Kim Pruett

EXHIBIT
A

Neil Gillespie

From: "kim" <kimberlypruett@earthlink.net>
To: "Neil Gillespie" <neilgillespie@mfi.net>
Sent: Wednesday, October 03, 2012 9:14 PM
Subject: Re: Robert Bauer

Thanks Neil,

I wrote him a real nasty email! I told him he was "milking" us and to get this case moving forward or else!

Kim

-----Original Message-----
From: Neil Gillespie
Sent: Oct 3, 2012 6:22 PM
To: Kimberly Pruett-Barry
Subject: Robert Bauer

Hello Kimberly,

Thanks for your call today about Robert Bauer. As you requested, I forwarded your information to Angela Woodhull. Here is a link to Tampa legal malpractice attorney Bill Vaughan that you mentioned http://www.florida-malpractice-attorney.com/index.php

Shortly I will be making another complaint against Robert Bauer. The designated reviewer of my last complaint said it often takes more than one complaint for the grievance committee to reach a finding of misconduct. Did you see my page with my complaint against Bauer? Here is a link http://www.nosue.org/bar-complaint-of-robert-w-bauer/ And thanks for reminding me about the fee arbitration program.

I□m so sorry to hear about your problems with Bauer. You are not alone. Feel free to contact me anytime, I□ll do whatever I can to assist you and your husband.

Sincerely,

Neil Gillespie
8092 SW 115th Loop (Oak Run)
Ocala, Florida 34481
Telephone: (352) 854-7807
website: http://www.nosue.org/bar-complaint-of-robert-w-bauer/
blog: http://nosueorg.blogspot.com/

Neil Gillespie

From: "kim" <kimberlypruett@earthlink.net>
To: "Angela V. Woodhull" <angelavwoodhull@yahoo.com>
Cc: <neilgillespie@mfi.net>
Sent: Saturday, October 20, 2012 11:56 AM
Subject: Re: Fw: Kimberly Pruett-Barry in Ocala, a former Bauer client

> Hey Angela,
>
> We are so tired at this point, I don't know what to do. I am gonna get this Suit over with first, then sit back and try to decide what to do about
>
> Bauer. He definately fails to "move a case forward", I think he tries to rack up a bill.
>
> Kim
>
> -----Original Message-----
> From: "Angela V. Woodhull"
> Sent: Oct 20, 2012 9:44 AM
> To: kim
> Cc: neilgillespie@mfi.net
> Subject: Re: Fw: Kimberly Pruett-Barry in Ocala, a former Bauer client

Are you putting this information out on the internet and what else may I do to assist the for all of us?
Angela W.

--- On **Sat, 10/20/12, kim <*kimberlypruett*@*earthlink.net*>** wrote:

> From: kim <kimberlypruett@earthlink.net>
> Subject: Re: Fw: Kimberly Pruett-Barry in Ocala, a former Bauer client
> To: "Neil Gillespie" <neilgillespie@mfi.net>
> Cc: angelavwoodhull@yahoo.com
> Date: Saturday, October 20, 2012, 9:16 AM
>
> > Hey Neil and Angela,
> >
> > Sorry have not been in touch. FINALLY had to get a new lawyer!
> >
> > We have been begging Bauer since January to get us into Mediation, he says he will and then we never hear from him again. Over 2 weeks ago, I sent him a
> >
> > nasty email and told him he had 10 days to get to something scheduled. I really laid into him! He immediately called my husband and apologized and said
> >
> > he would get right to work on it! We haven't heard from him since!
> >
> > We talked to another Atty last week (Mark Fox) and are switching to him on Monday.
> >
> > Bauer has not done anything with our case since Jan., yet somehow, we have racked up a 40K bill!!! We

have already paid him about 13K and I REFUSE to give him another dime.

Just thought I would let ya'll know what is going on.

Kim

-----Original Message-----
From: Neil Gillespie
Sent: Oct 5, 2012 6:45 PM
To: kim
Subject: Re: Fw: Kimberly Pruett-Barry in Ocala, a former Bauer client

Okay Kim, that sounds fine. I have a couple questions if you don't mind. How did you find Robert Bauer? Was he a referral from the Florida Bar Lawyer Referral Service? If so, he is supposed to meet certain requirements, such as maintaining malpractice insurance.

Also, who did you speak with at the Florida Bar? My notes from our phone call show "Mr. Negon" but that name does not appear in the Bar directory, maybe I have the wrong spelling?

I can send you a copy of my second complaint against Bauer if you like. Hopefully it will be ready in a couple of weeks.

Neil

----- Original Message -----
From: kim
To: Neil Gillespie
Sent: Thursday, October 04, 2012 10:35 AM
Subject: Re: Fw: Kimberly Pruett-Barry in Ocala, a former Bauer client

Thanks Neil,

I will call her today.

Kim

-----Original Message-----
From: Neil Gillespie
Sent: Oct 4, 2012 10:34 AM
To: Kimberly Pruett-Barry , "Angela V. Woodhull"
Subject: Fw: Kimberly Pruett-Barry in Ocala, a former Bauer client

Hello Kim,

Angela Woodhull can speak with you, she is in Albuquerque, New Mexico for one month. Call on her cell phone (352) 214-4652, see message below.

Neil

----- Original Message -----
From: Angela V. Woodhull
To: Neil Gillespie
Sent: Thursday, October 04, 2012 9:54 AM
Subject: Re: Kimberly Pruett-Barry in Ocala, a former Bauer client

Let's go for it. I'm now in Albuquerque, New Mexico for one month. Call on my cell phone (352)214-4652.
~A

--- On **Wed, 10/3/12, Neil Gillespie <*neilgillespie@mfi.net*>** wrote:

> From: Neil Gillespie <neilgillespie@mfi.net>
> Subject: Kimberly Pruett-Barry in Ocala, a former Bauer client
> To: "Angela V. Woodhull" <angelavwoodhull@yahoo.com>
> Date: Wednesday, October 3, 2012, 2:32 PM
>
> Angela,
>
> Today I received a call from Kimberly Pruett-Barry in Ocala, a former Bauer client. Kim said she and her husband William paid Bauer $40,000 to sue their former attorney for legal malpractice. Attorney Peter McGrath represented Kim and William in a HOA case in Marion County, which was reported in the Ocala Star-Banner. http://www.ocala.com/article/20090723/ARTICLES/907231010?p=1&tc=pg
>
> Kim found your Bauer pleading on my website, and said Bauer was disrespectful to her also. Kim would like to speak with you about your experience with Bauer. I'll forward this email to Kim if that is okay with you. Let me know.
>
> Kim spoke with a Tampa legal malpractice attorney, Bill Vaughan, and thinks the former Bauer clients should band together and sue Bauer. http://www.florida-malpractice-attorney.com/our.php
>
> Kimberly Pruett-Barry
> Telephone: 352-207-7291
> KimberlyPruett@earthlink.net
>
> Hope things are going okay with you. Take care.
>
> Neil Gillespie

Neil Gillespie

From: "kim" <kimberlypruett@earthlink.net>
To: "Neil Gillespie" <neilgillespie@mfi.net>
Cc: <angelavwoodhull@yahoo.com>
Sent: Saturday, October 20, 2012 9:16 AM
Subject: Re: Fw: Kimberly Pruett-Barry in Ocala, a former Bauer client

Hey Neil and Angela,

Sorry have not been in touch. FINALLY had to get a new lawyer!

We have been begging Bauer since January to get us into Mediation, he says he will and then we never hear from him again. Over 2 weeks ago, I sent him a

nasty email and told him he had 10 days to get to something scheduled. I really laid into him! He immediately called my husband and apologized and said

he would get right to work on it! We haven't heard from him since!

We talked to another Atty last week (Mark Fox) and are switching to him on Monday.

Bauer has not done anything with our case since Jan., yet somehow, we have racked up a 40K bill!!! We

have already paid him about 13K and I REFUSE to give him another dime.

Just thought I would let ya'll know what is going on.

Kim

-----Original Message-----
From: Neil Gillespie
Sent: Oct 5, 2012 6:45 PM
To: kim
Subject: Re: Fw: Kimberly Pruett-Barry in Ocala, a former Bauer client

Okay Kim, that sounds fine. I have a couple questions if you don't mind. How did you find Robert Bauer? Was he a referral from the Florida Bar Lawyer Referral Service? If so, he is supposed to meet certain requirements, such as maintaining malpractice insurance.

Also, who did you speak with at the Florida Bar? My notes from our phone call show "Mr. Negon" but that name does not appear in the Bar directory, maybe I have the wrong spelling?

I can send you a copy of my second complaint against Bauer if you like. Hopefully it will be ready in a couple of weeks.

Neil

----- Original Message -----
From: kim
To: Neil Gillespie
Sent: Thursday, October 04, 2012 10:35 AM
Subject: Re: Fw: Kimberly Pruett-Barry in Ocala, a former Bauer client

Thanks Neil,

I will call her today.

Kim

-----Original Message-----
From: Neil Gillespie
Sent: Oct 4, 2012 10:34 AM
To: Kimberly Pruett-Barry , "Angela V. Woodhull"
Subject: Fw: Kimberly Pruett-Barry in Ocala, a former Bauer client

Hello Kim,

Angela Woodhull can speak with you, she is in Albuquerque, New Mexico for one month. Call on her cell phone (352) 214-4652, see message below.

Neil

----- Original Message -----
From: Angela V. Woodhull
To: Neil Gillespie
Sent: Thursday, October 04, 2012 9:54 AM
Subject: Re: Kimberly Pruett-Barry in Ocala, a former Bauer client

Let's go for it. I'm now in Albuquerque, New Mexico for one month. Call on my cell phone (352)214-4652.
~A

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From: Neil Gillespie <neilgillespie@mfi.net>
Subject: Kimberly Pruett-Barry in Ocala, a former Bauer client
To: "Angela V. Woodhull" <angelavwoodhull@yahoo.com>
Date: Wednesday, October 3, 2012, 2:32 PM

Angela,

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http://www.ocala.com/article/20090723/ARTICLES/907231010?p=1&tc=pg

Kim found your Bauer pleading on my website, and said Bauer was disrespectful to her also. Kim would like to speak with you about your experience with Bauer. I'll forward this email to Kim if that is okay with you. Let me know.

Kim spoke with a Tampa legal malpractice attorney, Bill Vaughan, and thinks the former Bauer clients should band together and sue Bauer.
http://www.florida-malpractice-attorney.com/our.php

Kimberly Pruett-Barry
Telephone: 352-207-7291
KimberlyPruett@earthlink.net

Hope things are going okay with you. Take care.

Neil Gillespie

Neil Gillespie

From: "kim" <kimberlypruett@earthlink.net>
To: "Neil Gillespie" <neilgillespie@mfi.net>
Sent: Tuesday, November 13, 2012 8:21 PM
Subject: Re: Bauer

OH MY GOSH!! You think Bauer is telling folks that? Wouldn't put it past him.

Yep, we fired him, if you are gonna be home tomorrow afternoon, I will call ya and

tell ya all about it. Have a 10:00am appt with our new lawyer in the morning.

Kim

-----Original Message-----
From: Neil Gillespie
Sent: Nov 13, 2012 6:58 PM
To: Kimberly Pruett-Barry
Subject: Bauer

Hi Kim,

A week or so ago Anna Hodges emailed me and said a woman called her asking about Bauer. The woman also told her I passed away, have you heard about that? That is really strange.

How are things going with Bauer? Did you fire him yet?

Neil

Neil Gillespie

From: "Neil Gillespie" <neilgillespie@mfi.net>
To: "kim" <kimberlypruett@earthlink.net>
Cc: "Paul F Hill" <phill@flabar.org>; "Kenneth Lawrence Marvin" <kmarvin@flabar.org>; "Annemarie C Craft" <acap@flabar.org>
Sent: Wednesday, January 16, 2013 5:21 PM
Attach: Letter of Mary Bateman, Aug-03-2009.pdf
Subject: Re: FL State Bar

Kimberly Pruett-Barry

Dear Kim,

Thank you for your email. In a letter dated January 7, 2013 Bar Counsel Annemarie Craft informed me that the Bar was moving forward with my complaint, which is now designated "Robert W. Bauer, The Florida Bar File No. 2013-00,540 (8B)".

Since you are still a client of Mr. Bauer, I think it would be better to direct your questions about Mr. Bauer to the Florida Bar directly. Plus I do not have the time, and am not feeling well.

You have my sincere sympathy for what you are going through, but it is better to bring your complaints about Mr. Bauer directly to the Florida Bar. Perhaps the Bar's Lawyer Referral Service (LRS) could provide you substitute counsel. But I got Bauer as a LRS referral, and that did not work out.

I am sending copies of my reply to this email to Bar Counsel Annemarie Craft, since she has my complaint, and to Kenneth Marvin, Director of Lawyer Regulation, and Paul Hill, General Counsel for the Florida Bar. Hopefully between them they can fashion a solution to your problem with Robert W. Bauer. I ask each of them, by and through this email, to protect you as a consumer of legal and court services.

Kim, I wish you well, and hope those persons at the Florida Bar with the authority and responsibility to protect you will seriously listen to your cry for help about the misconduct of Mr. Bauer. I believe Mr. Marvin in particular has a duty under The Rules Regulating The Florida Bar to act, as well as a case I became aware of last night, Mueller v. The Florida Bar, which holds:

"Allegation by disbarred attorney that certain complaints against him were solicited by state bar was mere surplusage in complaint alleging malicious prosecution; state bar is not prohibited from actively seeking complaints against particular members of bar or members of bar in general. Mueller v. The Florida Bar, App. 4 Dist., 390 So.2d 449 (1980)."

I also believe the Florida Bar can initiate its own complaint against an attorney under Rule 3-7.3, see section (c), and the attached letter sent to me Aug-03-09 from Mary Ellen Bateman of the Florida Bar, paragraph number 2: "The bar does initiate complaints on occasion and when appropriate".

Sometime after all this gets resolved, you, me, and all the other survivors of Mr. Bauer's misconduct should get together for dinner and reminisce.

Sincerely,

Neil J. Gillespie

8092 SW 115th Loop

Ocala, FL 34481

Ps. If after this email the Florida Bar does not assist you, let me know and I will forward this matter to the extent possible in any response to my petition for writ of certiorari, which is docketed as Petition No. 12-7747 in the Supreme Court of the United States.
http://www.supremecourt.gov/Search.aspx?FileName=/docketfiles/12-7747.htm

You can read more about the petition here
http://nosueorg.blogspot.com/2012/12/petition-for-writ-of-certiorari-to.html

----- Original Message -----
From: "kim" <kimberlypruett@earthlink.net>
To: "Neil Gillespie" <neilgillespie@mfi.net>
Sent: Wednesday, January 16, 2013 2:47 PM
Subject: Re: FL State Bar

Lots to tell you, too much in an email, call me when you can!

Had to keep dumb butt Bauer, his lawyers would not accept my new lawyer, threatened to take
it to the Judge!

352 207-7291

Kim

-----Original Message-----
>From: Neil Gillespie <neilgillespie@mfi.net>
>Sent: Dec 5, 2012 11:16 AM
>To: kim <kimberlypruett@earthlink.net>
>Subject: Re: FL State Bar
>
>Kim,
>
>It appears your complaint is in the "intake" stage in Tallahassee, in
>ACAP -
>Attorney Consumer Assistance Program. If ACAP finds a likely violation of
>the rules, your complaint is sent to a local grievance committee, the panel
>you mentioned. That is how my complaint went with Bauer. But the local
>grievance committee is comprised of the lawyer's colleagues, perhaps his

>own
>friends and cronies, who often overlook wrongdoing to help a fellow lawyer.
>
>Neil
>
>----- Original Message -----
>From: "kim" <kimberlypruett@earthlink.net>
>To: "Neil Gillespie" <neilgillespie@mfi.net>
>Sent: Tuesday, December 04, 2012 7:13 PM
>Subject: Re: FL State Bar
>
>
>> Hey,
>> I did go ahead and call today and they said that the matter is under
>> investigation.
>> They also said the next step is that it will be sent back to his
>> district.
>> I guess this
>> is what happened to you, correct?
>>
>> This is when it goes before a "panel" and they decide if he did something
>> wrong, ot at least
>> this is my understanding.
>>
>> kim
>>
>> -----Original Message-----
>>>From: Neil Gillespie <neilgillespie@mfi.net>
>>>Sent: Dec 4, 2012 7:06 PM
>>>To: kim <kimberlypruett@earthlink.net>
>>>Subject: Re: FL State Bar
>>>
>>>Hi Kim,
>>>
>>>You should have heard something from the Bar by now. Are you trying to
>>>get
>>>money back from McGrath? What do you want the Bar to do for you?
>>>
>>>You may want to write a short letter to your Bar Counsel, just a couple
>>>of
>>>sentences, like "when can I expect to get a response to my complaint
>>>filed
>>>on such and such a date"?
>>>
>>>Sometimes the legal profession takes a letter more seriously than a phone
>>>call. If the Bar responds in writing, you will have that letter to refer
>>>too.
>>>
>>>Would you like me to mention your matter in my petition? If so I will
>>>need
>>>some information, like the RFA number.

>>>
>>>Neil
>>>
>>>----- Original Message -----
>>>From: "kim" <kimberlypruett@earthlink.net>
>>>To: <neilgillespie@mfi.net>
>>>Sent: Tuesday, December 04, 2012 12:33 PM
>>>Subject: FL State Bar
>>>
>>>
>>>> Hey Neil
>>>>
>>>> Still have not heard a word from the Bar on the complaint I made on
>>>> Peter McGrath.
>>>>
>>>> It has been months now.
>>>>
>>>> I didn't really want to bother them, but I think I will call for an
>>>> update. Of course,
>>>> they (the lawyer investigating our case) ALWAYS has to call ya back,
>>>> can
>>>> NEVER get through to them the first time.
>>>>
>>>> I will let ya know,
>>>> Kim
>>>
>>>
>>
>
>

No: 12-7747

IN THE

SUPREME COURT OF THE UNITED STATES

NEIL J. GILLESPIE - PETITIONER

vs.

THIRTEENTH JUDICIAL CIRCUIT, FLORIDA, ET AL, - RESPONDENTS

PETITION FOR REHEARING AN ORDER DENYING

PETITION NO. 12-7747 FOR WRIT OF CERTIORARI

SEPARATE VOLUME APPENDIX

In support of MOTION FOR LEAVE TO PROCEED
IN FORMA PAUPERIS

Letter to U.S. Sen. Elizabeth Warren,
re HECM reverse mortgage forclosure

VIA U.P.S. No. 1Z64589FNY95280437 March 15, 2013

U.S. Senator Elizabeth Warren
Russell Senate Office Building
2 Russell Courtyard
Washington, DC 20510

RE: Consumer Financial Protection Bureau, Case Number 120914-000082

- Bank of America Account No.: 68011002615899
- Reverse Mortgage Solutions, Inc. vs. Neil J. Gillespie, et al., U.S. District Court, Middle District, Florida Case No. 5:13-cv-58-oc-WTH-PRL, Ocala Division
- Reverse Mortgage Solutions, Inc. vs. Neil J. Gillespie, et al., Case No. 13-115-CAT, Marion County Circuit Court, Fifth Judicial Circuit, Florida

Dear Senator Warren:

Thank you[1] for working to create the Consumer Financial Protection Bureau, the CFPB, an agency that "is arguably the most important part of the Dodd-Frank financial reform" according to an Editorial in the New York Times:

> When Senator-elect Elizabeth Warren gave her victory speech on election night at a party where loudspeakers blared "Ain't No Stoppin' Us Now," she pledged to "hold the big guys accountable." Now, some bankers, their lobbyists and their Republican allies on the Senate banking committee reportedly would like nothing better than to keep Ms. Warren off the powerful bank panel — where she could do the most harm to the status quo, and the most good for the country....Sending Ms. Warren to the banking committee should be a no-brainer. - NYT: "Their Problem With Elizabeth Warren", November 23, 2012.

Unfortunately a senior federal judge in Florida, and his magistrate judge, will not acknowledge either the CFPB or the Dodd-Frank Act in orders responsive to my pleadings in a contested HECM reverse mortgage foreclosure by Reverse Mortgage Solutions, Inc. for Bank of America. The senior federal judge is a shareholder in Bank of America, the Hon. Wm. Terrell Hodges[2], U.S. District Court, Middle District, Ocala, FL. The interest list for Judge Hodges and Bank of America is enclosed, as filed on PACER at Case 5:13-cv-00058-WTH-PRL Document 18-1 Filed 03/06/13 Page 3 of 29 PageID 695

My home is in foreclosure on a Home Equity Conversion Mortgage, also called a HECM or a "reverse" mortgage. HECM is a federal mortgage insurance program administered by HUD - the U.S. Department of Housing and Urban Development, and is codified at 12 USC § 1715z–20,

---

[1] A copy of this letter will be provided Monday March 18, 2013 to the Supreme Court of the United States in support of my motion for leave to appear *in forma pauperis* on a petition for the rehearing of an order denying a petition for a writ of certiorari, No. 12-7747 that seeks better protection for consumers of legal and court services affecting interstate commerce.

[2] Judge Hodges was also the trial judge in the cases on petition for certiorari in No. 12-7747.

Insurance of home equity conversion mortgages for elderly homeowners. HUD is a coparty Defendant with me and others in the above captioned lawsuits, which I removed to federal court.

My initial complaint was sent August 9, 2012 to HUD as provided by Section 4-19 of the HUD Reverse Mortgage Handbook 7610.01, and disputed a Notice of Default and Intent to Foreclose, on acct./loan no. 68011002615899 from RMS - Reverse Mortgage Solutions. RMS is the debt collector for Bank of America.

Bank of America owns the subject HECM mortgage, and was identified as the party at interest by the CFPB in a letter addressed to me that did not mention RMS. The CFPB assigned case no. 120914-000082 to my complaint. The CFPB letter is enclosed as it appears on PACER at Case 5:13-cv-00058-WTH-PRL Document 18-1 Filed 03/06/13 Page 2 of 29 PageID 694, and Case 5:13-cv-00058-WTH-PRL Document 5-3 Filed 02/04/13 Page 2 of 40 PageID 326.

My CFPB complaint shows the lenders and affiliated parties made a HECM reverse mortgage June 5, 2008 to my mother, Penelope Gillespie, who was incompetent due to Alzheimer's dementia. Mom died from dementia fifteen months later, September 16, 2009. Bank of America and RMS claim a right to foreclose and demand immediate payment in full if the borrower dies and the property is not the principal residence of at least one surviving borrower. But I am a surviving borrower living in the home as my principal residence. The home, valued at $78,675, is in a family trust. The mortgage is $109,800. The home is underwater with -$31,125 negative equity. I am indigent and not able to refinance. I rely on Social Security disability income.

The lender and affiliated parties required me and my brother to sign the HECM note, mortgage, and other documents, making us all borrowers. Since I am a borrower living in the home in substantial compliance with the documents I signed, I believe this foreclosure is premature.

A ruling in the Santos[3] case rejected a definition of borrower to include only natural persons acting in their individual capacities. A decision January 4, 2013 in Bennett, et al., v. Secretary/HUD, No. 11-5288, U.S.C.A, D.C., the Court held:

> ....HUD itself has the capability to provide complete relief to the lenders and mortgagors alike....(page 1)
>
> ....HUD could accept assignment of the mortgage, pay off the balance of the loans to the lenders, and then decline to foreclose...(page 10)

But none of that mattered to Judge Hodges in Ocala District Court, and he refused to even mention those cases in his order remaining the case back to state court. In doing so Judge Hodges departed from the following cases and constitutional protections.

---

[3] Isabel Santos, individually and as trustee and beneficiary of the Yolanda Maria Santos Trust, et al. v. Reverse Mortgage Solutions, et al, No. 12-3296-SC, U.S District Court, Northern District of California. Page 11, Order, October 12, 2012 (Doc. 25) Denying Defendants' Motion (1) For Judgment on the Pleadings and (2) To Dissolve or Modify Preliminary Injunction

The Constitution states only one command twice. The Fifth Amendment says to the federal government that no one shall be "deprived of life, liberty or property without due process of law." The Fourteenth Amendment, ratified in 1868, uses the same eleven words, called the Due Process Clause, to describe a legal obligation of all states. These words have as their central promise an assurance that all levels of American government must operate within the law ("legality") and provide fair procedures. http://www.law.cornell.edu/wex/due_process

A property right can be created only by state law. Once a property right is established, the determination of what process is due before that right can be deprived is a question answered by the federal Constitution. Kingsford v. Salt Lake City Sch. Dist., 247 F.3d 1123 (10th Cir. 2001). A case "arises under" federal law "if federal law creates the cause of action, or if a substantial disputed issue of federal law is a necessary element of a state law claim." Pacheco de Perez v. AT&T Co., 139 F.3d 1368, 1373 (11th Cir. 1998) (citing Franchise Tax Bd. of Cal. v. Construction Laborers Vacation Trust for S. Cal., 463 U.S. 1, 13 (1983)). Here, my case arises under the federal HECM statute 12 USC § 1715z–20 because a substantial disputed issue of federal law is a necessary element of a state law claim, my rights under the HECM.

My HUD/CFPB complaint shows the HECM reverse mortgage was essentially sold to us as an investment that the heirs could rely upon, which I cited in a motion to dismiss (Doc. 5, ¶ 13):

> 13. The subject HECM reverse mortgage charged high fees and stripped the family of home equity. The HECM reverse mortgage counseling session was a sham, and did not serve its intended purpose. The HECM reverse mortgage financial projections were beyond optimistic, they were fraudulent. The FHA's Monthly Adjustable HECM Loan Estimated Amortization Schedule for Penelope Gillespie and Neil Gillespie shows at year four (4) an ending loan balance of $118,550, a home value of $163,780, and equity of $45,230. The value of the home is now $78,675; the loan balance is $109,345; the current deficit is -($30,670); equity difference is -($75,900). The Plaintiff is now seeking to compound the Gillespie Family's loss of $75,900 with a demand in the Complaint, paragraph 8, for "interest from September 16, 2009, late charges, advancements, and all costs of collection including, but not limited to, title search expense for ascertaining necessary parties to this action and reasonable attorney's fees."

The HUD/CFPB complaint shows multiple violations of 12 USC § 1715z–20, including:

> Failure to comply with 12 USC § 1715z–20(d) Eligibility requirements.
> (2)(B) has received adequate counseling, as provided in subsection (f), by an independent third party that is not, either directly or indirectly, associated with or compensated by a party involved in—
>
> (i) originating or servicing the mortgage;
> (ii) funding the loan underlying the mortgage; or
> (iii) the sale of annuities, investments, long-term care insurance, or any other type of financial or insurance product;

Consumer Credit Counseling Services, Money Management International Incorporated (CCCS/MMI) was the HUD-approved housing counseling agency for this loan. According to Wikipedia, in its 2007 Annual Report, MMI identified Bank of America as a major contributor. Therefore the counseling was not "adequate counseling by a third party (other than the lender)" because this HECM was compromised from the beginning by Bank of America.

My HUD/CFPB complaint also shows on page 12:

> A voice recording of the telephonic counseling session was made in .wav format. A CD copy is enclosed. All calls made to home office telephone extension (352) 854-7807 are recorded for quality assurance purposes pursuant to Florida Statutes chapter 934, section 934.02(4)(a)(1) and the holding of Royal Health Care Servs., Inc. v. Jefferson-Pilot Life Ins. Co., 924 F.2d 215 (11th Cir. 1991). This was to keep an accurate record of Ms. Gillespie's medically-related calls from doctors, and as a disability accommodation for Neil Gillespie.
>
> Some of the information provided to Penelope and Neil Gillespie April 22, 2008 by Susan Gray/CCCS/MMI during this counseling session was not accurate. For example, Ms. Gray said (at 26 minutes, 21 seconds in the recording) that in year 10 the balance on the loan would be $150,000, and the home value would be $207,000, resulting in equity of $57,000. However today, four years into the reverse mortgage, the home value is $85,564, resulting in an equity deficit of -$22,492 ($85,564 value - $108,056 RMA demand Jun-08-12).
>
> At the end of the call, Ms. Gray said "Your home should maintain positive equity for a long time". (at 33 minutes, 50 seconds in the recording). Clearly this was inaccurate information. Ms. Gray did not state that the property could decline in value. When Neil Gillespie asked about the buyer's margin interest rate, Ms. Gray was unable to answer, and said "and I'll be honest Neil, I don't understand the mathematical reasoning either other than it has something to do with the floor that was used when they made up these factor tables". When Neil Gillespie asked what "floor" meant, Ms. Gray did not know. (at 41 minutes, 30 seconds).

U.S. Congressman Elijah E. Cummings wrote February 25, 2011 to Inspector General Steve A. Linick of Federal Housing Finance Agency (FHFA) asking that he initiate an investigation into widespread allegations of abuse by private attorneys and law firms hired to process foreclosures as part of the "Retained Attorney Network" established by Fannie Mae." Homeowners face a gauntlet of abusive practices if it becomes necessary to defend a HECM foreclosure, such as my experience with McCalla Raymer, LLC in the above captioned cases.

McCalla Raymer, LLC was one firm Rep. Cummings mentioned by name:

> "Another firm in the Retained Attorney Network, McCalla Raymer, L.L.C., is a defendant in a federal lawsuit in which the plaintiffs allege that it engaged in fraud, racketeering, and the manufacture of fraudulent foreclosure documents. Reportedly, this firm established operations in Florida under the name Stone, McGehee & Silver and

> hired ten former Stern law firm employees. The firm Stone, McGehee and Silver, LLC, dba McCalla Raymer currently appears as a "Designated Counsel/Trustee" in Florida for Freddie Mac."

Rep. Cummings' six-page letter is enclosed. Unfortunately U.S. Senator Bill Nelson will not respond to matters involving The Florida Bar, lawyers or court matters. However Sen. Nelson did facilitate correspondence with the Office of Comptroller of the Currency, which I can provide. Otherwise Sen. Nelson has been very good responding to other constituent matters.

I am not requesting assistance from your office, and have provided this information in the public interest. Your staff assistant Audel said you may be able to look at this on a national context.

In my view a homeowner in a disputed HECM foreclosure with RMS for Bank of America should have a judge decide the case who is not a shareholder of Bank of America. Thank you.

Sincerely,

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

Telephone: (352) 854-7807
Email: neilgillespie@mfi.net

Enclosures

cfpb Consumer Financial Protection Bureau

P.O. Box 4503
Iowa City, Iowa 52244

Neil Gillespie
8092 SW 115th Loop
Ocala, FL 34481

Dear Neil Gillespie:

Thank you for contacting the Consumer Financial Protection Bureau. We received your complaint regarding Bank of America on 09/14/2012 and will send it to your company as soon as possible.

The following case number has been assigned to your complaint: 120914-000082. Keep this number for future reference and contact with the Consumer Financial Protection Bureau regarding your complaint.

To review your complaint and view the status go to consumerfinance.gov. You may also call 1-855-411-CFPB (2372) to hear your complaint's status update.

The Consumer Financial Protection Bureau is actively tracking the issues that consumers care about, to learn more about these issues, go to consumerfinance.gov.

Thank you,

Consumer Response Team
Consumer Financial Protection Bureau
consumerfinance.gov
1-(855)-411-CFPB-(2372)

EXHIBIT
1

Reference #
120914-000082

Status
First Level Review completed

Assigned To
Investigations
Kelly Byrne

Product
Mortgage
Other mortgage

Issue
Loan servicing, payments, escrow account

SLA
Inbound Referrals 120822

Queue
Supervisory Review

Date Created
09/14/2012 09:57 AM

Date Initial Solution Response
None

Last Updated
02/04/2013 03:19 PM

Customer SmartSense
0 (on -3 to +3 scale)

Staff SmartSense
0 (on -3 to +3 scale)

Send to company?
Yes

Copy What Happened (Flag)
Yes

Involves discrimination?
No

Discrimination age
No

Discrimination marital
No

Discrimination national origin
No

Discrimination race
No

Discrimination exercise
No

Discrimination public assist
No

Discrimination religion
No

Discrimination sex
No

Contacted CC issuer
Yes

Contacted CFPB
No

Contacted a government agency
Yes

Retained attorney
No

Filed legal action
No

Consumer Disputed Date
12/02/2012 08:50 PM

ZIP code
34481

On behalf of
Myself

On behalf of myself
Yes

Complaint against a HECM lender and a HECM Counselor in Texas

Discussion Thread

Note (Hector Ruiz) **01/22/2013 12:14 PM**

The consumer is calling about the status of the complaint. I read the 997 kb to the consumer. The consumer has received a letter of foreclosure and needs to have a response by the first of February. I explained to the consumer that the CFPB cannot get involved in any legal matters. The consumer want's to change the correspondence which would be through email. The consumer want's to know how to apply for a disability assistance with his complaint. I called tier 2 and talked to Jeff and he said that we can only accommodate writing the notes in the case or he can mail or fax us the information. The consumer want's to know why the bank will not speak with him because the signer's of loan are deceased the consumer's stating that this is a reverse mortgage and not a regular mortgage. The consumer claim's that under Florida law nothing can be changed or disregarding from the original documents. The consumer was provided the web site to the FOIA request and he will send his concerns regarding the matter of his disability.

Note (Jeffery Kirkpatrick) **01/22/2013 11:50 AM**

Consumer stated his disability prevents him from remembering information and from providing it by some of the ways we have to send it to CFPB. Advised the agent that he can send additional info via mail, fax, or by the phone. Agent will relay the info to the consumer.

Auto-Response **12/02/2012 08:50 PM**

Thank you for reviewing Bank of America's response to your complaint (Case number: 120914-000082).

We regret that your complaint has not been resolved. We take consumer complaints very seriously and use complaints like yours to identify practices or areas of concern. A Consumer Financial Protection Bureau specialist is reviewing your complaint and may contact you and Bank of America to collect additional information. This could be a lengthy process, so we ask for your patience.

The Consumer Financial Protection Bureau is also actively tracking the issues that consumers care about, to learn more about these issues please go to http://www.consumerfinance.gov.

To track the status of your complaint, go to https://help.consumerfinance.gov/app/account/complaints/list.

In the meantime, if you're having trouble paying your mortgage and need immediate assistance, call us at (855) 411-CFPB. We can connect you to a free, HUD-approved housing counselor who can help you explore all available options to avoid foreclosure, including modifications, short sales, repayment plans and government programs.

Special assistance may be available to military members or veterans.

You can also explore your options at
http://www.makinghomeaffordable.gov/programs/Pages/default.aspx

Please note that filing a complaint with us will not automatically stop or delay a foreclosure.

Thank you,

Office of Consumer Response
Consumer Financial Protection Bureau
consumerfinance.gov
(855) 411-CFPB (2372)

Customer (Neil Gillespie) **12/02/2012 08:50 PM**

I provided Bank of America a copy of the will on October 8, 2012 naming me as the executor, as requested by Bank of America.

I received a letter dated October 15, 2012 Danielle N. Parsons, Esq., responding on behalf of Reverse Mortgage Solutions (RMS) about my August 9, 2012 complaint to HUD and RMS. The letter looks like a general denial of my accusations.

Today I have added a copy of the letter to this website.

Auto-Response **10/21/2012 04:37 PM**

Bank of America reviewed your complaint (Case number: 120914-000082) and has provided a resolution.

To view the status of your complaint or to dispute the resolution within the next 10 days, go to https://help.consumerfinance.gov/app/account/complaints/list.

In the meantime, if you're having trouble paying your mortgage and need immediate assistance, call us at (855) 411-CFPB. We can connect you to a free, HUD-approved housing counselor who can help you explore all available options to avoid foreclosure, including modifications, short sales, repayment plans and government programs.

Special assistance may be available to military members or veterans.

You can also explore your options at
http://www.makinghomeaffordable.gov/programs/Pages/default.aspx

Please note that filing a complaint with us will not automatically stop or delay a foreclosure.

Thank you,
Consumer Response Team

Consumer Financial Protection Bureau
consumerfinance.gov

Country
United States

State
FL

ZIP code
34481

Country
United States

State
FL

ZIP code
34481

Country
United States

Complaint process
CFPB review

Sent to company
01/24/2013 01:46 PM

Respond by
02/03/2013

Respond By 60 Days
11/16/2012

Complaint source
Referral

I dispute this resolution?
Yes

Special handling?
No

Past Due Flag
No

No Response Flag
No

Nonstandard Handling
Not Applicable

Referred By
HUD

Script Complete?
No

Date Reviewed
09/17/2012

Potential Whistleblower?
No

Service Member?
No

Dependent of Service Member?
No

Older American?
No

Narrative Includes PII?
No

Investigation Letter Sent?
No

Invest Letter Ready to Send?
No

First Level Invest. Assigned
01/04/2013 07:44 AM

Investigations high priority?
No

Applying for the loan
No

Receiving a credit offer
No

Problems when unable to pay
No

Making payments
No

Signing the agreement
No

Concerned about foreclosure?
Yes

(855) 411-CFPB (2372)

Note (Melissa Herrera) **10/18/2012 02:20 PM**

Additional information (201210151345img1017_14350000) provided by consumer on 10/15/2012.

Updated consumer's contact information by adding an email address.

Auto-Response Note **10/01/2012 04:23 PM**

Neil Gillespie
8092 SW 115th Loop
Ocala, FL 34481

Dear Neil Gillespie:

Bank of America responded to your complaint (Case number: 120914-000082).

You are not required to take any action. However, to view the status of your complaint or to dispute the resolution, go to https://help.consumerfinance.gov/app/account/complaints/list and click on your complaint number.

In the meantime, if you're having trouble paying your mortgage and need immediate assistance, call us at (855) 411-CFPB. We can connect you to a free, HUD-approved housing counselor who can help you explore all available options to avoid foreclosure, including modifications, short sales, repayment plans and government programs.

Special assistance may be available to military members or veterans.

You can also explore your options at
http://www.makinghomeaffordable.gov/programs/Pages/default.aspx

Please note that filing a complaint with us will not automatically stop or delay a foreclosure.

The Consumer Financial Protection Bureau actively tracks issues consumers care about when it comes to Mortgage. To learn more about these issues, go to consumerfinance.gov.

Thank you,
Consumer Response Team

Consumer Financial Protection Bureau
consumerfinance.gov
(855) 411-CFPB (2372)

Auto-Response Note **09/17/2012 02:06 PM**

Neil Gillespie
8092 SW 115th Loop
Ocala, FL 34481

Dear Neil Gillespie:

Thank you for contacting the Consumer Financial Protection Bureau. We received your complaint regarding Bank of America on 09/14/2012 09:57 AM and will send it to your company as soon as possible.

The following case number has been assigned to your complaint: 120914-000082. Keep this number for future reference and contact with the Consumer Financial Protection Bureau regarding your complaint.

To review your complaint and view the status go to consumerfinance.gov. You may also call 1 (855) 411-CFPB (2372) to hear your complaint's status update.

In the meantime, if you're having trouble paying your mortgage and need immediate assistance, call us at (855) 411-CFPB. We can connect you to a free, HUD-approved housing counselor who can help you explore all available options to avoid foreclosure, including modifications, short sales, repayment plans and government programs.

Special assistance may be available to military members or veterans.

You can also explore your options at
http://www.makinghomeaffordable.gov/programs/Pages/default.aspx

Please note that filing a complaint with us will not automatically stop or delay a foreclosure.

The Consumer Financial Protection Bureau is actively tracking the issues that consumers care about, to learn more about these issues go to consumerfinance.gov.

Thank you,
Consumer Response Team

Consumer Financial Protection Bureau
consumerfinance.gov
(855) 411-CFPB (2372)

Note (Janet Bland) **09/14/2012 03:20 PM**

Recently we found a material alteration to our HECM reverse mortgage made by interlineation after execution. (Exhibits 32 and 33). Please take notice that we DO NOT ratify the change. The interlineation is a hand-written alteration, not initialed and not dated, and vitiates the mortgage.

The interlineation is an attempt to add a new party to the reverse mortgage, Penelope M. Gillespie individually. The interlineation recently came to our attention when an attorney we consulted found the altered mortgage on the Marion County Clerk's website. This mortgagee document differs from the mortgage documents we signed June 5, 2008 with no interlineation. On January 15, 2009 Bank of America provided us with copies of the mortgage documents that have no

Missed payment or default?
No

Is date foreclosure scheduled?
No

Pay company avoid foreclosure?
No

Company Initial Response Date
10/01/2012

Initial Sent to Company Date
09/17/2012

first_lvl_invest_start_time
01/04/2013 07:44 AM

first_lvl_invest_complete_time
02/04/2013 03:19 PM

company_info_request_time
01/24/2013 01:46 PM

company_info_rcvd_time
02/01/2013 11:41 AM

IG Report
No

Copy to mailing address
No

Copy to company address
No

Copy to property address
No

Copy to on-behalf address
No

Copy to service member address
No

Success Story
No

Recommendation
No

Human Interest
No

Red Flag?
No

Emerging Issue
No

Withhold from publication?
No

Consumer State
FL

Country (Sender Agent)
United States

Country (Sender)
United States

Country (Receiving Agent)
United States

Country (Recipient)
United States

interlineation. (Exhibits 9 and I 0). Therefore I conclude that the interlineation is evidence of fraud by the lender and/or lender-affiliated parties.

Customer (Neil Gillespie) **09/14/2012 03:20 PM**

Recently we found a material alteration to our HECM reverse mortgage made by interlineation after execution. (Exhibits 32 and 33). Please take notice that we DO NOT ratify the change. The interlineation is a hand-written alteration, not initialed and not dated, and vitiates the mortgage.

The interlineation is an attempt to add a new party to the reverse mortgage, Penelope M. Gillespie individually. The interlineation recently came to our attention when an attorney we consulted found the altered mortgage on the Marion County Clerk's website. This mortgagee document differs from the mortgage documents we signed June 5, 2008 with no interlineation. On January 15, 2009 Bank of America provided us with copies of the mortgage documents that have no interlineation. (Exhibits 9 and I 0). Therefore I conclude that the interlineation is evidence of fraud by the lender and/or lender-affiliated parties.

Customer **09/14/2012 09:57 AM**

========== application File Attachment ==========
DOC001.PDF, 1294980 bytes, added to case

Primary Contact

First Name: Neil
Last Name: Gillespie
Organization:

Login: neilgillespie@mfi.net
Title:
Contact Type:

Email: neilgillespie@mfi.net
Email - Alternate #1:
Email - Alternate #2:

Primary Phone: 352-854-7807
Mobile Phone:
Fax:
Assistant Phone:
Home Phone:

Street 8092 SW 115th Loop
City Ocala
State/Province FL
Postal Code 34481
Country United States

Additional Information

Name on acct: Neil Gillespie
Company name: Bank of America
Address 1: 8092 SW 115th Loop
City: Ocala
Address 1: 8092 SW 115th Loop
City: Ocala
Company status: Information provided
Consumer status: Response disputed
Pre-Investigation Response: Closed with explanation
Letter: RL 2.1a Company Response (Closed Relief)
Company Status 1: Closed with explanation
Investigation Letter Template: AR7.10 Unauthorized submission.dotx
Currency type (Error Amount): USD United States Dollar

What Happened?

Recently we found a material alteration to our HECM reverse mortgage made by interlineation after execution. (Exhibits 32 and 33). Please take notice that we DO NOT ratify the change. The interlineation is a hand-written alteration, not initialed and not dated, and vitiates the mortgage.

The interlineation is an attempt to add a new party to the reverse mortgage, Penelope M. Gillespie individually. The interlineation recently came to our attention when an attorney we consulted found the altered mortgage on the Marion County Clerk's website. This mortgagee document differs from the mortgage documents we signed June 5, 2008 with no interlineation. On January 15, 2009 Bank of America provided us with copies of the mortgage documents that have no interlineation. (Exhibits 9 and I 0). Therefore I conclude that the interlineation is evidence of fraud by the lender and/or lender-affiliated parties.

Fair resolution?

The interlineation is an attempt to add a new party to the reverse mortgage.

Consumer Response

I provided Bank of America a copy of the will on October 8, 2012 naming me as the executor, as requested by Bank of America.

I received a letter dated October 15, 2012 Danielle N. Parsons, Esq., responding on behalf of Reverse Mortgage Solutions (RMS) about my August 9, 2012 complaint to HUD and RMS. The letter looks like a general denial of my accusations.

Today I have added a copy of the letter to this website.

Provide a response

Dear Neil Gillespie:
Bank of America's Office of the CEO and President acknowledges receipt of your inquiry. As a customer advocate, I welcome the opportunity to respond to your inquiry.

Laws that govern customer privacy prevent us from providing you with details about any relationship we may have with any customer without first obtaining the written consent of such customer. Since our records indicate that no written authorization has been received to date from the person on whose behalf you are inquiring, we are unable to discuss any information with you at this time. Please provide a copy of the will naming the third party as the executor or the letters of testamentary naming you as the authorized representative. We will respond to the concerns raised in your correspondence once the aforementioned documents are provided.
If you wish to submit the will or the letters of testamentary, you can fax them directly to me at 1.877.373.7139. Please feel free to contact me directly at 1.972.526.3604. I am available Monday through Friday, 7:30 a.m. to 4:30 p.m. Central.
Sincerely,
Christopher Pickle
Customer Advocate
Office of the CEO and President
cc: Consumer Financial Protection Bureau Case # 120914-000082

Explanation of Closure

Dear Neil Gillespie:
Bank of America's Office of the CEO and President acknowledges receipt of your inquiry. As a customer advocate, I welcome the opportunity to respond to your inquiry.

Laws that govern customer privacy prevent us from providing you with details about any relationship we may have with any customer without first obtaining the written consent of such customer. Since our records indicate that no written authorization has been received to date from the person on whose behalf you are inquiring, we are unable to discuss any information with you at this time. Please provide a copy of the will naming the third party as the executor or the letters of testamentary naming you as the authorized representative. We will respond to the concerns raised in your correspondence once the aforementioned documents are provided.
If you wish to submit the will or the letters of testamentary, you can fax them directly to me at 1.877.373.7139. Please feel free to contact me directly at 1.972.526.3604. I am available Monday through Friday, 7:30 a.m. to 4:30 p.m. Central.
Sincerely,
Christopher Pickle
Customer Advocate
Office of the CEO and President
cc: Consumer Financial Protection Bureau Case # 120914-000082

mortgage_appended_ar_large

In the meantime, if you're having trouble paying your mortgage and need immediate assistance, call us at (855) 411-CFPB. We can connect you to a free, HUD-approved housing counselor who can help you explore all available options to avoid foreclosure, including modifications, short sales, repayment plans and government programs.

Special assistance may be available to military members or veterans.

You can also explore your options at http://www.makinghomeaffordable.gov/programs/Pages/default.aspx

Please note that filing a complaint with us will not automatically stop or delay a foreclosure.

File Attachments

Name	Size	Content Type
• DOC001.PDF	1.23m	application/pdf
• Proposed_Res_Privacy Letter Final SR 1-351124656.pdf	41.46k	application/pdf
• 201210151345img1017_14350000.PDF	284.57k	application/pdf
• Danielle Parsons-McCalla Raymer, response for RMS, Oct-15-2012.pdf	654.65k	octet/stream

RE: PA Request #CFPB-2013-100-P

March 12, 2013

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

Dear Mr. Gillespie:

This letter is in final response to your Privacy Act (PA) request dated February 26, 2013. Your request sought a copy of CFPB case number 120914-000082.

A search of the Office of Consumer Response for documents responsive to your request produced a total of 62 pages. We reviewed those documents and determined that 59 pages of the records are released in full and 3 pages are withheld in full pursuant to Exemption (d)(5) of the Privacy Act, 5 U.S.C. 552a.

Privacy Act Exemption (d)(5) permits the government to withhold all documents or information, which are compiled in reasonable anticipation of a civil action or proceeding. This extends to any records compiled in anticipation of civil proceedings, whether prepared by attorneys or lay investigators.

For questions concerning our response, please feel free to contact CFPB's FOIA Service Center by email at FOIA@cfpb.gov or by telephone at 1-855-444-FOIA (3642).

Sincerely,

Martin Michalosky
FOIA Manager
Operations Division

Senior United States District Judge William Terrell Hodges
List of Financial Interests

Bank of America

EXHIBIT
2

Bank of America

Executive Customer Relations
Office of the CEO and President

September 20, 2012

Neil Gillespie
8092 SW 115th Loop
Ocala, FL 34481

Inquiry received date: September 17, 2012

Dear Neil Gillespie:

Bank of America's Office of the CEO and President acknowledges receipt of your inquiry. As a customer advocate, I welcome the opportunity to respond to your inquiry.

Laws that govern customer privacy prevent us from providing you with details about any relationship we may have with any customer without first obtaining the written consent of such customer. Since our records indicate that no written authorization has been received to date from the customer on whose behalf you are inquiring, we are unable to provide you with any information at this time. We will, however, review the issues raised in your correspondence and, if warranted, we will respond directly to the customer with our conclusions.

In order for Bank of America to respond to your inquiry we require proof of power of attorney. You can fax this information directly to my fax at 877.373.7139. If you have additional questions please contact me directly at 1.972.526.3604 . I am available Monday through Friday, 7:30 a.m. to 4:30 p.m. Central.

Sincerely,

Chris Pickle
Customer Advocate
Office of the CEO and President

cc: U.S. Department of Housing and Urban Development (HUD)

EXHIBIT
3

Bank of America

Executive Customer Relations
Office of the CEO and President

October 1, 2012

Neil Gillespie
8092 Southwest 115th Loop
Ocala, FL 34481

Inquiry received date: September 17, 2012

Dear Neil Gillespie:

Bank of America's Office of the CEO and President acknowledges receipt of your inquiry. As a customer advocate, I welcome the opportunity to respond to your inquiry.

Laws that govern customer privacy prevent us from providing you with details about any relationship we may have with any customer without first obtaining the written consent of such customer. Since our records indicate that no written authorization has been received to date from the person on whose behalf you are inquiring, we are unable to discuss any information with you at this time. Please provide a copy of the will naming the third party as the executor or the letters of testamentary naming you as the authorized representative. We will respond to the concerns raised in your correspondence once the aforementioned documents are provided.

If you wish to submit the will or the letters of testamentary, you can fax them directly to me at 1.877.373.7139. Please feel free to contact me directly at 1.972.526.3604. I am available Monday through Friday, 7:30 a.m. to 4:30 p.m. Central.

Sincerely,

Christopher Pickle
Customer Advocate
Office of the CEO and President

cc: Consumer Financial Protection Bureau Case # 120914-000082

EXHIBIT
4

ONE HUNDRED TWELFTH CONGRESS

Congress of the United States

House of Representatives

COMMITTEE ON OVERSIGHT AND GOVERNMENT REFORM

2157 RAYBURN HOUSE OFFICE BUILDING

WASHINGTON, DC 20515–6143

MAJORITY (202) 225-5074
FACSIMILE (202) 225-3974
MINORITY (202) 225-5051

http://oversight.house.gov

February 25, 2011

The Honorable Steve A. Linick
Inspector General
Federal Housing Finance Agency
1625 Eye Street, NW
Washington, DC 20006

Dear Mr. Inspector General:

I am writing to request that you initiate an investigation into widespread allegations of abuse by private attorneys and law firms hired to process foreclosures as part of the "Retained Attorney Network" established by Fannie Mae. I also request that you examine allegations of abusive behavior on the part of default management firms engaged by both mortgage servicers managing Fannie Mae-backed loans and attorneys and firms that are part of the Retained Attorney Network. Finally, I request that you examine efforts by Fannie Mae and the Federal Housing Finance Agency (FHFA) to investigate these allegations and implement corrective action.

Allegations of Abuse in the Retained Attorney Network

In August 2008, Fannie Mae created "a new mandatory network of retained attorneys to handle all foreclosure and bankruptcy matters" relating to Fannie Mae mortgage loans, whether held in portfolio or mortgage-backed securities. Fannie Mae required that only these retained attorneys represent Fannie Mae mortgage servicers, and it established the maximum allowable reimbursable fees for foreclosure-related work.[1] In December 2010, Fannie Mae Executive Vice President Terence Edwards announced that the Retained Attorney Network would be expanded from 31 to 50 states.[2]

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[1] Fannie Mae, *New Foreclosure and Bankruptcy Attorney Network and Attorney's Fees and Costs* (Announcement 08-19) (Aug. 6, 2008) (online at https://www.efanniemae.com /sf/guides/ssg/annltrs/pdf/2008/0819.pdf) (requiring also that "requests for approval of excess fees by Fannie Mae must be submitted via email").

[2] Testimony of Terence Edwards, Executive Vice President, Credit Portfolio Management, Fannie Mae, before the U.S. Senate Committee on Banking, Housing and Urban Affairs (Dec. 1, 2010) (online at www.fanniemae.com/media/pdf/Edwards_ SenateBankingCommittee_12-1-10.pdf).

Recent reports indicate that many of the private attorneys, law firms, and other entities participating in the Retained Attorney Network have been accused of practices that are fraught with flaws, errors, conflicts of interest, and fraud, and these allegations have prompted numerous state and federal investigations.

For example, on August 10, 2010, the Florida State Attorney General announced an investigation into unfair and deceptive practices by the Law Offices of David J. Stern, P.A., the Law Offices of Marshall C. Watson, P.A., and Shapiro & Fishman, L.L.P. The allegations against the firms include creating and filing with Florida courts improper documentation to speed foreclosures and establishing affiliated companies outside the United States to prepare false documents.[3] In announcing this investigation, the Attorney General stated:

> On numerous occasions, allegedly fabricated documents have been presented to the courts in foreclosure actions to obtain final judgments against homeowners. Thousands of final judgments of foreclosure against Florida homeowners may have been the result of allegedly improper actions of the law firms under investigation.[4]

Former employees of the Stern law firm also reportedly alleged that the firm engaged in "robo-signing," a practice in which employees signed hundreds of foreclosure affidavits each day, falsely swearing to have personal knowledge of the underlying documents. One employee testified that the firm's chief operating officer "signed as many as 1,000 foreclosure affidavits a day without reading a single word."[5] The employees also reported that the firm backdated and altered documents, and that it took steps to cover its misconduct by changing the dates on hundreds of documents.[6]

Last November, Fannie Mae issued a public notice stating that it had "terminated its relationship with the Law Offices of David J. Stern" and informing servicers that they "may not refer any future Fannie Mae matters to the Stern firm."[7]

Separately, the U.S. Trustee Program (USTP) of the Department of Justice is investigating another firm in the Retained Attorney Network, the firm of Steven J. Baum, P.C. of Amherst, New York, for filing foreclosure documents that appear to be false or misleading;

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[3] Attorney General of Florida, *Press Release: Florida Law Firms Subpoenaed Over Foreclosure Filing Practices* (Aug. 10, 2010) (online at www.myfloridalegal.com/newsrel.nsf/newsreleases/2BAC1AF2A61BBA398525777B0051BB30).

[4] *Id.*

[5] *The Rise and Fall of a Foreclosure King,* Associated Press (Feb. 6, 2011).

[6] *Questions Rising Over Fannie and Freddie's Oversight of Foreclosures,* New York Times (Oct. 19, 2010); *The Foreclosure Machine*, New York Times (Mar. 20, 2008).

[7] Fannie Mae, *Servicing Notice: Termination of Relationship with the Stern Law Firm* (Nov. 10, 2010) (online at www.efanniemae.com/sf/guides/ssg/annltrs/pdf/2010/ntce111010.pdf).

attempting to foreclose on borrowers after rejecting their attempts to make on-time payments; and failing to prove ownership of mortgages as it seized homes. The firm has also been accused of illegally charging for foreclosure-settlement conferences, overcharging on foreclosure fees, and racketeering.[8]

Another firm in the Retained Attorney Network, McCalla Raymer, L.L.C., is a defendant in a federal lawsuit in which the plaintiffs allege that it engaged in fraud, racketeering, and the manufacture of fraudulent foreclosure documents. Reportedly, this firm established operations in Florida under the name Stone, McGehee & Silver and hired ten former Stern law firm employees.[9] The firm Stone, McGehee and Silver, LLC, dba McCalla Raymer currently appears as a "Designated Counsel/Trustee" in Florida for Freddie Mac.[10]

Lender Processing Services, Inc. (LPS), a $2.8 billion company headquartered in Jacksonville, Florida—and the largest provider of default loan services in the nation—is also under investigation by the Florida Attorney General for producing apparently forged or fabricated documents in foreclosure actions.[11] LPS is also a defendant in a federal suit alleging an illegal fee-sharing scheme. Filed in federal bankruptcy court in Mississippi, the suit alleges that LPS and another company, Prommis Solutions Holding Company, illegally required attorneys in their networks to turn over a portion of their fees for foreclosure services, and that another large law firm, Johnson & Freedman, L.L.C., joined in this scheme. The Chapter 13 Trustee for the Northern District of Mississippi, a unit of the Department of Justice, has joined as a plaintiff.[12]

A special investigation by *Reuters* last December reported that LPS and its affiliated companies also allegedly deployed low-skilled, non-lawyers to prepare foreclosure documents, created invalid mortgage assignments to facilitate foreclosures, and rewarded attorneys for speed rather than accuracy in filing court pleadings. *Reuters* reported:

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[8] *See* Federal Home Loan Mortgage Corp. v. Raia, SP 002253/10, District Court of Nassau County, New York (Hempstead); Campbell v. Baum, 10-cv-3800, U.S. District Court, Eastern District of New York (Brooklyn); Menashe v. Steven J. Baum P.C., 10-cv-5155, U.S. District Court, Eastern District of New York (Central Islip); and Baum v. Lask, 2010- 012048, New York Supreme Court, Erie County (Buffalo).

[9] *Novice Florida Lawyers Draw Suspicion in Foreclosure Mess,* Palm Beach Post (Jan. 13, 2011) (online at www.palmbeachpost.com/money/real-estate/novice-florida-lawyers-draw-suspicion-in-foreclosure-mess-1146402.html).

[10] Freddie Mac, *Guide Exhibit 79: Designated Counsel/Trustee* (Florida) (revised 2/8/11) (online at www.freddiemac.com/service/msp/exh79_fl.html).

[11] Office of the Attorney General of Florida, Case Number L10-3-1094 (online at http://myfloridalegal.com/__85256309005085AB.nsf/0/9B099A9DD32030BE8525771300426A68?Open&Highlight=0,lps).

[12] Thorne v. Prommis Solutions Holding Corp. et al., Second Amended Class Action Complaint, 10-01172 (BR N.D.M.S., Oct. 10, 2010).

> The law firms are on a stopwatch. [An LPS spokesman] confirmed that the LPS Desktop system automatically times how long each firm takes to complete a task. It assigns firms that turn out work the fastest a "green" rating; slower ones "yellow" and "red" for those that take the longest. Court records show that green ratings go to firms that jump on offered assignments from their LPS computer screens and almost instantly turn out ready-to-file court pleadings, often using teams of low-skilled clerical workers with little oversight from the lawyers.[13]

Although Fannie Mae terminated its relationship with the Stern law firm last November, it does not appear to have terminated its relationships with any of the other firms described above.[14]

Request for Investigation

These are serious allegations that may have affected thousands of homeowners. For these reasons, I request that your office initiate a comprehensive investigation into allegations of abuse by attorneys and law firms participating in the Retained Attorney Network, as well as servicers and default loan service providers alleged to have participated in these abuses.

It is my understanding that the mission of your office is to "promote the economy, efficiency, and effectiveness of the FHFA's programs; to assist FHFA in the performance of its mission; to prevent and detect fraud, waste, and abuse in FHFA's programs; and to seek sanctions and prosecutions against those who are responsible for such fraud, waste, and abuse."[15] In 2008, FHFA replaced the Office of Federal Housing Enterprise Oversight and became the regulator and conservator for Fannie Mae. As such, the agency's duties include overseeing the "prudential operations" of Fannie Mae and its contractors and ensuring that their activities and operations "are consistent with the public interest."[16]

With this background, I request that you address the following issues with respect to attorneys and law firms participating in the Retained Attorney Network program and with respect to other entities engaged by both mortgage servicers managing Fannie Mae-backed loans and attorneys and firms that are part of the Retained Attorney Network:

1. To what extent have homeowners lost their homes to improper, illegal, or otherwise invalid foreclosures as a result of the types of abuses described above?

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[13] *Id.*

[14] Fannie Mae, *Retained Attorney List* (effective February 10, 2011) (online at https://www.efanniemae.com/sf/technology/servinvreport/amn/pdf/retainedattorneylist.pdf).

[15] Website of the Federal Housing Finance Administration Office of Inspector General (accessed on Feb. 3, 2011) (online at www.fhfaoig.gov/).

[16] Section 1313(a)(1)(A)-(B), Housing and Economic Recovery Act of 2008 (P.L. 110-289).

2. To what extent have homeowners been charged improper, illegal, or otherwise invalid fees during the foreclosure process?

3. To what extent are attorneys, law firms, and other entities engaged in fee-splitting, kickbacks, or other similar schemes?

4. What is the total amount in "excess fees" that has been requested from Fannie Mae by attorneys and law firms? Of this amount, how much has been reimbursed, and how much has been determined to be inappropriate or unwarranted?

5. Have FHFA or Fannie Mae conducted investigations into allegations of abuse by attorneys, law firms, or other entities, and if so, what are the results? Were these allegations considered before the recent expansion of the Retained Attorney Network to all 50 states?

6. What specific information has been collected regarding allegations against the following firms and their affiliates?

    a. Law Offices of David J. Stern, P.A.
    b. Law Offices of Marshall C. Watson, P.A.
    c. Shapiro & Fishman, L.L.P.
    d. Steven J. Baum, P.C.
    e. McCalla Raymer, L.L.C.
    f. Johnson & Freedman, L.L.C.
    g. Prommis Solutions Holding Company
    h. Lender Processing Services, Inc. and LPS Default Solutions, L.L.C.

7. Have there been claims alleging that other attorneys or law firms participating in the Retained Attorney Network program or any default management firms managing the foreclosure of Fannie Mae-backed loans have engaged in similar conduct that violates the rights of borrowers or investors, federal or state foreclosure mitigation program guidelines, federal or state law, federal or state judicial requirements, state bar ethics requirements, or other regulations, rules, guidelines, or laws?

8. To what extent have the alleged abuses described above undermined loss and foreclosure mitigation efforts and outcomes? What responsibilities do loan servicers have in monitoring and overseeing the activities of attorneys and other third party companies? What are the levels of cure rate and loss mitigation activities among retained attorneys?

If you have any questions about this request, please have a member of your staff contact Lucinda Lessley of the committee staff at 202-225-4290.

Thank you for your consideration, and please feel free to contact me or my staff with any questions.

Sincerely,

Elijah E. Cummings
Ranking Member

cc: The Honorable Darrell E. Issa, Chairman