

IN THE CIRCUIT COURT OF THE FIFTH
JUDICIAL CIRCUIT IN AND FOR
MARION COUNTY, FLORIDA

SUMTER ELECTRIC COOPERATIVE, INC.,
a Florida not for profit corporation,

CASE NO. 2016-CA-000712

Plaintiff,

vs.

NEIL J. GILLESPIE,

Defendant.

_____ /

AFFIDAVIT OF NEIL J. GILLESPIE
War, What Is It Good For?

STATE OF FLORIDA)
) **SS.:**
COUNTY OF MARION)

BEFORE ME, this day personally appeared NEIL J. GILLESPIE, who upon oath
deposes upon personal knowledge and states:

1. I am over the age of eighteen and competent to testify in this matter.
2. I am a member-owner of Sumter Electric Cooperative, Inc., d/b/a SECO Energy (“SECO”) through Capital Credits and my SECO electric service account # 7010005303.
3. I became a member-owner of SECO over 2 years ago, on or about April 5, 2014.
4. On April 11, 2016, I used the word “war” as a metaphor in a letter to the Plaintiff SECO in the fight (also a metaphor) against injustice by this Rural Electric Cooperative,

“Unfortunately Sumter Electric Cooperative, Inc. et al. has made a decision not to resolve this matter honestly and with civility. Fine, it’s war from this point forward.”

5. I make this AFFIDAVIT in response to allegations by SECO, and findings by the Court, that my use of the word “war” as a metaphor means an armed conflict and violence. According to court filings, SECO purportedly hired security guards to protect against a metaphor.

6. Black's Law Dictionary, 6th Edition, definition of the word "war" below; and Exhibit 1.

War. Hostile contention by means of armed forces, carried on between nations, states, or rulers, or between citizens in the same nation or state. *Gitlow v. Kiely*, D.C.N.Y., 44 F.2d 227, 233. A contest by force between two or more nations, carried on for any purpose, or armed conflict of sovereign powers or declared and open hostilities, or the state of nations among whom there is an interruption of pacific relations, and a general contention by force, authorized by the sovereign. *West v. Palmetto State Life Ins. Co.*, 202 S.C. 422, 25 S.E.2d 475, 477, 478. War does not exist merely because of an armed attack by the military forces of another nation until it is a condition recognized or accepted by political authority of government which is attacked, either through an actual declaration of war or other acts demonstrating such position. *Savage v. Sun Life Assur. Co. of Canada*, D.C.La., 57 F.Supp. 620, 621. For there to be a "war," a sovereign or quasi-sovereign must engage in hostilities. *Pan American World Airways, Inc. v. Aetna Cas. & Sur. Co.*, C.A.N.Y., 505 F.2d 989, 1005.

Term as used in statute proscribing any claim against United States arising out of combatant activity of Military or Naval Forces or Coast Guard during time of war includes an undeclared war as well as a formally declared war. *Morrison v. U. S.*, D.C.Ga., 316 F.Supp. 78, 79.

7. Art. I, § 8 (Clauses 11-16) U.S.Const., provides, *inter alia*, that Congress shall have the power to declare war, and raise and support military forces.

8. I am not now, nor have I ever been, a member of the Congress of the United States. I do not have the power to declare war, and raise and support military forces.

9. The President is Commander in Chief. Article II, Section 2, Clause 1. U.S.Const.

The President shall be Commander in Chief of the Army and Navy of the United States, and of the Militia of the several States, when called into the actual Service of the United States;...

10. I am not the President of the United States. I am not Commander in Chief of the military.

11. I used the word “war” as a metaphor in my letter April 11, 2016 to the Plaintiff in the battle (also a metaphor) with Sumter Electric Cooperative, Inc., d.b.a. SECO Energy.

12. A Wikipedia article “war as metaphor” (Exhibit 2) shows,

War as metaphor
From Wikipedia, the free encyclopedia

The use of war as metaphor is a longstanding literary and rhetorical trope¹. In political usage, war metaphors are used to manage a perceived societal problem, with the concept taking the place of an individual or state enemy in true war. James Childress describes the use of war as a metaphor as a dilemma: "In debating social policy through the language of war, we often forget the moral reality of war."

United States

Early examples of war as metaphor in US political discourse include J. Edgar Hoover's "war on crime" in the 1930s. Various conflicts and demographic trends in US history have been described as a culture war. In *Metaphors We Live By*, George Lakoff and Mark Johnson describe Jimmy Carter's application of "war" as metaphor for the energy crisis of 1974. Other high-profile examples include the War on Poverty, War on Cancer, War on Drugs, War on Gangs, War on Women, and the War on Christmas...

13. The metaphor “war” is used to describe the adversarial process in the American legal system. The American Bar Association (“ABA”) sells online “The Trial War Room Handbook: Effective Strategies From the Trenches”, by G. Christopher Ritter, Amie J. Bailey, and Michael Skrzypek. The cover of “The Trial War Room Handbook” features the ABA’s logo in the bottom left corner, “Defending Liberty, Pursuing Justice”, as shown below, at the link, and Exhibit 3.

<http://shop.americanbar.org/eBus/Store/ProductDetails.aspx?productId=214600>

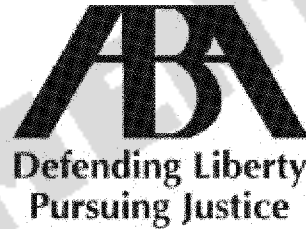
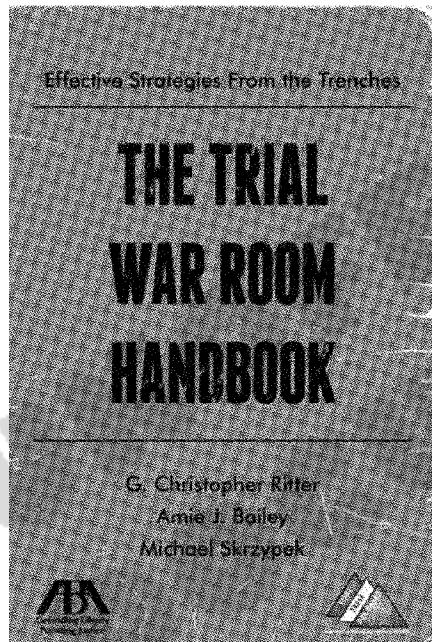
The Trial War Room Handbook
List Price \$59.95
Sponsor Member Price \$45.95

¹ The word “trope” in Wikipedia begins, “A literary trope is the use of figurative language – via word, phrase, or even an image – for artistic effect[1] such as using a figure of speech. The word trope has also come to be used for describing commonly recurring literary and rhetorical devices,[2] motifs or clichés in creative works.[3][4] https://en.wikipedia.org/wiki/Trope_%28literature%29

Author(s): G Christopher Ritter
Sponsor(s): Tort Trial and Insurance Practice Section
Publisher(s): ABA Book Publishing

ISBN: 978-1-61438-421-2
Product Code: 5190482
2012, 339 pages, 5 x 7, Paperback

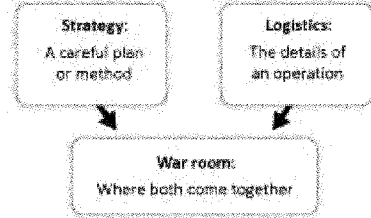
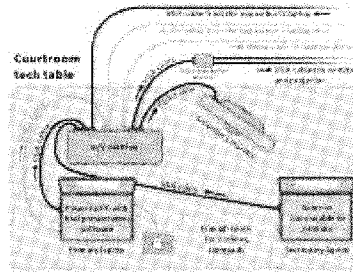
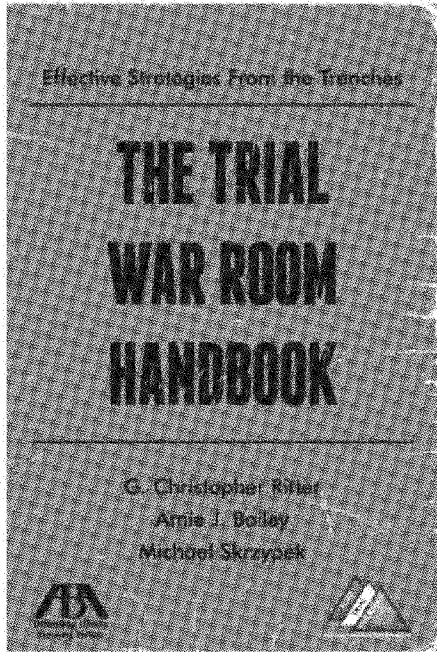
The Trial War Room Handbook is written for the lawyer facing a major adversarial event of some kind, such as a trial, arbitration or Markman hearing in a patent case. Written by seasoned trial professionals, this book teaches best practices in war room preparation. The difference between winning and losing a case can depend on the organizational ability of the lawyers working on it.



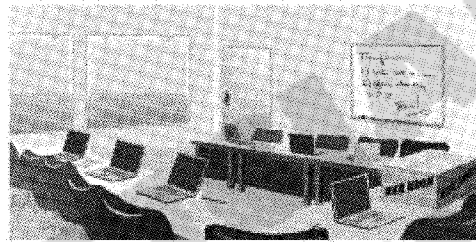
14. The Focal Point, LLC, a litigation consultant, uses the ABA publication “The Trial War Room Handbook: Effective Strategies From the Trenches”, see the link and image below, and at Exhibit 4. <http://www.thefocalpoint.com/insights/books/3>

Authors G. Christopher Ritter, Amie Bailey, and Michael Skrzypek take you step-by-step through the process of understanding what kind of resources you need, how to determine the logistical who/what/when/where of your war room, trial database basics, and finally, how to keep your team running smoothly from arrival at the war room to the trip home, all while minimizing stress and maximizing your chances for what you want when you go to court: a WIN.

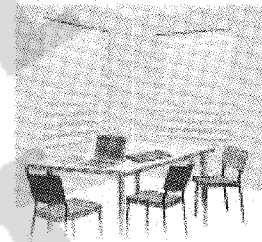
Visit our Trial Warroom Handbook blog: <http://www.thetrialwarroomhandbook.com/>



Your war room can be this ...



... or this.



The Focal Point, LLC. <http://www.thefocalpoint.com/insights/books/3>

15. I hired U.S. Legal Support, Inc. in this matter, a company that uses the “war” metaphor. U.S. Legal Support, Inc. is a privately held company with over 60 offices located across the United States, and one of the leading providers of litigation services, and a litigation support company that provides court reporting, record retrieval, litigation, eDiscovery and trial services nationwide. A U.S. Legal Support Service Brochure shows on page 3, Trial Services. (Exhibit 5)

“We Support Technology in the Courtroom and the War Room”
<https://www.uslegalsupport.com/media/18889/uslegalsupportservices.pdf>

16. My matter with SECO is a war of words, a fight protected by the First Amendment to the Constitution of the United States, the right to petition for a Governmental redress of grievances.

“Congress shall make no law respecting an establishment of religion, or prohibiting the free exercise thereof; or abridging the freedom of speech, or of the press; or the right of the people peaceably to assemble, and to petition the Government for a redress of grievances.”

https://en.wikipedia.org/wiki/First_Amendment_to_the_United_States_Constitution

17. Prior to the Plaintiff filing this action, I provided by email on April 14, 2016 to attorney Kevin Stone² a PDF copy of my letter to Sheriff Chris Blair, Marion County Sheriff's Office, outlining my legal strategy to learn the identity of the Plaintiff's counsel. See Exhibit 6.

18. My letter to Sheriff Blair notified Mr. Stone and others, *inter alia*, that profanities and offensive speech are protected by the First Amendment to the Constitution of the United States.

The First Amendment protects the use of profanities and offensive speech; a defendant cannot be punished simply for asserting his right to free speech.
W.L. v. State, 769 So.2d 1132 (3 DCA 2000) .

At the heart of the First Amendment is the recognition that the "freedom to speak one's mind is not only an aspect of individual liberty--and thus a good unto itself--but also is essential to the common quest for truth and the vitality of society as a whole."
Bose Corp. v. Consumers Union of United States, Inc. 466 U.S. 485, 503-504, (S. Ct. 1984).

Rhetorical hyperbole, verbal abuse, name calling, ridicule, jest, satirical statements and parody are all acceptable forms of protected forms of First Amendment expression by a private citizen, acting in a private capacity, even one who is professionally licensed as a lawyer. As the Supreme Court has noted in the First Amendment context, protected speech in various public disputes very often takes the form of "rhetorical hyperbole" used to convey a "vigorous epithet" by a protester who considers his adversary's position "extremely unreasonable."
Milkovich v. Lorain Journal Co., 497 U.S. 1 (1990).

19. My letter to Sheriff Blair noted, *inter alia*, that I was invited to visit a SECO office by the Email of Melinda Ferguson, a SECO energy payroll specialist, on April 08, 2016 10:40 AM,

3. Visit one of our local offices of your choice. Please let me know the proper office to have your forms waiting for your arrival to complete forms, sign and notarize at no charge at our local office then they will forward to Melinda.

20. I wrote April 14, 2016 to Sheriff Blair on page 2, beginning at paragraph 1,

I printed to forms and appeared at the Ocala SECO Energy office Monday April 11, 2016 to "sign and notarize at no charge" as stated by Ms. Ferguson in her email to me, but SECO Energy personnel refused to do their job. The Ocala SECO Energy personnel did not explain why they could not notarize my signature and accept the forms. Instead, they

² Kevin M. Stone, kevin@stoneandgerken.com, Florida Bar No. 0028516, Stone & Gerken, P.A. Plaintiff's counsel of record in this case. Also Lewis W. Stone and William Grant Watson.

told me to leave the office as the matter was being handled by a vague "legal department" SECO has refused to identify.

The MSCO failed to appear Monday April 11, 2016 to bear witness that I was attempting to comply with the instruction of Melinda Ferguson emailed May 8, 2016. The MSCO failed to appear Monday April 11, 2016 to protect me as a consumer outnumbered on their turf from retaliation and other such. Fine, this is to make a record of MCSO's failure. My cell phone shows a missed call at 3:57 PM from 352-732-9111. That was the last contact.

When I arrived home, email was waiting from attorney Kevin Stone, a partner with Stone & Gerken, P.A. who claims to be General Counsel to Sumter/SECO.

Apparently yelling works to motivate SECO Energy personnel. See below case law, and a successful motion to dismiss criminal charges against potty mouth attorney Michael Laurato.

21. My letter to Sheriff Blair appears at Exhibit 6 and includes the following,

- Email letter April 14, 2016 to Sheriff Chris Blair, 2 pages; with email to Sheriff Blair and receipts of Sheriff Blair, Gregg Jerald, Kevin Stone, and Neil Gillespie, 5 additional pages.
- Profanities and offensive speech protected, 1 page
- Elizabeth Bauerle-Patronage Capital Account, Membership Fee Release, Assignment and Indemnity Agreements, signed and notarized. (May 7, 2014), 1 page
- Mark J. Gillespie-Patronage Capital Account, Membership Fee Release, Assignment and Indemnity Agreements, signed and notarized. (May 5, 2014), 1 page
- Email of Melinda Ferguson <melinda.ferguson@secoenergy.com> to Neil Gillespie, Friday, April 08, 2016 at 10:40 AM, stating in part, (2 pages)

Please see the attached Capital Credit forms for Penelope M Gillespie for legal processing.

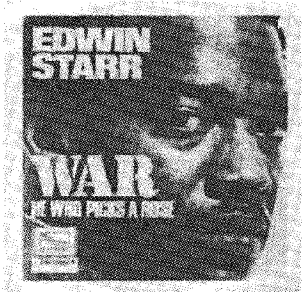
Forms attached have been requested by the Legal Department after I had forwarded the legal documents provided by you

- Sumter Electric Cooperative Estate Preretirement for Penelope M. Gillespie (2 pages)
- Patronage Capital Account, Membership Fee Release, Assignment and Indemnity Agreement Intestate Designated in Section 3. (1 page)
- Copy of SECO check # 04198521 payable to Penelope M. Gillespie for \$18.78 (1 page)
CAPITAL CREDIT NBR: 1034293962 CK#: 04198521 DATE: 11/16/15
Sumter Electric Cooperative, Inc. General Retirement Account

War, What Is It Good For?

22. A Motion to Dismiss accompanied my letter to Sheriff Blair, with the legal authority I relied upon. See State of Florida vs. Michael Vincent Laurato. Exhibit 7. (10 pages)

23. "War" is an anti-war song by Edwin Starr; on YouTube, https://youtu.be/dpWmlRNfLck The Wikipedia article for War (Edwin Starr song) is found online at, https://en.wikipedia.org/wiki/War_%28Edwin_Starr_song%29



"War" is a counterculture-era soul song written by Norman Whitfield and Barrett Strong for the Motown label in 1969. Whitfield first produced the song – a blatant anti-Vietnam War protest – with The Temptations as the original vocalists. After Motown began receiving repeated requests to release "War" as a single, Whitfield re-recorded the song with Edwin Starr as the vocalist, with the label deciding to withhold the Temptations' version from single release so as not to alienate their more conservative fans. Starr's version of "War" was a number-one hit on the Billboard Hot 100 chart in 1970, and is not only the most successful and well-known record of his career, but it is also one of the most popular protest songs ever recorded. It was one of 161 songs on the Clear Channel no-play list after September 11, 2001...

"War" is an anti-war song by Edwin Starr. Link on YouTube: https://youtu.be/dpWmlRNfLck

FURTHER AFFIANT SAYETH NOT.

Neil J. Gillespie
Neil J. Gillespie

The foregoing was acknowledged before me, this 18th day of May, 2016, by Neil J. Gillespie, who is personally known to me, or who has produced F.D.L.#G4263050-8942 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, information and belief.

(SEAL)

TARA JACKSON
NOTARY PUBLIC
STATE OF FLORIDA
Comm# FF244919
Expires 6/29/2019

Tara Jackson
NOTARY PUBLIC
Tara Jackson
Print Name of Notary Public

My Commission Expires: 6/29/2019

BLACK'S LAW DICTIONARY®

Definitions of Terms and Phrases of
American and English Jurisprudence,
Ancient and Modern

By

HENRY CAMPBELL BLACK, A.

SIXTH EDITION

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THE PUBLISHER'S STAFF

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ST. PAUL, MINN.
WEST PUBLISHING CO.
1990

EXHIBIT

1

indicat etsh etl hvat swia conr i gi nofd niyl it a
charac Absrah undr cedurt .

War Host t b t e n t y i m e m n o s f a r m e f d o r c e s ,
r i e o d n b e t w e r e a n t i o s r t s a , t o e r , u l e r m b , e t w e
c i t i z a n t h e s a m e a t i o n s t a t G i t l o . K i e l y
D . C . N 4 4 F . , 2 d 2 2 7 A c o 2 n 3 t 3 . y f o r b e t w e
t w o o r m o r e a t i o n s , o n a b n e i n g u r p o e e ,
a r m e d c o o r d i n a t i o n s o r a d r e d p e a r e d
h o s t i l o i r t h e s a d i n a t i o n s v a h m o n h e r s
a n i n t e r r u p t i o n i n f o l f a t i a n b s g e n e x o n t -
t e n t b y f i n o c a , u t h o r b y t e d e s o v e r e i g n .
P a l m e S t a L e f e C l o n 2 0 S . 4 2 2 , 5 S . E . 4 7 5 ,
4 7 7 4 , 7 8 . W a r d o e s e x i n t r e b y c a u s a f a n
a r m e a t t a b y t h e n i l i t f a r c y e o s f a n o t h e a r t i o n
u n t i l d a r e n d i t e o n g n i m e d e p t y p o l i t i
a u t h o r i t y o v e r n m w h i c h a t s a c k e e d t , h e
t h r o u g h a c t u a l d e c d f a r a t i o n h a r t s
d e m o n s t r a t i o n s i t S a n a g S u l i f a s s u r
C o o f C a n a d a , C . E 7 F . , S u p 2 0 6 , 2 . F o t h e r
t o b e a " w a r a " s o v e r e i g n a s i - s o v e r s e i g n
e n g a g e h o s t i l i t a i n A m e r i c a W o r l d M i r w a y s ,
I n c . A e t n C a s & S u r C o . C . A . N 5 0 5 F . , 2 9 1 8 9 ,
1 0 0 5 .

Terms us e i d s t a t u t e s c r a b y n g l a g i n n s
U n i t e d S t a t e s m f c o m b a t a n t i f t M i
t a r o y n a v a f l o r c o e r o a S t u a r d d u r i t n i g m e f w a r
i n c l u a d r e u n d e c l w a e d w e l a s a f o m a l d e y
c l a r e d M o r r i s o n S U . D . C . G a . E . , S u p 3
7 9 .

Art of war S r e . h a t t i l e .

Civil War i n t e r n e w a i r n A w a r c a r r i e d
b e t w e e n o p p o s i t e f i g s i n e b n a n o m y a t i o n

Declaration of war W a r S e e

Imprecation P S e f t , w a t o w .

Laws of war T h i s t e r m d e a t r a n o f i p u b l i
i n t e r n a t i o n a l c o n d i t i o n s o f r u l a n d
p r i n c i p l e s e s t a b l i s h e d i n t e r n a t i o n a l r e g u l a t i o n s
o f a p u b l i c s u c h , f o r a s t h e a p p l a t i o n
n e u t r a l b e l l i g e r e n t s , b l o c k a d e s ,
t r u c a e r s a r m i s t a e p i s t u l p r i s o n a e n t l e , c -
l a r a t i o n s a n d p e a c e ; G e n e C o n v e n t i

Mixed war A m i x e d a r i s o n e w h i c h m a d e n o n
s i d e y p u b l a u t h o r i t y , t h a n t h e d r y m e r e
p r i v a t e p e r s o n s .

Peacemaker W h e r w h o l a t i o n t w a r w i t a n o t h e r
w h o l e a t i o n w h e r t h o s t i l a i r t d i e m i t a s d
r e s p e c t a s c e r s o a n s d , h i n g h v a r i s t e r m e
" i m p e r a t o r . B a s v . T i n g 4 U . S . D a l 3 1 7 . 4 0 ,
L . E 7 3 1 .

Private war O n e b e t w e e n i n d i v i d u a l s o n a w f u l
e x e r t e d a y o f e l e s b u t t h e r w i n s k e n o w n
c i v i l c i e t y .

Public war E v e r y o n t e n b y f o a n r d e e , t w e t w o
n a t i o n s , e x t e r m a t t e u s d e t r a u t h o r o i f t
t h e i s p e c t o i v e r n m e l r t i s e a s e s B l a 6 1 6 6 ,
1 7 L . E 4 5 9 .

Style of war A w a m a d e f o r m y p u b l i c c l a r a t i o n ;
a w a r s o l e m n e g l a b r y o d e s t a g a i n s t o t h e r .
B a s v . T i n g 4 U . S . (D a 1 0 1 1 L E d . 3 3 . 1

War clause A r t . I , § 8 (C l a u s e s S . 1 C o - n s t) . ,
y p r o v i d e s e r a l C o n g r e s s a t l l p h o a w e t o
e n c l w a e n d a i s e d u p p o r t i t f a r c y e s e e
W a r p o w e r .

War crimes C r i m e s c o m m i t t e d u n t r i v e s o l a t i o n
o f t i m e t e r n a t i o n s o v e r n m a n r g s A t N u r e m -
b e r g t W o r l d W a r I c , r i m e s c o m m i t t e d b y N a z i s
w e r e t r i e d .

Ward G u a r d i a n , i n p r o t e c t i n g .
o n A d i v i s i o n a l t o y t o w h o r e l e p d i c a m e d ,
o a h g o v e r n m e n t r a p l o s e o r r i d o o r n r o t h -
e a r d i v i s i o n f o r p r i s o n , h o s p i t a l s t i o t r u t s i o m
A p e r s o n s p e c i a l l y r i n c o m p e t e n t b e y d
t h e o u n t d e t h e c a r s e u p a e n d v i s a i g o u a r d i a n
e o r c o n s e r v e t G u a r d G a r d i a n s h i p .
S e G u a r d G a r d i a n s h i p .

Wardage n o l E n g l i s h m o l n a e w a i a d n d o n t r i b -
u t e d o w a t c a m d v a r d .

Wardship S a x . I n o l d E n g l i s h w a r d - f t e h e e ;
l i a l o e a w a r d , r t h e n o n e y a i t d o t h e o r f d h i s
r e d e m p t i o n w a r d s h i p .

War-chorn I n o l E n g l i s h t h e a w d u t k y e p f n g
w a t c a m d v a r d i t a h o r a b l o w u p o n c a s i o n
o f s u r p r i s e .

Ward-in-chose A m i c n f a w h t o i s u n d e t h e u p e r i n -
e d e n o t e o f e t h e a n c e l l o r .

Ward-mote n o l E n g l i s h a c o u k t e p i t n e v e r y
w a r d n L o n d o n , c o m m o n t h e " w a r d - m o t e
c o u r t " i n q u e s t . "

Ward-penny I n o l E n g l i s h a m o n e y p a i d t h e
s h e r i f f a s t e l f o r t h e s a d u t o f w a t c h i a m g l
w a r - d i a n g a s t l e .

Wardship I n i l i t t a e r n y u r t h e s e , i g a f t h e o r t d
H a v e c u a s t g o u d a y , d i o n , t h e d a n d a n d s t h e
e s , n f s t e f t h e a n t a c c o u n t p r o f i t h a s w a s
t w e n t y e n s h e s i x t e n s o c a t e g u a r d w a n
a c c o u n t o f p r o f i t a n d h e w a s n o t h e o r d u t h e
g e a r e r s e t l a t t i o w h o m t h e i n h e r i t a c o n c l u d t
d e s c e a n d d h o w a r d s h e p s a t f a r t e e l m c o p y -
h o l d s , l o t r a s t h e g u a b d i w a n s p e r h a a p s -
c o u n t o f p r o f i t S e e . 2 B l . C o f i n .

Wardship-hilary A n i n c i d e a t t h e e n u o f e
d k n i g h t - s e r v i c e .

Wardship-cypher o l d t h e l o r i d s g u a r d i a n o f
i n f a t n e t n a l y s p e c i a l t o m .

Wardship-military S e a m a r e o m e t i t n e u s e s i g -
n a t e b d e c a u s e v , i e w n h e g e n e r a l p r o v i d e n c e
a n d a s h n a e d , t h o h g a r n o t e c h n i c a d d y -
a b l o e c o n t r a d t h i e n g n t r a r t e s a t e h o s e
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o r a n y s a c r i d i f r e i g h t f e e a m e w h i c h r e n o t

War as metaphor

From Wikipedia, the free encyclopedia

The use of **war as metaphor** is a longstanding literary and rhetorical trope. In political usage, war metaphors are used to manage a perceived societal problem, with the concept taking the place of an individual or state enemy in true war. James Childress describes the use of war as a metaphor as a dilemma: "In debating social policy through the language of war, we often forget the moral reality of war."

United States

Early examples of war as metaphor in US political discourse include J. Edgar Hoover's "war on crime" in the 1930s. Various conflicts and demographic trends in US history have been described as a culture war. In *Metaphors We Live By*, George Lakoff and Mark Johnson describe Jimmy Carter's application of "war" as metaphor for the energy crisis of 1974. Other high-profile examples include the War on Poverty, War on Cancer, War on Drugs, War on Gangs, War on Women, and the War on Christmas.

President George W. Bush coined the phrase "War on Terrorism" (or "War on Terror") after the terrorist attacks of September 11, 2001.

Other usage

- Toronto mayor Rob Ford has described municipal initiatives such as a "war on graffiti" and "war on cars."
- War on Want is a London-based anti-poverty charity.

Further reading

- Childress, James F. "The war metaphor in public policy" (<http://www.inarionline.com/bookpdfs/ficarro/p181.pdf>)
- Steinert, Heinz. 2003. "The Indispensable Metaphor of War: On Populist Politics and the Contradictions of the State's Monopoly of Force," *Theoretical Criminology* 7.3 (2003) p. 265-291.
- Thomas, Ruth P. 1984. "War as metaphor in *La Princesse de Montpensier*", *Forum for Modern Language Studies* 20.4 p. 323-332.

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Categories: Culture stubs Political science stubs Metaphors referring to war and violence

Politics of the United States

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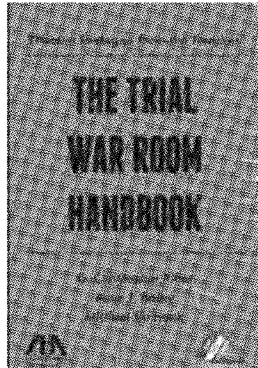


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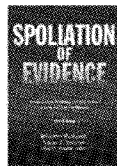
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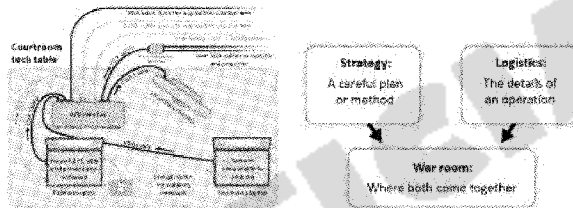
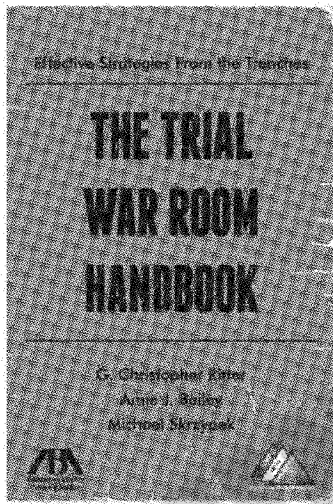
Authors



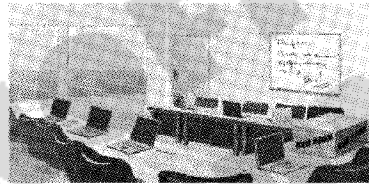
Chris Ritter is Chief of Visual Trial Strategy at The Focal Point and has nearly twenty years of experience working as a trial lawyer. An accomplished author, Chris has written three books, published by the American Bar Association. [Read Full Bio >>](#)



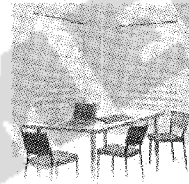
Michael Skrzypek works with The Focal Point as a consulting senior trial technician. His expertise draws on over ten years of experience in litigation support. [Read Full Bio >>](#)



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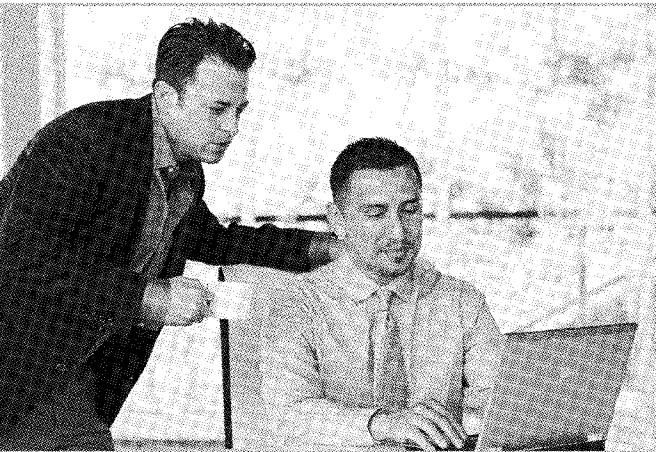
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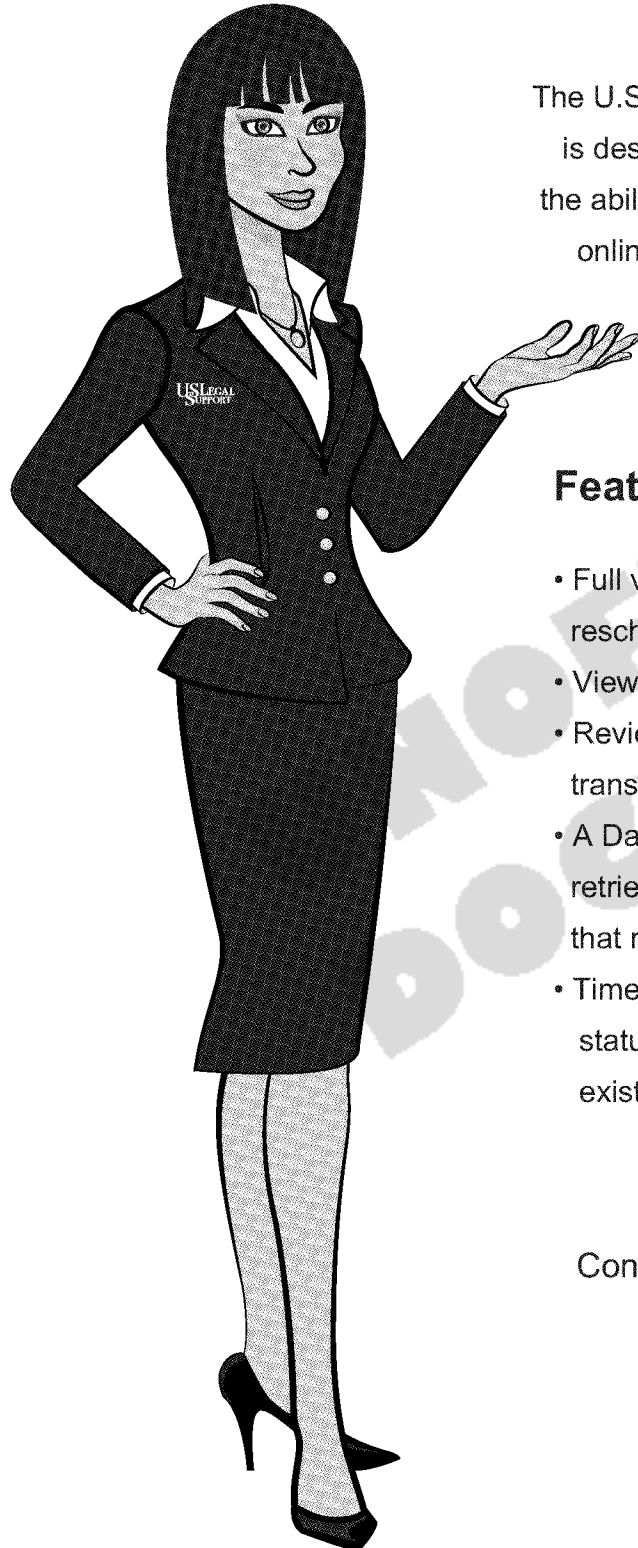
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Sheriff Chris Blair
Marion County Sheriff's Office
Email: cblair@marionso.com

April 14, 2016

Sheriff Blair:

This is a complaint, and records request, for my call for assistance Monday April 11, 2016, and no response from the the MCSO at the Ocala SECO Energy office.

Monday April 11, 2016 I called MCSO non-emergency number 352-732-9111 for assistance with a long-standing problem with Sumter Electric Cooperative, Inc. (SECO Energy) and its failure to release \$681.15 owed me for capital credits on my deceased mother's account.

Check owed to Neil J. Gillespie in the amount of \$662.37 for discounted capital credits.
Check owed to Neil J. Gillespie in the amount of \$18.78 for General Retirement Account.

My initial call for assistance to MCSO/352-732-9111 was placed at 3:52 PM from Ocala,

Sumter Electric Cooperative, Inc.
SECO Energy, Ocala Office
4872 Southwest 60th Avenue
Ocala, Florida 34474

My call was on a cell-phone, which is virtually useless to me since I cannot hear well on it, and end up shouting to be heard, especially Monday April 11, 2016 while outdoors in the SECO Energy parking lot. I spoke with a woman who answered MCSO/352-732-9111, but can't recall her name, or what she said, other than she was asking a number of bureaucratic questions. Ultimately I had to put the phone in my pocket and go inside before the office closed at 4:00 PM. Once inside I left the phone on the counter with the call connected to MCSO/352-732-9111.

Attached you will find from May, 2014 two SECO documents releasing the funds to me:

Elizabeth Bauerle-Patronage Capital Account, Membership Fee Release, Assignment and Indemnity Agreements, signed and notarized. (Original is at the SECO Ocala office)

Mark J. Gillespie-Patronage Capital Account, Membership Fee Release, Assignment and Indemnity Agreements, signed and notarized. (Original is at the SECO Ocala office)

Almost two years have passed without being paid. SECO has refused to disclose the name of its counsel. Experience has shown me that civility is taken as weakness in these matters. While I find it distasteful, I am ready and able to yell at these assholes to motivate them to action.

Email of Melinda Ferguson, a SECO energy payroll specialist, April 08, 2016 10:40 AM, stated,

3. Visit one of our local offices of your choice. Please let me know the proper office to have your forms waiting for your arrival to complete forms, sign and notarize at no charge at our local office then they will forward to Melinda.



I printed to forms and appeared at the Ocala SECO Energy office Monday April 11, 2016 to "sign and notarize at no charge" as stated by Ms. Ferguson in her email to me, but SECO Energy personnel refused to do their job. The Ocala SECO Energy personnel did not explain why they could not notarize my signature and accept the forms. Instead, they told me to leave the office as the matter was being handled by a vague "legal department" SECO has refused to identify.

The MSCO failed to appear Monday April 11, 2016 to bear witness that I was attempting to comply with the instruction of Melinda Ferguson emailed May 8, 2016. The MSCO failed to appear Monday April 11, 2016 to protect me as a consumer outnumbered on their turf from retaliation and other such. Fine, this is to make a record of MCSO's failure. My cell phone shows a missed call at 3:57 PM from 352-732-9111. That was the last contact.

When I arrived home, email was waiting from attorney Kevin Stone, a partner with Stone & Gerken, P.A. who claims to be General Counsel to Sumter/SECO.

Apparently yelling works to motivate SECO Energy personnel. See below case law, and a successful motion to dismiss criminal charges against potty mouth attorney Michael Laurato.

Sincerely,



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

Tel. 352-854-7807
Email: neilgillespie@mfi.net

Enclosures

Cc. Mr. Gregg Jerald, General Counsel
Marion County Sheriff's Office (MCSO)
Email: ggerald@marionso.com

Cc. Captain Linda Vyse, MCSO
Records & STAR Unit Commander
Email: lvyse@marionso.com

Cc. Attorney Kevin Stone
Email: kevin@stoneandgerken.com

Profanities and offensive speech protected

“The First Amendment protects the use of profanities and offensive speech; a defendant cannot be punished simply for asserting his right to free speech.”

W.L. v. State, 769 So.2d 1132 (3 DCA 2000)

First Amendment to the Constitution of the United States,

“Congress shall make no law respecting an establishment of religion, or prohibiting the free exercise thereof; or abridging the freedom of speech, or of the press; or the right of the people peaceably to assemble, and to petition the Government for a redress of grievances.”

“At the heart of the First Amendment is the recognition that the "freedom to speak one's mind is not only an aspect of individual liberty--and thus a good unto itself--but also is essential to the common quest for truth and the vitality of society as a whole."”

Bose Corp. v. Consumers Union of United States, Inc. 466 U.S. 485, 503-504, (S. Ct. 1984).

“Rhetorical hyperbole, verbal abuse, name calling, ridicule, jest, satirical statements and parody are all acceptable forms of protected forms of First Amendment expression by a private citizen, acting in a private capacity, even one who is professionally licensed as a lawyer. As the Supreme Court has noted in the First Amendment context, protected speech in various public disputes very often takes the form of "rhetorical hyperbole" used to convey a "vigorous epithet" by a protestor who considers his adversary's position "extremely unreasonable."”

Milkovich v. Lorain Journal Co., 497 U.S. 1 (1990).

Neil Gillespie

From: "Neil Gillespie" <neilgillespie@mfi.net>
To: "Sheriff Chris Blair" <cblair@marionso.com>
Cc: "Gregg Jerald" <ggerald@marionso.com>; "Captain Linda Vyse" <lvyse@marionso.com>; "Kevin Stone" <kevin@stoneandgerken.com>; "Neil Gillespie" <neilgillespie@mfi.net>
Sent: Thursday, April 14, 2016 2:43 PM
Attach: Complaint and Record Request to Sheriff Chris Blair MCSO April-14-2016.pdf; MOTION TO DISMISS (attorney Michael Laurato arrest).pdf
Subject: Complaint and Record Request to Sheriff Chris Blair MCSO April-14-2016

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Neil Gillespie

From: "Blair, Chris" <cblair@marionso.com>
To: "Neil Gillespie" <neilgillespie@mfi.net>
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Attach: ATT00192.txt
Subject: Read: Complaint and Record Request to Sheriff Chris Blair MCSO April-14-2016
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To: Blair, Chris
Subject: Complaint and Record Request to Sheriff Chris Blair MCSO April-14-2016
Sent: Thursday, April 14, 2016 2:43:11 PM (UTC-05:00) Eastern Time (US & Canada)

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To: "Neil Gillespie" <neilgillespie@mfi.net>
Sent: Thursday, April 14, 2016 2:47 PM
Attach: ATT00208.txt
Subject: Read: Complaint and Record Request to Sheriff Chris Blair MCSO April-14-2016
Your message

To: Jerald, Gregg
Subject: Complaint and Record Request to Sheriff Chris Blair MCSO April-14-2016
Sent: Thursday, April 14, 2016 2:43:11 PM (UTC-05:00) Eastern Time (US & Canada)

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Neil Gillespie

From: "Kevin Stone" <kevin@stoneandgerken.com>
To: "Neil Gillespie" <neilgillespie@mfi.net>
Sent: Thursday, April 14, 2016 2:45 PM
Attach: ATT00113.txt
Subject: Read: Complaint and Record Request to Sheriff Chris Blair MCSO April-14-2016
Your message was read on Thursday, April 14, 2016 6:45:18 PM UTC.

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Neil Gillespie

From: "Neil Gillespie" <neilgillespie@mfi.net>
To: "Neil Gillespie" <neilgillespie@mfi.net>
Sent: Thursday, April 14, 2016 2:47 PM
Attach: ATT00198.txt
Subject: Read: Complaint and Record Request to Sheriff Chris Blair MCSO April-14-2016

This is a receipt for the mail you sent to
"Sheriff Chris Blair" <cblair@marionso.com> at 4/14/2016 2:43 PM

This receipt verifies that the message has been displayed on the recipient's computer at 4/14/2016 2:47 PM

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Sumter Electric Cooperative
4872 S.W. 60th Ave
Ocala, FL 34474

**PATRONAGE CAPITAL ACCOUNT, MEMBERSHIP FEE RELEASE,
ASSIGNMENT and INDEMNITY AGREEMENT**

COPY

The undersigned person, having been duly sworn, states upon oath as follows:

1. That PENELOPE M GILLESPIE of MARION County, Florida died on the 16TH day of SEPTEMBER, 2009.

Testate (with a will) Intestate (without a will)

and left surviving him/her the following named heir, devisee, or otherwise:

<u>Name</u>	<u>Relationship to Deceased</u>	<u>Address</u>
<u>Elizabeth Bauerle</u>	<u>Daughter</u>	<u>34W584 Illinois St</u> <u>Saint Charles, IL.</u> <u>60114</u>
_____	_____	_____
_____	_____	_____
_____	_____	_____
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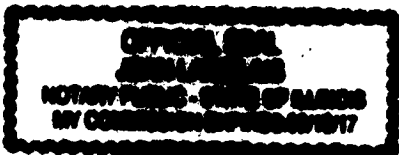
2. That, at the time of death, said decedent was entitled to certain capital credited to the deceased patron's patronage capital account with Sumter Electric Cooperative, Inc., and/or membership fees and/or deposits.
3. That the undersigned person hereby individually releases and assigns to NEIL J GILLESPIE all their right, title, interest, and claim as heirs at law, devisees, or otherwise to the aforesaid capital, fees, and agree to indemnify and save harmless the Cooperative against any and all claims arising out of sums hereby assigned.

State of Florida
County of _____

Elizabeth Bauerle
Applicant's Signature _____

Sworn to and subscribed before me this 7th day of May, 2014,
by ELIZABETH BAUERLE who is personally known to me or who has
produced FLORIDA DRIVER LIC. as identification.

(Seal)



Jean Langlais
Notary Public Signature
Jean Langlais
Printed Name of Notary

Note: The term heir means beneficiary under the law. The term devisee means beneficiary under the Will. If there is a Will, a copy must accompany this agreement. A copy of the death certificate or obituary must accompany this agreement.

Sumter Electric Cooperative
4872 S.W. 60th Ave
Miami, FL 33147

**PATRONAGE CAPITAL ACCOUNT, MEMBERSHIP FEE RELEASE,
ASSIGNMENT and INDEMNITY AGREEMENT**

COPY

The undersigned person, having been duly sworn, states upon oath as follows:

1. That PENELOPE M GILLESPIE of MARION County, Florida died on the 16TH day of SEPTEMBER, 2009,

Testate (with a will) **Intestate** (without a will)

and left surviving him/her the following named heir, devisee, or otherwise:

<u>Name</u>	<u>Relationship to Deceased</u>	<u>Address</u>
<u>MARK J. GILLESPIE</u>	<u>SON</u>	<u>7504 Summer Meadows Dr., FT. WORTH, TX 76123</u>
_____	_____	_____
_____	_____	_____
_____	_____	_____
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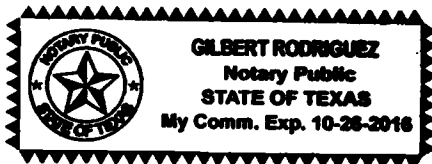
2. That, at the time of death, said decedent was entitled to certain capital credited to the deceased patron's patronage capital account with Sumter Electric Cooperative, Inc., and/or membership fees and/or deposits.

3. That the undersigned person hereby individually releases and assigns to NEIL J GILLESPIE _____ all their right, title, interest, and claim as heirs at law, devisees, or otherwise to the aforesaid capital, fees, and agree to indemnify and save harmless the Cooperative against any and all claims arising out of sums hereby assigned.

Texas
State of Florida
County of Tarrant

Mark J. Gillespie
Applicant's Signature _____

Sworn to and subscribed before me this 5th day of May, 2014,
by MARK J. Gillespie who is personally known to me or who has
produced TEXAS DRIVER LICENSE as identification.



(Seal)

Gilbert Rodriguez
Notary Public Signature _____
Gilbert Rodriguez
Printed Name of Notary _____

Note: The term heir means beneficiary under the law. The term devisee means beneficiary under the Will. If there is a Will, a copy must accompany this agreement. A copy of the death certificate or obituary must accompany this agreement.

Neil Gillespie

From: "Ferguson, Melinda" <melinda.ferguson@secoenergy.com>
To: "Neil Gillespie" <neilgillespie@mfi.net>
Sent: Friday, April 08, 2016 10:40 AM
Attach: Gillespie Penelope M 1034293962 Estate PreRetirement 04.07.16.pdf; Gillespie Penelope M 1034293962 Multi Heir Form.pdf
Subject: Penelope M Gillespie's Capital Credits 1034293962
Neil,

Please see the attached Capital Credit forms for Penelope M Gillespie for legal processing.

Forms attached have been requested by the Legal Department after I had forwarded the legal documents provided by you

After completion of the attached forms by you and upon Legal approval of Penelope M Gillespie's Capital Credits can be transferred into your name along with the 2015 General Retirement check in the amount of \$18.78 also upon Legal approval.

Listed below are steps needed to process your Capital Credit claim for the Patronage Capital Indemnity Agreement and Estate Preretirement form for Penelope M Gillespie's Capital Credits.

1. Verify information on the form is accurate
2. Write your Social Security number
3. In Section 2 write your name as it should appear on the check
4. In Section 3 select Payment Choice (see below section for descriptions of the two payment choices)
5. Review and sign page 2 if your payment choice in Section 3 is the Estate Preretirement form if One-time Lump Sum discounted estate retirement of unretired capital credit based on percentage and years
6. Sign Patronage Capital Indemnity Agreement form and have document notarized
7. Mail or forward forms to Melinda then I will forward to Legal and payment processing will be pending legal approval.

Listed below are descriptions of the two payment options in section 3 of the Patronage Capital Indemnity Agreement form for Penelope M Gillespie's Capital Credits.

1. Payment by Assignment which percentages are based on board approval in the yearly General Retirement for the unretired capital credit dollars, in a 30 year cycle until unretired patronage is complete.
2. Payment by One-time Lump Sum discounted estate retirement of unretired capital

credit based on percentage and years which patronage is complete. (Review and sign page 2 on the Estate Preretirement form if this is your payment choice)

Listed below are options for form processing, please let me know by email what you choose so I can assist you.

1. Print attached forms, return completed forms signed and notarized to Melinda
2. Forms can be mailed to you with a postage paid envelope to return completed forms signed and notarized to Melinda
3. Visit one of our local offices of your choice. Please let me know the proper office to have your forms waiting for your arrival to complete forms, sign and notarize at no charge at our local office then they will forward to Melinda

Forms attached have been requested by the Legal Department after I had forwarded the legal documents provided by you.

If you have any questions please feel free to contact me.

Thank you,

Melinda Ferguson

Payroll Specialist

Mailing Address:

Sumter Electric Cooperative, Inc.

P.O. Box 301

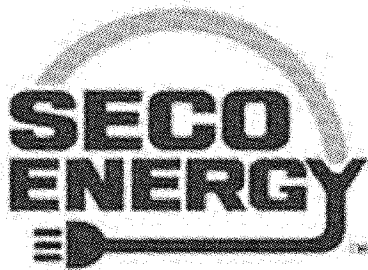
Sumterville FL 33585-0301

melinda.ferguson@secoenergy.com

352-569-9613

352-793-3801 ext. 9613

Fax: 352-793-1483



ESTATE PRERETIREMENT
 CUSTOMER NBR = 1034293962

NAME AND ADDRESS

PENELOPE M GILLESPIE
 8092 SW 115TH LOOP
 OCALA,FL 34481

<u>TYPE</u>	<u>YEAR</u>	<u>UNRETIRED</u>	<u>REFUND%</u>	<u>PAID</u>	<u>COOP</u>
2	1994	4.81	100.00 %	4.81	0.00
1	1995	40.47	100.00 %	40.47	0.00
2	1995	10.68	100.00 %	10.68	0.00
1	1996	56.70	94.65 %	53.67	3.03
2	1996	3.88	94.65 %	3.67	0.21
1	1997	64.30	89.59 %	57.61	6.69
2	1997	4.05	89.59 %	3.63	0.42
1	1998	60.45	84.80 %	51.26	9.19
2	1998	3.54	84.80 %	3.00	0.54
1	1999	59.54	80.26 %	47.79	11.75
2	1999	3.35	80.26 %	2.69	0.66
1	2000	43.45	75.97 %	33.01	10.44
2	2000	2.68	75.97 %	2.04	0.64
1	2001	14.40	71.91 %	10.36	4.04
2	2001	2.60	71.91 %	1.87	0.73
3	2001	0.81	71.91 %	0.58	0.23
1	2002	46.11	68.06 %	31.38	14.73
2	2002	2.26	68.06 %	1.54	0.72
1	2003	37.54	64.42 %	24.18	13.36
2	2003	1.86	64.42 %	1.20	0.66
3	2003	0.07	64.42 %	0.05	0.02
1	2004	25.73	60.98 %	15.69	10.04
2	2004	1.98	60.98 %	1.21	0.77
3	2004	0.04	60.98 %	0.02	0.02
1	2005	39.42	57.72 %	22.75	16.67
2	2005	6.13	57.72 %	3.54	2.59
3	2005	0.06	57.72 %	0.03	0.03
1	2006	26.85	54.63 %	14.67	12.18
2	2006	14.62	54.63 %	7.99	6.63
3	2006	0.07	54.63 %	0.04	0.03
1	2007	37.15	51.71 %	19.21	17.94
2	2007	10.89	51.71 %	5.63	5.26
1	2008	49.00	48.94 %	23.98	25.02
2	2008	11.84	48.94 %	5.79	6.05
1	2009	49.49	46.33 %	22.93	26.56
2	2009	21.70	46.33 %	10.05	11.65
1	2010	74.20	43.85 %	32.54	41.66
2	2010	45.89	43.85 %	20.12	25.77
1	2011	39.35	41.50 %	16.33	23.02
2	2011	19.23	41.50 %	7.98	11.25
1	2012	38.45	39.28 %	15.10	23.35

ESTATE PRERETIREMENT
CUSTOMER NBR = 1034293962

NAME AND ADDRESS

PENELOPE M GILLESPIE
8092 SW 115TH LOOP
OCALA,FL 34481

<u>TYPE</u>	<u>YEAR</u>	<u>UNRETIRED</u>	<u>REFUND%</u>	<u>PAID</u>	<u>COOP</u>
2	2012	7.14	39.28 %	2.80	4.34
1	2013	39.03	37.18 %	14.51	24.52
2	2013	12.58	37.18 %	4.68	7.90
1	2014	17.49	35.19 %	6.15	11.34
2	2014	8.93	35.19 %	3.14	5.79
GRAND TOTALS:		1,060.81		662.37	398.44
UNRETIRED:		1,060.81			
DISCOUNT:(-)		398.44			
PREV RETIRE NO CHECK:		0.00			
PREVIOUS UNCLAIMED:		0.00			
ANY UNCOLLECTABLES: (-)		0.00			
CHECK AMOUNT:		662.37			

Approval Signature: _____

SECO allocates its margins to its members as capital credits. Capital credits are SECO's operating capital until SECO retires the capital credits and issues refunds to members over a long-term cycle. The heirs of a member who dies with unretired capital credits may request an early refund of the descendant's capital credits. SECO's bylaws provide that its board may retire capital credited to a deceased member immediately (in a lump sum) if the legal representatives of his estate request in writing. This is known as Discounted Estate Retirement. Because the lump sum is received earlier in Discounted Estate Retirement, the refund is reduced as shown above. Please review the face value of the capital credits and reduced amount of the lump sum refund to decide whether to request Discounted Estate Retirement. Discounted Estate Retirement is voluntary - no member's estate or heir is required to participate. Please note that the Board of Trustees may choose not to honor a request for Discounted Estate Retirement if the program is modified, if the financial condition of SECO would be impaired, or for any other reason within the Board's discretion. The amount payable may differ from the amount shown in this report for reasons including, but not limited to, a delay in reporting the death of a member or uncollectable amounts due to SECO.

**PATRONAGE CAPITAL ACCOUNT, MEMBERSHIP FEE RELEASE,
ASSIGNMENT and INDEMNITY AGREEMENT INTESTATE DESIGNATED IN
SECTION 3**

The undersigned person, having been duly sworn, states upon oath as follows:

1. That Penelope M. Gillespie of Marion County, State of Florida, died on the 16th day of September, 2009, and left surviving him/her the following named heir, devisee or otherwise:

Testate (with a will) Intestate (without a will)

<u>Name</u>	<u>Relationship to Deceased</u>	<u>Address and Phone Number</u>
<u>Neil J. Gillespie</u>	<u>Son</u>	<u>8092 SW 115</u> <u>Loop</u> <u>Ocala FL 34481-</u> <u>3567</u> <u>(352) 854 - 7807</u>

Social Security Number: - -

1. That, at the time of death, said decedent was entitled to certain capital credited to the deceased patron's patronage capital account with Sumter Electric Cooperative, Inc., and/or membership fees and/or deposits.
2. That the undersigned person hereby individually releases and assigns to _____ all their right, title, interest, and claim as heirs at law, devisees, or otherwise to the aforesaid capital, fees, and agree to indemnify and save harmless the Cooperative against any and all claims arising out of sums hereby assigned.
3. We hereby apply for capital credits in the deceased patron's patronage capital account and upon receipt of said funds by selection of payment choice below do hereby agree to indemnify and save harmless the Cooperative, its trustees and employees, against any and all other and further claims, demand, costs, and expenses arising out of the above mentioned patronage capital account and membership fees and deposits hereby paid.

Heir(s) must choose and be in agreement of payment selection of either:

Payment by Assignment through General Retirement

~Or~

One-time Lump Sum discounted estate retirement of capital credit based on percentage and years

Applicant's Signature

State of _____

County of _____

Sworn to and subscribed before me this _____ day of _____, 20____, by _____ who is personally known to me or who has produced _____ as identification.

Notary Public Signature

Printed Name of Notary

Note: The term "heir" means beneficiary under the law. The term "devisee" means beneficiary under the Will. If there is a Will, a copy must accompany this agreement, and a copy of the death certificate must accompany this agreement.



Sumter Electric Cooperative, Inc.
 PO Box 301
 Sumterville FL 33585-0301

8576 1 AV 0.388
 PENELOPE M GILLESPIE
 8092 SW 115TH LOOP
 Ocala FL 34481-3567

5 8576
 C-23 P-40



2015 GENERAL RETIREMENT

RETIREMENT SUMMARY		YEAR	AMOUNT
PREVIOUS RETIREMENTS	8.98	1995	9.79
THIS RETIREMENT	9.80	2001	0.01
CHECK AMOUNT	18.78		9.80

CAPITAL CREDIT NBR: [REDACTED]
 Sumter Electric Cooperative, Inc.

[REDACTED]
 General Retirement Account

DATE: 11/16/15

THIS CHECK IS VOID WITHOUT A COLORED BACKGROUND AND WATERMARK/LINES ON THE BACK - HOLD AT ANGLE TO VIEW



Sumter Electric Cooperative, Inc.
 PO Box 301
 Sumterville FL 33585-0301

Regions Bank
 63-466/631

Void After 180 Days

Check Number

04198521

Check Date

11/16/15

Net Amount

*****\$18.78

General Retirement Account

CC # 1034293962

PAY ****Eighteen and 78/100 Dollars****

TO THE
 ORDER OF

PENELOPE M GILLESPIE
 8092 SW 115TH LOOP
 Ocala FL 34481-3567

E. Lawrence

 Thomas M. McDaniel



SIGNATURE HAS A COLORED BACKGROUND • BORDER CONTAINS MICROPRINTING

IN THE COUNTY COURT OF THE 13TH JUDICIAL CIRCUIT
IN AND FOR HILLSBOROUGH COUNTY, FLORIDA
CRIMINAL DIVISION

STATE OF FLORIDA,

Plaintiff,

v.

Case No.: 11-CM-003078

Division: E

MICHAEL VINCENT LAURATO,

Defendant.

FILED
CLERK OF COUNTY COURT
HILLSBOROUGH COUNTY, FLA
COUNTY CRIMINAL

FILED
FEB 28 AM 10:23

FILED

MOTION TO DISMISS

COMES NOW, the Defendant, MICHAEL VINCENT LAURATO, by and through his undersigned counsel, and pursuant to Florida Rule of Criminal Procedure 3.190(c)(4), and moves to dismiss the charges filed against him for Disorderly Conduct. The State cannot make out a prima facie case against the Defendant for Disorderly Conduct for the following reasons:

1. The State has charged the Defendant with Breach of the Peace; Disorderly Conduct, pursuant to Florida Statute 877.03, resulting from an alleged incident that occurred on February 13, 2011.

2. Florida Statute 877.03 Breach of the Peace; Disorderly Conduct provides that: "Whoever commits such acts as are of a nature to corrupt the public morals, or

outrage the sense of public decency, or affect the peace and quiet of persons who may witness them, or engages in brawling or fighting, or engages in such conduct as to constitute a breach of the peace or disorderly conduct, shall be guilty of a misdemeanor of the second degree."

3. However, even assuming all allegations of the police officers and witnesses to be true, the State cannot establish a prima facie case of breach of the peace or disorderly conduct, against this Defendant.

4. The State alleges that on February 13, 2011, at approximately 4:48 am, within the "Green Room" restaurant located within the Seminole Hard Rock Casino, the Defendant was asked to leave the restaurant by the manager, the Defendant refused to leave, and the Defendant yelled loudly across the restaurant which was filled with customers, "You stupid mother fucker get me your boss I'm not leaving".

5. The witness alleges that customers began to stop eating and turn to watch the Defendant, and alleges that casino security trespassed the Defendant from the property and told Defendant he had to leave.

6. The witnesses allege that Defendant continued to sit at the table and when SPD asked him where he was parked, to escort him to his vehicle, Defendant yelled "I don't have to answer any of your questions" and continued

to stand in the restaurant which caused customers to stop again and look at Defendant due to his actions.

7. Defendant denies these allegations, and asserts that the casino's videotape surveillance will clearly evidence the falsity of the allegations; however, even assuming all of the witnesses' allegations to be true, the Defendant's alleged statements and conduct do not constitute disorderly conduct and/or breach of peace, and thus the State cannot establish the elements of the offense, as a matter of law.

8. Based on the allegations set forth in the arrest affidavit, the State cannot make out a prima facie case of Breach of the Peace; Disorderly Conduct.

WHEREFORE, the Defendant respectfully requests that this Honorable Court dismiss the charge filed against him for Breach of the Peace; Disorderly Conduct, for the reasons set forth herein.

MEMORANDUM OF LAW IN SUPPORT OF MOTION TO DISMISS

The Second DCA ruled on a nearly identical fact pattern in the case of Smith v. State, 967 So.2d 937 (2 DCA 2007) and held that disorderly conduct is not made out as a matter of law under the facts alleged in this case. This decision is controlling on this court and requires dismissal.

In Smith, the Defendant visited a bank to secure a loan and was informed by the assistant manager that he did not qualify for the loan. Id. In response, Smith used profanity directed at the bank and at the assistant manager, and accused the assistant manager of stealing his pen. Id. The assistant manager told Smith she would have to stop cursing or he would have to leave the bank, and Smith requested that the assistant manager call the police. Id. While waiting for the police to arrive, Smith continued to curse loudly and the assistant manager stood between Smith and the customers standing in line to see the bank's tellers. Id. The bank was relatively busy, and the customers could hear Smith's verbal abuse of the assistant manager. Id. The assistant manager testified that "there were a lot of comments made afterwards on the language that was used." Id. When the police arrived, Smith continued to curse and directed his comments at the police officer. According to the officer, Smith was "very loud and very obnoxious." Id. The officer testified that she gave Smith the options either to leave the area or to be arrested. Id. According to her report he responded in very vulgar and threatening terms, and refused to leave the area. Id. The Court found that the evidence did not support the conviction for disorderly conduct for Smith's actions and

words inside or outside the bank. Id. There was no evidence that witnesses responded to defendant's words in any particular manner or that anyone in the area was actually incited to engage in an immediate breach of the peace, but were merely either curious or annoyed. Id.

Our case is nearly identical to Smith. There is no evidence that any of the restaurant patrons reacted in any particular manner or were incited to engage in an immediate breach of the peace. The Courts have consistently held that "unenhanced speech alone will not support a conviction for disorderly conduct." A.S.C. v. State, 14 So.3d 1118 (5 DCA 2009). A conviction for disorderly conduct, based upon a defendant speaking loudly and profanely, cannot be upheld in absence of evidence that a defendant was trying to incite a crowd or that a crowd gathered and presented a safety risk. Id. The First Amendment protects the use of profanities and offensive speech; a defendant cannot be punished simply for asserting his right to free speech. W.L. v. State, 769 So.2d 1132 (3 DCA 2000).

In our case, even taking all of the State's allegations to be true, the Defendant was simply exercising his right of free speech, which is protected by the First Amendment. There is no evidence that witnesses responded to Defendant's words or conduct in any particular manner or

that anyone in the area was actually incited to engage in an immediate breach of the peace, but were merely either curious or annoyed. Therefore, the State cannot make out a prima facie case of Breach of the Peace; Disorderly Conduct.

The Second District has been particularly circumspect about charges arising under this particular statute. In C.N. v. Florida, 49 So.3d 831 (Fla. 2d DCA 2010), the Second District Court of Appeal dismissed a charge of disorderly conduct, again, on facts very similar to the facts alleged, here. The defendant, in that case, was in a crowd of teenagers that spilled into the streets after a dance. Id. The police had received a number of complaints about the crowd, involving noise, property damage, and fighting in the area. Id. Officers were dispatched to break up the crowd. Id. The defendant was observed shouting and using foul language and the police feared that the defendant's actions might incite fights. Id. The officers instructed the defendant to leave the scene, but the defendant failed to leave and instead sarcastically "rolled her eyes," ignoring the officers instructions to leave or face arrest. Id. The defendant did not move and was taken into custody for disorderly conduct. Id. The Second District found that the state could not prove the

case for disorderly conduct under these facts and dismissed the charge. *Id.* If the facts of that case are legally insufficient to make out a charge of disorderly conduct, the facts of this case are, *a fortiori*, legally insufficient and dismissal is required.

Again, in C.H.C. v. State, 988 So.2d 1145 (Fla. 2d DCA 2008), the Second District refused to extend the reach of the disorderly conduct statute to cases similar to the defendant's here. There, the officers encountered a defendant surrounded by a large group of people, walking in a circle clinching his fists and yelling profanities. *Id.* The defendant then began screaming and yelling at the deputies on the scene. *Id.* The deputy then ordered the defendant to "come over here," at which point the defendant ran from the scene and continued to flee even though the deputy yelled "Police, stop." *Id.* The Second District held that these facts did not constitute disorderly conduct under the statute. *Id.*

Throughout the state's appellate districts, Florida courts have consistently and uniformly held that situations identical to the alleged circumstances of this case, are legally insufficient to make out a *prima facie* case of disorderly conduct in violation of the applicable statute. For example, in A.S.C. v. State, 14 So.3d 1118 (Fla. 5th

DCA), the Fifth District dismissed a disorderly conduct charge, where a defendant used loud, profane, and offensive language in a public setting.

Similarly, in W.L. v. State, 769 SO.2d 1132 (Fla. 3d DCA), the Third District dismissed a disorderly conduct charge, where a defendant, who was in a crowd of 15 to 20 people, yelled out a series of profanities to officers conducting a narcotics investigation. Noting that no member of the crowd threatened the officers and no safety concern arose, the court held the disorderly conduct charge conduct not stand. Id.

A similar result was reached by the Third District in Fields v. State, 24 So.3d 636, (Fla. 3d DCA 2009). In that case, the defendant was yelling profanities in a bank doorway, even though people coming out of the bank overheard the defendant and stopped to watch the defendant. The court held that the mere fact that the crowd gathered out of curiosity or annoyance to observe the defendant's behavior was legally insufficient to prove disorderly conduct. Id.

In this case, the best evidence—although disputed—is that the defendant used loud profanity in a public place and initially refused to leave and that the people already present took momentary notice of the Defendant.

AFFIDAVIT

I, MICHAEL VINCENT LAURATO, hereby swear and affirm that the above facts are true.

X _____
(Michael Vincent Laurato)

Sworn to this 24th day of February, 2011.

SEALED AND DELIVERED IN THE PRESENCE OF

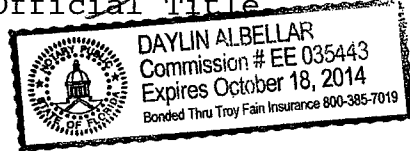
Witness _____ Address _____

State of Florida County of Hillsborough

On this 24th day of February, 2011, before me personally came and appeared Michael V. Laurato the person described herein, who _____ produced _____ identification/ is personally known to me, and who executed the foregoing instrument, and he (or she) acknowledged to me that he (or she) executed the same.

Daylin Albellar

Official Title



CERTIFICATE OF SERVICE

I HEREBY CERTIFY THAT a true and correct copy of the foregoing has been provided via U.S. mail to: The State Attorney's Office, Misdemeanor Division, 419 N. Pierce Street, Tampa, Florida 33602, on this 24th day of February, 2011.

Ardyn V. Cuchel

ARDYN V. CUCHEL, ESQ.
Florida Bar No.: 0713759
The Law Office of
Ardyn V. Cuchel, P.A.
1902 W. Cass Street
Tampa, Florida 33606
(813)253-3051 Phone
(813)258-4625 Fax
Attorneys for Defendant

UNOFFICIAL
DOCUMENT

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