IN THE SUPREME COURT OF FLORIDA
CASE NO. (NOT YET ASSIGNED)

Motion for Declaratory Judgment -
ORIGINAL JURISDICTION

EVAN GUTMAN, JD, CPA
Plaintiff, Pro Se

V

FLORIDA SUPREME COURT
FLORIDA SUPREME COURT JUSTICES
FLORIDA JUDICIAL QUALIFICATIONS COMMISSION
FLORIDA SUPREME COURT LOCAL RULES ADVISORY COMMITTEE
FLORIDA STATE BAR
Defendants

Motion for Declaratory Judgment and Brief on the Merits

NO ORAL ARGUMENT REQUESTED

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MOTION FOR DECLARATORY JUDGMENT

Plaintiff, Evan Gutman JD, CPA a Pennsylvania and District of Columbia Attorney, acting Pro Se, Moves the Justices of the Florida Supreme Court, who are Defendants in this case, for a Declaratory Judgment holding as follows :

1. Florida Rule of Judicial Administration 2.215 unconstitutionally violates the Due Process and Equal Protection Clauses of the 14th Amendment to the U.S. Constitution, on the grounds it substantively deprives litigants in all cases in Florida, both Civil and Criminal, of the right to a fair and impartial adjudication by a **Fully Independent Thinking** Trial Court Judge, not subjected to Undue Influence. The Rule unconstitutionally vests virtually **Unbridled** and Dictatorial Power within one Chief Judge of each County, who then has virtually total power and control over all other Judges in that County, including but not limited to deciding which cases they adjudicate, and declaring them in "neglect of duty" if they fail to comply with any of the Chief Judge's directives. The Rule creates two Classes of Trial Court Judges with one Class having virtually total control over the Subservient Class, even though both are duly Elected or Appointed, and the Subservient Class constitutes the majority of Judges.

2. Palm Beach County Court Rule 4 unconstitutionally violates the Due Process and Equal Protection Clauses of the 14th Amendment to the U.S. Constitution, on the ground it deprives Pro Se Litigants of a fair and impartial adjudication by totally excluding them from its contours, provisions, protections and penalties. The Rule is specifically designed to provide an inferior quality of justice to Pro Se Litigants, by treating them as an inferior class compared to litigants represented by attorneys, thereby exemplifying the existence of a marked judicial animus against Pro Se litigants in order to unconstitutionally favor the interests of well-connected Attorneys.

3. The extension of Absolute Immunity **for commission of Malicious Acts to Members of the Judicial Qualifications Commission (JQC) acting in a Non-Judicial capacity** and to certain members of the Florida State Bar who are not even Judges at all, in the case of Laura M. Watson v Florida Judicial Qualifications Commission, No. 17-13940 (11th Cir. Fed. Ct. of Appeals, August 15, 2018) unconstitutionally infringes upon the Due Process rights of a Pro Se

litigant to receive a fair and impartial adjudication in every single Florida case, both Civil and Criminal, involving a Pro Se Litigant. This occurs because it diminishes the ability of elected Trial Court Judges to think Independently and fairly decide issues, because they are unduly influenced, subjugated and neutralized in favor of potentially and/or possibly "Malicious" goals and interests of the JQC and certain members of the Florida Bar. The impact is that elected and appointed Trial Court Judges no longer have full control over judicial decision-making process in their cases, due to fear of maintaining their own professional position on the bench.

4. The lack of Uniformity in court rules between judges, critical to equal application of the laws, evidenced by varying Divisional Rules established on a haphazard arbitrary basis by individual Judges violates a litigant's right to due process and equal protection in violation of the 14th Amendment to the U.S. Constitution. Similarly, the lack of clearly defined Time limits for critical litigation events violates a litigant's due process and equal protection clause rights. Divisional Rules allowing each individual Judge to unilaterally decide upon the time frames when Oppositions to Motions must be filed; the Font size of filings within their individual Court, and the Number of Pages allowed in a Memorandum of Law result in unequal justice for litigants, the quality of which depends upon the predilections of the Judge assigned. Similarly, rules requiring a hearing be scheduled just to obtain a ruling on a motion; along with distinctions between how Pro Se litigants and licensed attorneys are required to schedule hearings, violate the Due Process and Equal Protection Clauses.

In support of this Motion Plaintiff relies on the accompanying Brief on the Merits.

Dated this 18th day of January, 2022

Filed By: 

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JURISDICTION

Original Jurisdiction of the Florida Supreme Court is established pursuant to FLA. CONST., art V, § 2, which states as follows in part (emphasis added) :

> "SECTION 2. **Administration; practice and procedure. -**
> (a) **The supreme court shall adopt rules for the practice and procedure** in all courts including . . . the administrative supervision of all courts, ..."

Jurisdiction is additionally established pursuant to Florida Rules of Judicial Administration, which state in part as follows (emphasis added):

> "**Rule 2.110 Scope and Purpose**
> **. . .** These rules shall supercede all conflicting rules and statutes.
> **. . .**
> **Rule 2.140 Amending Rules of Court**
> **. . .**
> **(d) Emergency Amendments by Court**. The supreme court, with or without notice, may change court rules at any time if an emergency exists that does not permit reference to the appropriate committee of The Florida Bar for recommendations. . . .
> **. . .**
> **(g) Amendments to the Rules of Judicial Administration.**
>
> (1) *Amendments Without Referral to Rules Committee*.
> Changes to the Rules of Judicial Administration contained in Part II, State Court Administration, of these rules, and rules 2.310 and 2.320, contained in Part III, Judicial Officers, generally will be considered and adopted by the supreme court without reference to or proposal from the Rules of Judicial Administration Committee. **The supreme court may amend rules under this subdivision at any time, with or without notice**. . . .
> **. . .**

Rule 2.205 The Supreme Court
(a) Internal Government
(1) Exercise of Powers and Jurisdiction.
The supreme court shall exercise its powers, **including establishing policy for the judicial branch** and jurisdiction en banc.

Plaintiff additionally relies on this Court's **inherent and historical power** to control the Courts exclusively on behalf of the public's interest. In this regard, it would be strange policy to assert the State Supreme Court does not have Original Jurisdiction over its' own rules or the Judicial Qualifications Commission (JQC), or the Florida State Bar (noting particularly it is undisputed the Florida State Bar is an "arm" of the State Supreme Court). See Rules Regulating the Florida Bar, Introduction stating (emphasis added):

> "The Supreme Court of Florida by these rules establishes the authority and responsibilities of The Florida Bar, **an official arm of the court**."

GENERAL FACTS AND STANDING

Plaintiff, Pro Se, is a Member in Good Standing of the State Bar of the Commonwealth of Pennsylvania and the District of Columbia Bar. Plaintiff is additionally a Florida Certified Public Accountant (CPA), New Jersey CPA, Arizona CPA, admitted to the U.S. Tax Court Bar, admitted to the Bar of the Federal Sixth Circuit Court of Appeals and the Federal Ninth Circuit Court of Appeals. Plaintiff has been a Licensed Pennsylvania Attorney since 1995, a District of Columbia Attorney since 1997, and an Arizona CPA since 1985 (now also a Florida and New Jersey CPA). Plaintiff has never been ethically disciplined in his capacity as either an Attorney or CPA, as no ethical complaint of any nature has ever been filed against Plaintiff by anyone, in either his capacity as an Attorney or CPA. Plaintiff also has never been Convicted of any Crime in his entire life.

On October 30, 2019 Plaintiff was served with a Complaint filed by Discover Bank in the Palm Beach County Circuit Court for an alleged credit card debt and Plaintiff herein, is the Defendant in that case. Two days later, on November 1, 2019 Plaintiff herein, filed his Answer in that case, Pro Se.[FN 1] A copy of the Discover Bank Complaint and the Answer filed, is included herein as Exhibit 6 and Exhibit 7. Plaintiff has filed a Motion to Disqualify every Single Palm Beach County Judge and also requested the proceedings be Stayed pending this Court's decision on the matters stated herein, pursuant to its Original

Jurisdiction (Exhibit 9), which as of this date is pending. Plaintiff contends he can not receive a Fair and Impartial adjudication by **ANY** Judge of the Palm Beach County Court, or in the entire State of Florida for that matter, for the reasons stated herein, and that the Palm Beach County Circuit Court lacks Jurisdiction to rule upon certain matters stated herein.

FOOTNOTE 1 - Discover Bank's Complaint against Plaintiff herein, was filed in Palm Beach County Circuit Court by **Zoran D. Jovanovich, Esq.** of the law firm of **Zwicker & Associates, P.C.** Defendant's Answer in that case noted amongst other matters that the law firm of Zwicker & Associates, P.C. in their legal representation of Discover Bank violated Florida State Bar Rule of Professional Conduct 4-1.3, which requires a Florida Attorney to "**act with reasonable due diligence**." More specifically, the Zwicker law firm sent a letter to Defendant dated July 16, 2019, which was not signed by any specific individual of the law firm (See Exhibit 5 herein). In that letter, the Zwicker law firm **represented on law firm letterhead** that **they were Attorneys** and **retained as a law firm** and were assisting their client to collect a debt as a debt collector **law firm**. However, the Zwicker law firm then remarkably stated in the same letter (emphasis added):

> **"As of this time, no attorney with this firm has personally reviewed the particular circumstances of your account."**

One would be hard-pressed to find a more blatant failure to exercise "reasonable due diligence" than a law firm sending a legal letter seeking payment of money on behalf of the client who retained them as lawyers, and then at the same time openly admitting in writing that not a single attorney in the firm even looked at the matter at all, before the legal letter was sent. (See Exhibit 5 herein).

ARGUMENT

1. Florida Rule of Judicial Administration 2.215 unconstitutionally violates the Due Process and Equal Protection Clauses of the 14th Amendment to the U.S. Constitution, on the grounds it substantively deprives litigants in all cases in Florida, both Civil and Criminal, of the right to a fair and impartial adjudication by a **Fully Independent Thinking** Trial Court Judge, not subjected to Undue Influence. The Rule unconstitutionally vests virtually **Unbridled** and Dictatorial Power within one Chief Judge of each County, who then has virtually total power and control over all other Judges in that County, including but not limited to deciding which cases they adjudicate, and declaring them in "neglect of duty" if they fail to comply with any of the Chief Judge's directives. The Rule creates two Classes of Trial Court Judges with one Class having virtually total control over the Subservient Class, even though both are duly Elected or Appointed, and the Subservient Class constitutes the majority of Judges.

It is well accepted the crux of our nation's legal system is the ability of a litigant to receive a fair and impartial adjudication from a disinterested trial court judge. See In Re Murchison, 349 U.S. 133, 136 (1955), Tumey v Ohio, 273 U.S. 510, 532 (1927). In Murchison, supra, the Court wrote (emphasis added):

> "A fair trial in a fair tribunal is a basic requirement of due process. Fairness of course requires an absence of actual bias in the trial of cases. But our system of law has always **endeavored to prevent even the probability of unfairness**. To this end **no man can be a judge in his own case and no man is permitted to try cases where he has an interest in the outcome.** That interest cannot be defined with precision. Circumstances and relationships must be considered. This Court has said, however, that "**every procedure which would offer a possible temptation** to the average man as a judge . . . not to hold the balance nice, clear and true between the State and the accused, **denies the latter due process of law**." Tumey v Ohio, 273 U.S. 510, 532."

In ascertaining the degree to which Florida Rule of Judicial Administration 2.215 infringes upon that Due Process right, the applicable Rule provisions to be considered are as follows (emphasis added):

> **Rule 2.215. Trial Court Administration**
>
> **"(a) Purpose.** The purpose of this rule is to fix administrative responsibility in the chief judges of the circuit courts and the other judges that the chief judges may designate. . . .
>
> **(b) Chief Judge.**
> **. . .**
> (2) . . . The **chief judge shall exercise administrative supervision over all judges**. . . . The chief judge shall have the authority to require that all judges of the court, . . . comply with all court and judicial branch policies, administrative orders, procedures and administrative plans.
> **. . .**
> **(4) The chief judge shall assign judges to the courts and divisions, and shall determine the length of each assignment. The chief judge is authorized to order consolidation of cases, and to assign cases to a judge or judges for the preparation of opinions, orders, or judgments . . . .** If a judge is temporarily absent, is disqualified in an action, or is unable to perform the duties of the office, **the chief judge or the chief judge's designee may assign a proceeding pending before the judge to any other judge or any additional assigned judge of the same court. The chief judge may assign any judge to temporary service for which the judge is qualified in any court in the same circuit. . . . The assigned judges shall be subject to administrative supervision of the chief judge for all purposes of this rule. . . .**
>
> **(5)** The chief judge may designate a judge in any court or court division of circuit or county courts as "administrative judge" of any court or division to assist with the administrative supervision of the court or division. **To the extent practical, the chief judge shall assign only one administrative judge to supervise the family court. The designee shall be responsible to the chief judge, shall have the power and duty to carry out the responsibilities assigned by the chief judge, and shall serve at the pleasure of the chief judge.**

> . . .
> (11) **The failure of any judge to comply with an order or directive of the chief judge shall be considered neglect of duty** and may be reported by the chief judge to the chief justice of the supreme court who shall have the authority to take any corrective action as may be appropriate. The chief judge may report the neglect of duty by a judge to the Judicial Qualifications Commission or other appropriate person or body, or take such other corrective action as may be appropriate.

The impact of the foregoing provisions taken as a whole is as follows. One single Judge in each county, known as the "Chief Judge" exercises administrative supervision over all judges, assigns judges to the courts and divisions, assigns cases to selected judges for the preparation of opinions and orders, and the failure of any judge to comply with an order or directive of the chief judge shall be considered neglect of duty. Suffice it to say, **one would have to be a pretty Dumb Judge to not try and keep the Chief Judge happy and satisfied.** And the best way to do that of course, is to render judgments, rulings and opinions in a manner that will please the Chief Judge. Failure to do so may result in the Chief Judge reassigning you to a division where you have no interest in working, being assigned cases you would prefer not to work on, or being unjustifiably declared in neglect of duty. Similarly, it is equally clear that if you keep the Chief Judge happy and render rulings and opinions that he (she) likes, your own professional career as a trial court Judge may blossom quite well. Notably, Subsection b(5) of the Rule also allows the Chief to designate other Judges as "administrative judge"

of any division and that designee by the express language of the subsection (emphasis addeed):

> "**shall have the power** and duty to carry out the responsibilities **assigned by the chief judge**, and **shall serve at the pleasure of the chief judge**."

Thus, not only does the Chief Judge himself (herself) function with virtually total power, but the Chief Judge can also designate other Judges of their choice to function substantively as their "Lieutenants," so to speak. And those "designees" by the express language of the rule, serve at the "**pleasure**" of the Chief Judge. Plaintiff openly concedes such immense power for the Chief Judge probably is a quite "**pleasurable**" experience for many of them. This is notwithstanding that both the Chief Judge and all the other Judges were equally elected by the general public, or appropriately appointed. Plaintiff understands neither the general public, nor the Governor's office who appoints Judges, has the slightest degree of influence on who will be the one single Judge in each County controlling all the others, and who therefore has immensely more power than any of them.

Unfortunately, stuck in the middle of the power games between the Chief Judge and all the other Judges is the litigant in any particular case. The litigant is under the mistaken impression that they are going to have a fair and impartial adjudication by an "independent" Judge who renders decisions "**without fear or favor**." See Florida Code of Judicial Conduct stating in part (emphasis added):

"**Canon 1. A Judge Shall Uphold the Integrity and Independence of the Judiciary**

An **independent** and honorable judiciary is indispensable to justice in our society. . . .
Commentary
Deference to the judgments and rulings of courts depends upon public confidence in the integrity and **independence of judges**. The integrity and independence of judges **depend in turn upon their acting without fear or favor.**

Plaintiff herein, can not receive a fair and impartial adjudication in the credit card litigation in which he is a Defendant and which is pending at the Palm Beach County Circuit Court. This is because he will not have the benefit of an independent thinking Judge who will rule without fear or favor, no matter what Judge is assigned to the case. Instead, any Judge assigned to his case, would be nothing short of an absolute fool to not take into consideration how the Chief Judge would like the case ruled upon. For the foregoing reason, Plaintiff requests Florida Rule of Judicial Administration 2.215 be declared in violation of Plaintiff's constitutional Due Process and Equal Protection Clause rights.

2. Palm Beach County Court Rule 4 unconstitutionally violates the Due Process and Equal Protection Clauses of the 14th Amendment to the U.S. Constitution, on the ground it deprives Pro Se Litigants of a fair and impartial adjudication by totally excluding them from its contours, provisions, protections and penalties. The Rule is specifically designed to provide an inferior quality of justice to Pro Se Litigants, by treating them as an inferior class compared to litigants represented by attorneys, thereby exemplifying the existence of a marked judicial animus against Pro Se litigants in order to unconstitutionally favor the interests of well-connected Attorneys.

The most applicable portions of Palm Beach County Local Rule No. 4 (full Rule attached herein as Exhibit 8, which was enacted pursuant to Florida Judicial Administration Rule 2.215 (also being challenged in this Motion) states in part as follows (emphasis added):

> "2. Prior to filing and serving a Notice of Hearing for a Uniform Calendar hearing or a specially set hearing, **the attorney** noticing the motion **shall attempt to resolve the matter and shall certify the good faith attempt to resolve.**[1]
>
> 3. The term "attempt to resolve the matter" in paragraph 2 **shall require counsel to make reasonable efforts to speak to one another** (in person or via telephone) **and engage in reasonable compromises in a genuine effort to resolve or narrow the disputes** before seeking Court intervention.[2] **All parties are to act courteously and professionally in the attempted resolution of the disputes**. . . .
>
> . . .
>
> [1] **The requirements of this rule do not apply when the moving party or non-moving party is pro se."**

FIRST, as a preliminary matter, from the outset, Rule 4 is in direct violation of Rule 2.120 of the Judicial Administration Rules, which in and of itself is

sufficient to invalidate Rule 4. Rule 2.120 specifically states as follows, in part (emphasis added):

> **"Rule 2.120. Definitions**
> The following terms have the meanings shown as used in these rules:
> **(a) Court Rule:** A rule of practice or procedure adopted **to facilitate the uniform conduct of litigation applicable to all proceedings, all parties**, and all attorneys.
>
> **(b) Local Court Rule:**
> (1) A rule of practice or procedure for circuit or county application only that, because of local conditions, supplies an omission in or facilitates application of a rule of statewide application that does not conflict therewith."

The analysis is as follows. Subsection (a) above indicates that "Court Rules" apply to "all proceedings" and "all parties." Subsection (b) then provides the ability for local courts to adopt their own rules based upon "local conditions" that "supplies an omission in or facilitates application of a a rule of statewide application." However, Subsection (b) does not provide any authority for a local court to adopt a rule that wholly negates the proviso of Subsection (a) requiring that the rules apply to "all proceedings" or "all parties" in the local court. Accordingly, by totally excluding every single litigation involving a Pro Se litigant in Palm Beach County from the provisos of Rule 4, the Court has positively violated the express terms of Subsection (a) of Rule 2.120.

SECOND, the manner in which Rule 4 is enforced also violates Rule 2.120 of the Judicial Administration Rules. The reason is as follows. As shown by

Exhibit 1 herein, on February 8, 2017, Palm Beach County Circuit Judge Peter D. Blanc sent a letter to 15th Judicial Circuit Attorneys regarding amendments to Rule 4. Page 2 of his letter expressly states as follows regarding enforcement:

> "**ENFORCEMENT OF RULE:** It is important to note that enforcement of the Rule will vary from judge to judge."

Based upon Plaintiff's reading of Rule 2.120 there is absolutely no provision in Judicial Administration Rule 2.120 for any Local Court Rule to be predicated upon anything less than uniform application of all Local Court Rules within that locality. The concept in Judge Blanc's letter that it is "important to note" that "Enforcement" "will vary from judge to judge" (meaning for all practical purposes each Judge gets to "fly by the seat of their pants" so to speak) is also not in conformity with the State Supreme Court's express mandate in Rule 2.120.

THIRD, Palm Beach County Rule 4 violates the Due Process and Equal Protection Clauses of the Fourteenth Amendment to the U.S. Constitution for the following reasons. The Fourteenth Amendment provides in relevant part:

> "No State shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States; nor shall any State deprive any person of life, liberty, or property, without due process of law; nor deny any person within its jurisdiction the equal protection of the laws."

Pursuant to principles of Substantive Due Process and Equal Protection, challenges to the legitimacy of a law (or in this instance a Court Rule) are typically

analyzed under a rubric of Strict Scrutiny, Intermediate Scrutiny or Rational Basis Scrutiny. Rational Basis Scrutiny is considered the lowest level of scrutiny a law needs to withstand challege and Strict Scrutiny the highest level. Classifications affecting Fundamental Rights are subject to Strict Scrutiny. See Clark v Jeter, 486 U.S. 456, 461 (1988), Justice O'Connor for a Unanimous Court writing:

> "classifications affecting fundamental rights . . . are given the most exacting scrutiny."

Thus, from a perspective of the Equal Protection Clause, the first determination to be made is whether the "right of access" to the Courts is a "fundamental right." Within the criminal context, the U.S. Supreme Court has held uniformly the right of access to the Courts is a "fundamental right." However, within the context of civil litigation, the matter is less clear. In fact, there is such a convoluted mix of statements on the issue it would not be possible, nor productive to present them all. That said, Plaintiff's position is that this Court should hold the right of access to the Courts within the context of civil litigation is a "Fundamental Right" subject to Strict Scrutiny. Plaintiff's position is best summarized by a statement of the U.S. Supreme Court in Chambers v Baltimore and Ohio Railroad Company, 207 U.S. 142, 148-149 (1907), where the Court wrote as follows (emphasis added):

> "The right to sue and defend in the courts is the alternative of force. In an organized society **it is the right conservative of all other rights**, and lies at the foundation of orderly government."

Then see also, Justice Brennan writing on the issue of suffrage in Plyler v Doe, 457 U.S. 202, 216 (1982), Footnote 15 as follows (emphasis added):

> ". . . we have explained **the need for strict scrutiny** as arising from the significance of the franchise **as the guardian of all other rights.**"

The concept in the two citations above is if a "right" is critical to the exercise of all other rights, it should be considered a "Fundamental Right." Plaintiff's position is the right of access to the Court within the context of civil litigation, is a Fundamental Right, and therefore subject to Strict Scrutiny. However, Plaintiff also asserts Rule 4 would not survive even Rational Basis Scrutiny. Accordingly, Plaintiff now analyzes Rule 4 under both Strict Scrutiny (the highest level of Scrutiny) and Rational Basis Scrutiny (the lowest level of Scrutiny).

Under Strict Scrutiny, classifications are constitutional only if they are "narrowly tailored to further compelling governmental interests." Grutter v Bollinger, 539 U.S. 306, 326 - 327 (2003). Under the more lenient standard of Rational Basis Scrutiny, classifications are constitutional unless the challenger can demonstrate they are not "rationally related to a legitimate governmental interest." Cleburne v Cleburne Living Center Inc. 473 U.S. 432, 439-440 (1985). The language of Rule 4 indicates its purpose is to resolve matters, stating expressly:

> (3) The term "attempt to resolve the matter" in paragraph 2 shall require counsel to make reasonable efforts to speak to one another (in person or via telephone) and engage in reasonable compromises in a genuine effort to resolve or narrow the disputes before seeking Court intervention. . . .

Plaintiff asserts that requiring Counsel to "attempt to resolve" matters before seeking Court intervention is not a compelling, nor legitimate State interest, nor is it the true and genuine State interest of Rule 4. Plaintiff also asserts that even if it were a valid State interest, the means stated to achieve such are not narrowly tailored as required by Strict Scrutiny, nor rationally related to that interest as required by Rational Basis Scrutiny. The multiple reasons that requiring Counsel to "attempt to resolve" matters is not a valid State interest, nor the true and genuine State interest for enacting Rule 4, are as follows:

FIRST, the Parties are in Court for the precise reason they were unable to resolve matters without Court intervention. <u>They are in Court precisely because Court resolution is needed</u>. Accordingly, for the Court then to require them to try and "resolve" matters without judicial decision-making relegates litigation to nothing more than a costly farce. If they could have resolved the matters between themselves, they would not be in Court.

SECOND, by requiring Counsel to "attempt to resolve" matters before seeking judicial decisions, Counsel are substantively being required to function in part as collaborative mediators, rather than advocates in an adversarial setting.

Since the foundation of our system is as an adversarial process, the Rule undermines that foundation by requiring Counsel to work together, instead of as adversaries.

THIRD, by requiring Counsel to "attempt to resolve" matters, Rule 4 mandates the Parties incur often unnecessary legal fees. Litigants are being required to pay for time spent by Counsel, even though both Counsel and both Parties often know full well that such is nothing more than a total waste of time.

FOURTH, Plaintiff understands there is substantial information indicating Judges handle extremely voluminous dockets. Often one Judge is responsible for hundreds of cases. Assuming the State Supreme Court agrees with this assertion, it is reasonable to conclude the real reason for enacting Rule 4, was not to help litigants at all. Rather, it was simply for the benefit of the Judges. Plaintiff sympathizes with the plight of Judges and their heavy dockets. Nevertheless, Judges should not avoid their decision-making duty, by adopting Rules simply for their own benefit at the expense of litigants.

FIFTH, attorneys become Judges to decide issues. If they do not want to decide issues, they should not become Judges. However, to accept a position as a Judge, only then to avoid deciding issues by pressuring (mandating) the Parties to resolve matters, diminishes public faith and confidence in the judiciary.

SIXTH, litigants often do not want their attorney to communicate with opposing Counsel. Counsel often does not want to communicate with opposing Counsel. It is their right to make that decision and adopt that strategy. Often, but not always, it will be the proper strategy to adopt. In either case, it is their decision to make. Rule 4 infringes upon that legal right.

SEVENTH, it is well-known in the context of settlement negotiations, there is often a fine line between what constitutes legitimate settlement negotiations, and that which constitutes the criminal act of Extortion. In general, most attorneys are less likely to communicate illegal statements in writing. People overall, are more prone to communicate illegal statements verbally, than in writing. Accordingly, by requiring Counsel to communicate verbally, Rule 4 promotes the commission of Extortion by certain Counsel. Similarly, Rule 4 often unjustifiably exposes Counsel and their clients, to baseless allegations of Extortion. The best way to avoid a baseless allegation of Extortion is to not speak with the opposing side. The Court should not preclude Counsel and their clients from avoiding baseless allegations of Extortion, by refusing to speak with the opposing side.

Even if the asserted State interest was the true and genuine State interest, and also a compelling and legitimate State interest, Rule 4 would still be unconstitutionally in violation of the Equal Protection Clause to the 14th Amendment for the following reason. The rule is not "narrowly tailored" or

"rationally related" to achieving the State's asserted interest, because it excludes a massive percentage of Palm Beach County litigants (and perhaps even the majority of litigants in the County) from its provisions. The Rule expressly indicates it totally excludes Pro Se litigants. Thus, to the extent the Rule may provide ancillary or minor benefits to some litigants represented by Counsel, such benefits are not similarly enjoyed by the massive numbers of Pro Se Litigants swept into the wide net of litigants wholly excluded from the Rule. If the Rule is in fact beneficial to litigants, the exclusion of Pro Se litigants from receiving such benefits, is indicative of a judicial animus against them as a class of litigants. The impact of all this is as follows. Rule 4 creates substantial incentives for litigants to not proceed Pro Se due to its existence. However, it also creates substantial incentives for other litigants to not engage Counsel, if they seek for the process to be truly adversarial in nature. In short, Rule 4 results in a well-informed litigant's decision of whether to engage Counsel or not, being based in large part upon either the "Harm" or "Benefit" the Rule will result in with respect to their particular litigation.

For the foregoing reason, Plaintiff requests Palm Beach County Local Rule 4 be declared in direct violation of Plaintiff's constitutional Due Process and Equal Protection Clause rights to a fair and impartial adjudication.

3. The extension of Absolute Immunity **for commission of Malicious Acts to Members of the Judicial Qualifications Commission (JQC) acting in a Non-Judicial capacity** and also to certain members of the Florida State Bar who are not even Judges at all, in the case of Laura M. Watson v Florida Judicial Qualifications Commission, No. 17-13940 (11th Cir. Fed. Ct. of Appeals, August 15, 2018) unconstitutionally infringes upon the Due Process rights of a Pro Se litigant to receive a fair and impartial adjudication in every single Florida case, both Civil and Criminal, which involves a Pro Se Litigant. This occurs because it diminishes the ability of duly elected Trial Court Judges to think Independently and fairly decide issues, because they are unduly influenced, subjugated and neutralized in favor of potentially and/or possibly "Malicious" goals and interests of the JQC and certain members of the Florida State Bar. The impact is that duly elected and appointed Trial Court Judges no longer have full control over the judicial decision-making process in their cases, due to fear of maintaining their own professional position on the bench.

On August 15, 2018, the U.S. Court of Appeals for the Eleventh Circuit, in the case of Laura M. Watson v Florida Judicial Qualifications Commission, No. 17-13940 (August 15, 2018) held as follows:

> "The District Court did not err when it dismissed Watson's claim against the JQC and Bar Officials because (1) the members of the JQC investigative panel were entitled to absolute prosecutorial immunity based on the functions of their position; (2) the members of the JQC hearing panel were entitled to absolute judicial immunity based on the functions of their position; and (3) the Bar Officials were entitled to absolute immunity as agents of the Florida Supreme Court acting in disciplinary proceedings."

The foregoing holding by the Federal Court of Appeals was presumably based in large part upon Page 11 of the JQC's Answer Brief in the Appeal (Exhibit 2) where they stated as follows (emphasis added):

> "Absolute or quasi-judicial immunity does not turn on an official's rank or title, but rather on the function that official performs. After reasoned analysis, the District Court concluded that: (1) **the JQC functions as a quasi-judicial agency;** (2) disgruntled judges who are disappointed in the outcome of JQC proceedings are just as likely as any other litigant to pursue claims against the JQC's members. . . ."

Thus, the very crux, essence, heart, soul and linchpin of the 11th Circuit's Court of Appeals opinion is that the JQC "**functions as a quasi-judicial agency**." However, the problem is the JQC's very own Brief totally disregarded the Florida Supreme Court's decision in State of Florida ex rel. Jack M. Turner v Richard T. Earle Jr., 295 So. 2d 609, 611 (Fla. 1974). In that case, the Florida Supreme Court had already decided the issue of whether JQC functions, constituted the exercise of "quasi-judicial" powers and held they do **NOT**. More specifically, the Florida Supreme Court held expressly as follows (emphasis added):

> "Since the commission **lacks the power essential to** judicial or **quasi-judicial tribunals** either to reach a final decision or to implement that decision, prohibition is an inappropriate remedy. . . ."

This of course indicates multiple dilemmas as follows. First, it appears the Eleventh Circuit's decision as to whether the JQC is a "quasi-judicial tribunal" is in direct contradiction with the Florida Supreme Court's decision on the issue in Turner, supra. That of course is problematic from several perspectives, not the least of which is the constitutional conflict which can exist between State's regulating their own Courts, and Federal Constitutional limitations upon such.

Additionally, the fact the JQC itself did not point out the State Supreme Court's holding in the Turner case to the 11th Circuit would seem to suggest two possibilities. The first possibility is simply that Counsel for the JQC was unaware of the Turner case, which is not only unlikely, but would also suggest a substantial degree of incompetency by Counsel for the JQC if such were the case. The second and more likely possibility is that Counsel for the JQC was aware of the Turner case, but made a conscious decision not to mention it. If that is the case, the decision of JQC Counsel would seem to violate Florida State Bar Rule of Professional Conduct 4-3.3 Candor Toward the Tribunal, which states as follows (emphasis added):

> **"(a) False Evidence; Duty to Disclose**. A lawyer shall not knowingly:
> . . .
> (3) **fail to disclose to the tribunal legal authority in the controlling jurisdiction known to the lawyer to be directly adverse to the position** of the client and not disclosed by opposing counsel;

In the Watson case, Page 11 of the Answer Brief of the Florida State Bar described Absolute Immunity as follows, (Exhibit 3) (emphasis added):

> "(rule of prosecutorial immunity insulated state bar and its agent acting within scope of office from liability for **malicious** prosecution in an action brought against them by a member of bar against whom a grievance had been filed, regardless of motive for that filing and without regard to whether or not there was probable cause for such filing)."

Similarly, the 11th Circuit's opinion utilized the term "malicious" in describing Absolute immunity as follows (emphasis added):

> "Absolute immunity can cover even wrongful or **malicious** acts. . . ."

Thus, it is necessary in understanding Absolute Immunity to understand exactly what the term "malicious" means. As shown on Exhibit 4 herein, Black's Law Dictionary defines the term "Malicious" as follows (emphasis added):

> "**Malicious**. Characterized by, or involving, malice; having, or done with, **wicked, evil** or mischievous intentions or motives. . . ."

Based on the foregoing, it is inescapable that what the JQC and the Florida State Bar were seeking in the Watson case was immunity for both of them to commit "Wicked" and "Evil" acts. While these characteristics under the guise of the less offensive term of "malicious" were quite clearly granted to both the JQC and the Florida Bar by the 11th Circuit, Plaintiff herein requests the Florida Supreme Court retreat from that rather immoral position. It is undisputed that Absolute Immunity is enjoyed by duly elected Judges functioning in a judicial capacity. While uncontroverted herein, that itself rests upon tenuous ground. Judicial power is at a "Zenith" when judging others, but at a "Nadir" when judging itself. Accordingly, to extend Absolute Immunity to the JQC, which according to the Florida Supreme Court's opinion in Turner, is not acting as a quasi-judicial

tribunal, or to mere Florida State Bar officials who are not Judges at all, appears quite irrational and "Bizarre."

Once the JQC and/or certain members of the Florida State Bar have the legal immunity (as granted by the 11th Circuit), to commit "Wicked" and "Evil" acts against duly elected Florida Trial Court Judges, individuals such as Plaintiff herein, can fairly expect that if they are a litigant in any case in Florida, the Trial Court Judge's ability to render a fair and impartial adjudication will be unduly impaired for fear of maintaining their own position as an elected Judge. While this impacts adversely in an unconstitutional manner upon all litigants including those represented by Counsel, the impact upon Pro Se litigants is particularly exacerbated. This is due to the animus the Judiciary has historically demonstrated against Pro Se litigants. (See for example the express exclusion of Pro Se Litigants from the contours of Palm Beach County Rule 4 also a subject of this Motion).

4. The lack of Uniformity in court rules between judges, critical to equal application of the laws, evidenced by varying Divisional Rules established on a haphazard arbitrary basis by individual Judges violates a litigant's right to due process and equal protection in violation of the 14th Amendment to the U.S. Constitution. Similarly, the lack of clearly defined Time limits for critical litigation events violates a litigant's due process and equal protection clause rights. Divisional Rules allowing each individual Judge to unilaterally decide upon the time frames when Oppositions to Motions must be filed; the Font size of filings within their individual Court, and the Number of Pages allowed in a Memorandum of Law result in unequal justice for litigants, the quality of which depends upon the predilections of the Judge assigned. Similarly, rules requiring a hearing be scheduled just to obtain a ruling on a motion; along with distinctions between how Pro Se litigants and licensed attorneys are required to schedule hearings, violate the Due Process and Equal Protection Clauses.

There is nothing more essential to society than the rule of law. If there is no rule of law, then people do as they please. This inevitably results in rule of the strong over the weak, without regard to fairness or justice. It has been an unfortunate predicate throughout history that when rules are broken, they tend to be broken in favor of the strong, rather than the weak. The entire concept of enacting rules in any society, any sports game, or market is to equalize the playing field. By having rules, everyone is supposed to know the manner in which a given event or controversy will be played or handled. By having rules within the context of litigation, the goal is to equalize the rich with the poor, the strong with the weak, those who know powerful people with those who don't know powerful people. The intended concept is that by having rules, no one should be able to gain an unfair advantage by doing things in an "informal" manner.

The dichotomy between liberal and strict interpretation of rules to fit self-interested goals has its roots in the related dichotomies of procedure versus substance, and rules versus standards. For instance, let us hypothetically presume a requirement exists to "file" a certain document within 15 days. That would be a rule. The rule is designed to foster the provision of "Notice" to another party in a timely manner. "Notice" therefore, would be a standard. Rules are designed to promote standards. The difficulties arise when a particular rule, due to the circumstances of a case, functions in an unjust manner. In the hope of solving such dilemmas, rules are therefore subject to interpretation.

In the foregoing hypothetical example, a common interpretation might be as follows. A document must be "filed" within 15 days, unless a party demonstrates "reasonable cause" for missing the deadline. One problem is solved and another is created. The dilemma created is determining what constitutes "reasonable cause." Whether "reasonable cause" exists has now become the determinative factor as to whether the 15 day deadline should be applied. This now brings our hypothetical to the dichotomy of procedure versus substance. Procedure takes precedence over substance when a particular rule is applied in a given case, even though application of the rule may cause an unjust result. In contrast, substance takes precedence over procedure when a rule is not applied, because the result of applying the rule would be unjust. So, one might then naively conclude that the resolution is simply to

apply the rule when to do so is "just" and don't apply the rule when doing so would be "unjust." Of course, that creates a brand new problem. The "rule" has ceased to be a rule, and has instead become a "conditional rule."

What if the rule is always applied to the weak, but the decision-makers consistently determine "reasonable cause" exists when those who are strong do not comply with the rule? Essentially, the weak are then always subjected to the rule, but the strong are always exempted from it. When this occurs, the rule that was originally designed to implement "justice" has instead become the exact tool to cause "injustice." Originally intended to equalize the playing field, the rule has become the precise implement to "rig" the playing field.

It is a basic maxim of human nature that to treat everyone equally and fairly, the rules should generally be the same for all people. In Florida, in addition to uniform judicial rules that apply to the entire State there are Local Judicial Rules within each Judicial Circuit. The Local Rules adopted by a Circuit, typically apply only to litigations within that Circuit. Local Rules are sometimes necessary because local conditions may vary between the different Circuits. This premise is recognized in Florida Judicial Administration Rule 2.120, which states as follows, in part (emphasis added):

"Rule 2.120 Definitions

. . .

(b) Local Court Rule:

(1) A rule of practice or procedure for circuit or county application that, **because of local conditions**, supplies an omission in or facilitates application of a rule of statewide application and doe not conflict therewith."

Thus, the fulcrum for the existence of Local Rules are the differences that exist in "local conditions" between Circuits. That means to the extent "local conditions" do not differ, local rules presumably would not be required. That said, Plaintiff understands in addition to the "Local Rules," each Divisional Judge within each Judicial Circuit is also allowed to adopt their own personal "Divisional Rules." This is notwithstanding that "conditions" do not typically differ within one specific judicial circuit. The "conditions" for a Judge in Room 101 are <u>for the most part</u> the same as the "conditions" for a Judge in Room 102 right next door. Thus, in general it does not appear there is substantial justification for "Divisional Rules" at all. Currently in Florida, the Divisional Rules allow for Judges to individually decide upon their own rules pertaining to the time frame when an Opposition to a Motion must be filed, the number of pages that may be submitted in a memorandum of law, and the Font size of certain legal documents and motions. For instance, hypothetically Judge Fair may allow an unlimited number of pages in a memorandum, whereas Judge Chopbuster may only allow 15 pages. Judge Fair may require that someone seeking to oppose a Motion, must file the Opposition

within 30 days, whereas Judge Screwball in contrast may allow an Opposition to be filed 6 months after the initial motion. Plaintiff understands some Judges do not even post all of their Divisional Rules. In this manner, only the attorneys who appear regularly before them even know what the rules are. Put simply, the existence of "Divisional Rules" has created a complete and total mess within the Courts of Florida. Because everybody is doing things differently. It's like a "**litigation demolition derby road rally**", because each Judge just does whatever they want. At a bare minimum, any rational conception of due process and equal protection means the stated rules should be the same for everyone.

As for the litigants, the quality of Justice received, depends in large part upon the predilections of the Judge assigned to their case and whether the Divisional Rules adopted by that Judge, work to the litigant's advantage or disadvantage. Stated alternatively, did the litigant win the judicial assignment "lottery?"

Specifically, there is no reason for one Judge to allow an Opposition to a Motion be filed months after the Motion itself is filed, while another Judge sets a time limit. Florida Rule of Civil Procedure 1.100 titled as Pleadings and Motions sets forth the procedural requirements on a uniform basis throughout the State for filing a Motion in Rule 1.100(b). Notably however, **that Rule contains absolutely no delineation as to when an Opposition to a Motion must be filed**. A

Defendant answering a Complaint is typically required to file a Answer within 20 days. That rule applies on a uniform basis throughout the entire State. There is no justifiable reason for failing to have a similar uniform Rule throughout the entire State delineating exactly when an Opposition to a Motion must be filed.

The judicial "road rally derby" in Florida is further complicated by the fact that to obtain a ruling on a properly filed motion, if the Judge does not set a hearing sua sponte, the litigant must set a hearing. Plaintiff obtained a summary of this issue from a document that appears to be written by Circuit Judge R. Thomas Corbin of Lee County. Judge Corbin commendably publishes "sample" Orders, which can be of immense assistance to both litigants and attorneys. His write-up on obtaining hearings and rulings on motions was exceptionally helpful to Plaintiff and is included herein as Exhibit 11. The document states as follows, in part, on pages 1 and 2, as shown by Exhibit 11 (emphasis added):

> "A judge is assigned thousands of cases. At last count this judge has an assignment of about 7,000 cases that are currently open or subject to being reopened. Many motions are filed in each of these cases every day. The judge has no way of knowing or keeping track of all of the motions filed every day. **Many motions are filed and never noticed for hearing so they are never ruled on. Only motions that are set for hearing by a party and noticed for hearing by a party are heard and ruled on."**

The entire purpose and essence of the Judiciary has been to decide cases and controversies dating back to the formation of this nation. To do so, necessarily implies that due process requires motions pertaining to such cases be ruled upon.

The irrational notion that Florida judges may escape ruling on motions by simply not setting hearings on those motions is entirely inconsistent with due process and the function of the judiciary branch of government. Whether the Court is going to grant or deny a motion, at a bare minimum elemental due process mandates the litigant is constitutionally entitled to a ruling on every single motion filed.

Plaintiff now addresses the logistics of how hearings are set in Palm Beach County. There are apparently three ways a hearing can be set. First, the Court (i.e. Judge) may of course, set a hearing sua sponte on any issue. Second, if that does not occur, the attorney or Pro Se litigant may contact the Judicial Assistant "in the hope" of getting help to set a hearing. Third, the most common manner of setting a hearing is to use the Court's Online Scheduling System (hereinafter "OLS"). However, OLS treats Pro Se litigants quite differently than attorneys.

Specifically, as shown by the screenshot on Exhibit 12(a) herein, after the hearing slot is selected the person setting the hearing must disclose whether one of the parties is a Pro Se litigant. In such an instance, that brings the person to the screenshot shown on Exhibit 12(b). As shown by Exhibit 12(b), the screenshot mandates the scheduler represent that: "They have previously cleared the requested date with opposing counsel;". Otherwise, the hearing can not be set. Thus, whereas attorneys need only represent that they "attempt" to speak with opposing Counsel in order to set a hearing (as shown by Exhibit 12(a)), the Pro Se

can only set the hearing if opposing Counsel actually agrees. One does not need to be a rocket scientist to know many attorneys will not agree to anything when dealing with a Pro Se litigant. Accordingly, the process for setting a hearing in Palm Beach County treats Pro Se litigants in a substantial disadvantageous manner compared to litigants represented by Counsel.

The impact of the foregoing is that a Pro Se litigant may not be able to get a hearing set and therefore may not be able to even get a ruling on a motion filed in Palm Beach County. Thus, quite presumably, **there are probably thousands upon thousands of prisoners sitting in prison cells in Florida who properly file Pro Se motions and are not even able to get a ruling upon those motions**. That is entirely unacceptable. The formulation of a system permeated with rules that apparently may result in Pro Se prisoners not being able to obtain any type of ruling at all on motions they properly file is constitutionally infirm. Accordingly, Plaintiff asserts the following changes should be made immediately in order for the Florida Judiciary to comport with U.S constitutional values of due process, equal protection and fair play:

1. **ALL JUDGES MUST BE REQUIRED TO RULE UPON ALL MOTIONS WITHIN AN EXPRESSLY STATED REASONABLE TIME LIMIT, REGARDLESS OF WHETHER A HEARING IS SET**

2. **ANY OPPOSITION TO ANY MOTION MUST BE FILED WITHIN AN EXPRESSLY STATED REASONABLE TIME LIMIT INCORPORATED INTO A STATEWIDE UNIFORM COURT RULE**

3. **ATTORNEYS ARE NOT TO BE ACCORDED ANY PREFERENTIAL TREATMENT WITH RESPECT TO THE PROCESS OF SETTING HEARINGS COMPARED TO PRO SE LITIGANTS AND THE PROCEDURE FOR SETTING HEARINGS MUST BE UNIFORM**

4. **ALL DIVISIONAL RULES OF ALL INDIVIDUAL JUDGES ARE TO BE ELIMINATED IN THEIR ENTIRETY, EXCEPT TO THE EXTENT EXCEEDINGLY PERSUASIVE JUSTIFICATION IS PRESENTED FOR THE EXISTENCE OF SUCH. UNIFORM LOCAL RULES WITHIN EACH JUDICIAL CIRCUIT MAY BE MAINTAINED TO THE EXTENT JUSTIFIED BY LOCAL CONDITIONS, BUT STATEWIDE UNIFORMITY IN RULES SHOULD EXIST TO THE MAXIMUM EXTENT POSSIBLE.**

CONCLUSION:

Plaintiff **PREEMPTIVELY** notes and asserts that even if the underlying case in the Palm Beach County Court involving the Plaintiff herein, is fully and completely resolved and/or settled prior to this Court's decision on the issues delineated herein, this Motion is **not rendered Moot**. In this regard, the well recognized historical exception to the mootness doctrine is that cases "capable of repetition, yet evading review" are not rendered moot by resolution of the underlying matter. Southern Pacific Terminal Company v ICC and Young, 219 U.S. 498, 514 - 516, (1911), Globe Newspaper Co. v Superior Court for the County of Norfolk, 457 U.S. 596, 603, Press-Enterprise v Superior Court, 478 U.S. 1, 6 (1986). In this instance, this Motion would not be rendered Moot by

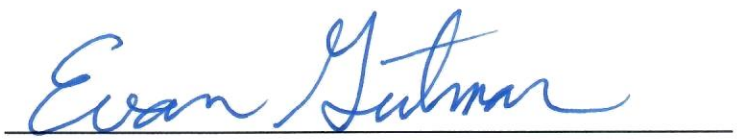
resolution of the underlying case because the matters stated herein, are not only "capable of repetition," but in fact are **certain** of repetition because they impact upon every single case in Florida, of either a Civil or Criminal nature.

As stated, it has been said that Judicial Power is at a "Zenith" when judging others, but at a "Nadir" when judging itself. Accordingly, Plaintiff does not request oral argument, based upon the centuries old bedrock judicial principle that no man shall act as a judge in his own cause, as set forth over 400 years ago in Bonham's Case, 8 Co. 114a, 118a, 77 Eng. Rep. 646, 652 (1610) and In Re Murchison, 349 U.S. 133, 136 (1955).

Notwithstanding, Plaintiff also similarly recognizes the ancient "Rule of Necessity" as expounded in U.S. v Will Et Al., 449 U.S. 200, 210-216 (1980), which is an exception to the above set forth principle of ***Nemo iudex in causa sua***, and which does in fact provide justification for this Court to render a decision in a matter the Court itself, and each of the individual Justices have a personal interest.

For the foregoing reasons, Plaintiff most respectfully requests the Florida Supreme Court grant this Motion for Declaratory Judgment on each issue delineated herein, so that it will not be necessary for these matters to be adjudicated by the United States Supreme Court.

Submitted respectfully and humbly this 18th day of January, 2022.



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Admitted to U.S. Tax Court Bar
Admitted to Bar of Federal Sixth Circuit Court of Appeals
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CERTIFICATE OF COMPLIANCE

I HEREBY CERTIFY that to the best of my knowledge and belief, this Motion and Brief have been prepared in "Times New Roman" with font size 14, in substantial compliance with Fla. R. App. P. 9.210(a)(2).

Evan Gutman JD, CPA

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CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a true and correct copy of the foregoing was served this 18th day of January, 2022 via U.S. Mail to the following:

Florida Supreme Court
500 South Duval Street
Tallahassee, Florida 32399-1925

Florida Supreme Court
Attn: Chief Justice Charles T. Canady
500 South Duval Street
Tallahassee, Florida 32399-1925

Florida Supreme Court
Attn: Justice Jorge Labarga
500 South Duval Street
Tallahassee, Florida 32399-1925

Florida Supreme Court
Attn: Justice Carlos G. Muniz
500 South Duval Street
Tallahassee, Florida 32399-1925

Florida Supreme Court
Attn: Justice Jamie R. Grosshans
500 South Duval Street
Tallahassee, Florida 32399-1925

Florida Supreme Court
Attn: Justice Justice Ricky Polston
500 South Duval Street
Tallahassee, Florida 32399-1925

Florida Supreme Court
Attn: Justice Justice Alan Lawson
500 South Duval Street
Tallahassee, Florida 32399-1925

Florida Supreme Court
Attn: Justice John D. Couriel
500 South Duval Street
Tallahassee, Florida 32399-1925

Florida Judicial Qualifications Commission
PO Box 14106
Tallassee, Florida 32317

Florida Supreme Court Local Rules Advisory Committee
500 South Duval Street
Tallahassee, Florida 32399-1925

Florida Supreme Court Local Rules Advisory Committee
Attn: Judge Ross Bilbrey
2000 Drayton Drive
Tallahassee, Florida 32399-0950

The Florida State Bar
651 East Jefferson Street
Tallahassee, Florida 32399-2300

Date this 18th day of January, 2022.

By: 

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EXHIBIT 1(a)

THE CIRCUIT COURT OF THE
FIFTEENTH JUDICIAL CIRCUIT
OF FLORIDA

CHAMBERS OF
PETER D. BLANC
CIRCUIT JUDGE

PALM BEACH COUNTY COURTHOUSE
205 NORTH DIXIE HIGHWAY
WEST PALM BEACH, FLORIDA 33401
(561) 355-1721

February 8, 2017

Dear 15th Judicial Circuit Attorneys:

As you may recall, Local Rule 4 (Uniform Motion Calendar) was amended in 2015 with regard to the Meet and Confer requirement. Based upon feedback from judges and attorneys, additional revisions are being sought. The proposed amended version of the Rule is attached hereto with changes in bold print. This proposed amendment was overwhelmingly approved by the Judges earlier today. I am now submitting this proposed amendment for your review, input and consideration. Our deadline for submission to the Florida Supreme Court Local Rule Committee is February 28, 2017 so I ask that you act expeditiously to distribute this proposal to the appropriate committee or committees and to offer your input. Any written responses should be directed to the Chief Judge care of Amy Borman, General Counsel at ABorman@pbcgov.org

Please allow me to provide you with some procedural information as well the history of the Rule and an explanation for the basis of this proposed amendment.

LOCAL RULES/ADMIN ORDERS: Local Rules, in contrast to Administrative Orders, require approval by a majority of judges within the circuit as well as approval by the Florida Supreme Court. As stated previously, this Local Rule was approved by the Judges of this circuit earlier today. The requirements of the Rule are similar to the standing discovery orders adopted by many of the United States District Court Magistrate Judges for the Southern District of Florida regarding discovery procedures and is also a simpler and less onerous version of Administrative Order 2012-03 from the Ninth Circuit in Orlando.

LOCAL RULE 4: As you may know, Local Rule 4 originated in 1990 under the direction of Chief Judge Daniel Hurley. At that time, the purpose of the Rule was to require attorneys to make a good faith effort to resolve contested motions before they were set for hearing. The Rule was amended in 2015. The purpose of the amendment was to define the phrase "attempt to resolve" as used in the original version of the Local Rule. This became necessary because technology had changed and it was apparent that attorneys were at best only exchanging e-mails and rarely speaking directly to each other as part of their attempt to resolve or narrow the issues. This limited communication resulted in fewer resolutions and frequently overcrowded UMC dockets, many unnecessary UMC hearings, and unnecessary preparation time for trial judges due, in part, to last-minute cancellations and/or submissions of agreed orders at hearings.

FIRST AMENDMENT TO LOCAL RULE 4: The practical goal of the 2015 amendment was to require attorneys to develop the habit of actually speaking to each other in an attempt to resolve motions before setting them for hearing. I remain convinced, based upon both common sense and experience, that such a practice creates a benefit to the attorneys, the clients, and the Court by increasing the number

EXHIBIT 1(b)

of resolutions, improving the quality of practice in our legal community and raising the bar for professionalism, while creating no additional or unnecessary delay in resolution.

BASIS FOR SECOND AMENDMENT: Since the implementation of the 2015 amended Rule, it does seem that attorney communication has improved. However, there are still circumstances where attorneys come to court for motion calendar having never spoken to each other about the subject motion. Therefore, as the result of informal discussions I had with Amy Borman, Greg Coleman and Adam Rabin, we have proposed a second amendment to Local Rule 4 to further clarify the intent and requirements of the Rule, to clarify that the Rule does not apply when one of the parties is a pro se litigant and, based upon suggestions by other judges and attorneys, to expand the Rule's application to both specially set hearings and to hearings that occur in the County Courts.

Although use of e-mail is an excellent tool and is encouraged, this second proposed amendment clarifies that in those instances where the exchange of e-mails is unsuccessful, the attorneys still have an obligation to try to speak to each other in an effort to resolve or narrow the issues before the hearing is scheduled. The simplest way for the movant's attorney to comply, if e-mail exchange is unsuccessful, is to make a call to opposing counsel's office to either discuss the motion or to provide potential dates and times to receive a call back to do so. If nothing else happens, movant's counsel has complied with the Rule. **Because the obligations of the Rule are reciprocal**, if opposing counsel does not call back timely to confirm a date and time to speak, opposing counsel has not complied with the Rule. Further, there is nothing wrong with staff coordinating a time for the attorneys to speak by phone, but the Rule presumes that both sides will be reasonable in their efforts to timely schedule a time to speak and failure of either side to do so could be considered noncompliance with the Rule.

In the Circuit Civil divisions, many times the attorney appearing in court for hearing is not the same attorney who attempted to speak to opposing counsel unsuccessfully. The Rule, as amended, simply requires that, in those instances, the attorney attending the hearing is able to specify the efforts made to confer when the efforts have been unsuccessful. This improves the Court's ability to determine who is and who is not complying with the Rule, resulting in greater accountability.

This draft also proposes changes to the language in the certification that must appear on the Notice of Hearing. The language as proposed makes it clear that, again if e-mails are unsuccessful, at least one phone call is required as part of the good faith effort to resolve. The current version of the Rule already requires the phone call, but the proposed amendment makes clear that the attorney is certifying that the required phone call has been made. The proposed language also contains a third option to use when the opposing party is pro se and the requirements of the Rule do not apply.

ENFORCEMENT OF RULE: It is important to note that enforcement of the Rule will vary from judge to judge. Nonetheless, the Rule itself promotes improved communication and encourages the development of this practice as a benefit to us all.

NEXT STEPS: This proposal is a draft, subject to modification and revision. As stated previously, this proposal has been approved by the Judges, but it is with the understanding that the Bar will now have the opportunity for input before submission to the Supreme Court's Local Rule Advisory Committee and, thereafter, if approved, to the Supreme Court. To the extent possible, I am happy to appear before any of your committees to answer questions or further clarify the proposal. I thank you in advance for your consideration.

Peter D. Blanc, Circuit Judge

EXHIBIT 2

as prosecutors, can discharge their obligations without fear of reprisal or threats of litigation from disgruntled parties. In the prior appeal in this case, this Court found that Appellant's proceeding before the JQC "was a civil proceeding akin to a criminal prosecution because it sought to punish [Appellant] for alleged unethical actions, and it was initiated and prosecuted by a state actor." *Watson v. Florida Judicial Qualifications Commission*, 618 Fed. Appx. 487, 490 (11th Cir. 2015).

Absolute or quasi-judicial immunity does not turn on an official's rank or title, but rather on the function that official performs. After reasoned analysis, the District Court concluded that: (1) the JQC functions as a quasi-judicial agency; (2) disgruntled judges who are disappointed in the outcome of JQC proceedings are just as likely as any other litigant to pursue claims against the JQC's members; and (3) the JQC has sufficient safeguards in place to protect against unconstitutional conduct by its members.

Thus, the District Court properly held that the JQC's members are entitled to absolute immunity (except for the JQC's Executive Director, whom the District found was entitled to qualified immunity).

ARGUMENT

I. THE DISTRICT COURT PROPERLY DETERMINED THAT THE JQC DEFENDANTS ARE ENTITLED TO ABSOLUTE IMMUNITY

The District Court properly found that all of the JQC Defendants, with the exception of Brooke Kennerly, who served as Executive Director of the JQC, are

EXHIBIT 3

unauthorized practice of law, the court cited *Carroll* and granted summary judgment in favor of The Florida Bar); *Solomon v. Sup. Ct. of Fla.,* No. 03-7002, 2003 WL 1873939 (D.C. Cir. Apr. 2, 2003) (members of Florida Bar disciplinary committee act as agents of the Florida Supreme Court and are entitled to absolute immunity from damages for their judicial acts); *Solomon v. The Fla. Sup. Ct.,* 816 A.2d 788, 789 (D.C. 2002) (same); *Cole v. Owens,* 766 So. 2d 287, 288 (Fla. 4th DCA 2000) (staff attorneys for the Florida Bar, as duly authorized agents of the Bar, have absolute immunity for their official actions); *Kee v. Baily,* 634 So. 2d 654 (Fla. 3d DCA 1994) ("The Florida Bar and its employees act as an official arm of the Florida Supreme Court and in such capacity enjoy absolute immunity for actions taken within the scope of their duties"); *Mueller v. The Fla. Bar*, 390 So. 2d 449, 452-53 (Fla. 4th DCA 1980) (rule of prosecutorial immunity insulated state bar and its agent acting within scope of office from liability for malicious prosecution in an action brought against them by a member of bar against whom a grievance had been filed, regardless of motive for that filing and without regard to whether or not there was probable cause for such filing).

Such case law is in accordance with the law of the United States Supreme Court that extends the doctrine of absolute immunity, which has traditionally protected judges and prosecutors, to administrative officials involved in quasi-judicial or quasi-prosecutorial functions. *Butz v. Economou*, 438 U.S. 478, 511-17

EXHIBIT 4

MALICE IN LAW

Malice in law. The intentional doing of a wrongful act without just cause or excuse. Lyons v. St. Joseph Belt Ry. Co., 232 Mo.App. 575, 84 S.W.2d 933, 944. Implied, inferred, or legal malice. As distinguished from malice in fact, it is presumed from tortious acts, deliberately done without just cause, excuse, or justification, which are reasonably calculated to injure another or others. *See also* Legal malice. *Compare* Malice in fact.

Malice prepense. Malice aforethought; deliberate, predetermined malice.

Malicious /məlíshəs/. Characterized by, or involving, malice; having, or done with, wicked, evil or mischievous intentions or motives; wrongful and done intentionally without just cause or excuse or as a result of ill will. *See also* Malice; Willful.

Malicious abandonment. In criminal law, the desertion of a wife or husband without just cause.

Malicious abuse of legal process. Wilfully misapplying court process to obtain object not intended by law. The wilful misuse or misapplication of process to accomplish a purpose not warranted or commanded by the writ. The malicious perversion of a regularly issued process, whereby a result not lawfully or properly obtained on a writ is secured; not including cases where the process was procured maliciously but not abused or misused after its issuance. The employment of process where probable cause exists but where the intent is to secure objects other than those intended by law. Hughes v. Swinehart, D.C.Pa., 376 F.Supp. 650, 652. The tort of "malicious abuse of process" requires a perversion of court process to accomplish some end which the process was not designed to accomplish, and does not arise from a regular use of process, even with ulterior motives. Capital Elec. Co. v. Cristaldi, D.C.Md., 157 F.Supp. 646, 648. *See also* Abuse *(Process)*; Malicious prosecution. *Compare* Malicious use of process.

Malicious accusation. Procuring accusation or prosecution of another from improper motive and without probable cause. *See* Malicious prosecution.

Malicious act. A wrongful act intentionally done without legal justification or excuse; an unlawful act done willfully or purposely to injure another.

Malicious arrest. *See* Malicious prosecution.

Malicious assault with deadly weapon. Form of aggravated assault in which the victim is threatened with death or serious bodily injury from the defendant's use of a deadly weapon. The element of malice can be inferred from the nature of the assault and the selection of the weapon.

Malicious injury. An injury committed against a person at the prompting of malice or hatred towards him, or done spitefully or wantonly. The willful doing of an act with knowledge it is liable to injure another and regardless of consequences. Injury involving element of fraud, violence, wantonness and willfulness, or criminality. An injury that is intentional, wrongful and without just cause or excuse, even in the absence of hatred, spite or ill will. Panchula v. Kaya, 59 Ohio App. 556, 18 N.E.2d 1003, 1005, 13 O.O. 301. Punitive damages may be awarded to plaintiff for such injury.

Malicious killing. Any intentional killing without legal justification or excuse and not within the realm of voluntary manslaughter. State v. Cope, 78 Ohio App. 429, 67 N.E.2d 912, 920, 34 O.O. 171.

Maliciously. Imports a wish to vex, annoy, or injure another, or an intent to do a wrongful act, and may consist in direct intention to injure, or in reckless disregard of another's rights. *See also* Malice; Malicious.

Malicious mischief. Willful destruction of personal property of another, from actual ill will or resentment towards its owner or possessor. Though only a trespass at the common law, it is now a crime in most states.

Malicious motive. Any motive for instituting a prosecution, other than a desire to bring an offender to justice. Lounder v. Jacobs, 119 Colo. 511, 205 P.2d 236, 238. Malicious prosecution.

Malicious prosecution. One begun in malice without probable cause to believe the charges can be sustained. An action for damages brought by person, against whom civil suit or criminal prosecution has been instituted maliciously and without probable cause, after termination of prosecution of such suit in favor of person claiming damages. Beaurline v. Smith, Tex.Civ.App., 426 S.W.2d 295, 298.

One who takes an active part in the initiation, continuation or procurement of civil proceedings against another is subject to liability to the other for wrongful civil proceedings if: (a) he acts without probable cause, and primarily for a purpose other than that of securing the proper adjudication of the claim in which the proceedings are based, and (b) except when they are ex parte, the proceedings have terminated in favor of the person against whom they are brought. Restatement, Second, Torts, § 674.

Elements of a cause of action for malicious prosecution are: (1) commencement of prosecution of proceedings against present plaintiff; (2) its legal causation by present defendant; (3) its termination in favor of present plaintiff; (4) absence of probable cause for such proceedings; (5) presence of malice therein; and (6) damage to plaintiff by reason thereof. Palermo v. Stockham, Mo.App., 525 S.W.2d 758, 764.

In addition to the tort remedy for malicious criminal proceedings, the majority of states also permit causes of actions for malicious institution of civil actions.

See also Advice of counsel; False arrest; Vexatious proceeding.

Malicious trespass. The act of one who maliciously mischievously injures or causes to be injured any property of another or any public property.

Malicious use of process. Utilization of process to intimidate, oppress or punish a person against whom it is sued out. Austin Liquor Mart, Inc. v. Department of Revenue, 18 Ill.App.3d 894, 310 N.E.2d 719, 728. Includes where plaintiff proceeds maliciously and without probable cause to execute object which law intends process to

Andover, MA 01810

02148

Zwicker & Associates, P.C.
Attorneys At Law

EXHIBIT 5(a)

76738-16A 8***AUTO**MIXED AADC 350
Evan S Gutman
1675 NW 4th Ave
Apt 511
Boca Raton FL 33432-3505

THIS LAW FIRM EMPLOYS ONE OR MORE ATTORNEYS ADMITTED TO PRACTICE IN THE FOLLOWING STATES:

ALASKA
ARIZONA
CALIFORNIA
COLORADO
CONNECTICUT
FLORIDA
GEORGIA
IDAHO
ILLINOIS
INDIANA
KENTUCKY
MARYLAND
MASSACHUSETTS
MICHIGAN
MINNESOTA
NEW HAMPSHIRE
NEW JERSEY
NEW YORK
NORTH CAROLINA
OHIO
OREGON
PENNSYLVANIA
RHODE ISLAND
SOUTH CAROLINA
TENNESSEE
TEXAS
VIRGINIA
WASHINGTON
WEST VIRGINIA
DISTRICT OF COLUMBIA

Personal and Confidential

07/16/2019
File ID: 5511250
Creditor: Discover Bank
Account number ending in: 0936[1,2,3,4] Balance: $16,618.87

Dear EVAN S GUTMAN:

This law firm has been retained by the above-named creditor to assist it in the collection of the funds you owe on the above-referenced account. Your balance is $16,618.87.

As of this time, no attorney with this firm has personally reviewed the particular circumstances of your account. This letter is not a threat of suit and should not be construed to be a threat of suit.

Please note that unless you dispute said debt, or any portion thereof, within thirty (30) days after your receipt of this letter, this firm shall assume the validity of this debt. Upon your written notification within such thirty-day period that this debt, or any portion thereof, is disputed, this firm shall obtain verification of the debt or a copy of a judgment, if any, against you and mail you a copy of such verification or judgment. Furthermore, upon your written request within said thirty-day period, this firm shall provide you with the name and address of the original creditor, if different from the current creditor.

Please contact this firm to discuss repayment with one of our non-attorney account representatives.

Sincerely,

ZWICKER & ASSOCIATES, P.C.

[1] This firm is a debt collector.
[2] This firm is attempting to collect a debt and any information obtained will be used for that purpose.
[3] Important notices appear on the back of this letter. Please read them as they may affect your rights.
[4] Colorado residents: please read important notice on the back of this letter.

IMPORTANT NOTICES **EXHIBIT 5(b)**

OFFICE HOURS: Monday through Thursday 8:00 AM – 9:00 PM, and Friday 8:00 AM – 7:00 PM. (All times are Eastern).

We are required under state law to notify consumers of the following rights. This list does not contain a complete list of the rights consumers have under state and federal law.

California – The state Rosenthal Fair Debt Collection Practices Act and the federal Fair Debt Collection Practices Act require that, except under unusual circumstances, collectors may not contact you before 8 a.m. or after 9 p.m. They may not harass you by using threats of violence or arrest or by using obscene language. Collectors may not use false or misleading statements or call you at work if they know or have reason to know that you may not receive personal calls at work. For the most part, collectors may not tell another person, other than your attorney or spouse, about your debt. Collectors may contact another person to confirm your location or enforce a judgment. For more information about debt collection activities, you may contact the Federal Trade Commission at 1-877-FTC-HELP or www.ftc.gov.

California/Utah - As required by law, you are hereby notified that a negative credit report reflecting on your credit record may be submitted to a credit reporting agency if you fail to fulfill the terms of your credit obligations.

Colorado - The following language is required by Colorado state law to be contained in the initial written communication sent to Colorado consumers:

FOR INFORMATION ABOUT THE COLORADO FAIR DEBT COLLECTION PRACTICES ACT, SEE WWW.COAG.GOV/CAR. A CONSUMER HAS THE RIGHT TO REQUEST IN WRITING THAT A DEBT COLLECTOR OR COLLECTION AGENCY CEASE FURTHER COMMUNICATION WITH THE CONSUMER. A WRITTEN REQUEST TO CEASE COMMUNICATION WILL NOT PROHIBIT THE DEBT COLLECTOR OR COLLECTION AGENCY FROM TAKING ANY OTHER ACTION AUTHORIZED BY LAW TO COLLECT THE DEBT.

Colorado residents may contact our office by telephone at 800-370-2251 during the office hours stated above.

Massachusetts – Massachusetts residents may contact our office by telephone at 800-370-2251 during the office hours stated above. The business address is: 80 Minuteman Road, Andover, Massachusetts 01810-1008. Massachusetts Law requires that we inform you:

NOTICE OF IMPORTANT RIGHTS

YOU HAVE THE RIGHT TO MAKE A WRITTEN OR ORAL REQUEST THAT TELEPHONE CALLS REGARDING YOUR DEBT NOT BE MADE TO YOU AT YOUR PLACE OF EMPLOYMENT. ANY SUCH ORAL REQUEST WILL BE VALID FOR ONLY TEN DAYS UNLESS YOU PROVIDE WRITTEN CONFIRMATION OF THE REQUEST POSTMARKED OR DELIVERED WITHIN SEVEN DAYS OF SUCH REQUEST. YOU MAY TERMINATE THIS REQUEST BY WRITING TO THE CREDITOR.

To all consumers: Federal law or other state laws may also provide you with similar or even greater rights.

Authorizing us by phone to set up payments on your account

If you and this firm agree that you can make a series of monthly payments on your account in specified amounts, you can authorize this firm by phone to initiate those payments electronically from your bank account. By (1) calling us at 800-370-2251 (NY City and Yonkers Residents Only Call 877-368-4531) or taking a call from us; (2) specifying the amounts and dates of payments which you would like to make; (3) identifying the bank account of yours which you wish to use to make the payments; and (4) electronically signing an Authorization, you authorize us to initiate payments from your account in the amounts and on the dates that you specify (and, if necessary, to electronically correct any erroneous debits or credits). You understand that your bank may charge you a fee for any unsuccessful payment and that we have no liability for any such fee. All ACH transactions that you authorize must comply with all applicable law and ACH network rules. **YOU ARE NOT REQUIRED TO ARRANGE FOR OR AUTHORIZE ANY PAYMENTS OF THIS TYPE. If you choose to provide an authorization, you can cancel it by calling us toll free at 800-370-2251 (NY City and Yonkers Residents Only Call 877-368-4531) or sending written notice to us at Zwicker & Associates, P.C., 80 Minuteman Road, Andover, MA 01810. Any cancellation request should be received by us at least three business days before the date on which you want the cancellation to be effective.** Your authorization in no way limits any right you may have under federal law to stop payment of a preauthorized electronic transfer by contacting your financial institution.

New York City Department of Consumer Affairs License No. 2045431-DCA: 80 Minuteman Road, Andover, MA 01810
New York City Department of Consumer Affairs License No. 2045486-DCA: 2300 Litton Lane, Suite 200, Hebron, KY 41048
New York City Department of Consumer Affairs License No. 2048466-DCA: 1225 West Washington St., Suite 110, Tempe, AZ 85281

EXHIBIT 6(a)

IN THE CIRCUIT COURT
IN AND FOR PALM BEACH
COUNTY, FLORIDA
CASE NO.
DIVISION:

DISCOVER BANK,
Plaintiff,

Vs.

EVAN S GUTMAN
Defendant(s)

COMPLAINT

The Plaintiff, DISCOVER BANK, (hereinafter "Plaintiff") sues the Defendant(s), EVAN S GUTMAN (hereinafter "Defendant(s)") and says:

1. Plaintiff is a FDIC-insured Delaware State Bank.

2. That this is an action for damages that does exceed $15,000.00, exclusive of interest and court costs..

BREACH OF CONTRACT

3. This action is based upon a Credit Account Agreement entered into by the Defendant(s) with the Plaintiff.

4. The Defendant(s) used or authorized the use of the Account to incur charges, or receive cash advances, or kept the Account open for future use, and by such action assumed the obligations of the terms and conditions of the Account. (A record of the governing terms and conditions of the Credit Account Agreement are attached and incorporated as Exhibit A).

5. A record of the account statement is attached. *See* Exhibit B.

6. The Defendant(s) subsequently defaulted on the terms and conditions of the Account and the Plaintiff accelerated the full balance due and owing on the Account.

7. The Defendant(s) owes the Plaintiff $16,618.87.

8. Plaintiff has performed all conditions precedent to bringing this action, or the same have been waived by the Defendant(s).

EXHIBIT 6(b)

WHEREFORE, Plaintiff demands judgment for damages, plus post-judgment interest, and costs against Defendant(s).

ZWICKER & ASSOCIATES, P.C.

/s/ Zoran D. Jovanovich, Esq.
□ ZORAN D. JOVANOVICH, ESQ.
FLORIDA BAR #189730
□ ERIKA DUCHARME, ESQ.
FLORIDA BAR #0092360
□ ROBERT G. DUNN, ESQ.
FLORIDA BAR #100709
□ JESSICA L. MONTES, ESQ.
FLORIDA BAR #47522
ZWICKER & ASSOCIATES, P.C.
A Law Firm Engaged in Debt Collection
ATTORNEY FOR PLAINTIFF
700 W. HILLSBORO BLVD.
BUILDING 2; SUITE 201
DEERFIELD BEACH, FL 33441
Phone: (954)481-0851
Fax: (954)481-0854
Email: SOUTHFLALITIGATION@ZWICKERPC.COM

EXHIBIT 7(a)

IN THE CIRCUIT COURT OF THE FIFTEENTH JUDICIAL CIRCUIT
IN AND FOR PALM BEACH COUNTY, FLORIDA
CIVIL DIVISION

DISCOVER BANK

Plaintiff

v.

EVAN S GUTMAN

Defendant

CASE NUMBER:
50-2019-CA-013570-XXXX-MB

DEFENDANT'S ANSWER

ANSWER

I, Evan Gutman, Answer the Complaint as follows:

1. Defendant lacks sufficient knowledge to Admit or Deny Paragraph (1) as it does not pertain to Defendant.
2. Defendant Admits Paragraph (2) in part and Denies Paragraph (2) in part. Defendant Admits this is an action. Defendant Admits Plaintiff seeks alleged damages exceeding $ 15,000.00. Defendant Denies any liability for any alleged damages, based on Affirmative Defenses set forth herein, and therefore Denies characterization of such as "damages" without stating such are only "alleged."
3. Defendant lacks sufficient knowledge to Admit or Deny Paragraph (3).
4. Defendant lacks sufficient knowledge to Admit or Deny Paragraph (4)
5. Defendant lacks sufficient knowledge to Admit or Deny Paragraph (5).
6. Defendant Denies Paragraph (6) based upon Affirmative Defenses set forth below.
7. Defendant Denies Paragraph (7).
8. Defendant lacks sufficient knowledge to Admit or Deny Paragraph (8), and Denies any Waiver.

EXHIBIT 7(b)

AFFIRMATIVE DEFENSES

1. As FIRST Affirmative Defense, Defendant asserts the alleged credit card agreement is an unenforceable contract of adhesion containing multiple provisions VOID as against public policy, which are so numerous and seriously egregious they can not fairly be severed from the alleged contract as a whole.

2. As SECOND Affirmative Defense, Defendant asserts Discover Bank has engaged in Unfair and Deceptive Acts and Practices, including but not limited to including within an unenforceable contract of adhesion multiple provisions VOID as against public policy, which are so numerous and seriously egregious they can not fairly be severed from the alleged contract as a whole.

3. As THIRD Affirmative Defense, Defendant asserts the law firm of Zwicker & Associates, P.C. in its' legal representation of Discover Bank, violated Florida State Bar Rule of Professional Conduct 4-1.3. Specifically, in the law firm's letter of July 16, 2019 (Exhibit 1 attached), **the law firm represented on law firm letterhead, that they were Attorneys at Law, retained as a law firm**, assisting their client to collect a debt asserted as legally owed, **as a debt collector law firm**. Defendant has circled and bracketed the appropriate sections of Zwicker's letter. However, the law firm then expressly stated as follows (emphasis added):

> **"As of this time, no attorney with this firm has personally reviewed the particular circumstances of your account."**

Florida State Bar Rule of Professional Conduct 4-1.3 (See Exhibit 2) expressly requires that a lawyer "shall act with reasonable diligence," and **the letter of Zwicker & Associates openly asserts no attorney of the firm reviewed the matter before a legal letter was sent out and accordingly, such reasonable diligence as required by the Florida State Bar was not performed.**

4. As FOURTH Affirmative Defense, Defendant asserts in its' legal representation of Discover Bank, **the law firm of Zwicker & Associates, P.C. engaged in Unfair and Deceptive Acts and Practices by violating Florida State Bar Rule of Professional Conduct 4-1.3.** (See Exhibit 2)

5. As FIFTH Affirmative Defense, Defendant asserts Estoppel.

6. As SIXTH Affirmative Defense, Defendant asserts the Complaint fails to state a cause of action for reasons including but not limited to the fact it does not identify any Account Number at all, upon which alleged damages are asserted.

7. As SEVENTH Affirmative Defense, Defendant asserts Unclean Hands.

WHEREFORE, having fully answered Plaintiff's Complaint, Defendant requests Dismissal With Prejudice.

Dated this 1st day of November, 2019.

Evan Gutman CPA, JD
1675 NW 4th Avenue, #511
Boca Raton, FL 33432
561-990-7440

EXHIBIT 8(a)

IN THE CIRCUIT COURT OF THE FIFTEENTH JUDICIAL CIRCUIT
IN AND FOR PALM BEACH COUNTY, FLORIDA

Local Rule No. 4*

IN RE: UNIFORM MOTION CALENDAR **AND**
SPECIALLY SET HEARINGS
_____:

Pursuant to the authority conferred by Rule 2.215(e), Fla. R. Jud. Admin., it is **ORDERED** as follows:

1. Circuit and **County Court** judges in each division shall conduct a Uniform Motion Calendar on days and at a time specified by the judges of the division.

2. Prior to **filing and serving a Notice of Hearing for a** Uniform Motion Calendar **hearing or a specially set hearing**, the attorney noticing the motion for hearing shall attempt to resolve the matter and shall certify the good faith attempt to resolve.[1]

3. The term "attempt to resolve the matter" in paragraph 2 shall require counsel to make reasonable efforts to speak to one another (in person or via telephone) and engage in reasonable compromises in a genuine effort to resolve or narrow the disputes before seeking Court intervention.[2] All parties are to act courteously and professionally in the attempted resolution of the disputes prior to **filing and serving a Notice of Hearing including responding timely to counsel who initiated the attempt to resolve the matter.**

4. All notices of hearings for matters scheduled on the Uniform Motion Calendar **or on a special setting** shall set forth directly above the signature block, the below certifications

---

[1] **The requirements of this rule do not apply when the moving party or non-moving party is pro se.**

[2] **The requirements of this rule do not preclude the use of e-mail or other written communication in an effort to resolve a pending motion. Compliance with this rule, including "making reasonable efforts to speak to one another" in person or by telephone before filing and serving a Notice of Hearing is required when e-mail or other written communication efforts are unsuccessful.**

without modification and shall designate with a check mark or other marking the specific certification**(s) that apply**:

_____ ***Movant's attorney has spoken in person or by telephone*** *with the* ***attorney(s)*** *for all parties who may be affected by the relief sought in the motion in a good faith effort to resolve or narrow the issues raised.*

_____ ***Movant's attorney has attempted to speak in person or by telephone with the attorney(s) for all parties who may be affected by the relief sought in the motion.***

_____ ***One or more of the parties who may be affected by the motion are self represented.***

5. Failure to make a good faith attempt at resolving the issues may, in the Court's discretion, result in the motion being stricken from the Uniform Motion Calendar **or specially set hearing** and/or the imposition of sanctions. The Court may waive the good faith attempt at resolving the issues in appropriate circumstances.

6. **The attorney attending the hearing on behalf of the movant, as well as any attorney who is covering the hearing for another attorney, shall be prepared to specify to the Court the efforts made to confer when the parties' attorneys have not spoken.**

7. To the extent **reasonable, the movant's attorney** shall advise the Court in advance of the hearing of cancellation, or resolution of some or all of the issues raised by the motion.

8. **On Uniform Motion Calendar**, hearings shall be limited to ten minutes per case. If two parties, each side shall be allotted five minutes. If more than two parties, the time shall be allocated by the Court. The ten-minute time limitation shall include the time necessary for the Court to review documents, memoranda, case authority, etc.

9. The moving party must furnish the Court with a copy of the motion to be heard together with a copy of the notice of hearing. Also, all parties shall furnish the Court with copies of all **relevant** documents, pleadings and case authority which they wish the Court to consider.

10. Except in the criminal division, counsel shall not make appointments with the Court's judicial assistant but shall **file and serve** opposing counsel **with a Notice of Hearing** pursuant to the applicable rules of procedure, and the Standards of Professional Courtesy and Civility **(the "Standards"),** which have been endorsed by the judges of the Fifteenth Judicial Circuit. **The Standards are available on the Fifteenth Judicial Circuit and the Palm Beach County Bar Association websites.**

11. **Cases on the uniform motion calendar will be called** for hearing in the order in which **they appear on the sign-in sheet for that day**. Failure of any party to appear at the time

set for the commencement of the calendar shall not prevent a party from proceeding with the hearing. If a party called for hearing chooses to wait for an absent party, the matter will be passed over but shall retain its position on that day's calendar.

DONE and **SIGNED** in Chambers at West Palm Beach, Palm Beach County, Florida, this 18th day of July, 2017.

Krista Marx
Chief Judge

*Further amends the amendments to Local Rule 4 approved in 2015. Amendments (in bold) approved by the Supreme Court of Florida, June 29, 2017.

FLORIDA SUPREME COURT EXHIBIT 9(a)

IN THE CIRCUIT COURT OF THE FIFTEENTH JUDICIAL CIRCUIT
IN AND FOR PALM BEACH COUNTY, FLORIDA
CIVIL DIVISION

DISCOVER BANK,	CASE NUMBER:
Plaintiff	50-2019-CA-013570-XXXX-MB
v.	
EVAN S. GUTMAN,	**DEFENDANT'S MOTION TO DISQUALIFY JUDGE G. JOSEPH CURLEY JR. and ALL OTHER PALM BEACH COUNTY JUDGES; STAY ARBITRATION and STAY PROCEEDINGS PENDING FLORIDA SUPREME COURT DECISION ON MOTION FOR DECLARATORY JUDGMENT ATTACHED**
Defendant, Pro Se	

"Without publicity, all other checks are insufficient, in comparison of publicity, all other checks are of small account. Recordation, appeal, whatever other institutions might present themselves in the character of checks, would be found to operate rather as cloaks than checks; in reality, as checks only in appearances."

In Re Oliver, 333 U.S. 257, 271 (1948)

"Much of a man's lifetime is spent in forming his character. He is made what he is as external forces interact with inherited qualities and accumulating experience. At some turning point the balance shifts: the individual, now comes into his own, brings his character to bear upon the external world."

August Heckscher, Woodrow Wilson - A Biography, Pg 275, Charles Scribner's Sons (1991)

"So that, in every respect, a gentle government is preferable, and gives the greatest security to the sovereign as well as to the subject."

David Hume, "That Politics May Be Reduced to a Science", Essays Moral Political and Literary (Circa 1741)

"The time was 1960. The place was Cherry Hills Country Club. The event was the U.S. Open. On the fourth round of that tournament, I tried a shot that I'd missed three times in three rounds. I tried it again not because I'd failed - or because I like failure - but because I was convinced that it was the shot necessary to win the tournament. A bold shot? Yes. But, you must play boldly to win. My whole philosophy has been based on winning golf tournaments, not on finishing a careful fifth, or seventh, or tenth. A reckless shot? No. . . . For boldness does not mean "recklessness" to me. Rather it involves a considered confidence: I know I'm going to make the shot that seems reckless to others. I also know the value of the risk involved. . . . But perhaps it was not until the U.S. Open at Cherry Hills that I put it all together, philosophically as well as physically. For not until that summer day in 1960 did it become apparent to me how boldness might influence not just a hole, but an entire round, an entire tournament, and even an entire golfing career."

From the book, "GO FOR BROKE" by ARNOLD PALMER (1973)

MOTION

Defendant Evan Gutman, JD, CPA upon having been DENIED his legitimate Due Process Right to **AT LEAST be Heard** by Circuit Judge G. Joseph Curley Jr., now humbly MOVES the Court for an Order Disqualifying Judge G. Joseph Curley Jr. and **ALL** other Palm Beach County Judges, on grounds he can not receive a Fair and Impartial adjudication by any Palm Beach County Judge for reasons stated herein. Very "Uncivil," and "Impolite" on the part of Judge G. Joseph Curley, Jr., thereby violating the "Spirit" of this Court's so-called "*Cherished*" Rule 4. Nevertheless, it is fairly conceded since Judge Curley will now likely be credited as the precise Judge responsible for the demise of this Court's **"IMMORAL" Rule 4**, he will have served a noble purpose in furthering Due Process rights of Pro Se Litigants. And he will be recognized as contributing to crushing any semblance of respect for Rule 4. An immoral Rule, which has stained the County Judiciary for years by impeding the ability of Brave, Noble members of the Florida State Bar to zealously represent their client's interests.

Concurrently, Defendant requests Arbitration Ordered by Judge Curley, who DENIED Defendant's Due Process Rights to be Heard be STAYED; and these proceedings in their entirety be STAYED, pending the Florida State Supreme Court's decision on the attached Motion for Declaratory Judgment (Exhibit 1) sent to the Florida Supreme Court for filing this same day, pursuant to its **Original Jurisdiction**. A ruling on that Motion is needed for this Court to rule on the issue of Judicial Disqualification because matters herein mandating Judicial Disqualification are issues this Court lacks the Jurisdiction to rule upon.

ARGUMENT

Defendant is constitutionally entitled to a fair trial in a fair tribunal. See In Re Murchison, 349 U.S. 133, 136 (1955), Tumey v Ohio, 273 U.S. 510, 532 (1927). In Murchison, supra, the Court wrote (emphasis added):

> "A fair trial in a fair tribunal is a basic requirement of due process. Fairness of course requires an absence of actual bias in the trial of cases. But our system of law has always **endeavored to prevent even the probability of unfairness**. To this end no man can be a judge in his own case and no man is permitted to try cases where he has an interest in the outcome. That interest cannot be defined with precision. Circumstances and relationships must be considered. This Court has said, however, that "**every procedure which would offer a possible temptation** to the average man as a judge . . . not to hold the balance nice, clear and true between the State and the accused, **denies the latter due process of law**." Tumey v Ohio, 273 U.S. 510, 532."

Thus, under Murchison, as well as the time-honored Tumey v Ohio, 273 U.S. 510 (1927) cited in Murchison, a fair trial requires an endeavor to prevent **"even the probability of unfairness**." In addition, "**every procedure which would offer a possible temptation . . . not to hold the balance nice, clear and true**" denies due process. Defendant has identified four issues, resulting in the balance not being held "nice, clear and true." Specifically, Defendant can not receive a fair adjudication for the following four reasons:

1. Florida Rule of Judicial Administration 2.215 unconstitutionally violates the Due Process and Equal Protection Clauses of the 14th Amendment to the U.S. Constitution, on the grounds it substantively deprives litigants in all cases in Florida, both Civil and Criminal, of the right to a fair and impartial adjudication by a **Fully Independent Thinking** Trial Court Judge, not subjected to Undue Influence. The Rule unconstitutionally vests virtually **Unbridled** and **Dictatorial Power within one Chief Judge** of each County, who then has virtually total power and control over all other Judges in that County, including but not limited to deciding which cases they adjudicate, and declaring them in "neglect of duty" if they fail to comply with any of the Chief Judge's directives. The Rule creates **Two Classes of Trial Court Judges** with one Class having virtually total control over the Subservient Class, even though both are duly Elected or Appointed, and the Subservient Class constitutes the majority of Judges.

2. Palm Beach County Court Rule 4 unconstitutionally violates the Due Process and Equal Protection Clauses of the 14th Amendment to the U.S. Constitution, on the ground it deprives Pro Se Litigants of a fair and impartial adjudication by totally excluding them from its contours, provisions, protections and penalties. The Rule is specifically designed to provide an inferior quality of justice to Pro Se Litigants, by treating them as an inferior class compared to litigants represented by attorneys, thereby exemplifying the existence of a marked judicial animus against Pro Se litigants in order to unconstitutionally favor the interests of well-connected Attorneys.

3. The extension of Absolute Immunity **for commission of Malicious Acts to Members of the Judicial Qualifications Commission (JQC) acting in a Non-Judicial capacity** and also to certain members of the Florida State Bar who are not even Judges at all, in the case of Laura M. Watson v Florida Judicial Qualifications Commission, No. 17-13940 (11th Cir. Fed. Ct. of Appeals, August 15, 2018) unconstitutionally infringes upon the Due Process rights of a Pro Se litigant to receive a fair and impartial adjudication in every single Florida case, both Civil and Criminal, which involves a Pro Se Litigant. This occurs because it diminishes the ability of duly elected Trial Court Judges to think Independently and fairly decide issues, because they are unduly influenced, subjugated and neutralized in favor of potentially and/or possibly **"Malicious" goals and interests of the JQC** and certain members of the Florida State Bar. The impact is that duly elected and appointed **Trial Court Judges no longer have full control over the judicial decision-making process in their cases, due to fear of maintaining their own professional position on the bench.**

4. The lack of Uniformity in court rules between judges, critical to equal application of the laws, **evidenced by varying Divisional Rules established on a haphazard arbitrary basis** by individual Judges violates a litigant's right to due process and equal protection in violation of the 14th Amendment to the U.S. Constitution. Similarly, the lack of clearly defined Time limits for critical litigation events violates a litigant's due process and equal protection clause rights. Divisional Rules allowing each individual Judge to unilaterally decide upon the time frames when Oppositions to Motions must be filed; the Font size of filings within their individual Court, and the Number of Pages allowed in a Memorandum of Law result in unequal justice for litigants, the quality of which depends upon the predilections of the Judge assigned. Similarly, rules requiring a hearing be scheduled just to obtain a ruling on a motion; along with distinctions between how Pro Se litigants and licensed attorneys are required to schedule hearings, violate the Due Process and Equal Protection Clauses.

In this case, on September 13, 2020, Defendant filed a Motion to Disqualify, Judge Curley's predecessor, Circuit Judge Cymonie Rowe who was handling the case at the time. That motion was based in large part upon the fact Plaintiff's predecessor Counsel, Zwicker and Associates, P.C. (now Substituted out of the case) substantively succeeded in Seizing Control of certain Judicial Duties pertaining to the setting of hearing dates that only the Court was entitled to perform. Plaintiff sent a courtesy copy of the Motion to Disqualify to Chief Judge Krista Marx. The next day on September 14, 2020, Judge Rowe denied the Motion to Disqualify (Exhibit 2). However, at the Hearing, she then also Denied Plaintiff's

Amended Motion for Summary Judgment (Exhibit 3), thereby providing Defendant with a **Massive Win** in the case. Ten days later on September 24, at another Hearing, Judge Rowe granted Defendant's Motion for Leave to File a Counterclaim, which included Punitive Damages (Exhibit 4), thereby providing Defendant with **another Massive Win** in the case. Honorable Judge Rowe's rulings at the two hearings in favor of Defendant dramatically shifted the balance of power in the case. As a result of the highly-charged events of September 13 - 24, in 2020, the entire tenor of the case changed and Discover Bank, along with its Debt Collector attorneys, (the "HUNTERS") had become the "HUNTED" within the context of litigation. Those same events **possibly and potentially** established Honorable Judge Rowe as a future Prominent Jurist within the American Judiciary. Plaintiff then predictably discharged their attorneys and hired new counsel.

On October 7, 2020, Chief Judge Krista Marx sent a letter to Defendant (Exhibit 5) responding to Defendant's submission of September 13, 2020. As shown by Exhibit 5, the letter of Chief Judge Marx states in part as follows:

> "As the Chief Judge, I am unable to review the correctness of a decision reached by another judge. I cannot comment or intercede in the proceedings and I do not sit in an appellate capacity."

Less than one month after her letter of October 7, 2020, on November 5, 2020, Chief Judge Krista Marx then reassigned Judge Rowe from the Civil Division to the Juvenile Division. Thus, the Judge who had rendered **two monumental rulings in Defendant's favor** was removed from the case. Judge Curley was assigned as the new Judge.

Defendant does not currently know whether Judge Marx's decision to reassign Judge Rowe was based in whole or part upon the two monumental rulings she rendered in Defendant's favor. Nevertheless, the close proximity in time between the Chief Judge's letter to Defendant and the reassignment raises the matter as a justiciable issue, worthy of inquiry.

Obviously, if the reassignment was related to **Judge Rowe's rulings against a Major National Bank**, then Chief Judge Marx engaged in the precise act of interceding in the litgation, notwithstanding her disingenuous assertion to the contrary. Ultimately, the only two people who may know whether the decision to reassign Judge Rowe was based in part upon matters delineated herein, are Chief Judge Marx and Judge Rowe. It may be Judge Rowe communicated an interest in being assigned to the Juvenile division and the reassignment was unrelated to this litigation. On the other hand, certain Judges might view reassignment from the Civil division to the Juvenile division as a demotion. It depends on the individual Judge. In either case, it is irrefutable **Judge Rowe's reassignment had a massive impact upon this litigation**. It is also incontestable, a Chief Judge has logistical power to influence trial court decision-making, by virtue of the unilateral power to reassign Judges at any point in time at their pleasure. Thus, to a large extent Florida's duly elected Trial Court Judges are substantively not much more than "PAWNS" of the Chief Judge in each Circuit.

Several months after reassigning Judge Rowe; Chief Judge Krista Marx announced her retirement effective July, 2021, after more than two decades on the bench.

CIRCUIT JUDGE G. JOSEPH CURLEY'S So-Called "Hearing"

The impact of Chief Judge Marx's reassignment of Judge Rowe, and appointment of Judge G. Joseph Curley, (Judge Rowe's successor) to the case, predictably became apparent at the first hearing (the term "Hearing" used loosely) when Judge Curley, a major proponent of the Court's Immoral and Prejudicial Rule 4, demolished the legitimate due process right of a Pro Se litigant to be heard. The following occurred.

The Hearing was scheduled by Court Order to begin at **11:00 am**. Defendant signed on to Zoom at approximately **10:53 am** (give or take a few minutes). The computer screen showed a message indicating we were waiting for the host to start the meeting. At

approximately **11:07 am**, not yet having been admitted, Defendant called Judge Curley's chambers and the phone was answered by a person who seemed to be the Judicial Assistant (JA). The JA indicated the Judge was running late and would admit Defendant to the meeting shortly. Defendant politely indicated that was fine. Defendant then turned off his cell phone and remained at the computer screen; because cell phones are supposed to be off during a court hearing. At approximately **11:23 am**, still not yet having been admitted into the Zoom Hearing, (notwithstanding his computer screen indicating he was waiting for the host to admit him), Defendant turned his cell phone back on. Defendant saw an email from Lucille Kilgallon (Defendant understands she is the JA). Her email, sent at approximately **11:16 am**, indicated the Court was waiting for Defendant to join the hearing. Defendant then called the Judge's Chambers a second time at approximately **11:24 am**, but only got an answering machine. Defendant left a voicemail indicating his computer screen showed he was waiting for the host to let him in the Zoom meeting. At approximately **11:26 am**, Defendant sent an email to Lucille stating **"My screen says waiting for hist to start this meeting." (Defendant misspelled "host" as "hist')** (Exhibit 6). At **11:27 am**, Defendant sent another email stating his phone number of 201-400-6459. (Exhibit 7). Defendant then tried to log in to Zoom anew several times, but it indicated that it would not connect at all. This apparently was because the So-Called "Hearing" had ended already. At approximately **11:34 am**, Defendant called the Judge's Chambers a third time. The JA indicated the Judge did not see him in the meeting room and had granted Plaintiff's Motion. Defendant asked if she had told Judge Curley that he called earlier, and the JA confirmed she had done so.

It is not known whether Judge Curley actually did see Defendant in the Zoom meeting room and intentionally did not admit him to the Zoom Hearing; **OR** whether the Judge in error genuinely did not see the Defendant and thus erred in not admitting him; **OR** in the Third Alternative whether there was some type of a genuine computer issue on either side

precluding Defendant from being seen or being present in the meeting room even though his computer screen indicated he was waiting for the host to admit him.

However, what is known is Defendant spoke with the JA at approximately **11:07 a.m.** and so they clearly knew Defendant had timely appeared, contrary to language in the issued Court Order. Also, **the Judge who himself was 15 minutes late in starting the hearing,** waited only 6 minutes for the issue to be resolved, before ruling in Plaintiff's favor. That constitutes a deprivation of Defendant's due process rights. Very "Uncivil" and "Impolite" on the part of Judge Curley. Particularly considering the critical dispositive nature of the subject motion. It is well-known, Courts regularly wait for "well- connected " attorneys or reschedule hearings when legitimate reasonable grounds exist.

Judge Curley's invidious "Uncivil" conduct warrants investigation. Such would likely determine **at best** he made a serious prejudicial error by abusing his discretion, and at worst he engaged in malicious illegal conduct (albeit protected by Absolute Judicial Immunity). Even if Judge Curley's failure to admit Defendant into the Zoom meeting was just an error, he certainly should have allowed more than 6 minutes for the issue to be resolved, particularly considering he was 15 minutes late himself, and Defendant had spoken by phone with his JA when the Judge was 7 minutes late. Lastly, the foregoing facts buttress the argument that Chief Judge Marx's reassignment of Judge Rowe was in fact, related to this litigation.

COUNTY JUDGE SANDRA BOSSO-PARDO'S "DO IT ALL AGAIN" JUDICIAL THEORY

In a "companion" case involving Defendant, on May 18, 2021, County Judge Sandra Boss-Pardo held a hearing on Defendant's Motion for Leave to Amend his Counterclaim to include a claim for Punitive Damages against Citibank, N.A. Case No. **50-2020-CC-005756-XXXX-MB**. Citibank was represented by Florida Attorney Michael Thiel Debski, Esq. The Hearing was scheduled to start at 3:15. After the Judge, Defendant and Mr. Debski were all

signed in on Zoom; Mr. Debski announced that he was waiting for a Court Reporter, who he had hired. In contrast to Judge Curley, in this instance Judge Bosso-Pardo required everyone to wait for about 10 minutes **just for Plaintiff's hired proprietary Court reporter**. After about 10 minutes, with the Court Reporter still not present, the Judge indicated we would proceed. The Judge then asked Defendant to present his Motion. Roughly speaking, Defendant spoke for about 10 minutes or so, in a well-articulated and poised manner, with some short exchanges between Defendant and the Judge.

Almost immediately after Defendant concluded, it was announced Mr. Debski's hired Court Reporter had just shown up. However, Defendant had already fully completed his presentation. Incredulously, Judge Bosso-Pardo indicated the Court Reporter could still proceed and then she had the audacity to request Defendant to briefly summarize his case again. Defendant indicated the concept of "briefly summarizing" that which he had prepared and fully presented was unacceptable. The Judge then indicated Defendant could do it all again. Defendant was exceptionally flustered and totally shocked. Nevertheless, Defendant did his best to give his entire presentation all over again. Defendant indicated numerous times during the "**Do Over**" that he was speaking because the Court Reporter hired by Debski had not been present. Overall, the second presentation, (the only one the Court Reporter would have), was not nearly as poised as the first presentation made by Defendant.

The concept of the Judge requiring a "DO OVER" because the Court Reporter hired by Plaintiff's Counsel was late, was an atrocious assault by the Judge upon notions of Due Process, Fairness and Impartiality. It is also quite possible Mr. Debski orchestrated the entire timing of the Reporter's arrival for the intentional purpose of sabotaging Defendant's presentation. Whether he did so or not, and whether the Judge cooperated regarding such; it is incontestable the concept of requiring a Defendant to do a "DO OVER" violated rudimentary notions of fair play. The precise timing of the court reporter showing up almost

exactly after Defendant completed his presentation was either remarkably "Serendipitous" or Abject Trickery. The Judge should have immediately bounced the court reporter out of the hearing. Defendant suffered Prejudice as a result of these invidious events.

Judge Bosso-Pardo's conduct is relevant though in a different case because Defendant now seeks to Disqualify ALL Palm Beach County Judges. This is due to a systemic pervasive breakdown in judicial application of Procedural Due Process, as a matter of Court rules and policy. Specificially, joint comparison of Judge Curley's approach with Judge Bosso-Pardo indicates a prejudicial judicial perpective as follows. The Court rules against a Pro Se if it can contrive any **"FLIMSY"** excuse to falsely assert a Pro Se shows up late or not at all. In contrast, the Court willingly waits over 10 minutes for a Florida attorney's hired court reporter, even if it prejudices due process rights of a Pro Se.

Approximately one month after the "hearing," Judge Sandra Bosso-Pardo submitted her resignation after approximately 17 years on the bench, effective September 30, 2021.

CONCLUSION

Defendant's research indicates Florida Court Rules do not contain any time deadline of any nature whatsoever, for filing an Opposition to a motion. That abject infirmity in the Court Rules enacted by the State Supreme Court, is then further complicated by the fact, apparently a litigant cannot even obtain a Ruling on a Motion, unless they set a hearing. Thus, the rules provide an incentive for Counsel to intentionally take unfair advantage of the element of "Surprise," by not filing any Opposition, until they can deprive their Opponent of sufficient time to prepare. Such Invidious State Bar and Judicial Policies which take advantage of Impoverished and disadvantaged litigants need to be changed immediately.

Notably, the procedure for setting a hearing has been markedly different for Pro Se litigants compared to Counsel. Consequently, it is Defendant's position the court rules

themselves are basically **"RIGGED"** to frustrate due process and fair adjudications, in favor of "Well-connected attorneys." The concept that a litigant may file a motion and not get any ruling of any nature is entirely incompatible with constitutional notions of due process, equal protection and fair adjudications. It is in fact, **Un-American** and wholly antithetical to the U.S. Constitution. Similarly, the concept an opponent of a motion gets multiple months or over a year to file their Opposition is nonsense. **Accordingly, these matters need to be changed on a Statewide basis**. Only the Florida State Supreme Court, (or the U.S. Supreme Court, if necessary) can do that.

This Court lacks Jurisdiction to rule upon or determine Items # 1, #3 and #4 set forth above, since only the Florida Supreme Court can rule upon the constitutionality of such, in accordance with its "Exclusive Jurisdiction" to regulate the practice of law (subject to U.S. Supreme Court review). This Court probably does have concurrent jurisdiction with the Florida Supreme Court to determine Item #2 above pertaining to Rule 4. However, since all four grounds are already presented to the Florida Supreme Court, Defendant suggests Item #2 not be ruled upon separately by this Court. Accordingly, Defendant requests Arbitration and these proceedings be STAYED pending the Florida Supreme Court's decision on the attached Motion, with further review by the U.S. Supreme Court anticipated, if necessary.

Submitted this 18th day of January, 2022.

Evan Gutman JD, CPA
Member State Bar of Pennsylvania
Member District of Columbia Bar
Admitted to Bar of Federal Ninth Circuit Court of Appeals
Admitted to Bar of Federal Sixth Circuit Court of Appeals
Florida Certified Public Accountant
1675 NW 4th Avenue, #511
Boca Raton, FL 33432
561-990-7440

CERTIFICATE OF SERVICE

I Evan Gutman, hereby Certify that a true copy of the foregoing was sent via US Certified Mail on this 18th day of January, 2022 addressed as follows to :

Burr & Forman LLP
Attn: Sarah R. Craig, Esq.
201 N. Franklin Street, Suite 3200
Tampa, FL 33602

DATED this 18th day of January, 2022.

Evan Gutman CPA, JD
Member State Bar of Pennsylvania
Member District of Columbia Bar
Admitted to Federal Sixth Circuit Court of Appeals
Admitted to Federal Ninth Circuit Court of Appeals
Florida Certified Public Accountant

1675 NW 4th Avenue, #511
Boca Raton, FL 33432
561-990-7440

EXHIBIT 1

IN THE MOTION TO DISQUALIFY CONSISTS OF THE "MOTION FOR DECLARATORY JUDGMENT" FILED WITH THE FLORIDA STATE SUPREME COURT

DUE TO ITS LENGTH of 92 PAGES, IT IS INCORPORATED BY REFERENCE HEREIN

INCLUSION BY REFERENCE HEREIN IS PURSUANT TO FLORIDA RULES AND POLICIES INCLUDING BUT NOT LIMITED TO FRCP 1.130 "AUTHOR'S COMMENT" STATING IN PART AS FOLLOWS (emphasis added):

> "The amendment and the present rule authorize statements in a pleading to be adopted by references in a different part of the same pleading or in another pleading or in any motion, **thereby alleviating the necessity of lengthy repetition in the pleadings**. . . ."

EXHIBIT 2

IN THE CIRCUIT COURT IN AND FOR
PALM BEACH COUNTY, FLORIDA

CIRCUIT CIVIL DIVISION: "AI"
CASE NO.: 50-2019-CA-013570-XXXX-MB

DISCOVER BANK,
Plaintiff/Petitioner
vs.
EVAN S GUTMAN,
Defendant/Respondent.
_____/

ORDER DENYING MOTION TO DISQUALIFY CIRCUIT JUDGE CYMONIE ROWE

THIS CAUSE came before the Court for review on September 14, 2020, certified as being filed and served on September 13, 2020. Based upon review of the Motion to Disqualify Circuit Judge Cymonie Rowe, a complete review of the court file, and the Court being otherwise fully advised in the premise, it is

ORDERED AND ADJUDGED that the Motion to Disqualify Circuit Judge Cymonie Rowe is DENIED as legally insufficient.

DONE AND ORDERED in West Palm Beach, Palm Beach County, Florida.

50-2019-CA-013570-XXXX-MB 09/14/2020
Cymonie Rowe Judge

50-2019-CA-013570-XXXX-MB 09/14/2020
Cymonie Rowe
Judge

Plaintiff must serve a copy of this order to all parties who did not receive an electroinic copy.

COPIES TO:

EVAN S. GUTMAN CPA JD	1675 N.W. 4TH AVENUE, APT 511 BOCA RATON, FL 33432	
ZWICKER & ASSOCIATES PC	ZORAN D. JOVANOVICH 700 WEST HILLSBORO BLVD, BLDG 2, STE. 201 DEERFIELD BEACH, FL 33441	zjovanovich@zwickerpc.com zjovanovich@zwickerpc.com southflalitigation@zwickerpc.com courtxpress@firmsolutions.us

IN THE CIRCUIT COURT
IN AND FOR PALM BEACH
COUNTY, FLORIDA

CASE NUMBER: 502019CA013570XXXXMB
DIVISION: AI

DISCOVER BANK,
Plaintiff,

vs.

EVAN S GUTMAN,
Defendant(s).
_____/

ORDER DENYING PLAINTIFF'S AMENDED MOTION FOR SUMMARY JUDGMENT

THIS CAUSE having come before the Court on September 14, 2020 upon Plainitff's Amended Motion for Summary Final Judgment, with the Plaintiff having appeared through counsel, and the Defendant(s) being properly noticed and having appeared. The Court having heard argument from the parties present, and having read and reviewed the pleadings and the proofs filed, and being otherwise familiar with the file, it is hereupon:

ORDERED AND ADJUDGED as follows:

Plainitff's Amended Motion for Summary Final Judgment is denied without prejudice, so as to allow the Plaintiff to provide the unredacted credit card account information/number to the Defendant.

DONE AND ORDERED in Palm Beach County, Florida on September 14, 2020.

50-2019-CA-013570-XXXX-MB 09/14/2020
Cymonie Rowe Judge

50-2019-CA-013570-XXXX-MB 09/14/2020
Cymonie Rowe
Judge

Plaintiff must serve a copy of this order to all parties who did not receive an electronic copy.
Copies Furnished to:

ZWICKER & ASSOCIATES, P.C., ATTORNEYS FOR PLAINTIFF, 700 W. HILLSBORO BLVD., BUILDING 2, SUITE 201, DEERFIELD BEACH, FL 33441, SOUTHFLALITIGATION@ZWICKERPC.COM

EVAN S GUTMAN, DEFENDANT, 1675 NW 4TH AVE APT 511, BOCA RATON, FL 33432

Filing # 113953819 E-Filed 09/25/2020 08:44:23 AM

EXHIBIT 4

IN THE CIRCUIT COURT
IN AND FOR PALM BEACH
COUNTY, FLORIDA

CASE NUMBER: 502019CA013570XXXXMB
DIVISION: AI

DISCOVER BANK,
Plaintiff,

vs.

EVAN S GUTMAN,
Defendant(s).
_____/

ORDER ON MOTION FOR LEAVE TO FILE A COUNTERCLAIM

THIS CAUSE having come before the Court on September 24, 2020 upon Defendant's Motion for Leave to File a Counterclaim, with the Court having heard argument from the parties, and having read and reviewed the pleadings and the proofs filed, and being otherwise familiar with the file, it is hereupon:

ORDERED AND ADJUDGED as follows:

1. Defendant's Motion for Leave to File a Counterclaim is GRANTED.
2. Defendant's proposed counterclaim filed with the Clerk of Court on February 24, 2020 is deemed filed as of September 24, 2020.
3. The Plaintiff/Discover Bank shall file a response to the counterclaim within 20 days from the date this Order.
4. If a Motion to Dismiss Counterclaim is filed it must be heard within 30 days from the date filed.
5. If an Answer is filed the Defendant/Evan S Gutman shall have 10 days to file a reply to the Answer.

DONE AND ORDERED, in West Palm Beach, Palm Beach County, Florida this 25th day of September, 2020.

50-2019-CA-013570-XXXX-MB 09/25/2020
15TH JUDICIAL CIRCUIT
Cymonle Rowe Judge
ADMINISTRATIVE OFFICE OF THE COURT

50-2019-CA-013570-XXXX-MB 09/25/2020
Cymonle Rowe
Judge

Copies Furnished to:

ZWICKER & ASSOCIATES, P.C., ATTORNEYS FOR PLAINTIFF, 700 W. HILLSBORO BLVD., BUILDING 2, SUITE 201, DEERFIELD BEACH, FL 33441, SOUTHFLALITIGATION@ZWICKERPC.COM

FLORIDA SUPREME COURT EXHIBIT 9(q)

EXHIBIT 5

THE CIRCUIT COURT OF THE
FIFTEENTH JUDICIAL CIRCUIT
OF FLORIDA

CHAMBERS OF
KRISTA MARX
CHIEF JUDGE

PALM BEACH COUNTY COURTHOUSE
205 NORTH DIXIE HIGHWAY
WEST PALM BEACH, FLORIDA 33401
(561)355-7814

October 7, 2020

Evan Gutman, CPA, JD
1675 NW 4th Avenue, #511
Boca Raton, FL 33432

Re: 2019CA013570XXXXMB

Dear Mr. Gutman,

I am in receipt of your letter dated September 13, 2020 with regard to the above referenced case. Judge Rowe must address the filed Motion to Disqualify Circuit Judge Cymonie Rowe. An order was issued on September 14, 2020.

As the Chief Judge, I am unable to review the correctness of a decision reached by another judge. I cannot comment or intercede in the proceedings and I do not sit in an appellate capacity. You will have to rely on the trial judge and the trial court procedures or the appellate court.

Sincerely,

Krista Marx

KM:at

EVAN GUTMAN

EXHIBIT 6

From: EVAN GUTMAN
Sent: Friday, July 16, 2021 11:26 AM
To: Lucille Kilgallon
Subject: Re: Zoom information

My screen says waiting for hist to start this meeting.

Sent from my IPhone

Evan Gutman CPA, JD
Boca Raton, FL. 33432
561-990-7440
201-400-6459 (Cell)

On Jul 16, 2021, at 11:16 AM, Lucille Kilgallon <LKilgallon@pbcgov.org> wrote:

Mr. Gutman, the Court is waiting for you to join the hearing.

MEETING ID #: 882 4474 2921 Password: None
https://us02web.zoom.us/j/88244742921
Zoom Dial-In Numbers: 877 853 5257, 888 475 4499 (toll free)

If you are having difficulty with the computer, you can dial the toll free number and enter the meeting ID.

Lucille Kilgallon
Judicial Assistant to the Honorable G. Joseph Curley, Jr.
Circuit Civil Division AI
Palm Beach County Courthouse
205 North Dixie Highway
West Palm Beach, FL 33401

(561) 355-7848
CAD-DivisionAI@pbcgov.org

EVAN GUTMAN

From: EVAN GUTMAN
Sent: Friday, July 16, 2021 11:27 AM
To: Lucille Kilgallon
Subject: Re: Zoom information

My phone is201-400-6459

Sent from my IPhone

Evan Gutman CPA, JD
Boca Raton, FL. 33432
561-990-7440
201-400-6459 (Cell)

On Jul 16, 2021, at 11:16 AM, Lucille Kilgallon <LKilgallon@pbcgov.org> wrote:

Mr. Gutman, the Court is waiting for you to join the hearing.

MEETING ID #: 882 4474 2921 Password: None
https://us02web.zoom.us/j/88244742921
Zoom Dial-In Numbers: 877 853 5257, 888 475 4499 (toll free)

If you are having difficulty with the computer, you can dial the toll free number and enter the meeting ID.

Lucille Kilgallon
Judicial Assistant to the Honorable G. Joseph Curley, Jr.
Circuit Civil Division AI
Palm Beach County Courthouse
205 North Dixie Highway
West Palm Beach, FL 33401

(561) 355-7848
CAD-DivisionAI@pbcgov.org

EXHIBIT 10(a)

discuss and provide feedback for implementation of policies and practices that have statewide impact including, but not limited to, the judicial branch's management, operation, strategic plan, legislative agenda and budget priorities. Such meetings shall, if practicable, occur at least quarterly and be conducted in person. At the discretion of the chief justice, any of these meetings may be combined with other judicial branch and leadership meetings.

(I) The chief judge shall have the responsibility to exercise reasonable efforts to promote and encourage diversity in the administration of justice.

(b) Clerk.

(1) *Appointment.* The court shall appoint a clerk who shall hold office at the pleasure of the court and perform such duties as the court directs. The clerk's compensation shall be fixed by law. The clerk's office shall be in the headquarters of the court. The clerk's time shall be devoted to the duties of the office and the clerk shall not engage in the private practice of law while serving as clerk. All court records and the seal of the court shall be kept in the office and the custody of the clerk. The clerk shall not allow any court record to be taken from the clerk's office or the courtroom, except by a judge of the court or upon order of the court.

(2) *Records of Proceedings.* The clerk shall keep such records as the court may from time to time order or direct. The clerk shall keep a docket or equivalent electronic record of all cases that are brought for review to, or that originate in, the court. Each case shall be numbered in the order that the notice, petition, or other initial pleading originating the proceeding is filed in the court.

(3) *Filing Fee.* In all cases filed in the court, the clerk shall require the payment of a fee as provided by law at the time the notice, petition, or other initial pleading is filed. The payment shall not be exacted in advance in appeals in which a party has been adjudicated insolvent for the purpose of an appeal or in appeals in which the state is the real party in interest as the moving party. The payment of the fee shall not be required in habeas corpus proceedings or appeals therefrom.

(4) *Issuance and Recall of Mandate; Recordation and Notification.* The clerk shall issue such mandates or process as may be directed by the court. If, within 120 days after a mandate has been issued, the court directs that a mandate be recalled, then the clerk shall recall the mandate. If the court directs that a mandate record shall be maintained, then upon the issuance or recall of any mandate the clerk shall record the issuance or recall in a book or equivalent electronic record kept for that purpose, in which shall be noted the date of issuance or the date of recall and the manner of transmittal of the process. In proceedings in which no mandate is issued, upon final adjudication of the pending cause the clerk shall transmit to the party affected thereby a copy of the court's order or judgment. The clerk shall notify the attorneys of record of the issuance of any mandate, the recall of any mandate, or the rendition of any final judgment. The clerk shall furnish without charge to all attorneys of record in any cause a copy of any order or written opinion rendered in such action.

(5) *Return of Original Papers.* The clerk shall retain all original papers, files, and exhibits transmitted to the court for a period of not less than 30 days after rendition of the opinion or order denying any motion pursuant to Florida Rule of Appellate Procedure 9.330, whichever is later. If no discretionary review proceeding or appeal has been timely commenced in the supreme court to review the court's decision within 30 days, the clerk shall transmit to the clerk of the trial court the original papers, files, and exhibits. If a discretionary review proceeding or appeal has been timely commenced in the supreme court to review the court's decision, the original papers, files, and exhibits shall be retained by the clerk until transmitted to the supreme court or, if not so transmitted, until final disposition by the supreme court and final disposition by the court pursuant to the mandate issued by the supreme court.

(c) Marshal.

(1) *Appointment.* The court shall appoint a marshal who shall hold office at the pleasure of the court and perform such duties as the court directs. The marshal's compensation shall be fixed by law.

(2) *Duties.* The marshal shall have power to execute process of the court throughout the district, and in any county therein may deputize the sheriff or a deputy sheriff for such purpose. The marshal shall perform such clerical or ministerial duties as the court may direct or as are required by law. The marshal shall be custodian of the headquarters occupied by the court, whether the headquarters is an entire building or a part of a building.

(d) Open Sessions. All sessions of the court shall be open to the public, except conference sessions held for the discussion and consideration of pending cases, for the formulation of opinions by the court, and for the discussion or resolution of other matters related to the administration of the court.

(e) Designation of Assigned Judges. When any justice or judge of another court is assigned for temporary service on a district court of appeal, that justice or judge shall be designated, as author or participant, by name and initials followed by the words "Associate Judge."

Former Rule 2.040 amended Oct. 8, 1992, effective Jan. 1, 1993 (609 So.2d 465); March 7, 2002 (825 So.2d 889). Renumbered from Rule 2.040 Sept. 21, 2006 (939 So.2d 966). Amended Feb. 9, 2012 (121 So.3d 1); Oct. 31, 2013, effective Jan. 1, 2014 (125 So.3d 743).

Rule 2.215. Trial Court Administration

(a) Purpose. The purpose of this rule is to fix administrative responsibility in the chief judges of the circuit courts and the other judges that the chief judges may designate. When these rules refer to the court, they shall be construed to apply to a judge of the court when the context requires or permits.

(b) Chief Judge.

(1) The chief judge shall be a circuit judge who possesses managerial, administrative, and leadership abilities, and shall be selected without regard to seniority only.

(2) The chief judge shall be the administrative officer of the courts within the circuit and shall, consistent with branch-wide policies, direct the formation and implementation of policies and priorities for the operation of all courts and officers within the circuit. The chief judge shall exercise administrative supervision over all judges and court personnel within the judicial circuit. The chief judge shall be responsible to the chief justice of the supreme court. The chief judge may enter and sign administrative orders, except as otherwise provided by this rule. The chief judge shall have the authority to require that all judges of the court, other court officers, and court personnel

EXHIBIT 10(b)

comply with all court and judicial branch policies, administrative orders, procedures and administrative plans.

(3) The chief judge shall maintain liaison in all judicial administrative matters with the chief justice of the supreme court, and shall, considering available resources, ensure the efficient and proper administration of all courts within that circuit. The chief judge shall develop an administrative plan that shall be filed with the supreme court and shall include an administrative organization capable of effecting the prompt disposition of cases; assignment of judges, other court officers, and all other court personnel; control of dockets; regulation and use of courtrooms; and mandatory periodic review of the status of the inmates of the county jail. The plan shall be compatible with the development of the capabilities of the judges in such a manner that each judge will be qualified to serve in any division, thereby creating a judicial pool from which judges may be assigned to various courts throughout the state. The administrative plan shall include a consideration of the statistical data developed by the case reporting system. Questions concerning the administration or management of the courts of the circuit shall be directed to the chief justice of the supreme court through the state courts administrator.

(4) The chief judge shall assign judges to the courts and divisions, and shall determine the length of each assignment. The chief judge is authorized to order consolidation of cases, and to assign cases to a judge or judges for the preparation of opinions, orders, or judgments. All judges shall inform the chief judge of any contemplated absences that will affect the progress of the court's business. If a judge is temporarily absent, is disqualified in an action, or is unable to perform the duties of the office, the chief judge or the chief judge's designee may assign a proceeding pending before the judge to any other judge or any additional assigned judge of the same court. The chief judge may assign any judge to temporary service for which the judge is qualified in any court in the same circuit. If it appears to the chief judge that the speedy, efficient, and proper administration of justice so requires, the chief judge shall request the chief justice of the supreme court to assign temporarily an additional judge or judges from outside the circuit to duty in the court requiring assistance, and shall advise the chief justice whether or not the approval of the chief judge of the circuit from which the assignment is to be made has been obtained. The assigned judges shall be subject to administrative supervision of the chief judge for all purposes of this rule. When assigning a judge to hear any type of postconviction or collateral relief proceeding brought by a defendant who has been sentenced to death, the chief judge shall assign to such cases a judge qualified to conduct such proceedings under subdivision (b)(10) of this rule. Nothing in this rule shall restrict the constitutional powers of the chief justice of the supreme court to make such assignments as the chief justice shall deem appropriate.

(5) The chief judge may designate a judge in any court or court division of circuit or county courts as "administrative judge" of any court or division to assist with the administrative supervision of the court or division. To the extent practical, the chief judge shall assign only one administrative judge to supervise the family court. The designee shall be responsible to the chief judge, shall have the power and duty to carry out the responsibilities assigned by the chief judge, and shall serve at the pleasure of the chief judge.

(6) The chief judge may require the attendance of prosecutors, public defenders, clerks, bailiffs, and other officers of the courts, and may require from the clerks of the courts, sheriffs, or other officers of the courts periodic reports that the chief judge deems necessary.

(7) The chief judge shall regulate the use of all court facilities, regularly examine the dockets of the courts under the chief judge's administrative supervision, and require a report on the status of the matters on the dockets. The chief judge may take such action as may be necessary to cause the dockets to be made current. The chief judge shall monitor the status of all postconviction or collateral relief proceedings for defendants who have been sentenced to death from the time that the mandate affirming the death sentence has been issued by the supreme court and shall take the necessary actions to assure that such cases proceed without undue delay. On the first day of every January, April, July, and October, the chief judge shall inform the chief justice of the supreme court of the status of all such cases.

(8) The chief judge or the chief judge's designee shall regularly examine the status of every inmate of the county jail.

(9) The chief judge may authorize the clerks of courts to maintain branch county court facilities. When so authorized, clerks of court shall be permitted to retain in such branch court facilities all county court permanent records of pending cases, and may retain and destroy these records in the manner provided by law.

(10) (A) The chief judge shall not assign a judge to preside over a capital case in which the state is seeking the death penalty, or collateral proceedings brought by a death row inmate, until that judge has become qualified to do so by:

(i) presiding a minimum of 6 months in a felony criminal division or in a division that includes felony criminal cases, and

(ii) successfully attending the "Handling Capital Cases" course offered through the Florida Court Education Council. A judge whose caseload includes felony criminal cases must attend the "Handling Capital Cases" course as soon as practicable, or upon the direction of the chief judge.

(B) The chief justice may waive these requirements in exceptional circumstances at the request of the chief judge.

(C) Following attendance at the "Handling Capital Cases" course, a judge shall remain qualified to preside over a capital case by attending a "Capital Case Refresher" course once during each of the subsequent continuing judicial education (CJE) reporting periods. A judge who has attended the "Handling Capital Cases" course and who has not taken the "Capital Case Refresher" course within any subsequent continuing judicial education reporting period must requalify to preside over a capital case by attending the refresher course.

(D) The refresher course shall be at least a 6-hour course and must be approved by the Florida Court Education Council. The course must contain instruction on the following topics: penalty phase, jury selection, and proceedings brought pursuant to Florida Rule of Criminal Procedure 3.851.

(11) The failure of any judge to comply with an order or directive of the chief judge shall be considered neglect of duty and may be reported by the chief judge to the chief justice of

EXHIBIT 10(c)

the supreme court who shall have the authority to take any corrective action as may be appropriate. The chief judge may report the neglect of duty by a judge to the Judicial Qualifications Commission or other appropriate person or body, or take such other corrective action as may be appropriate.

(12) At the call of the chief justice, the chief judges of the circuit court and district courts of appeal shall meet on a regular basis and with each other and with the chief justice to discuss and provide feedback for implementation of policies and practices that have statewide impact including, but not limited to, the judicial branch's management, operation, strategic plan, legislative agenda and budget priorities. Such meetings shall, if practicable, occur at least quarterly and be conducted in person. At the discretion of the chief justice, any of these meetings may be combined with other judicial branch and leadership meetings.

(13) The chief judge shall have the responsibility to exercise reasonable efforts to promote and encourage diversity in the administration of justice.

(c) Selection. The chief judge shall be chosen by a majority of the active circuit and county court judges within the circuit for a term of 2 years commencing on July 1 of each odd-numbered year, or if there is no majority, by the chief justice, for a term of 2 years. The election for chief judge shall be held no sooner than February 1 of the year during which the chief judge's term commences beginning July 1. All elections for chief judge shall be conducted as follows:

(1) All ballots shall be secret.

(2) Any circuit or county judge may nominate a candidate for chief judge.

(3) Proxy voting shall not be permitted.

(4) Any judge who will be absent from the election may vote by secret absentee ballot obtained from and returned to the Trial Court Administrator.

A chief judge may be removed as chief judge by the supreme court, acting as the administrative supervisory body of all courts, or may be removed by a two-thirds vote of the active judges. The purpose of this rule is to fix a 2-year cycle for the selection of the chief judge in each circuit. A chief judge may serve for successive terms but in no event shall the total term as chief judge exceed 8 years. A chief judge who is to be temporarily absent shall select an acting chief judge from among the circuit judges. If a chief judge dies, retires, fails to appoint an acting chief judge during an absence, or is unable to perform the duties of the office, the chief justice of the supreme court shall appoint a circuit judge to act as chief judge during the absence or disability, or until a successor chief judge is elected to serve the unexpired term. When the office of chief judge is temporarily vacant pending action within the scope of this paragraph, the duties of court administration shall be performed by the circuit judge having the longest continuous service as a judge or by another circuit judge designated by that judge.

(d) Circuit Court Administrator. Each circuit court administrator shall be selected or terminated by the chief judge subject to concurrence by a majority vote of the circuit and county judges of the respective circuits.

(e) Local Rules and Administrative Orders.

(1) Local court rules as defined in rule 2.120 may be proposed by a majority of the circuit and county judges in the circuit. The judges shall notify the local bar within the circuit of the proposal, after which they shall permit a representative of the local bar, and may permit any other interested person, to be heard orally or in writing on the proposal before submitting it to the supreme court for approval. When a proposed local rule is submitted to the supreme court for approval, the following procedure shall apply:

(A) Local court rule proposals shall be submitted to the supreme court in January of each year. The supreme court may accept emergency proposals submitted at other times.

(B) Not later than February 15 of each year, the clerk of the supreme court shall submit all local court rule proposals to the Supreme Court Local Rules Advisory Committee created by rule 2.140. At the same time, the clerk of the supreme court shall send copies of the proposed rules to the appropriate committees of The Florida Bar. The Florida Bar committees, any interested local bar associations, and any other interested person shall submit any comments or responses that they wish to make to the Supreme Court Local Rules Advisory Committee on or before March 15 of the year.

(C) The Supreme Court Local Rules Advisory Committee shall meet on or before April 15 to consider the proposals and any comments submitted by interested parties. The committee shall transmit its recommendations to the supreme court concerning each proposal, with the reasons for its recommendations, within 15 days after its meeting.

(D) The supreme court shall consider the recommendations of the committee and may resubmit the proposals with modifications to the committee for editorial comment only. The supreme court may set a hearing on any proposals, or consider them on the recommendations and comments as submitted. If a hearing is set, notice shall be given to the chief judge of the circuit from which the proposals originated, the executive director of The Florida Bar, the chair of the Rules of Judicial Administration Committee of The Florida Bar, any local bar associations, and any interested persons who made comments on the specific proposals to be considered. The supreme court shall act on the proposals promptly after the recommendations are received or heard.

(E) If a local court rule is approved by the supreme court, it shall become effective on the date set by that court.

(F) A copy of all local court rules approved by the supreme court shall be indexed and recorded by the clerk of the circuit court in each county of the circuit where the rules are effective. A set of the recorded copies shall be readily available for inspection as a public record, and copies shall be provided to any requesting party for the cost of duplication. The chief judge of the circuit may provide for the publication of the rules. The clerk of the supreme court shall furnish copies of each approved local court rule to the executive director of The Florida Bar.

(2) Any judge or member of The Florida Bar who believes that an administrative order promulgated under subdivision (b)(2) of this rule is a court rule or a local rule as defined in rule 2.120, rather than an administrative order, may apply to the Supreme Court Local Rules Advisory Committee for a decision on the question. The decisions of the committee concerning the determination of the question shall be reported to the supreme court, and the court shall follow the procedure set forth in subdivision (D) above in considering the recommendation of the committee.

(3) All administrative orders of a general and continuing nature, and all others designated by the chief judge, shall be indexed and recorded by the clerk of the circuit court in each

EXHIBIT 10(d)

county where the orders are effective. A set of the recorded copies shall be readily available for inspection as a public record, and copies shall be provided to any requesting party for the cost of duplication. The chief judge shall, on an annual basis, direct a review of all local administrative orders to ensure that the set of copies maintained by the clerk remains current and does not conflict with supreme court or local rules.

(4) All local court rules entered pursuant to this section shall be numbered sequentially for each respective judicial circuit.

(f) Duty to Rule within a Reasonable Time. Every judge has a duty to rule upon and announce an order or judgment on every matter submitted to that judge within a reasonable time. Each judge shall maintain a log of cases under advisement and inform the chief judge of the circuit at the end of each calendar month of each case that has been held under advisement for more than 60 days.

(g) Duty to Expedite Priority Cases. Every judge has a duty to expedite priority cases to the extent reasonably possible. Priority cases are those cases that have been assigned a priority status or assigned an expedited disposition schedule by statute, rule of procedure, case law, or otherwise. Particular attention shall be given to all juvenile dependency and termination of parental rights cases, cases involving families and children in need of services, challenges involving elections and proposed constitutional amendments, and capital postconviction cases. As part of an effort to make capital postconviction cases a priority, the chief judge shall have the discretion to create a postconviction division to handle capital postconviction, as well as non-capital postconviction cases, and may assign one or more judges to that division.

(h) Neglect of Duty. The failure of any judge, clerk, prosecutor, public defender, attorney, court reporter, or other officer of the court to comply with an order or directive of the chief judge shall be considered neglect of duty and shall be reported by the chief judge to the chief justice of the supreme court. The chief justice may report the neglect of duty by a judge to the Judicial Qualifications Commission, and neglect of duty by other officials to the governor of Florida or other appropriate person or body.

(i) Status Conference after Compilation of Record in Death Case. In any proceeding in which a defendant has been sentenced to death, the circuit judge assigned to the case shall take such action as may be necessary to ensure that a complete record on appeal has been properly prepared. To that end, the judge shall convene a status conference with all counsel of record as soon as possible after the record has been prepared pursuant to rule of appellate procedure 9.200(d) but before the record has been transmitted. The purpose of the status conference shall be to ensure that the record is complete.

Former Rule 2.050 amended June 14, 1979, effective July 1, 1979 (372 So.2d 449); July 17, 1980, effective Jan. 1, 1981 (389 So.2d 202); Dec. 4, 1980, effective Jan. 1, 1981 (391 So.2d 214); Jan. 5, 1987, effective Feb. 1, 1987 (500 So.2d 524); May 21, 1987, effective July 1, 1987 (507 So.2d 1390); Sept. 29, 1988, effective Jan. 1, 1989 (536 So.2d 195); Oct. 8, 1992, effective Jan. 1, 1993 (609 So.2d 465); April 11, 1996 (672 So.2d 523); Oct. 24, 1996, effective Jan. 1, 1997 (682 So.2d 89); Feb. 7, 1997 (688 So.2d 320); Nov. 20, 1997 (701 So.2d 864); July 12, 2001, effective Oct. 1, 2001 (797 So.2d 1213); Aug. 29, 2002, effective Oct. 1, 2002 (826 So.2d 233); July 10, 2003 (851 So.2d 698); Nov. 3, 2005, effective Jan. 1, 2006 (915 So.2d 157); Mar. 2, 2006 (923 So.2d 1160). Renumbered from Rule 2.050 Sept. 21, 2006 (939 So.2d 966). Amended Mar. 27, 2008, effective April 1, 2008 (978 So.2d 805); July 10, 2008, effective Jan. 1, 2009 (986 So.2d 560); Sept. 25, 2008, effective Oct. 1, 2008 (992 So.2d 237); Feb. 24, 2011 (75 So.3d 1241); Feb. 9, 2012 (121 So.3d 1); July 3, 2014, effective Jan. 1, 2015 (148 So.3d 1171).

Committee Notes

2008 Amendment. The provisions in subdivision (g) of this rule should be read in conjunction with the provisions of rule 2.545(c) governing priority cases.

Court Commentary

1996 Court Commentary. Rule 2.050(h) should be read in conjunction with Florida Rule of Appellate Procedure 9.140(b)(4)(A).

1997 Court Commentary. [Rule 2.050(b)(10)]. The refresher course may be a six-hour block during any Florida Court Education Council approved course offering sponsored by any approved Florida judicial education provider, including the Florida College of Advanced Judicial Studies or the Florida Conference of Circuit Judges. The block must contain instruction on the following topics: penalty phase, jury selection, and rule 3.850 proceedings.

Failure to complete the refresher course during the three-year judicial education reporting period will necessitate completion of the original "Handling Capital Cases" course.

2002 Court Commentary. Recognizing the inherent differences in trial and appellate court dockets, the last sentence of subdivision (g) is intended to conform to the extent practicable with appellate rule 9.146(g), which requires appellate courts to give priority to appeals in juvenile dependency and termination of parental rights cases, and in cases involving families and children in need of services.

Criminal Court Steering Committee Note

2014 Amendment. Capital postconviction cases were added to the list of priority cases.

Rule 2.220. Conferences of Judges

(a) Conference of County Court Judges.

(1) *Organization.* There shall be a "Conference of County Court Judges of Florida," consisting of the active and senior county court judges of the State of Florida.

(2) *Purpose.* The purpose of the conference shall be:

(A) the betterment of the judicial system of the state;

(B) the improvement of procedure and practice in the several courts;

(C) to conduct conferences and institutes for continuing judicial education and to provide forums in which the county court judges of Florida may meet and discuss mutual problems and solutions; and

(D) to provide input to the Unified Committee on Judicial Compensation on judicial compensation and benefit issues, and to assist the judicial branch in soliciting support and resources on these issues.

(3) *Officers.* Management of the conference shall be vested in the officers of the conference, an executive committee, and a board of directors.

(A) The officers of the conference shall be:

(i) the president, president-elect, immediate past president, secretary, and treasurer, who shall be elected at large; and

(ii) one vice-president elected from each appellate court district.

(B) The executive committee shall consist of the officers of the conference and an executive secretary.

EXHIBIT 11(a)

1 **IN THE CIRCUIT COURT OF THE TWENTIETH JUDICIAL CIRCUIT IN AND FOR LEE COUNTY, FLORIDA** **CIVIL ACTION**

S C,
Petitioner & husband,

vs. **Case No. XX DR YYYY N**
H C,
Respondent & wife,

ORDER ON HUSBAND'S MOTION TO STRIKE

This matter having come before the court on *Date omitted/* 2015 on the "Husband's motions listed below:

(1) Findings

Mr. X, Esq., filed a "Notice of Hearing" on *Date omitted/* 2015 in which he said the court would hear "Wife's Second Amended Petition for Relocation" and "Wife's Verified Emergency Motion, Etc."

Previously, on *Date omitted* /2015 the court issued a trial order that noticed this matter for a docket sounding on *Date omitted* /2015.

Mr. Y, Esq., then filed a "Husband's Motion to Strike Wife's Notice of Hearing," in which he said Mr. X's Notice of Hearing amounted to an advancement of the trial date on the wife's petition.

(2) Ruling

For the edification of both counsel, the court issues this order.

Obtaining hearing time from a judge's office to hear a motion and noticing a motion for hearing are controlled by common law concepts of fundamental due process of law. Due process is the constitutional right of every party.

So, consistent with due process, this is how a party obtains hearing time on a motion and sets it for hearing:

1. A party files a motion in a case and then calls the court's Judicial Assistant and requests hearing time.
2. A judge is assigned thousands of cases. At last count this judge has an assignment of about 7,000 cases that are currently open or subject to being reopened. Many motions are filed in each of these cases every day. The judge has no way of knowing or keeping track of all of the motions filed every day. Many motions are filed and never noticed for hearing so they are never ruled on. Only motions that are set for hearing by a party and noticed for hearing by a party are heard and ruled on.

3. The judge's Judicial Assistant gives hearing time on a "first come, first served" and "when time is available" basis. It is much like making an appointment with a dentist. The dentist gives a patient an appointment when the time is available on his calendar. However, unlike a dentist's receptionist setting up appointments, the court's Judicial Assistant must depend on the party to declare how much time the party needs for the hearing.

4. In both situations, however, the dentist and the judge control the calendar. The patient and the party do not control the calendar. The judge controls his calendar through his Judicial Assistant, who is well trained and experienced with hearings in family cases. The judge does not get involved with setting hearings, just as the dentist does not set his appointments.

5. From experience, the court's Judicial Assistant knows that in general a party calling for hearing time underestimates the time required for the hearing on the motion. Almost all hearings in family cases are evidentiary hearings and evidentiary hearings are lengthy. It is the responsibility of the party requesting hearing time to ask for enough time on the court's calendar

so that **both sides** can be heard on the motion. This is a fundamental due process: **both sides** must be heard on the motion. **So the time the movant requires to present the motion must be doubled by the movant when requesting hearing time in order to allow the opponent equal time.**

6. The court's Judicial Assistant does not know how much time will be required for a hearing on any motion. It is the responsibility of the party requesting hearing time to know how much time is needed and to request the correct amount of time and then double it.

7. Since the hearing is most likely an evidentiary hearing, the time required must include time for (a) opening statements; (b) testimony by witnesses; and (c) cross examination of the witnesses; and (d) closing arguments. **Cross examination and opening statements and closing argument of the movant and the opponent are included in the one-half of the time the movant requests for the hearing.**

8. If the time requested expires before both sides have been heard, then the court must continue the matter to a future date, a date that the party must obtain from the court's Judicial Assistant. The court cannot rule on a motion until both sides have had an equal opportunity to be heard.

9. Again, fundamental due process requires that both sides are entitled to equal time on any motion. So, the party requesting hearing time **must double** the time requested so the other side has the same amount of time to present its witnesses and have them cross examined.

The Supreme Court of Florida has issued Rules of Court. This is what the Florida Rules of Court provide:

Rule 12.440. Setting Action for Trial

(a) " ... the court ... shall enter an order setting the action for trial."

Rule 1.100. Pleadings and Motions

(a) "There shall be a complaint or when so designated by a statute or rule, a petition and an answer to it. ..."

(b) "An application to the court for an order shall be by motion ..."

Rule 1.110. General Rules of Pleading

(b) "A pleading which sets forth a claim for relief ..."

Rule 1.140(f) Motion to Strike. "A party may move to strike or the court may strike redundant, immaterial, impertinent, or scandalous matter from any pleading at any time."

Case law has applied these rules:

In *Merrigan v. Merrigan*, 947 So.2d 668 (Fla. 2d DCA 2007), a final judgment was entered after "a hearing" held before the magistrate pursuant to an order entered by the court that referred the wife's petition for dissolution to the magistrate and scheduled "a hearing" before the magistrate. Both parties appeared at that "hearing" on the wife's petition but it turned out to be "an abbreviated trial" on the merits of her petition. No trial order was entered pursuant to Rule 12.440(a) by either the judge or the magistrate. The appellate court ruled that the court's order of referral that noticed a hearing "did not fairly apprise the Husband that the hearing would result in a final judgment. ... This notice also failed to comply with the procedures required by Florida Rule of Family Law Procedure 12.440(a) for setting a trial or final hearing. This alone merits reversal. ... the procedures in this case were clearly insufficient to provide appropriate notice and an opportunity to be heard on the significant contested issues..."

See, e.g., Teelucksingh v. Teelucksingh, 21So.3d 37 (Fla. 2d DCA 2009): "... the court

itself was required to enter an order setting the action for trial; ..." *and Bisel v. Bisel*, 165 So.3d 833 (Fla. 4th DCA 2015), in which the appellate court reversed a judgment for the former husband because the former husband mailed the former wife a "notice of hearing," which turned out to be the trial on the merits of her supplemental petition and the trial court never entered a trial order pursuant to Rule 12.440.

In *Bennett v. Ward*, 667 So.2d 378 (Fla. 1st DCA 1995) the trial judge entered a judgment of foreclosure at a hearing noticed pursuant to a "notice of hearing" served by counsel and not a trial held pursuant to a trial order entered by the judge under Rule 1.440. The appellate court said that "noncompliance with [Rule] 1.440 can be raised ... by motion" pursuant to Florida Rule of Civil Procedure 1.540, and that "[s]trict compliance with Florida Rule of Civil Procedure 1.440 is required and failure to do so is reversible error." (*Citations omitted.*)

So, from these rules and this case law we see that pleadings must be set for trial by a trial order and motions are noticed for hearing by a party obtaining hearing time from the court's Judicial Assistant.

Therefore, Mr. X's "Notice of Hearing" in which he said the court would hear the wife's pleading is a nullity. A pleading is a claim for ultimate relief in the case. All pleadings are set for trial, if they are not otherwise disposed of before trial, for instance, by a motion for summary judgment. Trials are set by court orders. Pleadings cannot be heard and decided by a notice of hearing sent by counsel. A judgment based on a pleading that was heard and decided at a hearing noticed by counsel is a void judgment. This is, again, fundamental due process, that is, the process that is required by the Florida Rules of Court. Therefore, the court will not hear a pleading on a notice of hearing sent by counsel. A trial judge cannot violate fundamental concepts of due process.

However, Mr. X's "Notice of Hearing" that notices a motion for hearing is not a nullity. It notices a motion for a hearing. Presumably, the movant estimates the parties can conclude their

opening statements, direct testimony, cross examination and closing arguments in 90 minutes because Mr. X requested 180 minutes for the hearing.

Concerning Mr. Y's "Motion to Strike," there is no authority in the Florida Rules of Court for a "motion to strike" a notice of hearing. A motion to strike is allowed to strike "redundant, immaterial, impertinent, or scandalous matter from any pleading ..." A "notice of hearing" is not a "pleading." A "pleading" in a family case is a petition and an answer to it. F.S. §61.043(1): A proceeding for dissolution of marriage ... shall be commenced by filing ... a petition ..."

The husband's "Motion to Strike," therefore, is surplusage in the court file. By court rules and case law, Mr. X's attempt to notice a petition for hearing is a nullity. There is no need to strike nullities from the court file. Rather, an opponent appears at the hearing and asks the court to adhere to fundamental concepts of due process, as expressed in the Florida Rules of Court and the case law.

For the foregoing reasons, the husband's "Motion to Strike" is not ruled on. There is no need to rule on it. It is surplusage.

Done and ordered in Fort Myers, Lee County, Florida, this _____

R. Thomas Corbin, Circuit Judge

Copies provided to:
X, Esq., and Y, Esq.

THE 15TH JUDICIAL CIRCUIT OF FLORIDA
ADMINISTRATIVE OFFICE OF THE COURT

EXHIBIT 12(a)
Division AI

Verify Your Information

Motion 1

Pro Se Law Firm, on behalf of Defendant/Respondent, is scheduling a 15 minute special set hearing on July 24th 2020 at 10:30:00 AM i
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Pro Se (561-990-7440) (e

IMPORTANT

Please specify an option before scheduling this hearing.

- ○ Counsel requesting this Order has certified that he/she has spoken in person or by telephone with the attorney(s) for all parties who may be affected by the relief sought in the motion in a good faith effort to resolve or narrow the issues raised.
- ○ Counsel requesting this Order has certified that he/she has attempted to speak in person or by telephone with the attorney(s) for all parties who may be affected by the relief sought in the motion.
- ◉ One or more of the parties who may be affected by the motion are self represented.

Continue **Cancel**

The contact for this event is:
Evan S Gutman (561-990-7440) (egutman@gutmanvaluations.com)

The above information is accurate. Schedule This Hearing

The above information is inaccurate. Go Back and Re-Enter

Law Firm Portal **OLS Home** **Help** **Log Out**

THE 15TH JUDICIAL CIRCUIT OF FLORIDA
ADMINISTRATIVE OFFICE OF THE COURT

EXHIBIT 12(b)
Division AI

Verify Your Information

Motion 1

Pro Se Law Firm, on behalf of Defendant/Respondent, is
scheduling a 15 minute
2020 at 10:30:00 AM in
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Pro Se (561-990-7440) (e

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Evan S Gutman (561-990-7440) (egutman@gutmanvaluations.com)

NOTICE: PLEASE READ

You are about to schedule a SPECIAL SET hearing.

ACCEPTABLE USE POLICY

By clicking the 'I have read and understand the Acceptable Use Policy' button below, users of the system agree to the following:

- They have previously cleared the requested date with opposing counsel;
- They have previously filed the motion with the Clerk and Comptroller's office

Also, be advised that once a special set hearing is scheduled, it cannot be canceled using this application. If it needs to be canceled, users of the system will need to contact Division AI staff by emailing CAD-DivisionAI@pbcgov.org.

I have read and understand the Acceptable Use Policy **Cancel**

The above information is accurate. Schedule This Hearing

The above information is inaccurate. Go Back and Re-Enter

Law Firm Portal **OLS Home** **Help** **Log Out**