Filing # 163911884 E-Filed 01/02/2023 12:08:20 AM

IN THE DISTRICT COURT OF APPEAL OF FLORIDA
FOURTH DISTRICT

CASE NO. 4DCA#22- 2821

Lower Tribunal Case No. 50-2020-CC-005756-XXXX-MB

EVAN S. GUTMAN

Appellant,

vs.

CITIBANK, N.A.

Appellee

APPELLANT'S INITIAL BRIEF

EVAN S. GUTMAN, CPA, JD
Appellant Pro Se
Member State Bar of Pennsylvania
Member District of Columbia Bar
Admitted to U.S. Tax Court Bar
Florida Certified Public Accountant
1675 NW 4th Avenue, Apt. 511
Boca Raton, FL 33432
561-990-7440

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INTRODUCTION and EXPLANATION OF REFERENCES

Appellant Evan Gutman will be referred to as Appellant. Appellee Citibank, N.A. will be referred to as Citibank. References of record shall be designated as “R” followed by the page designations as set forth in the record on appeal transmitted by the Clerk of the lower Court. Leading Zeros for the page numbers are omitted.

Certain documents filed with the trial court, including but not limited to the Trial Transcript for some reason do not appear to have been sent to the Fourth District Court of Appeal as part of the Record on Appeal. Accordingly, concurrent with filing this Initial Brief on the Merits, Appellant has also filed a Motion to Supplement the Record identifying those documents. Additionally, the missing documents, including particularly the Trial Court Transcript are included in the Appendix being filed concurrently with this Brief and accordingly, are referenced herein to the Appendix. In this regard, each Appendix reference is delineated by "A." Thus, A14 for example, refers to Page 14 of the Appendix submitted concurrently.

The FIRST question raised in this appeal is whether Judge Edward Garrison erroneously denied Appellant's Motion for Disqualification. In this regard, the Trial Transcript (included in the Appendix and also part of the Motion to Supplement the Appellate Record) indicates Judge Garrison

either possesses SUPERHUMAN Intellectual Abilities; OR alternatively he engaged in deception evidenced by his comments at trial, thereby indicating he should have granted the Motion for Disqualification.

The SECOND question raised in this appeal is whether Trial should have proceeded because the case was not "At Issue" due to pending Motions not yet ruled upon on the day of trial; and as raised in Appellant's Motion to Postpone Trial filed prior to trial.

A THIRD question raised in this appeal is whether Appellant's Counterclaim was erroneously dismissed based upon a Litigation Privilege for Debt Collector Attorneys to engage in illegal acts with "Absolute Immunity" during the course of a proceeding. It was also erroneously dismissed on the ground Citibank's outstanding Motion to Extend discovery had not yet been ruled on, and if Citibank's request for an extension is denied it results in Citibank admitting issues of Liability in the Counterclaim. That Motion has not even been ruled upon yet, to this very day.

A FOURTH question raised in this appeal is whether Palm Beach County Court Rule 4 and the Palm Beach County Online Scheduling System for Hearings unconstitutionally infringe upon a Pro Se litigant's equal protection and due process clause rights to a fair and impartial adjudication under the U.S. Constitution.

STATEMENT OF THE CASE AND FACTS

Citibank filed a Complaint on or about July 8, 2020 pertaining to an alleged credit card debt asserting claims of Account Stated and Unjust Enrichment. The Complaint was served upon Appellant on or about September 22, 2020 (R12). Appellant filed an Answer on or about October 6, 2020, just 14 days later (R49). Appellant also filed a Counterclaim at that time (R16). On February 21, 2021 Appellant filed a Motion for Leave to Amend the Counterclaim to allow for punitive damages focusing on the fact Citibank has been filing massive numbers of Meritless Unjust Enrichment claims throughout Florida, with knowledge the claims are meritless (R84). A Hearing was held on or about May 18, 2021 before Judge Sandra Bosso Pardo, at which time Judge Pardo denied Appellant's Motion to Amend. (R177).

On or about June 11, 2021, Judge Sandra Bosso-Pardo issued an Order granting Citibank an Extension of Time to Respond to Appellant's Answer and Counterclaim (R179). Citibank then **Timely** filed a Motion to Strike Appellant's Affirmative Defenses on or about June 30, 2021 (R192) (over a year later, at trial on September 15, 2022; Citibank Counsel Kenneth Curtin would falsely contend their Motion to Strike was not timely filed; in order to defeat Appellant's assertion the case was not at issue).

However, as shown by R179 and R192; that Motion was in fact timely filed and pending on the date of trial. On or about June 30, 2021 Citibank also filed a Motion to Dismiss the pending Counterclaim substantively asserting Citibank had a "litigation privilege" to file meritless Complaints against massive numbers of impoverished litigants pursuant to well-established legal precedent in Florida set forth in Ecchevaria v Cole, 950 SO.2d 380, 384 (Fla. 2007). (R181).

On July 1, 2021 Appellant served Citibank with discovery consisting of Requests for Admissions; Notice of Service of Written Interrogatories; and Requests to Produce Documents (A29 - A50). (See Appellant's Motion to Supplement the Record on Appeal filed concurrently with this Brief). **On July 23, 2021, Citibank filed a Motion for Extension to respond to the discovery, which has still not been ruled upon to this date** (R196).

On or about January 28, 2022 (based upon a hearing held on or about January 5, 2022) Judge April Bristow granted Citibank's Motion to Dismiss the Counterclaim even though the pending Discovery Requests had not yet been substantively responded to at all; and even though if the items contained in the Requests for Admissions were admitted such results in Citibank admitting to liability on substantive issues (R237). Additionally, Citibank's still pending Motion to Extend the time to respond to discovery

had not even been ruled upon at that time, nor has it been ruled upon to this date. On February 15, 2022, having been granted Dismissal of the Counterclaim by Judge Bristow; Citibank predictably responded to the outstanding discovery for the purpose of mitigating the damages and prejudice to Appellant caused by their failure to timely respond prior to discovery prior to the dismissal hearing (A51-A70). (See Appellant's Motion to Supplement the Record on Appeal filed concurrently with Brief).

On June 13, 2022 Citibank's current Counsel set a Hearing for July 7, 2022 on their Motion to Strike Affirmative Defenses, thereby demonstrating the "Sincerity" in which they still "believed" in the legitimacy and merit of that motion (A72). Additionally, on June 13, 2022 Citibank Counsel set a Hearing on their Motion for an Extension of Time to Respond to Discovery. The Setting of Hearings on both the Motion to Strike and the Motion to Extend Time to Respond to Discovery although included as part of the trial court record as Docket Entry 44; appear to be inexplicably missing from the Record on Appeal transmitted to the appellate court. (See Motion to Supplement Record on Appeal filed concurrently). Citibank also set a Hearing on the Motion to Strike for August 31, 2022 (A128). The "Sincerity" with which Citibank Counsel scheduled hearings on their Motion to Strike "TWICE" (July 7, 2022 and August 31, 2022) would be expressly

"Denied" by their Counsel Kenneth Michael Curtin at the "purported" trial held on September 15, 2022. Appellant has also consistently maintained that granting the Order of Dismissal on his Counterclaim, when outstanding discovery remain that effectively "Admitted" Liability issues was abjectly erroneous.

Judge Bristow was then somewhat "mysteriously" assigned off the case and Judge James Sherman replaced her. On July 4, 2022, Appellant filed a Motion to Disqualify Judge James Sherman before he ruled on even a single issue (R403) and Judge Sherman granted the Motion for Recusal. (R492). The case was then assigned to Judge Edward Garrison, thereby choreographing an excellent "Match-Up" between a so-called "No Nonsense Law and Order" Judge ; and an equally "No Nonsense" Pro Se litigant with a penchant and goal to establish himself as the "Hero" of impoverished litigants by "Taming" inappropriate judicial "Attitudes."

On July 19, 2022, Judge Garrison denied Appellant's Second Motion for Reconsideration of Judge Bristow's erroneous ruling dismissing his Counterclaim (R497). That same day, Judge Garrison "unexpectedly" (to everyone's belief presumably), took it upon himself to set a trial date for September 8, 2022 even though the case was Not "At Issue" and therefore a trial date could not yet be legally set (R499).

On July 28, 2022, Appellant requested an Extension of time to respond to discovery Citibank served upon him on July 1, 2022; only 28 days earlier (R502). On August 3, 2022, Judge Garrison issued an Order "purporting" to grant Appellant's request, but which substantively allowed a paltry 12 days to provide the voluminous discovery requested (R543). Suffice it to say, a Court Order that "**Grants**" a Motion in such a way, is about the equivalent in terms of morality of Citibank debt collector attorney litigation tactics. Notably, Judge Garrison's Order to Appellant was rendered when Citibank's request for an extension to respond to discovery was still over a year old and not yet even ruled upon. Thus, they got over a year to respond; in contrast to the paltry 12 days granted to Appellant.

On August 15, 2022 Appellant filed with the Court excerpts of approximately 68 Meritless Complaints filed by Citibank indicating they were instituting legal actions against a massive number of impoverished litigants based upon meritless claims of unjust enrichment (R545-R723) and (R750-R967) (Florida law precludes an unjust enrichment claim when a written contract exists - See Agritrade v Quercia, 253 So.3d 28, 34-35 (2017). One week later, on August 22, 2022, Judge Garrison cancelled the trial he illegally set for September 8, 2022 and reset it for September 15, 2022 (R993).

On September 14, 2022 Appellant filed a Motion to Disqualify Judge Garrison and also a Motion to Postpone Trial, both of which are discussed and addressed at length later herein (R999 and R1138). Appellant intentionally did not appear at trial held on September 15, 2022, since if he had appeared some case law indicates such might constitute a "Waiver" of his steadfast position the case was not "At Issue" and therefore the trial date was illegally set. This point is also addressed at length later herein.

Judge Garrison rendered a "Final Judgment" in favor of Citibank on September 19, 2022 (R1161). The "Final Judgment" rendered (presumably written by Citibank Counsel), indicates it is predicated upon Citibank's "Account Stated" Claim. **However, the trial transcript indicates the actual proceedings contained no discussion or delineation of the basis for the Court's ruling and which Count it was granted upon.** (A5). Thus, it appears Citibank Counsel just "decided" all on their own after the trial the basis for the Court's ruling and then got the Judge to affix his name to it. No draft of the Final Judgment was ever sent to Appellant for review. Notably, the trial transcript has also not yet been transmitted to the appellate court and is included in Appellant's Motion to Supplement the Record. The trial transcript is also included in the Appendix submitted concurrently and cited at length herein based upon the Appendix (A5-A27).

Appellant timely filed a Notice of Appeal on or about October 17, 2022 (R1188). Subsequently, this Court issued an Order on October 21, 2022 that Appellant should provide a statement on the issue of Subject Matter Jurisdiction, since Count II of the Citibank Complaint appeared to be still "pending."

On or about October 27, 2022 Citibank filed a Motion to Dismiss Count II of their complaint for Unjust Enrichment in order to establish the "Finality" of the Judgment, so they could pursue an open and "Running Tally" of Attorney Fees against Appellant (A81). Appellant was given no reasonable opportunity to respond to the Motion in a timely manner thereby violating his Due Process Right of Notice; and Judge Garrison granted Citibank's Motion November 1, 2022, just a mere 4 days later (A84).

SUMMARY OF ARGUMENT

On a broad-based spectrum the crux of Appellant's argument is the legal profession and Judiciary of this Nation (not just Florida) from an objective analysis by pretty much any rational citizen, are for the most part in a state of collapse. One would be hard-pressed to find any citizen (or most licensed attorneys or Judges for that matter) willing to sincerely assert with a straight face, they have faith and confidence in the Judiciary. Most people tend to agree, it would be irrational to do so. The problem is not one Judge, one County, or one State. It is system-wide in nature on a national basis. And in all fairness, most Judges are victims of the systemic breakdown as much as anybody else. And in fairness, it should be noted there are in fact, some very Brave and caring Judges. But, for the most part, even Brave, Caring Judges are neutralized by a system gone awry.

While there are many reasons for such, Appellant's position delineated in his book, "**STATE BAR ADMISSIONS AND THE BOOTLEGGER'S SON"** (See R1022 - R1122 for book excerpts) is a key component of the problem is the invidious application of the Procedure / Substance dichotomy between which court rules are written versus how they are ultimately applied. Put simply, it has come to the point where court rules are so complex and cumbersome; neither the best attorneys or

Judges can comprehend them. Additionally, the complexity is not even predicated upon a reasonable attempt for the rules to be understandable. Rather, they have been implemented and applied for a singular purpose. That singular purpose is so that they may applied to helpless, impoverished litigants, or others lacking legal counsel; while willingly and substantively ignored by licensed attorneys, large law firms and well-connected attorneys. Thus, the court rules, purportedly intended to "level" the playing field between the rich and poor; the strong and weak; became the exact instrument to "Rig" the playing field. And the reason is the Poor, Weak, and Helpless are the only ones the rules are consistently applied to. Hotshot "connected" attorneys and Judges, not only waive procedural errors of each other, but in fact contend attorneys who refuse to "waive" them frustrate fair resolutions.

Of course, Appellant concedes the "broad-based spectrum" outlined above (while the foundation of most appeals), is not the specific point herein of appellate reliance. Instead, this appeal is based upon narrow issues of law presented from a more "narrowly-based spectrum." The narrower points formulating the basis for this appeal are as follows.

FIRST, Appellant asserts Judge Edward Garrison erroneously denied Appellant's Motion for Disqualification. This is for reasons including the Trial Transcript indicates Judge Garrison Possesses "SUPERHUMAN" Intellectual Abilities beyond those of virtually all Mere Mortals in the Secular World; **OR** alternatively the Transcript indicates he engaged in Deception warranting disqualification on the day of trial. Appellant asserts the latter is the case for reasons delineated herein. **SECOND**, Appellant asserts the Trial should not have proceeded because the case was not "At Issue" as indicated by Appellant's Motion to Postpone Trial erroneously denied by Judge Garrison. **THIRD**, Appellant's Counterclaim was erroneously dismissed based upon a Litigation Privilege for Debt Collector Attorneys to engage in illegal acts with "Absolute Immunity" during the course of a proceeding, that is inimical to basic societal values of a respect for fairness and the rules of law. And **FOURTH**, Appellant asserts Palm Beach County Court Rule 4 and the Palm Beach County Online Scheduling System for Hearings unconstitutionally infringe upon a Pro Se litigant's due process and equal protection clause rights under the U.S. Constitution, to a fair and impartial adjudication. In light of such, Palm Beach County Judges can not legitimately or rationally expect Nonattorney litigants (or Attorneys) to provide the Judges with the respect they may otherwise be entitled to.

STANDARD OF REVIEW

The standard of review of pure questions of law is *de novo*. Granada Lakes Villas Condominium Association, Inc. v Metro-Dade Investments Co., 125 So.3d 756 n.2 (Fla. 2013).

ARGUMENT

1. Judge Edward Garrison erroneously denied Appellant's Motion for Disqualification. The Trial Transcript suggests Judge Garrison Either possesses "SUPERHUMAN" Intellectual Abilities beyond Mere Mortals in the Secular World; OR Alternatively he engaged in Deception warranting disqualification the day of trial.

On September 14, 2022, Appellant filed a Motion to Disqualify Judge Edward Garrison and all other Palm Beach County Judges (R999). In addition, Appellant filed a Motion to Postpone the Trial Date set for the next day, on the ground the case was not "At Issue" as required by FRCP 1.440 (R1138). Since Appellant knew the trial was illegally scheduled because the case was not "At Issue," he did not appear for trial on September 15, 2022, opting instead to file a Petition for Writs with this Court. **FN 1**

FOOTNOTE 1 - On October 3, 2022, Appellant filed a Petition for Expedited writs of Mandamus and Prohibition with this Court regarding Judge Garrison's denials of his motions. This Court issued an Order on October 25, 2022 indicating the Petition for Writ of Mandamus was denied. That denial does not preclude consideration of the issue of judicial disqualification by direct appeal. See Dunlevy v State of Florida, 201 So.3d 733, 735-736 (4th DCA 2016) where this Court wrote:

> "The sole issue that we address is whether the trial court erred in denying Dunlevy's motion to disqualify. As an initial matter, consideration of that issue is not precluded by our denial of Dunlevy's petition for prohibition addressing the same motion. . . .
> **. . .**
> . . . Therefore, since our order denying Dunlevy's petition for writ of prohibition was entered simply stating it was denied, without citation or explanation, the denial does not preclude review of the same order on direct appeal."

Appellant's decision to not appear on the day of trial was based upon the premise if Appellant had appeared and proceeded, some case law indicates he arguably might have "Waived" the Rule 1.440 issue. Thus, by not appearing and firmly standing his ground the case was not "At Issue," there could be no legitimate assertion of a Waiver of Rule 1.440.

Thus, Judge Garrison and Citibank Counsel proceeded with trial on September 15, 2022. Appellant then requested and paid for a full and complete Transcript of the purported "Trial," which has been provided (A5-A27). The Transcript confirms Judge Garrison should have granted Appellant's Motion to Disqualify; as well as the Motion to Postpone. The reasons are as follows.

FIRST, the Trial Transcript indicates Judge Garrison EITHER possesses "**SUPERHUMAN**" Intellectual and Cognitive Abilities beyond those anticipated of Mere Mortals; **OR** Alternatively he engaged in deception warranting his disqualification on the day of trial. Put simply, if Judge Garrison's representations presented in the Transcript are honest, true and correct, then Judge Garrison possesses intellectual cognitive and analytical abilities far surpassing those of virtually any human being who has ever existed, including but not limited to Einstein or Physicist Stephen Hawking. Alternatively, if his representations were not honest, then he

engaged in "Trickery" and "Deception" on the day of trial, thereby confirming matters set forth in the Motion to Disqualify. Appellant now utilizes his Skills as a Forensic CPA with years of forensic accounting experience to simplistically demonstrate the latter is the case. **FN 2**

The "Forensic" CPA analysis of the Trial Transcript, included in the Appendix submitted concurrently is as follows. As shown by the Transcript Cover Page the trial began at 9:04 a.m. and concluded at 9:24 a.m. (A6) Thus, the Trial lasted about 17 minutes. The substantive part of the transcript reflecting words spoken begins on Page 5 and concludes on Page 16 (A10-A21). Thus, the transcript reflecting the words spoken is only 12 pages. The 17 minutes of the trial equates to 1,020 Seconds (17 times 60). Assuming the words spoken by Judge Garrison and Citibank Counsel were timed evenly, each Transcript page equates to a duration of 85 seconds (1,020 divided by 12). Thus, each page took 1 minute and 25 seconds of communication time (85 seconds).

FOOTNOTE 2 - Appellant emphasizes the operative phrase with respect to the analysis performed herein is "simplistically demonstrate." The reason is as follows. Although Appellant has years of Forensic Accounting experience, the analysis presented herein is actually so obvious from a perspective of just basic common sense that virtually any non-professional layman of moderate intelligence should easily be able to perform the same analysis and arrive at the same conclusion.

Beginning at the bottom of Page 5 of the Trial Transcript and continuing to the bottom of Page 6, the following exchanges took place before Judge Garrison and Citibank Counsel (emphasis added) (A10-A11).

" MR. CURTIN : Your Honor, I think we have a few preliminary issues we have to get over with first. At 5:00 - 4:00 or 5:00 last night, Mr. Gutman filed a motion to recuse Your Honor.

THE COURT : **Haven't seen it.**
. . .

THE COURT : Okay. **Is there an affidavit somewhere in here** ?

MR. CURTIN : It seems like he signed it. I don't know if it was an affidavit, per se, as a first exhibit.

THE COURT : Yeah, he signed the motion, but **I don't actually see an affidavit** or -

MR. CURTIN : Now, he mentioned it. I didn't see the affidavit either. Quite frankly, I kind of stopped reading it after a while.

THE COURT : It's a real page-tuner. All right. **For the record, I have reviewed the motion. The motion is denied. "**

(A10-A11)

The "Forensic" analysis of the above exchange is as follows. The exchange encompassed one page and thus based on time calculations presented; lasted approximately 1 minute and 25 seconds. Judge Garrison himself referred to the Motion to Disqualify as a "real page-turner" (spelled incorrectly as "tuner.") As shown by R999 - R1137 the Motion to Disqualify

was 138 pages. The majority of the Motion consisted of exhibits, from R1019 thru R1137. The Motion exclusive of exhibits, was only 19 pages.

Accordingly, even if we hypothetically assume Judge Garrison did not have a due process judicial duty to read each exhibit in detail, he certainly had a due process judicial duty to at least read the 19 pages of the Motion. In fact, in the cited exchange above, he even asserts he did so by stating:

> "**For the record, I have reviewed the motion. The motion is denied."**
> **(A11)**

If he was telling the truth above, he does in fact have **"SUPERHUMAN" intellectual abilities, extending beyond those of mere mortals in the Secular World.** Put simply, it means the following. It means within a time frame of only 85 seconds, he engaged in the above exchange; read 19 pages of the motion, carefully considered legal precedent both with respect to Federal constitutional law and Florida substantive law; weighed and balanced the rights of the litigants; and then with legal expertise the general public expects of its Judges rendered a carefully crafted and well-thought out judicial decision. The calculations indicate he would have had to have read each of the 19 pages and also considered them in **4.47 seconds for each page** (85 seconds / 19 = 4.47).

Of course, there is another possibility. Perhaps, although Judge Garrison is obviously quite intelligent (and a bit "tricky"), he is not exactly the "Genius" the foregoing analysis suggests. Often people with enhanced intellectual skills assert ridiculous propositions that are easily disproven by simple analysis. So, it is now left to this Court to determine whether Judge Garrison is the "**SUPERHUMAN**" Intellectual "Law and Order" Judge he professes to be; or perhaps just a tad bit less.

In the above exchange, Judge Garrison also asserts he didn't see an Affidavit with the Motion. Perhaps if he turned a few more pages in the Motion, he would have seen the Affidavit was attached and properly filed as Exhibit 3 within the Motion. (R1123-R1124). This error on his part seems to detract from the "**SUPERHUMAN**" Intellectual Genius Theory postulated.

Turning to the Motion to Disqualify itself, it delineates in detail how Judge Garrison exemplified actual bias against Appellant by allowing Citibank an extension of over a year to respond to discovery requests, while giving Defendant only 12 days (R543). Additionally, the Motion points out he violated Rule of Judicial Administration 2.215(f) by failing to rule upon Citibank's extension request (still now pending); but in contrast ruled upon Appellant's extension request within only 7 days. (R1000).

The Motion to Disqualify also asserts the Florida State Bar's "Good Moral Character" requirement for admission violates the Equal Protection and Due Process Clauses of the U.S. Constitution. This is because the State Bar does not periodically reassess the moral character of attorneys and Judges. Specifically, a Judge's "Current" moral character varies from their "Original" moral character when admitted to the Bar due to the lapse of time. This diminishes a litigant's ability to receive a fair and impartial adjudication from a Judge with "Good Moral Character." In support of these particular arguments, Appellant attached to the Motion to Disqualify as Exhibit 2 therein (R1022-R1122**)**, excerpts of a book he authored and published approximately 20 years ago, titled "**STATE BAR ADMISSIONS AND THE BOOTLEGGER'S SON**." Appellant believes his book in 2002, when published was the most comprehensive book (and may still be) ever written about the "Good Moral Character" requirement for admission to the State Bar. It is supported by extensive footnotes; was purchased by numerous law schools, remains in law school libraries today, and was cited in at least one significant law review article (R1020) ("Are You In or Are You Out? The Effect of a Prior Criminal Conviction on Bar Admission & a Proposed National Standard," Hofstra Law and Employment Law Journal, by Anthony J. Graniere and Hilary McHugh, Vol. 26, Issue 1, Page 223,

Footnote 2, 2008). Additional arguments presented on this particular issue discussed in detail in the Motion to Disqualify are incorporated by reference citation herein (R999-R1137).

2. Trial should not have proceeded because the case was not "At Issue" as indicated by Appellant's Motion to Postpone Trial erroneously denied by Judge Garrison.

On September 14, 2022, one day prior to the purported Trial, Appellant filed along with the Motion to Disqualify, a Motion to Postpone the Trial focusing on the fact Judge Garrison lacked legal authority to set the trial date because the case was not "At Issue" as required by FRCP 1.440. (R1138). That Motion was predicated upon the premise the case was not "At Issue" as required by FRCP 1.440 in order to set a trial date. The reason the case was not "At Issue" was because at that time, Citibank's Motion to Strike Affirmative Defenses, Timely filed on June 30, 2021, had not yet been either heard or rule upon by the Court (See R192 and R179**)**.

In addition, Citibank's Motion to Extend Discovery had also not yet been heard or ruled upon by the Court. (R196). Accordingly, Judge Garrison lacked legal authority to set the trial date. The following case cites are indicative of the importance of this issue:

"**Strict compliance** with rule 1.440 is required and **failure to adhere to it is reversible error**. See Lauxmont Farms, Inc. v Flavin, 514 So.2d 1133, 1134 (Fla. 5th DCA 1987). "Indeed **a trial court's obligation to hew strictly to the rule's terms is so well established that it may be enforced by a writ of mandamus** compelling the court to strike a noncompliant notice for trial or to remove a case from the trial docket." Gawker Media, LLC, 170 So.3d at 130 (citing R.J. Reynolds Tobacco Co. v Anderson, 90 So.3d 289 (Fla.2nd DCA 2012)."

Melbourne HMA, LLC v Janet B. Schoof, 190 So.3d 169 (2016)

"Rule 1.440(a) states that "an action is at issue after any motions directed to the last pleading served have been disposed of or, if no such motions are served, 20 days after service of the last pleading" . . . **Appellee concedes, and we agree, that the trial court improperly issued an order setting a non-jury trial. . . . Accordingly, we reverse and remand for a new trial in compliance with rule 1.440(a)**."

Lurtz v The Bank of New York Mellon, 162 So.3d 11 (2014)

"On appeal, U.S. Bank properly concedes that the final judgment must be reversed as the case not "at issue" pursuant to Rule 1.440

. . . .

Because "failure to adhere strictly to the mandates of Rule 1.440 is reversible error," Precision Constructors, Inc. v Valtec Constr. Corp. 825 So.2d 1062, 1063 (Fla. 3d DCA 2002) we reverse the final judgment in favor of U.S. Bank and remand for a new trial.,"

Lopez v U.S. Bank, 116 So.3d 640 (2013)

The Trial Transcript indicates the following communicative exchange took place on the "At Issue" premise (emphasis added). (A12) :

MR. CURTIN: No, Your Honor. Just for the record, on the motion to delay the trial, Your Honor, that - just for any appellate purposes, when he's talking about the motion to strike affirmative defenses, **that was filed by previous counsel in October 2020. So assuming that the answer was filed on October 2020, the motion to strike affirmative defenses was filed in June of 2021.** Obviously, he hadn't filed the previous -- plaintiff's counsel would have had that file capped at 20 days. **So that motion to strike affirmative defenses is moot anyway. It was filed too late. And Citibank would drop it.** And it has been, on the record, it's dropped that motion to strike affirmative defenses.

THE COURT: All right. Well, the **pending** motion to strike does not render the case not at issue anyway.

MR. CURTIN: Thank you, Your Honor.

(A12)

As shown above and by R179, Mr. Curtin blatantly represented Falsely to the Court their Motion to Strike was not timely filed. And even if it had not been timely filed, the fact that it was filed meritlessly still does not allow Citibank to escape the "At Issue" principle of Rule 1.440. The analysis of the above concededly somewhat "amusing" communicative exchange is simplistically as follows. The crux of Citibank's argument according to their Counsel is since their Motion was Meritless the "Pendency" of their Motion was negated, for purposes of the "At Issue"

rule. That is a rather "Novel" legal argument to state the matter mildly. Quite notably, as indicated also above, Judge Garrison referred to the Motion himself as the "pending motion." Therefore, Mr. Curtin was truly trying to argue with a straight face that Citibank is entitled to an advantage in setting the trial date specifically and precisely because they filed a "Meritless" Motion, which he openly asserts had no legitimate legal basis whatsoever. Thus, he asserts Citibank's pending motion was not in fact "pending," at all because it was Meritless in nature. The argument is so abjectly absurd it really is quite "funny," bringing semantic manipulation of logic to a hitherto unknown level in the secular world. Kind of makes it hard to support the notion UPL and State Bar Admission standards truly promote professional "Competency" and protect the general public.

Nonetheless, Appellant openly concedes the legitimacy of this "Unique" argument presented by Mr. Curtin is now to be decided upon by this Court. And Appellant also openly concedes he really can not wait to hear how this Court addresses such, if the Court decides in its legitimate discretion to do so at all.

For the foregoing reason, the trial court's judgment also should be Reversed and Appellant's Counterclaim reintstated.

3. Appellant's Counterclaim was erroneously dismissed based upon a Litigation Privilege for Debt Collector Attorneys to engage in illegal acts with "Absolute Immunity" during the course of a proceeding. It was also erroneously dismissed on the ground Citibank's outstanding Motion to Extend discovery had not yet been ruled on, and if that Motion is denied it results in Citibank admitting issues of Liability in the Counterclaim.

Appellant's Counterclaim was erroneously dismissed by the trial court for two reasons. **FIRST**, it was erroneously dismissed in reliance upon Echevarria v Cole, 950 So.2d 380 (2007) where the Florida Supreme Court held as follows (emphasis added):

> "The litigation privilege applies across the board to actions in Florida, both to common-law causes of action, those initiated pursuant to a statute, or of some other origin. **"Absolute immunity must be afforded to any act occurring during the course of a judicial proceeding. . . . so long as the act has some relation to the proceeding."**

Appellant asserts debt collectors should not be granted Absolute Immunity to commit illegal acts during the course of a proceeding. The holding in Echevarria, supra really is a quite incredible holding and one Appellant believes is unparalleled in any other U.S. State. The open issue is whether the State Supreme Court's holding is still of legal force today in light of other subsequent opinions.

At the onset, it is noted for a State Supreme Court to expressly hold it provides Non-Judicial persons, Absolute Immunity for commission of Illegal

Act of any nature during the course of a litigation, constitutes a substantial collapse of the law. The premise can only breed disrespect. It's really an amazing opinion. The open question is whether Echevarria has been overruled "Sub Silentio" since its issuance in 2007. So far as Appellant knows, the Florida Supreme Court has never expressly overruled it. That point however, is not dispositive as to whether it has been overruled "Sub Silentio" by other opinions. More specifically, in 2017 the Florida Supreme Court carved out at least one exception to Echevarria, when it held in Debrincat v Fischer, 217 So.3d 68 (2017) that litigation privilege does not bar the filing of a malicious prosecution claim. By carving out at least one exception, the Court's prior language that "litigation privilege applies across the board" was arguably overruled "Sub Silentio" in Debrincat.

Subsequent to Debrincat, numerous Appellate Courts have found reasons to disregard the language in Echevarria, that "litigation privilege applies across the board" and declined to apply litigation privilege to a wide variety of egregious conduct. See for example, Miller v Henderson Machine, Inc., 310 So.3d 44 (Fla 4th DCA 2020) ("trial court had authority to protect the proper administration of justice" by declining to apply litigation privilege); Hollander v Fortunato, 305 So.3d 344 (Fla. 3rd DCA 2020) ("litigation privilege does not apply under these circumstances, where

respondent alleged in the trial court that petitioners violated section 559.72 . . . by sending threatening collection letters demanding payment") ; Pace v Bank of New York Mellon Trust, 224 So.3d 342 (Fla 5th DCA 2017) ("Bank's process server's alleged comments to the tenants are not covered by absolute immunity under the litigation privilege"); Inlet Beach Capital Investments v The Enclave at Inlet Beach Owners Association, Inc., 236 So.3d 1140 (Fla. 1st DCA 2018) (Debrincat not limited to situations where a party is added to the litigation) ; Estape v Seidman, 269 So.3d 565 (Fla. 4th DCA 2019) ("statutory grant of confidentiality prevails over the litigation privilege, a common law doctrine").

The Fourth District DCA appears particularly receptive to declining to apply litigation privilege to egregious conduct. This is in conjunction with the Federal 11th Circuit's interpretation of Debrincat. More specifically, in Sun Life Assurance Company v Imperial Holdings Inc., 904 F.3d 1197, 1218 -1220 (2018) the Federal 11th Circuit wrote (emphasis added):

> "**1. Florida's Litigation Privilege**
>
> Sun Life contends that it cannot be sued for filing its declaratory judgment claim because its act of filing a lawsuit is absolutely immune from liability under Florida's litigation privilege. At its most basic level, Florida's litigation privilege "provides legal immunity for actions that occur in judicial proceedings." Echevarria, McCalla, Raymer . . . 950 So.2d 380, 383 (Fla. 2007). **Because the filing of a lawsuit is an "action that occurs in a judicial proceeding" id.,**

Sun Life contends that its filing of its declaratory judgment claim is protected by the privilege. The district court ultimately disagreed. . . . We are in accord with the district court.

Florida adopted its litigation privilege to protect testifying witnesses against defamation suits premised on statements they made in open court. See Myers v Hodges, 53 Fla. 197, 44 So. 357, 361-362 (1907). The concern was with chilling robust courtroom testimony. . . .

. . .

Although at its inception the privilege offered immunity only from actions sounding in defamation . . . . the Florida Supreme Court has significantly expanded the privilege. In Levin, it extended the privilege to protect not just allegedly defamatory litigation conduct but any "tortious behavior . . . [which had] some relation to the [judicial] proceeding. . . . **In Echevarria, the Court expanded the privilege beyond the tort context to hold immune from suit a party facing claims that its litigation conduct violated a statute.** . . .

. . .

Echevarria, however, is not the Court's latest word on Florida's litigation privilege. In Debrincat v Fischer, 217 So.3d 68 (Fla.2017), the Court receded somewhat from the broad language in Echevarria. . . . It concluded that the litigation privilege does not provide immunity from claims for malicious prosecution, principally because if it did so it "would eviscerate [that] long-established cause of action." Debrincat, 217 So.3d at 70.

After Debrincat, and despite the broad formulations in Levin and Echevarria, **we do not think that the Florida Supreme Court is of the view that the litigation privilege offers per se immunity against any and all causes of action arise out of conduct in judicial proceedings**. See id. **Rather, the applicability of the privilege must be assessed in light of the specific conduct for which the defendant seeks immunity**. In this case, therefore, we must ask whether Florida's litigation privilege would immunize a defendant from a breach of contract claim where the act that allegedly breached the contract was the filing of a lawsuit. We think it would not.

. . .

> **We are further persuaded by Debrincat, which made plain that the litigation privilege should not be applied in novel ways that serve to "eviscerate" long-standing sources of judicially available recovery**. . . . "

Thus, after Debrincat, according to the Federal 11th Circuit in Sun Life, supra, the Florida Supreme Court's current position is there are in fact certain **"acts"** occurring during the course of a judicial proceeding that are not protected by litigation privilege (including malicious prosecution claims). This is in direct contrast to the earlier position delineated in Echevarria.

In the instant case, Appellant's Counterclaim was dismissed primarily on the ground that Citibank had a "Privilege" to engage in illegal acts during the course of a proceeding, which includes the filing of meritless claims on a massive scale against litigants in Florida. Thus, Citibank uses litigation privilege as a "SWORD," rather than as the "SHIELD" for which it was originally intended in the seminal case of Myers v Hodges, 44 So. 357 (1907) to promote, rather than hinder the implementation of justice and fair adjudications. Accordingly, Appellant contends where a Plaintiff's conduct indicates they utilize litigation privilege as a "SWORD" to frustrate Due Process and undermine the trial process, this Court should hold that litigation privilege is inapplicable. A holding by this Court along such lines

would be in conjunction with the overall intent and function of litigation privilege, as delineated by the Federal 11th Circuit in Sun Life, supra.

With the foregoing in mind, it is appropriate to examine exactly what Absolute Judicial Immunity or its extension to certain Non-Judicial individuals under the so-called doctrine of "Litigation Privilege" really is. Under Florida law and Federal law, duly appointed or elected Judges are currently entitled to Absolute Immunity for commission of intentional illegal malicious acts. Appellant concedes this Court lacks the power to hold otherwise based on well-established judicial precedent. However, as regards Non-Judicial individuals the Courts now seem to focus on the type of conduct engaged in, the egregious nature of the conduct; whether justice and the dignity of the Court would be furthered or hindered by application of the privilege; whether the privilege as a common law doctrine is nullifying statutory rights; and whether the privilege is asserted in good faith.

It is undisputed Absolute Immunity is enjoyed by Judges functioning in a judicial capacity. While uncontroverted, that itself rests upon tenuous ground. Judicial power is at a "Zenith" when judging others, but at a "Nadir" when judging itself. To extend Absolute Immunity to Non-Judicial Officials and debt collector attorneys who function for self-interested economic goals at the expense of the general public is irrational.

Appellant contends the variant of absolute judicial immunity known as litigation privilege provided to debt collector attorneys, who repeatedly utilize it as a “SWORD” to commit unlawful statutory acts, so infects the fairness of the adjudicative process that it infringes upon a litigant’s right to a fair and impartial adjudication. It also encroaches upon legitimate powers of the State Legislature by effectively nullifying fair debt collection statutes and other legislative statutes when violated during the course of a litigation.

The **SECOND** reason Appellant's Counterclaim was erroneously dismissed is as follows. Citibank's Motion to Extend Discovery (which they filed for the purpose of "DELAY"), was pending and not yet ruled upon on the date of the hearing of their Motion to Dismiss (**and has still not been ruled upon to this day**) (R196). If that Motion to Extend is denied, it procedurally results in Citibank Admitting to the Liability issues in the Counterclaim (A29). More specifically, as Appellant's Opposition to the Motion to Dismiss pointed out, Citibank was served with Requests for Admissions on July 1, 2021. (R221-R226). Citibank filed a Motion for Extension of Time to Respond to Discovery on July 23, 2021 (R196)). In their Motion they requested a "**reasonable extension of time**" to complete their research and review on the issues. Their Motion also expressly stated that it was "**not for purposes of delay**" (R196). However, as of the

date of the hearing on their Motion to Dismiss on January 5, 2022 (almost 5 months later), they still had not substantively responded to the Requests for Admissions in any manner. It was not until February 15, 2022, about seven and a half months after the Requests were served that Citibank provided its "initial" response (to be supplemented months later) to the discovery requests served upon them (A52-A70). Additional documents were then also provided as late as July 14, 2022, as Appellant pointed out in his own motion (R502).

No hearing has ever occurred on their Motion to Extend and it has not yet been ruled upon to this date, now about 18 months later. Notably, Appellant has raised this issue multiple times since the dismissal, including in two Motions for Reconsideration (R250 and R292). If the Motion to Extend is Denied on the ground it was filed for purpose of delay, the procedural impact is that Liability issues in the Counterclaim are admitted. Thus, in the absence of the Court ruling on the Motion to Extend, it was erroneous for the Court to dismiss the Counterclaim.

For these reasons, Appellant's Counterclaim should be reinstated and the trial court’s judgment reversed.

4. Palm Beach County Court Rule 4 and the Palm Beach County Online Scheduling System for Hearings unconstitutionally infringe upon a Pro Se litigant's due process and equal protection clause rights under the U.S. Constitution, to a fair and impartial adjudication.

Appellant presented his Rule 4 challenge in detail at the trial court level on March 15, 2022 in his First Motion for Reconsideration of the Order Dismissing his Counterclaim (R250) and (R259-R266) The crux of the challenge to Rule 4 is it 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 excluding them from its contours, provisions, protections and penalties. Accordingly, having been intentionally "shunted" by the Judiciary by express exclusion, the Rule advances justifiable sentiments of "Incivility" and intellectual hostility by the public towards Judges. The rule does in fact promote commission of Summary Contempt by litigants lacking legal knowledge with no other way to defend their dignity and rights. Such acrimonious sentiments advanced by Rule 4, are not beneficial to Judges, licensed attorneys or the litigants. The Rule is specifically designed to provide inferior justice to Pro Se Litigants, by treating them as an inferior class compared to litigants represented by attorneys. The applicable portions of Rule 4 are as follows (emphasis added) (R260):

"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 "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 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 Palm Beach County Court has positively violated the express terms of Subsection (a) of Florida Judicial Administration 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. On or about February 8, 2017 Palm Beach County Circuit Judge Peter D. Blanc sent a letter to 15th Judicial Circuit Attorneys regarding amendments to Rule 4 (R275-R276). 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 Appellant'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 in that locality. The concept in Judge Blanc's letter it is "important to note" that "Enforcement" "will vary from judge to judge" (meaning for all practical purposes Judges "fly by the seat of their pants" so to speak) does not conform with the State Supreme Court's Rule 2.120 mandate.

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 challenge and Strict

Scrutiny the highest. 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."

Appellant now analyzes Rule 4 under both Strict Scrutiny (the highest level) and Rational Basis Scrutiny (the lowest level). Under Strict Scrutiny, classifications are constitutional only if "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). Rule 4 indicates its purpose is to resolve matters expressly stating (R271):

> (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. . . .
>
> (R271)

Appellant 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. Appellant also asserts 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. They are in Court precisely because Court resolution is needed. 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 must 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, 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 evade deciding issues by pressuring (mandating) the Parties to resolve matters, diminishes faith and confidence in the judiciary. Put simply, if you don't want to be responsible for deciding legal issues, don't become a Judge. But, the concept of becoming a Judge and then evading judicial decision-making by relying on manipulative procedural rules, like Rule 4 is unacceptable.

Similarly, along these lines, Appellant understands there is substantial information indicating Judges handle extremely voluminous dockets. Often one Judge is responsible for hundreds of cases, which in all fairness must be incredibly difficult. Accordingly, 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. The Rule does in fact diminish judicial workloads by transferring the judicial obligation to decide issues, to attorneys who then charge clients substantial sums to resolve

those issues. Appellant sympathizes with the plight of Judges and their heavy dockets. Nevertheless, Judges should not Evade their SWORN decision-making duty to the Public, by adopting Court Rules for their own personal benefit at the expense of litigants.

FIFTH, 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. In either case, it is their decision to make. Rule 4 infringes upon that right.

SIXTH, it is well-known in the context of settlement negotiations, there is often a fine line between legitimate settlement negotiations, and that which constitutes the criminal act of Extortion. In general, 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 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 from avoiding baseless allegations of Extortion, by refusing to speak with the opposing side.

Even if the asserted State interest was the genuine 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 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 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.

SEVENTH, the Judiciary's invidious animus against Pro Se litigants evidenced by Rule 4 has manifested itself in establishing an OLS scheduling system, which logistically allows members of the Florida State Bar to schedule hearings on their motions without the Consent of an opposing Pro Se litigant; even though Pro Se litigants must logistically

obtain opposing Counsel's Consent to proceed within OLS to schedule a Motion. That point is aggravated by Divisional Rules of trial judges, some of which require consent and some of which do not. Thus, depending on the particular trial Judge's divisional rules, the setting of hearings is like a "**Litigation Judicial Procedural Demolition Derby Road Rally**" with no uniformity and each litigant's fate is based upon the predilections of the particular Judge assigned as evidenced by their unilaterally adopted Divisional Rules. Thus, whether a litigant even gets a hearing (much less a fair ruling), depends on the judicial assignment "Lottery," so to speak.

Accordingly, Appellant requests Rule 4 be declared in violation of his constitutional Due Process and Equal Protection Clause rights to a fair and impartial adjudication.

The Court's Judgment should additionally be Reversed on this basis and Appellant's Counterclaim reinstated.

CONCLUSION

For the reasons presented herein based upon supporting legal authority, principles of rationality and common sense, Appellant respectfully requests the Trial Court's Final Judgment be Reversed and his Counterclaim Reinstated. The directions to the lower Court should include that Appellant is to be Refunded the Money payment he deposited with the Clerk of the Court in the amount of **$ 14,080.70** for the purpose of obtaining an Automatic Stay of Enforcement of the Money Judgment pursuant to FRAP 9.310(c)(1). (A76)

Submitted humbly and graciously this 2nd day of January, 2023.

Evan Gutman CPA, JD
Appellant Pro Se
Member State Bar of Pennsylvania
Member District of Columbia Bar
1675 NW 4th Avenue, Apt. 511
Boca Raton, FL 33432
561-990-7440

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a true and correct copy of the foregoing is being furnished to opposing counsel by E-Mail and a follow up copy will be sent via US Mail, to Donald Allen Mihokovich, Esquire, of the law firm of ADAMS AND REESE, LLP addressed as follows:

ADAMS AND REESE LLP
Attn: Donald Allen Mihokovich, Esq.
100 North Tampa Street, Suite 4000
Tampa, FL 33602

Dated this 2nd day of January, 2023.

Evan Gutman CPA, JD

CERTIFICATE OF COMPLIANCE

I HEREBY CERTIFY that to the best of my knowledge and belief, the foregoing comports with the Font and Spacing requirements of Fla. R. App. P. 9.210 and 9.045(b).

Evan Gutman CPA, JD