Filing # 182915201 E-Filed 09/29/2023 01:52:39 PM

IN THE DISTRICT COURT OF APPEAL OF FLORIDA
FOURTH DISTRICT

CASE NO. 4DCA#23- 1058

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

TABLE OF CONTENTS

TABLE OF CONTENTS (continued)

TABLE OF AUTHORITIES

TABLE OF AUTHORITIES (continued)

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 appropriate 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. This Brief is also appropriately "Bookmarked."

Certain documents filed with the trial court, including particularly the Transcript of the Evidentiary Hearing held on March 24, 2023 do not appear to have been sent to the Fourth District Court of Appeal by the trial court. Additionally, events occurred subsequent to the filing of the Notice of Appeal warranting consideration by this Court. Accordingly, concurrent with filing this Initial Brief on the Merits, Appellant has filed an additional Motion to Supplement the Record. In this regard, each Appendix reference is delineated by "A." Thus, A90 for example, refers to Page 90 of the Appendix submitted concurrently. Although Appellant designated the Transcript of the Attorney Fee Hearing held on March 24, 2023 as necessary for transcription and the Record on Appeal as early as May 2, 2023 (**See A90**), it does not appear that transcript was transmitted.

It appears this occurred becase Docket Entry 176 at the trial court, was not transmitted to the Court of Appeals. The designation of the March 24, 2023 hearing transcript was included in Appellant's Designation of records filed May 2, 2023 (**A90**) and was also filed with the trial court by the court reporting entity as Docket Entry 176. The key questions in this appeal are as follows:

1. Does 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 on all issues ?

2. Does substantial new evidence since this Court rendered its' decision Affirming without Opinion the Underlying Judgment in this case, indicate Judge Edward Garrison should be Disqualified ?

3. Do Florida State Bar Unauthorized Practice of Law (UPL) prohibitions, forming the basis of the legal monopoly unconstitutionally infringe upon the due process and equal protection clause rights of litigants to receive a fair and impartial adjudication. UPL prohibitions diminish the competency of legal services provided to litigants by attorneys by creating economic incentives for attorneys to waive procedural errors of each other at the expense of their client's interests; while simultaneously applying the rules hyper-strictly to Pro Se litigants.

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 (R14). Appellant filed an Answer on or about October 6, 2020, just 14 days later (R51). Appellant also filed a Counterclaim at that time (R18). 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, with actual knowledge the claims are meritless (R86).

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 (R181). Citibank then Timely filed a Motion to Strike Appellant's Affirmative Defenses on or about June 30, 2021 (R194). Over a year later at trial, Citibank Counsel Kenneth Curtin would falsely contend the Motion to Strike was not timely filed, so he could defeat Appellant's contention the case was not "At Issue." On or about June 30, 2021 Citibank also filed a Motion to Dismiss the pending Counterclaim 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).

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. 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 (R198).

On or about January 28, 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 (R239).

Subsequently, Judge Bristow was 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 (R405), which Judge Sherman granted. (R494). The case was then assigned to Judge Edward Garrison.

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 (R503). On August 3, 2022, Judge Garrison issued an Order

purporting to grant Appellant's request, but which allowed only 12 days to provide the voluminous discovery requested (R544). Notably, Judge Garrison's Order to Appellant granting only 12 days to respond 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 12 days granted to Appellant.

On September 14, 2022 Appellant filed a Motion to Disqualify Judge Garrison and also a Motion to Postpone Trial, both of which were denied (R1000 and R1139). Appellant intentionally did not appear at trial held on September 15, 2022, since if he appeared case law indicates such might constitute a "Waiver" of his steadfast position the case was not "At Issue" and the trial illegally set.

Judge Garrison rendered a "Final Judgment" in favor of Citibank on or about September 20, 2022 (R1162). The "Final Judgment" indicates it is predicated upon Citibank's "Account Stated" Claim. However, the trial transcript indicates the proceedings contained no discussion or delineation of the basis for the Court's ruling and which Count it was granted upon. Thus, it appears Citibank Counsel just "decided" 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.

Appellant timely filed a Notice of Appeal on or about October 17, 2022 (R1189). 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 (R1193). Hearings were held on the issue of entitlement and amount for attorney fees. On March 24, 2023 Judge Garrison awarded Citibank the sum of $ 31,215.50 in attorney fees and certain costs. Citibank served discovery upon Appellant on April 20, 2023; but never filed a Motion to Compel Discovery. At a hearing held on September 20, 2023; Judge Garrison incredibly opted to Reclassify and "Treat" Citibank's pending motion set for hearing that day as a Motion to Compel, even though that is not what it was. (A153).

By reclassifying the Citibank filing as a Motion to Compel, the impact was Appellant was <u>not provided with even one single day</u> to respond to the newly "Treated" Motion to Compel, since the hearing was supposed to be on the issue of Contempt. As a result of "Treating" an earlier filed Contempt motion as a Motion to Compel (thereby mooting the Contempt motion); there is no longer a valid active Contempt motion on the record. At a bare minimum, to hold someone in Contempt must at least require an active Contempt Motion to be on the record. For that matter, there is also

no active Sanctions Motion even on the record. The attorney fees and costs awarded to Citibank March 24, 2023 are the subject of this appeal.

SUMMARY OF ARGUMENT

Appellant's arguments are summarized as follows.

1. 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 on all issues.

2. Substantial new evidence since this Court rendered its' decision Affirming without Opinion the Underlying Judgment in this case, indicates Judge Edward Garrison should be Disqualified.

3. Florida State Bar Unauthorized Practice of Law (UPL) prohibitions, forming the basis of the legal monopoly unconstitutionally infringe upon the due process and equal protection clause rights of litigants to receive a fair and impartial adjudication. UPL prohibitions diminish the competency of legal services provided to litigants by attorneys by creating economic incentives for attorneys to waive procedural errors of each other at the expense of their client's interests; while simultaneously applying the rules hyper-strictly to Pro Se litigants.

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. 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 on all issues.

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 (R252) and multiple times thereafter. 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 "shunted" by the Judiciary by express exclusion, Rule 4 promotes public sentiments of "Incivility" towards Judges. The rule promotes commission of Summary Contempt by litigants lacking legal knowledge whos see no other way to defend their dignity and legitimate rights. Such acrimonious sentiments advanced by Rule 4, are not beneficial to Judges, licensed attorneys or litigants. The applicable portions of Rule 4 are as follows (emphasis added) (R273):

"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 contravenes 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 (A150-A151). 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 no provision in Judicial Administration Rule 2.120 for any Local Court Rule to be predicated upon less than uniform application of 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" 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 :

> (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. . . .

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 the

Rule. 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. Thus, depending on the trial Judge's divisional rules, the setting of

hearings is like a "Litigation Judicial Procedural Demolition Derby Road Rally" with no uniformity. Each litigant's fate is based upon the predilections of the 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."

Accordingly, Appellant requests Rule 4 be declared in violation of his Due Process and Equal Protection Clause rights to a fair and impartial adjudication on any and all issues because of the bias it promotes.

2. Substantial new evidence since this Court rendered its' decision Affirming the Underlying Judgment without Opinion in this case, indicates Judge Edward Garrison should be Disqualified.

An evidentiary hearing was held on the issue of attorney fees on March 24, 2023. Prior to the hearing, Appellant had filed two Motions to Disqualify Judge Garrison both of which were denied (one filed prior to the trial itself). The transcript of the March 24, 2023 hearing presents substantial new evidence that Judge Garrison was biased and rendered rulings in a one-sided manner in favor of Citibank. More specifically, at the Hearing he used inappropriate and highly intimidating language directed precisely at Appellant. The language he utilized could possibly even be construed as a thinly veiled threat to Appellant, although Appellant declines

to assert such at this time. Rather, Appellant simply asserts herein the language he utilized was inappropriate and intimidating. Accordingly, Appellant requests this Court consider the transcript of the March 24, 2023 hearing in its entirety, along with reconsidering issues presented in the prior two Motions to disqualify.

Specifically, as shown by Pages 7-8 of the hearing transcript (A12, A13) the following words were spoken by Judge Garrison and then also confirmed by Citibank Counsel, Carter Pope, Esq. (emphasis added) :

> THE COURT: . . . . **Fire away**.
> **. . . .**
> MR. POPE: Just to confirm**, Your Honor, it's fine to fire away ?**
>
> THE COURT: Yes, that's fine.
>
> (A12, A13)

The context of the Court's utilization of the phrase "Fire away" was clearly directed towards Appellant. This is evidenced by the fact the Court confirmed to Mr. Pope that he may "fire away" at Appellant. The fact two Motions to Disqualify had already been denied by the Court, indicated there was a degree of professional friction between Judge Garrison and Appellant. Accordingly, Judge Garrison should have been more sensitive and declined to use inappropriate and intimidating language. The problem

is then further complicated by the fact Judge Garrison went so far as to confirm his utilization of the language upon questioning by Mr. Pope. Appellant asserts if a litigant were to direct such inappropriate intimidating language towards a Judge, such would probably not be received too well.

Throughout the course of the hearing, Judge Garrison sustained virtually every single one of Citibank's objections and often did not even provide Appellant with an opportunity to respond in any manner. Ultimately, this issue came to a head as shown on Page 57 of the transcript by the following exchange (emphasis added) (A62):

MR. CURTIN: "Objection, Your Honor, relevancy. We're talking about a specific timeframe between July, I think 29th, 2022 up until the order on entitlement.

THE COURT: Sustained.

MR. GUTMAN: **I would like to note for the record, Your Honor, I didn't get an opportunity to respond**, but. . .

THE COURT: You'd like to what ?

MR. GUTMAN: **I didn't get an opportunity to respond to Mr. Curtin.**

THE COURT: **I didn't think a response was necessary.**

(A62)

The foregoing exchange evidences a drastic deprivation of Appellant's legitimate right to be respectfully heard, and thereby contributes to the reasons why Judge Garrison should be disqualified in this matter. Throughout this litigation, Appellant has consistently presented his legitimate legal arguments in a concededly passionate, but also respectful and lawful manner. Accordingly, Appellant was entitled to at least be treated with dignity, rather than subjected to intimidating inappropriate language by Judge Garrison, coupled with consistently declining to allow Appellant to be legitimately heard.

Appellant renews and incorporates by reference herein, all arguments presented in his two earlier Motions to Disqualify. Concurrently, Appellant notes it is his understanding since this Court affirmed the underlying judgment without opinion, the issue of litigation privilege is now pending at the U.S. Supreme Court. Further, Appellant understands that since the appellate "decision" affirming the underlying judgment was rendered without any written opinion, such is not precedential in nature.

This case presents a strong correlation between the legal doctrine of litigation privilege, which Citibank has relied upon to justify their illegal tortious conduct; and the concepts presented in Levin, Middlebrooks, Mabie v United States Fire Insurance, 639 So.2d 606 (608-610) (Fla.

1994). More specifically, the Florida Supreme Court held in Levin, that the filing of meritless complaints is not without protection to a litigant entirely due to the Court's power to control the proceedings. In this instance, the Levin promise will prove to be an empty promise, if not utilized to preclude the following egregious conduct of Citibank attorneys:

1. The written representation of Kenneth M. Curtin, Esq. that he would be willing to engage in Perjury to advance illegal debt collection efforts of Citibank (A119-A132). Ultimately, Mr. Curtin declined to do so, upon receiving proper counseling from Appellant. Mr. Curtin also falsely asserted, Appellant violated mediation confidentiality even though the subject e-mails and discussion did not take place within the context of mediation. Put simply, there was no mediator present, and the phone call between the parties was distinctly separate from the mediation provision in Judge Garrison's Order (A119-A132)
2. Recently, Mr. Curtin has been seeking to have Appellant held in Contempt or Sanctions imposed. This is notwithstanding there is not even an active Motion for Contempt pending because Judge Garrison "Reclassified" Mr. Curtin's motion as a Motion to Compel. Appellant was not even informed Mr. Curtin's Motion for Contempt would be "Treated" as a Motion to Compel, until the day of the hearing. Thus,

Appellant did not have even one day to respond to the newly formulated character of the Motion. This issue extends beyond Judicial Disqualification or mere Bias. By recognizing the validity of Appellant's argument regarding Contempt; and then Reclassifying the Citibank motion without Notice to Appellant, Judge Garrison functioned literally as an "ADVOCATE" for Citibank. He functioned as their "Counsel" by telling them what their Motion really should have been and then "Treating" it in that manner (A153).

3. The fact Citibank has been filing massive numbers of unjust enrichment claims and does not even separate the time they spend on such claims versus their account stated claim, should also preclude an attorney fee award under Levin, supra. (A53-A55)

4. The attorney fee award is unrelated to the time period Mr. Curtin requested attorney fees for, since he incorrectly stated the applicable dates in his original motion. Although he claims that is a Scrivener error, his failure to at least try to correct or amend the filing defeats the legitimacy of the contention. (A29-A33) and (A92-A100).

5. The time records presented by Mr. Curtin at the attorney fee hearing contained insufficient breakdown of the defeated unjust enrichment claim versus the account stated claim. Therefore, those records can

not be relied upon for purpose of the attorney fee award. The failulre of Judge Garrison to recognize such also exemplifies a one-sided bias in favor of Citibank (A53-A55).

6. At the hearing, Appellant proved the amount of time expended by Citibank Counsel on certain legal work massively exceeded the actual time spent. (A56-A60). Judge Garrison totally ignored that legitimate point when ruling in favor of Citibank.

Based on the foregoing, and this new evidence, Appellant asserts this Court should reconsider its' prior decision declining to recognize the legitimacy of the grounds by which Appellant sought to Disqualify Judge Garrison in the underlying case.

3. Florida State Bar Unauthorized Practice of Law (UPL) prohibitions, forming the basis of the legal monopoly unconstitutionally infringe upon the due process and equal protection clause rights of litigants to receive a fair and impartial adjudication. UPL prohibitions diminish the competency of legal services provided to litigants by attorneys by creating economic incentives for attorneys to waive procedural errors of each other at the expense of their client's interests; while simultaneously applying the rules hyper-strictly to Pro Se litigants.

State bars consistently maintain UPL prohibitions protect the public from incompetent legal services performed by Nonattorneys. Correlated

with this is the assertion UPL prohibitions are not intended to further the economic interests of the legal profession. Appellant contends the opposite. Appellant contends UPL prohibitions "Harm" the general public and increase the propensity of incompetent legal services. This occurs because they cause court rules to be applied liberally to licensed attorneys and hyper-strictly against Pro Se litigants. Historically, this is known as the "invidious application of the procedure / substance dichotomy."

Appellant wrote his senior year law school thesis in 1994 on the topic of UPL. While the scope of UPL varies from state to state, generally it is defined as the provision of "legal services." In turn, "legal services" are generally defined as rendering "legal advice" or preparation of "legal documents." Courts have wrestled with defining "legal advice" or preparation of "legal documents" since the 1930s. The more expansive the definitions, the more the legal profession economically benefits. To the extent UPL prohibitions minimize incompetent legal services, society also benefits. However, when UPL prohibitions exclude competent individuals from providing low-cost legal services, society is harmed. Thus, whether society is harmed or benefits is contingent upon who is excluded from providing legal services. In contrast, the legal profession always benefits.

The financial incentives for State Bars to maximize UPL enforcement mandates the Bar's UPL policy be critically examined. In assessing the legitimacy of the assertion that services performed by Nonattorneys are incompetent, it is critical to examine whether Nonattorneys are held to a higher standard of proficiency by Courts. This is because in a typical UPL enforcement action, the State Bar adopts the posture that not only was the service prohibited, but also the legal advice given or the legal document prepared contained errors. The flaw in this argument is that licensed attorneys regularly provide incorrect legal advice and prepare legal documents containing errors. The record in this case demonstrates such.

Even if procedural rules were not applied unevenly against Nonattorneys, the State Bar's competency assertion is still infirm. The reasons are as follows. **FIRST**, in virtually every instance where a licensed attorney files a motion opposed by another attorney, one party wins and one loses. If the losing attorney was wrong, it means the asserted position was wrong. Thus, if incorrect legal advice or preparation of erroneous documents constitutes grounds for precluding someone from providing legal services, there are thousands of licensed attorneys who should be excluded from practicing law. In fact, since one would be hard pressed to

find a trial lawyer who has not lost at least one motion, a solid assertion could be made they all should be excluded from practicing law.

SECOND, the fact that appellate courts regularly reverse trial courts undermines the competency argument. The law can not simultaneously require a motion should have been granted and also that it should not have been granted. That means most appellate opinions reversing a trial court judgment, mandates a conclusion the trial court judge did not competently apply the law. The same premise applies when a State Supreme Court reverses an appellate court, or the U.S. Supreme Court reverses a State Supreme Court decision. Put simply, two courts at two different levels with diametrically opposed opinions can not both be legally correct.

THIRD, the mere existence of dissenting judicial opinions undermines the competency argument. One does not have to look far on any appellate court to find one or more Justices asserting the majority is wrong. Since both the majority and the dissent can not be correct, it inescapably means any number of appellate justices do not understand the law competently. In fact, pursuant to this theory there is legitimacy in the assertion every U.S. Supreme Court opinion decided 5 - 4, means at least 4 U.S. Supreme Court Justices were not as competent as they should have been.

FOURTH, in Florida particularly, the competency argument is undermined by the fact Trial Judges are often assigned to divisions in legal subject areas where they have no experience at all. Judges who previously worked in criminal law may be assigned to the probate division. Judges who worked in the Estate area may be assigned to the criminal division. Put simply, there are massive numbers of Judges in Florida assigned to divisions where they don't have the slightest degree of experience. The fact many Judges do not have competency regarding the legal subjects they rule upon undercuts the legitimacy of State Bar competency arguments supporting UPL prohibitions.

The constitutional justification for UPL prohibitions adopted by Courts has chiefly relied on the speech-conduct dichotomy. The basic premise is speech is subject to greater protection under the First Amendment than conduct which is subject to greater State regulation. The seminal case is U.S. v O'Brien, 391 U.S. 367 (1968), where the Court's opinion stated:

> "When "speech" and "nonspeech" elements are combined in the same course of conduct, a sufficiently important government interest in regulating the nonspeech element can justify incidental restrictions on First Amendment freedoms."

The threshold issue in determining whether a particular service constitutes the practice of law is whether the service constitutes "speech"

or "conduct." If it includes both speech and nonspeech elements, the elements must be weighed to determine which of the two comprises a greater proportion. UPL prohibitions are justifiable only to the extent they primarily constitute "conduct" rather than "speech." The difficulty is that virtually everything a person does encompasses speech and nonspeech components. Even when a person engages in pure political speech or religious prayer (uniformly regarded as the Zenith of activity protected under the First Amendment), they unavoidably make facial expressions, hand movements or shifts in body posture. Arguably therefore, pure political speech or religious prayer could be manipulatively classified as conduct under the same theory used to justify UPL prohibitions.

The bottom line is the mere speaking of words containing legal information; or writing down information on legal documents; contains vastly greater elements of "speech," compared to the "nonspeech" (i.e. "conduct" elements). This exposes the vulnerability of UPL prohibitions. The problem is exacerbated by the fact that although Courts regularly classify the mere speaking of words containing legal information as “conduct” rather than “speech”; they adopt a diametrically opposed stance in subject areas that do not enhance economic interests of the legal profession. Some examples are as follows. In Cohen v California, 403

U.S. 15 (1971) the Court held wearing a jacket bearing profanity in the Los Angeles Courthouse was protected speech. In Gooding v Wilson, 405 U.S. 518 (1972) the Court invalidated a Georgia statute that criminalized "abusive language tending to cause a breach of the peace." In Police Department of the City of Chicago v Mosley, 408 U.S. 92 (1972) the Court invalidated a city ordinance that prohibited picketing, except for peaceful picketing of a school in a labor dispute. In each case, the challenged actions contained higher proportions of conduct compared to speech. Yet, in each case the Court concluded it was protected speech. Thus, it is mainly in the one area benefitting attorney economic interests that Courts regularly conclude such is “conduct,” rather than protected “speech.”

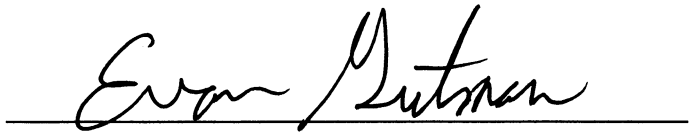
UPL prohibitions came close to collapsing entirely in NAACP v Button, 371 U.S. 415 (1963) where the Supreme Court held within the context of the case, litigation was a form of political expression. The Court rejected the Virginia's false assertion the purpose of UPL prohibitions was to insure high professional standards. It further determined a State may not, under the "guise' of prohibiting professional misconduct ignore constitutional rights. It is also noteworthy in Johnson v Avery, 393 U.S. 483 (1969) the Court held a State may not enforce a regulation which absolutely bars prison inmates from furnishing legal assistance to other

prisoners. The innocuous result is to a certain extent imprisoned criminals are legally allowed to provide free legal assistance to other criminals free of UPL prohibitions, while law-abiding citizens may not help other citizens.

Based on the foregoing, Appellant asserts this case provides support for the premise UPL prohibitions diminish the competency of legal services, thereby undermining the fairness of litigation. Specifically, the record demonstrates well-connected attorneys not only perform services incompetently, but yet still win against pro se litigants, due to invidious application of court rules. It is of significance there is a close nexus between UPL prohibitions; and the legal doctrines of litigation privilege; and absolute judicial immunity. All three are predicated upon promoting incompetency. UPL does so by applying court rules unevenly; Litigation Privilege and Absolute Immunity do so by fully exempting certain people from the law itself. Put simply, licensed attorneys enjoy such “Strangely Liberal” application of rules in their favor, it virtually nullifies the rules. In contrast, pro se litigants are subjected to such “Hyper-Strict” application it nullifies their legitimate due process rights to a fair adjudication. It is virtually impossible to win a litigation, if only one side is subjected to the rules and law, but the other side is exempted from them.

CONCLUSION

For the reasons presented herein Appellant requests the Trial Court's Final Judgment on Attorney Fees be Reversed. Submitted this 29th day of September, 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 Mihokovich, Esquire, of the law firm of Adams and Reese, LLP. addressed as follows:

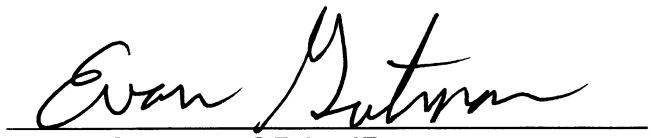
ADAMS AND REESE LLP
Attn: Donald Allen Mihokovich, Esq.
100 North Tampa Street, Suite 4000
Tampa, FL 33602

Dated this 29th day of September, 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. 9.210 and 9.045(b).



Evan Gutman CPA, JD