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The risk to a client is greatest when the client expects the lawyer to represent the client in the transaction itself or when the lawyer's financial interest otherwise poses a significant risk that the lawyer's representation of the client will be materially limited by the lawyer's financial interest in the transaction. Here the lawyer's role requires that the lawyer must comply, not only with the requirements of subdivision (a), but also with the requirements of rule 4-1.7. Under that rule, the lawyer must disclose the risks associated with the lawyer's dual role as both legal adviser and participant in the transaction, such as the risk that the lawyer will structure the transaction or give legal advice in a way that favors the lawyer's interests at the expense of the client. Moreover, the lawyer must obtain the client's informed consent. In some cases, the lawyer's interest may be such that rule 4-1.7 will preclude the lawyer from seeking the client's consent to the transaction.

If the client is independently represented in the transaction, subdivision (a)(2) of this rule is inapplicable, and the subdivision (a)(1) requirement for full disclosure is satisfied either by a written disclosure by the lawyer involved in the transaction or by the client's independent counsel. The fact that the client was independently represented in the transaction is relevant in determining whether the agreement was fair and reasonable to the client as subdivision (a)(1) further requires.

Gifts to lawyers

A lawyer may accept a gift from a client, if the transaction meets general standards of fairness and if the lawyer does not prepare the instrument bestowing the gift. For example, a simple gift such as a present given at a holiday or as a token of appreciation is permitted. If a client offers the lawyer a more substantial gift, subdivision (c) does not prohibit the lawyer from accepting it, although such a gift may be voidable by the client under the doctrine of undue influence, which treats client gifts as presumptively fraudulent. In any event, due to concerns about over-reaching and imposition on clients, a lawyer may not suggest that a substantial gift be made to the lawyer or for the lawyer's benefit, except where the lawyer is related to the client as set forth in subdivision (c). If effectuation of a substantial gift requires preparing a legal instrument such as a will or conveyance, however, the client should have the detached advice that another lawyer can provide and the lawyer should advise the client to seek advice of independent counsel. Subdivision (c) recognizes an exception where the client is a relative of the donee or the gift is not substantial.

This rule does not prohibit a lawyer from seeking to have the lawyer or a partner or associate of the lawyer named as personal representative of the client's estate or to another potentially lucrative fiduciary position. Nevertheless, such appointments will be subject to the general conflict of interest provision in rule 4-1.7 when there is a significant risk that the lawyer's interest in obtaining the appointment will materially limit the lawyer's independent professional judgment in advising the client concerning the choice of a personal representative or other fiduciary. In obtaining the client's informed consent to the conflict, the lawyer should advise the client concerning the nature and extent of the lawyer's financial interest in the appointment, as well as the availability of alternative candidates for the position.

Literary rights

An agreement by which a lawyer acquires literary or media rights concerning the conduct of the representation creates a conflict between the interests of the client and the personal interests of the lawyer. Measures suitable in the representation of the client may detract from the publication value of an account of the representation. Subdivision (d) does not prohibit a lawyer representing a client in a transaction concerning literary property from agreeing that the lawyer's fee shall consist of a share in ownership in the property if the arrangement conforms to rule 4-1.5 and subdivisions (a) and (i).
Financial assistance

Lawyers may not subsidize lawsuits or administrative proceedings brought on behalf of their clients, including making or guaranteeing loans to their clients for living expenses, because to do so would encourage clients to pursue lawsuits that might not otherwise be brought and because such assistance gives lawyers too great a financial stake in the litigation. These dangers do not warrant a prohibition on a lawyer advancing a client court costs and litigation expenses, including the expenses of medical examination and the reasonable costs of obtaining and presenting evidence, because these advances are virtually indistinguishable from contingent fees and help ensure access to the courts. Similarly, an exception allowing lawyers representing indigent clients to pay court costs and litigation expenses regardless of whether these funds will be repaid is warranted.

Person paying for lawyer’s services

Rule 4-1.8(a) requires disclosure of the fact that the lawyer’s services are being paid for by a third party. Such an arrangement must also conform to the requirements of rule 4-1.6 concerning confidentiality and rule 4-1.7 concerning conflict of interest. Where the client is not a class, consent may be obtained on behalf of the class by court-supervised procedure.

Lawyers are frequently asked to represent a client under circumstances in which a third person will compensate the lawyer, in whole or in part. The third person might be a relative or friend, an indemnitor (such as a liability insurance company), or a co-client (such as a corporation sued along with one or more of its employees). Because third-party payers frequently have interests that differ from those of the client, including interests in minimizing the amount spent on the representation and in learning how the representation is progressing, lawyers are prohibited from accepting or continuing such representations unless the lawyer determines that there will be no interference with the lawyer’s independent professional judgment and there is informed consent from the client. See also rule 4-5.4(d) (prohibiting interference with a lawyer’s professional judgment by one who recommends, employs or pays the lawyer to render legal services for another).

Sometimes, it will be sufficient for the lawyer to obtain the client’s informed consent regarding the fact of the payment and the identity of the third-party payer. If, however, the fee arrangement creates a conflict of interest for the lawyer, then the lawyer must comply with rule 4-1.7. The lawyer must also conform to the requirements of rule 4-1.6 concerning confidentiality. Under rule 4-1.7(a), a conflict of interest exists if there is significant risk that the lawyer’s representation of the client will be materially limited by the lawyer’s own interest in the fee arrangement or by the lawyer’s responsibilities to the third-party payer (for example, when the third-party payer is a co-client). Under rule 4-1.7(b), the lawyer may accept or continue the representation with the informed consent of each affected client, unless the conflict is nonconsentable under that subdivision. Under rule 4-1.7(b), the informed consent must be confirmed in writing or clearly stated on the record at a hearing.

Aggregate settlements

Differences in willingness to make or accept an offer of settlement are among the risks of common representation of multiple clients by a single lawyer. Under rule 4-1.7, this is one of the risks that should be discussed before undertaking the representation, as part of the process of obtaining the clients’ informed consent. In addition, rule 4-1.2(a) protects each client's right to have the final say in deciding whether to accept or reject an offer of settlement and in deciding whether to enter a guilty or nolo contendere plea in a criminal case. The rule stated in this subdivision is a corollary of both these rules and provides that, before any settlement offer or plea bargain is made or accepted on behalf of multiple clients, the lawyer must inform each of them about all the material terms of the settlement, including what the other clients will re-

receive or pay if the settlement or plea offer is accepted. See also terminology (definition of informed consent). Lawyers representing a class of plaintiffs or defendants, or those proceeding derivatively, must comply with applicable rules regulating notification of class members and other procedural requirements designed to ensure adequate protection of the entire class.

Acquisition of interest in litigation

[No Change]

Representation of insureds

[No Change]

Imputation of prohibitions

Under subdivision (k), a prohibition on conduct by an individual lawyer in subdivisions*445.(a) through (i) also applies to all lawyers associated in a firm with the personally prohibited lawyer. For example, 1 lawyer in a firm may not enter into a business transaction with a client of another member of the firm without complying with subdivision (a), even if the first lawyer is not personally involved in the representation of the client.

RULE 4-1.9 CONFLICT OF INTEREST; FORMER CLIENT

A lawyer who has formerly represented a client in a matter shall not thereafter:

(a) represent another person in the same or a substantially related matter in which that person's interests are materially adverse to the interests of the former client unless the former client consents after consultation gives informed consent; or

(b) use information relating to the representation to the disadvantage of the former client except as rule 4-1.6 would permit with respect to a client or when the information has become generally known. For purposes of this rule, "generally known" shall mean information of the type that a reasonably prudent lawyer would obtain from public records or through authorized processes for discovery of evidence.

Comment

After termination of a client-lawyer relationship, a lawyer may not represent another client except in conformity with this rule. The principles in rule 4-1.7 determine whether the interests of the present and former client are adverse. Thus, a lawyer could not properly seek to rescind on behalf of a new client a contract drafted on behalf of the former client. So also a lawyer who has prosecuted an accused person could not properly represent the accused in a subsequent civil action against the government concerning the same transaction.

The scope of a "matter" for purposes of rule 4-1.9(a) may depend on the facts of a particular situation or transaction. The lawyer's involvement in a matter can also be a question of degree. When a lawyer has been directly involved in a specific transaction, subsequent representation of other clients with materially adverse interests clearly is prohibited. On the other hand, a lawyer who recurrently handled a type of problem for a former client is not precluded from later representing another client in a wholly distinct problem of that type even though the subsequent representation involves a position adverse to the prior client. Similar considerations can apply to the reassignment of military lawyers between defense and prosecution functions within the same military jurisdiction. The underlying question is whether the lawyer was so involved in the matter that the subsequent representation can be justly regarded as a changing of sides in the matter in question.

Matters are "substantially related" for purposes of this rule if they involve the same transaction or legal dispute, or if the current matter would involve the
lawyer attacking work that the lawyer performed for the former client. For example, a lawyer who has previously represented a client in securing environmental permits to build a shopping center would be precluded from representing neighbors seeking to oppose rezoning of the property on the basis of environmental considerations; however, the lawyer would not be precluded, on the grounds of substantial relationship, from defending a tenant of the completed shopping center in resisting eviction for nonpayment of rent.

Lawyers owe confidentiality obligations to former clients, and thus information *446 acquired by the lawyer in the course of representing a client may not subsequently be used by the lawyer to the disadvantage of the client without the former client's consent. For example, a lawyer who has represented a businessperson and learned extensive private financial information about that person may not then represent that person's spouse in seeking a divorce. However, the fact that a lawyer has once served a client does not preclude the lawyer from using generally known information, as defined in rule 4-1.9(b), about that client when later representing another client. Information that has been widely disseminated by the media to the public, or that typically would be obtained by any reasonably prudent lawyer who had never represented the former client, should be considered generally known and ordinarily will not be disqualifying. The essential question is whether, for having represented the former client, the lawyer would know or discover the information.

Information acquired in a prior representation may have been rendered obsolete by the passage of time. In the case of an organizational client, general knowledge of the client's policies and practices ordinarily will not preclude a subsequent representation; on the other hand, knowledge of specific facts gained in a prior representation that are relevant to the matter in question ordinarily will preclude such a representation. A former client is not required to reveal the

confidential information learned by the lawyer in order to establish a substantial risk that the lawyer has confidential information to use in the subsequent matter. A conclusion about the possession of such information may be based on the nature of the services the lawyer provided the former client and information that would in ordinary practice be learned by a lawyer providing such services.

Disqualification from subsequent representation is the provisions of this rule are for the protection of clients and can be waived by them. A waiver is effective only if there is disclosure of the circumstances, including the lawyer's intended role in behalf of the new client if the former client gives informed consent. See terminology.

With regard to an opposing party's raising a question of conflict of interest, see comment to rule 4-1.7. With regard to disqualification of a firm with which a lawyer is associated, see rule 4-1.10.

**RULE 4-1.10 IMPUTED DISQUALIFICATION: IMPUTATION OF CONFLICTS OF INTEREST; GENERAL RULE**

(a) Imputed Disqualification of All Lawyers in Firm. While lawyers are associated in a firm, none of them shall knowingly represent a client when any 1 of them practicing alone would be prohibited from doing so by rule 4-1.7, 4-1.8(e), or 4-1.9, or 4-2.2 except as provided elsewhere in this rule, or unless the prohibition is based on a personal interest of the prohibited lawyer and does not present a significant risk of materially limiting the representation of the client by the remaining lawyers in the firm.

(b)-(d) [No Change]

(c) Government Lawyers. The disqualification of lawyers associated in a firm with former or current government lawyers is governed by rule 4-1.11.
Comment

Definition of "firm"

For purposes of the Rules of Professional Conduct, the term "firm" includes lawyers in a private firm and lawyers employed in the legal department of a corporation or other organization or in a legal services organization. Whether 2 or more lawyers constitute a firm within this definition \(^447\) can depend on the specific facts. For example, 2 practitioners who share office space and occasionally consult or assist each other ordinarily would not be regarded as constituting a firm. However, if they present themselves to the public in a way suggesting that they are a firm or conduct themselves as a firm, they should be regarded as a firm for purposes of the rules. The terms of any formal agreement between associated lawyers are relevant in determining whether they are a firm, as is the fact that they have mutual access to confidential information concerning the clients they serve. Furthermore, it is relevant in doubtful cases to consider the underlying purpose of the rule that is involved. A group of lawyers could be regarded as a firm for purposes of the rule that the same lawyer should not represent opposing parties in litigation, while it might not be so regarded for purposes of the rule that information acquired by one lawyer is attributed to another.

With respect to the law department of an organization, there is ordinarily no question that the members of the department constitute a firm within the meaning of the Rules of Professional Conduct. However, there can be uncertainty as to the identity of the client. For example, it may not be clear whether the law department of a corporation represents a subsidiary or an affiliated corporation, as well as the corporation by which the members of the department are directly employed. A similar question can arise concerning an unincorporated association and its local affiliates.

Similar questions can also arise with respect to lawyers in legal aid. Lawyers employed in the same unit of a legal service organization constitute a firm, but not necessarily those employed in separate units. As in the case of independent practitioners, whether the lawyers should be treated as associated with each other can depend on the particular rule that is involved and on the specific facts of the situation.

Where a lawyer has joined a private firm after having represented the government, the situation is governed by rule 4-1.11(a) and (b); where a lawyer represents the government after having served private clients, the situation is governed by rule 4-1.11(c)(1). The individual lawyer involved is bound by the rules generally, including rules 4-1.6, 4-1.7, and 4-1.9.

Different provisions are thus made for movement of a lawyer from 1 private firm to another and for movement of a lawyer between a private firm and the government. The government is entitled to protection of its client confidences and, therefore, to the protections provided in rules 4-1.6, 4-1.9, and 4-1.11. However, if the more extensive disqualification in rule 4-1.10 were applied to former government lawyers, the potential effect on the government would be unduly burdensome. The government deals with all private citizens and organizations and thus has a much wider circle of adverse legal interests than does any private law firm. In these circumstances, the government's recruitment of lawyers would be seriously impaired if rule 4-1.10 were applied to the government. On balance, therefore, the government is better served in the long run by the protections stated in rule 4-1.11.

Principles of imputed disqualification

The rule of imputed disqualification stated in subdivision (a) gives effect to the principle of loyalty to the client as it applies to lawyers who practice in a law firm. Such situations can be considered from the premise that a firm of lawyers is essentially 1 lawyer for purposes of the rules governing loyalty to the client or from the premise that each lawyer is vicariously bound by the obligation of loyalty owed by *448 each

lawyer with whom the lawyer is associated. Subdivision (a) operates only among the lawyers currently associated in a firm. When a lawyer moves from 1 firm to another the situation is governed by subdivisions (b) and (c).

The rule in subdivision (a) does not prohibit representation where neither questions of client loyalty nor protection of confidential information are presented. Where 1 lawyer in a firm could not effectively represent a given client because of strong political beliefs, for example, but that lawyer will do no work on the case and the personal beliefs of the lawyer will not materially limit the representation by others in the firm, the firm should not be disqualified. On the other hand, if an opposing party in a case were owned by a lawyer in the law firm, and others in the firm would be materially limited in pursuing the matter because of loyalty to that lawyer, the personal disqualification of the lawyer would be imputed to all others in the firm.

The rule in subdivision (a) also does not prohibit representation by others in the law firm where the person prohibited from involvement in a matter is a nonlawyer, such as a paralegal or legal secretary. Such persons, however, ordinarily must be screened from any personal participation in the matter to avoid communication to others in the firm of confidential information that both the nonlawyers and the firm have a legal duty to protect. See terminology and rule 4-5.3.

Lawyers moving between firms

[No Change]

Confidentiality

[No Change]

Adverse positions

The second aspect of loyalty to client is the lawyer's obligation to decline subsequent representation involving positions adverse to a former client arising in substantially related matters. This obligation requires abstention from adverse representation by the individual lawyer involved, but does not properly entail abstention of other lawyers through imputed disqualification. Hence, this aspect of the problem is governed by rule 4-1.9(a). Thus, if a lawyer left 1 firm for another, the new affiliation would not preclude the firms involved from continuing to represent clients with adverse interests in the same or related matters so long as the conditions of rule 4-1.10(b) and (c) concerning confidentiality have been met.

Rule 4-1.10(d) removes imputation with the informed consent of the affected client or former client under the conditions stated in rule 4-1.7. The conditions stated in rule 4-1.7 require the lawyer to determine that the representation is not prohibited by rule 4-1.7(b) and that each affected client or former client has given informed consent to the representation, confirmed in writing or clearly stated on the record. In some cases, the risk may be so severe that the conflict may not be cured by client consent. For a definition of informed consent, see terminology.

Where a lawyer is prohibited from engaging in certain transactions under rule 4-1.8, subdivision (k) of that rule, and not this rule, determines whether that prohibition also applies to other lawyers associated in a firm with the personally prohibited lawyer.

RULE 4-1.11 SUCCESSIVE SPECIAL CONFLICTS OF INTEREST FOR FORMER AND CURRENT GOVERNMENT OFFICERS AND PRIVATE EMPLOYMENT EMPLOYEES

(a) Representation of Private Client by Former Public Officer or Employee. A lawyer who has formerly served as a public officer or employee of the government:
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(1) is subject to rule 4-1.9(b); and

(2) shall not otherwise represent a private-client in connection with a matter in which the lawyer participated personally and substantially as a public officer or employee, unless the appropriate government agency consents after consultation gives its informed consent, confirmed in writing, to the representation.

(b) Representation by Another Member of the Firm. No-When a lawyer is disqualified from representation under subdivision (a), no lawyer in a firm with which that lawyer is associated may knowingly undertake or continue representation in such a matter unless:

(1) the disqualified lawyer is timely screened from any participation in the matter and is directly apportioned no part of the fee therefrom; and

(2) written notice is promptly given to the appropriate government agency to enable it to ascertain compliance with the provisions of this rule.

(bg) Use of Confidential Government Information. A lawyer having information that the lawyer knows is confidential government information about a person acquired when the lawyer was a public officer or employee may not represent a private client whose interests are adverse to that person in a matter in which the information could be used to the material disadvantage of that person. As used in this rule, the term "confidential government information" means information that has been obtained under governmental authority and at the time this rule is applied, the government is prohibited by law from disclosing to the public or has a legal privilege not to disclose and which is not otherwise available to the public. A firm with which that lawyer is associated may undertake or continue representation in the matter only if the disqualified lawyer is screened from any participation in the matter and is apportioned no part of the fee therefrom.

(eg ) Limits on Participation of Public Officer or Employee. A lawyer currently serving as a public officer or employee shall not:

(1) is subject to rules 4-1.7 and 4-1.9; and

(2) shall not:

(4A) participate in a matter in which the lawyer participated personally and substantially while in private practice or nongovernmental employment, unless under applicable law no one is, or by lawful delegation may be, authorized to act in the lawyer's stead in the matter the appropriate government agency gives its informed consent; or

(2B) negotiate for private employment with any person who is involved as a party or as attorney for a party in a matter in which the lawyer is participating personally and substantially.

(de) Matter Defined. As used in this rule, the term "matter" includes:

(1) any judicial or other proceeding, application, request for a ruling or other determination, contract, claim, controversy, investigation, charge, accusation, arrest, or other particular matter involving a specific party or parties; and

(2) any other matter covered by the conflict of interest rules of the appropriate government agency.

(ee) Confidential Government Information Defined. As used in this rule, the term "confidential government information" means information that has been obtained under governmental authority and at the time this rule is applied, the government is prohibited by law from disclosing to the public or has a legal privilege not to disclose and which is not otherwise available to the public.

prohibited by law from disclosing to the public or has a legal privilege not to disclose and that is not otherwise available to the public.

Comment

This rule prevents a lawyer from exploiting public office for the advantage of a private client. It is a counterpart of rule 4-1.10(b), which applies to lawyers moving from one firm to another.

A lawyer representing a government agency, whether employed or specially retained by the government, who has served or is currently serving as a public officer or employee is personally subject to the rules of professional conduct, including the prohibition against representing adverse interests concurrent conflicts of interest stated in rule 4-1.7 and the protections afforded former clients in rule 4-1.9. In addition, such a lawyer may be subject to rule 4-1.11 and to statutes and government regulations regarding conflict of interest. Such statutes and regulations may circumscribe the extent to which the government agency may give consent under this rule. See terminology for definition of informed consent.

Subdivisions (a)(1), (a)(2), and (d)(1) restate the obligations of an individual lawyer who has served or is currently serving as an officer or employee of the government toward a former government or private client. Rule 4-1.10 is not applicable to the conflicts of interest addressed by this rule. Rather, subdivision (b) sets forth a special imputation rule for former government lawyers that provides for screening and notice. Because of the special problems raised by imputation within a government agency, subdivision (d) does not impute the conflicts of a lawyer currently serving as an officer or employee of the government to other associated government officers or employees, although ordinarily it will be prudent to screen such lawyers.

Subdivisions (a)(2) and (d)(2) apply regardless of whether a lawyer is adverse to a former client and are thus designed not only to protect the former client, but also to prevent a lawyer from exploiting public office for the advantage of another client. For example, a lawyer who has pursued a claim on behalf of the government may not pursue the same claim on behalf of a later private client after the lawyer has left government service, except when authorized to do so by the government agency under subdivision (a). Similarly, a lawyer who has pursued a claim on behalf of a private client may not pursue the claim on behalf of the government, except when authorized to do so by subdivision (d). As with subdivisions (a)(1) and (d)(1), rule 4-1.10 is not applicable to the conflicts of interest addressed by these subdivisions.

Where This rule represents a balancing of interests. On the one hand, where the successive clients are a public—government agency and a private another client, public or private, the risk exists that power or discretion vested in public authority that agency might be used for the special benefit of a private other client. A lawyer should not be in a position where benefit to a private other client might affect performance of the lawyer’s professional functions on behalf of public authority the government. Also, unfair advantage could accrue to the private other client by reason of access to confidential government information about the client’s adversary obtainable only through the lawyer’s government service. However, on the other hand, the rules governing lawyers presently or formerly employed by a government agency should not be so restrictive as to inhibit transfer of employment to and from the government. The government has a legitimate need to attract qualified lawyers as well as to maintain high ethical standards. Thus, a former government lawyer is disqualified only from particular matters in which the lawyer participated personally and substantially. The provisions for screening and waiver in subdivision (b) are necessary to prevent the disqualification rule from imposing too severe a deterrent against entering public service. The limitation of disqualification in subdivi-
When the client is an agency of a lawyer has been employed by a government agency and then moves to a second government agency, it may be appropriate to treat that second—agency should be treated as a private another client for purposes of this rule if the lawyer thereafter represents an agency of another government, as when a lawyer represents employed by a city and subsequently is employed by a federal agency. However, because the conflict of interest is governed by subdivision (d), the latter agency is not required to screen the lawyer as subdivision (b) requires a law firm to do. The question of whether 2 government agencies should be regarded as the same or different clients for conflict of interest purposes is beyond the scope of these rules. See rule 4-1.13 comment, government agency.

Subdivisions (a)(4) and (b) and (c) contemplate a screening arrangement. See terminology (requirements for screening procedures). These subdivisions do not prohibit a lawyer from receiving a salary or partnership share established by prior independent agreement. They prohibit, but that lawyer may not receive compensation directly relating the attorney's compensation to the fee in the matter in which the lawyer is disqualified.

Notice, including a description of the screened lawyer's prior representation and of the screening procedures employed, generally should be given as soon as practicable after the need for screening becomes apparent.

Subdivision (a)(2) does not require that a lawyer give notice to the government agency at a time when premature disclosure would injure the client; a requirement for premature disclosure might preclude engagement of the lawyer. Such notice is, however, required to be given as soon as practicable in order that the government agency or affected person will have a reasonable opportunity to ascertain that the lawyer is complying with rule 4-1.11 and to take appropriate action if the agency or person believes the lawyer is not complying.

Subdivision (b)(c) operates only when the lawyer in question has knowledge of the information, which means actual knowledge; it does not operate with respect to information that merely could be imputed to the lawyer.

Subdivisions (a) and (ed) do not prohibit a lawyer from jointly representing a private party and a government agency when doing so is permitted by rule 4-1.7 and is not otherwise prohibited by law.

Subdivision (e) does not disqualify other lawyers in the agency with which the lawyer in question has become associated.

For purposes of subdivision (e) of this rule, a "matter" may continue in another form. In determining whether 2 particular matters are the same, the lawyer should consider the extent to which the matters involve the same basic facts, the same or related parties, and the time elapsed.

*452 Rule 4-1.12 Former Judge or Arbitrator, Mediator or Other Third-Party Neutral

(a) Representation of Private Client by Former Judge, Arbitrator, or Law Clerk, or Other Third-Party Neutral. Except as stated in subdivision (d), a lawyer shall not represent anyone in connection with a matter in which the lawyer participated personally and substantially as a judge or other adjudicative officer, arbitrator, or law clerk to such a person or as an arbitrator, mediator, or other third-party neutral, unless all parties to the proceeding give informed
consent after disclosure, confirmed in writing.

(b) Negotiation of Employment by Judge, Arbitrator, or Law Clerk, or Other Third-Party Neutral. A lawyer shall not negotiate for employment with any person who is involved as a party or as attorney for a party in a matter in which the lawyer is participating personally and substantially as a judge or other adjudicative officer or as an arbitrator, mediator, or other third-party neutral. A lawyer serving as a law clerk to a judge, or other adjudicative officer, or arbitrator may negotiate for employment with a party or attorney involved in a matter in which the clerk is participating personally and substantially, but only after the lawyer has notified the judge, or other adjudicative officer, or arbitrator.

(c) Imputed Disqualification of Law Firm. If a lawyer is disqualified by subdivision (a), no lawyer in a firm with which that lawyer is associated may knowingly undertake or continue representation in the matter unless:

1. the disqualified lawyer is timely screened from any participation in the matter and is directly apportioned no part of the fee therefrom; and

2. written notice is promptly given to the parties and any appropriate tribunal to enable it to ascertain compliance with the provisions of this rule.

(d) [No Change]

Comment
This rule generally parallels rule 4-1.11. The term "personally and substantially" signifies that a judge who was a member of a multimeember court, and thereafter left judicial office to practice law, is not prohibited from representing a client in a matter pending in the court, but in which the former judge did not participate. So also the fact that a former judge exercised administrative responsibility in a court does not prevent the former judge from acting as a lawyer in a matter where the judge had previously exercised remote or incidental administrative responsibility that did not affect the merits. Compare the comment to rule 4-1.11. The term "adjudicative officer" includes such officials as judges pro tempore, referees, special masters, hearing officers, and other parajudicial officers and also lawyers who serve as part-time judges. Compliance Canons A(2), B(2), and C of Florida's Code of Judicial Conduct provide that a part-time judge, judge pro tempore, or retired judge recalled to active service may not "act as a lawyer in a proceeding in which [the lawyer] has served as a judge or in any other proceeding related thereto." Although phrased differently from this rule, those rules correspond in meaning.

Like former judges, lawyers who have served as arbitrators, mediators, or other third-party neutrals may be asked to represent a client in a matter in which the lawyer participated personally and substantially. This rule forbids such representation unless all of the parties to the proceedings give their informed consent, confirmed in writing. See terminology. Other law or codes of ethics governing third-party neutrals may impose more stringent standards of personal or imputed disqualification. See rule 4-2.4.

Although lawyers who serve as third-party neutrals do not have information concerning the parties that is protected under rule 4-1.6, they typically owe the parties an obligation of confidentiality under law or codes of ethics governing third-party neutrals. Thus, subdivision (c) provides that conflicts of the personally disqualified lawyer will be imputed to other lawyers in a law firm unless the conditions of this subdivision are met.

Requirements for screening procedures are stated in terminology. Subdivision (c)(1) does not prohibit the screened lawyer from receiving a salary or partnership share established by prior independent agreement, but that lawyer may not receive compen-
sation directly related to the matter in which the lawyer is disqualified.

Notice, including a description of the screened lawyer’s prior representation and of the screening procedures employed, generally should be given as soon as practicable after the need for screening becomes apparent.

A Florida Bar member who is a certified mediator is governed by the applicable law and rules relating to certified mediators.

RULE 4-1.13 ORGANIZATION AS CLIENT
(a)-(e) [No Change]

(d) Identification of Client. In dealing with an organization’s directors, officers, employees, members, shareholders, or other constituents, a lawyer shall explain the identity of the client when it is apparent the lawyer knows or reasonably should know that the organization’s interests are adverse to those of the constituents with whom the lawyer is dealing.

(e) [No Change]

Comment
The entity as the client

An organizational client is a legal entity, but it cannot act except through its officers, directors, employees, shareholders, and other constituents. Officers, directors, employees, and shareholders are the constituents of the corporate organizational client. The duties defined in this comment apply equally to unincorporated associations. “Other constituents” as used in this comment means the positions equivalent to officers, directors, employees, and shareholders held by persons acting for organizational clients that are not corporations.

When one of the constituents of an organizational client communicates with the organization’s lawyer in that person’s organizational capacity, the communication is protected by rule 4-1.6. Thus, by way of example, if an organizational client requests its lawyer to investigate allegations of wrongdoing, interviews made in the course of that investigation between the lawyer and the client’s employees or other constituents are covered by rule 4-1.6. This does not mean, however, that constituents of an organizational client are the clients of the lawyer. The lawyer may not disclose to such constituents information relating to the representation except for disclosures explicitly or impliedly authorized by the organizational client in order to carry out the representation or as otherwise permitted by rule 4-1.6.

When constituents of the organization make decisions for it, the decisions ordinarily must be accepted by the lawyer even if their utility or prudence is doubtful. Decisions concerning policy and operations, including ones entailing serious risk, are not as such in the lawyer’s province. However, different considerations arise when the lawyer knows that the organization may be substantially injured by action of a constituent that is in violation of law. In such a circumstance, it may be reasonably necessary for the lawyer to ask the constituent to reconsider the matter. If that fails, or if the matter is of sufficient seriousness and importance to the organization, it may be reasonably necessary for the lawyer to take steps to have the matter reviewed by a higher authority in the organization. Clear justification should exist for seeking review over the head of the constituent normally responsible for it. The stated policy of the organization may define circumstances and prescribe channels for such review, and a lawyer should encourage the formulation of such a policy. Even in the absence of organization policy, however, the lawyer may have an obligation to refer a matter to higher authority, depending on the seriousness of the matter and whether the constituent in question has apparent motives to act at variance with the organization’s interest. Review by the chief executive officer or by the board of directors may be required when the matter is of importance.

commensurate with their authority. At some point it may be useful or essential to obtain an independent legal opinion.

In an extreme case, it may be reasonably necessary for the lawyer to refer the matter to the organization's highest authority. Ordinarily, that is to whom a matter may be referred ordinarily will be the board of directors or similar governing body. However, applicable law may prescribe that under certain conditions highest authority reposes elsewhere; for example, in the independent directors of a corporation.

Relation to other rules

The authority and responsibility provided in this rule are concurrent with the authority and responsibility provided in other rules. In particular, this rule does not limit or expand the lawyer's responsibility under rule 4-1.6, 4-1.8, 4-1.16, 4-3.3, or 4-4.1. If the lawyer's services are being used by an organization to further a crime or fraud by the organization, rule 4-1.2(d) can be applicable.

Government agency

The duty defined in this rule applies to governmental organizations. However, when the client is a governmental organization, a different balance may be appropriate between maintaining confidentiality and assuring that the wrongful official act is prevented or rectified, for public business is involved. In addition, duties of lawyers employed by the government or lawyers in military service may be defined by statutes and regulations. Therefore, defining precisely the identity of the client and prescribing the resulting obligations of such lawyers may be more difficult in the governmental context and is a matter beyond the scope of these rules. Although in some circumstances the client may be a specific agency, it is generally may also be a branch of the government, such as the executive branch, or the government as a whole. For example, if the action or failure to act involves the head of a bureau, either the department of which the bureau is a part or the relevant branch of government as a whole—may be the client for purposes of this rule. Moreover, in a matter involving the conduct of government officials, a government lawyer may have authority under applicable law to question such conduct more extensively than that of a lawyer for a private organization in similar circumstances. This rule does not limit that authority. See note on scope.

*455 Clarifying the lawyer's role

[No Change]

Dual representation

[No Change]

Derivative actions

[No Change]

Representing related organizations

Consistent with the principle expressed in subdivision (a) of this rule, an attorney lawyer or law firm who represents or has represented a corporation (or other organization) ordinarily is not presumed to also represent, solely by virtue of representing or having represented the client, an organization (such as a corporate parent or subsidiary) that is affiliated with the client. There are exceptions to this general proposition, such as, for example, when an affiliate actually is the alter ego of the organizational client or when the client has revealed confidential information to an attorney with the reasonable expectation that the information would not be used adversely to the client's affiliate(s). Absent such an exception, an attorney or law firm is not ethically precluded from undertaking representations adverse to affiliates of an existing or former client.

RULE 4-1.16 DECLINING OR TERMINATING
REPRESENTATION

(a) When Lawyer Must Decline or Terminate Representation. Except as stated in subdivision (c), a lawyer shall not represent a client or, where representation has commenced, shall withdraw from the representation of a client if:

(1) the representation will result in violation of the Rules of Professional Conduct or law;

(2) the lawyer's physical or mental condition materially impairs the lawyer's ability to represent the client; or

(3) the lawyer is discharged;

(4) the client persists in a course of action involving the lawyer's services that the lawyer reasonably believes is criminal or fraudulent, unless the client agrees to disclose and rectify the crime or fraud; or

(5) the client has used the lawyer's services to perpetrate a crime or fraud, unless the client agrees to disclose and rectify the crime or fraud.

(b) When Withdrawal Is Allowed. Except as stated in subdivision (c), a lawyer may withdraw from representing a client if:

(1) withdrawal can be accomplished without material adverse effect on the interests of the client; or

(2) the client persists in a course of action involving the lawyer's services that the lawyer reasonably believes is criminal or fraudulent;

(3) the client has used the lawyer's services to perpetrate a crime or fraud;

(4) the client insists upon pursuing an objectionable action that the lawyer considers repugnant, or imprudent, or with which the lawyer has a fundamental disagreement;

(5) the client fails substantially to fulfill an obligation to the lawyer regarding the lawyer's services and has been given reasonable warning that the lawyer will withdraw unless the obligation is fulfilled;

(6) the representation will result in an unreasonable financial burden on the lawyer or has been rendered unreasonably difficult by the client; or

(7) other good cause for withdrawal exists.

(c) Compliance With Order of Tribunal. A lawyer must comply with applicable law requiring notice or permission of a tribunal when terminating a representation. When ordered to do so by a tribunal, a lawyer shall continue representation notwithstanding good cause for terminating the representation.

(d) Protection of Client's Interest. Upon termination of representation, a lawyer shall take steps to the extent reasonably practicable to protect a client's interest, such as giving reasonable notice to the client, allowing time for employment of other counsel, surrendering papers and property to which the client is entitled, and refunding any advance payment of fee or expense that has not been earned or incurred. The lawyer may retain papers and other property relating to or belonging to the client to the extent permitted by law.

Comment

A lawyer should not accept representation in a matter unless it can be performed competently, promptly, without improper conflict of interest, and to completion. Ordinarily, a representation in a matter is completed when the agreed-upon assistance has been concluded. See rule 4-1.2, and the comment to rule 4-1.3.
Mandatory withdrawal

A lawyer ordinarily must decline or withdraw from representation if the client demands that the lawyer engage in conduct that is illegal or violates the Rules of Professional Conduct or law. The lawyer is not obliged to decline or withdraw simply because the client suggests such a course of conduct; a client may make such a suggestion in the hope that a lawyer will not be constrained by a professional obligation. Withdrawal is also mandatory if the client persists in a course of action that the lawyer reasonably believes is criminal or fraudulent, unless the client agrees to disclose and rectify the crime or fraud. Withdrawal is also required if the lawyer's services were misused in the past even if that would materially prejudice the client.

When a lawyer has been appointed to represent a client, withdrawal ordinarily requires approval of the appointing authority. See also rule 4-6.2. Similarly, court approval or notice to the court is often required by applicable law before a lawyer withdraws from pending litigation. Difficulty may be encountered if withdrawal is based on the client's demand that the lawyer engage in unprofessional conduct. The court may request an explanation for the withdrawal, while the lawyer may be bound to keep confidential the facts that would constitute such an explanation. The lawyer's statement that professional considerations require termination of the representation ordinarily should be accepted as sufficient. Lawyers should be mindful of their obligations to both clients and the court under rules 4-1.6 and 4-3.3.

Discharge

A client has a right to discharge a lawyer at any time, with or without cause, subject to liability for payment for the lawyer's services. Where future dispute about the withdrawal may be anticipated, it may be advisable to prepare a written statement reciting the circumstances.

Whether a client can discharge appointed counsel may depend on applicable law. A client seeking to do so should be given a full explanation of the consequences. These consequences may include a decision by the appointing authority that appointment of successor counsel is unjustified, thus requiring the client to be self-represented.

If the client is mentally incompetent, the client may lack the legal capacity to discharge the lawyer, and in any event the discharge may be seriously adverse to the client's interests. The lawyer should make special effort to help the client consider the consequences and, in an extreme case, may initiate proceedings for a conservatorship or similar protection of the client. See Rule 4-1.14 for reasonably necessary protective action as provided in rule 4-1.14.

Optional withdrawal

A lawyer may withdraw from representation in some circumstances. The lawyer has the option to withdraw if it can be accomplished without material adverse effect on the client's interests. Withdrawal is also justified if the client persists in a course of action that the lawyer reasonably believes is criminal or fraudulent, for a lawyer is not required to be associated with such conduct even if the lawyer does not further it. Withdrawal is also permitted if the lawyer's services were misused in the past even if that would materially prejudice the client. The lawyer also may withdraw where the client insists on taking action that the lawyer considers repugnant, or imprudent, objective or with which the lawyer has a fundamental disagreement.

A lawyer may withdraw if the client refuses to abide by the terms of an agreement relating to the representation, such as an agreement concerning fees or court costs or an agreement limiting the objectives of the representation.
Assisting the client upon withdrawal

Even if the lawyer has been unfairly discharged by the client, a lawyer must take all reasonable steps to mitigate the consequences to the client. The lawyer may retain papers and other property as security for a fee only to the extent permitted by law.

Whether a lawyer for an organization may under certain unusual circumstances have a legal obligation to the organization after withdrawing or being discharged by the organization's highest authority is beyond the scope of these rules.

Refunding advance payment of unearned fee

[No Change]

RULE 4-1.17 SALE OF LAW PRACTICE

A lawyer or a law firm may sell or purchase a law practice, or an area of practice, including good will, provided that:

(a) Sale of Practice or Area of Practice as an Entirety. The entire practice, or the entire area of practice, is sold as an entirety to a single purchaser, which is another lawyer or more lawyers or law firms authorized to practice law in Florida.

(b)-(f) [No Change]

Comment

The practice of law is a profession, not merely a business. Clients are not commodities that can be purchased and sold at will. In accordance with the requirements of this rule, when a lawyer or an entire firm sells the practice and another lawyer or firms takes over the representation, the selling lawyer or firm may obtain compensation for the reasonable value of the practice as may withdrawing partners of law firms. See rules 4-5.4 and 4-5.6.

Client confidences, consent, and notice

Negotiations between seller and prospective purchaser prior to disclosure of information relating to a specific representation of an identifiable client do not violate the confidentiality provisions of rule 4-1.6 any more than do preliminary discussions concerning the possible association of another lawyer or mergers between firms, with respect to which client consent ordinarily is not required. Providing the prospective purchaser access to client-specific information relating to the representation and to the file, however, requires client consent or court authorization. See rule
4-1.6. Rule 4-1.17 provides that the seller must attempt to serve each client with written notice of the contemplated sale, including the identity of the purchaser and the fact that the decision to consent to the substitution of counsel or to make other arrangements must be made within 30 days. If nothing is heard within that time from a client who was served with written notice of the proposed sale, that client's consent to the substitution of counsel is presumed. However, with regard to clients whose matters involve pending litigation but who could not be served with written notice of the proposed sale, authorization of the court is required before the files and client-specific information relating to the representation of those clients may be disclosed by the seller to the purchaser and before counsel may be substituted.

A lawyer or law firm selling a practice cannot be required to remain in practice just because some clients cannot be served with written notice of the proposed sale. Because these clients cannot themselves consent to the substitution of counsel or direct any other disposition of their representations and files, with regard to clients whose matters involve pending litigation the rule requires an order from the court authorizing the substitution (or withdrawal) of counsel. The court can be expected to determine whether reasonable efforts to locate the client have been exhausted, and whether the absent client's legitimate interests will be served by authorizing the substitution of counsel so that the purchaser may continue the representation. Preservation of client confidences requires that the petition for a court order be considered in camera. If, however, the court fails to grant substitution of counsel in a matter involving pending litigation, that matter shall not be included in the sale and the sale may be consummated without inclusion of that matter.

The rule provides that matters not involving pending litigation of clients who could not be served with written notice may not be included in the sale. This is because the clients' consent to disclosure of confidential information and to substitution of counsel cannot be obtained and because the alternative of court authorization ordinarily is not available in matters not involving pending litigation. Although such matters shall not be included in the sale, the sale may be consummated without inclusion of those matters.

If a client objects to the proposed substitution of counsel, the rule treats the seller as attempting to withdraw from representation of that client and, therefore, provides that the seller must comply with the provisions of rule 4-1.16 concerning withdrawal from representation. Additionally, the seller must comply with applicable requirements of law or rules of procedure.

All the elements of client autonomy, including the client's absolute right to discharge a lawyer and transfer the representation to another, survive the sale of the practice or an area of practice.

Fee arrangements between client and purchaser

[No Change]

Other applicable ethical standards

Lawyers participating in the sale of a law practice or a practice area are subject to the ethical standards applicable to involving another lawyer in the representation of a client for all matters pending at the time of the sale. These include, for example, the seller's ethical obligation to exercise competence in identifying a purchaser qualified to assume the practice and the purchaser's obligation to undertake the representation competently (see rule 4-1.1); the obligation to avoid disqualifying conflicts, and to secure the client's informed consent after consultation for those conflicts that can be agreed to (see rule 4-1.7 regarding conflicts and see the terminology section of the preamble for the definition of informed consent); and the obligation...
to protect information relating to the representation (see rules 4-1.6, 4-1.8(b), and 4-1.9(b)). If the terms of the sale involve the division between purchaser and seller of fees from matters that arise subsequent to the sale, the fee-division provisions of rule 4-1.5 must be satisfied with respect to such fees. These provisions will not apply to the division of fees from matters pending at the time of sale.

If approval of the substitution of the purchasing attorney for the selling attorney is required by the rules of any tribunal in which a matter is pending, such approval must be obtained before the matter can be included in the sale (see rule 4-1.16).

Applicability of this rule

[No Change]

RULE 4-1.18 DUTIES TO PROSPECTIVE CLIENT

(a) Prospective Client. A person who discusses with a lawyer the possibility of forming a client-lawyer relationship with respect to a matter is a prospective client.

(b) Confidentiality of Information. Even when no client-lawyer relationship ensues, a lawyer who has had discussions with a prospective client shall not use or reveal information learned in the consultation, except as rule 4-1.9 would permit with respect to information of a former client.

(c) Subsequent Representation. A lawyer subject to subdivision (b) shall not represent a client with interests materially adverse to those of a prospective client in the same or a substantially related matter if the lawyer received information from the prospective client that could be used to the disadvantage of that person in the matter, except as provided in subdivision (d). If a lawyer is disqualified from representation under this rule, no lawyer in a firm with which that lawyer is associated may knowingly undertake or continue representation in such a matter, except as provided in subdivision (d).

(d) Permissible Representation. When the lawyer has received disqualifying information as defined in subdivision (c), representation is permissible if:

(1) both the affected client and the prospective client have given informed consent, confirmed in writing; or

(2) the lawyer who received the information took reasonable measures to avoid exposure to more disqualifying information than was reasonably necessary to determine whether to represent the prospective client; and

(i) the disqualified lawyer is timely screened from any participation in the matter and is apportioned no part of the fee therefrom; and

(ii) written notice is promptly given to the prospective client.

Comment

Prospective clients, like clients, may disclose information to a lawyer, place documents or other property in the lawyer's custody, or rely on the lawyer's advice. A lawyer's discussions with a prospective client usually are limited in time and depth and leave both the prospective client and the lawyer free (and the lawyer sometimes required) to proceed no further. Hence, prospective clients should receive some but not all of the protection afforded clients.

Not all persons who communicate information to a lawyer are entitled to protection under this rule. A person who communicates information unilaterally to a lawyer, without any reasonable expectation that the lawyer is willing to discuss the possibility of forming a
client-lawyer relationship, is not a "prospective client" within the meaning of subdivision (a).

It is often necessary for a prospective client to reveal information to the lawyer during an initial consultation prior to the decision about formation of a client-lawyer relationship. The lawyer often must learn such information to determine whether there is a conflict of interest with an existing client and whether the matter is one that the lawyer is willing to undertake. Subdivision (b) prohibits the lawyer from using or revealing that information, except as permitted by rule 4-1.9, even if the client or lawyer decides not to proceed with the representation. The duty exists regardless of how brief the initial conference may be.

In order to avoid acquiring disqualifying information from a prospective client, a lawyer considering whether to undertake a new matter should limit the initial interview to only such information as reasonably appears necessary for that purpose. Where the information indicates that a conflict of interest or other reason for non-representation exists, the lawyer should so inform the prospective client or decline the representation. If the prospective client wishes to retain the lawyer, and if consent is possible under rule 4-1.7, then consent from all affected present or former clients must be obtained before accepting the representation.

A lawyer may condition conversations with a prospective client on the person's informed consent that no information disclosed during the consultation will prohibit the lawyer from representing a different client in the matter. See terminology for the definition of informed consent. If the agreement expressly so provides, the prospective client may also consent to the lawyer's subsequent use of information received from the prospective client.

Even in the absence of an agreement, under subdivision (c), the lawyer is not prohibited from representing a client with interests adverse to those of the prospective client in the same or a substantially related matter unless the lawyer has received from the prospective client information that could be used to the disadvantage of the prospective client in the matter.

Under subdivision (c), the prohibition in this rule is imputed to other lawyers as provided in rule 4-1.10, but, under subdivision (d)(1), the prohibition and its imputation may be avoided if the lawyer obtains the informed consent, confirmed in writing, of both the prospective and affected clients. In the alternative, the prohibition and its imputation may be avoided if the conditions of subdivision (d)(2) are met and all disqualified lawyers are timely screened and written notice is promptly given to the prospective client. See Rule terminology (requirements for screening procedures). Paragraph (d)(2)(i) does not prohibit the screened lawyer from receiving a salary or partnership share established by prior independent agreement, but that lawyer may not receive compensation directly related to the matter in which the lawyer is disqualified.

Notice, including a general description of the subject matter about which the lawyer was consulted, and of the screening procedures employed, generally should be given as soon as practicable after the need for screening becomes apparent.

The duties under this rule presume that the prospective client consults the lawyer in good faith. A person who consults a lawyer simply with the intent of disqualifying the lawyer from the matter, with no intent of possibly hiring the lawyer, has engaged in a sham and should not be able to invoke this rule to create a disqualification.

For the duty of competence of a lawyer who gives assistance on the merits of a matter to a prospective client, see rule 4-1.1. For a lawyer's duties when a prospective client entrusts valuables or papers to the
lawyer's care, see chapter 5, Rules Regulating The Florida Bar.

4-2. COUNSELOR
RULE 4-2.1 ADVISER
[No Change]

Comment
Scope of advice
[No Change]
Offering advice

In general, a lawyer is not expected to give advice until asked by the client. However, when a lawyer knows that a client proposes a course of action that is likely to result in substantial adverse legal consequences to the client, the lawyer's duty to the client under rule 4-1.4 may require that the lawyer offer advice if the client's course of action is related to the representation. Similarly, when a matter is likely to involve litigation, it may be necessary under rule 4-1.4 to inform the client of forms of dispute resolution that might constitute reasonable alternatives to litigation. A lawyer ordinarily has no duty to initiate investigation of a client's affairs or to give advice that the client has indicated is unwanted, but a lawyer may initiate advice to a client when doing so appears to be in the client's interest.

462 RULE 4-2.2 INTERMEDIARY
OPEN/VACANT

(a) When Lawyer May Act as Intermediary. A lawyer may act as intermediary between clients if the lawyer:

(1) consults with each client concerning the implications of the common representation, including the advantages and risks involved and the effect on the attorney-client privileges, and obtains each client's consent to the common representation;

(2) reasonably believes that the matter can be resolved on terms compatible with the clients' best interests, that each client will be able to make adequately informed decisions in the matter, and that there is little risk of material prejudice to the interests of any of the clients if the contemplated resolution is unsuccessful; and

(3) reasonably believes that the common representation can be undertaken impartially and without improper effect on other responsibilities the lawyer has to any of the clients.

(b) Lawyer as Intermediary: Consultation With Clients. While acting as intermediary, the lawyer shall consult with each client concerning the decisions to be made and the considerations relevant in making them, so that each client can make adequately informed decisions.

(c) Withdrawal as Intermediary: Effect. A lawyer shall withdraw as intermediary if any of the clients so request or if any of the conditions stated in subdivision (a) are no longer satisfied. Upon withdrawal, the lawyer shall not continue to represent any of the clients in the matter that was the subject of the intermediation.

Comment
A lawyer acts as intermediary under this rule when the lawyer represents 2 or more parties with potentially conflicting interests. A key factor in defining the relationship is whether the parties share responsibility for the lawyer's fee, but the common representation may be inferred from other circumstances. Because confusion can arise as to the lawyer's role where each party is not separately represented, it is important that the lawyer make clear the relationship.

The rule does not apply to a lawyer acting as arbitrator or mediator between or among parties who are not clients of the lawyer, even where the lawyer has been appointed with the concurrence of the parties. In performing such a role the lawyer may be subject to
applicable codes of ethics, such as the Code of Ethics for Arbitration in Commercial Disputes prepared by a joint committee of the American Bar Association and the American Arbitration Association.

A lawyer acts as intermediary in seeking to establish or adjust a relationship between clients on an amicable and mutually advantageous basis; for example, in helping to organize a business in which 2 or more clients are entrepreneurs, working out the financial reorganization of an enterprise in which 2 or more clients have an interest, arranging a property distribution in settlement of an estate, or mediating a dispute between clients. The lawyer seeks to resolve potentially conflicting interests by developing the parties' mutual interests. The alternative can be that each party may have to obtain separate representation, with the possibility in some situations of incurring additional cost, complication, or even litigation. Given these and other relevant factors, all the clients may prefer that the lawyer act as intermediary.

In considering whether to act as intermediary between clients, a lawyer should be mindful that if the intermediation fails the result can be additional cost, embarrassment, and recrimination. In some situations the risk of failure is so great that intermediation is plainly impossible. For example, a lawyer cannot undertake common representation of clients between whom contentious litigation is imminent or who contemplate contentious negotiations. More generally, if the relationship between the parties has already assumed definite antagonism, the possibility that the clients' interests can be adjusted by intermediation ordinarily is not very good.

The appropriateness of intermediation can depend on its form. Forms of intermediation range from informal arbitration, where each client's case is presented by the respective client and the lawyer decides the outcome, to mediation, to common representation where the clients' interests are substantially though not entirely compatible. One form may be appropriate in circumstances where another would not. Other relevant factors are whether the lawyer subsequently will represent both parties on a continuing basis and whether the situation involves creating a relationship between the parties or terminating one.

Confidentiality and privilege

A particularly important factor in determining the appropriateness of intermediation is the effect on client-lawyer confidentiality and the attorney-client privilege. In a common representation, the lawyer is still required both to keep each client adequately informed and to maintain confidentiality of information relating to the representation. See rules 4.1.4 and 4.1.6. Complying with both requirements while acting as intermediary requires a delicate balance. If the balance cannot be maintained, the common representation is improper. With regard to the attorney-client privilege, the prevailing rule is that as between commonly represented clients the privilege does not attach. Hence, it must be assumed that if litigation eventuates between the clients, the privilege will not protect any such communications, and the clients should be so advised.

Since the lawyer is required to be impartial between commonly represented clients, intermediation is improper when that impartiality cannot be maintained. For example, a lawyer who has represented 1 of the clients for a long period and in a variety of matters might have difficulty being impartial between that client and one to whom the lawyer has only recently been introduced.

Consultation

In acting as intermediary between clients, the lawyer is required to consult with the clients on the implications of doing so and to proceed only upon consent based on such a consultation. The consultation should make clear that the lawyer's role is not that of partisanship normally expected in other circumstances.
Subdivision (b) is an application of the principle expressed in rule 4-1.4. Where the lawyer is intermediary, the clients ordinarily must assume greater responsibility for decisions than when each client is independently represented.

Withdrawal

Common representation does not diminish the rights of each client in the client-lawyer relationship. Each has the right to loyalty and diligent representation; the right to discharge the lawyer as stated in rule 4-1.16; and the protection of rule 4-1.9 concerning obligations to a former client.

RULE 4-2.3 EVALUATION FOR USE BY THIRD PERSONS

(a) When Lawyer May Undertake Provide Evaluation. A lawyer may undertake provide an evaluation of a matter affecting a client for the use of someone other than the client if:

464 (1) the lawyer reasonably believes that making the evaluation is compatible with other aspects of the lawyer's relationship with the client; and

(2) the client consents after consultation gives informed consent.

(b)-(c) [No Change]

Comment

Definition

An evaluation may be performed at the client's direction but for the primary purpose of establishing information for the benefit of third parties; for example, an opinion concerning the title of property rendered at the behest of a vendor for the information of a prospective purchaser or at the behest of a borrower for the information of a prospective lender. In some situations, the evaluation may be required by a government agency; for example, an opinion concerning the legality of the securities registered for sale under the securities laws. In other instances, the evaluation may be required by a third person, such as a purchaser of a business.

Lawyers for the government may be called upon to give a formal opinion on the legality of contemplated government-agency action. In making such an evaluation, the government lawyer acts at the behest of the government as the client but for the purpose of establishing the limits of the agency's authorized activity. Such an opinion is to be distinguished from confidential legal advice given agency officials. The critical question is whether the opinion is to be made public.

A legal evaluation should be distinguished from an investigation of a person with whom the lawyer does not have a client-lawyer relationship. For example, a lawyer retained by a purchaser to analyze a vendor's title to property does not have a client-lawyer relationship with the vendor. So also, an investigation into a person's affairs by a government lawyer, or by special counsel employed by the government, is not an evaluation as that term is used in this rule. The question is whether the lawyer is retained by the person whose affairs are being examined. When the lawyer is retained by that person, the general rules concerning loyalty to client and preservation of confidences apply, which is not the case if the lawyer is retained by someone else. For this reason, it is essential to identify the person by whom the lawyer is retained. This should be made clear not only to the person under examination, but also to others to whom the results are to be made available.

Duty to third person

[No Change]

Access to and disclosure of information

The quality of an evaluation depends on the freedom and extent of the investigation upon which it is based. Ordinarily, a lawyer should have whatever latitude of investigation seems necessary as a matter of professional judgment. Under some circumstances, however, the terms of the evaluation may be limited. For example, certain issues or sources may be categorically excluded or the scope of search may be limited by time constraints or the noncooperation of persons having relevant information. Any such limitations that are material to the evaluation should be described in the report. If, after a lawyer has commenced an evaluation, the client refuses to comply with the terms upon which it was understood the evaluation was to have been made, the lawyer's obligations are determined by law, having reference to the terms of the client's agreement and the surrounding circumstances. In no circumstances is the lawyer permitted to knowingly make a false statement of material fact or law in providing an evaluation under this rule. See rule 4-4.1.

Financial auditors' requests for information

[No Change]

RULE 4-2.4 LAWYER SERVING AS THIRD-PARTY NEUTRAL

(a) A lawyer serves as a third-party neutral when the lawyer assists 2 or more persons who are not clients of the lawyer to reach a resolution of a dispute or other matter that has arisen between them. Service as a third-party neutral may include service as an arbitrator, a mediator, or in such other capacity as will enable the lawyer to assist the parties to resolve the matter.

(b) A lawyer serving as a third-party neutral shall inform unrepresented parties that the lawyer is not representing them. When the lawyer knows or reasonably should know that a party does not understand the lawyer's role in the matter, the lawyer shall explain the difference between the lawyer's role as a third-party neutral and a lawyer's role as one who represents a client.

Comment

Alternative dispute resolution has become a substantial part of the civil justice system. Aside from representing clients in dispute-resolution processes, lawyers often serve as third-party neutrals. A third-party neutral is a person, such as a mediator, arbitrator, conciliator, or evaluator, who assists the parties, represented or unrepresented, in the resolution of a dispute or in the arrangement of a transaction. Whether a third-party neutral serves primarily as a facilitator, evaluator, or decisionmaker depends on the particular process that is either selected by the parties or mandated by a court.

The role of a third-party neutral is not unique to lawyers, although, in some court-connected contexts, only lawyers are allowed to serve in this role or to handle certain types of cases. In performing this role, the lawyer may be subject to court rules or other law that apply either to third-party neutrals generally or to lawyers serving as third-party neutrals. Lawyer-neutrals may also be subject to various codes of ethics, such as the Code of Ethics for Arbitration in Commercial Disputes prepared by a joint committee of the American Bar Association and the American Arbitration Association, or the Model Standards of Conduct for Mediators jointly prepared by the American Bar Association, the American Arbitration Association and the Society of Professionals in Dispute Resolution. A Florida Bar member who is a certified mediator is governed by the applicable law and rules relating to certified mediators.

Unlike nonlawyers who serve as third-party neutrals, lawyers serving in this role may experience unique problems as a result of differences between the role of a third-party neutral and a lawyer's service as a client representative. The potential for confusion is significant when the parties are unrepresented in the process. Thus, subdivision (b) requires a law-
yer-neutral to inform unrepresented parties that the lawyer is not representing them. For some parties, particularly parties who frequently use dispute-resolution processes, this information will be sufficient. For others, particularly those who are using the process for the first time, more information will be required. Where appropriate, the lawyer should inform unrepresented parties of the important differences between the lawyer's role as third-party neutral and a lawyer's role as a client representative, including the inapplicability of the attorney-client evidentiary privilege. *466* The extent of disclosure required under this subdivision will depend on the particular parties involved and the subject matter of the proceeding, as well as the particular features of the dispute-resolution process selected.

A lawyer who serves as a third-party neutral subsequently may be asked to serve as a lawyer representing a client in the same matter. The conflicts of interest that arise for both the individual lawyer and the lawyer's law firm are addressed in rule 4-1.12.

Lawyers who represent clients in alternative dispute-resolution processes are governed by the Rules of Professional Conduct. When the dispute-resolution process takes place before a tribunal, as in binding arbitration (see terminology), the lawyer's duty of candor is governed by rule 4-3.3. Otherwise, the lawyer's duty of candor toward both the third-party neutral and other parties is governed by rule 4-4.1.

**4-3. ADVOCATE**

**RULE 4-3.1 MERITIOUS CLAIMS AND CONTENTIONS**

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

**Comment**

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

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

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

**RULE 4-3.2 EXPEDITING LITIGATION**

[No Change]

**Comment**
Dilatory practices bring the administration of justice into disrepute. Delay should not be indulged merely for the convenience of the advocates or although there will be occasions when a lawyer may properly seek a postponement for personal reasons, it is not proper for a lawyer to routinely fail to expedite litigation solely for the convenience of the advocates. Nor will a failure to expedite be reasonable if done for the purpose of frustrating an opposing party's attempt to obtain rightful redress or repose. It is not a justification that similar conduct is often tolerated by the bench and bar. The question is whether a competent lawyer acting in good faith would regard the course of action as having some substantial purpose other than delay. Realizing financial or other benefit from otherwise improper delay in litigation is not a legitimate interest of the client.

RULE 4-3.7 LAWYER AS WITNESS

(a) When Lawyer May Testify. A lawyer shall not act as advocate at a trial in which the lawyer is likely to be a necessary witness on behalf of the client except where unless:

(1) the testimony relates to an uncontested issue;

(2) the testimony will relate solely to a matter of formality and there is no reason to believe that substantial evidence will be offered in opposition to the testimony;

(3) the testimony relates to the nature and value of legal services rendered in the case; or

(4) disqualification of the lawyer would work substantial hardship on the client.

(b) [No Change]

Comment

Combining the roles of advocate and witness can prejudice the tribunal and the opposing party and can also involve a conflict of interest between the lawyer and client.

The opposing party has proper objection where the trier of fact may be confused or misled by a lawyer serving as both advocate and witness. The combination of roles may prejudice that another party's rights in the litigation. A witness is required to testify on the basis of personal knowledge, while an advocate is expected to explain and comment on evidence given by others. It may not be clear whether a statement by an advocate-witness should be taken as proof or as an analysis of the proof.

To protect the tribunal, subdivision (a) prohibits a lawyer from simultaneously serving as advocate and necessary witness except in those circumstances specified. Subdivision (a)(1) recognizes that if the testimony will be uncontested, the ambiguities in the dual role are purely theoretical. Subdivisions (a)(2) and (3) recognize that, where the testimony concerns the extent and value of legal services rendered in the action in which the testimony is offered, permitting the lawyers to testify avoids the need for a second trial with new counsel to resolve that issue. Moreover, in such a situation the judge has first-hand knowledge of the matter in issue; hence, there is less dependence on the adversary process to test the credibility of the testimony.

Apart from these 2 exceptions, subdivision (a)(4) recognizes that a balancing is required between the interests of the client and those of the tribunal and the opposing party. Whether the tribunal is likely to be misled or the opposing party is likely to suffer prejudice depends on the nature of the case, the importance and probable tenor of the lawyer's testimony, and the probability that the lawyer's testimony will conflict with that of other witnesses. Even if there is risk of such prejudice, in determining whether the lawyer should be disqualified, due regard must be given to the effect of disqualification on the lawyer's client. It is relevant that one or both parties could reasonably
foresaw that the lawyer would probably be a witness. The principle of imputed disqualification conflict of interest principles stated in rules 4-1.7, 4-1.9, and 4-1.10 have no application to this aspect of the problem.

Because the tribunal is not likely to be misled when a lawyer acts as advocate in a trial in which another lawyer in the lawyer's firm will testify as a necessary witness, subdivision (b) permits the lawyer to do so except in situations involving a conflict of interest.

Whether the combination of roles involves an improper determination of if it is permissible to act as advocate in a trial in which the lawyer will be a necessary witness, the lawyer must also consider that the dual role may give rise to a conflict of interest with respect to the client determined by rules that will require compliance with rules 4-1.7 or 4-1.9. For example, if there is likely to be substantial conflict between the testimony of the client and that of the lawyer or a member of the lawyer's firm, the representation is improper involves a conflict of interest that requires compliance with rule 4-1.7. This would be true even though the lawyer might not be prohibited by subdivision (a) from simultaneously serving as advocate and witness because the lawyer's disqualification would work a substantial hardship on the client. Similarly, a lawyer who might be permitted to simultaneously serve as an advocate and a witness by subdivision (a)(3) might be precluded from doing so by rule 4-1.9. The problem can arise whether the lawyer is called as a witness on behalf of the client or is called by the opposing party. Determining whether such a conflict exists is primarily the responsibility of the lawyer involved. If there is a conflict of interest, the lawyer must secure the client's informed consent. In some cases, the lawyer will be precluded from seeking the client's consent. See Comment to rule 4-1.7. If a lawyer who is a member of a firm may not act as both advocate and witness by reason of conflict of interest, rule 4-1.10 disqualifies the firm also. See terminology for the definition of "confirmed in writing" and "informed consent."

Subdivision (b) provides that a lawyer is not disqualified from serving as an advocate because a lawyer with whom the lawyer is associated in a firm is precluded from doing so by subdivision (a). If, however, the testifying lawyer would also be disqualified by rule 4-1.7 or 4-1.9 from representing the client in the matter, other lawyers in the firm will be precluded from representing the client by rule 4-1.10 unless the client gives informed consent under the conditions stated in rule 4-1.7.

**RULE 4-3.9 ADVOCATE IN NONADJUDICATIVE PROCEEDINGS**

A lawyer representing a client before a legislative body or administrative tribunal agency in a nonadjudicative proceeding shall disclose that the appearance is in a representative capacity and shall conform to the provisions of rules 4-3.3(a) through (d), and 4-3.4(a) through (c), and 4-3.5(a), (e), and (d).

Comment

In representation before bodies such as legislatures, municipal councils, and executive and administrative agencies acting in a rule-making or policy-making capacity, lawyers present facts, formulate issues, and advance argument in the matters under consideration. The decision-making body, like a court, should be able to rely on the integrity of the submissions made to it. A lawyer appearing before such a body should deal with the tribunal honestly and in conformity with applicable rules of procedure. See rules 4-3.3(a) through (d), and 4-3.4(a) through (e).

Lawyers have no exclusive right to appear before nonadjudicative bodies, as they do before a court. The requirements of this rule therefore may subject lawyers to regulations inapplicable to advocates who are not lawyers. However, legislatures and administrative
agencies have a right to expect lawyers to deal with them as they deal with courts.

This rule only applies when a lawyer represents a client in connection with an official hearing or meeting of a governmental agency or a legislative body to which the lawyer or the lawyer's client is presenting evidence or argument. It does not apply to representation of a client in a negotiation or other bilateral transaction with a governmental agency; representation in connection with an application for a license or other privilege or the client's compliance with generally applicable reporting requirements, such as the filing of income-tax returns. Nor does it apply to the representation of a client in connection with an investigation or examination of the client's affairs conducted by government investigators or examiners. Representation in such a transaction matters is governed by rules 4-4.1 through 4-4.4.

4-4. TRANSACTIONS WITH PERSONS OTHER THAN CLIENTS
RULE 4-4.1 TRUTHFULNESS IN STATEMENTS TO OTHERS
[No Change]

Comment
Misrepresentation
A lawyer is required to be truthful when dealing with others on a client's behalf, but generally has no affirmative duty to inform an opposing party of relevant facts. A misrepresentation can occur if the lawyer incorporates or affirms a statement of another person that the lawyer knows is false. Misrepresentations can also occur by failure to act, partially true but misleading statements or omissions that are the equivalent of affirmative false statements. For dishonest conduct that does not amount to a false statement or for misrepresentations by a lawyer other than in the course of representing a client, see rule 4-8.4.

Statements of fact
This rule refers to statements of fact. Whether a particular statement should be regarded as one of fact can depend on the circumstances. Under generally accepted conventions in negotiation, certain types of statements ordinarily are not taken as statements of material fact. Estimates of price or value placed on the subject of a transaction and a party's intentions as to an acceptable settlement of a claim are ordinarily in this category, and so is the existence of an undisclosed principal except where nondisclosure of the principal would constitute fraud. Lawyers should be mindful of their obligations under applicable law to avoid criminal and tortious misrepresentation.

Crime or Fraud by client
Under rule 4-1.2(d), a lawyer is prohibited from counseling or assisting a client in conduct that the lawyer knows is criminal or fraudulent. Subdivision (b) recognizes that states a specific application of the principle set forth in rule 4-1.2(d) and addresses the situation where a client's crime or fraud takes the form of a lie or misrepresentation. Ordinarily, a lawyer can avoid assisting a client's crime or fraud by withdrawing from the representation. Sometimes it may be necessary for the lawyer to give notice of the fact of withdrawal* and to disaffirm an opinion, document, affirmation or the like. In extreme cases, substantive law may require a lawyer to disclose certain information relating to the representation to avoid being deemed to have assisted the client's crime or fraud. The requirement off the lawyer can avoid assisting a client's crime or fraud only by disclosing this information, then under subdivision (b) the lawyer is required to do so, unless the disclosure created by this subdivision is, however, subject to the obligations created by prohibited by rule 4-1.6.

RULE 4-4.2 COMMUNICATION WITH PERSON REPRESENTED BY COUNSEL
(a)-(b) [No Change]

Comment
This rule contributes to the proper functioning of the legal system by protecting a person who has chosen to be represented by a lawyer in a matter against
possible overreaching by other lawyers who are participating in the matter, interference by those lawyers with the client-lawyer relationship, and the uncounseled disclosure of information relating to the representation.

This rule applies to communications with any person who is represented by counsel concerning the matter to which the communication relates.

The rule applies even though the represented person initiates or consents to the communication. A lawyer must immediately terminate communication with a person if, after commencing communication, the lawyer learns that the person is one with whom communication is not permitted by this rule.

This rule does not prohibit communication with a party represented person, or an employee or agent of such a party, concerning matters outside the representation. For example, the existence of a controversy between a government agency and a private party, or between 2 organizations, does not prohibit a lawyer for either from communicating with nonlawyer representatives of the other regarding a separate matter. Also, parties nor does this rule preclude communication with a represented person who is seeking advice from a lawyer who is not otherwise representing a client in the matter. A lawyer may not make a communication prohibited by this rule through the acts of another. See rule 4-8.4(a). Parties to a matter may communicate directly with each other, and a lawyer is not prohibited from advising a client concerning a communication that the client is legally entitled to make, provided that the client is not used to indirectly violate the Rules of Professional Conduct. Also, a lawyer having independent justification for communicating with the other party is permitted to do so. Permitted communications include, for example, the right of a party to a controversy with a government agency to speak with government officials about the matter.

In the case of a represented organization, this rule prohibits communications by a lawyer for 1 party concerning the matter in representation with persons having a managerial responsibility on behalf of a constituent of the organization and with any other person who supervises, directs, or regularly consults with the organization's lawyer concerning the matter or has authority to obligate the organization with respect to the matter or whose act or omission in connection with that matter may be imputed to the organization for purposes of civil or criminal liability or whose statement may constitute an admission on the part of the organization. Consent of the organization's lawyer is not required for communication with a former constituent. If an agent or employee of a constituent of the organization is represented in the matter by the agent's or employee's own counsel, the consent by that counsel to a communication will be sufficient for purposes of this rule. Compare rule 4-3.4(f). This rule also covers any person, whether or not a party to a formal proceeding, who is represented by counsel concerning the matter in question. In communication with a current or former constituent of an organization, a lawyer must not use methods of obtaining evidence that violate the legal rights of the organization. See rule 4-4.4.

The prohibition on communications with a represented person only applies in circumstances where the lawyer knows that the person is in fact represented in the matter to be discussed. This means that the lawyer has actual knowledge of the fact of the representation, but such actual knowledge may be inferred from the circumstances. See terminology. Thus, the lawyer cannot evade the requirement of obtaining the consent of counsel by closing eyes to the obvious.

In the event the person with whom the lawyer communicates is not known to be represented by counsel in the matter, the lawyer's communications are subject to rule 4-4.3.
RULE 4-4.3 DEALING WITH UNREPRESENTED PERSONS

(a) In dealing on behalf of a client with a person who is not represented by counsel, a lawyer shall not state or imply that the lawyer is disinterested. When the lawyer knows or reasonably should know that the unrepresented person misunderstands the lawyer's role in the matter, the lawyer shall make reasonable efforts to correct the misunderstanding. The lawyer shall not give legal advice to an unrepresented person, other than the advice to secure counsel.

(b) [No Change]

Comment

An unrepresented person, particularly one not experienced in dealing with legal matters, might assume that a lawyer is disinterested in loyalties or is a disinterested authority on the law even when the lawyer represents a client. During the course of a lawyer's representation of a client, the lawyer should not give advice to an unrepresented person other than the advice to obtain counsel. In order to avoid a misunderstanding, a lawyer will typically need to identify the lawyer's client and, where necessary, explain that the client has interests opposed to those of the unrepresented person. For misunderstandings that sometimes arise when a lawyer for an organization deals with an unrepresented constituent, see rule 4-1.13(d).

This rule does not prohibit a lawyer from negotiating the terms of a transaction or settling a dispute with an unrepresented person. So long as the lawyer has explained that the lawyer represents an adverse party and is not representing the person, the lawyer may inform the person of the terms on which the lawyer's client will enter into an agreement or settle a matter, prepare documents that require the person's signature and explain the lawyer's own view of the meaning of the document or the lawyer's view of the underlying legal obligations.

RULE 4-4.4 RESPECT FOR RIGHTS OF THIRD PERSONS

(a) In representing a client, a lawyer shall not use means that have no substantial purpose other than to embarrass, delay, or burden a third person or knowingly use methods of obtaining evidence that violate the legal rights of such a person.

*472 (b) A lawyer who receives a document relating to the representation of the lawyer's client and knows or reasonably should know that the document was inadvertently sent shall promptly notify the sender.

Comment

Responsibility to a client requires a lawyer to subordinate the interests of others to those of the client, but that responsibility does not imply that a lawyer may disregard the rights of third persons. It is impractical to catalogue all such rights, but they include legal restrictions on methods of obtaining evidence from third persons and unwarranted intrusions into privileged relationships, such as the client-lawyer relationship.

Subdivision (b) recognizes that lawyers sometimes receive documents that were mistakenly sent or produced by opposing parties or their lawyers. If a lawyer knows or reasonably should know that such a document was sent inadvertently, then this rule requires the lawyer to promptly notify the sender in order to permit that person to take protective measures. Whether the lawyer is required to take additional steps, such as returning the original document, is a matter of law beyond the scope of those rules, as is the question of whether the privileged status of a document has been waived. Similarly, this rule does not address the legal duties of a lawyer who receives a document that the lawyer knows or reasonably should know may have been wrongfully obtained by the sending person. For purposes of this rule, "document"
includes e-mail or other electronic modes of transmission subject to being read or put into readable form.

Some lawyers may choose to return a document unread, for example, when the lawyer learns before receiving the document that it was inadvertently sent to the wrong address. Where a lawyer is not required by applicable law to do so, the decision to voluntarily return such a document is a matter of professional judgment ordinarily reserved to the lawyer. See rules 4-1.2 and 4-1.4.

4-5. LAW FIRMS AND ASSOCIATIONS
RULE 4-5.1 RESPONSIBILITIES OF A-PARTNERS, MANAGERS, AND OR SUPERVISORY LAWYERS
(a) Duties Concerning Adherence to Rules of Professional Conduct. A member of the bar who is a partner in a law firm, and a lawyer who individually or together with other lawyers possesses comparable managerial authority in a law firm, proprietor, shareholder, member of a limited liability company, officer, director, or manager in an authorized business entity, as defined elsewhere in these rules, or has supervisory authority over another lawyer in the law department of an enterprise or government agency, shall make reasonable efforts to ensure that the authorized business-entity, enterprise, or government agency, as defined elsewhere in these rules, has in effect measures giving reasonable assurance that all lawyers therein conform to the Rules of Professional Conduct.

(b) Supervisory Lawyer’s Duties. Any lawyer in an authorized business-entity, enterprise, or government agency, having direct supervisory authority over another lawyer shall make reasonable efforts to ensure that the other lawyer conforms to the Rules of Professional Conduct.

(c) Responsibility for Rules Violations. A lawyer shall be responsible for another lawyer’s violation of the Rules of Professional Conduct if:

*473 (1) the lawyer orders the specific conduct or, with knowledge thereof, ratifies the conduct involved; or

(2) the lawyer is a partner, proprietor, shareholder, member of a limited liability company, officer, director, partner, or manager in an authorized business entity, as defined elsewhere in these rules, or has comparable managerial authority in the law firm in which the other lawyer practices or has direct supervisory authority over another lawyer in the law department of an enterprise or government agency, and knows of the conduct at a time when its consequences can be avoided or mitigated but fails to take reasonable remedial action.

Comment
Subdivisions (a) and (b) refer applies to lawyers who have supervisory managerial authority over the professional work of a firm or legal department of a government agency. See terminology. This includes members of a partnership, proprietors, the shareholders in a law firm organized as a professional corporation, and members of a limited liability company, other associations authorized to practice law, as well as lawyers having supervisory comparable managerial authority in the a legal services organization or a law department of an enterprise or government agency, and lawyers who have intermediate managerial responsibilities in an authorized business entity firm. Subdivision (b) applies to lawyers who have supervisory authority over the work of other lawyers in a firm.

Subdivision (a) requires lawyers with managerial authority within a firm to make reasonable efforts to establish internal policies and procedures designed to provide reasonable assurance that all lawyers in the firm will conform to the Rules of Professional Conduct. Such policies and procedures include those de-
signed to detect and resolve conflicts of interest, identify dates by which actions must be taken in pending matters, account for client funds and property, and ensure that inexperienced lawyers are properly supervised.

Other measures that may be required to fulfill the responsibility prescribed in subdivisions (a) and (b) can depend on the firm's structure and the nature of its practice. In a small firm of experienced lawyers, informal supervision and occasional ad-hoc periodic review of compliance with the required systems ordinarily might be sufficient. In a large firm, or in practice situations in which intensely difficult ethical problems frequently arise, more elaborate procedures measures may be necessary. Some firms, for example, have a procedure whereby junior lawyers can make confidential referral of ethical problems directly to a designated supervising lawyer or special committee. See rule 4-5.2. Firms, whether large or small, may also rely on continuing legal education in professional ethics. In any event the ethical atmosphere of a firm can influence the conduct of all its members and a lawyer having authority over the work of another the partners may not assume that the subordinate lawyer all lawyers associated with the firm will inevitably conform to the rules.

Subdivision (c)(1) expresses a general principle of personal responsibility for acts of another. See also rule 4-8.4(a).

Subdivision (c)(2) defines the duty of a partner or other lawyer having comparable managerial authority in a law firm, as well as a lawyer having supervisory authority over performance of specific legal work by another lawyer. Whether a lawyer has such supervisory authority in particular circumstances is a question of fact. Partners, proprietors, shareholders, members of a limited liability company, officers, directors, and managers and lawyers with comparable authority have at least indirect responsibility for all work being done by the firm, while a partner, shareholder, member of a limited liability company, officer, director, and or manager in charge of a particular matter ordinarily also has authority over supervisory responsibility for the work of other firm lawyers engaged in the matter. Appropriate remedial action by a partner or managing lawyer would depend on the immediacy of the partner's, shareholder's, member's (of a limited liability company), officer's, director's, or manager's that lawyer's involvement and the seriousness of the misconduct. The supervisor is required to intervene to prevent avoidable consequences of misconduct if the supervisor knows that the misconduct occurred. Thus, if a supervising lawyer knows that a subordinate misrepresented a matter to an opposing party in negotiation, the supervisor as well as the subordinate has a duty to correct the resulting misapprehension.

Professional misconduct by a lawyer under supervision could reveal a violation of subdivision (b) on the part of the supervisory lawyer even though it does not entail a violation of subdivision (c) because there was no direction, ratification, or knowledge of the violation.

Apart from this rule and rule 4-8.4(a), a lawyer does not have disciplinary liability for the conduct of a partner, shareholder, member of a limited liability company, officer, director, manager, associate, or subordinate. Whether a lawyer may be liable civilly or criminally for another lawyer's conduct is a question of law beyond the scope of these rules.

The duties imposed by this rule on managing and supervising lawyers do not alter the personal duty of each lawyer in a firm to abide by the Rules of Professional Conduct. See rule 4-5.2(a).

**RULE 4-5.3 RESPONSIBILITIES REGARDING NONLAWYER ASSISTANTS**

(a) Use of Titles by Nonlawyer Assistants. A person who uses the title of paralegal, legal assistant, or other similar term when offering or providing ser-
vices to the public must work for or under the direction or supervision of a lawyer or an authorized business entity as defined elsewhere in these Rules Regulating The Florida Bar firm.

(b) Supervisory Responsibility. With respect to a nonlawyer employed or retained by or associated with a lawyer or an authorized business entity as defined elsewhere in these Rules Regulating The Florida Bar:

(1) a partner, and a lawyer who individually or together with other lawyers possesses comparable managerial authority in a law firm, shall make reasonable efforts to ensure that the firm has in effect measures giving reasonable assurance that the person's conduct is compatible with the professional obligations of the lawyer;

(2) a lawyer having direct supervisory authority over the nonlawyer shall make reasonable efforts to ensure that the person's conduct is compatible with the professional obligations of the lawyer; and

(3) a lawyer shall be responsible for conduct of such a person that would be a violation of the Rules of Professional Conduct if engaged in by a lawyer if:

(A) the lawyer orders or, with the knowledge of the specific conduct, ratifies the conduct involved; or

(B) the lawyer is a partner or has comparable managerial authority in the law firm in which the person is employed, or has direct supervisory authority over the person, and knows of the conduct at a time when its consequences can be avoided or mitigated but fails to take reasonable remedial action.

(c) [No Change]

Comment
Lawyers generally employ assistants in their practice, including secretaries, investigators, law student interns, and paraprofessionals such as paralegals and legal assistants. Such assistants, whether employees or independent contractors, act for the lawyer in rendition of the lawyer's professional services. A lawyer should must give such assistants appropriate instruction and supervision concerning the ethical aspects of their employment, particularly regarding the obligation not to disclose information relating to representation of the client. The measures employed in supervising nonlawyers should take account of the level of their legal training and the fact that they are not subject to professional discipline. If an activity requires the independent judgment and participation of the lawyer, it cannot be properly delegated to a nonlawyer employee.

Subdivision (b)(1) requires lawyers with managerial authority within a law firm to make reasonable efforts to establish internal policies and procedures designed to provide reasonable assurance that nonlawyers in the firm will act in a way compatible with the Rules of Professional Conduct. See comment to rule 4-5.1. Subdivision (b)(2) applies to lawyers who have supervisory authority over the work of a nonlawyer. Subdivision (b)(3) specifies the circumstances in which a lawyer is responsible for conduct of a nonlawyer that would be a violation of the Rules of Professional Conduct if engaged in by a lawyer.

Nothing provided in this rule should be interpreted to mean that a nonlawyer may have any ownership or partnership interest in a law firm, which is prohibited by rule 4-5.4. Additionally, this rule would not permit a lawyer to accept employment by a nonlawyer or group of nonlawyers, the purpose of which is to provide the supervision required under this rule. Such conduct is prohibited by rules 4-5.4 and 4-5.5.

RULE 4-5.4 PROFESSIONAL INDEPENDENCE OF A LAWYER

(a) Sharing Fees with Nonlawyers. A lawyer or
law firm shall not share legal fees with a nonlawyer, except that:

(1) an agreement by a lawyer with the lawyer's firm, partner, or associate may provide for the payment of money, over a reasonable period of time after the lawyer's death, to the lawyer's estate or to 1 or more specified persons;

(2) a lawyer who undertakes to complete unfinished legal business of a deceased lawyer may pay to the estate of the deceased lawyer that proportion of the total compensation that fairly represents the services rendered by the deceased lawyer;

(3) a lawyer who purchases the practice of a deceased, disabled, or disappeared lawyer may, in accordance with the provisions of rule 4-1.17, pay to the estate or other legally authorized representative of that lawyer the agreed upon purchase price; and

(4) bonuses may be paid to nonlawyer employees for work performed, and may be based on their extraordinary efforts on a particular case or over a specified time period. Bonus payments shall not be based on cases or clients brought to the lawyer or law firm by the actions of the nonlawyer. A lawyer shall not provide a bonus payment that is calculated as a percentage of legal fees received by the lawyer or law firm; and

(5) a lawyer may share court-awarded fees with a nonprofit, pro bono legal services organization that employed, retained, or recommended employment of the lawyer in the matter.

(b)-(d) [No Change]

(e) Nonlawyer Ownership of Authorized Business Entity. A lawyer shall not practice with or in the form of a business entity authorized to practice law for a profit if:

(1) a nonlawyer owns any interest therein, except that a fiduciary representative of the estate of a lawyer may hold the stock or interest of the lawyer for a reasonable time during administration; or

(2) a nonlawyer is a corporate director or officer thereof or occupies the position of similar responsibility in any form of association other than a corporation; or

(3) a nonlawyer has the right to direct or control the professional judgment of a lawyer.

Comment

The provisions of this rule express traditional limitations on sharing fees. These limitations are to protect the lawyer's professional independence of judgment. Where someone other than the client pays the lawyer's fee or salary, or recommends employment of the lawyer, that arrangement does not modify the lawyer's obligation to the client. As stated in subdivision (e)(d), such arrangements should not interfere with the lawyer's professional judgment.

This rule also expresses traditional limitations on permitting a third party to direct or regulate the lawyer's professional judgment in rendering legal services to another. See also rule 4-1.8(f) (lawyer may accept compensation from a third party as long as there is no interference with the lawyer's independent professional judgment and the client gives informed consent).

The prohibition against sharing legal fees with nonlawyer employees is not intended to prohibit profit-sharing arrangements that are part of a qualified pension, profit-sharing, or retirement plan. Compensation plans, as opposed to retirement plans, may not be based on legal fees.

RULE 4-5.6 RESTRICTIONS ON RIGHT TO
PRACTICE

A lawyer shall not participate in offering or making:

(a) a partnership or shareholder, operating, employment, or other similar type of agreement that restricts the rights of a lawyer to practice after termination of the relationship, except an agreement concerning benefits upon retirement; or

(b) an agreement in which a restriction on the lawyer's right to practice is part of the settlement of a client controversy between private parties.

Comment

An agreement restricting the right of partners or associates, lawyers to practice after leaving a firm not only limits their professional autonomy, but also limits the freedom of clients to choose a lawyer. Subdivision (a) prohibits such agreements except for restrictions incident to provisions concerning retirement benefits for service with the firm.

Subdivision (b) prohibits a lawyer from agreeing not to represent other persons in connection with settling a claim on behalf of a client.

This rule does not apply to prohibit restrictions that may be included in the terms of the sale of a law practice in accordance with the provisions of rule 4-1.17.

This rule is not a per se prohibition against severance agreements between lawyers and law firms. Severance agreements containing reasonable and fair compensation provisions designed to avoid disputes requiring time-consuming quantum merit analysis are not prohibited by this rule. Severance agreements, on the other hand, that contain punitive clauses, the effect of which are to restrict competition or encroach upon a client's inherent right to select counsel, are prohibited. The percentage limitations found in rule 4-1.5(f)(4)(D) do not apply to fees divided pursuant to a severance agreement. No severance agreement shall contain a fee-splitting arrangement that results in a fee prohibited by the Rules Regulating The Florida Bar.

4-8. MAINTAINING THE INTEGRITY OF THE PROFESSION

RULE 4-8.1 BAR ADMISSION AND DISCIPLINARY MATTERS

[No Change]

Comment

The duty imposed by this rule extends to persons seeking admission to the bar as well as to lawyers. Hence, if a person makes a material false statement in connection with an application for admission, it may be the basis for subsequent disciplinary action if the person is admitted and in any event may be relevant in a subsequent admission application. The duty imposed by this rule applies to a lawyer's own admission or discipline as well as that of others. Thus, it is a separate professional offense for a lawyer to knowingly make a misrepresentation or omission in connection with a disciplinary investigation of the lawyer's own conduct. This subdivision (b) of this rule also requires correction of any prior misstatement in the matter that the applicant or lawyer may have made and affirmative clarification of any misunderstanding on the part of the admissions or disciplinary authority of which the person involved becomes aware.

This rule is subject to the provisions of the fifth amendment of the United States Constitution and the corresponding provisions of the Florida Constitution. A person relying on such a provision in response to a question, however, should do so openly and not use the right of nondisclosure as a justification for failure to comply with this rule.

A lawyer representing an applicant for admission to the bar, or representing a lawyer who is the subject of a disciplinary inquiry or proceeding, is governed by the rules applicable to the client-lawyer relationship, including rule 4-1.6 and, in some cases, rule 4-3.3.
An applicant for admission may commit acts that adversely reflect on the applicant's fitness to practice law and which are discovered only after the applicant becomes a member of the bar. This rule provides a means to address such misconduct in the absence of such a provision in the Rules of the Supreme Court Relating to Admissions to the Bar.

**RULE 4-8.3 REPORTING PROFESSIONAL MISCONDUCT**

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

(b) Reporting Misconduct of Judges. A lawyer having knowledge who knows that a judge has committed a violation of applicable rules of judicial conduct that raises a substantial question as to the judge's fitness for office shall inform the appropriate authority.

(c) Confidences Preserved. This rule does not require disclosure of information otherwise protected by rule 4-1.6 or information gained by a lawyer or judge while participating in an approved lawyers assistance program. Provided further, however, that if a lawyer's participation in an approved lawyers assistance program is part of a disciplinary sanction this limitation shall not be applicable and a report about the lawyer who is participating as part of a disciplinary sanction shall be made to the appropriate disciplinary agency.

(d) [No Change]

**Comment**

Self-regulation of the legal profession requires that members of the profession initiate disciplinary investigation when they know of a violation of the Rules of Professional Conduct. Lawyers have a similar obligation with respect to judicial misconduct. An apparently isolated violation may indicate a pattern of misconduct that only a disciplinary investigation can uncover. Reporting a violation is especially important where the victim is unlikely to discover the offense.

A report about misconduct is not required where it would involve violation of rule 4-1.6. However, a lawyer should encourage a client to consent to disclosure where prosecution would not substantially prejudice the client's interests.

If a lawyer were obliged to report every violation of the rules, the failure to report any violation would itself be a professional offense. Such a requirement existed in many jurisdictions, but proved to be unenforceable. This rule limits the reporting obligation to those offenses that a self-regulating profession must vigorously endeavor to prevent. A measure of judgment is, therefore, required in complying with the provisions of this rule. The term "substantial" refers to the seriousness of the possible offense and not the quantum of evidence of which the lawyer is aware.

The duty to report professional misconduct does not apply to a lawyer retained to represent a lawyer whose professional conduct is in question. Such a situation is governed by the rules applicable to the client-lawyer relationship.

Information about a lawyer's or judge's misconduct or fitness may be received by a lawyer in the course of that lawyer's participation in an approved lawyers or judges assistance program. In that circumstance, providing for an exception to the reporting requirements of subdivisions (a) and (b) of this rule encourages lawyers and judges to seek treatment through such a program. Conversely, without such an exception, lawyers and judges may hesitate to seek
RULE 4-8.4 MISCONDUCT
A lawyer shall not:

(a)-(d) [No Change]

(e) state or imply an ability to influence improperly a government agency or official or to achieve results by means that violate *479 the Rules of Professional Conduct or other law;

(f)-(i) [No Change]

Comment
Lawyers are subject to discipline when they violate or attempt to violate the Rules of Professional Conduct, knowingly assist or induce another to do so, or do so through the acts of another, as when they request or instruct an agent to do so on the lawyer’s behalf. Subdivision (a), however, does not prohibit a lawyer from advising a client concerning action the client is legally entitled to take, provided that the client is not used to indirectly violate the Rules of Professional Conduct.

Many kinds of illegal conduct reflect adversely on fitness to practice law, such as offenses involving fraud and the offense of willful failure to file an income tax return. However, some kinds of offense carry no such implication. Traditionally, the distinction was drawn in terms of offenses involving “moral turpitude.” That concept can be construed to include offenses concerning some matters of personal morality, such as adultery and comparable offenses, that have no specific connection to fitness for the practice of law. Although a lawyer is personally answerable to the entire criminal law, a lawyer should be professionally answerable only for offenses that indicate lack of those characteristics relevant to law practice. Offenses involving violence, dishonesty, or breach of trust or serious interference with the administration of justice are in that category. A pattern of repeated offenses, even ones of minor significance when considered separately, can indicate indifference to legal obligation.

A lawyer may refuse to comply with an obligation imposed by law upon a good faith belief that no valid obligation exists. The provisions of rule 4-1.2(d) concerning a good faith challenge to the validity, scope, meaning, or application of the law apply to challenges of legal regulation of the practice of law.

Subdivision (e) recognizes instances where lawyers in criminal law enforcement agencies or regulatory agencies advise others about or supervise others in undercover investigations, and provides an exception to allow the activity without the lawyer engaging in professional misconduct. The exception acknowledges current, acceptable practice of these agencies. Although the exception appears in this rule, it is also applicable to rules 4-4.1 and 4-4.3. However, nothing in the rule allows the lawyer to engage in such conduct if otherwise prohibited by law or rule.

Subdivision (d) of this rule proscribes conduct that is prejudicial to the administration of justice. Such proscription includes the prohibition against discriminatory conduct committed by a lawyer while performing duties in connection with the practice of law. The proscription extends to any characteristic or status that is not relevant to the proof of any legal or factual issue in dispute. Such conduct, when directed towards litigants, jurors, witnesses, court personnel, or other lawyers, whether based on race, ethnicity, gender, religion, national origin, disability, marital status, sexual orientation, age, socioeconomic status, em-
employment, physical characteristic, or any other basis, subverts the administration of justice and undermines the public's confidence in our system of justice, as well as notions of equality. This subdivision does not prohibit a lawyer from representing a client as may be permitted by applicable law, such as, by way of example, representing a client accused of committing discriminatory conduct.

Lawyers holding public office assume legal responsibilities going beyond those of other citizens. A lawyer's abuse of public office can suggest an inability to fulfill the professional role of attorney. The same is true of abuse of positions of private trust such as trustee, executor, administrator, guardian, or agent and officer, director, or manager of a corporation or other organization.

A lawyer's obligation to respond to an inquiry by a disciplinary agency is stated in subdivision (g) and rule 3-7.6(h)(2). While response is mandatory, the lawyer may deny the charges or assert any available privilege or immunity or interpose any disability that prevents disclosure of certain matter. A response containing a proper invocation thereof is sufficient under the Rules Regulating The Florida Bar. This obligation is necessary to ensure the proper and efficient operation of the disciplinary system.

Subdivision (h) of this rule was added to make consistent the treatment of attorneys who fail to pay child support with the treatment of other professionals who fail to pay child support, in accordance with the provisions of section 61.13015, Florida Statutes. That section provides for the suspension or denial of a professional license due to delinquent child support payments after all other available remedies for the collection of child support have been exhausted. Likewise, subdivision (h) of this rule should not be used as the primary means for collecting child support, but should be used only after all other available remedies for the collection of child support have been exhausted. Before a grievance may be filed or a grievance procedure initiated under this subdivision, the court that entered the child support order must first make a finding of willful refusal to pay. The child support obligation at issue under this rule includes both domestic (Florida) and out-of-state (URES A) child support obligations, as well as arrearages.

Subdivision (i) proscribes exploitation of the client and the lawyer-client relationship by means of commencement of sexual conduct. The lawyer-client relationship is grounded on mutual trust. A sexual relationship that exploits that trust compromises the lawyer-client relationship. For purposes of this subdivision, client means an individual, or a representative of the client, including but not limited to a duly authorized constituent of a corporate or other non-personal entity, and lawyer refers only to the lawyer(s) engaged in the legal representation and not other members of the law firm.

CHAPTER 5. RULES REGULATING TRUST ACCOUNTS

5-1. GENERALLY

RULE 5-1.1 TRUST ACCOUNTS

(a)-(e) [No Change]

(f) Disputed Ownership of Trust Funds. When in the course of representation a lawyer is in possession of property in which both 2 or more persons (1 of whom may be the lawyer) and another person claim interests, the property shall be treated by the lawyer as trust property, but the portion belonging to the lawyer or law firm shall be withdrawn within a reasonable time after it becomes due unless the right of the lawyer or law firm to receive it is disputed, in which event the portion in dispute shall be kept separate by the lawyer until the dispute is resolved. The lawyer shall promptly distribute all portions of the property as to which the interests are not in dispute.

(g)-(j) [No Change]
Comment

A lawyer must hold property of others with the care required of a professional *481 fiduciary. This chapter requires maintenance of a bank or savings and loan association account, clearly labeled as a trust account and in which only client or third party trust funds are held.

Securities should be kept in a safe deposit box, except when some other form of safekeeping is warranted by special circumstances.

All property that is the property of clients or third persons should be kept separate from the lawyer's business and personal property and, if money, in 1 or more trust accounts, unless requested otherwise in writing by the client. Separate trust accounts may be warranted when administering estate money or acting in similar fiduciary capacities.

A lawyer who holds funds for a client or third person and who determines that the funds are not nominal or short-term as defined elsewhere in this subchapter should hold the funds in a separate interest-bearing account with the interest accruing to the benefit of the client or third person unless directed otherwise in writing by the client or third person.

Lawyers often receive funds from third parties from which the lawyer's fee will be paid. If there is risk that the client may divert the funds without paying the fee, the lawyer is not required to remit the portion from which the fee is to be paid to the client funds that the lawyer reasonably believes represent fees owed. However, a lawyer may not hold funds to coerce a client into accepting the lawyer's contention. The disputed portion of the funds must be kept in a trust account and the lawyer should suggest means for prompt resolution of the dispute, such as arbitration. The undisputed portion of the funds shall be promptly distributed.

Third parties, such as a client's creditors, may have just lawful claims against funds or other property in a lawyer's custody. A lawyer may have a duty under applicable law to protect such third party claims against wrongful interference by the client and, accordingly, may, when the lawyer has a duty under applicable law to protect the third-party claim and the third-party claim is not frivolous under applicable law, the lawyer must refuse to surrender the property to the client until the claims are resolved. However, a lawyer should not unilaterally assume to arbitrate a dispute between the client and the third party, and, where appropriate, the lawyer should consider the possibility of depositing the property or funds in dispute into the registry of the applicable court so that the matter may be adjudicated.

The obligations of a lawyer under this chapter are independent of those arising from activity other than rendering legal services. For example, a lawyer who serves only as an escrow agent is governed by the applicable law relating to fiduciaries even though the lawyer does not render legal services in the transaction and is not governed by this rule.

Each lawyer is required to be familiar with and comply with the Rules Regulating Trust Accounts as adopted by the Supreme Court of Florida.

Money or other property entrusted to a lawyer for a specific purpose, including advances for fees, costs, and expenses, is held in trust and must be applied only to that purpose. Money and other property of clients coming into the hands of a lawyer are not subject to counterclaim or setoff for attorney's fees, and a refusal to account for and deliver over such property upon demand shall be a conversion. This does not preclude the retention of money or other property upon which a lawyer has a valid lien for services or to preclude the *482 payment of agreed fees from the proceeds of transactions or collections.
Advances for fees and costs (funds against which costs and fees are billed) are the property of the client or third party paying same on a client's behalf and are required to be maintained in trust, separate from the lawyer's property. Retainers are not funds against which future services are billed. Retainers are funds paid to guarantee the future availability of the lawyer's legal services and are earned by the lawyer upon receipt. Retainers, being funds of the lawyer, may not be placed in the client's trust account.

The test of excessiveness found elsewhere in the Rules Regulating The Florida Bar applies to all fees for legal services including retainers, nonrefundable retainers, and minimum or flat fees.

Fla., 2006.
In re Amendments to the Rules Regulating The Florida Bar
933 So.2d 417, 31 Fla. L. Weekly S453, 31 Fla. L. Weekly S195

END OF DOCUMENT
May 28, 2004

PRIVILEGED AND CONFIDENTIAL

Eric Fishman, M.D.
Drs. Fishman & Stashak, M.D.'s, P.A.
d/b/a Gold Coast Orthopedics
"b/a Gold Coast Orthopedics & Rehabilitation
1411 North Flagler Drive, Suite 8800
West Palm Beach, FL 33401

Case No. CA 01-11649 AB

Dear Dr. Fishman:

We are on the verge of a potentially significant event in this case. At the same time, certain events have just occurred without our knowledge that could materially affect your rights.

For over a year we have been fighting to obtain important internal Progressive documents about how Progressive devised and implemented the schemes used to improperly reduce your bills. While some documents have been produced to us, Progressive has gone to great lengths to prevent the production of documents to which they have asserted attorney-client and other privileges. There have now been five separate rulings requiring that the documents be produced to us, the most recent of which (May 17, 2004) also determined that we are entitled to sanctions. A hearing to determine the amount of sanctions is scheduled for June 23, 2004. By virtue of the extent to which Progressive has fought this issue and ignored rulings of three separate tribunals, we believe that these documents contain incriminating evidence and, if that is the case, there could be very important evidence both as to Progressive's bad faith and the value of this case.

In one of Progressive's efforts to avoid having to produce these documents, Progressive engaged us in a lengthy discussion about a "global" settlement of the bad faith claims in this case as well as the bad faith claims of all healthcare providers represented in PIP benefit claims by the law firms of Marks & Fleischer, Kane & Kane and Watson & Lentner. As you know, on April 19, 2004 there was a mediation conference with Progressive, that both you and Dr. Stashak attended along with Darin Lentner. In that
May 28, 2004
Page 2

Mediation Progressive offered $3.5 million to settle all the bad faith claims of all of the health care providers.

Since the mediation we have continued to increase the pressure on Progressive. If the content of the documents is as we believe, the total value of the claims should increase, not only for settlement purposes but also for trial purposes as well. We believe that as the rulings continue to mount, the pressure on Progressive to settle on more favorable terms will continue to grow.

It was against this background of events that we were informed by Darin Lentner via e-mail last week that the law firms of Marks & Fleischer, Kane & Kane and Watson & Lentner had apparently reached a secret settlement with Progressive that “substantially affected the Bad Faith Case.” This settlement has been negotiated without our knowledge, notwithstanding our continuous and ongoing efforts on your behalf, about which we have kept the three firms fully informed. Both in writing and verbally we have repeatedly requested that those firms provide us with information regarding the purported settlement, the most recent having occurred yesterday afternoon. Those firms have refused to tell us anything about the settlement except to tell us that the bad faith case has been settled but no money is being received for the bad faith claims. Given what has already been offered on the bad faith claims and the potential impact of this new evidence, it appears that your rights may have been compromised or even sacrificed.

The firms of Marks & Fleischer, Kane & Kane and Watson & Lentner claim that the settlement is confidential but, as your lawyers, we believe we have the right to see it. Indeed, without knowing all the details and parameters of any such settlement, it is not possible for us to evaluate your rights or the impact of such a settlement on those rights. If you have any materials relating to the settlement, please send them to us so that we can properly advise you. Otherwise we ask that you contact us so that we can discuss this matter further.

Very truly yours,

[Signature]
Larry S. Stewart

LSS:jc

Stewart Tilghman Fox & Bianchi, P.A.
Attorneys at Law
Tab 16
IN THE CIRCUIT COURT OF THE 15th
JUDICIAL CIRCUIT IN AND FOR
PALM BEACH COUNTY, FLORIDA

CASE NO. 502004 CAO0613XXXMB AO

STEWART TILGHMAN FOX &
BIANCHI, P.A., a professional association;
WILLIAM C. HEARON, P.A., a professional
association; and TODD S. STEWART, P.A.,
a professional association,

Plaintiffs,

-vs-

MARKS & FLEISCHER, P.A., a professional
association, KANE & KANE, a professional
corporation; and LAURA M. WATSON, P.A.
d/b/a WATSON & LENTNER, a professional
corporation; GARY H. MARKS, AMIR FLEISCHER,
CHARLES J. KANE, HARLEY N. KANE, LAURA
M. WATSON and DARIN J. LENTNER,

Defendants.

______________________________

AFFIDAVIT OF DR. EDWARD RIVERO

STATE OF FLORIDA
COUNTY OF DADE

BEFORE ME personally appeared Dr. Edward Rivero, who being first duly sworn,
deposes and says:

1. I am a physician and President of Columbia Center for Rehabilitation Corp., a
named plaintiff in an action generally known as “Gold coast Orthopedics (Drs. Fishman and
Stashak) et al v. Progressive Insurance Companies (hereafter referred to as the “Fishman/Stashak
bad faith case”). This affidavit is made in support of defendants’ Motion for Partial Summary
Judgment.

BACKGROUND
2. In my practice I treat victims of auto accidents. Some of these patients were insured by one of the Progressive Insurance Companies ("Progressive"). In some instances, Progressive failed to pay the full fee for service rendered.

3. In order to recover the sums due from Progressive, I engaged the services of the law firm of Watson & Lentner. I signed a retainer agreement which provided that the law firm would commence a lawsuit on my behalf against Progressive. If the suit was successful, I would recover the unpaid portion of my fee (the "PIP benefit") and accrued interest, while the lawyers would recover the costs of suit and their legal fees.

4. Ordinarily, it would have been completely impractical to pursue one of these claims in Court. Often times the sum being sought was less than $500.00. However, I understood that Florida law afforded me the opportunity to recover legal fees and costs if I prevailed. Progressive aggressively defended PIP suits brought on my behalf. If I had to advance costs and fees to recover $500.00, I would not have done so.

5. However, Watson & Lentner assumed the risk on our behalf and agreed to perform as much work and expend whatever time was necessary. Thus my lawyers matched or exceeded the efforts of Progressive and eventually we prevailed. I recovered the unpaid PIP benefits plus interest and my lawyers recovered costs and attorney's fees.

6. In or about 2002, I learned that a lawsuit had been brought against Progressive alleging bad faith in the pattern of denial or reduction of PIP benefits. Eventually I was asked if I wanted to join that lawsuit as a plaintiff. I elected to do so and signed a written retainer agreement with the following lawyers: (i) Stewart, Tighman, Fox & Bianchi, P.A.; (ii) William Hearon, P.A.; (iii) Todd Stewart, P.A.; (iv) Marks & Fleisher, P.A.; (v) Laura M. Watson, P.A. d/b/a Watson & Lentner; and (vi) Kane & Kane.

7. While I understood that my claims were being added to an existing lawsuit along with other physicians, I was never told that there was any plan or arrangement to add hundreds
of other physicians or thousands of claims to the lawsuit. Moreover, I was never asked for my consent to do so. Had I been asked, I would not have agreed. The lawsuit began in 2000 with a single plaintiff. It ended in June of 2004 with thirty six plaintiffs. I believe that the more plaintiffs that were added, the more complicated the case would become and the longer it would take to bring it to a conclusion.

8. In April of 2004 I am told that a mediation was held in the Fishman/Stashak case. I was not invited to attend the mediation even though I was a named plaintiff. I was not told of any strategy for the mediation and I was not asked to authorize any particular deal.

9. I am told that at the mediation, Larry Stewart made a demand for a sum of money to settle not just the claims of the thirty six plaintiffs in the Fishman Stashak case, but of more than four hundred other health care providers that were not in the case. I am also told that an offer was supposedly made by Progressive at the mediation which was to be divided between approximately 440 different health care providers, even though there were only thirty six plaintiffs in that case.

10. I was not asked if I wanted to accept that offer. I am told that Larry Stewart rejected Progressive’s offer without consulting with any of the named plaintiffs other than Drs. Fishman and Stashak.

SETTLEMENT OF THE BAD FAITH CASE

11. In May of 2004 I was contacted by my lawyers and advised that there was an opportunity to settle all of my remaining PIP cases with Progressive if I was willing to drop my bad faith claims. I was willing to do this and authorized Watson & Lentner to enter into such a settlement.

12. Subsequently, I was advised that a settlement on those terms with Progressive had not been approved by all of the health care providers. My lawyers then relayed a settlement offer from Progressive for the bad faith case whereby I would share $1,750,000.00 with the
thirty five other named plaintiffs in the bad faith case. In addition, in a separate settlement of outstanding PIP cases, I would receive full payment of all outstanding PIP claims together with interest and costs of litigation. In this arrangement, Watson & Lentner settled on the amount of attorneys fees they would receive for their work on our PIP cases.

13. I received a letter from Larry Stewart which I understood to be his advice that I not settle the bad faith case. I also received a letter from Watson & Lentner which explained that there was a disagreement between Larry Stewart and Watson & Lentner about how to handle the bad faith case and whether it should be settled.

14. I understood plainly that Larry Stewart believed the case was far more valuable and that we should not accept the offer from Progressive. I understood that Mr. Stewart believed that we had an advantage at that moment in the case.

15. I understood that if we continued with the litigation and did not settle the bad faith case there was an opportunity to obtain a better offer from Progressive. I also understood that there were no guarantees that we would get a better offer.

16. I felt strongly that Progressive Insurance had acted improperly. Although I am not a lawyer, I believed that their conduct was outrageous. I was aware that if the litigation of the case continued a higher offer could have been obtained from Progressive. However, the $1,750,000.00 offer obtained from Progressive was enough of an offer for me to accept.

17. In weighing the factors and making my decision to accept the settlement, I considered the advantage of “money now” rather than the possibility of “more money later”. The advantage of accepting a settlement is that you avoid the risk of trial, even if those risks are small.

18. The decision to accept the respective settlement offers was made by me independently.
19. If asked, I would have given Larry Stewart the same instructions to settle the bad faith case by accepting Progressive’s offer of $1,750,000.00.

20. I was aware that I could speak with Larry Stewart about his view of the bad faith case. I was free to seek his advice and he was free to contact me. I was never told that I could not speak with him.

21. If asked, I would not have consented to the addition of additional plaintiffs and claims to the bad faith case in May of 2004.

FURTHER AFFIANT SAYETH NOT.

DR. EDWARD RIVERO

The foregoing instrument was acknowledged before me this 12th day of August, 2005, by EDWARD RIVERO, who is personally known to me or who has produced Florida State ID as identification and who did not take an oath.

Sincerely,

NOTARY PUBLIC

Lourdes T. Torres
(PRINT NOTARY NAME), State of Florida

DD 17 2020
(Serial number, if any)
STATE OF FLORIDA  
COUNTY OF PALM BEACH  

BEFORE ME personally appeared Dr. John P. Christensen who being first duly sworn, deposes and says:

1. I am a physician and President of Dr. John P. Christensen, P.A., a named plaintiff in an action generally known as "Goldcoast Orthopedics (Drs. Fishman and Stashak) v. Progressive Insurance Companies (hereafter referred to as the "Fishman/Stashak bad faith case"). This affidavit is made in support of defendants' Motion for Partial Summary Judgment.

BACKGROUND

2. In my practice I treat victims of auto accidents. Some of these patients were insured by one of the Progressive Insurance Companies ("Progressive"). In some instances, Progressive failed to pay the full fee for service rendered.
3. In order to recover the sums due from Progressive, I engaged the services of the law firm of Watson & Lentner. I signed a retainer agreement which provided that the law firm would commence a lawsuit on my behalf against Progressive. If the suit was successful, I would recover the unpaid portion of my fee (the "PIP benefit") and accrued interest, while the lawyers would recover the costs of suit and their legal fees.

4. Ordinarily, it would have been completely impractical to pursue one of these claims in Court. Often times the sum being sought was less than $500.00. However, I understood that Florida law afforded me the opportunity to recover legal fees and costs if I prevailed. Progressive aggressively defended PIP suits brought on my behalf. If I had to advance costs and fees to recover $500.00, I would not have done so.

5. However, Watson & Lentner assumed the risk on our behalf and agreed to perform as much work and expend whatever time was necessary. Thus my lawyers matched or exceeded the efforts of Progressive and eventually we prevailed. I recovered the unpaid PIP benefits plus interest and my lawyers recovered costs and attorney's fees.

6. In or about 2002, I learned that a lawsuit had been brought against Progressive alleging bad faith in the pattern of denial or reduction of PIP benefits. Eventually I was asked if I wanted to join that lawsuit as a plaintiff. I elected to do so and signed a written retainer agreement with the following lawyers: (i) Stewart, Tightman, Fox & Bianchi, P.A.; (ii) William Hearon, P.A.; (iii) Todd Stewart, P.A.; (iv) Marks & Fleisher, P.A.; (v) Laura M. Watson, P.A. d/b/a Watson & Lentner; and (vi) Kane & Kane.

7. While I understood that my claims were being added to an existing lawsuit along with other physicians, I was never told that there was any plan or arrangement to add hundreds of other physicians or thousands of claims to the lawsuit. Moreover, I was never asked for my consent to do so. Had I been asked, I would not have agreed. The lawsuit began in 2000 with a single plaintiff. It ended in June of 2004 with thirty six plaintiffs. I believe that the more
plaintiffs that were added, the more complicated the case would become and the longer it would take to bring it to a conclusion.

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10. I was not asked if I wanted to accept that offer. I am told that Larry Stewart rejected Progressive's offer without consulting with any of the named plaintiffs other than Dns. Fishman and Stashak.

SETTLEMENT OF THE BAD FAITH CASE

11. In May of 2004 I was contacted by my lawyers and advised that there was an opportunity to settle all of my remaining PIP cases with Progressive if I was willing to drop my bad faith claims. I was willing to do this and authorized Watson & Lentner to enter into such a settlement.

12. Subsequently, I was advised that a settlement on those terms with Progressive had not been approved by all of the health care providers. My lawyers then relayed a settlement offer from Progressive for the bad faith case whereby I would share $1,750,000.00 with the thirty-five other named plaintiffs in the bad faith case. In addition, in a separate settlement of outstanding PIP cases, I would receive full payment of all outstanding PIP claims together with
interest and costs of litigation. In this arrangement, Watson & Lentner settled on the amount of attorneys fees they would receive for their work on our PIP cases.

13. I received a letter from Larry Stewart which I understood to be his advice that I not settle the bad faith case. I also received a letter from Watson & Lentner which explained that there was a disagreement between Larry Stewart and Watson & Lentner about how to handle the bad faith case and whether it should be settled.

14. I understood plainly that Larry Stewart believed the case was far more valuable and that we should not accept the offer from Progressive. I understood that Mr. Stewart believed that we had an advantage at that moment in the case.

15. I understood that if we continued with the litigation and did not settle the bad faith case there was an opportunity to obtain a better offer from Progressive. I also understood that there were no guarantees that we would get a better offer.

16. I felt strongly that Progressive Insurance had acted improperly. Although I am not a lawyer, I believed that their conduct was outrageous. I was aware that if the litigation of the case continued a higher offer could have been obtained from Progressive. However, the $1,750,000.00 offer obtained from Progressive was enough of an offer for me to accept.

17. In weighing the factors and making my decision to accept the settlement, I considered the advantage of "money now" rather than the possibility of "more money later". The advantage of accepting a settlement is that you avoid the risk of trial, even if those risks are small.

18. The decision to accept the respective settlement offers was made by me independently.

19. If asked, I would have given Larry Stewart the same instructions to settle the bad faith case by accepting Progressive's offer of $1,750,000.00.
20. I was aware that I could speak with Larry Stewart about his view of the bad faith case. I was free to seek his advice and he was free to contact me. I was never told that I could not speak with him.

21. If asked, I would not have consented to the addition of additional plaintiffs and claims to the bad faith case in May of 2004.

FURTHER AFFIANT SAYETH NOT.

[Signature]

DR. JOHN P. CHRISTENSEN

The foregoing instrument was acknowledged before me this 15th day of August, 2005, by [Signature], who is personally known to me or who has produced Florida State ID as identification and who did not take an oath.

[Signature]

NOTARY PUBLIC

[Stamp]

[Stamp]
IN THE CIRCUIT COURT OF THE 15th
JUDICIAL CIRCUIT IN AND FOR
PALM BEACH COUNTY, FLORIDA

CASE NO. 502004 CA006138XXXXMB AO

STEWARD TILGHMAN FOX & BIANCHI, P.A., a professional association;
WILLIAM C. HEARON, P.A., a professional association; and TODD S. STEWART, P.A.,
a professional association,
   Plaintiffs,

vsp-

MARKS & FLEISCHER, P.A., a professional association, KANE & KANE, a professional
corporation; and LAURA M. WATSON, P.A.
d/b/a WATSON & LENTNER, a professional
corporation; GARY H. MARKS, AMIR FLEISCHER,
CHARLES J. KANE, HARLEY N. KANE, LAURA
M. WATSON and DARIN J. LENTNER,
   Defendants.

AFFIDAVIT OF RONALD DRUCKER, D.C.

STATE OF FLORIDA )
COUNTY OF BROWARD )

BEFORE ME personally appeared Ronald Drucker, D.C. who being first duly sworn,
deposes and says:

1. I am a physician and President of Broward Chiropractic, Inc., a named plaintiff in
an action generally known as “Goldcoast Orthopedics (Drs. Fishman and Stashak) et al v.
Progressive Insurance Companies (hereafter referred to as the “Fishman/Stashak bad faith
case”). This affidavit is made in support of defendants’ Motion for Partial Summary Judgment.

BACKGROUND

2. In my practice I treat victims of auto accidents. Some of these patients were
insured by one of the Progressive Insurance Companies (“Progressive”). In some instances,
Progressive failed to pay the full fee for service rendered.
3. In order to recover the sums due from Progressive, I engaged the services of the law firm of Watson & Lentner. I signed a retainer agreement which provided that the law firm would commence a lawsuit on my behalf against Progressive. If the suit was successful, I would recover the unpaid portion of my fee (the “PIP benefit”) and accrued interest, while the lawyers would recover the costs of suit and their legal fees.

4. Ordinarily, it would have been completely impractical to pursue one of these claims in Court. Often times the sum being sought was less than $500.00. However, I understood that Florida law afforded me the opportunity to recover legal fees and costs if I prevailed. Progressive aggressively defended PIP suits brought on my behalf. If I had to advance costs and fees to recover $500.00, I would not have done so.

5. However, Watson & Lentner assumed the risk on our behalf and agreed to perform as much work and expend whatever time was necessary. Thus my lawyers matched or exceeded the efforts of Progressive and eventually we prevailed. I recovered the unpaid PIP benefits plus interest and my lawyers recovered costs and attorney’s fees.

6. In or about 2002, I learned that a lawsuit had been brought against Progressive alleging bad faith in the pattern of denial or reduction of PIP benefits. Eventually I was asked if I wanted to join that lawsuit as a plaintiff. I elected to do so and signed a written retainer agreement with the following lawyers: (i) Stewart, Tighman, Fox & Bianchi, P.A.; (ii) William Hearon, P.A.; (iii) Todd Stewart, P.A.; (iv) Macks & Fleisher, P.A.; (v) Laura M. Watson, P.A. d/b/a Watson & Lentner; and (vi) Kane & Kane.

7. While I understood that my claims were being added to an existing lawsuit along with other physicians, I was never told that there was any plan or arrangement to add hundreds of other physicians or thousands of claims to the lawsuit. Moreover, I was never asked for my consent to do so. Had I been asked, I would not have agreed. The lawsuit began in 2000 with a single plaintiff. It ended in June of 2004 with thirty six plaintiffs. I believe that the more
plaintiffs that were added, the more complicated the case would become and the longer it would take to bring it to a conclusion.

3. In April of 2004 I am told that a mediation was held in the Fishman/Stashak case. I was not invited to attend the mediation even though I was a named plaintiff. I was not told of any strategy for the mediation and I was not asked to authorize any particular deal.

9. I am told that at the mediation, Larry Stewart made a demand for a sum of money to settle not just the claims of the thirty six plaintiffs in the Fishman Stashak case, but of more than four hundred other health care providers that were not in the case. I am also told that an offer was supposedly made by Progressive at the mediation which was to be divided between approximately 440 different health care providers, even though there were only thirty six plaintiffs in that case.

10. I was not asked if I wanted to accept that offer. I am told that Larry Stewart rejected Progressive's offer without consulting with any of the named plaintiffs other than Drs. Fishman and Stashak.

SETTLEMENT OF THE BAD FAITH CASE

11. In May of 2004 I was contacted by my lawyers and advised that there was an opportunity to settle all of my remaining PIP cases with Progressive if I was willing to drop my bad faith claims. I was willing to do this and authorized Watson & Lentner to enter into such a settlement.

12. Subsequently, I was advised that a settlement on those terms with Progressive had not been approved by all of the health care providers. My lawyers then relayed a settlement offer from Progressive for the bad faith case whereby I would share $1,750,000.00 with the thirty five other named plaintiffs in the bad faith case. In addition, in a separate settlement of outstanding PIP cases, I would receive full payment of all outstanding PIP claims together with
interest and costs of litigation. In this arrangement, Watson & Lentner settled on the amount of attorneys fees they would receive for their work on our PIP cases.

13. I received a letter from Larry Stewart which I understood to be his advice that I not settle the bad faith case. I also received a letter from Watson & Lentner which explained that there was a disagreement between Larry Stewart and Watson & Lentner about how to handle the bad faith case and whether it should be settled.

14. I understood plainly that Larry Stewart believed the case was far more valuable and that we should not accept the offer from Progressive. I understood that Mr. Stewart believed that we had an advantage at that moment in the case.

15. I understood that if we continued with the litigation and did not settle the bad faith case there was an opportunity to obtain a better offer from Progressive. I also understood that there were no guarantees that we would get a better offer.

16. I felt strongly that Progressive Insurance had acted improperly. Although I am not a lawyer, I believed that their conduct was outrageous. I was aware that if the litigation of the case continued a higher offer could have been obtained from Progressive. However, the $1,750,000.00 offer obtained from Progressive was enough of an offer for me to accept.

17. In weighing the factors and making my decision to accept the settlement, I considered the advantage of “money now” rather than the possibility of “more money later”. The advantage of accepting a settlement is that you avoid the risk of trial, even if those risks are small.

18. The decision to accept the respective settlement offers was made by me independently.

19. If asked, I would have given Larry Stewart the same instructions to settle the bad faith case by accepting Progressive’s offer of $1,750,000.00.
20. I was aware that I could speak with Larry Stewart about his view of the bad faith case. I was free to seek his advice and he was free to contact me. I was never told that I could not speak with him.

21. If asked, I would not have consented to the addition of additional plaintiffs and claims to the bad faith case in May of 2004.

FURTHER AFFIANT SAYETH NOT.

RONALD DRUCKER, D.C.

The foregoing instrument was acknowledged before me this 14th day of August, 2005, by Ronald Drucker, who is personally known to me or who has produced Florida State ID as identification and who did not take an oath.

NOTARY PUBLIC

(Print Notary Name), State of Florida

(Serial number, if any)
IN THE CIRCUIT COURT OF THE 15th
JUDICIAL CIRCUIT IN AND FOR
PALM BEACH COUNTY, FLORIDA

CASE NO. 502004 CAO06188XXXXMB AO

STEWART TILGHMAN FOX &
BIANCHI, P.A., a professional association;
WILLIAM C. HEARON, P.A., a professional
association; and TODD S. STEWART, P.A.,
a professional association,

Plaintiffs,

VS

MARKS & FLEISCHER, P.A., a professional
association, KANE & KANE, a professional
corporation; and LAURA M. WATSON, P.A.
d/b/a WATSON & LENTNER, a professional
corporation; GARY H. MARKS, AMIR FLEISCHER,
CHARLES J. KANE, HARLEY N. KANE, LAURA
M. WATSON and DARIN J. LENTNER,
Defendants.

STATE OF FLORIDA
COUNTY OF BROWARD

BEFORE ME personally appeared Phillip P. Gager, D.C. who being first duly sworn,
deposes and says:

1. I am a physician and President of Phillip P. Gager, D.C., P.A., a named plaintiff
in an action generally known as "Goldcoast Orthopedics (Drs. Fishman and Stashak) et al v.
Progressive Insurance Companies (hereafter referred to as the "Fishman/Stashak bad faith
case"). This affidavit is made in support of defendants' Motion for Partial Summary Judgment.

BACKGROUND

2. In my practice I treat victims of auto accidents. Some of these patients were
insured by one of the Progressive Insurance Companies ("Progressive"). In some instances,
Progressive failed to pay the full fee for service rendered.
3. In order to recover the sums due from Progressive, I engaged the services of the law firm of Watson & Lentner. I signed a retainer agreement which provided that the law firm would commence a lawsuit on my behalf against Progressive. If the suit was successful, I would recover the unpaid portion of my fee (the "PIP benefit") and accrued interest, while the lawyers would recover the costs of suit and their legal fees.

4. Ordinarily, it would have been completely impractical to pursue one of these claims in Court. Often times the sum being sought was less than $500.00. However, I understood that Florida law afforded me the opportunity to recover legal fees and costs if I prevailed. Progressive aggressively defended PIP suits brought on my behalf. If I had to advance costs and fees to recover $500.00, I would not have done so.

5. However, Watson & Lentner assumed the risk on our behalf and agreed to perform as much work and expend whatever time was necessary. Thus my lawyers matched or exceeded the efforts of Progressive and eventually we prevailed. I recovered the unpaid PIP benefits plus interest and my lawyers recovered costs and attorney’s fees.

6. In or about 2002, I learned that a lawsuit had been brought against Progressive alleging bad faith in the pattern of denial or reduction of PIP benefits. Eventually I was asked if I wanted to join that lawsuit as a plaintiff. I elected to do so and signed a written retainer agreement with the following lawyers: (i) Stewart, Tighman, Fox & Bianchi, P.A.; (ii) William Hearon, P.A.; (iii) Todd Stewart, P.A.; (iv) Marks & Fleisher, P.A.; (v) Laura M. Watson, P.A. d/b/a Watson & Lentner; and (vi) Kane & Kane.

7. While I understood that my claims were being added to an existing lawsuit along with other physicians, I was never told that there was any plan or arrangement to add hundreds of other physicians or thousands of claims to the lawsuit. Moreover, I was never asked for my consent to do so. Had I been asked, I would not have agreed. The lawsuit began in 2000 with a single plaintiff. It ended in June of 2004 with thirty six plaintiffs. I believe that the more
plaintiffs that were added, the more complicated the case would become and the longer it would take to bring it to a conclusion.

8. In April of 2004 I am told that a mediation was held in the Fishman/Stashak case. I was not invited to attend the mediation even though I was a named plaintiff. I was not told of any strategy for the mediation and I was not asked to authorize any particular deal.

9. I am told that at the mediation, Larry Stewart made a demand for a sum of money to settle not just the claims of the thirty six plaintiffs in the Fishman Stashak case, but of more than four hundred other health care providers that were not in the case. I am also told that an offer was supposedly made by Progressive at the mediation which was to be divided between approximately 440 different health care providers, even though there were only thirty six plaintiffs in that case.

10. I was not asked if I wanted to accept that offer. I am told that Larry Stewart rejected Progressive’s offer without consulting with any of the named plaintiffs other than Dra. Fishman and Stashak.

**SETTLEMENT OF THE BAD FAITH CASE**

11. In May of 2004 I was contacted by my Lawyers and advised that there was an opportunity to settle all of my remaining PIP cases with Progressive if I was willing to drop my bad faith claims. I was willing to do this and authorized Watson & Leiner to enter into such a settlement.

12. Subsequently, I was advised that a settlement on those terms with Progressive had not been approved by all of the health care providers. My lawyers then relayed a settlement offer from Progressive for the bad faith case whereby I would share $1,750,000.00 with the thirty five other named plaintiffs in the bad faith case. In addition, in a separate settlement of outstanding PIP cases, I would receive full payment of all outstanding PIP claims together with
20. I was aware that I could speak with Larry Stewart about his view of the bad faith case. I was free to seek his advice and he was free to contact me. I was never told that I could not speak with him.

21. If asked, I would not have consented to the addition of additional plaintiffs and claims to the bad faith case in May of 2004.

FURTHER AFFIANT SAYETH NOT.

PHILLIP P. GAGER, D.C.

The foregoing instrument was acknowledged before me this 17th day of August, 2005, by PHILLIP P. GAGER, who is personally known to me or who has produced Florida State ID as identification and who did not take an oath.

NOTARY PUBLIC

(Print Notary Name), State of Florida

(Serial number, if any)
IN THE CIRCUIT COURT OF THE 15th
JUDICIAL CIRCUIT IN AND FOR
PALM BEACH COUNTY, FLORIDA

CASE NO. 502004 CAO06138XXXXMB AO

STEWART TILGHMAN FOX &
BIANCHI, P.A., a professional association;
WILLIAM C. HEARON, P.A., a professional
association; and TODD S. STEWART, P.A.,
a professional association,

Plaintiffs,

-vs-

MARKS & FLEISCHER, P.A., a professional
association, KANE & KANE, a professional
corporation; and LAURA M. WATSON, P.A.
d/b/a WATSON & LENTNER, a professional
corporation; GARY H. MARKS, AMIR FLEISCHER,
CHARLES J. KANE, HARLEY N. KANE, LAURA
M. WATSON and DARIN J. LENTNER,

Defendants.

AFENDAVIT OF DR. JOSE GARCIA

STATE OF FLORIDA
COUNTY OF DADE

BEFORE ME personally appeared Dr. Jose Garcia who being first duly sworn, deposes

and says:

1. I am a physician and President of Dr. Jose Garcia, D.C., P.A., a named plaintiff in
an action generally known as "Goldcoast Orthopedics (Drs. Fishman and Stashak) et al v.
Progressive Insurance Companies (hereafter referred to as the "Fishman/Stashak bad faith
case"). This affidavit is made in support of defendants' Motion for Partial Summary Judgment.

BACKGROUND

2. In my practice I treat victims of auto accidents. Some of these patients were
insured by one of the Progressive Insurance Companies ("Progressive"). In some instances,
Progressive failed to pay the full fee for service rendered.
3. In order to recover the sums due from Progressive, I engaged the services of the law firm of Watson & Lentner. I signed a retainer agreement which provided that the law firm would commence a lawsuit on my behalf against Progressive. If the suit was successful, I would recover the unpaid portion of my fee (the "PIP benefit") and accrued interest, while the lawyers would recover the costs of suit and their legal fees.

4. Ordinarily, it would have been completely impractical to pursue one of these claims in Court. Often times the sum being sought was less than $500.00. However, I understood that Florida law afforded me the opportunity to recover legal fees and costs if I prevailed. Progressive aggressively defended PIP suits brought on my behalf. If I had to advance costs and fees to recover $500.00, I would not have done so.

5. However, Watson & Lentner assumed the risk on our behalf and agreed to perform as much work and expend whatever time was necessary. Thus my lawyers matched or exceeded the efforts of Progressive and eventually we prevailed. I recovered the unpaid PIP benefits plus interest and my lawyers recovered costs and attorney's fees.

6. In or about 2002, I learned that a lawsuit had been brought against Progressive alleging bad faith in the pattern of denial or reduction of PIP benefits. Eventually I was asked if I wanted to join that lawsuit as a plaintiff. I elected to do so and signed a written retainer agreement with the following lawyers: (i) Stewart, Tighman, Fox & Bianchi, P.A.; (ii) William Hearon, P.A.; (iii) Todd Stewart, P.A.; (iv) Marks & Fleisher, P.A.; (v) Laura M. Watson, P.A. d/b/a Watson & Lentner; and (vi) Kane & Kane.

7. While I understood that my claims were being added to an existing lawsuit along with other physicians, I was never told that there was any plan or arrangement to add hundreds of other physicians or thousands of claims to the lawsuit. Moreover, I was never asked for my consent to do so. Had I been asked, I would not have agreed. The lawsuit began in 2000 with a single plaintiff. It ended in June of 2004 with thirty six plaintiffs. I believe that the more
plaintiffs that were added, the more complicated the case would become and the longer it would take to bring it to a conclusion.

8. In April of 2004 I am told that a mediation was held in the Fishman/Stashak case. I was not invited to attend the mediation even though I was a named plaintiff. I was not told of any strategy for the mediation and I was not asked to authorize any particular deal.

9. I am told that at the mediation, Larry Stewart made a demand for a sum of money to settle not just the claims of the thirty six plaintiffs in the Fishman Stashak case, but of more than four hundred other health care providers that were not in the case. I am also told that an offer was supposedly made by Progressive at the mediation which was to be divided between approximately 440 different health care providers, even though there were only thirty six plaintiffs in that case.

10. I was not asked if I wanted to accept that offer. I am told that Larry Stewart rejected Progressive’s offer without consulting with any of the named plaintiffs other than Drs. Fishman and Stashak.

SETTLEMENT OF THE BAD FAITH CASE

11. In May of 2004 I was contacted by my lawyers and advised that there was an opportunity to settle all of my remaining PIP cases with Progressive if I was willing to drop my bad faith claims. I was willing to do this and authorized Watson & Lentner to enter into such a settlement.

12. Subsequently, I was advised that a settlement on those terms with Progressive had not been approved by all of the health care providers. My lawyers then relayed a settlement offer from Progressive for the bad faith case whereby I would share $1,750,000.00 with the thirty five other named plaintiffs in the bad faith case. In addition, in a separate settlement of outstanding PIP cases, I would receive full payment of all outstanding PIP claims together with
interest and costs of litigation. In this arrangement, Watson & Lentner settled on the amount of attorneys fees they would receive for their work on our PIP cases.

13. I received a letter from Larry Stewart which I understood to be his advice that I not settle the bad faith case. I also received a letter from Watson & Lentner which explained that there was a disagreement between Larry Stewart and Watson & Lentner about how to handle the bad faith case and whether it should be settled.

14. I understood plainly that Larry Stewart believed the case was far more valuable and that we should not accept the offer from Progressive. I understood that Mr. Stewart believed that we had an advantage at that moment in the case.

15. I understood that if we continued with the litigation and did not settle the bad faith case there was an opportunity to obtain a better offer from Progressive. I also understood that there were no guarantees that we would get a better offer.

16. I felt strongly that Progressive Insurance had acted improperly. Although I am not a lawyer, I believed that their conduct was outrageous. I was aware that if the litigation of the case continued a higher offer could have been obtained from Progressive. However, the $1,750,000.00 offer obtained from Progressive was enough of an offer for me to accept.

17. In weighing the factors and making my decision to accept the settlement, I considered the advantage of "money now" rather than the possibility of "more money later". The advantage of accepting a settlement is that you avoid the risk of trial, even if those risks are small.

18. The decision to accept the respective settlement offers was made by me independently.

19. If asked, I would have given Larry Stewart the same instructions to settle the bad faith case by accepting Progressive's offer of $1,750,000.00.
20. I was aware that I could speak with Larry Stewart about his view of the bad faith case. I was free to seek his advice and he was free to contact me. I was never told that I could not speak with him.

21. If asked, I would not have consented to the addition of additional plaintiffs and claims to the bad faith case in May of 2004.

FURTHER AFFIANT SAYETH NOT.

[Signature]

DR. JOSE GARCIA

The foregoing instrument was acknowledged before me this 14th day of August, 2005, by JOSE GARCIA, who is personally known to me or who has produced Florida State ID as identification and who did not take an oath.

[Signature]

NOTARY PUBLIC

LOURDES T. TREVES

(PRINT NOTARY NAME), State of Florida

DD 17 2020

(Serial number, if any)
IN THE CIRCUIT COURT OF THE 15TH
JUDICIAL CIRCUIT IN AND FOR
PALM BEACH COUNTY, FLORIDA

CASE NO. 502004 CA006138XXXMB AO

STEWART TILGHMAN FOX &
BIANCHI, P.A., a professional association;
WILLIAM C. HEARON, P.A., a professional
association; and TODD S. STEWART, P.A.,
a professional association,

Plaintiffs,

-vs-

MARKS & FLEISCHER, P.A., a professional
association, KANE & KANE, a professional
corporation; and LAURA M. WATSON, P.A.
d/b/w WATSON & LENTNER, a professional
corporation; GARY H. MARKS, AMIR FLEISCHER,
CHARLES J. KANE, HARLEY N. KANE, LAURA
M. WATSON and DARIN J. LENTNER,

Defendants.

_______________________________________

AFFIDAVIT OF DR. ABRAHAM K. KOHL

STATE OF FLORIDA
COUNTY OF BROWARD

BEFORE ME personally appeared Dr. Abraham K. Kohl who being first duly sworn,
deposes and says:

1. I am a physician and owner of Kohl Chiropractic Clinic, a named plaintiff in an
action generally known as "Goldcoast Orthopedics (Drs. Fishman and Stushak) et al v.
Progressive Insurance Companies (hereafter referred to as the "Fishman/Stushak bad faith
case"). This affidavit is made in support of defendants' Motion for Partial Summary Judgment.

BACKGROUND

2. In my practice I treat victims of auto accidents. Some of these patients were
insured by one of the Progressive Insurance Companies ("Progressive"). In some instances,
Progressive failed to pay the full fee for services rendered.
3. In order to recover the sums due from Progressive, I engaged the services of the law firm of Watson & Lentner. I signed a retainer agreement which provided that the law firm would commence a lawsuit on my behalf against Progressive. If the suit was successful, I would recover the unpaid portion of my fee (the "PIP benefit") and accrued interest, while the lawyers would recover the costs of suit and their legal fees.

4. Ordinarily, it would have been completely impractical to pursue one of these claims in Court. Often times the sum being sought was less than $500.00. However, I understood that Florida law afforded me the opportunity to recover legal fees and costs if I prevailed. Progressive aggressively defended PIP suits brought on my behalf. If I had to advance costs and fees to recover $500.00, I would not have done so.

5. However, Watson & Lentner assumed the risk on our behalf and agreed to perform as much work and expend whatever time was necessary. Thus my lawyers matched or exceeded the efforts of Progressive and eventually we prevailed. I recovered the unpaid PIP benefits plus interest and my lawyers recovered costs and attorney's fees.

6. In or about 2002, I learned that a lawsuit had been brought against Progressive alleging bad faith in the pattern of denial or reduction of PIP benefits. Eventually I was asked if I wanted to join that lawsuit as a plaintiff. I elected to do so and signed a written retainer agreement with the following lawyers: (i) Stewart, Tighman, Fox & Bianchi, P.A.; (ii) William Heaton, P.A.; (iii) Todd Stewart, P.A.; (iv) Marks & Fleisher, P.A.; (v) Laura M. Watson, P.A. d/b/a Watson & Lentner; and (vi) Kane & Kanoff.

7. While I understood that my claims were being added to an existing lawsuit along with other physicians, I was never told that there was any plan or arrangement to add hundreds of other physicians or thousands of claims to the lawsuit. Moreover, I was never asked for my consent to do so. Had I been asked, I would not have agreed. The lawsuit began in 2000 with a single plaintiff. It ended in June of 2004 with thirty six plaintiffs. I believe that the more
plaintiffs that were added, the more complicated the case would become and the longer it would take to bring it to a conclusion.

8. In April of 2004 I am told that a mediation was held in the Fishman/Stashak case. I was not invited to attend the mediation even though I was a named plaintiff. I was not told of any strategy for the mediation and I was not asked to authorize any particular deal.

9. I am told that at the mediation, Larry Stewart made a demand for a sum of money to settle not just the claims of the thirty-six plaintiffs in the Fishman Stashak case, but of more than four hundred other health care providers that were not in the case. I am also told that an offer was supposedly made by Progressive at the mediation which was to be divided between approximately 440 different health care providers, even though there were only thirty-six plaintiffs in that case.

10. I was not asked if I wanted to accept that offer. I am told that Larry Stewart rejected Progressive's offer without consulting with any of the named plaintiffs other than Drs. Fishman and Stashak.

SETTLEMENT OF THE BAD FAITH CASE

11. In May of 2004 I was contacted by my lawyers and advised that there was an opportunity to settle all of my remaining PIP cases with Progressive if I was willing to drop my bad faith claims. I was willing to do this and authorized Watson & Lentner to enter into such a settlement.

12. Subsequently, I was advised that a settlement on those terms with Progressive had not been approved by all of the health care providers. My lawyers then relayed a settlement offer from Progressive for the bad faith case whereby I would share $1,750,000.00 with the thirty-five other named plaintiffs in the bad faith case. In addition, in a separate settlement of outstanding PIP cases, I would receive full payment of all outstanding PIP claims together with
interest and costs of litigation. In this arrangement, Watson & Lentner settled on the amount of attorneys fees they would receive for their work on our PIP cases.

13. I received a letter from Larry Stewart which I understood to be his advice that I not settle the bad faith case. I also received a letter from Watson & Lentner which explained that there was a disagreement between Larry Stewart and Watson & Lentner about how to handle the bad faith case and whether it should be settled.

14. I understood plainly that Larry Stewart believed the case was far more valuable and that we should not accept the offer from Progressive. I understood that Mr. Stewart believed that we had an advantage at that moment in the case.

15. I understood that if we continued with the litigation and did not settle the bad faith case there was an opportunity to obtain a better offer from Progressive. I also understood that there were no guarantees that we would get a better offer.

16. I felt strongly that Progressive Insurance had acted improperly. Although I am not a lawyer, I believed that their conduct was outrageous. I was aware that if the litigation of the case continued a higher offer could have been obtained from Progressive. However, the $1,750,000.00 offer obtained from Progressive was enough of an offer for me to accept.

17. In weighing the factors and making my decision to accept the settlement, I considered the advantage of "money now" rather than the possibility of "more money later". The advantage of accepting a settlement is that you avoid the risk of trial, even if those risks are small.

18. The decision to accept the respective settlement offers was made by me independently.

19. If asked, I would have given Larry Stewart the same instructions to settle the bad faith case by accepting Progressive’s offer of $1,750,000.00.
20. I was aware that I could speak with Larry Stewart about his view of the bad faith case. I was free to seek his advice and he was free to contact me. I was never told that I could not speak with him.

21. If asked, I would not have consented to the addition of additional plaintiffs and claims to the bad faith case in May of 2004.

FURTHER AFFIANT SAYETH NOT.

[Signature]

DR. ABRAHAM K. KOHL

The foregoing instrument was acknowledged before me this 15th day of August, 2005, by [Signature], who is personally known to me or who has produced Florida State ID as identification and who did not take an oath.

[Signature]

NOTARY PUBLIC

[Signature]

(PRINT NOTARY NAME), State of Florida
IN THE CIRCUIT COURT OF THE 15th
JUDICIAL CIRCUIT IN AND FOR
PALM BEACH COUNTY, FLORIDA

CASE NO. 502904 CAO06138XXXXMB AO

STEWART TILGHMAN FOX &
BIANCHI, P.A., a professional association;
WILLIAM C. HEARON, P.A., a professional
association; and TODD S. STEWART, P.A.,
a professional association,

Plaintiffs,

-vs-

MARKS & FLEISCHER, P.A., a professional
association, KANE & KANE, a professional
corporation; and LAURA M. WATSON, P.A.
d/b/a WATSON & LENTNER, a professional
corporation; GARY H. MARKS, AMIR FLEISCHER,
CHARLES J. KANE, HARLEY N. KANE, LAURA
M. WATSON and DARIN J. LENTNER,

Defendants.

AFFIDAVIT OF DOUGLAS KOLE, D.C.

STATE OF FLORIDA
COUNTY OF HILLSBORO

BEFORE ME personally appeared Douglas Kole, D.C. who being first duly sworn,
deposes and says:

1. I am a physician and President of Kole Chiropractic Center, P.A., a named
plaintiff in an action generally known as "Goldcoast Orthopedics (Drs. Fishman and Stashak) et
al v. Progressive Insurance Companies (hereafter referred to as the "Fishman/Stashak bad faith
case")). This affidavit is made in support of defendants' Motion for Partial Summary Judgment.

BACKGROUND

2. In my practice I treat victims of auto accidents. Some of these patients were
insured by one of the Progressive Insurance Companies ("Progressive"). In some instances,
Progressive failed to pay the full fee for service rendered.
3. In order to recover the sums due from Progressive, I engaged the services of the law firm of Watson & Lentner. I signed a retainer agreement which provided that the law firm would commence a lawsuit on my behalf against Progressive. If the suit was successful, I would recover the unpaid portion of my fee (the "PIP benefit") and earned interest, while the lawyers would recover the costs of suit and their legal fees.

4. Ordinarily, it would have been completely impractical to pursue one of these claims in Court. Often times the sum being sought was less than $500.00. However, I understood that Florida law afforded me the opportunity to recover legal fees and costs if I prevailed. Progressive aggressively defended PIP suits brought on my behalf. If I had to advance costs and fees to recover $500.00, I would not have done so.

5. However, Watson & Lentner assumed the risk on our behalf and agreed to perform as much work and expend whatever time was necessary. Thus my lawyers matched or exceeded the efforts of Progressive and eventually we prevailed. I recovered the unpaid PIP benefits plus interest and my lawyers recovered costs and attorney's fees.

6. In or about 2002, I learned that a lawsuit had been brought against Progressive alleging bad faith in the pattern of denial or reduction of PIP benefits. Eventually I was asked if I wanted to join that lawsuit as a plaintiff. I elected to do so and signed a written retainer agreement with the following lawyers: (i) Stewart, Tighman, Fox & Bianchi, P.A.; (ii) William Hearon, P.A.; (iii) Todd Stewart, P.A.; (iv) Marks & Fleisher, P.A.; (v) Laura M. Watson, P.A. d/b/a Watson & Lentner; and (vi) Kane & Kane.

7. While I understood that my claims were being added to an existing lawsuit along with other physicians, I was never told that there was any plan or arrangement to add hundreds of other physicians or thousands of claims to the lawsuit. Moreover, I was never asked for my consent to do so. Had I been asked, I would not have agreed. The lawsuit began in 2000 with a single plaintiff. It ended in June of 2004 with thirty six plaintiffs. I believe that the more
plaintiffs that were added, the more complicated the case would become and the longer it would take to bring it to a conclusion.

8. In April of 2004 I am told that a mediation was held in the Fishman/Stashak case. I was not invited to attend the mediation even though I was a named plaintiff. I was not told of any strategy for the mediation and I was not asked to authorize any particular deal.

9. I am told that at the mediation, Larry Stewart made a demand for a sum of money to settle not just the claims of the thirty six plaintiffs in the Fishman Stashak case, but of more than four hundred other health care providers that were not in the case. I am also told that an offer was supposedly made by Progressive at the mediation which was to be divided between approximately 440 different health care providers, even though there were only thirty six plaintiffs in that case.

10. I was not asked if I wanted to accept that offer. I am told that Larry Stewart rejected Progressive's offer without consulting with any of the named plaintiffs other than Drs. Fishman and Stashak.

SETTLEMENT OF THE BAD FAITH CASE

11. In May of 2004 I was contacted by my lawyers and advised that there was an opportunity to settle all of my remaining PIP cases with Progressive if I was willing to drop my bad faith claims. I was willing to do this and authorized Watson & Lentner to enter into such a settlement.

12. Subsequently, I was advised that a settlement on those terms with Progressive had not been approved by all of the health care providers. My lawyers then relayed a settlement offer from Progressive for the bad faith case whereby I would share $1,750,000.00 with the thirty five other named plaintiffs in the bad faith case. In addition, in a separate settlement of outstanding PIP cases, I would receive full payment of all outstanding PIP claims together with
interest and costs of litigation. In this arrangement, Watson & Lentner settled on the amount of attorneys fees they would receive for their work on our PIP cases.

13. I received a letter from Larry Stewart which I understood to be his advice that I not settle the bad faith case. I also received a letter from Watson & Lentner which explained that there was a disagreement between Larry Stewart and Watson & Lentner about how to handle the bad faith case and whether it should be settled.

14. I understood plainly that Larry Stewart believed the case was far more valuable and that we should not accept the offer from Progressive. I understood that Mr. Stewart believed that we had an advantage at that moment in the case.

15. I understood that if we continued with the litigation and did not settle the bad faith case there was an opportunity to obtain a better offer from Progressive. I also understood that there were no guarantees that we would get a better offer.

16. I felt strongly that Progressive Insurance had acted improperly. Although I am not a lawyer, I believed that their conduct was outrageous. I was aware that if the litigation of the case continued a higher offer could have been obtained from Progressive. However, the $1,750,000.00 offer obtained from Progressive was enough of an offer for me to accept.

17. In weighing the factors and making my decision to accept the settlement, I considered the advantage of "money now" rather than the possibility of "more money later". The advantage of accepting a settlement is that you avoid the risk of trial, even if those risks are small.

18. The decision to accept the respective settlement offers was made by me independently.

19. If asked, I would have given Larry Stewart the same instructions to settle the bad faith case by accepting Progressive’s offer of $1,750,000.00.
20. I was aware that I could speak with Larry Stewart about his view of the bad faith case. I was free to seek his advice and he was free to contact me. I was never told that I could not speak with him.

21. If asked, I would not have consented to the addition of additional plaintiffs and claims to the bad faith case in May of 2004.

FURTHER AFFIANT SAYETH NOT.

DOUGLAS KOLE, D.C.

The foregoing instrument was acknowledged before me this 10th day of August, 2005, by Douglas Kole, D.C., who is personally known to me or who has produced Florida State ID as identification and who did not take an oath.

Cynthia J. Bernardo
NOTARY PUBLIC

Cynthia J. Bernardo
(PRINT NOTARY NAME), State of Florida

(Serial number, if any)
IN THE CIRCUIT COURT OF THE 15th
JUDICIAL CIRCUIT IN AND FOR
PALM BEACH COUNTY, FLORIDA

CASE NO. 502004 CA006138XXXXMB-AO

STEWART TILDORMAN FOX &
BIANCHI, P.A., a professional association;
WILLIAM C. HEARON, P.A., a professional
association; and TODD S. STEWART, P.A.,
a professional association,

Plaintiffs,

v-

MARKS & FLEISCHER, P.A., a professional
association, KANE & KANE, a professional
corporation; and LAURA M. WATSON, P.A.
d/b a WATSON & LENTNER, a professional
corporation; GARY H. MARKS, AMIR FLEISCHER,
CHARLES J. KANE, HARLEY N. KANE, LAURA
M. WATSON and DARIN J. LENTNER,

Defendants,

 AFFIDAVIT OF DR. JOSEPH LEE

STATE OF FLORIDA )
COUNTY OF NASSAU )

BEFORE ME personally appeared Dr. Joseph Lee, who being first duly sworn, deposes
and says:

1. I am a physician and Vice President of Lee Chiropractic Clinic, Inc., a named
plaintiff in an action generally known as "Goldcoast Orthopedics (Drs. Fishman and Stashak) et
al v. Progressive Insurance Companies (hereafter referred to as the "Fishman/Stashak bad faith
case"). This affidavit is made in support of defendants' Motion for Partial Summary Judgment.

BACKGROUND

2. In my practice I treat victims of auto accidents. Some of these patients were
insured by one of the Progressive Insurance Companies ("Progressive"). In some instances,
Progressive failed to pay the full fee for service rendered.
3. In order to recover the sums due from Progressive, I engaged the services of the law firm of Watson & Lentner. I signed a retainer agreement which provided that the law firm would commence a lawsuit on my behalf against Progressive. If the suit was successful, I would recover the unpaid portion of my fee (the "PIP benefit") and accrued interest, while the lawyers would recover the costs of suit and their legal fees.

4. Ordinarily, it would have been completely impractical to pursue one of these claims in Court. Often times the sum being sought was less than $500.00. However, I understood that Florida law afforded me the opportunity to recover legal fees and costs if I prevailed. Progressive aggressively defended PIP suits brought on my behalf. If I had to advance costs and fees to recover $500.00, I would not have done so.

5. However, Watson & Lentner assumed the risk on my behalf and agreed to perform as much work and expend whatever time was necessary. Thus my lawyers matched or exceeded the efforts of Progressive and eventually we prevailed. I recovered the unpaid PIP benefits plus interest and my lawyers recovered costs and attorney's fees.

6. In or about 2002, I learned that a lawsuit had been brought against Progressive alleging bad faith in the pattern of denial or reduction of PIP benefits. Eventually I was asked if I wanted to join that lawsuit as a plaintiff. I elected to do so and signed a written retainer agreement with the following lawyers: (i) Stewart, Tignon, Fox & Bianchi, P.A.; (ii) William Heaton, P.A.; (iii) Todd Stewart, P.A.; (iv) Marks & Fleisher, P.A.; (v) Laura M. Watson, P.A. d/b/a Watson & Lentner; and (vi) Kane & Kane.

7. While I understood that my claims were being added to an existing lawsuit along with other physicians, I was never told that there was any plan or arrangement to add hundreds of other physicians or thousands of claims to the lawsuit. Moreover, I was never asked for my consent to do so. Had I been asked, I would not have agreed. The lawsuit began in 2000 with a single plaintiff. It ended in June of 2004 with thirty six plaintiffs. I believe that the more
plaintiffs that were added, the more complicated the case would become and the longer it would take to bring it to a conclusion.

8. In April of 2004 I am told that a mediation was held in the Fishman/Stashak case. I was not invited to attend the mediation even though I was a named plaintiff. I was not told of any strategy for the mediation and I was not asked to authorize any particular deal.

9. I am told that at the mediation, Larry Stewart made a demand for a sum of money to settle not just the claims of the thirty six plaintiffs in the Fishman Stashak case, but of more than four hundred other health care providers that were not in the case. I am also told that an offer was supposedly made by Progressive at the mediation which was to be divided between approximately 440 different health care providers, even though there were only thirty six plaintiffs in that case.

10. I was not asked if I wanted to accept that offer. I am told that Larry Stewart rejected Progressive's offer without consulting with any of the named plaintiffs other than Drs. Fishman and Stashak.

SETTLEMENT OF THE BAD FAITH CASE

11. In May of 2004 I was contacted by my lawyers and advised that there was an opportunity to settle all of my remaining PIP cases with Progressive if I was willing to drop my bad faith claims. I was willing to do this and authorized Watson & Lentner to enter into such a settlement.

12. Subsequently, I was advised that a settlement on those terms with Progressive had not been approved by all of the health care providers. My lawyers then relayed a settlement offer from Progressive for the bad faith case whereby I would share $1,750,000.00 with the thirty five other named plaintiffs in the bad faith case. In addition, in a separate settlement of outstanding PIP cases, I would receive full payment of all outstanding PIP claims together with
interest and costs of litigation. In this arrangement, Watson & Lentner settled on the amount of attorneys fees they would receive for their work on our PIP cases.

13. I received a letter from Larry Stewart which I understood to be his advice that I not settle the bad faith case. I also received a letter from Watson & Lentner which explained that there was a disagreement between Larry Stewart and Watson & Lentner about how to handle the bad faith case and whether it should be settled.

14. I understood plainly that Larry Stewart believed the case was far more valuable and that we should not accept the offer from Progressive. I understood that Mr. Stewart believed that we had an advantage at that moment in the case.

15. I understood that if we continued with the litigation and did not settle the bad faith case there was an opportunity to obtain a better offer from Progressive. I also understood that there were no guarantees that we would get a better offer.

16. I felt strongly that Progressive Insurance had acted improperly. Although I am not a lawyer, I believed that their conduct was outrageous. I was aware that if the litigation of the case continued a higher offer could have been obtained from Progressive. However, the $1,750,000.00 offer obtained from Progressive was enough of an offer for me to accept.

17. In weighing the factors and making my decision to accept the settlement, I considered the advantage of "money now" rather than the possibility of "more money later". The advantage of accepting a settlement is that you avoid the risk of trial, even if those risks are small.

18. The decision to accept the respective settlement offers was made by me independently.

19. If asked, I would have given Larry Stewart the same instructions to settle the bad faith case by accepting Progressive's offer of $1,750,000.00.
20. I was aware that I could speak with Larry Stewart about his view of the bad faith case. I was free to seek his advice and he was free to contact me. I was never told that I could not speak with him.

21. If asked, I would not have consented to the addition of additional plaintiffs and claims to the bad faith case in May of 2004.

FURTHER AFFIANT SAYETH NOT.

DR. JOSEPH LEE

The foregoing instrument was acknowledged before me this 9th day of August, 2005, by Dr. Joseph Lee, who is personally known to me or who has produced Florida State ID as identification and who did not take an oath.

WANDA M. MORGAN
NOTARY PUBLIC

Wanda M. Morgan
(PRINT NOTARY NAME), State of Florida

DO 185180
(Serial number, if any)
IN THE CIRCUIT COURT OF THE 15th
JUDICIAL CIRCUIT IN AND FOR
PALM BEACH COUNTY, FLORIDA

CASE NO. 502004 CA00638XXXXMB A0

STEWART TILGHMAN FOX &
BIANCHI, P.A., a professional association;
WILLIAM C. HEARON, P.A., a professional
association; and TODD S. STEWART, P.A.,
a professional association,

Plaintiffs,

-vs-

MARKS & FLEISCHER, P.A., a professional
association; KANE & KANE, a professional
corporation; and LAURA M. WATSON, P.A.
d/b/a WATSON & LENTNER, a professional
corporation; GARY H. MARKS, AMIR FLEISCHER,
CHARLES J. KANE, HARLEY N. KANE, LAURA
M. WATSON and DARIN J. LENTNER,

Defendants.

___________________________

AFFIDAVIT OF MICHAEL MINETT, D.C.

STATE OF FLORIDA
COUNTY OF PALM BEACH

BEFORE ME personally appeared Michael Minett, D.C. who being first duly sworn,
deposes and says:

1. I am a physician and officer of JAMNETT, Inc. d/b/a Total Health Chiropractic, a
named plaintiff in an action generally known as "Goldcoast Orthopedics (Drs. Fishman and
Stashak) et al v. Progressive Insurance Companies (hereafter referred to as the "Fishman/Stashak
bad faith case"). This affidavit is made in support of defendants' Motion for Partial Summary
Judgment.

BACKGROUND
2. In my practice I treat victims of auto accidents. Some of these patients were insured by one of the Progressive Insurance Companies ("Progressive"). In some instances, Progressive failed to pay the full fee for service rendered.

3. In order to recover the sums due from Progressive, I engaged the services of the law firm of Watson & Lentner. I signed a retainer agreement which provided that the law firm would commence a lawsuit on my behalf against Progressive. If the suit was successful, I would recover the unpaid portion of my fee (the "PIP benefit") and accrued interest, while the lawyers would recover the costs of suit and their legal fees.

4. Ordinarily, it would have been completely impractical to pursue one of these claims in Court. Often times the sum being sought was less than $500.00. However, I understood that Florida law afforded me the opportunity to recover legal fees and costs if I prevailed. Progressive aggressively defended PIP suits brought on my behalf. If I had to advance costs and fees to recover $500.00, I would not have done so.

5. However, Watson & Lentner assumed the risk on our behalf and agreed to perform as much work and expend whatever time was necessary. Thus my lawyers matched or exceeded the efforts of Progressive and eventually we prevailed. I recovered the unpaid PIP benefits plus interest and my lawyers recovered costs and attorney's fees.

6. In or about 2002, I learned that a lawsuit had been brought against Progressive alleging bad faith in the pattern of denial or reduction of PIP benefits. Eventually I was asked if I wanted to join that lawsuit as a plaintiff. I elected to do so and signed a written retainer agreement with the following lawyers: (i) Stewart, Tighman, Fox & Bianchi, P.A.; (ii) William Hearon, P.A.; (iii) Todd Stewart, P.A.; (iv) Marks & Fleisher, P.A.; (v) Laura M. Watson, P.A. d/b/a Watson & Lentner; and (vi) Kane & Kane.

7. While I understood that my claims were being added to an existing lawsuit along with other physicians, I was never told that there was any plan or arrangement to add hundreds
of other physicians or thousands of claims to the lawsuit. Moreover, I was never asked for my consent to do so. Had I been asked, I would not have agreed. The lawsuit began in 2000 with a single plaintiff. It ended in June of 2004 with thirty six plaintiffs. I believe that the more plaintiffs that were added, the more complicated the case would become and the longer it would take to bring it to a conclusion.

8. In April of 2004 I am told that a mediation was held in the Fishman/Stashak case. I was not invited to attend the mediation even though I was a named plaintiff. I was not told of any strategy for the mediation and I was not asked to authorize any particular deal.

9. I am told that at the mediation, Larry Stewart made a demand for a sum of money to settle not just the claims of the thirty six plaintiffs in the Fishman Stashak case, but of more than four hundred other health care providers that were not in the case. I am also told that an offer was supposedly made by Progressive at the mediation which was to be divided between approximately 440 different health care providers, even though there were only thirty six plaintiffs in that case.

10. I was not asked if I wanted to accept that offer. I am told that Larry Stewart rejected Progressive's offer without consulting with any of the named plaintiffs other than Drs. Fishman and Stashak.

SETTLEMENT OF THE BAD FAITH CASE

11. In May of 2004 I was contacted by my lawyers and advised that there was an opportunity to settle all of my remaining PIP cases with Progressive if I was willing to drop my bad faith claims. I was willing to do this and authorized Watson & Lentner to enter into such a settlement.

12. Subsequently, I was advised that a settlement on those terms with Progressive had not been approved by all of the health care providers. My lawyers then relayed a settlement offer from Progressive for the bad faith case whereby I would share $1,750,000.00 with the
thirty five other named plaintiffs in the bad faith case. In addition, in a separate settlement of outstanding PIP cases, I would receive full payment of all outstanding PIP claims together with interest and costs of litigation. In this arrangement, Watson & Lentner settled on the amount of attorneys fees they would receive for their work on our PIP cases.

13. I received a letter from Larry Stewart which I understood to be his advice that I not settle the bad faith case. I also received a letter from Watson & Lentner which explained that there was a disagreement between Larry Stewart and Watson & Lentner about how to handle the bad faith case and whether it should be settled.

14. I understood plainly that Larry Stewart believed the case was far more valuable and that we should not accept the offer from Progressive. I understood that Mr. Stewart believed that we had an advantage at that moment in the case.

15. I understood that if we continued with the litigation and did not settle the bad faith case there was an opportunity to obtain a better offer from Progressive. I also understood that there were no guarantees that we would get a better offer.

16. I felt strongly that Progressive Insurance had acted improperly. Although I am not a lawyer, I believed that their conduct was outrageous. I was aware that if the litigation of the case continued a higher offer could have been obtained from Progressive. However, the $1,750,000.00 offer obtained from Progressive was enough of an offer for me to accept.

17. In weighing the factors and making my decision to accept the settlement, I considered the advantage of "money now" rather than the possibility of "more money later". The advantage of accepting a settlement is that you avoid the risk of trial, even if those risks are small.

18. The decision to accept the respective settlement offers was made by me independently.
19. If asked, I would have given Larry Stewart the same instructions to settle the bad faith case by accepting Progressive's offer of $1,750,000.00.

20. I was aware that I could speak with Larry Stewart about his view of the bad faith case. I was free to seek his advice and he was free to contact me. I was never told that I could not speak with him.

21. If asked, I would not have consented to the addition of additional plaintiffs and claims to the bad faith case in May of 2004.

FURTHER AFFIANT SAYETH NOT.

MICHAEL MINETT, D.C.

The foregoing instrument was acknowledged before me this 10 day of August, 2005, by Michael Minett, who is personally known to me or who has produced Florida State ID as identification and who did not take an oath.

Jonathan Feldman
NOTARY PUBLIC

(Print Notary Name), State of Florida

(Serial number, if any)
IN THE CIRCUIT COURT OF THE 15th JUDICIAL CIRCUIT IN AND FOR PALM BEACH COUNTY, FLORIDA

CASE NO. 502604 CAOO6138XXXXMB AO

STEWARD TILGHMAN FOX & BIANCHI, P.A., a professional association;
WILLIAM C. HEARON, P.A., a professional association; and TODD S. STEWART, P.A., a professional association,

Plaintiffs,

-vs-

MARKS & FLEISCHER, P.A., a professional association; KANE & KANE, a professional corporation; and LAURA M. WATSON, P.A.
d/b/a WATSON & LENTNER, a professional corporation; GARY H. MARKS, AMIR FLEISCHER,
CHARLES J. KANE, HARLEY N. KANE, LAURA M. WATSON and DARIN J. LENTNER,

Defendants.

AFFIDAVIT OF MICHAEL P. NEWMAN, D.C.

STATE OF FLORIDA
COUNTY OF DADE

BEFORE ME personally appeared Michael P. Newman, D.C. who being first duly sworn, deposes and says:

1. I am a physician and President of South Miami Medical Arts Center, Inc., a named plaintiff in an action generally known as "Goldcoast Orthopedics (Drs. Fishman and Stashak) et al v. Progressive Insurance Companies (hereafter referred to as the "Fishman/Stashak bad faith case"). This affidavit is made in support of defendants' Motion for Partial Summary Judgment.

BACKGROUND
2. In my practice I treat victims of auto accidents. Some of these patients were insured by one of the Progressive Insurance Companies ("Progressive"). In some instances, Progressive failed to pay the full fee for service rendered.

3. In order to recover the sums due from Progressive, I engaged the services of the law firm of Watson & Lentner. I signed a retainer agreement which provided that the law firm would commence a lawsuit on my behalf against Progressive. If the suit was successful, I would recover the unpaid portion of my fee (the “PIP benefit”) and accrued interest, while the lawyers would recover the costs of suit and their legal fees.

4. Ordinarily, it would have been completely impractical to pursue one of these claims in Court. Often times the sum being sought was less than $500.00. However, I understood that Florida law afforded me the opportunity to recover legal fees and costs if I prevailed. Progressive aggressively defended PIP suits brought on my behalf. If I had to advance costs and fees to recover $500.00, I would not have done so.

5. However, Watson & Lentner assumed the risk on our behalf and agreed to perform as much work and expend whatever time was necessary. Thus my lawyers matched or exceeded the efforts of Progressive and eventually we prevailed. I recovered the unpaid PIP benefits plus interest and my lawyers recovered costs and attorney’s fees.

6. In or about 2002, I learned that a lawsuit had been brought against Progressive alleging bad faith in the pattern of denial or reduction of PIP benefits. Eventually I was asked if I wanted to join that lawsuit as a plaintiff. I elected to do so and signed a written retainer agreement with the following lawyers: (i) Stewart, Tighman, Fox & Bianchi, P.A.; (ii) William Hearon, P.A.; (iii) Todd Stewart, P.A.; (iv) Marks & Fleisher, P.A.; (v) Laura M. Watson, P.A. d/b/a Watson & Lentner; and (vi) Kane & Kane.

7. While I understood that my claims were being added to an existing lawsuit along with other physicians, I was never told that there was any plan or arrangement to add hundreds
of other physicians or thousands of claims to the lawsuit. Moreover, I was never asked for my consent to do so. Had I been asked, I would not have agreed. The lawsuit began in 2000 with a single plaintiff. It ended in June of 2004 with thirty-six plaintiffs. I believe that the more plaintiffs that were added, the more complicated the case would become and the longer it would take to bring it to a conclusion.

8. In April of 2004 I am told that a mediation was held in the Fishman/Stashak case. I was not invited to attend the mediation even though I was a named plaintiff. I was not told of any strategy for the mediation and I was not asked to authorize any particular deal.

9. I am told that at the mediation, Larry Stewart made a demand for a sum of money to settle not just the claims of the thirty-six plaintiffs in the Fishman Stashak case, but of more than four hundred other health care providers that were not in the case. I am also told that an offer was supposedly made by Progressive at the mediation which was to be divided between approximately 440 different health care providers, even though there were only thirty-six plaintiffs in that case.

10. I was not asked if I wanted to accept that offer. I am told that Larry Stewart rejected Progressive's offer without consulting with any of the named plaintiffs other than Drs. Fishman and Stashak.

SETTLEMENT OF THE BAD FAITH CASE

11. In May of 2004 I was contacted by my lawyers and advised that there was an opportunity to settle all of my remaining PIP cases with Progressive if I was willing to drop my bad faith claims. I was willing to do this and authorized Watson & Lentner to enter into such a settlement.

12. Subsequently, I was advised that a settlement on those terms with Progressive had not been approved by all of the health care providers. My lawyers then relayed a settlement offer from Progressive for the bad faith case whereby I would share $1,750,000.00 with the
19. If asked, I would have given Larry Stewart the same instructions to settle the bad faith case by accepting Progressive's offer of $1,750,000.00.

20. I was aware that I could speak with Larry Stewart about his view of the bad faith case. I was free to seek his advice and he was free to contact me. I was never told that I could not speak with him.

21. If asked, I would not have consented to the addition of additional plaintiffs and claims to the bad faith case in May of 2004.

FURTHER AFFIANT SAYETH NOT.

MICHAEL P. NEWMAN, D.C.

The foregoing instrument was acknowledged before me this 15th day of August, 2005, by MICHAEL P. NEWMAN, who is personally known to me or who has produced Florida State ID as identification and who did not take an oath.

EDWARD A. FISHER
NOTARY PUBLIC

EDWARD A. FISHER
(PRINT NOTARY NAME), State of Florida

(Serial number, if any)
AFFIDAVIT OF DR. DAVID SEIDNER

STATE OF FLORIDA )
COUNTY OF BROWARD )

BEFORE ME personally appeared Dr. David Seidner, who being first duly sworn, deposes and says:

1. I am a physician and President of David M. Seidner, P.T., D.C., a named plaintiff in an action generally known as "Goldcoast Orthopedics (Drs. Fishman and Stashak) et al v. Progressive Insurance Companies (hereafter referred to as the "Fishman/Stashak bad faith case"). This affidavit is made in support of defendants' Motion for Partial Summary Judgment.

BACKGROUND

2. In my practice I treat victims of auto accidents. Some of these patients were insured by one of the Progressive Insurance Companies ("Progressive"). In some instances, Progressive failed to pay the full fee for service rendered.
3. In order to recover the sums due from Progressive, I engaged the services of the law firm of Watson & Lentner. I signed a retainer agreement which provided that the law firm would commence a lawsuit on my behalf against Progressive. If the suit was successful, I would recover the unpaid portion of my fee (the "PIP benefit") and accrued interest, while the lawyers would recover the costs of suit and their legal fees.

4. Ordinarily, it would have been completely impractical to pursue one of these claims in Court. Often times the sum being sought was less than $500.00. However, I understood that Florida law afforded me the opportunity to recover legal fees and costs if I prevailed. Progressive aggressively defended PIP suits brought on my behalf. If I had to advance costs and fees to recover $500.00, I would not have done so.

5. However, Watson & Lentner assumed the risk on our behalf and agreed to perform as much work and expend whatever time was necessary. Thus my lawyers matched or exceeded the efforts of Progressive and eventually we prevailed. I recovered the unpaid PIP benefits plus interest and my lawyers recovered costs and attorney's fees.

6. In or about 2002, I learned that a lawsuit had been brought against Progressive alleging bad faith in the pattern of denial or reduction of PIP benefits. Eventually I was asked if I wanted to join that lawsuit as a plaintiff. I elected to do so and signed a written retainer agreement with the following lawyers: (i) Stewart, Tichelman, Fox & Bianchi, P.A.; (ii) William Heiron, P.A.; (iii) Todd Stewart, P.A.; (iv) Marks & Fleischer, P.A.; (v) Laura M. Watson, P.A. d/b/a Watson & Lentner; and (vi) Kane & Kane.

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plaintiffs that were added, the more complicated the case would become and the longer it would take to bring it to a conclusion.

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SETTLEMENT OF THE BAD FAITH CASE

11. In May of 2004 I was contacted by my lawyers and advised that there was an opportunity to settle all of my remaining PIP cases with Progressive if I was willing to drop my bad faith claims. I was willing to do this and authorized Watson & Lentner to enter into such a settlement.

12. Subsequently, I was advised that a settlement on those terms with Progressive had not been approved by all of the health care providers. My lawyers then relayed a settlement offer from Progressive for the bad faith case whereby I would share $1,750,000.00 with the thirty five other named plaintiffs in the bad faith case. In addition, in a separate settlement of outstanding PIP cases, I would receive full payment of all outstanding PIP claims together with
interest and costs of litigation. In this arrangement, Watson & Lentner settled on the amount of attorneys' fees they would receive for their work on our PIP cases.

13. I received a letter from Larry Stewart which I understood to be his advice that I not settle the bad faith case. I also received a letter from Watson & Lentner which explained that there was a disagreement between Larry Stewart and Watson & Lentner about how to handle the bad faith case and whether it should be settled.

14. I understood plainly that Larry Stewart believed the case was far more valuable and that we should not accept the offer from Progressive. I understood that Mr. Stewart believed that we had an advantage at that moment in the case.

15. I understood that if we continued with the litigation and did not settle the bad faith case there was an opportunity to obtain a better offer from Progressive. I also understood that there were no guarantees that we would get a better offer.

16. I felt strongly that Progressive Insurance had acted improperly. Although I am not a lawyer, I believed that their conduct was outrageous. I was aware that if the litigation of the case continued a higher offer could have been obtained from Progressive. However, the $1,750,000.00 offer obtained from Progressive was enough of an offer for me to accept.

17. In weighing the factors and making my decision to accept the settlement, I considered the advantage of "money now" rather than the possibility of "more money later". The advantage of accepting a settlement is that you avoid the risk of trial, even if those risks are small.

18. The decision to accept the respective settlement offers was made by me independently.

19. If asked, I would have given Larry Stewart the same instructions to settle the bad faith case by accepting Progressive's offer of $1,750,000.00.
20. I was aware that I could speak with Larry Stewart about his view of the bad faith case. I was free to seek his advice and he was free to contact me. I was never told that I could not speak with him.

21. If asked, I would not have consented to the addition of additional plaintiffs and claims to the bad faith case in May of 2004.

FURTHER AFFIANT SAYETH NOT.

[Signature]

DR. DAVID STEINER

The foregoing instrument was acknowledged before me this 9 day of August, 2005, by Dr. David Steinert, who is personally known to me or who has produced Florida State ID as identification and who did not take an oath.

[Signature]

NOTARY PUBLIC

Scott R. Baker
(Print Notary Name), State of Florida

(Serial number, if any)
IN THE CIRCUIT COURT OF THE 15th
JUDICIAL CIRCUIT IN AND FOR
PALM BEACH COUNTY, FLORIDA

CASE NO. 502004 CA006138XXXXMB AO

STEWARD TILGHMAN FOX &
BLANCHI, P.A., a professional association;
WILLIAM C. BEARON, P.A., a professional
association; and TODD S. STEWART, P.A.,
a professional association,

Plaintiffs,

vs-

MARKS & FLEISCHER, P.A., a professional
association, KANE & KANE, a professional
corporation; and LAURA M. WATSON, P.A.
d/b/a WATSON & LENTNER, a professional
corporation; GARY H. MARKS, AMIR FLEISCHER,
CHARLES J. KANE, HARLEY N. KANE, LAURA
M. WATSON and DARIN J. LENTNER,

Defendants.

AFFIDAVIT OF ANDREW WASSEMAN, D.C.

STATE OF FLORIDA
COUNTY OF BROWARD

BEFORE ME personally appeared Andrew Wasserman, D.C. who being first duly sworn,
deposes and says:

1. I am a physician and President of Wasserman Chiropractic, Inc., a named plaintiff
in an action generally known as "Goldcoast Orthopedics (Drs. Fishman and Stashak) et al v.
Progressive Insurance Companies (hereafter referred to as the "Fishman/Stashak bad faith
case"). This affidavit is made in support of defendants' Motion for Partial Summary Judgment.

BACKGROUND

2. In my practice I treat victims of auto accidents. Some of these patients were
insured by one of the Progressive Insurance Companies ("Progressive"). In some instances,
Progressive failed to pay the full fee for service rendered.
3. In order to recover the sums due from Progressive, I engaged the services of the law firm of Watson & Lentner. I signed a retainer agreement which provided that the law firm would commence a lawsuit on my behalf against Progressive. If the suit was successful, I would recover the unpaid portion of my fee (the "PIP benefit") and accrued interest, while the lawyers would recover the costs of suit and their legal fees.

4. Ordinarily, it would have been completely impractical to pursue one of these claims in Court. Often times the sum being sought was less than $500.00. However, I understood that Florida law afforded me the opportunity to recover legal fees and costs if I prevailed. Progressive aggressively defended PIP suits brought on my behalf. If I had to advance costs and fees to recover $500.00, I would not have done so.

5. However, Watson & Lentner assumed the risk on our behalf and agreed to perform as much work and expend whatever time was necessary. Thus my lawyers matched or exceeded the efforts of Progressive and eventually we prevailed. I recovered the unpaid PIP benefits plus interest and my lawyers recovered costs and attorney's fees.

6. In or about 2002, I learned that a lawsuit had been brought against Progressive alleging bad faith in the pattern of denial or reduction of PIP benefits. Eventually I was asked if I wanted to join that lawsuit as a plaintiff. I elected to do so and signed a written retainer agreement with the following lawyers: (i) Stewart, Tighman, Fox & Bianchi, P.A.; (ii) William Hearon, P.A.; (iii) Todd Stewart, P.A.; (iv) Marks & Fleisher, P.A.; (v) Laura M. Watson, P.A. d/b/a Watson & Lentner; and (vi) Kane & Kane.

7. While I understood that my claims were being added to an existing lawsuit along with other physicians, I was never told that there was any plan or arrangement to add hundreds of other physicians or thousands of claims to the lawsuit. Moreover, I was never asked for my consent to do so. Had I been asked, I would not have agreed. The lawsuit began in 2000 with a single plaintiff. It ended in June of 2004 with thirty six plaintiffs. I believe that the more
plaintiffs that were added, the more complicated the case would become and the longer it would take to bring it to a conclusion.

8. In April of 2004 I am told that a mediation was held in the Fishman/Stashak case. I was not invited to attend the mediation even though I was a named plaintiff. I was not told of any strategy for the mediation and I was not asked to authorize any particular deal.

9. I am told that at the mediation, Larry Stewart made a demand for a sum of money to settle not just the claims of the thirty six plaintiffs in the Fishman Stashak case, but of more than four hundred other health care providers that were not in the case. I am also told that an offer was supposedly made by Progressive at the mediation which was to be divided between approximately 440 different health care providers, even though there were only thirty six plaintiffs in that case.

10. I was not asked if I wanted to accept that offer. I am told that Larry Stewart rejected Progressive's offer without consulting with any of the named plaintiffs other than Drs. Fishman and Stashak.

SETTLEMENT OF THE BAD FAITH CASE

11. In May of 2004 I was contacted by my lawyers and advised that there was an opportunity to settle all of my remaining PIP cases with Progressive if I was willing to drop my bad faith claims. I was willing to do this and authorized Watson & Lentner to enter into such a settlement.

12. Subsequently, I was advised that a settlement on those terms with Progressive had not been approved by all of the health care providers. My lawyers then relayed a settlement offer from Progressive for the bad faith case whereby I would share $1,750,000.00 with the thirty five other named plaintiffs in the bad faith case. In addition, in a separate settlement of outstanding PIP cases, I would receive full payment of all outstanding PIP claims together with
interest and costs of litigation. In this arrangement, Watson & Lentner settled on the amount of
appropriate fees they would receive for their work on our PIP cases.

13. I received a letter from Larry Stewart which I understood to be his advice that I
not settle the bad faith case. I also received a letter from Watson & Lentner which explained that
there was a disagreement between Larry Stewart and Watson & Lentner about how to handle the
bad faith case and whether it should be settled.

14. I understood plainly that Larry Stewart believed the case was far more valuable
and that we should not accept the offer from Progressive. I understood that Mr. Stewart
believed that we had an advantage at that moment in the case.

15. I understood that if we continued with the litigation and did not settle the bad
faith case there was an opportunity to obtain a better offer from Progressive. I also understood
that there were no guarantees that we would get a better offer.

16. I felt strongly that Progressive Insurance had acted improperly. Although I am
not a lawyer, I believed that their conduct was outrageous. I was aware that if the litigation of
the case continued a higher offer could have been obtained from Progressive. However, the
$1,750,000.00 offer obtained from Progressive was enough of an offer for me to accept.

17. In weighing the factors and making my decision to accept the settlement, I
considered the advantage of "money now" rather than the possibility of "more money later".
The advantage of accepting a settlement is that you avoid the risk of trial, even if those risks are
small.

18. The decision to accept the respective settlement offers was made by me
independently.

19. If asked, I would have given Larry Stewart the same instructions to settle the bad
faith case by accepting Progressive's offer of $1,750,000.00.
20. I was aware that I could speak with Larry Stewart about his view of the bad faith case. I was free to seek his advice and he was free to contact me. I was never told that I could not speak with him.

21. If asked, I would not have consented to the addition of additional plaintiffs and claims to the bad faith case in May of 2004.

FURTHER AFFIANT SAYETH NOT.

ANDREW WASSERMAN, D.C.

The foregoing instrument was acknowledged before me this 10th day of August, 2005, by Andrew Wasserman, who is personally known to me or who has produced Florida State ID as identification and who did not take an oath.

GERALD A. LEAGUE
(Print Notary Name), State of Florida

(Commission Number)

(my commission expires Nov. 12, 2006)
STATE OF FLORIDA
COUNTY OF VOLUSIA

BEFORE ME personally appeared Lloyd A. Wright, D.C. who being first duly sworn, deposes and says:

1. I am a physician and a named plaintiff in an action generally known as "Goldcoast Orthopedics (Drs. Fishman and Stashak) et al v. Progressive Insurance Companies" (hereafter referred to as the "Tilghman/Stashak bad faith case"). This affidavit is made in support of defendants’ Motion for Partial Summary Judgment.

BACKGROUND

2. In my practice I treat victims of auto accidents. Some of these patients were insured by one of the Progressive Insurance Companies ("Progressive"). In some instances, Progressive failed to pay the full fee for service rendered.
interest and costs of litigation. In this arrangement, Watson & Lentner settled on the amount of attorneys fees they would receive for their work on our PIP cases.

13. I received a letter from Larry Stewart which I understood to be his advice that I not settle the bad faith case. I also received a letter from Watson & Lentner which explained that there was a disagreement between Larry Stewart and Watson & Lentner about how to handle the bad faith case and whether it should be settled.

14. I understood plainly that Larry Stewart believed the case was far more valuable and that we should not accept the offer from Progressive. I understood that Mr. Stewart believed that we had an advantage at that moment in the case.

15. I understood that if we continued with the litigation and did not settle the bad faith case there was an opportunity to obtain a better offer from Progressive. I also understood that there were no guarantees that we would get a better offer.

16. I felt strongly that Progressive Insurance had acted improperly. Although I am not a lawyer, I believed that their conduct was outrageous. I was aware that if the litigation of the case continued a higher offer could have been obtained from Progressive. However, the $1,750,000.00 offer obtained from Progressive was enough of an offer for me to accept.

17. In weighing the factors and making my decision to accept the settlement, I considered the advantage of "money now" rather than the possibility of "more money later". The advantage of accepting a settlement is that you avoid the risk of trial, even if those risks are small.

18. The decision to accept the respective settlement offers was made by me independently.

19. If asked, I would have given Larry Stewart the same instructions to settle the bad faith case by accepting Progressive's offer of $1,750,000.00.
20. I was aware that I could speak with Larry Stewart about his view of the bad faith case. I was free to seek his advice and he was free to contact me. I was never told that I could not speak with him.

21. If asked, I would not have consented to the addition of additional plaintiffs and claims to the bad faith case in May of 2004.

FURTHER AFFIANT SAYETH NOT.

[Signature]

LLOYD A. WRIGHT, MIN

The foregoing instrument was acknowledged before me this 12th day of August, 2005, by LLOYD A. WRIGHT, who is personally known to me or who has produced Florida State ID as identification and who did not take an oath.

[SIGNATURE]

NOTARY PUBLIC

[Notary Seal]

(Serial number, if any)
IN THE CIRCUIT COURT OF THE 15th
JUDICIAL CIRCUIT IN AND FOR
PALM BEACH COUNTY, FLORIDA

CASE NO. 502004 CA006/36XXXXMB AO

STEWARD TILGHMAN FOX &
BIANCHI, P.A., a professional association;
WILLIAM C.,HBEARON, P.A., a professional
association; and TODD S. STEWART, P.A.,
a professional association,

Plaintiffs,

-VS-

MARKS & FLEISCHER, P.A., a professional
association, KANE & KANE, a professional
corporation; and LAURA M. WATSON, P.A.
d/b/a WATSON & LENTNER, a professional
corporation; GARY H. MARKS, AMIR FLEISCHER,
CHARLES J. KANE, HARLEY N. KANE, LAURA
M. WATSON and DARIN J. LENTNER,

Defendants.

AFFIDAVIT OF MICHELLE ZAKREWSKI

STATE OF FLORIDA
COUNTY OF HILLSBOROUGH

BEFORE ME personally appeared Michelle Zakrewnski who being first duly sworn,
deposes and says:

1. I am President of Medical and Chiropractic Clinic, Inc., a named plaintiff in an
action generally known as "Goldcoast Orthopedics (Drs. Fishman and Stashak) et al v. Progressive Insurance Companies (hereafter referred to as the "Fishman/Stashak bad faith case"). This affidavit is made in support of defendants' Motion for Partial Summary Judgment.

BACKGROUND

2. In my practice I treat victims of auto accidents. Some of these patients were
insured by one of the Progressive Insurance Companies ("Progressive"). In some instances, Progressive failed to pay the full fee for service rendered.
3. In order to recover the sums due from Progressive, I engaged the services of the law firm of Watson & Lentner. I signed a retainer agreement which provided that the law firm would commence a lawsuit on my behalf against Progressive. If the suit was successful, I would recover the unpaid portion of my fee (the “PIP benefit”) and accrued interest, while the lawyers would recover the costs of suit and their legal fees.

4. Ordinarily, it would have been completely impractical to pursue one of those claims in Court. Often times the sum being sought was less than $500.00. However, I understood that Florida law afforded me the opportunity to recover legal fees and costs if I prevailed. Progressive aggressively defended PIP suits brought on my behalf. If I had to advance costs and fees to recover $500.00, I would not have done so.

5. However, Watson & Lentner assumed the risk on our behalf and agreed to perform as much work and expend whatever time was necessary. Thus my lawyers matched or exceeded the efforts of Progressive and eventually we prevailed. I recovered the unpaid PIP benefits plus interest and my lawyers recovered costs and attorney’s fees.

6. In or about 2002, I learned that a lawsuit had been brought against Progressive alleging bad faith in the pattern of denial or reduction of PIP benefits. Eventually I was asked if I wanted to join that lawsuit as a plaintiff. I elected to do so and signed a written retainer agreement with the following lawyers: (i) Stewart, Tighman, Fox & Bianchi, P.A.; (ii) William Hearon, P.A.; (iii) Todd Stewart, P.A.; (iv) Marks & Fleisher, P.A.; (v) Laura M. Watson, P.A. d/b/a Watson & Lentner; and (vi) Kane & Kane.

7. While I understood that my claims were being added to an existing lawsuit along with other physicians, I was never told that there was any plan or arrangement to add hundreds of other physicians or thousands of claims to the lawsuit. Moreover, I was never asked for my consent to do so. Had I been asked, I would not have agreed. The lawsuit began in 2000 with a single plaintiff. It ended in June of 2004 with thirty six plaintiffs. I believe that the more
plaintiffs that were added, the more complicated the case would become and the longer it would take to bring it to a conclusion.

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10. I was not asked if I wanted to accept that offer. I am told that Larry Stewart rejected Progressive's offer without consulting with any of the named plaintiffs other than Drs. Fishman and Stashak.

**SETTLEMENT OF THE BAD FAITH CASE**

11. In May of 2004 I was contacted by my lawyers and advised that there was an opportunity to settle all of my remaining PIP cases with Progressive if I was willing to drop my bad faith claims. I was willing to do this and authorized Watson & Lentner to enter into such a settlement.

12. Subsequently, I was advised that a settlement on these terms with Progressive had not been approved by all of the health care providers. My lawyers then relayed a settlement offer from Progressive for the bad faith case whereby I would share $1,750,000.00 with the thirty five other named plaintiffs in the bad faith case. In addition, in a separate settlement of outstanding PIP cases, I would receive full payment of all outstanding PIP claims together with
interest and costs of litigation. In this arrangement, Watson & Lentner settled on the amount of
attorneys' fees they would receive for their work on our PIP cases.

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not settle the bad faith case. I also received a letter from Watson & Lentner which explained that
there was a disagreement between Larry Stewart and Watson & Lentner about how to handle the
bad faith case and whether it should be settled.

14. I understood plainly that Larry Stewart believed the case was far more valuable
and that we should not accept the offer from Progressive. I understood that Mr. Stewart
believed that we had an advantage at that moment in the case.

15. I understood that if we continued with the litigation and did not settle the bad
faith case there was an opportunity to obtain a better offer from Progressive. I also understood
that there were no guarantees that we would get a better offer.

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not a lawyer, I believed that their conduct was outrageous. I was aware that if the litigation of
the case continued a higher offer could have been obtained from Progressive. However, the
$1,750,000.00 offer obtained from Progressive was enough of an offer for me to accept.

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considered the advantage of "money now" rather than the possibility of "more money later".
The advantage of accepting a settlement is that you avoid the risk of trial, even if those risks are
small.

18. The decision to accept the respective settlement offers was made by me
independently.

19. If asked, I would have given Larry Stewart the same instructions to settle the bad
faith case by accepting Progressive's offer of $1,750,000.00.
20. I was aware that I could speak with Larry Stewart about his view of the bad faith case. I was free to seek his advice and he was free to contact me. I was never told that I could not speak with him.

21. If asked, I would not have consented to the addition of additional plaintiffs and claims to the bad faith case in May of 2004.

FURTHER AFFIANT SAYETH NOT.

[Signature]

Michele Zakrowski

The foregoing instrument was acknowledged before me this 30 day of August, 2005, by Michele Zakrowski which is personally known to me or who has produced Florida State ID as identification and who did not take an oath.

[Signature]

Lowdes T. Torres

NOTARY PUBLIC

Lowdes T. Torres

(PRINT NOTARY NAME), State of Florida

Serial number, if any)
Tab 17
AUTHORITY TO REPRESENT – CONTRACT OF EMPLOYMENT

We, the undersigned clients, hereby employ STEWART, TILGHMAN FOX & BIANCHI, P.A., TODD S. STEWART P.A., WILLIAM C. HEARON, P.A., KANE & KANE, MARKS & FLEISCHER, P.A., and LAURA M. WATSON, P.A., d/b/a WATSON & LENTNER as our attorneys to represent us in connection with any and all claims or actions for bad faith, unfair claims practice, improper claims handling, fraud and/or unjust enrichment which we may have against any Progressive Insurance Company and/or any division, subsidiary, affiliate or related entity of the Progressive Insurance companies. This contract does not apply to the breach of contract PIP cases brought separately by KANE & KANE, MARKS & FLEISCHER, P.A., and/or LAURA M. WATSON, P.A., d/b/a WATSON & LENTNER on behalf of DR. ABRAHAM K. KOHL d/b/a KOHL CHIROPRACTIC CLINIC.

It is contemplated by the parties that PROGRESSIVE INSURANCE COMPANY and/or any of its divisions, subsidiaries, affiliates or related entities may propose a settlement that could include the resolution of claims filed pursuant to this Agreement and other claims that were not brought pursuant to this representation. In such an event, it is agreed that this Agreement shall not include that portion of any settlement that is attributable to those other claims or lawsuits including but not limited to contract benefits, damages for breach of contract, interest and any statutory attorneys fees that KANE & KANE, MARKS & FLEISCHER P.A., LAURA WATSON P.A. d/b/a WATSON & LENTNER would be due on such separate claims.

NOTIFICATION OF CLIENT’S BILL OF RIGHTS

Although this contract is not for the prosecution of a personal injury claim; the undersigned clients have, before signing this contract, reviewed and read The Statement of Client’s Rights and understands each of the rights set forth therein. The undersigned clients have signed the Statement and received a signed copy to keep and to refer to while being represented by the undersigned attorneys.

FEES

It is agreed that this claim will be handled on a contingent fee basis. If the claim is unsuccessful, we shall not be obligated for any attorneys’ fees. In the event the claim is successful by settlement or verdict, our attorneys may have the right to petition the court for an award of reasonable attorneys’ fees. In the event the court awards or any settlement includes attorneys’ fees, the fees to which our lawyers shall be entitled will be the greater of (1) the contingency fee; or (2) the court awarded fee. In the event a court awarded fee is granted on a settlement or verdict that is less than the amount of the contingency fee as computed below, the court awarded fee for this settlement or verdict would be applied as a credit to the total fee.

The undersigned clients further agree that from the proceeds of any such recovery, whether by settlement, judgment or otherwise, our lawyers may deduct the attorneys’ fees to which they are entitled.
entitled, and all costs, expenses and interest prior to any other disbursements.

It is our understanding that in the event that our attorneys apply to the Court for an award of attorneys' fees they will seek a “multiplier” over their hourly rates. We further understand that, under certain circumstances, the attorneys’ fee set by the Court to be paid by the Defendant(s) may exceed the fee to which we have agreed, in which event such fees shall be due to our attorneys.

Due to the expense of litigation and expertise required, the parties acknowledge that but for the contingency fee and the intent to apply for a multiplier where appropriate; their representation could not be undertaken. In the event that attorneys’ fees are recovered in this action from any adverse party, then it is expressly understood that this contract is not be construed in any way as a limitation on the maximum reasonable fee to be awarded by the Court to our attorneys.

If applicable, in any settlement negotiations, we authorize our attorneys to negotiate with the defendant the amount of attorneys’ fees, with the appropriate multiplier, they will receive. We also authorize our attorneys, in their discretion, to litigate the amount of attorneys’ fees if necessary and if applicable.

The fees are as follows:

(1) **Contingency Fee:**

As compensation for their professional services, the undersigned clients agree to pay to our attorneys out of the gross recovery, whether by verdict or settlement, a contingency fee equal to the following:

a. 33 1/3% of any recovery before the filing of an Answer or the Demand for Appointment of Arbitrators or, if no Answer is filed or no Demand for Appointment of Arbitrators is made, the expiration of the time period provided for such action.

b. 40% of any recovery after the filing of an Answer or the Demand for Appointment of Arbitrators or, if no Answer is filed or no Demand for Appointment of Arbitrators is made, the expiration of the time period provided for such action through the entry of judgment.

c. An additional 5% of any recovery after Notice of Appeal is filed or post judgment relief or action is required for recovery on the judgment.

(2) **Court Awarded Fee**

A court awarded fee may be sought based upon the hourly rates charged by our attorneys and we understand that, in such event, the Court will apply the appropriate multiplier to our attorneys' hourly rates. It is understood that, if necessary, our attorneys are authorized to litigate the
issue of fees because if they succeed, it would be a direct benefit to the undersigned clients who hereby agree that our attorneys are entitled to be additionally compensated for the time and effort and success in obtaining court awarded fees.

(3) **Division of Fees**

We acknowledge our understanding that a division of the attorneys’ fees between our attorneys will be made on the basis of time and effort expended by each attorney, which is estimated to be as follows:

60% to be shared between the law firms of STEWART, TILGHMAN FOX & BIANCHI, P.A., TODD S. STEWART P.A. and WILLIAM C. HEARON, P.A.

40% to be shared between the law firms of MARKS & FLEISCHER, P.A., LAURA M. WATSON, P.A., d/b/a WATSON & LENTNER, and KANE & KANE.

This division does not, however, apply to any contingent fee for post judgment relief or appellate work. Said fees for such work shall be paid to the attorney(s) or firm(s) performing the work.

Each of the law firms and the individual attorneys working on the case agree to assume the same legal responsibility to the client for the performance of the services in question as if the attorneys involved were partners and members of the same firm. It is further understood that each of the attorneys involved in the case shall be available to the client for consultation concerning the case. It is understood that in determining the division of the fees between the law firms, that the responsibility assumed by the attorneys has been considered in making this determination.
COSTS

We hereby authorize our attorneys to advance the costs of litigation as necessary including but not limited to, investigation, experts, copies, faxes, phone charges, travel expenses, etc., the repayment of which will be contingent on the outcome of the case. We agree to pay the costs incurred by our attorneys for investigating and/or prosecuting this case out of any recoveries we receive. We understand that costs will be deducted from any recovery after deducting attorneys’ fees. Costs will be shared among the firms in the same proportions as the fees as listed above. If any of the firms withdraw from our case, we agree to pay that/those firm(s) their costs incurred during their representation if we make a recovery. If however, we discharge any of the firms during the pendency of this case, we agree any outstanding costs incurred by that/those firm(s) up to the time of discharge when we make a recovery. If we never make a recovery, we do not owe any of the firms listed below any costs. We also agree to reimburse our attorneys reasonable interest on said advanced costs and expenses. We further understand that in the event litigation is instituted and it is unsuccessful as to any party, we may be responsible to such party for taxable court costs.

AGREEMENT TO DIVIDE RECOVERY

In the event that other individuals, firms or organizations join as plaintiffs in any claims prosecuted pursuant to this Agreement, and there is a recovery made in such action(s), either by way of judgment or settlement, or other individuals, firms or organizations participate in any settlement, then we agree to divide any such recovery among all such participants on a pro rata basis, based on the respective amount of the undersigned’s actual losses due to said misconduct as related to the actual losses of each other participant.

GENERAL PROVISIONS

In the event our attorneys determine after investigation of the case that in their opinion it is not feasible for them to prosecute the claim, upon notification to us of such fact, our attorneys are relieved from prosecuting the case and may withdraw from representation under this agreement.

At any stage of the proceedings our attorneys may retain and employ in our name the services of any additional attorneys who, in their judgment, may assist them in the preparation, investigation or prosecution of our claim. In the event additional attorneys are employed on our behalf, that employment shall be on the terms and conditions as determined by our attorneys, so long as the nature and extent of our obligation to pay attorney’s fees is not changed without our prior written approval.

In the event of any dispute over this agreement, venue and jurisdiction shall be the Fifteenth Judicial Circuit of Florida, in and for Palm Beach County; and the laws of the State of Florida shall apply.

RIGHT TO CANCEL

This contract may be canceled by written notification to our attorneys at any time within three

Initialed: [signature]
(3) business days of the date the contract was signed, as shown below, and if canceled, we shall not be obliged to pay any fees to our attorneys for the work performed during that time. If our attorneys have advanced funds to others in representation of the client, our attorneys are entitled to be reimbursed for such amounts as they have reasonably advanced on behalf of us.

DATED: 5/29/12

Client: DR. ABRAHAM K. KOHL d/b/a KOHL CHIROPRACTIC CLINIC

This legal representation is hereby accepted upon the terms stated herein.

By: STEWART, TILGHMAN, FOX & BIANCHI, P.A.

By: TODD S. STEWART, P.A.

By: WILLIAM C. HEARON, P.A.

By: MARKS & FLEISCHER, P.A.

By: LAURA M. WATSON, P.A., d/b/a WATSON & LENTNER

By: KANG & KANE

Initialed: THIS WITNESS
Tab 18
SETTLEMENT AGREEMENT

This Settlement Agreement is entered into by and between Stewart Tilghman Fox & Bianchi, P.A., William C. Hearon, P.A. and Todd S. Stewart, P.A., Plaintiffs, and Marks & Fleischer, P.A., Gary H. Marks, and Amir Fleischer, Defendants, on June 5, 2006, as follows:

1. By executing the Settlement Agreement, the parties hereby settle all claims existing between them, including but not limited to the claims that Plaintiffs have asserted against Defendants in the case of Stewart Tilghman Fox & Bianchi, P.A., et al vs. Marks & Fleischer, P.A., et al, No. CA 006138XXXKMB (Fla. 15th Jud. Cir. Ct.) for the total sum of Eight Hundred Twenty-two Thousand, Nine Hundred One and 47/100 Dollars ($822,901.47), payable by Defendants to Plaintiffs, said sum due and payable on June 5, 2006.

2. The parties hereto further agree to execute mutual releases in the form attached hereto as Exhibits 1 and 2 and the Plaintiffs agree to dismiss their claims against these Defendants in the above action with prejudice, each party to bear their own costs and attorneys' fees.

3. The sum of Eight Hundred Twenty-two Thousand, Nine Hundred One and 47/100 Dollars ($822,901.47) shall be payable by (A) cash in the sum of Five Hundred Seventy-seven Thousand Dollars ($577,000.00), (B) the sum of One Hundred Seventy-one Thousand, Six Hundred Sixty-six and 67/100 Dollars ($171,666.67) which is a portion of and included in the wire transfer of May 30, 2006 from the “Laura Watson Escrow Account”, and (C) a Promissory Note in the amount of Seventy-four Thousand, Two Hundred Thirty-four and 80/100 Dollars ($74,234.80). The Note shall be in the
form attached hereto as Exhibit 3, and the terms thereof are incorporated herein as integral terms of this Settlement Agreement.

4. Upon payment of these monies and receipt of the executed Promissory Note in paragraph 3 and the exchange of the mutual releases, the Plaintiffs shall file a motion for dismissal with prejudice of the claims against these Defendants in the above referenced case.

5. This Agreement is to be governed by the laws of Florida. In any action to enforce its terms, the prevailing parties shall be entitled to all the costs thereof, including reasonable attorneys’ fees and interest.

AGREED AND ACCEPTED:

For Plaintiffs:

Stewart Tilghman Fox & Bianchi, P.A.

By: ___________________________ Date: 6-5-06

Title: President

William C. Hearn, P.A.

By: ___________________________ Date: 6-5-06

Title: President

Todd S. Stewart, P.A.

By: ___________________________ Date: 6-5-06

Title: ___________________________

For Defendants:

Marks & Fleischer, P.A.

By: ___________________________ Date: 6-5-06

Title: ___________________________

GARY H. MARKS, individually

Date: 6-5-06

AMIR FLEISCHER, individually, Date: 6-5-06
May 31, 2006

Via Facsimile

Mr. Peter R. Goldman
Broad and Cassel
P.O. Box 14010
Ft. Lauderdale, Florida 33302

Mr. Irwin Gilbert
Gilbert & Associates
100 Village Square Crossing, Suite 207
West Palm Beach, Florida 33410


Dear Peter and Irwin:

We have received wire transfers from Laura Watson Account Number 111012783 totaling $515,000. So that there will be no misunderstandings in the future concerning these monies, I ask that each of you execute this letter acknowledging and agreeing that the receipt and use of these funds by the plaintiffs is without prejudice to any rights or claims that plaintiffs have in Stewart Tilghman Fox & Bianchi, et al vs. Marks & Fiebisher, et al.

Very truly yours,

[Signature]

Larry S. Stewart

Acknowledged and agreed:

[Signature]

Peter R. Goldman
Counsel for Laura Watson
d/b/a Watson & Leitner

[Signature]

Irwin Gilbert
Counsel for Kane & Kane

cc: All counsel of record

* We agree with the understanding that we intend to argue that these funds constitute a setoff in this case. We of course, are not waiving or prejudicing our right to assert this defense in the litigation.
See below.

From: Larry Stewart [mailto:lsstewart@stfblaw.com]
Sent: Tuesday, June 06, 2006 11:36 AM
To: Irwin Gilbert
Subject: RE: Revision to May 31, letter

Your description is correct. The sums paid are/would be a setoff against any damages awarded by the Court. Beyond that, the payment and acceptance of the monies are without prejudice to any claims, defenses or rights of the parties.

I have no objection to a letter but I believe that these 2 e-mails cover the point.

Larry S. Stewart
Stewart Tighman Fox & Bianchi, P.A.
Southeast Third Avenue, Suite 3000
Miami, Florida 33131

Tel: 305-358-6644.
Fax: 305-373-8048

-----Original Message-----
From: Irwin Gilbert [mailto:IGilbert@BizLit.net]
Sent: Tuesday, June 06, 2006 11:28 AM
To: Larry Stewart
Cc: Harley Kane
Subject: Revision to May 31, letter

Mr. Stewart:

Is there any dispute from the plaintiffs that the payments recently made and/or proposed to be made at this time are a setoff against the claims asserted by plaintiffs against the remaining defendants, or at least, Charles Kane, Harley Kane and their law partnership? If there is no dispute, I propose the following...

I would like to sign a letter which recites that (i) these payments are a setoff; (ii) these payments do not constitute a waiver of any defense or claim by any party and that other than constituting a set off, the payments are without prejudice to the rights of the parties. Both plaintiffs and defendants should acknowledge this. All Mr. Goldman did was create a footnote which was not agreed to by the plaintiff.

Let me know if this would be ok and if you want me to write the letter.

Irwin Gilbert

9/8/2007
ORDER ON MOTION TO COMPEL RELEASE OF ESCROW FUNDS

THIS CAUSE, came before the Court on Defendants, Marks & Fleischer, P.A., Gary Marks, and Amir Fleischer's, Motion to Compel Release of Escrow Funds and the Court, having heard argument of counsel and being otherwise advised in the premises,

FINDS, ORDERS AND ADJUDGES as follows:

The Court has been advised by counsel that, in 2004, Defendants placed $710,000.00 in escrow in connection with the settlement of the case captioned Fishman & Stashak, M.D. v. The Progressive Corporation, et. al. ("the Progressive Action").

According to Defendants, this escrow account was created specifically for the purpose of setting aside an amount equal to a 40% contingent fee in connection with the settlement
of the Progressive Action. The Court is further advised that $315,000.00 was recently transferred from the Laura Watson Escrow Account to a trust account of one of the Plaintiff Law Firms, leaving a balance in the Laura Watson Escrow Account of roughly $222,704.42. The Court is further advised that there is now a dispute between the Defendant Law Firms concerning how the balance of the funds in the Laura Watson Escrow Account should be disbursed and who has the right to control and direct how those funds are disbursed and ultimately distributed. Defendants, Laura Watson and Laura Watson, P.A., have, in view of this dispute, offered to make all future disbursements or distributions from the Laura Watson Escrow Account subject to Court control. Accordingly, the Court orders that no further distributions or disbursements from the Laura Watson Escrow Account shall be made without further order of this Court.

DONE AND ORDERED in Chambers at West Palm Beach County, Florida, this


day of , 2006.

SIGNED AND DATED

JUN 01 2005

Circuit Court Judge

JUDGE DAVID F. CROW

cc:  F. Gregory Barnhart
     Peter R. Goldman
     Irwin Gilbert
     Richard Zaden
     Robert Hauser
     William Hearon
     Larry Stewart
SUPPLEMENTAL AGREED ORDER ON MOTION TO COMPEL RELEASE OF ESCROW FUNDS

THIS CAUSE, originally came before the Court on Defendants, Marks & Fleischer, P.A., Gary Marks, and Amir Fleischer’s, (“Marks & Fleischer”) Motion to Compel Release of Escrow Funds. The Court heard argument on this Motion at a hearing conducted on June 1, 2006 and, at that time, entered an Order entitled, “Order on Motion to Compel Release of Escrow Funds.” The Court, now being advised of an agreement between all parties concerning the granting of the motion and the release of the portion of the escrowed funds claimed by Marks & Fleischer and otherwise being advised in the premises,

ORDERS AND ADJUDGES as follows:
That the motion of Marks & Fleischer be, and the same hereby is, granted and Laura Watson is authorized to immediately wire transfer $74,234.81 (consisting of 1/3 of the $222,704.42 balance in the Laura Watson Escrow Account) to the trust account of Stewart, Tiighman, et. al. in partial satisfaction of the settlement between Plaintiffs and Marks & Fleischer. Upon completion of the wire transfer authorized herein, Marks & Fleischer shall have no further interest in, or claim to, the balance of the funds held in the Laura Watson Escrow Account. The Court Orders that no further distributions or disbursements from the Laura Watson Escrow Account shall be made without further order of this Court.

SIGNED AND DATED

DONE AND ORDERED in Chambers at West Palm Beach County, Florida, this

JUN 06 2006

JUDGE DAVID F. CROW

HONORABLE DAVID F. CROW
Circuit Court Judge

cc: F. Gregory Barnhart
    Peter R. Goldman
    Irwin Gilbert
    Richard Zaden
    Robert Hauser
    William Hearon
    Larry Stewart
Tab 19
Notice of Disagreement Between Counsel

Dear Dr. Fishman:

The Progressive Entities\(^1\) wish to resolve all of your PIP and related claims, including all pending PIP lawsuits and all perfected, unfiled bad faith claims that our law firm has asserted, and all bad faith claims which our firm could perfect against The Progressive Entities since January 1, 2001, through May 17, 2004. As a result of this settlement you are obligated to furnish to The Progressive Entities a release and dismissal of all claims, each party to bear their own costs and attorney's fees, which you raised or could have raised in the action styled *Drs. Fishman & Stashak, M.D., P.A. d/b/a Goldcoast Orthopedics, et al.* now pending in the Circuit Court in and for Palm Beach County, Florida, Case No. CA 01-11649.

This is to notify you that a disagreement has arisen between your counsels in the case of *Drs. Fishman & Stashak, M.D., P.A. d/b/a Goldcoast Orthopedics, et al.* now pending in the Circuit Court in and for Palm Beach County, Florida, Case No. CA 01-11649 ("the Bad Faith Case") wherein you are represented of record by Stewart, et al. ("the Stewart Firm") and by us as co-counsel pursuant to an agreement between us (hereinafter the "PIP Firms") concerning the resolution of your Bad Faith claims against various Progressive companies you have sued in the Bad Faith Case. That disagreement is detailed below. Regardless of that disagreement, we the "PIP Firms" will be responsible for satisfying any monetary obligations to "The Stewart Firm". Nothing will be deducted from the amount you have agreed to accept.

The PIP Firms have had recent negotiations with representatives of the Progressive companies that have concluded with a proposed agreement for the resolution of all your PIP lawsuits against the Progressive companies. The proposed agreement ("PIP Settlement") calls for the execution and delivery to Progressive of a certain General Release and Assignment that will result in removing you as a party with an interest in the Bad Faith Case. (See attached General Release and Assignment). These negotiations were conducted by the PIP Firms pursuant to a reservation of the right to do so in the co-counsel agreement we have with the Stewart Firm. The Stewart Firm has been advised of

the happenstance of these negotiations but due to the confidential nature of the PIP Settlement has not been informed of any of the details of the agreement other than the requirement for your withdrawal with prejudice from the Bad Faith Case together with execution of the attached release and assignment.

In order for you to understand the reasons for the disagreement, it is important to review some of the pertinent facts and circumstances. The Stewart Firm began its representation in the Bad Faith Case in approximately May of 2002 with a few named plaintiffs who all signed retainers with the Stewart Firm. During the course of the litigation a few additional parties were retained and added as plaintiffs. One or more of the original plaintiffs has expressed concern that continuing to add plaintiffs will aggrandize the legal fees but may dilute the recovery available for each participant in the group of plaintiffs as that group grows in size. Recently the Bad Faith Case went to mediation. The offer received by the Stewart Firm was an offer, not for the existing claim, but the potential universe of bad faith claims, the majority of which had not been joined in the Bad Faith claim. In order to have accepted the offer in the Bad Faith case, the Stewart Firm would have been required to retain and add hundreds of potential plaintiffs and thousands of additional underlying claims. While we represented these other providers, the Stewart Firm did not.

We believe that any argument that the Stewart Firm is entitled to settle claims for providers it did not represent is untenable in law and in fact and is simply bluster. Florida law is clear that a lawyer who seeks a contingent fee must have a written agreement for it.

The Bad Faith Case was never presented as a class action seeking to represent anyone in a defined class. It was purely a lawsuit brought by the plaintiffs named therein. The assertion that the Stewart Firm represented anyone who had not executed a written agreement with that firm is contrary to law.

You have already received from the Progressive companies a formal proposal for settlement (offer of judgment). Initially this was a tactical maneuver by them to either end the litigation as to you for the amount offered or expose you to the potential for paying Progressive’s attorneys fees and litigation costs if you failed to accept it timely and the eventual outcome of the case did not meet certain statutory criteria for avoiding that fee shift. Even though most of the named Plaintiff’s rejected the Progressive Companies formal proposal for settlement, many of you have since expressed concern over being exposed to fees and costs and the decision not to take the offer and conveyed a desire to terminate the Bad Faith litigation.

The Stewart Firm has previously expressed to us concern about the value of the Bad Faith Case but now, we believe partially as a result of the PIP Settlement, sees a greater value. To be fair, you should also know that a recent development in the Bad Faith Case arising out of failure by Progressive’s counsel to timely abide by certain court rules did give Progressive some incentive to seek resolution by way of the PIP Settlement. Specifically, Progressive is now under court order to disclose certain records it could have timely listed and asserted were undiscoverable. The Stewart Firm undoubtedly believes those records will be embarrassing for Progressive and helpful in the Bad Faith Case. That may be true.
As attorneys we have the obligation to put your interests ahead of our own. As you may know, there are divergent opinions in the Florida district courts of appeal on the validity of the PPO reductions taken in your cases. We understand that the Florida Supreme Court may resolve the conflict, but when and if that will occur is presently unknown. If the Supreme Court rules that the reductions can properly be taken, then the questions of the existence of or the validity of an individual Health Care Providers PPO agreement will be litigated. Not only would this make the Bad Faith Case markedly more complex and difficult to win, but the same is true of all the unresolved PIP cases. As you can see, the PIP Firms have a greater spectrum to consider.

The recent problems we have encountered with the Stewart Firm, the uncertainties that remain on the PPO issue itself, and the lucky happenstance of Progressive’s discovery error, presented an opportunity to resolve the PIP cases at the expense of the also uncertain Bad Faith Case. We are, of course, mindful and appreciative of the effort put forth by the Stewart Firm and have made overtures to that firm to pay them out of the funds recovered by the PIP Firms. Our initial overtures were rebuffed.

The choice you now have is whether to continue as a party in the Bad Faith Case or to accept the PIP Settlement and the amount we have confidentially made known to you. Since you are represented both by the Stewart Firm and us in the Bad Faith Case you have the right to consult with us, with them or anyone else as your advisor. Please bear in mind, however, that the terms and amount of the PIP Settlement are agreed to be confidential and may not be disclosed to anyone other than your accountant. Violation of this confidentiality agreement will result in loss of the settlement for all concerned and a return to continued litigation.

Mr. Stewart’s firm has advised us that he has already sent you a letter with his contact information.

Should you choose to accept the PIP Settlement, it will be necessary for you to take various steps to ensure that the obligations of the parties under the PIP Settlement are fulfilled. If you wish to accept the PIP Settlement, you will need to sign below. By signing below, you are agreeing to accept the PIP settlement and are acknowledging that you want the Stewart Firm to dismiss the Bad Faith Case. Furthermore, your signature below authorizes the voluntary dismissal of the Bad Faith Case, and whatever steps are necessary to effectuate the PIP Settlement and ensure that the obligations of the parties are fulfilled. If that is your desire we will convey that to the Stewart Firm on your behalf.

DARIN J. LENTNER

ERIC FISHMAN, M.D.
June 16, 2004

ATTORNEY/CLIENT COMMUNICATION

FISHMAN AND STASHAK, M.D.'S, P.A.,
Dr. Eric S. Fishman and Dr. Gerald T. Stashak
1411 N. Flagler Drive, #8800
West Palm Beach, FL 33401
VIA FACSIMILE: (561) 799-0525

RE: AMENDED LETTER AGREEMENT/SETTLEMENT OFFER

Dear Dr. Stashak:

As we discussed, The Progressive Entities' wish to resolve all of your PIP and related claims, including all pending lawsuits and all perfected, unfiled bad faith claims that our law firm has asserted, and all bad faith claims which our firm could perfect against The Progressive Entities since January 1, 2001, through May 17, 2004. In addition, we have negotiated with Progressive to resolve the action styled Drs. Fishman & Stashak, M.D., P.A. d/b/a Goldcoast Orthopedics, et al, now pending in the Circuit Court in and for Palm Beach County, Florida, Case No. CA 01-11649 ("the Bad Faith Case"). Attached to this letter is the settlement offer regarding the resolution of the Bad Faith Case which is self explanatory. In addition to the amounts owed for the resolution of the Bad Faith case, Progressive will pay all of the outstanding PIP benefits, interest and statutory attorneys fees due for any pending cases currently filed by the firms of Watson & Lentner, Marks and Fleischer, and Kane and Kane. As previously discussed, the total amount of benefits and interest due you are $115,178.00. Progressive becomes obligated to resolve and pay these underlying PIP claims upon the settlement and dismissal of the Bad Faith Case.

By signing below, you agree to accept the amounts indicated above in exchange for a general release of the outstanding PIP benefits, interest which you have against The Progressive Entities, for any pending cases currently filed by the firms of Watson & Lentner, Marks and Fleischer, and Kane and Kane.

[Signature]

DARIN J. LENTNER

[Signature]

DR. GERALD T. STASHAK

June 16, 2004

FISHMAN AND STASHAK, M.D. ’S, P.A.,
Dr. Eric S. Fishman and Dr. Gerald T. Stashak
1411 N. Flagler Drive, #8800
West Palm Beach, FL 33401

Re: Amended Letter Agreement/Settlement Offer

Dear Dr. Fishman & Dr. Stashak:

BELOW IS A CONFIDENTIAL SETTLEMENT OFFER FROM THE PROGRESSIVE ENTITIES. DO NOT DISCLOSE, PUBLICIZE, OR DISCUSS IN ANY WAY, THE AMOUNT OR OTHER TERMS OF THIS AGREEMENT WITH ANYONE OTHER THAN YOUR ACCOUNTANT.

In attempt to work out any difference with our co-counsel Larry Stewart and to alleviate any of his concerns regarding the Progressive settlement, we have informed Progressive we are unable to proceed forward without a specific amount being offered for the Bad Faith Case. Upon further negotiations with The Progressive Entities, we have received an offer to settle the claims raised in the action styled Drs. Fishman & Stashak, M.D., P.A. d/b/a Goldcoast Orthopedics, et al, now pending in the Circuit Court in and for Palm Beach County, Florida, Case No. CA 01-11649 (“the Bad Faith Case”). Progressive has offered $1.75 million dollars to settle this lawsuit brought by the plaintiffs' named therein. We believe this is a fair settlement and a good result for the reasons set forth below:

At the April 19, 2004 mediation conference our co-counsel Larry Stewart did not negotiate a separate number for just those 36 plaintiffs named in the Bad Faith Case. Rather, the negotiations centered entirely on attempting to resolve the potential claims of 496 healthcare providers. Several healthcare providers with the largest percentage of claims in the Bad Faith Case have since objected to this tactic and expressed the following valid concern: that by not negotiating an offer for just those participants in the Bad Faith Case, and instead negotiating a number for the entire universe of potential bad faith claims of all of the clients of Marks & Fleischer, Kane & Kane and Watson & Lentner, that this tactic diluted the value and settlement to those providers who have been participants since the inception of the litigation. Collectively, those providers refuse to allow any additional parties to be added to the Bad Faith Case. Beyond the diminished value of the case to the named plaintiffs, there is a concern that the Stewart Firm
was attempting to settle claims for healthcare providers who never met with, spoke to, or even heard of the Stewart Firm. Florida law is clear that a lawyer who seeks a contingent fee must have a written agreement for that client.

At the mediation, the Stewart Firm attempted to settle the entire universe of bad faith claims, despite the fact that they did not have written fee agreements for over 460 of the healthcare providers. At that time, Progressive offered $3.5 million to settle the universe. The universe of bad faith claims included: the 36 Providers named in the Bad Faith Case, as well as the potential bad faith claims of the approximately 460 healthcare providers represented in PIP benefits claims by the law firms of Marks & Fleischer, Kane & Kane and Watson & Lentner. The number of individual PIP claims for the universe of healthcare providers totaled approximately 2,400. What that means is that the $3.5 million was to be split between the 496 health care providers. Thus, an analysis of the $3.5 million offer yields approximately $875.00 per PIP claim for both those providers named in the Bad Faith Case and those providers who were not named. ($3,500,000.00 \times 0.60 \text{ (the other 40% is carved out for attorneys' fee owed by contract) } = $2,100,000.00 \div 2400 = 875.00).

While continuing to add plaintiffs may pressure Progressive to increase their settlement offer, this only serves to aggrandize the legal fees while diluting the recovery available for the group of plaintiffs as that group grows in size. Moreover, this would further complicate an already highly complex action. With this in mind we began our negotiations at the last offer of $3.5 million. The difference in the negotiations was that these settlement discussions were designed to resolve only the claims for the 36 healthcare providers named in the Bad Faith Case. After numerous settlement discussions, Progressive has offered $1.75 million to settle the pending and potential Bad Faith claims of the 36 Plaintiffs named in the Bad Faith Case. Rather than 496 providers splitting $3.5 million, we have convinced Progressive to offer $1.75 million to the named Plaintiffs of which you are one. That settlement would be distributed between the 36 named Plaintiffs on a pro rata share in proportion to the number of claims each of the named plaintiffs had. However, since each provider had previously been served with a formal proposal for settlement/offer of judgment by Progressive, we feel that each provider should be guaranteed at least that amount. What we propose, is that each named plaintiff be given the amount of the proposal for settlement/offer of judgment previously offered and then the remainder of the money will be distributed based on the number of cases each named provider has. While we feel that this formula is the fairest means of distribution, this formula of course must be agreed to by all the named parties.

Therefore after the total amount of proposals for settlement/offers of judgement are taken out of this settlement and given to each healthcare provider, the settlement would yield $1,145.00 per claim for the 36 Plaintiffs in the Bad Faith Case. ($1,750,000.00 \times 0.60 \text{ (40% or $700,000.00 by contract goes to the attorneys) } = $1,050,000.00 - $242,800.00 \text{ (total proposals for settlement/offers of judgment) } = $ \frac{807,200.00}{704} = \frac{\text{total claims}}{\text{total claims}} = $1,145.00 \text{ per claim. Under this formula the amount due you under this settlement is } 486,520.00.

Pursuant to the Contract of Employment in the Bad Faith Case, as compensation for their professional services, you have agreed to pay the attorneys 40% out of the gross recovery or
$700,000.00. Of this amount, a division of the attorneys' fees between the attorneys will be made on the basis of time and effort expended by each attorney. This was estimated to be as follows: 60% to be shared between the firms of STEWART, TILGHMAN, FOX, AND BIANCHI, P.A., THE LAW OFFICES OF TODD STEWART, AND WILLIAM C. HEARON, P.A. (“the Stewart Firms”) and 40% to be shared by the law firms of MARKS AND FLEISCHER, P.A., WATSON AND LENTNER, AND KANE AND KANE (“the PIP Firms”). The amounts due the Stewart Firms and the PIP Firms will be disbursed from the proceeds of the settlement.

What is evident in the above analysis is that under the $3.5 million offer Stewart alludes to in his prior letter, you the provider would take less but his fee would double. We feel it is important to maximize your recovery and we feel that Progressive’s current offer of $1,750,000.00 does so.

If you choose to accept this settlement, we agree to indemnify defend and hold you harmless from any claims, demands or actions and any losses, damages, costs and/or liabilities resulting therefrom, which counsel of record in the Bad Faith Case, including Larry Stewart, Esquire, Stewart, Tilghman, Fox & Bianchi, P.A., Todd S. Stewart, P.A., William C. Hearon, P.A., may assert for attorneys’ fees and costs arising out of their prosecution of the Bad Faith Case and from any and all claims, demands or actions and any losses, damages, costs and/or liabilities resulting therefrom, by or on behalf of any other person by or with respect to any right or claim they may assert by reason of the above-described settlement in the Bad Faith Case.

This offer from The Progressive Entities supersedes the previous offer made to you on June 1, 2004. Should you choose to accept the proposed settlement of the Bad Faith Case, you will need to sign below. By signing below, you are agreeing to accept the terms as outlined above and authorizes the PIP Firms to take whatever steps necessary to effectuate the settlement and ensure that the obligations of the parties are fulfilled. This authorization includes, but is not limited to, discharging the Stewart Firms if needed and filing any necessary documents in the Bad Faith Case.

DARIN J. LENTNER

DR. GERALD T. STASHAK
ATTORNEY/CLIENT COMMUNICATION

FISHMAN AND STASHAK, M.D.' S., P.A.,
Dr. Eric S. Fishman and Dr. Gerald T. Stashak
1411 N. Flagler Drive, #8800
West Palm Beach, FL 33401
VIA FACSIMILE: (561) 799-0525

RE: AMENDED LETTER AGREEMENT/SETTLEMENT OFFER

Dear Dr. Stashak:

As we discussed, The Progressive Entities wish to resolve all of your PIP and related claims, including all pending lawsuits and all perfected, unfiled bad faith claims that our law firm has asserted, and all bad faith claims which our firm could perfect against The Progressive Entities since January 1, 2001, through May 17, 2004. In addition, we have negotiated with Progressive to resolve the action styled Drs. Fishman & Stashak, M.D., P.A. d/b/a Goldcoast Orthopaedics, et al, now pending in the Circuit Court in and for Palm Beach County, Florida, Case No. CA 01-11649 (“the Bad Faith Case”). Attached to this letter is the settlement offer regarding the resolution of the Bad Faith Case which is self-explanatory. In addition to the amounts owed for the resolution of the Bad Faith case, Progressive will pay all of the outstanding PIP benefits, interest and statutory attorneys fees due for any pending cases currently filed by the firms of Watson & Lentner, Marks and Fleischer, and Kane and Kane. As previously discussed, the total amount of benefits and interest due you are $115,178.00. Progressive becomes obligated to resolve and pay these underlying PIP claims upon the settlement and dismissal of the Bad Faith Case.

By signing below, you agree to accept the amounts indicated above in exchange for a general release of the outstanding PIP benefits, interest which you have against The Progressive Entities, for any pending cases currently filed by the firms of Watson & Lentner, Marks and Fleischer, and Kane and Kane.

DARIN J. LENTNER

DR. GERALD T. STASHAK

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$700,000.00. Of this amount, a division of the attorneys' fees between the attorneys will be made on the basis of time and effort expended by each attorney. This was estimated to be as follows:

60% to be shared between the firms of STEWART, TILGHMAN, FOX, AND BIANCHI, P.A., THE LAW OFFICES OF TODD STEWART, AND WILLIAM C. HEARON, P.A. ("the Stewart Firms") and 40% to be shared by the law firms of MARKS AND PFEISCHER, P.A., WATSON AND LENTNER, AND KANE AND KANE ("the PIP Firms"). The amounts due the Stewart Firms and the PIP Firms will be disbursed from the proceeds of the settlement.

What is evident in the above analysis is that under the $3.5 million offer Stewart alludes to in his prior letter, you the provider would take less but his fee would double. We feel it is important to maximize your recovery and we feel that Progressive's current offer of $1,750,000.00 does so.

If you choose to accept this settlement, we agree to indemnify defend and hold you harmless from any claims, demands or actions and any losses, damages, costs and/or liabilities resulting therefrom, which counsel of record in the Bad Faith Case, including Larry Stewart, Esquire, Stewart, Tilghman, Fox & Bianchi, P.A., Todd S. Stewart, P.A., William C. Herson, P.A., may assert for attorneys' fees and costs arising out of their prosecution of the Bad Faith Case and from any and all claims, demands or actions and any losses, damages, costs and/or liabilities resulting therefrom, by or on behalf of any other person by or with respect to any right or claim they may assert by reason of the above-described settlement in the Bad Faith Case.

This offer from The Progressive Entities supersedes the previous offer made to you on June 1, 2004. Should you choose to accept the proposed settlement of the Bad Faith Case, you will need to sign below. By signing below, you are agreeing to accept the terms as outlined above and authorizes the PIP Firms to take whatever steps necessary to effectuate the settlement and ensure that the obligations of the parties are fulfilled. This authorization includes, but is not limited to, discharging the Stewart Firms if needed and filing any necessary documents in the Bad Faith Case.

DARIN J. LENTNER

DR. GERALD T. STASHAK
GENERAL RELEASE AND ASSIGNMENT

KNOW ALL MEN BY THESE PRESENTS that Fishman and Stashak, M.D.'s, P.A., heirs heirs, legal representatives, successors, assigns, affiliates, owners, partners, members, shareholders, employees and independent contractors engaged to render health care services to patients of Relator, hereinafter referred to as "Relator," for good and valuable consideration, receipt of which is hereby acknowledged, has released, acquitted, and discharged, and by these presents does hereby release, acquit, and forever discharge The Progressive Corporation, Progressive Casualty Insurance Company, Progressive Express Insurance Company, Progressive Consumers Insurance Company, Progressive Bayside Insurance Company, Progressive Southeastern Insurance Company, Progressive Auto Pro Insurance Company and National Continental Insurance Company, (collectively "The Progressive Entities"), all of their parent corporations, subsidiaries, and affiliates, including all officers, directors, and employees, past and present, any reinsurer or insurer thereof, their respective administrators, successors, assigns, employees, agents, attorneys, officers, directors, and representatives, hereinafter referred to as "Releasees," of and from any and all claims and causes of action raised or which could have been raised in the matters identified on Exhibit I hereto, including but not limited to all claims for Personal Injury Protection ("PIP") benefits and/or Medical Payment ("MedPay") benefits, compensatory, punitive and consequential damages, penalties, bad faith (both statutory and common law), unfair claims handling practices (whether arising out of the investigation, claims-handling, adjusting and/or defense of claims), tort claims, contract claims, common law causes of action and statutory claims, pre- and/or post-judgment interest, attorneys' fees and costs and all claims, suits and causes of action arising out of any disqualification proceedings against Relator's counsel, including but not limited to all claims for attorneys' fees and costs incurred by or on behalf of Relator's counsel.

Relator further expressly releases The Progressive Entities from any and all claims and causes of action for statutory and/or common law bad faith and unfair claims handling practices, whether arising out of the investigation, claims-handling, adjusting and/or defense of claims, existing, arising or occurring on or before the date of this General Release and Assignment.

Relator and Releasees further agree that this General Release and Assignment is STRICTLY CONFIDENTIAL both as to its existence and terms and shall not be disclosed, except for purposes of enforcement of the terms herein or as required by law, either directly or indirectly by either party without the prior written consent of the other. This General Release and Assignment shall not be offered or received in evidence in any proceeding for any purpose whatsoever except for purposes of enforcement of the specific terms herein.

Relator hereby irrevocably transfers and assigns to Releasees, all of Relator's right, title and interest in and to any actions, causes of action, damages, suits, claims and demands, whether in law or in equity, which Relator has or may have against Beech
Street Corporation and ADP, their parents, subsidiaries and affiliates, arising out of the claims identified in Exhibit 1.

Releasor represents that Releasor has not assigned, transferred or conveyed any of the claims or causes of action governed by this General Release and Assignment to any third party.

Releasor and Releesees understand and agree that the payment made herein is not to be construed as an admission of any liability. Instead, the consideration being paid hereunder for this General Release and Assignment is being given in order to avoid litigation and the uncertainties stemming from litigation.

This General Release and Assignment shall in all respects be governed by and interpreted in accordance with the laws of the State of Florida.

All parties to this General Release and Assignment are to bear their own respective costs and attorneys’ fees.

Releasor hereby acknowledges that Releasor understands and accepts all of the terms and conditions herein and that Releasor has done so with the advice of counsel.

IN WITNESS WHEREOF, I have hereunto set my hand and seal this ___ day of ______________, 2004, in the County of _____, State of ___

[Signature]

By: Dr. Gerald Stasbak
It is: Vice President

STATE OF FLORIDA)

COUNTY OF ________________

I HEREBY CERTIFY that on this day, before me, an officer duly authorized in the State aforesaid and in the County aforesaid to take acknowledgements, personally appeared ____________________________, to me known to be the person described in, or has produced identification in the nature of ____________________________, and who
executed the foregoing instrument and who acknowledged before me that she executed the same.

WITNESS my hand and seal in the County and State last aforesaid this _____ day of __________________________ 2004.

__________________________
Notary Public

My Commission Expires:
(Print, Type or Stamp Commissioned Name of Notary Public)

IN WITNESS WHEREOF, I have hereunto set my hand and seal this _____ day of __________________________ 2004, in the County of ________, State of

__________________________
By:
Counsel for Releasor
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Tab 20
resolved in one negotiation. Right?

A No, sir. I was not.

Q And --

A I was contemplating that all of the
claims could be resolved with Progressive and that
the bad faith claims would be governed by this
contract and that the PIP claims would not be
governed by this contract.

Q You don't remember having any verbal
conversations with Laura Watson about that
contingency fee agreement, do you?

A No specific conversations.

Q And you don't know -- you're not sure
that Laura Watson came with the other PIP lawyers to
your office in that first meeting, you just think
she was there. Right?

A That's my recollection.

Q That was your testimony. Right?

A If you have a reference there, I'll be
glad to look at it. But it's my recollection that
she was there at the first meeting.

Q But you're not sure?

A Well, can I picture her in my mind at
that meeting as I sit here right now? No, I can't.
But I am fairly certain, and I think that she was
present at that meeting.

Q. I asked you on Page 23 at Line 8, "Are you -- you're not sure?"

And you said, "I think it was a personal meeting."

Then I said, "You're not sure."

And you said, "I think it was a personal meeting."

So you're not sure. Right? You just think it was a personal meeting?

A. Isn't that what I just said?

Q. That's not what you said on direct, though.

THE CHAIR: Just ask your next question.

Ask your next question.

MR. SWEETAPPLE: Yes, Your Honor, I'll do that.

BY MR. SWEETAPPLE:

Q. You can't -- at that first meeting, you can't remember what one person -- specifically what one person said at the first meeting different from any of the others, can you?

A. No, sir. They were all talking and nobody disagreed with anything that was being said. So I took it as what was being said was being said
as a group to me.

Q And you can't recall specifically anything that Judge Watson said at that meeting?

A No -- specific words, no, sir.

Q But you do recall that the reason they wanted to bring the bad faith claim was to stop the business practice that Progressive was engaging in. Right?

A Yes, sir.

Q You're the one that wanted to try to turn it into some huge class action. Right?

A No, sir.

Q And you don't recall any specific discussion with Judge Watson regarding whether or not her clients had been consulted and were hiring you to represent them all in a bad faith case at that first meeting. Right?

A In those specific words, no, sir.

Q That topic never came up. Right? In the first meeting with her?

A I don't remember that topic coming up. But that was the premise they were there for. They said they represented hundreds of clients with thousands of claims that wanted to sue bad -- sue Progressive for bad faith.
Q Then there was a second meeting at your office. You've testified about that on direct.

Right?

A Yes, sir.

Q Okay. And you think there was a second meeting with the PIP lawyers, but you're not sure.

Right?

A I know there was a second meeting.

Q And you're not sure if there was a second meeting with Laura Watson, though, are you?

A Sitting here now, I can't picture her being present at the second meeting, but I thought she was.

Q In fact, you testified on Page 35 at Line 13, when I said, "Do you, as a result of litigation or any other matter, have any other recollection, as you sit here today, that there was, in fact, the second meeting that took place with Laura Watson after the first meeting where your representation was discussed?"

Answer, "I told you I think there was a second meeting, but I'm not sure."

That's your testimony. Right?

A Yes.

Q And at -- at this -- at these meetings,
Tab 21
employment by the Plaintiffs; the bad faith claims imposed significant responsibilities on
the Plaintiffs; their fee was contingent on the outcome; and they expended over 1,200
hours before being discharged without cause. The Plaintiffs' work resulted in favorable
rulings which opened the door to settlement when Defendants had been unable to make
any progress in that regard on their own. In addition, the evidence establishes that
Defendant law firms unfairly deprived Plaintiffs of a fee by ignoring multiple conflicts of
interest, misrepresenting the terms of the settlement to the Plaintiffs, misrepresenting the
terms of the settlement to the clients to obtain the releases to trigger payment,
manipulating the allocation of the settlement to obtain most of it as attorneys' fees, and by
discharging Plaintiffs for no reason. Based upon the evidence, the Court, therefore, finds
that the Plaintiffs were 50% responsible for the result achieved. Nevertheless, an award of
50% is a maximum award and does not consider the services provided by the Defendant
law firms in representation of the universe of PIP claimants. In this context, the Court
accepts the testimony of Larry Stewart as to the reasonable value of the services
performed by the WATSON firm and the KANE & KANE firm. Based upon that testimony,
the Court finds that a reasonable fee earned by the WATSON firm for the PIP cases would
be $1,541,000.00 (more than 50%) and a reasonable fee for KANE & KANE for the PIP
cases is $1,912,500.00 (less than 50%). Marks & Fleischer, P.A. received $4,380,000.00 in
the reallocated settlement of which $4,000,000.00 went to attorney's fees. Excluding the
Goldcoast allocation in the Amended MOU, KANE & KANE settled their client's PIP claims
for $5,250,000.00, from which they received $4,000,000.00 in attorney's fees and the
WATSON firm received $3,075,000.00 in settlement of which $2,522,792.00 went to
attorney's fees. Therefore, based upon the above and after considering all relevant
circumstances, the totality of the circumstances, and the factors under Rule of
Professional Conduct 4-1.5(b), the Court finds a reasonable fee to the Plaintiffs on behalf of the WATSON clients is $981,792.00 ($2,522,792.00 less $1,541,000.00) and a reasonable fee on behalf of the KANE & KANE clients is $2,000,000.00 (50% of $4,000,000.00).

Nevertheless, the Plaintiffs seek "benefit of the bargain damages in its claims against the Defendant law firms. In essence, they contend they are entitled to what they would have received had they been allowed to continue to handle the bad faith litigation. In this context, they introduced expert testimony as to the "value" of the bad faith litigation. Even assuming that "benefit of the bargain damages" are allowable under the theories pled, such damages may only be considered when the evidence is reasonably certain. The evidence cannot be so vague as to cast virtually no light upon the issue. See e.g., Meadows v. English, Machaughan & O'Brien, P.A., 909 So.2d 926 (Fla. 4th DCA 2005).

In this case, the Court finds that the "expert's opinion" as to the alleged "settlement value" or "value" is totally speculative and not probative. The Court finds such testimony is predicated upon unknown and unquantifiable facts. See, Fla. Stat. 90.702.

The Plaintiffs also seek a constructive trust. The elements of constructive trust are: (1) a promise, express or implied; (2) a transfer of the property and reliance thereupon; (3) a confidential relation; and (4) unjust enrichment. See e.g., Provence v. Palm Beach Taverns, Inc., 676 So.2d 1022, 1024 (Fla. 4th DCA 1996); Abele v. Sawyer, 750 So.2d 70 (Fla. 4th DCA 1999). Not only has this Court previously ruled that a fiduciary relationship cannot be found in the instant case for reasons set forth in Beck v. Wecht, 28 Cal. 4th 289 (Cal. 2002), the Plaintiffs have failed to establish the requirements of a constructive trust under the facts of this case.
The Plaintiffs also suggest that DARIN LENTNER and LAURA WATSON should be individually responsible for the quantum meruit/unjust enrichment fees. First, there was no evidence presented as to the value, if any, individually conferred upon either. It was undisputed that LENTNER was an employee of the WATSON law firm and that WATSON was the shareholder/president of LAURA M. WATSON, P.A. and LAURA M. WATSON, P.A. was the party to all the contracts. There was no evidence that DARIN LENTNER or LAURA WATSON was ever a party to any such agreements. It is also undisputed that any and all payments related to the settlement were made to the law firm of LAURA M. WATSON, P.A. d/b/a WATSON & LENTNER and all the attorney’s fees were paid to the law firm. Generally, when a corporation is allegedly unjustly enriched, an action against individual directors, officers or shareholders will not lie simply because the assets can ultimately be traced from the corporation to the individual as long as the corporation retains its legal existence. See e.g., United States v. Dean Van Lines, 531 F.2d 289, 292-93 (5th Cir. 1976).

Former Defendants Marks & Fleischer settled the Plaintiffs’ claims by a voluntary payment to the Plaintiffs and are no longer a party to this litigation.

Based upon the foregoing, it is

CONSIDERED, ORDERED AND ADJUDGED as follows:

1. In order to state a cause for fraud in the inducement, Plaintiffs were required to prove: (1) a false statement of a material fact; (2) knowledge of the falsity; (3) Defendants’ intent that representation induced Plaintiffs to rely upon and act upon it and (4) injury to Plaintiffs and justify reliance upon the representation. Samuels v. King Motor Company of Ft. Lauderdale, 782 So.2d 489 (Fla. 4th DCA 2001). Based upon the findings of facts aforesaid, the Court finds for the Defendants against the Plaintiffs on the claims for
fraud in the inducement and the Defendants shall go hence without day in regard to said claims. Since the fraud in the inducement claim is the only claim which would support a claim for punitive damages, the Plaintiffs' claim for punitive damages also must fail.

2. Final Judgment be and the same is hereby entered in favor of the Plaintiffs, STEWART TILGHMAN FOX & BIANCHI, P.A., WILLIAM C. HEARON, P.A. and TODD S. STEWART, P.A., and against LAURA M. WATSON, P.A., d/b/a WATSON & LENTNER, in the amount of $981,792.00, for which let execution issue.

3. Final Judgment be and the same is hereby entered in favor of the Plaintiffs, STEWART TILGHMAN FOX & BIANCHI, P.A., WILLIAM C. HEARON, P.A. and TODD S. STEWART, P.A., and against the Defendants, KANE & KANE, HARLEY N. KANE and CHARLES J. KANE, jointly and severally, in the amount of $2,000,000.00, for which let execution issue.

4. Plaintiffs are also entitled to pre-judgment interest on their award. Since the Florida Supreme Court's decision in Argonaut Ins. Co. v. May Plumbing Co., 474 So.2d 212, 215 (Fla. 1985), whenever a verdict or judgment has the effect of fixing an otherwise unliquidated pecuniary loss as of a prior date, the plaintiff is entitled to an award of prejudgment interest. See e.g., Mercedes-Benz of North America, Inc. v. Florescue & Andrews Investments, Inc., 653 So.2d 1067 (Fla. 4th DCA 1995) ("an award of prejudgment interest is nondiscretionary once the amount of loss is ascertained") And that includes for unjust enrichment, e.g., Burr v. Norris, 667 So.2d 424, 426 (Fla. 2d DCA 1996); and for quantum meruit. E.g., Rohrback v. Dauer, 528 So.2d 1362, 1364 (Fla. 3d DCA 1988). The Court's award bears interest at the statutory rate of 7% from June 22, 2004, the date the settlement proceeds were received by the Defendants, through the end of 2005, 9% during the year 2006, and 11% thereafter.
5. Based upon the above findings of fact, the Plaintiffs' claim for Constructive Trust is hereby denied.

6. All other claims not otherwise set forth above are hereby denied.

7. A copy of this opinion is being forwarded to The Florida Bar for action, if any, in regard to this Court's finding of violations of Rules of Professional Conduct 4-1.5(f)(1) and (5)4-1.7(a)(b) and (c), 4-1.8 and 4-1.8(g) and 4-1.4.

DONE AND ORDERED this ___ day of April, 2008, in and for Palm Beach County, Florida.

APR 24 2008

DAVID F. CROW
CIRCUIT COURT JUDGE

Copy furnished:
CHRISTIAN D. SEARCY, ESQUIRE, P.O. Drawer 3626, West Palm Beach, FL 33409
LARRY S. STEWART, ESQUIRE, One S. E. Third Ave., Suite 3000, Miami, FL 33131
WILLIAM C. HEARON, ESQUIRE, One S.E. Third Ave., Suite 3000, Miami, FL 33130
IRWIN R. GILBERT, ESQUIRE, 11382 Prosperity Gardens, Suite 222-223F, Palm Beach Gardens, FL 33410
PETER R. GOLDMAN, ESQUIRE, P.O. Box 14010, Ft. Lauderdale, FL 33302
JOHN P. SEILER, ESQUIRE, 2850 North Andrews Ave., Wilton Manors, FL 33311
THE FLORIDA BAR, Department of Lawyer Regulation, 650 Apalachee Parkway, Tallahassee, FL 32399-2300
Tab 22
BEFORE THE FLORIDA JUDICIAL QUALIFICATIONS COMMISSION
STATE OF FLORIDA

INQUIRY CONCERNING A
JUDGE No. 12-613 RE: JUDGE
LAURA M. WATSON

MOTION FOR EXLARGEMENT OF TIME TO FILE RULE 25 AFFIDAVITS TO DISQUALIFY MEMBERS OF THE HEARING PANEL AND DEMAND FOR DISCLOSURES

Pursuant to Fla. R. Civ. P. 1.090(b) and Rule 12 and 25, Rules of the JQC, Judge Laura M. Watson requests that the time to file affidavits to disqualify members of the Hearing Panel be enlarged until 15 days after the Hearing Panel discloses their personal relationships, professional associations, professional activities, Florida Bar activities, or business interests, with the list of persons who are potential witnesses in this cause or who have an interest in this case.

The purpose of this request is to ensure an impartial Hearing Panel as a finder of fact. The public's belief in ethical and impartial judicial panels cannot be overstated and is fundamental to a public sense of fairness and justice and an essential element of due process guaranteed by the Constitutions of the State of Florida and of the United States of America. Without a disclosure of the
relationships between the members of the Hearing Panel, the Investigative Panel, the Special Counsel, and the potential witnesses and interested parties, a financial or regulatory nexus between the JQC and the private persons acting on the Commission's behalf cannot be determined. Some of the members of the Commission and those acting on behalf of the Commission may be private persons, but they have chosen to assume a traditionally public function and therefore are required to provide procedural due process to the accused to make certain that the government body and the private persons do not erroneously deprive a person of life, liberty, or a property interest that is constitutionally protected. The disclosures requested in this motion will allow each member to either self-recuse, or disclose the information requested.

Further, Rule 25 requires that a judge against whom formal proceedings have been instituted, has 15 days to "file with the hearing panel an affidavit that the judge fears the judge will not receive a fair hearing before the Hearing Panel on the charges because of the prejudice of one or more members of the Hearing Panel against the judge..." FJQCR 25 (a). Though the formal charges were brought by the JQC on July 24, 2013, and despite demand to be advised of the members that comprised the Hearing Panel, Special Counsel did not disclose the Hearing Panel members until August 2, 2013. (Exhibit "A").
The undersigned has been advised that the Hearing Panel includes the following persons:

- Hon. Kerry I. Evander, Chair
- Hon. Robert Morris
- Alan Bookman, Esq.
- Mayanne Downs, Esq.
- Jerome S. Osteryoung, PH.D
- Harry R. Duncanson

Canon 3E of the Code of Judicial Conduct governs the disqualification of a judge. The Canon places *the burden on the judge* “to disclose on the record information that the judge believes the parties or their lawyers might consider relevant to the question of disqualification, even if the judge believes there is no real basis for disqualification…” Commentary Canon 3E (1).

Moreover, the Code of Judicial Conduct applies not only to justices of the Supreme Court, district courts of appeal, circuit courts, and county courts, but it *applies to anyone* whether or not a lawyer who is acting in the capacity of a judge. The Application Section of the Code (which appears at the end of the Code) provides:

Anyone, whether or not a lawyer, who performs judicial functions, including but not limited to a
magistrate, court commissioner, special master, general master, domestic relations commissioner, child support hearing officer, or judge of compensation claims, shall, while performing judicial functions, conform with Canons 1, 2A, and 3, and as such other provisions of this Code that might reasonably be applicable depending on the nature of the judicial function performed. Any judge responsible for a person who performs a judicial function should require compliance with the applicable provisions of this Code.

Thus, the duty to disclose potential conflicts of interest, established personal relationships, professional associations, or business relationships belongs to each member of the Hearing Panel and the judges on the Panel are responsible to ensure that those who are performing a judicial function comply with this Code.

"The judicial duties of a judge take precedence over all the judge’s other activity." Canon 3 A. The fact that the district court of appellate judges are serving on the JQC- and not in their capacity on the court of appeals- is of no moment. The Judicial Qualifications Commission’s website states that the JQC is divided into two panels and that the hearing panel “acts much like a panel of judges reviewing the case...” www.floridasupremecourt.org/pub_info/jqc.shtml.

Even the most cursory search of Alan Bookman, Esq., one of the designated Hearing Panel members, and the Special Counsel Miles McGrane, reveals an
established professional and business relationship, and most likely an established personal relationship that creates the appearance of impropriety. Since 2004 they have both served:

- as Past Presidents of the Florida Bar
- as Trustees of the Florida Supreme Court Historical Society
- on the Florida Bar Board of Governors
- In 2005, the Board of Governors led by Bookman appointed McGrane to the JQC
- both have been officers and board members of The Florida Bar Foundation
- both participated in special projects such as the *Diversity In Legal Profession Symposium Report*
- In 2006 both wrote “to 45,000 lawyers across the state endorsing Republican Charlie Crist for governor as a ‘friend of lawyers’ and a ‘staunch defender of the independence of the judiciary.’” *45,000 Lawyers Get e-mails Backing Crist*, by Steve Bousquet.

At a minimum, one can infer that Bookman and McGrane have an established professional association and business relationship, and most likely have an established personal relationship that creates the appearance of impropriety.

This presents the very problem recently addressed in the Ana Gardiner and
Howard Scheinberg case, wherein the close relationship between a sitting judge and the prosecutor required removal of the judge and both attorneys were suspended from the practice of law. It is a fundamental right of a litigant to receive a fair hearing and it is incumbent in our system that judges avoid official acts that create the appearance of bias or impropriety.

As stated above, the Canons place *the burden on the judge* - in the instant case the Hearing Panel and their Special Counsel - “to disclose on the record information that the judge believes the parties or their lawyers might consider relevant to the question of disqualification, even if the judge believes there is no real basis for disqualification…” Commentary Canon 3E(1).

WHEREFORE, based upon the forgoing, the undersigned respectfully requests:

1. Pursuant to Rule 12(b), the following disclosures are demanded:

   The names and addresses of all witnesses whose testimony the Special Counsel expects to offer at the hearing, together with copies of all written statements and transcripts of testimony of such witnesses in the possession of the counsel or the Investigative Panel which are relevant to the subject matter of the hearing and which have not previously been furnished, except those documents confidential under the Constitution of the State.
2. The 15 day time period established by Rule 25 be tolled and not begin until such time that each member of the Hearing Panel and the Special Counsel make their record disclosures of any personal relationships, professional associations, professional activities, Florida Bar activities, or business interests, with any party including other members of the Hearing or Investigative Panels and the list of potential witnesses and interested parties in this matter. See Exhibit B.1 and B.2, Party’s Certificate of Interested Persons and Parties.

Respectfully submitted,

The Honorable Laura M. Watson
Circuit Judge, 17th Judicial Circuit
Room 1005B
201 SE 6th Street
Fort Lauderdale, Florida 33301
Tel.: (954) 831-6907
jwatson@17th.flcourts.org

/s/ Laura M. Watson
LAURA M. WATSON
Florida Bar No.: 476330

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a true and correct copy of the foregoing was furnished by email to: Miles A. McGrane, III, Esq. miles@mcgranelaw.com The McGrane Law Firm, Special Counsel, One Datran Center, Ste. 1500, 9100 South
Dadeland Boulevard, Miami, Florida 333156; Michael L. Schneider, Esq.

mschneider@floridajqc.com General Counsel, 1110 Thomasville Road, Tallahassee, Florida 32303, this 25th day of August 2013.

Pursuant to FJQCR Rule 10(b) a copy is furnished by email to: The Honorable Kerry L. Evander, evanderk@flcourts.org, Chair of the JQC, 300 S. Beach Street, Daytona Beach, FL 32114.

/s/ Laura M. Watson
LAURA M. WATSON
--- Forwarded message ---
From: Miles A. McGrane <miles@mcgranlaw.com>
Date: Fri, Aug 2, 2013 at 12:29 PM
Subject: Inquiry Concerning a Judge No. 12-613
To: "tucker@17th.lfcourts.org" <tucker@17th.lfcourts.org>

Hearing panel:

Judge Kerry Evander, Chair
Judge Robert Morris
Alan Bookman, Esq.
Mayanne Downs, Esq.
Dr. Jerry Osteryoung
Harry Duncanson

Miles McGrane
The McGrane Law Firm
9100 South Dadeland Blvd.
Suite 1500
Miami, Florida 33156
305.374.0003 office
305.213.4812 cell

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From: Michael Schneider <mschneider@floridajqc.com>
Date: July 31, 2013, 4:52:14 PM EDT
To: Laura Watson <jwatson@17th.lfcourts.org>
Cc: Miles McGrane <miles@mcgranlaw.com>
Subject: Re: Hearing Panel

I have asked the Chair and I am awaiting a response.

On Jul 31, 2013, at 12:07 PM, Laura Watson wrote:

Gentlemen:

As you know, Rule 25 gives a judge 15 days after service of the Notice of Formal Charges to file an affidavit to disqualify a member of the hearing panel. Please advise me who will be on the hearing panel.

Thank you,

Laura Watson

Exhibit "A"
# CERTIFICATE OF INTERESTED PERSONS

<table>
<thead>
<tr>
<th>Christian D. Searcy, Esquire</th>
<th>Peter R. Goldman, Esquire</th>
</tr>
</thead>
<tbody>
<tr>
<td>F. Gregory Barnhart, Esquire</td>
<td>Broad and Cassel</td>
</tr>
<tr>
<td>Searcy Denney Scarola Barnhart &amp; Shipley, P.A.</td>
<td></td>
</tr>
<tr>
<td>Larry S. Stewart, Esquire</td>
<td>John P. Seiler, Esquire</td>
</tr>
<tr>
<td>James B. Tilghman, Esq.</td>
<td>Richard J. Zaden, Esquire</td>
</tr>
<tr>
<td>David W. Bianchi, Esq.</td>
<td>Law Office of Seiler, Sauter</td>
</tr>
<tr>
<td>Stewart Tilghman Fox &amp; Bianci, P.A.</td>
<td>Zaden, Rimes &amp; Weihe</td>
</tr>
<tr>
<td>William C. Hearon, Esquire</td>
<td>Irwin R. Gilbert, Esquire</td>
</tr>
<tr>
<td>William C. Hearon, P.A.</td>
<td>Gilbert, Eavenson &amp; Kairalla</td>
</tr>
<tr>
<td>Philip M. Burlington, Esquire</td>
<td>John R. Beranek, Esquire</td>
</tr>
<tr>
<td>Burlington &amp; Rockenbach, P.A.</td>
<td>Ausley &amp; McMullen</td>
</tr>
<tr>
<td>Hon. David Crow</td>
<td>Miles A. McGrane, III, Esquire</td>
</tr>
<tr>
<td>Hon. Paul L. Backman</td>
<td>The McGrane Law Firm</td>
</tr>
<tr>
<td>Hon. J. Preston Silvernail</td>
<td>Todd S. Stewart, Esquire</td>
</tr>
<tr>
<td>Steven R. Maxwell, ED.D.</td>
<td>John G. (Jay) White, Esquire</td>
</tr>
<tr>
<td>Hon. Thomas B. Freeman</td>
<td>Marcia Bour</td>
</tr>
<tr>
<td>Hon. James A. Ruth</td>
<td>Ricardo (Rick) Morales</td>
</tr>
<tr>
<td>Shirlee P. Bowne</td>
<td>Alan Anthony Pascal, Esquire</td>
</tr>
</tbody>
</table>

**EXHIBIT B.1**

1
Ghenete Elaine Wright Muir, Esquire
Elizabeth Walker Finizio, Esquire
Judith Levine, Esquire
Jane Hill Quinn
Julio Gonzalez, Esquire
Judith Stern
Judith Stern Consulting, Inc.
Duke of Earle
Andre Eggelletion
Cherine Smith Valbrun, Esquire
Jennifer C. Erdelyi, Esquire
Mindy Elizabeth Jones, Esquire
Scott Jason Weiselberg, Esquire
Anthony Brunson
Strategic Message Design Group
Sharpton, Brunson & Company, P.A.
Helen Hinton
Dr. Susan Davis

EXHIBIT B.2
Tab 22
A
BEFORE THE FLORIDA JUDICIAL QUALIFICATIONS COMMISSION
STATE OF FLORIDA

INQUIRY CONCERNING A JUDGE No. 12-613
RE: JUDGE LAURA M. WATSON

MOTION AND SUGGESTION TO DISQUALIFY ALAN BOOKMAN, ESQ.
AND MAYANNE DOWNS, ESQ. OF THE JUDICIAL QUALIFICATIONS
COMMISSION HEARING PANEL AND SUPPORTING

Pursuant to Rule 25 of the FJQCR, Judge Laura M. Watson files this Motion
and Suggestion to Disqualify Hearing Panel members Alan Bookman, Esq.
(“Bookman”) and Mayanne Downs, Esq. (“Downs”) of the JQC with Judge
Watson’s affidavit and other supporting affidavits pursuant to Rule 25 of the
Florida Judicial Qualifications Commission Rules, and Rule 2.330 of the Florida
Rules of Judicial Administration, Canon 3E of the Code of Judicial Conduct, and
Judge Watson’s fundamental Florida and federal constitutional due process rights
to a hearing before a fair and impartial panel. On August 30, 2013 Counsel for the
Hearing Panel advised Judge Watson of each Panel members’ disclosures and this
motion is timely filed in accordance with the Order on Status Conference. The
grounds supporting this motion are set forth below:
Notwithstanding the demonstrably false allegations of conduct against Judge Watson and Watson's law firm from over 10 years ago that are contained in the Notice of Formal Charges, a circuit court judge is a constitutional officer, duly elected, and entitled to the constitutional guarantees of substantive and procedural due process and equal treatment under the law that ultimately require dismissal of these proceeding under the circumstances.

The Rules of the JQC provide for disqualification of a JQC Hearing Panel member whose impartiality may be questioned whenever a "judge fears the judge will not receive a fair hearing before the Hearing Panel on the charges because of the prejudice of one or more members of the Hearing Panel against the judge...and the facts stated as the basis for making the affidavit shall be supported in substance by affidavit of at least two reputable citizens of the State of Florida not kin to the judge or the judges attorney..." Rule 25 (a), FJQCR. Upon the filing of the appropriate affidavits the motion will be granted.

In addition, the judge may "by affidavit, suggest the disqualification of a member or members of the Commission unsupported by two citizens, but in such event the determination of the matter of disqualification shall be by majority vote of the panel having jurisdiction unless the person sought to be disqualified
voluntarily recuses himself.” Rule 25 (d), FJQCR. Previously, Judge Watson requested the Hearing Panel disclose their personal relationships, professional associations, professional activities, Florida Bar activities, or business interests, with the list of persons who are potential witnesses in this cause or who have an interest in this case. Without explanation or citation to legal authority, The Honorable Kerry Evander did not require such disclosures but ordered the Hearing Panel to state whether they are required to disqualify themselves within 5 days of receiving Special Counsel’s proposed witness list.

The ruling by Judge Evander violates the fundamental due process guarantees of the Florida and federal constitutional rights to a hearing before a fair and impartial panel. Predictably, none of the panel members believed they were required to disqualify themselves. Judge Evander’s ruling not requiring the appropriate disclosures also ignores the dictates of The Code of Judicial Conduct. Judge Watson is cognizant that the Constitution permits the JQC to adopt its own rules, but these rules cannot limit the guarantees given by state and federal constitution. The fact that Rule 25 has additional requirements to disqualify a panel member in excess of those set forth in the Rules of Judicial Administration and The Code of Judicial Conduct, which do not serve any rational basis is itself a limitation on the right to a fair and impartial hearing.
With the utmost respect to Judge Evander, the Code of Judicial Conduct does apply to the JQC. It applies not only to justices of the Supreme Court, district courts of appeal, circuit courts, and county courts, but it *applies to anyone* whether or not a lawyer who is acting in the capacity of a judge. The Application Section of the Code (which appears at the end of the Code) provides:

Anyone, whether or not a lawyer, who performs judicial functions, including but not limited to a magistrate, court commissioner, special master, general master, domestic relations commissioner, child support hearing officer, or judge of compensation claims, shall, while performing judicial functions, conform with Canons 1, 2A, and 3, and as such other provisions of this Code that might reasonably be applicable depending on the nature of the judicial function performed.

Any judge responsible for a person who performs a judicial function should require compliance with the applicable provisions of this Code.

The Canon 3E of the Code of Judicial Conduct governs the disqualification of a judge. The Canon places *the burden on the judge* "to disclose on the record information that the judge believes the parties or their lawyers might consider relevant to the question of disqualification, even if the judge believes there is no real basis for disqualification..." Commentary Canon 3E (1). Judge Evander’s ruling does not follow this requirement but only requires the panel members to
state if there was any legal reason that they should be disqualified.

The duty to disclose potential conflicts of interest, established personal relationships, professional associations, or business relationships belongs to each member of the Hearing Panel, not to the accused judge. “The judicial duties of a judge take precedence over all the judge’s other activity.” Canon 3 A. The fact that the district court of appellate judges are serving on the JQC- and not in their capacity on the court of appeals- is of no moment. The Judicial Qualifications Commission’s website states that the JQC is divided into two panels and that the hearing panel “acts much like a panel of judges reviewing the case...” www.floridasupremecourt.org/pub_info/jqc.shtml.

As stated above, the Canons place the burden on the judge. Yet only one member disclosed any relationships at all. Such conduct in and of itself calls the impartiality of some of the members into question. The purpose of the Code is to ensure an impartial Hearing Panel as a finder of fact. The public’s belief in ethical and impartial judicial panels cannot be overstated and is fundamental to a public sense of fairness and justice and an essential element of due process guaranteed by the Constitutions of the State of Florida and of the United States of America. A disclosure of the relationships between the members of the Hearing Panel, the Investigative Panel, the Special Counsel, and the potential witnesses and interested
parties, should be required so that a financial or regulatory nexus between the JQC and the private persons acting on the Commission’s behalf can be determined to the full extent. Some of the members of the Commission and those acting on behalf of the Commission may be private persons, but they have chosen to assume a traditionally public function and therefore are required to provide procedural due process to the accused to make certain that the government body and the private persons do not erroneously deprive a person of life, liberty, or a property interest that is constitutionally protected.

Judge Watson fears that Bookman and Downs will not hear proceedings with an open mind and that they have a personal bias or prejudice against Judge Watson and in favor of the Stewart lawyers, the Searcy Denney firm, Progressive Insurance Company, and other witnesses that will testify in support of the positions espoused by these complainants, witnesses, and corporations, and that Judge Watson will not receive a fair hearing before the Hearing Panel on the charges because of the prejudice of Bookman and Downs against the judge. Bookman and Downs maintain close social, political, and professional relationships as set forth in Judge Watson’s motion to dismiss for lack of subject matter jurisdiction. These relationships are identified in the affidavit below. The nature and length of these relationships on its face are sufficient to warrant a reasonable fear that Judge
Watson will not receive a fair hearing before the Panel.

Contrary to Judge Evander’s ruling, a judge must disclose a close personal friendship with a lawyer when the case is being handled by that attorney or the attorney’s associate. This is keeping with the general rule that a conflict of interest with one attorney extends to all members of that attorney’s firm. Judicial Ethics Advisory Committee Opinion Number: 2004-35, date of issue November 23, 2004.

Further, the decision to disclose a judge’s relationship with the attorney and the subsequent disqualification, is not based on time, rather the test is whether an objective disinterested person knowing all the circumstances would reasonably question the impartiality of the hearing officer. Judicial Ethics Advisory Committee, Opinion Number: 2004-01, date of issue: January 16, 2004; Judicial Ethics Advisory Committee, Opinion Number: 2004-06, date of Issue: February 6, 2004.

The basic tenet for the disqualification of a judge is to maintain the appearance of justice. This tenet should be adhered to even if the record is lacking of any actual bias or prejudice on the part of the judge. Hewitt v. State, 839 So.2d 763 (Fla. 4th DCA 2003).

WHEREFORE, based upon the Motion and Suggestion to Disqualify Bookman and Downs and the attached affidavits of Judge Watson (Exhibit “A”),
Marc Finkelstein, Esq. (Exhibit “B”), and Dan Lewis (Exhibit “C”), Judge Watson respectfully requests that Bookman and Downs either be disqualified or that they voluntarily recuse themselves.

The undersigned certifies that the motion and my statements are made in good faith as required by Rule 2.330(3) and that no previous motions to disqualify a panel member.

Respectfully submitted,

The Honorable Laura M. Watson
Circuit Judge, 17th Judicial Circuit
Room 1005B
201 SE 6th Street
Fort Lauderdale, Florida 33301
Tel.: (954) 831-6907
jwatson@17th.flcourts.org

/s/ Laura M. Watson
LAURA M. WATSON
Florida Bar No.: 476330

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a true and correct copy of the foregoing was furnished by email to: Miles A. McGrane, III, Esq. miles@mcgranelaw.com, lisa@mcgranelaw.com The McGrane Law Firm, Special Counsel, One Datran Center, Ste. 1500, 9100 South Dadeland Boulevard, Miami, Florida 333156; Lauri

8
Waldman Ross, Esq. RossGirten@Laurilaw.com Counsel to the Hearing Panel of
the JQC, Ste. 1612, 9100 South Dadeland Boulevard, Miami, Florida 333156;
Michael L. Schneider, Esq. mschneider@floridaqjc.com General Counsel, 1110
Thomasville Road, Tallahassee, Florida 32303, this 16th day of September 2013.

Pursuant to FJQCR Rule 10(b) a copy is furnished by email to: The
Honorable Kerry I. Evander, evanderk@flcourts.org, Chair of the JQC, 300 S.
Beach Street, Daytona Beach, FL 32114.

/s/ Laura M. Watson
LAURA M. WATSON
STATE OF FLORIDA  
)  
)SS:  
COUNTY OF BROWARD  
)

BEFORE ME, the undersigned authority, did personally appear LAURA M.
WATSON, who being duly sworn deposes and says as follows:

1. I am over 21 years of age and I either have personal knowledge of the
facts contained in this affidavit or the information contained herein is inherently
reliable and should be accepted by the Court. The facts and reasons for this motion
and suggestion are set forth in the motion above and in the facts below.

2. Judge Watson fears that the Alan Bookman, Esq. (“Bookman”) and
Mayanne Downs, Esq. (“Downs”) are prejudiced against Judge Watson and in favor
of the adverse parties. The facts and reasons for the movant’s fears are more fully
set forth below.

3. Because Judge Evander did not require the Hearing Panel to disclose
their personal relationships, professional associations, professional activities,

Exhibit “A”
Florida Bar activities, or business interests, with the list of persons who are potential witnesses, Judge Watson has spent in excess of one hundred hours of her own time researching and fact checking the information below from verifiable sources such as the Florida Bar web site, the Supreme Court of Florida web site, the JQC's own web site, and the web site of the particular law firms. If the information came from another source, that source is identified. The information below is true and correct as reflected by the sources previously noted and should be held by this court to have the requisite indicia of reliability to meet the standard for admissibility of evidentiary proof.

4. McGrane advised that the Investigative Panel had no witness statements or testimony other than Judge Watson's at the time of the filing of the Notice of Investigation and the Notice of Formal Charges. These allegations then, could only have come from ex-parte communications. McGrane, Bookman, and Downs among others had the opportunity, knowledge, and motive to improperly communicate these allegations which appeared in the notices. Because of the unusual manner in which these charges came about and the detail of the filings, Judge Watson fears that she will not receive a fair hearing with Bookman and Downs on the Hearing Panel because of their prejudice and personal bias or prejudice against Judge Watson and
in favor of the Stewart lawyers, the Searcy Denney firm, Progressive Insurance Company, and other witnesses that will testify in support of the positions espoused by these complainants, witnesses, and corporations, and that Judge Watson will not receive a fair hearing before the Hearing Panel on the charges because of that prejudice. The nature and length of these relationships on its face are sufficient to warrant a reasonable fear that Judge Watson will not receive a fair hearing on the charges.

5. It is obvious that conflicts of interest, cronyism, and unholy alliances abound between Bookman and Downs and the relationships between the Stewart Lawyers and their team (who have been locked in ongoing litigation with Watson since 2004), the Searcy Denney firm that represented the Stewart Lawyers, Progressive Insurance Company that paid millions of dollars to Watson P.A. and others, and other witnesses that will testify in support of the positions espoused by these complainants, witnesses, and corporations.

6. The very nature of the proceeding and the JQC’s actions exceeding their jurisdiction makes these relationships immediately suspect. Special Counsel Miles McGrane, and Hearing Counsel Lauri Waldman Ross, have personal relationships, professional associations, professional activities, Florida Bar activities, and/or business interests, with the Stewart Lawyers (or their relatives), the Searcy Denney
firm that represented the Stewart Lawyers in the *Attorney's Fees Litigation*, the insurance companies that insure the Stewart Lawyers for the claims in the pending *Defamation Litigation*, and expert witnesses who testified for the Stewart Lawyers in the *Attorney's Fees Litigation*. Moreover, Allstate Insurance Company, which insures Larry Stewart in the *Defamation Litigation* for example, has been represented by McGrane in cases critical to the manner in which Allstate and other insurance companies conduct business in the State of Florida. ¹

7. McGrane served as Special Counsel for the Investigative Panel in this matter, and now serves as Special Counsel for the Hearing Panel is inherently unfair and violates the constitution. The Florida Constitution requires that "[t]he commission shall hire separate staff for each panel." art. V, §12 (2)(e) Fla. Const. Further, McGrane served on the JQC and chaired the Commission in 2011.

8. The relationship between McGrane and David Bianchi (Larry Stewart's partner) has been long standing and believed to be very close. In 2001, McGrane and Bianchi served on the Special Commission on Insurance to study the practices of the

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¹ *United Services Automobile Association vs. Evelyn Goodman etc.*, Case Nos: SC01-1700; SC01-1710; SC01-1797; SC04-1814; SC01-1886; SC01-1887; SC01-1913; SC01-1980 (Consolidated). Notably, Ed Moss of Shook Hardy & Bacon appeared on behalf of USAA in this same litigation and appeared as an expert witness for the Stewart Lawyers in the *Attorney's Fees Litigation*. 

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property and casualty underwriters of the insurance practices as they relate to using insurance company staff attorneys to represent the insured. McGrane had also been on the Board of Governors from 1992-2000 and President of The Bar from 2003-2004. Bianchi was on the Board of Governors 1987-1989 and 1998-2004 serving on numerous committees. Both also served on numerous committees of The Florida Bar Board ofGovernor’s between 2001 and 2005, traveling to various locations in Florida such as Amelia Island, Pensacola, Ponte Vedra Beach, Naples, Key West, Tallahassee, and Palm Beach, but also to Las Vegas, Nevada and Chicago, IL. The Florida Bar Board of Governors Regular Minutes, January 30, 2004 and similarly in 2003. For many years McGrane and his wife have been involved in supporting Kristi House, a local charity. Patty McGrane and Julie Bianchi -- David Bianchi’s wife--both served on the Board of Directors of this charity.

9. The connections between Hearing Panel member Mayanne Downs and McGrane, other panel members, and witnesses in this case are just as striking. Downs has been on the Board of Governors from 2002 until the present and on the Executive Committee since 2005. When Downs was President of The Florida Bar,  

2 Bianchi -- Larry Stewart’s partner -- was the chair of the commission. The commission was composed of twelve members. The meetings were held in Boca Raton, Orlando, Tampa, and Miami between September 2001 and February 2002. Report of the Special Commission on Insurance Practices II, March 1, 2002.
she appointed McGrane to the 2011 Special Committee to Study the Decline in Jury Trials. JQC members Alan Bookman, John G. White, and Mayanne Downs have been members of this same committee and McGrane and Alan Bookman spent two days (in addition to the regular meetings) at a symposium on diversity. *Diversity in the Legal Profession*, Final Report and Recommendations, August 13, 2004. Both continued to be Members of the Supreme Court Standing Committee on Fairness and Diversity from 2005-2008.

10. Like Downs and McGrane, Bookman and John G. White are past presidents of The Florida Bar. Bookman served on the Board of Governors 1996-2004, the Executive Committee 1999-2000; 2001-2006; President elect 2004-2005 and President 2005-2006. In a recent disclosure, Bookman admitted that he and his wife “are friends with Mr. and Mrs. McGrane, have stayed in their home in Park City Utah and have attended 2 Destin Charity Wine Auctions in Destin Florida with them.” *Response of Hearing Panel Members*, August 30, 2013, this case. Bookman does not, however, believe this provides a legal basis requiring his disqualification from the Hearing Panel.

---

3 McGrane and JQC panel members Mayanne Downs, Alan Bookman, and John G. White have all served as past presidents of The Florida Bar in addition to their other board committees and bar involvement.
11. Both Downs and McGrane have connections to the Searcy Denney firm (attorneys for the Stewart Lawyers in the *Attorneys Fees Litigation* and witnesses here). McGrane and the Searcy Denney firm co-counseled several appeals including major tobacco related litigation. 4 Downs is a shareholder in the firm of GrayRobinson. Both the GrayRobinson firm and the Searcy Denney firm have members on the Fifteenth Judicial Circuit Nominating Commission. Likewise, Downs’ GrayRobinson firm and the firm of Colodny, Fass, Talenfeld, Karlinsky & Abbate have members on the Judicial Nominating Commission for this circuit. The Colodny Fass Talenfeld, Karlinsky & Abbate firm represents United Automobile and other insurers.

12. United Automobile contributed $15,000.00 to Judge Watson’s opponent during the election. [FN 2 Motion to Dismiss]. It was Colodny Fass’ associate that sat on the grievance committee that made the probable cause determination before the general election. Obviously if Judge Watson was removed from office, it would greatly benefit those who are in a position to influence the nomination of her

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4 *See: Norma R. Broin, et al., v. Phillip Morris Companies, 3D11-2129 &3D11-2121; Patricia Young et al., v. Norva L. Achenbauch et al., SC12-988. Robert Endacott v. International Hospitality, Inc., et al., 3D03-2718.* McGrane was one of the lead class counsel with Searcy Denney Scarola in the Engle Trust tobacco settlement.
replacement.

13. Downs is a shareholder in GrayRobinson and the firm’s web site lists Progressive Insurance Company as one of their clients. According to the Notice of Formal Charges, Progressive paid Watson P.A. and others an aggregate settlement of $14.5 million dollars in 2004 for all claims in the Gold Coast bad faith action which is the subject of this proceeding. Many of the witnesses that will be called in this case are representatives of Progressive Insurance Company.

14. The business relationships continue throughout this commission. Lauri Waldman Ross and Robert C. Tilghman (son of Jim Tilghman -- partner to Larry Stewart), are co-counsel on various appeals and Eileen Tilghman was Ross’ former law partner. Eileen Tilghman n/k/a Eileen Tilghman Moss, married Ed Moss of Shook Hardy & Bacon, the firm that appeared on behalf of USAA in this same litigation that McGrane represented Allstate (see above). Ed Moss also served as an expert for the Stewart Lawyers in the Attorney’s Fees Litigation and is a witness in this case. Lauri Waldman Ross has co-counseled with Richard Slawson and Fred Cunningham who are witnesses in this case. See United Automobile Ins. Co. v. The

5 See: Rosen v. Florida Insurance Guaranty Association, 734 So.2d 491 (Fla. 1st DCA 1999); Robert Endacott v. International Hospitality, Inc., et al., 3D03-2718; Melissa Ricks v. Rene Loyola, M.D., SC01-793; Florida East Coast Railway, LLC v. Stephen P. Roland, 3D02-1405;
Estate of Steven D. Levine, Assignee of Jose Hernandez, assignor, by and through Tracy Howard, as Personal Representative, 87 So.3d 782 (Fla. 2011).

15. Judge Watson fears that because of these relationships she will not receive a fair trial or hearing because of the prejudice and bias of Bookman and Downs and the political, personal, and business relationships between them and many witnesses in this case.

The undersigned certifies that the motion and my statements are made in good faith as required by Rule 2.330(3). Under penalties of perjury, I declare that I have read the foregoing affidavit and that the facts stated in it are true and correct.

Laura M. Watson
LAURA M. WATSON
Affiant
BEFORE THE FLORIDA JUDICIAL QUALIFICATIONS COMMISSION
STATE OF FLORIDA

SC13-1333

INQUIRY CONCERNING A JUDGE No. 12-613

LAURA M. WATSON

AFFIDAVIT OF MARC FINKELSTEIN IN SUPPORT OF JUDGE WATSONS'S MOTION FOR DISQUALIFICATION OF ALAN BOKMAN, ESQ. AND MAYANNE DOWNS, ESQ.

STATE OF FLORIDA  )
COUNTY OF BROWARD  )

BEFORE ME, the undersigned authority, did personally appear Marc Finkelstein, who after being duly sworn deposes and says as follows:

1. I am over 21 years of age and I am a reputable citizen of the State of Florida and I am not kin to Judge Watson. My background is I have known Judge Watson professionally for at least 15 years and I know her to be a careful and competent legal researcher. I am a member in good standing with the Florida Bar and have been for the past 32 years. Formerly, I was chairman of a Florida Bar grievance committee. I have and have always had, a very active litigation practice. My professional address is Exhibit "B"
600 South Andrews Avenue, Suite 405, Fort Lauderdale, FL 33301. The facts and reasons set forth in Judge Watson’s motion would lead any rational person to fear that Alan Bookman and Mayanne Downs and can not be fair and impartial in this matter and should be disqualified. Judge Watson’s fear that the Alan Bookman, Esq. (“Bookman”) and Mayanne Downs, Esq. (“Downs”) are prejudiced against Judge Watson in favor of the Stewart Lawyers (or their relatives), the Searcy Denney firm that represented the Stewart Lawyers in the *Attorney’s Fees Litigation*, the insurance companies that insure the Stewart Lawyers for the claims in the pending *Defamation Litigation*, and expert witnesses who testified for the Stewart Lawyers in the *Attorney’s Fees Litigation* are well founded.

2. Judge Watson’s research and fact checking of the information below from verifiable sources such as the Florida Bar web site, the Supreme Court of Florida web site, the JQC’s own web site, and the web site of the particular law firms has the requisite indicia of reliability to meet the standard for admissibility of evidentiary proof.

3. It is obvious that conflicts of interest and cronyism, in this proceeding between Bookman and Downs and the relationships between the Stewart Lawyers and their team, who have been locked in ongoing litigation
with Watson since 2004, appointees of the JQC and its paid staff, as well as the leadership of The Florida Bar compromises their ability to be fair and impartial.

4. Special Counsel Miles McGrane, and Hearing Counsel Lauri Waldman Ross, have personal relationships, professional associations, professional activities, Florida Bar activities, and/or business interests, with the Stewart Lawyers (or their relatives), the Searcy Denney firm that represented the Stewart Lawyers in the *Attorney’s Fees Litigation*, the insurance companies that insure the Stewart Lawyers for the claims in the pending *Defamation Litigation*, and expert witnesses who testified for the Stewart Lawyers in the *Attorney’s Fees Litigation*. Moreover, Allstate Insurance Company, which insures Larry Stewart in the *Defamation Litigation* for example, has been represented by McGrane in cases critical to the manner in which Allstate and other insurance companies conduct business in the State of Florida.

5. McGrane served as Special Counsel for the Investigative Panel in this matter, and now serves as Special Counsel for the Hearing Panel is inherently unfair and violates the constitution. The Florida Constitution requires that “[t]he commission shall hire separate staff for each panel.” art.

6. The relationship between McGrane and David Bianchi (Larry Stewart’s partner) has been long standing and believed to be very close. In 2001, McGrane and Bianchi served on the Special Commission on Insurance to study the practices of the property and casualty underwriters of the insurance practices as they relate to using insurance company staff attorneys to represent the insured. McGrane had also been on the Board of Governors from 1992-2000 and President of The Bar from 2003-2004. Bianchi was on the Board of Governors 1987-1989 and 1998-2004 serving on numerous committees. Both also served on numerous committees of The Florida Bar Board of Governor’s between 2001 and 2005, traveling to various locations in Florida such as Amelia Island, Pensacola, Ponte Vedra Beach, Naples, Key West, Tallahassee, and Palm Beach, but also to Las Vegas, Nevada and Chicago, IL. The Florida Bar Board of Governors Regular Minutes, January 30, 2004 and similarly in 2003. For many years McGrane and his wife have been involved in supporting Kristi House, a local charity. Patty McGrane and Julie Bianchi -- David Bianchi’s wife—both served on the Board of Directors of this charity.
7. The connections between Hearing Panel member Mayanne Downs and McGrane, other panel members, and witnesses in this case are just as striking. Downs has been on the Board of Governors from 2002 until the present and on the Executive Committee since 2005. When Downs was President of The Florida Bar, she appointed McGrane to the 2011 Special Committee to Study the Decline in Jury Trials. JQC members Alan Bookman, John G. White, and Mayanne Downs have been members of this same committee and McGrane and Alan Bookman spent two days (in addition to the regular meetings) at a symposium on diversity. *Diversity in the Legal Profession*, Final Report and Recommendations, August 13, 2004. Both continued to be Members of the Supreme Court Standing Committee on Fairness and Diversity from 2005-2008.

8. Like Downs and McGrane, Bookman and John G. White are past presidents of The Florida Bar. Bookman served on the Board of Governors 1996-2004, the Executive Committee 1999-2000; 2001-2006; President elect 2004-2005 and President 2005-2006. In a recent disclosure, Bookman admitted that he and his wife “are friends with Mr. and Mrs. McGrane, have stayed in their home in Park City Utah and have attended 2 Destin Charity Wine Auctions in Destin Florida with them.” *Response of*
Hearing Panel Members, August 30, 2013, this case. Bookman does not, however, believe this provides a legal basis requiring his disqualification from the Hearing Panel.

9. Both Downs and McGrane have connections to the Searcy Denney firm (attorneys for the Stewart Lawyers in the Attorneys Fees Litigation and witnesses here). McGrane and the Searcy Denney firm co-counseled several appeals including major tobacco related litigation. Downs is a shareholder in the firm of GrayRobinson. Both the GrayRobinson firm and the Searcy Denney firm have members on the Fifteenth Judicial Circuit Nominating Commission. Likewise, Downs’ GrayRobinson firm and the firm of Colodny, Fass, Talenfeld, Karlinsky & Abbate have members on the Judicial Nominating Commission for this circuit. As previously noted, the Colodny Fass Talenfeld, Karlinsky & Abbate firm represents United Automobile and other insurers.

10. United Automobile contributed $15,000.00 to Judge Watson’s opponent during the election. [FN 2 of Motion to Dismiss]. It was Colodny Fass’ associate that sat on the grievance committee that made the probable cause determination right before the general election. Obviously if Judge Watson was removed from office, it would greatly benefit those who are in
a position to influence the nomination of her replacement.

11. Downs is a shareholder in GrayRobinson and the firm's website lists Progressive Insurance Company as one of their clients. According to the Notice of Formal Charges, Progressive paid Watson P.A. and others an aggregate settlement of $14.5 million dollars in 2004 for all claims in the Gold Coast bad faith action which is the subject of this proceeding. Many of the witnesses that will be called in this case are representatives of Progressive Insurance Company.

12. The business relationships continue throughout this commission. Lauri Waldman Ross and Robert C. Tilghman (son of Jim Tilghman -- partner to Larry Stewart), are co-counsel on various appeals and Eileen Tilghman was Ross’ former law partner. Eileen Tilghman n/k/a Eileen Tilghman Moss, married Ed Moss of Shook Hardy & Bacon, the firm that appeared on behalf of USAA in this same litigation that McGrane represented Allstate (see above). Ed Moss also served as an expert for the Stewart Lawyers in the Attorney’s Fees Litigation and is a witness in this case. Lauri Waldman Ross has co-counseled with Richard Slawson and Fred Cunningham who are witnesses in this case. See United Automobile Ins. Co. v. The Estate of Steven D. Levine, Assignee of Jose Hernandez, assignor, by
and through Tracy Howard, as Personal Representative, 87 So.3d 782 (Fla. 2011).

13. Judge Watson fears that because of these relationships she will not receive a fair trial or hearing because of the prejudice and bias of Bookman and Downs and the political, personal, and business relationships between them and many witnesses in this case that will provide facts for the JQC's position.

14. Judge Watson has not previously filed any other motions for disqualification in this matter.

Under penalties of perjury, I declare that I have read the foregoing affidavit and that the facts stated in it are true and correct.

/s/ Marc Finkelstein
MARC FINKELSTEIN
Affiant
I, the undersigned, Mr. Daniel Lewis, do hereby solemnly affirm and declare on oath as follows:

1. I am over the age of eighteen and have no legal disabilities.

2. I am not kin to Judge Watson.

3. I am a reputable citizen of the State of Florida.

4. I have reviewed Judge Watson’s motion for “Disqualification of Alan Bokman and Mayanne Downs”.

5. On information and belief:

McGrane, and Hearing Counsel Lauri Waldman Ross, have personal

Exhibit “C”
relationships, professional associations, professional activities, Florida Bar activities, and/or business interests, with the Stewart Lawyers (or their relatives), the Searcy Denney firm that represented the Stewart Lawyers in the Attorney's Fees Litigation, the insurance companies that insure the Stewart Lawyers for the claims in the pending Defamation Litigation, and expert witnesses who testified for the Stewart Lawyers in the Attorney's Fees Litigation. Moreover, Allstate Insurance Company, which insures Larry Stewart in the Defamation Litigation for example, has been represented by McGrane in cases critical to the manner in which Allstate and other insurance companies conduct business in the State of Florida. The very fact that McGrane served as Special Counsel for the Investigative Panel in this matter, and now serves as Special Counsel for the Hearing Panel is inherently unfair and violates the constitution. The Florida Constitution requires that “[t]he commission shall hire separate staff for each panel.” art. V, §12 (2)(e) Fla. Const. Further, McGrane served on the JQC and chaired the Commission in 2011.

The relationship between McGrane and David Bianchi (Larry

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1 United Services Automobile Association vs. Evelyn Goodman etc., Case Nos: SC01-1700; SC01-1710; SC01-1797; SC04-1814; SC01-1886; SC01-1887; SC01-1913; SC01-1980 (Consolidated). Notably, Ed Moss of Shook Hardy & Bacon appeared on behalf of USAA in this same litigation and appeared as an expert witness for the Stewart Lawyers in the Attorney's Fees Litigation.
Stewart's partner) has been long standing and believed to be very close. In 2001, McGrane and Bianchi served on the Special Commission on Insurance to study the practices of the property and casualty underwriters of the insurance practices as they relate to using insurance company staff attorneys to represent the insured. McGrane had also been on the Board of Governors from 1992-2000 and President of The Bar from 2003-2004. Bianchi was on the Board of Governors 1987-1989 and 1998-2004 serving on numerous committees. Both also served on numerous committees of The Florida Bar Board of Governor's between 2001 and 2005, traveling to various locations in Florida such as Amelia Island, Pensacola, Ponte Vedra Beach, Naples, Key West, Tallahassee, and Palm Beach, but also to Las Vegas, Nevada and Chicago, IL. The Florida Bar Board of Governors Regular Minutes, January 30, 2004 and similarly in 2003. For many years McGrane and his wife have been involved in supporting Kristi House, a local charity. Patty McGrane and Julie Bianchi -- David Bianchi's wife—both served on the Board of Directors of this charity.

The connections between Hearing Panel member Mayanne Downs and

---

2 Bianchi -- Larry Stewart's partner -- was the chair of the commission. The commission was composed of twelve members. The meetings were held in Boca Raton, Orlando, Tampa, and Miami between September 2001 and February 2002. Report of the Special Commission on Insurance Practices II, March 1, 2002.
McGrane, other panel members, and witnesses in this case are just as striking. When Downs was President of The Florida Bar, she appointed McGrane to the 2011 Special Committee to Study the Decline in Jury Trials. JQC members Alan Bookman, John G. White, and Mayanne Downs have been members of this same board and McGrane and Alan Bookman spent two days (in addition to the regular meetings) at a symposium on diversity. *Diversity in the Legal Profession*, Final Report and Recommendations, August 13, 2004 and they continued to be Members of the Supreme Court Standing Committee on Fairness and Diversity from 2005-2008. Like Downs and McGrane, Bookman and John G. White are past presidents of The Florida Bar. Bookman served on the Board of Governors 1996-2004, the Executive Committee 1999-2000; 2001-2006; President elect 2004-2005 and President 2005-2006. In a recent disclosure, Bookman admitted that he and his wife “are friends with Mr. and Mrs. McGrane, have stayed in their home in Park City Utah and have attended 2 Destin Charity Wine Auctions in Destin Florida with them.” *Response of Hearing Panel Members*, August 30, 2013, this case. Bookman does not, however, believe this provides a legal basis requiring his disqualification.

---

3 McGrane and JQC panel members Mayanne Downs, Alan Bookman, and John G. White have all served as past presidents of The Florida Bar in addition to their other board committees and bar involvement.
from the Hearing Panel.

Both Downs and McGrane have connections to the Searcy Denney firm (attorneys for the Stewart Lawyers in the *Attorneys Fees Litigation* and witnesses here). McGrane and the Searcy Denney firm co-counseled several appeals including major tobacco related litigation.\(^4\) Downs is a shareholder in the firm of GrayRobinson. The GrayRobinson firm and the Searcy Denney firm each have members on the Fifteenth Judicial Circuit Nominating Commission. Likewise, Downs' GrayRobinson firm and the firm of Colodny, Fass, Talenfeld, Karlinsky & Abbate have members on the Judicial Nominating Commission for this circuit. As previously noted, the Colodny Fass firm represents United Automobile and other insurers. United Automobile contributed $15,000.00 to Judge Watson's opponent during the election.[FN 2]. It was Colodny Fass' associate that sat on the grievance committee that made the probable cause determination right before the general election. Obviously if Judge Watson was removed from office, it would greatly benefit those who are in a position to influence the nomination of her replacement. Perhaps most importantly, GrayRobinson lists

Progressive Insurance Company as one of their clients. According to the Notice of Formal Charges, Progressive paid Watson P.A. and others an aggregate settlement of $14.5 million dollars in 2004 for all claims in the Gold Coast bad faith action which is the subject of this proceeding.

The business relationships continue throughout this commission. Lauri Waldman Ross and Robert C. Tilghman (son of Jim Tilghman — partner to Larry Stewart), are co-counsel on various appeals and Eileen Tilghman was Ross' former law partner. Eileen Tilghman Moss, married Ed Moss of Shook Hardy & Bacon, the firm that appeared on behalf of USAA in this same litigation that McGrane represented Allstate (see above). Ed Moss also served as an expert for the Stewart Lawyers in the Attorney’s Fees Litigation and is a witness in this case. Lauri Waldman Ross has co-counseled with Richard Slawson and Fred Cunningham who are witnesses in this case. See United Automobile Ins. Co. v. The Estate of Steven D. Levine, Assignee of Jose Hernandez, assignor, by and through Tracy Howard, as Personal Representative, 87 So.3d 782 (Fla. 2011).

5 See: Rosen v. Florida Insurance Guaranty Association, 734 So.2d 491 (Fla. 1st DCA 1999); Robert Endacott v. International Hospitality, Inc., et al., 3D03-2718; Melissa Ricks v. Rene Loyola, M.D., SC01-793; Florida East Coast Railway, LLC v. Stephen P. Roland, 3D02-1405;
6. The facts and relationships set forth above and in Judge Watson's motion more than establish the grounds for the well-founded fear that she will not receive a fair trial or hearing because of both the actual and the appearance of partiality, prejudice and cronyism before the JQC hearing panel.

Under penalties of perjury, I declare that I have read the foregoing affidavit and that the facts stated in it are true and correct.

FURTHER AFFIANT SAYETH NAUGHT.

By ____________________________
Daniel W. Lewis
Affiant
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BEFORE THE JUDICIAL QUALIFICATIONS COMMISSION
STATE OF FLORIDA

INQUlry concerning Judge,
LAURA MARIE WATSON, NO. 12-613

RESPONSE OF HEARING PANEL MEMBERS

Undersigned Hearing Panel counsel attaches the responses of Hearing Panel Members to the Status Conference Order dated August 26, 2014, which she has been authorized to share with parties and their counsel.

Respectfully submitted,

Lauri Waldman Ross, Esq.
Counsel to the Hearing Panel of the Florida Judicial Qualifications Commission
ROSS & GIRTEN
Two Datran Center, Suite 1612
9130 South Dadeland Boulevard
Miami, Florida 33156-7818
Tel: (305) 670-8010
RossGirtten@Laurilaw.com

By: /s/ Lauri Waldman Ross
Lauri Waldman Ross, Esq.
CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a true and correct copy of the foregoing was served via e-mail on the 30th day of August, 2013 to:

Michael Schneider, General Counsel  
Brooke Kennerly, Executive Director  
FLORIDA JUDICIAL QUALIFICATIONS COMMISSION  
1110 Thomasville Road  
Tallahassee, FL 32303  
Telephone: (850) 448-1581  
mschneider@floridajqc.com  
bkennerly@floridajqc.com

Miles A. McGrane, III, Esquire, Special Counsel  
THE McGRANE LAW FIRM  
9100 S. Dadeland Blvd., #1500  
Miami, FL 33156  
Tel: (305) 374-0003  
miles@mcgranelaw.com  
lisa@mcgranelaw.com

Honorable Laura Marie Watson  
Circuit Judge, 17th Judicial Circuit  
201 S.E. 6th Street, Room 1005B  
Ft. Lauderdale, FL 33301  
Tel: (954) 831-6907  
jwatson@17th.flcourts.org  
ltucker@17th.flcourts.org

Honorable Kerry Evander  
JQC HEARING PANEL CHAIR  
Fifth District Court of Appeal  
300 S. Beach Street  
Daytona Beach, FL 32114  
evanderk@flcourts.org
Please be advised that I am unaware of any legal basis to require me to be disqualified as a hearing panel member in the above-referenced matter. As hearing panel counsel, you are authorized to provide this information to Judge Watson and Mr. McGrane. Thank you.

No virus found in this message.
Checked by AVG - www.avg.com
Version: 2013.0.3392 / Virus Database: 3211/6610 - Release Date: 08/26/13
From: Judge Robert Morris <morrisr@flcourts.org>
Sent: Monday, August 26, 2013 2:58 PM
To: Lauri Waldman Ross
Subject: Inquiry concerning Judge Laura Watson

I am unaware of any legal reason which would require me to be disqualified from being a member of the hearing panel in this case. I authorize the release of this e-mail to Judge Watson and Mr. McGrane.

No virus found in this message.
Checked by AVG - www.avg.com
Version: 2013.0.3392 / Virus Database: 3211/6610 - Release Date: 08/26/13
Lauri Waldman Ross

From: Jerome Osteryoung Sr <jerry.osteryoung@gmail.com>
Sent: Monday, August 26, 2013 1:41 PM
To: Lauri Waldman Ross
Subject: Judge Watson

Lauri-

I am unaware of any legal basis requiring my disqualification as a hearing panel member and you have my authorization to provide this information to the parties and their counsel.

Jerry

Jerome S. Osteryoung, Ph.D.
Consultant to Businesses and Organizations
Jim Moran Professor Emeritus of Entrepreneurship and Professor Emeritus of Finance
Florida State University
850-294-7478

Sent from my iMac.
As a member of the above Hearing Panel, I am unaware of any legal basis requiring my disqualification from this panel.

I also authorize Lauri Waldman Ross to provide this information to whoever necessary in this proceeding.
Dear Lauri:

I have reviewed Judge Evander's order on Judge Watson's motion, including the JQC witness list attached to that order, and I know of no legal basis that would require my disqualification from the hearing panel.

I authorize you to share this Information with all parties and counsel.

Thanks,

Mayanne

Mayanne Downs
Shareholder
GrayRobinson, P.A.
301 East Pine Street, Suite 1400
P.O. Box 3098 (32802-3096)
Orlando, Fl. 32801
Main: 407-244-5660 | Fax: 407-244-5660
Direct: 407-244-5647 | Cell: 407-810-5560
Email: mayanne.downs@gray-robinson.com

GRAY | ROBINSON
ATTORNEYS AT LAW

This e-mail is intended only for the individual(s) or entity(s) named within the message. This e-mail might contain legally privileged and confidential information. If you properly received this e-mail as a client or retained expert, please hold it in confidence to protect the attorney-client or work product privileges. Should the intended recipient forward or disclose this message to another person or party, that action could constitute a waiver of the attorney-client privilege. If the reader of this message is not the intended recipient, or the agent responsible to deliver it to the intended recipient, you are hereby notified that any review, dissemination, distribution or copying of this communication is prohibited by the sender and to do so might constitute a violation of the Electronic Communications Privacy Act, 18 U.S.C. section 2510-2521. If this communication was received in error we apologize for the intrusion. Please notify us by reply e-mail and delete the original message without reading same. Nothing in this e-mail message shall, in and of itself, create an attorney-client relationship with the sender.

No virus found in this message.
Checked by AVG - www.avg.com
Version: 2013.0.3392 / Virus Database: 3211/6610 - Release Date: 08/26/13
While I know of no legal basis that would require my disqualification please be advised that my wife and I are personal friends with Mr. and Mrs. McGrane, have stayed in their home in Park City Utah and have attended 2 Destin Charity Wine Auctions in Destin Florida with them. You are authorized to disclose and share this information with the parties.

If you need further information please do not hesitate contacting me.

ALAN B. BOOKMAN
Board Certified Real Estate Attorney
Emmanuel Sheppard & Condon
30 South Spring Street
Pensacola, FL 32502
Main: 850-433-6581
Direct: 850-444-3836
Fax: 850-434-7163
abb@esclaw.com
Tab 22
C
BEFORE THE JUDICIAL QUALIFICATIONS COMMISSION
STATE OF FLORIDA

INQUIRY CONCERNING JUDGE,
LAURA MARIE WATSON, NO. 12-613

RESPONSE OF HEARING PANEL MEMBERS

Undersigned Hearing Panel counsel attaches the responses of Hearing Panel Members to the “Order on Certain Pending Motions” dated September 25, 2013, which she has been authorized to share with parties and their counsel.

Respectfully submitted,

Lauri Waldman Ross, Esquire
COUNSEL TO THE HEARING PANEL OF THE FLORIDA JUDICIAL QUALIFICATIONS COMMISSION
ROSS & GIRTEN
9130 S. Dadeland Blvd., Suite 1612
Miami, Florida 33156
Service E-Mail: RossGirtens@LauriLaw.com

By: /s/ Lauri Waldman Ross
Lauri Waldman Ross, Esq.
CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a true and correct copy of the foregoing was served via e-mail this 6th day of October, 2013 to:

Michael Schneider, General Counsel
Brooke Kennerly, Executive Director
FLORIDA JUDICIAL QUALIFICATIONS COMMISSION
1110 Thomasville Road
Tallahassee, FL 32303
mschneider@floridajqc.com
bkennerly@floridajqc.com

Miles A. McGrane, III, Esquire, Special Counsel
THE MCGRANE LAW FIRM
9100 S. Dadeland Blvd., #1500
Miami, FL 33156
miles@mcgranelaw.com
lisa@mcgranelaw.com

Honorable Laura Marie Watson
Circuit Judge, 17th Judicial Circuit
201 S.E. 6th Street, Room 1005B
Ft. Lauderdale, FL 33301
jwatson@17th.flcourts.org
ltucker@17th.flcourts.org

By: /s/ Lauri Waldman Ross
Lauri Waldman Ross, Esquire
Fla. Bar No.: 311200
In re Judge Watson: I am unaware of any legal basis which would disqualify me from hearing this case. I do not know any person listed on Judge Watson's witness list except for John Beranek whom I have met only once.
I am unaware of any legal basis requiring my disqualification in the above-referenced case. You are authorized to file this response in the court file with a copy to Judge Watson and counsel of record. Thank you.
Dear Lauri:

I have reviewed the Judge Watson witness list referred to in and attached to Judge Evander’s order, and I am unaware of any legal basis that would require me to be disqualified as a hearing panel member. I am sending this to you in your capacity as hearing panel counsel, and you are authorized to provide this information to the parties and their counsel.

Please let me know if I can provide any additional information.

Mayanne
As a member of the above Hearing Panel, I am unaware of any legal basis requiring my disqualification from this panel.

I also authorize Lauri Waldman Ross to provide this information to whoever necessary in this proceeding.

Harry Duncanson

No virus found in this message.
Checked by AVG - www.avg.com
Version: 2013.0.3408 / Virus Database: 3222/6700 - Release Date: 09/26/13
From: Michael Nachwalter <mn@kennynachwalter.com>
Sent: Thursday, September 26, 2013 4:29 PM
To: Lauri Waldman Ross
Subject: Inquiry Concerning Judge Watson

I am not aware of any legal basis requiring my disqualification in this matter. You are authorized to file this response in the proceedings.

No virus found in this message.
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Version: 2013.0.3408 / Virus Database: 3222/6700 - Release Date: 09/26/13
Lauri Waldman Ross

From: Jerry Osteryoung <jerry.osteryoung@gmail.com>
Sent: Thursday, September 26, 2013 5:05 PM
To: Lauri Waldman Ross
Subject: Judge Watson

Lauri

I no of no legal reason why I should be disqualified for this hearing and do not know any of the witnesses in the Watson witness list.

Have a wonderful day.

Jerry

Jerome S. Osteryoung, Ph.D.

Sent from my iPhone 5.

-----
No virus found in this message.
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Version: 2013.0.3408 / Virus Database: 3222/6700 - Release Date: 09/26/13
Tab 22
D
BEFORE THE JUDICIAL QUALIFICATIONS COMMISSION
STATE OF FLORIDA

INQUIRY CONCERNING JUDGE,
LAURA MARIE WATSON, NO. 12-613
SC13-1333

ORDER ON CERTAIN PENDING MOTIONS

Pursuant to F.J.Q.C. Rule 7(b), the Chair of the Hearing Panel has reviewed:
Judge Watson’s “Motion and Suggestion to Disqualify Alan Bookman, Esq., and Mayanne Downs, Esq.”; and Judge Watson’s “Notice of Filing Preliminary Witness List... and Motion for Enlargement of Time to File Rule 25 Affidavits to Disqualify Members of the Hearing Panel and Demand for Disclosures.”

These motions do not require a hearing, and are resolved as follows:

1. Judge Watson’s Motion to Disqualify Mayanne Downs, Esq. is denied as legally insufficient.

2. Judge Watson’s motion to disqualify Alan Bookman, Esq. is granted. The Chair of the JQC shall give notice of Mr. Bookman’s replacement within 10 days. FJQC Rule 25 (b).

3. Judge Watson’s demand that Hearing Panel members disclose “their personal relationship, professional associations, professional activities, Florida Bar
activities or business interests with the list of witnesses in this cause," and her
motion to enlarge the time to file Rule 25 motions and affidavits are hereby denied.

4. However, Counsel to the Hearing Panel shall furnish a copy of this
order and Judge Watson's Preliminary Witness List to Members of the Hearing
Panel (attached as Ex. A) and request them to state whether they are required to
disqualify themselves within 5 days.

5. Counsel to the Hearing Panel shall also furnish copies of the parties’
respective witness lists to the member replacing Mr. Bookman upon appointment,
and request the replacement member to state whether he or she is required to
disqualify, within 5 days.

So ordered this 25th day of September, 2013.

FLORIDA JUDICIAL QUALIFICATIONS
COMMISSION

By: /s/ Honorable Kerry Evander
Honorable Kerry Evander
JQC HBARING PANEL CHAIR
Fifth District Court of Appeal
300 S. Beach Street
Daytona Beach, FL 32114
evanderk@flcourts.org
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Honorable Laura Marie Watson  
Circuit Judge, 17th Judicial Circuit  
201 S.E. 6th Street, Room 1005B  
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Lauri Waldman Ross, Esq.  
Counsel to the Hearing Panel of the  
Florida Judicial Qualifications Commission  
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Tab 22

E
BEFORE THE FLORIDA JUDICIAL QUALIFICATIONS COMMISSION
STATE OF FLORIDA

INQUIRY CONCERNING A JUDGE No. 12-613

LAURA M. WATSON

JUDGE WATSON'S MOTION TO DISQUALIFY MAYANNE DOWNS, ESQ., THE HONORABLE KERRY I. EVANDER, THE HONORABLE ROBERT MORRIS, AND MICHAEL NACHWALTER, ESQ.

Pursuant to Rule 25 of the Florida Judicial Qualifications Commission Rules ("FJQCR"), Judge Laura M. Watson files this Motion and Suggestion to Disqualify the following Hearing Panel members: Mayanne Downs ("Downs"), Esq., The Honorable Kerry I. Evander ("Evander"), The Honorable Robert Morris ("Morris"), and Michael Nachwalter ("Nachwalter"), Esq. In support of this motion, Judge Watson has provided her own affidavit and affidavits of two reputable citizens of the State of Florida not kin to the judge or the judge's attorney, supporting in substance the facts in the motion as required by Rule 25, FJQCR.1

1 At this point, it is unclear if the JQC is operating under the Published 1998 Rules as reported in In re Rules of Fla. Judicial Qualifications Commission, 719 So.2d 858 (Fla. 1998), or the Unpublished JQC Rules which recently appeared on the JQC website and proposed at SC11-1897 In re: Amendments to The Florida
Notwithstanding the demonstrably false allegations of conduct against Judge Watson and Judge Watson’s former law firm from over ten (10) years ago that are contained in the Notice of Formal Charges, a circuit court judge is a constitutional officer, duly elected, with a property right in the office, and entitled to the constitutional guarantees of substantive and procedural due process and equal treatment under the law pursuant to the state and federal constitutions.

The Rules of the JQC provide for disqualification of a Hearing Panel member whose impartiality may be questioned whenever a “judge fears the judge will not receive a fair hearing before the Hearing Panel against the judge...and the facts stated as the basis for making the affidavit shall be supported in substance by affidavit of at least two reputable citizens of the State of Florida not kin to the judge or the judge’s attorney...” Rule 25(a), FJQCR. Upon the filing of the appropriate affidavits the motion will be granted.

On February 7, 2014 Judge Watson filed suit against Downs, Evander, Morris, and Nachwalter, in both their official and individual capacities, in the United States District Court for the Southern District of Florida, case number 14-60306-CV-Cooke/Turnoff. Because this suit seeks monetary damages against them based upon their conduct and action in this JQC action, they have both a

Judicial Qualifications Commission vs. Rules, which have not received a citation from the Southern Reporter.
financial and personal interest in the outcome of the JQC Final Hearing. In the United States District Court case, Judge Watson filed a Verified Complaint for Declaratory Judgment, Injunctive Relief, and Damages and Motion for Temporary Restraining Order, Preliminary Injunction, and Permanent Injunction and Incorporated Memorandum of Law. For purposes of this motion, Judge Watson adopts in its entirety these filings from the United States District Court Case which are attached to Judge Watson’s February 7, 2014 Motion for an Injunction or to Stay the Final Hearing filed in this case.

Importantly, in the District Court case, Judge Watson seeks a declaration that Downs, Evander, Morris, and Nachwalter have acted without jurisdiction, and/or that their actions violate the Procedural Due Process Clause and the Substantive Due Process guaranteed by the Fourteenth Amendment to the U.S. Constitution, and amongst other relief, punitive damages against Downs, Evander, Morris, and Nachwalter for abuse of process.

As detailed in the Verified Complaint, the complainant/witness, Larry Stewart ("Stewart") exchanged emails with Special Counsel Miles McGrane ("McGrane"), which reveal that the JQC has been used for an illegal, improper, or perverted use of process both in the Investigative Panel process, and again in the Hearing Panel process to attempt to recover Stewart’s sought "restitution" against
Judge Watson personally, for which he is not entitled under the law. Legal malice on the part of the named Defendants against Judge Watson is both presumed and established because the JQC's processes have been used for an improper purpose.

As a direct and proximate cause of Downs, Evander, Morris, and Nachwalter’s actions, Judge Watson has suffered and will continue to suffer irreparable harm. Such harm includes the damage, and continued damage to her reputation, and the imminent threat of loss of her constitutional property rights in her judicial office. Because of this District Court case, Judge Watson fears that she will not receive a fair hearing before Downs, Evander, Morris, and Nachwalter because of their bias against Judge Watson and because they have a personal and/or financial interest in the outcome of this litigation. For these reasons they should be disqualified. In the alternative, Judge Watson requests that they voluntarily recuse themselves.

Disqualification is appropriate against Downs, Evander, Morris, and Nachwalter because they have a financial and/or personal interest in the outcome of the case.

The Supreme Court of the United States held that in determining whether a judge has a financial or personal interest in the outcome of the case, “the test is whether the [] situation is one ‘which would offer a possible temptation to the
average man as a judge to forget the burden of proof required to convict the defendant, or which might lead him not to hold the balance nice, clear, and true between the state and the accused.” Ward v. Village of Monroeville, 409 U.S. 57, 60, 93 S.Ct. 80, 34 L.Ed.2d 267 (1972)2, citing Tumey v. Ohio, 273 U.S. 510, 47 S. Ct. 437, 444-445, 71 L.Ed. 749 (1972). Accord: Pinardi v. State, 718 So.2d 242, 244 (Fla. 5th DCA 1998). The Court found that allowing a biased judge to preside over the proceedings is a structural error, i.e., a fundamental defect in the trial and is a denial of due process. Tumey at 445. The United States Supreme Court made it clear that such unfairness cannot be corrected on appeal. Ward at 84.

There is an obvious tension between Judge Watson and the individuals she sued: Downs, Evander, Morris, and Nachwalter. There is clearly and incentive to rule one way or the other in an attempt to influence the outcome of this case, and thereby possibly limit their personal financial exposure in the United States District Court case. It is difficult to imagine a more pointed example of a situation wherein the tribunal presiding over the Final Hearing has a more direct pecuniary and/or personal interest in the outcome of the case than the case at bar.

2 The United States Supreme Court ruled that the mayor acting as a judge in those cases had a direct pecuniary interest in the conclusion of the case against the defendant because in Ward, the revenue produced from the mayor’s court helped the municipality. In Ward the Supreme Court applied these principles to ensure the neutrality of a quasi-judicial tribunal. Id.
WHEREFORE, Judge Watson, for the reasons set forth above, respectfully requests that Downs, Evander, Morris, and Nachwalter be disqualified as they have a direct pecuniary interest in the conclusion of the case, are prejudice against Judge Watson, and because Judge Watson has a reasonable fear that she will not receive a fair hearing before these individuals. In the alternative, Judge Watson requests that Downs, Evander, Morris, and Nachwalter voluntarily recuse themselves.

Respectfully submitted,

The Honorable Laura M. Watson
Circuit Judge, 17th Judicial Circuit
Room 1005B
201 SE 6th Street
Fort Lauderdale, Florida 33301
Tel.: (954) 831-6907
jwatson@17th.flcourts.org

/s/ Laura M. Watson
LAURA M. WATSON
Florida Bar No.: 476330

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a true and correct copy of the foregoing was furnished by email to: Miles A. McGrane, III, Esq. miles@mcgranelaw.com lisa@mcgranelaw.com The McGrane Law Firm, Special Counsel, 2103 Country Club Prado, Coral Gables, Florida, 33134-2128, Miami, Florida 333156; Ruben V.
Chavez, Esq. rchavez@chavezpa Law Offices of Ruben V. Chavez, P.A., 9100 S. Dadeland Blvd., Suite 1510, Miami, Florida 33156-7816; Mayanne Downs, Esq. mayanne.downs@gray-robinson.com GrayRobinson, PA, 301 E. Pine Street FL14, Orlando, FL 32801-2724; Lauri Waldman Ross, Esq. RossGirten@Laurilaw.com Counsel to the Hearing Panel of the JQC, Ste. 1612, 9100 South Dadeland Boulevard, Miami, Florida 33316; Michael L. Schneider, Esq. mschneider@floridajqc.com General Counsel, 1110 Thomasville Road, Tallahassee, Florida 32303; The Honorable Robert Morris, morrisr@flcourts.org 2nd District Court of Appeal, P.O. Box 327, Lakeland, Florida 33802-0327; Michael Nachwalter, Esq. mnachwalter@knpa.com Kenny Nachwalter PA, 201 S. Biscayne Blvd., Miami, Florida 33131-4332; Robert A. Sweetapple, Pleadings@sweetapplelaw.com Co-counsel for Judge Watson, 20 SE 3rd Street, Boca Raton, Florida 33432, this 10th day of February 2014.

Pursuant to FJQCR Rule 10(b) a copy is furnished by email to: The Honorable Kerry I. Evander, evanderk@flcourts.org, Chair of the JQC, 300 S. Beach Street, Daytona Beach, FL 32114.

/s/ Laura M. Watson
LAURA M. WATSON
BEFORE THE FLORIDA JUDICIAL QUALIFICATIONS COMMISSION
STATE OF FLORIDA

INQUIRY CONCERNING A JUDGE No. 12-613

LAURA M. WATSON

AFFIDAVIT OF JUDGE WATSON IN SUPPORT OF HER MOTION FOR DISQUALIFICATION OF MAYANNE DOWNS, ESQ., THE HONORABLE KERRY I. EVANDER, THE HONORABLE ROBERT MORRIS, AND MICHAEL NACHWALTER, ESQ.

STATE OF FLORIDA )
 )SS:
COUNTY OF BROWARD )

I, the undersigned, Laura M. Watson, do hereby solemnly affirm and declare on oath as follows:

1. I am over the age of eighteen and I make this affidavit based upon personal knowledge.

2. I have filed a law suit filed against Mayanne Downs ("Downs"), Esq., The Honorable Kerry I. Evander ("Evander"), The Honorable Robert Morris ("Morris"), and Michael Nachwalter ("Nachwalter"), as well as others, who have
been sued in both their official and individual capacities in the United States District Court for the Southern District of Florida, case number 14-60306-CV-Cooke/Turnoff. This suit seeks Declaratory Judgment, Injunctive Relief, and Damages including punitive damages against Downs, Evander, Morris, and Nachwalter and others.

3. Disqualification of JQC Hearing Panel members Downs, Evander, Morris, and Nachwalter should be granted because of their bias or prejudice against me and their impartiality is in question. I fear that I will not receive a fair hearing before the Hearing Panel with these members and this fear is reasonable. The average person could not forget the pending federal law suit wherein the security of their finances possibly turns on each decision made in the final hearing. It is self-evident that such a temptation may override any sense of fairness that is required in these proceedings.

4. The facts and relationships set forth above and in Judge Watson’s motion and in the verified federal filings, more than establishes the grounds for the well-founded fear that I will not receive a fair trial or hearing because of both the actual and the appearance of partiality, prejudice, and partisan positions of Downs, Evander, Morris, and Nachwalter.

5. As detailed in the Verified Complaint, the complainant/witness, Larry
Stewart ("Stewart") exchanged emails with Special Counsel Miles McGrane ("McGrane"), which reveal that the JQC has been used for an illegal, improper, or perverted use of process both in the Investigative Panel process, and again in the Hearing Panel process to attempt to recover Stewart's sought "restitution" against me personally, for which he is not entitled under the law. Legal malice on the part of the named Defendants against me is both presumed and established because the JQC's processes have been used for an improper purpose.

6. As a direct and proximate cause of Downs, Evander, Morris, and Nachwalter's actions, I have suffered and will continue to suffer irreparable harm. Such harm includes the damage, and continued damage to my reputation, and the imminent threat of loss of my constitutional property rights in her judicial office. Because of this District Court case, I reasonably fear that I will not receive a fair hearing before Downs, Evander, Morris, and Nachwalter because of their bias against me and because they have a personal and/or financial interest in the outcome of this litigation. For these reasons they should be disqualified. In the alternative, I request that they voluntarily recuse themselves.
Under penalties of perjury, I declare that I have read the foregoing affidavit and that the facts stated in it are true and correct.

FURTHER AFFIANT SAYETH NAUGHT.

Laura M. Watson.

Respectfully submitted,

The Honorable Laura M. Watson
Circuit Judge, 17th Judicial Circuit
Room 1005B
201 SE 6th Street
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Tel.: (954) 831-6907
jwatson@17th.flcourts.org

/s/ Laura M. Watson
LAURA M. WATSON
Florida Bar No.: 476330

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a true and correct copy of the foregoing was furnished by email to: Miles A. McGrane, III, Esq. miles@mcgranelaw.com lisa@mcgranelaw.com The McGrane Law Firm, Special Counsel, 2103 Country Club Prado, Coral Gables, Florida, 33134-2128, Miami, Florida 33315; Ruben V. Chavez, Esq. rchavez@chavezpa Law Offices of Ruben V. Chavez, P.A., 9100 S.
Dadeland Blvd., Suite 1510, Miami, Florida 33156-7816; Mayanne Downs, Esq.
mayanne.downs@gray-robinson.com GrayRobinson, PA, 301 E. Pine Street FL14,
Orlando, FL 32801-2724; Lauri Waldman Ross, Esq. RossGirten@Laurilaw.com
Counsel to the Hearing Panel of the JQC, Ste. 1612, 9100 South Dadeland
Boulevard, Miami, Florida 333156; Michael L. Schneider, Esq.
mschneider@floridajqc.com General Counsel, 1110 Thomasville Road,
Tallahassee, Florida 32303; The Honorable Robert Morris, morrist@flcourts.org
2nd District Court of Appeal, P.O. Box 327, Lakeland, Florida 33802-0327;
Michael Nachwalter, Esq. mnachwalter@knpa.com Kenny Nachwalter PA, 201 S.
Biscayne Blvd., Miami, Florida 33131-4332; Robert A. Sweetapple,
Pleadings@sweetapplelaw.com ,Co-counsel for Judge Watson, 20 SE 3rd Street,
Boca Raton, Florida 33432, this 10th day of February 2014.

Pursuant to FJQCR Rule 10(b) a copy is furnished by email to: The
Honorable Kerry I. Evander, evanderk@flcourts.org, Chair of the JQC, 300 S.
Beach Street, Daytona Beach, FL 32114.

/s/ Laura M. Watson
LAURA M. WATSON
BEFORE THE FLORIDA JUDICIAL QUALIFICATIONS COMMISSION
STATE OF FLORIDA

SC13-1333

INQUIRY CONCERNING A JUDGE No. 12-613

LAURA M. WATSON

AFFIDAVIT OF COLLEEN KATHRYN O’LOUGHLIN, ATTORNEY AT LAW IN SUPPORT OF JUDGE WATSON’S MOTION FOR DISQUALIFICATION OF MAYANNE DOWNS, ESQ., THE HONORABLE KERRY I. EVANDER, THE HONORABLE ROBERT MORRIS, AND MICHAEL NACHWALTER, ESQ.

I, the undersigned, Colleen Kathryn O’Loughlin, Attorney at Law, make the following statements, which are true and correct to the best of my knowledge, and under penalty of perjury, as follows:

1. I am over the age of eighteen (18).

2. I am not kin to Judge Watson.

3. I am a reputable citizen of the State of Florida.

4. I am an attorney, who is a member in good standing in The Florida Bar, State Bar of Georgia, Supreme Court of Georgia, Court of Appeals of Georgia, United States District Court for the Southern District of Florida, United States District Court for the Northern District of Georgia, and Supreme Court of the
United States.

4. I have reviewed Judge Watson's Motion for Disqualification of Mayanne Downs ("Downs"), Esq., The Honorable Kerry I. Evander ("Evander"), The Honorable Robert Morris ("Morris"), and Michael Nachwalter ("Nachwalter"), Esq (hereinafter "Disqualification Motion").

5. I have reviewed Judge Watson's lawsuit filed against the above named persons, as well as others, who have been sued in both their official and individual capacities, in the United States District Court for the Southern District of Florida, case number 14-60306-CV-Cooke/Turnoff. I have reviewed most, if not all, of the underlying cases cited in such lawsuit and/or her Injunctive Relief Motion, and/or the exhibits thereto. Such lawsuit seeks Declaratory Judgment, Injunctive Relief, and Damages including punitive damages against Downs, Evander, Morris, and Nachwalter and others. I believe that Judge Watson will suffer immediate and irreparable harm if (a) the Temporary Restraining Order in such lawsuit is not granted, (b) the Preliminary and/or Permanent Injunctions in such lawsuit are not granted, and (c) a stay in this case is not granted.

6. I further believe that the Disqualification Motion of Downs, Evander, Morris, and Nachwalter, who are on the JQC Hearing Panel, should be granted because their impartiality is being called into question. I believe Judge Watson's
fears that she will not receive a fair hearing before the Hearing Panel, with these members on it, is reasonable, and that the average person could not forget the aforementioned pending federal lawsuit wherein the security of their finances possibly turns on each decision made in the final hearing. I believe that it is self-evident that such a temptation may override any sense of fairness that is required in these proceedings.

7. I believe that the facts and relationships set forth above, in Judge Watson’s Disqualification Motion, and/or the aforementioned federal filings, more than establishes the grounds for the well-founded fear that she will not receive a fair trial or hearing because of both the actual and the appearance of partiality, prejudice, and/or partisan positions of Downs, Evander, Morris, and Nachwalter.

Under penalties of perjury, I declare that I have read the foregoing affidavit, and that the facts stated in it are true and correct.

Colleen Kathryn O’Loughlin, Attorney at Law
Affiant
Respectfully submitted,

The Honorable Laura M. Watson
Circuit Judge, 17th Judicial Circuit
Room 1005B
201 SE 6th Street
Fort Lauderdale, Florida 33301
Tel.: (954) 831-6907
jwatson@17th.flcourts.org

/s/ Laura M. Watson
LAURA M. WATSON
Florida Bar No.: 476330

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a true and correct copy of the foregoing was furnished by email to: Miles A. McGrane, III, Esq. miles@mcgranelaw.com
lisa@mcgranelaw.com The McGrane Law Firm, Special Counsel, 2103 Country Club Prado, Coral Gables, Florida, 33134-2128, Miami, Florida 333156; Ruben V. Chavez, Esq. rchavez@chavezpa Law Offices of Ruben V. Chavez, P.A., 9100 S. Dadeland Blvd., Suite 1510, Miami, Florida 33156-7816; Lauri Waldman Ross, Esq. RossGirt@Laurilaw.com Counsel to the Hearing Panel of the JQC, Ste. 1612, 9100 South Dadeland Boulevard, Miami, Florida 333156; Michael L. Schneider, Esq. mschneider@floridajqc.com General Counsel, 1110 Thomasville Road, Tallahassee, Florida 32303; The Honorable Robert Morris,
morrisr@flcourts.org 2nd District Court of Appeal, P.O. Box 327, Lakeland,
Florida 33802-0327; Michael Nachwalter, Esq. mnachwalter@knpa.com Kenny Nachwalter PA, 201 S. Biscayne Blvd., Miami, Florida 33131-4332; Robert A. Sweetapple, Pleadings@sweetapplelaw.com, Co-counsel for Judge Watson, 20 SE 3rd Street, Boca Raton, Florida 33432, this 10th day of February 2014.

Pursuant to FJQCR Rule 10(b) a copy is furnished by email to: The Honorable Kerry I. Evander, evanderk@flcourts.org, Chair of the JQC, 300 S. Beach Street, Daytona Beach, FL 32114.

/s/ Laura M. Watson
LAURA M. WATSON
BEFORE THE FLORIDA JUDICIAL QUALIFICATIONS COMMISSION  
STATE OF FLORIDA  

SC13-1333  
INQUIRY CONCERNING A JUDGE No. 12-613  
LAURA M. WATSON  

AFFIDAVIT OF DANIEL LEWIS IN SUPPORT OF JUDGE WATSON'S MOTION FOR DISQUALIFICATION OF MAYANNE DOWNS, ESQ., THE HONORABLE KERRY I. EVANDER, THE HONORABLE ROBERT MORRIS, AND MICHAEL NACHWALTER, ESQ.  

STATE OF FLORIDA  )  
COUNTY OF BROWARD  )SS:  

I, the undersigned, Mr. Daniel Lewis, do hereby solemnly affirm and declare on oath as follows:  

1. I am over the age of eighteen.  
2. I am not kin to Judge Watson.  
3. I am a reputable citizen of the State of Florida.  
4. I have reviewed Judge Watson’s Motion for Disqualification of Mayanne Downs (“Downs”), Esq., The Honorable Kerry I. Evander (“Evander”), The
Honorable Robert Morris ("Morris"), and Michael Nachwalter ("Nachwalter"), Esq.

5. I have reviewed Judge Watson’s law suit filed against the above named persons, as well as others, who have been sued in both their official and individual capacities in the United States District Court for the Southern District of Florida, case number 14-60306-CV-Cooke/Turnoff. This suit seeks Declaratory Judgment, Injunctive Relief, and Damages including punitive damages against Downs, Evander, Morris, and Nachwalter and others.

6. Disqualification of JQC Hearing Panel members Downs, Evander, Morris, and Nachwalter should be granted because their impartiality is in question. I believe Judge Watson’s fears that she will not receive a fair hearing before the Hearing Panel with these members is reasonable and the average person could not forget the pending federal law suit wherein the security of their finances possibly turns on each decision made in the final hearing. It is self-evident that such a temptation may override any sense of fairness that is required in these proceedings.

7. The facts and relationships set forth above and in Judge Watson’s motion and in the federal filings, more than establishes the grounds for the well-founded fear that she will not receive a fair trial or hearing because of both the actual and the appearance of partiality, prejudice, and partisan positions of Downs,
Evander, Morris, and Nachwalter.

Under penalties of perjury, I declare that I have read the foregoing affidavit and that the facts stated in it are true and correct.

FURTHER AFFIANT SAYETH NAUGHT.

By
Daniel W. Lewis
Affiant

Respectfully submitted,
The Honorable Laura M. Watson
Circuit Judge, 17th Judicial Circuit
Room 1005B
201 SE 6th Street
Fort Lauderdale, Florida 33301
Tel.: (954) 831-6907
jwatson@17th.flcourts.org

/l/ Laura M. Watson
LAURA M. WATSON
Florida Bar No.: 476330

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a true and correct copy of the foregoing was furnished by email to: Miles A. McGrane, III, Esq. miles@mcgranelaw.com
lisa@mcgranelaw.com The McGrane Law Firm, Special Counsel, 2103 Country Club Prado, Coral Gables, Florida, 33134-2128, Miami, Florida 333156; Ruben V. Chavez, Esq. rchavez@chavezpa Law Offices of Ruben V. Chavez, P.A., 9100 S.
Dadeland Blvd., Suite 1510, Miami, Florida 33156-7816; Mayanne Downs, Esq.
mayanne.downs@gray-robinson.com GrayRobinson, PA, 301 E. Pine Street FL14,
Orlando, FL 32801-2724; Lauri Waldman Ross, Esq. RossGirten@Laurilaw.com
Counsel to the Hearing Panel of the JQC, Ste. 1612, 9100 South Dadeland
Boulevard, Miami, Florida 33316; Michael L. Schneider, Esq.
msschneider@floridajqc.com General Counsel, 1110 Thomasville Road,
Tallahassee, Florida 32303; The Honorable Robert Morris, morrisr@flcourts.org
2nd District Court of Appeal, P.O. Box 327, Lakeland, Florida 33802-0327;
Michael Nachwalter, Esq. mnachwalter@knpa.com Kenny Nachwalter PA, 201 S.
Biscayne Blvd., Miami, Florida 33131-4332; Robert A. Sweetapple,
Pleadings@sweetapplelaw.com Co-counsel for Judge Watson, 20 SE 3rd Street,
Boca Raton, Florida 33432, this 10th day of February 2014.

Pursuant to FJQCR Rule 10(b) a copy is furnished by email to: The
Honorable Kerry I. Evander, evanderk@flcourts.org, Chair of the JQC, 300 S.
Beach Street, Daytona Beach, FL 32114.

/s/ Laura M. Watson
LAURA M. WATSON
Tab 22
F
BEFORE THE JUDICIAL QUALIFICATIONS COMMISSION
STATE OF FLORIDA

INQUIRY CONCERNING JUDGE,

LAURA MARIE WATSON, NO. 12-613

ORDER DENYING MOTION TO DISQUALIFY

This cause came on to be heard on February 10, 2014 on Judge Watson’s Motion to Disqualify Florida Judicial Qualifications Hearing Panel Members Mayanne Downs, the Honorable Kerry Evander, the Honorable Robert Morris and Michael Nachwalter, Esquire. The motion is hereby denied as legally insufficient. Each of the individual members has been consulted and concurs in this denial. 5-H Corporation v. Padovano, 708 So.2d 244 (Fla. 1998); Cherradi v. Andrews, 669 So.2d 326 (Fla. 4th DCA 1996); See also Kampfer v. Gokey, 175 F.3d 1008 (Second Cir. 1999)(a litigant cannot force a judge’s recusal by filing suit against him or her); United States v. Pryor, 960 F.2d 1, 3 (First Cir. 1992)(rejecting claim that judge was required to recuse himself “because of bias due to the fact that defendants had brought a civil suit against him; decision was for the judge, and automatic recusal cannot be obtained by the single act of suing the judge”); Fowler v. United States 699 F.Supp. 925 (M.D. Ga. 1988)(same).

Done and Ordered this 10th day of February, 2014.
FLORIDA JUDICIAL QUALIFICATIONS COMMISSION

By: /s/ Honorable Kerry Evander
Honorable Kerry Evander
FJQC HEARING PANEL CHAIR
Fifth District Court of Appeal
300 S. Beach Street
Daytona Beach, FL 32114
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Tab 23
BEFORE THE JUDICIAL QUALIFICATIONS COMMISSION
STATE OF FLORIDA

INQUIRY CONCERNING JUDGE,

LAURA MARIE WATSON, NO. 12-613

ORDER ON PENDING MOTIONS AND STATUS CONFERENCE

This matter came to be heard at telephonic hearings and a status conference conducted on November 13 and 18, 2013 before Florida Judicial Qualifications Commission (FJQC) Hearing Panel Chair, Honorable Kerry Evander. In attendance were Miles M. McGrane, III, Special Counsel to the FJQC, Michael Schneider, FJQC General Counsel, Lauri Waldman Ross, Counsel to the FJQC Hearing Panel, the Respondent Judge Laura Marie Watson, and her co-counsel Robert A. Sweetapple, Esq.

A. Pending Motions

The Chair of the FJQC Hearing Panel is required to dispose of all pretrial motions, which may be heard by teleconference or be determined “with or without hearings” FJQC Rule 7(b). Accordingly, the Chair scheduled certain motions to be heard at the November 13, 2013 status conference, and rules as follows:
1. Judge Watson's Motion for Partial Summary Judgment is hereby denied. Inquiry Concerning Judge Davey, 645 So.2d 398, 403 (Fla. 1994); Inquiry Concerning Judge Kinsey, 842 So.2d 77, 85 n.4 (Fla. 2003).

2. The FJQC's motion to strike Judge Watson's Motion for Partial Summary Judgment has been withdrawn, and thus requires no ruling.

3. Judge Watson's "Motion for Express Ruling and Clarification of August 26, 2013 Order on Status Conference" is granted, as follows:
   a. The FJQC is an independent, constitutional agency governed by the Florida Constitution, art.v, §12 and the FJQC Rules. It is not an Article v court, governed by the Code of Judicial Conduct (although several of its members are judges, separately governed by such Code).
   b. FJQC Rule 14 provides that "legal evidence only" shall be received at a hearing before the Hearing Panel, and oral evidence "taken only on oath or affirmation." The Florida Rules of Evidence do not apply per se to this administrative proceeding, particularly in the area of hearsay. The Hearing Panel will be looking for indicia of reliability and may look to the Rules of Evidence for guidance.
However, ¶9 of the August 26, 2013 order is clarified to reflect that transcripts of prior proceedings are not a substitute for live testimony. These may be used to supplement live testimony, and to avoid needless consumption of panel time.

c. The Respondent’s Motion to Compel the Production of Evidence in the JQC’s possession preceding the notice of formal charges is denied. Fla. Const. art.v, §12(a)(4); FJQC Rule 23(a); Inquiry Concerning Judge Wood, 720 So.2d 506, 507 n.2 (Fla. 1998)(“[T]he specific nature of the allegations against Judge Wood and the events that transpired before the Investigative Panel may not be revealed because, they are, by rule, confidential.”); Inquiry Concerning a Judge Graziano, 696 So.2d 744, 751 (Fla. 1997)(minutes of JQC investigation and complaints preceding notice of formal charges remain constitutionally protected).

The Chair scheduled certain motions to be heard on November 18, 2013, and rules as follows:

1. The JQC’s Motion to Compel Better Answers to Interrogatories Served on September 16, 2013 and October 7, 2013 is granted in part. On or before December 10, 2013, Judge Watson shall state the subject matter about
which each witness identified (a) has knowledge; and (b) is expected to testify. The balance of the motion is denied.

2. The JQC’s Motion to Compel Production is denied, without prejudice to the service of subpoenas on the pertinent non-party. The respondent judge has stated that the place for service should be her office.

B. FINAL Hearing and Pretrial Proceedings

The final hearing of this matter shall take place the week of February 10, 2014, in Broward County, Florida commencing 10:00 a.m., February 10. Hearing Panel members scheduled to hear this case are Honorable Kerry Evander (Chair), Mayanne Downs, Esquire, Jerome S. Osteryoung, PhD. (lay member), Michael Nachwalter, Esquire (ad hoc), Honorable Robert Morris, and Harry R. Duncanson (lay member).

Status conferences are scheduled on the following dates, to facilitate the trial of this case and to address any discovery issues and motions:

December 18, 2013  1:30 p.m.
January 15, 2014  1:30 p.m.
January 29, 2014  1:30 p.m.

If there are no matters which require the Chair’s assistance or resolution, the parties shall notify the Chair and Ms. Ross by noon preceding the date of a scheduled status conference hearing.
Judge Watson’s designation of expert and character witnesses shall be served by December 10, 2013.

The JQC’s designations of prior witness testimony (adduced at trial and transcribed in civil proceedings related to the charges) shall be served four weeks prior to February 10, 2014. The Respondent’s objections to designations and cross-designations of prior witness testimony (adduced at trial and transcribed in civil proceedings related to the charges) shall be served three weeks prior to February 10, 2014.

Objections to designations shall be heard at the January 29, 2014 status conference.

The parties are encouraged to stipulate to as many exhibits as possible, prior to commencement of the final hearing. The parties shall exchange exhibits by January 20, 2014. Exhibit books shall be provided by the parties jointly to the Hearing Panel no later than 10:00 a.m. on February 10, 2014. The exhibit books shall be divided into three sections: (1) exhibits which are agreed and will be admitted without objection; (2) JQC exhibits to which the Respondent Judge objects; and (3) Judge Watson’s exhibits to which the JQC objects.

The exhibit books shall include an index listing each exhibit and specific objection[s].
Policy on Limitation of Character Witnesses: Pursuant to the General Policy of the Hearing Panel, the Respondent Judge will be limited to three live character witnesses at the final hearing. The Hearing Panel may consider character affidavits submitted by the Respondent by January 30, 2014.

Done and Ordered this 20th day of November, 2013.

FLORIDA JUDICIAL QUALIFICATIONS COMMISSION

By: /s/ Honorable Kerry Evander
Honorable Kerry Evander
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Tab 24
BEFORE THE FLORIDA JUDICIAL QUALIFICATIONS COMMISSION
STATE OF FLORIDA

INQUIRY CONCERNING A JUDGE No. 12-613

LAURA M. WATSON

ANSWER AND AFFIRMATIVE DEFENSES OF JUDGE LAURA M.
WATSON TO JQC’S NOTICE OF FORMAL CHARGES

Judge Laura M. Watson hereby answers the JQC’s Notice of Formal Charges and alleges as follows:

1. With respect to the allegations of paragraph “1” of the Notice of Formal Charges and without the benefit of a more definite statement, Judge Watson admits that since 1998 the firm of Laura M. Watson, P.A. d/b/a Watson and Lentner (“Watson, P.A.”) represented health care providers in numerous lawsuits and that firm maintained its own clients and files. Watson, P.A. avers that it lacks knowledge as to the alleged exact legal status of the other named firms but believes that they represented health care providers and other types of clients prior to 2002.

2. With respect to the allegations of paragraph “2” of the Notice of Formal Charges and without the benefit of a more definite statement, Judge Watson admits that since 1998 Watson, P.A. represented health care providers in numerous lawsuits
against Progressive Insurance Company and other insurance companies and that Watson, P.A. maintained its own clients and files. Watson, P.A. avers that it lacks knowledge as to the exact legal status of the other named firms but believes that they represented health care providers and other types of clients in various types of cases, including cases against Progressive Insurance Company prior to 2002.

3. With respect to the allegations of paragraph “3” of the Notice of Formal Charges and without the benefit of a more definite statement, Judge Watson admits that Watson, P.A. solicited health care providers in 2002 and that these solicitations were approved by the Florida Bar. Watson, P.A. does not have any records in its possession which would show the number of health care provider clients the firm or other firms represented in 2002 or the number of claims for unpaid bills and associated attorneys’ fees against Progressive Insurance Company at that time.

4. With respect to the allegations of paragraph “4” of the Notice of Formal Charges and without the benefit of a more definite statement, Judge Watson denies the allegations therein. Watson, P.A. never hired Stewart Tilghman Fox & Bianchi, William C. Hearon, P.A. and Todd S. Stewart, P.A. (“Stewart Lawyers”) to handle bad faith claims, or for any reason at any time. The agreements Watson, P.A. had with its health care providers did not authorize the firm to pursue a bad faith claim. (See Exhibit “A” which is an example of such a contract).
5. With respect to the allegations of paragraph “5” of the Notice of Formal Charges and without the benefit of a more definite statement, Judge Watson avers that “such bad faith claims” were filed in *Fishman & Stashak, M.D., P.A. d/b/a/ Goldcoast Orthopedics, et al., v. Progressive Bayside Insurance Company, et al.*, Case no. CA-01011649 (“Goldcoast”). The Goldcoast suit began as a single-plaintiff action against Progressive filed by the firm of Slawson, Cunningham, Whalen & Stewart in November 2001 which alleged violations of Florida Statutes §§ 624.155, 626.9541, violations of the Federal RICO statute, violations of 18 USC §1962(d), and violations of the State RICO statute. The Goldcoast suit was envisioned only as a single-plaintiff action. Watson P.A. was co-counsel to this action.

6. With respect to the allegations of paragraph “6” of the Notice of Formal Charges and without the benefit of a more definite statement, Judge Watson admits that Watson PA, was co-counsel to the Goldcoast action and that it was contemplated that the clients would receive 60% of the recovery in the case of *Fishman & Stashak, M.D., P.A. d/b/a/ Goldcoast Orthopedics, et al., v. Progressive Bayside Insurance Company, et al.*, and the attorneys who were counsel in that case would receive attorneys’ fees in the amount of 40% to be made on the basis of time and effort expended by each attorney, which was estimated to be 60% for the Stewart Lawyers.
Among the express written agreements were the retainer contracts for the 37 clients that were represented in the Goldcoast bad faith case that all included the following second paragraph:

It is contemplated by the parties that PROGRESSIVE INSURANCE COMPANY and/or any of its divisions, subsidiaries, affiliates or related companies may propose a settlement that could include the resolution of claims filed pursuant to this Agreement and other claims that were not brought pursuant to this representation. In such an event, it is agreed that this Agreement shall not include that portion of any settlement that is attributable to those other claims or lawsuits including but not limited to contract benefits, damages for breach of contract, interest and any statutory attorneys fees that KANE & KANE, MARKS & FLEISCHER P.A., LAURA WATSON, P.A. d/b/a WATSON & LENNER would be due on such separate claims. (See Exhibit “B” as an example of the contract).

7. With respect to the allegations of paragraph “7” of the Notice of Formal Charges and without the benefit of a more definite statement, Judge Watson denies that the Goldcoast case encompassed a core group of approximately forty (40) health care providers. The Goldcoast suit was envisioned only as a single-plaintiff action and was filed as such by the firm of Slawson, Cunningham, Whalen & Stewart, in November 2001. In July 2002 the Stewart Lawyers substituted in as counsel for the Slawson firm and at that time made the decision to add approximately twelve (12) additional health care providers. In January 2003 the Stewart Lawyers made the decision to file the Fourth Amended Complaint and added additional plaintiffs.
Ultimately the case had thirty-seven (37) plaintiffs. Judge Watson denies that bad faith claims were to be asserted on behalf of all of Watson, P.A.'s health care providers.

8. With respect to the allegations of paragraph "8" of the Notice of Formal Charges and without the benefit of a more definite statement, Judge Watson admits that at the request of the Stewart Lawyers, Watson, P.A. provided a list of its health care providers' clients. Judge Watson avers that this list was provided in order to support an award for punitive damages pursuant to the bad faith statute by showing that the "acts giving rise to the violation occur with such frequency as to indicate a general business practice and these acts are (a) Willful, wanton, and malicious; (b) In reckless disregard for the rights of any insured; or (c) In reckless disregard for the rights of a beneficiary under a life insurance contract." Fla. Stat. § 624.155(5).

9. With respect to the allegations of paragraph "9" of the Notice of Formal Charges and without the benefit of a more definite statement, Judge Watson admits that Watson P.A. worked diligently on the Goldcoast case but denies that the Stewart Lawyers appeared as co-counsel on any individual cases handled by the firm, appeared at any depositions on these cases, assisted in any discovery matters on the P.A.'s individual cases, or entered into any written contracts for employment as co-counsel on behalf of any of the Watson, P.A. clients other than the singular case of
10. With respect to the allegations of paragraph “10” of the Notice of Formal Charges and without the benefit of a more definite statement, Judge Watson admits that the Stewart Lawyers obtained a favorable ruling requiring disclosure of discovery materials but denies that this ruling materially enhanced the strength of the case. Progressive had always offered all of the materials without a court ruling pursuant to a confidentiality agreement. Even after appeal, any materials received were to remain confidential.

11. With respect to the allegations of paragraph “11” of the Notice of Formal Charges and without the benefit of a more definite statement, Judge Watson denies that there were any meaningful settlement negotiations in January 2004 that continued for the next several months.

12. With respect to the allegations of paragraph “12” of the Notice of Formal Charges and without the benefit of a more definite statement, Judge Watson admits that the Stewart Lawyers occasionally updated Watson, P.A. and has no personal knowledge as to the amount of communications with the other firms.

13. With respect to the allegations of paragraph “13” of the Notice of Formal Charges and without the benefit of a more definite statement, Judge Watson admits
that Watson, P.A. met with Progressive to discuss settlement and avers that Stewart’s consent was not needed to effectuate a settlement with Progressive. After the mediation between Progressive and the Stewart Lawyers, Progressive felt the Stewart Lawyers were disruptive, counterproductive and less reasonable and required that they not be present at this meeting. Watson PA had entered into fee contracts with their PIP clients authorizing them to pursue claims for PIP benefits. The firm was also co-counsel representing the Gold Coast plaintiffs. Watson P.A. always had the authority to negotiate and settle the claims for PIP benefits and the bad faith case, with or without the Stewart Lawyers’ permission and in fact prior to May 14, 2004 had attempted to do so with Stewart’s knowledge and encouragement. (See Exhibit “C” emails from Larry Stewart to Watson suggesting that the firm should approach Progressive with a proposal to settle all disputes).

14. With respect to the allegations of paragraph “14” of the Notice of Formal Charges and without the benefit of a more definite statement, Judge Watson admits that Watson, P.A. met with Progressive to discuss settlement but denies that Stewart’s consent was needed to effectuate a settlement. Progressive gave each of the three PIP firms its own confidential settlement offer. These figures included compensation for PIP benefits, interest and fees, and Progressive required a release of all bad faith claims and a dismissal of the Goldcoast case. Everyone involved