Presentation:

Appearances Are Everything

Cheatwood Inn of Court

April 13, 2010

Hon. Michael G. Williamson Pupilage

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UNITED STATES DISTRICT COURT

DISTRICT OF ARIZONA

TAJUDEEN O. OLADIRAN, and CHARLOTTE H. OLADIRAN, husband and wife, Plaintiffs, vs. SUNTRUST MORTGAGE, INC., a Virginia corporation d/b/a/ CRESTAR MORTGAGE; MORTGAGE ELECTRONIC REGISTRATION SYSTEMS INC., an Arizona corporation; SUNTRUST BANKS, INC., a Georgia corporation; JAMES M. WELLS III and JANE DOE WELLS III, husband and wife; STERLING EDMUNDS, JR and JANE DOE EDMUNDS, JR, husband and wife; JOHN DOES I – X; and ENTITIES 1-10, Defendants.	**CAUSE NO.: 2:09-CV-01471-SRB** **PLAINTIFFS' COUNSEL'S MOTION FOR A HONEST AND HONORABLE COURT SYSTEM** (Assigned to the Dishonorable Susan R. Bolton)

This motion is filed by Plaintiffs' counsel, Tajudeen O. Oladiran, Esq. ("Mr. Oladiran" or "Taj"),[1] pursuant to the law of, what goes around comes around. Judge

[1] Unless otherwise indicated, capitalized terms used in this Motion will correspond to the

Bolton, I just read your Order and I am very disappointed in the fact that a brainless coward like you is a federal judge.

I accused Suntrust Bank of racketeering etc, and many good lawyers in town told me the bank's executives would never be deposed, and that the case would go nowhere. I stupidly stuck to the notion that everyone is equal under the law etc. Boy was I wrong. The bank cancelled depositions set by the court, cancelled a hearing set by the court, and walked away without as much as a scratch.

My thanks go out to Larry Folks and Kathleen Weber who both warned me that I would lose (I should have listened to them).

I apologize to all my clients. I know, I'm sorry does not repair the mess I made but, that's all I've got.

To my family, words can't express my apologies; please remember me kindly.

Finally, to Susan Bolton, we shall meet again you know where ☺

SUBMITTED this 1st day of October, 2009.

OLADIRAN LAW, PC
Attorney At Law

By /s/ Tajudeen O. Oladiran, Esq.

Original of the foregoing filed with the court electronically
on this 1st day of October, 2009.

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capitalized terms used in Plaintiffs' First Amended Complaint (Docket No. 16).

I hereby certify that I electronically transmitted the attached document to the Clerk's Office using the CM/ECF System for filing and transmittal of a Notice of Electronic Filing to the following CM/ECF registrants this 1st day of October, 2009.

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By: Tajudeen O. Oladiran

Lowering the Bar

Legal humor. Seriously.

Court Criticizes Everybody Involved in Briefing That Totaled 5,415 Pages

A while back, I made fun of a brief that was filed on behalf of Jeffrey Skilling (of Enron fame, or infamy), not because it was bad but because it was 239 pages long. At the time, I thought that was a lot of pages.

On October 9, the California Court of Appeal ruled in a case involving what it described as "what may well be the most oppressive motion ever presented to a superior court," an eye-catching statement given all the oppression associated with superior courts anyway. The oppressiveness in *Nazir v. United Airlines* was not due to the kind of arguments made, just the sheer number of pages involved. Counting the required separate statements and appendices and other attachments as well as the briefs themselves, the parties apparently submitted **5,415** pieces of paper to the court for just this one summary judgment motion.

The briefs themselves were not the most remarkable thing about this. While they were all way too long -- the opening brief, opposition, and reply were 85, 57, and 76 pages respectively -- all three put together still would not equal the incomparable monster brief filed in the Skilling appeal, which as I pointed out before was half the length of *Huckleberry Finn*. But because summary judgment motions involve battles about the facts, they often involve lengthy attachments of exhibits and so forth. "Lengthy" generally means maybe a couple hundred pages, though, not well over *five thousand*. Depending on what kind of paper was being used and how many tabs there were, the stack of papers related to this one motion could have approached three feet in height.

It is especially odd for the defendants (who filed the motion) to have contributed so much to this pile, since the point of filing a summary judgment motion is to show that there are no genuinely disputed issues of fact that have to go to a jury. The fewer facts you bring up, the better, so the fewer pages, the better (always a good rule anyway). But here, the defendants' first set of papers was 1056 pages long, and (after more than 2000 pages from the plaintiff) they filed even more in reply (1150). It was, the court said, "a record the likes of which we have never seen."

Not surprisingly, the court reversed most of the judgment, managing to find some disputed facts in the ginormous mass of paper that had been dumped into the record. It managed also to criticize the trial judge, though, noting that "what apparently happened is that the trial court did not read all the papers." No kidding?

Cite: *Nazir v. United Airlines, Inc.*, 2009 WL 3235159 (Cal. App. Oct. 9, 2009).
Link: The UCL Practitioner

October 30, 2009 in Civil Procedure, Documents/Pleadings, Legal Writing | Permalink

Lowering the Bar

Legal humor. Seriously.

Rule 8 Invoked Against 465-Page Complaint

Rarely granted is the Motion for More Definite Statement under Federal Rule 8(a), which requires complaints to contain "a short and plain statement of the claim" being made. But now we know it is appropriate at least where a plaintiff has used more than 450 pages to assert 54 separate claims.

The title alone was eight pages long.

Judge Ronald Leighton of the Western District of Washington is the hero of this story. "The Court," he wrote, "recognizes the tension between Rule 8(a), which requires a "short and plain statement," and Rule 9(b), which requires the party [to] state his [fraud] claim with particularity. The issue before the Court is whether Plaintiff's 465 page complaint correctly balances this tension." He found it did not.

In addition to the eight-page title, the complaint spent 18 pages listing the defendants, which the court noted was somewhat repetitive given that there were only six defendants. The facts were finally reached at page 30, followed by 87 pages of general allegations, "including a 37 page pit-stop to quote emails." The balance of the complaint (341 pages) was an "odyssey" through all of plaintiff's claims for relief.

The judge only needed 3 pages for his order, which concluded this way:

> **III. Conclusion**
>
> Plaintiff has a great deal to say,
> But it seems he skipped Rule 8(a),
> His Complaint is too long,
> Which renders it wrong,
> Please re-write and re-file today.

Motion granted.

Link: WSJ Law Blog
LinK: How Appealing

July 08, 2008 in Legal Writing | Permalink

Lowering the Bar

Legal humor. Seriously.

O'Melveny & Myers Shames Itself With 239-Page Brief

The Wall Street Journal's Law Blog reports this afternoon that lawyers at O'Melveny & Myers, the firm defending former Enron CEO Jeff Skilling on appeal from his criminal conviction, have filed an appellate brief with the Fifth Circuit that is **239 pages long.**

To be fair, the Fifth Circuit does require a 14-point font.

Still, at **58,922 words**, the brief is over four times the length allowed by the Federal Rules, which limit briefs to 14,000 words unless you get permission from the court. The normal limit would permit a brief of about 50 pages (again, depending on the font), but I can't recall ever seeing a case where I thought the issues really justified anything close to that. Let alone 239.

I admit that I once wrote a brief that ended up being more than 40 pages. It wasn't really my fault, but I still hang my head in shame about it. (Tip: If you can't make your argument in 30 pages or less, you probably need a new argument.) The last brief I saw that was long enough to mock was a 100+ page draft of a brief that featured a 17-page introduction (itself longer than most briefs), with eleven separate main arguments, the last of which was the Dormant Commerce Clause. (Tip: If your argument even *mentions* the Dormant Commerce Clause, you probably need a new argument.) O'Melveny's brief uses 239 pages to cover just five main points. The brief includes:

- A 12-page introduction;
- Over 44 pages of facts;
- A two-page summary of argument;
- Beginning on page 61, a 175-page argument; and finally
- A two-sentence conclusion, for anyone who has not crumbled into dust, or evolved into some other type of lifeform that is above our petty human concepts of "justice," before actually reaching the end of the document.

Each and every page, of course, is deeply treasured by its author(s), who could no more delete one of these pages than you would push one of your own children in front of a bus to buy yourself a few extra seconds to dodge out of the way.

Of course, that's not the argument made in the accompanying Motion For Permission to File a Brief Exceeding the Word Limit Set Forth in Federal Rule of Appellate Procedure 32(a)(7)(B), which itself is eleven pages long. In that motion, O'Melveny says that the case of their client (referred to as "appellant Jeffrey Skilling ('Skilling')" just in case you forget which "Skilling" they're talking about) are sufficiently "extraordinary and compelling" that the extra words are justified. The brief will raise a "large number [five] of "serious legal issues" -- most briefs don't raise these, I guess -- each of which "could easily justify a full-length brief on [its] own." And has gotten one.

Finally, the authors note that this is not the longest brief (yes, an oxymoron) ever written, pointing out that in *U.S. v. Brown*, the government used 69,370 words in its brief, and in *U.S. v. Martha Stewart* it used 56,078 words. So you see, 58,922 words is really quite reasonable. True, it is more than *Hamlet* (31,901) and *Alice in Wonderland* (26,698) put together, and over half of *Huckleberry Finn* (111,275). But what's extraordinary about those?

In all fairness, I should say that the brief really is very well written. Honestly, this is outstanding legal work. It's just way too goddamn long.

And now, having written 595 words complaining that somebody's brief is too long, I'll stop.

Link: WSJ Law Blog

Link: Count words for yourself at Project Gutenberg

September 07, 2007 in Documents/Pleadings | Permalink

309 So.2d 17
District Court of Appeal of Florida, Fourth District.

Ray SANDSTROM, Appellant,
v.
STATE of Florida, Appellee.

No. 74-323. Feb. 28, 1975. Rehearing Denied March 26, 1975.

From a judgment of the Circuit Court for Broward County, Robert W. Tyson, Jr., J., finding a practicing member of the Bar in contempt, an appeal was taken. The District Court of Appeal, Downey, J., held that judge had power to impose dress requirements on lawyers appearing before him in judicial proceedings, and attorney who had been ordered to wear tie in court was in contempt of court when he appeared wearing sport shirt, open at neck, and a necklace with a round gold pendant the size of a silver dollar.

Affirmed.

West Headnotes (17)

1 **Contempt** ⇦ Nature and Elements of Contempt
Whether act constitutes contempt is determined by its reasonable tendencies to obstruct justice.

Cases that cite this headnote

2 **Contempt** ⇦ Disturbance of Proceedings of Court
In absence of order to wear tie when appearing in court, failure to wear tie would not have constituted contempt.

Cases that cite this headnote

3 **Contempt** ⇦ Disobedience to Mandate, Order, or Judgment
Wilful disobedience of court order clearly constitutes obstruction of justice and represents direct rather than indirect affront to court's authority.

Cases that cite this headnote

4 **Contempt** ⇦ Validity of Mandate, Order, or Judgment
Disobedience of order issued without jurisdiction is not contempt.

Cases that cite this headnote

5 **Contempt** ⇦ Validity of Mandate, Order, or Judgment
Courts ⇦ Matters Subject to Regulation
Judge had power to impose dress requirements upon lawyers appearing before him in judicial proceedings, an attorney who had been ordered to wear tie in court was in contempt of court when he appeared wearing sport shirt, open at neck, and a necklace with a round gold pendant the size of a silver dollar.

Cases that cite this headnote

6 **Attorney and Client** ⇦ Power and Duty to Control
Judicial branch of government has inherent power to regulate professional conduct of all lawyers.

Cases that cite this headnote

7 **Attorney and Client** ⇦ Dignity, Decorum, and Courtesy; Criticism of Courts
Constitutional Law ⇦ Attorneys and Paralegals
Constitutional Law ⇦ Course and Conduct of Proceedings in General
Order to wear tie when appearing in court did not violate due process, equal protection or any of attorney's other constitutional rights.

Cases that cite this headnote

8 **Attorney and Client** ⇦ Attorney's Conduct and Position in General
Constitutional Law ⇦ Estoppel, Waiver, or Forfeiture
Lawyer does not terminate his membership in human race, nor does he surrender constitutional rights possessed by private citizen, when he becomes member of Bar.

Cases that cite this headnote

9 **Attorney and Client** ⇦ Dignity, Decorum, and Courtesy; Criticism of Courts
Membership in Bar is privilege burdened with conditions, and compliance with regulations concerning courtroom attire is one of those conditions.

Cases that cite this headnote

10 **Attorney and Client** ⇦ Dignity, Decorum, and Courtesy; Criticism of Courts
When acting officially, judges have inherent power to control decorum (including conduct and physical appearance) of counsel; but this does not mean that counsel or anyone else can be subjected to unbridled idiosyncrasies of individual judge, and the court's action must bear reasonable relationship to justifiable end or purpose.

Cases that cite this headnote

11 **Courts** ⇦ Making and Promulgation of Rules
The fewer "local" rules the better.

Cases that cite this headnote

12 **Contempt** ⇦ Nature and Grounds of Power
The power to punish for contempt should be cautiously and sparingly used.

Cases that cite this headnote

13 **Judges** ⇦ Judicial Powers and Functions in General
There is no place in courtroom for personal likes and dislikes of judges, and judges should refrain from imposing their personal preferences upon others when it is not necessary to the proper administration of justice.

Cases that cite this headnote

14 **Courts** ⇦ Matters Subject to Regulation
Court order pertaining to decorum in courtroom will be upheld on direct attack if it is reasonably calculated to promote orderly administration of justice.

Cases that cite this headnote

15 **Contempt** ⇦ Validity of Mandate, Order, or Judgment
In absence of direct attack, order must be obeyed, subject to penalties of contempt, unless it is transparently invalid or has only frivolous pretense to validity.

Cases that cite this headnote

16 **Judges** ⇦ Objections to Judge, and Proceedings Thereon
If order is so outlandish or onerous as to reflect upon judge's competence to preside, matter should be referred to Judicial Qualifications Commission.

Cases that cite this headnote

17 **Contempt** ⇦ Validity of Mandate, Order, or Judgment
If court order results in lawyer's being "barred" from particular courtroom or his being threatened with contempt, there are remedies available to him for direct attack.

Cases that cite this headnote

Attorneys and Law Firms

*19 Ray Sandstrom, Sandstrom & Hodge, Fort Lauderdale, for appellant.
Robert L. Shevin, Atty. Gen., Tallahassee, and Stephen R. Koons, Asst. Atty. Gen., West Palm Beach, for appellee.

Opinion

DOWNEY, Judge.

Appellant, a practicing member of the Florida Bar, seeks review of a judgment finding him in contempt and sentencing him to confinement in the county jail for a period of three days.

On February 6, 1974, while representing a client, appellant appeared in open court before The Honorable Robert W. Tyson, Jr., Circuit Judge, without a necktie. The judge thereupon admonished appellant that, unless they had some excuse for not doing so, all attorneys should wear a tie when appearing in court and he ordered appellant thereafter to wear a tie in court. Appellant responded: 'No, sir. I am saying right now I shall not. I shall dress my mode of dress, not the dictations of the Court.'

On March 12, 1974, appellant appeared once again in open court before the same judge, representing two defendants in a criminal case. He wore a white suit, a sport shirt open at the neck, and a necklace with a round gold pendant the size of a silver dollar 'with the hair on his chest showing through the open shirt.' Upon convening court the judge called appellant's attention to his order of February 6, 1974, and advised appellant that he was in violation thereof. After lecturing appellant on the necessity of cooperation by counsel and of decorum in the courtroom, Judge Tyson advised appellant once again that he must wear a tie in the courtroom, and that until he decided to comply with the order that he was to wear a tie, he was barred from practicing in any proceeding before

Judge Tyson. The pending criminal case was then continued for one hour to afford appellant an opportunity to comply with the order relative to court attire for attorneys. The judge warned the appellant that if he returned to court without a tie, he would be held in contempt. Appellant remained intransigent. He dictated a lengthy response into the record and filed a motion to have Judge Tyson disqualify himself. Said motion was denied.

When court reconvened, the criminal case was called and appellant stepped forward to represent his clients. Judge Tyson noted that appellant was dressed exactly as he had been prior to the continuance. After appellant agreed that there was no necessity for the court to reiterate the grounds previously detailed, Judge Tyson found appellant guilty of direct criminal contempt for disobeying his order and sentenced appellant to three days in the county jail. This appeal from the contempt conviction followed.

1 2 3 Appellant filed seventeen assignments of error which have been telescoped into four points on appeal. Appellant's argument may be summarized as follows: (1) failure to wear a tie is not contempt of court; (2) if such failure could be contempt it could only be indirect contempt; (3) the order in question was void because (a) it was not reduced to writing, and (b) its subject matter was beyond the jurisdiction of the court; (4) Judge Tyson's refusal to recuse himself was improper. Only one part of the foregoing argument, (3)(b), warrants discussion and our disposition of that part disposes of the entire case. Before we proceed to that discussion we note that whether an act constitutes contempt is determined by its reasonable tendencies to obstruct justice. Baumgartner v. Joughin, 105 Fla. 335, 141 So. 185, 107 Fla. 858, 143 So. 436. The contemptuous act in the present case was not appellant's failure to wear a tie but, rather, appellant's disobedience of the court's order that he wear a tie. In the absence of the trial court's order, failure to wear a tie would certainly not constitute contempt. However, wilful disobedience of the court order clearly constitutes obstruction of justice *20 and represents a direct rather than an indirect affront to the court's authority.

4 The following discussion demonstrates that the only question appellant may appropriately raise here is that of jurisdiction. Appellant may obtain reversal of his contempt conviction only if he shows that the order the disobeyed was void, since disobedience of an order issued without jurisdiction is not contempt. State ex rel. Everette v. Petteway, 131 Fla. 516, 179 So. 666 (1938). This limitation upon appellant arises from the following rule:

'Where the court has jurisdiction over the subject matter and the parties and has the authority of power to render the particular order of decree, the fact that such order or decree, violation or disobedience of which is made the basis of the contempt charge, is erroneous or irregular or improvidently rendered, does not justify the defendant in failing to abide by its terms, and his conduct in failing to do so may be punished as for contempt despite the error or irregularity. It is almost unanimously agreed that if the defendant desires to attack the order or decree as erroneous, he must do so, not by disregarding or violating it and then setting the error up as a defense to a charge of contempt, but by attacking the order on direct appeal or by motion to set it aside. He cannot attack it collaterally upon an appeal from the judgment of contempt or upon an application for habeas corpus to be released from imprisonment for contempt. He must obey the order so long as it is in effect and until it is dissolved by the court issuing it, or reversed on appeal by the appellate court.' Anno: Contempt-Disobeying Invalid Decree, 12 A.L.R.2d 1059, 1107.

See too, Seaboard Airline Ry. Co., v. Tampa Southern R. Co., 101 Fla. 468, 134 So. 529 (1931); State ex rel. Buckner v. Culbreath, 147 Fla. 560, 3 So.2d 380 (1941); Friedman v. Friedman, Fla.App.1969, 224 So.2d 424; United States v. United Mine Workers of America, 330 U.S. 258, 67 S.Ct. 677, 91 L.Ed. 884 (1947); United States v. Dickinson, 465 F.2d 496 (5th Cir. 1972). One of the decisions following the general rule has stated it in this fashion: a court order must be obeyed, upon pain of punishment by contempt, until that order is reversed for error by orderly review unless the order is transparently invalid or has only a frivolous pretense to validity. Walker v. City of Birmingham, 388 U.S. 307, 315, 87 S.Ct. 1824, 1829, 18 L.Ed.2d 1210 (1967).

An interesting explanation of the reason underlying the foregoing rule is set forth in United States v. Dickinson:

'The criminal contempt exception requiring compliance with court orders, while invalid non-judicial directives may be disregarded, is not the product of self-protection or arrogance of Judges. Rather it is born of an experience-proved recognition that this rule is essential for the system to work. Judges, after all, are charged with the final responsibility to adjudicate legal disputes. It is the judiciary which is vested with the duty and the power to interpret and apply statutory and constitutional law. Determinations take the form of orders. The problem is unique to the judiciary because of its

particular role. Disobedience to a legislative pronouncement in no way interferes with the legislature's ability to discharge its responsibilities (passing laws). The dispute is simply pursued in the judiciary and the legislature is ordinarily free to continue its function unencumbered by any burdens resulting from the disregard of its directives. Similarly, law enforcement is not prevented by failure to convict those who disregard the unconstitutional commands of a policeman.

'On the other hand, the deliberate refusal to obey an order of the court without testing its validity through established processes requires further action by the judiciary, and therefore directly *21 affects the judiciary's ability to discharge its duties and responsibilities. Therefore, 'while it is sparingly to be used, yet the power of courts to punish for contempts is a necessary and intergral part of the independence of the judiciary, and is absolutely essential to the performance of the duties imposed on them by law. Without it they are mere boards of arbitration whose judgments and decrees would be only advisory.'' 465 F.2d at 510.

5 The question we must therefore decide is whether the circuit judge whose order appellant disobeyed had jurisdiction over the subject matter (it being unquestioned that the court had jurisdiction over appellant's person), i.e., whether the judge had the power to impose dress requirements upon lawyers appearing before him in judicial proceedings. We hold that he does have such power.

6 To begin with, it is clear that the judicial branch of government has the inherent power to regulate the professional conduct of all lawyers. Petition of Florida State Bar Ass'n, Fla.1949, 40 So.2d 902. Historically lawyers have been subject to court supervised regulation 'even in matters so personal as the growth of their beard of the cut of their dress.' People ex rel. Karlin v. Culkin, 248 N.Y. 465, 162 N.E. 487, 490, 60 A.L.R. 851 (1928). A recent New York decision, Peck v. Stone, 32 A.D.2d 506, 304 N.Y.S.2d 881 (1969), specifically recognizes the judiciary's power to regulate attorneys' attire in judicial proceedings. The following trilogy of cases also demonstrates recognition of that power: Champion v. State, Okl.Cr.App.1969, 456 P.2d 571; Crumb v. State, Okl.Cr.App.1969, 458 P.2d 909; Bearden v. State, Okl.Cr.App.1969, 458 P.2d 914, 919. See also Dobbs, Contempt of Court, 56 Cornell Law Review 183, 201-204. Since the circuit judge clearly had jurisdiction to enter the order appellant disobeyed, this court must reject appellant's collateral attack upon the order requiring him to wear a tie in court and must affirm his conviction of contempt.

7 8 9 However we think it appropriate to comment upon the various arguments appellant has presented on the propriety of the trial judge's order. Appellant has gone to great lengths to point out that he has appeared in numerous courts, including this one, attired as he had been before Judge Tyson and that no one else had complained. He attempts to glean approval for his dress before Judge Tyson from the lack of express disapproval of such dress by other courts. Appellant also finds comfort in numerous federal decisions striking down dress codes (primarily involving boys' hair styles) promulgated by school boards throughout the country in the last decade. Many of those cases found due process and equal protection rights violated by the codes in question without any sufficient showing of need to justify the codes. See, e.g., Stull v. School Board of Western Beaver Jr.-Sr. H.S., 459 F.2d 339 (3rd Cir. 1972); Wick v. Sullivan, 476 F.2d 973 (4th Cir. 1973). Appellant also attempts to find some organic rights violated by Judge Tyson's requirements that he wear a tie in court. We reject the suggestion and hold that the order in question does not involve the violation of any of appellant's constitutional rights. Certainly by becoming a member of the bar, a lawyer does not terminate his membership in the human race, nor does he surrender constitutional rights possessed by private citizens. Cf. Bond v. Floyed,385 U.S. 116, 132-133, 87 S.Ct. 339, 348, 17 L.Ed.2d 235 (1966). However '(m)embership in the bar is a privilege burdened with conditions.' In re Rouss, 221 N.Y. 81, 116 N.E. 782, 783 (1917). As we indicate earlier, compliance with regulations concerning courtroom attire is one of those conditions. People ex rel. Karlin v. Culkin, supra; Peck v. Stone,supra.

As authority for his position that the contempt conviction is improper, appellant relies heavily upon Peck v. Stone, supra. In that case Ms. Peck, a young lawyer, appeared in the City Court of Syracuse, New *22 York, to represent an indigent defendant. Ms. Peck was attired in a miniskirt, the hemline of which was approximately 5 inches above the knee and substantially higher when she was seated. Having previously admonished her about wearing a miniskirt in the courtroom, the city Judge directed Ms. Peck not to appear in court before him again 'until her dress is suitable, conventional and appropriate in keeping with her position as an officer of the Court.' Being dissatisfied with the foregoing order, Ms. Peck filed a petition in the Supreme Court, Special Term, to vacate it. Upon dismissal of said petition, she appealed to the Supreme Court, Appellate Division, which reversed the

order of dismissal and held that the judge of the city court had abused his discretion.

We find a major distinguishing feature between Ms. Peck and appellant. Ms. Peck did not 'take the judge on', as the saying goes, and obstinately rebuff his direction to change her attire. The appellate division found that at no time was her attitude contrary to her ethical responsibilities as an officer of the court. Whereas Ms. Peck took her grievance to a higher court for resolution, the way lawyers are trained to do, appellant chose a showdown in open court with the judge and unequivocally apprized him he would not comply with his order.

Finally, appellant cites a recent decision from the Supreme Court of New Hampshire, Kersevich v. Jaffrey District Court, N.H., 330 A.2d 446, opinion filed December 31, 1974, wherein that court reversed a trial court decision holding two defendants in traffic cases in contempt for failing to comply with the court's order to wear coats and ties to court. We would distinguish that case on two grounds. First, the individuals involved there were defendants who were required to appear in court. Second, the parties did not raise the propriety of a collateral attack upon the trial court's order to wear coat and tie. Accordingly, we decline to follow that case and instead rely upon Florida precedents and the general rule quoted from 12 A.L.R.2d supra.

10 11 12 13 14 15 16 17 Although when officially judges of necessity have inherent power to control the decorum (including the conduct and physical appearance) of counsel, this does not mean that counsel or anyone else can be subjected to the unbridled idiosyncrasies of individual judges. The watchword must be reasonableness. A court's action must bear a reasonable relation to a justifiable end or purpose. We subscribe to the school of thought which holds that the fewer 'local' rules the better, and that the power to punish for contempt should be cautiously and sparingly used. Demetree v. State, Fla.1956, 89 So.2d 498; State v. Clemmons, Fla.1963, 150 So.2d 231; Geary v. State, Fla.App.1962, 139 So.2d 891. Judges should refrain from imposing their personal preferences upon others when it is not necessary to the proper administration of justice. There is no place in the courtroom for the personal likes and dislikes of judges such as those demonstrated by the North Carolina judge who upon observing a long haired young man in court inquired: 'Now let me get this straight. Do I address you as Miss, Mrs. or Mister?' Dobbs, Contempt of Court, supra, at 201, footnote 70. Thus, a court order pertaining to decorum in the courtroom will be upheld upon direct attack if it is reasonably calculated to promote the orderly administration of justice. In the absence of direct attack the order must be obeyed subject to the penalties of contempt, unless it is transparently invalid or has only a frivolous pretense to validity. Walker v. City of Birmingham, supra. Should a lawyer feel aggrieved by the judge's order there is a professional way to seek relief. If the order is so outlandish or onerous as to reflect upon the judge's competence to preside, the matter could be referred to the Judicial Qualifications Commission. If it results in a lawyer being 'barred' from that particular courtroom or being threatened with contempt, there are remedies available to him for direct *23 attack. See, e.g., Friedman v. Friedman, supra; United States v. Dickinson, supra; cf. State ex rel. Everette v. Petteway, supra.

The wearing of a coat and necktie in open court has been a long honored tradition. It has always been considered a contribution to the seriousness and solemnity of the occasion and the proceedings. It is a sign of respect. A 'jacket and tie' are still required dress in many public places. The Supreme Court of the United States by 'Notice to Counsel' acting advises that appropriate dress in appearing before that court is conservative business dress. Would anyone question that includes a coat and necktie?

In our judgment the court's order requiring appellant to wear a tie in court was a simple requirement bearing a reasonable relationship to the proper administration of justice in that court. Appellant's dogged refusal to comply demonstrated a total lack of cooperation by counsel and was hardly befitting a member of the bar.

Affirmed.

OWEN, C.J., and WALDEN, J., concur.

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The Consequences of Bad Legal Writing

Avoiding reprimands, case dismissals and more.

By Christy Hall Benson, CLA

March/April 2007 Table of Contents

"The minute you read something that you can't understand, you can almost be sure it was drawn up by a lawyer."
— Will Rogers

Although this quotation by Will Rogers is humorous, bad legal writing is no laughing matter. Courts throughout the country are losing patience with attorneys and their poor writing skills. As a result, judges are issuing public reprimands, requiring attorneys to take legal writing courses and dismissing complaints for committing crimes against the English language such as excessive spelling errors, bad grammar and poor organization. As paralegals, we can be invaluable resources to attorneys by editing legal documents before they leave our offices. This article explores some of the consequences of bad legal writing and gives you the tools to help you prevent your attorney form facing these consequences.

Spelling and Typographical Errors

A bankruptcy attorney in Minnesota was publicly reprimanded for unprofessional conduct and ordered to pay court costs after repeatedly filing documents the court considered "unintelligible" because they contained numerous spelling and typographical errors. Additionally, the attorney was required to attend legal writing courses. The judge wrote in his opinion, "Public confidence in the legal system is shaken ... when a lawyer's correspondence and legal documents are so filled with [these] errors that they are virtually incomprehensible." In re Hawkins, 502 N.W.2d 770 (1993).

Follow these guidelines to ensure your documents are free from spelling errors and typos:

- Print out your document and do a manual edit on paper before editing electronically.
- If possible, allow some time to pass between drafting the document and self-editing.
- Ask another person to edit your document.
- Don't rely 100 percent on your computer's spell checker. Although spelled correctly, a word could be used improperly (e.g., trail judge instead of trial judge, statues instead of statutes, etc.).

Bad Grammar

In Mississippi, a defendant appealed a district attorney's burglary indictment, stating that it didn't charge him with anything because it contained bad grammar. In part, the indictment charged that the "goods, ware, and merchandise unlawfully, feloniously and burglariously did break and enter." The defendant presented an English teacher as an expert witness. In its opinion, the court said if the "rules of English grammar are a part of the positive law of [Mississippi], [the defendant's] burglary conviction must surely be reversed, for the indictment in which he has been charged would receive an 'F' from every English teacher in the land." Even though the court held the indictment to be legally sufficient, the judge stated that even Shakespeare could not have understood the indictment, which was "grammatically unintelligible." Henderson v. State, 445 So. 2d 1364 (1984).

Good legal writing should follow all the rules of grammar. Your documents should be written in complete sentences, have subjects and verbs that agree with one another and contain properly placed modifiers. You don't have to be a grammar expert to be a good legal writer; just know where to go to find the answers. Two great desk references are "The Associated Press Stylebook and Briefing on Media Law" (considered the journalist's "Bible") and the "Gregg Reference Manual." Both are available for purchase online and at bookstores.

Poor Organization

In *Duncan v. AT & T Communications, Inc.*, 668 F. Supp. 232 (1987), the defendant's motion to dismiss was granted for several reasons, including poor organization. The court's opinion stated: "A complaint may be so poorly

composed as to be functionally illegible. This is not to say that a complaint needs to resemble a winning entry in an essay contest."

The purpose of writing any legal document should guide your organization of it. Do you intend to advise a client, prepare for trial or draft a pleading? Using these strategies will ensure your documents are properly organized:

- Write an outline before drafting.
- Summarize your position in the introduction and the conclusion of your document.
- Use topic sentences to inform the reader of the contents of your paragraphs.
- Consider using a miniature table of contents or topic headings when your document exceeds three or four pages. Headings act like a skeleton to hold your body of work together and break up the text of a document, and can serve as an index to help readers find important information.

Citation Errors

Another element of bad writing is citing case law incorrectly. In a Vermont Case, *In re Shepperson*, 674 A.2d 1273 (1996), an attorney repeatedly submitted briefs to the courts during a seven-year period that contained "numerous citation errors that made identification of cases difficult, cited cases for irrelevant or incomprehensible reasons, made legal arguments without citation to authority, and inaccurately represented the law contained in the cited cases." One brief in particular was more than 90 pages long, and the judge noted that the attorney "fail[ed] to raise a legitimate legal issue or cite a single authority in support of his arguments." The attorney appealed a lower court's decision that he attend a six-month tutorial program designed to improve his skills. The appeals court suspended him for "not less than six months" and "until he has demonstrated to the satisfaction of the court that he is fit to practice law."

To prevent citation errors, keep these tips in mind:

- The main goal of citing properly is to allow the reader to easily retrieve the citation.
- Rely on respected citation sources such as "The Bluebook" or the "ALWD Citation Manual." Also, check with the courts in your particular state to see if any local citation guidelines exist.
- Never rely on outdated law. Always Shepardize your cases before submitting any document to the court and again right before a trial.

Not only does bad writing negatively impact attorneys, it can ruin the reputation of the entire legal profession. Bad legal writing weakens credibility and wastes the time of judges, other attorneys and clients, thereby wasting money. To ensure your documents don't merit the same consequences, remember: edit, edit, edit!

Where to Go for Writing Help

- Merriam-Webster dictionary on the Web (www.m-w.com)
- Law.com legal dictionary (http://dictionary.law.com)
- Writing and research guidelines developed by Professor Colleen Bargar of the University of Arkansas at Little Rock (www.ualr.edu/cmbarger). Click on "Writer's Resources," then on "Citations" for links to a variety of information ranging from tips for using "The Bluebook" to avoiding plagiarism when citing.
- Google's Writing Resources (http://directory.google.com/Top/Arts/Writers_Resources/Style_Guides/Grammar)
- Strunk and White's "The Elements of Style," published by Pearson Longman
- Washington State University English Professor Paul Brians' Common Errors in English (www.wsu.edu/~brians/errors)

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By Dan Slater

"A pleading that states a claim for relief must contain . . . a short and plain statement of the claim showing that the pleader is entitled to relief . . ." — Rule 8(a) of the Federal Rules of Civil Procedure

"In alleging fraud or mistake, a party must state with particularity the circumstances constituting fraud or mistake." — Rule 9(b) of the Federal Rules of Civil Procedure

A 465-page racketeering lawsuit filed with Washington State federal judge Ronald Leighton inspired Leighton to gin up the following limerick. (Gavel bang: How Appealing)

Plaintiff has a great deal to say,
But it seems he skipped Rule 8(a).
His Complaint is too long,
Which renders it wrong,
Please rewrite and refile today.

Drawing a rare comparison between Shakespeare's "Hamlet" and the Federal Rules of Civil Procedure, Judge Leighton (pictured), in a four-page order granting the defendant's motion for a more definite statement, writes that brevity, in addition to being the soul of wit, is the soul of a pleading.

"The Court recognizes the tension between Rule 8(a), which requires a 'short and plain statement,' and Rule 9(b), which requires the party state his claim with particularity," writes Leighton. "The Complaint does not correctly balance this tension."

So how did the voluminous complaint break down? For starters, Judge Leighton notes that the title to the complaint is eight pages. Next, the plaintiff uses eighteen pages to list six defendants. "On page 117," writes Leighton, "Plaintiff embarks on an odyssey through his claims for relief. While the Court understands that asserting 54 claims requires some space, the 341 pages used to do so is unreasonable."

Photo: Emerald Education Group Web Site

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502 N.W.2d 770
Supreme Court of Minnesota.

In re Petition for DISCIPLINARY ACTION AGAINST Patrick W. HAWKINS, an Attorney at Law of the State of Minnesota.

No. C1-92-1261. July 9, 1993.

In disciplinary proceeding, the Supreme Court held that attorney's disregard of court rules and lack of writing skills warrant public reprimand but do not warrant suspension.

So ordered.

West Headnotes (3)

1 **Attorney and Client** ⇐ Review
In attorney disciplinary proceedings, referee's findings of fact are deemed conclusive when transcript of hearing is not provided.

Cases that cite this headnote

2 **Attorney and Client** ⇐ Public Reprimand; Public Censure; Public Admonition
Attorney's repeated disregard of local bankruptcy rules coupled with incomprehensibility of his correspondence and documentation due to numerous spelling, grammatical, and typographical errors, is not "competent representation," within meaning of Rules of Professional Conduct and warrants public reprimand, even if clients have not been harmed; public confidence in legal system is shaken when lawyers disregard rules of court and when lawyer's legal correspondence and documents are virtually incomprehensible. 52 M.S.A., Rules of Prof.Conduct, Rule 1.1.

Cases that cite this headnote

3 **Bankruptcy** ⇐ Determination of Dischargeability
Compliance with rules of bankruptcy court ensures discharge of dischargeable debt.

Cases that cite this headnote

Attorneys and Law Firms

*770 Marcia A. Johnson, Director of the Office of Lawyers Professional Responsibility, Candice M. Hojan, Sr. Asst. Director, St. Paul, for appellant.
Patrick W. Hawkins, pro se.

Heard, considered, and decided by the court en banc.

Opinion

OPINION

PER CURIAM.

The Director of the Office of Lawyers Professional Responsibility has twice admonished Patrick W. Hawkins. On Hawkins' appeal from the second admonition, a panel of three members of the Lawyers Professional Responsibility Board found probable cause for public discipline and directed the filing of a petition addressed to this court.

1 On November 23 and 24, 1992 a hearing on the original petition and two supplementary petitions was held before our appointed referee, and on December 30, 1992 the referee issued his findings of fact, conclusions of law and a recommendation for suspension. Inasmuch as a transcript of the hearing has not been provided, the referee's findings are deemed conclusive.

2 The referee found that the Director had failed to prove the allegations of either the original or the first supplementary petition, although the written exhibits admitted in connection with those charges demonstrated respondent Hawkins' lack of skill as a communicator. With respect to the allegations of the second supplementary petition, however, the referee found that respondent's failure to comply with the Local Bankruptcy Rules of the United States Bankruptcy Court, District of Minnesota, and his repeated filing of documents rendered unintelligible by numerous spelling, grammatical, and typographical errors *771 were sufficiently serious that they amounted to incompetent representation.

On five occasions between January 13 and June 15, 1992 respondent failed to file amended lists of creditors as required by Rule 304(c), Local Bankruptcy Rules. On four occasions respondent failed to include the proof of service required by Rule 304(b), Local Bankruptcy Rules, when filing amended lists of creditors, and at least twice respondent filed amended

schedules of exempt property that did not comply with Rule 304(c).

Respondent also failed to comply with Rule 103, Local Bankruptcy Rules, in attempting to withdraw from representation. Although respondent filed a motion asking for permission to withdraw from a chapter 13 bankruptcy, it was untimely; and the bankruptcy trustee obtained a dismissal for failure of the debtor and respondent to appear at the creditors' meeting.

In short, the referee found that by regularly filing substandard bankruptcy documents containing numerous errors of various kinds, the respondent failed to represent his bankruptcy clients competently. The referee concluded, however, that respondent was well-versed in bankruptcy law and that his incompetence with respect to documentation had not harmed his clients. Nevertheless, the seriousness of respondent's noncompliance with the Local Bankruptcy Rules and respondent's attitude toward his shortcomings prompted the referee to recommend a three-month suspension followed by two years' supervised probation and completion of educational requirements.

3 It is apparent to us that Hawkins' repeated disregard of the Local Bankruptcy Rules, coupled with the incomprehensibility of his correspondence and documentation, constitutes a violation of Rule 1.1, Minnesota Rules of Professional Conduct.[1] Although it is quite true that the deficiencies in the documents submitted to the bankruptcy court did not, as the referee concluded, cause harm to Hawkins' clients, the lack of harm is fortuitous. Compliance with the rules of the bankruptcy court ensures discharge of dischargeable debt. Even though Hawkins might be able to prove that a creditor who claims he did not receive notice of the bankruptcy proceedings was in fact notified, in the absence of appropriate documentation of service of proper notification, he might not. Therefore, Hawkins' contention that because there has been "no harm," there is "no foul" is unacceptable.

Moreover, harm has occurred: even though Hawkins' clients have not been harmed, administration of the law and the legal profession have been negatively affected by his conduct. Public confidence in the legal system is shaken when lawyers disregard the rules of court and when a lawyer's correspondence and legal documents are so filled with spelling, grammatical, and typographical errors that they are virtually incomprehensible.

We are of the opinion, however, that respondent's misconduct does not warrant suspension at this time. That is not to discount the seriousness of Hawkins' misconduct but only to recognize that suspension does not appear to be required for the protection of the public because, despite Hawkins' disregard of rules of court and lack of writing skill, he does-as the referee concluded-appear knowledgeable of the substantive law of bankruptcy. Hawkins' misconduct does, however, require the public reprimand we now issue, together with the admonition that there must be some changes in his attitude-blame for his misconduct cannot be laid at the feet of his clients. Neither can this disciplinary proceeding be characterized as persecution.

*772 Respondent Patrick W. Hawkins is hereby publicly reprimanded for unprofessional conduct. He is ordered to pay costs and disbursements incurred in this proceeding in the amount of $250. Within two years after issuance of this opinion respondent shall successfully complete the following described CLE or other educational programs and shall report quarterly to the Director his progress in complying with these educational requirements:

(1) A program on bankruptcy rules, or if none is available, on the law of bankruptcy;

(2) A program of at least 10 hours in legal writing; and

(3) A program of at least 5 hours on law office management.

Public reprimand with conditions imposed.

Footnotes

1 Rule 1.1, Minnesota Rules of Professional Conduct, provides as follows:

A lawyer shall provide competent representation to a client. Competent representation requires the legal knowledge, skill, thoroughness and preparation reasonably necessary for the representation.

End of Document

445 So.2d 1364
Supreme Court of Mississippi.

Jacob HENDERSON

v.

STATE of Mississippi.

No. 54662. Feb. 8, 1984.

Defendant was convicted in the Circuit Court, Hinds County, William F. Coleman, J., of burglary and he appealed. The Supreme Court, Robertson, J., held that although indictment was grammatically unintelligible and could, under the rules of grammar, be read as charging that either the goods or the store did the breaking and entering, indictment was sufficient to charge defendant with the crime.

Affirmed.

West Headnotes (5)

1 **Indictment and Information** ⇐ Mistakes in Writing, Grammar, or Spelling
Rule governing form of the indictment does not require adherence to correct grammatical form and there is no constitutional or natural law which supplements the rule with the rules of good grammar. Uniform Circuit Court Criminal Rule 2.05.

Cases that cite this headnote

2 **Indictment and Information** ⇐ Mistakes in Writing, Grammar, or Spelling
Correct grammar, however desirable, is unnecessary to valid indictment; so long as, from a fair reading of the indictment taken as a whole, the nature and cause of the charge against the accused are clear, the indictment is legally sufficient. Uniform Circuit Court Criminal Rule 2.05.

Cases that cite this headnote

3 **Indictment and Information** ⇐ Mistakes in Writing, Grammar, or Spelling
Although inartfully drafted indictment was more properly read, according to the rules of grammar, as alleging that the "goods, ware and merchandise" did the breaking and entering or that the "store building" did the breaking and entering, and although a "patently inappropriate period" caused indictment to read grammatically as though it did not charge the defendant with doing anything, the indictment was sufficient to charge defendant with the crime of business burglary; rules of English grammar are not part of the positive law of the state.

Cases that cite this headnote

4 **Criminal Law** ⇐ Indictment or Information in General
Establishment of literate bar is a worthy aspiration but its achievement must be relegated to means other than reversing criminal convictions, justly and lawfully secured, because of atrocious grammar in indictment.

Cases that cite this headnote

5 **Jury** ⇐ Extent of Examination
It was proper to permit prosecutor to question prospective jurors during voir dire examination concerning their involvement with criminal acts, either as victim or perpetrator, despite defendant's claim that he was prejudiced because the questioning created an aura of rampant crime in the streets.

Cases that cite this headnote

Attorneys and Law Firms

*1365 T. Frank Collins, Collins & Dreher, Jackson, for appellant.
Bill Allain, Atty. Gen. by Anita Mathews Stamps, Sp. Asst. Atty. Gen., Jackson, for appellee.

Before PATTERSON, C.J., and PRATHER and ROBERTSON, JJ.

Opinion

ROBERTSON, Justice, for the Court:

I.

This case presents the question whether the rules of English grammar are a part of the positive law of this state. If they are, Jacob Henderson's burglary conviction must surely be reversed, for the indictment in which he has been charged would receive an "F" from every English teacher in the land.

Though grammatically unintelligible, we find that the indictment is legally sufficient and affirm, knowing full well

that our decision will receive of literate persons everywhere opprobrium as intense and widespread as it will be deserved.

II.

On May 15, 1982, the Maaco Paint Shop in Jackson, Mississippi, was burglarized. Jacob Henderson was arrested immediately thereafter, four items of stolen merchandise still in his possession.

On July 6, 1982, Henderson was formally charged with business burglary in violation of Miss.Code Ann. § 97-17-33 (1972) in an indictment returned by the Hinds County Grand Jury. The indictment further charged that Henderson was a recidivist within the meaning of Miss.Code Ann. § 99-19-81 (Supp.1983). Henderson entered a plea of not guilty to all charges.

On February 9, 1983, this case was called for trial in the Circuit Court of Hinds County. In due course, the jury found Henderson guilty on the principal charge of burglary.

Immediately thereafter, the circuit court conducted a non-jury hearing on the recidivism issue. Without contradiction, the evidence *1366 established that Jacob Henderson had, prior to that date, been convicted of two separate felonies, both burglaries. Accordingly, under the authority of Section 99-19-81 the circuit court sentenced Henderson to serve a term of seven years without eligibility for probation or parole.

From this conviction and sentence, Henderson appeals.

III.

A.

The primary issue presented on this appeal regards the legal adequacy of the indictment under which Henderson has been tried, convicted and sentenced. That indictment, in pertinent part, reads as follows:

The Grand Jurors for the State of Mississippi, ... upon their oaths present: That Jacob Henderson ... on the 15th day of May, A.D., 1982.

The store building there situated, the property of Metro Auto Painting, Inc., ... in which store building was kept for sale or use valuable things, to-wit: goods, ware and merchandise unlawfully, feloniously and burglariously did break and enter, with intent the goods, wares and merchandise of said Metro Auto Painting then and there being in said store building unlawfully, feloniously and then and there being in said store building burglariously to take, steal and carry away; And

One (1) Polaroid Land Camera,

One (1) Realistic AM/FM Stereo Tuner

One (1) Westminster AM/FM radio

One (1) Metal Box and contents thereof, ...

the property of the said Metro Auto Painting then and there being in said store building did then and there unlawfully, feloniously and burglariously take, steal and carry away the aforesaid property, he, the said Jacob Henderson, having been twice previously convicted of felonies, to-wit: ....

The remainder of the indictment charges Henderson with being a recidivist.

Henderson, no doubt offended, demurred. In support, he presented an expert witness, Ann Dreher, who had been a teacher of English for nine years. Ms. Dreher testified that, when read consistent with accepted rules of English grammar, the indictment did not charge Jacob Henderson with doing anything; rather it charged that goods, ware and merchandise broke and entered the paint store. The trial judge overruled the objection and the motion, but not without reservation. He stated:

> [T]his same objection has been made numerous times. It is one of Mr. Hailey's pets. [B]ut as far as I know no one has elected to appeal and I'm going to follow the decision whether it is grammatically correct or not. I have repeatedly begged for six years or five years for the district attorney not to use this form. It is very poor English. It is impossible English.... In addition to being very poor English, it also charges him with the crime of larceny, which is not necessary to include in an indictment for burglary. I never did understand the reason for that. I again ask the district attorney not to use this form. It's archaic. Even Shakespeare could not understand the grammatical construction of this indictment. But the objection will be overruled. Maybe it will take a reversal on a case of a similar nature where there is a

serious offense as this one is by the fact that he is indicted as a habitual to get the district attorney's attention.

B.

1.

In the trial court and on this appeal, Henderson insists that the meaning of the indictment may be obtained only within the strait jacket of accepted rules of grammatical construction of the English language. From this point of view, we are asked to examine the indictment and concentrate on the words "... unlawfully, feloniously and burglariously did break and enter ...." Who, we are asked, when the rules of good grammar are employed, did this alleged breaking and entering?

*1367 There are two possible answers (again, looking at the indictment as would an English teacher). "Goods, ware and merchandise" are the most obvious choice. Those nouns proximately precede the verb(s) "did break and enter" (separated only by the familiar string of adverbs "unlawfully, feloniously and burglariously"-the district attorney, like other lawyers, never uses one word when two or three will do just as well). Thus read, the indictment charges that Goods, ware and merchandise, not Jacob Henderson, burglarized the Maaco Paint Shop on May 15, 1982.

More properly, however, the words "Goods, ware and merchandise" are seen as the tail end of a largely unintelligible effort to describe something else: the store building. A perceptive English grammarian would conclude that it is "the store building there situated...." which is charged with the burglary, for those words seem to constitute the subject of the nonsensical non-sentence we are charged to construe.

Even so, whether the indictment charges that "Goods, ware and merchandise" *or* "The store building there situated" ... "unlawfully, feloniously and burglariously did break and enter ...." matters not to Jacob Henderson. His point is merely that the indictment does *not* charge that *he* did the breaking and entering.

Were this a Court of nine English teachers, Henderson no doubt would prevail.

The indictment does contain at the outset the charge "That Jacob Henderson ... on the 15th day of May, A.D., 1982," We have another non-sentence. The unmistakable period after 1982 is used by astute defense counsel to nail down the point-that the indictment fails to charge that Jacob Henderson did anything on May 15, 1982. Again, we must concede that grammatically speaking counsel is correct. The period after 1982 grammatically precludes the possibility that the indictment charges that Jacob Henderson did break and enter. Either the words "did break and enter" would have to precede the period, or the name Jacob Henderson would have to appear following it. Neither is the case.

Recognizing that the period is important, the State argues that in reality the indictment consists of one long sentence, written albeit in legalese instead of English. The State argues that "the period grammatically disjoined the first part of the sentence from the second", conceding that we are indeed confronted with "a patently inappropriate period". This, of course, prompts Henderson to analogize the state's argument to Lady Macbeth's famous "Out damned spot! Out, I say!"[1] W. Shakespeare, Macbeth, Act V, sc. 1, line 38. The retort would be telling in the classroom or in a court of the literati. Alas, it has meager force in a court of law.

2.

With no little temerity, we insist that the correct statement of the question before this Court is: Does the indictment conform to the requirements of Rule 2.05, Uniform Criminal Rules of Circuit Court Practice. That rule provides:

Rule 2.05

FORM OF THE INDICTMENT

The indictment upon which the defendant is to be tried shall be a plain, concise and definite written statement of the essential facts constituting the offense charged and shall fully notify the defendant of the nature and cause of the accusation against him. Formal or technical words are not necessary in an indictment, if the offense can be substantially described without them.

An indictment shall also include the following:

(1) The name of the accused;

(2) The date on which the indictment was filed in each court;

(3) A statement that the prosecution is brought in the name and by the authority of the State of Mississippi;

(4) The county and judicial district in which the indictment is brought;

*1368 (5) The date and if applicable the time, on which the offense was alleged to be committed. Failure to state the correct date shall not render the indictment insufficient;

(6) The signature of the foreman of the grand jury issuing it; and

(7) The words "against the peace and dignity of the state".

We have no significant prior constructions of Rule 2.05. We have referred to it with little comment in *Osborne v. State,* 404 So.2d 545, 548 (Miss.1981), *Dalgo v. State,* 435 So.2d 628, 630 (Miss.1983), and in *Joshua v. State,* 445 So.2d 221 (Miss.1984).

1 For better or for worse, nothing in Rule 2.05 requires any adherence to correct grammatical form. We know of no constitutional or natural law that might supplement Rule 2.05 with the rules of good grammar.[2]

2 Rule 2.05 states that "formal or technical words are not necessary". Correct grammar, however desirable, is similarly unnecessary. So long as from a fair reading of the indictment taken as a whole the nature and cause of the charge against the accused are clear, the indictment is legally sufficient.

3 The instant indictment, however inartfully worded, clearly charges Jacob Henderson with the crime of business burglary. It informs Henderson that the burglary is alleged to have occurred on May 15, 1982. The indictment names the business burglarized as Maaco Paint Shop operated by Metro Auto Painting, Inc. It charges that the crime occurred within the First Judicial District of Hinds County. Further, the indictment identifies the items of property said to have been stolen in the course of the burglary.[3]

Viewing the indictment under Rule 2.05, we find it legally adequate.[4] It provides Henderson with a "written statement of the essential facts constituting the offense charged" in language which is "plain, concise and definite", albeit grammatically atrocious. Beyond that, the indictment notified Henderson of "the nature and cause of the accusation against him".

4 Establishment of a literate bar is a worthy aspiration. 'Tis without doubt a consummation devoutly to be wished. Its achievement, however, must be relegated to means other than reversal of criminal convictions justly and lawfully secured.

The assignment of error is rejected.

IV.

5 Before trial Henderson filed a motion in limine wherein he sought to restrict questioning of prospective jurors during voir dire examination. Specifically, Henderson urged that the prosecutor be barred from inquiring, in the presence of the entire panel, regarding a prospective juror's involvement with criminal acts as either victim or perpetrator. On appeal, Henderson claims that the failure to grant the motion prejudiced the defendant in that the questioning created an aura of rampant *1369 crime in the streets in the minds of the jury panel.

Henderson argues that the rule of evidence, which prohibits the discussion of other criminal behavior of the defendant, is based on the same logical premises as is this assignment of error. We beg to differ. Suffice it to say that we divine no reason in common law or common sense that would support Henderson's point.

The assignment of error is denied.

AFFIRMED.

PATTERSON, C.J., WALKER and BROOM, P.JJ., and ROY NOBLE LEE, BOWLING, HAWKINS, DAN M. LEE and PRATHER, JJ., concur.

Footnotes

1 It cannot be gainsaid that all the perfumes of Arabia would not eviscerate the grammatical stench emanating from this indictment. Cf. W. Shakespeare, Macbeth, Act V, sc. 1, lines 56-57.

2 This is not the first time this Court has placed its collective head on the grammarian's chopping block by insisting upon the clarity of a meaning clearly untenable under correct grammatical construction of language. We did this with an inartfully drafted regulation of the State Tax

Commission, *Columbia Gulf Transmission Co. v. Barr*, 194 So.2d 890, 894 (Miss.1967). We have done it with pre-Rule 2.05 indictments. *State v. Lee*, 111 Miss. 773, 72 So. 195, 196 (1916); *Morgan v. State*, 13 Smedes & M. (21 Miss.) 242 (1849).

3

We agree with the trial judge that the language in the indictment charging larceny is unnecessary surplusage.

4

Our attention has been called to numerous pre-Rule 2.05 cases, principal of which is *Kelly v. State*, 204 Miss. 79, 36 So.2d 925 (1948). Many of our older cases required that an extremely strict interpretation be given criminal indictments. Suffice it to say that those cases decided before August 15, 1979, the date our Uniform Criminal Rules of Circuit Court Practice were adopted, should be read with great caution. Nothing in Rule 2.05, however, or in what we say here should be construed to undermine our familiar rule that the failure of an indictment to charge an essential element of the crime does constitute a fatal defect. See *Copeland v. State*, 423 So.2d 1333, 1336-37 (Miss.1982); *Joshua v. State*, 445 So.2d 221 (Miss.1984).

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668 F.Supp. 232
United States District Court,
S.D. New York.

Karen DUNCAN, Plaintiff,
v.

AT & T COMMUNICATIONS, INC., Communication Workers of America, Local 1150, Chester L. Macey, individually and in his representative capacity, James Pratt, individually and in his representative capacity, Diane Dearborn, individually and in her representative capacity, Al Florio, Juanita Lewis, Mr. Colligan, Jerome Blaustein, M.D., Jack Kapland, M.D., and Dr. Carroll, M.D., Defendants.

No. 86 Civ. 4796 (RLC). Aug. 19, 1987.

Employee brought action against her former employer, union local, and several individual defendants, alleging employment discrimination, breach of union duty of fair representation and intentional infliction of emotional distress. Defendants moved to dismiss and for summary judgment. The District Court, Robert L. Carter, J., held that: (1) employee failed to state claim for employment discrimination based on race; (2) allegation that union failed to respond to employee's correspondence was insufficient to establish that union breached duty of fair representation during limitations period; and (3) claim of intentional infliction of emotional distress, resting on state law, would be dismissed upon dismissal of federal claims.

Motions to dismiss granted.

West Headnotes (12)

1 **Federal Civil Procedure** ⇐ Hearing and Determination
Failure to submit statement of material facts as to which movant contended there was no genuine issue to be tried precluded grant of summary judgment. U.S.Dist.Ct.Rules S.D.N.Y., Civil Rule 3(g); Fed.Rules Civ.Proc.Rule 56, 28 U.S.C.A.

Cases that cite this headnote

2 **Federal Civil Procedure** ⇐ Presumptions
For purposes of motion to dismiss based on insufficiency of complaint, all well-pleaded factual allegations are assumed true and are viewed in the light most favorable to the plaintiff. Fed.Rules Civ.Proc.Rule 12(b)(6), 28 U.S.C.A.

Cases that cite this headnote

3 **Federal Civil Procedure** ⇐ Conclusions in General
Individual allegations of a complaint which are so baldly conclusory that they fail to give notice of the basic events and circumstances of which a plaintiff complains are meaningless as a practical matter and, as a matter of law, are insufficient to state a claim. Fed.Rules Civ.Proc.Rule 12(b)(6), 28 U.S.C.A.

Cases that cite this headnote

4 **Civil Rights** ⇐ Employment Practices
Plaintiff's references in her complaint to partial disability or handicap, without any reference to race, failed to state a § 1981 claim for employment discrimination based on race, since statutory provision prohibited only discrimination based at least in part on racial classifications. 42 U.S.C.A. § 1981.

Cases that cite this headnote

5 **Civil Rights** ⇐ Employment Practices
Former employee's allegation that employer did not take adequate affirmative steps to assist her in finding a new job position following her return from on-the-job injury, without any suggestion that she was treated differently than members of another race, failed to state a § 1981 discrimination claim, where complaint failed to allege that employee applied or was qualified for reemployment in any particular position or that employer ever made any position available or sought applicants for such a position. 42 U.S.C.A. § 1981.

Cases that cite this headnote

6 **Labor and Employment** ⇐ Actions for Breach of Duty
A union or its representatives breach their duty of fair representation, when, acting in an arbitrary or discriminatory manner, they fail to serve the interests of union members in the enforcement of a collective bargaining agreement. Labor Management Relations Act, 1947, § 301, 29 U.S.C.A. § 185.

Cases that cite this headnote

7 **Labor and Employment** ⇐ Exhaustion of Internal Remedies

Issue of "fair representation" by union or its representatives does not arise unless a union member has a grievance, based on breach by the employer of the collective bargaining agreement, and has at least attempted to use grievance procedures provided by the contract. Labor Management Relations Act, 1947, § 301, 29 U.S.C.A. § 185.

Cases that cite this headnote

8 **Labor and Employment** ⇦ Pleading
Complaint alleging breach of union duty of fair representation failed to establish basis for holding union defendants to that duty, where complaint failed to state whether plaintiff was a member of local union. Labor Management Relations Act, 1947, § 301, 29 U.S.C.A. § 185.

Cases that cite this headnote

9 **Labor and Employment** ⇦ Pleading
Complaint of breach of union duty of fair representation failed to set forth circumstances which would trigger that duty and thus had failed to state a claim against union local, where, aside from conclusory statements that union did not adhere to established guidelines, policies and procedures, complaint dwelled on union's alleged refusal to assist plaintiff in matters independent of colorable case of wrongdoing by employer. Labor Management Relations Act, 1947, § 301, 29 U.S.C.A. § 185.

Cases that cite this headnote

10 **Labor and Employment** ⇦ Pleading
Complaint alleging breach of union duty of fair representation, naming former or current presidents of union local in their individual and representative capacities, failed to draw distinction between those capacities or to make any allegation that either president acted individually, and individual claims against presidents were frivolous. Labor Management Relations Act, 1947, § 301, 29 U.S.C.A. § 185.

Cases that cite this headnote

11 **Labor and Employment** ⇦ Pleading
Complaint that union failed to respond to plaintiff's correspondence, without any indication that plaintiff had a grievance and sought representation from union, was insufficient to establish that union or its representatives breached any duty of fair representation to plaintiff during applicable period of limitations. Labor Management Relations Act, 1947, § 301, 29 U.S.C.A. § 185.

Cases that cite this headnote

12 **Federal Courts** ⇦ Validity or Substantiality of Federal Claims and Disposition Thereof
Plaintiff's pendent claim of intentional infliction of emotional distress, resting on state law, would be dismissed upon pretrial dismissal of federal claims alleging employment discrimination and breach of union duty of fair representation. 42 U.S.C.A. § 1981; Labor Management Relations Act, 1947, § 301, 29 U.S.C.A. § 185.

Cases that cite this headnote

Attorneys and Law Firms

*233 Paulette M. Owens, New York City, for plaintiff.
Seyfarth, Shaw, Fairweather & Geraldson, New York City, for defendants AT & T Communications, Inc., et al.; Kathleen M. McKenna, of counsel.
Colleran, O'Hara & Mills, P.C., Mineola, N.Y., for defendants James Pratt, Chester L. Macey and Communication Workers of America, Local 1150; Vincent F. O'Hara, of counsel.
Martin, Clearwater & Bell, New York City, for defendant Jack Kapland, M.D.; Patricia A. Lynn, of counsel.

Opinion

OPINION

ROBERT L. CARTER, District Judge.

Plaintiff Karen Duncan is a former employee of defendant AT & T Communications, Inc. ("AT & T"). Defendants, in addition to AT & T, include several individuals holding supervisory positions at AT & T, several physicians who apparently rendered opinions concerning Duncan's medical condition, and the Communication Workers of America, Local 1150 ("Local 1150" or "the Union") and two of its former or current presidents (collectively "the Union defendants"). In substance, Duncan alleges discrimination based on race and disability in connection with the "conditions and privileges of her employment," Complaint at 2, breach of the duty of fair representation by the Union defendants, and intentional infliction of emotional distress.

1 Defendants now move to dismiss the complaint pursuant to *234 Rule 12(b)(6), F.R.Civ.P.[1] In addition, with the exception of the Union defendants, they all move for summary judgment pursuant to Rule 56, F.R.Civ.P. However, none has filed "a separate, short and concise statement of the material facts as to which the [party moving for summary judgment] contends there is no genuine issue to be tried." Civil Rule 3(g), Local Rules of the United States District Courts for the Southern and Eastern Districts of New York. The motions for summary judgment are therefore denied. *Id.* ("Failure to submit such a statement constitutes grounds for denial of the motion."); *George v. Hilaire Farm Nursing Home*, 622 F.Supp. 1349, 1353 (S.D.N.Y.1985) (Carter, J.). Matters outside of the pleadings are excluded, and the court will consider only the sufficiency of the complaint under Rule 12(b)(6), F.R.Civ.P.

DISCUSSION

2 In general, a complaint may be dismissed only if its claims are unquestionably insufficient to entitle the plaintiff to relief no matter what supporting facts might be proved at trial. *Conley v. Gibson*, 355 U.S. 41, 45-46, 78 S.Ct. 99, 101-02, 2 L.Ed.2d 80 (1957); *Goldman v. Belden*, 754 F.2d 1059, 1065 (2d Cir.1985). Thus, all well-pleaded factual allegations are assumed true and are viewed in the light most favorable to the plaintiff. *Papasan v. Allain*, 478 U.S. 265, ----, 106 S.Ct. 2932, 2943, 92 L.Ed.2d 209 (1986). In short, the burden on the moving party is heavy because the sanction of dismissal is harsh.

Conversely, however, allegations which are not "well-pleaded" should not, and often simply cannot, be accepted as true. Inadequately pleaded factual allegations take at least two forms. First, a complaint may be so poorly composed as to be functionally illegible. This is not to say that a complaint need resemble a winning entry in an essay contest. "[A] short and plain statement of the claim," rather than clarity and precision for their own sake, is the benchmark of proper pleading. Rule 8(a), F.R.Civ.P.; *see Goldman v. Belden, supra*, 754 F.2d at 1065. However, the court's responsibilities do not include cryptography, especially when the plaintiff is represented by counsel. *See Heart Disease Research Foundation v. General Motors Corp.*, 463 F.2d 98, 100 (2d Cir.1972).

3 Second, individual allegations, although grammatically intact, may be so baldly conclusory that they fail to give notice of the basic events and circumstances of which the plaintiff complains. Such allegations are meaningless as a practical matter and, as a matter of law, insufficient to state a claim. *Barr v. Abrams*, 810 F.2d 358, 363 (2d Cir.1987); *McClure v. Esparza*, 556 F.Supp. 569, 571 (E.D.Mo.1983), *aff'd without opinion*, 732 F.2d 162 (8th Cir.1984), *cert. denied*, 471 U.S. 1052, 105 S.Ct. 2111, 85 L.Ed.2d 477 (1985).

Duncan's complaint, which was drafted by her counsel, is deficient in both respects. Grammatical and stylistic shortcomings aside, the complaint fails to state facts sufficient to apprise defendants or the court of plaintiff's claim. Moreover, certain factual allegations, which are grammatically unobjectionable and which would be legally significant if they were well-pleaded, are unacceptably groundless and conclusory. Although the complaint no doubt could be dismissed for these reasons *235 alone, *see Heart Disease Research Foundation, supra*, 463 F.2d at 100; *Barr, supra*, 810 F.2d at 363, a review of its substantive deficiencies may prove useful to obviate subsequent, futile amendments.

Duncan alleges race- and disability-based discrimination by AT & T, in violation of 42 U.S.C. § 1981, and breach of the duty of fair representation by the Union, presumably in violation of 29 U.S.C. § 185.[2] In support of the § 1981 claim, she alleges that AT & T failed to offer her employment or employee benefits after she suffered an on-the-job injury; that it failed to provide her with complete information about employment opportunities and benefits; and that it failed to apply equitably its promulgated policies, specifically, those regarding employee disability benefits. Complaint ¶¶ 4-5, 8-10, 12, 14, 17, 42-44, 46-47. Similarly, in support of the claimed breach of the duty of fair representation, Duncan alleges that the Union failed to answer her inquiries concerning her inability to regain employment at AT & T; that it failed to counsel her adequately about employee benefits she might be due; that it failed to investigate why AT & T allegedly had not borne the cost of a medical test for Duncan; and that it failed to adhere to established guidelines, policies, and procedures. *Id.* ¶¶ 6-9, 17, 43-44, 46.[3]

To state a claim for a § 1981 violation, the complaint must allege (i) that Duncan is a member of a racial minority group; (ii) that she applied and was qualified for reemployment in a position for which AT & T was seeking applicants; (iii) that despite her qualifications she was not offered the position; and (iv) that AT & T thereafter kept the position open and continued to seek applicants with Duncan's qualifications. *See*

McDonnell Douglas Corp. v. Green, 411 U.S. 792, 802, 93 S.Ct. 1817, 1824, 36 L.Ed.2d 668 (1973).[4]

4 5 Construing the complaint as liberally as possible, it alleges at best only the third of these four elements. Duncan's race is nowhere mentioned. The repeated references to a partial disability or handicap are of no help to her, since § 1981 prohibits only discrimination that is based at least in part on racial classifications. *Runyon v. McCrary*, 427 U.S. 160, 167, 96 S.Ct. 2586, 2592, 49 L.Ed.2d 415 (1976). The complaint fails to allege that Duncan applied or was qualified for reemployment in any particular position. Nor does it allege that AT & T ever made any position available, much less sought applicants for such a position. Rather, plaintiff complains in effect that defendants did not take adequate affirmative steps to assist her in finding a new job position. These sorts of allegations, without any suggestion that plaintiff was treated differently from members of another race, fail to state a claim under § 1981. *See Hudson v. International Business Machines Corp.*, 620 F.2d 351, 354 (2d Cir.), *cert. denied*, 449 U.S. 1066, 101 S.Ct. 794, 66 L.Ed.2d 611 (1980); *see also United States Postal Service Board of Governors v. Aikens*, 460 U.S. 711, 715, 103 S.Ct. 1478, 1482, 75 L.Ed.2d 403 (1983) (inquiry in Title VII case is whether employer is treating some people less favorably than others because of race).[5]

6 7 As for the duty of fair representation, a union or its representatives breach their duty when, acting in an arbitrary or discriminatory manner, they fail to serve *236 the interests of union members in the enforcement of a collective bargaining agreement. *Hines v. Anchor Motor Freight, Inc.*, 424 U.S. 554, 564-65, 96 S.Ct. 1048, 1056-57, 47 L.Ed.2d 231 (1976); *Vaca v. Sipes*, 386 U.S. 171, 177, 87 S.Ct. 903, 909, 17 L.Ed.2d 842 (1967). The issue of fair representation does not even arise, however, unless a union member (i) has a grievance, based on a breach by the employer of the collective bargaining contract, and (ii) has at least attempted to use grievance procedures provided by the contract. *Republic Steel Corp. v. Maddox*, 379 U.S. 650, 652-53, 85 S.Ct. 614, 616, 13 L.Ed.2d 580 (1965); *see DelCostello v. International Brotherhood of Teamsters*, 462 U.S. 151, 163-65, 103 S.Ct. 2281, 2289-91, 76 L.Ed.2d 476 (1983).[6]

8 9 10 These rules require dismissal of Duncan's fair representation claim on a number of grounds. The complaint does not state whether Duncan is a member of Local 1150. Thus, on its face it establishes no basis for holding the Union defendants to a duty of fair representation. Whether or not she is a member, however, the complaint also fails to allege either a violation by AT & T of any provision of a collective bargaining agreement or an attempt by Duncan to air a grievance. Instead, aside from conclusory statements-e.g., that the Union did not adhere to established guidelines, policies, and procedures-the complaint dwells on the Union's alleged refusal to assist her in matters independent of any colorable case of wrongdoing by AT & T. In short, the complaint fails to set forth circumstances which would trigger the Union's duty of fair representation.[7]

11 Independent of these grounds for dismissal, the fair representation claim is untimely. A claim under 29 U.S.C. § 185 must be brought within six months from the time the plaintiff knew or should have known that a breach had occurred. *Demchik v. General Motors Corp.*, 821 F.2d 102, 105 (2d Cir.1987). It is difficult, of course, to say when Duncan's time for bringing her claim could have expired, since the complaint fails to establish that such a breach ever occurred. However, even assuming that certain allegations were sufficient to establish a breach of duty, only one alleged event falls within the six-month limitations period:

> 6. ... [D]efendant union has failed to respond to numerous correspondence [sic] provided by the plaintiff and has refused to offer any explanation as to the reason that plaintiff could not resume with defendant company.
>
> 7. Said refusal on the part of defendant union has taken place within the last 6 months prior to the filing of this complaint.
>
> Complaint ¶¶ 6-7.

This transparent attempt to save the fair representation claim from untimeliness is futile. Whether viewed as an isolated event or the tail-end of a series of related events, a simple failure to respond to correspondence, without any indication that plaintiff had a grievance and sought representation from the Union, is insufficient to establish that the Union or its representatives could have breached a duty during the limitations period. *See DelCostello, supra*, 462 U.S. at 163-65, 103 S.Ct. at 2289-91; *King v. New York Telephone Co.*, 785 F.2d 31, 33-34 (2d Cir.1986) (limitations period begins to run when "the plaintiff could first have successfully maintained a suit based on that cause of action," i.e., "no *237 later than the time when plaintiff[ ] knew or reasonably should have known that ... a breach [of duty] had occurred").

12 Duncan's remaining claim of intentional infliction of emotional distress rests on state law. Because her federal claims must be dismissed at this pre-trial stage, the pendent state claim is dismissed as well. *See United Mine Workers of America v. Gibbs*, 383 U.S. 715, 726, 86 S.Ct. 1130, 1139, 16 L.Ed.2d 218 (1966); *George v. Hilaire Farm Nursing Home*, 622 F.Supp. 1349, 1355 (S.D.N.Y.1985) (Carter, J.).[8]

The complaint fails to state a claim on which relief can be granted. Defendants' motions to dismiss the complaint in full accordingly are granted. Rule 12(b)(6), F.R.Civ.P.

IT IS SO ORDERED.

Parallel Citations

45 Fair Empl.Prac.Cas. (BNA) 823

Footnotes

1 On November 7, 1986, plaintiff served the Union defendants, as well as defendant Dr. Jack Kapland, with notices of voluntary dismissal. As to Kapland, the notice of dismissal was void from the start because it was served both after he had filed a motion for summary judgment and without his stipulation or the court's consent. *See* Rule 41(a), F.R.Civ.P. On the other hand, the Union defendants, who had not moved for summary judgment, sought by letter dated November 10, 1986, to withdraw their Rule 12(b)(6) motion in view of the representation that plaintiff had dismissed the action as against them. A copy of the notice of voluntary dismissal was attached, and plaintiff did not subsequently challenge or otherwise reply to the letter. Believing that plaintiff had duly filed the notice of dismissal, the court on December 8, 1986, granted the Union defendants' request to withdraw their Rule 12(b)(6) motion on the ground that it was moot.

In fact, plaintiff never actually filed any notice of voluntary dismissal. The court's order of December 8, 1986, is therefore vacated. The request of the Union defendants by letter dated June 23, 1987, for reinstatement *nunc pro tunc* of their Rule 12(b)(6) motion to dismiss, is granted.

2 Plaintiff does not specify what law is the basis for her claim of breach of the duty of fair representation.

3 The complaint also alleges "[t]hat each defendant conspired with the other named defendants to limit the terms and conditions of plaintiff's employment." Complaint ¶ 49. This and like allegations of a conspiracy, *see id.* ¶¶ 13, 17, 45, 48, are so general and conclusory that they must be disregarded. *See Ellentuck v. Klein*, 570 F.2d 414, 426-27 (2d Cir.1978); *Ostrer v. Aronwald*, 567 F.2d 551, 553 (2d Cir.1977) (per curiam).

4 The elements of a prima facie § 1981 violation are properly borrowed from disparate treatment cases under Title VII, 42 U.S.C. § 2000e *et seq. Daniels v. Board of Education*, 805 F.2d 203, 207 (6th Cir.1987); *Martin v. Citibank, N.A.*, 762 F.2d 212, 216-17 (2d Cir.1985).

5 Whether the § 1981 claim was timely filed under the applicable statute of limitations is a more complicated question which, in light of the dismissal of the claim on other grounds, need not be addressed.

6 A union member need not *exhaust* grievance procedures when, for example, the union refuses to press the grievance or does so in a perfunctory way. However, the individual must at a minimum allow the union the opportunity to undertake his or her representation. *Hines, supra*, 424 U.S. at 563, 96 S.Ct. at 1055; *Maddox, supra*, 379 U.S. at 652-53, 85 S.Ct. at 616.

7 The caption of the complaint names the two former or current presidents of Local 1150 in their individual and representative capacities. However, nowhere else in the complaint is this distinction made and, in particular, nowhere are either of the presidents said to have acted individually. The action against the presidents in their individual capacities is dismissed as frivolous. *See Atkinson v. Sinclair Refining Co.*, 370 U.S. 238, 247-49, 82 S.Ct. 1318, 1324-25, 8 L.Ed.2d 462 (1962); *Peterson v. Kennedy*, 771 F.2d 1244, 1256-57 (9th Cir.1985), *cert. denied*, 475 U.S. 1122, 106 S.Ct. 1642, 90 L.Ed.2d 187 (1986).

8 Even if the court properly could exercise pendent jurisdiction, the state claim appears to be untimely. The statute of limitations applicable to claims of intentional infliction of emotional distress requires that actions be commenced within one year. CPLR § 215(3); *Goldner v. Sullivan, Gough, Skipworth, Summers & Smith*, 105 A.D.2d 1149, 482 N.Y.S.2d 606, 608 (4th Dep't 1984). No allegation that is even potentially relevant falls within this period.

End of Document

IN COUNTY COURT
NINTH JUDICIAL CIRCUIT
ORANGE COUNTY, FLORIDA

CASE NO. [redacted]

STATE OF FLORIDA

vs

[redacted]

_____/

DEFENDANT'S RESPONSE TO SILLY CHARGES

COMES NOW the undersigned Defendant and:

1. Enters a Plea of Not Guilty to all the silly charges.

2. Waives the taking of any and all evidence on behalf of the Prosecution.

3. Moves this Court to enter its Order for Directed Verdict of Acquittal and, in support of this Motion, would show this Court that the Waiver of the Prosecution's Case leaves no material issues of fact or law to be submitted to a jury or to be decided by this Court.

4. Informs this Court that whereas sanity is no great virtue, stupidity is no great vice.

CERTIFICATION is hereby made that a copy hereof was furnished to the Office of the State's Attorney by mail delivery delivery on 10 Dec, 1979.

[redacted] ESQUIRE
[redacted]

JK 3
Oct 77

IN THE COUNTY COURT
NINTH JUDICIAL CIRCUIT
ORANGE COUNTY, FLORIDA

CASE NO. TW-[redacted]

STATE OF FLORIDA

VS.

[redacted]

DEMAND FOR TRIAL BY MORTAL COMBAT

COMES NOW the undersigned and hereby serves this Demand for Trial by Mortal Combat and in support of said Demand would show this Court as follows:

1. Florida Statute Section 2.01 states the following:

> "The common and statute laws of England which are of a general and not a local nature, with the exception hereinafter mentioned, down to the fourth day of July, 1776, are declared to be of force in this State; provided said statutes and common law be not inconsistent with the Constitution and laws of the United States and the acts of the Legislature of this State."

2. There has been no legislation passed by the State Legislature of Florida forbidding or abrogating trial by mortal combat.

3. As of July 4, 1776, trial by mortal combat was part of the Common Law of England, although seldom, if ever, resorted to in modern time. See: Winston S. Churchill, A History of the English Speaking Peoples, Vol. I, (Dodd, Mead and Co., New York, 1966) p. 218, wherein it is stated:

> "...as late as 1818, a litigant non-plussed the judges by an appeal to trial by battle and compelled Parliament to abolish this ancient procedure."

WHEREFORE, the undersigned requests this Court to enter its Order directing that the trial of this cause be by mortal combat and setting forth the date, place and conditions for said combat.

CERTIFICATION is hereby made that a copy hereof was furnished by mail/hand delivery on 10 December 1979, to: Office of the State's Attorne 475 W. Story Rd., Ocoee, Fla. 32761.

[redacted]
Attorney and Champion for [redacted]

SF-120
1 July 75

Docs-002

ORDERED in the Southern District of Florida on January 19, 2010.

John K. Olson, Judge
United States Bankruptcy Court

UNITED STATES BANKRUPTCY COURT
SOUTHERN DISTRICT FLORIDA
FORT LAUDERDALE DIVISION

IN RE: CASE NO.:09-18783-BKC-JKO
PROCEEDING UNDER CHAPTER 13

[redacted]

DEBTOR(S)
_____/

ORDER TO SHOW CAUSE

THIS CAUSE came to be heard on January 5, 2010, upon the Confirmation Hearing, and the Court noting [redacted] Esquire's ([redacted]) failure to appear and properly represent his client, and based upon the record, it is

ORDERED as follows:

1. [redacted] shall appear and explain to the Court why he failed to appear at the December 3, 2009 341 Meeting of Creditors and properly represent his client.
2. [redacted] shall further explain why he failed to return the Debtor's multiple phone calls.

3. [redacted] shall further explain why he is entitled to $8,200.00 in Attorney fees as provided for in the Chapter 13 Plan.

4. [redacted] shall explain why he failed to advise his client that he would not be attending the 341 Meeting of Creditors.

5. [redacted] shall further explain why he did not contact the Trustee's Office to advise her that he would not be appearing at the scheduled 341 Meeting of Creditors prior to December 3, 2009.

6. [redacted] shall further explain why he did not make alternative arrangements and send another Attorney to appear and represent the Debtor on his behalf.

7. [redacted] is hereby directed to appear before this Court on **February 9, 2010 at 1:00 p.m.** at the United States Bankruptcy Court, 299 E Broward Blvd, Courtroom 301, Ft Lauderdale, Florida 33301, on an Order to Show Cause as to why his fees should not be disgorged and he not be sanctioned for his failure to properly represent his clients at the scheduled Hearing.

###

ORDER SUBMITTED BY:

ROBIN R WEINER, ESQUIRE
STANDING CHAPTER 13 TRUSTEE
PO BOX 559007
FORT LAUDERDALE, FL 33355-9007
954-382-2001

COPIES FURNISHED TO:

DEBTOR(S)
[redacted]

ATTORNEY FOR DEBTOR(S)
[redacted]

ROBIN R. WEINER IS DIRECTED TO SERVE COPIES OF THIS ORDER ON THE PARTIES LISTED AND FILE A CERTIFICATE OF SERVICE.

UNITED STATES BANKRUPTCY COURT
SOUTHERN DISTRICT OF FLORIDA
Fort Lauderdale Division

IN RE:

[redacted]

Case No.: 09-18783-JKO
Chapter 13

Debtor

/

[redacted]S REPLY
TO
ORDER TO SHOW CAUSE

COMES NOW Attorney [redacted], Esq. and respectfully files this Response to Order to Show Cause, and in support thereof argues as follows:

1. [redacted] could not appear at the 341 meeting of creditors because [redacted] was in the US Virgin Islands, trying to bond a 24 year old client from jail, in People Vs. Milosavljevic, C-ST-528-09, since November 25th, 2009. [redacted] won 2 separate orders reducing his bond from $200,000.00 to $2,500.00, [redacted] paid his bond, [redacted] found a custodian and a residence for that client, [redacted] bought food water and other provisions, and in the period November 25th, 2009 to today [redacted] in vain attempted to release said client. This is a problem for the United States Jurisprudence. [redacted] and local counsel in the VI now agreed to file a Habeas Petition with the Virgin Islands District Court on Monday, if the client is not released despite Orders from the Court.

2. [redacted] did not fail to return phone calls to his ex client. [redacted] called [redacted] from the Virgin Islands and spoke to the client one day before the creditors meeting and advise the client what documents to bring and how to appear at said meeting.

3. [redacted] is not entitled to $8,200.00, read the plan please. [redacted] was entitled to $100.00 per month every month to assure [redacted]'s compliance with the Orders of the Court. Thankfully, [redacted] fired [redacted], so [redacted] does not have to worry about past services performed. In addition, if it had not been for [redacted]'s advice and guidance, the estate and the creditors would have not received anything here. The creditors should shed a tear for poor young Mr. [redacted] here!

4. [redacted] never agreed to attend said meeting. [redacted] told [redacted] that [redacted] will try to do that, but [redacted] was unavailable because [redacted] is an attorney.

5. [redacted] is an attorney ranked by Martindale-Hubbell, with such ranking attached hereto as proof. As such, [redacted] attempted to call the Trustee but sadly could not reach her because [redacted] was in the Virgin Islands. That territory of the United States is not the United States, and the telecommunications there are terrible.

6. [redacted] could not make alternative arrangements because [redacted] law partner, [redacted] is 82 years old. The Trustee should explain how come she could not just simply reschedule the 341 meeting of creditors.

7. [redacted] shall not be sanctioned because [redacted] did nothing wrong here. [redacted] properly represented his client, the Trustee here alienated [redacted]'s feelings and challenged the contract between [redacted]'s and [redacted]'s contract and forced [redacted] to fire [redacted] and then induced the Court based on fantasies to issue this Order to Show cause.

8. [redacted] shall testify in his defense and put forward the following witnesses at that hearing: [redacted], cousin of the detainee, the detainee if available by then, [redacted] pro-bono clients, and [redacted] Next we should be telephone contact Judge

James Carroll, Marshall Rodney Arthurton, Mrs. Griffiths chief Clerk of Courts, who are all material witnesses to the extremely hard work [redacted] performed on behalf of his wrongly-imprisoned client in the United States Virgin Islands.

WHEREFORE, [redacted] respectfully moves this Honorable Court to enter an Order quashing the Order to Show cause and for all other relief deemed Just, Fair and Proper.

I HEREBY CERTIFY that on 2/5/2010 I served [redacted], POB 559007, Fort Lauderdale, FL 33355, and the US Trustee, **Office of the US Trustee**, 51 S.W. 1st Ave, Suite 1204, Miami, FL 33130, and all parties on the attached creditor matrix with a true and correct copy of this Motion.

I **HEREBY CERTIFY** that I am admitted to the Bar of the United States for the Southern District of Florida, and I am in compliance with additional qualifications to practice in this Court as set forth in 2090-1(A).

ALL OF WHICH IS RESPECTFULLY SUBMITTED:

[redacted]
BY: [redacted]
FLORIDA BAR NUMBER: [redacted]
[redacted]
TELEPHONE: [redacted]
TELEPHONE: [redacted]

ORDERED in the Southern District of Florida on March 9, 2010

John K. Olson, Judge
United States Bankruptcy Court

UNITED STATES BANKRUPTCY COURT
SOUTHERN DISTRICT OF FLORIDA
Fort Lauderdale Division
www.flsb.uscourts.gov

In re:

Eric Romeo **Harry**

Debtor.
_____/

Case No: 09-18783-BKC-JKO

Chapter 13

ORDER SANCTIONING ATTORNEY

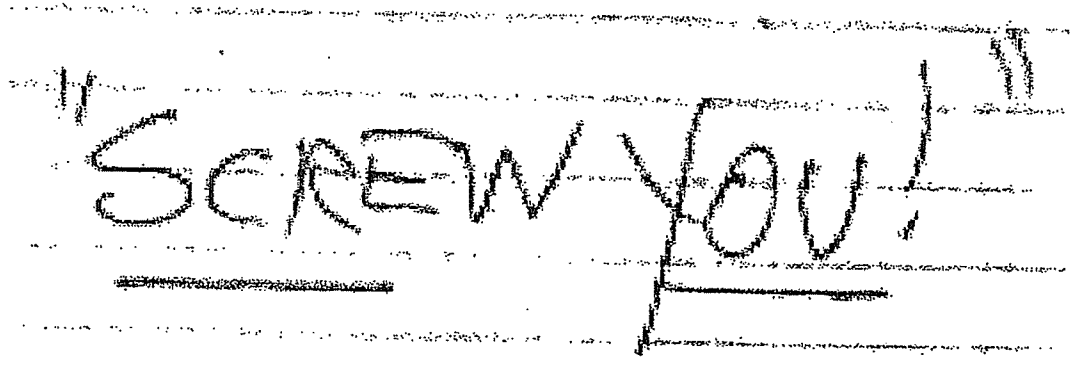
On January 19, 2010, I entered an Order to Show Cause [DE 55] which directed [redacted], Esq. to appear and explain why he should not be sanctioned for what appeared to be negligent representation of the Debtor in this case. A hearing was conducted February 9, 2010 and, for the reasons stated on the record, it is ORDERED that:

1. Debtor's former counsel, [redacted], Esq. is to pay $2,200 to the Clerk of Court if he has not already done so;
2. The Clerk of Court is to disburse the $2,200 to Debtor Eric Romeo Harry;
3. Debtor's former counsel, [redacted], Esq. is suspended from practice in this

June 08, 2009

How to make friends and influence judges.

Via Lawyerist, we learn that saying "Screw You" to a judge in written and verbal form is the way Ashton O'Dwyer Jr. influences people. Whether his approach was successful remains to be seen.



Mr. O'Dwyer's entire handwritten response to the judge's Order of Contempt can be found here.

Posted at 07:42 AM in Unforgettable Pleadings | Permalink | Comments (0) | TrackBack (0) ShareThis

MIDDLE DISTRICT OF FLORIDA
RULE 5.03 COURTROOM DECORUM

(b) When appearing in this Court, unless excused by the presiding Judge, all counsel (including, where the context applies, all persons at counsel table) shall abide by the following:

(8) Refer to all persons, including witnesses, other counsel and the parties by their surnames and not by their first or given names.

(16) Counsel shall admonish all persons at counsel table that gestures, facial expressions, audible comments, or the like, as manifestations of approval or disapproval during the testimony of witnesses, or at any other time, are absolutely prohibited.

Creed of Professionalism

I revere the law, the judicial system, and the legal profession and will at all times in my professional and private lives uphold the dignity and esteem of each.
I will further my profession's devotion to public service and to the public good.
I will strictly adhere to the spirit as well as the letter of my profession's code of ethics, to the extent that the law permits and will at all times be guided by a fundamental sense of honor, integrity, and fair play.
I will not knowingly misstate, distort, or improperly exaggerate any fact or opinion and will not improperly permit my silence or inaction to mislead anyone.
I will conduct myself to assure the just, speedy and inexpensive determination of every action and resolution of every controversy.
I will abstain from all rude, disruptive, disrespectful, and abusive behavior and will at all times act with dignity, decency, and courtesy.
I will respect the time and commitments of others.
I will be diligent and punctual in communicating with others and in fulfilling commitments.
I will exercise independent judgment and will not be governed by a client's ill will or deceit.
My word is my bond.

Guidelines for Professional Conduct

M. TRIAL CONDUCT AND COURTROOM DECORUM.

1. A lawyer should always deal with parties, counsel, witnesses, jurors or prospective jurors, court personnel and the judge with courtesy and civility and avoid undignified or discourteous conduct which is degrading to the court.

3. Stand as court is opened, recessed or adjourned; when the jury enters or retires from the courtroom; and when addressing, or being addressed by, the court.

4. Examination of jurors and witnesses should be conducted from a suitable distance. A lawyer should not crowd or lean over the witness or jury and during interrogation should avoid blocking opposing counsel's view of the witness.

6. A lawyer should avoid disparaging personal remarks or acrimony toward opposing counsel.

16. Counsel shall admonish all persons at counsel table that gestures, facial expressions, audible comments, or the like, as manifestations of approval or disapproval during the testimony of witnesses, or at any other time, are absolutely prohibited.

19. A lawyer should abstain from conduct calculated to detract or divert the fact-finder's attention from the relevant facts or otherwise cause it to reach a decision on an impermissible basis.

25. A lawyer should address objections, requests and observations to the court and not engage in undignified or discourteous conduct which is degrading to court procedure.

28. A lawyer should scrupulously abstain from all acts, comments and attitudes calculated to curry favor with any juror, by fawning, flattery, actual or pretended solicitude for the juror's comfort or convenience or the like.

UNITED STATES DISTRICT COURT
MIDDLE DISTRICT OF FLORIDA
ORLANDO DIVISION

AVISTA MANAGEMENT, INC.,
d/b/a Avista Plex, Inc.,

Plaintiff,

-vs-

Case No. 6:05-cv-1430-Orl-31JGG
(Consolidated)

WAUSAU UNDERWRITERS INSURANCE COMPANY,

Defendant.

ORDER

This matter comes before the Court on Plaintiff's Motion to designate location of a Rule 30(b)(6) deposition (Doc. 105). Upon consideration of the Motion – the latest in a series of Gordian knots that the parties have been unable to untangle without enlisting the assistance of the federal courts – it is

ORDERED that said Motion is DENIED. Instead, the Court will fashion a new form of alternative dispute resolution, to wit: at 4:00 P.M. on Friday, June 30, 2006, counsel shall convene at a neutral site agreeable to both parties. If counsel cannot agree on a neutral site, they shall meet on the front steps of the Sam M. Gibbons U.S. Courthouse, 801 North Florida Ave., Tampa, Florida 33602. Each lawyer shall be entitled to be accompanied by one paralegal who shall act as an attendant and witness. At that time and location, counsel shall engage in one (1) game of "rock, paper, scissors." The winner of this engagement shall be entitled to select the location for the 30(b)(6) deposition to be held somewhere in Hillsborough County during the

period July 11-12, 2006. If either party disputes the outcome of this engagement, an appeal may be filed and a hearing will be held at 8:30 A.M. on Friday, July 7, 2006 before the undersigned in Courtroom 3, George C. Young United States Courthouse and Federal Building, 80 North Hughey Avenue, Orlando, Florida 32801.

DONE and **ORDERED** in Chambers, Orlando, Florida on June 6, 2006.

GREGORY A. PRESNELL
UNITED STATES DISTRICT JUDGE

Copies furnished to:

Counsel of Record
Unrepresented Party