IN THE SUPREME COURT OF FLORIDA
(Before a Referee)

THE FLORIDA BAR,

Petitioner,

v.

GABE KAIMOWITZ,

Respondent.
_____/

Supreme Court Case
No. SC13-754

The Florida Bar File
No. 2013-00,238(08B)

REPORT OF THE REFEREE

I. SUMMARY OF PROCEEDINGS

Pursuant to the undersigned being duly appointed as referee to conduct disciplinary proceedings herein according to Rule 3-7.6, Rules of Discipline, the following proceedings occurred:

On March 26, 2013, The Florida Bar filed its Complaint against Respondent.

On November 7, 2013, and November 8, 2013, the final hearing was held in Courtroom 3B of the Family and Civil Justice Center, Alachua County Courthouse, Gainesville, Florida.

From the date of filing until the filing of this report, 100 different "pleadings" were received and indexed. Most of the "pleadings" were from the Respondent and many were frivolous or superfluous. Also, numerous

other communications or letters were received from Respondent. The Referee chose not to index said correspondence but rather to keep them in a "correspondence" file in chronological order from date of receipt.

All of the aforementioned pleadings, responses thereto, correspondence, exhibits received in evidence or marked for identification and this Report constitute the record in this case and are forwarded to the Supreme Court of Florida.

II. FINDINGS OF FACT

Jurisdictional Statement. Respondent is, and at all times mentioned during this investigation was, a member of The Florida Bar, subject to the jurisdiction and Disciplinary Rules of the Supreme Court of Florida.

A. Narrative Summary of Case. The Florida Bar charges the Respondent in Count I with violation of Rule 4-8.2, impugning the integrity of Judges and other Officers. The Respondent, in Count II, is charged with violation of Rule 4-8.4 (D), conduct in the practice of law that is prejudicial to the administration of justice. Count III charges the Respondent with violation of Rule 4-8.5, direct contact and disruption of a tribunal.

Essentially, Respondent in pleadings, in letters to newspapers, and at the hearing, accused Judge Monaco, Chief Judge of the Eighth Circuit, of being corrupt, manipulating cases, favoring certain parties, and being Anti-Semitic, thus forming the basis for Counts I and II.

Respondent, in pleadings, letters, and at the final hearing, asserts that now retired City of Gainesville Attorney, Marion Radson, is a racist and is corrupt, again forming the basis for Counts I and II.

The Bar claims, in Count III, that Respondent directly and without notice to the Bar, contacted Robert Birrenkott and Denise Hutson, members of the Eighth Circuit Bar Grievance Committee which investigated Respondent on this matter. The Florida Bar spent only a brief time showing that Respondent communicated directly by e-mail after being instructed not to communicate with the members of the Committee directly. Respondent did not address this issue. Although not technical or trivial, the issue set forth in Count III pales in comparison with Counts I and II.

The Bar proves Counts I and II by referring to nine (9) statements.[1] The Florida Bar relies upon the Bar's document A-1 in evidence (attached hereto) as follows:

Statement 1, paragraph 1, page 3.

Statement 2, last paragraph, page 7.

The Florida Bar relies upon the Bar's Document B-2 in evidence (attached hereto) as follows:

Statement 3, page 1, paragraph 2.

Statement 4, page 3.

Statement 5, page 9, 1st sentence, last paragraph.

The Bar relies on document C-3 in evidence (attached hereto) as follows:

Statement 6, page 2, paragraph 2.

Statement 7, page 2, paragraph 2.

Statement 8, page 3, last paragraph

The Bar relies on document D-4 in evidence (attached hereto) as follows:

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[1] The Referee was without a clerk at the final hearing. Consequently, he had to take notes on the testimony, mark evidence, rule on numerous objections, and maintain order in the Courtroom. The citations to the evidence relied upon by the Florida Bar are, hopefully, accurate. Further the Referee does not have the transcript of the proceeding.

Statement 9, last page, last paragraph.

The Respondent did not deny making these prior personal attacks on Judge Monaco and Mr. Radson and Respondent continued to make these allegations at the final hearing. Respondent's only defense is that he tries to show that he has a reasonable basis for the allegations.

Judge Monaco was the Florida Bar's first witness and he began his testimony at 9:35 a.m. on Thursday, November 7, 2013. Respondent started cross-examination before lunch. Judge Monaco returned to the witness stand at 1:00 p.m. and Respondent questioned him without any breaks until 5:00 p.m. Judge Monaco's testimony was credible and he exhibited remarkable patience and restraint.

Attorney Marion Radson testified on November 8th from approximately 8:45 a.m. to 11:00 a.m. The time for questioning was divided almost equally between the Florida Bar and the Respondent. Respondent, early in his questioning, shouted at Mr. Radson, "You are a racist." The Referee found Mr. Radson to be credible. Mr. Radson exhibited remarkable restraint as he was insulted by Respondent on more than one

occasion.

The circumstances giving rise to this proceeding, although not complex, are involved and can be confusing. The origins of this proceeding arise out of two (2) cases in the Eighth Judicial Circuit, the Friedberg and Butterfly cases. A summary follows:

Friedberg: Erin Friedberg was an employee of the City of Gainesville for seven (7) years whose job description included the city's public art projects. She was discharged by the City and as a result, filed a civil suit in the Eighth Judicial Circuit. Ms. Friedberg was represented by attorney Shoemacker. A Count is included at some point in the litigation complaining about the way the City responds to public record requests. Respondent, Kaimowitz, at this point, had nothing to do with the Friedberg case. The "Butterfly" matter was taking place at about this same time.

Butterfly: Butterfly Holding, LLC, is a non-profit entity created by the Respondent. Basically, Butterfly's primary purpose is to promote the use of the image of a

butterfly as a positive symbol by a city or community committed to the inclusion of and support for all citizens.

Respondent approached the City Council of Gainesville and proposed to designate Gainesville as a "Butterfly City". In return, the City would obtain a trade mark for the Butterfly symbol. At a Council meeting, Attorney Marion Radson[2] expressed that money had not been budgeted for this purpose. Respondent believed the City was not acting quickly enough on the "Butterfly" matter and began making public record requests. Attorney Radson, in response, said there was a charge to make copies and possibly an hourly research charge to find the documents, e-mails, etc. Butterfly, at this point, sued the City of Gainesville in the Eighth Judicial Circuit solely on the issue of the public records request.

The Friedberg case became consolidated with the Butterfly case. The Referee *assumes* they were consolidated in the sense of being assigned to the same Judge and for purposes of discovery as to the public records issue. At this point, Mr.

[2] Marion Radson served as City Attorney for Gainesville from 1985 to 2012.

Shoemacker withdrew as Ms. Friedberg's attorney and Respondent became Ms. Friedberg's attorney.

An evidentiary hearing or non-jury trial was held in the Friedberg case. After some evidence, the Judge on his own motion, disqualified himself and apparently did so without explanation.

The two (2) cases were then assigned to Judge Monaco. The Butterfly case was ultimately dismissed because Butterfly did not file an amended complaint. Judge Monaco presided over a non-jury trial in the Friedberg case and ruled in favor of the City.

2003 and 2004: In 2003 and 2004, the Respondent was filing pro se law suits that ultimately resulted in a finding that Respondent was a "vexatious litigant" pursuant to Section 68.093, Florida Statutes and a criminal contempt finding issued by now retired Judge Larry Turner. Judge Monaco was involved in these matters.

Respondent, in trying to show a basis for his present accusations, spent time questioning Judge Monaco about the

events that took place in 2003 and 2004. Respondent also spent some of his testimony on the 2003 and 2004 matters.

Respondent's basis for the allegations can be summarized as follows:

Judge Monaco

Anti-Black: Respondent offered that Judge Monaco's prior law firm (Dell Graham) did not have an African American attorney. Respondent became agitated and claimed that an attorney with the firm was from Panama and was not African American. The Bar took the deposition of this attorney, Mr. McNeill, who testified that his father was African American and his mother was from Panama.

Respondent also asserts the first African American Federal Judge in the Northern District of Florida is still controlled by white judges and attorneys because he allegedly had a DUI reduced to a reckless driving charge in Columbia County.

Anti-Semitic: Respondent showed that Judge Monaco was an active member of a Methodist Church, that he served on a leadership committee at the church, that he received a daily

devotional e-mail message from the Pastor, and on most days, he read the message. Respondent offered an article which "blames the Jews for the death of Christ". Finally, Respondent claimed that Judge Monaco's office has Christmas decorations including Santa Claus.

The Respondent testified that another Jewish attorney felt "uncomfortable" in front of Judge Monaco. The attorney was never identified nor did he or she testify.

Corrupt: Respondent claimed Judge Monaco ruled in favor of the City to "protect" Marion Radson. In return, Mr. Radson hired Judge Monaco's former firm to represent the City. Mr. Radson explained that from time to time, the City hired Judge Monaco's former firm for insurance defense cases involving suits against the City for the actions of police officers. Mr. Radson further explained the City's insurance carrier had to approve the law firm and the hourly rate charged.

Respondent claimed that during the 2003-2004 matters, civil files were checked out to Judge Monaco's office involving Respondent. Judge Monaco explained that, at the time, the Clerk had a policy to take papers filed in pro se cases to a Judge

to determine what, if any, action should be taken. Further, Respondent asserts Judge Turner and Judge Monaco spoke with one another about Respondent, that this was an ex parte communication and that the two judges plotted against him. The Referee explained to the Respondent that two (2) active judges can speak to one another about a case and that this was not an ex parte communication. Judge Monaco denied discussing Respondent's cases with Judge Turner.

Finally, the Eighth Circuit, like all circuits, has a Voluntary Bar Association and perhaps a Bench and Bar Committee. Respondent insists this Voluntary Bar Association is the Florida Bar and that Judge Monaco spoke poorly of Respondent to members of the Eighth Circuit Bar and they, in turn, influenced the Grievance Committee to take these actions against Respondent.

Marion Radson

Racist: Respondent claimed that Attorney Radson is a racist because: (1) the limited number of African Americans hired by the City during his 27 years as City Attorney and (2) three (3) African American attorneys filed discrimination

claims against the City during his tenure. One of those claims was settled by the City by payment of $15,000; how the other two (2) claims were resolved is unknown.

Corrupt: The same basis is applied here as is described in the "corrupt" Judge Monaco section.

Other Evidence: Mr. Radson testified that in the litigation with the City, the Respondent called a female attorney representing the City a "Charlie's Angel." To many professional women, being referred to as "Charlie's Angel" is an insult, implying a woman is hired because of her attractiveness, her lack of intelligence, and for her willingness to blindly follow the orders of her male employer. Respondent admits to making the statement and simply indicated "we" don't understand the context. It appears to the Referee this is just the method by which Respondent practices law. He personally attacks anyone who opposes him and the character assassinations practiced by Respondent, Gabe Kaimowitz, know no limits and no boundaries.

Conclusion: No person, reasonable or otherwise, could believe the allegations made against Judge Monaco and Attorney Radson.

III. RECOMMENDATIONS AS TO GUILT

The Referee recommends that Respondent be found guilty of violating Rule 4-8.2, Rule 4-8.4 and Rule 4-3.5.

IV. CASE LAW

The Referee considered the following case law prior to recommending discipline:

The Florida Bar v. Norkin, 38 Fla L. Weekly S786 (Fla. Oct. 31, 2013).

V. AGGRAVATING AND MITIGATING FACTORS

The Referee considered the following factors prior to recommending discipline:

Respondent was uncooperative, unprofessional, and combative in his dealing with Florida Bar Attorney Jeffrey Brown. Respondent moved to disqualify or remove Mr. Brown as the attorney on this case. The Referee explained to the Respondent the only basis to disqualify the attorney of an opposing party is a conflict created by prior representation of a party or a witness. Regardless, Respondent continued to seek the removal of Mr. Brown. It appeared that Respondent has in other litigation moved to remove

an opposing party's attorney. This may be another example of how Respondent practices law.

Respondent, in mitigation, cites his age of 79 years and that he is a "flamboyant" attorney.

The Referee considered the following standards: 9.0, 11.0 and 12.0 of the Standards for Imposing Lawyer Sanctions

VI. RECOMMENDATION AS TO DISCIPLINARY MEASURES TO BE APPLIED

The Florida Bar recommends a suspension of at least 91 days.

The Respondent recommends disbarment with no costs being assessed. Respondent stated, "if costs are assessed, he will fight until he goes to the grave."

The Referee recommends a two (2) year suspension followed by 18 months of probation. As condition of reinstatement, the Respondent should be required to undergo a mental health examination and to comply with any reasonably recommended treatment.

VII. PERSONAL HISTORY, PAST DISCIPLINARY RECORD

Prior to recommending discipline pursuant to Rule 3-7.6(m)(1), the Referee considered the following:

A. Personal History of Respondent:

The Respondent is 79 years old and was admitted to the Florida Bar on February 19, 1987.

B. Aggravating Factors:

The Respondent has the following prior disciplinary actions:

a. Public Reprimand , March 5, 1998, Case No. 90,3822

b. Public Reprimand, December 14, 2001,

Case No. SC00-815

C. Mitigating Factors:

a. Respondent's age

VIII. STATEMENT OF COSTS AND MANNER IN WHICH COSTS SHOULD BE TAXED

I find the following costs were reasonably incurred by The Florida Bar:

A. Grievance Committee Level

Administrative Fee pursuant to Rule 3-7.6(8)(1)(I) Rules of Discipline	$1,250.00
Court Reporter's Fees	$3,825.37
Bar Counsel Costs	1,693.04
Investigative Costs	191.36
Photocopies	467.51
TOTAL	$7,427.28

It is recommended that such costs be charged to respondent and that interest at the statutory rate shall accrue and be deemed delinquent 30 days after the judgment in this case becomes final unless paid in full or otherwise deferred by the Board of Governors of The Florida Bar.

William G. Law, Jr., Referee
North Wing, 2nd Floor, Suite 8
550 West Main Street
Tavares, FL 32778

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that the original or the foregoing Report of Referee has been mailed to THE HONORABLE JOHN A. TOMASINO, Clerk, Supreme Court of Florida, 500 South Duval Street, Tallahassee, Florida 32301, and the copies were mailed by regular U.S. Mail to KENNETH LAWRENCE MARVIN, Staff Counsel, The Florida Bar, 651 East Jefferson Street, Tallahassee, Florida 32399-2300; JEFFREY BROWN, Bar Counsel, The Florida Bar, 651 East Jefferson Street, Tallahassee, Florida 32399-2300; JASON VAIL, Assistant Attorney General, Office of the Attorney General, PL-01, The Capitol, Tallahassee, Florida 32399; and GABE H. KAIMOWITZ, ESQ., Law Office Box 140119, Gainesville, Florida 32614, on this 2 day of January, 2014.

William G. Law, Jr., Referee

IN THE CIRCUIT COURT OF THE EIGHTH JUDICIAL CIRCUIT
IN AND FOR ALACHUA COUNTY, FLORIDA

ERIN FRIEDBERG,
Plaintiff,

BUTTERFLY EDUCATION PROJECT, LLC,
Intervenor-Plaintiff, **CASE NO.: 2012-CA-360**

v.

DIVISION: K

CITY OF GAINESVILLE, FLORIDA,

Defendant.

2012 SEP 17 PM 12:55
J.K. "BUDDY" IRBY
CLERK CIRCUIT COURTS
ALACHUA COUNTY, FL.

FILED
OK GB

CORRECTED VERSION—Sent by First Class Mail, on Sept. 15, 2012—Original timely sent by UPS for filing Monday, Sept. 17, 2012.

MOTION OF INTERVENOR'S ATTORNEY TO SET ASIDE AN UNLAWFUL AND UNCONSTITUTIONAL TWO-PAGE ORDER OF DISMISSAL WITHOUT LEAVE TO AMEND

Gabriel Hillel Kaimowitz, attorney ("this Attorney") for Intervenor Butterfly Education Project, LLC ("Intervenor"), he manages, being a member in good standing of the Florida Bar, and an officer of this Court, ("this Court Officer") and so not being required by local judicial practice to take an oath before testifying, states as true to the best of his knowledge, each of the points made below. They are the grounds for this Motion (*this Motion*").

1. *This Motion* is brought pursuant to Rule 1.530 and Rule 1.540(b) (1) (3) and/or (6), Florida Rules of Civil Procedure ("Fla. R. Civ. P.") *This Motion* tolls the time for appeal from an *Unlawful and Unconstitutional Two Page Order without Leave to Amend* ("*Second Dismissal*") entered on Sept. 4, 2012, by a successor judge. *This Motion* is brought to set aside that "*Second Dismissal*". *This Motion* is filed within 10 days of that date.

BAR'S A for ID

EXHIBIT
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2. The successor judge apparently came to this mandamus action for immediate relief with full confidence that he could do anything he wished to suppress this action, because of:

a. The presence of this Attorney representing both Plaintiff and Intervenor;

b. The successor judge's own outstanding reputation; he is so highly regarded that he sat last year in a half dozen appeals as an associate judge in the Fourth District Court of Appeal, even though that jurisdiction's own rules limit such appearances to one in a given year;

c. The outstanding reputation of the City Attorney who on Oct. 1, 2012, will have retired after 27 consecutive years in his current position and four as an assistant. Both City Attorney and successor judge were admitted to the Florida Bar on the same day in October 1974.

For those reasons and perhaps others, the successor judge once again set aside the facts and the law, and took over representation of the Defendant on Aug. 22, 2012, at a Case Management Conference he called for these mandamus actions seeking to access public records. Neither side was given any opportunity to address the Court meaningfully. See transcript with relevant Orders.

On that date, if not before, the successor judge threw out everything which had gone on in the previous eight months or so. Setting aside the 20 hours of testimony was not enough. The successor Judge Toby S. Monaco was going to change everything of significance. So Judge Monaco ignored the Order and Finding of Fact and Law by Judge Victor L. Hulslander, on June 25, 2012. Judge Hulslander allowed the Butterfly Education Project, LLC, to intervene; accepted this Attorney's representation for the Intervenor and for Plaintiff; and stated that the this case was remain consolidated, because each of the parties were seeking relief from the City's withholding of public records from them. Judge Hulslander denied temporary injunctive relief requested by this Attorney, but he opined, he was doing so only because a Final Hearing was imminent

At that Final Hearing set for July 5, Plaintiff and Intervenor could have a claim for relief at law at that proceeding. The Final *Hearing* began on July 5th and continued up to the 11th hour on July 24, when Judge Hulslander appeared and recused himself sua sponte. That's when the fraud and conspiracy slipped into this case, as the City Attorney and the successor judge worked in tandem, in cooperation with the Eighth Judicial Circuit Bar Association ("EJCBA"), Inc. For the City, Daniel M. Nee began to show up and file a motion to quash a subpoena. His wife, Judge Denise Ferrero is close to all of the judges in the Eighth Judicial Circuit, as past president of the Association, and one of the attorneys who reinstated the EJCBA as a corporation in 2004. Spousal privilege protects whatever may have transpired between Judge Ferrero and Mr. Nee.

What was at issue was the nature of the public records this Attorney was seeking. The City Attorney knew that the City had been bombarded with public record requests since December 2011. What this Attorney was looking for was unaccounted for millions dispensed by Marion J. Radson to favored private historically white law firms to defend Gainesville in civil rights actions, and other litigation which threatened the image of the City. This Attorney finally found success by getting the information through the Gainesville Finance Department.

But this Attorney found far more than he expected. This Attorney found that the Office of the City Attorney was handing out that money to historically white/Hispanic law firms to defend against civil rights complaints, usually brought by blacks and often by civil rights attorneys. The money had been spent to keep African-Americans from having equal opportunity for placement in elected and appointed positions, in this area.

What this Attorney also found was the link between lawyers and judges in the area today, and those in the past, when the law practice of law was part of every-day Jim Crow life in the South. Contrary to it claim, EJCBA had not been started in 1957, after the 1954-55 Brown v. Board *of Education* decisions. In fact, the organization was rooted in the Jim Crow era, before 1941.

EJCBA presidents were elected every year of that engagement, and every year thereafter, into 1957, when the Florida State Legislature and the Florida Supreme Court openly defied the United States Supreme Court. See the 1957 *Interposition Resolution* in the History documents.

Judge Monaco was the person who prompted this Attorney to turn to the past, after he read the jurist's remarks on June 20, 2007. At the annual dinner of the 8th Judicial Circuit Bar Association, Judge Monaco introduced the lawyer who would receive the Judge James L. Tomlinson Professional Award for the past year. In that speech, Judge Monaco lauded his mentor, Joe Willcox. Judge Monaco recalled "those older members of the Bar who were our mentors and role models of the day—those who showed us how to practice law." "Professionalism was ingrained in their concept of being a lawyer." Judge Monaco said that attorneys could see the professionalism "in those who are honest, fair, and respectful in their dealings with the Court and with other counsel, and with others who they encounter in their role as lawyers."

This Attorney knew that Judge Monaco had not been respectful to him. Judge Monaco was not talking to him, in 2007, or 2006, or 2004, or 2012. This Attorney once believed that Judge Monaco was not talking to him in 2006, because the jurist did not like or trust Jews. But Judge Monaco and the EJCBA leadership valued some Jews like Stephen N. Bernstein, EJCBA past president, and frequent columnist for the 8th *Forum* Newsletter. But, as is clear from the documents with this Motion, EJCBA was covering up facts known about Mr. Bernstein.

Mr. Bernstein avoided prosecution for multiple felony and misdemeanor sex-related offenses, only because his fellow EJCBA columnist State Attorney Bill Cervone worked apparently with the Governor in 2006 to get deferred prosecutions. In 1982, Mr. Bernstein also had benefited from deferred prosecution. And then most recently while Mr. Bernstein was completing his assignments to get prosecutions deferred, he was charged in 2007 on a complaint for bringing contraband into a detention facility.

That charge later was dropped, because of insufficient evidence. Neither the EJCBA nor the Florida Bar has taken any disciplinary action toward Mr. Bernstein. The EJCBA might have counseled him through its Bench/Bar program but as this Attorney learned in 2005 those sessions are confidential.

Judge Toby S. Monaco does not respect this Attorney, for a different reason. Judge Monaco does not respect this Attorney who takes more pride in being a soldier in the civil rights movement, than he does in the jurist's "cherished" system of justice. This Attorney saw that "system," in Missisippi in 1964, in Texas and Louisiana in 1965. The white natives agreed with one another, but outsiders were barely tolerated. The professionalism Judge Monaco saw in Mr. Willcox only suggests an individual who had no difficulty adjusting to Florida's racist past—not in the streets, but in the courts, in the Florida's Supreme Court This Attorney knew that Joe Willcox was a partner in Dell Graham, a law firm which has a history going back to the early post-Reconstruction era. This Attorney learned that Dell and Graham had been EJCBA presidents. So had former Chief Judge Robert Cates, another Dell Graham partner. Judge Monaco had been a Dell Graham partner, too, from 1977-84/85. Dell Graham partners continue to dominate activities at the EJCBA—note the long-service record of Carl Schwait, for example, and the Bench/Bar expertise of Jennifer Lester, Esq.. The Dell Graham firm has a history dating back more than 100 years in Gainesville. Dell Graham PA may have a black attorney, now, but is that true also for Dell Graham Willcox (that description is given separately at the same address, with a different phone number).

When Judge Monaco urged the young lawyers to emulate Joe Willcox, he could not have been talking to African-Americans. He was talking to an audience who knew or should know that only one African-American has been a circuit court judge here since 1853. Only one black has ever been a president of the EJCBA. A black woman has never been in either position. This Attorney knew that Judge Monaco taught occasionally at the University of Florida School of Law.

Had Judge Monaco ever found an African-American he believed capable of functioning in the inner circle of the EJCBA, or serving as a judge locally? As much as this Attorney loves Prof. Joe W. Little, his own lawyer, he knows that the University of Florida Constitutional Law (emeritus) Professor has never found an African-American he believes should be a judge in this area.

In Gainesville, Judge Monaco had been talking to predominantly white audiences, not only at that dinner, but at the University of Florida law school where he was a trial advocate teaching small groups. He just did not "see" anyone else, unless, like this Attorney, they got ugly, vile, in his face. In each instance, Judge Monaco was there to talk, not to listen. The audiences were to listen.

Then this Attorney realized the same is true of the Office of the City Attorney. For as long as this Attorney has known that office, Ronald Combs, Esq., an African-American has been there. Indeed, Mr. Combs was admitted to the Florida Bar in 1977, 35 years ago. But with affirmative action, with diversity how was it possible that the Office of the City Attorney has eight other lawyers, all of whom are white? The latest hire was of a 2011 University Florida law graduate who passed the Bar in the fall of last year. Indeed, it was that junior member who was thwarting every attempt this Attorney used to get public records from the Office of the City Attorney itself. In fact was the entire white leadership of the EJCBA knowledgeable about the lack of progress within the organization of blacks?: Was EJCBA having the same difficulty as Florida Blue Key ("FBK"), of attracting African-Americans because of its long history of exclusion?

But wait Wasn't this Attorney in the EJCBA? Are we not in this one great big Eighth Judicial Circuit Bar Association, Inc. ("EJCBA") together? The EJCBA membership says we are—up to this week, EJCBA has listed Gabe Kaimowitz as a member to anyone who checks out his name on its Membership directory on the website. In fact this Attorney is not and has never been a member. Why not? This Attorney sued the EJCBA in 2006-2008, because of its nasty habit of relying upon and listen to only its own chosen leaders—from Dell Graham, from the State Attorney's Office.

When the action was filed in federal court, EJCBA member U.S. Judge Stephan Mickle immediately disqualified himself without explanation, just as Judge Victor L. Hulslander did here, in the official records. Neither the federal judge in that case nor Judge Hulslander has explained why this Attorney's presence required judicial disqualification. This Attorney to his knowledge had never met Judge Mickle. So the case was assigned to EJCBA member U.S. Senior Judge Maurice M. Paul. But why was he still on the bench? In 1997 when Judge Paul took Senior Status he said he would step down when his successor replaced him. That turned out to be Judge Mickle. For those like this Attorney who still pay attention to those things, Judge Mickle is black. So Senior Judge Paul has stayed on the bench.

Judge Paul is old school. Judge Paul became a member of the Florida Bar in 1960, just when Joe Willcox was finishing up his 1959-60 presidency of the EJCBA. What should the 1950s-1960s in the Florida legal system mean today? Young black attorneys certainly and even young whites should have little to learn from the segregationists of that era. What has happened here is that two Florida Bar members in the twilights of their respective careers are willing to disregard law or facts, to stop this Attorney from prevailing, from altering their image of what they believe the Bar was in the 1950s, and what they believe it should be—apparently, that is, black attorneys acting "white," and civil rights attorneys minding our own business. To those wrong ends, Judge Monaco has been dismissing claims in this mandamus action without basis in law and fact. He limited the Plaintiff to pro se proceedings at a one-day bench trial. The outcome was inevitable. Judge Monaco's unsupported *S*econd *O*rder *of D*ismissal should be set aside.

Submitted

By Gabe Kaimowitz, FL Bar 0633836
Law Office of Gabe Kaimowitz
P.O. 140119,Gainesville, FL32614
(352) 375-2670
gabrielhillel@gmail.com
Attorney for Butterfly Education Project, LLC

CERTIFICATE OF SERVICE

A copy of this CORRECTED version has been sent without document by first class mail, on Sept. 15 2012, Friday, to Liz Waratuke, Esq., Office of the City Attorney, Rm. #425, Gainesville, FL 32601; Erin Friedberg, pro se, 1719 N.W. 23rd Ave., Apt. 4F, Gainesville, FL 32605-3007; and to the Clerk of the Circuit Court, Family and Civil Justice Center, Alachua County Courthouse, 201 E. University Ave., Gainesville, FL 32601. Documents sent on Sept. 14, remain unchanged. The CORRECTED version here has not been changed substantively, only cosmetically.

By Gabe Kaimowitz, FL Bar 0633836
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Attorney for Butterfly Education Project, LLC.

IN THE CIRCUIT COURT OF THE EIGHTH JUDICIAL CIRCUIT
IN AND FOR ALACHUA COUNTY, FLORIDA

ERIN FRIEDBERG,
Plaintiff,

BUTTERFLY EDUCATION PROJECT, LLC,
Intervenor-Plaintiff,

v.

CITY OF GAINESVILLE, FLORIDA,

Defendant.

CASE NO.: 2012-CA-360

DIVISION: K

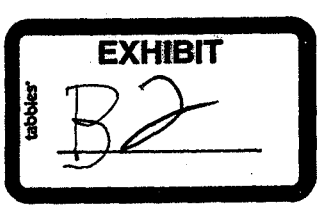
PLAINTIFF/INTERVENOR ATTORNEY'S MOTION/MEMORANDUM OF LAW with APPENDICES TO FOLLOW, TO SET ASIDE CLEARLY ERRONEOUS ORDERS ISSUED BY JUDGE TOBY MONACO IN HIS CAPACITY AS A LAWYER FOR A SHADOW GOVERNMENT CONTROLLING THELOCAL LEGALCOMMUNITY.

For Plaintiff E. H. Friedberg, ("Plaintiff") without her knowledge or consent, but to protect her constitutional right to counsel, G. H. Kaimowitz, ("this Attorney") moves to set aside written and bench orders served on them by e-mail on or before Aug. 22, 2012, at or after an unwarranted *so-called* Case Management Conference. At that "Conference," and in Orders issued since Aug. 2, 2012, the Honorable Toby S. Monaco has acted in this matter as the lawyer for the Defendant City of Gainesville, not as a judge bound by Canon 3, of the Florida Canons of Judicial Conduct.

This motion and applicable law have been filed pursuant to Fla. R. Civ. P. Rules Florida Rules of Civil Procedure 1.530 (a) and (b), and 1.540(b) (2012). The Honorable Toby S. Monaco ("the Honorable Monaco") is acting like a lawyer to protect Gainesville from any public criticism which would be viewed as credible by the Plaintiff and her Attorney in this matter. The Honorable Monaco is acting on behalf of a shadow government with tentacles throughout the legal system in Florida. Prominent in that legal system is Florida Bar Executive Director John Harkness, Florida Blue Key;

Mr. Harkness has been in his position for 40 years. Also knowledgeable about that corrupt system is the Florida Bar's officer John Berry. Mr. Berry spread his poison to Michigan into this Century before he returned to Florida.

BAR'S



28

From 2003, attorneys in Michigan who were inactive suddenly found themselves obligated for payment of dues. This Attorney exposed that action in 2010-11. The Bar has since taken steps to free thousands of lawyers from that stigma. This Attorney now is emeritus there,
after nearly a decade of having been suspended for failing to dues, although he believed he was free of such obligation since he left that organization in 1986.

In Florida that shadow government is rooted in Gainesville. It manifests itself through the old Florida Blue Key, a unique organization which from 1923 until 1972, admitted no Negroes, a few "useful Jews," and no women. FBK members can be found on several benches in state and federal courts here. Whistleblower Charles Grapski and his attorney University of Florida Prof. Joseph W. Little (emeritus) in the last century successfully gained a judgment of $250,000 against FBK for its "habit" of defamation in place of the truth until that time.

In this civil action, the Honorable Monaco is acting on behalf of the leadership of a so-called Eighth Judicial Circuit Bar Association ("EJCBA"). In 2007, for the Attorney General of Florida, George Lee Waas, Esq., identified as persons of interest among others in an appeal filed against the organization, the Honorable Monaco, his former partner and former Chief Judge Frederick D. Smith; U.S. Judge Maurice M. Paul (senior status since 1997, to shadow Senior U.S. Judge Stephan Mickle; Judge Mickle was the second black to be graduated from the University of Florida School of Law, in 1970); Denise Ferrero, then EJCBA president, and Dan Nee, a litigation attorney for Attorney Radson.

The EJCBA exercises control and official authority at times at the Eighth Judicial Circuit Court. For instance, Carl Schwait, Esq., of Dell Graham (Willcox?) received notification of the Court's judicial assignments in past years, though he was not affiliated in any appropriate sense with the judiciary itself. The assignments were not readily accessible on the internet at the time.

The EJCBA operates secretly at times at closed meetings of its Bench/Bar Committee, although it would appear to be a quasi-public agency under the Florida Bar, a state arm of the Florida Supreme Court. The Committee's jurisdiction is amorphous, but a claim is made that the entity considers the professionalism of its members from time to time. Complaints may be brought about them.

The Committee president is the Chief Judge, e.g., former Chief Judge Robert Cates, a partner of Judge Monaco at Dell Graham, who is credited with having revived the organization. Judge Cates also is credited with being the drafter in 1996-98 of the Eighth Judicial Circuit's Rules of Professional Discovery. Judge Monaco cites those Rules as enforceable from time to time.

In November 2005, this Attorney sought to file a complaint with the Committee against the Honorable Monaco. The Honorable Monaco himself had served for several years on that Committee, but he was not a member at the time. This Attorney brought that complaint after eight charges brought in a Complaint against him by the Florida Bar were dismissed unanimously by seven voting members of a grievance committee sitting in Tampa, Florida.

This Attorney had been made to answer about allegations made by the Honorable Monaco among others here that he was a vexatious litigator. This Attorney presented ample evidence that the Honorable Monaco and former Judge Larry Turner as well as John Jopling, of Dell Graham had been involved in a conspiracy. Former Judge Turner had lied to this Attorney to induce him to withdraw a guilty plea made to satisfy in full 20 criminal contempt charges brought by Attorney's Jopling's father the late Wallace Jopling in 1998, after a deposition on Mar. 13, 1998. This Attorney already had satisfied the Bar's investigation of the 20 charges, by pleading guilty to one count, paying $250 in fines, and no costs, and being publicly reprimanded without explanation.

Former Judge Larry Turner promised he would not impose any penalty worse than that accepted by Senior Judge Michael Salmon of Miami as part of the plea bargain in 2000. The bargain was for the same penalty as that imposed by the Bar, as well as a written and oral apology to Judge Jopling. Instead, in November 2004, in concert with the Honorable Monaco, former Judge Larry Turner falsely labeled this Attorney as a vexatious litigator, circulated that information to clerks and judges throughout the Eighth Judicial Circuit, before any appeal could be taken. By Jan. 1, 2005, former Judge Turner became Attorney Turner again. He no longer could serve on the bench because a severe hearing loss prevented him from presiding effectively as a judge.

The conspirators smeared this Attorney as a vexatious litigator. The bases for several of those eight charges in 2004 arose from that conspiracy and that label. The Honorable Monaco's labeling of this Attorney is freely circulated by City Attorney Marion Radson albeit in secret to elected City Commission. The First District Court of Appeal

acts as if this Attorney were a vexatious litigator. No appeal by this Attorney ever is submitted for oral argument or written decision.

In November 2005, Judge Monaco's former partner Judge Frederick D. Smith received the charges from this Attorney about the Honorable Monaco. When this Attorney appeared to present oral evidence of the Honorable Monaco's wrongdoing, Judge Smith ruled that the open meetings law did not apply and insisted that this Attorney leave before the meeting started. The entire Committee was present. Judge Smith then wrote to this Attorney to inform him that the Committee had postponed consideration of the allegations. In January 2006, Judge Smith notified this Attorney that the Committee unanimously agreed to take no action on the Complaint.

In June 2006, Judge Smith gratuitously sent an e-mail response to this Attorney to let him know that he would never prevail on any issue in this Eighth Judicial Circuit. By October 2006, Judge Smith had named as the Honorable vice chair of the Bench/Bar Committee. In 2008, as Chair of the Conflict Attorney selection committee, Judge Smith with EJCBA prominent member Gil Schaffhit, Esq., voted to bar this Attorney from being selected to represent juveniles. This Attorney has been a nationally recognized juvenile law attorney since 1972. Fortunately two attorneys voted for this Attorney. The tie was sufficient to allow this Attorney to practice as a juvenile conflict attorney from 2008-2012.

However, this Attorney has given up that practice after Attorney Schaffhit complained to an Eighth Judicial Circuit judge. This Attorney was in adult criminal court to represent a juvenile who had been in juvenile court for 90 days, before the State Attorney decided to charge him as an adult.

Judge Ysleta McDonald agreed to let this Attorney do so, until he filed a Motion to Dismiss which would have required a written ruling. When this Attorney and Mr. Schaffhit who represented an adult sibling appeared, Judge McDonald stated that this Attorney's Motion would not be considered.

The judge said she was taking such action because this Attorney was not a conflict attorney in criminal court. She then allowed Mr. Schaffhit to give his version of events. This Attorney moved for her recusal. Judge McDonald recused herself.

Judge Mark Moseley was assigned to the case. This Attorney had been in Judge Moseley's Juvenile Justice Court in 2010. This Attorney asked to have the shackling of juveniles coming from detention declared unconstitutional. Judge Moseley at the time was known to serve as the pastor for a church while he sat on the bench. This Attorney relied on his compassion.

Instead, Judge Moseley made a full page headline in the Gainesville Sun by suggesting that this Attorney withdraw his motion, or the jurist likely would find the client to be a serious offender, and suffer the appropriate sentencing requirements. This Attorney withdrew his motion. In adult court, Judge Moseley simply disregarded this Attorney. Attorney Geoffrey Mason was appointed to succeed this Attorney. This Attorney had never met Attorney Mason, but that lawyer told Judge Moseley that he did not want the assignment because Gabe Kaimowitz had been involved in the case. The juvenile was left without counsel for weeks, until a new attorney was appointed. That attorney also would not speak to this Attorney who had information about the juvenile that an advocate would to hear.

Bear in mind that the EJCBA seems to have little interest or take any action against this Attorney outside of Alachua County, even though EJCBA member Judges circulate throughout several counties. In Levy County, this Attorney has practiced without any evident hostility, with one exception by former Judge Maurice Giunta. Judge Giunta changed an Order favorable to this Attorney without explanation after he received the Turner/Monaco vexatious litigant smear. Judge Giunta denied that he had seen or knew about that smear.

Such inexplicable actions are not only taken against this Attorney. In this case, when this Attorney sought to intervene *pro* se, Clerk Irby, a Florida Blue Key honoree, informed him that his papers would not be filed. They were being rejected by the Clerk, just as he rejected other filings by others when he was directed to do so. This Attorney is aware that papers filed pro se by a Johnson husband and wife also had been rejected, at the direction of the Honorable Monaco.

The aforementioned examples are not evident to most of the legal community, and certainly not to the public. Most of the 400 members who are lawyers, judges, and the Clerk of the Court J. K. Buddy Irby of the EJCBA likely are unaware of the sinister connection of the organization to the Jim Crow legal world of hostility toward Negroes and Jews from days prior to World War II, certainly through 1959-60, when retired lawyer Joe Willcox was the organization's president. EJCBA lists this Attorney as one of its members. This Attorney is NOT now and he has never been a member of the EJCBA. This Attorney never has paid dues and he has bought lunches at EJCBA gatherings as a non-member.

EJCBA from time to time mailed its monthly 8th Judicial Forum Newsletter ("Newsletter"). This Attorney relies on that Forum but also the Alachua County Criminal Court Records, business listings in the White Pages, 2011-2013, and the University of Florida sporadic collection of Gainesville Sun issues, before 2002. The newspaper's own public archives do not date back to the previous century.

From that Newsletter in 2010, The Honorable Monaco publicly urged lawyers and judges to act as his former partner and mentor Mr. Willcox did, when the latter was able to work closely, civilly and professionally—in the all white world of law here. Mr. Willcox was graduated from law school in 1953, before the climactic 1954-55 decisions in *Brown v. Board of Education*, and practicing visibly enough to be elected EJCBA president eight years before Florida abolished the state's constitutional requirement that whites and Negroes attend separate schools.

How do you tell the different between the "old" EJCBA and the "new?" If you want to talk to a super lawyer like John Jopling and Carl Schwait who are prominent in the new EJCBA, call the Dell Graham,PA firm, at 352-372-4381, 203 N.E. lst St., Gainesville, FL. If you want to talk to a lawyer who was mentored by the Honorable Monaco, say, Attorney Jopling, in the old EJCBA, call Dell Graham Willcox, at 352-372-4384, 203 N.E. lst St., Gainesville, FL. That distinction in names and phone numbers is noted in the business section of telephone directories last year and this. If you want to reach Mr. Willcox himself, you will find his number at his residence where he retired earlier in this century.

But how do you tell the difference between the "old" EJCBA and the "new" organization?

The "old" EJCBA was "ended" in 2001. On its final board was Frank J.Maloney, Esq., former dean, University of Florida School of Law; Jennifer Lester, Esq., of Dell Graham (Willcox?), PA; and three other attorneys who were not named to the board when the new EJCBA surfaced, in 2004.

If it were not for Dean Maloney, this Attorney might not have learned about the old EJCBA. Dean Maloney was admitted to practice of law in Florida, in 1942, long before the Florida Bar is reported to have started in 1949. In the Newsletter in 1999, Dean Maloney thanks various local historic sources for recognizing that the EJCBA began to elect presidents in 1941, though he himself believed that the organization pre-dated U.S. entry into World War II on Dec. 7, 1941.

In that issue, next to a photo of Super Lawyer John Jopling of Dell Graham, is the list of EJCBA past presidents from 1941 starting with Joe Jenkins, through 1965, when the late Judge Theron Yawn was president. The late Judge Yawn was remembered as a mentor when he died in 2007, by State Attorney Bill Cervone. Judge Yawn was admitted to practice in 1951.

No other mention of the old EJCBA seems to exist—until Dean Maloney again in a 2011 Newsletter wanted everyone to know that the organization was 70 years old. His column remembers the old days, when law was practiced as the Honorable Monaco suggested the previous year.

The old EJCBA might have disappeared forever. Starting in 2004, the new EJCBA publicized in the Newsletter that its starting date had been in 1957. Between 2001 and 2004, the EJCBA "disappeared" as a corporation. EJCBA was an unincorporated association in those years, just as it had been from circa 1941 until 1957. In 2004 the three members who revived the new EJCBA were Denise Ferrero, who was on the fast track to be the organization's president in 2006-07; Sheron Sperling, Esq.; and Stephen N. Bernstein. Mr. Bernstein is a person who fits a definition of a "useful Jew," a Jew who is used by the authorities to show that they are not prejudiced against all Jews.

This Attorney hired the Bernstein firm in 2001, to sue Alachua County Board of County Commissioners. Mr. Bernstein would not speak to this Attorney or his co-complainant. Ray Washington, who had been a reporter for the Gainesville Sun, and had written favorably about this Attorney, was assigned to represent this Attorney and his co-complainant.

These complainants quickly shifted to Constitutional Law Prof. Joseph W. Little. By 2002, Professor Little had gained a $90,000 settlement for this Attorney; by 2003, he also secured another $10,000 without loss of a single day of pay in addition to a comparable position for the co-plaintiff in Alachua County.

Mr. Bernstein is a former president of the EJCBA. Mr. Bernstein for years has written a column for the Newsletter. Mr. Bernstein from time to time admonishes lawyers who have fallen from grace. Mr. Bernstein lauds the EJCBA on the 50th Anniversary of the first *Brown v. Board of Education* decision, at an EJCBA luncheon. African-American lawyers attended that luncheon and were honored at a special table at which no white, including this Attorney was allowed to sit.

But there is a dark side to Mr. Bernstein. In 1982, he was charged with and given a deferred prosecution for indecent exposure. The State Attorney assigned to that case was prominent EJCBA member Jean Marie Singer, who prosecuted this Attorney for criminal contempt, after former Judge Turner was assigned to the case.

In 2005, Mr. Bernstein was charged with and given deferred prosecutions on (1)(2) two third degree felony counts of voyeurism, (2) one with a separate misdemeanor count of voyeurism after trespassing after warning; (3) misdemeanor charge of voyeurism; (4) a separate misdemeanor count of trespass after warning.

The only Gainesville Sun report on a voyeurism charge quoted Mr. Bernstein's attorney Larry Turner as suggesting that the complainant might be lying. State Attorney Cervone stated that because of Mr. Bernstein's reputation locally, the matter would be deferred to Putnam County where the charge(s) had arisen. In fact, the Alachua County Criminal Court record shows a different history.

Each of the four matters was assigned to State Attorney Cervone. In his instance there is notation in the record of a communication from the Executive Office of the Governor on Jan. 6,2006. State Attorney Cervone suggests deferred prosecution in each instance. A single Order number is issued for each of the three single charges and one double charge.

In 2007, while Mr. Bernstein is still benefiting from deferred prosecution a sworn affidavit is filed against him. He is charged with smuggling contraband into a detention facility. The State Attorney takes no action, but decides that there is insufficient evidence on this claim.

On Apr. 18, 2008, the State Attorney notified the Court in each instance that Mr. Bernstein has satisfied the pre-trial intervention or deferred prosecution agreement. On Apr. 21, the cases are closed. Mr. Bernstein's listing with the Florida Bar in 2012 is that there is no history of discipline being taken against him, in the previous 10 years.

City Attorney Marion J. Radson in 2004 and again this year secretly discredited this Attorney in a Memorandum not disclosed to anyone other than his fellow Gainesville Charter Officers, and elected City Officials. He refuses to make that Memorandum available in response to a public record request made weeks ago. That request did prompt release of an e-mail Attorney Radson sent as a cover letter for the Memorandum, but not the Memorandum itself.

When the charges arose against Mr. Bernstein, in 2005, this Attorney already had been cleared by the Florida Bar, about the charges that Monaco/Turner made that he was a vexatious litigant.

Yet this year, after this Attorney complained at a City Commission meeting that Attorney Radson should be investigated for wrongdoing, before he "retired," Attorney Radson also included the 2004 Order of Dismissal with Prejudice, in which Judge Monaco used the Nazi propaganda technique of glittering generalities to describe this Attorney as a "vexatious litigant" whose complaints against Gainesville always failed because they allegedly did not include what he called "ultimate facts."

In return for Judge Monaco's protection, Attorney Radson from time to time rewards that Judge's old law firm with contracts to represent Gainesville in civil litigation. Attorney Radson rarely favors any other local law firm, although similar and far more lucrative contracts worth millions of dollars collectively have been made with Akerman, Senterfitt, & Eidson, of Tallahassee, Orlando ,and other locations in Florida; Thompson, Sizemore and Gonzalez in Tampa, and more than a half dozen other law firms in the State. From time to time, Attorney Radson also will reward favored plaintiff attorneys suing Gainesville, with "attorney fees" in litigation he knew or should have known the City could not lose.

Attorney Radson has moved to discredit this Attorney since March 13, 1998. This Attorney was deposing former University of Florida provost Dr. David Colburn, a state historian. Dr. Colburn had misled this Attorney about the University of Florida Press' requirements for books proposed for publication by this Attorney about the methods used by the Orlando and the Orlando Sentinel to maintain racial segregation in Central Florida. Dr. Colburn is the primary state historian who promotes falsely that Florida was so much more progressive than other Southern States in the 1950s and 1960s, because of prominent Florida Blue Key members like the late LeRoy Collins, and later Ruben Askew.

At that time, Dr. Colburn acknowledged that he knew John Jopling, through their church. Also prominent in that church is Marion Radson. Based on that relationship and learning that John Jopling was hired by the Defendant University of Florida, this Attorney sought to disqualify Judge Jopling. Past connections with the University of Florida had resulted in 1997 of the recusals of Judges Smith, Cates, and Chester Chance. Judge Martha Ann Lott stepped aside without explanation.

How do Mr. Radson and John Jopling work together to promote racism? In 1998, a police dog bite victim was suing the City of Gainesville and two individual police officers for denial of civil rights under color of law. Attorney Jopling represented the police officers, possibly under contract with the City. Mr. Radson represented the City. Attorney Jopling moved to disqualify Judge Stephan Mickle. Judge Mickle had been the black judge who integrated the Alachua County Circuit Court bench until 1992 when he was moved to integrate the First District Court of Appeal. That done, Judge Mickle was moved to integrate the Northern District of Florida. He was assigned to hear the dog bite case.

Attorney Jopling alleged that Judge Mickle had spoken about dog biting in Birmingham in the civil rights days in the mid-1960s, at an event in Columbia County. Judge Mickle also had civil rights clients before he was placed on the bench. Judge Mickle also had made headlines by being charged with a traffic offense in Columbia County. Mr. Radson objected to Mr. Jopling's motion. Judge Mickle recused himself without explanation. The police officers were "acquitted," by a jury, after the successor judge made bench rulings favorable to them.

In this case, after this Attorney tried to intervene for the Butterfly Education Project, LLC, ("BEP") on May 3, Judge Victor L. Hulslander held a hearing on May 15. The case actually had been started by Ms. Friedberg, on Jan. 27,2012. Although the law requires an immediate hearing, i.e. within 48 hours at least or two weeks at most, Judge Hulslander had not held such a proceeding until May 15.

Judge Hulslander then accepted the word of the City Attorney's office and he would continued to do so, that key witness Stephanie Marchman had to be accommodated because of her scheduled birth of a child in June and her leave at least through Aug. 20,2012. Judge Hulslander first set a July 5th Final Hearing date for the action(s) charging Gainesville with violation of the Florida Public Records Act, and the Florida Constitution, §24(a).

This Attorney filed for a temporary injunction. Judge Hulslander held hearings on that motion on June 14 and June 22. On June 25, Judge Hulslander denied the motion for temporary relief, solely on the ground that the Plaintiff and the Intervenor had a legal remedy at the hearing on July 5th.

Judge Hulslander however in a separate Order made findings that granted Intervener's Motion to Intervene, allowed this Attorney to represent both Ms. Friedberg and BEP. He found specifically that they had made requests for documents from the City before each filed pleadings alleging violations by the Defendant of state law and constitution.

The Honorable Monaco would claim that by ex parte review of the docket no such action had been taken by his predecessor. Therefore, without motion from anyone, the Honorable Monaco divided the Plaintiff from the Intervenor. Without motion from anyone, the Honorable Monaco dismissed the Plaintiff's First Amended Complaint, but allowed her to continue—without any discernible pleading! As for BEP, that Intervenor would have to start over, by filing a new amended complaint within 20 days.

That complaint was duly filed on Aug.24, at the Alachua County Courthouse. Clerk Irby's deputy at the desk stated for the first time that she no longer was allowed to stamp a copy for him to show the filing. The docket sheet does not reflect any such filing.

The docket sheet has been changed. "A trial" Notice on Aug. 7, 2012, for instance appeared on the Docket yesterday, Aug. 29, between entries on Aug. 6 and 8. A docket downloaded earlier in August shows no such entry between the last entry on Aug. 6 and the first on Aug. 8.

Once the Honorable Monaco was assigned to this case, there are listings on the docket of e-mails from Gabe Hillel. This Attorney has been filing listings without incident or reference during the entire time that Judge Hulslander was on the bench. The only Gabe or Gabriel Hillel involved in this proceeding is the BEP manager. In his personal capacity, Gabe or Gabriel Hillel voluntarily dismissed the papers he filed when he first proposed to intervene pro se, and Buddy Irby, who wanted to go to law school but never did, notified him in writing that no papers would be filed for him in that capacity. As Gabe or Gabriel Hillel or Gabe Kaimowitz, he still was a vexatious litigant as far as the Honorable Monaco was concerned.

The final hearing did not end on July 5th. Ms. Marchman's needs required postponement. Judge Hulslander stated he could not continue the hearing the following week because he had a trial. The defendant in that trial was the City of Gainesville. Dan Nee represented the City in that case. The Public Records Act notes that mandamus petitions take precedence over other business, unless those too also were pressing.

Judge Hulslander's judicial assistant suggested resumption of the hearing after Aug. 20, 2012. Liz Waratuke, the only assistant City Attorney of record in this case before Aug. 22, 2012, agreed the proposed times after Aug. 20th were acceptable to her. This Attorney insisted on an earlier time.

Judge Hulslander held a status conference on July 16th. He resumed the Final Hearing on July 19th and July 20th. Dan Nee appeared and he had so little to do, that Judge Hulslander assigned him the task of preparing the joint Exhibit list by hand, since there were so many entries they had become confusing.

On the 19th and then on the 20th, Ms. Marchman could not testify all day. Postponements were necessary. By the 20th, the evidence clearly was turned against the City. The City moved for in camera inspection of hundreds of e-mails.

The City did so, to let Judge Hulslander decide whether the documents were being retracted appropriately. The City impartially would accept his rulings. This Attorney objected.

The City had to identify the reasons for each of the hundreds of E-mails. Judge Hulslander agreed. He would not inspect them, until the reason for the proposed exemption or confidential provision was offered by the City. The City has offered no such explanation for any of them.

Ms. Marchman detailed all of the Public Record Act laws and cases she had relied upon to reach her conclusion to charge Ms. Friedberg $40,000 plus initially. The City handed in for judicial notice the hundreds of exemptions as well as the full Public Records Act. This Attorney objected. He informed the Court that the submissions did not include the 1992 Constitution, Art. I, Sec. 24(a). Ms. Marchman seemed never to have heard of it, even after prompting from the Court. She could not explain its bearing even after she was asked to read the language from a case on which the City relies to justify its extortion demand for $40,000 plus which Gainesville had reason to believe Ms. Friedberg could pay.

Judge Hulslander allowed her to testify over objection with affirming or swearing to the truth of her statements. He also allowed such statements to be given without oath by assistant City Attorney Shayla Neill. Ms. Neill said Gainesville Regional Utilities ("GRU") followed the same Public Records Policy as the City. Then this Attorney produced the GRU Public Record Policy revised in April 2011, after the City Policy was amended on May 6, 2010. The GRU Policy is significantly different in the processing of responses to public records act requests when a special service charge might be imposed.

When Ms. Marchman again forced postponement until July 24, 2012, this Attorney objected. There however was only an hour of cross-examination of Ms. Marchman, but he notified Judge Hulslander that he would insist she be sworn before she made up any further testimony.

On July 24th, Judge Hulslander stated that he was recusing himself because of Kaimowitz. The Gainesville Sun headlined: "KAIMOWI(TZ" on the inside page for the completion of the report. However, Judge Hulslander does not mention this Attorney or anyone else in his written Order. He recused himself in *mero muto*. Chief Judge Robert Roundtree assigned this action to Judge Monaco. Was Chief Judge Roundtree an EJCBA insider?

Judge Roundtree's former partner Jim Quincey, Esq., as well as Jim Clayton, was on a seven-member EJCBA Board when a county judge candidate accused them at an EJCBA meeting of being favored by then sitting County Judge H. H. McDonald, with probate assignments. No one ever denied that. The accuser, John Connell, was elected in what was reported to be an upset. Judge Connell served two terms and stepped aside voluntarily.

Chief Judge Roundtree publicly acknowledged judges talk among them about attorneys. Readers can learn the extent of those discussions by acquiring *All Rise*, the 2009 version of behind the scenes politics among the all white judges at the Eighth Judicial Circuit, and the lawyers who can be trusted and those who can be not. The author, Judge Nate Doughtie retired, after a lengthy career on the bench. He autographed a volume for this Attorney as someone who "keeps us busy."

The Newsletter reports that Judge Doughtie appeared at a book signing attended by 250 lawyers and judges in 2009. If there is one pet peeve Judge Doughtie has it is a motion filed by an attorney seeking to disqualify a judge.

The Honorable Monaco denied as legally insufficient motions for disqualification by this Attorney and, after he dismissed Ms. Feinberg's amended complaint but allowed her to continue, that jurist also denied her motion as legally insufficient. The dates on the Orders suggest that the Honorable Monaco is disqualified as a matter of case law. However, the Docket Sheet seems to reflect different dates In a prior case, *Kaimowitz* v. *Palmer*, 01-2003-CA-4845 (Fla. 8th J.D. 2003), the Honorable Monaco made the same mistake. Deputy Court Clerk Jack Benefield in 2005 acknowledged that docket sheet had been altered to reflect an earlier or contemporaneous denial of recusal with a substantive order. Again the Orders themselves accurately reflect the chronology, here, the substantive Order on Aug. 6, Ms. Friedberg's Application to Disqualify the jurist, also on Aug. 6, and the Honorable Monaco's Order to deny her Application as legally insufficient.

The concept of legal insufficiency is so unclear that yesterday, the Fifth District Court of Appeal two judges found the Application for Disqualification of the Seminole County Judge by Defendant George Zimmerman to be legally sufficient.

The dissenting judge stated that the trial judge was right. The Application was legally insufficient. Mr. Zimmerman is on trial for killing Trayvon Martin in Sanford, FL in a sensationally publicized event laden with racial implication.

Here after reading these papers, Judge Tobey S.. Monaco should disqualify himself as biased on his own authority, which he is allowed to do. If not, he should set aside all bench and written Orders on or after Aug. 22, 2012. Were he to return to judging rather than lawyering for the City, he also would set aside his Dismissals and return this case to its stance on July 25th, 2012, after Judge Hulslander disqualified himself but before he was assigned to this case as a judge, not a lawyer for defense. At a minimum, he must set aside those Orders generated to perpetuate the described fraud and conspiracy.

Those Orders erroneously and falsely claim to:

(1) grant this Attorney's application to withdraw as E. H. Friedberg's attorney (Judge Monaco ignored this Attorney's condition that he be allowed to withdraw only if his client were assured of assistance by counsel; that is not done);

(2) (a) require Plaintiff to make a Sophie's choice between (i) going forward with representation by an attorney for whom the judge regards as a vexatious litigator, and (ii) proceeding *pro se*, if she cannot afford another lawyer;

(2) (b) deny an application for judicial disqualification, first filed by this Attorney, in part because of his written observation in both his motion and in a certificate of good faith that the Honorable Toby S. Monaco makes Jews uncomfortable when they appear in his Court;

i. The last time this Attorney appeared before the Honorable Mr. Monaco, the jurist was so angry that he uttered a stream of insults about him, The Honorable Mr. Monaco justified that conclusion by a glittering generality and final insult: this Attorney was to be held in contempt for his "vituperativeness." At that time, this Attorney told the Honorable Mr. Monaco that his condescension toward Jews was expressed by a prominent Jewish lawyer known for his work in construction law;

ii. At no time in the last six years has the Honorable Toby S. Monaco denied that he is condescending toward Jews, and indifferent to their discomfort when he holds hearing in chambers during the Christmas season when his office is adorned with religious holiday decorations;

iii. This Attorney previously has identified a retired federal judge as someone who abuses his judicial authority by making Jews feel uncomfortable. The Florida Bar charged this Attorney with violations of the state legal profession's rules of conduct. When this Attorney offered proof of that claim, the Florida Bar agreed to dismiss the complaint made on those grounds;

(3) allow a successor judge to conduct a case management conference, in a civil action in which a party seeks only to obtain public records wrongfully withheld from her, and to obtain attorney fees to recover costs laid out for a civil action brought to get timely meaningful access to public records;

(4) limit a successor judge to re-hear all testimony and receive all evidence, under all circumstances, including matters raised by pleadings for mandamus relief from the wrongful withholding of public records—in fact, such rehearing is unnecessary if the parties stipulate to allowing the previous testimony. The transcript of Aug. 22, 2012, makes clear that Judge Monaco did not allow anyone to suggest such stipulation. This Attorney has since asked the City to save money by stipulating to the prior testimony and evidence. Further, there is another exception in at least two cases, which states that a successor judge could consider the prior evidence, e.g., exhibits, if the only issue was a matter of law. This Attorney is prepared to show that the Answer to the First Amended Complaint submitted for Ms. Friedberg and her pleading submitted by another attorney are sufficient as a matter of law, along with the tangible evidence submitted for all sides, to grant summary judgment to Plaintiff Friedberg on the violation of the public records act and state constitution by the City.

(5) require applicants who seek reasonable accommodation for disability relief to provide written notice seven days in advance of any hearing or trial; this attorney has practiced for four years in front of a half-dozen judges in juvenile, civil , and criminal actions, in Alachua County, without ever having to fill out a form, or to provide notice more than 48 hours in advance; in this action, this Attorney has proceeded without incident to have the hearing aids supplied automatically by court bailiffs;

(6) insist on providing and serving all pleadings, motions and written documents, between Aug. 23, 2012, and Sept. 14, 2012, and thereafter, if necessary, in hard copy; after Sept. 1, parties and their attorneys are required by change in Florida Supreme Court rule to provide documents and service of papers by E-mail:

(7) schedule a one-day trial—not hearing—at the judge's convenience on Sept. 14, 2012, after exchanging exhibit and witness lists 10 days before that scheduled proceeding. That one-day trial would be held with the knowledge that previous proceedings required 20 hours of testimony without conclusion of cross examination of Ms. Marchman under oath; further, the idea of scheduling the mandamus action which a requires an immediate hearing by law, three weeks from the date of the Order, is contrary to the Florida Constitution provisions for due process of law and meaningful access to the Courts for that purpose. That date would be more than eight months after Ms. Friedberg's initial complaint was filed.

(8) coordinate the foregoing with the Defendant parties and attorneys, including Dan Nee and others in the Office of City Attorney M. J. Radson. Ms. Friedberg, appearing *pro* se is asked to do that with the attorneys who opposed her discrimination/retaliation complaint against the City while that administrative proceeding was continuing. She already has informed this Court and those Attorneys that she has to file her discrimination complaint soon.

The Orders at issue here are as follows:

(A) THIS CAUSE having come before the Court upon Gabe Kaimowitz's motion to withdraw as attorney for Plaintiff Erin Friedberg...it is hereby ORDERED AND ADJUDGED that the Motion is GRANTED.
Written ORDER GRANTING MOTION TO WITHDRAW AS ATTORNEY FOR ERIN FRIEDBERG, Aug. 22, 2012.
(The Motion was filed conditionally, specifically at the outset.)

(B) THIS ACTION, as to the claim of Plaintiff Erin Friedberg only, is at issue and is ready for trial. Therefore, it is ADJUDGED that: "The claims of Plaintiff Erin Friedberg are set for Non-Jury Trial on Friday, September 14, 2012....The time allotted for the Non-Jury Trial is One (1) Day.
Written ORDER SCHEDULING NON-JURY TRIAL.

2. Not later than ten (10) days prior to the Non-Jury Trial, Plaintiff shall file with the Clerk of the Court, and deliver in hand a copy to opposing counsel, the following:

(a) A schedule of all exhibits and documentary evidence Plaintiff will offer during the trial. Copies of all said items will be delivered to Defendant with the exhibit list, except for those items already in Defendant's possession;

(b) A complete list of witnesses to be used at trial together with their addresses and telephone numbers.

3. Not later than ten (10) days prior to the Non-Jury Trial, Defendant shall file with the Clerk of the Court, and deliver in hand a copy to opposing counsel, the following:

(a) A schedule of all exhibits and documentary evidence Plaintiff will offer during the trial. Copies of all said items will be delivered to Defendant with the exhibit list, except for those items already in Defendant's possession;

(b)A complete list of witnesses to be used at trial together with their addresses and telephone numbers.

4. ALL DISCOVERY PROCEDURES ALLOWED BY THE RULES OF CIVIL PROCEDURE SHALL BE COMPLETEDE NOT LATER THAN 10 DAYS PRIOR TO THE NON-JURY TRIAL AS WELL AS THE TAKING OF ALL DEPOSITIONS.... (Note: The City has filed a response to a request to produce which requires adjudication either on a motion to compel or for a protective order.)....

6. The purpose of this Order is to facilitate a fair and speedy trial in this action....Proceedings shall conclude at the end of the day reserved for trial. The parties shall manage their time accordingly.

Written ORDER SCHEDULING NON-JURY TRIAL.

THE COURT: (W)ith respect to having a nonjury trial I would call it, I would not call it a final hearing, I would call it a nonjury trial on, Ms. Friedberg, your claim that you should have been provided the records that you requested under conditions different than (sic) what the city has imposed upon you.

BENCH ORDER SCHEDULING A NON-JURY TRIAL RATHER THAN A FINAL HEARING, Transcript ("TR"), page ("p." or "pp.") 8, lines ("l." or "ll.")2-8.

"(To this Attorney). I just wanted to make sure for the future...I just wanted to give you a copy of what's on the website with respect to making the request for accommodations and a form to do it...(F)or the future, we're happy to accommodate you, but if you could help us by doing it by way of (completion of the form), to make sure these accommodations happen wherever you might be in the courthouse. So that's on the website. (continued on the next page).

If you look up that information, it's there for you.
BENCH ORDER REQUIRING USE OF A FORM TO SEEK ACCOMMODATION, FOR ATTORNEY'S HEARING LOSS, "TR, p. 3, l. 17, through p. 4, l. 4.

"So now that I know what the situation is and I'll certainly make accommodations, Mrs. Friedberg, for you. Let me ask you now at this point in time, whether it is your intent to retain other counsel to assist you or whether it is your intention to represent yourself?
MS. FRIEDBERG:...I was concerned about the items I mentioned in my affidavit (for disqualification of Judge Monaco). And, I really unfortunately cannot at this time hire representation, other representation.
THE COURT: Okay. So it's your intent at this point in time not to hire another attorney. I just needed to know, because if it was your intent, we needed to talk about some reasonable period of time for you to seek and obtain other counsel. So now I know what your intentions are at this point in time. So basically it looks like we can move forward....
MR. KAIMOWITZ:...I have advised in my motion to withdraw, that Ms. Friedberg, not only on my advice, but on the advice of another attorney, (Constitutional Law Prof. (emeritus) Joseph W. Little), has been advised not to proceed in this case pro se, that it will be against her interest and her interest of counsel...
THE COURT: Well, with respect to what I need to address at this point in time and I perceive what I need to address, Ms. Friedberg is your claim, under the Public Records Act, which I want to set for final resolution as soon as we can, because you deserve that. And I wanted to talk to counsel and Mrs. Friedberg about that....
TR p. 6, l. 7, through p. 7, l. 6.

THE COURT: Ms. Friedberg, can I ask you first whether you have any input with respect to your claim?
MS. FRIEDBERG:...(W)hen I said that I was going pro se, I wanted to say that I felt like I was forced to make that decision based on the motions for recusal, reconsideration, the history between everybody here, not me....I'm a little concerned, because clearly the city attorney's office has a wealth of experience and could easily just probably, you know, squash me, excuse the phrase. But with their experience, they could probably very easily win against me, not being an attorney. But it's possible they won't. I do believe that I have a strong claim. I do believe that it's valid. And at this point, where I'm heading toward my discrimination and retaliation charge...I'm unable to afford attorney fees to continue in this case. And if Mr. Kaimowitz is not representing me, I definitely have concerns....I was under the impression that mandamus hearings were held immediately. And so when I first filed this charge (the complaint) I had no idea about the attorney fees that would be...piling up through this process to get to this point. So that's what my main concern is.
THE COURT: Well, I appreciate your concern about that. But it looks like where we are now, I need to set a nonjury trial on your claim, Ms. Friedberg. And I'm trying to get a handle on how much time we're going to need in order to do that....(continued on the next page).

THE COURT: And that's what I'm trying to schedule at this point in time. I do have time available, I want to clear these dates with you, if possible, with respect to Ms. Friedberg's claim. I've got September 14th available, we could start in the morning. Ad we just ask, Ms. Friedberg, whether that date is okay with you. And then I would ask the same question of the city's counsel as well.
MS. FRIEDBERG: Sure. Is that the earliest date?
THE COURT: That is the earliest date that I have.
MS. FRIEDBERG: Okay. That's fine.
THE COURT: Of this period of time. I was only thinking it would take a half a day. Indeed, I have a whole day available on September the 14th. And that's as expeditious as I can get. Your claim deserves expeditious treatment.
MS. FRIEDBERG: Okay.
MR. KAIMOWITZ: Are you suggesting that my time schedule is not relevant to that proceeding in this matter?
THE COURT: If you are not counsel for Ms. Friedberg, yes, I am suggesting this.
MR. KAIMOWITZ: That the Butterfly Education Project has no interest in Ms. Friedberg's case, according to your Honor?
THE COURT: At this point the posture of the pleadings are such that I have stricken the writ of mandamus petition by Butterfly. I have given you leaved to amend. I'm not aware of whether you have done that.
MR. KAIMOWITZ: I have not.
THE COURT: Well, we're certainly not at issue with respect to that. I can't set it.
MR. KAIMOWITZ: I will say that I will move to consolidate in the pleading that I will file. Thank you, your Honor.
THE COURT: All right. So September 14th.
MS. WARATUKE (City's attorney of record): Yes, you're Honor.
THE COURT: All right. Let's use September 14th....
TR p. 8, l. 22, through p. 15, l. 1.

THE COURT: Ms. Friedberg, do you have some notion other than yourself who you might call in support of your claim....I'm sorry for the interruption. Ms. Friedberg. Other than yourself, I assume you will testify with respect to the request that you made. I think you had an attorney before who actually may have made those requests on your behalf.
Ms. FRIEDBERG: Yes.
THE COURT: I don't know if you intend to ask that attorney to come and testify?
MS. FRIEDBERG: At this point, I can't make a final determination because this sort of came up, all of this kind of came up and surprised me. But I suppose Kurt Lannon from the city would be a good witness to call at this time.
THE COURT: Okay. All right. And there may be others, and I'm not foreclosing, I'm not saying, you know, tell me everybody right now, forget it, I'm not saying that at all. (continued on the next page.)

Most likely in the order that I will send out, it will require both sides to advise the others of who they anticipate calling as witnesses in some reasonable period of time before we actually have our trial. That's only three weeks away.
TR p. 15, l. 9, through p. 17, l. 1.

BENCH ORDER, re: Acceptance of party proceeding pro se after acceptance of withdrawal of attorney, and proceeding immediately thereon.

(THE COURT): Number one, I just want to make it perfectly clear that neither side should contact my judicial assistant by email or otherwise except for the purpose of scheduling a hearing or some other purely administrative matter. Do not send emails to my judicial assistant that have substantive matters in them. That is improper and inappropriate. If substantive matters need to be filed, the originals of those should be filed with the clerk of the court, and their office is downstairs, and should not be addressed to my JA, or to me, unless I specifically request that you deliver something to me, or some statute or rule requires that you do, okay. But I have already seen some emails addressed to my judicial assistant, even though I asked not to, that are substantive in nature and not just procedural, like when can we get a hearing or something like that. And I don't want that to happen anymore in this case.
And certainly if something needs to be sent to me and it's required by state or rule or something that I request, it should only be sent to me as a copy of something that has already been filed or contemporaneous with an original filed with the clerk of the court so that I get exactly what's filed, not something that gets changed later. I don't want to see that happen either. So just please if you'll help out, because I can't really read anything that you send to my JA, even if you send it to the other person by some form, I can't be guaranteed that that person has actually received it by the time I'm getting it or ever will.
And it should follow that course. If you have something to file in this case, file it with the clerk of the court. They're the keepers of the record. If they need a hearing on it, (sic) call my judicial assistant and get a hearing time, clear it with the other side to make sure nobody's got a conflict, and then we'll go ahead and set it for hearing at that time, okay....I don't know if I can give you a citation, except ex parte communications with the judge are things that are inappropriate. And if you send substantive things to a judge or the judge's judicial assistant, then you're inviting ex parte contact. Again, I just want you to understand that it's my philosophy that I'm going to try to protect myself from that. I don't want to look up at it until both sides have a chance to look at it until it's before me at a properly set hearing.
MR. KAIMOWITZ: And I'm not questioning that. I'm just saying that other judges may have a different practice.
THE COURT: I think you're right. But I think my practice is I would rather not, particularly, and I'm more cautious about this these days than I have been in the past because of emails entering our sphere. And email goes faster than regular mail, and sometimes these things get sent faster than they get sent to opposing counsel and other parties (continued)

and I don't think that's quite appropriate, because it almost invites at some point in time an ex parte communication that I want to try to avoid. So that's why I'm trying to make a rule that will help me avoid that which I think I need to.
BENCH ORDER, p. 18, l. 9, through p. 21,l. 19.

Also

LEGAL ARGUMENT

JUDGE TOBY S. MONACO IMPERMISSIBLY RELIED ON EX-PARTE COMMUNICATION, AND REVIEW OF THE RECORD TO MAKE DECISIONS AND TAKE ACTION, BEFORE THE PARTIES OR COUNSEL APPEARED BEFORE HIM IN THIS COURT.

On May 15, Judge Victor L. Hulslander held a meeting with counsel, Plaintiff and Intervenor (Gabe Kaimowitz is manager of the Intervenor corporation and corporation counsel here.)

Gabe Kaimowitz was allowed to substitute as counsel for Plaintiff, who originally was represented by Joseph C. Shoemaker, Esq., of Leesburg, from the filing of the original complaint on Jan. 27, 2012.

A SUCCESSOR JUDGE SHOULD BE DISQUALIFIED, BECAUSE HE ENTERED ORDERS UNRELATED TO AN APPLICATION FOR HIS RECUSAL, ***BEFORE HE DENIED THE MOTION TO DISQUALIFY HIM***. IN THE INTERIM, THE SUCCESSOR BEGAN IMPERMISSIBLE *EX PARTE* ACTIONS BY REVIEWING THE RECORD AND DECIDING ERRONEOUSLY THAT THE JUDGE ORIGINALLY ASSIGNED TO THE CASE HAD NOT DONE AN APPROPRIATE REVIEW. BUT THE SUCCESSOR DID NOT STOP THERE. HE RELIED ON EX PARTE MATERIALS AND HEARSAY DURING A SO-CALLED CASE MANAGEMENT CONFERENCE HELD ON AUG. 22.

On June 14 and 22, Judge Victor L. Hulslander held hearings on a motion for Plaintiff and Intervenor for temporary injunctive relief, that is, to get records those parties previously requested, albeit separately and independently of one another. Each party was claiming that the Defendant City violated the *Public Records Act* and the Florida Constitution by wrongfully withholding access to documents each had separately started requesting in December 2011.

On June 25, 2012, Judge Hulslander denied that relief, solely because he decided that they had a remedy at law, at a Final Hearing scheduled for July 5.

C. A nonjury trial (Final Hearing) in the instant case is currently scheduled for July 5, 2012.

D. Petitioners have an adequate remedy at law on July 5, 2012, at which time the Court will conduct a full trial on the merits of the cause.

Therein, Judge Hulslander specifically used Final Hearing synonymously with "nonjury trial." In order to carry out the Court's plan to decide the issues in favor of the City, deny Plaintiff and Intervenor Attorney Fees, and perhaps even award attorney fees against Gabe Kaimowitz, his successor judge in the form of tag team justice decided that they meant different things:

The successor judge stated from the bench: "(W)e basically have to start anew with respect to having a nonjury trial I would call it, I would not call it a final hearing, I would call it a nonjury trial on, Ms. Friedberg, your claim that you should have been provided the records that you requested under conditions than what the city has imposed upon you," Transcript of Aug. 22, 2012, page 8, lines 1-12.

The distinction is significant. See *Edwin Matos* v. *Office of the State Attorney for the 17th Judicial Circuit,* No. 4D11-4633 (FL 4th DCA 2012). The successor judge last joined half-dozen appeals panels, as a "designated judge," in that District.

> Section 119.11(1) requires the court to set "an immediate hearing, giving the case priority over other pending cases." We have held that an immediate hearing does not mean one scheduled within a reasonable time but means what the statute says: immediate. See *Salvador* v. *Fennelly*, 593 So.2d 1091, 1094 (Fla. 4th DCA 1992). The statutory provisions apply to prisoners. *Woodfaulk* v. *State*, 935 So.2d 1225, 1226 (Fla. 5th DCA 2006). *Id.*

(The successor judge often refers to this Attorney as a vexatious litigant. He relies at times on holdings seemingly confined to inmates proceeding pro se, to deny any and all applications made by this Attorney. See, e.g., an Order of Aug. 2, 2012, denying this Attorney's application for disqualification of the successor *Santiesteban* v. *State*, 72 So.3rd, 1987 (Fla 4th DCA 2011)(Adverse rulings do not demonstrate personal bias or prejudice.); see also Order Dismissing Plaintiff Friedberg's Petition for Writ of Mandamus in First Amended Complaint, but Deeming Pleading to Request Relief under Chapter 119:

Notice for Trial Regarding Plaintiff Friedberg's Claim and Order Dismissing Intervenor-Plaintiff BEP's Petition for Writ of Mandamus, ("Orders"), Aug. 6:

> Upon the filing of a petition for writ of mandamus, it is the trial court's duty to review the petition to determine if it is facially sufficient *Holsom (sic) in fact Holcomb* v. *Dept. Of Corr.*, 609 So.2d 751, 753 (Fla. lst DCA 1992); If the petition is legally sufficient, the court should issue an alternative writ, or order to show cause, *Davis* v. *State*, 861 So.2d 1214 (Fla. 2d DCA 2003). If it is not factually sufficient, the court should dismiss it *Id.*,

Based on those decisions considering *pro se* petitions from prisoners, the successor judge decided erroneously based on his ex parte review of the electronic docket that "prior to assignment to the undersigned, no order had been issued indicating that the required review had been accomplished prior to the event which led to the predecessor judge's recusal," Orders, p. 1.

However, the successor in his ex parte perusal of the record so that he could make decisions before this attorney for Plaintiff and Intervenor could provide evidence and information, erroneously concluded that no such separate review had taken place.

In fact by separate *Order of June 25, 2012*, Judge Hulslander stated that he made specific findings after hearings on May 15 and 14, to determine that Plaintiff and Intervenor had made actionable requests for records from the City. They could proceed together on the Final Hearing on July 5th, especially since Gabe Kaimowitz, Esq., represented both. At the hearing on July 5, Judge Hulslander modified that *Order* from the bench. He would consider evidence consecutively from Petitioner and then from Intervenor. In fact, between July 5, and a scheduled hearing on July 24, the parties completed all of the testimonial evidence except for conclusion of cross-examination of an unsworn witness. This Attorney stated that if the witness were to testify without being sworn, he would conclude his case. On July 24th, Judge Hulslander recused himself ex *mero motu* before any action was taken on that date. Defendant had rested. Plaintiff and Intervenor have since waived further testimony and they have rested as well. All that remains is a ruling on their complaint and accepted petition for mandamus relief for the wrongful withholding of public records by the City.

On July 26th, Chief Judge Robert E. Roundtree reassigned this mandamus proceeding to the Honorable Toby S. Monaco: "For tracking purposes, this case must remain in the division to which it is currently assigned." On July 30th, Judge Roundtree denied Plaintiff's (sic) Application for Withdrawal of Judicial Assignment. For Butterfly Education Project, LLC, this Attorney had moved to disqualify Judge Monaco. A motion for reconsideration is pending.

On Aug. 2, Judge Monaco denied a Motion for Disqualification, filed for the Intervenor. He ruled that the motion was legally insufficient. Application for reconsideration is pending. In three civil actions in the 8th Judicial District, in the Alachua County Circuit Court, *Kaimowitz* v. *the City of Gainesville, et al.*, #1-2003-CA-2400; *Kaimowitz* v. *Palmer*, (represented by John Jopling, Esq., of Del Graham, P.A.), and *Clark Butler* v. *New York Times, et al.*, #1-2005-CA-1927, the successor judge here found eight applications for his disqualification by this Attorney to be insufficient for various reasons. In one instance in Palmer, the successor judge here waited for 71 days to deny a motion for disqualification, and this Court ordered him to Show Cause why he should not step aside. Mr. Jopling, for whom the successor judge was a mentor at Dell Graham, provided a response. The First District Court of Appeal panel then dismissed the writ of prohibition, so that the successor judge here could continue. Subsequently, the successor judge here even denied an application for disqualification of a senior judge who had substituted for him, and exhibited in written orders similar bias against this Attorney in *Palmer*.

In all three civil actions, all substantive motions were decided in favor of defendants by the successor here. When the successor judge here first ran for a circuit court seat, the Gainesville Sun on Sept. 3, 2000 quoted him as saying that in 25 of 27 years in practice of law, he represented "the people who get sued." In more than 40 appeals from decisions of the successor here, by the First District Court of Appeal, in the past decade, any reviewer would note that the judge invariably rules for the defendant in civil cases, for the State in criminal cases, even when he is reversed on appeal, e.g. for his directed verdicts to curtail the amounts juries awarded plaintiffs, or his denial attorney fees for plaintiff lawyers.

The First District Court of Appeal did recognize that the successor judge here sometimes abuses his discretion to protect a defendant, e.g., in *Shaw* v. *Jain*, 914 So. 2d 458 (Fla. 1st DCA 2005).

(The successor judge tolerated repeated reference by the defendant's attorney to the plaintiff's marijuana use—even though there was no evidence that that usage affected her injuries, treatment, or recovery, in a medical malpractice case. But even there the judge and the defense attorney were spared personal criticism; somehow, the names of neither was published.)

With regard to the *ex parte* communication and judicial disqualification issues here, no objection is taken to the proceedings up until that point. However, on Aug. 6, the successor judge clearly began to march to his own drumming without seeking input on the record from Plaintiff or Intervenor.

In an Order Dismissing Plaintiff Friedberg's Petition for Writ of Mandamus in First Amended Complaint, but Deeming Pleading to Request Relief under Chapter 119: Notice for Trial Regarding Plaintiff Friedberg's Claim and Order Dismissing Intervenor-Plaintiff BEP's Petition for Writ of Mandamus, ("Orders") Judge Monaco stated in pertinent part that his "review of the electronic docket shows that, prior to assignment to the undersigned, no order had been issued indicating that the required review had been accomplished prior to the event which led to the predecessor judge's recusal," Orders, p. 1. In fact, the Order of June 25, 2012, granting Butterfly Education Project, LLC Motion to Intervene, shows that such a review took place based on hearings held on May 15, and June 14, 2012, case law, memoranda, and argument from counsel for the respective parties to the action. Based on that review, Judge Victor L. Hulslander, made five specific findings:

A. Both BEP and Plaintiff allege public records violations against the City of Gainesville and seek redress in the instant action.
B. Both BEP and Friedberg have requested documents from the City under the public records statutes and allege violations of those statutes by the City.
C. The same lawyer (Kaimowitz) currently represents both entities (BEP and Friedberg.)
D. There is a final nonjury trial scheduled for July 5, 2012, in the instant action, the results of which will affect the rights of both BEP and Friedberg.
E. It is in the interest of judicial economy as well as civil justice that BEP be allowed to intervene for the limited purpose of litigating the issues relating to BEP's access to the public records of the City of Gainesville and its subdivisions, consistent with Florida Statutes.

See Order of June 25, 2012, Granting Intervention, pp. 1-2.

At his one hearing here, on Aug. 22, the successor judge relied on the following *ex parte* communications, by his own admission:

A. "One thing I needed to clarify, Mrs. Friedberg, I haven't had the pleasure of meeting you before, but *I was informed that you had sent an email stating that you had terminated Mr. Kaimowitz's representation*, and I needed to clarify that point, as to whether that's the current status."
Case Management Conf. Transcript ("TR"), Aug. 22, 2012, page ("p.") 4, lines (ll.) 7-13.

Whatever information the successor judge learned about the Plaintiff, he was misled apparently into believing that she was married.

B. "And forgive me if I misunderstand the record of this case up to this point in time, *but I get the idea that you folks have had some hearing or hearings which may or may not have been concluded completely. I'm not real sure about that. But...right now I thought I saw some reference to somebody's cross-examination."*
TR, p. 7, ll. 7-11.

"*I understand, again, both sides correct me if I'm wrong, that you don't need to do any more discovery, you just need to have this over with in terms of the claim at this point. Is that true, Ms. Waratuke*?" MS. WARATUKE: "I think that's correct, your Honor."
TR, p. 10, ll. 10-17.

In fact, Ms. Waratuke knew or should have known that she objected to a Request to Produce Documents filed earlier by this Attorney. Without seeking a protective order, she declared what she would make available. This Attorney let her know that was unacceptable to him.

C. MS. WARATUKE: It was a nonjury trial, your Honor. We were...
THE COURT: I mean time-wise. *I thought it was like four or five hours or something like that*....MR. KAIMOWITZ: If I can factually set the record straight, that it was more than 20 hours of testimony from seven witnesses.....
TR. P. 11, 8-23

MR. KAIMOWITZ: "....(I)s there a citation for your position?
THE COURT: "Yes, there is. You want three of them?....It's Alvord versus Alvord, 572 So.2d 925; Hatcher v. St. Joe Paper Company, 603 So.2d 65....Carr versus Byers, 578 So.2d 347. And all stand for that proposition, I have to start all over again. And I don't have authority to proceed in the absence of a written stipulation by the parties that I can look at a transcript that's written out. So it may be more efficient and expeditious, actually, if we have a new hearing.
TR. p. 12, l. 16 through p. 13, l. 8.

THE COURT: I'm sorry for the interrupt, Ms. Friedberg. Other than yourself, I assume you will testify with respect to the request that you made. *I think you had an attorney before who actually may have made those requests on your behalf.*
TR. p. 15, l 23, through p. 16, l. 3.

THE COURT: *But I have already seen some emails addressed to my judicial assistant*, even though I asked not to, that are substantive in nature and not just procedural, like when can we get a hearing on something like that. And I don't want that to happen anymore in this case.
TR. p. 18, line 24 through p. 19, l. 4.

Particularly with the last example, the successor judge could have mitigated or cured the *ex parte* communication by identifying the party, attorney, who had sent those emails, and their general content. Also the successor judge suggested that he asked not to, without indicating time, place, or order. This attorney received no prior warning about e-mail use from the judge.

WHEREFORE, having no other adequate remedy at law or in equity, This Attorney moves for the identified Orders to be set aside forthwith, and the proceedings revert back at the latest prior to the Case Management Conference, on Aug.22, 2012.

Submitted

By Gabe Kaimowitz, FL Bar 0633836
Law Office of Gabe Kaimowitz
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(352) 375-2670
gabrielhillel@gmail.com
Attorney for BEP as a matter of fact and law,
Attorney for Ms.Friedberg as a matter of law
About appropriate withdrawal of an attorney.

CERTIFICATE OF SERVICE

A copy of the foregoing has been sent by UPS delivery on Thursday, Aug. 30, 2012, to Liz Waratuke, Esq., Office of the City Attorney, Rm #425, Gainesville, FL 32601. Appendices will ~~follow to the same attorney before she returns to work on Tuesday, Sept. 4~~ are filed herewith.

The papers similarly are being filed with the Clerk of the Court by UPS Delivery on Thursday, with Appendices ~~to follow before the Court reopens for business~~ herewith.

By Gabe Kaimowitz, FL Bar 0633836
Law Office of Gabe Kaimowitz
P.O. 140119,Gainesville, FL32614
(352) 375-2670
gabrielhillel@gmail.com
Attorney for BEP as a matter of fact and law,
Attorney for Ms.Friedberg as a matter of law
About appropriate withdrawal of an attorney.

Mary Jarvis File

From: Gabriel Hillel [gabrielhillel@gmail.com]
Sent: Tuesday, August 07, 2012 7:53 PM
To: Mary Jarvis
Cc: waratukeea@cityofgainesville.org; Karen Wable
Subject: Re: FW: Friedberg / City of Gainesville 2012-CA-360

Dear Ms. Jarvis, and Ms. Wable:

I filed the attached papers for reconsideration of the recusal by Judge Toby S. Monaco of his denial of recusal as requested by the Butterfly Education Project. They are now submitted in corrected PDF form.

I previously had sent e-mails of them, but in the hard copy I had filed yesterday, I added a copy of the affidavit of Ms. Friedberg for her recusal.

This evening, before I saw the denial of her application for disqualification of Judge Monaco, I corrected scriveners errors, and placed in the soon-to-be mandated PDF form, the 1) motion for reconsideration of the refusal of Judge Monaco to step aside despite his abiding loathing of me and those associated with me, 2) exhibits in support thereof, and 3) affidavits I submitted for the Butterfly Education Project and of Ms. Friedberg.

I am sending these papers both to the attention of Judges Monaco and Robert E. Roundtree, in the belief that until this point neither has ruled on 1) Papers to reconsider the assignment by the Chief Judge to Judge Monaco, and 2) the papers herewith to reconsider the recusal by Judge Monaco, based on the affidavits for both of my clients.

Before he disqualified himself, Judge Victor L. Hulslander entered an Order granting the Butterfly Education Project, LLC, to intervene, and to proceed on both cases. Without commenting, Judge Monaco apparently believes he has the right to unravel the cases, and ignore the hours of testimony recorded by court reporters in this matter on several dates, in June, and July.

Judge Monaco apparently does so in a blatant attempt to cover for the crude mistakes made by Gainesville since May 6,2010, when City Attorney Marion Radson railroad without an ordinance Public Records Policy and Administrative Procedures, on the consent agenda. Elected officials did not know what hit them. Then before Judge Hulslander stepped aside, I provided information in documented form that the Gainesville Regional Utilities has its own more general Public Records Act Policy/Procedure. That was directly contradictory to the testimony provided by two assistant City Attorneys during the proceeding.

FILED
CK 63
2012 AUG -8 PM 3:42
J.K. "BUDDY" IRBY
CLERK OF COURTS
ALACHUA COUNTY, FL.

Case: 2012 CA 000360
0007995360
KEY: LEAT-R

8/8/2012

BAR'S EXHIBIT C3

5

Neither conforms to the provision for making public records available pursuant to Florida Constitution Art. 1, Sec. 24, or the Florida Public Records Act, Sec. 119.1, et seq.

Now this Court arrogantly flouts the State Constitutional Protection for meaningful access to the Courts without delay. Judge Monaco's actions would shock the conscience of any reasonable lawyer or judge who knew what he was doing to this record, to protect his fellow members of the private Eighth Judicial Circuit Bar Association, Inc., especially Marion Radson, and his staffer Dan Nee, husband of County Judge Denise Ferrero.

I am 77 years old. In more than 42 years of practice, I have never seen anything like the crude, arrogant actions contrary to law or ethics taken by Judge Monaco to protect what some would call the good old boys. I have reported him to the Judicial Disqualification Commission only to have the papers returned to me. I tried to have the 8th Judicial Circuit Bench/Bar Committee hear years ago my concern about a jurist who I confronted with the words of a fellow Jewish lawyer who said he and his Jewish associates were made to feel uncomfortable in Judge Monaco's court.

Judge Monaco crudely now has given a Sophie's choice to Erin Friedberg. She already has suffered greatly at the hands of City personnel who have no compunction about demeaning people they do not like. Ms. Friedberg now has the choice of going pro se, or continuing to retain me.

She already has read the 18 pages of defamation Judge Monaco heaped on me in 2005, and which City Attorney Marion Radson chose to recirculate this year.

Ms. Friedberg knew none of this behind-the scenes backstabbing in this jurisdiction, when she hired a private attorney from Leesburg to get public records so that she could proceed on a discrimination/retaliation complaint against the City. That lawyer filed for her on Jan. 27, 2012--NOT as late

as March 23, 2012 as Judge Monaco claims. The docket reflects that the parties and claims remained the same, but the Judge has to make it seem that the City has acted expeditiously and responsibly. Those claims cannot stand.

On May 15, 2012, Judge Hulslander held a hearing I requested for the Butterfly Education Project so that I could intervene, after Alachua County Clerk Buddy Irby tried to satisfy Judge Monaco's need to keep me out of this Court. I met with Ms. Friedberg and her attorney. They both were being financially drained by the crude, unlawful withholding of public records by Stephanie Marchman, Esq. So we all agreed I would represent her. This was no complex controversial suit.

This was simply two requests to have the City of Gainesville, especially its Office of the City Attorney act responsibly. The hidden agenda was not known then. So I came to represent her.

In my wildest dreams, I would not have done so if I thought Judge Monaco would ever return to my life, and once again spew his loathesome view of me and (sic) my kind. I had left the law effectively and I have been in school to start oyer with a bachelor's degree in multimedia design. I have been an honor student for more than two and a half years on-line.

Because of Judge Monaco, this semester, half way through, I have had to drop out. Never again were men, jurists like him, supposed to control the law, a legal system, under a false facade of professionalism.

What Judge Monaco has done is beyond belief--this same Judge who has manipulated the law and ethics in my previous litigation with the City and with an Orlando attorney represented by Dell Graham, where Judge Monaco was a partner.

Judge Monaco may well prevail. The First Judicial District Court of Appeal has upheld him usually without opinion in more than 40

appeals over the years. Judge Monaco promised when he first campaigned that he was an attorney who represented people who are sued throughout his 27 years of practice. And now he continues to do so on the bench. In those more than 40 cases, he invariably has supported defendants, and taken away jury verdicts when they seem to give plaintiff more than he desires.

This is NOT law. This cannot be law, if the legal system is to be respected. If Judge Monaco believes that I am acting improperly, unprofessionally, let him refer me to the Florida Bar. But he knows or should know that as soon as I or Ms. Friedberg are heard by impartial parties, he and his crowd will not prevail.

I would appreciate either or both of you judicial assistants informing counsel for both sides whether final action has been taken on the pending papers I have described for reconsideration 1) by Judge Roundtree submitted earlier and by 2) Judge Monaco; the latter which have been filed on being provided here in PDF form.

I want to be prepared to take my concerns to the First District Court of Appeal, and hopefully beyond, until the improper actions of the 8th Judicial Circuit and its private association of lawyers and judges become a warning to the public that our legal system cannot endure if it is allowed to function this way.

Thank you for the courtesy I know each of you will give this. In my brief meetings with Ms. Jarvis in the past, and very briefly, with Ms. Wable, I can remember when the idea of Gainesville as a Butterfly City was a true vision, when I could smile and receive one in return--rather than the hateful abuse of language and the law that I have not seen since I was in theCivil rights movement in Mississippi, Louisiana, and Texas, in 1964-65.

The gentlemen of the White Citizens Council were supposed to be gone. Perhaps they are in those states. They certainly are here, in Florida.

Sincerely,

Gabriel Hillel Kaimowitz,
Fl Bar 0633836, New York Bar, and MI Bar P14564 (Emeritus).

8/8/2012

On Tue, Aug 7, 2012 at 4:43 PM, Mary Jarvis <JarvisM@circuit8.org> wrote:
Attached is your copy of an Order Denying Plaintiff Erin Friedberg's Motion for Disqualification.

Mary A. Jarvis, Judicial Assistant to
Toby S. Monaco, Circuit Judge
Alachua County Civil/Family Justice Center
201 E. University Avenue
Gainesville, FL 32601
(352) 374-3641 Fax: (352) 381-0178

Bradford County Courthouse
945 N. Temple Avenue
Starke, FL 32091
(904) 966-6210 Fax: (940) 966-6391

-----Original Message-----
From: jarvism@circuit8.org [mailto:jarvism@circuit8.org]
Sent: Tuesday, August 07, 2012 4:39 PM
To: Mary Jarvis
Subject:

CS-1820
[00:c0:ee:2b:e5:30]

IN THE CIRCUIT COURT OF THE EIGHTH JUDICIAL CIRCUIT
IN AND FOR ALACHUA COUNTY, FLORIDA

ERIN FRIEDBERG,
Plaintiff,

BUTTERFLY EDUCATION PROJECT, LLC,
Intervenor-Plaintiff, CASE NO.: 2012-CA-360

v. DIVISION: K

CITY OF GAINESVILLE, FLORIDA,
Defendant

SUPPLEMENTAL AUTHORITY IN SUPPORT OF MOTIONS FOR RECONSIDERATION TO SHOW THAT JUDGE TOBY S. MONACO IS DISQUALIFIED FROM HEARING THESE CASES AS A MATTER OF LAW. JUDGE MONACO ON AUGUST 6, 2012, ENTERED AN ORDER DISMISSING PLAINTIFF FRIEDBERG'S PETITION FOR WRIT OF MANDAMUS IN FIRST AMENDED COMPLAINT, and ON AUGUST 7, 2012, HE ENTERED AN ORDER DENYING PLAINTIFF ERIN FRIEBERG'S MOTION FOR DISQUALIFICATION.

ANNOTATED INDEX

1. *Fuster-Escalona* v. *Wisotsky*, 781 So.2d 1063 (FL 2000); (NOTE: This case has been modified on grounds not relevant here.)

   "Here, the trial court's failure to immediately address the motion to disqualify is inconsistent with the relevant statute, rule, and case law. The trial judge is the manager of the docket and has the ultimate responsibility to rule on pleadings that are properly pled before the court, in accord with applicable rules and court precedent (Citations omitted)."

   Here, pp. 1-4, cited text on page 2.
2. *Valdes-Fauli v. Valdes-Fauli*, Case No. 3D04-2079 (Fla. 3rd DCA 2004).

   "A trial judge must first rule on a motion for disqualification, before resolving any other matters. *Fuster-Escalona v. Wisotsky*, 781 So.2d 1063, 1065 (Fla. 2000); (other citations omitted).

   Here, pp. 5-7, cited text on page 7.
3. *Gomez v. State of Florida*, 900 So.2d 760 (Fla 4th DCA 2004).

   "Additionally, while a motion to disqualify is pending, the trial court is not authorized to rule on other pending motions; all such motions upon which the trial court rules must be vacated. See *Fuster-Escalona*, supra, other cites omitted.

   Here, p. 8.
4. *Shah v. Harding*, 839 So.2d 765 (Fla 3rd DCA 2003).

   As noted in *Fuster-Escalona* (supra): "When a trial court fails to act in accord with the statute and procedural rule on a motion to disqualify, an appellate court will vacate a trial court judgment that flows from the error."

   Here, pp. 8-9, at p. 9.

BAR'S

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5. *Inquiry Concerning A Judge, (re: Ralph E. Eriksson)*, 36 So.3d 480 (Fla. 2010): "Furthermore, this Court has held that when a motion to disqualify a judge is made, "until the matter is resolved the trial court cannot proceed," citing *Faster*, supra; "This Court has "recognized the importance of the constitutional guarantee of citizen access to the courts, with or without an attorney." *State v. Spencer*, 751 So.2d 47, 48 (Fla. 1999), (another cite omitted)." (This opinion is excerpted, to avoid unnecessary criticism of the judge.) **Here, pp. 10-16, at p. 14.** The undersigned Attorney also relies on the excellent language about judicial conduct, in the matter of former Judge Eriksson, who did not seek re-election in 2010, heeause of the stigma of this decision. This Attorney has practieed before Judge Eriksson and found him to be a paragon of justice, especially when compared with the conduct of Judge Monaco.
6. Docket sheet, *Hercules Management, Inc. v. Brenda Caldwell*, 2008 SC 1587 (FL. Seminole Co. Ct., 2008): This attorney appeared before Judge Eriksson from Apr. 28, 2008 through July 2, 2, 2009; he prevailed for plaintiff against defendant, and then got a judgment against his former client who refused to pay what he owed. A dlfferent judge is listed on the case, because that jurist, Judge Frederic M. Schott was elected to the seat, after Judge Eriksson chose not to seek re-election. **Here, pp. 17-18.**
7. *Diversified Numismatics, Inc., v. City of Orlando*, 948 F.2d 382, 384-85 (11th Cir. 1991)(This Attorney represented the Plaintiff): "Although it is conceivable that a judge could harbor such ill-will toward an attorney that the attorney's clients would also be prejudiced, we have not been pointed to any evidence of a continuing bias on the part of Judge Sharp." (This Attorney successfully defended his claim that Judge Sharp was an anti-Semite who stated that this Attorney "claimed to be Jewish." The Judge said he made that statement, because he had no proof this Attorney was Jewish at the time." That defense was sufficient to have the Florida Bar dismiss a complaint against this Attorney.) **Here, pp. 19-20, at p. 20.**
8. *Jarp v. Jarp*, 919 So.2d 614 (Fla. 3rd DCA 2006): "....We agree with the First District in *Milmir* and the Eleventh Circuit in *Diversified Numismatics*, supra, that to require a judge to disqualify himself or herself regardless of how stale the grounds for disqualification, would essentially provide "[l]awyers once in a controversy with a judge,' with 'a license under which the judge would serve at their will. Tempers do cool, and anger does dissipate...." (NOTE: there is no indication here that Judge Monaco's temper has cooled or that his anger has dissipated. The heiated response to Plaintiff Friedberg's motion to disqualify him should be ample evidence to any lawyer oc jurist outside of the Eighth Judicial Circuit Bar Association territory that Judge Monaco bears this Attorney nothing but ill will.) **Here, pp. 21-22, at p. 22.**
9. *Shaw v. Jain*, 914 So.2d 458 (Fla. lst DCA 2005). Although not listed, Judge Monaco served as the trial judge. In one of the very few instances when the First District reversed one of his decisions invariahly favorable to defendants, the Court noted: "A prior opinion has precedential value only to the extent that it is possible to determine from the opinion that the material facts are sufficiently similar (citations omitted)." "By repeated reference to Shaw's marijuana use in opening statement, during the doctors' testimony, and in closing

"argument, the marijuana use became a feature of the trial. As such any marginal probative value it might have had was clearly outweighed by the danger of unfair prejudice, confusion of issues [and] misleading the jury.' Accordingly, its use should have been prohibited.... (Citations omitted)." (NOTE: Judge Monaco's bias in favor of the physicians and against the marijuana user was so evident that it resulted in a reversal of his decision.)

Here, pp. 22-24, at p. 24.

10. ORDER GRANTING BUTTERFLY EDUCATION PROJECT, LLC's MOTION TO INTERVENE, June 25, 2012.
    Here, pp. 25-26.
11. ORDER DENYING PETITIONERS, FRIEDBERG AND BUTTERFLY EDUCATION PROJECT, LLC, HEREINAFTER BEP'S, PETITION FOR INJUNCTIVE RELIEF, June 25, 2012.
    Here, pp. 27-28.
12. E-mail exchange setting up the last hearing held in this matter, for July 24, 2012, between and among Tami Smith, judicial assistant to Judge Victor L. Hulslander; Liz Waratuke, Esq., for the Defendant City, and this Attorney on July 23, 2012.
    Here, p. 30. Page 31 is blank.
13. Letter of July 23, 2012, from the City of Gainesville to this Attorney, re: Public Records Request Received on July 11, 2012: "We received your emailed public records request on July 11, 2012, for all documents concerning William Iwinski since June 15, 2011....You may contact John Skaja, Compensation Assistant, (phoae number omitted) to schedule a mutually convenience time....In accordance with the City's Public Records Administrative Procedures, the City reqidres an advanced deposit of the special service charge prior to prtceeding with any records request that requires extensive use of City resources. We estimate that it will take approximately 341 hours of labor to respond to your request, with an approximate special service charge of $13,876.00. Please understand that this is only a rough estimate since the total charge can only be accurately determined after we produce the requested records. Therefore the difference between any advanced deposit received and the actual costs incurred will be collected or refunded, as appropriate, prior to inspection. Again this charge is applicable only to filling the full scope of your request; no special service charge shall apply to the documents described in the first paragraph. In recognition that your special service charge may be substantial given the voluminous nature of your public records request, you may wish to either narrow the scope of your request and/or proceed incrementally by submitting a limited advanced deposit that authorizes only a specific expenditure of City resources in the production of your reqoested records. If you choose to submit a limited advanced deposit, we will proceed with your request until the actual costs incurred equal your submitted deposit. At that time, we would make the produced records available for immediate inspection, provide you with a more accurate estimate regarding the special service charge applicable to the remainder of your request and await further direction from you. Please provide guidance on how you would like to proceed at this time." (NOTE: No such opportunity was given to Plaintiff Friedberg, between December 2011, and May 23, 2012, when the original estimate of nearly $40,000 turned out to be about 1/3 of that amount. All df these documents are open to discovery.)

Here, pp. 32-33.

14. E-mail exchange between and among Mary A. Jarvis, judicial assistant to Judge Toby S. Monaco; Liz Waratuke, Esq., for the Defendant City, and this Attorney, on Aug. 2, 2012. Ms. Jarvis provided Judge Monaco's Order denying this Attorney's Motion for Disqualification, filed on behalf of Butterfly Education Project, LLC, and a one-person corporation, which this Attorney also represents as counsel. This Attorney provided papers for the reconsideration of recusal of Judge Monaco, and documents in support thereof, on that same date. In the E-mail, this Attorney noted: "I also will protect the interests of my other client by sharing these papers with her, and ascertaining whether she will be filing her own motion for his disqualification...Of course, Judge Monaco's decision to remain may accomplish the purpose of her seeking other counsel, if she can afford to do so."
Here, p. 34.
15. Plaintiffs' Application for Disqualification of Judge Toby Monaco, July 26, 2012 (sic): "This attorney also represents Erin Friedberg. It would be an injustice to her specifically, if Judge Monaco were to preside, since the basis for claiming this jurist is prejudiced against Gabe Kaimowitz applies to anyone or any entity that is associated with Gabe Kaimowitz in litigation in this Circuit."
16. **Here, p. 35.**
17. E-mail exchange between and among Mary A. Jarvis, judicial assistant to Judge Toby S. Monaco; Liz Waratuke, Esq., for the Defendant City, and this Attorney, on Aug. 6, 2012. Ms. Jarvis provided Judge Monaco's Order dismissing petitions and setting up a case management conference for Aug. 22, 2012.
Here, p. 35-36.
18. E-mail exchange between and among Mary A. Jarvis, judicial assistant to Judge Toby S. Monaco; Liz Waratuke, Esq., for the Defendant City, and this Attorney, on Aug. 7, 2012. Ms. Jarvis provided Judge Monaco's Order denying Plaintiff's motion for his disqualification.
19. **Here, pp. 36-37.**
20. Editorial, "The money block," The Gainesville Sun, Apr. 5, 2012: "As The Sun reported last week, Gainesville's response has been to demand nearly $40,000 as a 'special service' fee for complying; citing the labor involved in reviewing and possibly redacting information from each record prior to release. On its face, the demand seems excessive, and it's... cost-prohibitive.... 'I see that happening quite regularly,' Barbara Peterson, of the First Amendment Foundation, told The Sun. "It's a way to obfuscate access. Do you want to make your house payment this month or do you want public records you have a constitutional right to?" That's a choice no one should be forced to make in the Sunshine State."
Here, p. 37.
Chris Curry, "Judge recuses himself, cites attorney's emails," The Gainesville Sun, July 24, 2012." "The trial involves the lawsuit that Erin Friedberg, the city's former visual arts coordinator, ***filed*** in January, after the City Attorney's Office said it would cost her $40,000-in advance-for records she requested in association with a pending workforce discrimination complaint filed with (FCHR)....The city later reduced the amount required to process the email request to approximately $13,000 because the request involved some 50,000 emails-one-third of the original estimate of 150,000."

"Among other things, Kaimowitz took issue in his emails with Hulslander's decision not to have staff attorneys 'to speak with reckless disregard of the truth.' Hulsiander said daring the initial July 5 hearing in the trial that he would not swear in members of the bar because they were always considered to be under oath....Hulslander said Chief Judge Robert E. Roundtree would appoint a replacement judge. Kaimowitz, who has been involved in multiple lawsuits against the city or county over the last decade, pushed to have a judge appointed from outside the Eighth Judicial Circuit saying none in the circuit would be impartial to him." (NOTE: Judge Hulslander was scheduled to hear the conclusion of cross examination of Stephanie Marchman, Esq., assistant City Attorney who claims to be the architect of the City's unconstitutional Public Records Policy and Administrative Procedures approved without comment on May 6, 2010, on the City Commission consent agenda. No ordinance appears to provide an underlying basis for that document, Also, there apparently is a separate GRU Public Records Policy and Administrative Procedures, approved in April 2011. This Attorney intended to offer rebuttal from Ms Friedberg, testimony from Bob Woods, the City's Communication Director, and doeuments, including those which had been used during proceedings in June for a TRO. Hours of testimony already had been taken from Ms. Marchman, a City IT expert, a legal assistant, and the attorney acting for the Gainesville Regional Utilities ("GRU"), for the Defendant For the Butterfly Education Project, LLC, Kurt Lannon, City Clerk since 1993, already had testified that he was hardly aware of the City Public Records Policy; he swore he was the custodian who enlisted the aid of the other five charter officers in processing public records; he could not recall ever imposing a special service charge on anyone requesting access to records. Former Gainesville Mayor Mac McEachern also testified, about the difficulties he had in obtaining public records from GRU. Judge Monaco's Orders to date do not reflect any testimony; instead, before he dismissed the complaints, he limited his factual presentation to the following: "THIS MATTER came before the Court for revdew upon reassignment, Plaintiff, Erin Friedberg, filed a first amended complaint on March 23, 2012, seeking a writ of mandamus pursuant to Rule 1.630, Florida Rules of Civil Procedure. The Intervenor-Plaintiff Butterfly Education Project, LLC ("BEP") on May 3, filed a "proposed' petition for writ of mandamus before intervention was granted."
Here, pp. 37-38.

21. Plaintiff Friedberg's 3-page affidavit Aug. 6, 2012, e-mailed and filed on that date. Here, pp. 39, 41, 43. Pages 40, 42, 44 are blank, because of mechanical failure.
22. This Attorney's Certificate of Good Faith, in support of the Affidavit, Aug. 6, 2012. Here, p. 45.

CASES CITED BY JUDGE MONACO TO DATE.

Judge Monaco has cited seven decisions to date with little regard for their substance, and none for the First District Court of Appeal holding in *Shaw* v. *Jain*, supra: "A prior opinion has precedential value only to the extent that it is possible to determine from the opinion that the material facts are sufficiently similar (citations omitted)."

23. "The issue is whether the court's remark that (the defendant) was 'being an obstinate jerk,' was reasonably suffieient to create a well-founded fear on the part of this defendant that he would not receive a fair trial. It was not."

That was the holding in *Oates* v. *State of Florida*, 619 So.2d 23 (4th DCA 1993). Judge Monaco's interpretation was "Court's comment regarding parties' (sic) obstinate behavior not sufficient to require disqualification," in *Order Denying Plaintiff Erin Friedberg's Motion for Disqualification* ("*Disqualification Order.*") **Here, pp. 46-48, at p. 48.**

24. *Howard v. State*, 950 So.2d 1260 (FL 5th DCA 2007): The court tersely stated that a motion to disqualify was properly denied.
Here, p. 49.

25. *Ellis v. Henning*,678 So.2d 827 (4th DCA 1996): "We sua sponte consolidate these nine cases involving the identical issue of whether the trial judge should be disqualified from presiding over petitioners' (plaintiffs) civil lawsuits. Although the subject matter of the civil cases is unrelated, the common thread is the representation of all plaintiffs by the law firm of Sheldon J. Schlesinger, P.A. Plaintiffs seek disqualification based on alleged animosity between the trial judge and the law firm as evidenced by the trial judge's actions in a series of proceedings culminating with her conduct during a September 21, 1995 calendar call in the Ellis case....Without a transcript or sworn factual allegation concerning the context in which the trial judge's alleged comments arose, we do not find that the allegations in plaintiffs' motions to disqualify set fortb a legally sufficient ground for recusal (citations omitted)....Unfortunately we are compelled to grant the writ of prohibition because the responses, filed on behalf of the trial judge, by an assistant attorney general in each of the consolidated cases, impermissibly took issue with the accuracy of plaintiffs' allegations." Judge Monaco does not mention the disposition, but instead states in his *Disqualification Order:* "(Absent transcript or record demonstrating context of trial judge's comments, disqualification not warranted; the trial judge's expression of dissatisfaction with counsel does not give rise to dlsqualifieation.)"
Here, at pp. 50-51:

26. *Owens-Cmning Fiberglas (sic) Corp.* v. *Parsons*, 644 So. 2d 340 (Fla. lst DCA 1994): "We hold that the motion to disqualify was legally sufficient The only authority offered by Respondent regarding Mr. Rodewig's authority to submit an affidavit for OCF is *Cardinal* v. *Wendy's of South Florida, Inc.*, 529 So.2d 335 (Fla. 4th DCA 1988), rev. den. 541 So.2d 1172 (Fla. 1989). That case however is distinguishable. In *Cardinal*, the affidavit was executed by counsel for the moving party. We are not persuaded that OCF's director of asbestos litigation would not be authorized to speak for the corporation concerning the matter at issue in the present case....Aecordingly, the petition for writ of prohibiltion is granted...." Judge Monaeo's version of that decision as applied to denial of disqualificatioa for BEP is: ("Disqualification motion by corporate enrity must be sworn to by someone witia authority to speak for corporation other than counsel.")

Here, pp. 51-54, at pp. 53-54.

27. *Santisteban v. State of Florida*, 72 So.2d 187 (Fla. 4th DCA 2011). "Here, the trial court properly denied appellant's motion because the motion did not comply with the procedural reqairements of rule 2.330. The motion for disqualification was not supported by appellant's sworn signature, nor was it supported by an affidavit Further, defense counsel did not separately certify that the motion and the client's statements were made in good faith. For these technical reasons along the trial court did not err in denying the motion as legally insufficient." (NOTE: The technical requirements were met here. Judge Monaco did not dispute that.) Apart from the technical requirements of the rule, the substantive test for wbether a motion to disqualify is 'legally snfficient' is whether the facts alleged would place a reasonably prudent person in fear of not receiving a fair and impartial trial (citation omitted)....In determining the legal sufficiency of the motion, '[i]t is not what the judge feels but the feeling in the mind of the party seeking to disqualify and the basis for that feeling.' (citations omitted). Nonetheless the fear of judicial bias must be objectively reasonable (citation omitted). The facts and reasons given for the disqualification must tend to show personal bias or prejudice (citation omitted). The fact that the judge has made adverse rulings against the defendant in the past is not an adequate ground for recusai....Appeljant falled to allege any objectively reasonable fear of judlcial bias....." (NOTE: Judge Monaco states the holding: "Adverse rirlings do not demonstrate personal bias or prejudice. He apparently has not read or he has forgatten his Nov. 3, 2004, 18-page diairibe of glittering venomous generalities, which his crony (sic) former Judge Larry Turner attached to his own decision to show that this Attorney is a vexatious litigant The Florida Bar dismissed that view summarily in 2005. The corrected version of that diatribe has surfaced now, because City Attorney Marion Radson circulated the document secretiy to City Commissioners and Charter Officers in 2012, to smear this Attorney. The secret document was buried in a response to a public records request.) Here, pp. 54-61, at p. 57.

28. (a) *Bermudez v. Bert*, 3D10-1355 (Fla. 3rd DCA 2010); (b) *Bert v. Bermudez*, 3D112-911 (Fla. 3rd DCA June 20, 2012): (NOTE: only the 2012 opidion is cited by Judge Monaco. However, In the 2010 view: "The petitioners....seek a writ prohibiting the trial judge from presiding over the post-judgment proceedings and their collection efforts. Because we eonclude that the moiian to disqualify the judge was legally sufficient, we grant the petition." The court cited *Livingston v. State*, 41 So.2d 1083, 1086 (Fla. 1983)("holding that the question of disqualification focuses on those matters from which a litigant may reasonably question a judge's impartiality rather than the court's own perception of its ability to act fairly and impartially.") In the 2012 version, the parties seeking disqualification described judicial conduct which would have warranted disqualification. "A review of the transcript nf the

March 19, 2012, hearing, however, paints an entirely different picture—one that reveals great restraint by the trial judge, and an attorney who either lost control or was intentionally trying to bait the judge....(H)is behavior was contemptuous....We also feel compelled to note that the unprofessional conduct of the...law firm was not confined to (one attorney's) behavior at the March 19, 2012 hearing. The petition filed in this Court, signed by (another partner(fares no better. The language, mischaracterizations, and 'spin' employed speak volumes. In its petition to this Court, the...law firm characterized the trial jiidge as 'petulant,' 'vindictive,' and 'out of control' and characterized his rulings as 'baseless.'.... "There is nothing this judge did or said to demonstrate bias or prejudice, or to suggest the judge will not decide the issues before him fairly and impartially (*Oates*, sup*ra*, and the 'obstinate jerk' is the only example given.)....We, therefore, deny the petition and remind (the law partners) of their obligations and responsibilities as members of The Florida Bar and as officers of the court." (NOTE: in light of the described conduct, it would be reasonable to ask why those attorneys were not referred to the Bar, for alleged failare of their "obligations and responsibilities." Judge Monaco telies on that case, based on a transcript, and appellate brief, to claim that "Judge's justifiable response to lawyer's behavior, in keeping with trial judge's right and obligation to control proceedings, is insnfficfent grounds for disqualification." Surely if this Attorney's behavior had been found to be improper in any of the four cases in which he appeared in that jurist's chambers from 2003-2005 the Florida Bar surely would have admonished this Attorney or otherwise taken appropriate action.) Here, pp. 62-68, at p. 68.

29. *Shea v. Cochran*, 680 So.2d 628 (Fla. 1996), "Based on the factual allegations of appellant's pleading, mandamus was an inappropriate remedy because the Sheriff provided a specific reason for refusihg to eomply witlt appellant's records request claiming the records were part of an ongoing criminal investigation. *Cf. Rechler*, 674 So.2d 789 (Fla. 4th DCA 1996); *Quigley* v. *Satz*, 596 So.2d 753 (Fla. 4th DCA 1992)." (NOTE: Judge Monaet's application of that case is based on his factual finding without regard to the hours of testimony already given by 4 witnesses for Defendant, Defendant, 3 for the Plaintiffs in this case, and the numerous exhibits. He writes: "After review, the Coiirt finds that the factual allegations of Plaintiff Friedberg's first amended compfaint and intervenor-Plaintiff BEP's petition for writ of mandamus fall to demonstrative a prime facie case for mandamus relief because the matters set forth dp not involve the performance of a purely ministerial act as opposed to a disereti mary one. Shea v. Cochran, 680 So.2d 628 (Fla. 4th DCA 1996). Moreover, for the subject matter involved there exists an alternative remedy at law under Chapter 119. *Id.*" Apparently his predecessor the Hon. Victor L. Hulslander could see none of that, since he speeifically allowed the hmurs of testimony, after he denied Plaintiffs injunctive relief, because they have an adequate remedy at law!

Here, p. 69.

30. *Holcomb v.* Department *of Corrections*, 609 So.2d 751 (Fla. lst DCA 1992): (NOTE: Judge Monaco once again (sic) mis-cited a decision. His Order Dismissihg the Pleadings claims the petitioner was "Holsom." His mistakes in two of three citations he added as an afterthought to his infamous Nov. 3, 2004, hate-filled Order resulted in him holding a sham hearing on motion of this Attorney; he wasted hours of the State's time; the only change he made after that "hearing" attended by a private attorney for the City, as well as this Attorney, was to correct those citations. The Order was republished and City Attorney Marion Radson distributed the "Corrected" version this year. *Holcomb* and *Davis v. State*, 861 So. 1214 (Fla. 2d DCA 2003), wlucb is also cited by Judge Monaco for roughly the same points, are rooted in pro se prisoner and pro se criminal defendant petitioners. *Holcomb* iavariably is cited in pro se prisoner petitions for mandamus arising in prison disciplinary hearings, and would appear to have no factual connection here. Both are cited in *Gilliam* v. *State*, #2D-08-2800 (Fla. 2nd DCA 2008). "If a petition for writ of mandamus does not state a facially sufficient claim for relief, the trial court may dismiss it. See Davis *v. State*, supra, *Holcomb*, supra. However, if a petition for writ of mandamus states a prima facie case for relief, the trial court must issue an 'alternative writ,' see Fla. R. Civ. P. 1.630(d)(3), which is ' "essentially an order to show cause why the requested relief should not be granted."' (citations omitted, including Davis, supra). Accordingly, we reverse and remand for further proceedings, including the issuance of an alternative writ to the clerk of the circuit court to show cause why it is not required to inform Gilham of the cost far him to obtain the transcript he has requested. If the clerk's response raises a valid defense to providing Gilliam with the requested cost, the trial court may deny the petition. Otherwise it shall grant the petition for writ of mandamus and order the clerk to provide Gilliam with the costs associated with his request for transcripts."
Judge Monaco's selection of cases makes clear that he does not contemplate a fee award in this case for the Plaintiffs, indeed there is nothing in his record to indicate his belief that plaintiffs have a right to such fees, e.g. if they prevail in a public records context. Here this Attorney represents a corporation and an individual who already has taken on an enormous finaneial burden, including legal expenses. If one or both Plaintiffs would prevail, this Attorney would be entitled to costs, and fees at a modest hourly rate of $250, far less than the $350 an hour or more paid by the City to private attorneys in Tampa, Miami, Sarasota, to defend Gainesville from people like the Plaintiffs here City Attorney Marion Radson still has not responded to request over the years as to how much the City paid Thomas Gonzalez, Esq., and his law firm in Tampa, for defending in Judge Monaco's court, and on appeal from Judge Monaco's defamatory insnlting opinion about tiris Attorney.
Here, at 70-74.

31. *Rhea v. District Board of Trustees of Santa Fe College, Florida*, 1D11-3049 (Fla 1st DCA July 19, 2012): On the last day of testimony in this mandamus proceeding on July 19, 2012, the First District Court of Appeal reversed an order of this Court entered by the Hon. Victor L. Hulslander; Judge Hulslander had denied Mr. Rhea access to a particular education record of a student whose candid comments had defamed Gainesville's well-known curmudgeon. The First District Court of Appeals quoted Shea v. Cochran, supra, as well as the holding that is germane to this legal action: "(A) person deprived (of access to public records has a right to demand, or a remedy where public officials or agencies may be coerced to perform ministerial duties that they have a clear duty to perform." Town of Manalapan v. Rechler, 674 So.2d 789, 790 (Fla. 4th DCA 1996). For purposes of mandamus relief, a duty or act is ministerial when no room exists for the exercise of discretion and the law directs the required perfbrmance." *Shea* v. *Cochran (supra)*. Applied to the instant case, the law of mandamus required the trial court to determipe whether Rhea has a clear legal right to the unredacted copy of the e-mail and whether the College has a legal duty to provide it to him.....Where purely legal issues of whether a document is a public record and subject to disclosure are involved, we have de novo review (citations omitted). A citizen's access to public records is a fundamental constitutipnal right in Florida. Article I, section 24(a), of the Florida Constitution (the "Sunshine Amendment"), grants:

> [e]very person...the right to inspect or copy any public record made or received in connection with the official business of any body, officer ,or employee of the state, or persons acting on their own behalf.

This "self-executing" right to open records is enforced through the Public Records Law, chapter 119 of the Florida Statutes. It is the dtiry of each agency (footnote omitted) to provide access to such records § 119.01 (1), Fla. Stat. (2009). Consistent with the state's policy of openness and transparency in government, public records are broadly defined....." *Id.*
Here, at p. 75 (*Rhea* is excerpted)

Based on this *Supplemental Authority*, Judge Monaco should step aside forthwith, or Chief Judge Robert Roundtree should remove him, pursuant to the papers filed for the Plaintiffs here for Reconsideration of the Disqualification of the former, and the assignment to him by the Chief Judge, in separate papers. It is time for the Eighth Judicial Circuit to move beyond the protection extended to the likes of Marion Radson, former Eighth Judicial Circuit Bar Association President Stephen N. Bernstein, Dan Nee, the Litigation Attorney married to County Judge Denise Ferrero, another former EJCBA president. The Plaintiffs have a right to the records they have been seeking jointly and severally since January 27, 2012, and May 3, 2012, respectively. It is time for circuit court judges to follow the law, like everyone else must do. /s Gabriel Hillel Kaimowitz.