UNITED STATES DISTRICT COURT
DISTRICT OF NEW JERSEY

Case No. 05-3619(JHR)

Albert W. Florence,

Plaintiff,

-against-

Board of Chosen Freeholders of the County of Burlington; et. al.

Defendants.

REPLY BRIEF SUPPORTING OPPOSITION TO DISCOVERY MOTION POST TERMINATION

July 19, 2013

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BRIEF SUPPORTING OPPOSITION

I. Introduction

Susan Chana Lask, Esq., with her significant experience in civil rights cases, agreed to represent Albert Florence pursuant to the Retainer Agreement. Based upon Florence's promises in a 2005 Retainer Agreement and an amendment thereto dated September 22, 2012, Ms. Lask devoted substantial time, money, and expertise investigating and litigating this complex and highly contested case against two county defendants. Ms. Lask performed this work zealously for over 8 years, including Circuit and United States Supreme Court appeals without receiving any payment, and with the risk that she would collect nothing unless there was a recovery in the case. As a result of her work on Florence's behalf, she obtained a $105,000.00 settlement which was to pay her legal fees as agreed by Florence and some $20,000 to Florence for his 7 days in jail. Research showed the highest similar verdicts and settlements at no more than $1,000 per day and from that attorney fees were taken; meaning, Florence agreeing to some $17-20,000 was more than double of what was customary, and more than the zero recovery he could have received.

Only now after the case has been settled and dismissed with Florence's consent, Florence complains to a Federal Court by a procedurally improper post termination motion for "Production of Documents" complaining that the Retainer Agreement is unenforceable and that there is a fee dispute, using fictions created by William Ribak, Esq. whose real interest is his present *Haas* case in conflict to Florence, which he fears may fail because of the Florence settlement.

The 2005 Retainer[1] excluded legal services for a trial or appeal, specifically stating "1. …This retainer shall not cover a trail (sic) or appeal of any issues herein and is limited to all work up and until a trial., to which if a trial is required then we shall enter into a new retainer to cover trial expenses." It also specifically stated a new agreement would be made with respect to legal

[1] The Retainer is attached as an exhibit to Florence's Certification.

services beyond the scope of the retainer and that fees may be increased pursuant to NJ R. 1:21-7(f) The Retainer Agreement is an enforceable contract, and Ms. Lask's compensation as expressly set forth in the 2005 Retainer Agreement as amended by the 2012 agreement is reasonable, appropriate, and satisfies the standard of Rule 1.5.

II. Law and Argument

A. The Discovery Motion is Procedurally Improper

The proper filing would have been an "Application for Emergent Relief to Reopen Pursuant to *L. Civ. R. 41.1(b)* and for the Court's Determination of Reasonableness of Attorney's Fee Pursuant to *L. Civ. R. 103.1(a)*" (the "Application"). Florence declined to make the procedurally proper application. His present motion is improper and all orders related thereto are void *ab initio*.

B. The Magistrate and this Court Do not Have Jurisdiction to Hear a Post Termination Discovery "Motion for Production of Documents".

i. Magistrate Schneider has No Authority over the Present Motion

Pursuant to 28 U.S.C. § 636(b)(1)(A), a United States Magistrate Judge may "hear and determine any [non-dispositive] pretrial matter pending before the court[.]" 28 U.S.C. §636(b)(1)(A). On March 28, 2013, this case and all causes of action asserted in this matter have been settled, resolved and terminated by order of this Court. Accordingly, the case is not in a "pre-trial" stage nor is the present "Motion for Production of Documents" a pre-trial non-dispositive motion pursuant to 28 U.S.C. § 636(b)(1)(A). Magistrate Schneider does not have authority over Florence's present "Motion for Production of Documents". All orders related thereto after the termination order, including permitting William Ribak to appear on this docket for a post termination dispute, are void *ab initio*. This post termination dispute should be removed from the docket in its entirety.

ii. Ancillary Jurisdiction of The Court Does Not Exist. The "Motion" Is Not Related to a Settlement

This Court does not have ancillary jurisdiction to hear a discovery "Motion for Production of Documents". It is axiomatic that "[f]ederal courts are courts of limited jurisdiction." *Kokkonen v. Guardian Life Ins. Co., 511 U.S. 375, 377, 114 S. Ct. 1673, 128 L. Ed. 2d 391 (1994)*. Federal courts obtain their jurisdictional power from explicit grants by Congress, and from Art. III of the U.S. Constitution. See U.S. Const. art. III; *Ins. Corp. of Ireland, Ltd. v. Compagnie des Bauxites de Guinee, 456 U.S. 694, 701-02, 102 S. Ct. 2099, 72 L. Ed. 2d 492 (1982)*. The Florence case was a civil rights case brought under Federal statute that this Court's March 28, 2013 order terminated

based upon a full and final settlement. The claims over which this Court had original jurisdiction (i.e. the federal 1983 claims) were resolved and dismissed. The existing precedent is "the rule within this Circuit is that once all claims with an independent basis of federal jurisdiction have been dismissed, the case no longer belongs in federal court." *Markowitz v. Northeast Land Co.,* 906 F.2d 100, 106 (3d Cir. 1990);*Lovell Mfg. Corp. v. Export-Import Bank of the United States*, 843 F.2d 725, 734 (3d Cir. 1988). There are no federal issues outstanding that gives this court jurisdiction to hear Florence's discovery motion. There is no Federal statute providing for jurisdiction over fee disputes.

Florence's "motion" demands that this Federal Court resurrect a settled and closed civil rights case because he thinks he may have a private dispute regarding a fee agreement, but he is not sure so he requests documents via his discovery motion? Florence's filing is suspect. Is there a fee dispute or did attorney Ribak once again interfere with the Florence case to use Florence like Tammy Haas complained he did to her to satisfy Ribak's personal agenda to change the Florence settlement to protect his monetary interests for legal fees from the Haas case by removing the Florence settlement as precedent (7/19/13 Lask, Calabro and Brady Certs.)?

Notwithstanding Florence's and Ribak's suspect motives, the Third Circuit holds that ancillary jurisdiction over attorney-client fee disputes is permitted only if the dispute "bear[s] directly upon the ability of the court to dispose of cases before it in a fair matter." *Novinger v. Lesonal-Werke, 809 F.2d 212, 217 (3d Cir. 1987)*. In *Novinger*, the fee dispute issues occurred before the case was conclusively resolved and the clients wanted to substitute new counsel before settlement. To close and settle that case and as part of the court's ability to manage and resolve cases before it, the court intervened to temporarily lift a former attorney's lien on the file documents to settle the case. Here the circumstances are completely different than *Novinger*. There is not an active calendar before this court that it needs to manage. It was after the case was settled and closed that Florence disrupts the Federal court for what might be his private fee dispute.

Consistent with *Novinger* that there is no jurisdiction over fee disputes is *Knoepfler v. The Guardian Life Insurance Co. of America, et al., 2010 U.S. Dist. LEXIS 75918 (DNJ 2010)*. In *Knoepfler* the court refused to hear a contingency fee dispute between the attorney and client after the case settled. *Knoepfler* held Federal courts lack subject matter jurisdiction over fee disputes and that post settlement issues are for the State court. In sum, post settlement fee disputes would directly contravene the Third Circuit's rationale in *Novinger* to permit ancillary jurisdiction when the incidental dispute arose (or was at least noticed) while the underlying action was pending.

Consistent with the rationales of *Novinger* and *Knoepfler* is the April 22, 2013 case of *United States of America et al v. The Cooper Health System, et. al,* 2013 U.S. Dist. Lexis 56809

(DNJ, 4/22/13). The *Cooper* court resolved a contingency fee dispute in a *qui tam* involving a settlement of over twelve million dollars. Specifically, that Settlement Agreement stated that the defendant "Cooper agrees to pay Relator's Counsel, and Relator's Counsel agree to accept as full payment $430,000 for expenses, and attorney's fees and costs in accordance with subsection *3730(d)(1)*." *Id*. Those attorney fees were based upon fee application submissions by plaintiff's counsel. Later the plaintiff complained that his counsel did not deserve the fees he agreed to in a retainer. Not only did the court deny that plaintiff's attempt to void his contingency retainer agreement but it was very specific that the only reason it heard the fee issue was because fees were intrinsically intertwined with the Settlement Agreement, to wit:

> "To the extent that Dr. DePace's Application specifically asserts that the Settlement Agreement supersedes the Contingency Fee Agreement, this Court has jurisdiction to reopen the case. The Court's Order of January 24, 2013, which dismissed the case, stated explicitly that this Court "shall retain jurisdiction over any disputes that may arise regarding compliance with the Settlement Agreement." (Order, January 24, 2013). Whether the terms of the Settlement Agreement obviate Dr. DePace's obligation to comply with the Contingency Fee Agreement **is clearly a dispute "regarding compliance with the Settlement Agreement."(**emphasis added) *Id,* at 9.

Moreover, the Cooper fee issue was requested correctly by a motion as an "Application for Emergent Relief to Reopen Pursuant to *L. Civ. R. 41.1(b)* and for the Court's Determination of Reasonableness of Attorney's Fee Pursuant to *L. Civ. R. 103.1(a)*" (the "Application"). Here not only did Florence decline to file the appropriate motion for relief and instead opted for some sort of discovery motion that does not give this court jurisdiction, but he also has no Settlement Agreement to bootstrap his discovery motion to. The settlement was a simple general release for a sum certain to each defendant that did not specify the court retains jurisdiction nor did it have anything to do with Florence's legal fees to Ms. Lask. That issue was between Florence and his counsel.

Even if Florence raised a settlement issue, which he does not, still this court does not have jurisdiction post settlement. The *Brass Smith, LLC v. RPI Industries, Inc., 827 F. Supp. 2d 377* (DNJ 2011) court refused ancillary jurisdiction to enforce a settlement agreement that had no limitations with respect to how long the court should maintain such jurisdiction and only if it is explicitly stated in a dismissal order with a limit of time. The concern was at some point the court's jurisdiction must end, not be limitless at the whim of the parties. *Brass* found "As the above discussion of the law demonstrates, no rule or statute confers such endless jurisdiction upon a federal court in a private dispute lacking substantial public interest." at 13. Footnote 2 of *Brass* makes clear that Federal Courts typically retain jurisdiction over settlement agreements only when a substantial Federal Interest was involved, such as a charge of racial discrimination before the EEOC (Holland), compliance with the federal Clean Air Act (Delaware Valley), alleged violations of

Fourteenth Amendment equal protection (Jordan), and a Sherman Anti-Trust Act violation (Swift). In the case at bar, the order of dismissal did not explicitly retain jurisdiction over the settlement, no less a fee dispute.

As well, there is no settlement dispute because Ms. Lask was expressly authorized by Florence to settle Burlington and Essex, which she did wholly under the supervision of this Court that assisted with the terms of the releases. Florence tries to deny the Burlington settlement by materially misrepresenting that money was kept from him or not deposited in an IOLTA account but his misrepresentations fail by the e-mails in his exhibits as well as Ms. Lask's exhibits proving for about five months before that settlement he directed Ms. Lask to settle and he executed not one but two releases five months later; one which directed the entire settlement to be paid to Ms. Lask (7/19/13 Lask cert, Exh. D). That was consistent with his agreement, solidified in his September 22, 2012 e-mail (7/19/13 Lask Cert, Exh. C) to pay her something for her 8 years of legal services to the US Supreme Court, and her continued post appellate work-all of which were excluded by the original 2005 retainer. He provides no law denying that settlement because the law in fact supports the settlement considering his e-mails and releases indisputably confirm settlement. ("An attorney may settle a lawsuit on behalf of a client if the attorney has either actual authority (express or implied) or apparent authority.") (citing *Newark Branch, NAACP v. Township of West Orange, N.J.,* 786 F.Supp. 408, 423 (D.N.J. 1992).

C. **Florence's Accusation of Settling Under "Threats" is a Material Misrepresentation**

Florence's certification to this court that Ms. Lask threatened him so he settled, or something to that effect, is unclear what he is trying to undo; however, there were no threats. He conveniently fails to specify how he as a 6'2" sophisticated businessman managing high-end car contracts and making over $200,000 a year while living in a luxury home and driving luxury automobiles who was imprisoned twice was threatened by the 5'4" female Susan Chana Lask who was his counsel for over 8 years in this Court, the Circuit Court and the US Supreme Court. He omits the fact that he was vocal enough to scream at Ms. Lask that she should tell Magistrate Schneider off if this did not settle (7/19/13 Lask Cert.). In *Cintron v. State of NJ,* Civil No. 10-195, Magistrate Schneider's undated decision to document 19 in that case docket denied a similar claim of duress and found that:

> "For a court to find duress, however, the plaintiff must suffer "a degree of constraint or danger, either actually inflicted or threatened and impending, sufficient in severity or in apprehension to overcome the mind or will of a person of ordinary firmness." Rubenstein, 20 N.J. at 365; Smith, 343 N.J. at 499. Where a party claims to have suffered duress in the

> form of moral compulsion or psychological pressure, the pressure must be "so oppressive under given circumstances as to constrain one to do what his free will would refuse." 20 N.J. at 367; 343 N.J. at 499."

Moreso, Florence never expressed reservations about the settlements. His e-mails show he was informed about the amounts and he agreed to them. He also does not dispute that he agreed to the settlements which were simple releases for a sum certain from each defendant. Instead, he claims he was "threatened" but does not explain what gun was held to his head that put him in such danger that he had no free will but to agree to settling.

Magistrate Schneider held in *Cintron* that "Plaintiff presents no evidence of any wrongful act or threat. This appears to be a case of "buyers remorse." However, the fact that plaintiff now has second thoughts or regrets about the settlement does not invalidate the agreement she signed. Plaintiff's second thoughts are entitled to no weight as against the strong public policy in favor of settlements. Jennings, 381 N.J. Super. at 232." The same holds true in the case at bar. Particularly the fact that the 6'2" man Florence in no way was threatened by 5'4" female Ms. Lask who was his counsel for over 8 years right to the US Supreme Court and she explained the settlement terms to him for months before the case settled and closed with his consent (7/19/13 Lask Cert.).

D. **The September 22, 2012 Fee Agreement Between Ms. Lask and Florence is Valid**

Pursuant to RPC 1.2(c) the 2005 retainer with the consent of Florence limited the attorney services to pre-trial work, and specifically excluded a trial or appeal. The Third Circuit holds that the relationship between an attorney and client is contractual. *Kant v. Seton Hall University*, 422 Fed.Appx. 186 (3rd Cir, 2011). District Courts use New Jersey state contract law to resolve contract issues. *Metro. Life Ins. Co. v. Hayes–Green,* No. 07–cv–2492 (WJM), 2008 WL 2119976, at *1 (D.N.J. May 20, 2008), *Erie R.R. Co. v. Tompkins,* 304 U.S. 64, 58 S.Ct. 817, 82 L.Ed. 1188 (1938) (federal diversity cases use state contract laws unless a federal interest is involved). The 2005 retainer and September 22, 2012 e-mail agreement[2] to amend it were contractually and ethically valid.

This Circuit holds that if "the assumptions underlying the original retainer agreement had been materially altered" by unforeseeable developments then the retainer fee can change accordingly. *Gunter v. Ridgewood Energy Corp.*, 223 F.3d 190 (3rd Cir., 2000). The 2005 retainer did not assume multiple summary judgment motions before and after the multiple appeals in this case that Ms. Lask continued to represent Florence in. Accordingly, after 8 years of legal services

[2] An e-mail constitutes a binding contract. *Longo v. First Nat. Mortg. Sources,* 2013 WL 1789554 (3rd Cir., 2013).

and appellate and post-appellate work after the US Supreme Court decision where new summary judgments were filed, continued representation was based on amending the 2005 retainer to compensate Ms. Lask. Florence and Ms. Lask negotiated the 2005 retainer wherein the 2012 amendment unequivocally incorporates it by reference. As well, the September 22, 2012 agreement may stand on its own. Either way, it was fair and reasonable agreement to compensate her somewhat for her 8 years of continued representation and services up to the United states supreme Court and back for Florence which were not assumed by the 2005 retainer, and he was not about to pay her for her services.

A writing must be given a reasonable construction, in accordance with justice and common sense. *GNOC, Corp. v. Director, Div. of Taxation,* 328 *N.J.Super.* 467, 477, 746 A.2d 466 (App.Div.2000) (quotations omitted), *aff'd as modified on other grounds,* 167 *N.J.* 62, 768 A.2d 1051 (2001). Common sense dictates the 2012 agreement was fair after 8 years of appeals and post-appellate work provided for Florence's benefit without any fees paid by him.

The 2012 renegotiated retainer agreement was consistent with *RPC* 1.5(c), to wit:

> "A contingent fee agreement shall be in writing and shall state the method by which the fee is to be determined, including the percentage or percentages that shall accrue to the lawyer in the event of settlement... and other expenses to be deducted from the recovery, and whether such expenses are to be deducted before or after the contingent fee is calculated."

It was also consistent with RPC 1.5 as a reasonable fee as after 8 years to the United States Supreme Court and past that decision when the case was virtually over, Ms. Lask continued representation post appeal and to settlement based on Florence's promise to pay her $45,000 of the Burlington settlement and 60% of whatever Essex settled for. Ms. Lask obtained $60,000 from Essex which without considering disbursements for the past years estimated at $4,000, the basic calculation is 60,000 x 60%= $36,000 from $60,000= $24,000 gross to Florence. Therefrom would be an estimated $4-6,000.00 in disbursements due, leaving Florence with what he and Ms. Lask agreed would be anywhere from $17-20,000 he would pocket. Thus, the motion before this court is all about disbursements of some $4,000 that Florence prevented Ms. Lask from finally accounting because he refused to sign the Essex voucher to obtain the check.

E. Florence Complains of His Own Unclean Hands that Prevented Essex from Disbursing the Settlement He Agreed to and Prevented Ms. Lask to Do a Final Accounting

Pursuant to RPC 1.5(c) "Upon conclusion of a contingent fee matter, the lawyer shall provide the client with a written statement stating the outcome of the matter and, if there is a recovery, showing the remittance to the client and the method of its determination." RPC 1.5(c) does not mandate an accounting before the settlement is received and distributed to the client. In

fact, it states the accounting is done simultaneous to remitting the client's portion clearly so a final accounting can be done to account for all disbursements to the very end. The closing statement is customarily sent once settlement is received and disbursed to the client. The March, 2013 e-mails show Florence authorized a $60,000 settlement (7/19/13 Lask Cert.), then he never appeared to sign Essex' voucher despite numerous requests so settlement could be disbursed per RPC 1.5 . Once disbursed with a closing statement then he could make his fee dispute if it exists, but he will not even let that occur.

F. **Florence Used Ms. Lask to Continue Representing Him Without Being Paid and Settle Based on His Promises to Pay Her, Then Once She Obtained an Extraordinary Settlement for Him He Retained Adversary Counsel Ribak to File False Claims Against Ms. Lask So He Can Renege on His Promises**

The only person that benefitted in this case was Florence. HE received the benefit of legal services for 8 years, including representation in the United states supreme Court, and a more than successful settlement post appellate work. First, 8 years of legal services in this highly contentious case to the United States Supreme Court does not justify a $81,000 in legal fees ($45,000 Burlington fee and 60% from Essex). The Circuit and US Supreme Court case alone is hundreds of thousands of dollars in hours. This District Court case of 8 years alone is millions of dollars in hours. That is justified by the fact that Florence's present counsel takes millions of dollars in legal fees he settles in a matter of a few years of work without appeals. Next, Ms. Lask's research of New Jersey and statewide verdicts and settlements proved these cases average at best $1,000 per day of incarceration, and from that attorney fees are taken.

Some of the cases revealed in the settlement research are Frankie Crane 2010 DNJ Settled at $300,000 less 75,000 attorney fees divided among SIX plaintiffs falsely arrested and falsely charged with an illegal search of their property; Kerry Edwards 2008 DNJ Settled at $327,000 FOR 30 days in Jail sued for false arrest; Esmat Zaklama 2007 DNJ claimed false arrest on a false warrant –0- award—Judge dismissed on SJ; James Quinn 2012 CA Dist Ct in jail 2.5 days and suffered atrial heart problems because they refused his medications. The plaintiff attorney demanded $300,000 attorney fees and received $425,000 total award which attorney fees were to be deducted and the difference there that there was no probable cause to arrest where here there was, also there was serious personal injury suffered where here Florence testified he had no personal injury, not even so much as seeing his general practitioner. As well, Florence could have received zero if the jury heard his underlying circumstances which a recent Camden jury gave zero. Thus, Florence's 7 days in jail at best was worth $7,000-he was receiving more than twice that without deducting attorney fees as he agreed they would be paid from Ms. Lask's settlement efforts.

G. **Florence's Counsel Ribak is Clearly in Conflict With Florence's Best Interests as His Filings are Not Only Patently False but He is Arguing Against Florence by Compelling Quantum Meruitt which Would Defeat Any Remittance to Florence That Ms. Lask More Than Fairly Provided for Him**

If Florence wants to deny his 2012 fee agreement where he receives a substantial settlement better than any other without losing legal fees therefrom as they were negotiated by Ms. Lask above Florence's settlement, and after Ms. Lask worked pursuant to Florence's promises that she would get fees from the settlement she negotiated, then lets proceed to paying Ms. Lask in quantum meruitt per the lodestar method. That way she can calculate her 8 years of service or even her past years worth of legal services and multiply that by her hourly rate. That would encompass the entire Burlington and Essex settlements to be paid to her.

Thus, if this court placates Florence's positions then it would have to permit Ms. Lask to file a motion for counsel fees and costs so the trial court can consider to determine the 'lodestar'--that is, the number of hours reasonably expended multiplied by a reasonable hourly rate--and then determine whether any adjustments to the product are required. *R.M. v. Supreme Court of N.J., 190 N.J. 1, 4, 918 A.2d 7 (2007)*. This Court would have to permit her to file pursuant to *Rule 4:42-9(b)* her affidavit of services addressing the factors enumerated by *R.P.C. 1.5(a)*. *Twp. of W. Orange v. 769 Assocs., LLC, 198 N.J. 529, 542, 969 A.2d 1080 (2009)*. Ms. Lask would submit that she was counsel throughout the 8 years of litigation, familiar with the case and personally reviewed all invoices showing the amount of hours worked and rate billed. *R.P.C. 1.5(a)*, in turn, prescribes that "[a] lawyer's fee shall be reasonable." Among the factors to be considered in determining the reasonableness of a fee are the following:

> (1) the time and labor required, the novelty and difficulty of the questions involved, and the skill requisite to perform the legal service properly;
>
> (2) the likelihood, if apparent to the client, that the acceptance of the particular employment will preclude other employment by the lawyer;
>
> (3) the fee customarily charged in the locality for similar legal services;
>
> (4) the amount involved and the results obtained;
>
> (5) the time limitations imposed by the client or by the circumstances;
>
> [**20] (6) the nature and length of the professional relationship with the client;
>
> (7) the experience, reputation, and ability of the lawyer or lawyers performing the services;
>
> (8) whether the fee is fixed or contingent. [*R.P.C. 1.5(a)(1)-(8)*.]

The list is not exhaustive and all factors will not be relevant in every case. *Twp. of W. Orange, supra, 198 N.J. at 542, 969 A.2d 1080*.

The point here is that the extraordinary amount of work to present 8 years of hours and other submissions for services rendered in this court, the Circuit Court and the United States Supreme Court would take 8 months to organize. To avoid such an extraordinary task which would add insult to injury in this over exhausted case is exactly why it was settled as it was by Ms. Lask reviewing with Florence statewide and nationwide settlements and then coming to an educated agreement with Florence regarding the value of the case and how to obtain some semblance of legal fees for Ms. Lask's services.

G. Florence Fictionalized an IOLTA Issue to Interfere With This Court's Impartiality So It Would Reopen the Case on a Baseless and Procedurally Improper Motion

Only funds belonging to a client must be deposited into a trust account, which would be an IOLTA in New Jersey. Restatement (Third) of the Law Governing Lawyer § 44, cmt. d (2000) ("A lawyer must deposit funds of a client or a third person in an account, usually a trust or client account, separate from the lawyer's own funds"). Florence falsely claims the Burlington settlement should have been deposited in an IOLTA by now mashing up the facts to mislead this court. The e-mails attached to his filing and Ms. Lask's certification prove he agreed that was her money, and the balance of the settlement from Essex was to be a contingency split, not the Burlington settlement. He actually appeared before her bank branch manager to sign the check and deliver it to Ms. Lask so she could be paid per his agreement with her. He confirms he knew there was no need for an IOLTA as the email chain he provides states exactly to Burlington's counsel Brooks DiDonato that Ms. Lask was not using an IOLTA because the funds were her legal fees per her agreement with Florence.

H. This Court Should *Sua Sponte* Sanction Ribak and Florence

This court may not have jurisdiction over Florence's discovery motion but it does retain the "inherent power to protect (its) integrity and prevent abuse of the judicial process." *Perna v. Electronic Data Systems Corp.*, 916 F. Supp. 385 (D.N.J. 1995). Ribak and Florence should be sanctioned for their material misrepresentations of fact and law and held accountable for all legal fees and expenses incurred to oppose their baseless motion. The pursuit of claims using fraudulent documents mocks and threatens our system of justice, undermines confidence in our courts, and unnecessarily expends public funds. Monies are spent for not just attorneys' fees but jurors, judges, judicial staff, and public facilities. Despite the case law and procedure, Florence with counsel

Ribak urges this court to waste judicial resources and numerous counsel to waste their valuable time with a procedurally improper and unsupported motion for what may be a fee issue or to overturn a settlement; nonetheless, completely devoid of logic, facts or law to support him.

Ribak drafted and filed Florence's certification and what he entitled a "Memorandum of Law" that both are conclusory and wholly unsupported of any law. Of the many material misrepresentations, Ribak falsely attributes facts to Michael Calabro, Esq. that never occurred to raise this court's suspicion against Ms. Lask (7/19/13 Calabro Cert.). That alone is a fraud and deserves sanctions by this court. A fraud on the court occurs "where it can be demonstrated, clearly and convincingly, that a party has sentiently set in motion some unconscionable scheme calculated to interfere with the judicial system's ability impartially to adjudicate a matter by improperly influencing the trier or unfairly hampering the presentation of the opposing party's claim or defense." *Ibid.* (quoting *Aoude v. Mobil Oil Corp., 892 F.2d 1115, 1118 (1st Cir.1989)*; *Perna v. Elec. Data Sys. Corp., 916 F. Supp. 388, 397 (D.N.J.1995)*).

Ribak continues the fraud with one material misrepresentation after another as if the RPCs were violated which they were not, or Florence was "threatened" without specifying the threat and omitting the law that does contravenes everything Ribak and Florence claim. He goes as far as to falsify facts and have Florence certify to false facts and falsely accuses Ms. Lask of not depositing money in an IOLTA account which he falsely made that accusation to get this court's attention to hear his baseless "motion"; and it worked. It in fact interfered with this court's ability to impartially handle this case as it was deliberately misinformed of one fiction after another with RPCs and accusations of theft thrown into the mix causing Magistrate Schneider to re-open the case, allow Ribak on the docket and this Court to re-manage this case under the guise of a baseless motion while Defendant Essex was also caused to file a motion. All of which was unnecessary, other than everyone heard that money was missing and Mr. Calabro was deceived by Ms. Lask, which is false. Ribak, an attorney, also deliberately omits the fact that by law an IOLTA is not required.

As if everything else was not deliberate enough, the fact that the "motion" is filed by Ribak who is associated with Poplar is truly deceptive. Poplar has made a new unsuccessful career of falsely accusing plaintiffs' counsel of ethics violations and other things in an attempt to overturn valid settlements despite clear law (*Cooper*, Id.- including at 23-24-this court noted there that Poplar argued similar fee issues without any substantiation or supporting law, and in contravention to existing clear law). This duplicate misconduct of filing baseless motions must be stopped here as it is bad enough once, but twice without informing this court of clear law is sanctionable. More disturbing is Florence as a sophisticated businessman who knows the truth, yet he allowed Ribak to file false submissions and he certified to it under penalty of perjury.

III. **Conclusion**

For the foregoing reasons, it is respectfully requested that this Court dismiss the Motion for production of documents for lack of jurisdiction among the other reasons provided herein. If the Court determines it does have jurisdiction, it is requested that the Court compel Florence to execute the Essex voucher per the settlement so Ms. Lask can deposit it in an IOLTA account to complete her accounting of disbursements and send with the final check to Florence, enforce the terms of the 2005 Retainer Agreement as amended in 2012 and provide fees and disbursements to Ms. Lask for responding to Florence's present unsubstantiated motion. Finally, if this Court does reach the merits, it is respectfully requested that the discovery motion be denied.

Respectfully submitted,

Dated: July 19, 2013 /s Michael V. Calabro

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