

IN THE CIRCUIT COURT OF THE
FIFTEENTH JUDICIAL CIRCUIT IN
AND FOR PALM BEACH COUNTY,
FLORIDA

Family Division

Case No. 501971DR004137XXDIFD

In Re Marriage of
WILLIAM A. CABANA
Petitioner, Former Husband, pro se

and

SHARON ANN MAYO f/k/a
SHARON ANN CABANA
Respondent/Former Wife.

COPY
ORIGINAL RECEIVED FOR FILING

MAR 14 2006

SHARON R. BOCK
CLERK & COMPTROLLER
FAMILY DIVISION

Former Husband's Appendix to Amended Motion For Rehearing
And Motion To Vacate Orders

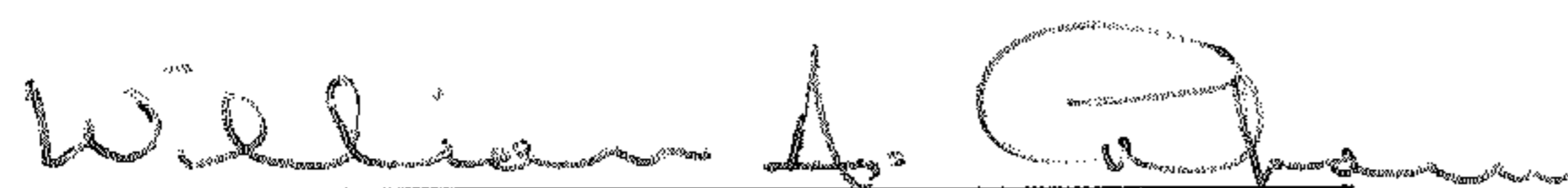
COMES NOW WILLIAM A. CABANA, *pro se*, to submit his appendix to his Amended Motion For Rehearing and Motion to Vacate Orders, which shows this court erred when it concluded the former husband had assets available to him from which to purge.

Opposing counsel's misrepresentation of financials alleged to be the former husband's were in fact not his as the exhibits and oral statements offered the court clearly indicate.

Opposing counsel's circumlocution merely created the illusion that the exhibits offered represented assets available to the former husband when in fact they were not his assets and he did not have access to use them. Examination of the exhibits and the hearing transcript fail to provide the court any evidence of a specific bank account or current balance available to the former husband with which he had/has the ability to purge now or the ability to purge in the future. In support he offers:

1. The appendix consists of excerpts from the trial transcript of the trial held on January 5-6, 2006.
2. Transcript pages numbered 384 to 395 of the appendix consist of the dialogue between the court and opposing counsel where the court was attempting to obtain a specific bank account number and bank balance in order to determine the present ability of Former Husband to pay a contempt purge.
3. In the order filed January 6, 2006, this Court has based its determination of Former Husband's ability to pay on a misrepresentation of evidence supplied by opposing counsel. Contrary to representations by opposing counsel, the transcript shows that no specific bank accounts nor current balances were positively identified to show that Former Husband had a present ability to pay as required for Civil Contempt proceedings.
4. Transcript pages numbered 398 to 399 of the appendix consist of the judge's ruling on Former Wife's deliberate and intentional misrepresentations on her financial affidavit to conceal substantial income and assets, which show her greater ability to pay attorney's fees.

Respectfully submitted,



William A. Cabana, pro se
1050 Capri Isles Blvd., Apt F-105
Venice, FL 34292
Telephone/Fax: 941-480-1395
Email: bcabana2@comcast.net

March 9, 2006

Certificate of Service

I certify that a copy of this Appendix to Amended Motion for Rehearing and Motion to Vacate Orders was faxed and mailed to Cathy L. Kamber, P.A., Attorneys for former wife., 1675 Palm Beach Lakes Boulevard, The Forum, Tower A, Suite 700, West Palm Beach, FL 33401 this 9th day of March, 2006



William A. Cabana, pro se
1050 Capri Isles Blvd., Apt F-105
Venice, FL 34292
Telephone/Fax: 941-480-1395
Email: bcabana2@comcast.net

Appendix to Amended Motion For Rehearing
And Motion To Vacate Orders

1 THE COURT: -- what is the -- no, here's
2 the question I have because this will shorten
3 the time. If I hold Mr. Cabana in contempt for
4 failure to comply with the order because he
5 hasn't shown his nonpayment is not willful,
6 what is the amount of purge of the contempt --

7 MS. KAMBER: Well --

8 THE COURT: -- to which the evidence
9 suggests he has the current ability to pay and
10 the law requires that the source of that
11 payment be identified?

12 MS. KAMBER: Well, I --

13 THE COURT: Give me the dollar amount and
14 the source amount.

15 MS. KAMBER: The dollar amount is the full
16 amount which is a hundred and thirty -- I have
17 to pull the --

18 THE COURT: Well, I'm not finding that as
19 the amount of the arrears so that's okay.

20 MS. KAMBER: Okay. And the sources which
21 the Court can rely on are --

22 THE COURT: Because under the contempt
23 law, I have to be able to say it's -- it is not
24 and could be or was but here it actually is,
25 okay? So I need -- if it's a bank account, you

1 have to say it's a bank account and identify
2 it, and there's a current amount of money. If
3 it's a brokerage account, the same thing. A
4 piece of property, the value. A car, the
5 value. That's the way the contempt law does it
6 on commitment for incarceration purposes.

7 MS. KAMBER: Understood.

8 THE COURT: So tell me that.

9 MS. KAMBER: There is a SouthTrust
10 Securities account.

11 THE COURT: Okay. In whose name?

12 MS. KAMBER: Well, the money came out of
13 his account, a joint account. If it -- if he
14 has -- if it is in someone's name, then it
15 can -- the Court can certainly find that he has
16 control over it. You can't just give your
17 money away and say --

18 THE COURT: But, see, that's not true,
19 because under the civil contempt law, it is --
20 if he had money yesterday and threw it away or
21 bogusly repaid a loan to someone yesterday and
22 no longer has it, that's indirect criminal
23 contempt. You can go to jail for that for up
24 to six months.

25 MS. KAMBER: Respectfully, Your Honor --

1 THE COURT: But that's not civil contempt.

2 MS. KAMBER: -- it is civil contempt. If
3 you have money --

4 THE COURT: Well, I mean, it's contempt
5 but --

6 MS. KAMBER -- and you say to your mom,
7 "Here, mom, hold this for me," okay, and you
8 still have control over that money,
9 respectfully --

10 THE COURT: All right. Well, how much
11 money --

12 MS. KAMBER: -- Your Honor, that's civil
13 contempt.

14 THE COURT: -- how much of his money is in
15 the -- what's the name of the account?

16 MS. KAMBER: SouthTrust Securities.

17 THE COURT: All right. How much of his
18 money is the SouthTrust Securities? Give me a
19 dollar amount that the evidence shows --

20 MS. KAMBER: The evidence shows that
21 \$78,000 was transferred to this account.

22 MR. CABANA: Incorrect.

23 THE COURT: Stop. That's rude.

24 MR. CABANA: I'm sorry.

25 THE COURT: That's rude. That's rude to

1 interrupt someone in closing argument.

2 MR. CABANA: I'm sorry.

3 THE COURT: Go ahead.

4 MS. KAMBER: The evidence shows -- the
5 evidence shows that there's an AmeriTrade
6 Securities account into which he's deposit
7 money. The evidence doesn't show the amount in
8 it.

9 THE COURT: Okay.

10 MS. KAMBER: Okay? The evidence doesn't
11 show the amount in it.

12 THE COURT: Then let's go back to --

13 MS. KAMBER: So rules can be penalized.

14 THE COURT: But that's not the law. The
15 law is how much of his money is in SouthTrust
16 Securities.

17 MS. KAMBER: The evidence doesn't -- the
18 evidence doesn't show that, because he has
19 willfully refused to provide the records.

20 THE COURT: Okay. So tell me --

21 MS. KAMBER: The evidence shows that there
22 is a U.S. Bank account --

23 THE COURT: Okay.

24 MS. KAMBER: -- into which at least
25 \$55,000 has been transferred.

1 THE COURT: And how much is in that U.S.
2 Bank account right now?

3 MS. KAMBER: Well, the only evidence --
4 the only evidence as to that account is that
5 \$55,000 was transferred into it.

6 THE COURT: Okay. And is that account --

7 MS. KAMBER: I'm saying there's no
8 evidence that any of it's been spent. The
9 evidence is that there's fifty-five in it.

10 THE COURT: Is there -- is the U.S -- is
11 that U.S. Bank account in existence now, or is
12 that the one that was closed?

13 MS. KAMBER: No, that's the U.S. Bank
14 account.

15 MR. CABANA: Your Honor --

16 MS. KAMBER: I guess. You know, Judge --

17 THE COURT: Is that the 1101 or the other
18 one --

19 MS. KAMBER: No, no, 1101 is Colonial.

20 THE COURT: Oh, Colonial.

21 MS. KAMBER: Colonial he closed.

22 THE COURT: Okay. So Mr. Cabana has in
23 the U.S. Bank account today \$55,000 --

24 MS. KAMBER: Here's what I'm --

25 THE COURT: -- and that's what the

1 evidence shows?

2 MS. KAMBER: Here's what I'm saying.
3 There has to be at least two U.S. Bank
4 accounts. The PayPal records show -- or excuse
5 me -- the Colonial records show transfers to
6 U.S. Bank starting in the year 2002.
7 Mr. Cabana testified that he has a U.S. Bank
8 account which he produced a statement or a
9 printout from three months.

10 THE COURT: Okay. Give me --

11 MS. KAMBER: That was opened in the
12 summer --

13 THE COURT: Miss Kamber --

14 MS. KAMBER: -- '05. So it's got to be
15 another account.

16 THE COURT: Okay. Give me the account
17 number of the U.S. Bank and the dollar amount
18 that Mr. Cabana has in there that he can take
19 out today by making a phone call from the jail.
20 Give me the account number.

21 MS. KAMBER: According to the PayPal
22 records -- and I can't say if this is the same
23 U.S. Bank. Mr. Cabana knows, and I would ask
24 that he be asked what U.S. Bank it was
25 transferred to.

1 THE COURT: All right. I need the account
2 number that the evidence shows he has money in.

3 MR. CABANA: Your Honor?

4 THE COURT: No. You're not allowed to
5 speak. This is her closing argument.

6 MS. CABANA: She asked that I could be
7 asked, Your Honor.

8 THE COURT: But I'm not asking you.

9 MS. KAMBER: Here it is (indicating). I
10 can't answer that, Judge. The records don't
11 show it. He has --

12 THE COURT: The records don't have an
13 account number?

14 MS. KAMBER: The records that I'm looking
15 at, the records that I'm referring to are the
16 Colonial Bank statements that say transfer to
17 U.S. Bank, and it doesn't have an account
18 number. That's what I'm referring to.

19 THE COURT: Okay. And how much is in the
20 one or two U.S. Bank accounts that Mr. Cabana's
21 name is on that's attributed to him as opposed
22 to his mother that he can utilize today to
23 purge contempt from the jail?

24 MS. KAMBER: Mr. Cabana has never told us
25 about the other U.S. Bank accounts so I can't

1 answer that.

2 THE COURT: Okay. So --

3 MS. KAMBER: The statement that he showed
4 up with today shows a balance -- appears to
5 show a balance of \$403.

6 THE COURT: Four hundred and thirty
7 dollars?

8 MS. KAMBER: Four hundred and three.

9 THE COURT: Three? Okay. All right.
10 Give me any other source, place and a dollar
11 amount of money of Mr. Cabana that he can
12 utilize today to purge contempt.

13 MS. KAMBER: Okay. There were SouthTrust
14 accounts that were put into evidence. Hold on.
15 I'm sorry. I didn't mean to say hold on.
16 There is SouthTrust Bank account number
17 59-022-506.

18 THE COURT: And whose name is that
19 account?

20 MS. KAMBER: William Cabana or Florence
21 Cabana or Jeanette Picard.

22 THE COURT: Okay. And how much of
23 Mr. Cabana's money is in that account that he
24 can utilize today to get out of jail?

25 MS. KAMBER: He's obviously got access to

1 the entire account, and the most recent balance
2 in it, I believe --

3 THE COURT: Well, what does the evidence
4 show of his money went into SouthTrust
5 Securities from any of his transactions?

6 MS. KAMBER: Okay. Here's one for \$2,200
7 that went into that account. Here is
8 SouthTrust Bank account 53-953-190 with a
9 deposit of \$5,000 in it. There is -- there was
10 the \$8,000 deposit, and I'm not coming up with
11 immediately, but this was the account that had
12 the \$8,000 deposit.

13 THE COURT: Well, if you have a current
14 statement that shows an amount of Mr. Cabana's
15 monies, they're in these accounts.

16 MS. KAMBER: Well, Judge, that's
17 impossible. That's an impossibility that
18 you're asking; a current statement that shows
19 how much is his money. It's a joint account.

20 THE COURT: Well, how much is sourced, the
21 evidence suggests, from him? I mean, if he
22 deposits 5,000 and then he spends \$4,900, he
23 would not have \$5,000 of his money in there.

24 MS. KAMBER: Well, he deposited 5,000.
25 Mom spent 4,900 to buy a vehicle. Mr. Cabana

1 says that the vehicle isn't his. So what did
2 he spend? Either he's got a vehicle, or he's
3 got \$5,000.

4 THE COURT: All right. What else?

5 MS. KAMBER: There were \$11,000, a 3,000
6 and an 8,000 deposit.

7 THE COURT: Into what account?

8 MS. KAMBER: You know what? I can tell
9 you that. 53-953- --

10 THE COURT: What's the name of the
11 account?

12 MS. KAMBER: SouthTrust.

13 THE COURT: Okay.

14 MS. KAMBER: 53953190, a deposit of
15 13,000, and it was out of that account that
16 78,000 went to SouthTrust Securities and
17 another 100,000 came out in what appears to be
18 a cash withdrawal. It's on the statement.

19 THE COURT: That's all in SouthTrust
20 Securities?

21 MS. KAMBER: No. Seventy-eight thousand
22 was sent to SouthTrust Securities, and
23 apparently another 100,000 came out for cash or
24 whatever.

25 THE COURT: So there's two SouthTrust

1 Securities accounts ending in 506 and 190.

2 MS. KAMBER: Well, there's more than that,
3 but those two accounts do exist.

4 THE COURT: All right. Go ahead. What
5 else in there?

6 MS. KAMBER: Well, he's got his PayPal
7 account, okay?

8 THE COURT: How much?

9 MS. KAMBER: The present balance I
10 couldn't say. On the most recent statement
11 which is the PayPal -- well, this is back from
12 August. So on here it shows \$391.

13 THE COURT: Go ahead. What else.

14 MS. KAMBER: He testified as to -- I think
15 he had \$900 in another Colonial account. The
16 vehicle.

17 THE COURT: He has a Colonial -- he still
18 has a Colonial account opened?

19 MS. KAMBER: Right.

20 THE COURT: Okay.

21 MS. KAMBER: That's the one that he used
22 for Social Security.

23 THE COURT: Right. Go ahead. The vehicle
24 is not titled in his name though.

25 MS. KAMBER: Well, then he's got the

1 money.

2 THE COURT: All right. Go ahead. What
3 else?

4 MR. CABANA: Objection, Your Honor. You
5 said we only had two minutes to make a --

6 THE COURT: Well, I'm asking her
7 questions, okay?

8 MR. CABANA: Are these dates -- would you
9 please get the dates of which she's quoting --

10 MS. KAMBER: And the trailer.

11 MR. CABANA: -- and the accounting
12 numbers?

13 MS. KAMBER: An RV or what's called a
14 trailer which he gave you a picture.

15 THE COURT: Which he doesn't have anymore.

16 MS. KAMBER: Well, maybe the Court chooses
17 to believe it, and maybe the Court chooses not
18 to believe it.

19 THE COURT: Okay. All right. Go ahead.
20 What else.

21 MS. KAMBER: Okay.

22 THE COURT: All right. What else?

23 MS. KAMBER: I can't give you anything
24 other than that, Judge.

25 THE COURT: Okay. Got it.

1 currently has a full-time job in which she
2 earns between income and -- earned income and
3 interest income and rental income -- enough
4 money to meet her reasonable needs, many of
5 which have been created subsequent to the
6 divorce by investments and other things that
7 she has done properly for herself in order to
8 enhance her financial position.

9 But in looking at what her circumstances
10 are now versus what I was told they were then
11 at the time of the judgment, the former wife's
12 overall financial circumstances are vastly
13 improved as shown in her financial affidavit
14 which is Exhibit No. 2 of the former husband's
15 She has a very valuable single-family home.
16 She has another rental property that's
17 valuable. She has two lots that's valuable
18 and -- but she pays for all four of them.

19 Problematic to the former wife's case was
20 the Court is finding that the former wife
21 deliberately and intentionally undervalued the
22 assets contained on her financial affidavit
23 which is Exhibit No. 2.

24 Now, each and every time that there was an
25 opportunity for the former wife to give

1 truthful evidence concerning the value of a
2 property, the substantial competent evidence
3 showed that the values that she asserted on her
4 financial affidavit were far less than that
5 which was shown to exist through other much
6 more credible, substantial, competent evidence,
7 and that's due to the value of her home, the
8 value of rental property of the value of the
9 lots.

10 She also failed to reveal the existence of
11 bank checking account monies at Goldcoast Trust
12 when they were there in an amount over \$6,000.
13 She puts in her household expenses an \$395
14 payment as an expense of her household when
15 it's clear that although she borrowed on her
16 home, that expense was in order to pay for the
17 cost of a mortgage on other property.

18 The Court finds that the former -- that
19 the totality of the former wife's assets over
20 her liabilities are substantial to the -- as
21 well as her income -- to the extent that she no
22 longer has the need, and it would be
23 inequitable and improper to require the former
24 husband to be paying \$25.00 a week or \$107.50 a
25 month towards her support.