

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.

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SEP 23 2005

SHARON R. BOCK
CLERK & COMPTROLLER
FAMILY DIVISION

Former Husband's Motion to Deny Motion for Sanctions

COMES NOW WILLIAM A. CABANA, *pro se*, respectfully requesting this court deny the former wife's motion for sanctions. When advised by opposing counsel of his non-compliance with Family Rules of Civil Procedure Rule 1.351 (b) and (c). the Former husband immediately complied and noticed opposing counsel and this court of his compliance. In support he offers,

1. A letter dated August 5, 2005, was sent by opposing counsel requesting him to cease sending copies of subpoenas to non-parties. (Exhibit A)
2. On September 16, 2005, Former Husband filed a Certificate of Compliance (Exhibit B) and apology in response. Contained therein was a list of four recipients to whom Notices of Production were sent prior to receipt of Former Wife's letter.

3. On September 16, 2005, Former Husband received a mailed notice of Former Wife's Motion for Sanctions.
4. The subpoena in question is the one of the copies accompanying the Notice of Production to Wachovia Bank – July 27, 2005 (DE 194). It was sent “prior” to receipt of Former Wife's August 5th letter of request. Pursuant to her letter, no subsequent Notices of Production or subpoenas have been sent.
5. In Former Wife's letter she references the one inadvertently sent to BellSouth on August 1st. In Former Husband's Certificate of Compliance, he references four Notices of Production that were sent prior to receipt of her letter. The one to Wachovia Bank was one of the included ones.
6. Former Husband alleges that the statement by Former Wife in paragraph 3, which states “Pursuant to Rule 1.351(b), “ (a) copy....to be served.” is in error and that he has not violated the Rules of Procedure. Nowhere does her quoted reference show up in the rule. In actuality the rule reads as follows:

“(b) Procedure. A party desiring production under this rule shall give notice to every other party of the intent to serve a subpoena under this rule at least 10 days before the subpoena is issued. The proposed subpoena shall be attached to the notice and shall state the time, place, and method for production of the documents or things, and the name and address of the person who is to produce the documents or things, if known, and if not known, a general description sufficient to identify the person or the particular class or group to which the person belongs; shall include a designation of the items to be produced; and shall state that the person who will be asked to produce the documents or things has the right to object to the production under this rule and that the person will not be required to surrender the documents or things. If any party serves an objection to production under this rule within 10 days of service of the notice or the person upon whom the subpoena is to be served documents or things, the documents or things shall not be produced under this rule.”

7. Former Husband denies Former Wife's unsupported allegation of a "surreptitiously furnished copy....to Wachovia Bank" in paragraph 4 in her Motion.
8. In paragraph 4 of Former Wife's motion, she admits that the Notice of Production and copy of subpoena sent to Wachovia Bank was "received" by them on August 4, 2005 even "before" her letter of August 5th. This admission therefore negates her arguments put forth in her motion since it establishes that Former Husband sent no "surreptitious" further notice to Wachovia after receipt of her letter.
9. Former wife has not provided any evidence showing that any further notices were sent subsequent to the ones indicated in the Certificate of Compliance
10. The date items are received or when Former Wife received notification records being furnished as indicated in paragraph 5, do not constitute proof to support an allegation of non-compliance and subsequent Motion for Sanctions.
11. Wachovia response to the "unsigned" copy of the subpoena, inadvertently sent with the Notice of Production, was inappropriate as the subpoena was not a valid document necessary to permit the disclosure of records and they are guilty of contributory negligence in their acts.
12. Records, sent by Wachovia, were those indicated in an "Exhibit A," attached to the subpoena, to be "excluded" from the list of requested items. Those records had already been provided by Former Wife and were in his possession. A letter to this effect was sent to Wachovia legal department. (Exhibit C)
13. Former Husband has addressed the alleged violation in paragraph 6 of the motion, in his Certificate of Compliance, with an acknowledgement of error,

willingness to comply in the future and an apology to the court and opposing counsel.

14. Former Wife's request for attorney fees in paragraph 7 of her motion should be denied as Former Wife has not shown that Former Husband has not complied with her requests not to send any further copies of subpoenas along with Notice of Production to Non-parties and therefore no award of attorney's fees is warranted.
15. Former Wife's request for an "instanter delivery" of records supplied is not possible. Since the documents provided by Wachovia were duplicates of ones already in Former Husband's possession, they were discarded.
16. Former Husband has verified the correct procedure with the Clerk in regards to sending future subpoenas and will not send any under his signature, but will issue them through the Clerk with their authorized signature on them.
17. Former Wife's request in paragraph (c.) of her motion should be denied as is one that would deny Former Husband the right to defend and protect himself in court as allowed by law and which are necessary in light of all the unsupported motions being filed against him. Former Husband objects to this request since it would deny him equal access to justice..
18. Former Husband has shown his past willingness to comply with all requests and directions of this court and to fixed the problem when he learned he was not in compliance with a rule. Any errors that were made were not willful, meant to harass, or be dilatory. They were simply a good faith misunderstanding of the rules.

19. Former Wife has filed 37 motions and notices against Former Husband. Former Husband has filed 50 motions, notices and memorandums of law against Former Wife. In summary:

	<u>Mayo</u>	<u>Cabana</u>
Violation of Rules of Procedure	13	4
Motions for Sanctions	2	0
Primary Motions	9	7
Memorandums of Law	0	6
Answers/Replies	5	23
Notices and Procedural Motions	23	14

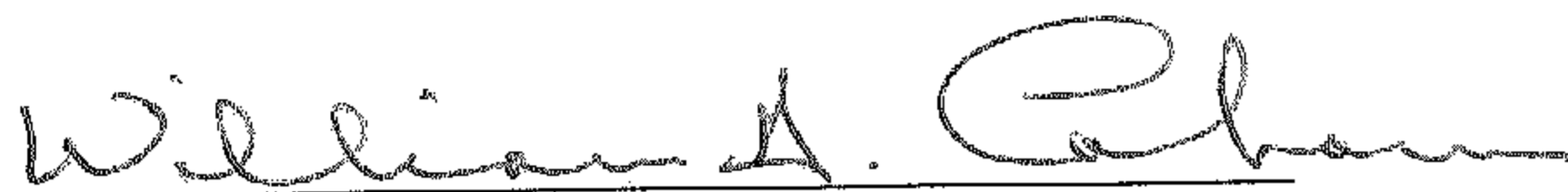
20. Former Husband objects to Former Wife's recent spate of unsupported and frivolous motion filings that apparently are willful, malicious and strictly intended to cause harm and prejudice the court against him.

WHEREFORE WILLIAM A. CABANA prays that the Court take jurisdiction over this matter, enter such orders as are appropriate to expedite consideration of this motion, and adjudicating Former Wife as follows:

1. Deny Former Wife's Motion for Sanctions due lack of evidence for her allegations of non-compliance with her request.
2. Deny Former Wife's request to prohibit Former Husband from filing any further pleadings on a pro se basis.
3. Deny Former Wife's claim for additional attorney's fees.

4. Awarding WILLIAM A. CABANA all costs pursuant to F.S. §86.011 and F.S. §57.041, for the defense of this motion.
5. For such and other relief that may be proper.

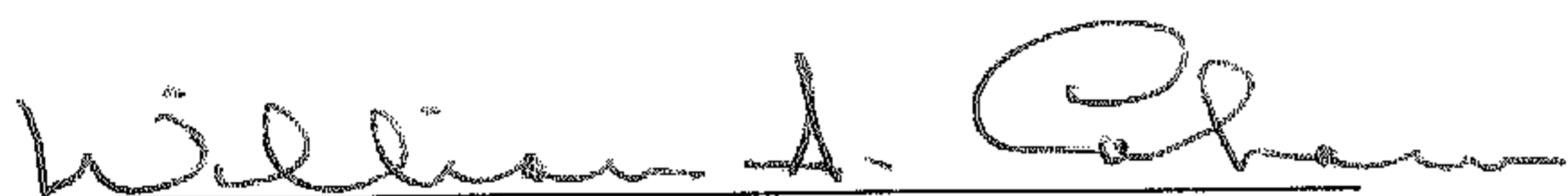
Respectfully submitted,



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

Certificate of Service

I certify that a copy of this Objection To Former Wife's Motion For Sanctions 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 19th day of September, 2005



William A. Cabana, pro se
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CATHY L. KAMBER, P.A.

ATTORNEYS AT LAW
1675 PALM BEACH LAKES BOULEVARD
THE FORUM, TOWER A
SUITE 700
WEST PALM BEACH, FLORIDA 33401

CATHY L. KAMBER
ADMITTED TO PRACTICE IN FLORIDA AND NEW YORK
KENNETH H. RENICK
RETIRED

TELEPHONE
(561) 868-1602
FAX NO.
(561) 868-1544

August 5, 2005

Via Certified Mail

Mr. William A. Cabana
1050 Capri Isles Blvd., #F105
Venice, FL 34292

Re: Former Marriage of Cabana

Dear Mr. Cabana:

I am advised that, contrary to rules, you have furnished to BellSouth a copy of the Notice of Production from Non Party and proposed Subpoena in an improper manner, prior to the expiration of the time for Former Wife to object. Pursuant to the rules, the non parties are not to receive copies of the subpoena or notices until the expiration of the time for objection, and then only in the manner permitted by the rules. You are notified that, upon any subsequent violations of this rule, the appropriate Motion for Sanctions and for Attorney's Fees will be filed.

Very truly yours,

CATHY L. KAMBER, P.A.

By: _____


Cathy L. Kamber

CLK/rlg

cc: Ms. Sharon Mayo

EXHIBIT A

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.

**Former Husband's Certificate Of Compliance With Former Wife's Request
To Cease Sending Copies Of Subpoenas To Non-Parties**

I, WILLIAM A. CABANA, certify that I have complied with the Request to Cease Sending
Copies of Subpoenas to Non-Parties as follows:

1. On August 5, 2005, a letter was sent from opposing counsel and received on approx.
August 8th requesting Former Husband to cease sending copies of subpoenas to non-
parties. Exhibit A
2. Previously, Former Husband had receive copies of the Notice of Production from Non-
party along with a copy of a subpoena sent to his bank and other non-parties by opposing
counsel. He mistakenly thought that it was the correct procedure for sending out a Notice
of Production from Non-party to include the copy of the subpoena with it and did not
check the applicable rules of procedure.

EXHIBIT B

3. Prior to opposing counsel's request, Former Husband had sent Notices of Production with copies of unsigned subpoenas to the non-parties shown below in paragraphs (a.) thru (d.) and dated as indicated on the County Clerk's website docket schedule:

- a. Wachovia Bank, NA – July 27, 2005 (See note below) (DE 194)
- b. Hyman Zacharia – July 27, 2005. (See note below) (DE 193)
- c. Benjamin Malvinni – July 27, 2005 (See note below) (DE 194)
- d. Bell South – August 1, 2005 (DE 198)

Note: due to a typographical error, items a, b. & c. had the Certificate of Service dated May 25, 2005 instead of July 25, 2005.

4. Former Husband admits he was in error in sending copies of the subpoenas to non-parties along with the Notice of Production from Non-party. The error was not willful, meant to harass, or be dilatory. It was a "good faith misunderstanding of the rules" and will not be repeated again now that it has been brought to his attention.
5. Former Husband apologizes to the court and opposing counsel for his error.

I certify that a copy of this Certificate Of Compliance With Former Wife's Request to Cease Sending Copies Of Subpoenas To Non-Parties was mailed to Cathy L. Kamber, Esq., 1675 Palm Beach Lakes Boulevard, The Forum, Tower A, Suite 700, West Palm Beach, FL 33401, this 16th day of September, 2005.



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FILE COPY

August 22, 2005

Wachovia Bank, NA
Legal Order Processing PA4292
Subpoena Dept.
PO Box 7618
Philadelphia, PA 19101-7618

Re: #74962

Attn: Kelly Murray

Dear Ms Murray:

For the above referenced subpoena, the request was for records "exclusive" of the ones you sent. We already have the ones sent and needed the others. A sampling of these have been attached. Please verify this with the attached exhibit for a list of what was originally requested in the subpoena. Since the incorrect records were sent, the invoice for research and or summons expenses will be disallowed and not paid.

Due to a situation that has arisen with the court case that has put things temporary in abeyance, please hold off on resending the correct items requested until further notice from me.

Sincerely,

William A. Cabana

William A. Cabana

EXHIBIT C