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SHARON R. BOCK
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FAMILY DIVISION

**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 Motion For Rehearing

COMES NOW WILLIAM A. CABANA, *pro se*, pursuant to F. R. Civ. P Rule 1.530 respectfully moves the Court vacate its order of September 28, 2005, by the Honorable Martin Colin and to grant a rehearing on the basis that Former Husband had complied with opposing counsel's request not to send copies of subpoenas. The error was a good faith error of a pro se litigant and not meant to harass or be dilatory, and opposing counsel herself moved with unclean hands because of numerous rules violations herself and therefore sanctions were not appropriate.

The Petitioner was not permitted to offer his counter arguments of good faith error, *pro se* litigant and movant with unclean hands at the hearing on the motion.

In support he offers:

1. This court has sanctioned Former Husband, for a good faith error of a pro se litigant, for an alleged and unsupported violation of a rule while ignoring opposing counsel's numerous violations of the rules of procedure. (Exhibit A)
2. In summary of violations of the rules:

	<u>Former Wife</u>	<u>Former Husband</u>
Violation of Rules of Procedure	14	4
Motions for Sanctions	2	0

3. A letter dated August 5, 2005, was sent by opposing counsel requesting him to cease sending copies of subpoenas to non-parties. (Exhibit B)
4. On September 16, 2005, Former Husband filed a Certificate of Compliance and apology in response. (Exhibit C) (DE 255) Contained therein was a list of four recipients to whom Notices of Production were sent prior to receipt of Former Wife's letter.
5. On September 16, 2005, Former Husband received a mailed notice of Former Wife's Motion for Sanctions. (DE 247)
6. 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.
7. 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.
8. Former Husband denies Former Wife's unsupported allegation of a “surreptitiously furnished copy....to Wachovia Bank” in paragraph 4 in her Motion. The copy is one of the ones listed in the Notice of Compliance.
9. 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.

10. Former Wife has not provided any evidence showing that any further notices were sent subsequent to the ones indicated in the Certificate of Compliance. Since Former Husband was in compliance with the letter of request, the Motion for Sanctions should never have been filed.
11. This Court should recognize that WILLIAM A. CABANA is a *pro se* litigant and that there should be “special care with which pro se litigants must be treated [because they] occupy a position significantly different from that of litigants represented by counsel.” Somerville v. Hall, 2 F.3d 1563, 1564 (11th Cir. 1993) and Johnson v. Pullman, 845 F.2d 911, 914 (11th Cir. 1988).

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. Vacate the Court Order of September 28, 2005 and enter a new order.
2. In regard to Ms. Mayo’s request for attorney’s fees in these proceedings, Former Husband would like to make reference to Rubin v. Rubin, 204 Conn. 224, 527 A.2d 1184 (1987). In order to do so, he would need to have the ability to pay. He does not have the ability to pay. Therefore, he submits that her request be denied.
3. Awarding WILLIAM A. CABANA all costs pursuant to Fla. Sta. §86.011, §57.041, §57.105 and other applicable law for the defense of this motion.

4. 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

October 6, 2005

Certificate of Service

I certify that a copy of this Motion for Rehearing was 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 6th day of October, 2005



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Exhibit A

Procedural Violations by Opposing Counsel

1. 09/14/05 - (DE 248) – Amended Notice of Hearing to be held on September 14th:
 - a. Violation of Fla. R. Civ. P. 1.090 (d) and (e) for not giving a reasonable time for response.
2. 09/14/05 – (DE 247) - Motion for Sanctions:
 - a. False claims of former husband violating Fla. R. Civ. P. Rule 1.351 (b) and (c) by sending out copy of subpoena with notice of production to non-party.
3. 09/08/05 (DE 244) - Former Wife's Response to Former Husband's Request to Produce: Wachovia Subpoena.
 - a. Violations of Fla. R. Civ. P. Rule 1.380. Failure to comply and gave false statement of providing copy of subpoena and sent a Re-notice of Deposition instead.
 - b. Evidence not produced as requested. False statement of having no list.
 - c. Violation of Fla. R. Civ. P. Rule 1.351 (b) Procedure. Violation in not sending out a valid subpoena.
4. 08/18/05 – (DE 217) - Emergency Motion for Injunction, Sanctions and Other Relief:
 - a. Violation of Fla. R. Civ. P. 1.610 Injunctions with false claim of complying with the rule.
5. 08/18/05 - Mayo's Proposed Court Order For Temporary Injunction:
 - a. Violation of Fla. R. Civ. P. 1.610 Injunctions with false claim of complying with it.
6. 08/04/05 - (DE 203) - Mayo's Notice of Taking Deposition Duces Tecum – Paypal:
 - a. Violation of Fla. Stat. 92.605 (2)(a). Lack of mandatory clause on first page of subpoena.
7. 08/04/05 – (DE 201) - Mayo's Notice of Taking Deposition Duces Tecum - Wachovia Securities:
 - a. Violation of Fla. Stat. 92.605 (2)(a). Lack of mandatory clause on first page of subpoena.
8. 08/04/05 – (DE 202) - Mayo's Notice of Taking Deposition Duces Tecum - Colonial Bank:
 - a. Violation of Fla. Stat. 92.605 (2)(a). Lack of mandatory clause on first page of subpoena.
9. 07/25/05 – (DE 184) - Mayo's Notice of Production from Non-Party – Paypal:
 - a. Violation of Fla. Stat. 92.605 (2)(a). Lack of mandatory clause on first page of subpoena.

10. 07/25/05 – (DE 185) - Mayo's Notice of Production from Non-Party - Wachovia Securities:
 - a. Violation of Fla. Stat. 92.605 (2)(a). Lack of mandatory clause on first page of subpoena.
11. 07/25/05 – (DE 186) - Mayo's Notice of Production from Non-Party – Colonial Bank:
 - a. Violation of Fla. Stat. 92.605 (2)(a). Lack of mandatory clause on first page of subpoena.
12. 06/20/05 - (DE 160) - Mayo's Re-notice of Taking Deposition Duces Tecum:
 - a. Violation of Fla. R. Civ. P. Rule 1.351 (b) by not issuing a subpoena indicating date and time of the deposition.
13. 06/06/05 – (DE 146) - Mayo's Notice of Taking Deposition of Duces Tecum - SouthTrust Bank:
 - a. Violation of Fla. Stat. 92.605 (2)(a). Lack of mandatory clause on first page of subpoena.
14. 04/27/05 - Mayo's Notice of Production from Non-party - SouthTrust Bank:
 - a. Violation of Fla. Stat. 92.605 (2)(a). Lack of mandatory clause on first page of subpoena.

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 B

IN THE CIRCUIT COURT OF THE
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Respondent, Former Wife

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SEP 21 2005

SHARON R. BOCK
CLERK & COMPTROLLER
FAMILY DIVISION

**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 C


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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