

**IN THE CIRCUIT COURT OF THE
FIFTEENTH JUDICIAL CIRCUIT IN
AND FOR PALM BEACH COUNTY,
FLORIDA**
Family Division
Case No. 501971 DR004137XXDIFD

**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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**Motion Objecting To Court Orders Granting Former Wife's
Request For Attorney Fees**

“There, we adhered fervently to the axiom that this Court is "'bound' to construe constitutional rights, which 'operate in favor of the individual, against government,' so as to 'achieve the primary goal of individual freedom and autonomy.'" N. Fla. Women's Health & Counseling Servs., 866 So. 2d at 647 (Pariente, J., specially concurring).

COMES NOW WILLIAM A. CABANA, pro se, respectfully objecting to the Court Orders Granting Former Wife's Request For Attorney Fees. In support he offers,

1. On June 17, 2005, Former Wife filed a Re-notice of Taking Deposition Duces Tecum.
2. On June 22, 2005, Former Husband filed a Motion in Opposition to Deposition and Discovery.
3. At a hearing before this Honorable Court on July 5, 2005, Former Husband's Motion In Opposition To The Deposition And Discovery order was labeled as frivolous and a court order was issued to pay opposing counsel the sum of \$412.50 attorney's fees.

4. On August 1, 2005, Former Wife filed Notice of Taking Deposition Duces Tecum from three separate non-parties.

5. On August 4, 2005, Former Husband filed a Motion in Opposition to Taking of Deposition Duces Tecum and Motion for Protective Order.

6. At a hearing before this Honorable Court on August 10, 2005, Former Husband's motion in opposition to the deposition and asking for the protective order was labeled as frivolous and a court order was issued to pay opposing counsel the sum of \$450 attorney's fees.

7. Opposing counsel drafted the August 10th order and submitted it to the court for signature. In the order so drafted, opposing counsel made the statement "Former Husband agrees that there is no legal basis for this motion."

That statement was never made. There is no record to indicate otherwise.

8. Former Husband's motions were proper and in order and cannot be considered frivolous. It is colorable and arguable based on the legal arguments raised in the motions to deny, i.e. the alimony statutes infringe the FL Constitution Right of Privacy.

9. William Cabana has been waiting over 8 months to have his declaratory judgment motion challenging the constitutionality of the alimony statute heard by this court. He has called this Honorable Court's office over 4 times to attempt to have it grant him possible dates for a hearing. This court abused discretion by granting an award of attorney fees and costs prior to hearing the declaratory judgment motion and ruling on it.

10. It is an abuse of discretion to set the deposition and discovery without a court ruling on the facial and as applied constitutionality of the Chapter 61 and Family Rules of Procedure relating to discovery of personal financial information 33 years after entrance

of a dissolution of marriage judgment without a demonstrated need for support by the party requesting discovery.

11. The alimony statute 61.08 and its associated enforcement and discovery provisions are violative and impermissibly infringe on the Florida Constitution Article I sec. 23 Right to Privacy and Article II Sec. 3 Separation of Powers pursuant to Bush v. Schiavo, Florida Supreme Court, case no. SC04-925 (9/23/2004), Sims v. State, 754 So. 2d 657, 668 (Fla. 2000). "The Court in Chiles v. State Employees Attys. Guild, 734 So. 2d 1030 (Fla. 1999), explained that Florida's *right of privacy is a fundamental right* warranting "strict" scrutiny. A legislative act impinging on this right is presumptively unconstitutional unless proved valid by the State.

12. Former Husband is acting pro se and all of his motions presented are done in good faith to change existing law and with a conscientious effort to defend himself according to the laws of this State and in support of his Constitutional rights. All the motions are supported with established supporting case law in defense of his motions. The motions to deny and object are not meant to harass or be in anyway dilatory. They are sincere efforts to bring before this court an awareness of law that is colorable but not yet ruled upon.

13. According to "A National Conference on Pro Se Litigation Florida Team Report" sponsored by the Office of the State Courts Administrator of the Florida Supreme Court, January 3, 2000, it says that "pro se litigants are the symptoms of a lack of access to justice, the seeds of future revolution." "The adversarial system has erected barriers to self-represented persons making informed decisions. Courts should protect pro se litigants against the consequences of procedural and technical errors. Where the rules

frustrate the goal of achieving fairness and justice, the rules should be modified.” “The notion of fairness and impartiality should compel courts to assist pro ses, rather than prevent it.”

14. 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) and must be given the same opportunity for justice from this court. Therefore his filing of The Motions in Opposition to Depositions should not be considered as being frivolous when they raise colorable issues and are a good faith effort to change existing law.

15. Former Husband declares that the motions were not frivolous for the following reasons:

a. Fernandez v. Fernandez, 710 So. 2d 223 (Fla. App. 2 Dist.) wherein the second circuit court certified to the Florida Supreme Court the question of the application of the Connor v, Southwest ruling to the context of alimony. Such certification indicates a highly justifiable legal argument that survives an attack that a constitutional challenge to the validity of the alimony statutes is frivolous.

b. Lawrence v. Texas, 539 U.S. 558 (2003)) which in light of the U.S. Supreme Court ruling in Bowers v. Hardwick should have been considered frivolous at each step of the proceedings through state court and even at the U.S. Supreme Court yet was ruled a good faith effort to change existing law and did so.

16. To declare Former Husband's motions as frivolous based on Barna v. Barna, CD00-534 FZ, 15th Judicial Circuit Court of Florida, 2003 is inaccurate. Barna v. Barna in the circuit court and the district court of appeals were wrongly decided and must not be relied upon as precedential or persuasive. The legal arguments offered there were not frivolous for the following 3 reasons.

a. One part of F.S. Chapter 61 had already been declared unconstitutional as it impermissibly infringed on the Fl Con Art. I Sec 23 Right of Privacy, Richardson v. Richardson, 734 So. 2d 1063 (Fla. 1st DCA 1999). Because one part was already declared unconstitutional as violating the right of privacy...it is not frivolous to consider another part as also violating the right of privacy.

b. Divorce has been recognized as entitled to the protections of the Federal Right of Privacy

c. Littlejohn v. Rose, 768 F.2d 765 (6th Cir. 1985). Where Littlejohn says...

"...it is clear that among the decisions that an individual may make without unjustified government interference are personal decisions relating to marriage..." Carey v. Population Serv. Int'l, 431 U.S. 678, 684-685 (1977)

The Court has "routinely categorized [these matters] as among the personal decisions protected by the right to privacy [and, in addition] has long recognized that freedom of personal choice in matters of marriage and family life is one of the liberties protected by the Due Process Clause of the Fourteenth Amendment." Zablocki v. Redhail,

"The Supreme Court has established broad protection for matters relating to the marital relationship including the availability of due process in seeking adjustments to the marital relationship. Boddie v. Connecticut,.... Given the 'associational interests that surround the establishment and dissolution of [the marital] relationship', such 'adjustments' as divorce and separation are naturally included within the umbrella of protection accorded to the right of privacy. See Zablocki, 434 U.S. at 385; U.S. v. Kras, 409 U.S. 434, 444, (1975)"

Those cases coupled with the judicial analysis mandated in North Fla. Women's Health & Counseling Servs., Inc. v. State, 866 So. 2d 612, 635 (Fla. 2003) place the argument on solid ground.

17. Former Husband is making a good faith effort to change existing law predicated on Connor v. Southwest Florida Regional Medical Center, Inc., 668 So. 2d 175 (Fla. 1995) (making parties in a marriage economic independents) (see Memorandum of Law in Support of Motion to Deny Contempt and for Termination of Alimony Plus Motion to Object to Request for Production... filed April 30, 2005)

18. In previous motions, Former Wife has been shown to have unclean hands for material misrepresentation of her financial records. Having unclean hands prevents her from obtaining equitable relief or a grant of attorney fees.

19. Former Husband has filed a recent financial affidavit on June 9, 2005 indicating his limited income, liabilities and lack of assets and has complied with all orders of this court to produce financial records indicating his financial status and inability to pay, i.e. he has income below the United States Department of Health and Human Services 2004 poverty income level for a single person.

20. The hardship of Former Husband's financial situation is significant and precludes him from paying any legal expenses of his Former Wife. The cost of defending himself on a pro se basis in actions brought against him by Former Wife has placed an additional financial hardship upon him that is driving him deeper in debt.

21. The two orders issued by this Honorable Court to pay the attorney fees are defective according to Messana v. Seaside Community Development Corp Case No. 1D04-3270 (1st DCA Aug. 5, 2005) which states:

“The trial court’s order awarding attorney’s fees is deficient because it did not set forth specific findings regarding the attorney’s hourly rate, the number of hours reasonably expended, and the appropriateness of reduction or enhancement factors. *Florida Patient’s Compensation Fund v. Rowe*, 472 So. 2d 1145 (Fla. 1985); *Teat v. City of Apalachicola*, 880 So. 2d 819, 820 (Fla. 1st DCA 2004).”

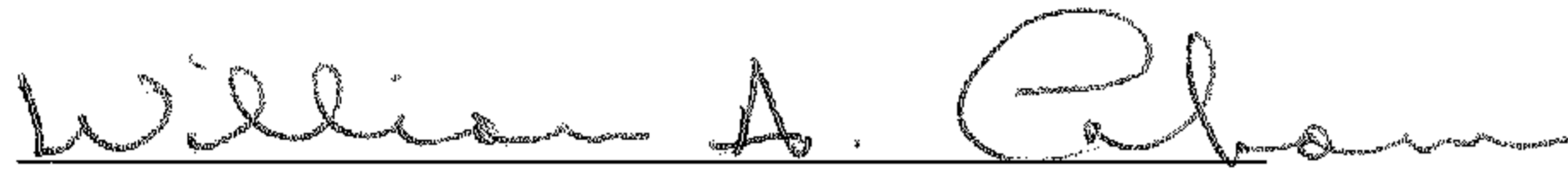
Opposing counsel has failed to provide any testimony or evidence as to the reasonableness of any hourly rate or the amount of time spent.

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. 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 Former Wife’s request be denied.
2. Former Wife’s material misrepresentation of her financial records represents unclean hands conduct such that her motions must be denied and her claims for attorney fees be denied.
3. Vacating the orders of July 5, 2005 and August 10, 2005 to pay attorney’s fees on the grounds that this courts declaring Former Husband’s motion in opposition to the deposition and discovery as a frivolous motion was in error.
4. Vacating the orders of July 5, 2005 and August 10, 2005 to pay attorney’s fees on the grounds that this court’s orders were defective.

5. Awarding WILLIAM A. CABANA all costs pursuant to F.S. §57.105, §86.011 and a reasonable attorneys' fee for the prosecution of this action pursuant to, 42 U.S.C. 1988 and Florida common law.

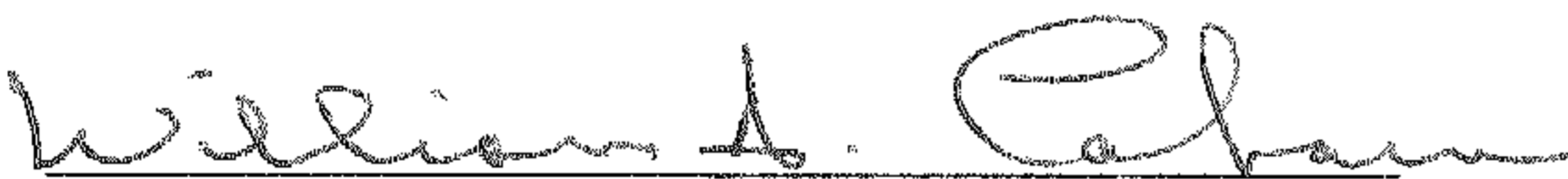
Respectfully submitted,



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Certificate of Service

I certify that a copy of this request for a Motion Objecting To Court Orders Granting Former Wife's Request For Attorney Fees 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 22nd day of August, 2005



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