

9 June 05

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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**FORMER HUSBAND'S MOTION TO DENY FORMER WIFE'S:
AMENDED MOTION FOR CONTEMPT
NOTICE OF INTENT TO USE SUMMARIES AND COMPILATIONS
MOTION TO DISMISS SUPPLEMENTAL PETITION FOR MODIFICATION
NOTICE OF PRODUCTION FROM NON-PARTY
MOTION TO STRIKE CONTEMPT DEFENSES
MOTION TO COMPEL PRODUCTION, INTERROGATORIES AND
FINANCIAL AFFIDAVIT
And In Addition
FORMER HUSBAND'S MOTION FOR CHANGE OF VENUE**

COMES NOW the Former Husband, WILLIAM A. CABANA, pro se to request
Former Wife's motions, based on her unclean hands, and by her current attorney and the
discovery sections of Chapter 61 "Dissolution of Marriage" statute as impermissibly
infringing the Florida Constitutional Article I Section 23 Right to Privacy.

Demonstrated need for support has become the paramount measure of alimony
awards, coupled with ability to pay. Hillier v. Iglesias, Case No. 4D04-4204 (4th DCA
May 4, 2005) Chief Judge Farmer concurring specially (*"Even if she had a need for*

alimony when the marriage was dissolved, it is obvious that she no longer does."). This court cannot determine need when the former wife misrepresents her financial status.

Former Husband's repeated requirement to appear for frequent hearings (three hearings between May 24, 2005 and June 9, 2005) in West Palm Beach, FL has forced him to incur severe financial expenses. Former husband requests a change of venue to Venice Florida where he lives.

In support he offers,

UNCLEAN HANDS--FORMER WIFE

1. On May 2, 2003, Former Husband served Supplemental Petition for Modification of Alimony along with his Financial Affidavit.
2. On August 13, 2003 Former Wife filed Certificate of Mandatory Compliance and provided a financial affidavit dated August 15, 2003 along with copies of income tax returns, bank statements, credit card statements, loans, etc. (See Exhibit A)
3. The requirement for information requested by the interrogatories is for 3 years. With the exception of the Federal Income Tax Returns for 2000, 2001 and 2002, Former Wife did not comply with this requirement and only supplied partial data for periods of time ranging from 3 to 6 months on some of the items.
4. Based on information reported in the Former Wife's financial affidavit, it shows glaring discrepancies of many items between what was reported on the financial affidavit and what exists in reality.
5. The following are typical examples:
 - a. The value of her 2684 square foot residence at 220 Almeria Rd. is shown in the 2003 financial affidavit as valued at \$187,500 (Sec. III, A. Real Estate on

the financial affidavit) while the Palm Beach Property Appraiser's value for that same year is \$381,565 (See Exhibit B). The 1799 square foot investment property house at 4401 Saturn Rd. (Same Sec.) is shown on her affidavit, as \$69,562 while the Appraiser's value is \$83,401 (See Exhibit C). The difference between the reported values of \$257,062 and the appraised values total of \$464,966 for 2003 is \$207,904.

- b. The residence on Almeria Rd. apparently has a garage apartment that is rented for \$83.00/mo. (Sec. I, 11. on the financial affidavit). An arms-length rental transaction in the current rental market would not appear to justify such a below market rental rate such as indicated.
- c. While Former Wife shows expenses of \$952/mo. (\$11,496/yr - Item G on the financial affidavit) for the investment property on Saturn Rd., there is no reported income shown for it shown on the financial affidavit. Yet on her 2002 income tax return (see Exhibit D), she shows income of \$3,307/yr. (\$275/mo. for an 1799 square foot house) with \$11,518/yr (\$960/mo) in expenses. This too is an apparent under-market rent. On her 2001 tax return (see Exhibit E), she showed an income of \$6720 for this same property. Apparently, her Father was residing there (see Exhibit P). It appears she is hiding and possibly under-reporting income in this instance.
- d. On the Financial Affidavit, under Liabilities (Sec. III, B. on the financial affidavit), is shown an entry for supplies and labor owed for repairs of \$5,532 for the Almeria Rd. property and \$8,598 for the Saturn Rd. property. No supporting documentation evidence of the liability or was provided showing a

list all repairs, date of repair, party performing repair with business addresses and phone numbers and dollar amount and item repaired. It is normally customary for all sub-contracted work to be paid in full upon completion of the work. The 2002 tax return (Exhibit D) shows only \$5,105 for repairs as compared with the \$5,532 reported owing on her affidavit. Apparently, she is not only inflating her repair expenses by over-reporting but is mixing up normal everyday repairs for minor items with replacement items, which should be amortized over a longer period of time, in order to show a higher rate of expenses.

- e. Former Wife indicates that she has a one-fifth ownership of a 2 ½ acre parcel of land in Okeechobee with a value of \$8,000 (Sec. III, A. on the financial affidavit). Records from the Okeechobee Property Appraiser (see Exhibit F) show ownership in her name alone with a 2003 appraised value of \$12,000 (\$5,375 + \$6,625).
- f. Former Wife omitted the fact that she has a trustee interest (see Exhibit G) in her parents home located at 12520 N.W. 17th Ave. in Miami, FL.
- g. Former wife shows ownership of a home and garage apartment on Almeria Rd. and a rental house on Saturn Rd. In her affidavit, she shows a total for household furnishings for all three units in the amount of \$900 (Section III, A. on the financial affidavit). This does not appear to be consistent with ownership in houses valued at \$464,966 and appears to be an undervaluation in assets. No supporting data was supplied.

- h. A personal loan secured by the Almeria property was made by Former Wife with the Gold Coast Federal Credit Union (see Exhibit H) in the amount of \$50,000 on Jan. 15, 2003. Nowhere do the proceeds from this loan show up in any accounts she is reporting. Yet, the re-payment of the personal loan in the amount of \$395.50 shows up on the financial affidavit as a mortgage on her home (Sec. III, A. on the financial affidavit). In effect, she is showing expenses for a personal loan but not the assets to offset it or account for its disbursement. She received funds on Jan 13, 2004. Her bank account statement of Jan.28 thru Feb. 25, 2005 only indicated an opening balance of \$9,579.60 (see Exhibit I). Note: Bank statements from the Wachovia Bank were submitted for only 6 months, the periods of Jan. 28, thru June 25, 2003, and only partial statements for each month were provided.
- i. Former Wife's bank account shows deposits of unaccounted-for large amounts of money, exclusive of her payroll deposits, ranging to over \$3,000 for a single deposit. The deposits (15 deposits over a 6 month period) amounted to a total of \$20,820 (see Exhibit I). Nowhere does this show up in the financial affidavit. The source of these funds is unidentified on the bank records other than as a deposit (sometimes with cash back which indicates a check) or counter deposit.
- j. From the credit card statements (of which only 3 months were provided. See Exhibit J with indicating numbers 1 and 3 penciled in.), purchase were recorded at Home Depot and Lowe's in the amount of \$2,681 or \$894 per month average, yet on her financial affidavit (Sec. II, A. on the financial

affidavit) she reports expenses of \$461/mo (\$5,532/yr). Apparently, she is doing the work herself and then reporting it as a liability with debts outstanding for repairs.

- k. Former Wife is operating a business under the unrecorded fictitious name of Cleaning Sherry (see Exhibit K) with a listing in the phone book of her address and a phone number, which is the same as the one indicated on her income tax report. This business apparently has been in operation for a minimum of 2 years and possibly longer. On the financial affidavit, Sec. III, 3., which asks for income from sources such as self-employment, it is blank with no income reported.
 - l. From the credit card statements (of which only 3 months were provided. See Exhibit J, items numbered 2 penciled in), meals outside home were \$218 over a 3 mo. period which equals \$72 per month actual. On the financial affidavit (section II. A.) Former Wife shows \$15 per month. No explanation was provided for the under-reporting other than to apparently appear less affluent.
 - m. Former Wife's financial affidavit shows a value for her '91 Toyota of \$1,025. NADA & Kelly Blue book shows a value range of \$2,525 to \$3,005 (see Exhibit L).
6. On the financial statement, Former Wife includes income and expenses from investment property. These amounts should not be computed in determining the necessary basic needs to support her. Former Husband should not have to bear the burden of investments on her behalf. However, they should be computed in computing alimony payments that should be being made to Former Husband.

7. On Former Wife's Financial Affidavit, which she had signed and notarized, there is a statement at the end of the form that states: "I understand that I am swearing or affirming under oath to the truthfulness of the claims made in this affidavit and that the punishment for knowingly making a false statement **"includes fines and/or imprisonment."**"

8. Since it has been shown that there were not one but many instances of inaccurate data, it can be concluded that her actions were deliberately done with an intent to misrepresent information to the court in order to materially understate her financial status. It is apparent that Former Wife did not supply complete records as required in order to hide her true financial status.

10. In Former Wife's Motion To Strike dated May 17, 2005 and her Former Wife's Amended Motion for Contempt dated April 20, 2004, Former Wife is inaccurately reporting that Former Husband is in arrears for child-support. All arrearages for child support were long since paid prior to these motions and are a matter of record with the court (see Exhibit O).

11. In her filing of Notice of Intent to Use Summaries and Compilations dated April 5, 2004, Former Wife apparently has used a CPA to create a schedule of amounts owing for alimony that are in disagreement with the State agency responsible for the collections and accounting of support payments computations. The CPA provided schedule for October 31, 2001 shows an erroneous amount owing of \$80,782 (see Exhibit M) while a letter from the Clerk of Court that was filed with the court November 1, 2002 shows an actual outstanding balance of \$9,843.31 (see Exhibit N).

6. Former Wife's intent to deliberately misrepresent her financial affidavit with many erroneous entries represents unclean hands conduct such that her motions must be denied and her claim for attorney fees be denied.

7. In regard to Ms. Mayo's request for attorney's fees in these proceedings, I would like to make reference to *Rubin v. Rubin*, 204 Conn. 224, 527 A.2d 1184 (1987). In order to do so, I would need to have the ability to pay. I do not have the ability to pay. Therefore, I submit that all of her requests in all the motions she has filed or will file be denied.

UNCLEAN HANDS---ATTORNEY KAMBER

8. Former Wife's Attorney's Notice of Hearing contains the statement that she attempted to resolve this matter prior to this hearing. This is a misrepresentation. The former husband never received any form of communication from Attorney Kamber as an attempt to resolve this issue. The representation to this court never happened.

9. Attorney Kamber knowingly participated in an ex parte hearing before The Honorable Edward A. Garrison on May 24, 2005 with no urgency for the hearing.

**"DISSOLUTION OF MARRIAGE' STATUTE ALIMONY AND DISCOVERY
PROVISIONS IMPERMISSIBLY INFRINGE THE FLORIDA CONSTITUTION**

RIGHT OF PRIVACY, ARTICLE I SECTION 23

10. The former husband relies on his Declaratory Judgment Motion and Memorandum of law, and His Memorandum of Law to Deny Contempt to support this part of his Motion.

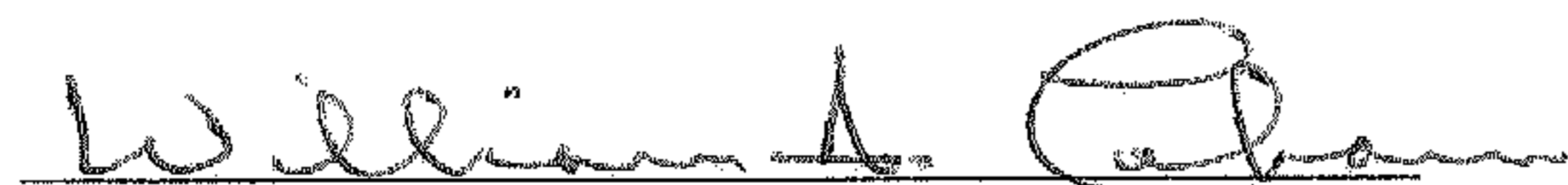
HARDSHIP OF PERSONAL APPEARANCE

The former husband has essentially no financial assets and a fixed income below the poverty level. The hardship of personal appearance is significant.

WHEREFORE Former Husband prays that this Honorable Court enter an Order adjudicating Former Wife as follows:

1. Deny all former wife's motions until she submits accurate and complete financial affidavit and records to the former husband and this court. .
2. Dismiss any and all motions against Former Husband and Florence Cabana.
3. Terminate any and all claims for past or future alimony, arrearages and attorney's fees against Former Husband.
4. Deny former wife's request for attorney fees based on unclean hands and misrepresentation of financial status as well as former wife's attorney's misrepresentation to this court to have attempted settlement of these issues prior to setting and conducting hearings.
5. Declare "Dissolution of Marriage" alimony and discovery provisions impermissibly infringe Article I Section 23 Fl. Con. Right to Privacy.
6. Grant a change of venue to Venice, Florida for future hearings.

Respectfully submitted,

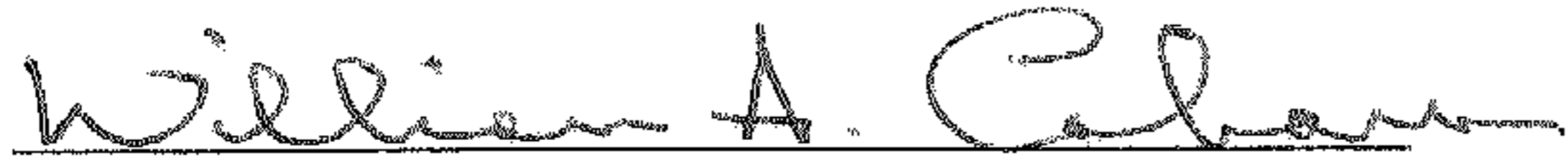


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Dated: June 9, 2005

Certificate of Service

I certify that a true copy of the foregoing was hand delivered to Cathy L. Kamber, Esq., 1675 Palm Beach Lakes Boulevard, The Forum, Tower A, Suite 700, West Palm Beach, FL 33401, this 9th day of June, 2005



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