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INANDFORPA LMBEACHCOUNTY,FLORIDA

CAFLORIDA HOLDINGS, LLC,
Publisher of the PALM BEACH POST,

Plaintiff,

v.

CASE NO.: 19-CA-014681

DAVE ARONBERG, as State Attorney of
Palm Beach County, Florida; SHARON R.
BOCK, as Clerk and Comptroller of Palm
Beach County, Florida.

Defendants.

**DEFENDANT, DAVE ARONBERG'S RESPONSE TO PLAINTIFF'S
MEMORANDUM OF LAW IN OPPOSITION TO THE STATE ATTORNEY'S
FLA. STAT. SECTION 57.105 MOTION**

Defendant, DAVE ARONBERG, as State Attorney of Palm Beach County, Florida, by and through the undersigned counsel, hereby files this Response to Plaintiff's Memorandum of Law in Opposition to the State Attorney's Fla. Stat. Section 57.105 Motion, and in support thereof states:

I. REGARDLESS OF PLAINTIFF'S PURPOSE IN BRINGING THE INSTANT LAWSUIT, IT IS IMPOSSIBLE FOR THE STATE ATTORNEY TO PRODUCE THE RECORDS THAT PLAINTIFF DEMANDS BE PRODUCED.

From the outset of this litigation the State Attorney has consistently maintained that neither he nor his office has possession, custody or control of the Epstein grand jury materials, ("Requested Materials"), sought by Plaintiff. Nonetheless, the State Attorney has no objection, and never has had any objection, to the Clerk releasing the records sought by Plaintiff, as disclosure of the Requested Materials sought herein lies solely within the providence of the Clerk pursuant to an order of the Court.

Party JOINT

ID# J21 EV# J21
DATE ADMITTED: 9/6/2022

Case No. 2019-CA-014681
JOSEPH ABRUZZO CLERK
CIRCUIT COURT

K6

Joint Exhibit

J21

Section 905.17(1), Florida Statutes makes clear that Plaintiff's Requested Materials can only be released by the Clerk pursuant to a court order.

The stenographic records, notes, and transcriptions made by the court reporter or stenographer shall be filed with the clerk who shall keep them in a sealed container not subject to public inspection. *The notes, records, and transcriptions are confidential and exempt from the provisions of s. 119.07(1) and s. 24(a), Art. I of the State Constitution and shall be released by the clerk only on request by a grand jury for use by the grand jury or on order of the court pursuant to s. 905.27.*

Section 905.17(1), Florida Statutes (2020).

Text, context, and purpose are the ordinary tools used for discerning statutory meaning, with the overarching principle being that "judges lack the power to construe an unambiguous statute in a way which would extend, modify, or limit its express terms or its reasonable and obvious implications. To do so would be an abrogation of legislative power." *Id.* Accordingly, here, the plain language of section 905.17 is clear and unambiguous and, therefore, controls. *See, Horowitz v. Plantation Gen. Hosp. Ltd. P'ship*, 959 So. 2d 176, 182 (Fla. 2007).

Again, the State Attorney has no objection to the Clerk producing and disclosing the Requested Materials should the Court grant an order to that effect. To be clear, however, it is impossible for State Attorney to comply with the relief sought by Plaintiff in its remaining claim for declaratory relief as he does not possess or control the Requested Materials and is statutorily barred from any disclosure.

II. THE STATE ATTORNEY'S FLA. STAT. SECTION 57.105 MOTION WAS PROPERLY MADE AND IN NO WAY SEEKS TO DETER *THE PALM BEACH POST* FROM SERVING THE PUBLIC INTEREST.

To be clear, the State Attorney has no other desire than to litigate on the merits the instant lawsuit's remaining issue of declaratory relief prior to a determination of his Fla. Stat. § 57.105

Motion for Attorneys' Fees ("57.105 Motion").¹ Furthermore, despite Plaintiff's disingenuous and self-aggrandizing contentions, in no way, shape, manner, or form is the State Attorney using the threat of sanctions to "suppress *The Palm Beach Post's* investigative reporting" or to "avoid litigating the case on the merits" or to "deter media inquiry into the Epstein grand jury proceeding."

See, Pl. Memorandum pg. 2-3.

Rather, the State Attorney was properly and entirely within his rights to send his June 8, 2020, Fla. Stat. § 57.105 Demand Letter and inform Plaintiff of his belief that the Amended Complaint and its sole remaining count for declaratory relief has no basis in fact or law. *See, Exhibit "A".* "Under the statute, the legislature has expressed its unequivocal intent that where a party files a meritless claim, suit or appeal, the party who is wrongfully required to expend funds for attorneys' fees is entitled to recoup those fees." *Martin County Conservation Alliance v. Martin County*, 73 So. 3d 856, 857 (Fla. 1st DCA 2011) (finding that "Courts are not at liberty to disregard the legislative mandate that courts shall impose *sanctions* in cases without foundation in material fact or law. The word "shall" in § 57.105, Fla. Stat., evidences the legislative intent to impose a mandatory penalty to discourage baseless claims, by placing a price tag on losing parties who engage in these activities. Section 57.105 expressly states courts "shall" assess attorney's fees for bringing, or failing to dismiss, baseless claims or defenses."). In fact,

Section 57.105(1) clearly and explicitly confers upon the trial court the authority to award attorney's fees to the prevailing party upon the court's initiative, if 'the court finds that the losing party . . . knew or should have known that a claim or defense when initially presented to the court or at any time before trial . . . [w]as not supported by the material facts necessary to establish the claim or defense.

¹ This Court's June 8, 2020, Order Granting Defendants' Motions to Dismiss Count II of Plaintiff's First Amended Complaint with Prejudice ("Order") did not address Plaintiff's Count I for Declaratory Relief. Notably, the State Attorney's § 57.105 Demand Letter and its accompanying proposed Motion for Attorney's Fees was served on Plaintiff later in the day of June 8, 2020, after the Court issued its Order.

Koch v. Koch, 47 So. 3d 320, 324 (Fla. 2d DCA 2010).

Notably, “[s]ection 57.105 does not require a finding of frivolousness to justify sanctions, but only a finding that the claim lacked a basis in fact or law.” *Martin County Conservation Alliance v. Martin County*, 73 So. 3d 856, 865 (Fla. 1st DCA 2011). Moreover,

The primary purpose of section 57.105(4) is not to spring a procedural trap on the unwary so that valid claims are lost. Rather, its function is to give a pleader a last clear chance to withdraw a frivolous claim or defense within the scope of subsection (1) or to reconsider a tactic taken primarily for the purpose of unreasonable delay under subsection (3). Having the parties police themselves, instead of requiring judicial intervention on section 57.105 issues, promotes judicial economy and minimizes litigation costs.

Vanderpol v. Frengut, 932 So. 2d 1251 (Fla. 4th DCA 2006) (finding that because the plaintiff had withdrawn his motion, the defendants were not permitted to file with or present to the trial court their motion for attorney's fees).

Thus, in properly serving his 57.105 demand on Plaintiff, the State Attorney also properly put Plaintiff on notice that he would seek sanctions by filing the 57.105 Motion for Attorneys' fees if Plaintiff failed to dismiss its Amended Complaint within 21 days of service of the 57.105 demand letter and motion for attorneys' fees. The course of action taken by the State Attorney actually tracks the specific language set forth in the Statute, to wit:

A motion by a party seeking sanctions under this section must be served but may not be filed with or presented to the court unless, within 21 days after service of the motion, the challenged paper, claim, defense, contention, allegation, or denial is not withdrawn or appropriately corrected.

Section 57.105(4), Florida Statutes (2020).

Accordingly, after receiving Plaintiff's June 23, 2020, response refusing to the withdraw the remainder of the Amended Complaint and waiting the prerequisite "21 days after service of the motion" the State Attorney's Motion for Attorneys' Fees was filed with this Court on July 1, 2020. *See, Exhibit B.* Nothing improper was done by the State Attorney in availing himself of the

law set forth in § 57.105 given the circumstances of the instant lawsuit and the State Attorney's intention to establish that Plaintiff's claim for declaratory relief has no basis in fact or law.

Here, regardless of Plaintiff's assertions that the State Attorney is "using the threat of sanctions to avoid litigating the case on its merits," the simple fact of the matter is that Plaintiff failed to withdraw its Amended Complaint against the State Attorney within the 21-day period provided for in section 57.105(4), thus the State Attorney was permitted to file his 57.105 Motion for Attorneys' Fees as sanctions. Again, the filing of the 57.105 Motion for Attorney's fees was filed as a matter of course and a place-marker to further notify Plaintiff of the State Attorney's intention to seek sanctions should he prevail on the merits at a future substantive hearing.

III. REGARDLESS OF THE "JUSTICE" PROVISION OF FLA. STAT. SECTION 905.27, FLA. STAT. SECTION 905.17(1) MAKES CLEAR THAT ONLY THE CLERK SHALL RELEASE GRAND JURY RECORDS LIKE THOSE SOUGHT HEREIN.

Despite Plaintiff's assertion, the State Attorney has never taken the position that this Court's June 8, 2020, Order held that Plaintiff's claims are without any merit. Rather, the State Attorney has consistently taken the position that the Order merely dispenses, with prejudice, Plaintiff's Count II and that any other discussion pertaining to that claim is immaterial and irrelevant to the remaining claim for declaratory relief.²

Again, Section 905.17(1), Florida Statutes makes clear that Plaintiff's Requested Materials can only be released by the Clerk pursuant to a court order. To wit:

The stenographic records, notes, and transcriptions made by the court reporter or stenographer shall be filed with the clerk who shall keep them in a sealed container not subject to public inspection. The notes, records, and transcriptions are confidential and exempt from the provisions of s. 119.07(1) and s. 24(a), Art. I of the State Constitution and shall be released by the clerk only on request by a grand jury for use by the grand jury or on order of the court pursuant to s. 905.27.

² Specifically, Plaintiff's remaining Count I for Declaratory Relief seeks a court order declaring that the State Attorney provide copies of the Requested Materials to *The Palm Beach Post* for the purpose of informing the public. See, *Pl's Amended Complaint* pg. 20-21.

Section 905.17(1), Florida Statutes (2020).

As stated previously, neither the State Attorney nor his office has possession, custody or control of the Requested Materials. Likewise, the State Attorney has no objection, and never has had any objection, to the Clerk releasing the records sought by Plaintiff, as disclosure of the Requested Materials sought by Plaintiff lies solely within the providence of the Clerk pursuant to an order of the Court.

Thus, based on the impossible nature of Plaintiff's demand of the State Attorney, it was proper to demand withdrawal of Plaintiff's remaining claim for declaratory relief and serve the 57.105 Motion for Attorneys' Fees due to Plaintiff's claim lacking any basis in fact or law. Regardless of whether the "justice" provision of § 905.27 has been adjudicated, Plaintiff's Count II was dismissed with prejudice and its remaining Count I for declaratory relief has no basis in fact or law because the State Attorney does not have the Requested Materials and § 905.17(1), Florida Statutes explicitly requires that only the Clerk shall release grand jury materials like the Requested Materials and only pursuant to a court order.

IV. THE STATE ATTORNEY'S FLA. STAT. SECTION 57.105 MOTION IS RELATED ONLY TO PLAINTIFF'S CLAIM FOR DECLARATORY RELIEF AS THIS COURT DISMISSED WITH PREJUDICE COUNT II, REGARDLESS OF ANY NOVELTY OR COMPLEXITY.

Although this Court unambiguously dismissed with prejudice Count II of the Amended Complaint, Plaintiff oddly acts as though Count II is alive and able to be further argued before this Court. Additionally, Plaintiff either disingenuously or unawaresly argues that the fees sought herein "should not be awarded unless there is 'a total or absolute lack of a justiciable issue, which is tantamount to a finding that the action is frivolous ... and so clearly devoid of merit both on the facts and law as to be completely untenable.' *Muckenfuss v. Deltona Corp.*, 508 So. 2d 340, 341 (Fla. 1987)." Rather than the old standard cited by Plaintiff, the amended version of Fla. Stat. §

57.105 “does not require a finding of frivolousness to justify sanctions, but only a finding that the claim lacked a basis in material facts or then-existing law.” *Martin County Conservation Alliance v. Martin County*, 73 So. 3d 856, 858 (Fla. 1st DCA 2011). *See, Long v. AvMed, Inc.*, 14 So. 3d 1264, 1265 (Fla. 1st DCA 2009) (noting section 57.105 does not require a party to show complete absence of a justiciable issue of fact or law).

The court in *Davis v. Bailyson*, 268 So. 3d 762, 769 (Fla. 4th DCA 2019), provides further insight and guidance regarding 57.105 sanctions as it explained:

The central purpose of § 57.105, Fla. Stat., is, and always has been, to deter meritless filings and thus streamline the administration and procedure of the courts. Thus, the post-1999 version of § 57.105 has expanded the circumstances where fees should be awarded and the purpose is to deter meritless filings. [The Florida Supreme Court] has also stated that § 57.105 creates an opportunity to avoid the sanction of attorney's fees by creating a safe period for withdrawal or amendment of meritless allegations and claims. Therefore, it appears that [The Florida Supreme Court] has viewed even individual allegations as part of what § 57.105(1) seeks to deter. By "individual allegations," we are referring to a series of allegations framing a theory of liability based on a factual scenario that is not supported by law.

Davis v. Bailyson, 268 So. 3d 762, 769 (Fla. 4th DCA 2019). Taking this into account further detracts from the plausibility of Plaintiff's position, even despite its argument that the issues contained in Count II were “novel and complex.” Despite Plaintiff's argument that “[w]here an issue is novel and complex, sanctions under section 57.105 may not be imposed” and that even though Count II was dismissed with prejudice it was brought in good faith, these arguments do not rise to such a level as to overcome the reality that Plaintiff's Count I for declaratory relief has no basis in fact or law because it is impossible for the State Attorney to comply with its demand.

Further, the Bailyson court provides guidance here as well by explaining that the State Attorney's 57.105 claim does not have to apply to Plaintiff's entire action to succeed:

Unlike the prior version [of section 57.105], the current version of the statute does not apply only to an entire action, but now applies to any claim or defense. (emphasis added). Because the statute refers to “any claim or defense,” it does not

require that the entire action be unsupported by material facts or the application of then-existing case law.

Davis v. Bailyson, 268 So. 3d 762, 769 (Fla. 4th DCA 2019). Thus, “the revised statute expanded the number of circumstances in which fees should be awarded” and “if an action asserts a theory of liability using more than one, but separate, factual scenarios in support of the theory, and one of the factual scenarios meets the criteria for a 57.105(1) fee sanction because it is not supported by law, the sanction must be ordered.” *Id.*

Thus, notwithstanding any of Plaintiff’s assertions regarding Count II, Count II not only was dismissed with prejudice, but the issues pertaining to it are irrelevant as to the State Attorney’s 57.105 Motion regarding the lack of any basis in fact or law as to Plaintiff’s remaining request for declaratory relief.

V. REGARDLESS OF PLAINTIFF’S CONSTITUTIONAL ARGUMENTS, ONLY THE CLERK, NOT THE STATE ATTORNEY, IS STATUTORILY AUTHORIZED TO RELEASE THE GRAND JURY RECORDS SOUGHT HEREIN.

To be clear, in no way does the State Attorney assume, as Plaintiff suggests, that this Court’s Order extinguishes and renders frivolous Plaintiff’s Count I for Declaratory Relief. Rather, as the State Attorney’s 57.105 demand letter clearly states, Plaintiff’s claim for declaratory relief has no basis in fact or law.

Moreover, regardless of Plaintiff’s continual attempts to revive and make arguments under its Count II, it was dismissed with prejudice and Plaintiff is consequently foreclosed from litigating the issues therein. Thus, despite any constitutional or other argument under Count II, the facts and law remain the same: only the Clerk, not the State Attorney, is statutorily authorized to release the Requested Materials herein.

Again, Section 905.17(1), Florida Statutes makes clear that Plaintiff’s Requested Materials can only be released by the Clerk pursuant to a court order.

The stenographic records, notes, and transcriptions made by the court reporter or stenographer shall be filed with the clerk who shall keep them in a sealed container not subject to public inspection. *The notes, records, and transcriptions are confidential and exempt from the provisions of s. 119.07(1) and s. 24(a), Art. I of the State Constitution and shall be released by the clerk only on request by a grand jury for use by the grand jury or on order of the court pursuant to s. 905.27.*

Section 905.17(1), Florida Statutes (2020).

Likewise, it bears repeating, neither the State Attorney nor his office has possession, custody or control of the Requested Materials; and, the State Attorney has no objection, and never has had any objection, to the Clerk releasing the records sought by Plaintiff, as disclosure of the Requested Materials sought by Plaintiff lies solely within the providence of the Clerk pursuant to an order of the Court. Thus, based on the impossible nature of Plaintiff's lawsuit against the State Attorney, it was proper to demand withdrawal of Plaintiff's remaining claim for declaratory relief and serve the 57.105 Motion for Attorneys' fees due to Plaintiff's claim lacking any basis in fact or law.

VI. THE STATE ATTORNEY HAS NEVER TAKEN A POSITION AGAINST DISCLOSING THE RECORDS SOUGHT BY PLAINTIFF, BUT RATHER HAS CONSISTENTLY ARGUED THAT NEITHER HE NOR HIS OFFICE HAS CUSTODY, CONTROL, OR POSSESSION OF THE RECORDS AND THAT UNDER FLA. STAT. SECTION 905.17(1) ONLY THE CLERK SHALL RELEASE THE RECORDS AND ONLY PURSUANT TO A COURT ORDER.

Oddly, Plaintiff argues that the State Attorney has made an unsworn claim that he does not possess the Requested Materials, when his Affidavit, filed along with his Motion for Summary Judgment on August 18, 2020, clearly provides the following sworn statements:

1. My name is David (Dave) Aronberg, and I am the State Attorney for the Fifteenth Judicial Circuit/Palm Beach County, Florida, since 2013, and a Defendant in the above-captioned matter.

2. Plaintiff is seeking declaratory relief, pursuant to Fla. Stat. 905.21(1)(c) and the Court's inherent authority, allowing Plaintiff access to the testimony, minutes, and other evidence presented in 2006 to the Palm Beach County grand jury, (the "Requested Materials"), and to use those materials for the purpose of informing the public.

3. Despite Plaintiff's above-described action for declaratory relief, neither myself nor the Office of the State Attorney for the Fifteenth Judicial Circuit, ("SAO"), is in control, custody, or possession of the Requested Materials.

4. As such, the declaratory relief sought by the Plaintiff seeks materials that are impossible for me or my office to produce.

5. To be clear, neither myself nor the SAO has the legal authority to obtain and deliver the Requested Materials.

6. I have repeatedly made these facts evident to the Plaintiff and the public through not only the pleadings and correspondence in this matter, but also through an office press release and my public social media accounts.

7. Despite the contentions of Plaintiff, neither myself nor the SAO has the authority to demand that the Clerk grant the SAO access to grand jury materials after a criminal case has concluded.

8. Moreover, during my administration, neither myself nor my office has accessed grand jury materials from the Clerk's office in this or any other instance.

9. As provided in section 905.17(1), Florida Statutes (2020), the Clerk has sole custody and possession of the Requested Materials, which can only be released by the Clerk pursuant to an order of the Court.

See, Exhibit "C". Clearly, the matter presently before the Court is the determination of the State Attorney's Motion for Summary Judgment, and then, should he prevail on said Motion a hearing should be scheduled on the 57.105 Motion for Attorneys' Fees. Regardless, the State Attorney is of the belief that Plaintiff is unable to prove its declaratory relief claim against him as Plaintiff's claim has no basis in fact or law as set forth at length above.

Also, despite the clear, concise, and unambiguous language of Section 905.17(1), Florida Statutes, which states that grand jury materials "shall be released by the Clerk only ... on order of the Court," Plaintiff attempts to argue that the State Attorney may still have the ability to "access" grand jury materials and that therefore he is a necessary party to this action. To be clear, there is a great distinction between the ability to "access" and the ability to "disclose" grand jury materials. Nonetheless, the State Attorney swore in his Affidavit that "during my administration, neither myself nor my office has accessed grand jury materials from the Clerk's office in this or any other instance." *See, Exhibit "C" ¶ 8.* Again, even assuming that the State Attorney had the ability to

access the Requested Materials, he is foreclosed from making any disclosure pursuant to Section 905.17(1), Florida Statutes, as only the Clerk shall release grand jury materials pursuant to a court order.

Based on the foregoing, it is clear that Plaintiff indeed has a valid claim against the Clerk to seek disclosure of the Requested Materials, and for that reason the Clerk has declined to move for 57.105 sanctions. Unlike Plaintiff's case against the Clerk, however, the arguments and authority set forth above make clear that it is impossible for the State Attorney or his office to produce the Requested Materials demanded by the Plaintiff. This rationale again illustrates the lack of any basis in fact or law as to Plaintiff's claim for declaratory relief and provides justification for the sanctions sought by the State Attorney should he prevail on the merits of this controversy.

VII. THE STATE ATTORNEY'S 57.105 MOTION IS NOT PREMATURE, BUT A HEARING OR RULING ON SAID MOTION PRIOR TO A SUBSTANTIVE HEARING ON THE STATE ATTORNEY'S MOTION FOR SUMMARY JUDGMENT WOULD BE PREMATURE.

Simply put, Plaintiff's argument that "the State Attorney's Motion is admittedly premature" is nothing more than a disingenuous stretch of the imagination. To be clear, the State Attorney never made such an admission, but rather has consistently argued that "it would be premature to have an attorney fee hearing when there is no prevailing party and no substantive hearings held since the motion for fees was filed." *See, Pl's Memorandum, Exhibit "A"*. Plaintiff apparently views this statement as an admission on the part of the State Attorney, which it clearly was not. Again the 57.105 Motion was not premature and the State Attorney was entirely within his rights to file said Motion based on the statutory instructions set forth in § 57.105(4), Florida. Statutes.

Moreover, despite Plaintiff's false contentions, the State Attorney's 57.105 Motion is not based on his Motion to Dismiss Count II of the Amended Complaint. As discussed at length above,

the 57.105 Motion is based solely on the reality that Plaintiff's Count I for Declaratory Relief is not grounded in fact or law. Because Plaintiff failed to voluntarily dismiss the remainder of its Amended Complaint, i.e., Count I for Declaratory Relief, the State Attorney filed its 57.105 Motion for Attorneys' Fees as authorized, and discussed *supra*, by § 57.105, Fla. Stat. Nonetheless, Plaintiff has purposely misconstrued the filing order of the 57.105 Motion and the Motion for Summary Judgment and falsely asserts that the State Attorney "acknowledges that his motion is not ripe." *See, Pl's Memorandum pg. 9.*

Rather, the State Attorney agrees that the Motion for Summary Judgment must first be resolved prior to resolving the 57.105 Motion, but the filing of the State Attorneys' 57.105 Motion is not unripe merely because it was filed prior to his Motion for Summary Judgment. Not only is the State Attorney authorized to file the 57.105 Motion based specifically on statutory instruction, the Florida Courts and the Florida Rules of Civil Procedure also support this position. To wit, Fla. R. Civ. P. 1.525, Motions for Costs and Attorneys' Fees, states:

Any party seeking a judgment taxing costs, attorneys' fees, or both shall serve a motion no later than 30 days after filing of the judgment, including a judgment of dismissal, or the service of a notice of voluntary dismissal, which judgment or notice concludes the action as to that party.

Florida Rules of Civil Procedure, 1.525. As provide above, the Florida Rules of Civil Procedure speak only to the filing deadline for Attorneys' Fees Motions and are otherwise silent as to any other restriction on filing such motions.

It is also significant to point out the manner in which Plaintiff has purposely misconstrued the very language of § 57.105 by omitting the language that hurts its position. Despite, Plaintiff's claims that "57.105 (1)(a)-(b) examines a claim or defense 'when initially presented to the court', Plaintiff declined to include the remainder of the statutory language, which states "or at any time before trial." Clearly, the State Attorney is authorized to pursue sanctions under § 57.105 at any

time before trial due, as he has, regarding the lack of any basis in fact or law as to Plaintiff's claim for declaratory relief.

Again, the State Attorney was authorized to file the 57.105 Motion because he did not file it with the court until after the prerequisite statutory timeline was satisfied. The 57.105 Motion was filed with the Court to further put the Plaintiff on notice that the State Attorney would seek sanctions should he prevail on the merits of the lawsuit. Just because the 57.105 Motion for Attorneys' fees was filed prior to the State Attorney's Motion for Summary Judgment does not necessitate a hearing or ruling on the 57.105 Motion prior to a hearing on the Motion for Summary Judgment. See, *Koch v. Koch*, 47 So. 3d 320, 325 (Fla. 2d DCA 2010) (finding that "a court is typically faced with the decision to impose sanctions for frivolous litigation only after the parties' respective positions have been presented to the court at a substantive hearing."). Likewise, it would be far removed from the interests of judicial economy to require a hearing on a place-marker 57.105 Motion for Attorneys' fees as sanctions prior to a hearing on the Motion for Summary Judgment.

WHEREFORE, DAVE ARONBERG, as State Attorney of Palm Beach County, Florida, respectfully requests that a substantive hearing on the merits take place along with the determination of a prevailing party before any hearing or ruling on fees or sanctions herein.

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on this 14th day of October, 2020, a copy of the foregoing has been electronically filed with the Florida E-File Portal for e-service on all parties of record herein.

JACOBS SCHOLZ & WYLER, LLC

/s/ *Douglas A. Wyler*

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*Attorneys for Defendant, Dave Aronberg, and
General Counsel for the Florida Prosecuting
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NOT A CERTIFIED COPY

EXHIBIT “A”

NOT A CERTIFIED COPY

EXHIBIT “A”

JACOBS SCHOLZ & WYLER, LLC.

A LIMITED LIABILITY COMPANY OF PROFESSIONAL ASSOCIATIONS

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RICHARD J. SCHOLZ, P.A.
RICHARD J. SCHOLZ
DOUGLAS A. WYLER, P.A.
DOUGLAS A. WYLER

June 8, 2020

VIA ELECTRONIC & U.S. MAIL

Stephen A. Mendelsohn, Esq.
Greenburg Traurig, P.A.
5100 Town Center Circle, Suite 400
Boca Raton, FL 33486

**RE: CA Florida Holdings, LLC v. Dave Aronberg et al.
Palm Beach County, Case No.: 2019-CA-014681**

Dear Mr. Mendelsohn:

As you are aware our firm represents the interests of Dave Aronberg, as State Attorney of Palm Beach County, Florida, in the above referenced matter. The purpose of this letter is to demand the voluntary dismissal of your First Amended Complaint, (the "Complaint"), dated January 17, 2020. This demand is made pursuant to section 57.105, Florida Statutes.

As you know, Section 57.105 provides:

- (1) Upon the court's initiative or motion of any party, the court shall award a reasonable attorney's fee, including prejudgment interest, to be paid to the prevailing party in equal amounts by the losing party and the losing party's attorney on any claim or defense at any time during a civil proceeding or action in which the court finds that the losing party or the losing party's attorney knew or should have known that a claim or defense when initially presented to the court or at any time before trial:
 - a. Was not supported by the material facts necessary to establish the claim or defense; or
 - b. Would not be supported by the application of then-existing law to those material facts.

Today, Judge Marx granted, with prejudice, Defendant Aronberg's Motion to Dismiss Count II of the Plaintiff's Complaint. Pursuant to the Court's ruling, the Plaintiff's only remaining cause of action consists of Count I, for Declaratory Relief. Accordingly, we believe that the Complaint filed herein and its sole remaining Count for Declaratory Relief is not supported by the material facts necessary to establish the claims asserted, and that your claims are not supported by the application of current law to said material facts.

First and foremost, the Complaint is not supported by the material facts necessary to establish the claims asserted because neither Defendant Aronberg, nor The Office of the State Attorney for the Fifteenth Judicial Circuit is in custody or control of the 2006 grand jury materials sought therein. Simply put, the declaratory relief sought by the Plaintiff, seeks records from my client that are impossible for him or his office to produce. Accordingly, Defendant Aronberg is not a proper party to this action because no matter what, he and his office do not have possession, custody, or control of the requested materials.

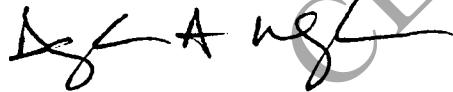
In addition to the foregoing material facts that negate the claims asserted in the Complaint, your claims are also not supported by the application of current law. Specifically, your action for declaratory relief fails based on the clear, unambiguous statutory language found in Section 905.27(2), Florida Statutes, which states:

When such disclosure is ordered by a court pursuant to subsection (1) for use in a civil case, it may be disclosed to all parties to the case and to their attorneys and by the latter to their legal associates and employees. However, the grand jury testimony afforded such persons by the court can only be used in the defense or prosecution of the civil or criminal case and for no other purpose whatsoever.

Moreover, even if the Plaintiff were to prevail in the declaratory action, Mr. Aronberg would be unable to comply with any court order granting disclosure of the requested documents because neither Mr. Aronberg nor The Office of the State Attorney for the Fifteenth Judicial Circuit have possession, custody, or control of the 2006 Epstein grand jury records.

Based on the foregoing, if the Complaint is not dismissed within 21 days of the service of this letter, the enclosed Motion for Attorney's Fees will be filed and we will seek as sanctions, from your client and your firm, recovery of the legal expenses incurred in defending this frivolous action.

Please govern yourself accordingly,



Douglas A. Wyler, Esq.
For the Firm

Encl.: Defendant's Motion for Attorneys' Fees

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

CA FLORIDA HOLDINGS, LLC,
Publisher of the PALM BEACH POST,

Plaintiff,

v.

CASE NO.: 19-CA-014681

DAVE ARONBERG, as State Attorney of
Palm Beach County, Florida; SHARON R.
BOCK, as Clerk and Comptroller of Palm
Beach County, Florida.

Defendants.

DEFENDANT, DAVE ARONBERG'S MOTION FOR ATTORNEYS' FEES

Defendant, DAVE ARONBERG, as State Attorney of Palm Beach County, Florida, by and through the undersigned attorneys, moves the Court, pursuant to Florida Statutes, Section 57.105, to award him reasonable attorneys' fees for the defense of Plaintiff's First Amended Complaint, (the "Complaint"), and as grounds therefor, would show that on June 8, 2020, Plaintiff was served a copy of this Motion, together with a letter from the undersigned attorney, in accordance with subsection (4) of the above Statute, demanding dismissal of the Complaint, at least 21 days prior to the filing of this Motion. In said letter, Defendant's attorney advised Plaintiff of the facts which establish that the Complaint is without support of the facts or the law.

WHEREFORE, Defendant, DAVE ARONBERG, as State Attorney of Palm Beach County, Florida, respectfully requests the Court enter an Order requiring Plaintiff and Plaintiff's attorneys to pay said Defendant's attorneys' fees incurred herein after service of this Motion.

CERTIFICATE OF SERVICE

I hereby certify that on this ____ day ____, 2020, the foregoing was electronically filed via the Florida E-File Portal for electronic service on the parties of record herein.

JACOBS SCHOLZ & WYLER, LLC

/s/ Douglas A. Wyler

Arthur I. Jacobs, Esquire
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Attorneys for Defendant

EXHIBIT “B”

NOT A CERTIFIED COPY

EXHIBIT “B”

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

CA FLORIDA HOLDINGS, LLC,
Publisher of the PALM BEACH POST,

Plaintiff,

v.

CASE NO.: 19-CA-014681

DAVE ARONBERG, as State Attorney of
Palm Beach County, Florida; SHARON R.
BOCK, as Clerk and Comptroller of Palm
Beach County, Florida.

Defendants.

DEFENDANT, DAVE ARONBERG'S MOTION FOR ATTORNEYS' FEES

Defendant, DAVE ARONBERG, as State Attorney of Palm Beach County, Florida, by and through the undersigned attorneys, moves the Court, pursuant to Florida Statutes, Section 57.105, to award him reasonable attorneys' fees for the defense of Plaintiff's First Amended Complaint, (the "Complaint"), and as grounds therefor, would show that on June 8, 2020, Plaintiff was served a copy of this Motion, together with a letter from the undersigned attorney, in accordance with subsection (4) of the above Statute, demanding dismissal of the Complaint, at least 21 days prior to the filing of this Motion. In said letter, Defendant's attorney advised Plaintiff of the facts which establish that the Complaint is without support of the facts or the law.

WHEREFORE, Defendant, DAVE ARONBERG, as State Attorney of Palm Beach County, Florida, respectfully requests the Court enter an Order requiring Plaintiff and Plaintiff's attorneys to pay said Defendant's attorneys' fees incurred herein after service of this Motion.

CERTIFICATE OF SERVICE

I hereby certify that on this 1st day July, 2020, the foregoing was electronically filed via the Florida E-File Portal for electronic service on the parties of record herein.

JACOBS SCHOLZ & WYLER, LLC

/s/ Douglas A. Wyler

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Attorneys for Defendant, Dave Aronberg

EXHIBIT “C”

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EXHIBIT “C”

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

CA FLORIDA HOLDINGS, LLC,
Publisher of the PALM BEACH POST,

Plaintiff,

v.

CASE NO.: 19-CA-014681

DAVE ARONBERG, as State Attorney of
Palm Beach County, Florida; SHARON R.
BOCK, as Clerk and Comptroller of Palm
Beach County, Florida.

Defendants.

AFFIDAVIT OF DAVID ARONBERG

STATE OF FLORIDA
COUNTY OF PALM BEACH

Before me, the undersigned authority personally appeared DAVID ARONBERG, being first duly sworn,
states:

1. My name is David (Dave) Aronberg, and I am the State Attorney for the Fifteenth Judicial Circuit/Palm Beach County, Florida, since 2013, and a Defendant in the above-captioned matter.
2. Plaintiff is seeking declaratory relief, pursuant to Fla. Stat. 905.21(1)(c) and the Court's inherent authority, allowing Plaintiff access to the testimony, minutes, and other evidence presented in 2006 to the Palm Beach County grand jury, (the "Requested Materials"), and to use those materials for the purpose of informing the public.
3. Despite Plaintiff's above-described action for declaratory relief, neither myself nor the Office of the State Attorney for the Fifteenth Judicial Circuit, ("SAO"), is in control, custody, or possession of the Requested Materials.
4. As such, the declaratory relief sought by the Plaintiff seeks materials that are impossible for me or my office to produce.
5. To be clear, neither myself nor the SAO has the legal authority to obtain and deliver the Requested Materials.
6. I have repeatedly made these facts evident to the Plaintiff and the public through not only the pleadings and correspondence in this matter, but also through an office press release and my public social media accounts.

7. Despite the contentions of Plaintiff, neither myself nor the SAO has the authority to demand that the Clerk grant the SAO access to grand jury materials after a criminal case has concluded.

8. Moreover, during my administration, neither myself nor my office has accessed grand jury materials from the Clerk's office in this or any other instance.

9. As provided in section 905.17(1), Florida Statutes (2020), the Clerk has sole custody and possession of the Requested Materials, which can only be released by the Clerk pursuant to an order of the Court.

FURTHER AFFIANT SAYETH NAUGHT.

By:

DAVID ARONBERG

STATE OF FLORIDA
COUNTY OF PALM BEACH

Sworn to and subscribed before me this 30th day of July, 2020, by DAVID ARONBERG, who is personally known to me or has shown _____ as personal identification.

Latisha Lowe-Goode
Notary Public

Notary's Stamp or Seal



LATISHA LOWE-GOODE
Commission # GG 967813
Expires May 26, 2024
Bonded True Budget Notary Services