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.

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

Defendants.

CASE NO.: 50-2019-CA-014681-XXXX-MB

DIVISION: AG

WRITTEN CLOSING ARGUMENT OF CA FLORIDA HOLDINGS, LLC, PUBLISHER OF *THE PALM BEACH POST*, ON STATE ATTORNEY DAVE ARONBERG'S AMENDED MOTION FOR ATTORNEYS' FEES UNDER FLORIDA STATUTES SECTION 57.105

Plaintiff, CA Florida Holdings, LLC, publisher of *The Palm Beach Post* ("Plaintiff" or the "*Post*"), pursuant to the Court's instructions at the conclusion of the evidentiary hearing held on September 6 and 8, 2022, respectfully submits this Written Closing Argument opposing State Attorney Dave Aronberg's November 9, 2020 Amended Motion for Attorneys' Fees (the "Amended Motion") under Florida Statutes § 57.105 [DE 50].

I. INTRODUCTION

The State Attorney's Amended Motion should be denied with prejudice, as it is both procedurally and substantively deficient. The evidence establishes that—in an effort to inform the public how sexual predator Jeffrey Epstein received a highly unusual and extremely lenient plea agreement following his 2006 grand jury indictment by a former Palm Beach County State Attorney—the *Post* and its attorneys conducted an extensive factual and legal investigation, leading to the filing of this case seeking the Epstein grand jury materials. The *Post* relied upon

statutes and case law supporting disclosure of the grand jury materials under the unique and extraordinary circumstances of the Epstein case—including *Miami Herald Pub. Co. v. Marko*, 352 So. 2d 518 (Fla. 1977), in which the Florida Supreme Court recognized an exception to grand jury secrecy under the First Amendment in the context of grand jury findings of public corruption—to argue that a similar exception to grand jury secrecy should be recognized in the Epstein case. While ultimately denying the relief that the *Post* sought, in the Court's Final Judgment on the declaratory relief claim in Count I, Judge Hafele stated that the *Post*'s arguments were "palatable and persuasive" and presented "strong arguments" for a more expansive construction of the "in furtherance of justice" language of Florida Statutes Section 905.27. Judge Hafele also noted the case presented questions of "first impression" regarding that statute's interpretation and the Court's inherent authority over grand jury proceedings, which questions also implicated "issues of constitutional import regarding the historic tension between grand jury secrecy and the First Amendment." Ex. J30 at pp. 5, 7, 11, 13.[1] These issues are now on appeal before the Fourth District Court of Appeal.

As was shown at the evidentiary hearing, the State Attorney's Amended Motion has no merit. It is the State Attorney's burden—and a heavy one—to prove sanctions are permitted and warranted under Florida Statutes Section 57.105 as to Count I of the Amended Complaint, the declaratory judgment claim. This is a burden the State Attorney not only failed to meet, but cannot meet, after he admitted in his Answer that the Count I declaratory judgment claim presented a "good faith dispute" between the parties. Ex. J09 at ¶ 72; Ex. J10 at ¶ 72.

The State Attorney's accusation that he was named in his official capacity—in a claim

[1] Citations to "Ex. J__" correspond to the hearing exhibit numbers set forth in the parties' Joint Exhibit List, filed with the Court on September 1, 2022.

seeking access to grand jury materials from a prosecution by a former State Attorney—solely because of some "personal vendetta" against him has no factual basis. Hrg. Tr.[2] at 58:6-59:25.[3] Rather, the evidence shows a thoughtful, deliberate, and detailed factual investigation and legal analysis by the *Post*'s attorneys to determine what claims to bring and what parties were required to be joined to obtain public access to Epstein's grand jury materials.

The State Attorney was always a necessary party—the reasons requiring his joinder were alleged in the initial Complaint, continued in the Amended Complaint, and never changed, contrary to the State Attorney's argument that the *Post* somehow "moved the goalposts." Hrg. Tr. at 53:1-11, 59:15-25, 60:21-61:14. Unlike the Clerk, who was named in its official capacity only as being "in possession of documents that are the subject to this action," [Ex. J04 at ¶ 4; Ex. J09 at ¶ 4], the State Attorney was named in his official capacity primarily because of his "authority in grand jury proceedings pursuant to Fla. Stat. section 27.03." *See* Ex. J04, ¶ 3; Ex. J09 at ¶ 3; *see also* Ex. J16 (June 23, 2020 Letter from S. Mendelsohn to D. Wyler, counsel for State Attorney Dave Aronberg).

As the sole public official with authority over grand jury proceedings, the State Attorney had the right and authority, if he so chose, to object to the release of grand jury materials by the

[2] Full transcripts from the evidentiary hearings on September 6 and 8, 2022 ("Hrg. Tr.") have been filed with the Court, and condensed versions of the transcripts hereto are attached as **Composite Exhibit A**.

[3] The State Attorney's belief that the only reason his Office was named as a defendant was because of a "personal vendetta" and animus to "go after" him on behalf of the *Post* (Hrg. Tr. at 58:6-59:25) was not supported by any exhibit, nor any pleadings or filings. To the contrary, the *Post's* attorney, Stephen Mendelsohn, testified he had a great deal of respect for the State Attorney and his Office. Hrg. Tr. at 136:17-137:13. Despite the State Attorney's speculation about the *Post*'s purportedly adverse motivations and his criticism of the *Post*'s prior reporting, none of the articles he took issue with were offered in evidence. Further, the State Attorney's allegation that the *Post* had coordinated its reporting with its counsel was rebutted as Mr. Mendelsohn testified that he did not speak to the *Post*'s editorial staff about its news coverage of the issues in this litigation. Hrg. Tr. at 135:23-136:16.

Clerk. The State Attorney exercised his authority and objected to release of the grand jury materials by his motion to dismiss the initial Complaint, and again in his Answer to Count I and Motion to Dismiss Count II of the Amended Complaint. Ex. J06; Ex. J10.

Once the State Attorney changed his position, on October 14, 2020, by affirmatively stating that he did not object to release of the grand jury materials if ordered by the Court, the *Post* dismissed the State Attorney from the lawsuit on October 21, 2020. Yet, nineteen days *after* his dismissal, on November 9, 2020, the State Attorney filed the Amended Motion.

Because the Amended Motion was filed after the State Attorney had been dismissed from the case and because there was a lack of proper service of the Amended Motion, there is no need to address the merits of the State Attorney's Amended Motion—under the law, the Court lacks jurisdiction to consider it, and the Amended Motion should be denied on that basis alone.

II. THE COURT LACKS JURISDICTION TO CONSIDER THE AMENDED MOTION

A. THE STATE ATTORNEY FILED HIS AMENDED MOTION AFTER HE WAS DISMISSED AS A PARTY.

As a threshold—but fundamental—point, the Court lacks jurisdiction to consider the Amended Motion (the only motion set for hearing before the Court) because, as the State Attorney plainly admitted, he filed his Amended Motion on November 9, 2020, *after* he had already been dismissed as a party on October 21, 2020. Ex. J23, J25; Hrg. Tr. at 44:3-6, 57:2-12. With that admission, the Court does not have jurisdiction to consider the Amended Motion. *Sidlosca v. Olympus Ins. Co.*, 276 So. 3d 987, 989 (Fla. 3d DCA 2019) [Authorities TAB 26] ("[A] trial court has continuing jurisdiction to consider a section 57.105 motion for sanctions *only where* the motion for sanctions was filed with the court ***before*** a *voluntary dismissal*") (emphasis added).

B. THE AMENDED MOTION VIOLATED THE "SAFE HARBOR" NOTICE PROVISION IN SECTION 57.105(4), AS IT WAS NEVER SERVED BEFORE IT WAS FILED.

Compounding the above error, the State Attorney admitted that the Amended Motion was not properly *served* before it was *filed*. Hrg. Tr. at 16:16-17:21; 92:2-93:25. As a result, the Amended Motion violated the strict "safe harbor" notice provision of section 57.105(4), which requires a motion for fees to be served on the non-moving party at least 21 days before it is filed. Fla. Stat. § 57.105(4) ("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.") (Emphasis added).

The State Attorney's admission that if he had served the Amended Motion before the *Post* dismissed him as a party on October 21, 2020, he would have *no motion for fees*, is also fatal. Hrg. Tr. at 93:3-25. Without proper safe harbor service, the Court does not have jurisdiction. *See MC Liberty Express, Inc.*, 252 So. 3d at 403 ("[I]n order to have properly complied with section 57.105, [the filing party] must have first served the proposed motion upon the party it sought to sanction.") This is because "[t]he primary purpose of section 57.105's safe harbor provision is to provide the recipient of the motion with notice and the opportunity to withdraw or abandon a frivolous claim before sanctions are sought." *Id*.; *see also Ferere v. Shure*, 65 So. 3d 1141, 1145 (Fla. 4th DCA 2011) [Authorities TAB 6] (section 57.105(1) was not applicable where there was no way for plaintiff's counsel to withdraw an allegation after a post-trial motion).

C. THE STATE ATTORNEY MAY NOT RELY ON SERVICE OF A PRIOR "PLACE-MARKER" MOTION FOR FEES TO AVOID THE STRICT REQUIREMENTS OF 57.105.

The State Attorney relies on a prior—what he calls a "place-marker"—motion for attorneys' fees that was served on June 8, 2020 and filed on July 1, 2020, in an attempt to avoid

the safe harbor requirements of 57.105(4). Ex. J14; Ex. J18; *see also* Ex. J21 at pp. 5, 13. His reliance is misplaced.

Service of that initial "place-marker" motion is not sufficient to comply with section 57.105(4), because once the State Attorney filed his Amended Motion containing *new arguments*, the 21-day safe harbor notice was required *anew*. *See Lago v. Kame By Design, LLC*, 120 So. 3d 73, 75 (Fla. 4th DCA 2013) [Authorities TAB 14]. The *Lago* Court stated:

> We hold that if a party files a subsequent or amended motion for sanctions under section 57.105 and raises an argument that was not raised in the original motion for section 57.105 sanctions, the subsequent motion must independently comply with the twenty-one-day 'safe harbor' provision of section 57.105(4).

Id. at 75; *see also Moore v. Estate of Albee by Benzenhafer*, 239 So. 3d 192, 195, n.2 (Fla. 5th DCA 2018) [Authorities TAB 20] (court could not consider amended motion for section 57.105 fees because it raised additional grounds for sanctions not raised in the defendant's prior motion for fees and there was "no indication that [defendant] complied with the twenty-one-day 'safe harbor' provision of section 57.105(4)"); *Phillips v. Garcia*, 147 So. 3d 569, 572 (Fla. 3d DCA 2014) [Authorities TAB 22].

Lago and its progeny establish that the State Attorney was required to independently comply with the 21-day safe harbor before filing his Amended Motion, because the Amended Motion made new arguments and referenced new evidence, including the State Attorney's August 2020 motion for summary judgment and affidavit in support, which were not in existence at the time of the initial "place-marker" motion. *Compare* Ex. J14 *with* Ex. J25; *see also* Hrg. Tr. at 94:6-17.

III. THE INITIAL "PLACE-MARKER" MOTION CANNOT BE CONSIDERED, AND EVEN IF IT COULD, IT WHOLLY FAILS TO SATISFY SECTION 57.105

A. THE INITIAL "PLACE-MARKER" MOTION FOR FEES WAS NEVER NOTICED FOR HEARING.

Apparently recognizing at the hearing that the State Attorney's violation of section 57.105(4)'s safe harbor provision is fatal to the State Attorney's Amended Motion, in his opening statement the State Attorney's counsel said he would now rely, in the alternative, on the initial "place-marker" motion for attorneys' fees—*i.e.*, the one-page motion and two-page enclosure letter, served on June 8, 2020 [Ex. J14] and filed on July 1, 2020 [Ex. J17].

The State Attorney's July 1, 2020 "place-marker" fee motion has never been set for hearing. Hrg. Tr. at 128:1-4. The only motion that was set for hearing, and re-set for hearing at least twice, is the November 9, 2020 Amended Motion. Ex. J25; Hrg. Tr. at 132:14-17. Accordingly, the Amended Motion is the only motion that may properly be considered by the Court. *See*, *e.g.*, *Harrison v. Persighetti*, 858 So. 2d 1226, 1226 (Fla. 4th DCA 2022) (holding the "trial court erred in ruling on a matter that was not noticed for hearing," requiring reversal and remand). While the State Attorney argues the Court should also now consider his initial fee motion based upon *Lago*, that decision does not save him, as *Lago* did not address whether the first sanctions motion had been properly noticed for hearing and the appellate court did not consider whether consideration of the first motion would violate the opponent's due process rights. *See Lago*, 120 So. 3d at 75. As stated above, were this Court to now address the "place marker "motion, which was not noticed for hearing, it would violate the *Post*'s and its attorneys' due process rights.

B. THE INITIAL "PLACE-MARKER" MOTION FOR FEES WHOLLY FAILS TO SATISFY SECTION 57.105.

Even if the initial "place-marker" motion had been noticed for hearing (which it never was) and the Court could consider that motion (which it cannot), the initial motion does not help the State Attorney. The barebones "place-marker" motion fails to meet the high burden of section 57.105. The Court must look at the substance, or lack thereof, of that motion, as of that moment in the timeline, to determine whether *at that time* the State Attorney met his burden of showing the claim was frivolous or, in other words, that the *Post* knew or should have known *at that time* there was no longer any justiciable claim. *See Chue v. Lehman*, 21 So. 3d 890, 892 (Fla. 4th DCA 2009) ("Thus, we must consider the evidence presented at the evidentiary hearing concerning what [plaintiff] and his attorney knew or should have known at that point in the litigation.") [Authorities TAB 1]; *Weatherby Assoc.'s, Inc. v. Ballack*, 783 So. 2d 138, 1142-43 (Fla. 4th DCA 2001) ("First, the court must determine whether the suit was frivolous when initially filed. If it was not, then the court must determine whether the suit became frivolous after the suit was filed.") (finding that "[a]ny reasonable inference" that the defendant was working for plaintiff's competitor disintegrated during discovery and after a deposition revealed the opposite, "leaving no justiciable issues of law or fact" and "rendering the suit frivolous" at that point) [Authorities TAB 30].[4]

There was only one purported basis for sanctions stated in the first "place-marker" motion (technically, in the enclosure letter to that one-page motion) regarding the declaratory relief claim

[4] *See also Tr. Mortg., LLC v. Ferlanti*, 193 So. 3d 997, 1001 (Fla. 4th DCA 2016) ("Instead, like here, where the party reasonably believes the factual basis for its claim exists, it is entitled to proceed with its claims and seek to prove those facts. If attempts to prove those facts are fruitless, that is still not cause for sanctions where the party's initial belief was well-founded. It is only in circumstances like *Country Place* where the party knew or should have known at the time of filing that the material facts were nonexistent that a claim is truly frivolous and worthy of sanctions.") [Authorities TAB 28].

in Count I—the argument that the State Attorney did not have possession or custody of the Epstein grand jury materials. Ex. J14; Ex. J17. Did that argument alone end the matter as to the State Attorney? *No*. Did that argument alone make the State Attorney's joinder in this case so frivolous as to be completely untenable? *Absolutely not*.

At the time the first "place-marker" motion was filed on July 1, 2020, there was no sworn testimony in the record as to what grand jury materials the State Attorney and his Office actually possessed. It was not until August 18, 2020, more than six weeks after the expiration of the safe harbor period for the initial place-marker motion, that the State Attorney filed his motion for summary judgment and affidavit in support, in which he stated under oath for the first time that he did not have possession of any grand jury materials sought in the Complaint, and in which he first stated his position that he did not have the authority to demand that the Clerk provide access to the grand jury materials. Ex. J18; Ex. J19. Moreover, as of July 1, 2020, the State Attorney had not yet addressed the other main reasons his joinder in the case was necessary. Indeed, it was not until October 14, 2020, more than three months after the expiration of the safe harbor period—and after being reminded in both a letter and a filing by the *Post* as to why the *Post* had joined him in the case—that the State Attorney filed his reply stating "the State Attorney has no objection" to the Clerk producing grand jury materials if ordered by the Court. The State Attorney's failure to address these issues prior to the filing of his "place-marker" motion would be fatal even if that motion were proper to consider.

Even if the State Attorney could overcome the jurisdictional defects that prevent the Court from considering the Amended Motion (which he cannot), under the merits, the evidence shows that there is absolutely no basis for sanctions under section 57.105.

IV. THE EVIDENCE SHOWS THE STATE ATTORNEY FAILED TO MEET HIS HEAVY BURDEN FOR SANCTIONS UNDER SECTION 57.105

A. LEGAL STANDARD FOR SANCTIONS UNDER SECTION 57.105.

Under Florida Statutes Section 57.105, the Court may award reasonable attorneys' fees only if "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." Fla. Stat. § 57.105(1).

Before awarding sanctions, the trial court must make "***explicit findings***" that "the action was 'frivolous or so devoid of merit both on the facts and the law as to be completely untenable.' . . . ***This burden is a heavy one***." *MC Liberty Express, Inc. v. All Points Servs., Inc.*, 252 So. 3d 397, 403 (Fla. 3d DCA 2018) [Authorities TAB 18] (internal citations omitted) (emphasis added); *see also Davis v. Bailynson*, 268 So. 3d 762, 768 (Fla. 4th DCA 2019) (setting forth the same standard for sanctions). Thus, to *grant* a motion for sanctions, the Court must make "explicit findings" that a claim was frivolous and completely untenable, and those findings "must be based on substantial competent evidence that is either contained in the record or is otherwise before the court." *MC Liberty Express, Inc.*, 252 So. 3d at 397; *see also Yakavonis v. Dolphin Petroleum, Inc*., 934 So. 2d 615, 618 (Fla. 4th DCA 2006) ("The trial court's finding must be based upon substantial competent evidence presented to the court at the hearing on attorney's fees or otherwise before the court and in the trial court record.") [Authorities TAB 31].

B. THE STATE ATTORNEY HAS NOT PROVEN THE DECLARATORY JUDGMENT CLAIM WAS FRIVOLOUS OR DEVOID OF MERIT.

The State Attorney's Office—the executive branch office tasked with protection of [redacted] *secrecy*—did not meet its burden of proving that naming the State Attorney's Office as a party

to a declaratory relief claim seeking access to *grand jury* records—from a prosecution and grand jury proceeding *conducted by* the former State Attorney's Office—was "frivolous or so devoid of merit both on the facts and the law as to be completely untenable." *See*, *e.g.*, *MC Liberty Express, Inc.*, 252 So. 3d at 397.

Rather, the evidence demonstrates the opposite of what the State Attorney was required to prove—it shows that the declaratory judgment claim was made in good faith, and the State Attorney, in his official capacity, was a necessary party. Recognizing this fact, the State Attorney answered the declaratory judgment claim and admitted that a good faith dispute existed between the parties. Ex. J09 at ¶ 72; Ex. J10 at ¶ 72. The merit of the declaratory judgment claim should be undisputed, as the State Attorney *admitted* that "the Defendants [including the State Attorney] have refused to provide, access to the testimony, minutes, and other evidence presented in 2006 to the Palm Beach County grand jury" and "a good faith dispute exists between the parties." Ex. J09 at ¶ 72; Ex. J10 at ¶ 72. These admissions in a responsive pleading doom the Amended Motion.

C. THE STATE ATTORNEY WAS A NECESSARY PARTY.

The *Post* sued both the Clerk, who was charged by law with maintaining possession of grand jury materials, and the State Attorney's Office, who conducted the grand jury proceedings and who by law was charged with the authority and control over the grand jury process, including the obligation to protect grand jury secrecy. At the hearing, the State Attorney incorrectly argued that this case is solely about who has custody and possession of the grand jury materials and accused the *Post* and its attorneys of "moving the goalposts" by asserting other non-possessory reasons for naming the State Attorney. Hrg. Tr. at 45:24-46:5. No evidence supports these arguments. As Mr. Mendelsohn testified, the *Post*'s legal team determined after months of intensive and careful legal and factual research that the State Attorney was a necessary party to any action to obtain the Epstein grand jury materials and disclose them to the public because:

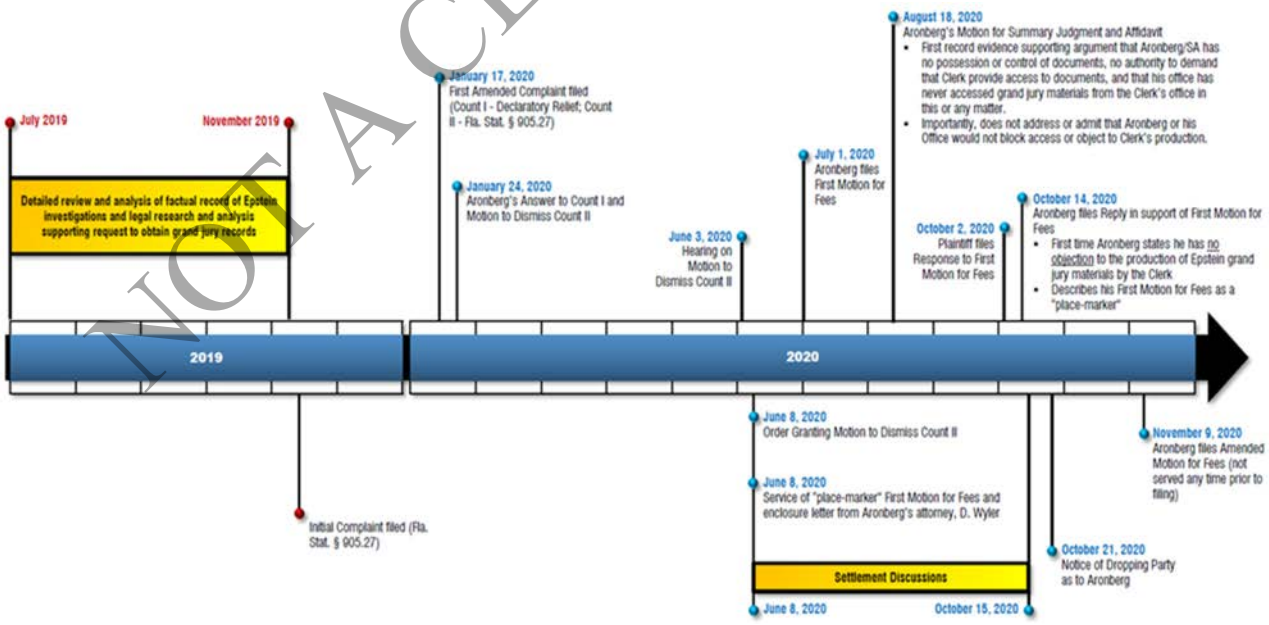
1. The State Attorney's Office was the public office that conducted the grand jury proceeding in 2006 and obtained Epstein's indictment, and to the extent the Office had custody or possession of any grand jury materials, the *Post* was requesting that they be produced and disclosed to the public.

2. The State Attorney is the public official with authority and control over the grand jury system and, as such, has the power to object to release of grand jury materials by the Clerk.

3. There was nothing under Florida law that prohibited a State Attorney from requesting copies of grand jury materials from the Clerk during and after close of criminal prosecution.

See Hrg. Tr. at 112:5-114:11; Ex. J04, Ex. J09, Ex. J16.

As demonstrated in the timeline attached as **Exhibit B** and as shown at the evidentiary hearing, the *Post* never moved the goalposts—these grounds were set forth in both the original and the Amended Complaints:



Both the initial Complaint, filed in November 2019, and the Amended Complaint, filed in January 2020, named the State Attorney in his official capacity and as having "authority in grand jury proceedings pursuant to Fla. Stat. section 27.03." Ex. J04 at ¶ 3; Ex. J09, ¶ 3.

On June 23, 2020, the *Post*'s attorney, Mr. Mendelsohn, responded to the State Attorney's initial "place-marker" fee motion and specifically laid out the 3 reasons why the State Attorney was a necessary party, with citations to additional case law. Ex. J16. Mr. Mendelsohn's June 23, 2020 letter explained that the State Attorney has "as its *primary* interest the protection of its grand jury system," citing *In re Grand Jury Proceedings*, 832 F. 2d 554, 559 (11th Cir. 1987) (italics in original). Ex. J16. In that case, the federal government petitioned a Florida State Attorney to turn over state grand jury transcripts, and the State Attorney opposed their release, citing to section 905.27. Later, a federal grand jury served a subpoena upon the same State Attorney seeking grand jury transcripts. Reversing his position, the State Attorney in response advised the federal court that he would produce the transcripts, thereby demonstrating that irrespective of physical possession, he had legal authority to obtain and deliver them pursuant to the subpoena. Ex. J16. Mr. Mendelsohn then explained that based on *In re Grand Jury Proceedings*, the "State Attorney was named as a party not simply as a custodian of grand jury records" but rather, "the relevant State Attorney is a necessary party in order to protect the grand jury that the Office of State Attorney supervised and to make arguments, if need be, against release of the grand jury materials." Ex. J16.

While *In re Grand Jury Proceedings* dealt with a subpoena as opposed to service of a summons and complaint, both a subpoena and a summons served with a complaint are forms of process. *See*, *e.g.*, 28 C.F.R. §§ 0.111(b); 0.114(e) (defining "process" as "a summons and a complaint, subpoena, writ, orders, and the execution of court-ordered injunctions, and civil

commitments on behalf of a requesting party" for the U.S. Marshals Service, tasked with "[t]he service of all civil and criminal process emanating from the Federal judicial system").[5] As there was no pending civil case in which the *Post* could issue a subpoena, the only form of process available to the *Post* was through service of a complaint. *See* Hrg. Tr. at 184:2-185:12; 186:25-187:14:.[6] It is also worth noting that the State Attorney in *In re Grand Jury Proceedings* inserted himself into the case for the purpose of objecting to disclosure of grand jury records, even before he was served with a subpoena, demonstrating that, regardless of the form of process, or even if there is no service of process, a State Attorney may intervene for the purpose of asserting grand jury secrecy. *See* 832 F. 2d at 559.

The State Attorney's counsel did not respond to Mr. Mendelsohn's June 23, 2020 letter nor did the State Attorney address *In re Grand Jury Proceedings*.

On August 18, 2020, the State Attorney filed a motion for summary judgment as to Count I and an affidavit in support, in which he stated under oath for the first time that he did not have possession of any grand jury materials sought in the Complaint, and first stated his position that he did not have the authority to demand that the Clerk provide access to the grand jury materials. Ex. J18; Ex. J19.

Then, on October 2, 2020, in its response memorandum to the State Attorney's initial "place-marker" motion, the *Post* reminded the State Attorney that because he still objected to the

[5] *See also Pilipajc v. Atria Grp.*, *LLC*, No. 8:13-cv-2415-T-35JSS, 2016 U.S. Dist. LEXIS 178214, at *16 (M.D. Fla. Jan. 19, 2016) (stating process is "defined to include a summons, complaint, and subpoena" and citing 28 C.F.R. § 0.114(e)).

[6] Florida Rule of General Practice and Judicial Administration 2.420(j) was similarly not an available method for the *Post* to seek the grand jury materials because that Rule requires a motion seeking disclosure be tied to a pending civil or criminal case. *See* Fla. R. Gen. Prac. & Jud. Admin. Rule 2.420(j). However, the State Attorney never argued that the *Post* should have sought access to the grand jury materials under Rule 2.420(j), and Judge Marx did not suggest the same in her June 8, 2020 Order.

Clerk's release of materials, the State Attorney remained a necessary party. Ex. J20, p. 8. Finally, on October 14, 2020, in response to the *Post*'s October 2, 2020 filing, the State Attorney changed his position, stating for the first time that his Office no longer objected to the Clerk's release of grand jury materials if ordered by the Court. Ex. J21 at pp. 1, 2. At that point, once the State Attorney had sworn under oath that he did not possess the requested grand jury materials and stated in a pleading for the first time that his Office was no longer objecting to the Clerk disclosing the records, the State Attorney's presence in the action was no longer required. The next day, October 15, Mr. Mendelsohn responded that he was "pleased" to read the State Attorney's "unequivocal" statement that his Office no longer opposed the *Post*'s request for Jeffrey Epstein grand jury materials. Ex. J22; Hrg. Tr. at 130:10-13. The *Post* dismissed the State Attorney on October 21, 2020. Ex. J23.

D. THE *POST* AND ITS ATTORNEYS ACTED IN GOOD FAITH.

Although the *Post* has no burden on this motion—it is the *State Attorney's* heavy burden to prove a *lack of good faith*—the evidence demonstrates that the *Post* and its attorneys prosecuted the declaratory judgment claim, and the entire litigation, in good faith. The *Post*'s attorneys researched the proper method to obtain the grand jury materials. This was a difficult analysis—it was a case of first impression, involving novel and complex issues, and matters of genuine public concern.

Months before filing the initial Complaint, from June 2019 through November 2019, the *Post*'s attorneys conducted substantial fact investigation and legal research into possible claims and the parties to be named in a lawsuit, in addition to relying upon the *Post*'s extensive prior investigation. The *Post* presented significant evidence, which it and its counsel uncovered through painstaking due diligence, that a former State Attorney likely misused a grand jury by undermining a victim's credibility based upon information provided by Epstein's defense counsel and supplied

to that former State Attorney. Hrg. Tr. at 195:16-23. In an effort to obtain materials that would shed light on how Epstein obtained the extraordinarily lenient non-prosecution agreement and sentence recommendation from the former State Attorney's Office, and in addition to the *Post*'s public records requests, Mr. Mendelsohn submitted to the State Attorney's Office specific document requests in a letter dated August 27, 2019. Ex. J01. The State Attorney never responded. Hrg. Tr. at 104:20-22. Attorney Mike Grygiel followed up on Mr. Mendelsohn's letter on October 9, 2019, and like Mr. Mendelson, did not receive a response from the State Attorney. Ex. J37; Hrg. Tr. at 105:4-14. After other avenues proved unsuccessful, and after considerable research and analysis, the *Post* and its attorneys asserted thoughtful, good faith arguments, supported by statutes and case law from Florida and other jurisdictions, before this Court to find a mechanism to obtain the Epstein grand jury materials.

There was room in the law for the claims made by the *Post*, as shown in the Florida Supreme Court's decision in *Miami Herald Pub. Co. v. Marko*, 352 So. 2d 518 (Fla. 1977), and various additional cases cited by the *Post* in its filings throughout this case. While section 905.27 says nothing overtly about the release of grand jury materials to the media, and codifies grand jury secrecy, the Florida Supreme Court held, where a grand jury identifies abuses and corruption by public officials, the First Amendment compels public disclosure of the grand jury's written report and the evidence before the grand jury. 352 So. 2d at 523. The *Post* argued, based on the same rationale adopted by the Florida Supreme Court in recognizing a disclosure exception to grand jury secrecy in cases involving findings of public corruption, that the Court should make a similar exception to grand jury secrecy under the unique circumstances of the Epstein case. As in *Marko*, where the Court recognized a First Amendment exception to grand jury secrecy, the *Post* argued that the unique circumstances in this case provided a First Amendment basis for an exception to

grand jury secrecy in favor of the media. Hrg. Tr. at 75:19-77:3. The State Attorney ignores *Marko* and the First Amendment.

In the Court's Final Judgment relating to the declaratory relief claim, the Court noted there was ambiguity in the law, and expressed curiosity about whether "an appeal of this order might persuade a higher court to establish a less restrictive interpretation." Ex. J30 at p. 12. In the pending appeal, there is no longer a need to name the State Attorney because he stated affirmatively on the record his Office does not object to the Clerk's release of grand jury materials. Moreover, in the appeal, the Clerk has now changed its position and "no longer" objects to the disclosure of the grand jury materials if ordered. Hrg. Tr. at 202:13-20. The actions of the *Post* and its attorneys, in seeking an exception to grand jury secrecy under the First Amendment like that recognized by the Florida Supreme Court in *Marko*, and in advocating for the Court to "establish a less restrictive interpretation" of the "in furtherance of justice" language in section 905.27, are not sanctionable under section 57.105.

E. THE *POST*'S CLAIM WAS SPECIFICALLY EXCEPTED FROM SANCTIONS UNDER SECTION 57.105(3)(A).

At the very least, in this case of first impression, the claim for declaratory relief was a good faith argument for extension or modification of the law, and according to section 57.105(3)(a), sanctions cannot be awarded. *See* Fla. Stat. § 57.105(3)(a) (monetary sanctions cannot be awarded: "if the court determines that the claim or defense was initially presented to the court as a good faith argument for the extension, modification, or reversal of existing law or the establishment of new law, as it applied to the material facts, with a reasonable expectation of success").

In the Court's Final Judgment relating to the declaratory judgment claim, as it remained pending against the Clerk, Judge Hafele described the *Post*'s arguments as "sincere," and "palatable and persuasive" and noted this was a case of "first impression" that "implicate[d] issues

of constitutional import," in the context of "genuine subjects of public interest and concern. . . ." *See* Ex. J30 at pp. 5, 11, 13. Thus, 57.105 sanctions are not appropriate.

F. THE STATE ATTORNEY'S FOCUS ON THE PREVIOUSLY DISMISSED STATUTORY CLAIM IN COUNT II IS MISGUIDED.

While the State Attorney focuses on the previously dismissed claim under section 905.27 in Count II, and the June 3, 2020 hearing before Chief Judge Marx on the motion to dismiss Count II, that hearing has no relevance to the instant motion. The motion to dismiss addressed at the June 3, 2020 hearing dealt only with section 905.27, and did not address the Count I declaratory judgment claim. Moreover, in dismissing Count II, the Court's June 8, 2020 Order was limited to holding that section 905.27 does not create an implied cause of action for the media. Ex. J15. Further, the comments by Chief Judge Marx during the hearing that are not memorialized in the June 8, 2020 Order are *dicta* and do not constitute a judicial determination as to whether the State Attorney had possession or custody of any Epstein grand jury materials.

The June 8, 2020 Order dismissing the statutory claim in Count II cited *Horowitz v. Plantation Gen. Hosp. Ltd. P'ship,* 959 So. 2d 176 (Fla. 2007), which sets forth the standards for determining if a statute creates an implied cause of action. In *Horowitz*, the Florida Supreme Court addressed whether a private cause of action against hospitals existed under medical practitioner requirements set forth in Florida Statutes § 458.320, and referenced the general principle 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*," as such "would be an abrogation of legislative power." (Emphasis in original).

While *Horowitz* may be relevant to an analysis of Count II on the issue of whether section 905.27 creates a private cause of action, *Horowitz* has no relevance to either the State Attorney's place-marker motion or the Amended Motion, which solely addressed Count I. First, Count I—

unlike the previously dismissed Count II—is *not* a pure statutory claim seeking to assert a private cause of action under 905.27, but it is a claim for *declaratory relief* based on the First Amendment, the Court's inherent authority over grand juries to prevent and expose prosecutorial abuses as in *Marko*, and section 905.27, which allows for release of grand jury materials in the furtherance of justice. Second, *Horowitz* is not a sanctions case. *Horowitz* does not address whether a plaintiff should be subjected to sanctions if its claim to a private right of action under a statute ultimately fails. *See Minto PBLH, LLC v. 1000 Friends of Florida, Inc.*, 228 So. 3d 147, 149 (Fla. 4th DCA 2017), where the Court stated if that argument were taken to its logical extreme, "a losing party would be subject to sanctions under section 57.105 every time a court found that a statute or legal document was unambiguous and that the losing party's interpretation was incorrect." That is not the standard.

G. NO OBLIGATION FOR FEES AROSE BECAUSE THERE IS NO BASIS FOR SANCTIONS.

Despite the State Attorney's initial testimony that he insisted on moving forward with his Amended Motion to "get the taxpayers some of their money back" for legal fees, he reluctantly admitted on cross-examination that tax dollars have not been spent on this lawsuit. Hrg. Tr. at 59:15-25; 63:21-64:15. From the outset, no fee obligations arose unless there was a Court order awarding section 57.105 sanctions. Ex. J05.[7] The only way the State Attorney's counsel, Mr. Wyler, was to be paid fees was under a section 57.105 motion. However, there is no basis for sanctions under section 57.105, and thus no basis for attorney's fees.

[7] There is no need to address the amount of fees sought because the State Attorney is not entitled to any fees under section 57.105. However, even if the Court were to disagree, the majority of the fees sought are not recoverable under Florida law, as set forth in the *Post*'s Bench Memorandum Regarding Attorney Fee Objections, delivered to the Court on September 1, 2022, and attached hereto as **Exhibit C**.

Put simply, section 57.105 is for egregious conduct. Nothing even close to that conduct was presented by the State Attorney here.

CONCLUSION

Plaintiff, CA Florida Holdings, LLC, publisher of *The Palm Beach Post*, respectfully requests that the Court: (i) deny State Attorney Dave Aronberg's November 9, 2020 Amended Motion for Attorneys' Fees, with prejudice; (ii) decline to address State Attorney Dave Aronberg's July 1, 2020 Motion for Attorneys' Fees, as it is not properly before the Court; or in the alternative, if the Court decides to address it, deny the July 1, 2020 Motion for Attorneys' Fees, with prejudice; and (iii) and grant such other and further relief as the Court deems necessary or proper.

Respectfully submitted,

GREENBERG TRAURIG, P.A.
Attorneys for CA Florida Holdings, LLC, Publisher of The Palm Beach Post

/s/ Lauren Whetstone

LAUREN WHETSTONE
Florida Bar No. 45192
MARK F. BIDEAU
Florida Bar No. 564044
GREENBERG TRAURIG, P.A.
777 South Flagler Drive, Suite 300 East
West Palm Beach, FL 33401
Tel.: 561.650.7900
whetstonel@gtlaw.com
bideaum@gtlaw.com
sandra.famadas@gtlaw.com
thomasd@gtlaw.com
FLService@gtlaw.com

STEPHEN A. MENDELSOHN
Florida Bar No. 849324
GREENBERG TRAURIG, P.A.
401 East Las Olas Boulevard, Suite 2000
Fort Lauderdale, FL 33301
Tel.: 954.768.8225

mendelsohns@gtlaw.com
smithl@gtlaw.com

MICHAEL J. GRYGIEL
(Admitted *Pro Hac Vice*)
GREENBERG TRAURIG, LLP
54 State Street, 6th Floor
Albany, NY 12207
Tel.: 518.689.1400
grygielm@gtlaw.com

NINA D. BOYAJIAN
(Admitted *Pro Hac Vice*)
GREENBERG TRAURIG, LLP
1840 Century Park East, Suite 1900
Los Angeles, CA 90067
Tel.: 310.586.7700
boyajiann@gtlaw.com
riveraal@gtlaw.com

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on this 6th day of October, 2022, a true and correct copy of the foregoing has been filed with the Clerk of the Court using the State of Florida e-filing system, which will send a notice of electronic service for all parties of record herein.

/s/ Lauren Whetstone, Esq.
Lauren Whetstone, Esq.

Composite Exhibit "A"

IN THE CIRCUIT COURT OF THE 15TH JUDICIAL CIRCUIT
IN AND FOR PALM BEACH COUNTY, FLORIDA
CASE NO. 50-2019-CA-014681-XXXX-MB AG

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

Plaintiff,

vs.

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

Defendants.
_____/

TRANSCRIPT OF HEARING PROCEEDINGS

RE: Defendant Dave Aronberg's Amended Motion for Attorneys' Fees

DATE TAKEN: Tuesday, September 6, 2022
TIME: 1:42 p.m. - 4:53 p.m.
PLACE: PALM BEACH COUNTY COURTHOUSE
205 North Dixie Highway
Courtroom 10D
West Palm Beach, Florida 33401
BEFORE: LUIS DELGADO, JR., Circuit Judge

Stenographically reported by:
Lisa Begley, RPR, RMR

270569

APPEARANCES:
On behalf of the Plaintiff:
GREENBERG TRAURIG
777 South Flagler Drive
Suite 300 East
West Palm Beach, Florida 33401
561-650-6420
BY: LAUREN R. WHETSTONE, ESQ.
whetstonel@gtlaw.com
MARK F. BIDEAU, ESQ.
bideaum@gtlaw.com
GERARD BUITRAGO, ESQ.
buitragog@gtlaw.com

On behalf of Defendant, Dave Aronberg:
JACOB, SCHOLZ & WYLER, LLC
961687 Gateway Boulevard
Suite 2011
Fernandina Beach, Florida 32034
904-261-3693
BY: DOUGLAS A. WYLER, ESQ.
doug@jswflorida.com
Also present: Dave Aronberg, State Attorney
Defendant

I N D E X

Thereupon,
the following proceedings began at 1:42 p.m.:

THE COURT: All right, please be seated.

All right, so we're here on the amended motion for attorneys' fees.

Let's announce appearances.

MS. WHETSTONE: Good afternoon, Your Honor, Lauren Whetstone. With me is Mark Bideau and Gerard Buitrago and our paralegal, Jennifer Thomson, from Greenberg Traurig on behalf of CA Florida Holdings, the publisher of the Palm Beach Post.

MR. WYLER: Good afternoon, Your Honor. My name's Douglas Wyler. I'm here on behalf of defendant, David Aronberg.

MR. ARONBERG: State Attorney Dave Aronberg, Your Honor.

THE COURT: Thank you very much. It's your motion.

MR. WYLER: Thank you, Your Honor. May I approach?

THE COURT: (Nods head up and down.)

MR. WYLER: Hi, again, Your Honor. Thank you. May it please the Court. As you know, we're here today on Mr. Aronberg's amended motion for

attorney's fees. It was filed on November 9th, 2020, in conjunction with his 57.105 demand that was made to the plaintiffs on June 8th, 2020.

That demand letter that was sent to the plaintiff's counsel was sent on the same day that Judge Marx entered her order granting the defendant's motion to dismiss Count 2 of this case with prejudice. And that motion, that 57.105 demand letter asserted that the plaintiff's sole remaining count for declaratory action had no basis in fact or law pursuant to 57.105.

Their declaratory relief claim is rooted in Chapter 905.27 Florida Statute that governs the exceptions for the release of grand jury -- grand jury materials.

In our 57.105 letter, we specifically told the plaintiffs that, under 57.105(1)(a), their declaratory relief claim is unsupported by the material facts necessary to establish it and also, under 57.105(1)(b), that their declaratory relief claim is unsupported by the application of the law to those material facts:

There's a case, Davis v. Bailynson, it's found at 268 So.3d 762. It's a Fourth DCA case from 2019.

THE COURT: Give me that cite one more time.

MR. WYLER: Yes, sir. It's Davis v. Bailynson, B-a-i-l-y-n-s-o-n, 268 So.3d 762. It's a Fourth DCA 2019. That case says, The central purpose of 57.105 Florida Statute is and always has been to deter meritless filings and, thus, streamline the administration and the procedure of the courts. Thus, the post-1999 version of the 57 -- 57.105 has expanded the circumstances where fees should be awarded and the purpose is to defer meritless filings.

57.105 -- The statute 57.105 provides the following language authorizing the award of attorneys' fees such as in the present litigation. It says, "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, was not supported by the material facts necessary to establish the claim or defense, or would not be supported by the application of then existing law to those material facts."

So, notably, the statute includes a lot of key words in there, but here, the key words that I'm focusing on is "knew or should have known."

Here, the plaintiff had a due diligence obligation to know what the law was when they filed the lawsuit. They should have known the ultimate facts of the case all along, and they should have known the proper legal mechanism for obtaining the records that they were seeking.

Nonetheless, we've informed the plaintiff multiple times throughout this case that not -- that Mr. Aronberg is an improper party, not only -- because not only is it impossible for him to produce the requested records since he has no possession, custody or control over them, but also because the statutes that govern the disclosure of grand jury records clearly and unambiguously do not grant such authority or power to the state attorney.

Another case for you is Trust Mortgage,

LLC, v. Ferlanti. That's found at 193 So.3d 997. That's also a Fourth DCA case from 2016. And it can guide the Court here. This case says that, in determining an award of sanctions under Section 57.105, the trial court's findings must be based on substantial competent evidence and the trial court must make an inquiry into what the losing party knew or should have known during the fact establishment process both before and after the suit was filed.

So, as to the 57.105(1)(a) claim, Mr. Aronberg's position is that the newspaper should have known when they were doing their research that it was an impossibility, that he had no access, custody or control of these records, but that fact -- a bright line was drawn to that fact by Judge Marx in the June 3rd, 2020, motion to dismiss hearing. She made several statements that put the plaintiff on notice, if they weren't already.

And, if it would please the Court, I would like to read those onto the record. You can find these -- We've submitted a joint binder to you, and if you -- --

THE COURT: I have it here. Tell me where

I'm looking.

MR. WYLER: Yes, sir. If you look at J13, that's the condensed version of the transcript. You can find the full version if you look at J29, and I can give you the Bates stamp numbers.

THE COURT: Tell me where to look, and I'll look.

MR. WYLER: Absolutely, Your Honor. Look at Bates stamp 1353, and that will start you --

THE COURT: Of what exhibit?

MR. WYLER: Okay, Exhibit 29 is the full version. I thought that might be easier for you to read it. At 1353.

THE COURT: You said J29.

MR. WYLER: Yeah, J29, and, if you look in the lower left corner, there's a Bates number that says CA, slash, Aronberg, and you'll see the Bates stamp numbers.

THE COURT: What's the number?

MR. WYLER: 1353.

THE COURT: Go ahead.

MR. WYLER: Thank you, Your Honor. I'm going to go through this transcript, and I'll direct you to the actual page number of the transcript itself, okay? Page 3, lines 18 -- 4

Page 10

through 1. "Not for nothing" -- This is all Judge Marx. "Not for nothing, I think we all know that they don't have control and custody of the records."

Page 5, lines 17 through 19. "I think we can all agree that the state attorney doesn't have these records."

Page 8, line 4. "I'm asking you, how are the clerk and the state attorney the proper defendants?"

Page 8, line 8. "I'm puzzled by the procedural posturing of this case naming the state attorney, and, you know, I'm further stymied by the fact that you allege in your complaint that they have, particularly David Aronberg, the state attorney, that he has these records."

Page 8, line 18. "Okay, let's run this all the way out. Let's say you win and you get a judgment against the state attorney, Dave Aronberg. What's he supposed to do with it? He can't release the grand jury testimony. He has no authority whatsoever to do that."

Page 10, line 21. "And the only thing we're here today about is why should the clerk and the state attorney have to defend a civil action

Page 11

when it's an impossibility of performance? They even -- If you were to win and get a judgment against them, they cannot give you what they don't have."

Page 11, line 12. "I'm simply saying, why should these two entities have to defend this lawsuit when, even down the road, if you win, they can't give you what they don't have?"

Page 16, line 12. "And, you know, really, I want to you boil it down for me as to this: Let's take it all the way down the road. You win. You get a judgment against the clerk and the state attorney. I know there's other reasons why you might have filed it this way, but I'm just simply puzzled because I do hear what the clerk and the state attorney are saying, and that is, performance is impossible. They don't have the records and cannot, absolutely. There's not even an inch of wiggle room that they could release the records even if you got a judgment. It is solely a determination for the Court. I frankly think you know there's ways to get your records. There's ways to get confidential records, but it isn't by suing the state attorney and the clerk."

Page 17, line 6. "Even assuming, arguendo,

Page 12

that they have the records, we know they don't. You were to -- If you were to get a judgment against them, how would you expect them to perform?"

And then finally, on page 17, line 23. "What do you mean? What do you mean? They're not trying to block it? They're saying that, despite the fact -- let's just talk about the clerk because we all know the state attorney doesn't have it."

I would ask the Court to enter the hearing transcript found at J29, 1353 to 1374 as Defense's Exhibit No. 1.

THE COURT: Any objection?

MS. WHETSTONE: All the joint exhibits are in evidence, so...

MR. WYLER: They're in evidence, but I don't know if you wanted to mark them for each person. So if I don't need to do that, then I'll dispense with that.

THE COURT: These joint exhibits have all been stipulated to?

MR. WYLER: Yes.

THE COURT: No need then.

MR. WYLER: Then I'll leave it alone.

Page 13

Thank you, Your Honor.

These statements, along with the upcoming examination of Mr. Aronberg and Mr. Mendelsohn, along with everything that's presented to the Court, it shows that these sanctions are justified, and there is no arguable basis in fact or law the way those statutes are written that Mr. Aronberg could ever provide the requested materials that he was sued for.

As to the 57.105(1)(b) argument, Mr. Aronberg's position here is that the newspaper, plaintiffs and their attorneys, they should have also known at the beginning when they were doing their research that those statutes precluded Mr. Aronberg from actually providing these records. That's what they sued for. They asked for Mr. Aronberg to provide these records so that they could then be disclosed to the public. But chapter -- or, Statute 905.27 states this: And this -- this argument has been presented in everything that we've said to the newspaper.

"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

Page 14

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."

That argument was ultimately utilized in Judge Hafele's final judgment in favor of the clerk because, on top of other things, the plaintiff admitted that they weren't seeking to use these requested records in an underlying civil or criminal case. They wanted to use it to -- for public disclosure.

Chapter 905.17 of the Florida statutes also applies here. This has also been made evident and very clear to the plaintiff. That statute says, in pertinent part, "The notes" -- and this is all regarding the grand jury materials -- "The notes, records and transcriptions are confidential and exempt from the provisions of Chapter 119.07 and Section 24(a), Article 1 of the State Constitution and shall be released by the clerk only on a request by a grand jury for use by the grand jury or on an order of the Court pursuant to Chapter 905.27."

So, like I said, these legal arguments have

Page 15

been presented to plaintiff and its lawyers several times. It was in the 57.105 demand letter, but plaintiff dropped Mr. Aronberg from the case too late. The statute had already taken effect. There's a 21-day safe-harbor provision in that statute. And the testimony and evidence today will show that a motion for attorneys' fees was filed appropriately with that statute, and then following that, Mr. Aronberg was dropped from the case. After that, an amended motion for attorneys' fees was filed.

Plaintiff has an argument having to deal with the timing of when our amended motion for attorneys' fees was filed. They claim that we don't comply with the 21-day safe-harbor provision, and they use this case of Lago v Kame, Lago v Kame By Design. It's K-a-m, like Mary, K-a-m-e By Design, LLC. That's found at 120 So.3d 73. It's also a Fourth DCA case from 2013.

So that case held that, if a party files a subsequent or amended motion for sanctions under Section 57.105 and raises an argument that was not raised in the original motion for Section 57.105 sanctions, then the subsequent motion must independently comply with the 21-day safe-harbor

Page 16

provision.

Okay, but the facts are different, totally different.

See, in the Lago case, the party who was served with the 57.105 demand never withdrew from the case. They stayed in the case to the end. The person that served the original 57.105 in Lago, after serving it, served a second one, and when they served the second 57.105 -- well, they didn't serve a second 57.105 demand letter. They filed a second motion for attorneys' fees, an amended motion for attorneys' fees without providing an additional letter, 57.105 letter before they filed the amended motion. That didn't happen in this case.

In this case, we filed our amended motion -- our original motion for attorneys' fees on November 9th, 2020, and then they dropped Mr. Aronberg from the case on October 21st -- sorry, we filed -- I'm sorry. I apologize, Your Honor. We filed our original motion for attorneys' fees on July 1, 2020. I apologize. They dropped Mr. Aronberg from the case on October 21, 2020, and then we filed our amended motion for attorneys' fees on November 9th, 2020.

Page 17

So the significant thing about this, Your Honor, is the 21-day safe-harbor provision is there to provide the -- provide an opportunity to reevaluate your position and change your position and withdraw your case based on the demands in the 57.105.

There was no opportunity for the plaintiff to reevaluate and change their position. They had already made their mind up. They had already dropped Mr. Aronberg from the case. So, by asking or saying that we failed to provide the 21-day safe-harbor provision, that is misleading, Your Honor, because there was no way they could change their position with another demand letter sent to them. They had already made their decision and dropped Mr. Aronberg from the case. It was impossible for them to change their position. So he had no obligation to serve his amended motion prior to filing with the Court because he was already dropped, and a previous motion for attorneys' fees was already filed.

Another interesting part of that Lago case is that, in that case, the Court did find that the amended motion was filed improperly because they were still in the case, but, instead, the Court

picked up the originally-filed motion for attorneys' fees in that case. And we would ask Your Honor, in the alternative, should you find that, that you would rule on our original motion for attorneys' fees if it came down to it because, in the end, the arguments are the same, and the real difference in the filing of the amended motion for attorneys' fees is that it included the final tabulation of my firm's fees, as well as affidavits -- my affidavit of reasonable -- of fees and an affidavit of reasonable fees from our expert.

The other interesting thing here, the other argument that you'll hear plaintiff make is that Mr. Aronberg was a proper party to the case. Now, again, the clerk is the person -- the only entity that has authority to provide these records under statute, and that alone should be enough to show that Mr. Aronberg is not a proper party defendant. But Judge Hafele's final judgment actually helps out this because Judge Hafele's final judgment actually instructed plaintiff on the right way to go about trying to get the records that they were seeking. It points out that they followed -- failed to follow the right procedure.

In that final judgment, Judge Hafele makes it clear that all that they had to do was file -- follow the Rules of Judicial Administration Rule 2.42 and file a motion seeking disclosure in the underlying case, and then serve the parties to that case and anybody who might be interested in it.

That underlying case is State of Florida vs. Jeffrey Epstein. It's case number 2006-CF-9454, and Mr. Aronberg nor his office is a party to that case. So he is an improper party. They never needed to sue him to get these records.

There's a big difference between suing the state attorney to get records versus filing a motion in a case that was already open.

Okay, now they make one other defense here under 57.105(3)(a), but that does not apply here in any sense, and I'll explain to you why. First, let me read you the statutory language.

This is 57.105(3)(a), and it says, "Notwithstanding subsections (1) and (2), monetary sanctions may not be awarded; (a), Under paragraph (1)(b) if the Court determines that the claim or defense was initially presented to the Court as a good faith argument for the extension,

modification or reversal of existing law or the establishment of new law, as it applied to the material facts, and with a reasonable expectation of success."

So here, the plaintiff tries to twist the language of that statute in two different ways to suit its argument. First, they entirely failed to recognize that the 57.103(a) (sic) defense applies only to claims made under 57.105(1)(b), and that has to do with the law not being correct as applied to the facts to establish the case.

The law here cannot be applied to the case in such a way that would support their claim as I went through with those statutes with you. That is the only scenario under (1)(b), when you're making a legal argument, not a factual argument, where you can come up with a good faith defense. So there is no good faith defense at all that applies to the factual argument that it is impossible for Mr. Aronberg to provide these materials, that he has no access, custody or control over them and he never has. That is unchanged by this defense of theirs.

But the interesting thing is that this defense fails in another way, too, because, if you

recall, their only remaining count is for declaratory relief, and when declaratory relief is asked of the Court, that is an asked for interpretation, and admittedly so by the plaintiff. Their -- They state that -- Where did I just put it? They argue that their declaratory relief claim was presented to the Court as a, quote, good faith argument for the interpretation of existing law or at least the establishment of a new law. But that doesn't work here because, if you go back to the statutory language, the statute, it's only for the extension, modification or reversal of existing law. It doesn't say anything about interpretations.

They did not ask for the extension of 57.105 -- or, of 905.27. They didn't ask for it to be modified. They didn't ask for it to be reversed. They asked the Court to interpret it and tell them whether or not they had the ability to have the grand jury records disclosed to them. That is totally -- That is an interpretation that they asked for. The Court only got to address that as to the clerk because, again, we were dropped before then.

So the other part of that statute talks

about -- it says, or creation of a new law, okay? They weren't asking to create a new law with their declaratory relief claim. The only place where they were trying to create a new statutory cause of action was in their Count 2 that was dismissed with prejudice by Judge Marx and is not at all a part of Mr. Aronberg's 57.105 demand.

The 57.105 demand only regards the claim for declaratory relief. So the defense under 57.105(3)(a) fails as to both of Mr. Aronberg's 57.105 claims.

I would just like to reiterate to the Court that the clerk is in actual possession of the requested records, is the only entity that is statutorily authorized to release grand jury records pursuant to a Court order, and despite plaintiff's arguments to the contrary, the record evidence will show that plaintiff and its lawyers knew or should have known at the time they were served -- at least at the time they were served with the 57.105 demand that the declaratory relief claim fails under 57.105(1)(a) because it is unsupported by the material facts necessary to establish it, and under 57.105(1)(b) because it is unsupported by the application of the law to the

material facts.

Plaintiff and its attorneys have exposed themselves to sanctions under 57.105, and Mr. Aronberg requests such relief.

THE COURT: Thank you.

MR. WYLER: Thank you, Your Honor.

MS. WHETSTONE: May I approach, Your Honor?

THE COURT: Please.

MS. WHETSTONE: And if I may, I'll flip over this timeline. Your Honor should have a copy in your binder.

THE COURT: Is that the -- Yes, give me -- I think I actually...

Is this it?

MS. WHETSTONE: Yes.

THE COURT: Whenever you're ready.

MS. WHETSTONE: May it please the Court. The Post filed a complaint seeking access to materials from Jeffrey Epstein's grand jury investigation which was run by the Palm Beach County's former state attorney in 2006.

The Post felt a duty to inform the public as to how this sexual predator got the deal of the century and got off with such leniency. It is a matter of genuine public interest and concern as

this Court has noted.

The Post named two defendants, number one, the clerk of Court as the public office tasked with custody of grand jury records and, number two, the state attorney's office because it actually ran the investigation and because it is the public office tasked with protecting grand jury secrecy.

The state attorney's office says they should have never been named a party. Of course they had to be named a party. Not only were they the public office that conducted the investigation and presumably had possession of certain documents at some time, but, more importantly, they're the public office with the power and authority to prevent the clerk from producing grand jury documents.

Your Honor, we heard in the state attorney's counsel's opening that this is about custody, whether the state attorney had the documents, whether he had possession or custody of the documents, but it's not just about that. It is not just about custody. And it's -- We'll get into this, but the important point is, the state attorney's office has as its task the protection

of the grand jury system.

And it's important to remember, we're here today on a motion for 57.105 sanctions relating to the declaratory relief claim, not the statutory claim. We heard reading from the transcript before Judge Marx relating to the motion to dismiss Count 2, which was on a statutory claim under Florida Statute 905.27.

Of course, we are here on the declaratory relief claim that also involved constitutional law and First Amendment law, not just Florida statutory law.

So, starting off, we went as to the merits, but you don't even need to get there, Your Honor. There are two noncurable, case dispositive jurisdictional issues which require denial of the motion without any consideration of underlying facts. And this is not just an argument. These are jurisdictional defects.

Number one, the Court lacks jurisdiction because the amended motion for sanctions was filed after the state attorney was dismissed as a party. And I'll indicate -- Hopefully you can hear me, but here is where the state attorney filed his amended motion for fees. It was November 2020.

Page 26

And we dismissed -- the Post had dismissed him as a party 19 days before, on October 21st, 2020.

The case law is clear that the Court has no jurisdiction over a motion for sanctions after a voluntary dismissal, like the motion here. And this is case law, including Sidlosca vs. Olympus, and that is in Authorities tab -- the Authorities binder that Your Honor has at tab 26, and I'll read the case cite for the record. 276 So.3d 987. It's a Third DCA 2019 case.

Number two, the Court also lacks jurisdiction because the amended motion, which is the only motion we are here on, violated 57.105 subsection (4)'s safe-harbor notice provision which requires a motion for fees be served at least 21 days before its filed.

It is undisputed that the state attorney never served a copy of the amended motion for sanctions at any time before filing it on November 9th. I believe Mr. Wyler also mentioned that and agreed with that in his opening. As a result, the amended motion cannot be considered. The state attorney tries to rely on a prior, what he calls, quote, unquote, place-marker motion for fees that was served on June 8th, 2020, in an attempt to get

Page 27

around the safe-harbor requirement of 57.105. He cannot do so. First, the statute is in derogation of the common law, so it must be strictly construed.

More importantly, the case law says, and this is Lago vs. Kame, the case law says that the initial place-marker motion is not sufficient to comply with 57.105 because, once they filed an amended motion making new arguments, then that 21-day safe-harbor notice was required anew. And, again, Lago says -- this is tab 14 in Your Honor's binder -- that they must independently comply with the 21-day safe harbor.

The state attorney tries to argue that, because we dismissed him prior to him filing the amended motion for fees, he's no longer required to comply with the 21-day safe harbor, but the dismissal is exactly what the 21-day safe-harbor provision is aimed at encouraging from parties in litigation.

There was nothing to ask us to withdraw with a 21-day notice because it had already been withdrawn, so 57.105 doesn't even apply to the situation here, and that's actually a situation that came up in the Ferere, F-e-r-e-r-e, vs. Shore

Page 28

case, and that's tab 6 in Your Honor's binder and that's a Fourth DCA case. And in that case, the Court said that 57.105 subsection (1) was not applicable where there was no way for plaintiff's counsel to withdraw an allegation after a post-trial motion. So if 57.105 -- the safe-harbor notice was not available, then 57.105 doesn't apply at all.

And, here, it's obvious that the amended motion made new arguments not in the first place-marker motion. And we're going to pull up the first place-marker motion and the amended motion to compare them, and those are exhibits, Joint Exhibits 14 and 25.

So, first, here is -- So the first place-marker motion, Exhibit 14, it's -- the motion itself is one page. There's an enclosure letter that came with it, and it's two pages. So three pages total. The motion itself says nothing except we're going to prevail, and this is your notice, we want fees.

But the enclosure letter says, along the lines I believe Mr. Wyler said this in his opening, that the defendant Aronberg nor the office of the state attorney is in custody or

Page 29

control of the 2006 grand jury materials sought therein.

However, the first motion completely failed to address the main reason why the state attorney was a party to the lawsuit, because it could object to the clerk providing the grand jury records.

So now let's pull up Exhibit 25, which is the amended motion. And, Your Honor, here, so you can have an idea, here's the first motion. It's Joint Exhibit 14. Here's the amended motion. This is three pages. This is 59 pages with exhibits, 11 pages of a motion. And one page of a motion. So clearly there's new stuff in the amended motion for fees. But Mr. Wyler said they said the same arguments. That's not -- That's not true.

The amended motion clearly makes new arguments not in the first place-marker motion. It also references new documents, like the state attorney's motion for summary judgment and Mr. Aronberg's affidavit, both which were filed in August of 2020. So here (indicating).

Importantly, the amended motion also raises new positions. Just as an example -- and, Gerard,

Page 30

if you could pull up paragraph 20 of the amended motion -- it says, "The state attorney has no objection to the clerk producing and disclosing the requested materials should the Court grant an order to that effect." And then in paragraph 25 it says, "Likewise, the state attorney has no objection and never has had any objection to the clerk releasing the records sought by the plaintiff."

That's not true, though. As you will see in the evidence, the position that the state attorney had, quote, no objection, or, quote, never had any objection to the clerk producing grand jury materials was new, and you'll hear from [redacted] attorney Stephen Mendelsohn that this is exactly the position that the Post was trying to get and Mr. Mendelsohn was trying to get from the state attorney.

And you'll hear, in a June 23rd, 2020, letter Mr. Mendelsohn wrote to the state attorney, he said the state attorney is named here because they are a party that is tasked with protection of the grand jury system. You have the right to object to the release of grand jury materials. That's why you're here. And, once we had this

Page 31

notice right here of saying they don't object, we dismissed him.

So he first said on the record, on October 14th, I have no objection to the production of the Epstein grand jury materials. We dismissed him October 21st.

So, to close out on the jurisdictional argument, the amended motion raised new arguments and cited new record evidence that did not exist at the time of the first place-marker motion. So the amended motion had independently complied with the strict 21-day safe-harbor requirement, and the state attorney failed to serve it before filing; therefore, the amended motion must be denied outright.

Your Honor, even if the Court -- sorry -- even if the state attorney could overcome the jurisdictional defects, the evidence will show there's absolutely no basis for sanctions under the statute, and let's turn to the statute now and the standard under it as applied by the case law.

And this will be tab 18.

THE COURT: Are you talking to me, or --

MS. WHETSTONE: Sorry, I was indicating to Gerard.

Page 32

And, Your Honor, here's the standard for sanctions under Florida Statute 57.105. The statute is behind it. [redacted] read from that. And this is a case that interprets -- interprets this high standard, and this is the same -- I note that Davis vs. Bailynson -- I'm going to botch that name, sorry, but the case that Mr. Wyler read from has the same exact standard as to how you -- you interpret whether somebody has met the requirements of 57.105. So this is a high burden. This is not a who won. This is not a prevailing party standard.

They have the burden of showing that the claim was so frivolous and devoid of merit both on the facts and the law as to be completely untenable, and we know the claim was not frivolous, number one, because they admitted in their answer to this very claim --

And, Gerard, if you could pull up the comparison.

They admitted in their answer to this very claim that a good faith dispute exists between the parties. And here you're seeing -- Your Honor is seeing a comparison of Exhibit 9, which is the amended complaint, this count for declaratory

Page 33

relief, and Exhibit 10, which is the state attorney's answer. And it says, "The Palm Beach Post has sought from defendants, and defendants -- but defendants have refused to provide access to the testimony, minutes and other evidence presented in 2006 to the Palm Beach County grand jury. Indeed, defendants have each filed motions to dismiss the complaint and the relief it sought under Florida Statute Section 905.27(1). Accordingly, a good faith dispute exists between the parties." And, in response, the state attorney simply said, "Admitted."

By that admission, they lose this motion for sanctions. They cannot now argue this claim was without merit. And, in addition, we will go through the evidence that shows the Post and Greenberg Traurig acted only in good faith and with thoughtful deliberation and that this was not a frivolous claim by any means.

So backing up a bit and to what we believe the evidence will show. After Epstein's arrest here in Palm Beach County in 2005, the Post began an investigation into Epstein and then what happened with the prosecution in 2006, how he got this sweetheart deal from the former state

attorney, to inform the public what went wrong.

The Post made a number of public records requests. No luck. The limited documents they received shed no light on how Epstein got off with such leniency.

So, in the summer of 2019 -- we again have this timeline -- after years of investigation on Epstein, the Post brought in a team at Greenberg Traurig, including Stephen Mendelsohn here who you will hear from today, and other experienced attorneys in First Amendment and constitutional law and criminal law.

The Post and its attorneys spent months researching and determining how do we get these records. And you'll see the first box is from July -- July 2019 through November 2019, research and -- legal research and due diligence regarding what claims to bring and how. You will hear that Mr. Mendelsohn tried contacting the state attorney's office and requesting what was missing from the public records requests.

And if you want to pull up Exhibit 1.

Exhibit 1 is an example of such, and it was a letter from Mr. Mendelsohn that you'll hear about where he requests specific documents. And

you will hear that Mr. Mendelsohn was not the only attorney to write the state attorney's office in addition to the Post. You will hear that Mr. Mendelsohn's specific records request to the state attorney's office went unanswered, and you will hear from [redacted] and the Post that the Post was left with no other option. So the Post filed this lawsuit seeking access to grand jury materials naming two defendants, the clerk and the state attorney.

And the state attorney was a necessary party to the claim here. I believe I've gone over that, but, quickly, number one, the state attorney ran -- conducted the grand jury investigation in 2006. At some point, the state attorney's office had to have records. But, number two, more importantly, as the public official with responsibility and control over the grand jury system, the state attorney had to be named. As the public office with that control, the state attorney had the power to object to the clerk producing records. And this is something that the state attorney has never refuted or even addressed, and that goes hand in hand with number two, that the state attorney also had the ability

to request access to records from the clerk. This was not on a whim, not to harass and certainly not frivolous.

In doing all this background research, you will hear that Mr. Mendelsohn came across Fourth DCA and federal case law supporting the conclusion that the state attorney was a necessary party. Mr. Mendelsohn provided the state attorney with that case law and explained what we needed from the state attorney in this case. We needed the state attorney to represent that he would not object to the release of grand jury materials by the clerk if ordered by the Court. They ignored that request.

You will hear from Mr. Mendelsohn -- Exhibit 16 -- about a June 23rd, 2020, letter he sent to the state attorney in response to the state attorney's place-marker motion for fees that was in early June. And, in this letter dated June 23rd, Mr. Mendelsohn set forth three reasons why the state attorney was named as a party. Again, number one, custody; number two, they had the power to make arguments against release of grand jury materials; number three, there was nothing that prohibits the state attorney from

requesting copies of the clerk during and after the close of criminal prosecution.

So, as Mr. Mendelsohn says in this letter, even if the state attorney's office did not have possession or custody of the grand jury materials, that did not end the need for his office to be a party to the declaratory relief claim. The state attorney still had the right to object to the clerk producing records. That's exactly why we included them in the case.

You'll hear they previously did oppose release by filing a motion to dismiss -- this is Count 2, I'm sorry, the statutory count -- and then, by filing the answer to Count 1 admitting that a good faith dispute exists as to this very claim.

So in the timeline, for months after Mr. Mendelsohn's letter, they -- they refused to respond, and we also reminded them on October 2nd, 2020, in a later filing, what we needed. What we needed from the state attorney to release him from this case was that he would not object to the clerk's release of materials, and this was in our reply -- sorry -- response to the first place-marker motion for fees, and that was

Exhibit 20.

In that exhibit -- or, in that document, Mr. Mendelsohn again raises the In re Grand Jury case that you just saw in the June 23rd letter. It was not until after this, on October 14th, 2020, that the state attorney's office finally stated in a court filing they would not object to the clerk's production if ordered, and he took a position of neutrality. Days later, we dismissed the state attorney.

It's important to note the dismissal of the state attorney does not make him a prevailing party, not even under the 57.105 sanctions standard, which is much higher than a prevailing party standard, but even under a regular prevailing party standard, the state attorney is not a prevailing party here. Just because a plaintiff voluntarily dismisses a defendant does not make a defendant a prevailing party. Where a plaintiff gets something or a compromise out of litigation, a dismissal becomes an appropriate course of action as a result, then neither party is the prevailing party for purposes of contractual attorneys' fees. And that's pursuant to the Kelly vs. BankUnited case that is -- it

should be in tab 38 of Your Honor's Authorities binder. We sent it included in the supplement.

THE COURT: I think I --

MS. WHETSTONE: It should have been on last Thursday, but --

THE COURT: I got it.

MS. WHETSTONE: As Mr. Wyler even said, the purpose of 57.105 is to deter misuse of the judicial system and to discourage needless litigation, but here, to declare the state attorney a prevailing party and entitled to attorneys' fees under these facts would be contrary to that goal.

Again, you'll hear from Mr. Mendelsohn that the Post dismissed the state attorney only after it got what it needed from him, changing his opposition to release of grand jury records to getting his affirmative statement that his office did not object. And, Your Honor, the cases here -- sorry -- the Court's rulings here actually support this finding of no basis for sanctions even further.

With regard to -- We heard a lot from the transcript before Judge Marx from the motion to dismiss Count 2. First, that was with regard to a

motion to dismiss Count 2, not the count we're on here today, which is Count 1 for declaratory relief.

It's important to note that Count 1 for declaratory relief involves issues of First Amendment and constitutional law, not just that Florida Statute 905.27.

In number two, respectfully, what -- what Judge Marx said during a hearing is not evidence as to whether the state attorney actually has custody or control of records. So we heard her statements on the record but no evidence about whether the state attorney did or did not have custody of the documents. And he did say in his filings he does not have custody or control of the documents, but, again, we're not just here about his own custody or control; we're here about his right as the state attorney to object to the clerk releasing grand jury records.

And when Judge Marx entered an order on Count 2 dismissing Count 2, that was a limited order on whether there was a private cause of action under that statute.

In addition, there was Judge Hafele's final judgment that was Exhibit 30 in the binder, and

Judge Hafele, when he entered the final judgment, that was as to the same claim that's at issue here, the declaratory relief claim as it remained against the clerk, because you'll recall the state attorney had already been dismissed as a party once they said they had no objection to the clerk releasing grand jury materials.

In the final judgment, Judge Hafele noted this was a case of first impression involving issues of genuine public concern. The arguments by the Post's attorneys in support of the declaratory relief claim were strong, sincere, palatable and persuasive. He commended everyone for their hard work. This is the opposite of a frivolous claim. And, while the Court ultimately did not rule in the Post's favor for declaratory relief as to the clerk, we respectfully disagree, and that decision is currently on appeal. But, more importantly, that is not the standard for 57.105. Again, it is not a prevailing party standard.

They have not met the high burden for sanctions to prove that the fact -- the claim was so frivolous or so devoid of merit under both the facts and the law as to be completely untenable,

and, at the very least, this is a case -- in this case of first impression, the claim for declaratory relief was a good faith argument for extension of the law. And, according to 57.105(3)(a) sanctions cannot be awarded.

A reminder here, too, that it was not just the statutory -- the Florida statute at issue. It's constitutional and First Amendment law at issue in the declaratory relief claim.

Finally, it's worth noting that, if there are no sanctions imposed, there are no fees to be paid by the state attorney's office, by Mr. Aronberg personally or by taxpayers, by anybody.

Mr. Wyler, who represents state attorneys across the state of Florida, had a contingency agreement with the state of Florida in this case -- sorry -- state attorney in this case and, from the outset, no fee obligations arose unless there was a Court order awarding fees. And that's Exhibit 5 in the joint exhibit binder. So the only way they were going to get fees was under a 57.105 motion. However, there has never been any basis for 57.105 sanctions.

In closing, Your Honor, 57.105 is reserved

for egregious conduct. There's nothing even remotely close to that conduct that exists here.

The motion must be denied, and the Post respectfully requests the Court deny the amended motion for sanctions in its entirety.

Thank you, Your Honor.

THE COURT: How many witnesses are you calling?

MR. WYLER: Just one. Mr. Aronberg.

THE COURT: All right.

THE CLERK: Do you solemnly swear or affirm that the evidence you are about to give will be the truth, the whole truth and nothing but the truth?

THE WITNESS: I do.

Thereupon,

DAVID ARONBERG, STATE ATTORNEY,

having been duly sworn by the Clerk of the Court, responded and testified as follows:

DIRECT EXAMINATION

BY MR. WYLER:

Q. Good afternoon, Mr. Aronberg.

Will you please introduce yourself to the Court and tell us how long you've held your position.

A. Good afternoon.

I'm David Aronberg. I go by Dave. And I've been state attorney since I was elected in 2012.

Q. Thank you. We're here today on your amended motion for attorneys' fees filed November 9, 2020, against the plaintiff, correct?

A. Correct.

Q. And did you engage my law firm, Jacobs Scholz & Wyler, to defend you in this action?

A. Yes.

Q. I'm going to show you our Joint Exhibit 5. Do you recognize this as a copy of our firm's engagement letter with your office signed by Jeanne Howard?

A. Yes.

Q. Thank you.

MR. WYLER: Joint Exhibit 5, Your Honor, our firm's engagement letter, contingency fee agreement.

THE COURT: Thank you.

BY MR. WYLER:

Q. Mr. Aronberg, have you reviewed or are you otherwise familiar with the pleadings and filings submitted with the Court in this hearing?

A. I am.

Q. So then you're familiar with the newspaper's original summons and complaint filed against

you on November 14th, 2019, and then the amended complaint filed January 17, 2020?

A. Yes.

Q. And what has the newspaper sued you for?

A. They sued me to obtain the Jeffrey Epstein grand jury documents.

Q. Did they sue to just obtain them, or to also produce them and provide them to them?

A. They wanted me to produce them and to give it -- give those documents to them.

Q. And do you know what they wanted to do with those documents once they got them?

A. They wanted to publish the documents.

Q. Okay. And do you have possession, custody or control of those requested grand jury documents?

A. No. I've never had possession, custody or control of those documents.

Q. And, by control of those documents, do you mean that you couldn't -- you have no power to release them if you had them?

A. I have no power to release these documents. I don't have them. I've never had them. They knew I've never had them.

Q. But, in their complaint, didn't they allege that you and your office are, quote, in possession of the

documents that are the subject of this action?

A. That's this whole case. It's whether I had possession, custody or control of these documents. That's why they sued me and my office. And I never had possession, custody or control of these documents.

Q. Okay.

MR. WYLER: Your Honor, you can find that on J9 of the amended complaint if you're looking.

THE COURT: Thank you.

MR. WYLER: You can find it at Bates stamp 118.

BY MR. WYLER:

Q. Mr. Aronberg, are you familiar with the newspaper's allegation in their complaint that you, quote, have denied to the Palm Beach Post and to the public at large the grand jury materials sought to be disclosed?

A. I am.

Q. Did you ever deny the newspaper those requested materials?

A. From the beginning, we informed the newspaper that I've never had these documents. In our motion to dismiss, we had two arguments. The first one, the very first one was that we do not possess, have custody or control of these documents.

In the second argument, we then make an argument of law, because it's a motion to dismiss and we have to argue as a matter of law and we couldn't rely on the matter of fact that I didn't have the documents. So they put us in a position to argue as a matter of law that, even if we did have them, under the law we could not provide them.

Q. Okay.

A. And, since then, they've been using that as a cudgel.

MR. WYLER: And, Your Honor, if I can, I'll direct you to J6 and J10. Those are the two motions to dismiss that do make that assertion.

THE COURT: 6 and 10?

MR. WYLER: Yes, Your Honor. And I'll read that on the record. J6, Bates stamp 103, it says, "It is significant to note that, despite plaintiff's allegations to the contrary, Defendant Aronberg is not in custody or control of the records sought and is, therefore, not a proper party to this action."

And, in the second motion to dismiss, I'll read that to the Court as well. That's at J10, Bates stamp 222. "It is significant to emphasize that, despite plaintiff's allegations to the contrary, Defendant Aronberg and the Office of the State Attorney for the 15th Judicial Circuit are not in custody or control of the records sought herein, and, therefore, Defendant Aronberg is not a proper party to this action. In fact, Defendant Sharon R. Bock as clerk and comptroller of Palm Beach County, Florida, admits that she is the custodian in possession of the documents that are the subject of this action."

BY MR. WYLER:

Q. Mr. Aronberg, after these initial filings, did you take any other steps to further notify the newspaper and its lawyers that your office lacks possession, custody and control of the requested records?

A. Yes, and that is because, when the articles came out that I was somehow stonewalling the Palm Beach Post and trying to prevent public access to these documents, I started to get calls and texts from people asking why I was doing that. I had a Facebook message that said I should resign.

Peter Antonacci, my predecessor down in Broward, reached out to me, wanted to know why I was covering for the grand jury -- or, for Barry Krischer or for others. And I told him I don't have the documents, because that seemed to be lost in the articles written.

And so I took an extraordinary step. I made a decision to create a Web portal and to release every document that my office had relating to Jeffrey Epstein and put it on the Internet, and that was -- and I have just to refresh my recollection, the dates up here -- that was January 30th.

Q. Okay, great. On January 30th, did -- I'm going to show you joint Exhibit No. 12. Do you recognize this as the press release that your office released that you were just explaining?

A. Yes.

Q. And can you read it to the Court, please?

A. This is a press release that my office put out when we established this Web portal, and it says this: "Palm Beach County State Attorney Dave Aronberg creates Web portal for public access to Jeffrey Epstein records."

And then there's a statement from me: "In response to a large number of requests, my office is posting online all the public records from the investigation and prosecution of Jeffrey Epstein. These records, which have all been released previously pursuant to public records requests, can be accessed through the following link," and it gives the link.

"The Jeffrey Epstein case occurred several

years and multiple state attorney administrations before I became Palm Beach County State Attorney in 2013." I was elected as -- As an aside, I was elected in 2012, but I started in 2013. "As such, I have never seen or had access to the Epstein grand jury transcripts as the state attorney's office has never possessed them. As lawsuits and investigations continue to move forward, I hope that Epstein's victims are able to achieve justice and closure they deserve."

Q. Thank you. Now, in addition to that press release, did you make any other steps to further notify plaintiff that you don't have the records they were seeking?

A. In addition to putting out that press release and sending it to the Palm Beach Post and every other media outlet in our database from around the country, I also put that press release on my Twitter page and, not only that, I pinned it so it would be the first thing on my Twitter page.

I also put it out on my Facebook page, and, as a result, it received national media coverage, including coverage from the Sun-Sentinel, the competitor to the Palm Beach Post. But, curiously, the one paper that did not report on this Web portal, the one paper that did not report on my releasing all the documents in

my possession was the Palm Beach Post.

To this day, they still have never acknowledged that I posted every document onto my Web page, onto my Twitter page, onto my Facebook page, onto our Web portal. To this day, even though I've had that tweet pinned to my page for months in the past, they have never acknowledged that it existed.

Q. Thank you, Mr. Aronberg. I'm going to show you our joint Exhibit No. 11. Do you recognize this as the Twitter post that you were just referencing?

A. Yes.

Q. And does it say the same thing as the press release?

A. Yes.

Q. Thank you.

A. It also looks like this could be from Facebook as well.

Q. Okay. All right, are you aware and familiar with the June 3rd motion to dismiss hearing and statements made on the record by Judge Marx, the ones I just read to the Court previously?

A. Yes.

Q. What did you think of those remarks?

MR. BIDEAU: Objection, Your Honor, irrelevant what Mr. Aronberg thinks of remarks.

THE COURT: Sustained.

BY MR. WYLER:

Q. So following those remarks from Judge Marx, do you believe that the newspaper knew or should have known that you were not in possession, custody or control of those records and that they should have dropped you from the lawsuit even then?

MR. BIDEAU: Objection. Again, Your Honor, I don't know how Mr. Aronberg could know what the newspaper knew or should have known.

THE COURT: So your objection is speculation. Sustained.

MR. WYLER: Okay.

THE COURT: All right, you know, generally, we have a jury here, but let's keep objections short. I'll answer them if I need to, or I'll ask for more.

MR. BIDEAU: Okay, Your Honor.

BY MR. WYLER:

Q. Can you -- Mr. Aronberg, can you please explain to the Court how it is impossible for you to provide these records?

A. Well, first, I never had these records, so obviously it's impossible for me to provide them. I told them that. They knew that.

Secondly, I have no custody or control over these documents. I've never had them. They know that, which is why they now are moving the goal posts to change this whole lawsuit, this whole action from custody, possession, control, into keeping me on the sidelines so I don't object to the clerk's ability to release the documents. So it's a new -- it's a new ball game now apparently.

But the newspaper obviously knew that I never had these documents, that I never had custody or control over them because I repeatedly told them.

Q. All right. And then so, following Judge Marx's order that I just referenced on June 3rd, what action did you then direct me to take?

A. Well, after Judge Marx's order and I was dismissed from one of the two counts, I asked you to seek sanctions, well, to start the ball rolling, 57.105, so to send a letter that gives the 21-day notice.

Q. That's correct. And let me show you a copy of that letter.

MR. WYLER: Your Honor, if you see our J14, it's a copy of the 57.105 demand letter and the email to Mr. Mendelsohn that accompanied it, and just for a point of clarification, there is the motion for attorneys' fees at the end, but that

was not filed on June 8th. Pursuant to the statute, you have to wait at least 21 days, and as you'll see later, that was followed.

THE COURT: The way this is -- I assume this was attached to the letter?

MR. WYLER: It is, Your Honor. It's at Bates stamp 235, yes, Your Honor.

BY MR. WYLER:

Q. Do you recognize that, Mr. Aronberg, as a copy of the email to Mr. Mendelsohn and then the 57.105 demand that we issued to the plaintiff?

A. Yes.

Q. And, in that letter, did we assert our position that their demand to produce the 2006 [redacted] records, that there was no basis in fact or law?

A. Correct.

Q. Do you know if the newspaper dropped you from the lawsuit within the 21-day safe-harbor provision provided by statute 57.105?

A. They did not.

Q. But they eventually did drop you?

A. A long time later, they did finally drop me.

Q. Okay, but, before they dropped you, did we not file a motion for summary judgment?

A. Correct.

Q. And did that include an accompanying affidavit from you?

A. Correct.

Q. Let me show you a copy of that affidavit. That's at J18. Do you recognize this as a copy of your affidavit?

A. Yes.

Q. Will you please read it aloud for the Court?

A. The entire page?

Q. Yep.

A. "My name is David (Dave) Aronberg, and I'm the State Attorney for the 15th Judicial Circuit, Palm Beach County, Florida, since 2013 and a defendant in the above-captioned matter. Plaintiff is seeking declaratory relief pursuant Florida Statute 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."

"Despite plaintiff's above-described action for declaratory relief, neither myself nor the Office of the State Attorney for the 15th Judicial Circuit (SAO) is

in control, custody or possession of the required" -- excuse me -- " of the requested materials."

"As such, the declaratory relief sought by the plaintiff seeks materials that are impossible for me or my office to produce. To be clear, neither myself nor the SAO has the legal authority to obtain and deliver the requested materials. I've 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."

"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. Moreover, during my administration, neither myself nor my office has access to grand jury materials from the clerk's office in this or any other instance."

"As provided in Section 905.17(1) Florida Statutes, the clerk has sole authority and possession of the requested materials, which can only be released by the clerk pursuant to an order of the Court."

Q. Thank you. Do you know of any other substantive action regarding plaintiff's claim for declaratory relief after you filed your motion for

summary judgment?

A. After we filed the motion for summary judgment, we included the affidavit, and then there was a -- at some point I was dismissed, and then there was an amended motion after that.

Q. That's correct. And I'm going to show you J23. Do you recognize this as a copy of the notice where you were dropped as a party from the lawsuit?

A. Correct.

Q. What date is that? It's on the top, the very, very top.

A. This was October 21st, 2020.

Q. Thank you. And, after you were dismissed, are you aware -- yeah, after you were dismissed, are you aware that the Court eventually granted the clerk summary judgment in their favor, a summary judgment in favor of the clerk?

A. Yes.

Q. Okay. Just a couple more questions for you.

There's been some references to maybe the newspaper not just suing you just to get these records for public disclosure. Even Judge Marx said that she thought that there was something else going on. What do you think is the underlying reason here for this lawsuit?

MR. BIDEAU: Objection, Your Honor, irrelevant as to what the reason is.

MR. WYLER: It goes to good faith, Your Honor.

THE COURT: All right, overruled.

A. Look, it was clear to me from the beginning that this whole lawsuit was a twofer for the Palm Beach Post. Number one, they were able to try to overcome the fact that the Miami Herald, a newspaper 90 miles away, scooped them on the Jeffrey Epstein story, and they wanted to catch up and be the hero of their own narrative. And so they made themselves the center of this whole thing by suing to get these transcripts.

And, number two, they can do it on the back of someone they have extreme dislike for, and it's no secret in this community that the Palm Beach Post and I have had numerous battles over the years, usually one-sided, where the Palm Beach Post has, for the past 12 years, has attacked me, written many misleading articles, which stems from a personal vendetta from a leader of the Palm Beach Post, Randy Schultz, and me. And then, after he was removed from his position, his acolytes believed that I had something to do with it, and they -- the attacks continued.

I mean, they continue even today where

there's a front page article about some exaggerated -- a misleading front-page article about a criminal defendant in Broward who is making claims and trying to get my ex-wife's deposition. And the Palm Beach Post, instead of writing the facts about it, sued to get the ex-wife's deposition released.

I mean, for years, this has been an ongoing issue between the Palm Beach Post and me, and it's not a secret. For example, when they hired a reporter to cover my office, who my office, prior to my being there, prosecuted for crack cocaine. So I was thinking maybe at some point they could find a reporter to cover our office who our office did not prosecute for crack cocaine. So this has been an ongoing thing.

So this whole matter stems from two things: The Palm Beach Post trying to get the Jeffrey Epstein story back, sell newspapers and to go after me, and they're able to do it. And that's why I insisted that we at least get the taxpayers some of their money back because they had to fight and pay for your legal fees to fight a lawsuit that was, in my mind, frivolous from the beginning because this newspaper knew I never had these documents, I never had control or custody. And it's very telling that now they're trying to move the goal posts and make this about something entirely different.

BY MR. WYLER:

Q. Let's talk about that, moving the goal posts. We talked earlier about the wording in the complaint against you. Do you recall the statements were that you somehow denied the Palm Beach Post and the citizens of Palm Beach County the grand jury records they were requesting? Do you recall that?

A. Yes.

Q. And now it appears that we're hearing a whole new argument from plaintiff today; is that correct?

A. Yes.

Q. And that argument, correct me if I'm wrong, is that they were fine once you said you didn't object to the records being released and that, for that reason, they dropped you; is that accurate?

A. Correct.

MR. BIDEAU: Objection, Your Honor, leading.

THE COURT: Sustained.

BY MR. WYLER:

Q. Can you please explain your -- your perception of how they moved the goal posts?

A. Look, I mean, this lawsuit from the beginning was about whether I had possession, custody, control of the Jeffrey Epstein grand jury transcripts.

That's a series of articles they wrote about this. They wrote a long series of articles attacking me for trying to obstruct. Those articles were misleading.

The fact that we're here today and now it's not about that, it's about keeping me on the sidelines so I didn't have -- that I didn't object to the clerk's production of these documents is something that I haven't heard before, and I think is so misleading because this whole thing was about the grand jury transcripts. It's not about trying to prevent me from saying something to the clerk.

It was clear from the beginning I never had these documents. Judge Marx made it clear on the record, and that's why we pursued these sanctions.

Q. Thank you. And isn't it -- isn't there a big difference between objecting to the release or intervening in the release and actually being able to release the records?

A. They sued me to get the records. They didn't sue me to prevent me from speaking up.

Q. There's nowhere in the complaint that says that they're suing to you keep you from objecting to the release?

A. Not only is there nothing in the complaint, there's nothing in all the articles they wrote. They

wanted this thing to continue, to continue to write articles. It would have been embarrassing for them to admit that they filed a frivolous lawsuit and then they had to dismiss me. So they continued these articles way past the 21-day period, and now, when they got called on it, they're trying to change the whole case into something about how they needed me to stay silent so I wouldn't tell the clerk to do something.

I mean, this thing was about production, custody and control of grand jury documents, and I just don't believe the Palm Beach Post should be able to change it after the fact.

Q. So do you believe they have an agenda against you and were intentionally targeting you when they filed this lawsuit?

A. They've always had an agenda against me.

MR. BIDEAU: Objection, Your Honor, relevance.

THE COURT: I think you have already covered it. So I'm going to sustain the objection. That's fine.

BY MR. WYLER:

Q. Have your friends and family been impacted by the plaintiff's agenda-driven reporting?

MR. BIDEAU: Again, Judge, objection,

relevance.

THE COURT: Sustained as to relevance.

MR. WYLER: Thank you.

BY MR. WYLER:

Q. Do you believe that plaintiff's relationship with you prevented them from accepting the ultimate fact that you have no legal right to possession, custody or control of the release of the requested grand jury records?

MR. BIDEAU: Objection, cumulative, Judge. I think we've been over this. He asked the same question before.

THE COURT: We've covered this.

MR. WYLER: No further questions.

THE COURT: Cross examination.

MR. BIDEAU: Thank you, Judge.

CROSS EXAMINATION

BY MR. BIDEAU:

Q. Good afternoon, Mr. Aronberg.

A. Hi.

Q. You said a couple minutes ago to your lawyer that you filed this motion to get the taxpayers back some of their money, right?

A. Uh-huh.

Q. That's what you said? The taxpayers are

not out any money, are they?

A. It is a contingency-fee basis.

Q. Right, and so the answer to question is: The taxpayers are not out any money, are they? You don't owe your counsel a nickel today, right?

A. I think that's fair to say.

Q. You haven't paid your counsel a nickel today, right?

A. We have not.

Q. And the only way that your counsel gets any money is if he wins this 57.105 motion, right?

A. That's a good point.

Q. So under no circumstance are the taxpayers out any money, correct?

A. Yeah, I guess so. You're right.

Q. Okay. So, when you testified a few minutes ago that you filed this motion in order to get the taxpayers back their money, that was wrong, right?

A. Look, the fact that our office --

Q. Is that right, or wrong?

A. Look, I have to dispute with you on that one. Look, look, the fact that our office has spent months having to deal with this frivolous lawsuit, that's taxpayer money. And, yes, so perhaps I misspoke when I said that because the money wouldn't go directly to him

unless we got something today. But it's clear the taxpayers are out money when you divert my attention from real business to focus on your frivolous lawsuit that has been filed for nothing more than to sell newspapers and make a profit for your client.

Q. So the only person involved in this lawsuit -- I haven't seen you -- Have you testified in any hearings in this case?

A. No.

Q. Have you been deposed in this case?

A. No.

Q. Okay. So the only thing you've done in this case presumably is chat with your lawyer, correct?

A. Are you saying our office has done nothing, has not been distracted about this case?

Q. I'm talking about you, Mr. Aronberg.

A. Oh, I've spent plenty of time about this case. I have spent way more time than I ever should have in a case that I had nothing to do with.

Q. Mr. Aronberg, you said that this idea that -- Well, let me back up for a second.

You said that you thought the Palm Beach Post brought this case for two reasons: One, they brought this case because they don't like you and they wanted to embarrass you somehow, and they brought this

case because they've been scooped by the Miami Herald, I think you said, right?

A. Yes.

Q. On the Epstein matter. I mean, you agree that an investigation into the Epstein matter and what your predecessors did in the Epstein matter is a legitimate matter of public interest, right?

A. The investigation of Jeffrey Epstein? Absolutely.

Q. Absolutely. And the -- And the investigation of what your office by your predecessor -- By the way, nobody has ever suggested, Mr. Aronberg, in any of the pleadings filed in this case that you personally were involved in whatever happened with Mr. Epstein. That's not in the complaint, right? There's no reference to you personally having been involved. In fact, the complaint makes it very clear that this was your predecessor who was involved, correct, not you?

A. Correct.

Q. Now, so the pleadings we drafted didn't -- didn't accuse you of having done anything wrong with respect to Mr. Epstein or the plea deal that got cut or whatever happened with the feds, correct? We acknowledge you weren't around in the pleadings that we filed in this

case, right?

A. You acknowledged that I had nothing to do with the stuff in the past, but you are accusing me of hiding grand jury transcripts that I've never possessed.

Q. There's nothing in the pleading that said you hid grand jury transcripts, correct? The request -- The lawsuit for declaratory relief was to declare that you either turn over what you had, correct?

A. Then you don't read your own newspaper.

Q. I'm talking about the pleadings that are filed in this case. I understand that you are concerned about the press side of this. I'm concerned about the legal side, okay?

A. The legal side sued me to get grand jury transcripts, and the press side accused me of hiding them.

Q. Okay, so we can agree that the legal side, the thing we're here on in this case today, is about getting grand jury testimony, correct, getting grand jury transcripts?

A. Possession, custody and control, correct.

Q. Incidentally, when my firm first got involved -- Do you have the exhibit binder in front of you?

A. I do not.

MR. BIDEAU: Okay. Can we get an extra copy of it?

MS. WHETSTONE: We can pull it up on the screen.

MR. BIDEAU: Exhibit 1.

THE COURT: I'm sorry, what number?

MR. BIDEAU: Exhibit 1, Your Honor.

MS. WHETSTONE: Your Honor, may I approach with the exhibit binder?

THE COURT: Yes.

BY MR. BIDEAU:

Q. Mr. Aronberg, it might be a little quicker if I just hand you the binder, okay? That way you don't have to turn around and look at it.

A. Okay, what exhibit is it?

Q. Exhibit 1.

A. Okay.

Q. Exhibit 1 is an August 27, 2019, letter from Mr. Mendelsohn to you, correct?

A. Correct.

Q. And this was a request for -- Now, prior to this, your office had received a number of public records requests from the Palm Beach Post, correct?

A. About -- About this?

Q. About the Jeffrey Epstein matter. All my

questions are about the Jeffrey Epstein matter.

A. Okay, yes.

Q. Okay, and this was the first letter you received from my office, correct? From Mr. Mendelsohn about the Jeffrey Epstein matter, right?

A. I don't know if this is the first letter. If you say it, I assume that's true.

Q. And, in this letter, Mr. Mendelsohn requests a number of documents and records with respect to the grand jury matter concerning Mr. Epstein, correct?

A. I'd have to read it, but, yes, I'll take your --

Q. By the way, your office never actually responded to this particular letter, did it?

A. I don't know.

Q. And, in fact, after this letter, if you look at tab 37, which is the very last tab -- and I apologize, the binder is so big, it's hard to move around. This letter is dated of August of 2019.

THE COURT: What exhibit?

MR. BIDEAU: Exhibit 37, Your Honor.

MS. WHETSTONE: It's also on the screen if that's easier.

THE WITNESS: Maybe I can look at the screen.

MR. BIDEAU: You can look there, okay.
THE COURT: I'm going to slow you down a little bit. I can't see the writing on the screen from that far, so I'm going to flip to 37.
MR. BIDEAU: And, I apologize, I hate these big binders.
THE COURT: It's okay. I just want to see what you're talking about as you're talking about it.
You're right, they're not easy to navigate.
All right, please continue.
BY MR. BIDEAU:
Q. Exhibit 37 is an October 9th, 2019, letter and that's from Mike Grygiel, another lawyer in my office, to your office, and it's following up on Mr. Mendelsohn's October (sic) 27th letter, okay, and his September 17th letter. Do you see that?
A. Yes.
Q. Okay. And up to that point in time, we had not yet received responses to our letters, correct? Do you know?
A. I don't know.
Q. Okay. And then -- And then after that, sir, it was on January -- it was on -- it was in 2019, shortly after that, November of 2019 that we filed the

first lawsuit against you, correct?
A. Correct.
Q. So, after having sent your office two letters, you don't know if we ever got responses to those letters, we went and filed a lawsuit, and in that lawsuit we named you in your official capacity, correct, not a personal capacity?
A. Correct.
Q. And whenever you sue the state attorney's office, and your office gets sued for things all the time, it doesn't have anything to do with you personally, right?
A. Correct.
Q. You sue -- You sue an entity like the state attorney's office in its -- by the state attorney who is in his official capacity, correct?
A. Yes.
Q. And you talked about your original motion to dismiss, J6, so let's take a look at J6, if you want to look at Exhibit 6 in the binder, or can you look at it up there. I don't really care.
A. Okay.
Q. Let's look at the second page. On the second page, you --
MR. BIDEAU: Could you highlight, Gerard,

where it starts with, "Plaintiff has improperly..." Down at the bottom, last paragraph.
BY MR. BIDEAU:
Q. You see you indicate -- your lawyer responded by saying, "Plaintiff," that would be the Palm Beach Post, "is improperly seeking requested 2006 grand jury materials for the purpose of public disclosure pursuant to the Court's inherent authority and supervisory powers over the grand jury." Do you see that?
A. Yes.
Q. So at least at that point, you were objecting saying the Post shouldn't get these, they're not entitled to them, so that they can't -- because they want to give them out to the public, right? And that's what the sentence says.
A. See --
Q. Is that what it says?
A. Look, you are -- this is exactly the problem, what you guys did. You filed a lawsuit against us, and the first defense that we had was that we didn't have the documents, but because, as you know, in a motion to dismiss you have to argue as a matter of law. So the only way we could dismiss this frivolous lawsuit is to

argue as a matter of law. And this -- this was the legal position that says, by the way, under the law you're not entitled to these documents. And then you -- then your client then wrote all these articles saying, see, he's trying to block us, he's trying to obstruct us, without mentioning the number one defense, which was he doesn't have the documents. That could have gone a long way. That could have shown maybe some good faith if you would have done that.
Q. Mr. Aronberg, in connection with -- at the time of the motion to dismiss, you had filed nothing, your office had done no indication that you didn't have the documents, did you, up to this point in time? Up to this point in time. And this is only -- this is only late 2019. You hadn't filed an answer. You hadn't filed any motion.
A. In our motion to dismiss.
Q. You hadn't responded to any of our three prior letters, and the first pleadings you filed indicated that your objection was that we were improperly seeking these materials under the Court's inherent authority and supervisory powers over the grand jury for public disclosure. That was the official position filed by your lawyer, and I understand, you were taking a legal position to dismiss the lawsuit.

A. Correct, but also I do want to challenge one part of that. When you say that we -- we were silent over and over again about responding to your public records requests, I have spoken to -- I've spoken to the public records person in my office who believes that she did say that we didn't have the documents to everyone who has requested them.

MR. BIDEAU: Your Honor, I'd move to strike as hearsay.

THE COURT: Sustained.

BY MR. BIDEAU:

Q. And, after you filed this motion, the Palm Beach Post filed an amended complaint, correct, and, in that amended complaint, the Post asserted two causes of action, right? One was a statutory claim, and one was a declaratory judgment claim under the First Amendment and the Court's inherent authority, correct?

A. Correct.

Q. And the motion to dismiss and the arguments in front of Judge Marx all went to the statutory claim, not to the second claim, the declaratory judgment claim, correct?

A. The Marx hearing was about Count 2.

Q. Count 2, the statutory claim, correct?

A. Correct.

Q. And, so, when we look at -- I've got the complaint here because I want to read it. The first amended complaint, which is J9, and if you take a look at J9 --

THE COURT: Let me stop you for one second. So I'm flipping through these, but, like, for example, right there, I can't -- I can't see that.

MR. BIDEAU: Right, I know.

THE COURT: But I saw that you were able to blow up a portion of --

MR. BIDEAU: He is.

THE COURT: -- and I'm going to ask him to do that, that way I don't have to --

MR. BIDEAU: I'm going to ask him to blow it up so you can see it.

THE COURT: Thank you very much. I appreciate it.

BY MR. BIDEAU:

Q. So let's take a look here at Count 1 for declaratory relief.

MR. BIDEAU: Gerard, it's on page 19. Okay, just blow up the Count 1 for declaratory relief, please, that section.

BY MR. BIDEAU:

Q. Then, with respect to paragraph 7, do you see that one of the allegations is that the Post respectfully requests the Court declare that, pursuant to Florida Statute 905.27(1), it is entitled to access to the testimony, minutes and other evidence presented in 2019 -- 2006 to the grand jury because such disclosure and access would be in furtherance of justice, and then it cites to 905.27(1)06 (sic), correct?

A. Yes.

Q. And it says, because the Post is not seeking these materials in connection with any civil or criminal case, it seeks a declaration -- In other words, it asks the Court, hey, construe this paragraph, construe the statute to allow us to give this stuff to the public because we recognize there's an interest of justice provision in that statute, correct?

A. Well, it is what it says it is.

Q. Okay. And that's what it says, right, in furtherance of justice? That's what the request was?

A. Again, it is what it is.

Q. Okay. And then paragraph 71, the Post seeks a further declaration that disclosure of the testimony, minutes and other evidence presented to the grand jury is appropriate pursuant to the Court's inherent authority over grand jury proceedings because of the exceptional public interest in this case and compelling circumstances supporting transparency. Do you see that?

A. Yes.

Q. Okay, and, with respect to paragraph 71, do you know what the answer was --

A. No --

Q. -- that you filed?

A. -- not offhand.

MR. BIDEAU: Okay. Can we pull up the answer to 71? That's J2, page 10, 71, 71.

BY MR. BIDEAU:

Q. As to 71, you admit that we seek a declaration, but you deny the remainder of paragraph 71. So, in fact, although we were asking in 71 that the Court uses its inherent authority over grand jury proceedings, because of the exceptional interest in this case and compelling circumstances, that the Court declare that we're allowed to use this testimony, your answer was, well, that's your declaration, but we deny paragraph 71. So you asked the Court to deny that relief?

A. It is what it is.

MR. BIDEAU: Okay. And then we'll go to paragraph 72. I think you have a slide on that, 72.

BY MR. BIDEAU:

Q. And, in 72, we say, the Post has sought from defendants, but defendants have refused to provide, access to the testimony, minutes and evidence presented in 2006 to the grand jury. Indeed, defendants have each filed motions to dismiss the complaint and the reliefs sought under 50 -- 905.27(1). Accordingly, a good faith dispute exists between the parties. Do you see that?

A. Yes.

Q. And you see in that case your office admitted that, your lawyers admitted that at least, admitting there was a good faith dispute between the parties and admitting that the defendants had refused to provide access to the testimony, minutes and evidence presented, right? No qualification, you all just admit that.

A. Again, it is what it is.

Q. Now, you said that this argument that Ms. Whetstone made during her opening statement, that the idea that you wouldn't object to disclosure, was something new, that just popped up at this hearing, that -- I think your phrase was, "you moved the goal posts," right --

A. Yes.

Q. -- at this hearing? But that's not true

either, right, because that issue had been raised with you all the way back in June of 2020, right?

A. Are you saying this lawsuit was about that? Is that what you're saying, or are you saying that it was about possession?

Q. The issue -- The issue of your position with respect to whether you would agree with -- I'm sorry -- whether you would object to the request to have the records released was an issue that had been raised by Mr. Mendelsohn back in June of 2020, correct?

A. Can you restate the question, please?

Q. Sure. Let me -- Let me try to do it a little more articulately because that was pretty terrible. Let me get the letter out to make it easier for all of us. J16, please.

You've seen this letter, right, Exhibit 16?

A. I'm not sure if I've seen this one.

Q. Okay, well, did you know that, when your lawyer filed his 57.105 motion back in early June and then had that two-page letter that he served it with, right, and he laid out, we don't have the records, right?

A. Correct.

Q. Which is the basis for your 57.105 --

A. Yeah, correct.

Q. -- we don't have it, leave me alone.

A. Well...

Q. Basically.

A. Yeah, no possession, custody or control.

Q. Okay, no possession, custody or control.

Mr. Mendelsohn, a couple weeks later, wrote a letter back, right? Do you remember seeing that?

A. This is the letter you're referring to?

Q. That's the letter, and it's under tab 16 in the binder.

A. Again, I don't remember seeing this letter.

Q. Can you flip to the second page?

A. This letter was written to my attorney --

Q. To your attorney, right.

A. -- back in June of 2020.

Q. June 23rd, 2020.

A. No, I don't remember reading this letter.

Q. Okay, well, let me see if I can help you out then. Would you go to the middle of that paragraph where it says, "The state attorney was named..." Can you -- Go above that, where it says, "The state attorney was named as a party, not simply" -- Do you see it? Okay.

Do you see Mr. Mendelsohn writes back, he says, "Assuming the state attorney does not currently have physical possession of the Epstein grand jury materials" -- I mean, by the way, the Office of State

Attorney at some point would have had possession of the materials that were going to be presented to the grand jury, right? I mean, the office presented this stuff to the grand jury. You would have had possession.

A. If you're talking about the transcripts, no.

Q. No, but I'm talking about the other materials, the investigative materials, the exhibits, the minutes, the other things like that.

A. The minutes?

Q. Your office would have had those?

A. The minutes? I don't believe so. I guess it depends. I don't know how they did it back in Barry Krischer's administration, but the documents that you asked for, I've never had. So that's the only question I had.

Q. Well, hold on. You mean the transcripts, because in the complaint, we actually ask for more than transcripts.

A. Right, but those are documents I've never had, and that's the whole thing.

Q. You personally never had them, but --

A. Right.

Q. -- you agree with me, the Office of State Attorney would have, during the course of the

investigation, would have had those materials, it had to?

A. Again, I don't know what Barry Krischer's administration had back then.

Q. Well, when you got the public records request, did you have somebody go back and look and see what they had?

A. Well, obviously, when we got public records requests, we try to fulfill all of them.

Q. Right, and you don't know personally sitting here today what was done to respond to any of Mr. Mendelsohn or Mr. Grygiel, my partners' letters asking for materials from back during the Barry Krischer days, correct? Because there's been no response to those letters even to today.

MR. WYLER: Objection, Your Honor, those letters and the Chapter 119 request have nothing do with this lawsuit. They're not referenced in the lawsuit. They have no bearing on the requested relief that plaintiff is requesting here.

THE COURT: Overruled.

BY MR. BIDEAU:

Q. And so --

THE COURT: Can you repeat the question?

MR. BIDEAU: Sure, I'll repeat the

question.

BY MR. BIDEAU:

Q. You don't know what anybody in your office did to respond to Mr. Mendelsohn or Mr. Grygiel's letters, Exhibit 1 and Exhibit 37, correct? You don't personally know?

A. It is my understanding, based on conversations I had with the office, that every public records request has been responded to and that people were told, who requested Jeffrey Epstein grand jury transcripts, that we did not have them.

Q. Mr. Mendelsohn and Mr. Grygiel, in those letters, request a lot more than just transcripts, right? They wanted evidence. They wanted exhibits. They wanted that sort of material, correct? That was Exhibit 1 and 37, we looked at, right?

A. When I say "transcripts," I mean records, I mean records, that anything we had, we put then out on that portal that your client refused to acknowledge.

Q. Well, the portal was things you'd already produced. That's what -- Your press release says this is all the stuff we've already given out, right? That's already been in the public, right?

A. Yeah.

Q. Okay, well, but you understand, we were

asking for stuff that you hadn't yet given out, and, as best you know, you don't have any personal knowledge as to whether or not -- what happened to those requests, to Mr. Mendelsohn's request or Mr. Grygiel's request, right? You personally don't know?

A. Well, again, you objected because of hearsay before, but, in speaking to an individual who does public records in my office, I've been told that that person had said whether or not we've had those documents, and so I believe that everyone who requested documents were told truthfully whether we had those documents or not. And we can use documents in a broad -- in a broad way.

Q. In a broad sense, right?

A. Correct.

Q. But you don't have copies of any responses or that went back to Mr. Mendelsohn or Mr. Grygiel in my office when they requested documents, correct?

A. I would think that Mr. Wyler would have everything that we produced.

Q. Okay. Now, Mr. Mendelsohn, back in June of 2020, in response to your first 57.105 letter, he says, The state attorney was named as a party, not simply as custodian of the grand jury -- the grand jury records. The state attorney was named in his official capacity as

his office has, quote, as his primary interest, protection of its grand jury system, and he cites to a 11th Circuit decision. Do you see that?

A. Yes.

Q. Okay. And, in that case, the U.S. petition -- he goes on to explain it. He goes on to explain that the Broward County State Attorney was involved in this case, and so Mr. Mendelsohn was indicating to you in that case where you were named not only whether you had custody; you were named in that case basically because you're in charge of the grand jury process, you had the right to object if the clerk wanted to give out those records or not.

A. Where does it say that?

Q. It's in the -- The case indicates that, when one seeks grand jury materials, the relevant state attorney is a necessary party in order to protect the grand jury system, and the Office of State Attorney supervised it to make arguments if needed against release of the grand jury materials. Do you see that?

A. Yes.

Q. So Mr. Mendelsohn was telling you, as opposed to what you said a few minutes ago in here, that the first time you saw these goal posts being moved, Mr. Mendelsohn -- was today when Ms. Whetstone testified

-- I mean, when Ms. Whetstone talked. In fact, all the way back to when the very first 57.105 motion was filed, Mr. Mendelsohn told you that one of the reasons that the Post sued you in this case was in order to address the situation that you had the right, if you thought it was appropriate, to object to the release of materials. Do you see that?

A. Was that in the complaint?

Q. I'm asking about the -- I'm asking about the --

A. Well, the letter you wrote after -- well after the complaint, the letter you're showing me here that was sent to Mr. Wyler is what it says it is.

Q. Correct.

A. That's on not in the complaint, right?

Q. But you told me that this idea of moving the goal posts, that the Post was suddenly making that argument, you told everybody in this courtroom a few minutes ago that just happened today, I mean, they're just moving the goal posts on me. Well, if the goal posts are being moved, that was back on June 23rd of 2020, and you remember seeing this, right?

A. Again, I don't remember seeing this letter, but, again, this was not part of the complaint. This is an after-the-fact letter from Mr. Mendelsohn to my

lawyer.

Q. Correct, and so --

A. Okay.

Q. -- you -- neither you nor your lawyer ever responded to this letter, right?

A. Well, you'll have to talk to my lawyer about that. Obviously I don't personally respond to letters written to my lawyer.

Q. Correct. But you told us you're familiar with the pleadings, but you're not familiar with this particular letter?

A. Again, I don't remember seeing this letter.

Q. Now, Mr. Mendelsohn indicates in the last sentence, These are some of the same reasons why the state attorney was named in this case. Do you see that? Very last sentence of that paragraph.

A. Yes.

MR. BIDEAU: Can we take a look at Exhibit 21? Do you have Exhibit 21 up?

Can you -- Can you blow up the part that's highlighted, please, and I'll read it?

BY MR. BIDEAU:

Q. Now, Exhibit 21 is Defendant David Aronberg's response to plaintiff's memorandum in opposition to the 57.105 motion, the original one filed

back in June of 2020. And do you see in paragraph -- in the first paragraph, you indicate, quote, Nonetheless, the state attorney has no objection and never had any objection to the Court releasing the records sought by plaintiff as to the disclosure of the requested materials sought herein lies within the province of the clerk pursuant to the order of the Court. Do you see that?

A. Yes.

Q. And this is the first time in any pleading -- Strike that.

First of all, obviously you knew this was an issue back in October of 2020, the fact that the Post was arguing that one reason you needed to be in this case was because you had the right to object, because you address that issue in October of 2020, correct?

A. Here.

Q. Here, right, as of October 2020. So that argument had been raised not for the first time today, but back in 2020, right, Mr. Aronson?

A. Aronberg.

Q. Aronberg. I'm sorry.

A. This is what it says it is.

And, again, I felt that this sentence was consistent with what our position always has been because, when we were forced to do the motion to dismiss,

we were forced, because of a matter of law, to make the legal argument as a legal matter that the Post is not entitled to this, but as far as my belief of whether I care whether these grand jury documents are released, I've never cared one way or the other, but, because of this, in my view, bad faith lawsuit, you forced us to do a motion to dismiss that told you we don't have this stuff, and, secondly, we had to do a response as a matter of law.

Q. Okay, now let me get back to my question. My question was: You told the Court earlier today that this moving the goal posts, this idea that you had the right to object and we wanted to make sure you weren't going to object was something that came up for the first time today, and that wasn't true, was it? That issue came up back in June of 2020 at the -- at the latest when Mr. Mendelsohn put it in his letter, and you saw it necessary to address it in October of 2020, right?

A. So the letter that I said I don't remember seeing is the letter that you say put me on notice that this argument was being made?

Q. Well, that letter certainly put you on notice if you didn't know it before that, sir, because it says it clear as day.

A. But it doesn't make my statement

inconsistent. It said, again, that I was not aware of your moving the goal posts, and, besides, it doesn't matter because this whole thing is about possession, custody and control, which you informed of that we didn't have. Now you're saying, well, this whole thing was about you wanted me to talk to the clerk, or you didn't want me to talk to the clerk, and to me that's disingenuous because that's not the subject of this lawsuit.

You mentioned in a sentence that Mr. Mendelsohn wrote to my lawyer much later than the complaint, well after the complaint, in one sentence in a letter to my lawyer, and you're saying, aha, we wanted this the whole time.

Q. Well, certainly we wanted it the whole time, and we wanted it at the, as Mr. Mendelsohn will testify, and Mr. Mendelsohn wrote that when your lawyer sent a 57.105, saying our case isn't frivolous, we think your office might have possession of the records, at least some of the records that we were seeking, and in addition, your office has the right to object.

A. Did you put that in the complaint? You didn't put that in the complaint.

Q. I know it's hard for a lawyer to not ask questions, but --

A. Fair enough. Fair enough.

Q. And try not to argue because our court reporter is going to kill us.

Okay, in any event, Mr. Aronberg, in the October 14th, 2020, response, you indicate that the state attorney has no objection, okay, to the clerk producing these records if the clerk produces them, right?

A. Right.

Q. And you know, by the way, that the clerk had already produced them without -- well, probably -- nobody could find a court order -- had given them to the U.S. Attorney and the FBI years earlier, right?

A. I guess so. I mean, I wasn't there years earlier, so if that's what happened, yes, sure.

Q. And, by the way, shortly after you filed Exhibit 21 is when the Palm Beach Post dismissed the case, right? It was within 14 days of that, correct?

We can do it up there. Maybe 17 days?

A. Whatever your timeline says.

Q. Right. All right, you indicated on the 20th is the first time you stated you had no objection to production of the materials, okay, and then on October 21st, now that you said you don't have them and you don't object, the Post dropped you as a party seven days later, see that?

A. Yeah.

Q. Right? Okay. And then 17 days later, you file an amended motion which makes a host of arguments not set forth in your original motion back in June of 2020, correct?

A. Well, you have to ask Mr. Wyler about the substance of that, but I know that the motion -- the amended motion was filed after I was already dismissed from the lawsuit and after your client failed to dismiss me within the 21-day grace period.

Q. Well, that's the 21-day grace period for the first motion that you filed, correct?

A. Correct, correct.

Q. But the motion we're here on today, according to the Court order and the notice, is your amended motion, which was never served prior to being filed, correct?

A. Well, are you saying that the filing of the second motion means that the first motion is now void, it just goes away, it didn't exist?

Q. We're going to be arguing that to the Judge, but the filing, under the law, the filing of a second motion that raises new and different arguments absolutely goes away, the first motion goes away.

A. But the whole purpose of the 21-day notice

is to give you a chance to dismiss me, and I was already dismissed by that point, so --

Q. So let's take that to its logical -- Let's assume you had gone ahead and served this back, say, back here in October, okay, and then you filed that response and we looked at it and said, oh, he's now admitting -- he's now saying he's not going to oppose it. If we had dismissed you right then, you'd have no fee claim, right, because under the rule, we're allowed to dismiss.

A. You get 21 days.

Q. We get 21 days, right. So if you had served it all the way back here in October and if we had gotten your response and dismissed, you'd have no fee claim, right? We would have gotten your 57.105, and within the grace period, we would have dismissed it, right?

A. If the second one was filed before I was dismissed, within the 21 days --

Q. Yes, sir.

A. -- and the case was still pending? Then, yeah, you'd have a much better argument. But you don't have an argument now because, under the first --

Q. We'll argue -- We'll argue that to the Judge --

A. All right, fair enough.

Q. -- as to whether we have an argument now. We think the Fourth is pretty clear on that one.

MR. BIDEAU: Would you bring up, please -- just last question -- Exhibit 25, paragraph 20?

BY MR. BIDEAU:

Q. And this is -- this is your amended motion, and you say, The state attorney has no objection to the clerk producing and disclosing the requested material should the Court grant an order to that effect; however, it is impossible for the state attorney to comply with the relief, blah, blah, blah, because you'd made that argument before.

That argument that you had no objection to the clerk producing the requested materials was not set forth in your original motion, your original 57.105 motion, correct?

A. I believe that's correct.

MR. BIDEAU: That's all I have, Judge.

THE COURT: Redirect?

MR. WYLER: Just real quick.

REDIRECT EXAMINATION

BY MR. WYLER:

Q. Mr. Aronberg, you were just talking -- or, just being asked questions about the public records requests that were made of your office.

Did the plaintiff ever file a Chapter 119 lawsuit against your office for those records?

A. No.

MR. WYLER: No further questions.

THE COURT: Is Mr. Aronberg excused?

THE WITNESS: Thank you, Your Honor.

MR. WYLER: Yes, you're excused.

MS. WHETSTONE: Your Honor, may we take a five-minute break?

THE COURT: We'll be back in a few. I'll be in recess, we'll say 5 to 10 minutes.

(Off the record from 3:39 p.m. to 3:57 p.m.)

THE COURT: All right, please be seated.

MR. WYLER: Your Honor, before I rest, I just wanted to say to the Court that plaintiff and defense counsel, we've -- we've agreed on all those exhibits, that joint exhibit book. We just wanted to make sure that all exhibits, 1 through 37, are recognized by the Court.

THE COURT: All right, so Exhibits 1 through 37 of this joint binder have been stipulated to and are in evidence, and that's the an agreement of the parties.

MS. WHETSTONE: Yes, Your Honor.

MR. WYLER: Thank you, Your Honor.

(Joint Exhibits 1 through 37 were admitted into evidence.)

Defense rests.

THE COURT: But not this timeline, correct? This is not?

MS. WHETSTONE: That's correct. That's a demonstrative. Thank you, Your Honor.

THE CLERK: Thank you.

MS. WHETSTONE: The plaintiff calls Stephen Mendelsohn.

THE COURT: Before we do this, how long is Mr. Mendelsohn going to testify today?

MS. WHETSTONE: We will make this as fast as possible.

THE COURT: I'm not trying to rush you through everything, but we're done at 5:00 today.

MS. WHETSTONE: Thirty minutes.

THE COURT: And after Mr. Mendelsohn, are you done?

MS. WHETSTONE: Yes, Your Honor.

THE COURT: Okay. In the event that you're going past 5 -- we're not going to go past 5, but in the event you need to go past 5, I'll bring you back in later in the week. It won't be tomorrow.

Tomorrow I have another matter that I have to hear in the afternoon. But, in the event we need to go past 5, even if it's for argument, probably Thursday or Friday in the afternoon, I'll bring you back.

If the testimony is going to conclude today or mostly conclude today and the only thing left are your arguments of law and your arguments as to the findings of fact, then that might be something that we end up doing on Thursday or Friday afternoon, okay?

MR. WYLER: Yes, Your Honor. I think it might be worthwhile to point out to the Court that the reasonableness phase of this, if we get there, we've already agreed that there would be no experts, so I think that could dispense with that.

I am located up in Amelia Island, Florida, so I am --

THE COURT: Fifteen minutes away.

MR. WYLER: Super close. So I don't know if it would be possible, if we finished with the testimony today, if maybe we could make written closing arguments to the Court instead of coming back?

THE COURT: How do you feel about writing?

MS. WHETSTONE: We would have no objection to that if Your Honor would prefer. Whatever Your Honor prefers, we will do.

THE COURT: If you guys don't mind writing. I mean, I think people are better in writing. People overestimate their oratory skills, but okay.

THE CLERK: Do you solemnly swear or affirm that the evidence you're about to give will be the truth, the whole truth and nothing but the truth?

THE WITNESS: Yes.

Thereupon,

STEPHEN MENDELSOHN, ESQ.,

having been duly sworn by the Clerk of the Court, responded and testified as follows:

THE COURT: Whenever you're ready.

MS. WHETSTONE: Thank you, Your Honor.

DIRECT EXAMINATION

BY MS. WHETSTONE:

Q. Good afternoon, Mr. Mendelsohn.

A. Hello.

Q. Please introduce yourself to the Court.

A. Yes. I am Stephen Mendelsohn.

Let me just move a little closer.

Yes, I'm Stephen Mendelsohn, and I'm an

attorney at Greenberg Traurig in the Fort Lauderdale office.

Q. Please let us know your educational background.

A. I have a bachelor's degree from Colgate University in Upstate New York, graduated in 1980 and -- in economics, and I have a J.D. degree from Hofstra University School of Law from 1983.

Q. And what's your work experience going backwards in time?

A. I've been at Greenberg Traurig as a commercial litigator for approximately 20 years, and all that time I've been a shareholder at Greenberg. As I said, I work out of the Fort Lauderdale office at present. Previous to that, I was in the Boca Raton office of Greenberg Traurig, so going back 20 years.

Before that, I was an attorney with Rutherford Mulhull & Wargo in Boca Raton, also commercial litigation, and, prior to that, I was a named partner a firm in Miami. That was Carolonga, Langen, Lorenza (phonetic) & Mendelsohn, and before that, I was an assistant attorney general for the State of New York.

Q. In what states are you licensed to practice law?

A. New York and Florida.

Q. At Greenberg Traurig, what types of cases do you practice?

A. A variety of commercial litigation, copyright, trademark, securities, real estate disputes, disputes over employment, contract, fraud. Also, not just simply commercial, but I also do defamation defense, First Amendment cases on defamation, and I do trial work and appellate work.

Q. When you were at the New York State Attorney General's Office, what types of cases did you handle?

A. I was in the Litigation Bureau of Labor Statistics, and that's civil litigation, primarily civil rights and constitutional law cases involving 42 USC Section 1983, where New York State and its officials were sued in their official capacity. That included cases under the Fourth Amendment, cases under the Seventh Amendment occasionally, and the Eighth Amendment and Fourteenth Amendments to the U.S. Constitution.

Q. Are you AV rated?

A. Yes, AV rated as well.

Q. Have you ever been sanctioned or subject to disciplinary action?

A. Never.

Q. Ever --

A. In any jurisdiction.

Q. Ever had 57.105 sanctions or Rule 11 sanctions awarded in any case that you've worked on?

A. This is the first motion ever under 57.105 or Rule 11 under the federal rules or any of that.

Q. So besides this case, no?

A. No.

Q. You've never had any motion raised?

A. No. No, ma'am.

Q. How did you first get involved with the Jeffrey Epstein case on behalf of the Palm Beach Post?

A. I was contacted by Michael Grygiel from our Albany office. He represents a number of media and newspapers throughout the United States, and essentially he heads the media group at Greenberg Traurig. And he was looking for someone to help the Palm Beach Post in obtaining documents from at that time the state attorney's office here in Palm Beach County.

Q. When were you contacted by Mike Grygiel?

A. When approximately?

Q. (Nods head up and down.)

A. In the summer of 2019. It's Grygiel, G-r-y-g-i-e-l.

Q. Thank you. So here, around -- on the timeline, I'm indicating July 2019?

A. Yes.

Q. And what did the Post want to find out and inform the public about with regard to Jeffrey Epstein?

A. Right, at that time, the Epstein matter was back in the news. Mr. Epstein had been arrested by the FBI, and he was being prosecuted by the U.S. Attorney's Office in the Southern District of New York and was in custody.

So the issues of the plea deal that had been worked out by Mr. Krischer's office back in 2006 was back in the news, and, in particular, President Trump's Secretary of Labor, Alexander Acosta, at that time was the U.S. Attorney in the Southern District of Florida who also helped negotiate the plea and the non-prosecution agreement, and there was a big firestorm as to whether or not Mr. Acosta should or should not resign as Secretary of Labor.

Q. What was the Post interested in finding out with regard to the prior grand jury investigation by the Palm Beach County State Attorney?

A. Well, because of the firestorm surrounding Alex Acosta and the re-arrest, or new arrest, I should say, of Jeffrey Epstein, the Post was interested in looking back again as to what Barry Krischer's office as state attorney did in terms of using or misusing the

grand jury process, in terms of the prosecution of Jeffrey Epstein both in terms of the very light non-prosecution agreement that they allowed him to enter into, as well as the extremely lenient sentence that he had.

Q. Were you involved in drafting letters to the state attorney's office seeking documents relating to the Epstein prosecution?

A. Yes.

MS. WHETSTONE: Would you please bring up Exhibit 1?

BY MS. WHETSTONE:

Q. We're pulling up Exhibit 1 in the joint exhibit binder. It's an August 27th letter.

A. Yes.

Q. Or, actually, Mr. Mendelsohn, please let me know what this letter is.

A. Yes, this is Joint Exhibit 1. This is a letter I wrote on August 27, 2019, to State Attorney Dave Aronberg on behalf of the Post requesting specific documents related to the grand jury investigation of Jeffrey Epstein.

Q. What were you seeking in this letter?

A. Particularly, we were interested in items stated on pages 2 and 3, some of what we were looking at.

We were very interested in finding out the conversations between defense counsel, that's criminal defense counsel for Mr. Epstein and, in particular, Alan Dershowitz and Mr. Krischer's office.

We knew from investigation that Mr. Dershowitz had provided Mr. Krischer with exhibits or documents which went to injure the testimony -- the credibility and the testimony of the young woman who testified before the grand jury. I mean, we were looking for those communications between Mr. Krischer's office and defense counsel, in particular where Mr. Dershowitz and others from the defense provided those materials to damage the credibility of the grand jury witness.

We also wanted communications between Mr. Krischer's office and the FBI and the U.S. Attorney's Office because those issues were coming to the fore because of Alex Acosta, and we did know that there were such communications, and we wanted those documents to go back to the Post for public disclosure.

Q. What was the state attorney's office's response to this August 27th letter?

A. I never received a response to this letter.

Q. Were there other letters from Greenberg Traurig to the state attorney's office following up?

A. Yes. Mr. Grygiel wrote a letter to the

state attorney's office as well. When I didn't receive a response, I guess he felt whatever, but he did send that next letter.

Q. Okay, so I'm pulling up Exhibit 37. Is this -- Let me know what this is.

A. Yes, this is Mr. Grygiel, from our Albany office, this is his letter to State Attorney Dave Aronberg, October 9, 2019, reiterating some of the things that we thought were in the possession of the state attorney's office but had not been provided to the Palm Beach Post.

Q. Did you get a response -- Was there a response to this letter?

A. No.

Q. Did you review the documents that were provided by the state attorney's office to the Post?

A. Yes. Before -- Sort of in the middle of this, the Palm Beach Post, before I had written, had made a public records request of the state attorney's office, and some materials had been provided, and we did go through that, those materials. They did not include those that I mentioned in Joint Exhibit 1, which particularly were missing the Dershowitz communications and the communications with Mr. Krischer's office, the FBI and the U.S. Attorney's Office.

Page 106

Q. So what information -- what additional information was needed that the Post was seeking?

A. We wanted to see why the grand jury was used in such a way as to result in a very lenient charge for Mr. Epstein, as well as the lenient sentence that was part of the non-prosecution agreement.

We knew from the Post's investigation and from other materials we had assembled that there were -- there was a grand jury that was empaneled. In fact, there was two. The first one was canceled, and the second one was conducted, and a witness, a victim did testify. And we were on fairly certain ground that the state attorney's office under Barry Krischer undermined her credibility with materials provided to Mr. Krischer by defense counsel --

Q. Did you --

A. -- and we did not get those materials back from the state attorney's office.

Q. Did you review any other information to reach the conclusions about the [redacted] indictment?

A. Yes. I wanted to say that I was not the only one working on this at Greenberg Traurig. In addition to Mr. Grygiel, Nina Boyajian of our Los Angeles office, who is a First Amendment expert, was also part of our team. She is very well versed in First Amendment

Page 107

issues, especially when it comes to representing the media's interest under the First Amendment.

So we also had paralegals tasked with that responsibility, too. We had assembled deposition transcripts, affidavits that had been submitted in various cases. I personally have spoken with the Town of Palm Beach County -- the Town of Palm Beach Chief of Police Reiter and discussed his testimony with him in civil cases. I've obtained his deposition transcripts. We spoke to only a few of the plaintiffs' lawyers in the cases, but some of them did provide us with materials.

There was a voluminous amount of materials we used. We also went back to the criminal case where the materials were in the public domain and read through those items as well.

Q. And, after this team at Greenberg reviewed all this information and did due diligence, what was decided next?

A. Ultimately, the team decided that it was necessary to bring a lawsuit to obtain what we call grand jury materials. It's not just simply the transcripts of what occurred in front of the grand jury, but all of the ancillary or corollary materials related to that. And that, as we stated in Exhibit 1, included, but not limited to, the communications where we believe

Page 108

Mr. Dershowitz provided damaging information or documentation to Mr. Krischer's office to destroy his own witness in front of the grand jury, which honestly, looking at all of the materials we had received and based upon my personal discussions with the chief of police of the Town of Palm Beach, we came to the conclusion Mr. Krischer had abused his authority as state attorney.

Q. When did the due diligence process start and when did it end as far as reviewing the facts?

A. Started in the summer of 2019, and it -- Well, the first phase resulted in the lawsuit, and that contained hundreds of hours' worth of work, not only legal work, but, as I said, factual investigatory work as well. But it continued even after the lawsuit had been filed as well. We didn't stop in case we found something new, and ultimately we did find new things out in this case, which I can add later, but there were new revelations that had occurred.

Q. And the initial complaint was filed in...?

A. The end of November of 2019.

Q. What legal research was done before filing the initial complaint? And that was for the statutory count under 905.27.

A. Sure. The way we divided the work between myself primarily and Ms. Boyajian was that we would

Page 109

handle the First Amendment issues in the case. So the U.S. Supreme Court cases involving the rights of the media to be the public surrogate or be the public mouthpiece and to obtain and participate in all facets of criminal proceedings, she helped me and provided that -- I was aware of all of that, but she certainly had a greater in-depth knowledge than I did. I was tasked with the responsibility of fleshing out Section 905.27 of the Florida statutes primarily.

Q. What did you personally research to flesh out Florida Statute 905.27?

A. I read every word of Chapter 905. I looked at Law Review articles. I remember one from Catholic University, Valparaiso and others about the grand jury process, grand jury secrecy, both federal cases and state cases. I found every reported case under 905.27, which particularly dealt with the issues that we were discussing before and that Mr. Aronberg testified about, and that went back to even the predecessor statute to 905.27, which is into the 1920s. And I tried to find legislative history on the statute, but there wasn't any.

So I amassed 50, 60 cases under the statute going back from the '20s, '30s, '40s, '50s, '60s, et cetera, under 905.27. I read all of them.

Q. It sounds like a great deal of research,

but did you engage in any other research before filing the initial complaint?

A. Well, federal as well, not only under the state, but I wanted to see, you know, who to sue, to be honest with you, in this case. We had a debate amongst ourselves as to who the proper defendants were going to be, and my principal responsibility was determining under Florida law who that would be.

So I had extensive experience as an assistant attorney general on suing, at least in defending state officials in not only 1983 cases, but many other type of cases where state officials are sued in their official capacity. So this was certainly nothing new to me.

I probably handled 3, 400 cases like that, all on the defense side. So I was very familiar with arguments of who was the proper party and the role of a state official in litigation.

So what did I do? I went to see whether there were other 905 cases, Chapter 905 cases where state officials had been sued, and in particular I found two cases. One was a state case and one was a federal case. The state case was James vs. Wille and, coincidently, actually involved the predecessor to Barry Krischer, and that case involved the beating of an inmate at the Palm

Beach County Jail out by Belle Glade, and that individual sought grand jury testimony, and the state attorney was named as a party in the case and, in fact, participated in the case as to whether or not grand jury secrecy under the statute -- you know, the extent of it and made legal arguments opposing such.

Q. So we're talking about some of the cases you relied upon --

A. Yes.

Q. -- in determining that the state attorney was a necessary party defendant, and I wanted to pull up -- you mentioned James vs. -- Was it the James vs. Wille case?

A. Yeah, James vs. Wille, correct.

Q. And that's Exhibit 36. Can you just let me know if Exhibit 36 is the case you were talking about?

A. Yep, that's the case.

Q. And were there any other cases you relied upon specifically with regard to the state attorney necessarily being a party?

A. Yes. An 11th Circuit case called In re Grand Jury. It's a Federal 11th Circuit Court of Appeals case.

MS. WHETSTONE: And that's in Your Honor's binder, the Authorities binder at tab 11. We'll

pull that up.

BY MS. WHETSTONE:

Q. Is that the In re Grand Jury case?

A. Yes, that's the case.

Q. So what were the three -- what were the reasons the state attorney was named a defendant?

A. Well, this case particularly, the state attorney was from Broward County named in this case. It's a little complicated facts, but essentially there was a federal grand jury that issued a subpoena to the Broward County State Attorney seeking state attorney grand jury materials for a particular investigation, and the Broward County attorney, as you can see here, participated in this case and objected to the release of such under 905.27.

And I was particularly interested in the language from this case which said that the state attorney's role was an essential one because his or her role was to protect the grand jury process, which included grand jury secrecy.

So, based upon the James vs. Wille case and this case and my background in defending state officials, I felt that the state attorney here in his official capacity was a necessary party because someone had to advocate one way or the other for grand jury secrecy if

the state attorney decided that's what he wanted to do. But, if we didn't name the state attorney, we were denying that state official and that office the right to object under secrecy laws.

So the purpose was to allow the state attorney, if he chose to do so, to object to the disclosure under 905.27 and to advocate for the state secrecy interest, and that was a prime issue of why he was named.

Q. Were there other reasons?

A. Well, we weren't sure what the state attorney's office had. We knew that at one point the state attorney's office had grand jury materials because that's -- under Mr. Krischer that's what had occurred. He presented this to the grand jury. So we weren't completely sure who had what.

So we also believed, and I still believe, that the statute does not prohibit the state attorney from requesting the state attorney to look at grand jury materials, not disclose it to the public, but merely to disclose it to the state attorney if the state attorney wanted to look at it.

So we were hopeful that, if the state attorney was interested in looking at these materials, that he would say that he had the right to look at them

under 905.27 and then, if so, ask the Court for an in-camera review before release to the public.

So those are the three issues we were concerned with.

Q. Did Greenberg Traurig conclude that the state attorney was a necessary party to this case regardless of whether it had possession of the grand jury materials?

A. Yes.

Q. And was that conclusion a yes?

A. Yes, it was.

Q. So, after the complaint -- the initial complaint was filed in November of 2019, were discussions had with the state attorney's counsel and the counsel for the clerk?

A. Yes.

Q. What were those discussions?

A. Well, we had discussions about the case, particularly where this is going, did they have objections and, if so, under what basis did they have objections.

Q. After the complaint -- the initial complaint was filed, what position did the state attorney take in the case?

A. Took two -- Took two positions. He filed

an answer, and that answer contained a motion to dismiss.

Q. Backing up. Sorry. After the initial complaint was filed, what was the -- what was the position taken by the state attorney to the initial complaint, just the Count 2?

A. Okay.

Q. Sorry, just Count 1.

A. His position was that grand jury secrecy was preeminent under 905.27, and that statute barred the release of the materials. He also argued that the statute was only operative where there was a pending civil case and a pending criminal case, and since the Epstein case was not pending civilly involving the Post, or the criminal case, there was no criminal case in Palm Beach County, we didn't have any position or standing under the statute to seek the materials on behalf of the Palm Beach Post.

Q. Did the state attorney file a motion to dismiss the initial complaint?

A. Yes.

Q. What was your reaction to that?

A. Well, I was hopeful that they wouldn't object or seek to dismiss it, but I understood that they had a statutory obligation to protect [redacted] secrecy, so I didn't take it personally or anything like that. I

understood the role that they were playing because that was the role we gave them the opportunity to play in this case. So I was neither surprised, nor upset that they played that role, because that's the opportunity we gave them.

Q. Did the clerk file a motion to dismiss the initial complaint as well?

A. Yes.

Q. After the state attorney filed his motion to dismiss the initial complaint, what did the Post do in response?

A. After the initial -- Well, we filed an amendment to the -- to the complaint.

Q. Did you take a look at whether there were other causes of action you could assert?

A. Yes. We decided to develop the First Amendment issue in more depth and argue that the Post had rights under the First Amendment, as well as the statute, in conjunction with the statute to obtain the materials, as well as an argument that I had developed which was that the Court has inherent authority as the ultimate supervisor of the grand jury system under the Florida Constitution to prevent abuse of the grand jury system, and we felt that the Court had such authority. That was the Clayton case that I was relying on.

Q. We're going to pull up Exhibit 9, which is the amended complaint in this matter.

Could you confirm to me that's the first amended complaint?

A. Yes, I see that. That's on the board here. Yes, it's in front of me as well.

Q. And we'll turn to it, but the state attorney answered Count 1 of this amended complaint, which was the count for declaratory judgment; is that correct?

A. That is correct. They moved to -- Yes, they moved to dismiss Count 2, the purely statutory claim, and they answered the declaratory judgment which was the mixture of First Amendment, statute, inherent authority of the Court.

Q. What do you recall about reviewing the answer to the first amended complaint for declaratory relief?

A. Well, they continued to oppose the release of the materials under 905.27 asserting grand jury secrecy and asserting that we didn't have a claim under the statute. I did note that they admitted in paragraph 72 that the case was brought in good faith, and that's particularly the declaratory judgment one. That stood out to me.

Page 118

Q. We'll pull that up. I think we've seen it a couple times. We'll pull it up.

Please let me know if this comparison of Exhibit 9 and Exhibit 10 is the paragraph you're talking about.

A. Right, right, yes, that they refused to provide access. That's through their objection to the clerk to testimony, minutes and other evidence. Again, this was not just simply transcripts. It was much broader than that. And that a good faith dispute exists, and they admitted all of that.

Q. Did Count 1 for declaratory relief seek to force the state attorney to produce documents that he did not have?

A. No.

Q. Did the state attorney's position that his office did not have possession or custody of the grand jury materials end the need for his office to be a party to the declaratory relief claim?

A. No, and really the proof of that is what actually occurred, which is they moved forward with their motion to dismiss and ultimately a motion for summary judgment.

So they opposed the release of the materials, as was their right, under the statute

Page 119

asserting grand jury secrecy. So it actually proved why we put them in the case, which is to give them the opportunity on behalf of the office officially to assert grand jury secrecy, which is what they did. So, in effect, it worked. They took advantage of the opportunity and asserted that we were not entitled to it under the statute's grand jury secrecy provisions.

Q. On June 8th, 2020, Judge Marx -- did Judge Marx enter an order on the motion to dismiss Count 2 under Florida Statute 905.27?

A. She did.

Q. And what was -- what was the ruling?

A. She determined that the Post lacked -- well, that the statute did not create a private right of action, that it was limited to those who were seeking the materials in the pending civil case and a pending criminal case, so she did it on a very narrow ground.

Q. That order -- sorry.

A. Go right ahead.

Q. Mr. Mendelsohn, go ahead.

Okay, that order did not address the declaratory judgment claim in Count 1, did it?

A. No.

Q. When did the state attorney send its initial what he calls place-marker 57.105 demand letter

Page 120

and motion for fees?

A. Within hours of the order from Judge Marx was issued, I believe, on June 8, 2020.

Q. And at that point why was the state attorney kept in the case?

A. Well, they were still objecting to disclosure under Count 2, under the declaratory judgment. They were still asserting that grand jury secrecy and the statute could not be overcome by the First Amendment or by the Court's inherent authority, and that the Court's inherent authority was limited by the statute, which we obviously thought was sort of the other way, that the statute or the legislature could not inhibit the Court's inherent authority because the judiciary had its rights and the legislature had its rights. So that issue still remained.

Q. Did you write to the state attorney's counsel and lay out the Post's reasons for continuing to include the state attorney in the case?

A. Yes. That's my letter of June 23rd, 2020.

Q. And we'll go ahead and pull that up. That's Exhibit 16.

Is that the letter that you're referring to?

A. Yes.

Page 121

Q. And your letter set forth the reasons why the state attorney was named as a party in the case --

A. Yes.

Q. -- and continued to be named?

A. Yes.

Q. Did the state attorney's office ever address the second reason for keeping the state attorney in the case in response to this letter?

A. I never received a written response to this letter.

Q. And that second reason was that he was the -- that the state attorney's office was an official tasked with protecting grand jury secrecy?

A. Correct.

Q. And, in your letter, did you cite a case to the state attorney?

A. Yes. I cited to In re Grand Jury Proceedings, the 11th Circuit case.

Q. Did you have discussions with the state attorney's counsel after this point, after writing this letter?

A. Yes, with Mr. Wyler.

Q. And what were they?

A. What are we going to do about this case essentially. Is the state attorney going to oppose us?

Is he continuing to oppose us? Because I never received a response to my June 23rd letter, and I wanted it to be understood that we honestly believed that the state attorney had a necessary role to play in their official capacity. We were hopeful that they would take a neutral position, but they remained adamant that they had to protect grand jury secrecy under the statute, which we respected.

Q. And I don't want to know the substance of settlement discussions, if there were any, but did settlement discussions go on with the state attorney's counsel after the June 23rd letter?

A. Yes. Yes, they did.

Q. And is that indicated on the timeline here of June, June 8th, 2020, to October 15th, 2020?

A. Yes. With Mr. Wyler, yes.

Q. Mr. Wyler.

A. He was a very nice man on the phone. We had very good conversations, very professional.

Q. The state attorney filed his motion for fees on July 1st, 2020; is that correct?

A. Yes.

Q. And is this the state attorney's first motion for fees that was filed on July 1st, 2020?

A. It is.

Q. Did the initial 57.105 motion as filed set forth any of the grounds for the motion?

A. No, it didn't. It just said that they were entitled to 57.105.

Q. So, after this point, did you -- did the Post and Greenberg seek discovery from the clerk?

A. Yes.

Q. And this was in the litigation?

A. Yes.

Q. What discovery did you seek from the clerk?

A. We wanted to know whether or not any -- well, first, whether the state attorney under Mr. Krischer had asked for any of the materials that the clerk had had, and, also, whether the FBI and U.S. Attorney's Office had asked the clerk to provide such materials. And the clerk indicated to us in response to a request that the clerk's office had done so, though they were vague as to why and when.

Q. And what -- did you serve interrogatories --

A. Yes.

Q. -- and document --

A. Requests, yes. We wanted to see a log of the materials in the [redacted] sealed -- that the clerk had sealed. We hoped that there was a log indicating

what was in there, not really specifically what was in there, but by category, whether it was a transcript, whether there were exhibits and/or whether there were affidavits or whether there were deposition transcripts. Whatever there was in there, we wanted to understand.

The clerk had responded that they don't keep a log, so they couldn't tell us unless the seal was broken what was in there.

Q. In August of 2020, the state attorney's office filed a motion for summary judgment; is that correct?

A. Yes.

Q. And Exhibit 19, please. Is this the state attorney's motion for summary judgment that's on the screen?

A. Yes, it is. Yes.

Q. And, in support of this motion for summary judgment, did Mr. Aronberg file an affidavit in support?

A. He did.

MS. WHETSTONE: If you could go to 18, please.

BY MS. WHETSTONE:

Q. And is 18 the State Attorney Dave Aronberg's affidavit in support?

A. It is.

Q. At this point, after the affidavit had been filed, had the state attorney responded to another one of the reasons that he had been named as a necessary party to the action?

A. No. They focused exclusively on possession rather than their position protecting the grand jury's secrecy issue which they had advocated for.

Q. So did the state attorney's affidavit and motion for summary judgment address In re Grand Jury Proceedings or any of that -- any point in your letter about his office being able to prevent the clerk from releasing grand jury materials?

A. No, they never responded to that.

Q. Was there still a factual issue -- At this time in August 2020, was there still a factual issue as to whether the state attorney had physical possession of copies of grand jury materials?

A. Well, we knew at one point Mr. Krischer obviously had to have had such. We also had -- We were of the belief that there were communications, on very strong grounds, between Mr. Krischer's office and Mr. Dershowitz and other defense counsel, as well as the FBI and U.S. Attorney leading up to and including the indictment, the non-prosecution agreement, as well as the sentencing report.

We never received any such, and we knew they were out there. Exactly who had them, where they were, we weren't sure. We learned in hindsight that the U.S. Attorney's Office had been provided with such by the clerk's office. This is the Palm Beach County clerk's office.

Q. So fast forwarding a bit to October 2nd, 2020, did Greenberg and the Post -- sorry -- did the Post file a response to the state attorney's first place-marker 57.105 motion?

A. We did.

Q. And if you could pull up Exhibit 20.

A. Which one is this exhibit?

Q. 20.

A. That's what I thought. Okay.

Q. Is this the Post's response, memorandum of law of the plaintiff to the state attorney's --

A. That is correct.

Q. -- 57.105 sanction motion?

A. Yes. I drafted this, yes.

Q. On page 8 --

MS. WHETSTONE: Gerard, do you mind going to page 8.

BY MS. WHETSTONE:

Q. Did you again raise the state attorney's

ability to object to release of grand jury records?

A. Yes. I cited to In re Grand Jury Proceedings again.

Q. If you look at the screen, is that on page 8? Is that where you cited to?

A. Correct.

Q. And at this point, the state attorney still had not responded to this reason he was named as a party; is that correct?

A. Yes.

Q. So then on October 14th, 2020, did the state attorney file a reply to this response?

A. Yes.

MS. WHETSTONE: If could you pull up Exhibit 21.

BY MS. WHETSTONE:

Q. Is this the state attorney's reply in support of the first place-marker motion for fees?

A. Yes, it's in response to their June 2020 motion for fees.

Q. So this is not a reply to the 57.105 motion we're here on today, right?

A. That's correct.

Q. This is a reply to the original June place-marker motion for fees, correct?

A. Correct. What happened is the state attorney never noticed the first motion they filed for fees for a hearing, and they still haven't done that. So it's never been noticed for hearing.

There was a little dispute between myself and Mr. Wyler as to whether or not the fee motion that he had filed in June should be heard first or their motion for summary judgment should be heard first, and there was a case management conference before Judge Hafele, and Judge Hafele decided that the state attorney could decide the order of when that would occur. So not knowing when -- what hearing would go first, I filed a response to their fee motion that they filed back in June, and that was Exhibit 20, and then he responded in Exhibit 21.

Q. And I'll call your attention to pages 1 through 2 of Exhibit 21 and the state attorney's reply --

A. Yes.

Q. -- and where it's highlighted on the screen.

A. Yep, I see that.

Q. It says, "Nonetheless, the state attorney has no objection and never has had any objection to the clerk releasing the records sought by the plaintiff."

Was this the first time the state attorney -- the state attorney stated his office would not object

to the release of grand jury materials if ordered by the Court?

A. Yes.

Q. So, after your reply -- sorry -- after your response on October 2nd, then on October 14th, the state attorney for the first time stated in a filing that he had no objection to the production of Epstein grand jury materials by the clerk?

A. That's accurate, yes.

Q. Was this a change from the state attorney's prior position about releasing grand jury materials?

A. Absolutely.

Q. How would you describe the change from the initial -- from his initial response to the initial complaint to this reply?

A. Initially they fulfilled why they were in the case, which is they objected to the release of the materials under 905.27, and now they were taking a neutral position, and they were no longer advocating the supremacy of 905.27 and its secrecy provisions as a bar or prevention or preventive for the release of grand jury materials. They were no longer taking that position. They were no longer taking any position.

Q. What was your reaction to this change?

A. Well, I was pleased.

Q. Did you send a letter -- a settlement letter on October 15th in response to this October 14th position in the reply?

A. Yes. I did it pretty quickly after I saw it.

Q. The next day?

A. The next day. Well, I started writing it on the 14th, but, yes, we sent it on the next day.

Q. Okay, and I'll pull up Exhibit 22.

Is this your letter to Mr. Wyler with regard to the reply?

A. Yes. Since they had changed to a neutral position, I didn't see a point in discussing whether or not they should remain in the case, and that's what the purpose of this was.

Q. And in it you say you were pleased about them changing --

A. Yes, yes. In the second paragraph, I said I was pleased to read that they -- the state attorney's clear and unequivocal statement in their response filed yesterday that their office will not oppose the Post's request for access to the Jeffrey Epstein grand jury materials. I was pleased.

Q. Once the state attorney's office said that it would no longer object to release of the grand jury

materials by the clerk, what was [redacted]s and the Post's response?

A. We had a team meeting and ultimately discussion with the Post as to whether or not the state attorney should remain in the case. We had, for the first time, Mr. Aronberg's affidavit. He had previously stated that position, but for the first time in a pleading or an affidavit filed in the case, he said he clearly didn't have possession. And he's now taking a neutral position. Because of the change in position that this neutrality had now created, we had a very serious discussion as to whether or not he should remain in the case because, remember, one of the necessary party prongs that I had mentioned previously was to give Mr. Aronberg the opportunity as state attorney to voice either his objection to the release or his neutrality or maybe his support.

Now he decided to change from opposition to neutrality, and, since that was the case, we determined ultimately to drop him from the case, that there was no -- he had exercised his option and made a decision, and we were happy that he had done so.

Q. Was -- What date was the state attorney dropped as a party to the action?

A. It was in October. Was it October 21st?

Q. We'll pull up Exhibit 23.

A. Okay, I've got it in front of me. It was October 21st, 2020.

Q. And is this Exhibit 23 the notice of dropping the state attorney as a party?

A. Correct.

Q. After this, 19 days after this, did the state attorney file an amended motion for fees under 57.105?

A. He did.

Q. Is that the motion we're here on today?

A. Correct. That's the only one that the state attorney has noticed for hearing.

Q. We're pulling up Exhibit 25, and, once it's up, I'd like you to confirm, is this the amended motion for sanctions that we're here on today?

A. Yes.

Q. Was this amended motion ever served on you or the Post anytime before it was filed?

A. No.

Q. Does the amended motion set forth new and different BCs for the motion for sanctions than compared to the first what they call place-marker motion?

A. Absolutely.

Q. What were some of those new arguments?

A. Well, ultimately the major new argument was that he now had neutrality in the case. That was a massive change in the position of the state attorney which was not the situation back when they first made their place-holder motion, and this is the words they used back in June. This was a sea change as far as we were concerned in the status of the case.

Q. And you told the state attorney that was the basis for its joinder back in the beginning of the case?

A. As a necessary party, yes. And, since they were no longer advocating secrecy and now had adopted neutrality, that's why we dropped them from the case.

Q. And I'll move to what I think is going to be my last exhibit, the final judgment, which is Exhibit 30.

A. Yes.

Q. Did the Post -- So did the Post file a motion for summary judgment against the clerk --

A. Yes.

Q. -- as to the declaratory relief claim?

A. Yes. They were the remaining party in the case.

Q. And Judge Hafele heard argument on that motion for summary judgment?

A. He heard it for about two and a half hours, yes.

Q. And was this the same declaratory judgment count that had been asserted against the state attorney that had been dismissed against him after he said he had no objection to the clerk releasing documents?

A. It was Count 1. That was the same count that we had against the state attorney and the clerk, and that had been dropped against the state attorney at the time I argued the motion for summary judgment in front of Judge Hafele in September of 2020 or August of 2020.

Q. And Judge Hafele entered an order on a motion for summary judgment which became this final judgment; is that right?

A. Correct.

Q. And going through it, on page 5, the Court noted that the Post's position was -- Well, I'll ask you, what was the Court's reaction in the final judgment to the presentations given by the Post?

A. Ultimately Judge Hafele determined that his hands were -- while he recognized that the Court had inherent authority and that inherent authority covered the supervision of prosecutorial abuse of the grand jury process, he felt constrained by the statute, which was 905.27. So he felt ultimately that he could not exercise

inherent authority because of the limitations that he thought 905.27 contained, though, without sounding too egotistical, he was very effusive to the work that Greenberg Traurig had done, as well as the work done by the clerk's counsel.

Q. So I'll draw attention to page 7. It says, "The newspaper makes strong arguments to advance its more expansive construction of Section 905" --

A. Right.

Q. -- "27 as part of furthering justice." And then page 11, it says, "The Court acknowledges the newspaper's vibrant and sincere arguments."

Was that -- Was that comment with regard to Count 1?

A. Yes.

Q. And that's the count we're here on today?

A. Correct. That matter is on appeal. The final judgment is on appeal.

Q. Thank you. That was my next question.

A. Okay.

Q. Okay. Okay, one last question -- sorry -- two.

Did you have any discussions with the editorial side of the Post having anything to do with the decision to sue the state attorney?

A. None. There was a firewall between the legal arguments we were making here and whatever the Post was writing both editorially and factually. I had absolutely no conversations with the Post, nor did any member of my team as to what they were going to write. It's not my role to tell the paper what it wants to, or not, write or not write, so the legal positions that we adopted in this case were -- were the positions that we as Greenberg Traurig and the paper came to the conclusion of based upon the facts and the law.

As to what the Post may have wanted to write or did write, I have zero input into that, nor did Mr. Grygiel, nor did Ms. Boyajian. I didn't even know what was going to be printed until I read it in the paper, so I did not know one word they were going to put in the paper.

Q. Last question. Did suing the state attorney in this case have anything to do with a personal vendetta against the state attorney?

A. Well, I voted for Mr. Aronberg. No.

Q. So no?

A. We have a mutual friend. So I have no animus against him at all. I'm not happy he has me sitting up here, to be honest with you, but, you know, I understand why he has me up here. I get that. He's not

happy being associated with Mr. Epstein. The man was reprobate. He was one of the lowest forms of humanity. So even having my name in an article, even if I'm not accused of something, I can understand why he's not happy about it.

But I don't -- we didn't do this out of animus or lack of preparation. This was a sober decision against someone in their official capacity. I'm sorry that he feels personally offended by this, but we took great pains to make sure that there were no allegations in the amended complaint and the complaint accusing him of anything or of any wrongdoing of any kind because that's just not the case that we have in front of us.

MS. WHETSTONE: Thank you, Mr. Mendelsohn.

Sorry, we went a little long.

THE COURT: No, it's okay.

Are you going to finish in the next 10 minutes?

MR. WYLER: No, Your Honor. That's impossible for me.

THE COURT: So then we're not going to get started.

MR. WYLER: I don't think it would be worthwhile for me to start and then stop in 10 minutes. It's going to take me at least

30 minutes, probably more like 45.
THE COURT: Okay, so, you know, from Amelia Island to here is five hours?
MR. WYLER: Yes, sir.
THE COURT: You're almost in Georgia.
MR. WYLER: Exactly. Your Honor, I will be here whenever you need me to be here. I'll make it happen.
THE COURT: Thursday or Friday?
MR. WYLER: Honestly --
THE COURT: How about Thursday?
MR. WYLER: -- how about Thursday? Yeah, Thursday would be better.
THE COURT: Okay, all right, we'll come back in Thursday.
MR. MENDELSOHN: In the afternoon, Your Honor?
THE COURT: Come back Thursday, probably 1:00 p.m. Give me one minute.
(Brief interruption.)
THE COURT: All right, so the only thing left is cross examination, redirect, and then are the parties going to write closing arguments?
MS. WHETSTONE: If Your Honor would prefer it, we'd be fine with that.

THE COURT: I prefer closing arguments that are written. I think things are more coherent. You know, I think the logic is tighter. If the parties don't mind writing closing arguments, I would prefer that.
Okay, do you want to bring your closing argument? I mean, I can anticipate you probably know what you're going to argue.
MS. WHETSTONE: If we could finish the direct -- the redirect and just make sure we have the testimony, that we will have the transcript and add it into the closings or make sure that we have -- What do you think?
MR. WYLER: Your Honor, it's going to be really hard for me to drive back, and then hand write it and then drive back down here again.
THE COURT: Why don't we do this: Cross examination, redirect. You'll give me a closing argument, and you can supplement your closing arguments in writing. If I need to have an additional hearing, we can do that via Zoom since the evidence and presentation will have concluded.
MS. WHETSTONE: Sounds good.
THE COURT: Sound good?
MR. WYLER: Sounds good, yes.

THE COURT: All right, so we'll come back Thursday, 1:00 p.m.
THE WITNESS: Am I excused, Your Honor, from the stand?
THE COURT: Yes.
THE WITNESS: Thank you.
THE COURT: I know we have guests. You know, the Wall Street Journal will write reprobate. It's a big word. It's a big word.
All right, anything else?
Have a great day, everybody. We're in recess.
(The hearing adjourned at 4:53 p.m.)

COURT CERTIFICATE

STATE OF FLORIDA
COUNTY OF PALM BEACH

I, Lisa Begley, RPR, RMR, certify that I was authorized to and did stenographically report the foregoing proceedings and that the transcript is a true and complete record of my stenographic notes.

Dated this 12th day of September, 2022.

Lisa Begley

Lisa Begley, RPR, RMR

IN THE CIRCUIT COURT OF THE 15TH JUDICIAL CIRCUIT
IN AND FOR PALM BEACH COUNTY, FLORIDA
CASE NO. 50-2019-CA-014681-XXXX-MB AG

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

Plaintiff,

vs.

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

Defendants.
_____/

TRANSCRIPT OF CONTINUATION OF
HEARING PROCEEDINGS

RE: Defendant Dave Aronberg's Amended Motion for Attorneys' Fees

DATE TAKEN: Thursday, September 8, 2022
TIME: 1:06 p.m. - 2:42 p.m.
PLACE: PALM BEACH COUNTY COURTHOUSE
205 North Dixie Highway
Courtroom 10D
West Palm Beach, Florida 33401
BEFORE: LUIS DELGADO, JR., Circuit Judge

Stenographically reported by:
Lisa Begley, RPR, RMR

271843

APPEARANCES:
On behalf of the Plaintiff:
GREENBERG TRAURIG
777 South Flagler Drive
Suite 300 East
West Palm Beach, Florida 33401
561-650-6420
BY: LAUREN R. WHETSTONE, ESQ.
whetstonel@gtlaw.com
MARK F. BIDEAU, ESQ.
bideaum@gtlaw.com
GERARD BUITRAGO, ESQ.
buitragog@gtlaw.com

On behalf of Defendant, Dave Aronberg:
JACOB, SCHOLZ & WYLER, LLC
961687 Gateway Boulevard
Suite 2011
Fernandina Beach, Florida 32034
904-261-3693
BY: DOUGLAS A. WYLER, ESQ.
doug@jswflorida.com
Also present: Dave Aronberg, State Attorney
Defendant

Leigh Miller, Public Records Coordinator
Office of the State Attorney PBC

I N D E X

Thereupon,
the following proceedings began at 1:06 p.m.:
THE COURT: All right, please be seated.
All right, announce your presence.
MS. WHETSTONE: Good afternoon, Your Honor, Lauren Whetstone, and with me, Mark Bideau, Gerard Buitrago and paralegal, Jennifer Thomson, on behalf of Greenberg Traurig, on behalf of CA Florida Holdings, the publisher of the Palm Beach Post, the plaintiff, and our witness, Stephen Mendelsohn.
MR. WYLER: Good afternoon, Your Honor, Douglas Wyler with the law firm Jacobs, Scholz & Wyler here on behalf of the State Attorney, Dave Aronberg, defendant.
THE COURT: All right, so we left off with cross examination? Is that where we are?
MS. WHETSTONE: Yes, Your Honor.
MR. WYLER: Yes, sir.
THE COURT: Madam Clerk, please swear in the witness.
Sir?
THE WITNESS: Oh, I've been sworn in before.
THE CLERK: Do you solemnly swear or affirm

that the evidence that you're about to give will be the truth, the whole truth and nothing but the truth?
THE WITNESS: I do.
Thereupon,
STEPHEN MENDELSOHN, ESQ.,
having been duly sworn by the Clerk of the Court, responded and testified as follows:
CROSS EXAMINATION
BY MR. WYLER:
Q. Good afternoon, Mr. Mendelsohn.
A. Good afternoon, Mr. Wyler.
Q. So I'm going to start off with this: Isn't it true that part of the exhibits that we've all agreed on that are here and part of evidence are some of the portions of our settlement negotiations?
A. There is one letter, yes.
Q. Okay. And isn't it true you and I talked several times regarding settlement?
A. Sure.
Q. And isn't it also true that, during the pendency of our settlement negotiations, Mr. Aronberg was contacted by the same reporter that the SAO had previously prosecuted for illegal substances?
MS. WHETSTONE: Objection, Your Honor, no

foundation.

MR. WYLER: That's fine.

THE COURT: All right.

BY MR. WYLER:

Q. Isn't it true, though, that Mr. Aronberg and Mike Edmondson contacted you to complain about an article that was being written about him?

A. No, no. I've never spoken to Edmondson that I remember.

Q. Well, okay. That's fine. But you did speak with Mr. Aronberg, right?

A. No. I don't recall speaking to anyone on this matter, unless he was on the phone with you. Other than that, no.

Q. Okay, well, then part of when we spoke, and maybe you didn't know, Mr. Aronberg and Mike Edmondson were on the phone with us, but isn't it true that there was a time, when you and I spoke in settlement negotiations, that you offered to hold an article pending our settlement negotiations?

MS. WHETSTONE: Objection, Your Honor, settlement discussion.

MR. WYLER: They opened the door to settlement negotiations by putting it into evidence.

THE COURT: What exhibit are you talking about?

MR. WYLER: I don't actually have an exhibit that is part of evidence, but I do have an exhibit that is not part of evidence that I will offer to the Court.

THE COURT: That is good then. Objection is sustained.

A. That is absolutely untrue.

BY MR. WYLER:

Q. So you're saying that never happened?

A. No. Mr. Aronberg, through you, suggested that in the settlement, that the paper would write a favorable article about him if we were able to settle. You suggested that. I didn't make a comment one way or the other, but I absolutely advised my client of it.

I don't make editorial decisions for the paper, so I have no authority to make such.

Q. So you're saying there was never a conversation between you and I where we discussed Mr. Aronberg creating a comment to go into the newspaper as part of those settlement negotiations where you wanted us to drop our 57.105 demand and you offered to get an article held while we determined whether we would do that?

MS. WHETSTONE: Objection, Your Honor, compound, compound.

THE COURT: Sustained as compound.

BY MR. WYLER:

Q. All right, I'll move on.

So, in your direct examination the other day, isn't it true that you stated that you devoted hundreds of hours to the research and development of bringing this lawsuit?

A. Yes.

Q. Okay. And so, in all of that research, you extensively put time into looking into Chapter 905.27 before you brought this action?

A. Yes, sir.

Q. And, prior to Judge Marx's June 8th order on the motion to dismiss Count 2 -- Let me scratch that.

Isn't it also true that your client's complaint alleged against -- that my client was in possession or control of the documents that are in this action, the subject of this action?

A. I'm sorry, can --

Q. I'll repeat it. Isn't it true that your client's complaints alleged that my client and/or his office is in, quote, possession and/or control of the documents that are subject of this action?

A. Are you reading from the amended complaint?

Q. That is found at page 117, Bates stamp number 117, paragraph 3 of the first amended complaint. I'll be happy to show it to you.

A. Well, if you'll just let me know where in the amended complaint it is, what paragraph.

Q. Paragraph 3.

THE COURT: What's the Bates stamp?

MR. WYLER: 117, Your Honor.

A. Yes, sir, that's part of what I said in paragraph 3.

BY MR. WYLER:

Q. But there was an allegation that my client is in possession and/or control of the documents?

A. In his official capacity as his office is in possession and/or control of documents that are the subject of this action. And in the prior sentence, I quoted Florida Statute 27.03 which provides for the attorney -- excuse me -- the state attorney to have authority over grand jury proceedings in the state of Florida.

Q. Okay. Isn't it also true in the first amended complaint that your client admitted that it is not -- it is not seeking these materials in connection with either a civil or criminal case and, therefore,

Page 151

sought unlimited access to the requested materials under 905.27?

A. Again, that's a compound question. I'm not sure which one goes first.

Q. Isn't it -- If you would look at Bates stamp page 135.

A. I don't have the Bates stamps in front of me. All I have is the exhibits, sir.

Q. Okay. They should be on there, in the bottom left corner.

A. Which one is it?

Q. 135.

A. Okay. I'm sorry, what is your question, sir?

Q. Didn't you admit on that page that you are not seeking these requested materials in connection with either a civil or criminal case?

A. A pending -- Right, that is correct.

Q. Okay.

A. The Post was not seeking these documents in a pending criminal or civil case involving the Post. That is correct.

Q. Thank you. And did you also seek unlimited access to those requested materials for that reason?

A. No, that's not accurate.

Page 152

Q. If you look -- Would you look at Bates -- at that Bates stamp I just provided you?

A. Yes.

Q. I believe it's on here.

A. Are you looking at 135 --

Q. Uh-huh.

A. -- on Exhibit 9? Yes, I'm looking at that, sir.

Q. Okay, and if you would look at paragraph 70.

A. Sure.

Q. And then, do you see -- one, two, three -- the fourth line down, in the sentence that starts with, "Because..."

A. Yes.

Q. Okay. It says, "Because the Palm Beach Post is not seeking these materials in connection with either a civil or criminal case, it seeks a declaration that the scope of its use of the disclosed materials is not limited."

A. Right, not limited to a civil or criminal case, but that the Post had the right under section (c) of 905.27 in furtherance of justice. We were always seeking an in-camera inspection of the documents by the Court prior to any release to the Post.

Page 153

Q. Did that argument succeed in your claim against the clerk?

A. Which one?

Q. That you had no connection with the civil or criminal case and to get unlimited -- to get unlimited access.

A. Well, again, we weren't seeking unlimited access. As I just mentioned, we were always seeking an in-camera inspection by the Court prior to release to us. So we were not seeking unlimited access, nor immediate access to the documents.

Q. You weren't -- All right, we're going to move on.

Isn't it true that the other day you testified that you sued my client because you needed him not to object to your request for these materials?

A. I needed him not to object? No. I gave him the opportunity to do actually three things. One is to support our request; two, they could have taken a neutral position; or, three, they could have objected.

Initially, the state attorney's office took the position to object, and as I think I testified, they eventually changed the position in October of 2020 to neutrality.

Q. And you believe that's a proper basis for

Page 154

filing this lawsuit against my client?

A. That they adopted a neutrality position? I'm not clear what you're asking me.

Q. Oh, no, that you needed him not to object.

A. That I needed him not to object? No --

Q. Unless you wanted --

A. I'm sorry, did I step on you, sir?

Q. No, you're fine.

A. No. That I needed him not to object? No, I gave the state attorney's office the option to make, in their discretion, to make the decision as to what they wanted to do vis-à-vis grand jury secrecy. And as I stated -- You know, if you look at the paragraph you quoted before, that's paragraph 3 of the first amended complaint, I cite to Florida Statute 27.03, which gives the state attorney the authority over grand juries, and if you look at the cases cited under 27.03, there are a number of them which say that the state attorney has very, very broad powers in the conduct of a grand jury, so --

Q. Thank you, Mr. Mendelsohn. Let's move on.

A. Okay.

Q. In your long practice as an attorney, is it your understanding that clear, unambiguous statutory language has to be enforced as written?

A. Well, there are circumstances where the courts have implied causes of action. That's the famous United States Supreme Court case of Cort v. Ash where the Court said that, even if Congress did not specifically authorize a cause of action, that, in certain circumstances, if Congress did not bar such, you could have an implied cause of action. That comes also for Section 10(b)(5) of the securities laws.

Q. Okay, but --

A. And Florida has that, too.

Q. All right. But, in your research, you stated that you went through 905.27, right?

A. Exactly, yes.

Q. Okay. And you came across this language, right? I'm going to read this to you: "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."

You came across that language when you were doing the research, right?

A. Absolutely.

Q. And do you recall my client asserting that as a defense from the beginning, from our first interaction, first legal filing in this?

A. Yes, you made a motion to dismiss arguing that the Post did not --

Q. We'll take a yes. It was a yes or no.

A. Well, you asked me if your client did that, and I was answering it. So the answer --

Q. I'll take it as a yes or no.

A. May I finish my answer without interruption?

The answer is, yes, you made a motion to dismiss under 905.27 and asserted that the materials could only be used in a civil or criminal case. Of course, we disputed that because of (c), which is the furtherance of justice language.

Q. And did that -- did that argument -- was this argument successful in your action against the clerk?

A. It was never addressed by the Court.

Q. So you're telling me that [redacted] never brought up 57 -- or, 905.27 in his final judgment?

A. No. I'm suggesting the way you characterize it was not the way Judge Hafele decided.

Judge Hafele, in his final judgment, said that he felt constrained by the statute vis-à-vis his inherent authority as a judge.

While he wanted as a judge to exercise his inherent authority to allow for disclosure, he felt that the statute constrained him in doing so because it did not expressly so state that it could be used outside of the civil or criminal case. That's what I believe Judge Hafele said.

Q. Do you have a copy of the final judgment in front of you?

A. Yes. What exhibit is it?

Q. It's tab 30.

A. Okay. Okay.

Q. All right, tab -- or, Bates 1477.

A. Sure. The newspaper makes strong arguments to advance --

Q. No. No, sir. No, sir.

A. I'm sorry.

Q. No, sir. Let me redirect -- Let me direct you to the first paragraph here under Emphasis Added? Do you see it says, "Reading subsection (1)(c)..."?

A. Right.

Q. Could you read that until the cite for the amended complaint, please?

A. Right. "Reading subsection (1)(c), furthering justice," which is in quotes and parentheses, "in tandem with section (2), it is evident that the phrase, quote, furthering justice, end quote, is to be interpreted in the context of seeking disclosure of the grand jury materials for use in a pending criminal or civil case."

Q. Keep going.

A. Yep. "The newspaper acknowledges that it is not seeking the disclosure of such materials for such purpose. Instead" --

Q. That's it. Thank you, Mr. Mendelsohn.

A. But it's not the --

Q. Mr. Mendelsohn --

THE STENOGRAPHER: I'm sorry, I can't take this.

THE COURT: Gentleman, gentleman, we're here for trial, and you're being cross-examined --

THE WITNESS: Your Honor, maybe, for the rule of completeness, I would like to be able to read the entire sentence.

THE COURT: So right now you're testifying.

It's your witness. What's your next inquiry?

MR. WYLER: Thank you, Your Honor. May I

continue with this final judgment, Your Honor?
BY MR. WYLER:
Q. I would like you, Mr. Mendelsohn, to flip to page 1479 of that same final judgment. At the very top of that page, could you read that first sentence for me, too -- for me?
A. "Subsection (2) clearly limits Section 925.27's (sic) scope as to the instances in which grand jury testimony or materials need to be disclosed for use in a criminal or civil case."
Q. And then -- You can keep going.
A. "Section (2) provides that, once grand jury testimony is disclosed in the course of a court proceeding, it is then open to unlimited dissemination. Before that occurs, the Court must determine that one of the three needs prescribed in section (1) is present in a criminal or civil case that requires disclosure. There's nothing in Section 905.27 that gives the Court carte blanche," which he has italics, "authority to release grand jury materials in any situation that might bear some relationship to, quote, furthering justice, end quote, in its broadest sense."
Q. Thank you. All right, so moving on from 905.27, in your extensive research of this case, did you also come across Chapter 905.17?

A. Sure.
Q. Okay, and let me provide that to you, sir.
MR. WYLER: This is tab 32 of the -- or, 33 of the Authorities, Your Honor, tab 33.
BY MR. WYLER:
Q. Do you have it, Mr. Mendelsohn, or would you like me to provide it?
A. It's the amended and supplemental affidavit of attorneys' fees and costs?
Q. You don't have the Authorities binder?
A. No, I don't have the Authorities binder.
MR. WYLER: May I approach?
THE COURT: Yes.
BY MR. WYLER:
Q. Here's a copy of 905.17.
A. Yes, I'm familiar with this provision.
Q. Great, okay. And then the very last sentence of that first paragraph, it starts with, "The notes, records and transcriptions..." Would you please read that for the Court?
A. I'm not sure where you're directing me, sir.
Q. Let me approach again and show you here. I'm sorry, I didn't have this highlighted for you. Right here, very last sentence of that

first paragraph starts with, "The notes..."
A. Yes.
Q. Will you please read that for the Court?
A. Sure. "The notes, records and transcriptions are confidential and exempt from the provisions of Section 119.07 subdivision (1) and Section 24(a), Article 1 of the State Constitution, and shall be released by the clerk only upon request by a grand jury for use by the grand jury or on order of the Court pursuant to 905.27."
Q. Thank you, Mr. Mendelsohn. And do you recall my client asserting this as a defense to your claim as well?
A. Yes, yes.
Q. And isn't it true that your client and your firm and you yourself have been made aware several times that Mr. Aronberg and his office have no ability to comply with your declaratory relief claim because they have no possession, custody or control of those requested grand jury materials?
A. I'm aware that's your argument.
Q. You're aware that we've made that argument to you several times, are you?
A. Yes, you made a motion to dismiss and a motion for summary judgment.

Q. And did we also put that argument in our 57.105 demand?
A. Yes.
Q. Okay. And isn't it true that you and your client have admitted that the clerk is the only one in possession and control of those requested grand jury materials?
A. I don't believe so.
Q. All right. If I could direct the Court and you, Mr. Mendelsohn, to tab 20, and it's Bates stamped 262.
A. 262? Yes, sir.
Q. And then the second paragraph starts with, "Also..." Can you just read -- Can you just read that first sentence for me? Or I'll just read it here. It says, Also, the clerk, who admittedly has both possession and control of the Epstein grand jury materials, has not followed the state attorney's lead in seeking sanction of the Palm Beach Post.
It says that in there, correct?
A. Well, you didn't read it verbatim, but essentially that's what it says, yes.
It also says the clerk's decision --
Q. I didn't ask you what else it says.
A. I know, because it doesn't help you.

Q. But I didn't ask you that.

THE COURT: Gentleman, so this is the second time, okay?

MR. WYLER: Thank you, Your Honor.

THE COURT: Let's maintain a little civility.

BY MR. WYLER:

Q. Mr. Mendelsohn, in your extensive involvement in this case, how did you contribute to the June 3rd, 2020, motion to dismiss hearing?

A. How did I?

Q. Yeah, or did you?

A. I didn't argue the motion, but certainly, as part of the group, we had discussions as to how we thought it should be argued, the potential arguments from the state attorney's office and what we thought would occur.

Q. Did you attend via Zoom or --

A. Yes --

Q. Okay.

A. -- I did.

Q. And have you ever read the transcript of it?

A. Some time ago, yes.

Q. Okay, so then you were aware of Judge Marx's statements, the ones that I read onto the record in my opening statement regarding the impossibility of performance for the records that you requested?

A. I know she said that, yes.

Q. Okay. Did you agree with Judge Marx's statements as to an impossibility of Mr. Aronberg being able to comply?

A. I took her statements as complete dicta since they were not before her as a question on the motion to dismiss. I did not know what personal knowledge she had of what the state attorney's possession or nonpossession was. So I did not credit it as being anything but a dicta statement from her.

Q. So you or your firm, no one objected to those statements then, correct?

A. There wasn't -- I'm not sure what you're referring to.

Q. Was there any objections made to any of those statements made -- objections or appeals made as to those statements made on the record in that hearing?

A. I don't follow, because you don't make objections to a judge's comments.

Q. Well, through an appeal, you would. Did you file an appeal as to that motion to dismiss?

A. No. It wasn't necessary.

Q. Okay. Would you please flip to our Joint Exhibit Number 14?

A. Sure.

Q. It's also found at Bates stamp 232.

A. Yes, sir.

Q. Okay, do you -- do you recognize this as a copy of my client's 57.105 demand letter and a copy of the email when it was sent to you?

A. Yes, I do.

Q. And what day was it sent to you?

A. June 8th --

Q. Okay.

A. -- of 2020.

Q. Thank you. And then, if you flip to the -- past the letter, that's Bates stamp 235.

A. Yes, sir.

Q. Do you -- Do you recognize this as the motion for attorneys' fees that was sent along with that motion to -- or, with that 57.105 demand?

A. Well, it wasn't a motion. It was an unsigned proposed motion that you were suggesting would be filed if we did not act within the 21-day safe harbor under 57.105.

Q. That's right. And that -- Do you know when this motion for attorneys' fees was actually filed?

A. July, the beginning of July of 2020, I believe.

Q. If I told you July 1, 2020, does that sound correct to you?

A. Yes, it does.

Q. Okay. And is that more than 21 days after June 8th, 2020?

A. Yes.

Q. It's 23 days beyond, my math.

A. I have no reason to doubt that.

Q. If you look at -- I quoted in our -- In the 57.105 demand, you'll see a quote of the Chapter 57.105 subsection (1).

A. What are you referring to now?

Q. Do you see in my -- the 57.105 demand letter, still Exhibit 14?

A. The demand letter that's Exhibit 16?

Q. No, no, no. Still on 14.

A. 14.

Q. Bates stamp 233.

A. 233? Yes.

Q. Okay. Do you see where the 57.105 statute's quoted there in the middle of the page?

A. Yes.

Q. Can you tell me anywhere in there there's a

good faith element?

A. No, because you didn't quote the good faith element of the statute.

Q. In subsection (1), is there a good faith element?

A. I believe there is a good faith element that wraps around the entire proceeding of 57.105.

Q. Okay, but in subsection 1 itself, is there a good faith element in that subsection?

A. No, but there's an additional good faith provision in 57.105 that you didn't cite to in this letter.

Q. Okay. Now, are you referring to 57.105 subsection 4? I can show you the statute.

A. Let me just check here. I'm looking at my letter of June 23rd. 57.105(3)(a), that's what I was referring to.

Q. Okay. All right. And, now, we talked about this before. Can you -- 57.105(3)(a), can you read subsection (a) for the Court?

A. I don't have 57.105. I have my letter which --

Q. I can hand it to you.

A. Sure.

Q. Yeah, absolutely.

A. Thank you.

Q. You're welcome. 3(a) is right there.

A. "Notwithstanding subsections (1) and (2), monetary sanctions may not be awarded; (a), under paragraph (1)(b) if the Court determines that the claim or defense was initially presented to the Court as a good faith argument for the extension, modification or reversal of existing law or the establishment of new law as it is applied -- as it applied to the material facts for the reasonable expectation of success; (b), under section" -- excuse me -- "under paragraph (1)(a) or paragraph (1)(b) against a losing party's attorney, if he or she has acted in good faith based upon the representations of his or her client as to the existence of material facts; (c), under" --

Q. I just -- I just needed you to read (a). Thank you.

A. Oh, I wasn't sure.

Q. So under (3)(a), does that apply to subsection (1)(a) of the statute, or does it only say (1)(b) there?

A. No, if you look at (3)(a) -- if you look at (3)(b), it says, under paragraph (1)(a) or paragraph (1)(b) against a losing party's attorney if he or she has acted in good faith.

You're seeking fees against myself and --

Q. No, no.

A. -- and Greenberg attorneys, so I read that as being applicable.

Q. Mr. Mendelsohn, you're skipping down to -- That's not what I asked you. 57.105(3)(a), does that apply to 57.105(1)(a)? Does it say it in the statute?

MS. WHETSTONE: Objection, calls for a legal conclusion.

MR. WYLER: No, I'm just asking him to read it.

A. It doesn't say (1)(a) under (3)(a), but I don't remember the case law as to whether or not, when you're suing both the client and the lawyer under 57.105, that both of them can't make the argument of good faith.

BY MR. WYLER:

Q. But correct me if I'm wrong, it did say, under paragraph (1)(b), if the Court determines that the claim or defense was initially presented to the Court as a good faith argument?

A. (1)(b) has good faith in it as well, yes.

Q. It doesn't say (1)(a) in there, does it?

A. I'm confused now as to what you're asking me. No offense.

Q. Mr. Mendelsohn, that's okay. I'll move on

from that. I believe the Court understands what I'm saying.

So back to that 57.105 demand letter. Isn't it true in that demand letter that we asserted that your client's declaratory relief claim is not supported by the material facts to establish it?

A. That's what you say, yes.

Q. Okay, we made that assertion, yes?

A. That's what the state attorney asserted.

Q. Yes, sir, okay. And, in making that assertion, didn't he say that neither him or his office has custody or control of those records and that's it's impossible for him to provide them? He made that known to you in that letter?

A. That's what he said, yes.

Q. Okay. Didn't that letter also say that your client's declaratory relief claim is unsupported by the application of the law to those facts?

A. Well, in a conclusory way, yes, but not in any specifics as to why we were wrong.

Q. Well, then maybe you should keep looking at that because, if you flip to the second page of that 57.105 demand letter, do you see Section 905.27(2) quoted as the reason for that assertion?

A. Yes, but if you recall, there was more --

Q. Thank you.
A. -- there was more than one argument you were making and more than one argument we were making.
Q. A review of this letter makes crystal clear -- I'm sorry. All right. Okay, let's go to tab number 16.
A. Yes.
Q. Do you recognize this as the letter where you rejected our 57.105 demand?
A. Yes.
Q. Can I direct you to the very last paragraph of that letter?
A. "For these reasons, we decline" --
Q. No, sir. No, sir. I'll point you. The very last paragraph of this letter, it starts with, "Also assuming..."
A. That's actually --
Q. Oh, no, I'm sorry, on the second page. I didn't need that one.
A. That's actually the penultimate --
Q. Then we'll start with the penultimate paragraph on 245 --
A. Right, I see that, yes. It starts, "Also assuming..."
Q. First sentence, please.

A. "Also assuming the state attorney does not have physical possession of the grand jury materials, there is nothing in Florida law that prohibits the state attorney from requesting the clerk provide copies to the state attorney."
Do you want me to keep reading?
Q. No, sir. Thank you. But I would like to redirect your attention, again, back to 905.17 and that statement that you read earlier. It says, "The notes, records and transcriptions are confidential and exempt from the provisions of Section 119.07(1) and Section 24(a) Article 1 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 Section 905.27."
A. Right, I'm familiar with that.
Q. Okay.
A. And that section refers to the clerk, not to the state attorney.
Q. Thank you. Exactly. Thank you.
A. So there's nothing to prohibit the state attorney in this statute from asking the clerk for these materials.
Q. All right, isn't there a big difference between getting access from the clerk for materials and

disclosing the materials? Isn't there a difference between that?
A. I don't understand what you're asking.
Q. I'll ask you again. Isn't there a difference between accessing the materials and being able to disclose the materials?
A. Once the clerk provides --
Q. No, no, no. It's a yes or no question.
A. Then I don't understand what you're asking me, to be honest with you.
Q. Is there -- Is there a difference between saying, Hey, may I please have these records, versus saying, Here you go, here's these records, Newspaper?
A. Well, what you're -- what you're asking me is a twofold question.
Q. I asked you one question. Is there a difference between access and disclosure?
A. No. Once you access something, it's disclosed. I don't understand what you're asking me, sir, I honestly don't.
Q. Mr. Mendelsohn, I'm sorry, and I do not want to have -- I do not want to make the Court angry, but we've got to stop talking over each other. I'm asking you a simple question.
You stated here that Mr. Aronberg could get

access to these records through the Court -- through the clerk, correct?
A. He could ask the clerk for them, and I didn't -- and I argued that there was nothing in the statute prohibiting him from asking the clerk for the clerk to give his office these documents, yes, sir.
Q. Okay, sure. Okay, thank you. And so let's just say that happened.
A. Okay.
Q. The clerk gives -- Mr. Aronberg asks the clerk for the records and the clerk gives them to him.
A. Okay.
Q. That's not what you asked for in your lawsuit, is it?
A. Yes, of course it is.
Q. Mr. Mendelsohn, did you not -- does not your complaint request the complete -- the disclosure of these records from my client?
A. But --
Q. You asked -- Did you ask in your lawsuit for my client to hand these records over?
A. No, no.
Q. No? Okay.
A. No, because we had asked for the records to be examined by the Court in camera before they were ever

Page 175

to be disclosed to the public. In fact, we stated in the amended complaint that the Court should review such documents and redact anything that would identify witnesses or potential witnesses or those who were not charged with a crime.

So it's inaccurate for you to suggest that the paper just wanted it handed to them. That was never the case.

Q. Okay. Let's look back at your complaint. It's tab number 9. We're going to look at Bates stamp 136, and we're going to look at your wherefore clause.

A. Tab 9, you say?

Q. Yes.

A. 136?

Q. Yes.

A. I see it.

Q. Okay.

A. "Wherefore, the Post -- the Palm Beach Post respectfully requests that the Court determine the rights and obligations of the parties by declaring that, pursuant to Florida Statute Section 905.27(1)(c) and the Court's inherent authority, the Palm Beach Post may gain access to the testimony, minutes and other evidence presented in 2006 to the Palm Beach County grand jury and use those materials for the purpose of informing the

Page 176

public."

Q. Okay, thank you. And so in there it says that you're asking for the Palm Beach Post to gain access to the testimony; is that correct?

A. Yes, after the Court examined them in camera.

Q. How else would you gain access to testimony unless it was disclosed to you?

A. I'm --

Q. You would not.

A. I'm not following what you're asking me, I'm really not.

Q. Would you please look at tab J17.

A. Dave Aronberg's motion for attorneys' fees?

Q. Uh-huh.

A. Okay.

Q. It's at Bates stamp 247.

A. Right. This is the one you made on July 1, 2020.

Q. Correct. And we went through that. Before, you said that was filed at least 21 days after you received the 57.105 demand, correct?

A. Well, you said it was 23, and I agreed with you.

Q. And I said at least 21 days.

Page 177

A. Right.

Q. Thank you. So, if I give you this -- Let me give you this 57.105 statute again and ask you to look at subsection (4) for me.

A. Okay.

Q. And if could you read that to the Court. Thank you.

A. "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."

Q. Thank you. And you and your client did not withdraw the claim for declaratory relief within that 21 days after being served, correct?

A. Yes.

Q. All right. And then let me have you look at tab number -- or, our Exhibit Number 23.

A. Plaintiff -- Yes, the notice of dropping State Attorney Dave Aronberg on October 21st, 2020, that is the one you want me to look at?

Q. Yes, that's right. Yep. And that's the date it was filed, October 21, 2020; is that what you said?

Page 178

A. Yes.

Q. Okay. And is that filing date more than 21 days beyond when you were served with the 57.105?

A. You're confusing a lot of things there.

Q. No, I'm not. I asked you a question.

A. I cannot answer that question, I can't --

Q. Okay.

A. -- because it's making a number of assumptions that are inaccurate.

Q. No, no, no. That was one simple question. When were you served with the 57.105 demand?

A. Which one?

Q. No, no, no. You were only served with one 57.105 demand.

A. That's correct.

Q. Okay. I'm just asking which one.

A. Right. I wanted you to pin down what you did.

Q. Okay, you were served with one 57.105 demand.

A. Right.

Q. What day was that?

A. The letter was June 8th, 2020.

Q. Okay. And this -- And that gave you 21 days from that date to change your position; is that

correct?

A. The statute gave me that, yes.

Q. Okay. And then when did you actually change your position and drop Mr. Aronberg?

A. We dropped Mr. Aronberg -- When you say changed position, I don't know what you're referring to. We dropped Mr. Aronberg as a defendant in this case on October 21, 2020.

Q. Okay, and October 21, 2020, is more than 21 days after June 8th, 2020, right?

A. Yes.

Q. Okay. So then that fits with the statutory language then, correct, of what that 21-day -- it gives you 21 days to withdraw, and you didn't withdraw within 21 days, correct? The statute, 57.105 subsection (4), gives you 21 days to withdraw the alleged --

A. You are confusing a number of things that are happening, so I cannot answer that question. You're assuming certain things that are not accurate, so I cannot answer your question in the manner you put it to me.

Q. Mr. Mendelsohn, it's very simple. I'm just trying to establish that that -- that you filed your drop cure -- you dropped the claim against Mr. Aronberg outside of the 21-day safe-harbor period, correct?

A. But you never moved -- you never filed a motion on the first motion you made for fees.

Q. Okay.

A. That's not before us. So you're confusing a safe-harbor for something you've never moved on versus dropping your client as a defendant after something else happened.

Q. Okay, so --

A. So you're mixing two things together.

Q. I'm not. I believe you are. Okay, so is it your position then that, after you dropped Dave Aronberg as a client, that --

A. He's not a client.

Q. After -- Is it your position that, after you dropped Dave Aronberg as a party from this lawsuit, it's your position that, after you dropped him, that another 57.105 demand letter should have been sent to you?

A. You didn't give us --

Q. Just answer my question. After you dropped Mr. Aronberg from this lawsuit, is it your position that you should have been served with another 57.105 demand letter?

A. Yes. You didn't comply with 57.105 for your amended motion for 57.105. You did not comply with

it. Yes, that is the position.

Q. Can you tell me, after dropping Mr. Aronberg from the lawsuit, how your position -- how your client's position could have changed if they were served with another letter being that he was already out of the lawsuit?

A. Well, that's the problem you have because you served this motion without giving us the safe-harbor, the amended motion I'm referring to, as well as the fact that you served it after we dropped him. For jurisdictional purposes, you can't do that.

Q. How could I provide you a safe-harbor if you had already dropped him from the lawsuit?

A. Mr. Wyler, with all due respect, you're actually making my argument, which is that 57.105 is not applicable when your client is no longer part of the case.

Q. Well, then I guess we just have differing views on how to interpret that statute, Mr. Mendelsohn. All right, I just have a few more questions for you.

A. Sure.

Q. I'd like to go -- I think I'd like to go back to that final judgment. That was tab 30.

A. Okay.

Q. All right, all right, I'm on Bates stamp 1473, and I'm at the top of that page, that first sentence.

A. The clerk's position? Is that what you're reading from?

Q. Yes, yes. That's correct.

A. "The clerk's position is that he is merely a custodian of the materials, and, as such, he has no real interest in the issues before the Court as identified. The clerk only needs direction from the Court on whether or not he should produce or disclose the materials. Nonetheless, the clerk has zealously advocated the position against disclosure based upon grand jury secrecy and confidentiality because Rule 2.420(d)(1)(B)(xvii) of the Florida Rules of General Practice and Judicial Administration, the clerk is required to maintain the confidentiality of grand jury records."

Q. Yes, will you read the next paragraph, too, please?

A. "The clerk is correct that his role as custodian of the materials is only to follow the Court's direction once confidentiality is determined. The clerk's role in this proceeding has been complicated or expanded because the newspaper filed this action as a

civil declaratory judgment action and has moved for summary judgment under Florida Rule of Civil Procedure 1.510. However, the proper procedure for obtaining disclosure of confidential Court records is set forth in Florida Rule of General Practice and Judicial Administration 2.420(j) which only requires the filing of a, quote, motion, end quote, seeking disclosure, Florida Rule of General Practice and Judicial Administration 2.420(j)(2)."

Want me to keep going?

Q. Yeah, just to the very end of that next sentence, please.

A. "Accordingly, the Court will treat the newspaper's complaint and motion for summary judgment as a motion for disclosure under Rule 2.42" -- excuse me -- "2.420(j). As a result, the Court need not determine as a matter of law whether the clerk of the Court is a proper defendant to the declaratory judgment for the release of the grand jury materials."

Q. Thank you. All right.

A. I'm sorry, was there a question?

Q. No. There's going to be. Just one second.

When you filed this lawsuit, were you familiar with Rule 2.420 of the Rules of Judicial Administration?

A. Absolutely.

Q. Then why didn't you just file a motion like the rule says -- says you're supposed to if you want confidential Court records and sued my client instead?

A. First off, the rule doesn't actually say that. It says you may file a motion in a pending criminal or civil procedure. Since there wasn't a pending criminal or civil proceeding, we didn't view that motion as being necessary to be made.

Now, this issue is before the Fourth DCA at the present time, and the clerk's taken the position in its answer brief that Rule 4 -- 2.420 is ambiguous and the actual procedure that needs to be followed is uncertain. And, in fact, the clerk's position is now that the Supreme Court must reassess how one would seek grand jury materials.

That was in their answer brief, which I'd be happy to provide to the Court along with our initial brief and reply brief, which extensively discusses Rule 2.420, but also argue that the clerk has now adopted a position of neutrality when it comes to the release of the grand jury materials. In its answer brief, it says it no longer opposes release of the materials.

Q. Okay.

A. It is now neutral on that issue.

Q. Thank you, Mr. Mendelsohn.

In the Court's final judgment, however, it does say, which you just read to the Court, the proper procedure for obtaining disclosure of confidential records is set forth in Florida Rule of General Practice and Judicial Administration 2.420(j), which only requires the filing of a motion seeking disclosure; is that correct?

A. Yes, but at this time, the state attorney was not a party, and, in fact, the state attorney has never made any argument under Rule 2.420 in this case. It has never made such an argument.

Q. But you were aware of that rule before you filed this lawsuit?

A. Right, and the clerk made this argument after we dropped the state attorney from this case. That was the first time the clerk had made such. The clerk made this argument that the rule was applicable in opposition to our motion for summary judgment which occurred after the state attorney had been dropped from the case.

So this was not an issue in the case either because your client did not raise it, the clerk did not raise it, and it was not before the Court until after your client was no longer a party. So it was not an

issue that either you addressed or we addressed as part of your demand that we withdraw the case.

Q. But you still knew about it before you filed the lawsuit, right? You knew about that rule?

A. Of course. Of course.

Q. All right, last question for you: Isn't it true that your client's goal in obtaining these records from my client was for public disclosure? Was that your end goal?

A. After the Court examined them in camera and removed witness identification or people who hadn't been indicted, that was actually discussed very much extensively in the oral argument before Judge Hafele, and, in fact, he asked us particularly if I were -- and using Judge Hafele's words -- inclined to release these materials to the newspaper and the public -- it wasn't just the paper; it was simultaneously to the public -- how would I go about redacting them? Would I need to have someone else, a master, possibly review them? How would I go about doing it?

And we had about a half hour's worth of discussion as to how to accomplish that if he were inclined to grant disclosure. So that absolutely was an issue before Judge Hafele.

Q. Great. So then the final goal was -- Was

the final goal to have these requested grand jury materials be able to be disclosed to the public?

A. Absolutely.

Q. Okay. And that was without any connection to any underlying civil or criminal case, correct?

A. If you're asking me whether or not the Post was part of a civil or criminal case pending at the time, no, it was not.

Q. You did not -- Did you request these records as part of a pending civil or criminal case?

A. Involving the Post? No --

MR. WYLER: Thank you. No further questions.

A. -- other than this lawsuit.

THE COURT: Thank you.

Redirect examination.

REDIRECT EXAMINATION

BY MS. WHETSTONE:

Q. Good afternoon, Mr. Mendelsohn.

A. Yes.

Q. Mr. Wyler asked you to read a sentence in the amended complaint --

A. Yes.

Q. -- and I'd like to draw your attention to that, and it's Exhibit 9. I'm going to look at

paragraph 3.

A. Yes, I have that in front of me.

Q. Can you read the entire paragraph 3, please?

A. Yes, I'd be happy to.

"Defendant Dave Aronberg is the duly elected State Attorney for the 15th Judicial District in and for Palm Beach County, Florida, pursuant to Florida Statute Section 27.01 and has authority in grand jury proceedings pursuant to Florida Statute Section 27.03. He is sued in his official capacity as his office is in possession and/or control of documents that are the subject of this action."

Q. So, and I'm actually going to compare --

MS. WHETSTONE: And it's on the screen for Your Honor, too, if that's easier to see.

BY MS. WHETSTONE:

Q. But we're going to look at paragraph 4 next because paragraph 4 names the clerk; is that correct?

A. Yes.

Q. Could you read paragraph 4, please?

A. Yes. "Defendant Sharon R. Bock is the duly elected clerk and comptroller of Palm Beach County, Florida. She is sued here in her official capacity as her office is in possession and/or control of documents

that are the subject of this action."

Q. So comparing those two paragraphs, was the clerk named in a different capacity as the state attorney in paragraph 3?

A. Yes, because, in paragraph 3, I cited to Florida Statute 27.03, which is the broad grant of authority to state attorneys to supervise and conduct grand jury investigations, and that's really what the situation involved in this case.

Q. So you set forth in the amended complaint that the state attorney was named as having authority over grand jury proceedings; is that correct?

A. Yes.

Q. Was the same language in the first complaint that was filed in November 2019?

A. I don't recall.

Q. Let's go ahead and pull that up.

MS. WHETSTONE: And, Gerard, if you don't mind, it's Exhibit 4.

BY MS. WHETSTONE:

Q. And, while you're turning to that, was the clerk only named in its official capacity as having possession?

A. Yes, that is correct. I'm looking at paragraph 3 of the original complaint dated 11/14/2019,

and it appears that paragraph 3 appears the same.

Q. And let's go ahead and blow that up just so we can close the loop on this.

Paragraph 3 of the original complaint is the same as the amended complaint; is that correct?

A. Yes. Both of them cite to Section 27.03 Florida Statutes creating jurisdiction by the state attorney over all grand juries within their particular judicial district.

Q. So the state attorney was named -- never named solely because he might have possession, custody -- or custody of the grand jury records from the Epstein grand jury investigation; is that correct?

A. That is correct. The primary reason was because the state attorney has such authority over the grand jury process in this judicial district.

Now, granted, Mr. Aronberg was not the one who conducted the Jeffrey Epstein grand jury proceeding. Nevertheless, we didn't sue Mr. Aronberg in his individual capacity, only in his official capacity because he's the successor to State Attorney Krischer.

Q. Was there any case law cited in the amended complaint -- We'll go back to Exhibit 9, please -- any case law cited in the amended complaint dealing with the state attorney's official capacity as the protector of

the grand jury system?

A. You mean paragraph 3?

Q. Yes.

A. No, I didn't cite to it because it was clear to anyone who looked at Florida Statute 27.03, they would see a litany of cases describing the authority of the state attorney over the grand juries in their judicial district. So it was obvious that -- what we were getting at.

Q. You cited the statute that gives the state attorney power over the grand jury?

A. Correct, yes. In fact, there are cases that say that, under this statute, that the grand jury is essentially the arm of the -- of the state attorney.

Q. And now that we're back on the amended complaint, I'll direct your attention to paragraph 21 -- sorry -- page 21, wherein there is the wherefore clause.

Mr. Wyler had you read from one of the wherefore clauses, but I wanted to ask about the wherefore clause on page 21 --

A. Yes.

Q. -- and you had said that you had requested an in-camera inspection. Actually, could I just ask you to read this wherefore clause?

A. Sure. "The Palm Beach Post respectfully

requests that this Court, pursuant to Florida Statute Section 905.27(1) and the Court's inherent authority, order the state attorney and clerk of the Court to file with this Court files of testimony, minutes and other evidence presented in 2006 to the Palm Beach County grand jury during the first Jeffrey Epstein sex abuse investigation so that, following an in-camera inspection, it can be made available to the Palm Beach Post and the public on an expedited basis, and grant such other and further equitable or legal relief the Court deems just and proper."

Q. So, in the amended complaint, did you request an in-camera inspection?

A. In fact, in our motion for summary judgment that we made before Judge Hafele, there's a whole section on that.

Q. And Mr. Wyler asked you about the transcript -- the hearing before Judge Marx and that transcript, and during that hearing, Judge Marx made comments about possession and custody of the grand jury records by the state attorney.

I wanted to ask you about the order on that motion to dismiss. The order was Exhibit 15.

A. Yes.

Q. And did Judge Marx's order address those

comments that Mr. Wyler read?

A. No, she did not. That's why I believe that they were dicta.

Q. And what did Judge Marx's order rule?

A. She ruled on a very narrow area, which -- and I respect Judge Marx. She's a very, very seasoned and reasoned jurist.

She determined that, under 905.27, that there was not a private cause of action, and that, because it was not a private cause of action, we could not utilize that statute to seek the grand jury materials. We disagreed with that, and that is the subject of the appeal.

Q. So turning to the final judgment that was entered by Judge Hafele, which is --

A. 30.

Q. -- Exhibit 30, yes --

A. Yes.

Q. -- Mr. Wyler asked you to read from page 7, that was Bates number ending 1477.

A. Yes.

Q. And I'm going to ask you to go ahead and finish that paragraph, or read the whole paragraph if you would like.

A. Right. "The newspaper makes strong

arguments to advance its more expansive construction of Section 905.27 as part of, quote, furthering justice, unquote. Unquestionably, the established matters surrounding Mr. Epstein's conduct, the circumstances of his resolution of the 2006 state charges and potential federal charges and his [redacted] guilty plea and incarceration are matters of public interest, and disclosure of the materials may arguably fall within the concept of, quote, furthering justice, end quote, in the broadest social sense of the phrase."

Should I keep going, or not?

Q. I think that's fine for now.

Were there other portions of the final judgment that you wanted to discuss and needed to finish? Did the --

A. Well --

Q. Go ahead, sorry.

A. I take issue with the state attorney's assertion that this was only about possession and custody. We were asserting that the Court has inherent authority over the grand jury process and that inherent authority superseded or was preeminent over the statute, 905.27. That is why we gave the state attorney the opportunity to participate in this case, because we felt it was only fair to, not only the state attorney, but to

Page 195

the public to hear a voice for [redacted] secrecy. And the state attorney availed himself of that opportunity.

Now, on appeal, we are of the belief that the Court has such inherent authority and that the Court's inherent authority is, as I say, superior to the statute. There are federal cases which say that, and there are state cases which say that. And, in fact, the Florida Supreme Court's case -- actually it's a Fifth DCA case in Clayton says that, where a state attorney may have abused his authority with the grand jury -- It's not Mr. Krischer, and it's not Mr. Aronberg, so I'm not suggesting they are -- but, in that case, it was the Fifth DCA who said that, I don't care what the statute says, the Court has authority to control abuses of the grand jury process, and ultimately that's why we're here.

We believe that we've laid out a very detailed factual and legal reason why we think the prior state attorney abused his authority. How did he do so? By obtaining materials from the defense team that undermined the credibility of the witness and the victim before the grand jury. We assert that in paragraph 22 of the amended complaint. It states that in there. And, if you look at the exhibits, you'll see that.

We now know, based upon the Department of Justice, the U.S. Department of Justice's report, that

Page 196

the clerk's office in Palm Beach County shared these reported secret grand jury materials with the federal government without a court order, without notice apparently to Mr. Aronberg's office or to the public.

Now, why they did that, under what authority they did that, I don't know. Now, whether they asked Mr. Krischer or whether he consented during the time of the U.S. Attorney's interactions with the state attorney, Mr. Krischer's office, we don't know that either. But we do know that they have been disclosed.

Q. And you're trying to get those materials and --

A. We want the public to have those materials.

Q. Right.

A. Not me.

Q. The public.

A. The public. The Post is only a conduit for the public. That's what the media is under the First Amendment. Without the media acting as the conduit for the public, the public does not have the authority, the time or the resources to inform the public of what's going to happen.

Imagine if Joe Public or Jane Public came and brought this lawsuit. Would it have gone anywhere? No. Thank God for the First Amendment that the Post has

Page 197

the right constitutionally to seek these materials.

I know I'm going off on a tangent, but it's important.

THE COURT: You are. So let's move on.

THE WITNESS: Thank you.

BY MS. WHETSTONE:

Q. Thank you, Mr. Mendelsohn. Now let's go back to the demand, the first motion for sanctions that was that one-page motion, and that was served on June 8th, 2020.

A. Yes.

Q. And the demand was Exhibit 14.

A. Yes.

Q. And Mr. Wyler had asked you some questions about the letter that was enclosed with that motion and was the basis for the sanctions motion that was attached dealing with possession or custody of the grand jury materials by the state attorney's office.

A. I'm sorry, I don't understand your question.

Q. Sure. He had asked you whether there was a basis for the first motion for fees, and the basis is set forth in this enclosure letter; is that correct?

A. Right. Their position was that the Statute, 905.27, and -- yes, 905.27 did not provide a

Page 198

private right of action, yes.

Q. So 905.27, that statute is not the claim that we're here on today, correct?

A. That is correct. Count 1 was broader than that.

Q. And, when it comes to -- Mr. Wyler said something about possession or custody of the state attorney. He referenced that the state attorney does not have possession or custody in this letter, correct?

A. Correct.

Q. But the reason for naming the state attorney in the complaint, the initial complaint and the amended complaint, was broader than his own possession or custody?

A. Correct. As the entity charged by Florida law with the supervision of the grand jury proceeding, that included as well the protection of grand jury secrecy, and we named him in his official capacity, if he so chose, to protect grand jury secrecy, which he did in a motion to dismiss and the motion for summary judgment he filed opposing the release of the materials to the public.

Q. So that first motion for fees was filed July 1st, 2020; is that correct?

A. The first motion, yes.

Q. Yes. And did the state attorney ever set that motion, original motion for fees for hearing?
A. Never.
Q. And we are not here on that first motion; is that correct?
A. Correct. They never set it for a hearing.
Q. So we're here on the amended motion for sanctions which was filed November 9th, 2020; is that correct?
A. Correct. And, in fact, the amended motion and the notice of hearing does not mention the first one from July of 2020.
Q. So you never got a notice of hearing that set the original first -- July 1st, 2020, motion for fees for hearing; is that correct?
A. That is correct, yes.
Q. And you never got a copy via mail or fax or hard copy of the amended motion for fees filed November 9th prior to the time it was filed, correct?
A. That is correct. We weren't given the 21-day safe harbor.
Q. Why did you -- Why did the Post decide to drop the state attorney when it did?
A. The state attorney's position changed from one of opposition to the release of the grand jury

materials to one of neutrality. Once the grand jury -- Once the state attorney changed the position, then the Post re-evaluated whether or not he should remain in the case, and we determined that he should be dropped from the case.
Q. At that point, had the Post accomplished everything that it needed from the state attorney in the amended complaint?
A. Yes. We had given him the opportunity to voice objection or non-objection. He originally voiced objection, then he changed it to neutrality. That was his decision, and there was nothing further that needed to be stated.
Q. And, at that point, when the Post decided to dismiss the state attorney on October 21st, 2020, had the Post accomplished everything that was set forth in your June 23rd, 2020, letter, those three reasons?
A. Yes. We had given the state attorney his opportunity to be heard, and he took it and then decided he no longer needed it.
Q. And, finally, the -- you mentioned that the final judgment on Count 1 regarding declaratory relief is currently on appeal.
A. Yes, Count 1 is, yes.
Q. And does the state attorney need to be

named in that appeal?
A. No.
Q. Why not?
A. Well, the appeal was taken on Count 1 as you say. Count 1 had a number of elements associated with it. That's the declaratory judgment provision. It asserted that, under the First Amendment, both the U.S. Constitution and the Florida Constitution that the Post had standing or the right to seek these grand jury materials, and the statute was complementary to that First Amendment right by the language in the statute, 905.27, of it being in furtherance of justice.
We also asserted that the Court had inherent authority over and above 905.27. If the appellate court were to determine that 905.27 was in conflict with the Court's authority, that the Court's authority was superior to 905.27. So if it's unclear -- So there were a number of elements, a constitutional element, the Court's constitutional inherent authority as described by the Florida Supreme Court and that we believe that the reading of the statute that read out in furtherance of justice or tied it exclusively to a pending civil or criminal case was too narrow a reading of the statute.
Q. So the state attorney has stated his

affirmative non-objection to the clerk releasing the grand jury materials from the Jeffrey Epstein case if ordered by the Court?
A. Yes. That was why we dropped the state attorney.
Q. On October 14th --
A. Correct, yes.
Q. -- that was the first time he filed that affirmative statement --
A. Yes.
Q. -- that he didn't object?
A. That's absolutely right, yes.
Q. And the clerk no longer objects to the release of the grand jury materials if ordered by the Court in the Fourth DCA appeal?
A. Yes. In their answer brief, the clerk took the position that it had no opposition at all to the release of the materials, which was contrary to the position they took against our motion for summary judgment.
MS. WHETSTONE: No further questions.
THE COURT: Is this witness excused?
THE WITNESS: Thank you, sir.
MS. WHETSTONE: Yes.
THE COURT: All right, thank you, sir.

MS. WHETSTONE: If I may approach, I'll take the exhibit binder.
THE WITNESS: These are for Mr. Wyler. Thank you.
THE COURT: Next witness.
MR. WYLER: May we call a rebuttal witness?
MS. WHETSTONE: Your Honor, there's no rebuttal witness listed on the --
MR. WYLER: Well, as to the statements that Mr. Mendelsohn said at the beginning denying the conversation where he, you know, put it on us to -- you know, he said that he would hold the filing of an article while settlement negotiations were pending.
MS. WHETSTONE: And, Your Honor, those settlement discussions were never entered into evidence, never even attempted to enter into evidence, and we object to those being entered into evidence now.
THE COURT: Settlement negotiations are excluded by statute. All right, so no.
MR. WYLER: Okay.
MS. WHETSTONE: Thank you, Your Honor.
THE COURT: Is there anything else?
MR. WYLER: Other than -- No, Your Honor.

THE COURT: Okay. Then, I guess, both parties have rested at this point?
MS. WHETSTONE: I was going to ask if Your Honor wanted copies of the appeal brief and the reply that had been filed in the Fourth DCA?
THE COURT: It's not in evidence, no.
MS. WHETSTONE: Then the non-movant rests.
THE COURT: All right. So everybody's rested. I have your joint --
MS. MILLER: Can we have just a moment, please?
THE COURT: I'll take a moment. I'll be back in five minutes.
(Off the record from 2:20 p.m. to 2:35 p.m.)
THE COURT: Please be seated.
Everyone get a chance to confer with who they need to confer with?
MR. WYLER: Your Honor, thank you. We'd ask if you might reconsider the rebuttal witness. It's not based on settlement. It's really based on the direct testimony yesterday of Mr. Mendelsohn saying that there was a firewall between the legal team and the news team, and our witness can directly contradict that.

MS. WHETSTONE: Your Honor, we object to this as not on the witness list, which we have agreed, and having no issue that needs to be raised. You could have asked Mr. Mendelsohn about -- and you could have asked Mr. Aronberg about his own recollection of that instance.
MR. WYLER: I could call Mr. Aronberg then as a rebuttal.
THE COURT: I'm sorry?
MS. WHETSTONE: Objection, it's not relevant to the motion at all.
THE COURT: I agree. All right, I will not reconsider.
MR. WYLER: Thank you, Your Honor.
THE COURT: Closing arguments. All right, now, I think what we discussed last time we were here was that you would give me your closing arguments, and, if you needed to supplement, I'll give you time to supplement in writing.
Is that what you all want to do, or do you want to conclude today?
MR. WYLER: I would prefer to provide you a written closing argument if possible.
THE COURT: Instead of --
MR. WYLER: Yeah, I absolutely would. I

think that there's a lot of -- there's a lot going on here, and I think it might be beneficial to the Court if you would -- if you would allow us. I will give you -- I'd be happy to give you a written closing argument. I think it could help you in formulating your final judgment, whichever way you go.
MS. WHETSTONE: Your Honor, I prepared a closing argument, but -- and I can also write one. I was planning on doing a supplemental one anyway.
THE COURT: Well, I'm asking you, you know.
MS. WHETSTONE: I think it would probably be more -- if you were going to do one or the other, I think written closing arguments, we could really lay out, you know --
THE COURT: Yeah, I joked about it earlier, I think people are better in writing. A lot of people, when they try to go off the cuff or deal with the changes they experienced during a trial, they miss things. I do think people are better in writing.
How much time do you need to prepare a written argument?
MR. WYLER: If you could give us a week, that would be great.

THE COURT: Okay, I'm going to give you some guidance because there's something I do want to hear from you.

I do want you to address Lago. And, Ms. Whetstone, when I read In re Grand Jury Proceedings, in those cases the state attorney was subpoenaed, they were not a party to the case, and I want you to address that as well.

How much time do you need to prepare your closings?

MR. WYLER: If you could give us a week, Your Honor, that would be terrific.

THE COURT: I'll give you a week.

Ms. Whetstone, is a week sufficient?

MS. WHETSTONE: Yes, Your Honor, a week is sufficient.

THE COURT: I'll give you 10 days. I would also like a copy of the transcript attached.

MR. WYLER: Then we might need a little more time to get it.

MS. WHETSTONE: Your Honor, could we ask for 20 days?

THE COURT: I'll give you three weeks. I'll give you three weeks. Give me your -- your written closings and proposed orders.

Give me one more minute. There might be something else I want you guys to address.

In the event that I agree with Mr. Aronberg, the amounts have been stipulated to, correct?

MS. WHETSTONE: No, Your Honor, they have not been stipulated to. We submitted a bench memo that objects to the majority of the fees.

THE COURT: I saw that. Travel time.

MS. WHETSTONE: Yes, Your Honor.

THE COURT: Okay.

MR. BIDEAU: But the rates have been agreed. We're not contesting the rate. They didn't need to bring an expert to talk about the rate. Our argument was on legally whether some of these -- some of these fees were -- were recoverable.

THE COURT: You can be seated. Give me a second.

MS. WHETSTONE: Oh, okay.

THE COURT: I want you to address Weatherby. One of the cases submitted, Weatherby.

MR. WYLER: Weatherby? Yes, sir.

And, Ms. Whetstone, I want you to address In re Grand Jury on that issue regarding --

because there is a difference, Mr. Aronberg in his official capacity as a named party, and In re Grand Jury, I think in that case, I think the state attorney's was subpoenaed.

And I also want you -- well, both parties to address the Horowitz case where it says that the judge can extend the law because it's an obligation of legislative authority.

All right, so you'll give me your arguments and proposed orders within 21 days.

Do I need to bring you back in for a hearing?

MS. WHETSTONE: No, Your Honor.

MR. WYLER: No, Your Honor.

THE COURT: Okay. All right, then we'll be in recess. Thank you very much, everybody.

MR. WYLER: Thank you, Your Honor.

MS. WHETSTONE: Thank you, Your Honor.

THE COURT: Have a great day.

(The hearing concluded at 2:42 p.m.)

COURT CERTIFICATE

STATE OF FLORIDA
COUNTY OF PALM BEACH

I, Lisa Begley, RPR, RMR, certify that I was authorized to and did stenographically report the foregoing proceedings and that the transcript is a true and complete record of my stenographic notes.

Dated this 13th day of September, 2022.

Lisa Begley

Lisa Begley, RPR, RMR

Exhibit "B"

Timeline

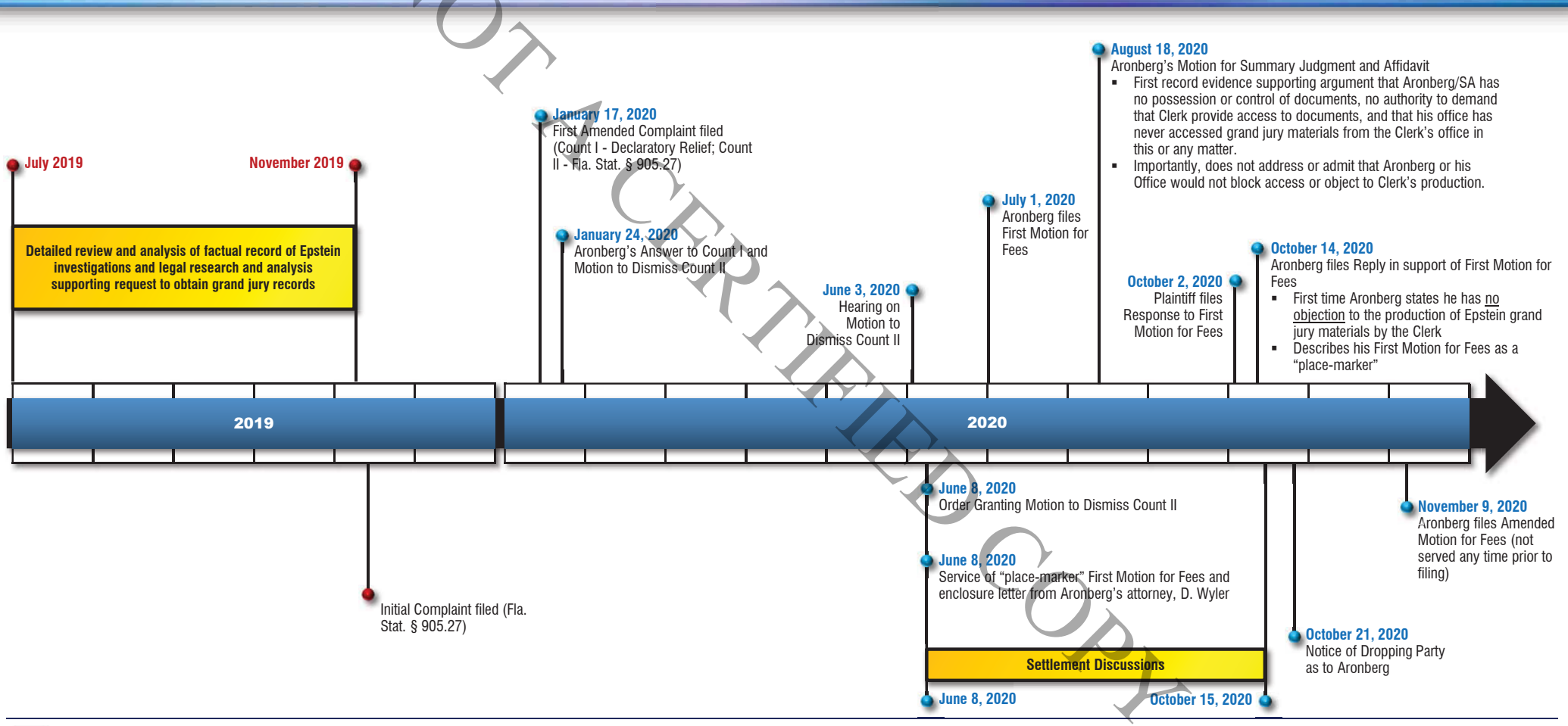


Exhibit "C"

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.

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

Defendants.
_____/

CASE NO.: 50-2019-CA-014681-XXXX-MB

DIVISION: AG

BENCH MEMORANDUM REGARDING ATTORNEY FEE OBJECTIONS

Plaintiff, CA Florida Holdings, LLC ("The Post"), publisher of *The Palm Beach Post*, by and through undersigned counsel, and pursuant to the Court's Order on Joint Motion to Continue Evidentiary Hearing on the State Attorney's Amended Motion for Attorneys' Fees dated August 5, 2021, hereby submits this Bench Memorandum in connection with the evidentiary hearing scheduled on September 6, 2022 at 1:30 p.m.:

DEFENDANT IS NOT ENTITLED TO ATTORNEY'S FEES

For the reasons discussed in The Post's February 24, 2022 Amended Response and Memorandum of Law ("Response in Opposition"), The Office of State Attorney is not entitled to recover any amounts under Florida Statutes § 57.105.

MANY OF THE FEES REQUESTED ARE NOT COMPENSABLE

Should this Court determine the State Attorney is entitled to fees, which he is not, many of the fees requested are not compensable and/or should be substantially discounted. Such

categories and case authority are below:[1]

- Travel Time in the amount of $10,412.50; *see* **Exhibit A** attached hereto.
    - *Mandel v. Decorator's Mart, Inc.*, 965 So. 2d 311, 315–316 (Fla. 4th DCA 2007) ("[T]he award of fees should not have included the travel time of the attorneys . . . without proof that a competent local attorney could not be obtained, an award of attorney's fees from an opponent should not include travel time over and above what a local attorney would charge.").
    - *Palm Beach Polo Holdings, Inc. v. Stewart Title Guar. Co.*, 132 So. 3d 858, 862 (Fla. 4th DCA 2014) ("[T]ravel time is generally not compensable . . . .").
- Costs in the amount of $1,482.77; *see* **Exhibit B** attached hereto.
    - *Ferdie v. Isaacson*, 8 So. 3d 1246, 1251 (Fla. 4th DCA 2009), *superseded by statute on other grounds,* (reversing award of costs and stating that Fla. Stat. § 57.105 allows for "reasonable attorney's fee to be paid to the prevailing party, but makes no mention of costs." (internal quotations omitted)).
    - *Ferere v. Shure*, 65 So. 3d 1141, 1145 (Fla. 4th DCA 2011) ("[A]n award of costs is not allowed under section 57.105.").
- Litigation Time Re: Fee Amount in the amount of $3,485.00; *see* **Exhibit C** attached hereto.
    - *Cox v. Great Am. Ins. Co.*, 88 So. 3d 1048, 1049 (Fla. 4th DCA 2012) ("The trial court erred in assessing attorney's fees incurred in litigating the amount of the fee award.").
    - *Yakavonis v. Dolphin Petroleum, Inc.*, 934 So. 2d 615, 620 (Fla. 4th DCA 2006) ("Attorney's fees are only available for time spent litigating the issue of entitlement, not for the time spent litigating the amount of fees to be awarded.").
    - *Palm Beach Polo Holdings, Inc.*, 132 So. 3d at 862 ("Although fees incurred in litigating *entitlement* to attorneys' fees under section 768.79 are authorized, fees incurred in litigating the *amount* of fees are not recoverable.") (emphasis in original).
    - *Oquendo v. Citizens Property Ins.*, 998 So. 2d 636, 638 (Fla. 3d DCA 2008) (fact that retainer agreement obligated insureds to pay counsel for time expended in

[1] The Post's objections against a multiplier are not included as the State Attorney no longer seeks a multiplier. *See* April 13, 2022 Notice, [DE 99], at Tab X of Plaintiff's Joint Pleadings & Filings Hearing Binder.

litigating the amount of attorneys' fees made no difference to issue of whether fees were compensable by other side).

- Administrative Entries in the total amount of $7,522.50, also containing block billed time entries where portions of the entry are administrative; *see* **Exhibit D** attached hereto.

    - *N. Dade Church of God, Inc. v. JM Statewide, Inc.*, 851 So. 2d 194, 196 (Fla. 3d DCA 2003) ("We do, however, conclude that the attorney's fee award must be reduced. . . . Likewise noncompensable is excessive time spent on simple ministerial tasks such as reviewing documents or filing notices of appearance.").

    - *Haines v. Sophia*, 711 So. 2d 209, 212 (Fla. 4th DCA 1998) ("The mere fact that the client is not standing over their shoulders as each time entry is logged does not allow them to inflate the time spent on their client's behalf. Nor does it allow duplicative services by multiple members of the firm and staff.").

    - *Wells Fargo Bank, N.A. v. Mickelson*, 2018 Fla. Cir. LEXIS 3017, *9 (Fla. Cir. Ct. 2018) ("Courts are clear that purely clerical tasks should not be billed at paralegal rates regardless of the qualifications of the biller. Where there was no evidence that work done was paralegal work, as opposed to secretarial work, courts have reversed an award of paralegal fees." (collecting cases)).

- Media time entries in the amount of $567.50; *see* **Exhibit E** attached hereto.

- Settlement time entries in the amount of $1,835.00; *see* **Exhibit F** attached hereto.

    - *MacAlister v. Bevis Constr., Inc.*, 164 So. 3d 773, 776 (Fla. 2d DCA 2015) (stating that courts must apply Section 57.105 "with restraint to ensure that it serves its intended purpose of discouraging baseless claims without casting a chilling effect on use of the courts.").

    - *Minto PBLH, LLC v. 1000 Friends of Fla., Inc.*, 228 So. 3d 147 (Fla. 4th DCA 2017) (same).

- Relation Back time entries in the amount of $27,540.00; *see* **Exhibit G** attached hereto.[2]

    - *Yakavonis*, 934 So. 2d at 619–620 ("[I]f the claim or defense is not initially frivolous, the court must then determine whether the claim or defense became frivolous after the suit was filed . . . The trial court is free to measure the attorney's fees from the time it was known or should have been known that the claim had no basis in fact or law.").

[2] This calculation is done from the date of The State Attorney's Response to Plaintiff's Memorandum of Law in Opposition to the First Motion for Fees, October 14, 2020. Alternatively, calculating from July 1, 2020, the date the first Motion for Fees was filed comes to $ 16,447.50; *see* **Exhibit H** attached hereto.

- *Hustad v. Architectural Studio, Inc.*, 958 So. 2d 569, 570 (Fla. 4th DCA 2007) ("The mere dismissal of a suit does not necessarily justify an attorney's fee award if the suit can be considered to have been non-frivolous at its inception.").

- Fla. Stat. § 57.105(1)(a) (stating that fees are to be awarded "on any claim . . . at any time during a civil proceeding . . . in which the court finds that the losing party . . . knew or should have known that a claim . . . [w]as not supported by the material facts [or law] necessary to establish the claim.").

• Clerk-Only Entries in the amount of $2,277.50; *see* **Exhibit I** attached hereto. This covers fees claimed after the dismissal of the State Attorney and which relate solely to matters involving the litigation with the Clerk of the Court.

Respectfully submitted,

/s/ Lauren Whetstone
Lauren Whetstone
Florida Bar No. 45192
Mark F. Bideau
Florida Bar No. 564044
Greenberg Traurig, P.A.
777 South Flagler Drive, Suite 300 East
West Palm Beach, FL 33401
Tel.: 561.650.7900
whetstonel@gtlaw.com
bideaum@gtlaw.com
sandra.famadas@gtlaw.com
thomasd@gtlaw.com
FLService@gtlaw.com

Stephen A. Mendelsohn
Florida Bar No. 849324
Greenberg Traurig, P.A.
401 East Las Olas Boulevard, Suite 2000
Fort Lauderdale, FL 33301
Tel.: 954.768.8225
mendelsohns@gtlaw.com
smithl@gtlaw.com

Michael J. Grygiel
(Admitted *Pro Hac Vice*)
Greenberg Traurig, P.A.
54 State Street, 6th Floor
Albany, NY 12207

Tel.: 518.689.1400
grygielm@gtlaw.com

Nina D. Boyajian
(Admitted *Pro Hac Vice*)
Greenberg Traurig, P.A.
1840 Century Park East, Suite 1900
Los Angeles, CA 90067
Tel.: 310.586.7700
boyajiann@gtlaw.com
riveraal@gtlaw.com

Counsel for Plaintiff CA Florida Holdings, LLC, Publisher of The Palm Beach Post

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a true and accurate copy of the foregoing has been served on all parties of record herein on this 1st day of September, 2022.

/s/ Lauren Whetstone
Lauren Whetstone

Exhibit A

Date	EE	Activity	Description	Rate	Hours	Line Total
07/15/2021	DW	Travel	Travel to West Palm Beach	$425.00	5.5	$2,337.50
07/17/2021	DW	Travel	Travel back to Amelia	$425.00	5.5	$2,337.50
03/03/2022	DW	Travel	Travel to West Palm Beach	$425.00	8.0	$3,400.00
03/04/2022	DW	Travel	Travel back to Amelia	$425.00	5.5	$2,337.50
				Total:	**24.5**	**$ 10,412.50**

Exhibit B

Date	EE	Activity	Description	Rate	Hours	Line Total
07/15/2021	DW	Expense	Gas	$42.02	1.0	$42.02
07/16/2021	DW	Expense	The Ben West Palm Beach, re: 7/16/21 hearing	$557.46	1.0	$557.46
07/17/2021	DW	Expense	Gas	$59.12	1.0	$59.12
03/03/2022	DW	Expense	Gas	$70.41	1.0	$70.41
03/04/2022	DW	Expense	Hyatt Place West Palm Beach/Downtown, re: 3/4 hearing	$659.92	1.0	$659.92
03/04/2022	DW	Expense	Uber to Courthouse	$6.51	1.0	$6.51
03/04/2022	DW	Expense	Gas	$87.33	1.0	$87.33

Total: **$ 1,482.77**

Exhibit C

Date	EE	Activity	Description	Rate	Hours	Line Total
11/05/2020	DW	Draft	Draft Amended Motion for Attorneys' Fees & Costs	$425.00	3.0	$1,275.00
11/06/2020	DW	Draft	Continue drafting Motion for Attorneys' Fees & Costs and Affidavit of Attorneys Fees and Affidaivt of Reasonable Attorneys' Fees, sent to expert for review	$425.00	2.0	$850.00
11/09/2020	DW	Various	Call w/ expert, re: affidavit; Call w/ Client, re: filings; filed Motion &	$425.00	1.0	$425.00
03/01/2022	DW	Various	Review and reply to email from op. counsel, re: availability from 3/14 - 5/20; call w/ client; call w/ expert	$425.00	1.0	$425.00
03/08/2022	DW	Various	Call w/ Client, re: upcoming hearing, experts, plan; Meeting w/ AIJ	$425.00	1.0	$425.00
03/25/2022	DW	Teleconference	Call to expert witness, re: fees, updated affidavits, hearing date	$425.00	0.2	$85.00
				Total:	**8.2**	**$ 3,485.00**

Exhibit D

Date	EE	Activity	Description	Rate	Hours	Line Total
11/26/2019	DW	Draft	Drafted engagement letter and sent to client	$425.00	0.3	$127.50
11/26/2019	DW	Review	Reviewed 15th circuit local rules	$425.00	1.0	$425.00
12/06/2019	DW	Draft	Completed final draft of motion to dismiss; filed with Court	$425.00	0.7	$297.50
01/24/2020	DW	Various	Completed Answer/MTDismiss Amended Complaint; filed with Court; sent copy to Client	$425.00	1.0	$425.00
01/24/2020	DW	Draft	Drafted and filed Notice of Unavailability	$425.00	0.4	$170.00
06/03/2020	DW	E-mail	Emailed courtesy copies of Aronberg's Answer and MTDismiss to Judge	$425.00	0.1	$42.50
06/23/2020	DW	E-mail	Sent client copy of Pl's letter refusing to dismiss complaint	$425.00	0.1	$42.50
07/01/2020	DW	Various	Spoke w/ client, re: filing of 57.105 motion for fees/sanctions; filed motion for attorneys' fees based on Pl's failure to voluntarily dismiss amended complaint count 1	$425.00	0.5	$212.50
08/18/2020	DW	Draft	Finalized Motion for Summary Judgment; filed w/ court along with Aronberg affidavit	$425.00	2.0	$850.00
09/18/2020	DW	Various	Drafted and filed motion to set case management conference; re: MSJ 1st or Fee hearing 1st	$425.00	0.5	$212.50
09/22/2020	DW	Various	Drafted and filed Notice of Hearing on 10/15/20; set up Court Call; spoke w/ client, re: hearing date	$425.00	0.7	$297.50
10/14/2020	DW	Draft	Finalized and filed Response to Pl's Memo of Law	$425.00	1.0	$425.00
10/21/2020	DW	Various	Drafted and filed Motion to Set Hearing on Aronberg MSJ; drafted proposed order granting motion to set; checked court availability; emailed Pl's counsel, re: choose date for hearing	$425.00	1.0	$425.00
11/09/2020	DW	Various	Call w/ expert, re: affidavit; Call w/ Client, re: filings; filed Motion & Affidavits	$425.00	1.0	$425.00
12/03/2020	DW	Draft & File	Draft and File Notice for Non-Jury Trial; email to JA; emails w/ opposing counsel counsel to set meeting	$425.00	0.7	$297.50
12/10/2020	DW	Draft & File	Draft and File Amended Notice for Non-Jury Trial	$425.00	0.5	$212.50
07/23/2021	DW	Various	Complete and File Memo of Law; Meeting w/ AIJ to discuss; call to JA; call to Client; several emails w/ opposing counsel	$425.00	2.0	$850.00
07/23/2021	DW	Teleconference	Call to Judge Hafale's JA, re: hearing date	$425.00	0.1	$42.50
07/29/2021	DW	Draft & File	Complete drafting and file updated Memo of Law	$425.00	2.0	$850.00
08/12/2021	DW	Various	Complete draft of Amended Memo of Law & filed; reviewed and responded to several emails w/ opposing counsel	$425.00	2.0	$850.00
09/13/2021	DW	E-mail	Accept calendar invite for 9/14 teleconference	$425.00	0.1	$42.50
				Total:	**17.7**	**$ 7,522.50**

Exhibit E

Date	EE	Activity	Description	Rate	Hours	Line Total
10/21/2020	DW	Telephone	Spoke w/ client, re: media response	$425.00	0.2	$85.00
10/21/2020	DW	Telephone	Spoke w/ client, re: media response	$425.00	0.1	$42.50
10/21/2020	DW	Telephone	Spoke w/ client, re: media response	$425.00	0.1	$42.50
10/21/2020	DW	Telephone	Spoke w/ client, re: media response	$425.00	0.1	$42.50
10/21/2020	DW	Telephone	Spoke w/ client, re: media response	$425.00	0.1	$42.50
10/21/2020	DW	E-mail	Sent email w/ Aronberg statement to	$425.00	0.1	$42.50
10/21/2020	AIJ	Meeting	Discussed media response w/ DAW	$475.00	0.3	$142.50
10/21/2020	DW	Meeting	Discussed media response w/ AIJ	$425.00	0.3	$127.50
				Total:	**1.3**	**$ 567.50**

Exhibit F

Date	EE	Activity	Description	Rate	Hours	Line Total
10/15/2020	DW	Telephone	Spoke w/ PI's counsel, re: settlement	$425.00	0.1	$42.50
10/15/2020	DW	Telephone	Spoke w/ client, re: PI's settlement proposal	$425.00	0.2	$85.00
10/15/2020	AIJ	Various	Discussed PI's settlement proposal w/ DAW and then w/ Client	$475.00	0.4	$190.00
10/15/2020	DW	Meeting	Discussed PI's settlement proposal w/ AIJ	$425.00	0.2	$85.00
10/16/2020	DW	Telephone	Spoke w/ PI's counsel, re: settlement	$425.00	0.2	$85.00
10/16/2020	DW	Telephone	Spoke w/ client, re: PI's settlement proposal	$425.00	0.5	$212.50
10/16/2020	DW	Meeting	Discussed PI's settlement proposal w/ AIJ	$425.00	0.2	$85.00
10/16/2020	AIJ	Meeting	Discussed PI's settlement proposal w/ DAW	$475.00	0.2	$95.00
10/19/2020	DW	Telephone	Spoke w/ client, re: PI's settlement proposal	$425.00	0.2	$85.00
10/19/2020	DW	Telephone	Spoke w/ PI's counsel, re: settlement	$425.00	0.1	$42.50
10/19/2020	AIJ	Meeting	Discussed PI's settlement proposal w/ DAW	$475.00	0.2	$95.00
10/19/2020	DW	Meeting	Discussed PI's settlement proposal w/ AIJ	$425.00	0.2	$85.00
10/20/2020	DW	Various	Reviewed email from PI, re: settlement; sent copy to Client and called to discuss	$425.00	0.5	$212.50
10/20/2020	DW	Telephone	Spoke w/ client, re: settlement	$425.00	0.4	$170.00
10/20/2020	DW	Telephone	Spoke w/ PI's counsel, re: settlement	$425.00	0.1	$42.50
10/20/2020	DW	Telephone	Spoke w/ client, re: settlement	$425.00	0.1	$42.50
10/20/2020	DW	Meeting	Discussed PI's settlement proposal w/ AIJ	$425.00	0.2	$85.00
10/20/2020	AIJ	Meeting	Discussed PI's settlement proposal w/ DAW	$475.00	0.2	$95.00
				Total:	**4.2**	**$ 1,835.00**

Exhibit G

Date	EE	Activity	Description	Rate	Hours	Line Total
11/26/2019	DW	Review	Initial review of summons and complaint.	$425.00	1.5	$637.50
11/26/2019	DW	Review	Reviewed motion for pro hac vice and Judge Hafele' order granting	$425.00	0.2	$85.00
11/26/2019	DW	Teleconference	Teleconference w/ Client, re: response to lawsuit	$425.00	0.5	$212.50
11/26/2019	DW	Draft	Drafted engagement letter and sent to client	$425.00	0.3	$127.50
11/26/2019	DW	Review	Reviewed 15th circuit local rules	$425.00	1.0	$425.00
11/26/2019	AIJ	Review	Initial review of complaint	$475.00	1.0	$475.00
11/26/2019	AIJ	Meeting	Meeting w/ DAW to discuss lawsuit and strategy	$475.00	0.5	$237.50
11/26/2019	DW	Meeting	Meeting w/ AIJ to discuss lawsuit and strategy	$425.00	0.5	$212.50
11/26/2019	AIJ	Teleconference	Teleconference w/ Client, re: response to lawsuit	$475.00	0.5	$237.50
12/02/2019	DW	Research & Preparation	Research and prep for Motion to dismiss	$425.00	2.0	$850.00
12/02/2019	DW	Draft	1st Draft motion to dismiss	$425.00	1.0	$425.00
12/02/2019	DW	Teleconference	Teleconference w/ Client, re: draft motion to dismiss	$425.00	0.5	$212.50
12/02/2019	AIJ	Review	Reviewed 1st Draft MTDismiss	$475.00	0.3	$142.50
12/02/2019	AIJ	Teleconference	Teleconference w/ client, re: draft motion to dismiss	$475.00	0.5	$237.50
12/03/2019	AIJ	Meeting	Meeting w/ DAW, re: motion to dismiss	$475.00	0.2	$95.00
12/03/2019	DW	Meeting	Meeting w/ AIJ, re: MTDismiss	$425.00	0.2	$85.00
12/06/2019	DW	Draft	Completed final draft of motion to dismiss; filed with Court	$425.00	0.7	$297.50
12/06/2019	DW	Teleconference	Spoke w/ client, re: final draft of motion to dismiss	$425.00	0.5	$212.50
12/06/2019	DW	Teleconference	Spoke with Clerk's attorney, re: response	$425.00	0.5	$212.50
12/06/2019	AIJ	Review	Reviewed final draft MTDismiss	$475.00	0.2	$95.00
12/06/2019	AIJ	Review	Reviewed Clerk's MTDismiss	$475.00	0.2	$95.00
12/13/2019	DW	Review	Reviewed Clerk's Motion to Dismiss	$425.00	0.5	$212.50
01/16/2020	DW	Review	Reviewed Order Setting Hearing on Defendants' MTDismiss	$425.00	0.1	$42.50
01/16/2020	DW	Review	Reviewed motion for pro hac vice	$425.00	0.1	$42.50
01/17/2020	DW	Review	Reviewed Pl's Amended Complaint	$425.00	1.0	$425.00
01/17/2020	DW	Teleconference	Spoke with client, re: Amended Complaint	$425.00	0.5	$212.50
01/17/2020	DW	Review	Reviewed Pl's notice of filing	$425.00	0.1	$42.50
01/20/2020	AIJ	Review	Reviewed Pl's Am. Compl	$475.00	0.3	$142.50
01/21/2020	DW	Review	Reviewed Judge Marx's Order Cancelling MTDismiss Hearing	$425.00	0.1	$42.50
01/21/2020	DW	Review	Reviewed Pl's Objection to Defendants' MTDismiss	$425.00	0.2	$85.00
01/21/2020	DW	Teleconference	Spoke with client, re: Amended complaint	$425.00	0.5	$212.50
01/21/2020	AIJ	Meeting	Meeting w/ DAW, re: response to Am. Compl.	$475.00	0.2	$95.00
01/21/2020	DW	Meeting	Meeting w/ AIJ, re: response to Am. Compl.	$425.00	0.2	$85.00
01/22/2020	DW	Review	Reviewed Order granting pro hac vice admission	$425.00	0.1	$42.50
01/22/2020	DW	Research & Draft	Researched and drafted response to Amended Complaint	$425.00	1.0	$425.00
01/23/2020	DW	Teleconference	Spoke with Clerk's attorney, re: response to amended complaint	$425.00	0.2	$85.00
01/24/2020	DW	Various	Completed Answer/MTDismiss Amended Complaint; filed with Court; sent copy to Client	$425.00	1.0	$425.00
01/24/2020	DW	Draft	Drafted and filed Notice of Unavailability	$425.00	0.4	$170.00
01/24/2020	AIJ	Review	Reviewed final Answer/MTDismiss	$475.00	0.2	$95.00
01/27/2020	DW	Review	Reviewed Clerk's Answer/MTDismiss	$425.00	0.3	$127.50
02/03/2020	DW	Review	Reviewed Order setting hearing on Defs' MTDismiss	$425.00	0.1	$42.50
02/03/2020	DW	Teleconference	Spoke w/ client, re: order setting MTDismiss hearing for March 24, 2020	$425.00	0.5	$212.50
03/13/2020	DW	Review	Reviewed Pl's Opposition to Aronberg MTDismiss & Clerk's MTDismiss	$425.00	1.5	$637.50
03/13/2020	AIJ	Review	Reviewed Pl's Opposition to Aronberg MTDismiss & Clerk's MTDismiss	$475.00	0.7	$332.50
03/18/2020	DW	Teleconference	Reviewed email from Pl's counsel, re: motion to continue hearing	$425.00	0.1	$42.50
03/18/2020	DW	Review	Reviewed Pl's unopposed motion for continuance	$425.00	0.1	$42.50
03/18/2020	DW	E-mail	Emails w/ Clerk's counsel, re: Pl's request to continue hearing	$425.00	0.2	$85.00
03/19/2020	DW	E-mail	Reviewed email from Pl, re: agreed order & responded	$425.00	0.1	$42.50
03/20/2020	DW	Review	Reviewed Court's agreed order continuing hearing	$425.00	0.1	$42.50
04/21/2020	DW	Review	Reviewed order rescheduling hearing on Defs' MTDismiss	$425.00	0.1	$42.50
04/21/2020	DW	Teleconference	Spoke w/ client, re: order rescheduling MTDismiss hearing for June 3, 2020	$425.00	0.3	$127.50
04/21/2020	AIJ	Review	Reviewed Order rescheduling MTDismiss hearing	$475.00	0.1	$47.50
05/22/2020	DW	Review	Reviewed order setting Zoom hearing, re: MTDismiss	$425.00	0.1	$42.50
05/22/2020	DW	Teleconference	Spoke w/ client, re: hearing will be via Zoom	$425.00	0.2	$85.00
05/27/2020	DW	Review	Reviewed Clerk's filing: change of atty of record	$425.00	0.1	$42.50
05/27/2020	DW	Teleconference	Spoke with Clerk's new counsel, Nicole Fingerhut	$425.00	0.2	$85.00
05/28/2020	DW	E-mail	Reviewed Pl's email, re: cases and authorities for MTDismiss hearing; responded	$425.00	0.1	$42.50
05/29/2020	DW	Preparation	Began oral argument prep for 6/8 MTDismiss hearing	$425.00	1.0	$425.00
06/01/2020	DW	E-mail	Reviewed email from Judge Marx's JA and responded	$425.00	0.1	$42.50
06/02/2020	DW	Various	Reviewed Pl's 500+ page binder, re: MTDismiss & prepped for hearing	$425.00	3.0	$1,275.00
06/02/2020	DW	E-mail	Drafted and sent email to client, re: MTD hearing tomorrow	$425.00	0.1	$42.50
06/03/2020	DW	Attend Hearing	Prepped for and attended MTDismiss hearing via Zoom	$425.00	1.5	$637.50
06/03/2020	DW	Teleconference	Spoke w/ Client, re: debrief MTDismiss hearing	$425.00	0.5	$212.50
06/03/2020	DW	E-mail	Emailed courtesy copies of Aronberg's Answer and MTDismiss to Judge Marx	$425.00	0.1	$42.50

Date	EE	Activity	Description	Rate	Hours	Line Total
06/03/2020	DW	E-mail	Reviewed response from Client and replied	$425.00	0.1	$42.50
06/03/2020	AIJ	Attend Hearing	Attended MTDismiss hearing via Zoom	$475.00	1.0	$475.00
06/03/2020	AIJ	Review	Reviewed order granting MTDismiss w/ prejudice	$475.00	0.3	$142.50
06/08/2020	DW	Review	Reviewed Court's Order Granting Defendants MTDismiss Count II w/ Prejudice	$425.00	0.5	$212.50
06/08/2020	DW	Various	Shared order w/ Client and spoke w/, re: result and plan going forward, re:	$425.00	0.5	$212.50
06/08/2020	DW	Various	Researched § 57.105 Fla. Stat.; drafted 57.105 demand letter and proposed motion for attorneys' fees/sanctions; Served Pl's counsel with demand letter and proposed motion.	$425.00	2.0	$850.00
06/08/2020	AIJ	Meeting	Meeting w/ DAW, re: Order & 57.105	$475.00	0.3	$142.50
06/08/2020	DW	Meeting	Meeting w/ AIJ, re: Order & 57.105	$425.00	0.3	$127.50
06/08/2020	AIJ	Review	Reviewed 57.105 demand and proposed motion for sanction	$475.00	0.2	$95.00
06/10/2020	DW	Various	Reviewed notice of change of attorney, re: Clerk; called and spoke w/ new counsel Cynthia Guerra	$425.00	0.3	$127.50
06/23/2020	DW	Various	Reviewed Pl's letter refusing to voluntarily dismiss amended complaint despite 57.105 demand; called and spoke w/ client, re: Pl's refusal & next steps	$425.00	1.0	$425.00
06/23/2020	DW	E-mail	Sent client copy of Pl's letter refusing to dismiss complaint	$425.00	0.1	$42.50
06/23/2020	AIJ	Review	Reviewed Pl's letter refusing to dismiss Count I/Am. Compl.	$475.00	0.1	$47.50
07/01/2020	DW	Various	Spoke w/ client, re: filing of 57.105 motion for fees/sanctions; filed motion for attorneys' fees based on Pl's failure to voluntarily dismiss amended complaint	$425.00	0.5	$212.50
07/02/2020	DW	E-mail	Email to client, re: affidavit and summary judgment	$425.00	0.1	$42.50
07/08/2020	DW	Teleconference	Discussed w/ Client drafting and filing Motion for Summary Judgment and MSJ	$425.00	0.7	$297.50
07/08/2020	AIJ	Teleconference	Discussed w/ Client drafting and filing Motion for Summary Judgment and MSJ	$475.00	0.7	$332.50
07/10/2020	DW	Draft	Created 1st draft of Aronberg Affidavit; shared w/ client	$425.00	1.0	$425.00
07/10/2020	AIJ	Various	Reviewed draft affidavit and discussed w/ DAW	$475.00	0.3	$142.50
07/10/2020	DW	Meeting	Discussed draft affidavit w/ AIJ	$425.00	0.2	$85.00
07/13/2020	DW	Review	Reviewed Pl's Request to Produce, re: Clerk	$425.00	0.1	$42.50
07/13/2020	DW	Teleconference	Spoke w/ Clerk's counsel, re: Request to Produce	$425.00	0.2	$85.00
07/27/2020	DW	Review	Reviewed Pl's Amended Request to Produce, re: Clerk	$425.00	0.1	$42.50
07/27/2020	DW	Teleconference	Spoke w/ Clerk's counsel, re: Amended Request to Produce	$425.00	0.1	$42.50
07/28/2020	DW	Draft	Revised Aronberg affidavit	$425.00	0.5	$212.50
07/29/2020	DW	Draft	Finalized Aronberg Affidavit and sent to client	$425.00	0.5	$212.50
07/29/2020	DW	Research & Preparation	Research and prep for Motion for Summary Judgment	$425.00	1.0	$425.00
07/30/2020	DW	Various	Received executed Aronberg Affidavit	$425.00	0.1	$42.50
07/30/2020	DW	Draft	Began drafting Motion for Summary Judgment	$425.00	2.0	$850.00
08/05/2020	DW	Draft	Continued drafting Motion for Summary Judgment	$425.00	1.0	$425.00
08/07/2020	DW	Review	Reviewed email from Plaintiff attempting to set hearing on 57.105 motion for fees/sanctions	$425.00	0.1	$42.50
08/10/2020	DW	E-mail	Sent responsive email to Pl's counsel	$425.00	0.1	$42.50
08/17/2020	DW	Meeting	Discussed draft MSJ w/ AIJ	$425.00	0.2	$85.00
08/17/2020	AIJ	Various	Reviewed draft MSJ and met w/ DAW to discuss	$475.00	0.5	$237.50
08/18/2020	DW	Draft	Finalized Motion for Summary Judgment; filed w/ court along with Aronberg	$425.00	2.0	$850.00
08/27/2020	DW	Teleconference	Spoke w/ Clerk's counsel, re: request to produce	$425.00	0.1	$42.50
09/01/2020	DW	Various	Reviewed Pl's email and accepted conference call invite for 9/2/20	$425.00	0.1	$42.50
09/02/2020	DW	Review	Reviewed Clerk's response to request for production	$425.00	0.2	$85.00
09/02/2020	DW	Teleconference	Spoke w/ Pl's counsel, re: dispute as to whether MSJ should be heard before 57.105 fee motion or vis versa - call was unsuccessful	$425.00	0.5	$212.50
09/02/2020	AIJ	Meeting	Discussed w/ DAW phone call w/ Pl's counsel	$475.00	0.2	$95.00
09/02/2020	DW	Meeting	Discussed w/ AIJ phone call w/ Pl's counsel	$425.00	0.2	$85.00
09/16/2020	DW	E-mail	Reviewed email from Pl's counsel requested Aronberg to withdraw sanctions motion w/o prejudice	$425.00	0.1	$42.50
09/17/2020	DW	Meeting	Discussed w/ AIJ filing motion for CMC	$425.00	0.1	$42.50
09/17/2020	AIJ	Meeting	Discussed w/ DAW filing motion for CMC	$475.00	0.1	$47.50
09/18/2020	DW	Various	Drafted and filed motion to set case management conference; re: MSJ 1st or Fee hearing 1st	$425.00	0.5	$212.50
09/18/2020	DW	E-mail	Responded to Pl's 9/16/20 email and refused to withdraw 57.105 motion; provided copy of motion to set CMC and available dates for hearing	$425.00	0.1	$42.50
09/18/2020	DW	E-mail	Reviewed Pl's email insisting that 57.105 motion be withdrawn	$425.00	0.1	$42.50
09/18/2020	DW	E-mail	Replied to Pl's counsel that the 57.105 motion for sanctions will not be withdrawn and asking for response, re: CMC	$425.00	0.1	$42.50
09/18/2020	DW	E-mail	Sent client copy of email exchange w/ Pl's counsel; called and spoke w/ Client	$425.00	0.5	$212.50
09/22/2020	DW	Various	Drafted and filed Notice of Hearing on 10/15/20; set up Court Call; spoke w/ client, re: hearing date	$425.00	0.7	$297.50
10/02/2020	DW	Review	Reviewed Pl's Memo of Law opposing Aronberg's 57.105 motion for fees/sanctions	$425.00	0.7	$297.50

Date	EE	Activity	Description	Rate	Hours	Line Total
10/02/2020	DW	Review	Reviewed Pl's Response to Aronberg's request to schedule 57.105 motion for fees after MSJ	$425.00	0.5	$212.50
10/02/2020	AIJ	Review	Reviewed Pl's Memo of Law opposing 57.105 motion	$475.00	0.5	$237.50
10/02/2020	AIJ	Review	Reviewed Pl's Response to Aronberg's request to schedule 57.105 motion after	$475.00	0.4	$190.00
10/12/2020	DW	Research	Research caselaw & statutes, re: response to Pl's Memo of Law	$425.00	1.0	$425.00
10/13/2020	DW	Research & Analyze	Continued researching caselaw, re: response to Pl's memo of law	$425.00	1.0	$425.00
10/13/2020	DW	Draft	Created 1st draft of Response to Pl's Memo of Law and shared w/ Client	$425.00	4.0	$1,700.00
10/13/2020	DW	Meeting	Discussed w/ AIJ caselaw and draft response to memo	$425.00	0.5	$212.50
10/13/2020	AIJ	Various	Reviewed draft MSJ, discussed draft w/ DAW and caselaw	$475.00	0.7	$332.50
10/14/2020	DW	Draft	Finalized and filed Response to Pl's Memo of Law	$425.00	1.0	$425.00
10/14/2020	DW	Telephone	Spoke w/ client, re: memo of law	$425.00	0.2	$85.00
10/14/2020	DW	Telephone	Spoke w/ client again, re: response to memo of law	$425.00	0.1	$42.50
				Total:	63.6	$ 27,540.00

Exhibit H

Date	EE	Activity	Description	Rate	Hours	Line Total
11/26/2019	DW	Review	Initial review of summons and complaint.	$425.00	1.5	$637.50
11/26/2019	DW	Review	Reviewed motion for pro hac vice and Judge Hafele' order granting	$425.00	0.2	$85.00
11/26/2019	DW	Teleconference	Teleconference w/ Client, re: response to lawsuit	$425.00	0.5	$212.50
11/26/2019	DW	Draft	Drafted engagement letter and sent to client	$425.00	0.3	$127.50
11/26/2019	DW	Review	Reviewed 15th circuit local rules	$425.00	1.0	$425.00
11/26/2019	AIJ	Review	Initial review of complaint	$475.00	1.0	$475.00
11/26/2019	AIJ	Meeting	Meeting w/ DAW to discuss lawsuit and strategy	$475.00	0.5	$237.50
11/26/2019	DW	Meeting	Meeting w/ AIJ to discuss lawsuit and strategy	$425.00	0.5	$212.50
11/26/2019	AIJ	Teleconference	Teleconference w/ Client, re: response to lawsuit	$475.00	0.5	$237.50
12/02/2019	DW	Research & Preparation	Research and prep for Motion to dismiss	$425.00	2.0	$850.00
12/02/2019	DW	Draft	1st Draft motion to dismiss	$425.00	1.0	$425.00
12/02/2019	DW	Teleconference	Teleconference w/ Client, re: draft motion to dismiss	$425.00	0.5	$212.50
12/02/2019	AIJ	Review	Reviewed 1st Draft MTDismiss	$475.00	0.3	$142.50
12/02/2019	AIJ	Teleconference	Teleconference w/ client, re: draft motion to dismiss	$475.00	0.5	$237.50
12/03/2019	AIJ	Meeting	Meeting w/ DAW, re: motion to dismiss	$475.00	0.2	$95.00
12/03/2019	DW	Meeting	Meeting w/ AIJ, re: MTDismiss	$425.00	0.2	$85.00
12/06/2019	DW	Draft	Completed final draft of motion to dismiss; filed with Court	$425.00	0.7	$297.50
12/06/2019	DW	Teleconference	Spoke w/ client, re: final draft of motion to dismiss	$425.00	0.5	$212.50
12/06/2019	DW	Teleconference	Spoke with Clerk's attorney, re: response	$425.00	0.5	$212.50
12/06/2019	AIJ	Review	Reviewed final draft MTDismiss	$475.00	0.2	$95.00
12/06/2019	AIJ	Review	Reviewed Clerk's MTDismiss	$475.00	0.2	$95.00
12/13/2019	DW	Review	Reviewed Clerk's Motion to Dismiss	$425.00	0.5	$212.50
01/16/2020	DW	Review	Reviewed Order Setting Hearing on Defendants' MTDismiss	$425.00	0.1	$42.50
01/16/2020	DW	Review	Reviewed motion for pro hac vice	$425.00	0.1	$42.50
01/17/2020	DW	Review	Reviewed Pl's Amended Complaint	$425.00	1.0	$425.00
01/17/2020	DW	Teleconference	Spoke with client, re: Amended Complaint	$425.00	0.5	$212.50
01/17/2020	DW	Review	Reviewed Pl's notice of filing	$425.00	0.1	$42.50
01/20/2020	AIJ	Review	Reviewed Pl's Am. Compl	$475.00	0.3	$142.50
01/21/2020	DW	Review	Reviewed Judge Marx's Order Cancelling MTDismiss Hearing	$425.00	0.1	$42.50
01/21/2020	DW	Review	Reviewed Pl's Objection to Defendants' MTDismiss	$425.00	0.2	$85.00
01/21/2020	DW	Teleconference	Spoke with client, re: Amended complaint	$425.00	0.5	$212.50
01/21/2020	AIJ	Meeting	Meeting w/ DAW, re: response to Am. Compl.	$475.00	0.2	$95.00
01/21/2020	DW	Meeting	Meeting w/ AIJ, re: response to Am. Compl.	$425.00	0.2	$85.00
01/22/2020	DW	Review	Reviewed Order granting pro hac vice admission	$425.00	0.1	$42.50
01/22/2020	DW	Research & Draft	Researched and drafted response to Amended Complaint	$425.00	1.0	$425.00
01/23/2020	DW	Teleconference	Spoke with Clerk's attorney, re: response to amended complaint	$425.00	0.2	$85.00
01/24/2020	DW	Various	Completed Answer/MTDismiss Amended Complaint; filed with Court; sent copy to Client	$425.00	1.0	$425.00
01/24/2020	DW	Draft	Drafted and filed Notice of Unavailability	$425.00	0.4	$170.00
01/24/2020	AIJ	Review	Reviewed final Answer/MTDismiss	$475.00	0.2	$95.00
01/27/2020	DW	Review	Reviewed Clerk's Answer/MTDismiss	$425.00	0.3	$127.50
02/03/2020	DW	Review	Reviewed Order setting hearing on Defs' MTDismiss	$425.00	0.1	$42.50
02/03/2020	DW	Teleconference	Spoke w/ client, re: order setting MTDismiss hearing for March 24, 2020	$425.00	0.5	$212.50
03/13/2020	DW	Review	Reviewed Pl's Opposition to Aronberg MTDismiss & Clerk's MTDismiss	$425.00	1.5	$637.50
03/13/2020	AIJ	Review	Reviewed Pl's Opposition to Aronberg MTDismiss & Clerk's MTDismiss	$475.00	0.7	$332.50
03/18/2020	DW	Teleconference	Reviewed email from Pl's counsel, re: motion to continue hearing	$425.00	0.1	$42.50
03/18/2020	DW	Review	Reviewed Pl's unopposed motion for continuance	$425.00	0.1	$42.50
03/18/2020	DW	E-mail	Emails w/ Clerk's counsel, re: Pl's request to continue hearing	$425.00	0.2	$85.00
03/19/2020	DW	E-mail	Reviewed email from Pl, re: agreed order & responded	$425.00	0.1	$42.50
03/20/2020	DW	Review	Reviewed Court's agreed order continuing hearing	$425.00	0.1	$42.50
04/21/2020	DW	Review	Reviewed order rescheduling hearing on Defs' MTDismiss	$425.00	0.1	$42.50
04/21/2020	DW	Teleconference	Spoke w/ client, re: order rescheduling MTDismiss hearing for June 3, 2020	$425.00	0.3	$127.50
04/21/2020	AIJ	Review	Reviewed Order rescheduling MTDismiss hearing	$475.00	0.1	$47.50
05/22/2020	DW	Review	Reviewed order setting Zoom hearing, re: MTDismiss	$425.00	0.1	$42.50
05/22/2020	DW	Teleconference	Spoke w/ client, re: hearing will be via Zoom	$425.00	0.2	$85.00
05/27/2020	DW	Review	Reviewed Clerk's filing: change of atty of record	$425.00	0.1	$42.50
05/27/2020	DW	Teleconference	Spoke with Clerk's new counsel, Nicole Fingerhut	$425.00	0.2	$85.00
05/28/2020	DW	E-mail	Reviewed Pl's email, re: cases and authorities for MTDismiss hearing;	$425.00	0.1	$42.50
05/29/2020	DW	Preparation	Began oral argument prep for 6/8 MTDismiss hearing	$425.00	1.0	$425.00

Date	EE	Activity	Description	Rate	Hours	Line Total
06/01/2020	DW	E-mail	Reviewed email from Judge Marx's JA and responded	$425.00	0.1	$42.50
06/02/2020	DW	Various	Reviewed Pl's 500+ page binder, re: MTDismiss & prepped for hearing	$425.00	3.0	$1,275.00
06/02/2020	DW	E-mail	Drafted and sent email to client, re: MTD hearing tomorrow	$425.00	0.1	$42.50
06/03/2020	DW	Attend Hearing	Prepped for and attended MTDismiss hearing via Zoom	$425.00	1.5	$637.50
06/03/2020	DW	Teleconference	Spoke w/ Client, re: debrief MTDismiss hearing	$425.00	0.5	$212.50
06/03/2020	DW	E-mail	Emailed courtesy copies of Aronberg's Answer and MTDismiss to Judge Marx	$425.00	0.1	$42.50
06/03/2020	DW	E-mail	Reviewed response from Client and replied	$425.00	0.1	$42.50
06/03/2020	AIJ	Attend Hearing	Attended MTDismiss hearing via Zoom	$475.00	1.0	$475.00
06/03/2020	AIJ	Review	Reviewed order granting MTDismiss w/ prejudice	$475.00	0.3	$142.50
06/08/2020	DW	Review	Reviewed Court's Order Granting Defendants MTDismiss Count II w/ Prejudice	$425.00	0.5	$212.50
06/08/2020	DW	Various	Shared order w/ Client and spoke w/, re: result and plan going forward, re:	$425.00	0.5	$212.50
06/08/2020	DW	Various	Researched § 57.105 Fla. Stat.; drafted 57.105 demand letter and proposed motion for attorneys' fees/sanctions; Served Pl's counsel with demand letter and proposed motion.	$425.00	2.0	$850.00
06/08/2020	AIJ	Meeting	Meeting w/ DAW, re: Order & 57.105	$475.00	0.3	$142.50
06/08/2020	DW	Meeting	Meeting w/ AIJ, re: Order & 57.105	$425.00	0.3	$127.50
06/08/2020	AIJ	Review	Reviewed 57.105 demand and proposed motion for sanction	$475.00	0.2	$95.00
06/10/2020	DW	Various	Reviewed notice of change of attorney, re: Clerk; called and spoke w/ new counsel Cynthia Guerra	$425.00	0.3	$127.50
06/23/2020	DW	Various	Reviewed Pl's letter refusing to voluntarily dismiss amended complaint despite 57.105 demand; called and spoke w/ client, re: Pl's refusal & next	$425.00	1.0	$425.00
06/23/2020	DW	E-mail	Sent client copy of Pl's letter refusing to dismiss complaint	$425.00	0.1	$42.50
06/23/2020	AIJ	Review	Reviewed Pl's letter refusing to dismiss Count I/Am. Compl.	$475.00	0.1	$47.50
07/01/2020	DW	Various	Spoke w/ client, re: filing of 57.105 motion for fees/sanctions; filed motion for attorneys' fees based on Pl's failure to voluntarily dismiss amended complaint count 1	$425.00	0.5	$212.50
				Total:	**37.9**	**$ 16,447.50**

Exhibit I

Date	EE	Activity	Description	Rate	Hours	Line Total
03/25/2021	DW	Review	Review Notice of Change of Counsel	$425.00	0.1	$42.50
10/01/2021	DW	Review & Analyze	Review Clerk's response to MSJ	$425.00	0.5	$212.50
10/05/2021	DW	Review & Analyze	Review Order, re: MSJ hearing on 10/22/21	$425.00	0.1	$42.50
10/05/2021	DW	Review & Analyze	Review Pl's Reply in support of MSJ	$425.00	0.5	$212.50
11/02/2021	DW	E-mail	Reviewed several emails b/w opposing counsel	$425.00	0.2	$85.00
11/05/2021	DW	E-mail	Reviewed several emails b/w opposing counsel	$425.00	0.2	$85.00
12/20/2021	DW	Various	Review & Analyze Final Judgment in favor of Clerk, meeting w/ AIJ, call client to discuss	$425.00	1.5	$637.50
12/20/2021	AIJ	Meeting	Meeting w/ DAW, re: MSJ Order	$475.00	0.5	$237.50
12/21/2021	DW	E-mail	Review email from Op. Counsel	$425.00	0.1	$42.50
01/04/2022	DW	Review	Review Clerk's Motion to Amend Final Judgment	$425.00	0.1	$42.50
01/04/2022	DW	Review	Reviewed Clerk's Notice of Appearance	$425.00	0.1	$42.50
01/12/2022	DW	E-mail	Reviewed and replied to email from Op. Counsel	$425.00	0.2	$85.00
01/19/2022	DW	Review & Analyze	Reviewed and replied to email from Op. Counsel	$425.00	0.5	$212.50
01/26/2022	DW	Review	Review Notice of Withdrawing Motion to Amend FJ	$425.00	0.1	$42.50
01/26/2022	DW	E-mail	Emailed Clerk's Motion for Sanctions to Client	$425.00	0.1	$42.50
01/27/2022	DW	Review	Review Pl's Notice of Appeal	$425.00	0.1	$42.50
01/28/2022	DW	Review	Reviewed 4DCA Order, re: abeyance	$425.00	0.1	$42.50
03/10/2022	DW	E-mail	Reviewed and replied to email form Clerk's counsel	$425.00	0.2	$85.00
03/30/2022	DW	Review	Review Motion to Withdraw	$425.00	0.1	$42.50
				Total:	**5.3**	**$ 2,277.50**