

IN THE CIRCUIT COURT OF THE 15TH JUDICIAL CIRCUIT IN AND FOR PALM
BEACH COUNTY, FLORIDA

CASE NO: 2013CA012409XXXXMB

DIVISION: AJ

DAVID GARTEN, ESQ

Plaintiff,

V

**Defendant's Motion to Appear
By Telephone; Stay-Continuance;
Unclean Hands of David Garten**

SKENDER HOTI and
BEBA HOTI,

Defendants,

_____ /

COMES NOW, Skender Hoti filing this motion pro-se, who respectfully shows this Court and pleads and prays as follows:

1. I am the defendant pro se Skender Hoti.
2. This Hearing must now be cancelled altogether or alternatively stayed and continued until another date as the Plaintiff and his lawyers have violated this Court's published rules and Divisional Instructions for Special Set Hearings which are specific and clear providing in part as follows: "4) Any materials submitted are due at least 7 days prior to the hearing;" See, <http://15thcircuit.co.palm-beach.fl.us/web/judge-hafele/divinstructions>.
3. The hearing is set for tomorrow, the 18th of July, 2016 which means the materials submitted by the Plaintiff's attorneys were due at least by July 11th, 2016 and yet instead Plaintiff's lawyers did not file or serve any such materials until July 14, 2016 clearly in violation of the

Rules and when serving said “materials” on me as Defendant by electronic email did so by a PDF document which could not even be opened due to some restraint on the document.

4. Thus, I had to write to Plaintiff’s lawyers on Friday July 15, 2016 and received an updated copy by email on or around 3:53 pm EST as follows:

From: Vanessa Fleites <vfleites@WaltonLantaff.com>
Date: July 15, 2016 at 3:53:45 PM EDT
To: "skendertravel@gmail.com" <skendertravel@gmail.com>, "skendertravel@hotmail.com" <skendertravel@hotmail.com>
Cc: "Kelly M. Vogt" <KVOGT@WaltonLantaff.com>, "Deborah P. FitzGerald" <DFitzgerald@WaltonLantaff.com>
Subject: RE: 5018-00232 \ DAVID GARTEN V. SKENDER HOTI & BEBA HOTI \:Correspondence to Judge for Monday's Hearing

Good Afternoon

In response to your request below, please see attached copy of correspondence to Judge Hafele

Vanessa Fleites

Legal Assistant to Deborah P. FitzGerald & Kelly M. Vogt

Walton Lantaff Schroeder & Carson LLP
Attorneys at Law
110 East Broward Blvd, Suite 2000 | Fort Lauderdale Florida 33301
Office: (954) 463-8456 | Direct: (954) 713-1415 | Fax: (954) 763-6294
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WLSC:This message contains confidential information and is intended only for the individual(s) addressed in the message. If you are not the named addressee, you should not disseminate, distribute, or copy this e-mail. If you are not the intended recipient, you are notified that disclosing, distributing, or copying this e-mail is strictly prohibited.

From: Skender Hoti <skendertravel@gmail.com>
Date: July 15, 2016 at 3:30:12 PM EDT
To: KVOGT@WaltonLantaff.com
Subject: Fwd: Vanessa, Request from Skender Hoti to re-send your correspondence dated July 14, 2016

Vanessa,

Please re-send the Correspondence to the Court that was attached to your July 14, 2016

email as this PDF attachment is not able to be opened.

This case is still in the jurisdiction of the District Court of Appeals and should be stayed until determined at that Court.

I intend to file for permission to appear by telephone on Monday, July 18, 2016 at 1:30 pm.

Please get me whatever this recent correspondence to the Judge is as soon as possible today.

Thank you.

Skender Hoti

5. The “materials” provided to this Court and served upon defendants in violation of the 7 day Divisional Instruction Rules clearly included legal authorities and citations and this improper filing provided inadequate notice to myself pro se and is a sharp and improper practice in a case involving fraud upon fraud within a fraud and the Hearing should now be cancelled.
6. While I understand there is typically a 7 day notice to appear by Telephone for a Special Set Hearing, because such Evidentiary Hearing can not go forward for this violation of the Rules by Plaintiff and his lawyers, I am requesting that instead I be granted permission to appear by telephone at 561-385-6390 solely for purposes of discussing the scheduling of further motions in this case.
7. Thus, should this court not cancel the hearing altogether, the evidentiary hearing should be stayed and the appearance converted to a scheduling matter with the Court and parties.
8. Moreover the underlying case is on Appeal to the 4th District Court of Appeals which has jurisdiction over the case and the matter should be stayed and continued until such time as the 4th DCA rules in the case.
9. Still, the matter should be further stayed to permit myself as Defendant sufficient time to file a proper application under the All Writs powers at the Florida Supreme Court for the

underlying fraud of David Garten in the original Billing case number 502012CA011639 / 4D14-4826 which was just shown to the 4th DCA to have been fraud upon the Court with attorney Garten not filing any proper Billing Statements to support his original claim to fees in the thousands of pages of filings certified by Clerk Sharon Bock to the 4th DCA and no proper hearing to determine if any such fee claim had merit according to established law of the Florida Supreme Court with the original case involving the illegal, false and fraudulent taking of Gwendolyn Batson into Guardianship by one Judge Martin Colin using his Wife Betsy Savitt as Guardian and not disclosing same and not holding a hearing prior to the kidnapping of Ms. Batson where it was shown Betsy Savitt and others had been spying on her and her property to “take her” at a time when others were not around.

10. This Court may or may not be aware that it was my case and that of Gwendolyn Batson that exposed some of the original wrongdoings in the Court of Judge Colin that lead to a series of articles by th Palm Beach Post on Guardianships and ultimately lead to Judge Colin recusing from over 100 cases overnight and being transferred out of the Division. See, Palm Beach Post, John Pacenti articles titled “Guardianship: A Broken Trust.”¹

11. I have attached a copy of my Motion for Rehearing filed with the 4th DCA as Exhibit 1 which shows in good faith not only the basis to seek All Writs determination at the Florida

¹Palm Beach Post Series - Guardianship a Broken Trust - “Professional guardian’s lawyer empties man’s home” NEWS By John Pacenti, Updated: 5:47 p.m. Friday, April 3, 2015 | Posted: 5:47 p.m. Friday, April 3, 2015

<http://www.mypalmbeachpost.com/news/news/post-investigates-professional-guardians-lawyer-em/nkmSd>

And

“Judge’s wife accused of taking fees before court OKs them”

<http://www.mypalmbeachpost.com/guardianships-elizabeth-savitt>

And

Hoti Case Files 1 <http://www.documentcloud.org/documents/2680673-Batson-Case-1.html>

And

Hoti Case Files 2 <http://www.documentcloud.org/documents/2680674-Batson-Case-2.html>

Supreme Court but also the basis for motions to be filed under Rule 1.540 of the Florida Rules of Civil Procedure in both the original Billing case and this case and note that Hearings and Discovery against David Garten and his attorneys will be necessary and where it has been held to be reversible error to not grant such hearings. See, *Robinson v. Weiland*, 936 So.2d 777 (Fla. 5th DCA Sep 01, 2006); *Granados v. Zehr*, 979 So. 2d 1155 (Fla. 5th DCA 2008). *Cox v. Burke*, 706 So. 2d 43, 46 (Fla. 5th DCA 1998); *E. I. Dupont DeNemours & Co. v. Sidran*, 140 So. 3d 620, 623 (Fla. 3d DCA 2014); *Gautreaux v. Maya*, 112 So. 3d 146, 149 (Fla. 5th DCA 2013). *Gilbert v. Eckerd Corp. of FL, Inc.*, 34 So. 3d 773 (Fla. 4th DCA 2010).

12. Thus the Special Set Hearing should be stayed and continued until such reasonable time to enable me to file a proper application under All Writs jurisdiction at the Florida Supreme Court and further motions to vacate the underlying judgments in this case and the original billing case under Rule 1.540 and Monday's appearance should be by telephone for purposes of setting a proper schedule. The prior Orders and judgments in this case and the billing face fall in to the following rule: "On the face of it, the order embodies an unacceptable, even incredible result. No court is obliged to approve a judgment which so obviously offends even the most hardened appellate conscience and which is so obviously contrary to the manifest justice of the case. Indeed, it is obliged not to. *Florida Nat'l. Bank v. Sherouse*, 80 Fla. 405, 406, 86 So. 279, 279 (1920) ("[I]f a decree is manifestly against the weight of the evidence, or contrary to the legal effect of the evidence, then it becomes the duty of the appellate court to reverse the same."); *Newman v. Smith*, 77 Fla. 633, 650, 82 So. 236, 241 (1918) ("Where the finding of a trial judge is contrary to the legal effect of the evidence on the issues made the appellate court should reverse the finding even though the trial judge personally saw and

heard the witnesses testify, and even though there were conflicts in the testimony, and there was some evidence tending to support the finding." Accord *Howell v. Blackburn*, 100 Fla. 114, 129 So. 341 (1930); *Boyd v. Gosser*, 78 Fla. 64, 82 So. 758 (1918); *Fuller v. Fuller*, 23 Fla. 236, 2 So. 426 (1887); *John D.C. v. State*, 16 Fla. 554 (1878); *Uhley v. Tapio Constr. Co., Inc.*, 573 So.2d 390 (Fla. 4th DCA), rev. denied, 583 So.2d 1037 (Fla. 1991); *C.M. Life Ins. Co. v. Ortega*, 562 So.2d 702 (Fla. 3d DCA 1990), rev. denied, 576 So.2d 289 (Fla. 1991). See, *Miller v. First American Bank & Trust* **607 So.2d 483 (4th DCA 1992)**

13. Still, David Garten and his attorneys should be stayed and estopped under the Unclean Hands rule.

14. The 4th District Court of Appeals has described Unclean Hands as follows:

It is certainly without question that "one who comes into a Court of Equity must come with Clean Hands, else all relief will be denied him regardless of the merits of his claim. It is not essential that the act be a crime; it is enough that it be condemned by honest and reasonable men." *Ocean View Towers, Inc. v. First Fid Savings and Loans Ass'n*, 521 So. 2d 325, 326 (Fla. 4th DCA 1988). (quoting *Roberts v. Roberts*, 84 So. 2d 717, 720 (Fla. 1956)).

Recently, the 4th District Court of Appeals found that Unclean Hands is tantamount to [u]nscrupulous practices, over reaching, concealment, trickery, or other unconscientious conduct." *Congress Park Office Condos II*, No. 4D11-4479 at 6-7 (citation omitted).

15. Here the Defendant has always maintained the same Defense over the last three years in which David Garten, the Plaintiff was supposed to represent me, the Defendant, Skender Hoti in the Guardianship case of my mother, Gwendolyn Batson for 10 to 15 thousand dollars. However, the Defendant paid more than double of the original request by the Plaintiff, for a total of 35,000 dollars and the Plaintiff was terminated for Ineffective Assistance of Counsel.

16. The original record of the guardianship case shows that it was "Impossible" for David Garten to earn 68,000.00 dollars in 4 months. In fact if the record was broken down and the record shows that the Plaintiff stated he earned 62,000.00 dollars in 10 weeks. The record and motions made by the Plaintiff shows that out of the 18 motions he wrote, 16 were all less than one page long, with three short sentences in each motion. At \$450.00 per hour each of the 16 motions could not have taken more than 30 minutes, for such an experienced Probate attorney to write three sentences, which would be approximately \$3600.00. The other two motions were one and one half pages and the other a two page motion both including captions. If one was to calculate the other two motions would probably take one hour, which would be \$900.00.
17. So the record shows that the Plaintiff is trying to extort money through fraudulent billing and now using his attorneys to assist in this extortion scheme. Most motions in Guardianship cases are far more than three sentences long, most average six to ten pages long or more. The record has been broken down month by month which, shows in the month of May, there was one motion and in June one motion by the Plaintiff which stated he was terminated.
18. No judge ever reviewed the Plaintiff's bills, since Garten failed to attach his bills to his complaint to deceive and defraud the Judge in this case. Since the bills were not attached to the complaint, the Plaintiff cannot sue the Defendant, and the lawsuit should be null and void.
19. Judge Lucy Brown had no jurisdiction to rule on this case and her ruling is *void ab initio*, the case was to be Arbitrated according to the Plaintiff's contract with the Defendant. Judge Brown did not review the Guardianship record or bills by the Plaintiff, because the bills were not attached to the complaint, which voids the complaint. Judge Brown took the Plaintiff's

word, never reviewing his bills, since his bills were not a part of the record and the Defendant was denied any kind of fair evidentiary hearing, which would have shown that the Plaintiff did not earn \$68,000.00 and never earned the \$35,000.00 which he was paid by the Defendant **and in fact never included the total of \$35,000.00 actually paid to his office in the underlying billing case further contributing to the fraud in those proceedings.** So it was impossible for him to earn 68,000.00 in 16 weeks, or 62,000.00 in 10 weeks.

20. The original record was reviewed by an expert in Guardianships, and it is very clear that Garten never even earned the \$15,000.00 that was requested when the contract was signed with the Defendant when the Plaintiff was hired on February 15, 2012. No Judge in this case ever examined the record which clearly shows that the Plaintiff is trying to extort money from the Defendant and his family. The 20. Plaintiff clearly committed Extrinsic Fraud and Breach of Fiduciary Duty and sold out his client accusing him of being a drug dealer, because he was a hard worker and a good businessman and the Plaintiff was jealous of the Defendants success. This whole case is a product of Fraud on the Court, Extortion, Breach of Fiduciary Duty and Extrinsic Fraud committed by the Plaintiff.
21. The Plaintiff is abusing the Court and abusing his position as an attorney to take advantage of a Family man with 6 children, all children are highly educated and respectable young adults. Skender Hoti was only trying to protect his mother and her wishes and in turn, the Plaintiff did absolutely nothing in this case, but cause serious emotional and financial injury to not only Mr. Hoti and Beba Hoti, but to his 6 children as well. Mr. Hoti and family has suffered irreparable damage by this dishonest lawyer, David Garten.
22. There was clear and convincing evidence that Gwendolyn Batson was never incapacitated and that the doctors report by Pierre Andre was a product of Fraud. Gwendolyn Batson was

competent and was never in need of a guardian and at the end, Judge James Martz returned Gwendolyn Batson to her son, Skender Hoti to be her Guardian.

23. No Judge ever gave any weight to the above evidence in which the Defendants claims have been ignored by the Court, due to a slick talking Attorneys that are trying to ambush the Defendant with motions after motion, when the original case was to be argued in Arbitration, not in Court in front of Judge Lucy Brown.
24. Therefore, this case which is an illegal transfer case, which is a product of the original case, which was a product of Fraud on the Court, which was supposed to be Arbitrated, should also be void ab initio.
25. Under the unique facts of this case and the record before us, the Defendant's allegations are legally sufficient to properly assert the defense of unclean hands. See, e.g., Monetary Funding Grp., Inc. v. Pluchino, 867 A.2d 841 (Conn. App. Ct. 2005) The facts of the case are almost identical, where the Defendant was unsophisticated about attorneys and how his own attorney, the Plaintiff took advantage of the Defendant and Breached his Fiduciary Duty, while committing Extrinsic Fraud, by selling out his client's interest to the opposing party, and now trying to Extort money that the Plaintiff never earned. The Defendant was supposed to trust his attorney, the attorney David Garten had a Fiduciary Duty to represent the Defendant for a fair price which they negotiated, but Garten immediately sold out his client and is now trying to extort over \$300,000.00 from the Defendant and his Family.
26. Plaintiff comes to court with unclean hands and is prohibited by reason thereof from obtaining the equitable relief from this Court. The Plaintiff's unclean hands result from the Plaintiff's actions of using false information to file a fraudulent complaint in order to extort money that he never earned. As a matter of equity, this Court should refuse to entertain the

Plaintiff's motion for final judgment. It would be inequitable, unjust, and the circumstances of this case render final judgment for the Plaintiff, unconscionable. It is well settled that a party claiming unclean hands as an affirmative defense must establish that it was injured by the conduct constituting the unclean hands. *McCollem v. Chidnese*, 832 So. 2d 194, 196 (Fla. 4th DCA 2002).

27. The Plaintiff, David Garten has caused Severe Emotional, Psychological, and Financial Distress with Irreparable Damage to the Defendants, Skender Hoti, his wife Beba Hoti, the Hoti Family and the Children who have been severely traumatized and damaged by the action of David Garten. David Garten has caused Severe Financial Distress in which, Beba Hoti and the Children have to work full time and some over 40 hours to pay household expenses and go to college, due to the father cannot afford to pay their educational expenses, because the Defendant has to use this money to pay attorneys to stop David Garten from committing Extortion and Fraud against the Hoti Family, after enormous resources were spent freeing Hoti's mother from the predatory guardianship placed on her by Colin in the first place.
28. Skender Hoti and Family are suffering from a "Legal Abuse Syndrome" in which David Garten and his attorney's are 100% responsible for. LEGAL ABUSE SYNDROME (LAS) is a form of posttraumatic stress disorder (PTSD). It is a psychic injury, not a mental illness. It is a personal injury that develops in individuals assaulted by ethical violations, legal abuses, betrayals, and fraud. Abuse of power and authority and a profound lack of accountability in our courts have become rampant, compounding an already stressful experience.
29. This stress can and does lead to physical illness. AMA statistics show that around 85% of all physical illness is directly attributable to stress. Legal Abuse Syndrome is a public health

menace in this country. It leads to massive medical intervention costs, burdens insurance companies, and adds to Medicare and Social Security costs. Most painfully, it crushes the brilliance and creativity of its sufferers. Legal Abuse Syndrome is detrimental to all of society, and nobody is immune.

30. Whatever the court setting, whether it is regarding divorce, child custody, parental support, probate matters, personal injury, property disputes, legal or medical malpractice, criminal charges, or other deeply personal issues, the frauds put forth in our courts add greatly to the trauma. When litigants are unable to get fair resolution to their issues, when the court dysfunction further adds to the litigant's burden, when no amount of actual case law compels an equitable outcome, litigants suffer often disabling levels of stress. When further attempts to achieve redress fail, litigants display the hallmark signs of Legal Abuse Syndrome (LAS).

WHEREFORE, the Defendant prays this Honorable Court will cancel the Special Set Hearing altogether or alternatively Stay and Continue the Hearing due to violations of the Divisional Rules by Plaintiff and his attorneys and further Stay and continue these matters pending determination by the 4th DCA and further allowing Defendant a reasonable time to file at the Florida Supreme Court and under Rule 1.540 at the Trial Court and thus permitting Defendant to appear by telephone for Scheduling matters on July 18, 2016 and not for any evidentiary hearing on the merits and for such other and further relief as is just and proper.

Dated this 17th day of July, 2016

Respectfully Submitted,

/s/ Skender Hoti
Skender Hoti, Pro-Se
3103 Drew Way
Palm Springs, FL 33461
Tel: 561-385-6390
primary: skendertravel@hotmail.com

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a copy of the foregoing has been E-filed and served to: David Garten, Esq. 400 Columbia Drive, Suite 100 West Palm Beach, Florida 33409, dgarten@gartenlaw.com; Deborah P. FitzGerald, Esq. at Walton Lantaff Shroeder & Carson LLP Corporate Center 110 E. Broward Blvd, Suite 2000 Fort Lauderdale, FL 33301-3503, dfitzgerald@waltonlantaff.com, on this 17th day of July, 2016.

/s/ Skender Hoti
Skender Hoti, Pro-Se
3103 Drew Way
Palm Springs, FL 33461
Tel: 561-385-6390
primary: skendertravel@hotmail.com

EXHIBIT 1

RECEIVED, 6/21/2016 10:27 PM, Clerk, Fourth District Court of Appeal

IN THE DISTRICT COURT OF APPEAL
FOURTH DISTRICT, STATE OF FLORIDA

CASE NO. 4D14-4826

LOWER TRIBUNAL NO. 2012CA011639XXXXMB AJ

SKENDER HOTI,

Appellant,

v,

DAVID M. GARTEN,

Appellee,

_____ /

**APPELLANT SKENDER HOTI'S MOTION FOR A REHEARING OF
THIS COURT'S DECISION ON CASE #4D14-4826 AND FOR A WRITTEN
OPINION AND CLARIFICATION OR ORDERS AND DECISIONS**

COMES NOW, THE Appellant, Skender, (hereinafter referred to as "HOTI"),
Pro-se and serves this Motion for Re-hearing of this Court's Decisions and Orders
in Case No. 4D14-4826 and for a Written Opinion and Clarification of such Orders
and Decisions, who respectfully say and plead to this Court as follows:

1. I am the Appellant herein, Skender Hoti, acting pro se and make this motion under Florida Rule of Appellate Procedure 9.330 for Re-Hearing of this Court's Decision and Orders in Case No. 4D14-4826 issued May 19, 2016 and for a Written Opinion and Clarification of such Orders and Decisions.
2. Respectfully, this Court has misapprehended or overlooked the facts in the Record on Appeal and misapplied the law of the 4th District Court of Appeals and Florida involving the factual proof required to sustain an award of attorney's fees and Rehearing is thus appropriate.
3. The 4th District Court of Appeals has a long standing line of cases on the type of proof and evidence and factual record that must be developed to support the award of attorney's fees.
4. Chief Judge Ciklin in July of 2014 confirmed in *Diwakar v. Montecito Palm Beach Condominium*, No. 4D13-915. 143 So.3d 958 (2014), that a party's argument "that there was simply no competent, substantial evidence to support the award may be raised for the first time on appeal. See Fla. R. Civ. P. 1.530(e) ("When an action has been tried by the court without a jury, the sufficiency of the evidence to support the judgment may be raised on appeal whether or not the party raising the question has made any objection thereto

in the trial court or made a motion for rehearing, for new trial, or to alter or amend the judgment.").

5. This case here was not tried “by the Court” but instead involved the lower Court upholding an Arbitrator’s award.
6. Appellant Skender Hoti objected to the Arbitration Award and raised factual issues regarding the total amount paid to Garten showing payments of \$35,000.00 to Garten which are unaccounted for by Garten and the Court below while also raising factual issues and objections and arguments to the reasonableness of the fees, and other objections to the fees and these objections were filed and made in the Court below and are part of the Record on Appeal in this case and part of the facts this Court may consider. See, Record on Appeal pages 136-141 (Skender Counter-Complaint.)
7. According to the many cases of the 4th DCA, “The standard of review of an award of attorneys' fees is abuse of discretion. *Glantz & Glantz, P.A. v. Chinchilla*, 17 So.3d 711, 713 (Fla. 4th DCA 2009) (citations omitted). "We will uphold a trial court's award of attorneys' fees so long as it is supported by substantial, competent evidence." *Effective Teleservices, Inc. v. Smith*, 132 So.3d 335, 341 (Fla. 4th DCA 2014) (citation omitted).
An award of attorney's fees must be supported by substantial competent

evidence and contain express findings regarding the number of hours reasonably expended and a reasonable hourly rate for the type of litigation involved. Additionally, the award must be supported by expert evidence, including the testimony of the attorney who performed the services.

Tutor Time Merger Corp. v. McCabe, 763 So.2d 505, 506 (Fla. 4th DCA 2000) (citations omitted). "Competent evidence includes invoices, records and other information detailing the services provided as well as the testimony from the attorney in support of the fee." Brewer v. Solovsky, 945 So.2d 610, 611 (Fla. 4th DCA 2006) (citations omitted)." See, Diwakar v. Montecito Palm Beach Condominium, No. 4D13-915. 143 So.3d 958 (2014).

8. The long line of cases from the 4th DCA and other District Courts of Appeal in Florida further make it clear that, "***Generally, when an attorney's fee or cost award is appealed and the record on appeal is devoid of competent substantial evidence to support the order, the appellate court will reverse the award without remand.***" *Rodriguez v. Campbell*, 720 So. 2d 266, 268 (Fla. 4th DCA 1998); *Cooper v. Cooper*, 406 So. 2d 1223 (Fla. 4th DCA 1981); *Warner v. Warner*, 692 So. 2d 266, 268 (Fla. 5th DCA 1997); *Brake v. Murphy*, 736 So. 2d 745 (Fla. 3d DCA 1999). See, FAIRCLOTH, v

BLISS, No. 4D04-2761, 917 So. 2d 1005 (2006) District Court of Appeal of Florida, Fourth District. January 4, 2006.

9. The line of cases in the 4th DCA and other District Courts of Appeal further hold that “Unsworn statements by attorneys are usually not considered as evidence by trial courts unless stipulated to by both parties. *See Leon Shaffer Golnick Advertising, Inc. v. Cedar*, 423 So. 2d 1015 (Fla. 4th DCA 1982). As this Court explained in *Leon*: [An attorney's] unsworn statements do not establish facts in the absence of stipulation. Trial judges cannot rely upon these unsworn statements as the basis for making factual determinations; and this court cannot so consider them on review of the record. If the advocate wishes to establish a fact, he must provide sworn testimony through witnesses other than himself or a stipulation to which his opponent agrees.” *Id.* at 1017; *see also Daniel v. Moats*, 718 So. 2d 949 (Fla. 5th DCA 1998) (holding that evidence did not support award of attorney fees to mother in proceedings to modify fathers child support obligation; no one testified concerning attorney fees except mother, mother merely stated what she paid, and there was no evidence as to reasonableness of hours or fees); *Clark v. Squire, Sanders & Dempsey*, 495 So. 2d 264 (Fla. 3d DCA 1986) (holding that it was error for the trial court to affix an attorneys fee without testimony

from the attorney in support of his fee other than a time sheet and without any other testimony to indicate the reasonableness of the time expended or the amount of the fee to be awarded); *Markham v. Markham*, 485 So. 2d 1299 (Fla. 5th DCA 1986) (award of attorneys fees reversed even in the absence of a timely objection where the court relied upon unsworn statements). See, *FAIRCLOTH, v BLISS*, No. 4D04-2761, 917 So. 2d 1005 (2006).

10. Appellant's Answer Brief cited to the lack of Records and proof in the Court below and the inappropriateness of the fees. See, Appellant's Answer Brief pages 2-3.

11. As I pointed out to this Court in my Motion for an Extension of time to file this motion for rehearing dated June 3, 2016, "Now that I can access and open the Record on Appeal under the Docket Entry Type "Brief" with this Court from May 28, 2015 I can say in good faith that I have scrolled through all 1353 (one-thousand -three-hundred and fifty-three) pages Certified by Clerk Sharon Bock as the Record on Appeal and the Only "Billing Statement" that is a part of the Record on Appeal for the underlying original fee dispute filed before Judge Lucy Brown provided by David Garten on this appeal is an alleged June 20, 2012 Invoice at Record on Appeal Pages

000007 to 000011 marked as Exhibit B which appears to have been filed 4 or 5 other times in this Record on Appeal at later pages.”

12. Thus, as factually shown by the Record on Appeal at pages 000007-000011 the only Billing Statement for any fees in the Original Complaint seeking \$32,952.32 are some alleged factual details for the Bill totalling \$6,413.35.
13. But even for this alleged amount, there is No Sworn Testimony from David Garten in the Record on Appeal, No full Invoice or Account History in the Record on Appeal of David Garten, and absolutely NO Factual basis in the Record on Appeal whatsoever to claim ***anything more than the \$6, 413.35.***
14. In fact, even for this amount the Record on Appeal has no Sworn Testimony, and ***no copies of Any of the work Garten allegedly did even for this amount.***
15. The Bill refers to several “Draft motions” and “Draft emails” but **none of these items are contained anywhere in the Record on Appeal as these items were not provided in the proceedings below.**
16. The Billing Statement does give this Court a strong insight into the actions of attorney David Garten, however, as seen on Record on Appeal Page 00009 where David Garten “bills” myself as Appellant on 6-5-12 \$85.00 for calling my Wife who he did NOT have a Retainer Agreement with to talk to

her about me Paying his alleged Bill and then goes on 6-8-12 to Bill both of us \$425.00 to have a Conference on Paying his Bill and then proceeds on Record on Appeal Page 000010 to Bill in excess of another \$500 plus total AFTER he had received notice that I discharged him.

17. Thus, not only is there absolutely NO Facts in the Record nor in the original Complaint filed before Judge Lucy Brown to claim the additional \$26,137.38 claimed as “Prior Balance” but even the amount where there is a Billing Statement is significantly in question.
18. There are No Invoices for the \$26,137.38 in the Record on Appeal, No Sworn Testimony from David Garten in the Record on Appeal for this amount, No Invoice Notices or Proof of Sending Invoices in the Record on Appeal, no Proof of when I allegedly received such Bills in the Record on Appeal, no documents or records to show what was done for the \$26,137.38 such as Motions or Hearings, nothing other than an attorney claiming he is owed some amount.
19. Nowhere in the Record on Appeal are there any Exhibits or Transcripts or Sworn Testimony to support the Arbitrator’s Award found at pages Record on Appeal 00153-00158.

20. Nor are any of these items contained anywhere in this Record on Appeal to support the original Order of Judge Lucy Brown upholding the Arbitrator's Award which has to be an Abuse of Discretion under the standards established by the 4th DCA and District Courts of Appeal and Supreme Court in Florida and this must now be reversed and vacated on appeal.
21. The Arbitrator's Award says nothing other than a conclusory statement based upon alleged Testimony which is **NOT shown to be sworn and in fact does not even Exist in the Record on Appeal** that somehow the case was "complex" but there are no Facts, no motions, no records to show this as a factual matter.
22. Nowhere in the Record on Appeal does it show that David Garten provided these missing invoices or records in his motions to Confirm the Arbitrator's award and in fact David Garten did not even claim that these records exist or try to provide them to this Court in response when I filed the June 3, 2016 Motion for Extension of time.
23. In fact the Record on Appeal makes it crystal clear that all David Garten did was provide further Bills to the Lower Court charged **after the Retainer Agreement was cancelled to then Bill Appellant to collect Fees which had not justified in the first instance.** See, Record on Appeal Pages 176-211.

24. As stated by this Court in Faircloth v Bliss, 917 So. 2d 1005 (2006).

“Here, the record is devoid of any competent evidence regarding the number of hours reasonably expended, the reasonable hourly rate or details of the services performed. We, therefore, reverse the fee award without remand.”

25. David Garten has had years to provide the basis for claiming these fees and thus this Court should now vacate all Orders and Decisions rendered on 5-19-2016 and reverse and vacate the Orders and Judgements below *without remand.*

26. Alternatively, this Court should *limit any remand to the only possibly claimed fees of \$6,413.35* where this Court has any factual proof in the Record and enjoin David Garten and his attorneys from any further fees beyond this amount from this case. See, Faircloth v Bliss (4th DCA 2006).

Written Opinion and Clarification

27. While the devoid absent facts in the Record on Appeal make it clear the lower Court Orders and Awards were an abuse of discretion and this Court must now vacate its Orders of May 19, 2016 on rehearing the facts and law,

the public as a whole would benefit from a Written Opinion and Clarification of the Court's Orders.

28. The Florida Supreme Court has made the issue of client's rights and attorney's fees one of exceptional importance and clearly implicates the operations of the State's justice system.
29. The Florida Supreme Court has said, "The attorney-client relationship is one of special trust and confidence. The client must rely entirely on the good faith efforts of the attorney in representing his interests. This reliance requires that the client have complete confidence in the integrity and ability of the attorney and that absolute fairness and candor characterize all dealings between them. These considerations dictate that clients be given greater freedom to change legal representatives than might be tolerated in other employment relationships. We approve the philosophy that there is an overriding need to allow clients freedom to substitute attorneys without economic penalty as a means of accomplishing the broad objective of fostering public confidence in the legal profession." See, *ROSENBERG v. LEVIN*, 409 So.2d 1016 (1982).
30. That case further outlined the factors to be considered which are not shown to have been followed by any facts or proof in the Record on Appeal such

as, “In computing the reasonable value of the discharged attorney's services, the trial court can consider the totality of the circumstances surrounding the professional relationship between the attorney and client. Factors such as time, the recovery sought, the skill demanded, the results obtained, and the attorney-client contract itself will necessarily be relevant considerations.”

29. The public at large and this case would benefit from a Written Decision and clarification of it's decisions and Orders should this Court not vacate it's prior Orders and reverse the lower tribunal without remand and the case should be appealable to the Florida Supreme Court if necessary.

31. Appellant further asserts the issues of subject matter jurisdiction raised in Appellant's Briefs and the impropriety of the process for Arbitration are sufficiently preserved and important to require a Written Decision as well.

32. The Index to the Record on Appeal and the Record on Appeal alone makes it clear that David Garten was “Litigating” from the outset and not pursuing the contractually agreed Arbitration.

33. The Record on Appeal is devoid of any proper determination that the Retainer Agreement itself was obtained under proper circumstances where a disadvantaged person such as myself who is not native to the United States

and it not a lawyer is being asked to waive important Due Process rights and substantive rights like giving up a Jury Trial.

34. In this case, all rights of Appellant were given up with no benefit of any bargain as David Garten pursued calculated litigation from the outset.

35. The entire Absence of a Record below of any Testimony, Hearings, Transcripts and Records both involving the Court and the Arbitration process creates an exceptional issue of importance in due process where a disadvantaged client pro se does not even have a Record to go by and adequately challenge actions.

36. **WHEREFORE**, it is respectfully prayed for an Order vacating all of these Court's Orders issued May 19, 2016 including the per curiam Affirmance and further reversing the Order, Decision and Judgements below as an abuse of discretion without remand for David Garten to prove any further fee or alternatively limiting any remand solely to fees no greater than \$6, 413.35 and striking and enjoining David Garten and any attorney acting on his behalf from pursuing any fees beyond that amount in this case herein. It is further alternatively prayed for an Order granting a Written Opinion and Clarification of this Court's Orders and enabling the matter to be appealed to

the Florida Supreme Court and for such other and further relief as may be just and proper.

Dated June 21, 2016

Respectfully submitted,

/s/ Skender Hoti

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CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a copy of the foregoing has been served via email to dfitzgerald@waltonlantaff.com on Walton Lantaff Schroeder & Carson LLP 110 E. Broward Blvd. Suite 2000 Fort Lauderdale, Fl 33301-3503 on this 21st day of June 2016.

/s/ Skender Hoti

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