No. 21-815

In The
Supreme Court of the United States

RAYMOND H. PIERSON, III, M.D.,PRO SE
Petitioner,
v.
BRUCE S. ROGOW, J.D., BRUCE S. ROGOW, P.A.,
CYNTHIA GUNTHER, J.D., DOES 1 - 5
Respondents.

On Petition For A Writ of Certiorari
To The United States Court of Appeals
For The Eleventh Circuit

PETITION FOR REHEARING

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PETITION FOR REHEARING

The Petitioner herein respectfully moves this Court for an Order vacating its denial of the Petition for Writ of Certiorari entered on February 22, 2022 which in requested this Court's acknowledgement based upon the substantial evidence that has been presented that Dr. Pierson's Notice of Appeal was timely filed in the Eleventh Circuit Appellate Court and that his right of appeal does validly exist resulting in that Court having full jurisdiction over the appeal and 2) to grant the Petition with this Court then instructing the Eleventh Circuit Appellate Court to resume jurisdiction over the case:

I. In opposition to the Eleventh Circuit Appellate Courts December 7, 2020 ruling (Writ App. 2-3) later affirmed in the 4-15-2021 denial (Writ App. 1) of Dr. Pierson's 3-8-21 Motion for Reconsideration (Writ App. 47-82) that jurisdiction did not exist for the Court in the Appeal due to untimely filing of the Notice of Appeal (Writ App. 240-250) it is Dr. Pierson's position that the appeal was timely filed as a matter of law. The well documented facts which support timely filing of the Notice of Appeal along with the evidence to be reviewed below fully support the conclusion that the Appeal was terminated for review by the Eleventh Circuit with the express intent of eliminating the requirement for that Reviewing Court to have to address the evidence presented by Appellant of the exceptional

and adverse regional maldistribution of justice which exists in the Eleventh Circuit and with particularity the District Courts of Florida (Writ App. 198-202). Furthermore, that evidence strongly suggests that the Court terminated the Appeal in order to suppress discovery of the Lexis/Nexis database findings advanced by Appellant within his Initial Brief that provided exceptionally strong evidence of the existence of a practice of the quite frequent and substantive taking of the rights of civil litigants and with particular adverse impact on pleadings advanced by self-represented litigants which absolutely warrants review and action taken by the U.S. Judicial Conference (App 200a).

The Initial Appellant Brief which demonstrated indisputable evidence from a review of published caselaw in the Lexis/Nexis database from all Federal District Courts which provided full confirmation of an exceptional over-utilization of the use of the designation of cases as *"shotgun pleadings"*. That evidence resulted in an exceptional maldistribution of justice in the Eleventh Circuit supervised courts with the vast predominance of that type of case termination in the District Courts of Florida. These are related to the Florida District Court's misrepresentation and severe application of the Federal Rules of Civil Procedure especially Rule 8a(2) which has resulted

in the taking of the substantial rights of litigants in violation of 28 USC § 2072(b). The evidence of these abusive practices of the Florida District Courts was well-reviewed in the Initial Appellant Brief at issues #13 and #14 (Writ APP 169-170) and more expounded upon further in the body of the Brief (Writ APP 198-202). That data analysis demonstrated that 86% of case terminations as *shotgun pleadings* through all Federal District Courts nationally occurred in the Eleventh Circuit (3115 of 3620 cases) with 62% (1921 of 3115 cases) of those cases occurring in the State of Florida. The State of Florida accounted for 53% of all such case terminations nationally. This case at issue was also terminated as a *"shotgun pleading"* (Writ APP 14-21). There can be no question but that this evidence of a maldistribution of justice and misapplication of the Federal Rules in the South Florida District Courts represents the very *"chaos"* this Court predicted would occur in the Court's decision in *Sibbach v. Wilson & Co.,* 312 U.S. 13-14 (1941) which has been most recently advanced in the Court's decision in *Shady Grove Orthopedic Assoc., P.A. v. Allstate Ins. Co.,* 449 U.S. 393 (S. Ct. 2010).

In conclusion, it is Appellant's position supported by the decision to terminate the Appeal on unjustifiable jurisdictional grounds due to an unsupportable claim of untimely filing that

provides confirmation that the decision by the Eleventh Circuit to proceed in that manner confirms that the Court sought to fully suppress the evidence of those exceptional injustices and even to stop a full inquiry by the U.S. Judicial Conference as Dr. Pierson has requested. The evidence of these exceptional and unconstitutional injustices are fully in conflict with the instructions of the U.S. Congress as stated in the statutes [28 USC § 2072(b)] which requires that the federal rules *"shall not abridge, collapse or modify any substantive right"* and it is important that these concerns be addressed without delay by this Supreme Court of this Great Republic to restore the rights for the people.

In addition, there is evidence to support the conclusion that the denial of review of the Appeal was also motivated, in part, to avoid the significant charge advanced with substantial evidence in support the serial Judicial misconduct Dr. Pierson experienced as a pro se litigant in this litigation before both Article III Courts which had jurisdiction over this case during the 5.5 years it was before that Court. That Judicial misconduct included the original Article III Court's denial 6-22-2018) (APP 8-9) of Dr. Pierson's 6-19-2018 (APP 5-7) request for recusal of that Court from the case because of demonstrated inherent bias. Remarkably, that same Article III Court denied

(APP 13-14) Dr. Pierson's 7-18-2018 separate motion directed to the Chief Judge of the District Court of Florida (APP 10-12) to request leave of that Chief Judge to permit Dr. Pierson the opportunity to seek review of the assigned Article III Court under the authorization of the Judicial Conduct and Disability Act of 1980 (28 USC § 351-364). That presiding Chief Judge in no manner or form even responded to that lawful request supported by the Federal statutes thus denying Dr. Pierson any opportunity of that review. The fact that the very Article III Court which Dr. Pierson challenged the fitness to adjudicate the case was permitted to deny Dr. Pierson's request directed to the Chief Judge for outside review was and still remains totally unfathomable.

A. The facts supporting Dr. Pierson's claims against this original Article III Court included the Court's two prior improper Final Orders of Dismissals of the case that were successfully reversed on two appeals to the Eleventh Circuit:

    1. First successful appeal was on 4-18-2014 Case #14-11722-BB. This case was also referred to this Supreme Court with a Petition for Writ of Certiorari advanced under the Cohen Doctrine – Case #15-595 what advanced concerns with Judicial Conduct.

2. Second successful appeal #15-14575-BB which was also advanced under the Cohen Doctrine to this Court (Case #17-316). This appeal at question #2 requested review of the charge of Judicial Misconduct which the Appellate Court would not address because it was raised in the Reply Brief.
3. Dr. Pierson's request for recusal was also supported by the Court's failure to permit Dr. Pierson's two unopposed motions (APP 15-17 and APP 18-20) to Amend the Second Amended Complaint which was Dr. Pierson's *"No Forfeiture"* right under 5.1(d) to name as a defendant the U.S. Attorney General who had been inadvertently left off the Second Amended Complaint which advanced a constitutional challenge to the 1990 Revision of 28 USC § 1391 that eliminated a plaintiff's right as a choice of venue their districts of residence/domicile.
4. That failure was followed by the Court's dismissal of that constitutional challenge with prejudice (APP 21-43, 44-47).
5. Dr. Pierson subsequently filed five unopposed requests (APP 48-52, 53-55, 56-58, 61-64) to stay the case and to

permit interlocutory appeal of the dismissal of the above noted constitutional challenge. The Article III Courts remained completely non-responsive to all five (5) requests.

B. The original Article III Court one year later on 6-27-2019 moved to senior status and voluntarily removed himself from the case (Writ APP 31-32). That decision resulted in a new Article III Court being assigned to the case. That Court proceeded with multiple abusive rulings that demonstrated an absolute intent through the use of multiple improper rulings, to destroy the case as efficiently as possible.

3. Immediately on assignment to the case the Court denied Dr. Pierson's unopposed request for a twenty-one (21) day time extension (Writ APP 321-324) to file an opposition to Defendant's Motion to Dismiss (DE 93) despite the fact that over two months earlier (APP 325-326) Dr. Pierson had informed the Court of his and his Assistant's unavailability during the time period the Opposition became due. Defendant Counsel's also pre-announced unavailability (APP 325-326), but the Court in contrast approved the time extension for submission of their

requested time extension request (APP 33-34) which had resulted in the opposition being due when Dr. Pierson and his single assistant were both unavailable. As a result of the denial of the time extension request (Writ APP 29-30), Dr. Pierson was placed at an extreme disadvantage of having to file the opposition (APP 257-320) when he and his staff member were out of town with no reasonable availability. As a result, the opposition had to be submitted in an overlength, draft form in order to be able to file it by the Court's unreasonable deadline. Notice of that extreme duress that resulted due to the extreme inequity of the Court was stated at the end of the Opposition in a *"Notice to the Court"* (APP 319-320). At that time, Dr. Pierson had no resources or time available to file a separate motion for submission of an overlength brief. Remarkably, the Court later had the Opposition stricken in its entirety (APP 26-28) and proceeded with Dismissal/Judgment of the case (APP 6-7, 8-25) before Dr. Pierson could file his unopposed motion to file an Opposition of correct length (APP 251-256). Even more

astounding is the fact that the Article III Court in the Dismissal made multiple references to that *"stricken"* Opposition which had ceased to exist on the Court's earlier order.

In conclusion, the facts provided above confirm beyond any doubt that the two Article III District of South Florida Courts proceeded to adjudicate Dr. Pierson's case before the Court with extreme prejudice and absolute inherent bias. There was no civil justice granted Dr. Pierson and no element of pro se liberal construction as required by the directives of this Court.

II. The primary focus of the originally filed Petition for Writ of Certiorari was to request that this Supreme Court review the substantial evidence in the case and Appellate record that supports beyond any doubt that the Eleventh Circuit Appellate Panel's determination that jurisdiction for the Court did not exist because of an untimely filing of the Appeal represented frank error. The evidence presented strongly confirms timely filing of the Appeal. This evidence is again reviewed below:

1. The first point to make is that in this case in diversity with litigants on opposite coasts it is important to state

that Dr. Pierson a pro se litigant was denied electronic filing (APP 4).

2. Petitioner delivered the Notice of Appeal into the independent control of a third-party commercial carrier on 9-18-2019 (Writ APP 247-250) which would result in timely filing under the U.S. Supreme Court Rule 29(2) on that date. The differences which exists between the Supreme Court Rule 29(2) and FRAP(a)(2)(A)(i) results in a point of unnecessary confusion in the Federal Rules which is particularly perilous for pro se litigants unsophisticated in the law. That divergence should be correct by the Court. In addition, from the perspective that the Supreme Court provided in *Houston v. Lack, 487 U.S. 255, 272 (1988)* in which the Court's view that under the circumstances that the Legislature at 28 USC § 2107 did *"not define when a notice of appeal has been "filed" or designate the person with whom it must be filed"* it concluded that though *"notice must be directed to the Clerk of the District Court"* that did not require the interpretation that it had to be necessarily delivered directly to the Clerk. Thus, under the adverse service

conditions of that existed for Dr. Pierson in California and the need to file in the South Florida District Court which he had no physical access to the Clerk of Court due to the 3,000 mile distance and considering Dr. Pierson's late receipt of service seven (7) days post-docketing of the case termination documents, it is certainly reasonable for the delivery to the third-party commercial carrier on 9-18-2019 to be accepted as timely service. Irrespective of this point, it must be emphasized that there is no *"jurisdictional"* bar as stated by the Eleventh Circuit in the 12-7-2020 Dismissal (Writ APP 2-3) as this Supreme Court finds delivery on or before the last day for filing to a third-party commercial carrier to be timely.

3. A legitimate FRAP 4(a)(4)(A)(ii) & (iv) unopposed post-judgment motion was filed in the case (Writ APP 251-6) post-judgment on 9-19-2019 and was not denied by the Court until 8-22-2019 (Writ APP 4-5) which results in a reset of the earliest last day for service of the Notice of Appeal to be September 23, 2019. Though the post-judgment motion was misnamed there is no question that

the intent of the motion to restore the content of Dr. Pierson's Opposition (Writ APP 257-320) to the Defendant's Motion of Dismissal would represent a qualifying post-judgment FRAP 4(a)4(A) qualifying post-judgment Motion.

4. A last consideration concerns the fact that Dr. Pierson included a constitutional challenge to the 1990 Revision of 28 USC § 1391 which eliminated for plaintiffs in federal civil litigation the choice of venue selection in their districts of residence/domicile, in the Second Amended Complaint. At the time of that filing, Dr. Pierson inadvertently erred by failing to identify the U.S. Attorney General as the defendant on the constitutional question. On learning of that error shortly thereafter Dr. Pierson filed two unopposed motions for leave of Court to correct that default as authorized under the FRCP 5.1(d) *"No Forfeiture Clause"*. (APP 15-17 & APP 18-20). Despite those pending requests which should have been granted under that Federal Rule as a matter of right. The District Court then proceeded to Dismiss (APP 21-43 and 44-47) the constitutional challenge with prejudice.

Even more evidence of injustice and prejudice is demonstrated on the part of both Article III Courts on this issue to restore the constitutional challenge to the 1990 Revision of 28 USC § 1391 and to the U.S. Attorney General as a defendant.

> That is, despite Dr. Pierson's five (5) subsequent unopposed filings (APP 48-52, 53-55, 56-58, 61-64) to request the opportunity to both Article III Courts to proceed with an interlocutory pursuit of an Appeal to restore that constitutional challenge to the District Court case were remained completely silent through the time of case termination. Thus, in summary the District Courts fully ignored with no actions taken in any manner or from all seven (7) attempts by Petitioner to correct the error to add the U.S. Attorney General which was his absolute right as provided by the Legislature at FRCP 5.1(d).

That denial represents an exceptional manifest error. Thus, the only conclusion possible is that the U.S. Attorney General must lawfully be considered to have been a defendant in the lower Court case which would result in 28 USC § 2107(b) and FRCP 4(a)(1)(B) results in a full 60 days for Appeal notice.

5. It is an absolute fact that the many apparent errors by both the Clerk of the District Court of South Florida and the Clerk of the Eleventh Circuit to accept and maintain jurisdiction over the Appeal for almost fourteen (14) months before changing direction and denying jurisdiction denied Dr. Pierson his lawful right to apply for an extension of time for filing a Notice of Appeal under FRAP 4(a)5.

    - Clerk of the Eleventh Circuit also accepted and docketed the Appeal with a Notice mailed on 9-23-2019 assigning a case #19-13722. (APP 69-70)

- On 9-25-2019 the Clerk of the Eleventh Circuit sent a letter to Dr. Pierson stating that the date for the Initial Appellant Brief was 10-29-2019.
- Subsequent to those above noted matters the Eleventh Circuit proceeded with 13 separate Orders:

  10/21/19
  11/12/19
  12/3/19
  12/12/19
  12/22/19
  1/6/2020
  1/28/2020
  2/19/2020
  4/21/2020
  5/20/20
  6/8/2020
  7/29/2020
  8/11/2020

III. In the Interests of Justice

This Court has on rehearing vacated its denial of a petition for writ of certiorari, granted the petition, and reversed the judgment below where "the interests of justice" so required, and it has done so repeatedly. *Gondeck v. Pan American World Airways, Inc., 382*

U.S. 25, 26-27 (1965); United States v. Ohio Power Co., 353 U.S. 98, 99 (1957).

It is Petitioner's position that the evidence prescribed which demonstrates an exceptional over-use of the designation of *shotgun pleadings* by the Florida District Courts as well as the undisputable evidence that there was exceptional judicial misconduct by both District Courts involved with Dr. Pierson's case were principal factors in the Appellate Panel proceeding to deny the Appeal on improper jurisdictional grounds to suppress and prevent discovery and review of the information presented by the Judicial Council of the United States which is the oversight organization that Dr. Pierson requested (Writ APP 200) to review his findings and institute corrective measures.

CONCLUSION

Such an extensive list of Court occurrences to deny a litigant's substantive rights must be corrected by the Court either with an overextended time extension right or alternatively to resurrect the Unique Circumstances Doctrine to provide the necessary relief which would be to return the Notice of Appeal timely.

PRAYER FOR RELIEF

Dr. Pierson requests that the Court agree with the determination that his Appeal was timely filed and to remand the case to the Eleventh Circuit for prosecution of the Appeal.

Respectfully submitted,

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Pro Se Petitioner

CERTIFICATE OF COUNSEL

As Counsel pro se I hereby certify that this Petition for Rehearing is presented in good faith and not for delay and is restricted to the grounds specified in rule 44.2.

March 21, 2022

U.S. District Court - Southern District of Florida

Raymond H. Pierson III
3 Gopher Flat Rd.
Unit #7
Sutter Creek, CA 95685

Case: 0:15-cv-61312-WJZ #41 2 pages

IMPORTANT: REDACTION REQUIREMENTS AND PRIVACY POLICY

Note: This is NOT a request for information.

Thu May 24 11:21:06 2018

Do NOT include personal identifiers in documents filed with the Court, unless specifically permitted by the rules or Court Order. If you MUST include personal
identifiers, ONLY include the limited information noted below:

- Social Security number: last four digits only
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- Financial Account Numbers: last four digits only
- Date of Birth: year only
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- Home Address: city and state only (for criminal cases only).

Attorneys and parties are responsible for redacting (removing) personal identifiers from filings. The

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Any personal information included in filings will be accessible to the public over the internet via PACER.

For additional information, refer to Fed. R. Civ. P. 5.2 and Fed. R. Crim. P. 49.1.Also see the CM/ECF Administrative Procedures located on the Court's websitewww.flsd.uscourts.gov.

IMPORTANT: REQUIREMENT TO MAINTAIN CURRENT MAILING ADDRESS AND CONTACT INFORMATION

Pursuant to Administrative Order 2005-38, parties appearing pro se and counsel appearing pro hac vice must file, in each pending case, a notice of change of mailing address or contact information whenever such a change occurs. If court notices sent via the U.S. mail
are returned as undeliverable TWICE in a case, notices will no longer be sent to that party until a current mailing address is provided.

IMPORTANT: ADDITIONAL TIME TO RESPOND FOR NON-ELECTRONIC SERVICE

Additional days to respond may be available to parties serviced by non-electronic means. See Fed.R.Civ.P.6(d) Fed.R.Crim.P.45(c) and Local Rule 7.1(c)(1)(A). Parties are advised that the response deadlines automatically calculated in CMECF do

NOT account for and may NOT be accurate when service is by mail. Parties may NOT rely on response times calculated in CMECF, which are only a general guide, and must calculate response deadlines themselves.

Subject:Activity in Case 0:15-cv-61312-WJZ Pierson v. Rogow et al Order to Vacate This is an automatic e-mail message generated by the CM/ECF system. Please DO NOT RESPOND to this e-mail because the mail box is unattended.

NOTE TO PUBLIC ACCESS USERS Judicial Conference of the United States policy permits attorneys of record and parties in a case (including pro se litigants) to receive one free electronic copy of all documents filed electronically, if receipt is required by law or directed by the filer. PACER access fees apply to all other users. To avoid later charges, download a copy of each document during this first viewing. However, if the reference document is a transcript, the free copy and 30 page limit do not apply.

U.S. District Court
Southern District of Florida
Notice of Electronic Filing

The following transaction was entered on 5/24/2018 11:04 AM EDT and filed on 5/24/2018
Case Name: Pierson v. Rogow et al
Case Number: 0:15-cv-61312-WJZ
Filer: Document Number: 41

41(No document attached)

Docket Text:
PAPERLESS ORDER granting [28] Plaintiff's Motion in Response to the Court Order, which this Court construes as a Motion to Reconsider. Plaintiff's request to file and receive notices electronically
is hereby determined to be withdrawn and the accompanying Order [27] is vacated. Plaintiff shall henceforth file and receive all documents conventionallyin accordance with the Local Rules.

Signed by Magistrate Judge Patrick M. Hunt on May 24, 2018. (hhr)

Case 0:15-cv-61312-UU Document 49 Entered on FLSD Docket 06/19/2018 Page 1 of 13

IN THE UNITED STATES DISTRICT COURT SOUTHERN DISTRICT OF FLORIDA

CASE NO.: 0:14-cv-61312

Raymond H. Pierson, III, M.D., Pro Se
Plaintiff,

vs.

Bruce S. Rogow, J.D.;
Bruce S. Rogow, PA;
Cynthia Gunther, J.D.;
And Does 1 through 5, inclusive,
Defendants.

PLAINTIFF MOTION TO REQUEST THAT THE ARTICLE III DISTRICT COURTJUDGE ASSIGNED TO THIS CASE VOLUNTARILY RECUSE HIMSELF FROM FURTHER INVOLVEMENT IN THESE PROCEEDINGS PERMITTING THE CASETO BE RE-ASSIGNED TO THE COURT OF AN ALTERNATIVE ARTICLE III FEDERAL JUDGE

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Plaintiff Motion to Request that the Article III District Court Judge Assigned to this Case Voluntarily Recuse Himself from Further Involvement in these Proceedings Thus Permitting the Case to be Re-Assigned to the Court of an Alternative Article III Federal Judge

Plaintiff recognizes that he has a statutory right to continue in these proceedings in the Federal District Court of South Florida in an unbiased Court. For multiple valid reasons that will go unstated at this time, it is Plaintiffs firm belief that it is constitutionally and statutorily impermissible to continue these proceedings without re-assignment of this case to an alternative Article III Court. The reasons though not stated, can quite easily be gleaned from the tortious four year course of the original filed case and this subsequent *"new"* case through the Federal District Court of South Florida and through two successful appeals to the Eleventh Circuit Court of Appeals which were followed in each instance with Petitions for Writ of Certiorari to the U.S. Supreme Court. A detailed discussion of the reasoning behind this Motion will be provided if requested by the Court. Under the facts and circumstances of these cases which are well known to this Court,

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF FLORIDA
CASE NO. 15-61312-CIV-ZLOCH

RAYMOND H. PIERSON, III, Plaintiff,
vs.
BRUCE S. ROGOW, et al.,
Defendants.

ORDER

THIS MATTER is before the Court upon Plaintiff's Motion To Request That The Article III District Court Judge Assigned To This Case Voluntarily Recuse Himself From Further Involvement In These Proceedings Permitting The Case To Be Re-Assigned To The Court Of An Alternative Article III Federal Judge (DE 49). The Court has carefully reviewed said Motion, the entire court file and is otherwise fully advised in the premises.

Accordingly, after due consideration, it is

ORDERED AND ADJUDGED that Plaintiff's Motion To Request That The Article III District Court Judge Assigned To This Case Voluntarily Recuse Himself From Further Involvement In These Proceedings Permitting The Case To Be Re-Assigned To The Court Of An Alternative Article III Federal Judge (DE 49) be and the same is hereby DENIED.

DONE AND ORDERED in Chambers at Fort Lauderdale, Broward County, Florida, this 21st day of June, 2018.

WILLIAM J. ZLOCH
Sr. United States District Judge

IN THE UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF FLORIDA

CASE NO.: 0:14-cv-61312

Raymond H. Pierson, III, M.D., Pro Se
Plaintiff,

vs.

Bruce S. Rogow, J.D.;
Bruce S. Rogow, PA;
Cynthia Gunther, J.D.;
And Does 1 through 5, inclusive,
Defendants.

PLAINTIFF MOTION FOR LEAVE OF THE CHIEF JUDGE OF THE UNITED STATES DISTRICT COURT FOR THE SOUTHERN DISTRICT OF FLORIDA TO PERMIT PLAINTIFF TO SUBMIT A MOTION TO THE COURT REQUESTING REVIEW BY THE CHIEF JUDGE OF THE DENIAL OF PLAINTIFF'S RECENT MOTION REQUESTING VOLUNTARY RECUSAL OF THE ARTICLE III JUDGE CURRENTLY ASSIGNED TO THIS CASE (DOC. 50)

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Plaintiff Motion for Leave of the Chief Judge of the United States District Court for Southern District of Florida to Permit Plaintiff to Submit a Motion to the Court to Request Review by the Chief Judge of the Denial of Plaintiff's Recent Motion Requesting Voluntary Recusal of the Article III Judge Currently Assigned to this Case (Doc 50)

Plaintiff respectfully requests that the Chief Judge of the United States District Court for the Southern District of Florida permit Plaintiff the opportunity to submit a Motion to the Court requesting a review of the continued participation of the Article III Judge in this case. That Article III Judge was assigned to the originally filed case at the time of case transfer under 28 § USC 1406(a) from the United States District Court for the Eastern District of California on February 4. 2014. Plaintiff holds the position which is well supported by the facts of the case that the criteria currently exists for removal of the assigned Article III Judge under the conditions established by the Judicial Conduct and Disability Act of 1980 (28 § USC 351-364) as interpreted by the Breyer Committee in 2006 which were later promulgated by the Judicial Conference on March 11, 2008 and most recently amended on September 17, 2015.

Furthermore, Plaintiff also holds the well supported position that under the *"Reasonable Person Test"* standard which applies under 28 § USC 455 (a) that the Article III Judge currently assigned to this case is required by law to voluntarily recuse himself from further involvement in these proceedings. Despite that *"reasonable person"* standard which applies *"in which his impartiality might reasonably be questioned"* the currently assigned Article III Judge stands in conflict with the law as demonstrated by his refusal to voluntarily step aside. This Motion is submitted to the Chief Judge of the United States District Court for the Southern District of Florida for the purpose of requesting leave of the Court to permit Plaintiff the opportunity to submit a Motion to the Court which fully reviews the legal grounds which support removal of the currently assigned Article Ill Judge from further involvement in these proceedings.

Respectfully submitted,

Raymond H. Pierson, III, M.D.

7-6-18

Date

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF FLORIDA

CASE NO. 15-61312-CIV-ZLOCH

RAYMOND H. PIERSON, III,
Plaintiff,
vs.

BRUCE s. ROGOW, et al.,

Defendant.

ORDER

THIS MATTER is before the Court upon Plaintiff's Motion Requesting A Temporary Stay Of The Case Proceedings While Plaintiff Seeks Review By The Chief Judge Of The United States District CourtFor The Southern District Of Florida Of The Denial Of Plaintiff's Recent Motion To Request That The Article III District Court JudgeCurrently Assigned To This Case Voluntarily Recuse Himself From Further Involvement In These Proceedings (DE 52) and Plaintiff's Motion For Leave Of The Chief Judge Of the United States District Court For The Southern District Of Florida To Permit Plaintiff ToSubmit A Motion To The Court Requesting Review By The Chief Judge Of The Denial Of Plaintiff's Recent Motion Requesting Voluntary Recusal Of The Article III Judge Currently Assigned To This Case (DE 53).

The Court has carefully reviewed said Motions, the entire court file and is otherwise fully advised in the premises.

Accordingly, after due consideration, it is **ORDERED AND ADJUDGED** that Plaintiff's Motion Requesting A Temporary Stay Of The Case Proceedings While Plaintiff Seeks Review By The Chief Judge Of The United States District Court For The Southern District Of Florida Of The Denial Of Plaintiff's Recent Motion To Request That The Article III District Court Judge Currently Assigned To This Case Voluntarily Recuse Himself From Further Involvement In These Proceedings (DE 52) and Plaintiff's Motion For Leave Of The Chief Judge Of the United States District Court For The Southern District Of Florida To Permit Plaintiff To Submit A Motion To The Court Requesting Review By The Chief Judge Of The Denial Of Plaintiff's Recent Motion Requesting Voluntary Recusal Of The Article III Judge Currently Assigned To This Case (DE 53) be and the same are hereby **DENIED.**

DONE AND ORDERED in Chambers at Fort Lauderdale, Broward County, Florida, this 12TH day of July, 2018.

WILLIAM J. ZLOCH
Sr. United States District Judge

IN THE UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF FLORIDA
CASE.: 0:14-cv-61312

Raymond H. Pierson, III, M.D., Pro Se
Plaintiff,

vs.

Bruce S. Rogow, J.D.;
Bruce S. Rogow, PA;
Cynthia Gunther, J.D.;
And Does 1 through 5, inclusive,
Defendants.

PLAINTIFF UNOPPOSED MOTION FOR LEAVE OF THE COURT TOAMEND THE SECOND AMENDED COMPLAINT

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Plaintiff Unopposed Motion for Leave of the Court to Amend the Second Amended Complaint

Pro Se Plaintiff requests leave of the Court to compose and file an Amended Complaintin this matter of Raymond IL Pierson, I I I v. Bruce S. Rogow, J.D et al. case #15-cv-61312.

Plaintiff acknowledges his steep learning curve as it relates to this filing of a Complaint under Federal diversity of citizenship jurisdiction. Though plaintiff fully maintains the position that thepleadings on all counts are sufficient as it relates to the existing Federal pleading standards, he has developed important insights with respect to any deficiencies of the pleadings that may be perceived to exist as presented in the Second Amended Complaint. As a result of that perspective and insights, Plaintiff now formally requests leave of the Court to file a *Third Amended Complaint.* The nature of this Motion has been presented to opposing Counsel via email correspondence. Opposing Counsel, Attorney Tara Campion, responded via email at 11:21 A.M. today, September 6, 2018, stating *"no objection";* however, she did point out that *"iiis unorthodox to amend while the motion is under consideration by the Court".* (See attached email exchange) Based on the above non-opposition and as authorized under Federal Rule of Civil Procedure, Rule I 5 (a)(2), Plaintiff advances this Motion to the Court for amendment of the pleadings which the Rule authorizes *"the court should freely give leave when justice so requires".* In addition, this request is advanced as authorized under Rule 15 (c) (1) (B) and (C)

for the purpose of correcting a deficiency in the pleading in *"the naming the party againstwhom a claim is asserted"*.

Plaintiff respectfully prays that this Court grant this request and permit submission of a Third Amended Complaint within 21-days of the granting of the Motion.

Respectfully submitted,
Raymond H. Pierson, III, M.D.

9-6-18

Date

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THE UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF FLORIDA
CASE

Raymond H. Pierson, III, M.D., Pro Se
Plaintiff,

vs.

Bruce S. Rogow, J.D.;
Bruce S. Rogow, PA;
Cynthia Gunther, J.D.;
And Does 1 through 5, inclusive,
Defendants.

PLAINTIFF SECOND REQUEST FOR UNOPPOSED MOTION FORLEAVE OF THE COURT TO AMEND COMPLAINT

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Plaintiff Second Request for Unopposed Motion for Leave of the Court to Amend Complaint

Pro Se Plaintiff Raymond H. Pierson, III M.D., as a prose litigant, since the time of the filing of the Second Amended Complaint on February 20, 2018, has become better informed as to

requirements of the federal pleading standards. It should be emphasized to the Court that the original Eleventh Circuit Appellate Court's decision of December 31, 2014 (Case #14-11722) toremand the original First Amended Complaint as a "new case", results in the circumstances that the named Second Amended Complaint filed on February 20, 2018 in this matter was, in fact, not a Second Amended Complaint in the "new case" remanded to the South Florida District Court but truly a First Amended Complaint to that "new case" created by the Eleventh Circuit Appellate Court's December 31, 2014 decision.

Despite the fact that Dr. Pierson believes the pleadings that have been filed are more than sufficient under the elevated Twombly and Iqbal standards (as established by the U.S. Supreme Court) to permit advancement of this case on all counts, the new and enhanced perspective which this pro se Plaintiff now has on the optional method for the writing of such a Complaint under Federal Court jurisdiction as well as his better understanding of the required elements of pleadings for those federal standards has permitted new insights which have created the opportunity and ability to make legally meaningful improvements in the pleading. As a result, this pro se Plaintiff believes the

opportunity to amend the complaint to make these modifications and improvements should be permitted before the Court proceeds with the filing of a *Report and Recommendations*. As cited in the September 7, 2018 Request to Amend under Federal Rule of Civil Procedure, Rule 15 (a)(2) and Rule 15 (c)(l) (B) and (C), there will be no prejudice to opposing counsel who voiced no opposition to the filing of the Amended Complaint before the Court's *Record and Recommendation* which has not occurred to this date.

For the reasons expounded above, Dr. Pierson again advances this request to the Court and prays that the Court grant this request to submit an Amended Complaint with a period of 28 days from the time of the Court's granting of the Leave to Amend to file that amended complaint.

Respectfully submitted,
Raymond H. Pierson, III, M.D.

10-11-2018

Date

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UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF FLORIDA

CASE NO. 15-61312-CIV-ZLOCH

RAYMOND H. PIERSON, III,
Plaintiff,
vs.

BRUCE s. ROGOW, et al.,

Defendant.

REPORT AND RECOMMENDATION

This matter is before this Court on Defendants' Motion to Dismiss Plaintiff's Second Amended Complaint, ECF No. 32, and Plaintiff's Motions to Amend, ECF No. 59, 61. The Honorable William J. Zloch previously referred this case to the undersigned for disposition of all pre-trial non-dispositive motions and a report and recommendation concerning disposition of all dispositive motions. ECF No. 22; see also 28 U.S.C. § 636(b); S.D. Fla. Mag. R. 1. Having carefully reviewed the Motions, any response, oral argument, the entire case file, and applicable law, and being otherwise fully advised in the premises, the undersigned hereby RECOMMENDS that

Defendants' Motion to Dismiss be GRANTED, and Plaintiff's Motions to Amend be GRANTED.

Background

Plaintiff, a physician, is suing his appellate attorneys due to the attorneys' alleged mishandling of Plaintiff's appeal. The case underlying the appeal stemmed from sanctions imposed on Plaintiff by his then-medical group. Plaintiff is also bringing a constitutional challenge to the change of venue statute that allowed Defendants to bring the case here rather than in California, where Plaintiff lives and where the case was initially filed. Defendants now file their Motion to Dismiss Plaintiff's Second Amended Complaint.

Legal Standard

> "To survive a motion to dismiss [under Rule 12(b)(6)], a complaint must contain sufficient factual matter, accepted as true, to 'state a claim to relief that is plausible on its face.'" *Ashcroft v. Iqbal*, 556 U.S. 662, 678 (2009) (alteration added) (quoting *Bell Atl. Corp. v. Twombly*, 550 U.S. 544, 570 (2007)). Although this pleading standard "does not require 'detailed factual allegations,' ... it demands more than an unadorned, the-

defendant- unlawfully-harmed-me accusation." *Id.* (alteration added) (quoting *Twombly*, 550 U.S. at 555). Pleadings must contain "more than labels and conclusions, and a formulaic recitation of the elements of a cause of action will not do." *Twombly*, 550 U.S. at 555 (citation omitted). Indeed, "only a complaint that states a plausible claim for relief survives a motion to dismiss." *Iqbal*, 556 U.S. at 679 (citing *Twombly*, 550 U.S. at 556).

To meet this "plausibility standard," a plaintiff must "plead[ ] factual content that allows the court to draw the reasonable inference that the defendant is liable for the misconduct alleged." *Id.* at 678 (alteration added)(citing *Twombly*, 550 U.S. at 556). "The mere possibility the defendant acted unlawfully is insufficient to survive a motion to dismiss." *Sinaltrainal v. Coca- Cola Co.*, 578 F.3d 1252, 1261 (11th Cir. 2009) (citation omitted), *abrogated on other grounds by Mohamad v. Palestinian Auth.*, 566 U.S. 449 (2012).

On a motion to dismiss, a court construes the complaint in the light most favorable to the plaintiff and accepts its factual allegations as true. *SeeBrooks v. Blue*

> *Cross & Blue Shield of Fla., Inc.*, 116 F.3d 1364, 1369 (11th Cir. 1997) (citing *SEC v. ESM Grp., Inc.*, 835 F.2d 270, 272 (11th Cir. 1988)). Unsupported allegations and conclusions of law, however, will not benefit from this favorable reading. *See Iqbal*, 556 U.S. at 679 ("While legal conclusions can provide the framework of a complaint, they must be supported by factual allegations."); *see also Sinaltrainal*, 578 F.3d at 1260 ("[U]nwarranted deductions of fact in a complaint are not admitted as true for the purpose of testing the sufficiency of [a] plaintiff's allegations." (alterations added; internal quotation marks omitted) (quoting *Aldana v. Del Monte Fresh Produce, N.A., Inc.*, 416 F.3d 1242, 1248 (11th Cir. 2005); other citation omitted)).

Arias v. Integon Nat'l Ins. Co., No. 18-22508-CIV, 2018 WL 4407624, at *2–3 (S.D. Fla. Sept. 17, 2018).[1]

> 864 (11th Cir. 2008) (citations omitted).

Plaintiff, however, is a pro se complainant. The undersigned notes that

> [a] document filed *pro se* is "to be liberally construed," *Estelle* [*v. Gamble*], 429 U.S. [97,] 106 [(1976)], and "a *pro se* complaint, however inartfully pleaded, must be held to less stringent standards than formal pleadings drafted by lawyers," *ibid.* (internal quotation marks omitted). *Cf.* Fed. Rule Civ. Proc. 8(f) ("All pleadings shall be so construed as to do substantial justice").

Erickson v. Pardus, 551 U.S. 89, 94 (2007).

Nonetheless, "[d]espite the leniency afforded pro se plaintiffs, the district court does not have license to rewrite a deficient pleading." *Osahar*, 297 F. App'x at 864. Indeed, "[a] *pro se* litigant must nevertheless 'conform to procedural rules.'" *Houman v. Lewis*, No. 09-82271-CIV, 2010 WL 2331089, at *1 (S.D. Fla. June 10, 2010) (quoting *Loren v. Sasser,* 309 F.3d 1296, 1304 (11th Cir.2002)). The undersigned finds that Plaintiff's Complaint, as written, fails to do so.

In *Osahar*, the Court dismissed a 62-page "'shotgun' pleading replete with factual allegations and rambling legal conclusions." *Osahar*, 297 F. App'x at 864 (citing *StrategicIncome Fund, L.L.C. v. Spear, Leeds & Kellogg Corp.,* 305 F.3d 1293, 1295-

96 (11th Cir.2002)). That Court found that "to force the parties and the court to sift through an additional 100 pages of letters, reports, and contracts would frustrate the purpose of Rule 8(a)(2)." *Id.*

The undersigned finds that Plaintiff's 82-page Complaint, with its 42-page exhibit attachment, is similarly deficient. Much of the Complaint is a lengthy recitation of the events leading up to the present case, including Plaintiff's own history as well as that of the underlying case that gave rise to Plaintiff's appeal. As Plaintiff is pro se, some excess in the pleadings should be overlooked. However, Plaintiff's Complaint often appears to be more of an attempt to re-litigate the underlying case than a short and plain statementof the claim showing Plaintiff is entitled to relief.

Likewise, Plaintiff's Complaint fails to state his claims with the requisite specificityas to which Defendant committed the errors alleged.

> [A] *pro se* plaintiff must file a complaint containing "sufficient factual matter, accepted as true, to state a claim to relief that is plausible on its face. A claim has facial plausibility when the pleaded factual content allows the court to draw the reasonable inference that the defendant is

> liable for the misconduct alleged." *Anderson v. Ward,* No. 09–15678, 2010 WL 1544604, at *1 (11th Cir. Apr.19, 2010) (quoting *Ashcroft v. Iqbal,* —— U.S. ——, — — – ——, 129 S.Ct. 1937, 1949–50, 173 L.Ed.2d 868) (citations and internal quotations omitted).

Houman, 2010 WL 2331089, at *1.

Here, Pierson merely alleges that "Rogow et al.," *i.e.* all Defendants – including five individuals known only as Jane or John Doe – committed all of the wrongs alleged. It is unclear from the pleadings in what capacities the Defendants worked on Plaintiff's case. A blanket accusation that all Defendants – including unknown individuals who mayor may not be attorneys – committed a series of legal errors simply does not give rise toa reasonable inference that the individuals accused are liable for the misconduct alleged.

For these reasons, Plaintiff's Second Amended Complaint is deficiently pleaded under the Federal Rules. However, assuming, *arguendo,* that Defendants could be determined, and considering Plaintiff's pending Motions to Amend his Complaint, the undersigned also addresses Plaintiff's allegations on the merits. As this Court

reads Plaintiff's Complaint, he alleges five causes of action. Each cause will be addressed in order.

I. First Cause of Action: Legal Malpractice

"A legal malpractice cause of action is comprised of three elements: (1) the attorney's employment; (2) the attorney's neglect of a reasonable duty; and (3) proof that the neglect of a reasonable duty is the proximate cause of a loss to the client." *Resolution Tr. Corp. v. Holland & Knight*, 832 F. Supp. 1528, 1530 (S.D. Fla. 1993). With respect to the third element, i.e., proximate cause, "the client has to prove that she would have prevailed on the underlying action but for the attorney's negligence." *Tarleton v. Arnstein & Lehr,* 719 So.2d 325, 328 (Fla. 4th DCA 1998). Stated differently, "the attorney must be the proximate cause of the adverse outcome of the underlying action which results in damage to the client." *Steffen v. Akerman Senterfitt,* No. 804CV1693T24MSS, 2005 WL3277894, at *6 (M.D. Fla. Dec. 2, 2005) (citing *Silverstone v. Edell,* 721 So.2d 1173, 1175(Fla.1998)).

Plaintiff alleges under each cause of action several "counts." This Court reads the "counts" as different theories under which Plaintiff believes Defendants committed the overarching cause of action.

Regarding his legal malpractice claim, Plaintiff first alleges that Defendants consistently failed to meet deadlines and required multiple time extensions during the appeal. However, so long as such a request is adequately filed and granted, as appears to have been the case here, there would be no prejudice to the client. Accordingly, simply requesting extensions, in and of itself, fails to rise to the levelof malpractice.

Plaintiff next alleges that he was not allowed time to properly review the briefs and comment on them. Defendants argue that even were this to be the case, Plaintiff fails to show how this caused Plaintiff's damages, namely that Plaintiff's appeal was lost. The undersigned agrees with Defendants on this point, as it is at best speculative that the outcome would have been different were Plaintiff able to further review and comment onthe briefs.

Indeed, this is a problem plaguing many of Plaintiff's arguments. Notably, the undersigned is conscious of the maxim that it is not for this Court to second-guess reasonable professional judgments or impose a duty on attorneys to raise every colorable claim suggested by a client. *Jones v. Barnes*, 463 U.S. 745, 754 (1983). However, even were this Court convinced to do so, Plaintiff's Complaint regularly fails to adequately identify the specifics of the alleged omissions, and, importantly,

how the inclusion of those omissions would have changed the appellate panel's mind. Instead, Plaintiff consistently merely asserts that had the facts he wanted raised been raised, he would have won. That he did not win, Pierson appears to claim, is proof that the representation was inadequate. Such a "defendant-unlawfully-harmed-me" allegation is, without more, simply too broad to state a claim.

Some of the difficultly appears to stem from a misunderstanding regarding the nature of appellate litigation. For instance, Plaintiff at one point states that "[a]t an absolute minimum, there was a requirement for Rogow et al. to present [particular] issues to the Appellate court in as complete and as effective manner as they were presented to the District Court." ECF No. 30 at 52, ¶ 54. Plaintiff seemingly alleges that because Defendants failed to present what appears to be every argument lost in the District Court again on appeal, Defendants committed malpractice.

However, it is clear appellate attorneys need not include every colorable claim. Indeed, "[a] brief that raises every colorable issue runs the risk of burying good arguments

– those that, in the words of the great advocate John W. Davis, 'go for the jugular' – in a verbal

mound made up of strong and weak contentions." *Jones*, 463 U.S. at 752–53. (footnote and internal citations omitted). The need to focus appellate arguments is made clear in the Federal Rules of Appellate Procedure, which limit a principal brief to 30 pages. Fed. R. App. P. Rule 32(a)(7). A quick examination of recent Eleventh Circuit oral argument calendars shows that appellate argument is often limited to 15 minutes per side. Such rules demonstrate the need for appellate arguments to be focused and precise, and prohibit the kind of "kitchen sink" approach Plaintiff appears to believe his appellate attorney should have pursued.

Given the strictures of appellate arguments, Plaintiff's expectation that practically every claim decided against him in the District Court should have been relitigated at the appellate level is unreasonable. Further, although it is possible, it is unlikely that every count dismissed in the District Court was dismissed in error, and it is the appellate attorney's duty to separate the wheat from the chaff. Even were every count dismissed in error, to survive a Motion to Dismiss alleging malpractice a Plaintiff must include more than mere conclusions that had an argument been presented it would have been successful. Although voluminous, Plaintiff's Complaint suffers from a distinct lack of meat on the bone, and consistently

fails to include facts demonstrating that, had Plaintiff's underlying claims been advanced, the outcome would have been different.

Indeed, even claims that appear colorable on their face, such as that defendants in the underlying case were negligently omitted on appeal, fail because of Plaintiff's inadequate pleading. Although such an omission could certainly give rise to a malpractice claim, Plaintiff does not adequately specify the circumstances surrounding those defendants, and, importantly, how their inclusion in the appeal would have led to a reversal of the District Court's summary judgment decision. Such questions must be answered to allow a court to adequately determine whether a colorable claim has been alleged on these grounds. As Plaintiff's Complaint consistently fails to do so, his first cause of action should be dismissed.

II. Second Cause of Action: Breach of Fiduciary Duty

Plaintiff next alleges that the actions described in the first cause of action also qualify as a breach of fiduciary duty. In addition, Plaintiff claims that Defendants' refusal to listen to Plaintiff's instructions regarding the issues to be advanced constitutes a breach. Although a breach

of fiduciary duty claim could seem duplicative of a legal malpractice claim, the Federal Rules and Florida law allow both claims to go forward in the alternative. *See* Fed. R. Civ. P. 8(e)(2); *Resolution Tr. Corp. v. Holland & Knight*, 832 F. Supp. 1528, 1531–32 (S.D. Fla. 1993); *Brenner v. Miller*, No. 09-60235-CIV, 2009 WL 1393420, at *1 (S.D. Fla. May 18, 2009).

in error, to survive a Motion to Dismiss alleging malpractice a Plaintiff must include more than mere conclusions that had an argument been presented it would have been successful. Although voluminous, Plaintiff's Complaint suffers from a distinct lack of meat on the bone, and consistently fails to include facts demonstrating that, had Plaintiff's underlying claims been advanced, the outcome would have been different.

Indeed, even claims that appear colorable on their face, such as that defendants in the underlying case were negligently omitted on appeal, fail because of Plaintiff's inadequate pleading. Although such an omission could certainly give rise to a malpractice claim, Plaintiff does not adequately specify the circumstances surrounding those defendants, and, importantly, how their inclusion in the appeal would have led to a reversal of the District Court's summary judgment decision. Such questions must be answered to allow a court

to adequately determine whether a colorable claim has been alleged on these grounds. As Plaintiff's Complaint consistently fails to do so, his first cause of action should be dismissed.

III. Second Cause of Action: Breach of Fiduciary Duty

Plaintiff next alleges that the actions described in the first cause of action also qualify as a breach of fiduciary duty. In addition, Plaintiff claims that Defendants' refusal to listen to Plaintiff's instructions regarding the issues to be advanced constitutes a breach. Although a breach of fiduciary duty claim could seem duplicative of a legal malpractice claim, the Federal Rules and Florida law allow both claims to go forward in the alternative. *See* Fed. R. Civ. P. 8(e)(2); *Resolution Tr. Corp. v. Holland & Knight*, 832 F. Supp. 1528, 1531–32 (S.D. Fla. 1993); *Brenner v. Miller*, No. 09-60235-CIV, 2009 WL 1393420, at *1 (S.D. Fla. May 18, 2009).

"Under Florida law, there are three elements of breach of fiduciary duty: 'the existence of a fiduciary duty, a breach of that duty, and plaintiff's damages proximately caused by the breach.'" *Fed. Deposit Ins. Corp. for Orion Bank of Naples, Fla. v.*

Nason Yeager Gerson White & Lioce, P.A., No. 213CV208FTM38UAM, 2013 WL 12200968, at *6 (M.D. Fla. July 22, 2013) (citing *Gracey v. Eaker*, 837 So. 2d 348, 353 (Fla. 2002). However, "[a]lthough breach of fiduciary duty and professional negligence are separate causes of action under Florida law, courts analyze the elements of neglect of duty and proximate cause in the same way under both theories." *Id.* at *8 (citing *Resolution Trust*, 832 F. Supp. at 1532). Accordingly, Plaintiff's Complaint is deficient on this count for largely the same reasons that Plaintiff's Complaint fails to allege legal malpractice. Inasmuch as Plaintiff alleges that counsel failed to pursue certain legal arguments, he fails to adequately demonstrate how those pursuits would have changed the outcome. Accordingly, Plaintiff's second cause of action should also be dismissed.

l. Third Cause of Action: Breach of Contract

A breach of contract claim consists of (1) the existence of a valid contract betweenthe parties; (2) a material breach; and (3) damages. *Galison v. Fireman's Fund Ins. Co.*, No. 10-81522-CIV, 2011 WL 3419620, at *2 (S.D. Fla. Aug. 4, 2011). Courts have

recognized "some overlap" in the facts relevant to legal malpractice, breach of fiduciary duty, and breach of contract claims. *Brenner*, 2009 WL 1393420 at *2. Still, Florida courts have recognized that all three can be brought together. *Id.* As far as legal malpractice and breach of contract, "those claims are distinct because even if the court were to conclude that the Defendants exercised due care in providing their legal services, the court could still find that the Defendants failed to provide Plaintiff with the full legal services set forth in the retainer agreement." *Id.*

Plaintiff here alleges that Defendants breached the contract, in that Defendants contracted "for All the Proceedings in the Court of Appeals." Plaintiff argues that under that language, Defendants' failure to file a petition for rehearing constitutes a breach. On the surface, this claim would appear to suffer the same issues as its counterparts. However, the undersigned believes the damages here are of a different nature than those discussed above.

"The underlying purpose of damages in actions premised on a breach of contract is to place the non-breaching party in the same position it would have occupied if the contract had not been breached." *Allapattah Servs., Inc. v. Exxon Corp.*, 61 F. Supp. 2d 1326, 1328 (S.D. Fla. 1999). Here,

rather than having to show that but for Defendants' alleged breach, Plaintiff would have prevailed, Plaintiff must merely show there was a benefit he was entitled to that he was denied because of the alleged breach. Plaintiff claims there was an understanding that the contract guaranteed the filing of a petition for rehearing, which was not filed by any Defendant. Defendants counter that such a filing would have been frivolous, a claim Plaintiff vigorously denies. Although it is true that attorneys cannot be required to file frivolous petitions, whether such a petition would have been so, and indeed whether Plaintiff was so promised, are not properly before this Court on a Motion to Dismiss where Plaintiff's allegations are taken as true. Still, despite having the outlines of a plausible claim, Plaintiff's Complaint on this point also suffers from a lack of specificity as to which Defendants engaged in particular behaviors regarding the contract, and accordingly should be dismissed.

IV. Fourth Cause of Action: Fraud

Although titled "Fraud," Plaintiff here appears to be alleging fraudulent inducement, in that he claims Defendants falsely represented themselves as competent lawyers to induce him into an exorbitant payment for shoddy services.

> Under Florida law, in an action for fraudulent inducement, the plaintiff must show (1) a false statement of a material fact; (2) that the defendant knew or should have known was false; (3) that was made to induce the plaintiff to enter into a contract; and (4) that proximately caused injury to the plaintiff when acting in reliance on the misrepresentation.

In re Biddiscombe Int'l, L.L.C., 392 B.R. 909, 914–15 (Bankr. M.D. Fla. 2008) (citations omitted).

In examining a fraud allegation, a "court must apply Rule 9(b) which requires that: 'In all averments of fraud or mistake, the circumstances constituting fraud or mistake shall be stated with particularity.'" *NCR Credit Corp. v. Reptron Elecs., Inc.*, 155 F.R.D. 690, 692 (M.D. Fla. 1994). "The purpose of Rule 9(b) is to ensure defendants have notice of the conduct complained of, so they have sufficient information to formulate a defense. Essentially, a plaintiff satisfies Rule 9(b) by alleging who, what, when, where, and how." *Trinity Graphic, USA, Inc. v. Tervis Tumbler Co.*, 320 F. Supp. 3d 1285, 1294 (M.D. Fla. 2018) (citation and quotations omitted).

As outlined above, Plaintiff's Complaint suffers from a general lack of specificity that carries over into his fraud count. The details of who said what, when, and in what context, are largely undefined in the Complaint. Indeed, many of the allegations appear to be of the type that "Defendants led Plaintiff to believe they would do something and did not do it to Plaintiff's satisfaction." This is not the stuff of a fraud claim.[2]

Additionally, as mentioned above, there is significant confusion regarding certain sanctionable issues on appeal that Plaintiff alleges he was kept in the dark about. Although Plaintiff alleges these were "significant to the appeal" and that Defendants allegedly "went to great lengths" to hide them, it is unclear what, exactly, these issues were, and to what lengths Defendants went in concealing them. Again, without more, Plaintiff's Complaint is simply deficient.

There is, however, a slight exception to the above. In Paragraphs 65 and 66, Plaintiff identifies specific statements made at certain times in emails to Plaintiff. ECF No. 72. Plaintiff alleges these were made in an attempt to avoid certain promised duties and to hide Defendants' significant legal errors. While this allegation, again, too broadly describes the perpetrators, it at least approaches the level of specificity required to survive a Motion

to Dismiss. Plaintiff's allegation fails, however, to show how he relied on the alleged misinformation, nor does it identify a cognizable injury, as Plaintiff ultimately filed his unsuccessful Petition for Rehearing En Banc. Accordingly, Plaintiff's fraud counts should also be dismissed.

V. Request for Declaratory Relief

> Finally, Plaintiff files a constitutional challenge to the 1990 Revision of 28 U.S.C. §§ 1391 by Public Law 101-650 Section 311(1).

Rule 5.1 of the Federal Rules of Civil Procedure governs the process for challenging the constitutionality of statutes, providing:

> **(a) Notice by a Party.** A party that files a pleading, written motion, or other paper drawing into question the constitutionality of a federal or state statute must promptly:
>
> **(1)** file a notice of constitutional question stating the question and identifying the paper that raises it, if:
>
> **(A)** a federal statute is questioned and the parties do not include the United States,

> one of its agencies, or one of its officers or employees in an official capacity; or
>
> . . .
>
> **(2)** serve the notice and paper on the Attorney General of the United States if a federal statute is questioned ... either by certified or registered mail or by sending it to an electronic address designated by the attorney general for this purpose.
>
> **(b) Certification by the Court.** The court must, under 28 U.S.C. § 2403, certify to the appropriate attorney general that a statute has been questioned.

Fed. R. Civ. P. 5.1(a).

There is no indication that Plaintiff has filed such a notice. Accordingly, this Court should not consider Plaintiff's constitutional arguments. *See Jones v. U-Haul Co. of Massachusetts & Ohio Inc.*, 16 F. Supp. 3d 922, 941 (S.D. Ohio 2014). Further, this Court agrees with Defendants that they are not the proper defendants in a challenge to a federal statute. As a general principle, "[u]nder United States Supreme Court precedent, when a plaintiff challenges the constitutionality of a rule of law, it is the state official designated to enforce that rule who

is the proper defendant, even when that party has made no attempt to enforce the rule." *Am. Civil Liberties Union v. The Fla. Bar*, 999 F.2d 1486, 1490 (11th Cir. 1993) (citing *Diamond v. Charles*, 476 U.S. 54, 63 (1986)). Additionally ECF No. 30 at 3. For all of these reasons, Plaintiff's constitutional challenge should alsobe dismissed.[3]

Plaintiff's Motions to Amend

Following oral argument in this case, Plaintiff filed two Motions to Amend his Second Amended Complaint. ECF No. 59, 61. As outlined above, although Plaintiff's Complaint is deficient, this Court cannot yet say it is wholly without merit. Accordingly, the undersigned would grant Plaintiff's Motion to Amend, with the caveat that no further such motions would be entertained.

Recommendation

For the foregoing reasons, the undersigned respectfully RECOMMENDS that Defendants' Motion to Dismiss, ECF No. 32, should be GRANTED. The Causes of Action numbered I, II, III, and IV should be dismissed WITHOUT PREJUDICE. Plaintiff's Request for Declaratory Relief, which contains faults for which this Court can see no cure, should be dismissed WITH PREJUDICE. Plaintiff's Motions to Amend his

Amended Complaint, ECF No. 59 and 61, should likewise be GRANTED.

Within fourteen days after being served with a copy of this Report and Recommendation, any Party may serve and file written objections to any of the above findings and recommendations as provided by the Local Rules for this district. 28 U.S.C.

§ 636(b)(1); S.D. Fla. Mag. R. 4(b). The Parties are hereby notified that a failure to timelyobject waives the right to challenge on appeal the district court's order based on unobjected-to factual and legal conclusions contained in this Report and Recommendation. 11th Cir. R. 3–1 (2016); *see Thomas v. Arn*, 474 U.S. 140 (1985).

DONE AND SUBMITTED at Fort Lauderdale, Florida this 23rd day of January 2019.

PATRICK M. HUNT

UNITED STATES MAGISTRATE JUDGE

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UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF FLORIDA

CASE NO. 15-61312-CIV-ZLOCH

RAYMOND H. PIERSON, III,
Plaintiff,
vs.

BRUCE s. ROGOW, et al.,

Defendant.

ORDER

THIS MATTER is before the Court upon the Report And Recommendation (DE 65) filed herein by United States Magistrate Judge Patrick M. Hunt. The Court has conducted a de novo review of the entire record herein and is otherwise fully advised in the premises.

Plaintiff Raymond H. Pierson, III (hereinafter "Plaintiff"), filed a Second Amended Complaint (DE 30), and Defendants Bruce S. Rogow, J.D., Bruce S. Rogow, P.A., Cynthia Gunther, J.D. (hereinafter "Defendants"), filed a Motion To Dismiss (DE 32). In his Report (DE 65), Magistrate Judge Hunt finds that Plaintiff fails to

state his claims in his Second Amended Complaint (DE 30) with the requisite specificity, and that as pled, some counts also fail on the merits. In addition, Magistrate Judge Hunt finds that Plaintiff's request for declaratory relief, by which Plaintiff wishes to challenge the constitutionality of the 1990 Revision of

28 U.S.C. § 1391 by Public Law 101-650 Section 311(1), is entirelyimproper; Plaintiff has failed to file a notice pursuant to FederalRule of Civil Procedure 5.1 and no Defendant is a state officialtasked with enforcing the statute that Plaintiff wishes to challenge.

Magistrate Judge Hunt recommends that Defendants' Motion ToDismiss (DE 32) be granted, and that the Second Amended Complaint(DE 30) be dismissed without prejudice, except for Plaintiff's request for declaratory relief, which is to be dismissed with prejudice. In addition, Magistrate Judge Hunt recommends that Plaintiff's Motions For Leave To Amend (DE Nos. 59 & 61) be granted. The Court adopts Magistrate Judge Hunt's reasoning andconclusions.

Accordingly, after due consideration, it is

ORDERED AND ADJUDGED as follows:

1. Plaintiff Raymond H. Pierson., III, M.D.'s,

Response To The "Report And Recommendation" Of The U.S. Magistrate Judge (DE 66), which the Court construes as Objections To The Report And Recommendation, be and the same is hereby **OVERRULED**;

2. The Report And Recommendation (DE 65) filed herein by United States Magistrate Judge Patrick M. Hunt be and the same is hereby approved, adopted, and ratified by the Court;

3. Defendants Bruce S. Rogow, J.D., Bruce S. Rogow, P.A., AndCynthia Gunther, J.D.'s, Motion To Dismiss Plaintiff's Second Amended Complaint (DE 32) be and the same is hereby **GRANTED**;

4. Plaintiff's Second Amended Complaint And Demand For Jury Trial And Constitutional Challenge To The 1990 Revision Of 28 U.S.C. § 1391 By Public Law 101-650 Section 311(1) Which EliminatedPlaintiff's Right Of Venue In Their District Of Residence/Domicile (DE 30) be and the same is hereby **DISMISSED** with prejudice as to Plaintiff's request for declaratory judgment and is otherwise

DISMISSED without prejudice and with leave to amend;

5. Plaintiff's Unopposed Motion For Leave Of The Court To Amend The Second Amended Complaint (DE 59) and Plaintiff's Second

Unopposed Motion For Leave Of The Court To Amend Complaint (DE 61) be and the same are hereby **GRANTED**; and

6. Plaintiff shall file an Amended Complaint by noon onTuesday, April 16, 2019.

DONE AND ORDEREDin Chambers at Fort Lauderdale, Broward

County, Florida, this 25th day of March, 2019.

WILLIAM J. ZLOCH
Sr. United States District Judge

IN THE UNITED STATES DISTRICT COURT SOUTHERN DISTRICT OF FLORIDA

CASE NO.: 0:14-cv-61312LAINTIFF REQUEST

Raymond H. Pierson, III, M.D., Pro Se
Plaintiff,

vs.

Bruce S. Rogow, J.D.;
Bruce S. Rogow, PA;
Cynthia Gunther, J.D.;
And Does 1 through 5, inclusive,
Defendants.

PLAINTIFF REQUESTS THAT THIS COURT PROVIDE A DEFINITIVE DECISION CONCERNING PLAINTIFF'S APRIL 8, 2019 UNOPPOSED MOTION (DE 70) TO "STAY" THE PROCEEDINGS OF THIS CASE IN THE DISTRICT COURT AND "GRANT" PLAINTIFF THE OPPORTUNITY TO PROCEED WITH IMMEDIATE APPELLATE REVIEW OF THE COURT'S DENIAL OF PLAINTIFF'S CONSTITUTIONAL CHALLENGE OF THE 1990 REVISION OF 28 USC§ 1391 BY PUBLIC LAW 101-650 SECTION 311 (1) WHICH ELIMINATED TO ALL PLAINTIFFS THEIR RIGHT OF VENUE SELECTION IN THEIR DISTRICT OF RESIDENCE/DOMICILE

Dr. Pierson requests that this Court provide a definitive decision on his request to *"stay"* the case and permit the advancement for immediate appellate review of the Court's decision to deny with **preiudice** (DE 69) Plaintiff's right to proceed with a constitutional challenge to the 1990 Revision of28 USC§ 1391 which has denied to all plaintiffs their right of venue selection in Federal civil litigation in their districts of domicile and residence. As clearly stated in Plaintiff's prior Motion (DE 70), his right to purse that challenge in this case which was originally improperly transferred by a U.S. Magistrate Judge on February 4, 2014 from the Eastern District of California (case #2:14-CV-0324 KJM CKD PS) is so fundamental to this case that it requires immediate Appellate review before the case proceeds in the District court.

It has been well established by the Supreme Court of the United States under the Gillespie Doctrine in the *Gillespie v. United States Steel Corp.* 379 U.S. 148, p.153 (1964) citing *United States v. General Motors Corp.,* 323 U.S. 373,377(1945) that appellate review at this time is fully warranted because it is so *"fundamental to the further conduct"* of

the case as well as to having exceptional relevance to all plaintiffs involved in civil litigation in which jurisdiction resides with the Federal District Courts. Furthermore, this right to pursue appellate review at this time is further supported by the *"Collateral Order Doctrine* as presented by the U.S. Supreme Court in *Cohen v. Benefit Industrial Loan Corp,* 337 U.S. 541, 546. That is, the constitutional challenge to the 1990 Revision of 28 USC§ 1391 raises a question not only of tremendous significance to this case, but to the rights of all plaintiffs involved in civil litigation adjudicated under Federal District Court jurisdiction. The U.S. Supreme Court expressed this doctrine as follows:

> *"This decision appears to fall in that small class which finally determine claims of right separable from, and collateral to rights asserted in the action, too important to be denied review and too independent of the cause itself to require that appellate consideration be deferred until the whole caseis adjudicated."*

Furthermore, the fact that Dr. Pierson is a citizen of California who resides within the jurisdiction of the U.S. District of Eastern

California and has previously suffered injury by the improper and unjust application of the revised 28 USC § 1391 statute with the improper transfer of his originally filed case to this DistrictCourt in South Florida attests to Dr. Pierson's "standing" to advance this constitutional challenge. In addition, this Court's decision to deny with **prejudice** that constitutional challenge represents an improper and manifestly unjust misapplication of Federal Rule of Civil Procedure Rule 5.1 (d) which guarantees that there can be *"no forfeiture"* of a *"constitutional claim or defense that is otherwise timely asserted"*. That constitutional challenge was timely asserted within the Second Amended Complaint (DE 30) before any defendant response was received. Furthermore, that decision by this Court represents an unjust denial of Plaintiff's Federal Rule 15(a)(2) Right to Amend which *"the Court should freely give leave when justice so requires"*. This is especially the case in this litigation which at this stage the defendants have not even filed an answer to the complaint only a request for dismissal. The well accepted position of the federal judiciary is to avoid the unnecessary waste of critical court resources.

That approach of the Courts demands that the decision by this Court denying Plaintiff's right to proceed with the above referenced constitutional challenge must be resolved through Appellate review at this time before the case is permitted to advance any further in the District Court. It is plaintiff's firm position

deny with ***preiudice*** (DE 69) any further consideration of the constitutional challenge to the 1990 Revision of 28 USC § 1391 by Public Law 101-650 Section 311 (1) must occur before plaintiff is required to proceed with the composition and filing of the Third Amended Complaint.

Prayer for Relief

Plaintiff prays that this Court proceed to Order a *"stay"* of this case from further proceedings in this District Court at this time and to *"grant"* Dr. Pierson the opportunity to seek immediate Appellate review of the Court's decision to deny the constitutional challenge to the 1990 Revision of28 USC§ 1391 which deprives to all plaintiffs in Federal District Court civil jurisdiction cases their right to venue selection in their districts of domicile and residence.

Case 0:15-cv-61312-UU Document 78
Entered on FLSD Docket 05/09/2019 Page 1 of 15

THE UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF FLORIDA

CASE NO.: 0:14-cv-61312

Raymond H. Pierson, III, M.D., Pro Se
Plaintiff,

vs.

Bruce S. Rogow, J.D.;
Bruce S. Rogow, PA;
Cynthia Gunther, J.D.;
And Does 1 through 5, inclusive,
Defendants.

SECOND PLAINTIFF REQUEST (FIRST REQUEST- DE 73) THAT THIS COURT PROVIDE A DEFINITIVE DECISION CONCERNING PLAINTIFF'SAPRIL 8, 2019 UNOPPOSED MOTION (DE 70) TO "STAY" THE PROCEEDINGS OF THIS CASE IN THE DISTRICT COURT AND "GRANT"PLAINTIFF THE OPPORTUNITY TO PROCEED WITH IMMEDIATE APPELLATE REVIEW OF THE COURT'S DENIAL (DE 69) OF PLAINTIFF'S CONSTITUTIONAL CHALLENGE TO THE 1990 REVISION OF 28 USC§ 1391 BY PUBLIC LAW 101-650 SECTION 311 (1) WHICH ELIMINATED TO ALL PLAINTIFFS THEIR RIGHT AS A CHOICE OF VENUE SELECTION THEIR DISTRICT OF RESIDENCE/DOMICILE

Plaintiff, Dr. Pierson again requests and prays that the Court provide a definitive decision on Dr. Pierson's request to *"stay"* proceedings in this case and permit his advancement for immediate appellate review the Court's decision to deny with **prejudice** (DE 69) in these proceedings Dr. Pierson's right to proceed with his constitutional challenge to the 1990 Revision of 28 USC§ 1391 which has denied to all plaintiffs as a choice of their right of venue selection in Federal civil litigation in their districts of domicile and residence. As clearly stated in Plaintiffs prior Motions (DE 70 & 73), his right to pursue such a constitutional challenge in this case which was originally improperly transferred to the U.S. District Court of South Florida by a U.S. Magistrate Judge on February 4, 2014 from the Eastern District of California (case #2:14-CV-0324 KJM CKD PS) is such an essential and fundamental component to this case that it requires immediate Appellate review before the case is permitted to proceed in the District court.

The Eleventh Circuit Appellate decision on this constitutional issue will have exceptional impact on the composition of the Third Amended Complaint (Note: The Third Amended Complaint is factually the Second Amended

Complaint in this matter). The current due date for that Third Amended Complaint is May 15, 2019 (see DE 75). The Court's immediate decision on this matter is necessary to permit the opportunity of Appellate Court review of that matter as the Appellate Court's input will potentially greatly alter the composition of the to be submitted Amended Complaint.

Prayer for Relief

Dr. Pierson prays that this Court proceed to Order a *"stay"* of this case from further proceedings in this District Court at this time and to *"grant"* Dr. the opportunity to seek immediate Appellate review of the Court's decision to deny (DE 69) Plaintiffs constitutional challenge to the 1990 Revision of 28 USC § 1391 which deprives to all plaintiffs in Federal District Court civil jurisdiction their right as a choice of venue selection their districts of domicile and residence.

Respectfully submitted,

Raymond H. Pierson, III M.D.

5-6-2019

Date

Case 0:15-cv-61312-UU Document 91
Entered on FLSD Docket 06/25/2019 Page 56 of

IN THE UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF FLORIDA
CASE NO.: 0:14-cv-61312

Raymond H. Pierson, III, M.D., Pro Se
Plaintiff,

vs.

Bruce S. Rogow, J.D.;
Bruce S. Rogow, PA;
Cynthia Gunther, J.D.;
And Does 1 through 5, inclusive,
Defendants.

PLAINTIFF, DR. RAYMOND H. PIERSON III'S THIRD REQUEST OF THISCOURT (PREVIOUS REQUESTS DE 73 AND 78) TO PROVIDE A DEFINITIVE DECISION CONCERNING PLAINTIFF'S MOTION TO STAY THE PROCEEDINGS OF THIS CASE IN THE DISTRICT COURT AND TO GRANT PLAINTIFF THE OPPORTUNITY TO PROCEED WITH IMMEDIATE APPELLATE REVIEW OF THIS COURT'S DENIAL OF PLAINTIFF'S CONSTITUTIONAL CHALLENGE OF THE 1990 REVISION OF 28 USC § 1391 BY PUBLIC LAW 100-650 SECTION 311(1) ELIMINATION OF A PLAINTIFF'S RIGHT OF VENUE CHOICE IN THEIRDISTRICT OF RESIDENCE/DOMICILE (DE 70)

Plaintiff holds the firm position which is fully supported by the Federal Rule of Civil Procedure - Rule 5.1(d) that this Court has erred in denying with prejudice Plaintiffs right to amend his complaint to correct the deficiency in the pleading of Plaintiffs constitutional challenge to the 1990 Revision of 28 USC§ 1391. That revision eliminated to all plaintiffs in civil litigation with Federal District Court jurisdiction their right as a choice of proper venue their district of residence and domicile. This filing represents the third request directed to this the Court concerning that original Motion (DE 70) to provide a definitive decision. Plaintiff believes that he has a right to a definitive decision by this Court concerning this repeated request.

Prayer for Relief

Plaintiff prays that this Court recognizes the importance of this Constitutional question to this case which was improperly transferred to this Court by the U.S. District Court in the Eastern District of California. Because that improper transfer was authorized under the revised statute, Plaintiff requests that the Court institute a stay of the case and grants plaintiff the right to proceed

withthe constitutional challenge in the Eleventh Circuit Appellate Court.

Respectfully submitted,

Raymond H. Pierson, III, M.D.

6-20-2019

Date

Case 0:15-cv-61312-UU Document 92 Entered on FLSD Docket 06/27/2019 Page 1 of 1

UNITED STATES DISTRICT COURT SOUTHERN DISTRICT OF FLORIDA

CASE NO. 15-61312-CIV-ZLOCH

RAYMOND H. PIERSON, III,

Plaintiff,

vs.

BRUCE S. ROGOW, et al.,

Defendants

ORDER

THIS MATTER is before the Court sua sponte. The Court has carefully reviewed the entire court file and is otherwise fully advised in the premises.

Pursuant to 28 U.S.C. § 371, on January 31, 2017, the undersigned took senior status. In that 28 U.S.C. § 294(b) permits a senior judge to perform such duties as he is willing and able to undertake, the undersigned hereby recuses himself from the above-styled cause.

Accordingly, after due consideration, it is

ORDERED AND ADJUDGED that the above-styled cause be and the same is hereby **REFERRED** to the Clerk of Courts for reassignment to another active judge in accordance with the random assignment system.

DONE AND ORDERED in Chambers at Fort Lauderdale, Broward County, Florida this 24th day of June 2019.

WILLIAM J. ZLOCH

Sr. United States District Judge

IN THE UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF FLORIDA
CASE NO.: 0:14-cv-61312

Raymond H. Pierson, III, M.D., Pro Se
Plaintiff,

vs.

Bruce S. Rogow, J.D.;
Bruce S. Rogow, PA;
Cynthia Gunther, J.D.;
And Does 1 through 5, inclusive,
Defendants.

NOTICE TO THE COURT IN THIS NEWLY REASSIGNED CASE THAT APENDING PLAINTIFF REQUEST FOR A STAY OF THE PROCEEDINGS BEFORE THE DISTRICT COURT TO PERMIT HIS IMMEDIATE APPEALTO THE ELEVENTH CIRCUIT APPELLATE COURT OF THE PRIOR COURT'S DENIAL OF PLAINTIFF'S RIGHT TO AMEND HIS CONSTITUTIONAL CHALLENGE TO THE 1990 REVISION OF 28 USC § 1391 WHICH DEPRIVED TO ALL PLAINTIFFS IN FEDERAL CIVIL LITIGATION THEIR RIGHT AS A CHOICE OF VENUE SELECTION THEIR DISTRICT OF RESIDENCE AND DOMICILE.

On July 1, 2019, Dr. Pierson received via U.S. Mail from the Clerk of the U.S. District Court in the Southern District of Florida Notice of the sua sponte voluntary Motion for Recusal by Judge William J. Zloch from his further involvement in this matter pursuant to 28 USC§ 371 and 28 USC§ 294(b) with instruction to the Clerk of Court to reassign the case under the random assignment system. That reassignment procedure resulted in District Court Judge Ursula M. Ungaro's assignment to the case. This Notice is now provided in order to bring to the new Article III Court's attention the fact that no definitive order on the matter concerning the Plaintiff's Motions for Stay of the Case and the request for the leave of Court to proceed with immediate appeal to the Eleventh Circuit of the denial with prejudice of Plaintiff's right to amend his constitutional challenge to the 1990 Revision of28 USC§ 1391 which has denied to all Plaintiffs in Federal civil litigation their right as a possible choice for venue selection their district of residence and domicile. Those multiple requests of this matter have remained unresolved by the Court through the time of this writing. In the complaints, Plaintiff has fully demonstrated to the Court his

standing to advance that constitutional challenge in this case which was immediately and improperly transferred from California by a U.S. Magistrate Judge without notice or the opportunity for submission of a brief in opposition to the assigned Article III Courtin the U.S. District Court of the Eastern District of California, the District of original filing. That transfer occurred not only contrary to 28 USC § 636(b)(c) and to the Federal Rule of Civil Procedure Rule 72(a)(b) but also under the revisions instituted in that 1990 revision to 28 USC § 1391.

The request for the stay and leave to appeal the above referenced denial with prejudice of Plaintiffs right to amend his constitutional challenge to the 1990 revision of 28 USC§ 1391 was first filed with this Court on April 9, 2019 (DE 70). When no definitive response was forthcoming from the Court, three subsequent requests were submitted to the Court (DE 73, 78 and 91) repeatedly requesting thatthe Court provide a definitive decision to those requests which were initially advanced in DE 70 on April 9, 2019. The last request filed on June 24, 2019 (DE 91) was pending before the Court at the

time of the Article III Judge's Order of Recusal on June 27,209 (DE 92). As a result, Plaintiff now advances this Notice to inform the newly assigned Article III Court of this pending issue before the Court.

Prayer for Relief

Dr. Raymond Pierson, a pro se Plaintiff in this action, prays that the newly assigned Article III Court provide a definitive decision concerning his repeated requests. Plaintiff prays that the Court stays the case from further proceedings and grants to Dr. Pierson leave to immediately appeal the denial with prejudice of his right to advance his constitutional challenge to the 1990 Revision of 28 USC § 1391 which has denied to all plaintiffs in Federal civil litigation their right as a choice of venue their district of residence and domicile, a right that had existed for over two hundred years in this Republic.

Respectfully submitted,
Raymond H. Pierson, III, M.D.

UNITED STATES DISTRICT COURT SOUTHERN DISTRICT OF FLORIDA

CASE NO. 15-61312-CIV-ZLOCH

RAYMOND H. PIERSON, III,

Plaintiff,

vs.

BRUCE S. ROGOW, et al.,

Defendants

ORDER

THIS CAUSE comes before the Court upon Plaintiff's Unopposed Motion to Request of this Court the Opportunity to Submit a Revised Motion in Opposition to Defendant's Motion (DE 93) to Dismiss the Third (Technically the Second) (Doc 85) at the Correct Length (the "Motion").[1]

D.E. 101.

THE COURT has considered the Motion, the pertinent portions of the record and is otherwise fully advised on the premises.

On August 15, 2019, the Court entered its order striking *pro se* Plaintiff's response in opposition to

Defendants' motion to dismiss, as he failed to seek leave and obtain prior permissionof the Court before filing any opposing memoranda of law in excess of twenty pages. D.E. 98. On August 19, 2019, the Court granted Defendants' motion to dismiss, dismissed the third amended complaint with prejudice, and entered final judgment in favor of Defendants. D.E. 99 & 100. Plaintiff now moves for leave to file a revised motion in opposition to Defendants' motionto dismiss at the permissible length.[2] D.E. 101. Accordingly, it is hereby

ORDERED AND ADJUDGED that the Motion (D.E. 101) is DENIED AS MOOT.

DONE AND ORDERED in Chambers at Miami, Florida, this _22d_ day of August, 2019.

Ursula Lazaro

UNITED STATES DISTRICT JUDGE

Raymond H. Pierson, III, M.D.
3 Gopher Flat Rd., Unit #7
Sutter Creek, CA 95685
T: 209-267-9118 F: 209-267-5360
E: rpiersonmd@sbcglobal.net

September 19, 2019

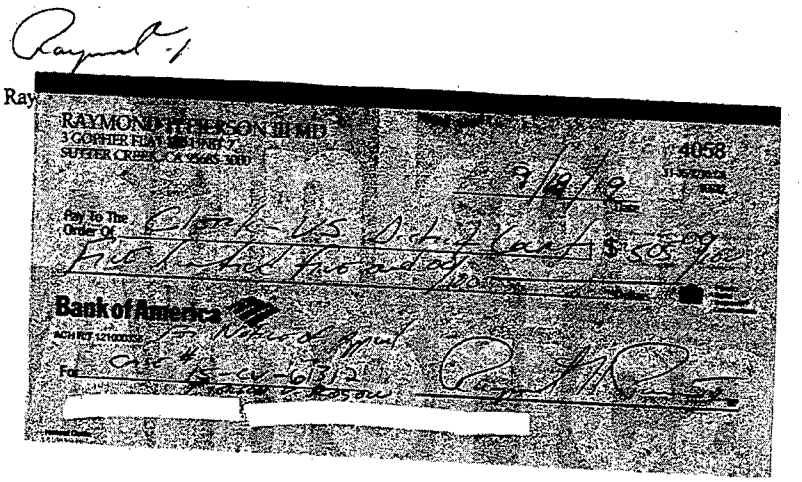
Clerk of the Court
United States Federal CourtDistrict
of Southern Florida
Fort Lauderdale Division
299 East Broward Blvd. #108
Fort Lauderdale, FL 33301

Re: Case #15-cv-61312 Pierson v. Rogow

Enclosed please find check number 4058 in the amount of five hundred and five dollars ($505.00) from Pro Se Appellant Raymond H. Pierson, Ill M.D. made out the *Clerk U.S. DistrictCourt.* The payment is for the requisite fee required to advance the Notice of Appeal for case #15-cv-61312. The check was inadvertently not included with the original Notice of Appeal delivered to Fedex for overnight delivery on th afternoon on Wednesday, september 18, 2019. The package was delivered to your office at 10 J4 AMon Thursday, September 19, 2019.

Your assistance in the proper processing of this payment for the requisite Appeal fee in that case will be greatly appreciated. Thank you.

Respectfully submitted,



UNITED STATES COURT OF APPEALS
FOR THE ELEVENTH CIRCUIT

ELBERT PARR TUTTLE COURT OF APPEALS BUJLDING
56 Forsyth Street. N.W.Atlanta, Georgia 30303

September 23, 2019

Raymond H. Pierson III
Unit #7 3 GOPHER FLAT RD
SUTTER CREEK, CA 95685

Appeal Number: 19-13722-E

Case Style: Raymond Pierson, III v. Bruce Rogow, et al

District Court Docket No: 0:15-cv-61312-UU

This Court requires all counsel to file documents electronically using the Electronic Case Files ("ECF") system, unless exempted for good cause.

The referenced case has been docketed in this cmat. Please use the appellate docket number noted above when making inquiries.

Attorneys who wish to participate in this appeal must be admitted to the bar of this Court, admitted for this particular proceeding pursuant to 11th Cir. R. 46-3, or admitted pro hac vice pursuant to 11th Cir. R. 46-4. In addition, all attorneys (except colllt-appointed counsel) who

wish to participate in this appeal must file an Appearance of Counsel form within 14 days. The Application for Admission to the Bar and Appearance of Counsel Form are available at www.call.uscourts.gov. The clerk generally may not process filings from an attorney until that attorney files an appearance form. See 11th Cir. R. 46-6(b).

Every motion, petition, brief, answer, response and reply filed must contain a Certificate of Interested Persons and Corporate Disclosure Statement (CIP). Appellants/Petitioners must file a CIP within 14 days after the date the case or appeal is docketed in this court; Appellees/Respondents/Intervenors/Other Parties must file a CIP within 28 days after the case or appeal is docketed in this court, regardless of whether appellants/petitioners have filed a CIP.See FRAP 26.1 and 11th Cir. R. 26.1-1.

On the same day a party or amicus curiae first files its paper ore-filed CIP, that filer must also complete the court's web-based CIP at the Web-Based CIP link on the court's website. Prose filers (except attorneys appearing in particular cases as prose parties) are **not required or authorized** to complete the web-based CIP.

Subsequent Docketed Formal Orders by the Eleventh Circuit Appellate Court demonstrating ongoing jurisdiction of Appeal:

10-21-2019	2-19-2020
11-12-2019	4-21-2020
12-3-2019	5-20-2020
12-12-2019	6-8-2020
12-22-2019	7-29-2020
1-6-2020	8-11-2020
1-28-2020	

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No. 21-815

RAYMOND H. PIERSON, III, M.D.,PRO SE
Petitioner,
v.
BRUCE S. ROGOW, J.D., BRUCE S. ROGOW, P.A.,
CYNTHIA GUNTHER, J.D., DOES 1 - 5
Respondents.

AFFIDAVIT OF SERVICE

I, Andrew Cockle, of lawful age, being duly sworn, upon my oath state that I did, on the 21st day of March, 2022, send out from Omaha, NE 1 package(s) containing 3 copies of the PETITION FOR REHEARING in the above entitled case. All parties required to be served have been served by third-party commercial carrier for delivery within 3 calendar days. Packages were plainly addressed to the following:

SEE ATTACHED

To be filed for:

RAYMOND H. PIERSON, III, M.D.,
3 GOPHER FLAT RD., UNIT #7
SUTTER CREEK, CA 95685
T: (209) 267-9118
F: (209) 267-5360
E: rpiersonmd@sbcglobal.net

Pro Se Petitioner

Subscribed and sworn to before me this 21st day of March, 2022.
I am duly authorized under the laws of the State of Nebraska to administer oaths.

GENERAL NOTARY-State of Nebraska
RENEE J. GOSS
My Comm. Exp. September 5, 2023

Renee J. Goss
Notary Public

Andrew H. Cockle
Affiant

42005

Attorneys for Respondents

Tara Ann Campion
Counsel of Record

Bruce S. Rogow, P.A.
1199 S. Federal Hwy., #212
Boca Raton, FL 33432

tcampion@rogowlaw.com

954-767-8909

Party name: Bruce S. Rogow, J.D., Bruce S. Rogow, P.A., Cynthia Gunther, J.D.

CERTIFICATE OF COMPLIANCE

No. 21-815

Raymond H. Pierson, III, M.D.
Petitioner(s),

v.

BRUCE S. ROGOW, J.D., BRUCE S. ROGOW, P.A.,
CYNTHIA GUNTHER, J.D., DOES 1 - 5
Respondent(s).

As required by Supreme Court Rule 33.1(h), I certify that the Petition for Rehearing contains 2,993 words, excluding the parts of the Petition for Rehearing that are exempted by Supreme Court Rule 33.1(d).

I declare under penalty of perjury that the foregoing is true and correct.

Executed on March 21, 2022.

(Signature)