

APPENDIX

APPENDIX

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APPENDIX A

**IN THE UNITED STATES COURT OF APPEALS
FOR THE FIFTH CIRCUIT**

**No. 17-60249
Summary Calendar**

[Filed November 22, 2017]

THOMAS M. UTTERBACK,	)
Plaintiff-Appellant,	)
	)
versus	)
	)
TRUSTMARK NATIONAL BANK;	)
HAND ARENDALL, L.L.C.,	)
Defendants-Appellees.	)

Appeal from the United States District Court
for the Southern District of Mississippi
No. 3:15-CV-163

Before HIGGINBOTHAM, JONES, and SMITH,
Circuit Judges.

PER CURIAM:*

Thomas Utterback sued Trustmark National Bank
("Trustmark") and Hand Arendall, L.L.C., in the court

* Pursuant to 5TH CIR. R. 47.5, the court has determined that this opinion should not be published and is not precedent except under the limited circumstances set forth in 5TH CIR. R. 47.5.4.

a quo, claiming that they had made tortious statements against him in the course of earlier litigation. Nearly two years after Utterback sued, the district court informed the parties that it would be granting defendants' motion to dismiss. Utterback responded quickly with a motion to transfer to another district. The district court denied the motion and dismissed all claims. On appeal, Utterback, appearing *pro se*, asserts only that the court abused its discretion in denying transfer. We find no abuse and affirm.

I.

Utterback, a citizen and resident of Missouri, was an attorney licensed to practice there until 1998, when he pleaded guilty of money-laundering and surrendered his license. He served twenty-five months of a three-year term. In March 2003, after being discharged from supervised release, he moved to Florida.

The case before us arises out of litigation in the Florida state and federal courts between BankTrust, a Mississippi bank and Trustmark's predecessor in interest, and CCB, LLC, the investment entity that employed Utterback as its manager. Over the course of that litigation, which spanned from November 2011 to March 2013, attorneys from Hand Arendall, the Alabama law firm representing BankTrust, consistently alleged, through motions and a formal complaint to the Florida Bar, that Utterback was managing the litigation without a license.

In March 2015, Utterback sued Trustmark and Hand Arendall in the Southern District of Mississippi, asserting defamation, invasion of privacy, intentional infliction of emotional distress, tortious interference

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with business relationships, and abuse of process, all on the basis of defendants' accusations that he had practiced law without a license. Defendants moved to dismiss on the grounds that they were absolutely immune from liability under Florida's litigation privilege and that all but one of Utterback's claims were barred by Mississippi's one-year statute of limitations. In February 2017, after the district court announced that it would be granting defendants' motion but before it issued a formal ruling, Utterback moved to transfer to the Northern District of Florida.¹

The district court denied transfer and granted defendants' motions to dismiss.² Sitting in diversity and tasked with the application of state law, the court began by properly applying the forum's choice-of-law rules. *See Klaxon Co. v. Stentor Elec. Mfg. Co.*, 313 U.S. 487, 496–97 (1941). Under Mississippi's "center of gravity" test, the substantive law of the state with the "most substantial contact with the parties and the subject matter of the action" should control. *Boardman v. United Servs. Auto. Ass'n*, 470 So.2d 1024, 1031 (Miss. 1985). Florida's substantive law applied because all of the allegedly tortious conduct occurred there. But because Mississippi's one-year statute of limitations

¹ The motion to transfer invoked an assortment of federal rules and statutes, including Federal Rules of Civil Procedure 12(b)(2) (motion to dismiss for lack of personal jurisdiction) and 12(b)(3) (motion to dismiss for improper venue) and removal statutes 28 U.S.C. §§ 1404 and § 1406.

² The district court also denied Utterback's motions to defer ruling on defendants' motion to dismiss and to abate entry of judgment in favor of allowing Utterback to file an amended complaint. Utterback challenges neither on appeal.

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was deemed procedural in nature,³ it foreclosed all but one of Utterback's claims.⁴ His remaining claim for tortious interference was dismissed as both deficient on its face and duplicative of his defamation claim.

In addition, the district court held that Florida's litigation privilege immunized the defendants for their allegedly tortious statements. Under Florida law, "absolute immunity must be afforded to any act occurring during the course of a judicial proceeding, regardless of whether the act involves a defamatory statement or other tortious behavior such as the alleged misconduct at issue, so long as the act has some relation to the proceeding." *Levin, Middlebrooks, Mamie, Thomas, May & Mitchell, P.A. v. U.S. Fire Ins.*

³ Under Mississippi law, statutes of limitations are deemed procedural unless the limitations period is intertwined with the cause of action such that "expiration of the limitations period extinguishes the right." *Robinson v. Gen. Motors Corp.*, 150 F. Supp. 2d 930, 932 (S.D. Miss. 2001) (quoting *Siroonian v. Textron, Inc.*, 844 F.2d 289, 292 (5th Cir. 1988)). Because, under Florida law, none of Utterback's claims intertwines with a limitations period, Mississippi's one-year period applied.

⁴ Mississippi's statute reads, "All actions for assault, assault and battery, maiming, false imprisonment, malicious arrest, or menace, and all actions for slanderous words concerning the person or title, for failure to employ, and for libels, shall be commenced within one (1) year next after the cause of such action accrued, and not after. MISS. CODE. ANN. § 15-1-35 (West). Mississippi state courts have extended this limitations period to cover actions for invasion of privacy, see *Young v. Jackson*, 572 So. 2d 378, 382 (Miss. 1990), intentional infliction of emotional distress, and abuse of process, see *Maas v. Moran*, No. 1:11CV287-LG-RHW, 2013 WL 4456154, at *9 (S.D. Miss. Aug. 16, 2013) (discussing relevant state court decisions).

Co., 639 So. 2d 606, 608 (Fla. 1994). Because Hand Arendall had consistently argued that CCB's attorneys should be disqualified as counsel if they knew of Utterback's unlicensed practice, all of their allegations bore "some relation" to the underlying litigation.

II.

Utterback's sole issue on appeal is whether the district court abused its discretion in refusing to transfer. It did not. We review "all questions concerning venue under the abuse of discretion standard. The trial court is entitled to broad discretion in ruling on motions to transfer venue, and its decision will be upheld absent abuse of discretion." *United States v. Asibor*, 109 F.3d 1023, 1037 (5th Cir. 1997); see also *Mills v. Beech Aircraft Corp.*, 886 F.2d 758, 761 (5th Cir. 1989).

Utterback maintains that transfer was required because of improper venue.⁵ But the argument is not his to make. When a case is filed in the wrong venue, 28 U.S.C. § 1406(a) instructs district courts either to dismiss or, "if it be in the interest of justice," to transfer to a district where venue is proper. Section 1406(b) adds that "[n]othing in this chapter shall impair the jurisdiction of a district court of any matter involving a party who does not interpose timely and sufficient objection to venue." Like personal jurisdiction, venue is "designed to protect the *defendant* against the risk that

⁵ Likewise, he claims transfer was necessary because the court lacked personal jurisdiction. But like improper venue, the personal jurisdiction claim is not his to raise. Defendants settled the matter when they waived personal jurisdiction in their initial motions to dismiss. FED. R. CIV. P. 12(h)(1).

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a plaintiff will select an unfair or inconvenient place of trial.” *Leroy v. Great W. United Corp.*, 443 U.S. 173, 183–84 (1979); *see also In re Volkswagen of Am., Inc.*, 545 F.3d 304, 313 (5th Cir. 2008) (en banc). Therefore, “a plaintiff, by bringing the suit in a district other than that authorized by the statute, relinquishe[s] his right to object to the venue.” *Olberding v. Ill. Cent. Ry. Co.*, 346 U.S. 338, 340 (1953). Where defendants waive their objection to venue, as they did in this case, 28 U.S.C. § 1406(a) affords plaintiffs no relief.

Alternatively, Utterback suggests the district court abused its discretion in misweighing the equities under § 1404(a), which authorizes transfer of “any civil action to any other district or division where it might have been brought” if it serves the “convenience of parties and witnesses” and “the interest of justice.” 28 U.S.C. § 1404(a).⁶ Although he chose to sue in Mississippi and litigated there for two years, Utterback now asserts that Florida is the more convenient forum because (a) the events occurred there and (b) witnesses reside there. He adds that transfer is required as a matter of justice because it would (c) avoid Mississippi’s one-year statute of limitations and allow for a fair resolution of

⁶ Factors relevant to the convenience inquiry include “(1) ‘the relative ease of access to sources of proof; (2) ‘the availability of compulsory process to secure the attendance of witnesses’; (3) ‘the cost of attendance for willing witnesses’; (4) ‘all other practical problems that make the trial of a case easy, expeditious and inexpensive’; (5) ‘the administrative difficulties flowing from court congestion’; (6) ‘the local interest in having localized interests decided at home’; (7) ‘the familiarity of the forum with the law that will govern the case’; and (8) the avoidance of unnecessary problem of conflict of laws.” *In re Radmax, Ltd.*, 720 F.3d 285 (5th Cir. 2013) (quoting *Volkswagen*, 545 F.3d at 315).

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his claims on the merits and (d) permit a court in Florida to decide the scope of that state's litigation privilege.⁷

Unfortunately for Utterback, the first three of those theories come two years too late, and the last is wholly baseless. Utterback selected Mississippi as his forum, and the parties have since committed considerable time and resources to litigating there. Given the timing of Utterback's motion, it would emphatically not serve the interest of justice to allow him to take a second "bite[] at the apple" in Florida, just after learning that he would lose in Mississippi.⁸

Utterback insists the timing of his motion is immaterial to the § 1404(a) analysis. Our caselaw suggests the opposite.⁹ On the question of convenience, timing is obviously salient, and after almost two years

⁷ Utterback also raises arguments related to his status as an ex-felon, but those claims lack merit.

⁸ See *Cohen v. Waxman*, 421 F. App'x 801, 803 (10th Cir. 2010) (finding no abuse of discretion in denial of transfer under similar facts).

⁹ See *Peteet v. Dow Chem. Co.*, 868 F.2d 1428 (5th Cir. 1989) (finding no abuse of discretion in denying defendant's § 1404(a) motion filed eighteen months after the case was remanded, because "[p]arties seeking a change of venue should act with 'reasonable promptness.'" (quoting 15 C. WRIGHT, A. MILLER & COOPER, FEDERAL PRACTICE AND PROCEDURE § 3844, at 335-37 (1986)).

of litigation in Mississippi, Utterback has missed his window to litigate in Florida.¹⁰

Utterback's final argument—that his cases raises a novel state-law issue that ought to be decided in Florida—likewise is baseless. Although Florida courts are best positioned to decide difficult questions of Florida law, Utterback's case presents no such complexity. In dismissing his complaint, the district court considered *Debrincat v. Fischer*, 217 So. 3d 68 (Fla. 2017), to which Utterback repeatedly cites, and found it inapposite. *Debrincat* held that malicious-prosecution claims are not necessarily barred by the litigation privilege because litigation is a necessary element of the claim. *Id.* at 70. In cases like these, application of the litigation privilege would effectively “eviscerate[]” the cause of action. *Id.* at 69. Because none of Utterback's claims arises exclusively in the context of litigation, the logic of *Debrincat* has no application to his case. And even if it did, that interest would by no means counterbalance the two years of delay weighing heavily against transfer.

The judgment of dismissal is AFFIRMED.

¹⁰ Additionally, Utterback fails to identify with any specificity *which witnesses* and *what evidence* would be inaccessible in Mississippi but readily available in Florida. Without more, we cannot credit such vague and conclusional assertions.

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**IN THE UNITED STATES COURT OF APPEALS
FOR THE FIFTH CIRCUIT**

**No. 17-60249
Summary Calendar
D.C. Docket No. 3:15-CV-163**

[Filed November 22, 2017]

THOMAS M. UTTERBACK,	)
Plaintiff - Appellant,	)
	)
v.	)
	)
TRUSTMARK NATIONAL BANK;	)
HAND ARENDALL, L.L.C.,	)
Defendants - Appellees.	)

Appeal from the United States District Court for the
Southern District of Mississippi

Before HIGGINBOTHAM, JONES, and SMITH,
Circuit Judges.

J U D G M E N T

This cause was considered on the record on appeal
and the briefs on file.

It is ordered and adjudged that the judgment of the
District Court is affirmed.

IT IS FURTHER ORDERED that plaintiff-appellant
pay to defendants-appellees the costs on appeal to be
taxed by the Clerk of this Court.

APPENDIX B

**IN THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF MISSISSIPPI
NORTHERN DIVISION**

CIVIL ACTION NO.: 3:15-CV-163-HTW-LRA

[Filed March 30, 2017]

THOMAS M. UTTERBACK	)
PLAINTIFF	)
	)
vs.	)
	)
TRUSTMARK NATIONAL BANK	)
and HAND ARENDALL LLC	)
DEFENDANTS	)

ORDER GRANTING DISMISSAL

BEFORE THIS COURT are six (6) motions: Defendant Hand-Arendall LLC's Motion to Dismiss [**Docket no. 9**]; Defendant Trustmark National Bank's Motion to Dismiss [**Docket no. 11**]; Plaintiff Thomas M. Utterback's Motion re: Rebuttals [**Docket no. 26**]; Plaintiff Thomas M. Utterback's Motion to Defer Ruling on Motions to Dismiss [**Docket no. 31**]; Plaintiff's Motion To Transfer To The Northern District Of Florida (Pensacola) [**Docket no. 45**]; Utterback's Motion to Abate Entry of Judgment in Favor of Allowing Plaintiff to File His Amended Complaint [**Docket no. 47**].

Plaintiff, Thomas Utterback (hereinafter referred to as “Utterback”) here acting *pro se*, is a citizen of Missouri, and was formerly licensed to practice law in that state. He surrendered his license to the Missouri Supreme Court in 1998 after he had been convicted in federal court of money laundering in 1998.¹

The defendants in this lawsuit are: Trustmark Corporation, a Mississippi banking corporation doing business as Trustmark National Bank (hereinafter referred to as “Trustmark”); and Hand Arendall LLC (hereinafter referred to as “Arendall”), an Alabama limited liability company engaged in the practice of law with offices in Madison, Mississippi. Trustmark is the successor in interest to BankTrust² through a Federal Deposit Insurance Corporation approved merger in February, 2013. These parties will be collectively referred to hereinafter as “the Defendants.”

Utterback filed the lawsuit *sub judice* on March 6, 2015, alleging the Defendants collectively had damaged him by filing complaints with the Florida State Bar Association and by making statements to his detriment during the course of litigation in Florida state and federal lawsuits. [Docket no. 1]. Utterback’s complaint alleges the following causes of action: defamation; invasion of privacy; intentional infliction of emotional distress; tortious interference with business relationships; and abuse of process. [Docket no. 1].

¹ Money Laundering Control Act, codified at 18 U.S.C. §§ 1956, 1957.

² Other than name, the parties do not provide any other information as to BankTrust.

I. FACTS

Utterback pled guilty in 1998 to money-laundering in the United States District Court for the Eastern District of Missouri. That court sentenced him to a thirty-six (36) month sentence. [Docket no. 1, ¶ 3]. As a result of his guilty plea, Utterback surrendered to the Missouri State Supreme Court his license to practice law. [Docket no. 1, ¶ 3].

Utterback served his sentence. He was released from Federal Prison Camp Eglin³ in November, 2000. Thereafter, he began his term of supervised release, completing same in March, 2003. [Docket no. 1, ¶ 4].

In June, 2003, Utterback moved to Okaloosa County, Florida. [Docket no. 1, ¶ 4]. In June, 2010, CCB, LLC, located in Florida, hired him to as its manager. His activities as manager, during the course of certain State of Florida federal and state court litigations, are the thrusts of the instant lawsuit, as will be shown below. [Docket no. 1, ¶ 9]. Utterback moved to Missouri in February, 2015.

Trustmark, as the successor in interest of BankTrust, sought to foreclose on certain properties in

³ Federal Prison Camp, Eglin was a Federal Bureau of Prisons minimum security prison at Auxiliary Field 6, Eglin Air Force Base in Florida. Lacey Rose of *Forbes* wrote that it “was once considered so cushy that the term “Club Fed” was actually coined to describe it. By 2006 the federal government decided to cut costs by closing Eglin and returning the buildings to the Air Force. The prisoners were moved to Federal Prison Camp, Pensacola, Florida.

case no. 2009 CA 001573⁴ filed in the Circuit Court of Walton County, Florida, a state court. [Docket no. 1, ¶ 8]. The CCB, LLC (Dr. Charles & Mrs. Cynthia Barniv and Dr. Bruce Witkind) filed a parallel federal suit, 3:10-CV-228-LC-EMT, in the United States District Court of the Northern Division of Florida. [Docket no. 1, ¶ 8]. In the parallel federal suit, CCB, LLC, asserted the same claims its asserted as counterclaims in the Circuit Court of Walton County, Florida: breach of fiduciary duty; constructive fraud; violation of mortgage brokerage laws; violation of lending laws; fraud; state RICO violations; and Federal RICO violations.

That federal court stayed the lawsuit before it pending the outcome of the state court case. [Docket no. 1, ¶ 8]. Later, the CCB parties filed a wrongful garnishment lawsuit against BankTrust in case no. 3:12-CV-394-MCR-EMT in the United States District Court of the Northern Division of Florida. [Docket no. 1, ¶ 8]. Various appeals to state and federal forums followed. [Docket no. 1, ¶ 8]. Certain language in those pleadings has offended Utterback and form the basis for his lawsuit *sub judice*, to wit:

- November 9, 2010, George M. Walker (hereinafter referred to as “Walker”), a lawyer-member of Hand Arendall LLC, filed a motion to compel in the federal case asserting Utterback was “managing” this litigation without a license to do so.” [Docket no. 1, ¶ 11].

⁴ Florida, like all American jurisdictions, requires uniform state case number formatting. The CA in the case number referenced above is the Case Type indicator for Civil Circuit Cases in Florida.

- February 17, 2011, Walker filed a bar complaint with the Florida State Bar Association alleging Utterback was practicing law without a license. [Docket no. 1, ¶ 12].
- November, 2011, during depositions, Walker confronted CCB with the assertion that Utterback was a convicted felon, a disbarred attorney, and may be practicing law without a license. [Docket no. 1, ¶ 10].
- November 22, 2011, Walker identified Utterback as a disbarred Missouri attorney who may have been practicing law without a license in a motion to compel. [Docket no. 1, ¶ 14].
- March 19, 2012, Walker responded to CCB's motion for a protective order by again alleging Utterback's status as a convicted felon and disbarred attorney. Further, the Defendants, says Utterback, alleged he was practicing law without a license. [Docket no. 1, ¶ 15].
- March, 23, 2012, Walker filed a motion to dismiss, again alleging Utterback was "managing" this litigation without a license to do so." [Docket no. 1, ¶ 16].
- March 28, 2012, Walker, in his response to CCB's motion to reconsider, asserted again that he believed Utterback was practicing law without a license. [Docket no. 1, ¶ 17].
- May 24, 2012, in the appeal, case no. 1D12-1774, Walker again re-alleged his belief Utterback was practicing law without a license and confirmed that part of his discovery was directed toward

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evidence that Utterback was practicing law without a license. [Docket no. 1, ¶ 18].

- December 21, 2012, in a responsive pleading to CCB's motion to stay discovery in the federal garnishment action, Walker asserted Utterback was practicing law without a license. [Docket no. 1, ¶ 13].
- February 7, 2013, the Florida State Bar Association closed its case against Utterback when Utterback filed his cease and desist affidavit. The Florida State Bar Association found that Utterback had been involved in the unlicensed practice of law on several occasions. [Docket no. 1, ¶ 20].
- February 20, 2013, Walker filed a motion for appellate attorneys' fees and again raised Utterback's unlawful practice of law without a license, as well as his conviction and disbarment. [Docket no. 1, ¶ 21].
- March 11, 2013, Walker again raised Utterback's unlawful practice of law without a license, as well as his conviction and disbarment. [Docket no. 1, ¶ 22].

II. JURISDICTION

Utterback filed this lawsuit in this federal forum invoking 28 U.S.C. § 1332⁵ subject matter diversity jurisdiction. [Docket no. 1, ¶ 1]. Utterback alleged the amount in controversy is for damages greater than \$75,000 exclusive of interests and costs. [Docket no. 1, ¶ 1]. Utterback further alleged complete diversity between the parties. [Docket no. 1, ¶ 1].

The Defendants have not challenged subject matter diversity jurisdiction; nevertheless, this court has an independent obligation to verify it possesses subject matter jurisdiction.⁶ Upon a review of the pleadings of

⁵ (a) The district courts shall have original jurisdiction of all civil actions where the matter in controversy exceeds the sum or value of \$75,000, exclusive of interest and costs, and is between—

(1) citizens of different States;

28 U.S.C.A. § 1332 (West).

⁶ Federal courts are obliged to examine the basis for the exercise of federal subject-matter jurisdiction. *Smith v. Texas Children's Hospital*, 172 F.3d 923, 925 (5th Cir. 1999). A federal district court may examine its subject-matter jurisdiction over a matter, *sua sponte*, at any time. *Giles v. Nylcare Health Plans, Inc.*, 172 F.3d 332, 336 (5th Cir. 1999) (a court must raise the issue *sua sponte* if it discovers that it lacks subject matter jurisdiction); 5B Charles Alan Wright & Arthur R. Miller, *Federal Practice and Procedure* § 1350 (3d ed. 2007). Under Rule 12(h)(3) of the Federal Rules of Civil Procedure, “[w]henver it appears by suggestion of the parties or otherwise that the court lacks jurisdiction of the subject matter, the court shall dismiss the action.” (emphasis added).

Dean v. Mazingo, 521 F. Supp. 2d 541, 551 (S.D. Miss. 2007)(overturned on other grounds).

the parties, this court finds it possesses subject matter diversity jurisdiction.⁷

A federal court with diversity jurisdiction applies the substantive law of the forum state. *Learmonth v. Sears, Roebuck & Co.* 710 F.3d 249, 258 (5th Cir. 2013). A district court then, must apply the choice of law rules of the state in which the action is brought. *Williamson Pounders Architects PC v. Tunica Cty., Miss.* 597 F.3d 292, 295 (5th Cir. 2010).

Mississippi is the forum state for the lawsuit *sub judice*. Its choice of law provisions must be enforced here and given effect unless Mississippi's provisions are arbitrary or fundamentally unfair. *Id.* Thus, obedient to *Erie Railroad Co., v. Tompkins*, 304 U.S. 64 (1938), this court, sitting in Mississippi, looked to Mississippi law to determine whether, under these circumstances here, this court, after recognizing the potential involvement of the law of Florida, should apply that state's substantive law to the facts of this controversy, an approach described as a "conflict of laws" query.

Mississippi's key authority is *Boardman v. United Services Auto. Ass'n*, 470 So.2d 1024 (Miss. 1985),

⁷ Utterback is an adult citizen of the State of Missouri, while Trustmark is a banking corporation duly registered in the State of Mississippi with its principle place of business in Mississippi, and Hand Arendall LLC is an Alabama limited liability company whose primary place of business is Alabama.

Utterback alleged in his complaint that the value of the compensatory damages in this lawsuit is greater than \$75,000. Utterback also asked this court to grant punitive damages to him. [Docket no. 1].

which holds that “the law of a single state does not necessarily control every issue in a given case. We apply the center of gravity test to each question presented, recognizing that the answer produced in some instances may be that the law of this state applies and on other questions in the same case the substantive law of another state may be enforceable.” *Id* at 1031. After abiding by this Mississippi approach, this court, on the balance of the major facts, found that this court should apply the substantive law of Florida to this dispute, and as dictated by *Erie*, the procedural law of Mississippi.⁸

III. MOTIONS TO DISMISS [Docket nos. 9 & 11]

The Defendants (Trustmark and Hand Arendall) make the same arguments in their motions to dismiss; so, this court will address both motions as one. The Defendants urge this court to dismiss Plaintiff's complaint based on the strength of Florida's Litigation Privilege immunity; and Mississippi's statute of limitations which, say Defendants, bar all of Utterback's causes of action, with the exception of the tortious interference with business relations claim. This claim contends, Defendants, manifests a separate flaw: it fails to state a claim upon which relief can be granted.

⁸ The litigation, as previously stated, stems from a series of lawsuits which occurred in Florida. All the actions complained of occurred in Florida. Therefore, this court finds the substantive law of the State of Florida applies, while the procedural law of the State of Mississippi, wherein this court sits, applies.

a. Standard of Review

The Defendants filed their Motions to Dismiss [**Docket nos. 9 & 11**] asking this court to dismiss Utterback's complaint pursuant to Federal Rules of Civil Procedure, Rule 12(b)(6)⁹. When tasked with this question, this court must consider the facts of the complaint in the light most favorable to the plaintiff and determine whether the complaint states a valid claim for relief. *United States ex rel. Willard v. Humana Health Plan of Tex., Inc.*, 336 F.3d 375, 379 (5th Cir. 2003).

The United States Supreme Court has stated that the complaint must allege sufficient facts to give rise to a plausible claim. *Ashcroft v. Iqbal*, 556 U.S. 662, 678 (2009). The court "must take all of the factual allegations in the complaint as true," but is "not bound to accept as true a legal conclusion couched as a factual allegation." *Id.* In considering a motion under Rule 12(b)(6) of the Federal Rules of Civil Procedure, the "court accepts 'all well-pleaded facts as true, viewing them in the light most favorable to the plaintiff.'" *Martin K. Eby Constr. Co. v. Dall. Area Rapid Transit*, 369 F.3d 464, 467 (5th Cir. 2004).

⁹ (b) How to Present Defenses. Every defense to a claim for relief in any pleading must be asserted in the responsive pleading if one is required. But a party may assert the following defenses by motion: (6) failure to state a claim upon which relief can be granted;

b. Choice of Law

The Defendants assert, and Utterback concedes, Mississippi follows the “center of gravity” test in determining choice of law issues. *Boardman v. U.S. Auto Ass’n*, 470 So.2d 1024, 1030-31 (Miss. 1985). In such an inquiry, Mississippi courts determine, “which state has the most substantial contact with the parties and the subject matter of the action.” *Id.*

The Defendants concede all the actions occurred in Florida; therefore, Florida substantive law¹⁰ applies. Utterback agrees with this argument of the Defendants. The Defendants further assert that the procedural law¹¹ of Mississippi applies, and Utterback agrees with this proposition, as well. The disagreement of the parties relates to how the different states, Florida and Mississippi, treat the statutes of

¹⁰ substantive law (səb-stən-tiv) (18c) The part of the law that creates, defines, and regulates the rights, duties, and powers of parties. *Cf. procedural law.*

“So far as the administration of justice is concerned with the application of remedies to violated rights, we may say that the substantive law defines the remedy and the right, while the law of procedure defines the modes and conditions of the application of the one to the other.” John Salmond, *Jurisprudence* 476 (Glanville L. Williams ed., 10th ed. 1947).

SUBSTANTIVE LAW, Black’s Law Dictionary (10th ed. 2014).

¹¹ procedural law (1896) The rules that prescribe the steps for having a right or duty judicially enforced, as opposed to the law that defines the specific rights or duties themselves. — Also termed adjective law. *Cf. substantive law.*

PROCEDURAL LAW, Black’s Law Dictionary (10th ed. 2014).

limitations: Florida treats such provisions as substantive¹² and Mississippi treats statutes of limitations as procedural.¹³

In *Robinson v. General Motors Corp. et al*, the United States District Court interpreting Mississippi state law stated:

[A]s regards procedural matters, including, as a general rule, statutes of limitations, Mississippi applies its own law. *Id.* at 292. A well-recognized exception to this general rule exists where the “limitations period is an integral part of the statute which created the cause of action, and expiration of the limitations period extinguishes the right of action.” *Id.* In such cases, the limitations period is considered to be substantive. In determining whether another state’s statute of limitations is “substantive” or “procedural,” Mississippi “honors the construction of [the] statute placed on it by the

¹² *Fulton Cnty. Adm’r v. Sullivan*, 753 So.2d 549, 553 (Fla. 1999).

¹³ “While Arkansas law controls all substantive issues, the statute of limitations defense is a ‘procedural’ matter. Under Mississippi choice of law rules, Mississippi law applies to all procedural matters. *See, Shewbrooks v. A.C. & S. Inc.*, 529 So.2d 557, 566 (Miss.1988) (holding that the limitation period of the applicable statute of the state where the suit is filed controls); *See also, King v. Otasco, Inc.*, 861 F.2d 438, 441 (5th Cir.1988) (applying Mississippi law on statute of limitations). Anything relating to a statute of limitations defense will also be governed by Mississippi law.

Curry v. Hurt, 997 F.2d 881 (5th Cir. 1993).

courts of the state whose legislature enacted it.”

Id.

Robinson v. Gen. Motors Corp., 150 F. Supp. 2d 930, 932–33 (S.D. Miss. 2001)(*Citing Mitchell v. Craft*, 211 So.2d 509 (Miss.1968))(See also *Fieldman v. Roper Corp. et al*, 586 F.Supp 936 (S.D. Miss. 1984)).

The interpretation campaigned by Utterback of *Sullivan*, is correct, Florida law clearly considers statutes of limitations to be substantive and not procedural. *Fulton Cty. Adm'r v. Sullivan*, 753 So. 2d 549, 553 (Fla. 1999). Mississippi law, however, treats statutes of limitations as procedural, and this court sits in Mississippi. This court is convinced that Mississippi's choice of law provision about the procedural nature of the statute of limitations is appropriate and, therefore, will apply Mississippi's statute of limitations. Moreover, this court finds that Utterback has not alleged any cause of action arising from Florida statutory authority which provides a statute of limitations along with a cause of action, thus, under the authority of *Robinson*, this court must apply Mississippi's statute of limitations.

c. Statute of Limitations

Mississippi's statutes of limitations, which govern these claims, are codified at § 15-1-35, which provides:

All actions for assault, assault and battery, maiming, false imprisonment, malicious arrest, or menace, and all actions for slanderous words concerning the person or title, for failure to employ, and for libels, shall be commenced within one (1) year next after the cause of such action accrued, and not after.

MISS. CODE. ANN. § 15-1-35 (West).

Further, Mississippi courts have interpreted § 15-1-35 to bar claims for invasion of privacy¹⁴, outrage¹⁵, and abuse of process¹⁶.

¹⁴ “[W]e have recognized that the one-year statute of limitations applies in invasion of privacy actions, the same as in actions for libel or slander.”

Young v. Jackson, 572 So. 2d 378, 382 (Miss. 1990)(citing *City of Mound Bayou v. Johnson*, 562 So.2d 1212, 1219 n. 7 (Miss.1990); see also, *Andrews v. GAB Business Services, Inc.*, 443 F.Supp. 510, 513 (N.D.Miss.1977)).

¹⁵ “Maas’s claims for intentional infliction of emotional distress and outrage are also time-barred by the one-year statute of limitations. Under Mississippi law, these claims are considered to be equivalent. *Donald v. Amoco Prod. Co.*, 735 So. 2d 161, 179 (Miss. 1999) (Mississippi Supreme Court ‘has recognized outrageous conduct as a tort more commonly known as the intentional infliction of emotional distress’). As with all intentional torts, they are subject to a one-year statute of limitations. *Jones v. Fluor Daniel Servs. Corp.*, 32 So.3d 417, 423 (Miss. 2010).”

Maas v. Moran, No. 1:11CV287-LG-RHW, 2013 U.S. Dist. LEXIS 116222, at *27-28 (S.D. Miss. Aug. 16, 2013)

¹⁶ “Likewise, Maas’s claim of abuse of process is also barred by the one-year statute of limitations governing intentional torts. ‘A cause of action for abuse of process, therefore, accrues at the termination of the acts which constitute the abuse complained of, and not from the completion of the action which the process issued.’ *Harried v. Forman Perry Watkins Krutz & Tardy*, 813 F. Supp. 2d 835, 841 (S.D. Miss. 2011)(citing *Sullivan v. Boyd Tunica, Inc.*, Civil Action No. 2:06CV016-B-A, 2007 U.S. Dist. LEXIS 11499, 2007 WL 541619, *3 (N.D. Miss. Feb. 16, 2007) (internal quotations and citation omitted).”

Maas, at *24-27 (S.D. Miss. Aug. 16, 2013)

Utterback filed his complaint in this lawsuit on March 6, 2015. [Docket no. 1]. The alleged actions of the Defendants that Utterback complains of occurred, according to his own complaint, between November, 2011, and March, 2013.

Thus, Utterback's causes of action for defamation, invasion of privacy, outrage, and abuse of process must be dismissed as untimely filed.

d. Tortious Interference with Business Relations

As discussed *supra*, this court must apply Florida substantive law to the claims themselves in determining whether they have been adequately pled. The Defendants contend, as pled in the complaint, the tortious interference with business relations claim filed by Utterback fails to state a claim upon which relief can be granted.

Utterback's complaint alleges:

43. Utterback is a consultant who provides business consultation services to non-attorneys and to attorneys, primarily in support of an attorney's litigation needs. Utterback has had advantageous business relationship with his clients. Likewise, Utterback has had a continuous relationship with the Missouri Supreme Court, through the Office of the Chief Disciplinary Counsel, in his efforts to obtain reinstatement to the Missouri Bar.

44. Walker had knowledge of Utterback's advantageous business relationships with his clients, business associates, and of Utterback's

efforts to achieve reinstatement with the Missouri Bar.

45. Walker intentionally and unjustifiedly interfered with Utterback's business relationships with his existing and prospective clients by using the civil justice system to defame Utterback, callously believing that he could manipulate the litigation privilege to shield himself from liability.

46. Walker knew that his attacks on Utterback in the federal and state trial and appellate courts has no connection to the litigation, but chose to adopt a "win at all costs" approach to the litigation and consciously decided to punish Utterback for daring to use his experience and knowledge to expose BankTrust/Trustmark's fraudulent conduct; and to use Utterback's 1998 criminal conviction and the surrender of his Missouri law license in the same year to prejudice Utterback's clients, his attorneys, the judges in the matters of litigation, and the employees of Missouri's Office of the Chief Disciplinary Counsel.

47. Walker's conduct has caused Utterback to suffer damages that exceed \$450,000 in compensatory damages. Utterback alleges that the proof of Walker/Beckmann's intentional, malicious conduct coupled with evidence of the net worth's of Walker, Beckmann, Hand Arendall, and Trustmark will support a punitive damages award that would exceed Five Million Dollars (\$5,000,000) because where the fact finder determines that at the time of the injury

the defendant had a specific intent to harm the claimant and determines that the defendant's conduct did in fact harm the claimant, there is no cap on punitive damages.

[Docket no. 1, ¶¶ 43-47].

The Defendants cite *Seminole Tribe v. Time Pub. Co.*, in which the court held that the claim therein was "a defamation case in the clothing of a different sort." 780 So.2d 310, 318 (Fla. 4th DCA 2001). The plaintiffs in *Seminole* alleged in their complaint that libelous statements caused "interference with the relationship" between the tribe and its employees and agents. *Id* at 314. The *Seminole Tribe* court rejected that argument and this court will do the same for Utterback's claim, as it finds it similarly postured.

Further, says the Defendants, in order to state a claim for tortious interference with a business relationship in Florida the plaintiff must allege:

- (1) the existence of a business relationship, not necessarily evidenced by an enforceable contract;
- (2) knowledge of the relationship on the part of the defendant;
- (3) an intentional and unjustified interference with the relationship by the defendant; and
- (4) damage to the plaintiff as a result of the breach of the relationship.

Se. Integrated Med., P.L. v. N. Florida Women's Physicians, P.A., 50 So. 3d 21, 23 (Fla. Dist. Ct. App. 2010)(quoting *Tamiami Trail Tours, Inc. v. Cotton*, 463 So.2d 1126, 1127 (Fla.1985)).

From the face of Utterback's complaint, he cannot succeed on intentional interference with business

relations. It is unclear which defendant Utterback is asserting intentionally interfered with a business relation by defamation. Furthermore, Utterback has failed to assert a business relation that is even actionable. Utterback was not in an existing business relationship with the Florida State Bar Association. He had never been barred in Florida. Utterback was also not in an existing business relationship with the Missouri Supreme Court. He was not a contractor, not an employee, nor was he providing services to the Missouri Supreme Court. Utterback was attempting to have his license re-instated to practice law in Missouri. Thus, Utterback had no existing business relation with the Missouri Supreme Court.

Even were Utterback later to assert his allegations were that the Defendants interfered with his relationships with clients, he has still failed to allege any damages he suffered with regard to those relationships.

Moreover, this court finds it dispositive that Utterback has utterly failed to show defamation. Under Florida law:

The elements of a defamation claim include "a false and defamatory statement concerning another." *Thomas v. Jacksonville Television, Inc.*, 699 So.2d 800, 803 (Fla. 1st DCA 1997). A defamatory statement is one that tends to harm someone's reputation in the community or deters others from associating with the person. *See id.* Thus, in a situation like the one in the instant case, if a statement is both false and defamatory, then the burden is on a plaintiff to demonstrate by clear and convincing evidence that appellees'

statement to the prospective employer was “knowingly false,” “deliberately misleading,” or “rendered with a malicious purpose.”

Linafelt v. Beverly Enterprises-Florida, Inc., 745 So. 2d 386, 388–89 (Fla. Dist. Ct. App. 1999). This court notes that Utterback, in his own complaint, alleges the Florida State Bar Association found he had been practicing law without a license, exactly as averred by the Defendants. Defamation requires a *false* statement. Clearly, that is not the case here. Utterback urges this court to listen to his loud and repetitive insistence that he was defamed without showing this court that a defendant made a false statement about him.

e. Florida's Litigation Privilege

The defendants maintain that under Florida law, the “litigation privilege” grants them absolute immunity as to the allegedly tortious statements. In *Levin, Middlebrooks, Mamie, Thomas, May & Mitchell, P.A. v. U.S. Fire Ins. Co.*, 639 So. 2d 606, 607-08 (Fla. 1994), the Florida Supreme Court held that “*absolute immunity* must be afforded to *any act* occurring during the course of a judicial proceeding, regardless of whether the act involves a defamatory statement or other tortious behavior such as the alleged misconduct at issue, *so long as the act has some relation to the proceeding.*” (Emphasis added.) The court further stated that “The rationale behind the immunity afforded to defamatory statements is equally applicable to other misconduct occurring during the course of a judicial proceeding. Just as participants in litigation must be free to engage in unhindered communication, so too must those participants be free to use their best judgment in prosecuting or defending a lawsuit without

fear of having to defend their actions in a subsequent civil action for misconduct.” *Id.* at 608. According to a U.S. District Court in Florida:

“The litigation privilege applies across the board to actions in Florida, both to common-law causes of action, those initiated pursuant to a statute, or of some other origin.” *Echevarria, McCalla, Raymer, Barrett & Frappier v. Cole*, 950 So.2d 380, 384 (Fla.2007); *see also Microsoft Corp. v. Big Boy Distrib. LLC*, 589 F.Supp.2d 1308, 1322 (S.D.Fla.2008) (finding tortious interference claim barred by Florida’s litigation privilege where it was based on the plaintiffs pursuit of “its legal remedies through this lawsuit and another lawsuit filed against ... one of [the defendant’s] customers/ suppliers, for related activities”); *Boca Investors Grp., Inc. v. Potash*, 835 So.2d 273, 275 (Fla. 3d DCA 2002) (“Here, as in *Levin*, all of the acts alleged in support of the tortious interference claim bear a relationship to the proceedings instituted by defendants.... Accordingly, those acts must be afforded absolute immunity.”); *Green Leaf Nursery v. E.I. DuPont De Nemours & Co.*, 341 F.3d 1292, 1302-04 (11th Cir.2003) (finding that Florida’s litigation immunity doctrine barred claim for fraud that was based on alleged conduct including untruthful testimony, improper or obstructive motions, trial misconduct, and taking “false litigation positions”).

Palaxar alleges that the Mirabilis Litigation is what caused its damages. All of Palaxar’s claims

arise from the Mirabilis Litigation or actions allegedly taken with some relation to the Mirabilis Litigation. The tortious interference and conspiracy claims are clearly barred by Florida's litigation privilege doctrine.

Palaxar Grp., LLC v. Williams, 2014 WL 5059286, at *10 (M.D. Fla. Oct. 2, 2014). As the Eleventh Circuit has explained, *absolute* immunity protects both parties and their attorneys:

Under Florida law, "absolute immunity must be afforded to any act occurring during the course of a judicial proceeding ... so long as the act has some relation to the proceeding." *Green Leaf Nursery v. E.I. DuPont De Nemours and Co.*, 341 F.3d 1292, 1302 n. 8 (11th Cir.2003). This litigation privilege "extends not only to the parties in a proceeding but to . . . counsel as well." *Levin, Middlebrooks, Mabie, Thomas, Mayes & Mitchell, P.A. v. United States Fire Ins. Co.*, 639 So.2d 606, 608 (Fla.1994). As such, this privilege bars tort claims based on counsel's conduct during the course of litigation. See *Jackson v. BellSouth Telecomms.*, 372 F.3d 1250, 1275-76 (11th Cir.2004) (holding Florida's litigation privilege barred suit against attorneys). Further, we have held "Florida law suggests that the Florida courts would agree that 'events taking place outside the courtroom during discovery ... [are] deserving of the protection of the [litigation] privilege....' " *Id.* at 1276.

Williams v. Carney, 157 F. App'x 103, 107-08, 2005 WL 2662550 (11th Cir. 2005).

The Florida Supreme Court confirmed the absolute immunity provided by the litigation privilege in *Echeverria, McCall, Rammer, Barrett & Flapper v. Cole*, 950 So. 2d 380 (Fla. 2007). In *Echeverria*, the Florida Supreme Court reaffirmed the broad reach of the litigation privilege described in *Levin*, stating that “The nature of the underlying dispute simply does not matter. . . . The litigation privilege applies across the board to actions in Florida, both to common-law causes of action, those initiated pursuant to statute, or of some other origin.” *Id.* at 384.

Florida courts, thus, have recognized the absolute immunity provided by the litigation privilege in dismissing claims for various causes of action: defamation, *McCullough v. Kubiak*, 158 So. 3d 739, 739-741 (Fla. Dist. Ct. App. 4th Dist. 2015); tortious interference with a business relationship, *Fernandez v. Haber & Ganguzza, LLP*, 30 So. 3d 644, 646 (Fla. Dist. Ct. App. 3d Dist. 2010); and abuse of process, *LatAm Invs., LLC v. Holland & Knight, LLP*, 88 So. 3d 240, 242 (Fla. Dist. Ct. App. 3d Dist. 2011).¹⁷ And, while

¹⁷ Utterback has placed false hope in a case pending before the Florida Supreme Court, *Debrincat v. Fischer*. Utterback asked this Court to delay ruling on the present motions until the Florida court resolved that case. On February 9, 2017, the Florida Supreme Court ruled in that case that malicious prosecution claims are not necessarily barred by the litigation privilege, because litigation is a necessary element of the claim. *Debrincat v. Fischer*, - - - So.3d - - - , 2017 WL 526508 (Fla. 2/9/2017). The holding in *Debrincat* is limited to claims for malicious prosecution – a claim that has not been pled by Utterback, and that could not be supported since he was not sued, and that would be time barred under Miss. Code Ann. § 15-1-35. The recent *Debrincat* decision did not alter the longstanding principle that statements made in

immunity is an affirmative defense,"it may be raised in a motion to dismiss if its applicability is demonstrated on the face of the complaint or exhibits." *James v. Leigh*, 145 So. 3d 1006, 1008 (Fla. Dist. Ct. App. 1st Dist. 2014); *see also LatAm Invs.*, 88 So. 3d at 242. Just as the litigation privilege protects statements made in court or in pleadings filed in court, it also protects statements made in depositions in a case. *McCullough*, 158 So. 3d 739, 739-741; *Sussman v. Damian*, 355 So. 2d 809, 811 (Fla. Dist. Ct. App. 3d Dist. 1977). Florida's litigation privilege has been applied to many legal theories and claims based on harmful statements, including for example abuse of process (*LatAm Invs., LLC v. Holland & Knight, LLP*, 88 So. 3d 240, 242 (Fla. Dist. Ct. App. 3d Dist. 2011)) and tortious interference with business relationships (*Levin, supra*, 639 So.2d at 607-08).

Utterback, apparently aware of the absolute immunity provided by Florida's litigation privilege, attempted to plead around it by alleging that "Walker's allegations, as summarized in the above paragraphs, had no relation to any of the trial court or appellate proceedings." [Compl. 1, 23]. His conclusory assertion is inadequate to avoid dismissal, however, because Florida "courts have not imposed a strict relevancy test in determining whether a statement made during the course of a judicial proceeding is entitled to immunity so long as the statement 'has some relation to the proceeding.'" *James*, 145 So. 3d at 1008 (quoting *Hope v. Nat'l Alliance of Postal & Fed. Emps., Jacksonville*

litigation are entitled to absolute immunity so long as the statements have some relation to the proceeding.

Local No. 320, 649 So. 2d 897, 901 (Fla. Dist. Ct. App. 1st Dist. 1995)).

The Court has carefully studied Utterback's Complaint, which identifies the statements upon which plaintiff's claims rest, including the documents and transcripts in which the statements are found. The Court has also studied Exhibits 1 through 13 to Hand Arendall's Motion to Dismiss, which consist of the deposition transcripts, Bar complaint, and pleadings upon which Utterback's Complaint relies. All of the statements and communications "related to" the Florida Litigation. CCB had contended that communications between it and Utterback were privileged and thus refused to answer deposition questions relating to those communications or to produce documents between Utterback and CCB based upon an attorney-client privilege. Hand Arendall argued that the attorney-client privilege did not apply since Utterback was not an attorney. The trial court agreed with Hand Arendall's position and ordered the production of the documents. CCB filed various objections to the trial court ruling, including a motion for rehearing, a motion for protective order, and an interlocutory appeal. In response to those motions, Hand Arendall repeated its argument that the attorney-client privilege did not apply since Utterback was no longer a member of any bar.

Utterback complains that Hand Arendall asserted that Utterback may have been practicing law without a license. It is abundantly clear from the allegations of the Complaint itself that such statements "had some relation" to the proceeding. As noted in paragraphs 15 and 18 of the Complaint, Hand Arendall took the

position that if CCB's attorneys knew that Utterback was practicing law without a license and facilitated such, then those attorneys would be disqualified from continuing to represent CCB in the Florida Litigation. Accordingly, the face of the Complaint demonstrates that the statements had "some relation" to the litigation. Therefore, the Complaint does not sufficiently allege any statements were made by either defendant that did not "have some relation" to the litigation between the bank and CCB. The statements upon which Utterback bases his claims were therefore protected by the litigation privilege; thus, the Complaint fails to state a claim upon which relief may be granted.

**IV. PLAINTIFF'S MOTION TO FILE SUR-
RESPONSE TO DEFENDANTS' DOCUMENTS
20 & 21 - REBUTTALS TO PLAINTIFF'S
RESPONSE TO MOTIONS TO DISMISS
[Docket no. 26].**

This court has reviewed the submissions of the parties and its ruling on the motions to dismiss [Docket nos. 9 & 11], *supra*, and finds this motion **MOOT** and therefore **DENIES** it as such.

**V. PLAINTIFF'S MOTION TO DEFER RULING
ON DEFENDANTS' MOTIONS TO DISMISS
[Docket no. 31].**

This court has reviewed the submissions of the parties and its ruling on the motions to dismiss [Docket nos. 9 & 11], *supra*, and finds this motion **MOOT** and therefore **DENIES** it as such.

**VI. PLAINTIFF'S MOTION TO TRANSFER TO
THE NORTHERN DISTRICT OF FLORIDA
(PENSACOLA)
[Docket no. 45].**

This court has reviewed the submissions of the parties and its ruling on the motions to dismiss [Docket nos. 9 & 11], *supra*, and finds this motion **MOOT** and therefore **DENIES** it as such.

**VII. UTTERBACK'S MOTION TO ABATE
ENTRY OF JUDGMENT IN FAVOR OF
ALLOWING PLAINTIFF TO FILE HIS
AMENDED COMPLAINT
[Docket no. 47].**

This court has reviewed the submissions of the parties and its ruling on the motions to dismiss [Docket nos. 9 & 11], *supra*, and finds this motion **MOOT** and therefore **DENIES** it as such.

VIII. CONCLUSION

This court has considered the submissions of the parties and is convinced that Utterback's causes of action for defamation; invasion of privacy; intentional infliction of emotional distress; and abuse of process are all barred under Mississippi law's statute of limitations, Miss. Code § 15-1-35. Further, Utterback's intentional interference with business relations claim fails as insufficiently pled because it fails to identify an existing relationship with which the Defendants interfered. Thus, with all his claims failing as a matter of law, this court must dismiss his Complaint.

IT IS THEREFORE ORDERED the Motions to Dismiss filed by the Defendants [**Docket nos. 9 & 11**] are hereby **GRANTED**.

IT IS FURTHER ORDERED that Utterback's Motion to File Sur-Response to Defendants' Documents 20 & 21 – Rebuttals To Plaintiff's Response to Motions to Dismiss [**Docket no. 26**]; Utterback's Motion to Defer Ruling On Defendants' Motions to Dismiss [**Docket no. 31**]; Utterback's Motion to Transfer to the Northern District of Florida (Pensacola) [**Docket no. 45**]; and Utterback's Motion to Abate Entry of Judgment in Favor of Allowing Plaintiff to File His Amended Complaint [**Docket no. 47**] are **MOOT** and **DENIED** as such.

SO ORDERED this the 29th day of March, 2017.

s/ HENRY T. WINGATE

UNITED STATES DISTRICT COURT JUDGE

**IN THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF MISSISSIPPI
NORTHERN DIVISION**

CIVIL ACTION NO.: 3:15-CV-163-HTW-LRA

[Filed March 30, 2017]

THOMAS M. UTTERBACK	)
PLAINTIFF	)
	)
vs.	)
	)
TRUSTMARK NATIONAL BANK	)
and HAND ARENDALL LLC	)
DEFENDANTS	)
	)

FINAL JUDGMENT

Before this court is the Defendants' Motions to Dismiss [**Docket nos. 9 & 11**]. After consideration of the motion, evidence offered in support of the motion, and the memoranda of the parties, the court finds that the motion of the defendants is well taken and should be granted. This court is issuing an order contemporaneously with this judgment. The court concludes that judgment should be entered in favor of the defendants and against the plaintiff and that the defendants should be awarded their costs.

IT IS, THEREFORE, ORDERED AND ADJUDGED that the complaint be, and it is hereby dismissed in accordance with this court's Order granting dismissal.

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IT IS FURTHER ORDERED AND ADJUDGED
that the defendants are entitled to recover their
taxable costs in this action upon filing a Bill of Costs in
the time and manner prescribed by the rules.

SO ORDERED AND ADJUDGED this the 29th
day of March, 2017.

s/ HENRY T. WINGATE

UNITED STATES DISTRICT COURT JUDGE

Civil Action No. 3:15-CV-163-HTW-LRA
Final Judgment

APPENDIX C

Sup. Ct. R. 8 §2

2. After reasonable notice and an opportunity to show cause why disciplinary action should not be taken, and after a hearing if material facts are in dispute, the Court may take any appropriate disciplinary action against any attorney who is admitted to practice before it for conduct unbecoming a member of the Bar or for failure to comply with these Rules or any Rule or order of the Court.

**Constitution of the State of Florida
as Revised in 1968 and Subsequently Amended**

Article V Judiciary

Section 15. Attorneys; admission and discipline.—The supreme court shall have exclusive jurisdiction to regulate the admission of persons to the practice of law and the discipline of persons admitted.

History.—S.J.R. 52-D, 1971; adopted 1972.