

APPENDIX

**In The
Supreme Court of the United States**

_____ Δ _____

SANDRA FINCH

Petitioner,

_____ Δ _____

**On Petition For Writ Of Certiorari
To The United States Court Of Appeals
For The Eleventh Circuit**

_____ Δ _____

PETITION FOR WRIT OF CERTIORARI

_____ Δ _____

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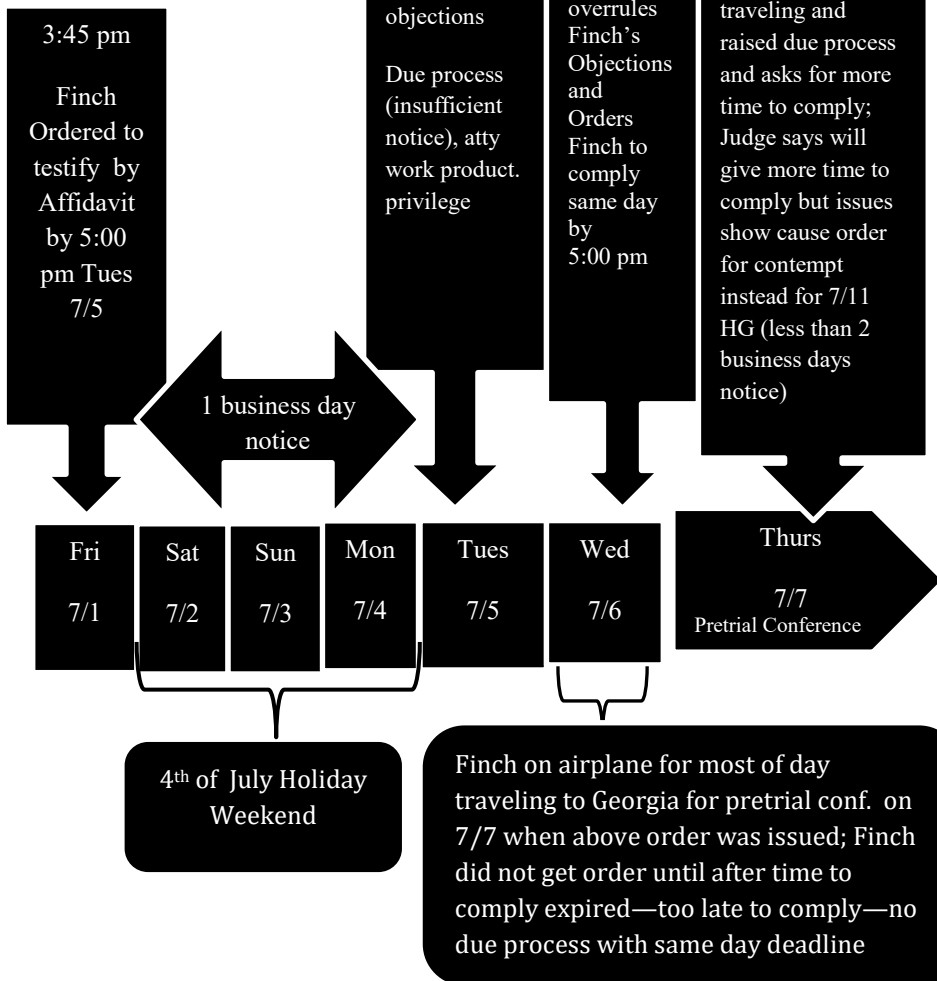
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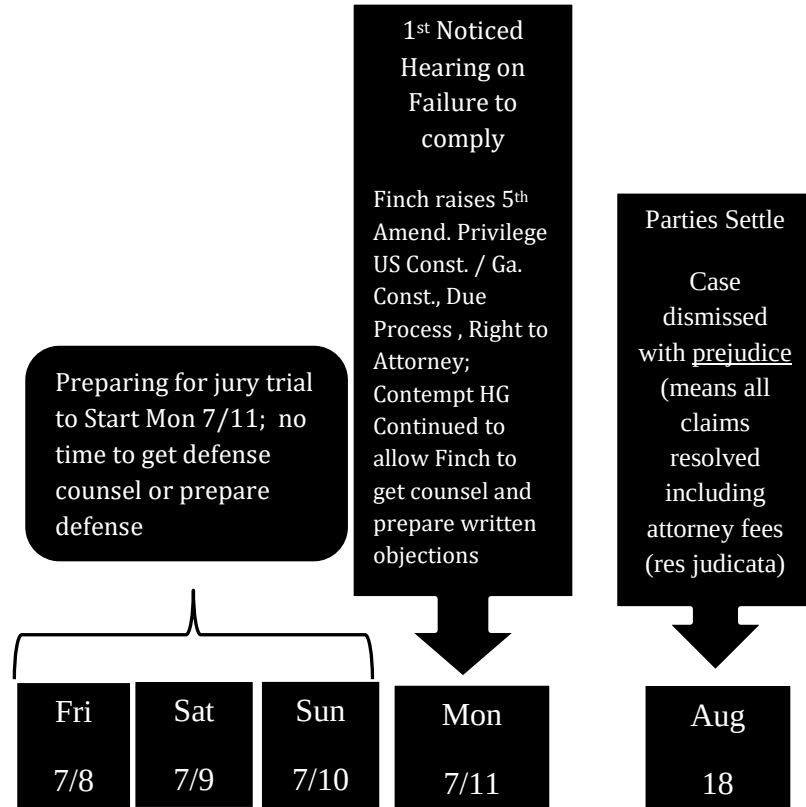
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APPENDIX A, Timeline

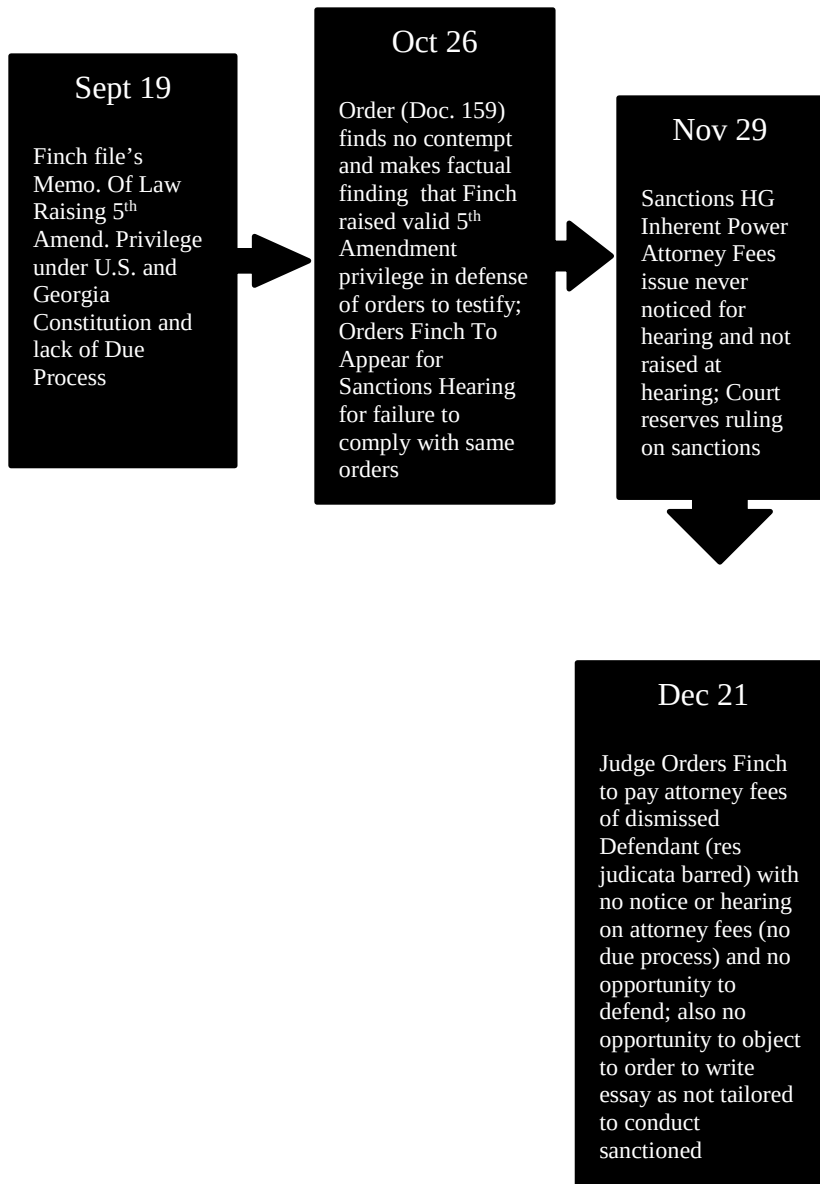
Timeline of Good Faith Defenses of Lack of Due Process and 5th Amendment Privilege—Finch Never Offers Testimony As Ordered (No Waiver)



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App. 3a



**APPENDIX B, Opinion of the U.S. Court of Appeals
for the Eleventh Circuit Affirming District Court's
12/6/17 (Doc. 165) & 12/21/17 (Doc. 167) Orders**

[DO NOT PUBLISH]

IN THE UNITED STATES COURT OF APPEALS FOR
THE ELEVENTH CIRCUIT

ELAINE ARMSTEAD	)	
	)	No. 17-10068
Plaintiff,	)	Non-Argument
	)	Calendar
SANDRA FINCH	)	
	)	D.C. Docket No.
Respondent/Appellant,	)	1:14-cv-00586-WSD
	)	
Versus	)	
	)	
ALLSTATE PROPERTY &	)	
CASUALTY INSURANCE	)	
COMPANY,	)	
	)	
Defendant-Appellee,	)	
	)	
WEBB, ZSCHUNKE,	)	
NEARY, & DIKEMAN,	)	
LLP,	)	
	)	
Defendant.	)	

Appeal from the United States District
Court for the Northern District of
Georgia

(July 14, 2017)

Before ED CARNES, Chief Judge, JORDAN and ROSENBAUM, Circuit Judges. PER CURIAM:

Attorney Sandra Finch represented Elaine Armstead in Armstead's lawsuit against Allstate Property & Casualty Insurance Company. In the weeks leading up to trial, Finch, on Armstead's behalf, filed a motion in limine to exclude or strike the deposition testimony of Allstate's fact witness Mark Gould. Allstate filed a response in opposition that, among other things, described what happened during Gould's deposition, which it supported by citing the deposition transcript and Gould's affidavit. The transcript showed that during the deposition Finch handed Gould page-by-page photographs of a document titled "Steamatic Guide to Restoration Services" (an outdated company document) and that when Gould asked Finch where she had found that document, Finch refused to answer. Gould in his affidavit stated that he "got very upset when it became apparent [that Finch] had obtained the document from my office without my permission."

The photographs of the Steamatic Guide were not the only photographs Finch showed Gould during his deposition. At one point she handed Gould a photograph of the inside of his office, but refused to explain where she had gotten the picture. Gould accused Finch of trespassing, at which point Finch responded, "I caution you on defaming me, because if you defame me, I can promise you it will not be good."

On July 1, 2016, the district court entered an order denying Armstead's motion in limine and instructing Finch to "file, on or before July 5, 2016, a sworn affidavit stating, in detail, how and under what circumstances she obtained the photographs of Mr. Gould's office and the Steamatic Guide in question."

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Finch responded to that order on July 5 by filing objections based on lack of notice, due process, and relevance. On July 6 the district court entered an order overruling Finch's objections and instructing her to file the affidavit "on or before 5:00 p.m. EST today, July 6, 2017" because "the matters required to be addressed in the affidavit may impact the admission of evidence at trial." Finch did not file the affidavit by that deadline.

The next morning (July 7), the district court held a pretrial conference. Finch and Allstate's counsel attended, and Finch explained that she was traveling by plane when the district court entered its July 6 order and was unable to file her response by the 5:00 deadline. Finch stated that she needed additional time to respond to the court's order and that she objected to that order on due process grounds, explaining that "I really don't understand what the complaint is or what it is that I'm responding to." The district court clarified that Finch was to file an affidavit providing the source of the photographs because that information "may well impact the admissibility" of those documents at trial. The district court then told Finch that she would be permitted "a little more time today to provide the information." At 5:07 that evening, after Finch had not filed the affidavit, the district court entered an order directing her to show cause why it should not hold her in contempt and impose sanctions for failing to follow its July 1 and July 6 orders.

On July 11, after the first day of trial had ended, the district court held a hearing on its show cause order and, at that hearing, Finch argued for the first time that she had not filed the affidavit based on her Fifth Amendment right against self-incrimination. The district court did not impose sanctions at that hearing and scheduled a second sanctions hearing to give Finch time to retain counsel to represent her in the matter.

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At the second sanctions hearing Finch, through her attorney, reiterated that she had not filed the affidavit based on her Fifth Amendment right.

A few days after that second hearing, the district court entered an order finding that Finch had acted in bad faith by refusing to comply with its July 1 and July 6 orders. It decided to exercise its inherent power to sanction Finch by ordering her to pay Allstate's attorney's fees incurred by its participation in and preparation for both the pretrial conference (nearly all of which was spent discussing Finch's failure to comply with the July 1 and July 6 orders) and the first sanctions hearing. The court ordered Allstate to submit to it the amount of attorney's fees it had incurred in connection with those two hearings. Allstate submitted the calculation of its attorney's fees, and the district court entered an order directing Finch to pay Allstate \$1,548 in attorney's fees. This is Finch's appeal of the district court's orders imposing sanctions based on her non-compliance with its July 1 and July 6 orders.

We review for an abuse of discretion the district court's imposition of sanctions under its inherent power. See Sciarretta v. Lincoln Nat'l Life Ins. Co., 778 F.3d 1205, 1212 (11th Cir. 2015). A district court abuses its discretion when it "applies an incorrect legal standard, applies the law in an unreasonable or incorrect manner, follows improper procedures in making a determination, or makes findings of fact that are clearly erroneous," or when it "misconstrues its proper role, or ignores or misunderstands the relevant evidence." Id. (quotation marks omitted) (alterations omitted). "Courts have the inherent power to police themselves and those appearing before them," and "[t]he key to unlocking that inherent power is a finding of bad faith." Id. "Once unlocked, the power carries with it the authority to assess attorney's fees as a sanction for bad faith conduct." Id.

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Finch first contends that because she had a good faith basis for asserting her Fifth Amendment right, the district court erred in finding that she acted in bad faith by refusing to comply with its July 1 and July 6 orders. Although Finch raised objections to those orders, she did not assert her Fifth Amendment privilege at that time. She instead brought up her Fifth Amendment right at the sanctions hearings as an after-the-fact reason for not filing the affidavit.

If Finch wished to assert her Fifth Amendment right as a basis for not complying with the July 1 and July 6 orders, she should have claimed her Fifth Amendment privilege at the time she was instructed to file the affidavit. See

Minnesota v. Murphy, 465 U.S. 420, 434, 104 S. Ct. 1136, 1146 (1984) (noting “[t]he general rule that the [Fifth Amendment] privilege must be claimed when self-incrimination is threatened”). Instead, Finch objected to the July 1 and July 6 orders on other grounds (which the district court overruled) and then sat silently while the July 7 deadline passed. The district court’s decision to sanction Finch did not, as she contends, “effectively penaliz[e] [her] for the exercise of her Fifth Amendment privilege.” It was instead based on her failure to either comply with or timely raise a valid objection to complying with the July 1 and July 6 orders.

Finch also contends that the district court erred in finding that Finch’s failure to file the required affidavit constituted bad faith because the court failed to make specific findings of the conduct that warranted sanctions. “We review a court’s finding of bad faith, and the subsidiary factual findings that go into it, only for clear error.” Sciarretta, 778 F.3d at 1213. “Under clear error review, we will reverse only if after viewing all the evidence, we are left with the definite and firm

conviction that a mistake has been committed.” Id. (quotation marks omitted).

The district court’s order imposing sanctions found that Finch “acted in bad faith when she repeatedly and flagrantly disregarded [its] orders” without providing “adequate justification or explanation.” The district court made specific findings of bad faith and it did not clearly err in finding that Finch acted in bad faith by failing to either comply or timely justify not complying with its orders. ¹

Finally, Finch contends that the district court abused its discretion by imposing sanctions because it failed to give her sufficient notice of its intent to sanction her and failed to provide a legal basis for imposing sanctions. See Chambers v. NASCO, Inc., 501 U.S. 32, 50, 111 S. Ct. 2123, 2136 (1991) (“A court must, of course, exercise caution in invoking its inherent power, and it must comply with the mandates of due process . . .”). Before the first sanctions hearing, the district court ordered Finch to show cause why she should not be held in contempt and sanctioned for not complying with its July 1 and July 6 orders. During the first sanctions hearing the district court made clear both the factual and legal basis for which it was considering imposing sanctions. At that hearing the district court told Finch

¹ Finch also contends that the district court erroneously failed to take into account Allstate’s egregious conduct during discovery, which is what led to the “need to disprove Gould’s testimony without the benefit of full discovery” and her need to “get to the truth . . . in a situation where [her client] was deprived of discovery.” But Finch was not sanctioned for allegedly sneaking into Gould’s office. She was sanctioned for refusing to file an affidavit after the court more than once ordered her to do so. For that reason, Allstate’s conduct during discovery is not relevant to whether Finch acted in bad faith by refusing to file the court ordered affidavit.

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that she needed to show cause why she should not be sanctioned for specific conduct:

In [the July 1 order] I required Ms. Finch to provide certain information about the acquisition of materials that were used during a deposition. The information that was required to be provided is set out on page 34 of the order, . . . and the information was required to be provided in a sworn affidavit, stating in detail how and under what circumstances she obtained the photographs of Mr. Gould's office and the Steamatic guide in question She did not provide the information as originally required in the July 1, 2016 order, nor did she provide me information as she was told she was required in the Court's subsequent order. And then, further, during the pretrial conference that we had just a couple of days ago, she told me that she intended to file a response to the order, and she has failed to do that.

In an order scheduling the second sanctions hearing, the district court stated that it was holding that hearing "to determine whether the Court should exercise its inherent power, and, if it should, what sanctions are appropriate." Finch's statement that "[t]he District court failed to notify [her] of a) the conduct that is subject to sanction; or b) the legal basis for said sanctions" is false.

AFFIRMED.

**APPENDIX C, Opinion of the U.S. Court of Appeals
for the Eleventh Circuit Denying Rehearing and/or
Rehearing En Banc**

IN THE UNITED STATES COURT OF APPEALS FOR THE
ELEVENTH CIRCUIT
ATLANTA DIVISION

ELAINE ARMSTEAD	)	
	)	No. 17-10068
Plaintiff,	)	Non-Argument
	)	Calendar
SANDAR FINCH	)	D.C. Docket No.
	)	1:14-cv-00586-WSD
Respondent/	)	
Appellant,	)	
	)	
Versus	)	
	)	
ALLSTATE PROPERTY &	)	
CASUALTY INSURANCE	)	
COMPANY,	)	
	)	
Defendant-Appellee,	)	
	)	
WEBB, ZSCHUNKE, NEARY, &	)	
DIKEMAN, LLP,	)	
	)	
Defendant.	)	

Appeal from the United States
District Court for the Northern
District of Georgia

BEFORE: ED CARNES, Chief Judge, JORDAN and ROSENBAUM,
Circuit Judges. PER CURIAM:

The petition(s) for panel rehearing filed by SANDRA FINCH is
DENIED

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/s Ed Carnes
Chief Judge

**APPENDIX D, District Court July 1, 2016 Order,
Ordering Finch to Testify by Affidavit,
(Doc. 121)**

IN THE UNITED STATES DISTRICT COURT FOR THE
NORTHERN DISTRICT OF GEORGIA
ATLANTA DIVISION
ELAINE ARMSTEAD,

Plaintiff,

v.

1:14-CV-586-WSD

ALLSTATE PROPERTY
& CASUALTY INSURANCE
COMPANY,

Defendant.

OPINION AND ORDER

portions of this order irrelevant to this appeal omitted

I. PLAINTIFF'S COUNSEL'S CONDUCT

Allstate submitted in its response to Plaintiff's Motion an affidavit of Mr. Gould relating facts regarding Sandra Finch, Plaintiff's attorney. ([114.1]). The facts contained in Mr. Gould's affidavit are highly troubling. Mr. Gould states that he believes "Plaintiff's counsel entered areas of [his] office building without permission and took many photographs without permission" (Gould Aff. [115.1] ¶ 13). During Mr. Gould's deposition, Ms. Finch handed him a document titled "Steamatic Guide to Restoration Services," which had been photographed page-by-page. (Id. ¶ 5). The photographs contained Ms. Finch's letterhead. (Id.). Mr. Gould states that it "became apparent to [him] Plaintiff's counsel had obtained the document from [his] office without [his] permission." (Id. ¶ 6).

After he accused Ms. Finch of trespassing, Ms. Finch stated “I caution you on defaming me, because if you defame me, I can promise you it will not be good.” (Id. ¶ 9). Mr. Gould felt this was a threat. (Id.). At the deposition, Ms. Finch stated that, in order for trespassing to occur, “you have to have told somebody they can’t come on your property . . .” (Id. ¶ 8).

After the deposition, Mr. Gould went to his office and confirmed the location of the Steamatic Guide, which was located on a bookshelf in his project manager’s office. (Id. ¶ 11). He questioned his office manager, Leonor Alarez, who told him:

On May 20, 2016, she heard some noise in the office and asked if anyone was there. There was no response. So, Ms. Alarez continued working. Approximately 30 minutes later, Ms. Alarez was walking to the copier and came upon Plaintiff’s counsel sitting in the reception area. Ms. Alarez asked Plaintiff’s counsel how long she had been there, but she never received an answer. At which point, Plaintiff’s counsel hand delivered the subpoena.

(Id. ¶ 12). It is Mr. Gould’s opinion and belief “that Plaintiff’s counsel entered areas of [his] office building without permission and took many photographs without permission . . .” (Id. ¶ 13).

Ms. Finch submitted her own affidavit with her reply brief. ([116.1]). In it, she states:

On May 16, 2016 . . . I drove to the offices of Steamatic of Greater Atlanta. When I arrived at Steamatic offices there were no signs not to enter, and it appeared that the business was a business open to the public. I took a photo of the business door as it appeared that day. The doors were not locked and there were no signs of “no trespass.” I opened the door and

entered. . . . No one came to greet me. I waited for several minutes and still no one greeted me. I was in a hurry to get to my deposition [for an unrelated case]. I heard a voice speaking in a British accent coming from the hall way [sic]. I had previously spoken to Mr. Gould on the phone and recognized the voice to be Mr. Gould's. I proceeded into the hallway to look for the source of the voice. There was no door leading from the reception area to the hallway. . . . When I entered the hallway, I saw a man on the telephone in the office to the left. The man stated to the person whom he was on the phone with "I am about to be served" and then ended his phone conversation. . . . The man identified himself as Mr. Gould. . . . I identified myself and explained why I was there.

(Finch Aff. ¶ 4 (citations omitted)). Regarding the photographs of Mr. Gould's office, Ms. Finch explains:

Through attorney work product and privileged investigation, I previously obtained a photo of multiple certifications, including IICRC certifications, hanging on the wall in the hallway where Mr. Gould's office is located. While standing in the hallway in front of Mr. Gould's office, I observed the numerous framed IICRC certifications hanging on the wall as depicted in the photo. The framed certifications were obviously being displayed for potential customers to view in an effort to convince customers of the company's competency for hire.

(Id. ¶ 6 (citations omitted)). Regarding the Steamatic Guide, Plaintiff explains: "I have litigated many cases involving franchises with different owners and have numerous sources for P202 'Steamatic Guide to Restoration Services' shown to

Mr. Gould to include data banks, other lawyers, other Steamatic franchises, etc.” [Id. ¶ 9].

The Court finds Ms. Finch’s explanations insufficient and evasive. Accordingly, Ms. Finch is required to file, on or before July 5, 2016, a sworn affidavit stating, in detail, how and under what circumstances she obtained the photographs of Mr. Gould’s office and the Steamatic Guide in question, including when the photographs were obtained, who took them, where they were taken, to whom they were distributed, whether the Steamatic Guide photographs had Ms. Finch’s letterhead and, if so, how did the letterhead appear on them, and whether Ms. Finch was involved in or knew of the circumstances regarding the creation of the photographs.

II. CONCLUSION

*** portions of this section irrelevant to this appeal omitted]***

IT IS FURTHER ORDERED that Plaintiff’s counsel is required to file, on or before July 5, 2016, a sworn affidavit containing the information required by this Order.

SO ORDERED this 1st day of July, 2016.

/s/ William S. Duffey

United States District Judge

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**APPENDIX E, Finch's Objections to July 1, 2016
Order, July 5, 2017
(Doc. 125)**

IN THE UNITED STATES DISTRICT COURT FOR
THE NORTHERN DISTRICT OF GEORGIA
ATLANTA DIVISION
ELAINE ARMSTEAD

Plaintiff,

v.

1:14-CV-586-WSD

ALLSTATE INDEMNITY
COMPANY INSURANCE
COMPANY,

Defendant.

**PLAINTIFF COUNSEL'S OBJECTION TO COURT'S
ORDER TO PRODUCE AN AFFIDAVIT**

COMES NOW Sandra Finch, Counsel for Plaintiff, and notices the Court of her objections to the Court's Order to Produce An Affidavit as set forth in Order Doc. 121 p. 32 as follows:

1. The Court issued its order at 3:45 p.m., Friday, July 1, 2016 with a deadline to respond on Tuesday, July 5, 2016, without a single business day's notice. Counsel objects to lack of notice, due process and relevance.
2. This Court has already made its evidentiary rulings on the Motion to Exclude Mark Gould. There is no evidentiary basis for the Court's ruling as Counsel's investigation into Mr. Gould's

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certifications and procedures are no longer relevant to any issue in this case.

3. Counsel is concerned as to the Court's overemphasis on the Plaintiff's investigation of Mr. Gould,¹ and overall lack of concern with witness Mark Gould's blatant disregard of a subpoena commanding production of documents and other tangible items, his obvious attempt at obstruction of discovering the truth, and his obvious dishonesty and perjury.
4. This Court emphasized its desire to enforce the rules to create a level playing field. [Doc. 90. At 4]. The fact is there has never been anything level about this playing field where a multi-billion dollar corporation has been using its muscle to avoid its obligations to a single, elderly lady who barely gets by financially, and who relied upon the benefits of her insurance policy.
5. The Defendant's evasive and insufficient discovery responses have obstructed Plaintiff's ability to obtain evidence in the case to either prosecute her claim or defend against the baseless defenses. The effect of this failure to disclose has been compounded by last minute defenses made in the pretrial order.
6. Counsel's representation has been within the boundaries of the law and ethics as she has zealously advocated for her client in the face of Defense Counsel's personal vendetta against her.

¹ The allegations made by Mr. Gould, even if true, are not criminal or unethical. Even if they were, it would not be proper for this Court to be involved in such an inquiry, as to do so, creates a clear appearance of bias and lack of partiality.

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7. This Court has spared no opportunity to humiliate and insult Counsel in chambers, on the record, and in its recent Order.
8. Counsel notices the Court that she at all times has acted ethically and in the best interest of her client and has remained a faithful and zealous advocate, which is her job.
9. This Plaintiff deserves a fair trial and a level playing field and for the Court to be an impartial guardian of truth and justice.

Respectfully submitted this 5th day of July, 2016.

/s/ Sandra Finch
Attorney for Plaintiff
State Bar No.: 446264

The Russell's Law Firm, PLC
741 E. Fry Blvd., Suite 200
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520-458-7246

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**APPENDIX F, District Court Order, July 6, 2016,
Overruling Objections and Ordering Compliance
same day by 5:00 pm—No Notice**

(Doc. 127)

IN THE UNITED STATES DISTRICT COURT FOR THE
NORTHERN DISTRICT OF GEORGIA
ATLANTA DIVISION
ELAINE ARMSTEAD,

Plaintiff,

v.

1:14-cv-586-WSD

ALLSTATE PROPERTY AND
CASUALTY INSURANCE
COMPANY,

Defendant.

ORDER

This matter is before the Court on the Court's Order dated July 1, 2016 [121] ("July 1st Order") and Plaintiff Counsel's Objections to Court Order to Produce an Affidavit [125] ("Objections"). The Court's July 1st Order required Plaintiff's counsel to provide an affidavit with the information required by the July 1st Order.

The Court has considered the statements of Plaintiff's counsel in her Objections.¹ Ct. 1885, 1892 (2016) ("[D]istrict courts have the inherent authority to

¹ The Court does not address in this Order the contents of the Objections or whether they constitute contempt of Court.

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manage their dockets and courtrooms with a view toward the efficient and expedient resolution of cases”); Chambers v. NASCO, Inc., 501 U.S. 32, 45-48 (1991) (courts have the inherent authority to sanction litigants for bad faith conduct); In re Gopman, 531 F.2d 262, 266 (5th Cir. 1976)² (“[I]t is beyond dispute that lawyers are officers of the court and that the courts have the inherent authority to regulate their professional conduct.”). In light of this authority and because the matters required to be addressed in the affidavit may impact the admission of evidence at trial, the Court

The Court has the obligation and the inherent authority to manage its docket and courtroom, and the conduct of the parties and counsel who litigate before the Court. See Dietz v. Bouldin, 136 S. **OVERRULES** the Objections. The required affidavit shall be filed on or before 5:00 p.m. EST today, July 6, 2016.

SO ORDERED this 6th day of July, 2016.

/s/ William S. Duffey
United States District Judge

² In Bonner v. City of Prichard, 661 F.2d 1206 (11th Cir.1981), the Eleventh Circuit adopted as binding precedent all of the decisions of the former Fifth Circuit handed down prior to the close of business on September 30, 1981.

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**APPENDIX G, Transcript 7/7/16 Pretrial
Conference**

(Doc. 138)

IN THE UNITED STATES DISTRICT COURT FOR THE
NORTHERN DISTRICT OF GEORGIA ATLANTA
DIVISION

ELAINE ARMSTEAD,

Plaintiff,

v.

Civil Action File

No. 1:14-CV-586-WSD

ALLSTATE INDEMNITY
COMPANY INSURANCE
COMPANY,

Atlanta Division

Defendant.

Transcript of Proceedings

Before the Honorable William S. Duffey, Jr.,

United States District Judge

Pretrial Conference

Thursday, July 7, 2016

Page 1

Appearance of Counsel:

For the Plaintiff: The Russell's Law Firm, PLC

(By: Sandra Lee Finch)

For the Defendant: Webb Zschunke Neary &

Dikeman LLP

(By: Marvin Dewayne Dikeman)

Melissa Cordell Patton).

Proceedings recorded by mechanical stenography
and computer-aided transcript produced by
Nicholas A. Marrone, RMR, CRR
1714 U. S. Courthouse
75 Ted Turner Drive, S.W.
Atlanta, GA 30303
(404) 215-14806

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1 Thursday Morning Session

2 July 7, 2016

3 9:31 a.m.

4

5 P R O C E E D I N G S

6

7 (In chambers by teleconference:)

8 THE COURT: Good morning.

9 MS. FINCH: Good morning.

10 MR. DIKEMAN: Good morning, Judge.

11 MS. PATTON: Good morning.

12 THE COURT: This is the further pretrial conference
13 in Armstead versus Allstate.

14 Ms. Finch, are you on for the plaintiff?

15 MS. FINCH: Yes, I am. Good morning.

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16 THE COURT: Good morning.
17 And Mr. Dikeman and Ms. Patton, are you on for
18 Allstate?
19 MR. DIKEMAN: Yes, Your Honor.
20 MS. PATTON: Yes.
21 THE COURT: Well, as you know, we had a complete
22 pretrial conference in the case on March 9th where
23 I completed all the things that I would normally go
over in a
24 pretrial conference.
25 I set this because I knew that there might be some

Page 3

1 things that needed to be considered as a result of
the delay
2 of the case when we postponed and continued the
trial.
3 I just thought we needed to protect some time to
consider
4 anything that arose during that period. So I set
this
5 conference.
6 But we have had the ability to address all of the
7 pending matters in written orders. There will be
orders
8 entered on the remaining pending matters today,
so you will
9 have those in writing, and that will include an

order on the

10 motion to amend the pretrial order. So you will
get that

11 today.

12 And that's -- so I don't have anything to go over
13 today because we have been able to attend to all of
the

14 pending matters in written motions that I have
issued.

15 But just because I don't have anything doesn't
mean

16 that you might not have something that you want
to

17 discuss. And while we are all together, let's do
that.

18 MR. DIKEMAN: Your Honor, this is Marvin
Dikeman.

19 I would like to inquire as to the status of the
20 documents used to question Mr. Gould and where
they were
21 located.

22 THE COURT: Well, I have entered two orders on
23 that, and I haven't received a response to the
order that

24 I entered, and I'm considering what to do on that.

25 MR. DIKEMAN: Okay.

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1 MS. FINCH: And I'm plaintiff's counsel. I would

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2 just like to know what the relevance is for that? I
did file

3 my objection. I did not receive Your Honor's order.
I was flying

4 yesterday, Your Honor. I did not get to computer
until

5 sometime after 4:00.

6 I had my iPhone with me while I was traveling,
and

7 I was able to get some of the e-mails that were
sent out, but

8 on my iPhone I can't open -- I couldn't open all of
the

9 order; I could only open the first page of it.

10 And, of course, I had no computer to -- I had no
11 ability to respond, and I believe there was a due
date of

12 5:00 yesterday. So there is no way I could have
responded by

14 5:00.

15 THE COURT: Well, of course, I didn't know that
16 until right now. Nobody contacted us to say what
your travel

17 arrangements were, that you didn't have any
access to a

18 computer. If what you are asking -- and I haven't
received

19 anything today yet.

20 **But if you are saying that you need some**

additional

21 **time to respond, I will give that to you.**

22 **MS. FINCH:Well, I would like some
additional time**

23 **to respond.** But I also have an objection, again,
because

24 I really don't understand what the complaint is or
what it is

25 that I'm responding to.

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1 I have looked up the law on every possible way
that

2 you could sanction me for this conduct, which
appears that's

3 what -- that appears to be the intent of the Court.
I don't

4 know. I'm trying to understand.

5 And without knowing what it is that you are

6 complaining I have done, I don't know how I'm
supposed to

7 respond. And I feel like it's a due process issue.

8 **THE COURT:**Well, that's why you have options
9 available to you.

10 But the orders are clear. I have the authority

11 inherent, including authority from the Supreme
Court just

12 this term, to manage matters that are assigned to

App. 28a

me and over

13 which I preside.

14 I have reached a conclusion that a source of these
15 documents -- which I still don't know because
that's all

16 I have asked you to provide -- may well impact the
17 admissibility, including of documents that are
listed in this

18 motion -- in your request to amend the pretrial
order.

19 And I don't know what you intend to do with those
20 documents, but one of the options available to me
is if

21 I believe that documents were obtained
wrongfully, that

22 I could exclude them from trial. Which is why I
have ordered

23 you twice to provide just the factual information
about the

24 origin of those documents, because I believe they
may well

25 impact my decisions on evidentiary issues at trial.

Page 6

1 And that's why I'm telling you one more time that
2 you are under a court order to provide the
information that

3 I have requested. It is simply factual information
about the

4 origin of the documents.

5 And if you want more time to provide it -- you
have

6 now had since last Friday, it is Thursday -- **but if**
you need

7 **a little more time to do that, I'm willing to do**
that. But

8 you are under a court order to provide that
information.

9 MS. FINCH: Well, I understand that, Judge,
10 respectfully.

11 And if it's to admit a document or to decide
12 whether you are going to admit or exclude a
document, if

13 I could just have some idea as to which documents
that you --

14 are you referring to -- because I am having trouble
15 understanding. It looks like you have already
excluded all
16 of those documents.

17 THE COURT: Ms. Finch, I'm not negotiating with
18 you, and I'm sorry you are confused.

19 What is not confusing is the order for you to
20 provide information about the source of the
documents that

21 you used during Mr. Gould's deposition. And you
are under an

22 order to do that. You are going to have to decide
how you

23 are going to respond to the Court's order.

24 If what you want is a little more time today to
25 provide the information, which is solely in your
possession,

Page 7

1 and the questions are not hard ones, **then I will
give you**

2 **more time**, although I frankly don't think it's
necessary.

3 **But if you want it, I will give it to you.**

4 But you are under an order of the Court to provide
5 the information, and you must.

6 MS. FINCH: Your Honor, if -- and I'm not going to
7 debate the merits with you. I will file a response.

8 But I'm just confused as to what -- if the
9 documents are already excluded, I don't
understand how there

10 is any relevance whatsoever as to where the
documents come

11 from.

12 THE COURT: Because this case, Ms. Finch, is
fluid,

13 including your request to amend the pretrial order
to address

14 the documents that are in issue, as I understand
it.

15 And the fact is you are under an order to provide
16 information for me to manage this case, and --

17 MS. FINCH: Well, I have heard you state that,

App. 31a

and

- 18 it's not that I don't understand that. I do
understand that
- 19 you are telling me that I'm under an order, but
your orders
- 20 have to be a valid, lawful order.
- 21 And if the order serves no purpose other than
- 22 you're just intending to sanction me, then I think
I'm
- 23 required due process on that issue and I'm
entitled to notice
- 24 of what it is you want to sanction me for, what
conduct it is
- 25 you want to sanction me for.

Page 8

- 1 And I have read the cases on this, and they all say
- 2 that I am entitled to a hearing.
- THE COURT: You are. After I get the information
- 4 to determine the source of the documents, I have
to decide --
- 5 MS. FINCH: I know, I --
- 6 THE COURT: Ms. Finch, I'm not going to argue
this
- 7 anymore. You are under an order to provide the
information.
- 8 You either provide it or you don't, and if you don't,
then
- 9 I decide what to do.

App. 32a

10 MS. FINCH: Okay. Thank you, Your Honor.
11 THE COURT: Anything else?
12 MR. DIKEMAN: Not from Allstate, Your Honor.
13 THE COURT: Anything else from the plaintiff?
14 MS. FINCH: Just as far as the pretrial order goes,
15 there are something like a thousand pages in the
16 claims file,
17 and in my motion to amend I think I included all
18 of the --
19 THE COURT: Your motion to amend -- your
20 motion To
21 amend is before the Court and we will issue an
22 order on that
23 today.
24 MS. FINCH: Okay. Well, I had just a couple of
25 more exhibits that I pulled out of the claims file
just
because I don't want to introduce the whole
thousand pages.
Am I going to -- can I do that?
There is just a few more -- like I had 230 -- or
229 to 233, I believe it is. 229 to 233 are just
exhibits

Page 9

1 out of the claims file notebook that I labeled
individually,
2 and I would like to add those to the list.

3 THE COURT: So you are amending your motion to
4 amend to amend?

5 MS. FINCH: Well, I have never had a trial before a
6 judge where you had to have every single exhibit
labeled at

7 the trial individually. As long as you disclosed
them, you

8 could use them.

9 And I didn't label these as individual documents.

10 They have been disclosed. They are Allstate's
claims files,

11 but I decided to label them individually. In the
course of

12 preparation of my outline, it made more sense to
label them

13 individually as opposed to the way I had them
labeled before.

14 THE COURT: I will take that --

15 MS. FINCH: It will be more helpful to the jury.

16 THE COURT: I will take that up at trial.

17 MS. FINCH: Okay.

18 THE COURT: Anything else?

19 All right. Well, thank you for being available,

20 and we will see you Monday morning.

21 MS. FINCH: Thank you.

22 MR. DIKEMAN: Thank you, Your Honor.

23 (Proceedings adjourn at 9:42 a.m.)

App. 34a

**APPENDIX H, U.S. District Court Order To Show
Cause For Contempt, July 7, 2017
(Doc. 136)**

IN THE UNITED STATES DISTRICT COURT FOR
THE NORTHERN DISTRICT OF GEORGIA ATLANTA
DIVISION

ELAINE ARMSTEAD,

Plaintiff,

v.

1:14-CV-586-WSD

ALLSTATE INDEMNITY
COMPANY INSURANCE
COMPANY,

Defendant.

ORDER

On July 1, 2016, the Court entered an Order [121] (“July 1st Order”) requiring Plaintiff’s counsel to provide, on or before July 5, 2016, an affidavit with the information detailed in the July 1st Order. On July 5, 2016, Plaintiff’s counsel filed Plaintiff Counsel’s Objections to Court Order to Produce an Affidavit [125] (“Objections”). After considering Plaintiff’s counsel’s Objections, on July 6, 2016, the Court entered an Order [127] (“July 6th Order”) overruling her Objections and requiring her to file, on or before 5:00 p.m. EST on July 6, 2016, the required affidavit. Plaintiff’s counsel failed to file the required affidavit within the time period allowed. During the pretrial conference held on July 7, 2016, the Court reiterated that Plaintiff’s counsel was under a Court order to provide the required affidavit, and explained to counsel the information

required in the affidavit was to determine its impact on evidence that Plaintiff stated she intends to offer at trial. The Court offered to allow Plaintiff's counsel to file the affidavit later today.

Plaintiff's counsel did not request additional time to file the affidavit. Plaintiff's counsel did not file the required affidavit, and has not otherwise responded to the Court's July 6th Order requiring the affidavit. For these reasons,

IT IS HEREBY ORDERED that Plaintiff's counsel **SHOW CAUSE** why the Court should not hold her in contempt of the Court's July 1st Order and July 6th Order, and, if found in contempt, what sanction, if any, should be imposed. The Court will hold a hearing on this matter on Monday July 11, 2016, at 5:30 p.m.

SO ORDERED this 7th day of July, 2016.

/s/ William S. Duffey

William S. Duffey, Jr.

United States District Judge

App. 36a

**APPENDIX I, Transcript Contempt Hearing July
11, 2016**

(Doc. 138)

IN THE UNITED STATES DISTRICT COURT FOR
THE NORTHERN DISTRICT OF GEORGIA ATLANTA
DIVISION

ELAINE ARMSTEAD,

Plaintiff,

v.

Civil Action File
No. 1:14-CV-586-WSD

ALLSTATE INDEMNITY
COMPANY INSURANCE
COMPANY,

Atlanta Division

Defendant.

Transcript of Proceedings

Before the Honorable William S. Duffey, Jr.,
United States District Judge, And Jury

Contempt Hearing

Thursday, July 11, 2016

Appearance of Counsel:

For the Plaintiff: The Russell's Law Firm, PLC

(By: Sandra Lee Finch)

For the Defendant: Webb Zschunke Neary &

Dikeman LLP

(By: Marvin Dewayne Dikeman)

App. 37a

Melissa Cordell Patton).

Proceedings recorded by mechanical stenography and
computer-aided transcript produced by

Nicholas A. Marrone, RMR, CRR

1714 U. S. Courthouse

75 Ted Turner Drive, S.W.

Atlanta, GA 30303

(404) 215-14806

Page 2

1 Monday Afternoon Session

2 July 11, 2016

3 4:42 p.m.

4 - - - -

5 P R O C E E D I N G S

6 - - - -

7 In open court without a jury present:)

8 THE COURT: All right. This is a hearing
pursuant

9 to my order dated July 1st of 2016. In that I
required

10 Ms. Finch to provide certain information
about the

11 acquisition of materials that were used during
a

12 deposition.

13 The information that was required to be

App. 38a

14 provided is set out on page 34 of the order,
and included
15 information as follows, and the information was
required to
16 be provided in a sworn affidavit, stating in detail how
and
17 under what circumstances she obtained the
photographs of
18 Mr. Gould's office and the Steamatic guide in question,
19 including when the photographs were obtained, who
took them,
20 where they were taken, to whom they were
distributed, and
21 whether the Steamatic guide photographs had Ms.
Finch's
22 letterhead on it, and, if so, how did the letterhead
23 appear on them, and whether Ms. Finch was involved
in or
24 knew the circumstances regarding the creation of the
25 photographs.

Page 3

1 In response to this, Ms. Finch objected to the
2 requirement of the Court, and she was reminded, and I
gave
3 her some additional time to respond to the
requirement of the
4 order. She did not provide the information as originally
5 required in the July 1st, 2016, order, nor did she
provide me

6 information as she was told she was required in the
Court's
7 subsequent order.
8 And then, further, during the pretrial conference
9 that we had just a couple of days ago, she told me that
she
10 intended to file a response to the order, and she has
failed
11 to do that.
12 And so this hearing is for Ms. Finch to show cause
13 why she should not be held in contempt.
14 So you are to show cause why you should not
be held
15 in contempt.
16 MS. FINCH: Well, Your Honor, first I believe
the
17 Court has the burden to establish contempt by clear
and
18 convincing evidence, *Chairs v. Burgess*, 143 F
3d 1432, 1436,
19 Eleventh Circuit 1998. Contempt proceedings are
brought to
20 enforce a court order that requires a party to act in
some
21 defined manner. A petitioner must first establish by
clear
22 and convincing evidence that the alleged contemnor
violated a

23 court's earlier order.

24 THE COURT: This is my order that I imposed upon
26 you and that I have told you in a subsequent order that
you

Page 4

1 are required to comply with. The information that was
2 required, as I have told you before, was directly related
to

3 my duties in presiding over this case and making
evidentiary

4 rulings.

5 You have not provided the information that you have
6 been ordered by the Court twice to provide. And I want
to

7 know, one, are you going to provide it now, and if you
are

8 not going to provide it, why.

9 MS. FINCH: May I finish, Your Honor?

10 THE COURT: Are you going to provide the
11 information now, and if not --

12 MS. FINCH: The case that I just cited to you holds
13 a prima facie case includes validity of the order. The
court

14 must show authority under which it has made the
order.

15 THE COURT: My authority is that under

16 Supreme Court precedent and circuit precedent, I have
the

App. 41a

17 authority for lawyers appearing in litigation before me
to
18 maintain the integrity of that process, and my authority
and
19 the reason why this order is being issued is because to
20 preside over this case, I require the information that
21 I requested very specifically.
22 That is my authority. If you disagree with it,
you
23 can take it up with the Court of Appeals. But that's my
24 authority.
25 MS. FINCH: Okay, Your Honor.

Page 5

1 Well, first off, I would say that the Court in its
2 order for me to show cause has not been very -- has
shown a
3 lack of candor in its order stating that I did not ask for
4 additional time.
5 And I would tender Exhibit 1 as my evidence, which
6 is the transcript of the proceeding which states on page
7 four:
8 The Court: Well, of course, I didn't know
9 that until right now. Nobody contacted us to say
10 what your travel arrangements were, that you didn't
11 have any access to a computer.
12 If what you are asking -- and I haven't

13 received anything today yet, but if you are saying
14 that you need some additional time to respond, I
15 will give that to you.

16 Ms. Finch: Well, I would like some additional
17 time to respond. But I also have an objection,
18 again, because I don't really understand what
19 the complaint is or what it is that I am responding
20 to.

21 THE COURT: Ms. Finch, I was at that conference.

22 In fact, that's a conversation between me and you, and I
gave

23 you additional time, and during that conference you
said that

24 you were going to file a response.

25 It is now Monday, July 11th. You have had an order

Page 6

7 of the Court to provide specific factual information.
You

8 have had lots of time to do that, and you have refused to
9 provide it.

10 MS. FINCH: Your Honor, may I be heard?

11 THE COURT: So tell me what the information is in
12 answer to the questions?

13 MS. FINCH: I would like to. I would like to
14 respond to you.

15 THE COURT: Tell me, first, are you going to comply

16 with the order to provide the information required in
my

17 order?

18 MS. FINCH: No, I am not.

19 THE COURT: And why not?

20 MS. FINCH: And I will tender Exhibit 1.

21 THE COURT: And why not?

22 MS. FINCH: Because I don't believe it's a valid
23 order, and I believe the Court is required to have a valid
24 order before it can enforce contempt.

25 There have been three orders in this case dealing
26 with that affidavit.

27 The first one was Document 121 dated July 1st,
28 which came out at 3:45 p.m. on a Friday before a
holiday
29 weekend with a due date on Tuesday, July 5th, with no
30 business days in between, which was a lack of due
process and
31 a lack of notice.

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7 Then in that order the Court said it found Finch's
8 explanations insufficient and evasive, then with no
reason
9 whatsoever ordered counsel to provide an affidavit
relating
10 to how evidence that this Court already excluded was
11 obtained.

App. 44a

12 There does not appear to be any valid reason for
13 the Court to be asking for that information other than to
14 initiate some sort of sanction or some sort of -- I don't
15 even know what.

16 And the inherent power of the Court addresses
17 conduct within the courtroom. This is conduct that is
out of

18 the courtroom and it is not within the Court's inherent
19 power. It doesn't fall under Rule 11. It doesn't fall
under

20 Rule 36. It doesn't fall under Rule 37 or Rule 16. It
21 doesn't fall under any rule that this Court has the
authority

22 to do anything about.

23 And on top of that, the Court is required, if they
24 want to -- if the Court wants to -- there is just no
25 conceivable reason for the Court to need that
information

26 unless the Court is trying to discipline me or sanction
me in
27 some way.

28 And if that's the case, the Court is required to go
29 through procedures and provide me with a petition --
an
30 allegation of what conduct the Court complains of that I
did
31 or did not do that was wrong, and I am required to have
an

Page 8

1 opportunity to respond to that and have
representation and
2 have a hearing. Due process.
3 The second order dated July 6th, Document 127,
was
4 due on the same day at 5:00. I got on a plane, I left
at
5 four a.m. at my house, Arizona time, and did not
arrive to a
6 place where I could even do anything about the
order until
7 sometime -- I don't know the exact time. It was at
least
8 4:30.
9 I don't remember when I got it. I know I didn't
10 have time to respond to the order. I don't think
that that
11 is due process or notice.
12 And inherent power to sanction litigants for bad
13 faith or inherent authority to regulate professional
conduct
14 is what -- I mean, you put in the order your reason
for
15 asking for it in that order was that you had the
inherent
16 authority to manage your docket in the courtroom
and the

App. 46a

17 conduct of parties and counsel who litigate before
the
18 Court.
19 Well, this had nothing to do with your docket,
20 nothing to do with your courtroom, and nothing to
do with
21 conduct of the parties in the court.
22 The other inherent power you mentioned was to
23 sanction litigants for bad faith. Okay. Well, if you
are
24 going to sanction me, then I have a right to be told
what it
25 is, the conduct I have done that you are going to
sanction me

Page 9

1 for.
2 If you are going to regulate professional conduct,
3 there are rules for that. Those are listed in Local
Rule
4 83.1, I believe it is. Local 83.1, Attorney
5 Discipline. There is a whole procedure for it.
6 It says the court has to provide a petition, an
7 allegation against the attorney, and that they have
an
8 opportunity to respond. None of that happened.
9 And then the third order which the Court issued
on

App. 47a

10 July 7th, the order to show cause, now the reason
for the
11 order is for the Court to determine its impact on
the
12 evidence that plaintiff stated she intends to offer
at
13 trial.
14 Three different orders, three different reasons for
15 why the Court has said they want this
information, when it
16 all really comes down to is the Court somehow
wants to
17 sanction me or make a judgment of me about
conduct that
18 occurred outside of the Court's presence that the
Court has
19 no knowledge of.
20 And the Court cannot just take affidavits from
21 people. I am entitled to a hearing on that.
22 Under the inherent power under 18 U.S.C. 401, it's
23 for misbehavior committed in the court's presence
or
24 disobedience or resistance to a lawful order. And
the key
25 there is lawful order.

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1 THE COURT: Anything else?

2 MS. FINCH: I don't believe the order is lawful.
3 An order or command must be sufficiently clear
and
4 unequivocal at the time that it is issued. Whether
an
5 order -- that's *Traub v. United States*, 232 F 2d 43,
D.C.
6 Circuit 1955.
7 Whether an order is clear enough depends on the
8 context in which it is issued and the audience to
which it is
9 addressed. *United States v. Robinson*, 922 F 2d
1531,
10 Eleventh Circuit 1991.
11 And in this context where the court is clearly
12 looking for a reason to sanction counsel, counsel
would like
13 to know the reasons so that she can respond.
14 I don't believe I am sufficiently noticed as to the
15 need for an affidavit with the changing and
evolving orders
16 of the Court. Is it to determine admissibility of
evidence?
17 Is it to sanction counsel? Is it to regulate
professional
18 conduct? Is it for any of these things?
19 If it's for any of these things, a complaint or
20 petition or fair notice of conduct complained of is
required

21 with notice and opportunity to be heard, and none
of that has
22 happened.
23 THE COURT: Anything else?
24 MS. FINCH: It is not contempt to disobey, avoid a
25 command date or decreed or warrent issued by a
court without

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1 jurisdiction of the parties and the subject matter.
That is
2 *Western Fruit Growers v. Godfried*, CCA 9,
California 1943.
3 It is a weak court that must depend for its
4 strength upon contempt proceedings, and for any
abuse of
5 administrative discretion or powers, an equity
court has more
6 fitting and effectual restraints and correctives;
and,
7 therefore, suggestion that contempt process of
court be
8 invoked to compel future admissions of Negro
pupils to
9 schools was declined, especially in view of the fact
that it
10 appeared that defendant's injunction suit had been
warranted
11 in their determinations to refuse admittance in
greater

12 number of cases. That's *Jones v. School Board of*
13 *City of Alexandria, Virginia*, 179 F Supp 280.
14 A federal court may punish contemptuous conduct
15 that occurs outside its presence only after giving
16 the essential facts constituting the charged
17 contempt. That's *United States v. Baldwin*, 770 F
2d 1550,
18 Eleventh Circuit 1985. That cases discusses the
19 difference
20 in procedure required for direct and indirect
21 contempt.
22 The defendant is not only entitled to be informed
23 of the nature of the charge against him, but to
24 know that it
25 is a charge and not a civil.
26 A reasonableness -- an order meets the reasonable
27 specificity requirement only if it is a clear, definite
28 and

Page 12

1 unambiguous order requiring or prohibiting the
2 action in
3 question. *DuPont de Nemours & Company-Benlate*
4 *Litigation*,
5 99 F 3d 363, Eleventh Circuit.
6 And the reasonableness of an order must be

5 evaluated in the context in which it is entered and
the
6 audience to which it is addressed.
7 It's a very high burden for the court to establish
8 contempt under use of inherent power. *Chambers*
v. NASCO --
9 that's a case you cited in one of your orders, Your
Honor --
10 501 U.S. 32.
11 Should be exercised cautiously and with due
regard
12 to constitutional rights. *U.S. v. Moore*.
13 And no willful disobedience.
14 This Court was aware at the time that it issued its
15 order, the last order, that plaintiff was unable to
16 comply. I was expecting there to be another order,
but
17 apparently the Court just went on and issued
another order.
18 When I said I wanted more time to respond, I
would have
19 expected an order that gave me more time to
respond.
20 Courts have held that the inherent power to hold
an
21 attorney in contempt is to be used in the least
restrictive
22 manner to achieve the proposed end. That is a
question

23 there: I'm not even sure what the proposed end is.
24 If the Court is truly concerned about an
25 evidentiary ruling, this Court should specify which
 evidence

Page 13

1 that it is speaking of and why an affidavit is
 relevant to
2 that evidence being admitted or denied. The Court
3 specifically references an affidavit on where
 photographs of
4 Mr. Gould's office and manual were taken, who
 took them,
5 et cetera, and those exhibits have already been
 excluded.
6 would raise the defense of work product
7 doctrine. Attorneys in their investigations have
 privilege.
8 That's *United States v. Nobles*, 422 U.S. 225, a
 Supreme Court
9 case.
10 Also *Republic of Ecuador v. Hinchee*, 741 F 3d
 1185,
11 Eleventh Circuit case, which said that at its core
12 shelters -- the work product doctrine at its core
 shelters
13 the mental processes of the attorney.
14 The Supreme Court observed that attorneys often
15 must rely on the assistance of investigators and
 other agents

16 in the compilation of materials in preparation for
17 trial. The Supreme Court concluded that it is
necessary that
18 the work product doctrine protect material
prepared by agents
19 for the attorney as well as those prepared by the
attorney
20 himself.
21 In addition, to the extent that there is any
22 allegation that I did anything or if there is any
proof that
23 I did anything, I would not be required to comment
on any of
24 that on my Fifth Amendment rights, and the
Georgia Fifth
25 Amendment is much broader than the federal
Fifth Amendment

Page 14

1 and covers anything that will bring ill-repute on a
lawyer,
2 not just criminal conduct.
3 And that's all I have.
4 THE COURT: This hearing is conducted because
on
5 July 1st of 2016, I ordered you to provide
information to me,
6 and that order was entered regarding other
motions *in limine*

7 that had been filed with the Court at the time that
I ordered
8 you to provide the information that you were
ordered to
9 provide. So this is about your failure to provide
10 information in response to an order, it is not about
11 sanctioning conduct outside the Court.
12 And at the time that I entered the order, I had two
13 things before me.
14 I had plaintiff's motion to amend the pretrial
15 order at Docket Entry 118. The motion was filed on
July 1st,
16 and it sought to add to the pretrial order at your
request
17 Exhibit 199, which was the photo of Steamatic
wall depicting
18 certifications. And you wanted to add to the
pretrial order
19 Exhibit 202, which was the Steamatic Guide to
Restoration
20 Services. Those are both in your motion that were
before me
21 at the time that this order was entered.
22 I also had before me on that date objections to
23 Mr. Gould's deposition testimony which centered
upon the two
24 things that you wanted to add to the pretrial order,
which

25 was specifically the photo of Steamatic wall
depicting

Page 15

1 certifications and the Steamatic Guide to
Restoration
2 Services.
3 So at the time that I entered this order and
4 required the information about the acquisition of
those,
5 I was specifically considering whether or not to
allow
6 amendment to an order, and it had to do
specifically as a
7 result of Mr. Gould's deposition testimony and my
review of
8 the objections to it. It had to do with whether or
not
9 testimony or exhibits were admissible in a matter
over which
10 I was presiding.
11 I needed to make rulings on evidentiary matters
12 that were before me in matters that you filed by
wanting to
13 add to the pretrial order the two things that are
actually
14 in dispute. I needed to know how those were
obtained,
15 because if there was lawyer misconduct with
respect to that,

App. 56a

16 I might well have and probably would have
excluded the
17 information.
18 I simply wanted to know whether or not they were
19 obtained in a way that was through the regular
discovery
20 process, in which case it would have been fine, or
was there
21 some other way in which there was an election
made not to use
22 the Rules of Civil Procedure or other vehicles to
obtain the
23 information in a piece of litigation. And if they
weren't,
24 I reserved the right to consider whether or not an
25 appropriate ruling would be to exclude the
evidence.

Page 16

1 At the time that I issued my order, I simply asked
2 for factual information that was clearly in your
possession
3 relating to two exhibits that you asked me to allow
you to
4 bring into the case.
5 Your failure to provide the factual information
6 that was requested was a failure on three
occasions. I have
7 given you the further opportunity today to provide
the

App. 57a

8 factual information that I need. Because, frankly,
in this
9 case I don't know what you are going to try to
introduce
10 because it changes from time to time. I think I am
required
11 to be prepared for any evidentiary issues so that I
have the
12 right information to make a proper ruling.
13 For those reasons I find that you were in bad
14 faith, because you had a specific order to provide
15 information in response to an order that I issued
so that
16 I could manage and preside over a piece of
litigation
17 assigned to me, and on three occasions, from July
1st until
18 now, not once have you provided the information,
and not once
19 have you ever explained why you refuse to provide
it, until
20 today when you say you have got Fifth
Amendment privileges,
21 you have got due process privileges.
22 But this is your due process hearing, this is your
23 chance to tell me what it is that is your objection
and why
24 you didn't provide the information, or you can
provide the

25 information.

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1 Failing to do either of those things, I find you in
2 contempt.

3 I will issue a written order on this so that you
4 can appeal it to the Eleventh Circuit, and in that
order I

5 will decide what is an appropriate sanction.

6 And that's my ruling.

7 MS. FINCH: Your Honor, I would just say that the
8 distinction here lies in -- I'm trying to look at the
dates

9 that you just recited, and I seem to recall that you
already

10 ruled on the -- that you ruled on the admissibility
of the

11 Gould 202 and 191.

12 THE COURT: And that might well influence me on
13 what sanction to impose, but it doesn't absolve you
of the

14 responsibility of responding to a valid order of the
Court

15 that was lawful.

16 And if you want to submit something in writing
now

17 that I have given you my views on this, I will hold
off

18 issuing a written order until you do.

19 How much longer to do you need to do that?
20 MS. FINCH: Your Honor, that's fine. I will just
21 appeal it.
22 THE COURT: So how long do you want to be able
to
23 respond to this in writing?
24 And if you want an additional hearing with
counsel,
25 I am happy to schedule that. Would you like to do
that after

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1 the case is over?
2 MS. FINCH: I would appreciate anything that the
3 Court is willing to do to allow me to absolve myself
in this
4 situation. I think once the Court hears all of the
evidence
5 and finds out that Mr. Gould perjured himself in
more ways
6 than one --
7 THE COURT: Would you like a hearing, and, if so,
8 when would you want it?
9 MS. FINCH: Well, I am here until the 20th. I fly
10 back to Arizona on the 20th. So when could the
Court do a
11 hearing?
12 THE COURT: I will let you know in the morning.
13 MS. FINCH: Thank you.

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14 THE COURT: Anything further?

15 MR. DIKEMAN: No, Your Honor.

16 THE COURT: We will be in recess.

17 (Proceedings adjourn at 5:05 p.m.)

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APPENDIX J, Notice of Settlement

(Doc. 145)

IN THE UNITED STATES DISTRICT COURT FOR THE
NORTHERN DISTRICT OF GEORGIA ATLANTA
DIVISION

ELAINE ARMSTEAD,

Plaintiff,

v.

Civil Action File
No. 1:14-CV-586-WSD

ALLSTATE INDEMNITY
COMPANY INSURANCE
COMPANY,

Atlanta Division

Defendant.

NOTICE OF SETTLEMENT

COMES NOW, Defendant Allstate Property & Casualty Insurance Company and notifies the Court that the parties have reached an agreement and settled the above styled case with each party bearing their own costs. The terms of the settlement are confidential.

Respectfully submitted,

WEBB, ZSCHUNKE, NEARY &
DIKEMAN, LLP

By: /s/ *Melissa C. Patton*

MARVIN D. DIKEMAN

Georgia State Bar No. 221760

MELISSA C. PATTON

Georgia State Bar 187560

**APPENDIX K, District Court, July 19, 2016
Retaining Jurisdiction of Contempt**

IN THE UNITED STATES DISTRICT COURT FOR THE
NORTHERN DISTRICT OF GEORGIA ATLANTA
DIVISION

ELAINE ARMSTEAD,

Plaintiff,

Civil Action File

v.

No. 1:14-CV-586-WSD

ALLSTATE INDEMNITY
COMPANY INSURANCE
COMPANY,

Atlanta Division

Defendant.

ORDER

On July 18, 2016, Plaintiff Elaine Armstead and Defendant Allstate Property & Casualty Insurance Company filed their Notice of Settlement [145] of all pending claims. The parties are directed to file a stipulation of dismissal on or before August 19, 2016. The Court removes the case from its calendar and directs the Clerk to close the case administratively with the right of any party to reopen the case if the settlement is not concluded. The Court retains jurisdiction over the Order to Show Cause issued on July 7, 2016 [136], which was the subject of the hearing conducted by the Court on July 11, 2016 [140]. At the request of Plaintiff's counsel, the Court continued the hearing to allow counsel to further prepare for it and to retain counsel. The continuation of the show cause hearing scheduled for 2:00 p.m. EST on

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August 23, 2016, in Courtroom 1705, before Judge William S. Duffey, Jr.

SO ORDERED this 19th day of July, 2016.

/s/ William S. Duffey, Jr.

United States District Judge

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**APPENDIX L, Stipulated Voluntary Dismissal With
Prejudice (Dismissing All Claims)**

(Doc. 153)

IN THE UNITED STATES DISTRICT COURT FOR THE
NORTHERN DISTRICT OF GEORGIA ATLANTA
DIVISION
ELAINE ARMSTEAD,

Plaintiff,

v.

Civil Action File
No. 1:14-CV-586-WSD

ALLSTATE INDEMNITY
COMPANY INSURANCE
COMPANY,

Atlanta Division

Defendant.

**STIPULATED PLAINTIFF'S VOLUNTARY
DISMISSAL WITH PREJUDICE**

COMES NOW the parties, by and through counsel,
pursuant to Fed. R. Civ. P. 41(a)(1)(A)(ii) and jointly files
this Stipulated Plaintiff's Voluntary Dismissal with
prejudice.

Respectfully submitted this 18th day of August, 2016.

STIPULATED BY:

/s/ Sandra Finch

Attorney for Plaintiff

State Bar No.: 446264

The Russell's Law Firm, PLC

741 E. Fry Blvd., Suite 200

Sierra Vista, AZ 85635

/s/ Marvin Dikeman

Marvin Dikeman

Melissa Patton

Webb, Zschunke, Neary

& Dikeman, LLP

3490 Securities Centre,

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520-458-7246

Suite 1210
Atlanta, GA 30305

**APPENDIX M, Finch Memorandum of Law In
Response to Court's Order to Show Cause For
Contempt
(Doc. 158)**

IN THE UNITED STATES DISTRICT COURT FOR THE
NORTHERN DISTRICT OF GEORGIA ATLANTA
DIVISION

ELAINE ARMSTEAD,

Plaintiff,

Civil Action File

v.

No. 1:14-CV-586-WSD

ALLSTATE INDEMNITY
COMPANY INSURANCE
COMPANY,

Atlanta Division

Defendant.

**SANDRA FINCH'S MEMORANDUM OF LAW IN
RESPONSE TO COURT'S ORDER TO SHOW
CAUSE FOR CONTEMPT**

COMES NOW Attorney Sandra Finch (hereinafter "Respondent"), in the above-referenced action and files her Memorandum of Law as to the Court's Order to Show Cause for Contempt.

I. RELEVANT FACTS

This contempt action arises out of an Order by this Court for Respondent to show cause why she should not be held in contempt of Court [Doc. 136] for failing to comply with the Court's July 1st [Doc. 121 at 32-35] and July 6th [Doc. 127] Orders. Those Orders required Respondent to file an affidavit stating the

circumstances of how she obtained certain documentary evidence used to impeach a non-party witness during a deposition in this cause.

Respondent represented Plaintiff, Elaine Armstead on claims of breach of contract and bad faith for Defendant Allstate's failure to pay Plaintiff's claim for fire damages in the Allstate Homeowner's insurance policy issued to Plaintiff. [Doc. 1- 1]¹

Jury trial was scheduled in the case to begin on July 11, 2016. On May 6, 2016, Defendant Allstate filed a Motion to Conduct the Preservation Deposition of a non-party witness Mark Gould (hereinafter "Mr. Gould"). [Doc. 105] Mr. Gould's deposition took place on May 19, 2016. [Doc. 114-5]

On direct, Mr. Gould testified that his company took photographs of Plaintiff's carpet before cleaning the carpets. [Id. at 34-37, 152; D60 and D152] Mr. Gould testified he had never been to Plaintiff's home, never inspected fire damages at her home [Id. at 56, 148], never observed any work done by his company at her home [Id. at 61-62], did not take any of the photographs which he was testifying about [Id. at 59, 152-153], and was not present when the photographs were taken [Id. at 59, 62- 63] Mr. Gould does not know the scenes depicted in the photos and could not verify the photos fairly and accurately depicted events as depicted. [Id. at 150-151, 163- 164] The photos, embedded in an email, contained file names with dates of which Mr. Gould had no personal knowledge. [Id.] Despite a lack of personal knowledge of the photographs, Mr. Gould was adamant that all photos were taken before any cleaning occurred. Defendant however sought to have the photographs

¹ The original lawsuit was filed in Fulton County State Court and was removed to this Court by motion of the Defendant. Plaintiff's motion for remand to state court was denied by the Court.

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admitted under the business record exception to the hearsay rule.

Plaintiff had commanded Witness Gould via subpoena to bring the original digital media of the photographs at issue to the deposition for the purpose of cross-examining Mr. Gould on the digital metadata found on the photographs to verify the dates they were taken. [Doc. 114-4] Mr. Gould did not produce the digital photos as commanded. [Id. at 33, 153] Thus, Respondent was unable to question Gould or verify the truth of his testimony as to when the photographs were taken.² Mr. Gould also failed to produce other documents as commanded in the subpoena served upon him. [Doc. 114-5 at 42, 210-211]³

Mr. Gould was also confronted with Exhibit P-202 (Stematic Guide) for the purpose of impeaching his testimony regarding the independence of his company from Allstate. Witness Gould denied recognizing P-202 stating it is “not [his] document”. [Id. at 89-92, 93] Witness Gould became irate and, off the record but captured in the video deposition, can be seen pointing at Respondent and shouting very loudly “where the fuck

² Through a third subpoena served upon Witness Gould to appear at trial and bring the digital media, Mr. Gould produced a certified copy of the original digital media in which the meta data shows that all of the photos except one was taken nearly a month after cleaning of the carpets was completed.

³ Specifically Mr. Gould was asked to bring copies of all of his professional certifications for carpet cleaning but he did not bring any responsive documents to the deposition, claiming that he did not “keep them”. [Id. At 42 – 43] Respondent confronted witness Court with Exhibit P-191, which was a photograph of numerous framed professional certifications hanging on his wall for the purpose of impeachment. [Id. At 90, 205-208]

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did you get these documents?” [Id. at 94, line 21 to line 24; Video Deposition 1.24]

Mr. Gould, refused to answer any more questions and walked out of the deposition over Respondent’s objections. [Id. at 276-277]

Respondent filed a Motion In *Limine* to exclude the deposition testimony of Mr. Gould and to exclude the photographs (D60 and D152) that Gould claimed were taken before his company cleaned the carpets. [Doc. 114]

In Response to Plaintiff’s Motion In *Limine*, Defendant filed an affidavit signed by Mr. Gould, averring that Exhibit P-191 was a photograph “taken inside [his] office without [his] permission” [Doc. 115-1 at ¶ 7] and that Exhibit P-202 was a document located in his office. [Id. at ¶ 8]

Mr. Gould confirmed that Exhibit P- 202 was located on a bookshelf in his office. [Id.]

On July 1, 2016, this Court issued an Order denying Plaintiff’s Motion In *Limine* and excluded P-191 and P202. [Doc. 121 at 32-35] In addition, the Court ordered Respondent “to file on or before July 5, 2016, a sworn affidavit stating, in detail, how and under what circumstances she obtained the photographs of Mr. Gould’s office and the Steamatic Guide in question, including when the photographs were obtained, who took them, where they were taken, to whom they were distributed, whether the Steamatic Guide photographs had Respondent’s letterhead and, if so, how did the letterhead appear on them, and whether Respondent was involved in or knew the circumstances regarding the creation of the photographs.”

On Tuesday July 5, 2016, Respondent filed objections to the Order on grounds of lack of notice, due

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process and opportunity to be heard, as well as mootness due to Court's exclusion of the documents at issue.

The Court issued a second Order on July 6, 2016 overruling Respondent's objections and stated that "the Court has the obligation and the inherent authority to manage its docket and court room, and the conduct of the parties and counsel who litigate before the Court", "to sanction litigants for bad faith conduct", and "to regulate their professional conduct.". [Doc. 127] The Court ordered Respondent to comply with the Order by 5:00 p.m. same day. Due to Respondent's travels, she did not receive the order in time to timely comply. [Doc. 138 at 4]

At the pretrial conference held the following day on July 7, 2016, Respondent informed the Court she had not complied with the July 6th Order because she was unable to comply while traveling given the short notice (less than a full business day). [Doc. 138 at 4]. The Court asked if Respondent wanted more time to which Respondent replied, as follows:

I would like additional time to respond. But also I have an objection, again, because I really don't understand what the complaint is or what it is I'm responding to. I have looked up the law on every possible way that you could sanction me for this conduct, which appears that's what -- that appears to be the intent of the Court. I don't know. I'm trying to understand. And without knowing what it is that you are complaining I have done, I don't know how I'm supposed to respond. And I feel like it's a due process issue.

[Id. at 4-5]

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The same date that Respondent explained why she had not complied and requested more time to comply, this Court issued an Order to Show Cause why Respondent should not be held in contempt of the Court's July 1, 2016 and July 6, 2016 orders, requiring Respondent to appear on Monday July 11, 2016 at 5:30 p.m. on the first day of jury trial in the above styled case. [Doc. 136] In its Order, the Court states "Plaintiff's counsel did not request additional time to file the affidavit. Plaintiff's counsel did not file the required affidavit, and has not otherwise responded to the Court's July 6th Order requiring the affidavit." [Id.]

A jury trial commenced on July 11, 2016. At 5:30 p.m. on the first day of trial, the Court conducted a contempt hearing wherein Respondent urged several objections including lack of notice, lack of due process, right to counsel, lack of willfulness, inability to comply, lack of a clear and valid order, attorney work product / investigative privilege and 5th Amendment privilege. [Doc. 147 at 6-14]. The Court found Respondent in contempt but continued the contempt hearing to allow Respondent to submit pleadings in writing in her defense. [Id. at 16-18]

On July 13, 2016, near the conclusion of Plaintiff's case in chief, the Defendant moved for a mistrial, which the Court granted. [Doc. 148 at 8; Doc. 142] On July 18, 2016, the parties filed a Notice of Settlement of the case. [Doc. 145] On July 19, 2016, the Court ordered the parties to file a stipulation of dismissal on or before August 19, 2016 stating that the "Court retains jurisdiction over the Order to Show Cause issued on July 7, 2016" and ordered Respondent to appear on August 23, 2016 for that hearing. [Doc. 146] On August 18, 2016, the parties filed a Stipulated Plaintiff's Voluntary Dismissal With Prejudice, dismissing all claims and ending the case. [Doc. 153]

On August 17, 2016, undersigned counsel entered his Entry of Appearance on behalf of Respondent and requested a prehearing status conference. [Docs. 149, 150] As a result of the pretrial status conference, Respondent was allowed to file a brief on the issues now presented by this Court's contempt proceedings against Respondent.

A. ARGUMENT AND CITATION OF AUTHORITY

1) SUMMARY OF ARGUMENT

Due to the dismissal of the principal case, there is no possibility of civil contempt (coercive sanctions or compensatory sanctions to a litigant) because coercive sanctions do not survive abatement of the principal action and there are no litigants to award sanctions. Further, the sole purpose of any sanction would be to vindicate the Court's authority, which is the hallmark of criminal contempt proceedings. A criminal contempt proceeding requires compliance with Rule 42 before imposing sanctions. Respondent has a 5th Amendment right not to provide any affidavit, which would be testimonial in nature. Finally, the exercise of contempt proceedings under the Court's inherent contempt power would exceed the severely limited purpose of the inherent power.

2) ANY SANCTION IMPOSED BY THE COURT FOR FAILING TO COMPLY WITH THIS COURT'S *SUA SPONTE* ORDER IS PUNITIVE AND SERVES ONLY TO VINDICATE THE COURT'S AUTHORITY, CONSTITUTING CRIMINAL CONTEMPT.

It is well settled that the difference between civil and criminal contempt lies not in the alleged contemptuous acts, but in the court's sanction for the acts. *Nye v. U.S.*, 313 U.S. 33, 61 S.Ct. 810, 85 L.Ed.

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1172 (1941). The Supreme Court has instructed that “conclusions about the civil or criminal nature of a contempt sanction are properly drawn, not from the subjective intent of [the court imposing the sanction], but from an examination of the character of the relief itself.” *International Union, United Mine Workers of America v. Bagwell*, 512 U.S. 821, ___, 114 S.Ct. 2552, 2557, 129 L.Ed. 642 (1994) (citation and internal quotation marks omitted). If the relief is designed to compensate a complainant for losses or to coerce a party into complying with a court order, the contempt sanction is civil in nature. See *Id.*, 512 U.S. at ___, 114 S. Ct. at 2558; *Martin v. Guillot*, 875 F.2d 839, 845 (11th Cir. 1989). By contrast, “if a court seeks to vindicate its authority by punishing a contemnor, then [the] contempt is

criminal in nature.” *Martin*, 875 F.2d at 845. (citations omitted).⁴

In *Nye*, the Supreme Court found a sanction against an attorney in the form of an unconditional fine payable to the Court rather than a litigant was criminal contempt because it did not aid in the adjudication of the principal suit and did not award relief to a private suitor. *Nye* at 813. Other Courts including the 5th Circuit following *Nye* have reached similar holdings. See *Southern Ry. Co. v. Lanham*, 403 F.2d 119, rehearing denied 408 F.2d 348 (C.A.5 Ga. 1968) (holding sanctions in the form of a fine made payable to the court constitutes criminal contempt

⁴“A contempt is considered civil when the punishment is wholly remedial, serves only the purpose of the complainant, and is not intend as a deterrent to offenses against the public. *Id.* at 813.

because it serves only to vindicate the authority of the court and is punitive in nature); *US v. Haggerty*, 581 F. Supp 1286 (D.C.Colo.1981) (holding that if the purpose is to punish and vindicate court's authority then the proceeding is criminal); *Palmigiano v. Garrahy*, 448 F. Supp. 659 (C.C.R.I. 1978) ("criminal contempt aims at vindicating the dignity of the court while civil contempt serves to preserve and enforce the rights of private parties to suits and to compel obedience to orders and decrees and is coercive in nature"). Indeed, a civil contempt is that civil contempt Order must permit the contemnor to purge itself and remove the sanction by compliance with the court's order. *Lanham* at 125.

In the instant case, the Court *sua sponte* entered its July 1st and July 6th orders giving rise to this contempt action. Subsequently, the principal suit was dismissed, with prejudice, leaving no pending claims or parties. Any imposition of sanctions at this point by the Court would serve no purpose other than to vindicate the Court's authority and therefore would constitute criminal contempt.

Under similar facts, the *Lanham* Court reversed a trial court's finding of contempt and imposition of a monetary fine payable to the court holding that it was error to impose an unconditional fine payable to the Court (rather than a private suitor) where the court did not permit the contemnor to purge itself by compliance with the court's order and classified this type of sanction as criminal contempt. *Lanham*, at 125. The court reasoned that under such circumstances "[t]he contemnor does not carry the keys of his prison in his own pocket and therefore the fine operates not as a remedy

coercive in its nature, but solely as punishment for the completed act of disobedience.” *Id.*⁵

Following *Nye* and its progeny, it is clear that any sanction imposed in the instant case for failing to comply with this Court’s order to file an affidavit serves no other purpose but to vindicate the Court’s authority and therefore, can only be deemed criminal contempt.

**3) THIS COURT MUST COMPLY WITH
FRCrP 42 BEFORE IMPOSING ANY
CRIMINAL SANCTION.**

Because the principal case has been dismissed and the court is contemplating sanctions against Respondent to vindicate its authority, this contempt proceeding is criminal in nature. Rule 42

sets forth the procedural requirements with which the court must comply before imposing sanctions. Rule 42, in relevant part, provides as follows:

(a) Disposition After Notice. Any person who commits criminal contempt may be punished for that contempt after prosecution on notice.

(1) Notice. The court must give the person notice in open court, in an order to show cause, or in an arrest order. The notice must:

⁵ In a footnote in the *Lanham* case, the Court notes that the contempt proceedings were held in compliance with Rule 42, but the Court reversed nonetheless because the imposition of an unconditional fine payable to the court was an improper sanction where contempt was raised *sua sponte* by the Court and the fine was not paid to a litigant.

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- (A) state the time and place of the trial;
 - (B) allow the defendant a reasonable time to prepare a defense; and
 - (C) state the essential facts constituting the charged criminal contempt and describe it as such.
- (2) **Appointing a Prosecutor.** The court must request that the contempt be prosecuted by an attorney for the government, unless the interest of justice requires the appointment of another attorney. If the government declines the request, the court must appoint another attorney to prosecute the contempt.
- (3) **Trial and Disposition.** A person being prosecuted for criminal contempt is entitled to a jury trial in any case in which federal law so provides and must be released or detained as Rule 46 provides.

Fed. R. Crim. P. 42. The Court must comply with Rule 42 by appointing a prosecutor, by allowing time for a reasonable defense and by providing Respondent with a jury trial.

In *In re E.I. DuPont De Nemours & Company-Benlate Litigation*, 99 F.3d 363 (11th Cir. 1996) the Court of Appeals reversed a district court's finding of contempt where the trial court employed civil contempt proceedings to impose a criminal sanction against attorneys for failing to comply with a discovery order. The Court found this to be a violation of due process citing *Blaylock v. United States*, 844 F.2d 1546, 1560 n. 20 (11th Cir. 1988) (per curiam) (Tjoflat, J., specially concurring) ("It requires no citation of authority to say that a district court may not, even unwittingly,

employ a civil contempt proceeding to impose what, in law, amounts to a criminal contempt sanction.... When a district court employs civil contempt procedures to punish a contemnor, it necessarily deprives the contemnor of his constitutional rights and renders his contempt citation a nullity.”).

Thus, the law is clear that if this Court seeks to impose a sanction of a fine or confinement against Respondent for contempt under the facts of this case, that it must comply with Rule 42.

4) NO CONTEMPT SANCTIONS CAN BE IMPOSED FOR THE VALID EXERCISE OF THE FIFTH AMENDMENT.

The burden for a court to establish contempt under the inherent power is very high. *Chambers v. NASCO, Inc.* 501 U.S. 32, 47, 111 S.Ct. 2123 (1991) (inherent powers must be exercised with “restraint and discretion”); *Chaves v. M/V Medina Star*, 47 F.3d 153 (1995) (“the threshold for use of inherent power sanctions is high”). Historically, contempt under the inherent power must be exercised cautiously and with due regard to constitutional rights. *U.S. v. Moore*, 294 F. 852 (2nd Cir.), certiorari denied 44 S. Ct. 331, 264 U.S. 581 (1923). *Chambers v. NASCO* makes clear that the inherent power is not to be used where there are other procedural rules directly on point to address an issue. 501 U.S. 32, 47, 111 S.Ct. 2123 (1991). *See also FTC v. Trudeau*, 606 F.3d 382, 386 (8th Cir. 2010). [“The fundamental principle in contempt cases is that the court must exercise the least possible power to the end proposed].”

Respondent has already asserted a Fifth Amendment claim to compliance with the Court’s Order. The Fifth Amendment states that “[n]o person ... shall be compelled in any criminal case to be a

witness against himself. To qualify for the Fifth Amendment privilege, a communication must be testimonial, incriminating, and compelled.” See *United States v. Hubbell*, 530 U.S. 27, 34-38, 120 S. Ct. 2037, 147 L.Ed.2d 24 (2000). The Courts have long recognized the 5th Amendment as a defense to non-compliance with a court order and it is well settled that one may not be held in contempt of court if she rightly claims the privilege against self-incrimination. See *U.S. v. Dickinson*, 465 F.2d 496 (1972):

“[a]n order that requires an irrevocable and permanent surrender of a constitutional right, cannot be enforced by the contempt power. For example, a witness cannot be punished for contempt of court for refusing a court order to testify if the underlying order violates Fifth, Fourth or perhaps First Amendment rights. *Malloy v. Hogan*, 1964, 378 U.S. 1, 84 S.Ct. 1489, 12 L.Ed.2d 653; *Silverthorne Lumber Co. v. United States*, 1920, 251 U.S. 385, 40 S.Ct. 182, 64 L.Ed. 319; *Gelbard v. United States*, 1972, 408 U.S. 41, 92 S.Ct. 2357, 33 L.Ed.2d 179...The rationale of these cases is that once the witness has complied with an order to testify he cannot thereafter retrieve the information involuntarily revealed, even if it subsequently develops that compelling the testimony violated constitutional rights. In such a predicament, the damage is irreparable. No remedies are available which can effectively cure the constitutional deprivation after the order has been unwillingly obeyed.”

Dickinson; see also *Hiibel v. Sixth Judicial Dist. Court of Nevada, Humboldt County*, 542 U.S. 177, 195, 124 S. Ct. 2451, 2463-64, 159 L. Ed. 2d 292 (2004).

The Court's Order reasoned that: "In light of its authority and because the matters required to be addressed in the affidavit may impact the admission of evidence at trial, the Court Overrules the Objections". [Doc. 127]. The principal lawsuit has been dismissed and there are no pending evidentiary issues that the Court needs to consider. The only possible proceeding against Respondent will be criminal in nature as discussed above. Respondent cannot be forced to provide any affidavit where there is no pending litigation and the Court has no reason for seeking the affidavit related to the principal lawsuit, especially where the Court has made it clear that it seeks to punish Respondent. With possible Bar proceedings pending, Respondent has properly invoked the 5th Amendment. *See Wilson v State Bar of Georgia*, 225 Ga. 343 (1969); *Spevack*.

CONCLUSION

For all of the foregoing reasons, the Court's order requiring Respondent to provide an affidavit regarding the source of evidence potential trial evidence is now moot, and this Court should dismiss the contempt proceedings. Even if it is not moot, Respondent has properly invoked her Fifth Amendment privilege which protects her non-compliance. There has therefore, not been a willful failure to comply.

This 19th day of September, 2016.

Respectfully submitted,

/sBruce S. Harvey

**APPENDIX N, District Court Order, October 26,
2016, District Court Finds Valid Fifth Amendment
Privilege Raised—Orders Petitioner To Appear For
Sanctions Hearing under Inherent Power for same
failure to comply
(Doc. 159)**

IN THE UNITED STATES DISTRICT COURT FOR THE
NORTHERN DISTRICT OF GEORGIA ATLANTA
DIVISION

ELAINE ARMSTEAD,

Plaintiff,

v.

Civil Action File
No. 1:14-CV-586-WSD

ALLSTATE INDEMNITY
COMPANY INSURANCE
COMPANY,

Atlanta Division

Defendant.

OPINION AND ORDER

This matter is before the Court on Attorney Sandra Finch’s (“Respondent”) Memorandum of Law in Response to the Court’s Order to Show Cause for Contempt [158] (“Contempt Memo”).

II. BACKGROUND

On June 28, 2016, Defendant Allstate Property & Casualty Insurance (“Defendant”) provided an affidavit, in which Defendant’s witness Mark Gould states that he believes Respondent “entered areas of [his] office building without permission and took many photographs without permission” (Gould Aff. [115.1] ¶ 13). The affidavit

further provides that, during Mr. Gould's deposition, Respondent handed him a document titled "Steamatic Guide to Restoration Services," which had been photographed page-by-page. (Id. ¶ 5). The photographs also showed Respondent's letterhead in the background. (Id.). Mr. Gould testified that it "became apparent to [him] Plaintiff's counsel had obtained the document from [his] office without [his] permission." (Id. ¶ 6). After he accused Respondent of trespassing in his office, Respondent stated, "I caution you on defaming me, because if you defame me, I can promise you it will not be good." (Id. ¶ 9). Mr. Gould considered this a threat. (Id.). At the deposition, Respondent stated that, in order for trespassing to occur, "you have to have told somebody they can't come on your property" (Id. ¶ 8).

After the deposition, Mr. Gould went to his office and confirmed the location of the Steamatic Guide, which was on a bookshelf in his project manager's office. (Id. ¶ 11). Mr. Gould's office manager, Leonor Alarez, later told him:

On May 20, 2016, she heard some noise in the office and asked if anyone was there. There was no response. So, Ms. Alarez continued working. Approximately 30 minutes later, Ms. Alarez was walking to the copier and came upon Plaintiff's counsel sitting in the reception area. Ms. Alarez asked Plaintiff's counsel how long she had been there, but she never received an answer. At which point, Plaintiff's counsel hand delivered the subpoena.

(Id. ¶ 12). It is Mr. Gould's opinion and belief "that Plaintiff's counsel entered areas of [his] office building without permission and took many photographs without permission" (Id. ¶ 13).

Respondent, in a sworn affidavit filed with the Court [116.1], denied these accusations. The Court found Respondent's explanations insufficient and evasive. In light of Mr. Gould's affidavit, and because Respondent sought to admit into evidence at trial the Steamatic Guide and a photograph depicting certifications that were displayed in a hallway away from the public reception areas of Mr. Gould's office, on July 1, 2016, the Court entered an Order [121] ("July 1st Order") requiring Respondent to provide, on or before July 5, 2016, an affidavit stating, in detail, how and under what circumstances she obtained the photographs of Mr. Gould's office and the Steamatic Guide so the Court could consider if these proposed exhibits would be allowed into evidence at trial.

On July 5, 2016, Respondent filed her Objections to Court Order to Produce an Affidavit [122] ("Objections"). After considering Respondent's Objections, on July 6, 2016, the Court entered an Order [127] ("July 6th Order") overruling them and requiring her to file the affidavit on or before 5:00 p.m. EST on July 6, 2016. Respondent failed to file the required affidavit by the time ordered, and otherwise failed to respond to the July 6th Order, or explain why she could not or did not comply. During the pretrial conference held on July 7, 2016, the Court reiterated that Respondent was under a Court order to provide the required affidavit, and explained to her the information required in the affidavit was to determine its impact on evidence that Respondent stated she intended to offer at trial. The Court offered to allow Respondent to file the affidavit later that day. Respondent again failed to file the required affidavit or explain why she would not or could not comply.

On July 7, 2016, the Court entered an order requiring Respondent to show cause [136] ("Show Cause Order") why the Court should not hold her in contempt of

the Court's July 1st Order and July 6th Order. On July 11, 2016, the Court held a hearing on the Show Cause Order. During the hearing, Respondent requested, and the Court allowed, that the hearing be continued so that she could be represented by counsel. (See Tr. [147] at 17-18). Respondent also suggested, for the first time, that she should not be required to file the required affidavit based on her Fifth Amendment right against self-incrimination. On August 17, 2016, the Court entered an order [152] clarifying that "it has not found [Respondent] in contempt, because [Respondent] advised the Court she needed more time to prepare and wanted to be represented at the hearing."

On August 22, 2016, the Court held a pre-hearing status conference with Respondent's attorney. At the hearing, Respondent's attorney indicated his position that, should the Court conduct contempt proceedings, the proceedings are required to be criminal in nature and comply with the requirements of Fed. R. Crim. P. 42. The same day, the Court issued an order [155] requiring Respondent to file, on or before September 14, 2016, her legal authority and argument regarding her opinion as to the nature of the hearing and the procedural requirements to conduct it. The Court continued the contempt hearing scheduled for August 23, 2016.

On September 19, 2016, Respondent filed the memorandum the Court ordered her to submit. Respondent argues that, the principal case having been dismissed, there is no possibility of civil contempt, and, where the sole purpose of a sanction is to vindicate the Court's authority, criminal contempt proceedings are required. Respondent also argues no contempt sanctions can be imposed for the valid exercise of the Fifth Amendment.

B. DISCUSSION

A. Legal Standard

In reviewing a contempt judgment, the Eleventh Circuit first determines whether the nature of the contempt proceeding was civil or criminal. Afro-American Patrolmen's League v. City of Atlanta, 817 F.2d 719, 723 n.3 (11th Cir. 1987). “[C]onclusions about the civil or criminal nature of a contempt sanction are properly drawn, not from the subjective intent of a State’s laws and its courts, but from an examination of the character of the relief itself.” Int’l Union, United Mine Workers of Am. v. Bagwell, 512 U.S. 82, 828 (1994) (internal quotation marks and citations omitted). If the relief is designed to compensate a complainant for losses or to coerce a party into complying with a court order, the contempt sanction is civil in nature. See id. Contempt is criminal in nature “if it is imposed retrospectively for a completed act of disobedience.” Id. (internal quotation marks omitted).

Fed. R. Crim. P. 42 governs criminal contempt proceedings. Rule 42(a) provides that “[a]ny person who commits criminal contempt may be punished for that contempt after prosecution on notice.” Rule 42(a)(1) describes what the notice must contain; Rule 42(a)(2) indicates who the court must appoint as a prosecutor; and Rule 43(a)(3) provides that a person prosecuted for criminal contempt is entitled to a jury trial if federal law allows. Because of these requirements, “[a] district court may not use the civil contempt power to impose what amounts to a punitive or criminal contempt sanction.” SEC v. Pension Fund of Am., L.C., 396 F. App’x 577, 583 (11th Cir. 2010) (internal quotation marks omitted) (quoting United States v. City of Miami, 195 F.3d 1292, 1298 (11th Cir. 1999)); see also DuPont De Nemours & Company-Benlate Litig., 99 F.3d 363, 369 (11th Cir. 1996) (reversible error to impose criminal

sanctions in a civil proceeding, which “did not afford [the contemnor] the procedural protections the Constitution requires for the imposition of criminal contempt sanctions”).

The contempt power, however, “is merely one of many inherent powers that a court possesses; it is not the only type of inherent power that can be deployed.” In re Charbono, 790 F.3d 80, 85 (1st Cir. 2015) (citing Chambers v. NASCO, Inc., 501 U.S. 32, 43-44 (1991)). “The authority to issue a punitive sanction also may reside in a court’s inherent power to police itself, thus . . . vindicating judicial authority without resort to the more drastic sanctions available for contempt of court.” Id. (internal quotation marks and brackets omitted) (citing Chambers, 501U.S. at 46). Courts have consistently recognized that, in addition to the contempt power, courts have the inherent power to sanction attorneys. See, e.g., id.; In re Sunshine Jr. Stores, Inc., 456 F.3d 1291, 1304 (11th Cir. 2006) (“Federal courts have the inherent power to impose sanctions on parties, lawyers, or both.”); Mark Indus., Ltd v. Sea Captain’s Choice, Inc., 50 F.3d 730, 733 (9th Cir. 1995) (non-contempt inherent-power sanction can be employed to vindicate a court’s authority); United States v. Shaffer Equip. Co., 11 F.3d 450, 457 (4th Cir. 1993) (inherent power to impose sanctions “is organic, without need of a statute or rule for its definition, and it is necessary to the exercise of all other powers”); Harlan v. Lewis, 982 F.2d 1255, 1259 (8th Cir. 1993) (approving non-contempt monetary sanction as within district court’s inherent powers); Eash v. Riggins Trucking Inc., 757 F.2d 557, 565-66 (3d Cir. 1985) (en banc) (noting that a court’s “broad power to discipline attorneys as officers of the court for misconduct not properly categorized as contempt is substantially different from the contempt power”). The “inherent power of a court can be invoked even if procedural rules exist which sanction the same conduct.” Chambers, 501 U.S. at 46.

Exercise of a court's inherent power is appropriate where a client or her attorney has "acted in bad faith, vexatiously, wantonly, or for oppressive reasons." Byrne v. Nezhat, 261 F.3d 1075, 1106 (11th Cir. 2001), abrogated on other grounds by Douglas Asphalt Co. v. QORE, Inc., 657 F.3d 1146 (11th Cir. 2011) (quoting Chambers, 501 U.S. at 46). "The key to unlocking a court's inherent power is a finding of bad faith." Barnes v. Dalton, 158 F.3d 1212, 1214 (11th Cir. 1998). "A court should be cautious in exerting its inherent power and 'must comply with the mandates of due process, both in determining that the requisite bad faith exists and in assessing fees.'" Byrne, 261 F.3d at 1106 (quoting Chambers, 501 U.S. at 50). "Because the court's inherent power is so potent, it should be exercised 'with restraint and iscretion.'" Id. (quoting Chambers, 501 U.S. at 50).

Exercising its inherent power, a "court[] may levy sanctions (including punitive sanctions) for such varied purposes as disciplining attorneys, remedying fraud on the court, and preventing the disruption of ongoing proceedings." Charbono, 790 F.3d at 96 (citing Chambers, 501 U.S. at 43-44); see also Eash, 757 F.2d at 564 ("myriad violations of court rules, deadlines, or orders" may be grounds to impose sanctions based on a court's inherent authority, grounded in "the control necessarily vested in courts to manage their own affairs so as to achieve the orderly and expeditious disposition of cases." (quoting Link v. Wabash RR Co., 370 U.S. 626, 630-31 (1962))). A court exercising its inherent power may, among other remedies, "issue orders, punish for contempt, vacate judgments obtained by fraud, conduct investigations as necessary to exercise the power, bar persons from the courtroom, assess attorneys' fees, and dismiss actions." Shaffer, 11 F.3d at 462.

B. Analysis

As a result of the dismissal of the principal case,

civil contempt is not an available remedy. Here, the sole purpose of any sanction is to vindicate the Court's authority, and contempt proceedings would be criminal in nature and would need to comply with the requirements of Fed. R. Crim. P. 42. As detailed above, courts have consistently recognized that, in addition to the contempt power, courts have the inherent power to sanction attorneys. "Requiring courts to await the conclusion of extensive investigation and prosecution procedures [for criminal sanctions] following every courtroom infraction would greatly compromise the court's ability to direct and control the proceedings." Goldstein v. Forbes, 260 F.3d 183, 199 (3d Cir. 2001). That was the case involving this infraction where the trial was about to commence. Under the circumstances of this case, the Court finds that a hearing to determine whether and how the Court should exercise its inherent power is Appropriate.¹

The Court addresses next Respondent's argument that a contempt sanction cannot be imposed for the valid exercise of the Fifth Amendment. "Disobedience of a court order unequivocally merits punishment save in instances in which compliance would necessarily result in an irrevocable and permanent surrender of a constitutional right." Kleiner v. First Nat. Bank of Atlanta, 751 F.2d 1193, 1208 (11th Cir. 1985) (internal quotation marks and emphasis omitted). Here, Respondent ultimately—after multiple Court orders and

¹ The Court notes that it has explicitly invoked its inherent power in connection with this matter. In its July 6, 2016, Order overruling Respondent's objections to the Court's July 1st Order, the Court noted its inherent authority to regulate Respondent's conduct in her capacity as an officer of the court. ([127] at 1-2 (quoting In re Gopman, 531 F.2d 262, 266 (5th Cir. 1976))).

conferences—asserted her Fifth Amendment right against self-incrimination to protect her from filing the affidavit required by the Court’s orders. The Court does not—nor could it—now require Respondent to forego her asserted Fifth Amendment rights by requiring her to comply with the Court’s July 1st and July 6th Orders. Rather, the misconduct at issue at this stage of the proceedings is Respondent’s pattern of disruptive behavior and her flagrant disregard for the Court’s orders without adequate justification or explanation. Respondent’s belated Fifth Amendment assertion does not, in itself, excuse her pattern of conduct leading up to her assertion of her right against self-incrimination.

In accordance with the requirement that a court’s use of its inherent power must comply with the mandates of due process, Byrne, 261 F.3d at 1106 (quoting Chambers, 501 U.S. at 50), the Court shall hold a hearing to determine whether the Court should exercise its inherent power, and, if it should, what sanctions are appropriate. The Court will not, at this stage, hold contempt proceedings in this matter.

C. CONCLUSION

For the foregoing reasons,

IT IS HEREBY ORDERED that the Court shall hold a hearing on November 22, 2016, at 9:30 a.m., in Courtroom 1705, United States Courthouse, 75 Ted Turner Drive SW, Atlanta, Georgia 30303, to determine whether the Court should exercise its inherent authority and, if so, whether sanctions are appropriate.

SO ORDERED this 26th day of October, 2016.

/s/ William S. Duffey

United States District Judge

**APPENDOX O, Transcript Sanctions Hearing
Inherent Power, November 29, 2016**

(Doc. 185)

Page 1

TRANSCRIPT OF PROCEEDINGS

10 **BEFORE THE HONORABLE WILLIAM
S. DUFFEY, JR.,
UNITED STATES DISTRICT JUDGE**

11

SHOW CAUSE HEARING

12 **Tuesday, November 29, 2016**

13

14

15 **APPEARANCES OF COUNSEL:**

16 **For Ms. Finch: LAW OFFICE OF BRUCE
HARVEY**

(By: Bruce S. Harvey)

17

18

19

20

21

Proceedings recorded by mechanical stenography

22 *and computer-aided transcript produced by*

NICHOLAS A. MARRONE, RMR, CRR

23 **1714 U. S. Courthouse**

75 Ted Turner Drive, S.W.
24 Atlanta, GA 30303
(404) 215-1486

Page 2

1 Tuesday Morning Session
2 November 29, 2016
3 9:31 a.m.

4

5 P R O C E E D I N G S

6

7 (In open court:)

8 THE COURT: Good morning. This is the hearing
9 that's conducted pursuant to my order dated
October 10th of

10 2016.

11 The date of the hearing has been continued at the
12 request of plaintiff's counsel. I am happy to
accommodate

13 that, and I appreciate us being able to do it now
rather than

14 in December.

15 I set out in my October 10th order the purpose of
16 the hearing and the authorities upon which I am
relying in

17 this matter, and now this is the opportunity that
I'm going

App. 91a

18 to afford to the respondent to present whatever
evidence or
19 argument she wants in connection with the
matters set forth
20 in the October 10th order.
21 Mr. Harvey?
22 MR. HARVEY: Good morning, Judge.
23 THE COURT: Good morning.
24 MR. HARVEY: I am a little bit confused about
your
25 reference to the October 10th order. Can I -- I
believe

Page 3

1 I would refer to the Court's October 26th order,
which is
2 Document No. 159, and I think that kind of frames
what
3 I thought to be -- frames the issue.
4 THE COURT: Well, I said that this is not a
5 contempt hearing. I agreed with you on that
position.
6 MR. HARVEY: Yes.
7 THE COURT: But I still have inherent powers.
And
8 so those authorities, whatever order they happen
to be in.
9 MR. HARVEY: No, I agree, I'm not saying you
don't

10 have inherent powers. I agree that you do. The
question I
11 think is the contours of those powers.
12 But under the Court's October 26th --
13 THE COURT: Right, that's the Docket Entry 159.
14 MR. HARVEY: Docket -- yes, sir, Docket 159,
Judge.
15 THE COURT: Sorry.
16 MR. HARVEY: On page eleven of that order, here
17 is -- and I quote: Rather, the misconduct at issue at
this
18 stage of the proceedings is respondent's -- and
there are two
19 things -- pattern of disruptive behavior, that's
number one,
20 and her flagrant disregard for the Court's orders
without
21 adequate justification or explanation. That's
number two.
22 You also indicate, continuing along in that
23 paragraph on page eleven of Document 159, that
the belated
24 Fifth Amendment assertion does not in itself
excuse her
25 pattern of conduct.

Page 4

1 So it seems to me that the Court is wishing to
2 exercise its inherent power with regard to a
pattern of

3 disruptive behavior and/or flagrant disregard for
the Court's
4 orders without adequate justification or
explanation.
5 Now, I will say that since we are not here on a
6 contempt hearing because the Court did agree
with our prior
7 pleading in that regard, that a pattern of
disruptive
8 behavior is so amorphous and ambiguous as to not
give us an
9 opportunity -- I guess I am making a due process
argument --
10 not specific enough or so amorphous that I don't
have any
11 clue as to what it is we have to defend against,
because I
12 don't know what in the Court's mind constitutes a
pattern of
13 disruptive behavior, and I do not know what
orders the
14 respondent, Ms. Finch, disregarded without
adequate
15 justification or explanation, neither of which --
16 THE COURT: I'm sorry, that's all in the order,
17 Mr. Harvey.
18 I know you are making a record on this; I'm happy
19 for you to do that. But it's clear in this order that
she

20 was ordered at least two times to respond to an
order of the
21 Court, and she neither did that nor explained why
she didn't
22 do that.
23 So why don't you start with that.
24 MR. HARVEY: Okay. Well, I'm unaware of which
25 order you are referring to. In this order, in the
October

Page 5

1 10th -- I mean, the October 26th order?
2 THE COURT: Aren't you aware, having gone back
and
3 read the transcript in this case, that she was
ordered twice
4 to provide specific information about why she --
where she
5 acquired information that was at issue in the case?
6 MR. HARVEY: Yes, yes, yes.
7 THE COURT: And she was twice ordered to do
that
8 and given specific dates upon which to respond,
and neither
9 responded, nor did she explain why she didn't
respond on
10 either of those occasions.
11 So why don't you start with that.
12 MR. HARVEY: Well, in the first place, I don't

13 think that constitutes a pattern of disruptive
behavior under
14 any circumstances.
15 THE COURT: Well, let's just start with that.
16 That's one of the things that I pointed to in the
orders.
17 Explain to me why somebody is not required to
respond to a
18 lawfully-issued order of the Court either by
providing the
19 information required or explaining why it's not
being
20 provided.
21 MR. HARVEY: Well, first, I think that Ms. Finch
22 did, in fact, respond. One.
23 THE COURT: Well, good, tell me what that is.
What
24 was her response in your mind?
25 MR. HARVEY: Well, her response, if I can -- in the
Page 6

1 first instance, I think there was a July 1st order,
which is
2 Document 121, I believe, from the Court. You
ordered her to
3 respond within a certain period of time, and I
think that was
4 July 5th.
5 And there was then a hearing --

6 THE COURT: Well, what you should do if you are -
-
7 this is your due process hearing. If you want to put
8 evidence in the record upon which you are relying
to respond
9 to this required hearing, let's do that so that the
record is
10 clear.
11 And you have all those documents, and Ms. Finch
is
12 over there going through the file. So let's just get
those
13 in the record so that it's clear to me and it's clear
to the
14 Court of Appeals what it is that you are claiming
that was
15 her response to the two orders.
16 MR. HARVEY: Well, my response to that is I think
17 that you are now going back to the contempt
proceeding --
18 THE COURT: No, I'm not.
19 MR. HARVEY: -- with regard to that particular
20 order, because you are --
21 THE COURT: Mr. Harvey, I'm not going to play
this
22 game with you. I'm requiring you -- and I will
consider what
23 you have to say, and if you want to make a further
submission

24 saying that now that you are claiming I'm going
back to the
25 contempt proceeding, you may. But this is an
evidentiary

Page 7

1 hearing, then I will listen to whatever argument
you want to

2 make.

3 But I'm not going to take a position. I just set
4 this hearing because I wanted Ms. Finch here to
hear from her

5 as to what she wants to say to me to consider in
connection

6 with this decision on whether or not I impose a
response

7 under my inherent powers. So let's get on with it.

8 MR. HARVEY: Okay. You know, I object to that
9 characterization, because I think it is outside your
October

10 26th, '16, order, which does not give us --

11 THE COURT: That's fine. Let's go, first, whatever
12 you want to introduce into evidence, let's do that
first, and

13 then I will let you make your argument.

14 MR. HARVEY: I think the record speaks for itself.

15 THE COURT: Tell me what parts of the record you
16 are relying on.

17 MR. HARVEY: I think I am referring to, for

18 example, the July 6th hearing before Your Honor.
19 On the July 6th hearing before Your Honor,
20 Your Honor gave Ms. Finch till July 5th. Ms. Finch
said,
21 I was traveling, I didn't get the order.
22 You said at the July 6th hearing, Do you want
23 additional time to respond?
24 She said, and I quote -- this is at pages four to
25 five of the transcript -- I would like additional time
to

Page 8

1 respond. But I also have an objection, again,
because
2 I really don't understand, et cetera. This is at
pages four
3 to five of the July 6th transcript.
4 I believe then that you then had a hearing on July
5 MS. FINCH: 7th.
7 MR. HARVEY: 7th -- no, no, no, I'm sorry, a show
8 cause hearing on July 10th, I believe, at which
time
9 Ms. Finch indicated, To the extent there is any
allegation
10 that I did anything or if there is any proof that I
did
11 anything, I would not be required to comment on
any of that

12 on my Fifth Amendment rights. So she exercised
those Fifth
13 Amendment rights.
14 It seems to me that that's, (A), an adequate
15 response; (B), she did specifically ask for additional
time
16 to respond; and when she responded, she
appropriately
17 exercised her Fifth Amendment rights.
18 So it seems to me that that one instance is the
19 only thing that we have to defend against.
20 THE COURT: All right. Anything else?
21 MR. HARVEY: One moment.
22 Judge, I don't have any other specific evidence.
23 I think that the record as it is adequately comports
with at
24 least the only instance that I understand that the
Court is
25 inquiring about at this particular time.

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1 THE COURT: No, that was the first. I want you to
2 respond to the orders that have been entered in
this case,
3 and specifically the matters set out in the October
26th
4 order, which is Docket Entry 159.
5 And if there is nothing else that you want to

6 present because you claim that there is nothing
else to
7 respond to, that's fine.
8 MR. HARVEY: Well, as long as the Court
understands
9 that -- well, I made the record on the first.
10 THE COURT: I understand you made the record.
11 MR. HARVEY: Okay, all right.
12 THE COURT: Now, would Ms. Finch like to say
13 anything before we conclude?
14 MR. HARVEY: Well, there are also other matters.
15 We don't -- I don't know and we have not been
advised if the
16 Court is proceeding under anything other than the
global
17 inherent powers of the Court. I don't know what
sanctions,
18 if any, the Court is contemplating. I don't know
19 whether there is --
20 THE COURT: Well, I don't have to tell you what
21 sanctions I'm contemplating until the hearing is
over and
22 I deliberate on what would be appropriate.
23 If you want to suggest what you think sanctions
are
24 appropriate, I would listen to those.
25 MR. HARVEY: Well, I think that under a number
of

Page 10

1 cases, the court set out specifically if there are any
2 ethical violations or any other violations, the court
has --

3 the courts have set out here are the ethical
violations and

4 the rules that they violate; (B), here are the
sanctions that

5 the court is contemplating.

6 So I think there is plenty of authority for the
7 fact that I think the Court has an obligation if the
Court is

8 going to exercise its inherent authority to say here
is what

9 it is that I am sanctioning you for, here are the
sanctions

10 that I contemplate.

11 And, finally, if you are contemplating monetary
12 sanctions, then the financial position of the
respondent is

13 something that the Court can and should take into
14 consideration.

15 THE COURT: So what are her financial conditions
16 that would impact that?

17 MR. HARVEY: Can I -- I would like to mark an
18 exhibit for you, Judge.

19 THE COURT: You may.

20 So what is this?

21 MR. HARVEY: That's her financial statement, as
far

22 as I understand it, Judge, for her --

23 THE COURT: For what period?

24 MR. HARVEY: I'm sorry?

25 THE COURT: For what period?

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1 MR. HARVEY: For this year, for 2016.

2 THE COURT: And is she a partner in the firm?

3 MR. HARVEY: I think she is.

4 MS. FINCH: No.

5 MR. HARVEY: Well, it's a sole practice.

6 MS. FINCH: It's Chris's. I am an employee.

7 MR. HARVEY: You can address the Court.

8 MS. FINCH: I'm an employee of the firm.

9 In transitioning from Georgia to Arizona, I had to
10 close my practice, and I have moved to Arizona
with no

11 clients. And I am only working part-time, spending
time with

12 my child.

13 MR. HARVEY: And, secondly, just for the Court's
14 information --

15 THE COURT: Well, can I ask --

16 MR. HARVEY: Yes, sir.

17 THE COURT: Because this is pretty bare bones,

App. 103a

18 I would like to see for the last six months her
credit card
19 statements to see what money she has been
spending to see if
20 that tracks against somebody who is claiming that
they have
21 made an aggregate of \$27,000. Could I get that?
22 MR. HARVEY: I don't know.
23 THE COURT: Could you ask? I know you can get
it.
24 MR. HARVEY: You know what my gut reaction is.
25 I think that's a little personal, but -

Page 12

1 THE COURT: Well, it will be --
2 MS. FINCH: Actually, I don't think it's relevant
3 because --
4 MR. HARVEY: Wait. Just tell me. Thank you.
5 (Counsel and client confer.)
6 MR. HARVEY: The problem with that, Judge, is
that
7 as I understand it, that there is -- I don't think the
credit
8 card is reflective of income/expenses because I
think her
9 husband is paying either a large portion or all of
the credit
10 card bills. So we are talking about a family income
as

11 opposed to an individual's income.
12 So I don't know the answer to that question.
13 THE COURT: Well, I do. Are you willing to provide
14 the credit card statements for the last six months?
15 (Attorney and client confer.)
16 MR. HARVEY: Thank you for waiting, Judge.
17 THE COURT: It's a real easy request. Yes or no?
18 MR. HARVEY: Well, actually it's not. I mean, my
19 first reaction if you asked me for my credit card
20 bills would
21 be to say absolutely not because I don't necessarily
22 think --
23 THE COURT: Well, you have joined the issue by
24 submitting this saying that she for the last year
25 has been
26 living on \$27,500.
27 MR. HARVEY: And that is her income.
28 THE COURT: That's her income.

Page 13

1 MR. HARVEY: Correct.
2 THE COURT: But I want to know what her
3 spending is
4 to see whether or not she has other resources of
5 income.
6 MR. HARVEY: Well, I'm confident that she does. I
7 mean, I'm confident that her husband is paying
8 her bills,

6 paying most of the bills, and --

7 THE COURT: Well, you are making this
8 representation --

9 MR. HARVEY: But you --

10 THE COURT: -- but you don't know the answer to
11 that.

12 Are you giving to me the six months of credit card
13 statements or not? Just tell me.

14 MR. HARVEY: I don't know.

15 MS. FINCH: Your Honor, I --

16 MR. HARVEY: Tell me.

17 (Attorney and client confer.)

18 MR. HARVEY: Thanks for the offer, Judge, but we
19 will respectfully decline.

20 THE COURT: All right. Thank you. And I will take
21 that into account in determining whether or not
22 this

22 information is credible since it's just a printout.

23 MR. HARVEY: Well, I think that --

24 THE COURT: And is this a marital relationship or
25 other kind of relationship?

Page 14

1 MR. HARVEY: Marital, marital.

2 I also want to point out two other things, Judge,
3 for the record and for your consideration.

4 First, that I know that you are familiar with the

5 historical background of the Court's orders, but
Mr. Gould,
6 the witness, has filed a bar complaint with the
State Bar of
7 Georgia. So that there is a pending bar complaint
with
8 regard to the genesis of your orders and the reason
that we
9 are here. That's number one.
10 THE COURT: Well, first, I don't think that's
11 true. I think his complaint was filed before we had
the
12 problems of noncompliance with the order. So I'm
not sure
13 that he addressed that.
14 MR. HARVEY: I think it was afterwards. But it's
15 still pending. It's pending.
16 THE COURT: Right. And what's the status of
that?
17 MR. HARVEY: It's still pending.
18 THE COURT: Has there been an interview of
19 Ms. Finch or not?
20 MR. HARVEY: I think Ms. Finch has filed a
21 response. There has been a complaint, a response,
and
22 it's --
23 THE COURT: And when was the response filed?

24 MS. FINCH: It was like a week ago, two weeks
ago.

25 MR. HARVEY: Recently.

Page 15

1 THE COURT: Okay.

2 MR. HARVEY: And, secondly --

3 THE COURT: And how long do those matters
usually

4 take, do you know? I assume there is an
investigating

5 officer; is that right?

6 MR. HARVEY: Well, once a complaint is filed, the
7 respondent is -- or if it meets, you know, the we
are going

8 to continue, we are going to open an investigation,
then the

9 respondent is offered an opportunity to respond.
Then

10 I guess the state bar makes a determination as to
whether or

11 not there is going to be or if a hearing is necessary.
Then

12 a hearing is had. Then, you know, the state bar
makes a

13 determination as to what, if anything, the state
bar is going

14 to do.

15 I have had them last a year. So it takes some
16 time. It's not an immediate response.

17 Once they say, yes, we are going to go forward,
18 that kind of prolongs the proceeding.

19 THE COURT: Right. Okay.

20 MR. HARVEY: And, second -- so there is already
21 an

21 inquiry with regard to this particular matter.

22 THE COURT: But how is that relevant to what I'm
23 holding this hearing for?

24 MR. HARVEY: Well, because I don't know what
25 sanctions the Court is contemplating. One of the
sanctions

Page 16

1 could be, I would assume, some reference to the
state bar,

2 some reference under Rule 80, the local Rule 83 to
the chief

3 judge for some disciplinary -- potential
disciplinary action

4 in the United States District Court for the
Northern District

5 of Georgia.

6 So what relevance it has is that there is already
7 pending a proceeding with regard to Ms. Finch
with regard to

8 this incident.

9 And, lastly, on September 29th of 2016 --

10 THE COURT: You are probably aware that we
remove

11 people from the list of attorneys allowed to
practice before
12 the bar for matters other than a response or
discipline
13 through the state judicial authorities. We have
done that.
14 MR. HARVEY: Sure, and I would expect that those
15 are done under Rule 83, which has its own built-in
procedural
16 protections as well.
17 THE COURT: It does, right.
18 MR. HARVEY: Well, again, I think it's relevant
19 because I don't know what sanctions, if any, the
Court is
20 contemplating.
21 THE COURT: Well, I can't sanction her by
removing
22 her from the list of approved attorneys from the
bar. I can
23 make that recommendation, but the court
ultimately has the
24 authority to do that.
25 MR. HARVEY: Right.

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1 THE COURT: So I couldn't sanction her by saying
2 she can't practice here. The court would have to do
that,
3 and she would have due process rights in that
process.

4 MR. HARVEY: I agree.

5 THE COURT: Right.

6 MR. HARVEY: And on September 29th, 2016, the
7 U.S. Supreme Court granted cert in a case called
Goodyear

8 *Tire v. Haeger*, H-a-e-g-e-r, and the question
presented in

9 that case was the contours of the court's inherent
powers.

10 So there is pending before the U.S. Supreme
Court a

11 case which -- and nobody disagrees that the court
has

12 inherent powers, but just how they are to be
exercised. And

13 there is a great wealth of law out there that says,
of

14 course, like the parsimony principle in sentencing,
the

15 parsimony principle applies to the inherent power
of the

16 court, the least onerous sanction should be the
sanction that

17 the court imposes, if the court is going to impose a
18 sanction.

19 And in *Goodyear Tire*, not only are the contours of
20 the inherent power -- the court's inherent power at
issue,

21 but whether or not there is and must be, which I
thought they
22 have already said, a direct causation requirement
if there
23 are going to be any monetary sanctions imposed
under the
24 inherent powers.
25 So I would suggest to the Court that whatever

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1 sanctions the Court is contemplating, it might be
wise to
2 wait and see what the U.S. Supremes do in
Goodyear Tire v.
3 *Haeger*, if, in fact, they only have eight folks up
there at
4 this particular time.
5 Because I don't know whether we are going to have
6 nine at any time soon. Unless they nominate me,
which I tend
7 to doubt in a Republican administration.
8 THE COURT: All right. Anything else?
9 MR. HARVEY: No, sir.
10 THE COURT: All right. I will take all of this
11 into consideration and issue a written order.
Thank you for
12 being here.
13 And we will be in recess.
14 MR. HARVEY: Thank you, Judge.

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15 (Proceedings adjourn at 9:55 a.m.)

**APPENDIX P, Order of the U.S. District Court,
12/6/16 (Doc 165)**

IN THE UNITED STATES DISTRICT COURT FOR THE
NORTHERN DISTRICT OF GEORGIA ATLANTA
DIVISION

ELAINE ARMSTEAD,

Plaintiff,

v.

1:14-CV-586-WSD

ALLSTATE PROPERTY &
CASUALTY INSURANCE
COMPANY,

Defendant,

Sandra Finch,

Respondent.

OPINION AND ORDER

III. BACKGROUND

On June 28, 2016, Defendant Allstate Property & Casualty Insurance (“Defendant”), as part of its response to a motion *in limine* filed by Plaintiff Elaine Armstead (“Plaintiff”), provided an affidavit. In the affidavit, Defendant’s witness Mark Gould stated his belief that Sandra Finch, counsel for Plaintiff and the Respondent in this proceeding (“Respondent”), “entered areas of [his] office building without permission and took many photographs without permission . . .” (Gould Aff. [115.1] ¶ 13). Mr. Gould’s affidavit stated further that, during Mr. Gould’s deposition, Respondent handed him a document titled “Steamatic Guide to Restoration

Services,” which had been photographed page-by-page. (Id. ¶ 5). The photographs revealed Respondent’s letterhead in the background. (Id.). Mr. Gould testified that it “became apparent to [him] Plaintiff’s counsel had obtained the document from [his] office without [his] permission.” (Id. ¶ 6). After he confronted Respondent about trespassing in his office, Respondent stated, “I caution you on defaming me, because if you defame me, I can promise you it will not be good.” (Id. ¶ 9). Mr. Gould considered this a threat. (Id.). At the deposition, Respondent stated that, in order for trespassing to occur, “you have to have told somebody they can’t come on your property” (Id. ¶ 8).

After the deposition, Mr. Gould went to his office and confirmed the location of the Steamatic Guide, which was on a bookshelf in his project manager’s office. (Id. ¶ 11). Mr. Gould’s office manager, Leonor Alarez, later told him:

On May 20, 2016, she heard some noise in the office and asked if anyone was there. There was no response. So, Ms. Alarez continued working. Approximately 30 minutes later, Ms. Alarez was walking to the copier and came upon Plaintiff’s counsel sitting in the reception area. Ms. Alarez asked Plaintiff’s counsel how long she had been there, but she never received an answer. At which point, Plaintiff’s counsel hand delivered the subpoena.

(Id. ¶ 12). It is Mr. Gould’s opinion and belief “that Plaintiff’s counsel entered areas of [his] office building without permission and took many photographs without permission” (Id. ¶ 13).

In connection with her reply in support of her motion *in limine*, Respondent attached a sworn affidavit

[116.1] denying Mr. Gould's claim that she had trespassed on his property. She stated the doors to Mr. Gould's place of business were not locked, and "there were no signs of 'no trespass.'" ([116.1] ¶ 4). Respondent stated she obtained the photographs of Mr. Gould's certifications "[t]hrough attorney work product and privileged investigation," and that the "framed certifications were obviously being displayed for potential customers to view in an effort to convince customers of the company's competency for hire." (Id. ¶ 6). She stated that she has "litigated many cases involving franchises with different owners and ha[s] numerous sources for" the Steamatic Guide, including "data banks, other lawyers, other Steamatic franchisees, etc." (Id. ¶ 9). She did not address whether the Steamatic Guide pictures she used at the deposition were from the guide in Mr. Gould's office.

The Court found Respondent's explanations insufficient and evasive. In light of Mr. Gould's affidavit, and because Respondent sought to admit into evidence at trial the Steamatic Guide and a photograph depicting certifications that were displayed in a hallway away from the public reception areas of Mr. Gould's office, on July 1, 2016, the Court entered an Order [121] ("July 1st Order") requiring Respondent to provide, on or before July 5, 2016, an affidavit stating, in detail, how and under what circumstances she obtained the photographs of Mr. Gould's office and the Steamatic Guide so the Court could consider if these proposed exhibits would be allowed into evidence at trial.

On July 5, 2016, Respondent filed her Objections to Court Order to Produce an Affidavit [125] ("Objections"). Respondent objected to "lack of notice, due process and relevance." ([125] at 1). She stated that her representation of her client "has been within the boundaries of the law and ethics as she has zealously

advocated for her client in the face of Defense Counsel's personal vendetta against her." (Id. at 2). After considering Respondent's Objections, on July 6, 2016, the Court entered an Order [127] ("July 6th Order") overruling them and requiring her to file the affidavit on or before 5:00 p.m. EST on July 6, 2016. Respondent failed to file the required affidavit by the time ordered, and otherwise failed to respond to the July 6th Order, or explain why she could not or did not comply.

Beginning at 9:31 a.m. on July 7, 2016, the Court conducted the pretrial conference. During the conference, the Court reiterated to Respondent that she was under a Court order to provide the required affidavit. Respondent stated she objected to the Court's orders, and that she did not "understand what the complaint is or what it is that I'm responding to." (Pretrial Conference Tr. [138] 4:23-24).

Respondent questioned the lawfulness of the Court's orders. (See id. at 7:17-20). The Court explained to Respondent that the information required in the affidavit was to determine its impact on evidence that Respondent stated she intended to offer at trial. (Id. at 5:14-6:4). The Court offered to allow Respondent additional time to file the affidavit, and Respondent stated "I would like some additional time to respond." (Id. at 4:20-23). The Court stated "[i]f what you want is a little more time today to provide the information . . . then I will give you more time" (Id. at 6:24-7:2). Respondent stated "I will file a response." (Id. at 7:7). The Court gave her until the end of the day to do so.

By the end of the day, Respondent had not filed the required affidavit or explained why she would not or could not comply. At 5:07 p.m. on July 7, 2016, the Court entered an order requiring Respondent to show cause [136] ("Show Cause Order") why the Court should not hold her in contempt of the Court's July 1st Order

and July 6th Order. Respondent still did not file the required affidavit or explain why she would not or could not comply.

On July 11, 2016, after the first day of the trial in this matter, the Court held a hearing (“Contempt Hearing”) on the Show Cause Order. Respondent and Defense counsel were present at the hearing. At the end of the hearing, Respondent suggested, for the first time, that she should not be required to file the required affidavit based on her Fifth Amendment right against self-incrimination. (Contempt Hr’g Tr. [147] 13:21-14:2). Respondent requested, and the Court agreed, that the hearing be continued so that she could be represented by counsel. (See id. at 17:22-18:13). On August 17, 2016, the Court entered an order clarifying that “it has not found [Respondent] in contempt, because [Respondent] advised the Court she needed more time to prepare and wanted to be represented at the hearing.” ([152]). A hearing was scheduled for August 23, 2016.

On August 22, 2016, the Court held a pre-hearing status conference with Respondent’s attorney. At the hearing, Respondent’s attorney indicated his position, considering that Respondent had settled the case she was litigating and in which she intended to introduce the Gould materials, that contempt proceedings would be criminal in nature because there was no need now to compel Respondent’s compliance with the Court’s orders. He argued further that the requirements of Fed. R. Crim. P. 42 would apply to any further contempt hearing. The same day, the Court issued an order [155] requiring Respondent to file, on or before September 14, 2016, her legal authority and argument regarding her opinion as to the nature of the hearing and the procedural requirements to conduct it. The Court

continued the contempt hearing scheduled for August 23, 2016.

On September 19, 2016, Respondent filed the memorandum the Court ordered her to submit. ([158]). Respondent argued that, the principal civil case having been dismissed after the settlement, there is no possibility of civil contempt, and, where the sole purpose of a sanction is to vindicate the Court's authority, criminal contempt proceedings are required. Respondent also argued contempt sanctions could not be imposed for the valid exercise of a Fifth Amendment privilege.

On October 26, 2016, the Court issued an order [159] ("October 26th Order") in response to the arguments in Respondent's September 19, 2016, submission. The Court determined that criminal contempt proceedings were not appropriate and agreed not to conduct them. The Court advised, however, that it would conduct a hearing to determine whether sanctions were appropriate to address Respondent's professional conduct pursuant to the Court's inherent power to sanction attorneys. (October 26th Order at 9-10). The Court acknowledged that a contempt sanction cannot be imposed for the valid exercise of the Fifth Amendment, but that the misconduct at issue at this stage of the proceedings is "Respondent's pattern of disruptive behavior and her flagrant disregard for the Court's orders without adequate justification or explanation." (Id. at 10-11). The Court set a hearing for November 22, 2016, to determine whether the Court should exercise its inherent authority to sanction attorneys and, if so, whether sanctions are appropriate. The hearing was rescheduled for November 29, 2016.

On November 29, 2016, the Court held a hearing ("Inherent Power Hearing") to determine whether the Court should exercise its inherent power to sanction

Respondent. At the hearing, Respondent argued that the Court's October 26th Order is "not specific enough" to put Respondent on notice "as to what it is we have to defend against," and that Respondent "do[es] not know what orders . . . [she] disregarded without adequate justification or explanation." (November 29, 2016, Hr'g Tr. 4:5-15). Respondent argued that her request, during the July 7, 2016, pretrial conference, for additional time to respond to the Court's orders was an adequate response to the Court's orders. (Id. at 7:22-8:17). Respondent also argued that, should the Court find monetary sanctions appropriate, the Court should take Respondent's financial position into account. (Id. at 10:11-14). Respondent submitted an exhibit reflecting that her 2016 year-to-date income is \$27,500.00. (See id. at 10:21-11:21). She stated she is an employee of her husband's firm and that is the only salary she received. (See id. at 11:2-12). The Court requested Respondent's credit card statements for the last six months "to see what money [Respondent] has been spending to see if that tracks against" Respondent's claimed income of \$27,000. (Id. at 11:17-21). Respondent stated her husband pays a large portion of her credit card bills, (id. at 12:6-11), and she declined to provide her credit card statements, stating they were irrelevant, (id. at 13:18-19). Finally, Respondent noted that, on September 29, 2016, the United States Supreme Court granted a writ of certiorari in Goodyear Tire v. Haeger to determine the contours of a court's inherent powers, arguing that the Court should not proceed until the Goodyear case was decided. (Id. at 17:6-18:4).

D. DISCUSSION

A. Legal Standard

Courts have the inherent power to sanction attorneys. See, e.g. In re Charbono, 790 F.3d 80, 85 (1st

Cir. 2015); In re Sunshine Jr. Stores, Inc., 456 F.3d 1291, 1304 (11th Cir. 2006) (“Federal courts have the inherent power to impose sanctions on parties, lawyers, or both.”); Mark Indus., Ltd v. Sea Captain’s Choice, Inc., 50 F.3d 730, 733 (9th Cir. 1995) (non-contempt inherent-power sanction can be employed to vindicate a court’s authority); United States v. Shaffer Equip. Co., 11 F.3d 450, 457 (4th Cir. 1993) (inherent power to impose sanctions “is organic, without need of a statute or rule for its definition, and it is necessary to the exercise of all other powers”); Harlan v. Lewis, 982 F.2d 1255, 1259 (8th Cir. 1993) (approving non-contempt monetary sanction as within district court’s inherent powers); Eash v. Riggins Trucking Inc., 757 F.2d 557, 565-66 (3d Cir. 1985) (en banc) (noting that a court’s “broad power to discipline attorneys as officers of the court for misconduct not properly categorized as contempt is substantially different from the contempt power”). The “inherent power of a court can be invoked even if procedural rules exist which sanction the same conduct.” Chambers v. NASCO, Inc., 501 U.S. 32, 46 (1991).

Exercise of a court’s inherent power is appropriate where a client or her attorney has “acted in bad faith, vexatiously, wantonly, or for oppressive reasons.” Byrne v. Nezhat, 261 F.3d 1075, 1106 (11th Cir. 2001), abrogated on other grounds by Douglas Asphalt Co. v. QORE, Inc., 657 F.3d 1146 (11th Cir. 2011) (quoting Chambers, 501 U.S. at 46). “The key to unlocking a court’s inherent power is a finding of bad faith.” Barnes v. Dalton, 158 F.3d 1212, 1214 (11th Cir. 1998). “A court should be cautious in exerting its inherent power and ‘must comply with the mandates of due process, both in determining that the requisite bad faith exists and in assessing fees.’” Byrne, 261 F.3d at 1106 (quoting Chambers, 501 U.S. at 50). “Because the court’s inherent power is so potent, it should be exercised ‘with

restraint and discretion.” Id. (quoting Chambers, 501 U.S. at 50).

“Once unlocked, the [inherent] power carries with it the authority to assess attorney’s fees as a sanction for bad faith conduct.” Sciarretta v. Lincoln Nat. Life Ins. Co., 778 F.3d 1205, 1212 (11th Cir. 2015) (citing Chambers, 501 U.S. at 45-46); see also Charbono, 790 F.3d at 96 (exercising its inherent power, a “court[] may levy sanctions (including punitive sanctions) for such varied purposes as disciplining attorneys, remedying fraud on the court, and preventing the disruption of ongoing proceedings”); Eash, 757 F.2d at 564 (“myriad violations of court rules, deadlines, or orders” may be grounds to impose sanctions based on a court’s inherent authority, grounded in “the control necessarily vested in courts to manage their own affairs so as to achieve the orderly and expeditious disposition of cases.” (quoting Link v. Wabash RR Co., 370 U.S. 626, 630-31 (1962))).

B. Analysis

1. Due Process

Respondent first argues she has not been afforded due process because the Court’s October 26th Order is “not specific enough” to put Respondent on notice “as to what it is we have to defend against,” and that Respondent “do[es] not know what orders . . . [she] disregarded without adequate justification or explanation.” (November 29, 2016, Hr’g Tr. 4:5-15). This argument is disingenuous. Over the course of multiple hearings and orders, including the Court’s October 26th Order, the Court made clear to Respondent that her failure to comply with the Court’s July 1st and July 6th Orders were central to the issue here. The Court specified in its October 26th Order that “Respondent ultimately—after multiple Court orders and conferences—asserted her Fifth Amendment right

against self-incrimination” (October 26th Order at 11). The Court then stated that it “does not—nor could it—now require Respondent to forego her asserted Fifth Amendment rights by requiring her to comply with the Court’s July 1st and July 6th Orders. Rather, the misconduct at issue at this stage of the proceedings is Respondent’s pattern of disruptive behavior and her flagrant disregard for the Court’s orders without adequate justification or explanation.” (Id.). The October 26th Order is clear that Respondent’s repeated and flagrant disregard for the Court’s July 1st and July 6th Orders, as detailed above, is the conduct at issue here. The Court also notes that Respondent has had multiple occasions—including at the pretrial conference, the Contempt Hearing, the August 22, 2016, pre-hearing status conference, and the Inherent Power hearing—to clarify the basis for the Court’s actions and to present evidence and argument that her conduct was not contemptuous, that she did not act in bad faith, or that sanctions otherwise are not warranted. Respondent has been afforded more than the process she is due.

2. Bad Faith

The Court finds Respondent acted in bad faith when she repeatedly and flagrantly disregarded the Court’s orders. The Court’s July 1st Order required Respondent to provide, on or before July 5, 2016, an affidavit providing specific information. Rather than providing the required affidavit or asserting her Fifth Amendment right against self-incrimination, on July 5, 2016, Respondent filed her Objections, arguing a “lack of notice, due process and relevance.” ([125] at 1).¹ The

¹ In view of the fact that Respondent had time to draft and file her four-page Objections by July 5, 2016, Respondent’s objection based on a “lack of notice” is not credible.

following day, the Court overruled Respondent's Objections and required Respondent to file the affidavit on or before 5:00 p.m. EST on July 6, 2016. Respondent again failed to file the required affidavit or to explain why she could not or did not comply. On the morning of July 7, 2016, during the pretrial conference, the Court again reiterated to Respondent that she was under a Court order to provide the required affidavit. Respondent questioned the lawfulness of the Court's orders. The Court offered "a little more time today to provide" the affidavit, and Respondent stated "I will file a response." ([138] 6:24-7:7). Despite this representation, Respondent again failed to file the affidavit or to explain why she would not or could not do so.² The evening of July 7, 2016, the Court issued its Show Cause Order. Respondent did not provide an adequate justification for her failure to file the required affidavit until July 11, 2016, ten days after the Court first required it.

In short, Respondent, fully aware she was under Court orders to provide the affidavit, chose instead (1) to challenge the Court's authority to issue the orders, and (2) to ignore the orders. Under these circumstances, the Court finds Respondent acted in bad faith when she

² Respondent argues that her request, during the July 7, 2016, pretrial conference, for additional time to respond to the Court's orders, was an adequate response to the Court's orders. (November 29, 2016, Hr'g Tr. 7:22-8:17). First, the context of the hearing shows that the Court allowed Respondent until the end of the day on July 7, 2016, to file the affidavit or otherwise respond to the Court's orders, which Respondent failed to do. Second, Respondent's argument overlooks her failure to respond to the Court's July 6th Order requiring her to file the affidavit by 5:00 p.m. EST on July 6, 2016.

failed to comply with the Court's July 1st and July 6th Orders without adequate justification or explanation.

3. Sanctions

Having found Respondent acted in bad faith, the Court may exercise its inherent power to sanction Respondent. See Barnes 58 F.3d at 1214 (“The key to unlocking a court’s inherent power is a finding of bad faith.”). With respect to the sanctions available, Respondent notes that, on September 29, 2016, the United States Supreme Court granted a writ of certiorari in Goodyear Tire v. Haeger, No. 15-1406, 137 S. Ct. 30 (2016). The question the Supreme Court will decide is whether a federal court is required to tailor compensatory civil sanctions imposed under inherent powers to harm directly caused by sanctionable misconduct when the court does not afford sanctioned parties the protections of criminal due process. See id.; Petition for Writ of Certiorari, Haeger, 2016 WL 2937089 (2016) (No. 15-1406). Because the Court is exercising its inherent power rather than proceeding under the criminal contempt rules, the Supreme Court’s decision in Haeger may affect the scope of sanctions available here. Without weighing in on the merits of the issue before the Supreme Court in Haeger, the Court here chooses to tailor the sanctions it imposes to the harm directly caused by Respondent’s sanctionable misconduct.

Defendant participated in the July 7, 2016, pretrial conference, nearly all of which was devoted to discussing Respondent’s failure to comply with the Court’s July 1st and July 6th Orders. Defendant also participated in the July 11, 2016, Contempt Hearing. Had Respondent not engaged in her sanctionable misconduct—that is, had she provided an adequate

explanation or justification for her failure to comply with the Court's July 1st and July 6th Orders—Defendant would not have incurred attorney's fees participating in, and preparing for, these hearings. Respondent is required to pay Defendant these fees. The Court finds the fees will not be so great as to unduly burden Respondent. Defendant shall, on or before December 16, 2016, submit to the Court the attorney's fees it incurred in connection with its participation in the pretrial conference and the Contempt Hearing. The Court will review the fees detailed and evaluate them as an appropriate sanction for Respondent's bad faith conduct.

The Court imposes a further sanction tailored toward Respondent's bad faith conduct. A lawyer has legal, ethical, and professional responsibilities to a court. Respondent failed to meet these standards in this case. To encourage Plaintiff to engage in proper litigation conduct in the future, and to assist other lawyers to understand their legal, ethical, and professional obligations to the court, the Court also requires Respondent to author, personally, an article to be submitted for publication to the Georgia Bar Journal and the Arizona Attorney (the Publications"). The article is required to discuss the practical and legal consequences of failing to be candid with the court and failing to comply with court rules and orders.

E. CONCLUSION

For the foregoing reasons,

IT IS HEREBY ORDERED that the Court finds Attorney Sandra Finch refused, in bad faith, to comply with lawful orders of the Court, and the Court exercises its inherent power to sanction her.

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IT IS FURTHER ORDERED that Defendant Allstate Property & Casualty Insurance Company shall, on or before December 16, 2016, submit to the Court the attorney's fees it incurred in connection with its participation in the pretrial conference and the Contempt Hearing.

IT IS FURTHER ORDERED that Respondent shall, on or before February 28, 2017, personally author and submit for publication to the Georgia Bar Journal and the Arizona Attorney an article discussing the practical and legal consequences of failing to be candid with the court and failing to comply with court rules and orders. The article shall be no fewer than 5,000 words in length and Respondent shall, on or before March 15, 2017, submit to the Court a copy of the article, evidence of each Publication's receipt of the article, and that Respondent asked for it to be considered for publication.

SO ORDERED this 6th day of December, 2016.

/s/ William S. Duffey
William S. Duffey, Jr.
United States District Judge

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**APPENDIX Q, Order of the U.S. District Court,
12/21/16 (Doc 167)**

IN THE UNITED STATES DISTRICT COURT FOR THE
NORTHERN DISTRICT OF GEORGIA ATLANTA
DIVISION
ELAINE ARMSTEAD,

Plaintiff,

v.

1:14-CV-586-WSD

ALLSTATE PROPERTY &
CASUALTY INSURANCE
COMPANY,

Defendant,

Sandra Finch,

Respondent.

OPINION AND ORDER

This matter is before the Court on Defendant Allstate Property & Casualty Insurance Company's ("Defendant") Notice of Attorney's Fees [166].

IV. BACKGROUND

On December 6, 2016, the Court issued an Order [165] ("December 6th Order") finding that Respondent Sandra Finch ("Respondent") had refused, in bad faith, to comply with lawful orders of the Court. The Court exercised its inherent power to sanction Respondent. One of the sanctions the Court imposed required Respondent to pay the attorney's fees Defendant incurred

as a result of Respondent's sanctionable misconduct. The Court noted that Defendant participated in the July 7, 2016, pretrial conference, nearly all of which was devoted to discussing Respondent's failure to comply with the Court's July 1st and July 6th Orders. Defendant also participated in the July 11, 2016, Contempt Hearing. The Court found that, had Respondent not engaged in her sanctionable misconduct, Defendant would not have incurred attorney's fees to participate in, and prepare for, these hearings. To determine the fees required to be paid, the Court ordered Defendant to submit, on or before December 16, 2016, the attorney's fees it incurred in connection with its participation in the pretrial conference and the Contempt Hearing. The Court stated it would review the fees detailed and evaluate them as an appropriate sanction for Respondent's bad faith conduct.

On December 16, 2016, Defendant filed its Notice of Attorney's Fees. Defendant filed two exhibits with its Notice. Exhibit 1 is a list of fees incurred that are directly related to the pretrial hearing and the contempt hearing. Exhibit 2 is a broader list of fees and expenses incurred by Defendant in connection with Plaintiff's misconduct.

F. DISCUSSION

The starting point for determining the amount of a reasonable fee is the number of hours reasonably expended on the litigation multiplied by a reasonable hourly rate . . . [t]he product of these two figures is the lodestar and there is a strong presumption that the lodestar is the reasonable sum the attorneys deserve." Bivins v. Wrap It Up, Inc., 548 F.3d 1348, 1350 (11th Cir. 2008) (considering the recovery of reasonable attorney's fees) (internal quotation marks and citations omitted).

The Court finds Defendant's \$200.00 hourly rate reasonable, if not below the hourly rate customarily

charged in the Atlanta area market for legal services. The Court also finds reasonable the time Defendant expended on the matters detailed in Exhibit 2. The entries in Exhibit 2, with the exception of the entries from June 23, 2016, through July 1, 2016, are directly related to Respondent's failure to comply with the Court's July 1st and July 6th Orders. Based on the Court's review, it finds that Defendant is entitled to attorney's fees in the aggregate amount of \$1,548.00.

G. CONCLUSION

For the foregoing reasons,

IT IS HEREBY ORDERED that Respondent Sandra Finch shall, on or before January 6, 2017, pay Defendant Allstate Property & Casualty Insurance Company the amount of \$1,548.00. Payment shall be made by cashier's check or other good funds.

SO ORDERED this 21st day of December, 2016.

/s/ William S. Duffey

William S. Duffey, Jr.

United States District Judge