

Date: September 12, 2012

To: Charles B. Lembcke, Esq. (cbl@cblaw.com); Jackson P. Berry; others

Subject: Berry v Lilker – Lemley: pending litigation

Via: e mail; posting on the Internet; pdf attachment

**In the Matter of Berry v Lilker – Lemley
(The Columbia County Observer)
Pending Litigation Regarding An Alleged Claim of Defamation**

Dear Mr. Lembcke and Mr. Berry,

**1. Various letters by you, in representation Jackson P. Berry
re: Notice of Intent to Commence Defamation Action**

I am in receipt of various letters by you in representation of your client, Jackson P. Berry, Columbia County's quintessential public figure, former republican party chieftain, public official and Governor Jeb Bush appointee to the Lake Shore Hosp Auth Board, and present Auth Gen Manager.

You are advised that the two letters you addressed to my home address are incorrectly addressed and were not received for days after they were mailed. These letters were sent first class mail.

A third correspondence, authored by you and sent to the Columbia County Observer's Internet hosting company was e mailed to me sometime later and your correspondence was different that the other two I previously received. Your initial letters were different from each other.

I generally only check my snail mail once or twice a week.

2. Defective Service

The FL Rules of Civil Procedure are crystal clear in that service by mail requires it to be by "certified mail, return receipt requested." Additionally, common sense and the rules of fair play require that a person being advised of a pending law suit must have proper service. (Emphasis added).

§ 770.01 FL Statute states in relevant part regarding service, "serve notice in writing on the defendant." (Emphasis added).

I suggest to you that the blatant disregard of my rights in this issue is totally in character with many other actions of your legendary client, Jackson P. Berry.

3. Purpose of FL Statute § 770.01

Section 770.01, Florida Statutes ("Defamation Notice Law"), is entitled "Notice condition precedent to action or prosecution for libel or slander." It provides that:

Before any civil action is brought for publication or broadcast, in a newspaper, periodical, or other medium, of a libel or slander, the plaintiff shall, at least 5 days before instituting such action, serve notice in writing on the defendant, specifying the article or broadcast and the statements therein which he or she alleges to be false and defamatory. (Emphasis added)

Again, it is crystal clear and supported by case law (citations omitted) that the purpose of Defamation Notice Law, as intended by the legislature, is to give the plaintiff and the defendant a chance to explore the issues presented and work out their differences before litigation is commenced.

Mr. Lembcke, I cannot believe for a moment that an attorney of your experience could not understand the requirements of proper service or the intent of the legislature regarding the Defamation Notice Law and additionally, I believe your actions to be willful, intentional, and for a wrongful purpose.

4. Remedy

I am again extending my hand to Jackson P. Berry and to you, to sit down at a table and review civilly and intelligently the issues that Mr. Berry finds disturbing.

It is well documented that every time Mr. Berry has cried, "All you want to do is tell lies about Jackie," I have offered to explore and correct, if necessary, Mr. Berry's objections.

I do not waive the defective notice; however, even before your proper notice of the pending law suit, I am asking that you carefully reexamine the alleged issues you seem to have presented. I have not been served and I am requesting that you withdraw this meritless action. However, if you still feel it is necessary to move forward, that we sit down and try and work this out before walking into a courtroom.

Conclusion

Mr. Lembcke, the Columbia County Observer is a respected on line publication. Of course, some of the folks that read it don't share that sentiment, as is to be expected and it is that which demonstrates the strength of our democracy and the value of a free press and the 1st Amendment of the Constitution of the United States.

Hopefully, one day the Florida Legislature will recognize that there is an Internet which presents something other than newsprint and TV images and that all journalists do not work for the "mainstream media." I am hoping not to be part of the established law if and when the legislature gets around to considering this important issue.

I am looking forward to your response.

Respectfully (as if signed by my hand)

Stewart S. Lilker

Fort White, FL 32038

Dated: September 12, 2012

"Sunlight is the best disinfectant" - Louis Brandeis, Sup Ct Justice

StewLilker

Pub/ed

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(386-454-4500)

Good government is everybody's business.