

1 IN THE CIRCUIT COURT OF THE 11TH
2 JUDICIAL CIRCUIT IN AND FOR
3 DADE COUNTY, FLORIDA

4 CIVIL DIVISION

5 CASE NO: 09-68539 CA 25

6 JOHN GIORDANO, individually, and G&G
7 ADDICTION TREATMENT, INC., a Florida Corp.

8 Plaintiffs,

9 Vs.

ORIGINAL

10 DONNA L. ROMEO, and XCENTRIC VENTURES,
11 LLC, an Arizona Limited Liability Corp.

12 Defendants.

13 _____)

14 September 14, 2010
15 9:30 a.m. - 12:15 p.m.
16 73 W. Flagler Street
17 Miami, Florida

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21 Transcript of the proceedings had and taken before
22 the Honorable PETER ADRIEN, Judge of the above-entitled
23 court, at the time and place stated in the caption
24 above.

25 Page break

1 APPEARANCES:

2
3 MENDY HALBERSTAM, ESQUIRE

4 Rosen, Switkes & Entin

5 407 Lincoln Road - PH SE

6 Miami Beach, Florida

7
8 LAURENCE A. WANSHEL, ESQUIRE

9 12940 S.W. 133 Court

10 Miami, Florida 33186

1 (Thereupon, the following proceedings were had)

2

3 MR. HALBERSTAM: Good morning, Your Honor.

4 THE COURT: What is your case number?

5 MR. HALBERSTAM: Case number 09-68539.

6 THE COURT: What~is it on for?

7 MR. HALBERSTAM: Good morning, Your Honor.

8 Mendy Halberstam for the plaintiffs. We are here on our
9 motion for temporary injunctive relief against the
10 defendant, Donna Romeo. Just by way of background we
11 were before Your Honor twice.

12 THE COURT: This is Xcentric? I~will do
13 it at the end of the calendar.

14 MR. HALBERSTAM: I have a mediation at
15 11:00 o'clock on the Beach.

16 MR. WANSHEL: Your Honor, I~am new in the
17 case. I substituted on August 31st. My client is here.
18 This is an evidentiary hearing. She's never had an
19 opportunity to present herself in this case. She was
20 never notified of any other hearing from prior counsel
21 and we are here to present testimony. It will be ten
22 minutes at the most but I think before the court issues
23 or makes a decision, she at least should have the
24 opportunity for you to hear the case from my client's
25 perspective.

1 THE COURT: I would have to hear from her
2 to make the determination?

3 MR. HALBERSTAM: Just so I can put it out
4 there, Your Honor, we had a two-hour special set
5 hearing.

6 THE COURT: I remember.

7 MR. HALBERSTAM: In February and you heard
8 testimony at that time.

9 THE COURT: From her?

10 MR. HALBERSTAM: Well, her attorneys were
11 there. If it was an evidentiary hearing they have had
12 every opportunity to bring her.

13 THE COURT: But the whole idea of
14 resetting it was to hear from her and I said I would do
15 it at the end of motion calendar but if you come in and
16 you have something else set, it's hard to fit it in but
17 I need to hear from her in order to make findings and
18 things like that; and the last time you were here the
19 motion was not directed to her.

20 It was directed to someone else. So I
21 think the court would need to take testimony and make a
22 determination based on what it hears. If you want to
23 get a special set right now you can go to my J.A. and
24 get one. Tell her I want it within 30 days.

25 MR. HALBERSTAM: The only problem is my

1 client lives in Tampa and came in specially for this
2 hearing. I told him it should be set for an evidentiary
3 and he said we could set it before the motion calendar
4 based on the Court's last decision.

5 THE COURT: I told him he could?

6 MR. WANSHEL: Based on that, I had my
7 client come here.

8 THE COURT: I told him he could? I can't
9 help it if he has a mediation at this point. I will set
10 it within 30 days. She will come back down in 30 days
11 so if you want to get a special set to put in the order
12 --

13 MR. HALBERSTAM: Let me see if I can get
14 somebody to cover that. It's an accounting -- I can see
15 if somebody can cover that and I will wait.

16 THE COURT: If someone will come, if we
17 will wait, I will pass it.

18 (Recess until the end of the calendar)

19 MR. WANSHEL: I think this file is under
20 seal and everybody has to be removed from the courtroom,
21 anything that is not connected with the case.

22 THE COURT: That is not a problem.

23 MR. WANSHEL: I have another witness, Your
24 Honor. Also you want him to wait outside the courtroom?

25 THE COURT: The rule is invoked. Do you

1 want to invoke the rule?

2 MR. HALBERSTAM: It doesn't make a
3 difference to me.

4 THE COURT: He can wait here. What is the
5 case number again?

6 MR. HALBERSTAM: 09-68539.

7 THE COURT: You are asking for an
8 injunction to be entered against Donna Romero, correct?

9 MR. HALBERSTAM: Exactly. If you would like
10 I guess we will just put it on the record so I will
11 briefly recite the facts but essentially the facts are
12 uncomplicated, and Your Honor heard an awful lot of
13 testimony at the first motion for injunction so I am not
14 going to re-invent the wheel, but Mr. Giordano was here
15 on the February 12th hearing.

16 We also filed his affidavit in support of
17 the motion for injunctive relief. Essentially Ms. Romeo
18 was, once had a business relationship with G&G. She was
19 unhappy with the services there. Subsequently wrote a
20 whole posting with defamatory statements on rip off
21 report.com.

22 As part of the post on rip off report.com
23 the defendant noted that the employees of the
24 plaintiff's facility illegally dispensed medication. It
25 was also, the defendant also stated that one of the

1 owners was a convicted felon and you can read all about
2 it and she cites to a Court of Appeals court case from
3 New York state.

4 We provided a copy of that case, Your
5 Honor, with the February 12th hearing. We also filed a
6 notice of filing of Mr. Giordano's FBI clearance that he
7 has because he is a chaplain with the police department
8 in North Miami Beach and we also filed an affidavit from
9 Mr. Giordano saying that all the statements on the
10 website are false.

11 In fact, the defendant has not denied that
12 she's made the statement and doesn't even deny that she
13 now knows that they are false because yesterday or last
14 week, I'm sorry, on Friday we were served with responses
15 to our request for, request for admissions and I don't
16 think counsel is going to deny the defendant essentially
17 said yes, I made the statement, I now know that they
18 were false and I made a mistake but that is the reality.

19 MR. WANSHEL: Can I proffer?

20 THE COURT: When he finishes.

21 MR. HALBERSTAM: Essentially, as Your
22 Honor had found, at least I believe Your Honor found at
23 the February 12th hearing, those statements imputing
24 illegal activity and the fact that one of the principals
25 of G & G, now one of the plaintiffs here, Mr. Giordano,

1 is a convicted felon. That falls as defamation per se.

2 As a result our clients had a substantial
3 likelihood of success on the merits. Our client
4 testified on the February 12th hearing and in the
5 affidavit affirms he suffered a loss of business, loss
6 of his good will.

7 People are calling up and saying they are
8 not interested in attending the facilities because of
9 the things they are reading on rip off report.com.

10 Under well settled law, if you are not able to determine
11 with any exactitude what damages you are suffering, then
12 your damages are irreparable.

13 There is no adequate remedy at law. So as
14 a consequence we have established that there is a
15 substantial likelihood of success on the merits because
16 of defamation per se. There is, our plaintiffs have and
17 are continuing to suffer irreparable harm because no
18 matter what they try to do, they can't get that
19 information off~the website and they are suffering
20 losses; their business, good will.

21 Public policy favors the issuance of an
22 injunction because the public favors protecting Florida
23 businesses from baseless attacks and individuals who are
24 trying to make a contribution to the community from
25 having their reputation destroyed for no reason and it's

1 something they cannot do.

2 There is nothing in their power to protect
3 themselves from it. The balance of hardship favors the
4 plaintiff because we are asking for an order to direct
5 the defendant to remove or approach Xcentric and say,
6 take the stuff down, I want to mitigate my damages, and
7 Your Honor has already indicated at the June 10th
8 hearing that Your Honor believes that the court is able
9 to issue an injunction against Xcentric only after we
10 actually applied to the court for relief, for injunctive
11 relief against Ms. Romeo and at that point if Xcentric
12 refuses to comply with an order, with an injunction
13 having Ms. Romeo remove it and essentially is lying and
14 continuing to damage her and our client, then we can
15 bring Xcentric back in because Your Honor dismissed them
16 orally on June 10th.

17 THE COURT: You have to first establish in
18 the court that you are entitled to an injunction against
19 Ms. Romeo.

20 MR. HALBERSTAM: That is what I am trying
21 to establish right now.

22 THE COURT: Does she object?

23 MR. WANSHEL: In a sense, yes, if she's
24 subject to contempt for not complying with an injunction
25 that she can't possibly enforce or do anything about,

1 yes.

2 THE COURT: Let me restate my question.
3 Without admitting guilt or not, would she object to
4 requesting --

5 MR. WANSHEL: She already requested from
6 them to remove the article.

7 THE COURT: Would she object to requesting
8 from Xcentric officially that any and all posting that
9 she made regarding this gentleman be removed?

10 MR. WANSHEL: If it's limited to the one
11 statement -- what the problem is, Your Honor, is that
12 this posting that she made is a long posting. Everything
13 that is in that she claims is accurate, and she's here
14 to testify, that she believes that -- I mean, there is
15 truth to everything said.

16 The only comment in there was that he was
17 a convicted felon and she had reason to believe that was
18 correct based on other postings that were already on rip
19 off.com concerning him and that clinic and identified
20 that clinic.

21 So based on comments that he made to her
22 at the facility she believed it to be true. So she had
23 a reasonable belief. So I have no problem -- she
24 doesn't want that on the Internet and did what she can
25 but she's powerless to do anything about it.

1 THE COURT: Are you satisfied with that or
2 you want the complete posting listed because as to the
3 other stuff, if it's her opinion --

4 MR. HALBERSTAM: Obviously, Your Honor,
5 the motion, and we are actually seeking to have the
6 whole thing removed. I don't think that Ms. Romeo has a
7 problem. I think the issue is whether or not she is
8 going to be subject to contempt and we are not asking
9 for that.

10 THE COURT: He says she doesn't want to
11 remove everything. She only wants to remove --

12 MR. WANSHEL: I have to ask her about it
13 but if we could reach an accord, but the court --

14 THE COURT: Tell me about the contempt
15 issue because if she requests it and it's beyond her
16 control, how can the court find her in contempt?

17 MR. WANSHEL: That is why, to issue an
18 injunction against her to begin with if she's powerless
19 to do anything about the article --

20 THE COURT: Because she's a step in the
21 chain.

22 MR. WANSHEL: If the court wants to issue
23 an order saying that she's requested, I mean, to file an
24 official request for them to remove that information, I
25 don't think she will have a problem with that. In fact,

1 she's already done that and they refused.

2 THE COURT: In terms of the injunction the
3 injunction would basically require that she specifically
4 request it be removed and use the best efforts to do so.
5 That is as far as the court can go and then whatever she
6 does she provides --

7 MR. WANSHEL: That is open to
8 interpretation what her best efforts could be because, I
9 mean, she's written, I mean, she's already --

10 THE COURT: You keep telling me that.

11 MR. WANSHEL: That is the truth. What can
12 we do?

13 MR. HALBERSTAM: I drafted a proposal. I
14 will just tell you what it says.

15 THE COURT: Show it to counsel and see if
16 he can agree to it.

17 MR. WANSHEL: Can I ask her about -- it's
18 never been, the court has never been aware of her
19 position that she's basically --

20 THE COURT: I agree.

21 MR. WANSHEL: She's basically saying that
22 everything in there is accurate and correct. She made a
23 mistake about the criminal conviction, wasn't offensive
24 to him because he made comments to her, and this is our
25 testimony, that he had a troubled past, that he had been

1 involved in criminal activities.

2 THE COURT: You do have a choice. I am
3 not forcing you to agree to that. I just want to know
4 if we can short cut it and do that. If not, then I will
5 hear her testimony and I will make a determination. If
6 you want to talk to counsel after you speak to her to
7 see if you can reach an agreement as to that --

8 MR. WANSHEL: Okay. Can I take two minutes
9 to read it?

10 THE COURT: Sure. You can go outside with
11 her if you want to. When you finish, if there is some
12 changes you would like, some language that would make --
13 I can't say hold harmless because that is not what they
14 are seeking ultimately but something regarding the
15 completeness of her ability to remove everything.

16 Maybe you guys can discuss it and see if
17 you can agree to some language because it sounds to me
18 like he is concerned if she requested and she does
19 whatever she can and they still won't do it, he is
20 concerned you are going to want to go after her. So
21 maybe you can cover that in the order.

22 MR. HALBERSTAM: I have covered it already
23 in the order.

24 THE COURT: If he has any objections or
25 any additional language that would help his clients out

1 he~will tell you and you guys see if you can reach an
2 agreement.

3 MR. WANSHEL: We also thought it was
4 important for the court to hear her position.

5 THE COURT: I~will hear her position if
6 you can't make an agreement and I will make a
7 determination whether it's warranted or not and I have
8 the time.

9 (Short recess)

10 MR. WANSHEL: I think we are reaching an
11 agreement. Another three minutes, that is all. I think
12 we have reached an agreement.

13 THE COURT: I am going to go ahead and
14 start my calendar call.

15 MR. HALBERSTAM: We have agreed. What we
16 have agreed to is that we will enter an agreed order
17 entering the injunction but the defendant would like to
18 proffer her testimony of what she believes happened here
19 and why she made the statement that she did. That is
20 what she would like to do.

21 MR. WANSHEL: I want her to proffer because
22 I don't think the court has ever heard it and they have
23 heard testimony from other people about what her --

24 THE COURT: Last time we~had a hearing
25 counsel was here and counsel did put her position

1 forward in terms of what he believed it is but I am not
2 necessarily making any findings for the injunction, but
3 if you want to proffer, go ahead.

4 MR. WANSHEL: So far as the injunction
5 there is going to be no admissions.

6 THE COURT: Without admitting.

7 MR. WANSHEL: No finding of libel per se
8 and no finding of irreparable damage which~is just an
9 agreed injunction, that she will do what she can to --
10 and then I would like that specified that she should
11 write to them and tell them to remove --

12 THE COURT: Officially requested and
13 documented that it's been requested.

14 MR. HALBERSTAM: I am providing them a copy
15 of the order of the court.

16 THE COURT: Requiring that it be removed.

17 MR. WANSHEL: That is fine and all that
18 language in the proposed order gets eliminated about
19 temporary -- I mean, libel per se and findings of any
20 kind of factor in wrongdoing on the part of my client.

21 THE COURT: The court is not making any
22 specific findings as to wrongdoing but by way of
23 agreement the parties are agreeing without admitting or
24 denying, that the injunction can be entered and as a
25 result she will send them a letter officially requesting

1 that the posting be removed from the website.

2 MR. WANSHEL: Which she's already done but
3 we will do it officially.

4 MR. HALBERSTAM: With a copy of the court
5 order and telling them that she's under a court order to
6 do it.

7 THE COURT: Okay, and that she's
8 specifically to do it pursuant to the court order
9 because then you will have a second section of the court
10 order which says based on the parties agreement the
11 court is hereby directing Ms. Romero to specifically
12 remove that posting and to request that it be removed,
13 okay?

14 MR. WANSHEL: Yes, and if you give me
15 another minute I would like to go back on the record and
16 proffer what she would have testified.

17 THE COURT: You can go now.

18 MR. WANSHEL: My client is going to
19 testify, Your Honor, that she was not an alcohol addict;
20 she had an alcohol problem. She was despondent trying
21 to find a place for relaxation and guidance while she
22 was -- for a certain period of time.

23 THE COURT: I didn't even remember that
24 was an issue.

25 MR. WANSHEL: Well, she wanted to explain

1 why the article is true.

2 THE COURT: Go ahead.

3 MR. WANSHEL: And she was contacted by
4 marketeers and they were explaining this experience was
5 ideal for her, that they had a chef on the premises;
6 that it was going to be luxurious accommodations; that
7 it was going to be a spa type of rehabilitation; that
8 they were only going to treat her for alcohol problems
9 and she was on medications and she believed them to be
10 true.

11 It was suppose to be near the Beach. It
12 was suppose to have organic food with a chef, luxury.
13 What she found out is that she went to boot camp with 18
14 to 20-year olds that were court mandated to be there and
15 she was in a totally different environment than she was
16 expecting; that she was suppose to have certain type of
17 medication that she was taking for health, like blood
18 pressure medication and she had anti-anxiety pills and
19 they detoxified her so far as everything and removed her
20 from drugs that she needed to use and she got sick as a
21 result of that and she is saying that she witnessed
22 adolescents at the facility bringing in drugs, having
23 sex in an open courtyard and things that are totally
24 inappropriate for a woman in her position and she
25 decided to leave.

1 She went to Mr. Giordano prior to leaving
2 and is saying the reasons why she wanted to leave the
3 facility and Mr. Giordano told her that she was crazy,
4 that he wouldn't refund any money. She was only there
5 11 days out of a 35-day period and told her, I dare you
6 to do anything against me because you are not going to
7 be successful.

8 She's also going to testify there were
9 certain things that were very inappropriate so far as
10 what was happening in the facilities. She made a
11 request that they stop sending in piped in music that
12 was over, that it was piped throughout the whole
13 facility and Mr. Giordano refused to remove it because
14 he said it had subliminal messages that were necessary
15 for people's treatment.

16 She was eating on styrofoam and paper
17 plates when she was expecting a luxurious kind of stay
18 there and it was totally -- she was the only person --
19 everybody that was there was between 18 and 22 years
20 old.

21 She observed, they called them blue
22 shirts, giving inadequate medication to people. Not
23 knowing how to put on a blood pressure machine. She was
24 given the wrong medication. Instead of getting a
25 diuretic, she was given a pill so she had to go to the

1 bathroom and it was all kinds of mix ups and
2 mistreatment while she was there.

3 But the thing is, it didn't fit her needs
4 and she was marketed this. It was sold to her and she
5 spend over \$27,000 to be at that facility and was only
6 there 11 days and basically that was the case.

7 So far as the unfortunate mistake she made
8 when she went to, she decided to complain about the
9 facility based upon her experience there and she wanted
10 to let the public know it's a boot camp type
11 environment, not what they were doing.

12 In addition they were treating every kind
13 of addiction possible. They didn't have any kind of
14 limitation. It wasn't just for alcohol or drugs. It
15 wasn't for sex. It was for any kind of addiction and it
16 was totally inappropriate for her and she made that
17 report on rip off.com and she swears by and stands by
18 that rip off report.

19 The only fact is when she went to Google
20 and did a search on rip off.com there was an article,
21 there was a previous posting where they said Mr.
22 Giordano was a convicted felon and they referred the
23 reader to go to rip off dot -- I mean to the website,
24 Cornell University website where they printed out the
25 case law on a conviction.

1 THE COURT: But he actually, it's just not
2 the same person. She posted something. There were two
3 complaints. Number one, because you bring in a whole
4 bunch of stuff that I don't understand was the crux of
5 the motion. The crux of the motion I understand were
6 two things mainly.

7 Number one, that they said he was a
8 convicted felon which it turns out he is not a convicted
9 felon. That was very slanderous and which she admits she
10 did. She says she was given wrong information but she
11 did.

12 The second thing was she specifically said
13 he was administering medication, prescription medication
14 at the facility. Now I understand you are saying some
15 blue shirts were doing that but you are not saying he
16 specifically was doing that?

17 MR. WANSHEL: She didn't say in the article
18 that he was specifically administering medication. She
19 said that medications were not properly administered and
20 some of the personnel was illegally administering
21 medications, that they didn't have the qualification and
22 training to do.

23 She didn't accuse Mr. Giordano -- in fact,
24 Mr. Giordano is not even mentioned in there except to
25 say that one of the owners is a convicted felon and it

1 was referred to by other articles that were already
2 printed.

3 THE COURT: Did it mention his name?

4 MR. WANSHEL: No. It said one of the owners
5 is a convicted felon. If you go -- and she got that from
6 other postings. So she reasonably believed that to be
7 true because it was identifying that John Giordano as
8 the one.

9 THE COURT: Anything else you want to
10 proffer?

11 MR. WANSHEL: Yes. So far as the damages
12 is concerned they haven't proved any kind of damages,
13 irreparable damage whatsoever. In fact, in the type of
14 rehabilitative facility that he runs--it's not
15 necessarily offensive to say that the owner is a
16 convicted felon who had a drug problem because a lot of
17 them are run by convicted felons that have drug
18 problems.

19 THE COURT: Did they say -- if you are a
20 convicted felon, would it affect your law license?

21 MR. WANSHEL: I am an attorney. He is
22 running a facility for addicts that also rely on people
23 that sometimes have the problem, experienced it and they
24 directly direct these things.

25 THE COURT: Other people who own these

1 facilities and run them are ex-addicts?

2 MR. WANSHEL: No, that is not the case but
3 another reason why she reasonably believed it to be true
4 is because Mr. Giordano at one of the meetings said that
5 there were, that he came from the area, the Brooklyn
6 area and he did say he was, he had a troubled past.

7 He was in trouble with the law. He
8 admitted this to everybody but it was not the same John
9 Giordano and I am not going to say that I ran an
10 investigation and found out it was not.

11 THE COURT: On the record the court is not
12 making any kind of findings in this case proceeding.
13 The court will have to have an independent hearing to
14 hear the evidence or any facts regarding the specific
15 posting that she placed on the record as to whether it
16 was true or not; as to where she got it from.

17 The court will make a determination at
18 that time as to whether that is relevant. More
19 importantly as to whether she posted it or not. At this
20 time though what the court understands is the court is
21 entering an injunction based on an agreement by the
22 parties without it making any specific findings, in
23 which she's agreeing to remove the posting.

24 MR. WANSHEL: Correct, without any findings
25 and no admissions.

1 MR. HALBERSTAM: Yes. I am just asking
2 Your Honor before we leave if I can add into the order
3 that if Romeo attempts to comply with the order from
4 this court but is stopped by -- if rip off reports.com
5 has a policy of maintaining statements on their website
6 even against this order and against an expressed request
7 the court believes that the conditions precedent for the
8 issuance of a -- against rip off report.com will
9 have~been met and will consider an appropriate motion at
10 that time.

11 THE COURT: I don't think I can make that
12 finding right now. You go a little too far with it. You
13 can make a determination that she needs to do the
14 request and if she does and they don't, then you can
15 file whatever motions you want to.

16 I can't make that finding until I have
17 them in front of me and things like that. So we have to
18 take it step by step. You are trying to jump it. I
19 have to go through step by step.

20 MR. HALBERSTAM: Yes,~sir.

21 THE COURT: If she makes the request and
22 they refuse to, then after you are notified of the
23 official refusal, then you~will go ahead and file
24 whatever pleadings you believe is appropriate.

25 MR. HALBERSTAM: And I am assuming that

1 the defendant will provide us with any copy of the
2 refusal?

3 THE COURT: Yes.

4 MR. WANSHEL: I already have a refusal?

5 MR. HALBERSTAM: After she does this.

6 THE COURT: There is a difference with the
7 one you have and this one. This one is going to be done
8 with~your points pursuant to a court order that is going
9 to notify them and that respectfully asks that they
10 remove it.

11 MR. WANSHEL: You can put it in the order,
12 give us ten days?

13 MR. HALBERSTAM: I did seven.

14 MR. WANSHEL: Seven is fine.

15 THE COURT: You~will provide proof of that
16 and proof of any response to counsel. When you draft
17 that order send it to him so he can review it before you
18 submit it.

19 MR. WANSHEL: Can an attorney write a
20 letter or does it have to be from Donna Romeo?

21 THE COURT: You can write the letter on
22 her behalf and attach the order and specifically request
23 it but they may say they want her. So if you can~have
24 her notarize it and sign it.

25 MR. WANSHEL: My problem is she's in Tampa.

1 THE COURT: I will give you 15 days.

2 MR. HALBERSTAM: Thank you very much.

3 THE COURT: That way I think they are
4 going to want to see her signature.

5 MR. WANSHEL: They are going to want to
6 hear from her although they have a policy that they
7 don't care what you write.

8 THE COURT: I don't know. We will cross
9 that bridge when we reach it.

10 (Thereupon, the hearing was concluded)

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CERTIFICATE

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STATE OF FLORIDA)

SS.

COUNTY OF DADE)

I, MYRIAM BOSCH, Registered Professional Reporter, do hereby certify that I was authorized and did transcribe in Shorthand, the proceedings had and taken before the Honorable Peter Adrien, Judge of the above-styled Court, at the time and place stated in the caption thereof.

I further certify that I am not of counsel, I am not employed by nor related to an attorney to this suit, and I am not financially interested in the outcome thereof.

