Time: 3:56:56 - 4:01:18 Clock: 0:00 – 4:22
BENCH CONFERENCE
Kayce says: Okay so what's your position on the Abuse of Process Charge?
Steven says: I'm sorry I didn't hear what you said.
Judge says: It was dismissed the Counterclaim was dismissed
Kayce says: But she showed up in probate court threatening that and then actually filed it and then she repeatedly told lies about the client so my job is to discredit her but I don't want to actually show a bunch of disrespect for the Court.
Steven says: I'm not sure how you.
Judge says: You
Steven says: May I respond?
Judge says: Yeah
Steven says: I am not sure how you establish lies and this sort of thing uh
Kayce says: Motions
Steven says: In this sort of matter
Kayce says: Motions
Steven says: Well she
Kayce says: Its part of the record
Steven says: Its Motion practice that's not, that's not for uh consumption by a jury, Motion practice has never been for consumption by a jury.
Kayce says: So you just tell whatever lies you want in Motion practice?
Steven says: Uh
Kayce says: How would you discredit
Steven says: I try not to ever tell any if that's what you're asking me. (1:02)
Kayce says: How would you discredit a witness you are putting on a witness and I can show that she's repeatedly lied but I don't want to disrespect the Court either so I'm gonna
Steven says: **Uh I'm not I don't know where we are going with this your honor but it doesn't sound like we should be going there to me. This arguing with her about Motion practice in District Court and maybe this Court as well.**
Judge says: **I mean I understand her wanting to attack credibility I suppose but**
Kayce says: That's exactly what I would be doing.
Judge says: **But if it relates to the Counterclaim and Abuse of Process Claim that's been dismissed so I really don't think that you can bring those things up since it's been dismissed because there are not seeking that. So I guess I'm if it's beyond that I am not exactly sure what it is you are seeking to**
Kayce says: Discredit her
Judge says: question. Okay
Steven says: I need to ask her just a couple more questions I forgot something.
Judge says: Okay – I guess we are going to have to see where this is going, I don't know.
Kayce says: If you say no I want do I mean it's plain and simple
Judge says: Well I guess I am just not real clear on what kind of questions you will be asking.
Kayce says: How she filed an Abuse of Process in retaliation.
Judge says: **But that's been dismissed, I guess that's where I am confused once it, I mean obviously once if it was still there.**
Kayce says: But she still filed it, the attorney's still had, or he still had to pay an attorney to defend it and come back and forth to Court.
Steven says: I but you don't have an Abuse of Process Claim.
Kayce says: No because I'm not petty.
Steven says: **Well I think I can see where we heading with this and I wasn't involved with this Case until very recently and uh and it looks like getting ready to be real ugly and a cat fight.**
Kayce says: I won't do that to the Court
Steven says: That's exactly
Kayce says: It won't I'm that
Steven says: I just don't I'm not sure
Judge says: **Without me knowing more detail if it relates to the Motion's that were filed in regard to the Abuse of Process claim since it's been dismissed I am saying you can't ask those questions. I don't know in detail what it is you want to ask but if it's a general**
Steven says: I am going to ask her if she represented because you are going to ask her about that right?
Kayce says: Yeah
Steven says: Yeah I'm going to ask her that, I meant to ask it already
Judge says: Represented
Steven says: Represented that she was initially involved in this ligation she ethically is entitled to do that until
Judge says: She knew she was going to be a witness
Steven says: became clear she was going to be witness yeah

Judge says: Okay you can ask that

Steven says: All this other stuff I mean I don't know where we're going but I you know I'm getting tired on don't want to have to get up too many times.

Judge says: Well but I'm just saying since the Abuse of Process Counterclaim has been dismissed and not knowing the specifics of what you want to ask in general all questions regarding the Abuse of Process Claim will be excluded.

Kayce says: I mean it's a given we're like oil and water but

Judge says: Laughs

Time: 4:01:18 – 4:01:37 Clock: 0:00 – 0:19

SPEAKER: Steven Downey

CONTENT:

I've got just a couple of other questions that I uh, uh should have already thought of uh – now once well we need to approach for just a moment.

Time: 4:01:37 – 4:06:58 Clock: 0:00 – 5:22

BENCH CONFERENCE

Kayce says: I just sit down.

Steven says: What about this October 2006 thing?

Kayce says: Well we can step up

Steven says: Can we talk about anything after October of 2006 and every bit of this is after October 2006.

Judge says: You mean the probate stuff

Steven says: Yeah the probate and just the lawsuit, her being in it and everything else

Kayce says: But I want to step up so at least she had to at least have to admit she has something to gain by testifying today.

Steven says: I'm not sure what she has to gain but

Kayce says: Um she's been in this Case the entire time are you going to tell me she is going to walk away without any attorney fees

Steven says: I don't know she hadn't been paid anything yet.

Kayce says: But she's not going to walk away without any attorney fees she does have something to gain if I can't ask her about the other stuff I can show that you were on this Case

Judge says: I mean let's just start from here the General Order says that nothing after 2006 comes in. If you are going to ask her questions about her representation in this Case and your wanting to if you all want to

Steven says: I don't want to ask it unless she's going to but I but I don't want to not ask it or her ask it first either because it appears that's where we're headed.

Judge says: If I let one of you ask it then I've got to let both of you.

Steven says: **Well I am not proposing to ask it I am only asking if you are going to allow her to do so. If you are not going to allow her to do so I am sure as heck not going to ask her.**

Kayce says: She has something to gain, she show that to any witness so I'm not saying ask her about the Abuse of Process but show that she has something to gain. It wouldn't be my desire to disrespect the Court either so I mean.

Steven says: **I am going to make it clear I am not going to ask her unless the Court rules that she is going to be asking her about representing these people in this Case for a while and if you are not going to allow that then I am certainly not going to open the door.**

Kayce says: I think that's part of the Case I mean she has been on the Case for two and half years and

Steven says: I, I you know I got in this thing late and

Kayce says: I get that

Steven says: The matter would be that it's not to my advantage to introduce that in anyway but I'm saying there has been some Motion practice about it and I suppose I could have brought it up myself about but I don't know what we

Judge says: Motion practice what about

Steven says: Just about whether we were going to go here or not and now we've got you

Kayce says: I assumed we would at least that she was on board.

Steven says: Sorry

Kayce says: I would assume that would have I mean she is testifying that she's had no prior relationship that she's had in that last two and half years she has been on the Case

Steven says: I, I specifically ask her up until October 23rd of 2006 about Randy Fish I did not ask her about beyond that time so

Kayce says: And she's testifying today.

Steven says: Sorry

Kayce says: She's testifying today.

Judge says: About the Will

Steven says: Right

Kayce says: Right but she's been on the Case and she does have something to gain if I can't talk to her about her Abuse of Process and the petty things that she did then I should be able to at least ask her if she has

something to gain I mean that's like the minor of everything.
Judge says: I mean I understand the conflict between the two of you but I am not sure this Will Contest Case is where that needs to be hashed out that's not the issue going to the Jury.
Kayce says: But she'd had the reason she's testifying here today the reason she might testify here today is that she does have a stake in this Case. She didn't just prepare the Will to collect her $75.00 and go home. She's been on the Case for two and half years it's no different than me asking William Robinson whether he's executor.
Judge says: Say if they would have had him from the get go she still would have had to come here to testify as to the execution of the Will.
Kayce says: She would but I mean now she has something more to gain there's of a vested interest in the Case.
Steven says: Uh, Uh the only way you would be able to prove that would be if she had a Contingency fee contract which I know she does not.
Kayce says: Well she had gained from the estate when it's probated. Look at the percentage.
Steven says: I just said she does not have a Contingency fee contract.
Judge says: You mean for either Case the Probate or this one or
Steven says: Right well probate is an hourly thing yes and not for this either.
Kayce says: That's a lot of hours
Judge says: With the Probate, I don't know how much time was involved with the Probate usually a lot and with this Case a whole lot
Steven says: Well sure a whole lot in this Case
Kayce says: I'm sure this one's counting too.
Steven says: Well in but Mr., Mr. Robinson is charged with, I mean I've been paid.
Judge says: uh huh
Steven says: You know when they called, I've been paid and, and I researched to be sure that you could do that and he's charged with doing that to protect that Will and spending part of it even if it dwindles down something that might eventually go somewhere else other than Peyton Fish but I really don't know what that's got to do with uh Ms. Moore.
Judge says: Okay the ruling has been nothing after October 23rd, 2006 so I am going to make it go both ways.
Steven says: Okay alright

Judge says: And I stand by that ruling
Steven says: Alright
Kayce says: Okay