

02-1283-CD

JOHN A. LECHLARA -vs- TONI M. CHERRY et al

IN THE COURT OF COMMON PLEAS OF CLEARFIELD COUNTY
COMMONWEALTH OF PENNSYLVANIA
CIVIL DIVISION

JOHN A. LECHIARA,
Plaintiff,

Vs. No. 02-1283-C.D.

TONI M. CHERRY, individually,

and

GLEASON, CHERRY and
CHERRY, L.L.P., a partnership,
Defendants.

TYPE OF FILING: Praeclipe for Writ of
Summons in Civil Action

FILED ON BEHALF OF:
Plaintiff

COUNSEL FOR PLAINTIFF:

Mark A. Wheeler
Pa. Sup. Ct. ID # 64335

WHEELER LAW OFFICES
512 Main Street
P.O. Box 176
Reynoldsville, PA 15851
(814)653-2000
(814)653-2200 (fax)
E-mail at wheeler7@penn.com

FILED

AUG 19 2002

o/ 2:10 (u)

William A. Shaw *pp* *pp*
Prothonotary

3 cert to *ATTY*

3 writs to *ATTY*

IN THE COURT OF COMMON PLEAS OF CLEARFIELD COUNTY
COMMONWEALTH OF PENNSYLVANIA
CIVIL DIVISION

JOHN A. LECHIARA,
Plaintiff,

Vs. No. 02-_____ -C.D.

TONI M. CHERRY, an individually,

and

GLEASON, CHERRY and
CHERRY, L.L.P., a partnership,
Defendants.

PRAECIPE FOR WRIT OF SUMMONS IN CIVIL ACTION

TO THE PROTHONOTARY:

Kindly issue a Writ of Summons in Civil Action against the defendants, Toni M. Cherry, an individual and Gleason, Cherry and Cherry, L.L.P., a partnership

Respectfully Submitted:



MARK A. WHEELER
Wheeler Law Offices
512 Main Street
P.O. Box 176
Reynoldsville, PA 15851
Attorney for Plaintiff

Date: JULY 15, 2002

COPY

**IN THE COURT OF COMMON PLEAS OF
CLEARFIELD COUNTY PENNSYLVANIA
CIVIL ACTION**

SUMMONS

John A. Lechiara

Vs.

NO.: 2002-01283-CD

**Toni M. Cherry individually
and
Gleason, Cherry and Cherry, LLP,
a partnership**

**TO: TONI M. CHERRY, Individually and
GLEASON, CHERRY AND CHERRY, LLP, a partnership**

To the above named Defendant(s) you are hereby notified that the above named Plaintiff has commenced a Civil Action against you.

Date: 08/19/2002

William A. Shaw
Prothonotary

Issuing Attorney:

Mark A. Wheeler, Esquire
P.O. Box 176
Reynoldsville, PA 15851
(814) 563-2000

In The Court of Common Pleas of Clearfield County, Pennsylvania

Sheriff Docket # 12943

LECHIARA, JOHN A.

02-1283-CD

VS.

CHERRY, TONI M., ind & GLEASON, CHERRY & CHERRY

PRAECIPE & SUMMONS

SHERIFF RETURNS

NOW AUGUST 21, 2002 AT 11:00 AM DST SERVED THE WITHIN PRAECIPE & SUMMONS ON TONI M. CHERRY, IND., DEFENDANT AT EMPLOYMENT, 1 N. FRANKLIN ST., DUBOIS, CLEARFIELD COUNTY, PENNSYLVANIA BY HANDING TO TONI CHERRY A TRUE AND ATTESTED COPY OF THE ORIGINAL PRAECIPE & SUMMONS AND MADE KNOWN TO HER THE CONTENTS THEREOF.

SERVED BY: COUDRIET/RYEN

NOW AUGUST 21, 2002 AT 11:00 AM DST SERVED THE WITHIN PRAECIPE & SUMMONS ON GLEASON, CHERRY & CHERRY, LLP, A partnership, DEFENDANT AT EMPLOYMENT, 1 N. FRANKLIN ST., DUBOIS, CLEARFIELD COUNTY, PENNSYLVANIA BY HANDING TO TONI CHERRY, A TRUE AND ATTESTED COPY OF THE ORIGINAL PRAECIPE & SUMMONS AND MADE KNOWN TO HER THE CONTENTS THEREOF.

SERVED BY: COUDRIET/RYEN

Return Costs

Cost	Description
36.72	SHFF. HAWKINS PAID BY: ATTY.
20.00	SURCHARGE PAID BY: ATTY.

Sworn to Before Me This

20 Day Of Sept 2002

FILED

SEP 20 2002 *W.A.S.*

2:40

William A. Shaw
Prothonotary

So Answers,

*Chester Hawkins
by Marilyn Hart*
Chester A. Hawkins
Sheriff

IN THE COURT OF COMMON PLEAS OF CLEARFIELD COUNTY
COMMONWEALTH OF PENNSYLVANIA
CIVIL DIVISION

JOHN A. LECHIARA, : No. 02-1283 CD
Plaintiff, :
vs. : TYPE OF CASE: CIVIL
: Type of Pleading:
TONI M. CHERRY, individually, and : COMPLAINT IN CIVIL ACTION
GLEASON, CHERRY, AND CHERRY, :
L.L.P., :
Defendants. : FILED ON BEHALF OF:
: PLAINTIFF
: COUNSEL FOR PLAINTIFF
: MARK A. WHEELER, SR.
: PA. SUP. CT. ID # 64335
: WHEELER LAW OFFICES
: 512 Main Street, PO Box 176
: Reynoldsville, PA 15851-0176
: (814) 653-2000
: (814) 653-2200 FAX
: wheeler7@penn.com
: JURY TRIAL DEMANDED

FILED

AUG 18 2003

William A. Shaw
Prothonotary/Clerk of Courts

IN THE COURT OF COMMON PLEAS OF CLEARFIELD COUNTY
COMMONWEALTH OF PENNSYLVANIA
CIVIL DIVISION

JOHN A. LECHIARA,	:	No. 02-1283 CD
Plaintiff,	:	
	:	
vs.	:	TYPE OF CASE: CIVIL
	:	
	:	
TONI M. CHERRY, individually, and	:	
GLEASON, CHERRY, AND CHERRY,	:	
L.L.P.,	:	
Defendants.	:	

NOTICE

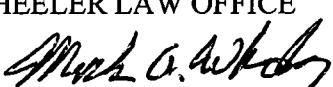
You have been sued in Court. If you wish to defend against the claims set forth in the following pages, you must take prompt action within twenty (20) days after this Complaint and Notice are served, by entering a written appearance personally or by attorney and filing in writing with the Court your defenses and objections to the claims set forth against you. You are warned that if you fail to do so the case may proceed without you and a judgment may be entered against you by the Court without further notice for any money claimed in the Complaint or for any other claim or relief requested by the Plaintiff. You may lose money or property or other rights important to you.

YOU SHOULD TAKE THIS PAPER TO YOUR LAWYER AT ONCE. IF YOU DO NOT HAVE A LAWYER OR CANNOT AFFORD ONE, GO TO OR TELEPHONE THE OFFICE SET FORTH BELOW TO FIND OUT WHERE YOU CAN GET LEGAL HELP.

**LAWYER REFERRAL
PENNSYLVANIA BAR ASSOCIATION
100 SOUTH STREET
P.O. BOX 186
HARRISBURG, PA 17108
1-800-692-7375**

WHEELER LAW OFFICE

By:



Mark Wheeler, Esquire

**IN THE COURT OF COMMON PLEAS OF CLEARFIELD COUNTY
COMMONWEALTH OF PENNSYLVANIA
CIVIL DIVISION**

JOHN A. LECHIARA,	:	No. 02-1283 CD
Plaintiff,		:
vs.		TYPE OF CASE: CIVIL
:		:
TONI M. CHERRY, individually, and	:	
GLEASON, CHERRY, AND CHERRY,		:
L.L.P.,		:
Defendants.		:

COMPLAINT

1. Plaintiff is JOHN A. LECHIARA, an adult individual, *sui juris*, who presently resides at 623 ½ South Brady Street, DuBois, County of Clearfield, Commonwealth of Pennsylvania;
2. Defendant, TONI M. CHERRY, an adult individual, *sui juris*, who presently resides in the County of Clearfield, Commonwealth of Pennsylvania, having been duly admitted to the practice of law before the courts of the Commonwealth of Pennsylvania;
3. At all times relevant to this Complaint, Defendant, Toni M. Cherry, Esquire practiced law in the Commonwealth of Pennsylvania, with a law office located at One North Franklin Street, in DuBois, County of Clearfield and Commonwealth of Pennsylvania, and at all times material and relevant hereto held herself out to the Plaintiff as an attorney duly licensed and able to practice law in the courts of the Commonwealth of Pennsylvania;
4. Defendant, Gleason, Cherry and Cherry, L.L P. is a law firm that maintains offices at One North Franklin Street in DuBois, County of Clearfield and Commonwealth

of Pennsylvania;

5. Defendant, Gleason Cherry and Cherry, L.L.P. is a law firm engaged in the business of providing legal services to members of the general public desiring such services, including civil claims for damages related to personal injuries and torts as well as other general law practices;

6. At all times pertinent hereto, the Defendant, Gleason, Cherry and Cherry, L.L.P. was acting by and through its agents, servants or employees, who were acting on the claim and business of the Plaintiff and within the scope of authority.

7. At all times relevant hereto, the Defendant Toni M. Cherry, Esquire, was acting individually and on her own behalf, and/or as the agent, servant or employee of the Defendant, Gleason, Cherry and Cherry, L.L.P.;

8. On August 30, 1999 the Plaintiff was incarcerated at Mercer S.C.I. with a prisoner number of DM 3231 on an assault charge and a theft of a motor vehicle charge;

9. On August 30, 1999 the Plaintiff was being housed in auxiliary housing at the aforesaid facility; said auxiliary housing being a conglomerate of 14 mobile home frames with a temporary housing unit built thereon;

10. On August 30, 1999, the Plaintiff was housed in the above-described temporary housing unit which had been condemned by the Butler County authorities in 1997 for decrepit and unsafe conditions;

11. On August 30, 1999, the Plaintiff was being housed with 69 other inmates in the above-described temporary housing unit called H-B unit;

12. On August 30, 1999 at approximately 6:30 p.m., the Plaintiff was taking his daily shower and severely injured himself while exiting the shower;

13. This shower facility was a temporary structure and was a fixture attached to the above-mentioned H-B unit which was condemned as alleged previously herein;

14. The Plaintiff was stepping out of the shower unit and utilizing a steel grab bar when he lost his footing due to a repair job that was not done correctly to the floor of the shower unit; said repair not being in conformity with BOCA codes;

15. Said repair to the subject shower unit resulted in the floor of the shower being well below the drain causing a failure of the shower unit to allow water to escape causing a buildup or pooling of water in and around the entrance area and the floor adjacent thereto—said improper repair causing the slippery conditions which lead to the unnecessary injury suffered by the Plaintiff, John Lechiara;

16. Further, due to this pooling of water and the improper cleaning and sanitation of the subject area, mold, mildew and soap scum had developed a significant coating on the area further contributing to the ultra dangerous, hazardous and slippery conditions (secondary to the improper repair to the previously condemned structure) which caused the Plaintiff to slip, fall and injure himself;

17. In falling, the Plaintiff suffered multiple injuries, the first of which was a deep gash to his right eyebrow area caused by a blunt force contact with a dressing bench located between the subject shower stall and the neighboring shower stall;

18. In falling, the Plaintiff suffered multiple injuries, the second of which was a concussion, caused by the aforementioned blunt force contact with the dressing bench described in Paragraph 17 above;

19. In falling, the Plaintiff suffered multiple injuries, the third of which was a severely dislocated shoulder caused by a blunt force contact with the dressing bench and

the ceramic floor;

20. In falling, the Plaintiff suffered multiple injuries, the fourth of which was a wrenched and severely sprained left knee caused by the Plaintiff shifting his weight in an unsuccessful attempt to catch his balance in the process of slipping, falling and injuring himself;

21. In falling, the Plaintiff suffered multiple injuries, the fifth of which was being knocked unconscious secondary to the blunt force contact mentioned above;

22. In falling the Plaintiff suffered multiple injuries, the sixth of which was a muscle separation in his back, specifically his Rhomboid muscles separated and detached from the Trapezius muscle in the upper back causing muscular atrophy and eventually muscular necrosis and cell disintigration;

23. After falling the Plaintiff came to and found himself prostrate on the floor in a pool of blood and stagnant water;

24. After gingerly rising the Plaintiff reported his injury to Correction Officer Kennedy who was on duty at the time;

25. The H-B corrections officer Kennedy immediately assisted the Plaintiff to the infirmary where he was strip searched by C.O. Carl Berg, assessed by additional Corrections Officers and a female nurse and was prepared for transport to the local Mercer hospital;

26. The gash suffered by the Plaintiff was closed with surgical glue but the necessary x-rays were not given pursuant to instructions by the Supervising Corrections Officer who transported the Plaintiff, one Carl Berg;

27. The Plaintiff was suffering great pain caused by his fall and requested x-rays

to be conducted;

28. This request was met favorably by the treating emergency room physician, but the supervising Mercer SCI Corrections Officer Carl Berg told the doctor that such tests would have to be authorized at a later date;

29. Because of the actions of the Mercer SCI Corrections Officer in charge, the stated Carl Berg, the Plaintiff was denied necessary diagnostic tests including x-rays;

30. Because of the failure to properly diagnosis the Plaintiff's conditions and to treat the same, the Plaintiff has suffered permanent disfiguring and disabling injuries to his head, neck, shoulder, back, side, and knee;

31. The Plaintiff suffered numerous additional symptoms secondary to his fall including migraine headaches, earaches, a stiff and swollen neck, pain throughout his joints and muscular system and a loss of range of motion in his right shoulder;

32. Upon return to the H-B unit, the Plaintiff placed a request form into the infirmary for x-rays—see Plaintiff's Exhibit One;

33. The requested x-rays were not granted until September 9, 1999; a period of nine days—a delay which caused irreparable damage to the Plaintiff's shoulder, back and neck area;

34. On September 1, 1999, the Plaintiff notified his family about his injuries by calling his sister, Corinda Panighetti and informing her of the severity of his injuries, the negligence and improper conduct of the Mercer SCI and its agents, Kennedy, Berg and others, and the lack of x-rays and other diagnostic treatment which was repeatedly requested and refused;

35. On September 2, 1999, the Plaintiff called his sister Corinda to notify her that

the x-rays still had not been taken and that his condition was worsening.

36. During this conversation, Corinda Panighetti suggested that the Plaintiff use the services of her Attorney, Toni M. Cherry, Esquire, of the law firm Gleason, Cherry and Cherry, L.L.P. of DuBois, Pennsylvania;

37. On September 2, 1999, the Plaintiff met with the head of the Mercer SCI medical staff, a Mr. Quimby, and was informed that the x-rays had not been conducted as of that date because the x-ray technician was away on sick leave necessitated by her suffering injuries herself in a car accident—it was understood by the Plaintiff that this meeting occurred as a result of his sister Corinda calling and making inquiries about the lack of medical treatment being provided by Mercer SCI;

38. On September 6, 1999, the Plaintiff called his sister Corinda and asked her to contact attorney Toni M. Cherry of the law offices of Gleason, Cherry and Cherry, L.L.P. of DuBois, to see if she would be interested in representing the Plaintiff and helping him to receive the medical treatment he needed for his still dislocated shoulder and other injuries and his sister Corinda agreed to make the necessary contact;

39. On September 7, 1999, at approximately 2:30 p.m. the Plaintiff called his sister to find out what Attorney Cherry had decided and was informed that no contact had been made;

40. On September 7, 1999, Mercer SCI undertook a renovation and remodeling project to address and correct the water evacuation and pooling problem which had caused the Plaintiff's injuries;

41. On September 8, 1999, at approximately 2:30 p.m. Plaintiff called his sister again and was informed that Attorney Cherry was interested in helping the Plaintiff and

would file a civil lawsuit on behalf of the Plaintiff;

42. On September 9, 1999 the Plaintiff had a meeting with Mike Marshall, a doctor who came to treat the Plaintiff at SCI Mercer;

43. On September 14, 1999, the Plaintiff was seen at Mercer SCI by a Doctor Cortez who told the Plaintiff that his injuries had been ignored and that his condition was the result of a lack of proper medical treatment and that Doctor Cortez refused to see the Plaintiff again because of the delay in diagnosis and treatment by Mercer SCI, and its agents, including Dr. Mike Marshall;

44. On September 15, 1999, the Plaintiff was given another inmate's medication by mistake by the infirmary;

45. On September 24, 1999, the Plaintiff called his sister Corinda and was informed that Attorney Cherry was preparing a Writ of Habeas Corpus on behalf of the Plaintiff;

46. On September 24, 1999, the Plaintiff was seen by a Dr. Martin who was also not interested in treating the Plaintiff because "you only have 82 more days till you go home.";

47. At all times relevant to this Complaint, Defendant, Toni M. Cherry, Esquire, individually and as a partner of the law firm of Gleason, Cherry and Cherry, L.L.P., of DuBois, assured the Plaintiff and the Plaintiff's sister Corinda Panighetti that the Plaintiff had a meritorious claim and that Attorney Cherry and her law firm would pursue it for him and prepare and file all the necessary paperwork to establish a personal injury case and/or a case for money damages;

48. On December 16, 1999, the Plaintiff was released from Mercer SCI;

49. At the time, the Plaintiff was repeatedly assured by his sister, Corinda Panighetti, that Attorney Cherry and her law firm had made a commitment to his case and would meet with him upon his release and get the papers ready for his lawsuit.

50. Throughout the Plaintiff's final stay at Mercer SCI, he continued to suffer pain and suffering as a result of their negligent and willfully deficient non-treatment of his injuries;

51. During the second week of February 2000, the Plaintiff visited the office of Attorney Toni M. Cherry and Gleason Cherry and Cherry and had a one-hour consultation with Attorney Toni Cherry;

52. During this meeting with Attorney Cherry, the Plaintiff was provided with case law and was informed that a prisoner had successfully sued a prison for a similar injury under very similar circumstances;

53. During this meeting, Attorney Cherry informed the Plaintiff that he had a meritorious civil suit against Mercer SCI and against the Warden, and all the other Corrections Officers and doctors and other medical staff who failed to provide him with the necessary and reasonable medical treatment;

54. At this initial face-to-face meeting, Attorney Cherry informed the Plaintiff that her fee would be contingent on winning the case and that the percentage would be between 30% and 40% depending on when the case was settled;

55. The Plaintiff accepted these terms and indicated a desire to pursue the case without delay and Attorney Cherry assured the Plaintiff that she would begin preparing the case for filing;

56. During this first meeting in February 2000, the Plaintiff's sister Corinda was

present at all times and was a first-hand witness to the facts as alleged;

57. At this first meeting, a second interview was scheduled for the month of March, 2000;

58. At the March 2000 meeting, Attorney Cherry informed the Plaintiff that things were progressing and that the case was on schedule and the Plaintiff relied on these representations of merit and progress and did not seek to get additional legal opinions;

59. During the Year 2000, the Plaintiff met with the Defendant, Attorney Toni Cherry a total of six times and at each meeting she conducted interviews regarding what happened and assured the Plaintiff that she had the case under control and that everything looked good and that she was researching the case and preparing the Complaint for filing;

60. On January 4, 2001, the Plaintiff met with the Defendant, Attorney Toni Cherry at her office for one-half hour and the same pattern of interviewing and reassurances regarding work progress occurred;

61. On June 19, 2001, the Plaintiff met with the Defendant, Attorney Toni Cherry at her office for one and one-half hours with the same basic pattern of interviewing and case development;

62. The Plaintiff was becoming nervous about the statute of limitations expiring in his case and called the Defendant, Attorney Toni Cherry numerous times to make an appointment to discuss the filing of his Complaint;

63. On September 11, 2001, the Plaintiff had a two-hour appointment at the offices of Toni Cherry with the Defendant, Toni Cherry and he was very upset about his case and he secreted a tape recorder into the Defendant's office and he tape recorded their conversation;

64. During this meeting on September 11, 2001, Toni Cherry told the Plaintiff that "for the last nineteen months I have been racking my brain trying to determine someone to sue and you have no one to sue...you have no case."

65. The Plaintiff asked the Defendant point blank about the two- year statute of limitations and she refused to answer;

66. During this September 11, 2001, meeting the Defendant, Toni Cherry told the Plaintiff that the prison had immunity from a law suit;

67. During this September 11, 2001 meeting, the Defendant, Toni Cherry called Dr. Barber at the DuBois Medical Arts building and told the Doctor that she did not see any injuries to the Plaintiff and told the doctor that the Plaintiff did not have a case;

68. During this meeting, the Defendant, Toni Cherry appeared highly agitated and was extremely rude and upset during their meeting and the Plaintiff was upset over this treatment;

69. The Plaintiff returned home and immediately started calling attorneys to try to find out if anyone could take over his personal injury case and got an appointment with attorney John Achille of Brookville;

70. Attorney Achille informed the Plaintiff that he felt the Defendant had given him incorrect information about the Plaintiff's case and that he felt that Attorney Cherry had missed the deadline for filing and had failed to notify the Plaintiff of this fact until well after the statue of limitations had run and was guilty of attorney malpractice as a result of these failures on her part but Attorney Achille was not interested in pursuing a malpractice claim against Attorney Cherry;

COUNT ONE—BREACH OF CONTRACT

71. Plaintiff incorporates all prior averments of fact alleged herein by present reference hereto;
72. Plaintiff contracted with the Defendant to receive legal services which were competent, researched, reliable and valuable;
73. Plaintiff signed a Retainer Agreement with the Defendant, Toni M. Cherry at her offices in DuBois and never received a copy despite several requests for a copy;
74. Plaintiff was assured by the Defendant, Toni M. Cherry that the Plaintiff had a good case and she showed the Plaintiff a case from a law book indicating that an inmate in a prison successfully sued a prison for a slip and fall injury and the Plaintiff was persuaded to retain the Defendant's services and refrain from seeking other competent representation;
75. On September 11, 2001, the Defendant told the Plaintiff for the first time that he had no one to sue and this was the first time that the Defendant made any representation to the Plaintiff that he had no case;
76. Plaintiff avers that Toni M. Cherry failed to fulfill her duty pursuant to the contract for legal services by failing to notify the Plaintiff that he did not have a case within a time sufficient for him to seek other competent legal counsel;
77. Plaintiff avers that Toni M. Cherry failed to fulfill her duty pursuant to the contract for legal services by failing to prepare and file a civil Complaint and by failing to prepare and file a Praecept for a Writ of Summons to initiate a law suit as promised by

the Defendant in February 2000;

78. Plaintiff avers that Toni M. Cherry breached her duty to inform the client that in her professional opinion no case existed so that the Plaintiff could seek separate legal counsel;

79. Plaintiff avers that on September 11, 2001 he told the Defendant, Toni M. Cherry that he was going to get another attorney and file the law suit quickly and that instead of informing the Plaintiff that the statute of limitations had run she said "You have no grounds...John you are not listening...you have no doctor to say the treatment was wrong and you have no way to show dangerous conditions of the prison.";

80. Plaintiff avers that this total lack of candor on the part of the Defendant, Toni M. Cherry indicates a total disregard for her responsibility to the Plaintiff and her responsibility to her profession and its Rules of Professional Conduct;

81. Plaintiff avers that it was reasonable for the Plaintiff to expect the Defendant to be knowledgeable, skillful, thorough and prepared in handling his case as required in Rule 1.1 of the Lawyers' Rules of Profession conduct and that the Defendant failed to exhibit any of these requirements;

82. Plaintiff avers that it was reasonable for the Plaintiff to expect that the Defendant would act with reasonable diligence and promptness in representing the Defendant pursuant to the contract entered into between the parties for legal services as required in rule 1.3 of the Lawyer's Rules of Professional conduct and that the Defendant failed to act in such a fashion;

83. Plaintiff avers that it was reasonable for the Plaintiff to expect that the Defendant would keep the Plaintiff informed about the status of his pending lawsuit and promptly

reply to his requests for information regarding the status of his case as required by Rule 1.4 of the Lawyer's Rules of Professional Conduct and that the Defendant failed in her duty to communicate as required;

84. Plaintiff avers that it was reasonable for the Plaintiff to expect that the Defendant would provide the Plaintiff independent professional judgment and render candid advice to him and that the Defendant failed to do so by allowing the statute of limitations to run without either informing the Plaintiff that the statue had run or that it was about to run and by so doing stripped the Plaintiff of his right to pursue his case;

COUNT TWO—ATTORNEY MALPRACTICE

85. Plaintiff incorporates all prior averments of fact alleged herein by present reference hereto;

86. Plaintiff avers that the Defendant, Toni M. Cherry is guilty of attorney malpractice by her willful and wanton failure to advise the Plaintiff that in the Defendant's opinion the Plaintiff had no case and that such a notice should have been in writing;

87. Plaintiff avers that the Defendant, Toni M. Cherry is guilty of attorney malpractice by her willful and wanton failure to prepare and file a proper civil Complaint and/or a Praecept for Writ of Summons within the prescribed time limits;

88. Plaintiff avers that the Defendant, Toni M. Cherry is guilty of attorney malpractice by her willful and wanton failure to advise the Plaintiff that she was not interested in pursing his case with sufficient time left so that the Plaintiff had the opportunity to seek and obtain replacement legal services from another attorney and that such a notice should have been in writing.

WHEREFORE, Plaintiff prays that this Court find in favor of the Plaintiff against the Defendants for the grounds listed herein and heretofore and requests the following damages:

- a. compensatory damages in an amount to be determined by the Court but exceeding \$25,000.00;
- b. attorney's fees and interest;
- c. punitive damages for the willful and wanton failure of the Defendants to protect and serve the Plaintiff in an amount to be determined by the Court;
- d. all other remedies determined to be fit and proper;

JURY TRIAL DEMANDED

Plaintiff demands a Jury Trial as to all issues so triable.

RESPECTFULLY SUBMITTED:

DATE:

8-18-03


WHEELER LAW OFFICES

PLAINTIFF'S VERIFICATION

I verify that the statements in this Compliant are true and correct. I understand that false statements herein are made subject to the penalties of 18 Pa.C.S. § 4904, relating to unsworn falsification to authorities.


JOHN A. LECHIARA, Plaintiff

FILED

AUG 18 2003

8/18/03 (u)
William A. Shaw
Prothonotary/Clerk of Courts

5 cent to AFL



In The Court of Common Pleas of Clearfield County, Pennsylvania

LECHIARA, JOHN A.

VS.

CHERRY, TONI M. IND. & GLEASON, CHERRY & CHERRY, LLP

COMPLAINT

Sheriff Docket # 14474

02-1283-CD

SHERIFF RETURNS

NOW AUGUST 29, 2003 AT 10:10 AM SERVED THE WITHIN COMPLAINT ON TONI M. CHERRY, IND., DEFENDANT AT EMPLOYMENT, ONE NORTH FRANKLIN ST., DUBOIS, CLEARFIELD COUNTY, PENNSYLVANIA BY HANDING TO TONI M. CHERRY A TRUE AND ATTESTED COPY OF THE ORIGINAL COMPLAINT AND MADE KNOWN TO HER THE CONTENTS THEREOF.

SERVED BY: MCCLEARY/NEVLINIG

NOW AUGUST 29, 2003 AT 10:10 AM SERVED THE WITHIN COMPLAINT ON GLEASON, CHERRY and CHERRY, LLP, DEFENDANTS AT EMPLOYMENT, ONE NORTH FRANKLIN ST., DUBOIS, CLEARFIELD COUNTY, PENNSYLVANIA BY HANDING TO TONI M. CHERRY, PIC A TRUE AND ATTESTED COPY OF THE ORIGINAL COMPLAINT AND MADE KNOWN TO HER THE CONTENTS THEREOF.

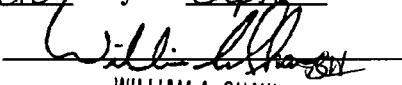
SERVED BY: MCCLEARY/NEVLING

Return Costs

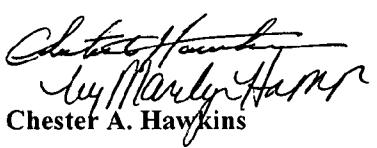
Cost	Description
38.05	SHERIFF HAWKINS PAID BY: Steven W. & Tammy L. Magee
20.00	SURCHARGE PAID BY: Steven W. & Tammy L. Magee

Sworn to Before Me This

26th Day Of Sept. 2003


WILLIAM A. SHAW
Prothonotary
My Commission Expires
1st Monday in Jan. 2006
Clearfield Co., Clearfield, PA

So Answers,


Chester A. Hawkins
Sheriff

FILED
09:27 AM
SEP 26 2003

William A. Shaw
Prothonotary/Clerk of Courts

IN THE COURT OF COMMON PLEAS OF CLEARFIELD COUNTY, PENNSYLVANIA

CIVIL DIVISION

JOHN A. LECHIARA,

Plaintiff,

v.

TONI M. CHERRY, individually, and
GLEASON, CHERRY and CHERRY,
L.L.P., a Partnership,

Defendants.

) CIVIL ACTION
)
) No. 02-1283 CD
)
) TYPE OF CASE: CIVIL
)
) **PRAECLPICE FOR APPEARANCE**
)
) Filed on behalf of defendants, Toni M.
) Cherry, individually and Gleason, Cherry &
) Cherry, L.L.P.
)
) Counsel of Record for these Parties:
)
) DENNIS J. ROMAN, ESQUIRE
) Pa. I.D. # 36904
)
) GROGAN GRAFFAM, P.C.
) Firm I.D. No. 072
) Four Gateway Center
) 12th Floor
) Pittsburgh, PA 15222
) (412) 553-6300
)
20200/17096

FILED

OCT 01 2003

William A. Shaw
Prothonotary

IN THE COURT OF COMMON PLEAS OF CLEARFIELD COUNTY, PENNSYLVANIA

JOHN A. LECHIARA,) CIVIL ACTION
)
Plaintiff,) No. 02-1283 CD
)
v.)
)
TONI M. CHERRY, individually, and)
GLEASON, CHERRY and CHERRY,)
L.L.P., a Partnership,)
)
)
Defendants.)
)

PRAECIPE FOR APPEARANCE

TO: PROTHONOTARY

Kindly enter our firm's appearance on behalf of defendants Toni M. Cherry, individually and Gleason, Cherry & Cherry, L.L.P., a partnership, in connection with the above action.

GROGAN GRAFFAM, P.C.

DENNIS J. ROMAN, ESQUIRE
ATTORNEYS FOR DEFENDANTS,
TONI M. CHERRY, INDIVIDUALLY
AND GLEASON, CHERRY & CHERRY, L.L.P.,
A PARTNERSHIP

CERTIFICATE OF SERVICE

I hereby certify that a true and correct copy of the foregoing Praeclipe for Appearance was served upon the following counsel of record by United States Mail, first class, postage prepaid, this
29th day of September, 2003.

Mark A. Wheeler, Sr., Esquire
Wheeler Law Offices
512 Main Street, P.O. Box 176
Reynoldsville, PA 15851-0176

GROGAN GRAFFAM, P.C.

DENNIS X ROMAN, ESQUIRE
ATTORNEYS FOR DEFENDANTS,
TONI M. CHERRY, INDIVIDUALLY
AND GLEASON, CHERRY & CHERRY, L.L.P.,
A PARTNERSHIP

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Million, Oct.

OCT 01 2003

William A. Shaw
Prothonotary

IN THE COURT OF COMMON PLEAS OF CLEARFIELD COUNTY, PENNSYLVANIA

CIVIL DIVISION

JOHN A. LECHIARA,

Plaintiff,

v.

TONI M. CHERRY, individually, and
GLEASON, CHERRY and CHERRY,
L.L.P., a Partnership,

Defendants.

) CIVIL ACTION

) No. 02-1283 CD

) TYPE OF CASE: CIVIL

) **PRAECIPE FOR ENTRY OF
JUDGMENT OF NON PROS
PURSUANT TO Pa.R.C.P. 1042.6**

) Filed on behalf of defendants, Toni M.
Cherry, individually and Gleason, Cherry &
Cherry, L.L.P.

) Counsel of Record for these Parties:

) DENNIS J. ROMAN, ESQUIRE
Pa. I.D. # 36904

) GROGAN GRAFFAM, P.C.
Firm I.D. No. 072
Four Gateway Center
12th Floor
Pittsburgh, PA 15222
(412) 553-6300

20200/17096

FILED

MAR 16 2004

William A. Shaw
Prothonotary

IN THE COURT OF COMMON PLEAS OF CLEARFIELD COUNTY, PENNSYLVANIA

JOHN A. LECHIARA,)	CIVIL ACTION
)	
Plaintiff,)	No. 02-1283 CD
)	
v.)	
)	
TONI M. CHERRY, individually, and)	
GLEASON, CHERRY and CHERRY,)	
L.L.P., a Partnership,)	
)	
Defendants.)	
)	

PRAECIPE FOR ENTRY OF JUDGMENT OF NON PROS
PURSUANT TO Pa.R.C.P. 1042.6

TO: PROTHONOTARY

Enter judgment of non pros against plaintiff, JOHN A. LECHIARA, in the professional liability claims against defendants, TONI M. CHERRY, ESQUIRE, individually, and GLEASON, CHERRY and CHERRY, L.L.P., a partnership, in the above captioned matter.

I, the undersigned, certify that the plaintiff named above asserted professional liability claims against defendants named above, TONI M. CHERRY, a licensed professional, and her law partnership, GLEASON, CHERRY and CHERRY, L.L.P., that no certificate of merit has been filed within the time required by Pa.R.C.P. 1042.3 and that there is no motion to extend the time for filing the certificate pending before the court.

GROGAN GRAFFAM, P.C.

Date:

3/10/64

DENNIS J. ROMAN, ESQUIRE

ATTORNEYS FOR DEFENDANTS,
TONI M. CHERRY, INDIVIDUALLY
AND GLEASON, CHERRY & CHERRY, L.L.P.,
A PARTNERSHIP

CERTIFICATE OF SERVICE

I hereby certify that a true and correct copy of the foregoing Praeclipe for Entry of Judgment of Non Pros Pursuant to Pa.R.C.P. 1042.6 was served upon the following counsel of record by United States Mail, first class, postage prepaid, this 10th day of March, 2004:

Mark A. Wheeler, Sr., Esquire
Wheeler Law Offices
512 Main Street, P.O. Box 176
Reynoldsville, PA 15851-0176

GROGAN GRAFFAM, P.C.

DENNIS J. ROMAN, ESQUIRE
ATTORNEYS FOR DEFENDANTS,
TONI M. CHERRY, INDIVIDUALLY
AND GLEASON, CHERRY & CHERRY, L.L.P.,
A PARTNERSHIP

FILED

AP 11-34 SA pg 20.00

MAR 16 2004

no cont

Notice of Judgment

Writ issued to Wm. &
John D. Remond

William D. Remond
Prothonotary

IN THE COURT OF COMMON PLEAS OF CLEARFIELD COUNTY,
PENNSYLVANIA
NON PROS

John A. Lechiara

Plaintiff

Vs.

No. 2002-01283-CD

Toni M. Cherry
Gleason, Cherry and Cherry, LLP

Defendant

TO: Mark A. Wheeler, Sr., Esq. :

Notice is hereby given that a judgment of non-pros has been entered in the above captioned matter pursuant to Praeclipe dated March 16, 2004. A copy of said document is hereto attached.

Judgment entered of record March 16, 2004.

Sincerely,

William A. Shaw
Prothonotary

Enclosures

Date: 03/16/2004

Clearfield County Court of Common Pleas

NO. 1875571

Time: 11:40 AM

Receipt

Page 1 of 1

Received of: Roman, Dennis J. (attorney for Gleason, Cherry and

\$ 20.00

Twenty and 00/100 Dollars

Case: 2002-01283-CD	Litigant: John A. Lechiara vs. Toni M. Cherry, et al.	Amount
Judgment		20.00
Total:		20.00

Check: 6454

Payment Method: Check

William A. Shaw, Prothonotary/Clerk of Courts

Amount Tendered: 20.00

By: _____
Deputy Clerk

Clerk: BANDERSON

Duplicate



March 10, 2004

Dennis J. Roman
Phone: 412-553-6325
Fax: 412-553-6717
E-mail: droman@grogangraffam.com

VIA FEDERAL EXPRESS

William A. Shaw, Prothonotary
Clearfield County
Second & Market Street
P.O. Box 549
Clearfield, PA 16830

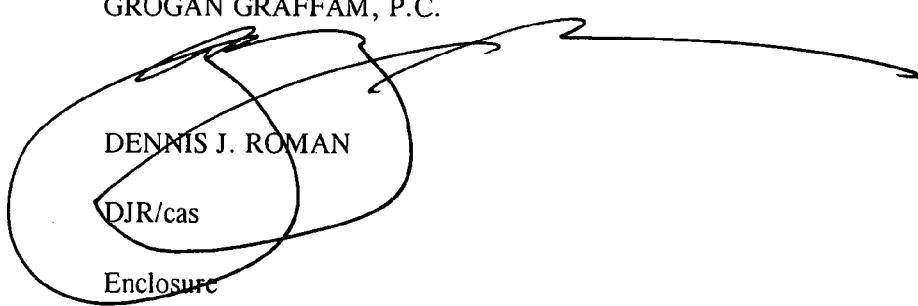
RE: Lechiara v. Cherry, et al.
Docket No.: 02-1283 CD (Clearfield)
Our File: 20200/17096

Dear Mr. Shaw:

I have enclosed for filing a Praecept for Entry of Judgment of Non Pros Pursuant to Pa.R.C.P. 1042.6 on behalf of the defendants in the above action. A copy of the Praecept is being served today upon counsel for plaintiff.

Very truly yours,

GROGAN GRAFFAM, P.C.



DENNIS J. ROMAN

DJR/cas

Enclosure

cc: Mark A. Wheeler, Sr., Esquire (w/encl.)