

IN THE CIRCUIT COURT, SEVENTH
JUDICIAL CIRCUIT, IN AND FOR
VOLUSIA COUNTY, FLORIDA

A. B., an individual and
FLORIDA CARRY, INC.,
a Florida non-profit corporation
Plaintiff,

CASE NO: 2013-31317-CICI
DIV:

v.

CITY OF DAYTONA BEACH, FLORIDA;
DERRICK L. HENRY, an individual, and
MICHAEL CHITWOOD, an individual,
Defendants.

**PLAINTIFFS' ANSWER TO COUNTERCLAIM OF DEFENDANT CITY OF
DAYTONA BEACH**

COMES NOW, Plaintiffs A.B. and Florida Carry, Inc., by and through their undersigned counsel and file this PLAINTIFFS' ANSWER TO COUNTERCLAIM OF DEFENDANT CITY OF DAYTONA BEACH as follows:

1. ADMIT the allegations of Paragraph 1 for Jurisdictional purposes only and that there is a statutory basis for actions for declaratory judgement.
2. ADMIT the allegations of Paragraph 2.
3. ADMIT the allegations of Paragraph 3.
4. DENY the allegations of Paragraph 4, as there is no ambiguity or conflict in the law under the facts of this case.
5. ADMIT in part the allegations of Paragraph 5, that on or about December 22-23 2012, Plaintiff A.B. sought assistance from a veteran's assistance hotline and that Daytona Beach Police Department responded to Plaintiff's home, otherwise Plaintiff is without knowledge, therefore DENY.

6. Plaintiff is without knowledge of the allegations of as to what dispatch informed the police officers, therefore DENY.

7. ADMIT in part the allegations of Paragraph 7 that Plaintiff went outside to meet with officers and was taken into custody under Florida's Baker Act, otherwise DENY.

8. Plaintiff moves to strike the allegations of Paragraph 8 pursuant to Rule 1.140, Fla. R. Civ. P. as immaterial and scandalous, irrelevant accusations, as Florida law does not prohibit possession of firearms while under the influence of alcohol.

9. ADMIT in part the allegation of Paragraph 9 that Plaintiff had multiple firearms in the house, otherwise DENY. Specifically DENY the exact content of Plaintiff's statements to police and the characterization that firearms were "hidden".

10. ADMIT in part the allegations of Paragraph 10 that Daytona Beach Police Officers seized the property at issue in this case, otherwise DENY all remaining allegations and specifically state that the police officers conducted illegal searches of the residence for weapons and other personal property that was then illegally seized without legal basis or due process and continues to be wrongfully detained by Defendant.

11. ADMIT the allegations of Paragraph 11.

12. ADMIT in part the allegations of Paragraph 12, that Plaintiff submitted two affidavits to CITY based on its illegal policy of requiring such affidavits, and that one affidavit stated that Plaintiff did not "meet requirement for involuntary treatment, otherwise DENY.

13. ADMIT the allegations of Paragraph 13.

14. ADMIT the allegations of Paragraph 14 accurately reflect a portion of the cited statutes.

15. ADMIT the allegations of Paragraph 15 accurately reflect a portion of the cited

statutes.

16. DENY the allegations of Paragraph 16.
17. DENY the allegations of Paragraph 17.
18. DENY the allegations of Paragraph 18.
19. ADMIT the allegations of Paragraph 19.

WHEREFORE, Plaintiffs requests the Court find that Defendant has not set forth facts showing that there is any ambiguity in the law and declare that the allegations of Defendant's counterclaim do not set forth sufficient facts to show that it is entitled to a declaratory judgment. Plaintiffs demand trial by jury on all issues so triable.

Dated this 28th day of June 2013

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a copy of the foregoing was served this 28th day of June, 2013, by U.S. Mail or e-service to the following:

Robert F. Jagger
jaggerr@codb.us
popel@codb.us

Marie Hartman
hartmanm@codb.us
popel@codb.us

Derrick L. Henry
301 S. Ridgwood Ave. Rm 200
Daytona Beach, FL 32114

Michael Chitwood
175 Valor Blvd. Room 3001
Daytona Beach FL 32114

/s/ Eric J. Friday
FLETCHER & PHILLIPS
Eric J. Friday, Esquire
541 East Monroe St., Suite 1
Jacksonville, Florida 32202
(904) 353-7733, Fax 353-8255

Florida Bar No. 797901

Primary: familylaw@fletcherandphillips.com

Secondary: efriday@fletcherandphillips.com

Melody Lankford, Esq.

5977 Herron Pond Dr.

Port Orange, FL 32128-7219

Phone: 850-264-7004

mlankford@lankfordlawfirm.com