IN THE CIRCUIT COURT OF THE EIGHTEENTH JUDICIAL CIRCUIT IN AND FOR BREVARD COUNTY, FLORIDA

IN RE: ESTATE OF SEYMOUR BAUM
Deceased.

PROBATE DIVISION

ANNEEN NINA GLORIA BAUM,

Petitioner/Plaintiff,

v.

DAVID A. BAUM, et al.,

Respondents/Defendants.

Chief Judge John M. Harris

Case #: 05-2012-CP-048323
Case #: 05-2013-CP-028863

PETITIONER/PLAINTIFF ANNEEN NINA GLORIA BAUM'S AFFIDAVIT IN REPLY TO "PERSONAL REPRESENTATIVE'S RESPONSE TO MOTION FOR DISQUALIFICATION OF JUDGE AND MOTION TO DISQUALIFY COURT FOR DEMONSTRATED ACTUAL BIAS"

I, Anneen Nina Gloria Baum, being duly sworn, deposes and says:

1. I am the Petitioner/Plaintiff herein, without counsel,[1] and submit this affidavit in reply to the November 20, 2014 "Personal Representative's Response to Motion for Disqualification of Judge and Motion to Disqualify Court for Demonstrated Actual Bias", signed by William Hennessey, Esq.

2. Mr. Hennessey's paltry 1-1/2 page "Response" is no-response, *as a matter of law*, to either of my two disqualification motions:

- my 17-1/3 page "Motion to Disqualify the Court for Demonstrated Actual Bias", signed and notarized by me on November 12, 2014 and filed on November 13, 2014 [hereinafter "initial disqualification motion"];

[1] Assisting me is the same independent reviewer of the record who assisted me in making my November 12, 2014 "Motion to Disqualify the Court for Demonstrated Actual Bias" to which Mr. Hennessey purports to respond.

- my 4-page "Motion for Disqualification of Judge", signed and notarized by me on November 13, 2014 and filed on November 14, 2014 [hereinafter "subsequent disqualification motion"].[2]

As hereinafter shown, Mr. Hennessey's "Response" is non-responsive to ALL the facts, law, and legal argument presented by these two disqualification motions, ALL of which it materially conceals.

3. Indeed, Mr. Hennessey's "Response" is a verifiable fraud on the Court, flagrantly violating Rule 4-3.3 of Florida's Rules of Professional Conduct "Candor Toward the Tribunal", proscribing a lawyer from, *inter alia*, knowingly making "a false statement of fact or law to a tribunal or fail[ing] to correct a false statement of material fact or law previously made to the tribunal by the lawyer". Likewise, it flagrantly violates his Oath of Admission to the Florida Bar, which enjoins him to "never seek to mislead the judge…by any artifice or false statement of fact and law."

4. That Mr. Hennessey has no compunction in interposing such fraudulent "Response", notwithstanding Canon 3D(2) of Florida's Code of Judicial Conduct "requires a judge to take appropriate action 'when a judge receives information or has actual knowledge that substantial likelihood exists that a layer has committed a violation of the Rules Regulating the Florida Bar…'" – as I twice, previously, pointed out to him, citing *Dean v. Bentley*, 848 So.2d 487 (5th DCA 2003)[3] – reflects his view that this Court will let him get away with anything

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[2] Mr. Hennessey's "Response" (at ¶¶2, 3, "WHEREFORE" clause) apparently deems this subsequent motion as part of the initial motion, by its varying use of the singular "motion". Such is similarly reflected by his proposed orders denying the motions, which also materially uses the singular.

[3] See ¶15 of my September 8, 2014 affidavit to the Fifth District Court of Appeal in opposition to Mr. Hennessey's motion seeking to have that Court withdraw its August 22, 2014 Order relinquishing jurisdiction to this Court for purposes of determining my Rule 1.540(b)(3) Amended Motion for Relief from Court Orders – which is free-standing Exhibit I to my October 14, 2014 affidavit clarifying, supplementing, & further supporting my Amended Motion, including for purposes of summary

because he has the Court "in his pocket". As such, Mr. Hennessey's "Response" only reinforces my entitlement to this Court's disqualification.

5. As I also previously pointed out[4] – without contest from Mr. Hennessey – the "controlling legal principle" is as follows:

> "when a litigating party resorts to falsehood or other fraud in trying to establish a position, a court may conclude that position to be without merit and that the relevant facts are contrary to those asserted by the party.' Corpus Juris Secundum, Vol. 31A (1996 ed., 339);
>
> "It has always been understood – the inference is one of the simplest in human experience – that a party's falsehood or other fraud in the preparation and presentation of his cause…and all similar conduct, is receivable against him as an indication of his consciousness that his case is a weak or unfounded one; and that from that consciousness may be inferred the fact itself of the cause's lack of truth and merit. The inference thus does not necessarily apply to any specific fact in the cause, but operates, indefinitely though strongly, against the whole mass of alleged facts constituting his cause.' II John Henry Wigmore, Evidence §278 at 133 (1979)." (¶¶7 of my October 30, 2014 affidavit in reply to Mr. Hennessey's October 15, 2014 Response to my Amended Motion for Relief from Court Orders).

6. This further reinforces my entitlement to the disqualification sought by my two motions.

Mr. Hennessey's Non-Response "Response" Continues his *Modus Operandi* of Fraud and Misrepresentation

7. Mr. Hennessey's "Response" is, in every one of its six paragraphs, a knowing fraud on the Court. Most significant is his pretense that I am complaining about adverse rulings by the Court, but that these are "not an adequate ground for recusal". Thus his ¶3:

> "The thrust of Petitioner's Motion is that *this Court must be biased because it ruled against her*. Petitioner simply reargues the reasons she believes she should have prevailed." (italics in the original).

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determination thereof; AND ¶¶3-7 of my October 30, 2014 affidavit in reply to Mr. Hennessey's written "Response" to the Amended Motion.

[4] See ¶7 of my October 30, 2014 affidavit in reply to Mr. Hennessey's written "Response" to my Amended Motion for Relief from Court Orders.

and his ¶5:

> "'The fact that the judge has made adverse rulings against the [movant] in the past is not an adequate ground for recusal.' See Santisteban v. State, 72 So.3d 187, 194 (Fla. 4th DCA 2011); Mansfield v. State, 911 So.2d 1160, 1171 (Fla. 2005)."

8. The falsity of both these paragraphs is revealed by ¶6 of my initial disqualification motion. It states, with respect to the Court's November 3, 2014 Order denying my Rule 1.540(b)(3) Amended Motion to Vacate Court Orders:

> "On its face, the ½-page Order (Exhibit B) is devoid of facts and law, being completely conclusory, including as to what the Court 'specifically finds' – reflective of the Court's knowledge that there is no basis in fact and law for the Order. Such Order is not an 'adverse ruling', with which I 'disagree', but a judicial fraud, which cannot be justified when compared to the record. It is the culminating manifestation of the Court's pervasive actual bias, meeting the 'impossibility of fair judgment' disqualification standard of *Liteky v. United States*, 510 U.S. 540, 555, 563, 564 (1994)." (underlining in the original).

In other words, and as highlighted by the underlining in that motion, the Court's disqualification is not because it has "ruled against [me]", as if such ruling(s) are defensible in fact and law and can be justified. Rather, it is because the Court's November 3, 2014 Order is "a judicial fraud" – verifiable from a record establishing actual bias so pervasive and resistant to evidence and law as to meet the standard for judicial disqualification, articulated by the U.S. Supreme Court decision in *Liteky v. United States*.

9. Moreover, as Mr. Hennessey well knows, his cited cases of *Santisteban* and *Mansfield* cannot – and do not – override United States Supreme Court's decision in *Liteky v. United States* as to when judicial rulings can constitute grounds for judicial disqualification. Indeed, *Santisteban* makes evident – including by its citation to *Scott v. Florida*, 909 So. 2d 364, 367-368 (5th DCA 2005) – that where "adverse rulings" "suggest[] bias" – because, for example, *they are without record support*, as at bar – they constitute an "objective basis" for the fear of a Court's "personal prejudice". Certainly, NO LAW holds that a Court's factually-unfounded,

legally-insupportable rulings, knowingly made, are "merely the exercise of a legitimate judicial function". *Santisteban,* at 194.[5]

10. As for Mr. Hennessey's ¶2, which purports that my motions are not "legally sufficient" and then recites that I was required to allege

> "specific facts showing that this Court was 'personally prejudiced' against [me] or that reasonable persons in [my] position would fear not receiving a fair trial 'because of specifically described prejudice or bias of the judge",

Mr. Hennessey does not purport that my motions did not furnish such "specific facts" – let alone refute any of the "specific facts" it had not identified. Nor can Mr. Hennessy do so.

11. As the most cursory examination of my disqualification motions reveal, they furnish a mountain of record-based "specific facts" for a "legally sufficient" motion. In addition to the "specific facts" particularized by ¶¶12-30 of my initial disqualification motion under the title heading:

> "The Court's Conclusory November 3, 2014 Order is a Manifestation of its Pervasive Actual Bias as the Record Dispositively Establishes a Multitude of Factual and Legal Grounds for Vacatur – Including Mr. Hennessey's Material Fraud that I am to Blame for my Attorneys' Failure to Effect Service",

the motion's introductory paragraphs, ¶¶1-11, summarize and present "specific facts" that are themselves "legally sufficient" – especially my ¶¶9-11, stating:

> "9. The consequence of this virulent, pervasive bias is that the Court's November 3, 2014 Order is 'so totally devoid of evidentiary support as to render

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[5] See *Leone v. State of Florida*, 666 So. 2d 1050 (3rd DCA 1996):

> "As nothing in this record reveals any bias, prejudice, or ill will on the part of the judge, but only the exercise of legitimate judicial function, the motion to disqualify was legally insufficient and properly denied." (underlining added).

This is cited and paraphrased in *Scott v. State of Florida* as:

> "(motion to disqualify judge was legally insufficient and properly denied where nothing in the record revealed any bias, prejudice, or ill will on the part of the judge, but only the exercise of legitimate judicial function)" (at 368, underlining added).

[it] unconstitutional under the Due Process Clause' of the United States Constitution, *Garner v. State of Louisiana*, 36S U.S. 157,163 (1961); *Thompson v. City of Louisville*, 362 U.S. 199 (1960). It also flagrantly denies me equal protection of the law by its willful disobedience to the black-letter law of *Kozel v. Ostendorf*, 629 So.2d 817 (Florida Supreme Court, 1993), and the mountain of caselaw based thereon precluding a court from doing what this Court did: dismissing a litigant's case for attorney error or misconduct for which the litigant is blameless. That caselaw, which I brought to the Court's attention in two affidavits, includes *Erdman v. Bloch*, 65 So. 3d 62 (5th DCA 2011), *Sanders v. Gussin*, 30 So. 3d 699 (5th DCA 2010), *Shortall v. Walt Disney World Hospitality*, 997 So. 2d 1203 (5th DCA 2008); *Scallan v. Marriott International, Inc.*, 995 So.2d 1066 (5th DCA 2008), *American Express v. Hickey*, 869 So. 2d 694 (5th DCA 2004), in addition to the two cases that Mr. Hennessey misrepresented in his advocacy to the Court: *Powell v. Madison County Sheriff's Department*, 100 So. 3d 753 (1st DCA 2012), and *Pixton v. Scotsman*, 924 So. 2d 37 (5th DCA 2006) – much as he misrepresented to the Court that I, rather than my attorneys was to blame for the failure to effect service of my pleadings, which was the material deceit without which he could not have procured the April 2, 2014 Order dismissing my will contest.

10. A court that refuses to give obedience to black-letter law, as to which it has NO discretion, is NOT fair and impartial – and plainly has some other agenda. Pursuant to *Kozel*, *Pixton*, and the caselaw resting thereon, the April 2, 2014 Orders must be vacated/reversed, *as a matter of law*, on my appeals, as the Court well knows. Consequently, the ONLY explanation for its refusal to vacate those Orders on a proper motion, such as mine, is that it is so virulently biased and prejudiced that it maliciously seeks to burden me with the effort and expense of appeals that is its duty to obviate by a ruling to which I am absolutely entitled – the Amended Vacatur Motion expressly identifying Mr. Hennessey's misrepresentations that service was not made '[a]s a result of Nina's delay' and because I had purportedly been 'uncooperative' with my lawyers (¶¶7, 8, 18).

11. That the Amended Vacatur Motion additionally seeks, by its 'WHEREFORE' clause, 'such other relief that may be necessary or just under the circumstances' (at p. 8) – such being consistent with the Court's inherent power and interest-of-justice jurisdiction – only accentuates that the Court is disabled by bias and prejudice – all concealed by its completely conclusory November 3, 2014 Order, devoid of requisite findings and all law." (capitalization and italics in the original).

12. A judge's violation of the requirements of black-letter law – as to which he has NO discretion, *as at bar* – constitutes an "objective basis" for fearing that he is personally biased or prejudiced – this being the meaning of the language in *Scott v. State of Florida:* "…a judge is

not required to accept a plea negotiated by the parties" (underlining added). Indeed, illuminating the significance of this language is *Jernigan v. State of Florida*, 608 So. 2d 569, 570 (1st DCA 1992), more fully stating:

> "…A trial court is not obligated to accept a plea agreement which binds it to a specific sentence… The defendant is not entitled to specific performance of a plea agreement…. Thus, rejection of the plea agreement is in the nature of an adverse judicial ruling, and such rulings will not serve as a basis for disqualification…" (underlining added).

In other words, a judge's disregard of mandatory legal requirements is not an "adverse ruling", but, rather, one which cannot be defended.

13. As for Mr. Hennessey's ¶6, which additionally purports, somewhat implicitly, that my disqualification motion is not legally sufficient because "A motion to disqualify must be filed within 10 days of discovery of the facts constituting the grounds for the motion", such is a further deceit. Not identified by that paragraph, as likewise by the balance of Mr. Hennessey's "Response", is that my two disqualification motions are based on what the Court did on November 3, 2014, both at that day's continued evidentiary hearing and in the Order it then rushed to issue denying me the vacatur of its April 2, 2014 and November 13, 2013 Orders to which my meritorious Rule 1.540(b)(3) Amended Motion for Relief of Court Orders entitled me, *as a matter of law*. Tellingly, Mr. Hennessey's motion never even identifies the November 3, 2014 Order or the Court's rulings at the continued evidentiary hearing of that date.

14. Finally, and further underscoring that Mr. Hennessey has NO defense to my disqualification motions is his "Response" to my November 13, 2014 motion for rehearing of the Court's November 3, 2014 Order and, in conjunction therewith, disclosure of facts bearing upon its fairness and impartiality. The fraudulence of that November 17, 2014 "Response", beginning

with its material omission of the disclosure sought, is particularized by my reply affidavit thereto, simultaneously filed with this reply affidavit and incorporated herein by reference.

15. Suffice to say that Mr. Hennessey concealment of the requested disclosure – which he himself could have substantially made for the Court – suggests that this Court has personal, professional, and political relationships with him, his client, or other adverse counsel and that Mr. Hennessey is:

> "the *ex parte* source of the Court's handwritten additions to his proposed orders dropping parties, which the Court signed on April 2, 2014, most importantly, the handwritten addition that the Court had 'previously noted' my 'dilatory and stall tactics' – which has absolutely NO record support, the Court having never 'previously noted' any such thing."

16. Tellingly, neither in his "Response" to that rehearing/disclosure motion, nor in his "Response" to my disqualification motions, does Mr. Hennessey furnish the record support for where the Court had "previously noted" my "dilatory and stall tactics".

ANNEEN NINA GLORIA BAUM

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Sworn to before me this
24th day of November 2014

Anneen NG Baum
being personally known to me

Notary Public

TINO GONZALEZ
Notary Public - State of Florida
My Comm. Expires May 5, 2015
Commission # EE 84888
Bonded Through National Notary Assn.

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that the foregoing document is being served on November 25, 2014, *via* an automatic email generated by the Florida Courts E-Filing Portal to:

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CERTIFICATE OF SERVICE

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