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

IN RE: ESTATE OF SEYMOUR BAUM **PROBATE DIVISION**

Deceased.

ANNEEN NINA GLORIA BAUM, **Chief Judge John M. Harris**

Petitioner/Plaintiff,

v. **Case #: 05-2012-CP-048323**
Case #: 05-2013-CP-028863

DAVID A. BAUM, et al.,

Respondents/Defendants.

PETITIONER/PLAINTIFF ANNEEN NINA GLORIA BAUM'S AFFIDAVIT IN REPLY TO THE "PERSONAL REPRESENTATIVE'S RESPONSE TO MOTION FOR REHEARING"

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

1. I am the Petitioner/Plaintiff herein, unrepresented by counsel,[1] and submit this affidvit in reply to the November 17, 2014 "Personal Representative's Response to Motion for Rehearing", signed by William Hennessey, Esq.

2. Such purported "Response" materially omits that my November 13, 2014 motion[2] is not only for rehearing, but, in conjunction therewith, disclosure of facts bearing upon the Court's fairness and impartiality. This is prominently identified by both the motion's first-page capitalized title and first paragraph – with the particulars of the requested disclosure set forth at ¶¶11 and 12. In addition to disclosure of the Court's personal, professional, and political relationships with Mr.

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[1] Assisting me is the same independent reviewer of the record who assisted me in making the November 12, 2014 motion to which Mr. Hennessey purports to respond.

[2] This is the filing date of the motion, which I signed and notarized on November 12, 2014.

Hennessey and his client, I asked for disclosure as to whether Mr. Hennessey was 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. Mr. Hennessey, who readily could have furnished such information, has chosen to conceal that it was even requested – including in the proposed orders denying the motion that he has furnished to the Court for signature.

3. As hereinafter shown, Mr. Hennessey's paltry 1-1/2 page "Response" to the rehearing sought by my motion is no opposition, *as a matter of law*, as it is non-responsive to ALL the facts, law, and legal argument presented by my motion, ALL materially concealed.

4. Indeed, Mr. Hennessey's "Response" is a 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". Similarly, it flagrantly violates Mr. Hennessey's 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."

5. This is not the first time I am pointing out to Mr. Hennessey both the Rules and Oath. I did so initially by my September 8, 2014 affidavit to the Fifth District Court of Appeal in opposing his August 25, 2014 motion seeking to have that Court withdraw its August 22, 2014 Order relinquishing jurisdiction, wherein I demonstrated that his motion was a fraud upon that Court, being fashioned on material misrepresentations of fact and law, throughout.[3] I pointed out the Rules and

[3] The September 8, 2014 affidavit is free-standing Exhibit I to my October 14, 2014 affidavit clarifying, supplementing & further supporting my Rule 1.540(b)(3) Amended Motion for Relief from Court Orders, including for purposes of summary determination thereof.

Oath, yet again, by my October 30, 2014 affidavit in reply to his October 15, 2014 written "Response" to my Rule 1.540(b)(3) Amended Motion for Relief from Court Orders,[4] wherein I demonstrated that his written "Response" was a fraud upon this Court, also being fashioned on material misrepresentations of fact and law, throughout.

6. As additionally noted by my October 30, 2014 reply affidavit (¶7) – 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. As such, Mr. Hennessey's demonstrated misconduct on this rehearing/disclosure motion – and on my simultaneously-filed November 13, 2014 motion for this Court's disqualification for demonstrated actual bias[5] – reinforces my entitlement to the rehearing/disclosure relief sought.

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

8. Mr. Hennessey's "Response" begins with the flagrant deceit, by his ¶1, that:

> "This Court correctly denied Petitioner's Amended Motion for Relief from Orders for Misconduct or Fraud, etc."

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[4] See ¶¶3-7 of my October 30, 2014 affidavit.

[5] Mr. Hennessey's non-responsive and fraudulent "Response" to that disqualification motion is particularized by my simultaneously-filed November 24, 2014 affidavit in reply thereto, incorporated herein by reference.

Such is a bald declaration, non-responsive to the specifics of my motion for rehearing and disclosure, none of which are identified or addressed in the seven subsequent paragraphs of his "Response".

9. Of these seven subsequent paragraphs, five are, in their entirety, bald, non-responsive declarations: his ¶2 that I am "seeking to place blame on this Court"; his ¶3, that the "thrust of [my] argument is that I ha[ve] been denied due process"; his ¶4, that my Amended Motion for Relief "failed not because of a lack of process but a lack of proof"; his ¶7, that there is "simply no misconduct or fraud"; and his ¶8, that I have "alleged no legal basis which would require a rehearing".

10. As for the remaining two, his ¶¶5-6, which refer to unspecified "evidence" pertaining to the Court's November 15, 2013 Order(s) Compelling Service, such are also non-responsive to the basis upon which I moved for rehearing – in addition to being materially false and misleading.

11. As for the meritorious basis upon which I moved for rehearing , UNCHALLENGED BY MR. HENNESSEY, it is my entitlement, *as a matter of law*, to the vacatur denied by the Court's conclusory November 3, 2014 Order, containing NO factual findings or conclusions of law and plainly "overlooking" the dispositive significance of my "Procedural History", my e-mail chains with my attorneys, and my October 14, 2014 and October 30, 2014 affidavits in further support of my Rule 1.540(b)(3) Amended Motion for Relief from Court Orders.

12. Likewise, UNCHALLENGED BY MR. HENNESSEY, are the dispositive particulars of the deficiencies of the Court's November 3, 2014 Order, set forth by my motion's Exhibit D – this being my simultaneously-filed motion for the Court's disqualification for demonstrated actual bias based on the November 3, 2014 Order. Such is incorporated by reference at ¶10 of my motion, as follows:

"…As all the facts, law, and legal argument set forth by my disqualification motion as to the indefensibility of the Court's Order are germane to this rehearing motion, a copy of the disqualification motion is annexed hereto (Exhibit D) and incorporated by reference, in the interest of judicial economy."

13. Indeed, it is to conceal that Mr. Hennessey has absolutely NO substantive response to my rehearing motion that he offers up his frivolous and multitudinously false and deceitful ¶¶5-6, which reads:

"5. Petitioner's claims of misconduct and fraud centered upon the submission of an Order to this Court following a hearing on November 12, 2013. At that hearing, the Court required her to complete service no later than December 17, 2013. The evidence demonstrated that Petitioner's counsel approved the order and wrote to this Court's judicial assistant indicating that he had 'no objection' to the Order. The evidence also demonstrated that the Order was consistent with this Court's ruling.

6. Lastly, and perhaps most importantly, the evidence presented showed that Petitioner never objected to the proposed deadline for completing service or attempted to offer any good cause for her delay in completing service until this trial was concluded."

14. The multitudinous falsehoods and deceits of Mr. Hennessey's ¶¶5-6 are as follows:

(a) The unidentified "submission of an Order to this Court following a hearing on November 12, 2013" is Mr. Hennessey's proposed "Order(s) Compelling Service", which the Court signed on November 15, 2013. Its materially false and overreaching nature is only one of several grounds upon which my Rule 1.540(b)(3) Amended Motion for Relief of Court Orders entitled me to vacatur. Among the other dispositive, evidentiarily-established grounds, 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, identified at ¶¶7, 8, 18 of my Amended Motion for Relief. This was the most material of Mr. Hennessey's falsehoods, as without it he could not have procured the April 2, 2014 Orders dropping parties, effectively depriving me of my will contest – the particulars of which are focally-presented by my October 14, 2014 and October 30, 2014 affidavits and highlighted by ¶¶9-11, 13-25 of my November 13, 2014 motion to disqualify the Court for demonstrated actual bias, annexed to my rehearing/disclosure motion as Exhibit D;

(b) It is false that at the November 12, 2013 hearing the Court "required me to complete service no later than December 17, 2013". The flexibility of the Court's November 12, 2013 oral ruling setting a target date for service, as opposed to an intractable deadline, is established by the transcript of the

hearing, annexed as an exhibit to my Rule 1.540(b)(3) Amended Motion for Relief from Court Orders – and quoted and discussed at its ¶¶9-11, 16-17;

(c) It is false that "[t]he evidence…demonstrated" that Mr. Hennessey's proposed "Order Compelling Service", which the Court signed on November 15, 2013, was "consistent with this Court's [November 12, 2013] oral ruling". That the oral ruling and the written order are inconsistent is established by comparison of the November 12, 2013 transcript and Mr. Hennessey's proposed Order(s), annexed as exhibits to my Rule 1.540(b)(3) Amended Motion for Relief from Court Orders[6];

(d) The proposition that Mr. Hennessey's material re-write of the Court's November 12, 2013 oral ruling, by his proposed "Order(s) Compelling Service, is not fraud and misrepresentation because "approved" by Mr. Guralnick, the counsel purporting to represent me at the November 12, 2013 hearing, is UNSUPPORTED by any law. Indeed, because Mr. Hennessey and the Court have no law to justify what Mr. Hennessey did, Mr. Hennessey falsely purports that "evidence…demonstrates" that the oral ruling and signed Order are "consistent" – when, in fact, no such "evidence" exists or can exist for what is documentarily-proven as inconsistent. This deceit replicates what the Court did by its November 3, 2014 Order, detailed at ¶13 of my November 13, 2014 disqualification motion, without response from Mr. Hennessey[7];

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[6] This Court is presumed to be aware of the criticisms and infirmities of signing orders submitted by the parties:

> "It is well established that trial courts are admonished for the verbatim adoption of proposed orders drafted by litigants. *E.g., Chudasama v. Mazda Motor Corporation*, 123 F.3d 1353, 1373 n. 46 (11th Cir. 1997). The Eleventh Circuit made it clear that a judge's practice of delegating the task of drafting sensitive, dispositive orders to counsel, and then uncritically adopting the orders nearly verbatim would belie the appearance of justice and creates the potential for overreaching and exaggeration on the part of the attorney preparing findings of fact. Id. The court referred to a quote of Judge J. Skelly Wright, who characterized opinions drafted by lawyers as 'not worth the paper they are written on' as far as assisting the appellate court in determining why the judge decided the case. *Id*. at 1373 n. 46. *See also, Polizzi v. Polizzi*, 600 So. 2d 490, 491 (Fla. 5th DCA 1992)." *Corporate Management Advisors v. Boghos*, 756 So. 2d 246, 248 (5th DCA 2000). (underlining added).

See, also *Ford v. Starling*, 721 So. 2d 335, 337 (5th DCA 1998); *White v. White*, 686 So. 2d 762 (5th DCA 1997); *Polizzi v. Polizzi*, 600 So. 2d 490 (5th DCA 1992).

[7] ¶13 of my November 13, 2014 disqualification motion states:

> "As to the only other so-called 'specific' in the [November 3, 2014] Order:
>
> > '…no misrepresentation or misconduct…[in the] entry of prior orders on the representation that all counsel had agreed that the order accurately reflected the scope and intent of the Court's prior ruling',

(e) Mr. Hennessey has furnished NO evidence that Mr. Guralnick's "approval" of his proposed "Order(s) Compelling Service" was knowing, as opposed to inadvertent. The evidence is ALL to the contrary: Mr. Hennessey does not purport that he ever alerted Mr. Guralnick – or the Court – to his rewrite of the Court's November 12, 2013 oral ruling AND the transcripts of the December 17, 2013 and March 18, 2014 hearings establish his affirmative deceit as to what had taken place on November 12, 2013. Tellingly, he did not subpoena Mr. Guralnick to testify at the evidentiary hearing of my Rule 1.540(b)(3) Amended Motion for Relief from Court Orders, in contrast to my two subpoenas for Mr. Guralnick's testimony, which the Court both quashed, without reasons;

(f) Mr. Hennessey's assertion that "perhaps most importantly, the evidence presented showed that Petitioner never objected to the proposed deadline for completing service or attempted to offer any good cause for her delay in completing service until this trial was concluded" is false. Mr. Guralnick made repeated motions to extend the deadline – which the Court denied, following Mr. Hennessey's false and inciting advocacy that I was responsible

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this is utter nonsense as Mr. Hennessey's drafted order that the Court signed on November 15, 2013 did not 'accurately reflect[] the scope and intent of the Court's 'prior ruling' and Mr. Hennessey repeatedly dodged and was evasive on the witness stand, while, additionally, Mr. Karr made frivolous objections about these being issued raised previously on rehearing and being untimely – falsehoods which the Court should have, but did not, condemn – as I had already exposed these deceits as having been previously employed by Mr. Hennessey before the Fifth District Court of Appeal in his effort to prevent it from relinquishing jurisdiction to this Court for purposes of determining my Amended Vacatur Motion. Nor does the November 3, 2014 Order furnish any law for its proposition that an attorney's material rewriting of a court's oral order – as at bar – without notice of that fact to adverse counsel constitutes agreement, especially where his rewriting is entirely one-sided and in his client's favor. Certainly, Mr. Hennessey did not purport, by his testimony, that he had ever alerted either Mr. Guralnick or the Court to the liberties he had taken – such that their purported 'agreement' thereto was knowing, rather than inadvertent. Indeed, ¶16 of the Amended Vacatur Motion quotes from the December 17, 2013 hearing transcript to show that on December 17, 2013 Mr. Hennessey not only did not disclose what he had done in drafting the 'Order(s) Compelling Service', but affirmatively misrepresented to the Court what it had orally ruled at the November 12, 2013 case management conference and that the November 15, 2013 written Order was consistent therewith. This is even more dramatically particularized by the 'Procedural History' (at pp. 10-11) – with its further showing (at pp. 15-16) of Mr. Hennessey's repetition of this misconduct at the March 18, 2014 oral argument on Mr. Hennessey's motions to drop parties.

14. Here, too, the November 3, 2014 Order does not identify that the Court ended the November 3, 2014 evidentiary hearing without permitting closing argument – thereby preventing me from furnishing the Court with the salient facts and law, including what my October 30, 2014 affidavit had set forth (at ¶¶36-39) as to the fraudulent manner in which Mr. Hennessey's Response to my Amended Vacatur Motion had dealt with the issue."

> for the failure to effect service and was "masterminding" a strategy of delay – as to which Mr. Hennessey had NO evidence. This is highlighted by my "Procedural History" – as likewise the "good cause" that was before the Court pertaining to "delay in completing service" (pp. 7-14, 21-22). Additionally, the Court quashed my subpoenas for Mr. Guralnick's testimony, as likewise for the testimony of Ms. Hoffman, so that they could explain their actions in failing to effect service and failing to address the "good cause" issue, as to which I had absolutely no culpability.

15. Were the Court to substantiate its November 3, 2014 Order with findings of fact and conclusions of law as to each of the paragraphs of my Rule 1.540(b)(3) Amended Motion for Relief from Court Orders – which is what ¶¶13-14 of my rehearing motion identify as the Court's duty to do, in the event it does not vacate the Order upon rehearing – its findings and conclusions would mirror those hereinabove stated and result in the vacatur to which I am entitled on multiple grounds. This is presumably why Mr. Hennessey does not respond to my ¶¶13-14 either.

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

I HEREBY CERTIFY that the foregoing document is being served on November 28, 2014, *via* an automatic email generated by the Florida Courts E-Filing Portal to:

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